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FILED BY RESS & DELIVERED

December 20, 2013

File No.: 129316.1002

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
Yonge-Eglinton Centre
P.O. Box 2319
2300 Yonge Street, Suite 2700
Toronto ON M4P 1E4

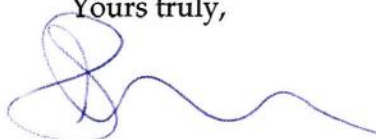
Dear Ms. Walli:

**Re: wpd Sumac Ridge Incorporated - New Application for Leave
to Construct Transmission Facilities**

On behalf of wpd Sumac Ridge Incorporated, we enclose two copies of wpd Sumac's application under Section 41(9) of the *Electricity Act* to determine the location of wpd Sumac's distribution facilities within certain road allowances located in the City of Kawartha Lakes, Ontario.

In accordance with Board Staff's direction, a searchable PDF copy of the application has also been filed electronically through RESS.

Yours truly,



Ingrid Minott

IM/dl
Encl.

TORONTO

MONTRÉAL

OTTAWA

CALGARY

VANCOUVER

NEWYORK

LONDON

SYDNEY

EXHIBIT LIST

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IN THE MATTER of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B, (the “**OEB Act**”);

AND IN THE MATTER of an Application by wpd Sumac Ridge Incorporated for an Order or Orders pursuant to section 41(9) of the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A establishing a location for the applicant’s distribution facilities on public road owned by the Municipality of Kawartha Lakes, Ontario, as set out in this application.

APPLICATION

The Applicant wpd Sumac Ridge Incorporated (“**wpd Sumac**” or the “**Applicant**”) is a New Brunswick corporation with its headquarters located in Mississauga, Ontario. wpd Sumac is developing the Sumac Ridge renewable wind energy development project (the “**Sumac Ridge Wind Project**” or the “**Wind Project**”) in Kawartha Lakes, Ontario (the “**Municipality**”).

wpd Sumac hereby applies to the Ontario Energy Board (the “**OEB**” or the “**Board**”) pursuant to section 41(9) of the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A (the “*Electricity Act*”) for an order or orders establishing a location for wpd Sumac’s distribution facilities to run above a portion of Gray Road and to cross beneath Wild Turkey Road (the “**Road Allowances**”), more particularly described in Exhibit C, Tab 1, Schedule 1.

wpd Sumac requests that the Board expedite its hearing of this Application in accordance with sections 2.10 and 7.01 of the Board’s *Rules of Practice and Procedure* because as the sole owner of the Road Allowances, the Municipality is the only person or entity directly affected by this Application.

The Applicant also requests that the Board, in hearing this Application, be guided by its mandate, under section 1(1)(5) of the OEB Act, to “promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission

1 systems and distribution systems to accommodate connection of renewable energy
2 generation facilities.”

3 The individuals named below are the authorized representatives of the Applicant for the
4 purpose of serving documents on the Applicant throughout this proceeding:

The Applicant:

wpd Sumac Ridge Incorporated
2233 Argentia Road
Suite 102
Mississauga ON L5N 2X7
Attention: Jesse Long

Tel: (905) 813-8400
Fax: (905) 813-7487
Email: jesse@wpd-canada.ca

The Applicant's Legal Counsel:

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
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Ingrid A. Minott (58674F)
Tel: (416) 869-5580
Fax: (416) 947-0866
Email: iminott@stikeman.com

5 Additional written evidence, as required, may be filed in support of this Application and
6 may be amended from time to time prior to the Board's final decision.

- 1 The Applicant requests that the Board proceed by way of written hearing, pursuant to
- 2 section 34.01 of the Board's *Rules of Practice and Procedure*.

DATED at Toronto, Ontario, this 20th day of December, 2013

wpd Sumac Ridge Incorporated

by its counsel

Stikeman Elliott LLP

A handwritten signature in black ink, appearing to read "PD-117", is written above a horizontal line.

Patrick Duffy

1 **APPLICATION SUMMARY**

2 This is an Application by wpd Sumac for an order or orders pursuant to section 41(9) of the
3 *Electricity Act* establishing the location of the Applicant's distribution facilities on the Road
4 Allowances, as set out in Exhibit C, Tab 1, Schedule 1.

5 **The Applicant**

6 The Applicant wpd Sumac is a New Brunswick corporation and is headquartered in
7 Mississauga, Ontario.

8 The Applicant is a wholly-owned subsidiary of wpd europe GmbH ("**wpd europe**"). wpd
9 europe is a German corporation that is engaged in the business of developing and operating
10 renewable wind energy facilities in Germany and other parts of the world.

11 A chart that depicts the underlying ownership structure of the Applicant is included at
12 Exhibit B, Tab 3, Schedule 2.

13 **The Sumac Ridge Wind Project**

14 The Applicant is the proponent of the Sumac Ridge Wind Project. The Wind Project will
15 consist of 5 REpower MM92-2.05 MW wind turbine generators owned and operated by the
16 Applicant and will contribute 10.25 MW of renewable energy to Ontario's electricity grid. In
17 May 2010, the Applicant was awarded a contract with the Ontario Power Authority
18 ("**OPA**") under the OPAs Feed-In-Tariff Program ("**FIT Program**") in respect of the Wind
19 Project.

20 **The Distribution System**

21 To transport electricity generated by turbine 5 to the collector substation, the Applicant will
22 run a 44 kV collector line underground crossing beneath Wild Turkey Road to turbine 4 (the
23 "**WRT Collector Line**"). To convey the electricity generated by the Wind Project to the
24 Independent Electricity System Operator ("**IESO**") controlled grid, the Applicant intends to

1 construct a 44 kV aboveground electrical power distribution line (the “**Distribution Line**”)
2 to connect to an existing local distribution system located along Highway 35, and running to
3 Hydro One Networks Inc.’s (“**HONI**”) Wilson Transmission Station, which is in turn
4 connected to the IESO-controlled grid. As such, wpd Sumac is a distributor as defined in the
5 *Electricity Act*.

6 The WRT Collector Line, Distribution Line and their associated facilities are collectively
7 referred to in this Application as the “**Distribution System**”. The Distribution System is
8 more particularly described in Exhibit C, Tab 1, Schedule 1.

9 **Statutory Rights of Distributors**

10 The Applicant intends to locate certain facilities associated with the Distribution System
11 within the Road Allowances, as particularly described in Exhibit C, Tab 1, Schedule 3.
12 Pursuant to section 41(1) and 41(5) of the *Electricity Act* and the Board’s Decision and Order
13 in EB-2010-0253 (the “**Grey Highlands Decision**”),¹ as a distributor, wpd Sumac may
14 construct or install distribution facilities over, under or on any public streets or highways
15 without the consent of the owner of, or any other person having an interest in, such streets
16 or highways.

17 As set out in Exhibit D, Tab 1, Schedule 4, a balance of environmental, social, technical and
18 economic considerations have resulted in wpd Sumac’s decision to locate the Distribution
19 System within the Road Allowances. However, as detailed in Exhibit D, Tab 1, Schedule 2,
20 the Municipality has refused to engage in discussions with the Applicant regarding the
21 location of the Distribution System within the Road Allowances.

¹ Decision and Order in EB-2010-0253 dated January 12, 2011 (the “**Grey Highlands Decision**”)

Application for Permit to Occupy the Road Allowances

Given the Applicant's statutory right to locate the Distribution System within the Road Allowances, the only outstanding issue with respect to wpd Sumac's use of the Road Allowances is the precise location of the Distribution System within the Road Allowances.

Although under no statutory obligation to do so, the Applicant reached out to the Municipality to commence the application process for a permit to occupy and engage in certain construction activities within the Road Allowances related to the Distribution System, and begin negotiations regarding the terms of a road use agreement pertaining to the Applicant's use of the Road Allowances.

The Municipality refused to process the Applicant's application for a permit on the basis that the Applicant's request was premature and not supported by the Municipal Council. The Municipality has effectively refused to engage with the Applicant with respect to the precise location of the Distribution System within the Road Allowances. The Municipality has continuously rebuffed the Applicant's efforts to initiate a discussion about the necessary permit. As a result of the Municipality's conduct, the Applicant has not obtained a permit to occupy the Road Allowances, and has been unable to reach an agreement with the Municipality regarding the location of the Distribution System within the Road Allowances. The Municipality's response to the Applicant's attempts to obtain a permit and initiate discussions between the parties is more particularly described in Exhibit D, Tab 1, Schedule 2.

The Proposed Road Use Agreement

In anticipation of discussions with the Municipality regarding the location of the Distribution System within the Road Allowances, the Applicant prepared a proposed road use agreement (the "**Road Use Agreement**") to facilitate negotiations with the Municipality and to document the rights and obligations of the parties regarding the location of the Distribution System within the Road Allowances.

Pursuant to the terms of the proposed Road Use Agreement, the Municipality would affirm the Applicant's right to use the Road Allowances for the Distribution System and agree to the location of the Distribution System within the Road Allowances. In exchange, the Applicant would provide certain protections to the Municipality, including security to guarantee the Applicant's performance of its obligations under the proposed Road Use Agreement. The terms of the proposed Road Use Agreement are consistent with a distributor's obligations under section 41 of the *Electricity Act*. The provisions are discussed in greater detail in Exhibit D, Tab 1, Schedule 3.

Potential Impacts

The Applicant's use of the Road Allowances will not prejudice the Municipality. In particular, in its Renewable Energy Application, wpd Sumac identified and developed mitigation measures for all the significant environmental effects of the Wind Project, including the Distribution System. In addition, the Municipality will benefit from the road improvements that will result from the Applicant's construction activities within the Road Allowances, which improvements will be fully funded by the Applicant at no cost to the Municipality.

However, as detailed in Exhibit D, Tab 1, Schedule 2, the Municipality's delay or failure to enter into a road use agreement with wpd Sumac could cause significant prejudice to the Applicant in the form of increased costs caused by construction delays, and could affect the Applicant's ability to meet certain milestones with respect to its FIT Contract.

The Board's Authority to Determine the Location of the Distribution System

Pursuant to section 41(9) of the *Electricity Act*, in the event of any disagreement, the Board may determine the location of the structures, equipment or facilities relating to a distribution system that a distributor intends to construct on any street or highway. In this case, because the Applicant and the Municipality have been unable to agree on its

1 precise location, the Board may determine the location of the Distribution System within the
2 Road Allowances.

3 In the Grey Highlands Decision, the Board acknowledged that the scope of its authority
4 with respect to an application under section 41(9) of the OEB Act is limited to the
5 determination of the location of the proposed distribution facilities. Further, in its Decision
6 and Order in respect of EB-2013-0233 (the “**Grey County Decision**”),² the Board confirmed
7 that the *Electricity Act* does not require an applicant to obtain any applicable regulatory
8 approval prior to seeking relief under section 41(9). Accordingly, in this Application, the
9 Board’s determination of whether to grant the relief requested does not involve a
10 consideration of whether the Wind Project has received the required regulatory approval.

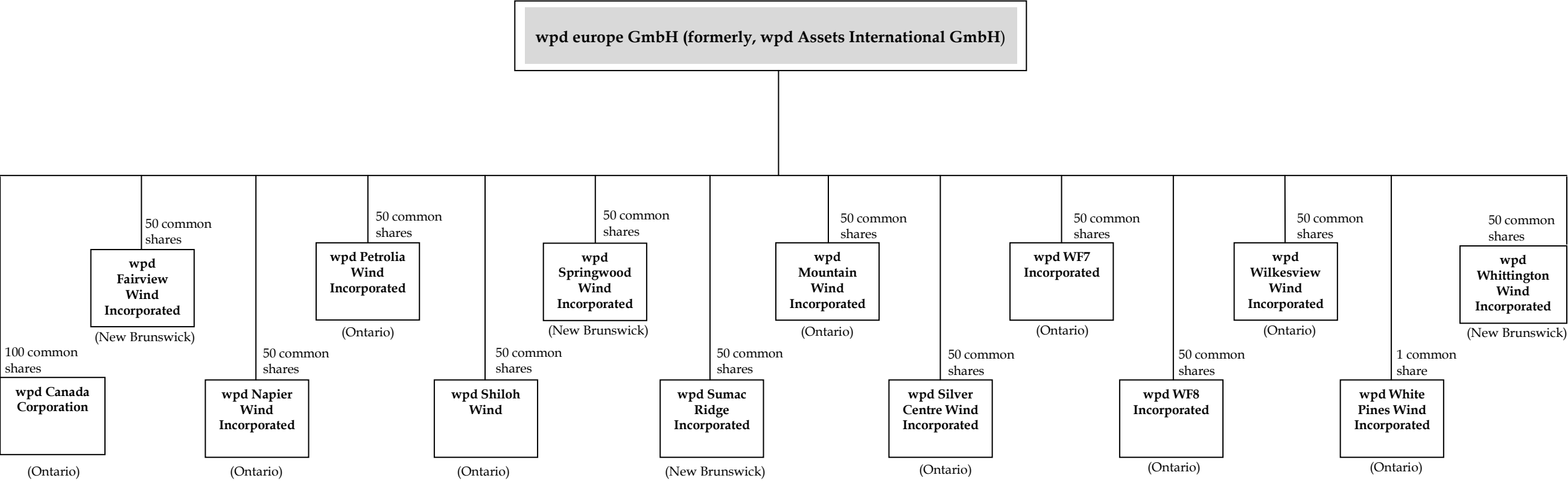
² Decision and Order in EB-2013-0233 dated November 7, 2013

1 **THE APPLICANT**

2 wpd Sumac is a corporation created and existing under the laws of New Brunswick and is
3 headquartered in Mississauga, Ontario. wpd Sumac is developing a renewable wind energy
4 generation facility in the City of Kawartha Lakes, Ontario.

5 The Applicant is a wholly-owned subsidiary of wpd europe. wpd europe is a German
6 corporation that is engaged in the business of developing and operating renewable wind
7 energy facilities in Germany and other parts of the world.

8 A chart that depicts the underlying ownership structure of the Applicant is included at
9 Exhibit B, Tab 3, Schedule 2.



1 **PROJECT DESCRIPTION**

2 Pursuant to the *Green Energy and Green Economy Act, 2009*, the Minister of Energy directed
3 the Ontario Power Authority (the “OPA”) to develop the FIT Program to procure energy
4 from renewable sources to further the Government of Ontario’s commitment to increase the
5 renewable energy capacity of Ontario’s energy supply mix.

6 In May 2010, the Applicant was awarded a contract with the OPA under the FIT Program to
7 developable the Sumac Ridge Wind Project in the City of Kawartha Lakes, Ontario, which
8 will contribute to increasing Ontario’s renewable energy supply.

9 **The Sumac Ridge Wind Project**

10 The Wind Project will consist of five REPower MM92-2.05 MW wind turbine generators
11 owned and operated by the Applicant and will contribute 10.25 MW of renewable energy to
12 Ontario’s electricity grid. The Wind Project, including the wind turbine generators, access
13 roads, temporary work and storage locations, will be located on privately owned lands. The
14 Wind Project will require upgrades to existing municipal roads and construction of new
15 private access roads to the wind turbine sites.

16 A map showing the proposed layout of the Sumac Ridge Wind Project is included at
17 Appendix “A” to Exhibit C, Tab 1, Schedule 2.

18 **The Distribution System**

19 To facilitate the transportation of electricity generated by the Wind Project to Ontario’s
20 energy supply mix, the Applicant intends to construct the Distribution System to convey
21 electricity from the Wind Project to HONI’s distribution system, which is in turn connected
22 to the IESO-controlled grid. In an effort to mitigate the potential environment impacts of
23 alternate routing, along with other social, technical and economic considerations, the

1 Applicant has chosen to locate the Distribution System in the Road Allowances in order to
2 convey the electricity generated by the Wind Project to HONI's distribution system.

3 A step up, pad mounted transformer will be located at the base of each turbine to transform
4 the electrical voltage generated by the turbines to 44 kV, making the electricity generated by
5 each wind turbine suitable for connection to HONI's distribution system. 44 kV
6 underground collector lines (the "**Collector Lines**") will deliver the transformed electricity
7 from each turbine to a collector substation located near Turbine 3 (the "**Collector**
8 **Substation**"). The WRT Collector Line transporting the electricity generated by turbine 5
9 will cross beneath Wild Turkey Road to connect to the Collector Line transporting the
10 electricity generated by turbine 4.

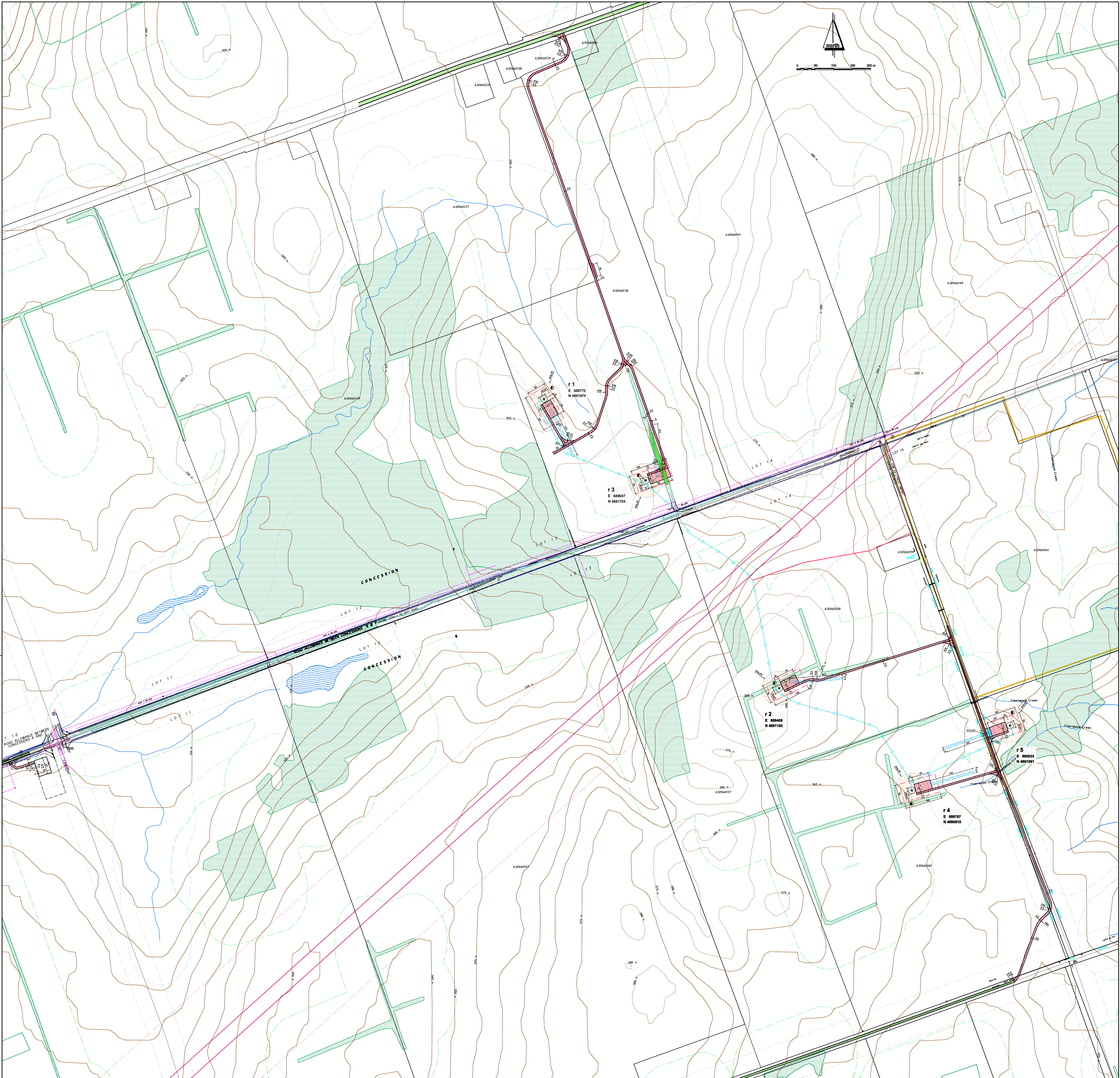
11 The Distribution Line will be located aboveground and will travel from the Collector
12 Substation 1.9 km on private property and west on the undeveloped portion of Gray Road
13 to a switching station located near Highway 35 (the "**Switching Station**"), where it will
14 connect the electricity generated by the Wind Project to the existing local distribution system
15 located along Highway 35 and running along to HONI's Wilson Transmission Station,
16 which is in turn connected to the IESO-controlled grid.

17 The Collector Lines, including the WRT Collector Line will require trenching and the
18 excavation of substrate. All materials removed will be used to backfill the trenching after the
19 lines have been installed and inspected. The Switching Station will be approximately 30 m
20 by 30 m and will consist of an area enclosed by a chain link fence accessed by a single lane
21 driveway and the Switching Station equipment.

22 The Applicant has secured rights on certain privately owned property on which the wind
23 turbines, access roads, and portions of the Distribution System will be located.

24 The Distribution System will be designed and built in accordance with the Electrical Safety
25 Authority standards.

1 A map of the Sumac Ridge Wind Project is included at Appendix “A” to Exhibit C, Tab 1,
2 Schedule 2. A map depicting the proposed layout of the Distribution Line and the WRT
3 Collector Line within the Road Allowances is included at Appendix “B” to Exhibit C, Tab 1,
4 Schedule 2. A cross-sectional diagram included at Appendix “C” to Exhibit C, Tab 1,
5 Schedule 2 shows the approximate location where the Applicant intends to position the
6 WRT Collector Line underground within the Road Allowance. Single line diagrams
7 showing the proposed layout of the Distribution Line are included at Exhibit C, Tab 1,
8 Schedule 4.



- LEGEND**
- Foundations, WTG internal transformer
 - Rotor diameter
 - WTG number
 - New or modified road
 - Existing road
 - New road temporary
 - Boom assembly area
 - Laydown area 50m x 100m
 - Cable route
 - Communication cable
 - Ductwork
 - Horizontal directional drilling
 - Wooded area
 - Wooded area to delete
 - Waterbody
 - Watercourse

Windturbine model:
REPOWER MM 92
Hub height: 100,0 m
Rotor diameter: 92,5 m

Coordinate system:
UTM NAD83 format, Zone 17

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| Revision | Modifications | Date | Name drawer |
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Project title:
SUMAC RIDGE WIND FARM

Drawing title:
**CONCEPT DRAWING
SITE PLAN**

| | | | |
|--------------|------------|-------------|-----------------|
| | Date: | Name: | Drawing number: |
| drawn by: | 02.07.2013 | A. Tielmann | SUMA_S_V01 |
| verified by: | | | Replacment for: |
| issued by: | | | |

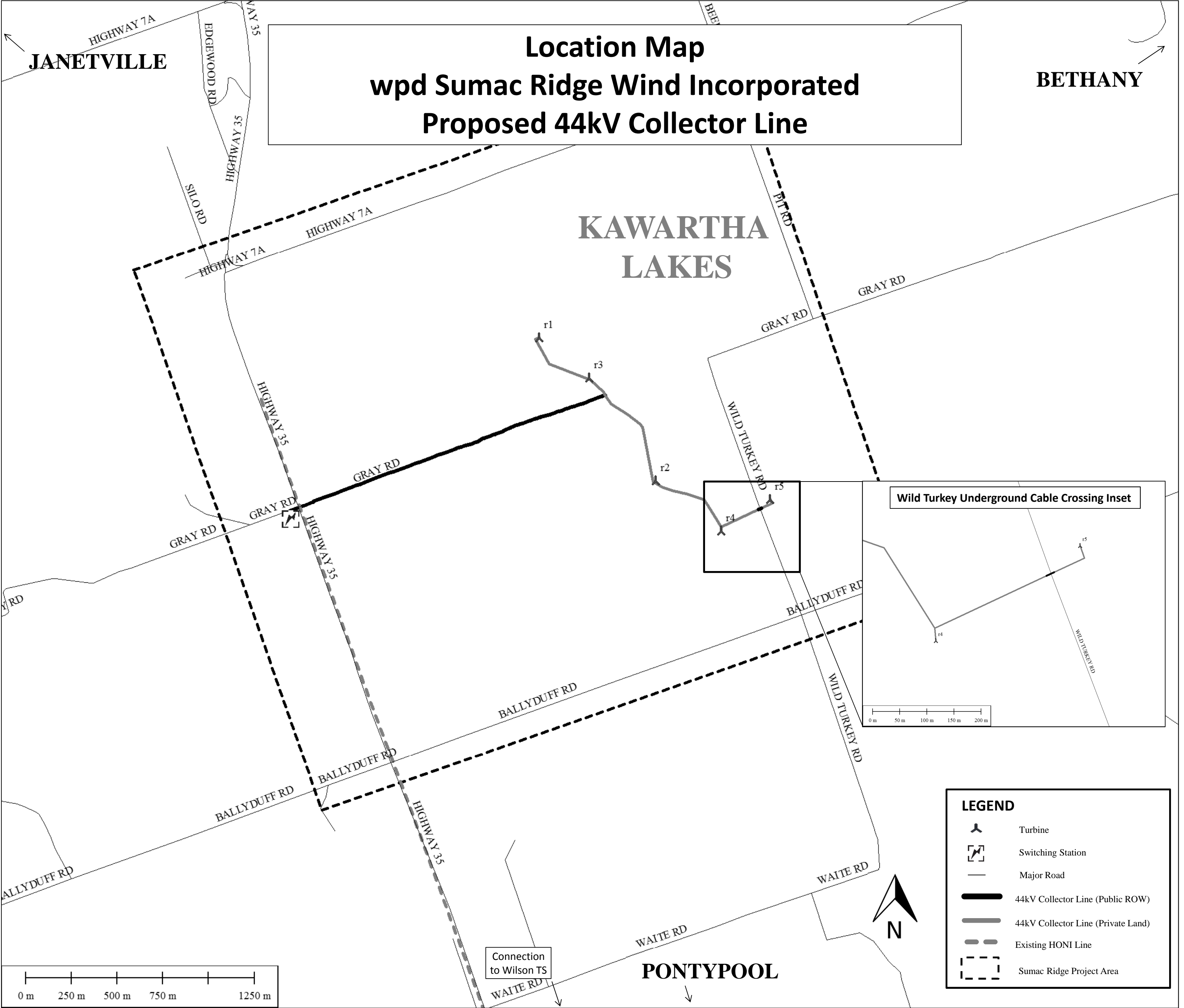
Plan development:
2233 Argente Road, Suite 102
Mississauga, Ontario
L5N 2X7
(p) 905-813-8400
(c) 416-568-3365
(toll free) 1-888-712-2401
(f) 905-813-7407
<http://www.wpd-canada.ca>

Date:

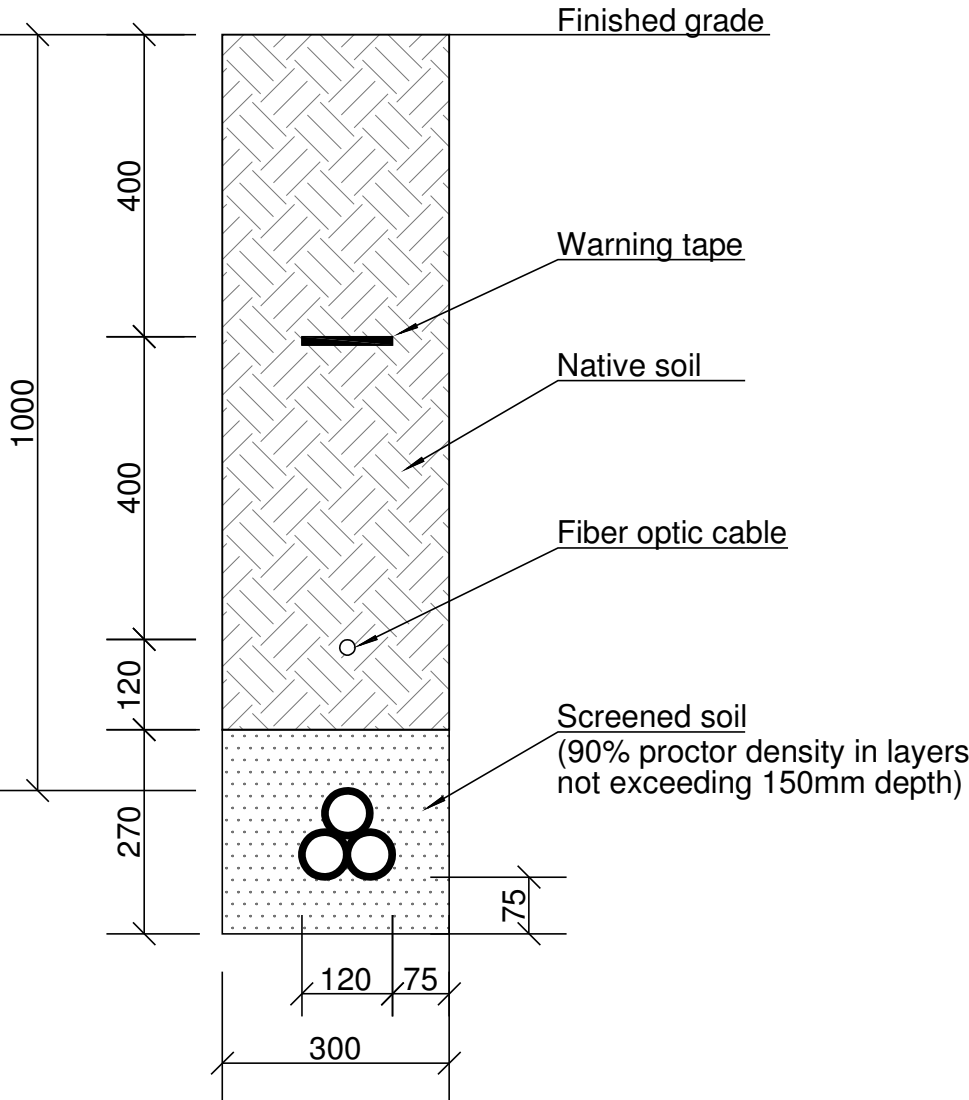
Signature:

wpd
think energy

| | | | |
|--------|-----------|-----------------------|-----------|
| Scale: | 1 : 4.000 | Content of the table: | Site Plan |
|--------|-----------|-----------------------|-----------|



Section for single circuit



typical underground supply and fiber optic cables run layout.

Notes:

- 1. Cable trench width min. 300 mm for max supply cable size of 1000 kcmil.
- 2. Full mechanical excavation only. (No human labor in the trench).

| | | | |
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| 1 | | | |
| Revision | Modifications | Date | Name |

This is a preliminary drawing and is not to be used for construction.

SUMAC RIDGE
WIND FARM

concept:
Typical trench installation
44 kV underground cable

| | | | |
|--------------|------------|------|-----------------------|
| | Date | Name | File name: |
| drawn by: | 10.09.2013 | DaPr | SUMA_Cable trench_V01 |
| verified by: | 10.09.2013 | GB | Substitute for: |
| issued by: | | | |

Plan development:

wpd Canada Corp.
2233 Argentinia Road, Suite 102
Mississauga, Ontario
L5N 2X7
(p) 905-813-8400
(toll free) 1-888-712-2401
(f) 905-813-7487
<http://www.wpd-canada.ca>

Signature:

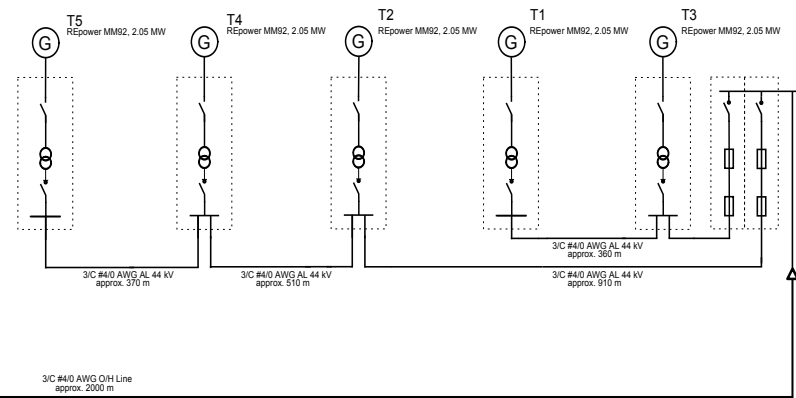
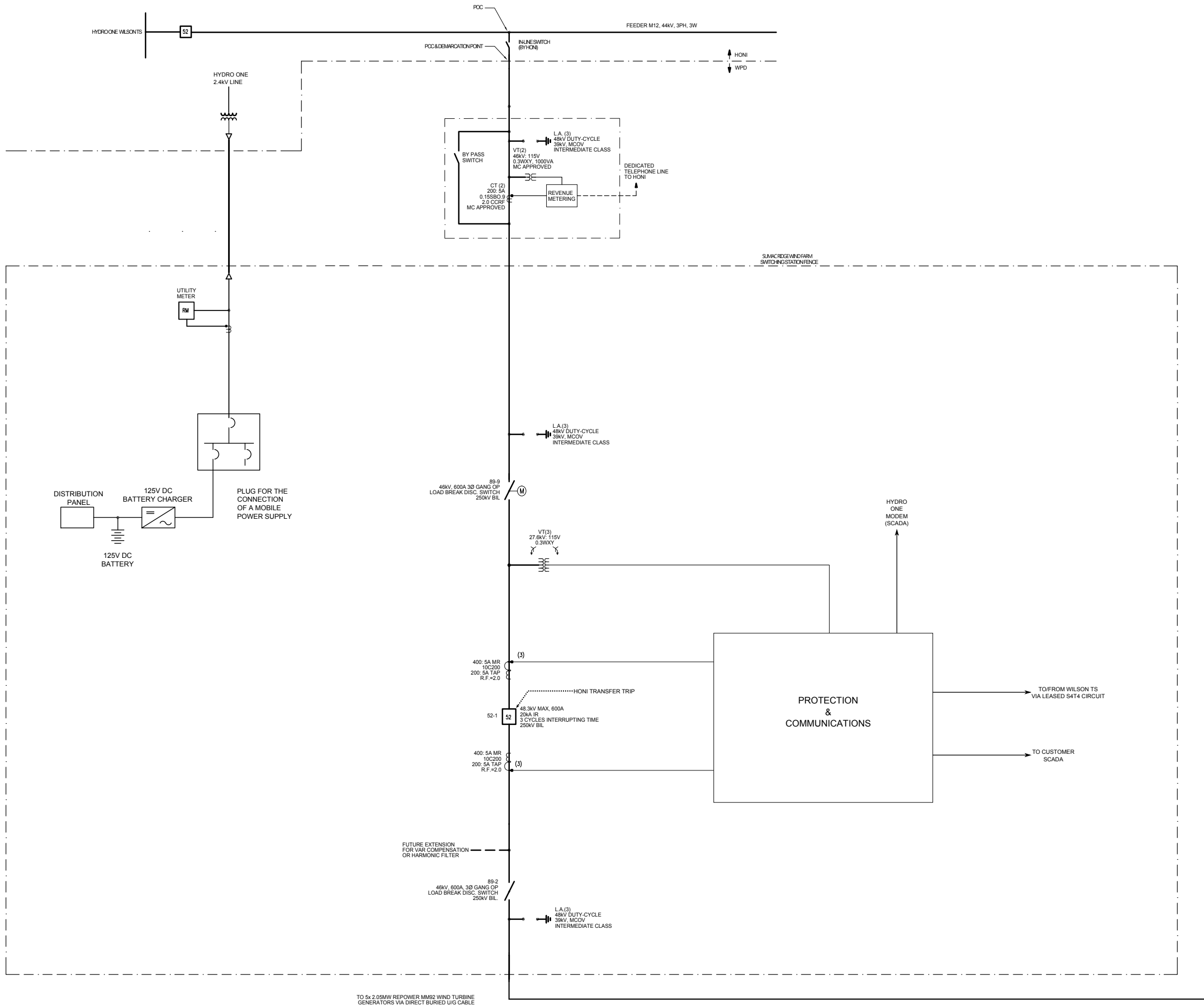
Date: 10.09.2013




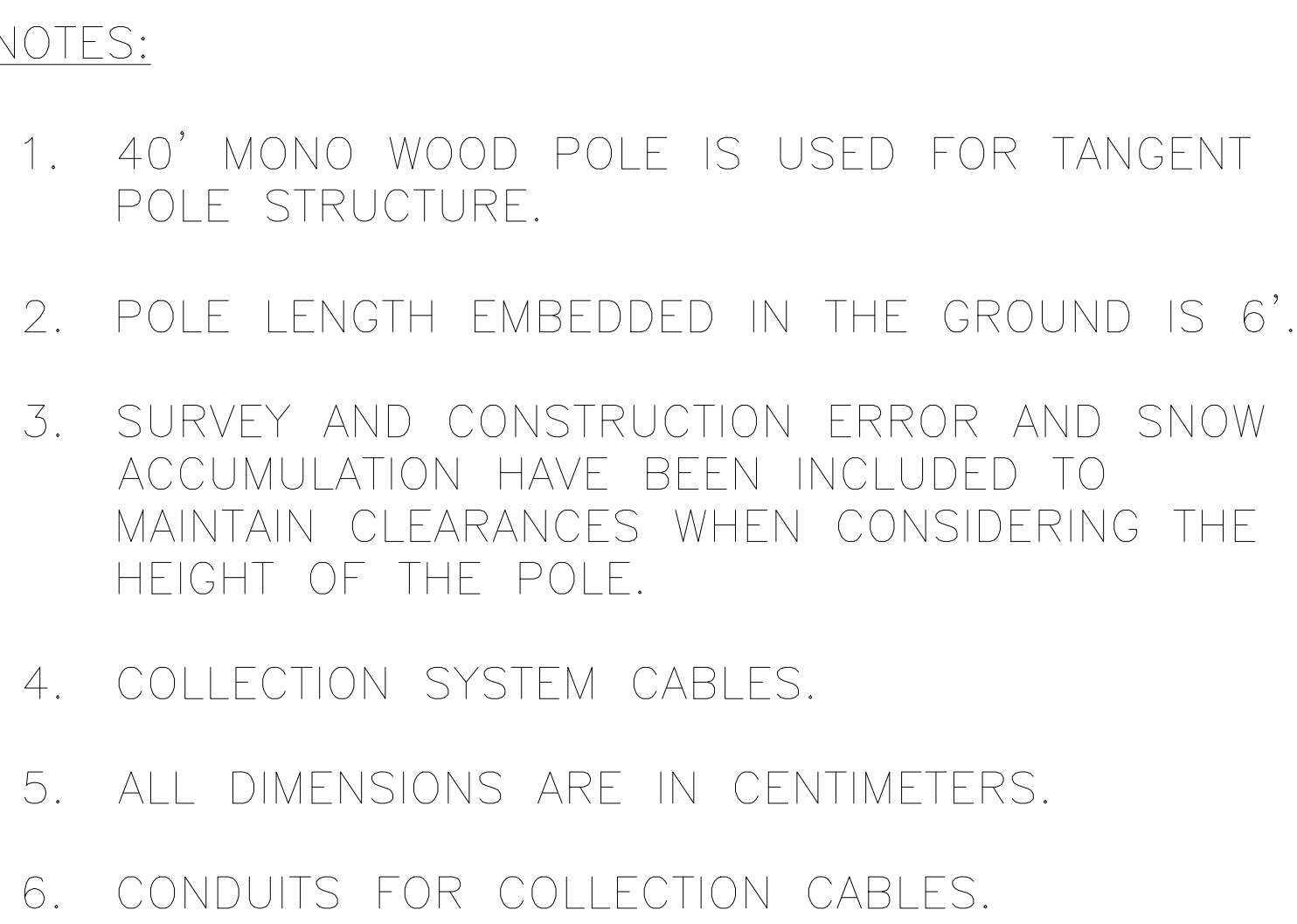
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| 1:10 | A3 | cable trench |

**LIST OF MUNICIAPL ROAD ALLOWANCES WITHIN WHICH THE DISTRIUBTION
SYSTEM WILL BE LOCATED**

1. Gray Road, between Highway 35 and Pitt Road
2. Wild Turkey Road, between Ballyduff Road and Gray Road

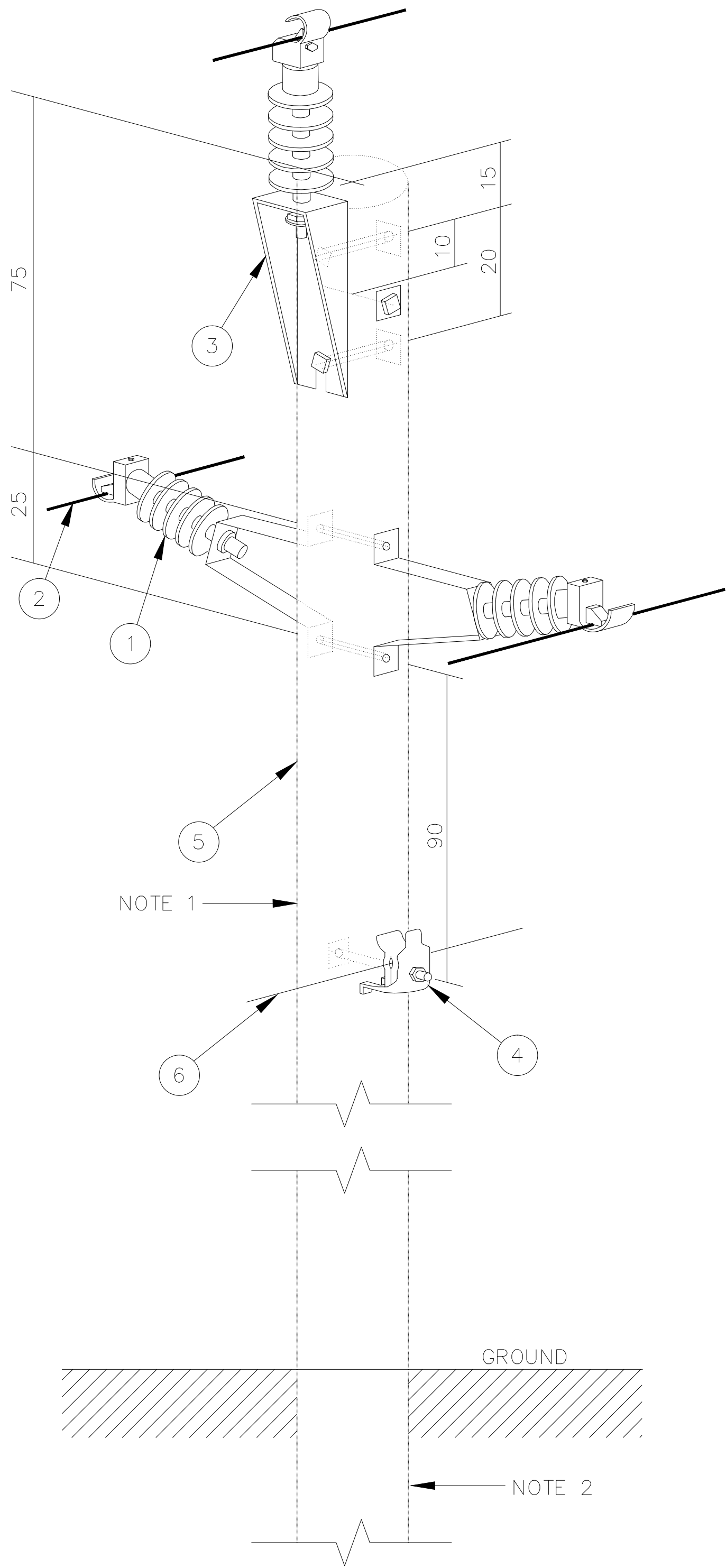


| | | | | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|--------------------------------------------------------|----------------------------------------|------------------------------|------------------------|
| responsible department ELECTRICAL ENG. | technical reference | provided by P.DEOL | approved from G.BARRIO | | |
|  wpd Canada Corporation 2233 Argentia Rd, Suite 102 Mississauga, ON, L5N 2X7 T.: 905-813-8400 F.: 905-813-7487 | | kind of document SINGLE LINE DIAGRAM | document status DRAFT | Rev. D | |
| | | title, additional title WF SUMAC RIDGE | code number | | |
| | | | date of issue 02.10.2013 | format 12 x 18 | page 1/1 |



PRELIMINARY
DRAWING

NOT TO BE
USED FOR
CONSTRUCTION




- NOTES:
- 40’ MONO WOOD POLE IS USED FOR TANGENT POLE STRUCTURE.
 - POLE LENGTH EMBEDDED IN THE GROUND IS 6’.
 - SURVEY AND CONSTRUCTION ERROR AND SNOW ACCUMULATION HAVE BEEN INCLUDED TO MAINTAIN CLEARANCES WHEN CONSIDERING THE HEIGHT OF THE POLE.
 - ALL DIMENSIONS ARE IN CENTIMETERS.

| LIST OF PARTS | |
|---------------|----------------------------|
| NO. | DESCRIPTION |
| 1 | INSULATOR WITH CLAMP |
| 2 | ACSR 3/0 OH CONDUCTOR |
| 3 | POLE-TOP BRACKET |
| 4 | CLAMP FOR FIBRE OPTIC WIRE |
| 5 | 40’ MONO WOOD POLE |
| 6 | FIBRE OPTIC WIRE |

PRELIMINARY
DRAWING

NOT TO BE
USED FOR
CONSTRUCTION

| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--------------------|--|--|--|------------------|--|--|--|-----------------|--|--|--|------------|--|--|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|---------------------------|--|--|--|------------------------------|--|--|--|------------------------------------------------------------------------------------------------------------|--|--|--|-----------------------------------------------------------------------|--|--|--|-----------|--|--|--|--|--|--|--|--|--|--|--|-----------|--|--|--|
| | | | | SUB CONSULTANTS: | | | | PERMIT STAMP | | | | SEAL | | | | DESIGNED BY: G. NANDA | | | | PREPARED BY: D. BOWERS | | | | REVIEWED BY: R. EFTEKHARI | | | | CLIENT: WPD CANADA | | | | PROJECT NAME: SUMAC WIND RIDGE PROJECT | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | AUTHORIZED BY: R. EFTEKHARI | | | | DATE: 2013/12/04 | | | | SCALE: AS NOTED | | | | <div>TETRA TECH</div> | | | | DRAWING DESCRIPTION: TANGENT POLE STRUCTURE FOR 44kV OVERHEAD LINE | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | THE CONTENT OF THIS DOCUMENT IS NOT INTENDED FOR THE USE OF, NOR IS IT INTENDED TO BE RELIED UPON BY ANY PERSON, FIRM OR CORPORATION OTHER THAN THE CLIENT AND TETRA TECH WEI INC. (Tetra Tech). TETRA TECH WEI INC. (Tetra Tech) DENIES ANY LIABILITY WHATSOEVER TO OTHER PARTIES FOR DAMAGES OR INJURY SUFFERED BY SUCH THIRD PARTY ARISING FROM THE USE OF THIS DOCUMENT BY THEM, WITHOUT THE EXPRESSED WRITTEN AUTHORITY OF TETRA TECH WEI INC. (Tetra Tech) AND OUR CLIENT. THIS DOCUMENT IS SUBJECT TO FURTHER RESTRICTIONS IMPOSED BY THE CONTRACT BETWEEN THE CLIENT AND TETRA TECH WEI INC. (Tetra Tech) AND THESE PARTIES' PERMISSION MUST BE SOUGHT REGARDING THIS DOCUMENT IN ALL OTHER CIRCUMSTANCES. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| NO. | | | | DESCRIPTION | | | | A | | | | 2013/12/04 | | | | ISSUED FOR REVIEW | | | | DB | | | | GN | | | | | | | | GN | | | | RE | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | PREPARED | | | | REVIEW | | | | | | | | DESIGN | | | | AUTHORIZE | | | | | | | | | | | | | | | |
| REFERENCE DRAWINGS | | | | | | | | REVISIONS/ISSUE | | | | | | | | DRAFTING | | | | | | | | ENGINEERING | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| D (34" x 24") | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | DRAWING NO: 1493930100-DWG-E0002 | | | | | | | | | | | | | | | | REV: A | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 3D MODEL REF No: | | | | | | | | | | | | | | | | | | | |

D (34" x 22")

1 Pursuant to section 4.0.1(1)(d) of Ontario Regulation 161/99 made under the OEB Act, a
2 distributor will not be required to obtain or hold a distribution license under section 57(a) of
3 the OEB Act where, as will be the case here, the distributor distributes electricity for a price
4 no greater than that required to recover all reasonable costs with respect to a distribution
5 system that it owns or operates, if the distributor is a generator and distributes electricity
6 solely for the purpose of conveying it into the IESO-controlled grid. Although wpd Sumac
7 will not require a license from the Board in respect of the Distribution System, this will not
8 affect wpd Sumac's status as a "distributor" for the purposes of the *Electricity Act*.

APPLICATION FOR PERMIT TO OCCUPY ROAD ALLOWANCES

The Applicant is a distributor of electricity under the *Electricity Act*. Due to the applicable Road Allowances being located in, owned and controlled by the Municipality, the Applicant attempted to engage the Municipality in discussions regarding the precise location of the Distribution System within the Road Allowances by initiating the application process for a permit to occupy and complete work within the Road Allowances. Although it is under no statutory obligation to do so, as is standard practice in Ontario, the Applicant intended to engage with the Municipality to negotiate the terms of the Road Use Agreement to define the parties' rights and responsibilities with respect to the location of the Distribution System with the Road Allowances. An overview of the terms of proposed Road Use Agreement is included at Exhibit D, Tab 1, Schedule 3.

Despite the Applicant's efforts, the Municipality has refused to process wpd Sumac's application for a permit on the basis that the request for an application is premature. The Municipality failed to respond constructively and has expressed no concerns regarding the location of the Distribution System within the Road Allowances. Due to the Municipality's failure to respond to the Applicant's overtures the parties are unable to reach an agreement regarding the location of the Distribution System within the Road Allowances.

The following is a chronological account of the events that have transpired to date resulting in the inability of the parties to reach an agreement regarding the location of the Distribution System within the Road Allowances:

- On April 4, 2013, the Applicant's counsel wrote to the Municipality to initiate the application process for a permit to occupy and complete work on a portion of Gray Road for a 44 kV distribution line in relation to the Sumac Ridge Wind Project. A copy of the Applicant's letter is included at Appendix "A" to Exhibit D, Tab 1, Schedule 2;

- 1 • On April 22, 2013, the Municipality responded to the Applicant's letter and denied
2 the Applicant's request to initiate the permit application process on the basis that
3 wpd Sumac's request was premature. A copy of the Municipality's response is
4 included at Appendix "B" to Exhibit D, Tab 1, Schedule 2;
5
- 6 • On May 22, 2013, the Applicant's counsel wrote to the Municipality expressing the
7 Applicant's disagreement with the Municipality's conclusion that wpd Sumac's
8 application for a permit was premature. The letter referred the Municipality to
9 section 41(1) of the *Electricity Act* and the Grey Highland's Decision, which
10 confirmed that a renewable energy developer such as the Applicant qualifies as a
11 distributor for purposes of the *Electricity Act*. The Applicant's counsel stated that the
12 Municipality had a duty to process the application in good faith and requested that
13 the matter be brought before the Municipal Council at its May 28, 2013 meeting. A
14 copy of the letter is included at Appendix "C" to Exhibit D, Tab 1, Schedule 2;
15
- 16 • By letter dated May 28, 2013, the Municipality indicated that it had referred the
17 Applicant's counsel's letter of May 22nd to the Municipality's solicitors for review
18 and that the matter would not be placed on the Municipal Council's agenda for May
19 28, 2013, but would be considered at the June 11, 2013 Municipal Council meeting. A
20 copy of the letter is included at Appendix "D" to Exhibit D, Tab 1, Schedule 2;
21
- 22 • On June 11, 2013, the Municipality advised the Applicant's counsel that the legal
23 opinion requested from the Municipality's solicitors was not complete and that the
24 matter of the Applicant's request for a permit would not be considered at the June
25 11, 2013 Municipal Council meeting. A copy of the letter is included at Appendix "E"
26 to Exhibit D, Tab 1, Schedule 2;
27

- 1 • On July 22, 2013, the Municipality's solicitors Gowling Lafleur Henderson LLP
2 advised the Applicant's counsel of a resolution passed by the Municipal Council on
3 July 9, 2013 that wpd Sumac's application for a permit to locate the Distribution
4 System within the Road Allowances was premature. The letter reiterated the
5 Municipality's position that the application was premature and stated that the
6 Applicant does not qualify as a distributor because none of the approvals required
7 for the Sumac Ridge Wind Project had yet been obtained. A copy of the letter is
8 included at Appendix "F" to Exhibit D, Tab 1, Schedule 2;
9
- 10 • On October 8, 2013, the Municipal Council passed a resolution further stating that
11 the wpd's application for a permit to locate the Distribution System within the Road
12 Allowance was premature. A copy of the resolution, entitled Report Legal2013-010,
13 is included at Appendix "G" to Exhibit D, Tab 1, Schedule 2.

14 The Municipality has effectively refused to engage the Applicant in discussions
15 regarding the location of the Distribution System within the Road Allowances despite
16 the fact that the Applicant is a distributor for the purposes of the *Electricity Act*.
17 Notwithstanding wpd Sumac's good faith efforts to work with the Municipality, the
18 parties are unable to reach an agreement regarding the location of the Distribution
19 System within the Road Allowances.

STIKEMAN ELLIOTT

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, Canada M5L 1B9
Tel: (416) 869-5500 Fax: (416) 947-0866 www.stikeman.com

Calvin Lantz
Direct: (416) 869-5669
Fax: (416) 947-0866
E-mail: CLantz@stikeman.com

BY COURIER & E-MAIL
dmcfarlane@city.kawarthalakes.on.ca

April 4, 2013

The City of Kawartha Lakes
Land Management Committee
26 Francis Street, P. O. Box 9000
Lindsay, ON K9V 5R8

Attention: Diane McFarlane, Land Management Coordinator

Dear Ms. McFarlane:

**Re: Request for Permit - Gray Road
Sumac Ridge Wind Farm**

Further to wpd Canada Corporation's ("wpd") previous letter to the Planning Department of the City of Kawartha Lakes (the "City") and wpd's meeting with Planning Department staff, we write to request and initiate the application process for a permit to allow wpd to occupy and complete work beneath a portion of Gray Road.

wpd requires the permit to allow for the construction of a 44kV collector line beneath Gray Road from Property B to Highway 35, as shown on the drawing attached hereto. The 44kV collector line will connect the wind turbines located on Property B, C, D and E to the switching station located at the south east corner of Gray Road and Highway 35. The cables will be buried below grade at an approximate depth of one metre. Upon the completion of the construction of the 44kV collector line beneath Gray Road, wpd is committed to restoring Gray Road to its previous condition.

Enclosed is a cheque in the amount of \$125 payable to the City of Kawartha Lakes, which represents the filing fee for the request noted herein.

TORONTO

MONTREAL

OTTAWA

CALGARY

VANCOUVER

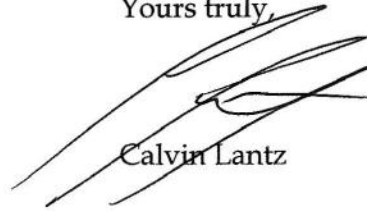
NEW YORK

LONDON

SYDNEY

Please do not hesitate to contact the undersigned should you have any questions.

Yours truly,

A handwritten signature in black ink, appearing to be 'Calvin Lantz', written over the printed name.

Calvin Lantz

Enclosure

cc: Jesse Long, *wpd Canada Corporation*



LEGEND

- Turbine
- Major Road
- 440V Collection Line
- Data Line
- Access Easement
- Easement Area
- Gravel Laydown
- Gravel Pad
- Switching Station
- Land Easement
- Outlined Property

Wind Turbine Model:
Repower MM92

Hub Height: 100.0 m
Rotor Diameter: 92.5 m

Coordinate System: UTM NAD83 - Zone 17N

| Revision | Model name | Date | Drawn by |
|----------|------------|------|----------|
| | | | |
| | | | |
| | | | |

Project Title:
Sumac Ridge Wind Farm

Drawing Title:
Parcel with Infrastructure

| Drawn By | Date | Drawn By | Date |
|----------|------|----------|------|
| | | | |
| | | | |

2233 Argentin Road, Suite 101
Mississauga, Ontario
L5N 2K7
Tel: 905.413.2400
Fax: 905.413.2401
Cell: 905.413.7487
<http://www.wpd.ca>

Scale:
1" = 100' Horizontal Scale
1" = 10' Vertical Scale

Date: _____
Signature: _____

Fig. 1

Fig. 2

Property B
632660136

Property C
632660158

Property D
632660160

Property E
632660164

Property A
632670284

MP THIS DOCUMENT CONTAINS SECURITY FEATURES - SEE REVERSE MI CE DOCUMENT CONTIENT DES CARACTERISTIQUES DE SECURITE - VOIR A L'ENDOS MI

CANADIAN IMPERIAL BANK OF COMMERCE
MAIN BRANCH - COMMERCE COURT
TORONTO, ONTARIO M5L 1G9

STIKEMAN ELLIOTT
TORONTO, CANADA

273844

04042013
Date MMDDYYYY

One hundred twenty-five and 00/100***** \$ ***125.00
PAY TO THE ORDER OF
City Of Kawartha Lakes

STIKEMAN ELLIOTT LLP

PER 

⑈ 273844⑈ ⑆00002⑈010⑆ 87⑈12816⑈



The Corporation of the
City of Kawartha Lakes
Land Management
26 Francis Street, PO Box 9000
LINDSAY, ONTARIO. K9V 5R8
(705) 324-9411 ext.1279
Facsimile: (705) 340-5961
Email: dmcfarlane@city.kawarthalakes.on.ca

April 22, 2013

By e-mail to: clantz@stikeman.com

Stikeman Elliott LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Attention: Calvin Lantz

Dear Sir:

Re: Request for Permit – Gray Road
Sumac Ridge Wind Farm

We acknowledge receipt of your request to initiate the application process to permit your client, wpd Canada Corporation, to occupy and complete work beneath a portion of Gray Road in the City of Kawartha Lakes and the applicable \$125.00 non-refundable application fee.

We confirm your request was discussed at the Land Management meeting on Thursday, April 11, 2013. The Committee concluded that this request is premature and was not supported. Council has not endorsed your client's application and at the Special Council meeting of February 5, 2013, Council adopted the following resolutions:

Moved by Councillor Stauble, seconded by Councillor Yeo,

RESOLVED THAT Report PLAN2013-003, "Sumac Ridge Wind Farm", be received;

THAT Council recommends that the Sumac Ridge Wind Farm Project as generally outlined in Appendix 'B' to Report PLAN2013-003 be refused by the Province; and

THAT Council's recommendations, together with Report PLAN2013-003 and the Part B Municipal Consultation Form as generally completed in Appendix 'C', be forwarded to the Province.

CARRIED CR2013-112

Recorded Vote requested by Councillor Stauble.

Voting Member

| | | |
|-----------------------|------------------|-----------|
| Councillor Ashmore | Yes | |
| Councillor Campbell | Yes | |
| Councillor Dunn | Yes | |
| Councillor Elmslie | Yes | |
| Councillor Hodgson | Yes | |
| Councillor James | Yes | |
| Councillor Junkin | Yes | |
| Councillor Luff | | No |
| Councillor Macklem | Yes | |
| Councillor McGregor | Yes | |
| Councillor O'Reilly | Yes | |
| Councillor Stauble | Yes | |
| Councillor Strangway | Yes | |
| Councillor Villemaire | Yes | |
| Councillor Warren | | No |
| Councillor Yeo | Yes | |
| Mayor McGee | Yes | |
| Total | Favoured: | 15 |
| | Against: | 2 |

Moved by Councillor Stauble, seconded by Councillor Yeo,

RESOLVED THAT, if approval for the wpd Canada - Sumac Ridge Wind Farm industrial wind turbine project is granted by the Provincial Government and/or any of its agencies, that staff, including the City's Solicitor, be directed to explore the opportunity to appeal said decision to the appropriate authority, including seeking a court injunction, and report back to Council with recommendations and actions.

Moved by Councillor Luff, seconded by Councillor Warren,

RESOLVED THAT this matter be deferred to the next Council meeting for a full report on the implications.

CARRIED CR2013-113

Recorded Vote requested by Councillor Warren.

Voting Member

| | | |
|----------------------|-----|----|
| Councillor Ashmore | Yes | |
| Councillor Campbell | Yes | |
| Councillor Dunn | Yes | |
| Councillor Elmslie | Yes | |
| Councillor Hodgson | Yes | |
| Councillor James | Yes | |
| Councillor Junkin | | No |
| Councillor Luff | Yes | |
| Councillor Macklem | | No |
| Councillor McGregor | Yes | |
| Councillor O'Reilly | | No |
| Councillor Stauble | | No |
| Councillor Strangway | Yes | |

| | | |
|-----------------------|------------------|----|
| Councillor Villemaire | | No |
| Councillor Warren | Yes | |
| Councillor Yeo | | No |
| Mayor McGee | | No |
| Total | Favoured: | 10 |
| | Against: | 7 |

At the Council meeting of March 26, 2013, Council adopted the following resolutions:

Moved by Councillor Warren, seconded by Councillor Campbell,
RESOLVED THAT Report LEGAL2013-005, "*Sumac Ridge Wind Farm Project - Appeal Options*", be referred back to staff to provide additional information and recommendations on all legal options including a possible format appeal with stay order request and/or injunction for the Sumac Ridge Wind Farm project at such time as the Province's decision on the application is posted on the Environmental Registry.

CARRIED CR2013-298

Moved by Councillor Stauble, seconded by Councillor Junkin,
WHEREAS there are three (3) proposed industrial wind projects in the City of Kawartha Lakes (Sumac Ridge, Snowy Ridge and Settlers Landing); and
WHEREAS the Premier has stated that the Province will not force wind projects upon communities that are not willing hosts; and
WHEREAS our community is not a willing host;
THEREFORE BE IT RESOLVED THAT the City of Kawartha Lakes declares that it is 'not a willing host'; and
THAT this resolution be forwarded to the Premier, Minister of Energy, Minister of the Environment, Minister of Agriculture and Food, Minister of Rural Affairs, Doris Dumais, Director of Environmental Approval and Service Integration Branch of the Ministry of the Environment, MPP Laurie Scott and the Association of Municipalities of Ontario (AMO).

CARRIED CR2013-299

Recorded Vote requested by Councillor Stauble.

Voting Member

| | | | |
|-----------------------|-----|----|--------|
| Councillor Ashmore | Yes | | |
| Councillor Campbell | | No | |
| Councillor Dunn | | No | |
| Councillor Elmslie | | | Absent |
| Councillor Hodgson | Yes | | |
| Councillor James | Yes | | |
| Councillor Junkin | Yes | | |
| Councillor Luff | | No | |
| Councillor Macklem | Yes | | |
| Councillor McGregor | Yes | | |
| Councillor O'Reilly | | No | |
| Councillor Stauble | Yes | | |
| Councillor Strangway | | | Absent |
| Councillor Villemaire | Yes | | |

Councillor Warren
Councillor Yeo
Mayor McGee
Total

| | | |
|------------------|----|--------|
| | No | Absent |
| Yes | | |
| Favoured: | 9 | |
| Against: | 5 | |

Therefore, at this time there is no reason for the City to enter into an agreement or authorize such permission on our infrastructure.

Sincerely,

The Corporation of the City of Kawartha Lakes



Diane McFarlane, SR/WA
Land Management Co-ordinator
DM:nw

Cc: Development Services
Public Works
Community Services

STIKEMAN ELLIOTT

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, Canada M5L 1B9
Tel: (416) 869-5500 Fax: (416) 947-0866 www.stikeman.com

Calvin Lantz
Direct: (416) 869-5669
E-mail: clantz@stikeman.com

BY E-MAIL & COURIER
(dmcfarlane@city.kawarthalakes.on.ca)

May 22, 2013
File No.: 129316-1002

The Corporation of the City of Kawartha Lakes
Land Management
26 Francis Street,
PO Box 9000
Lindsay, ON K9V 5R8

Attention: Ms. Diane McFarlane, SR/WA
Land Management Co-Ordinator

Dear Ms. McFarlane:

**Re: Request for Permit - Gray Road
Sumac Ridge Wind Farm**

We write in response to your letter dated April 22, 2013 denying wpd Canada Corporation's request to initiate the application process for a permit to occupy and complete work beneath a portion of Gray Road for a 44 kV collector line for its Sumac Ridge Wind Farm (the "Project").

We do not accept your stated justification that wpd's request is "premature and not supported by Council." Simply put, the City cannot refuse to process wpd's permit application because Council is opposed to the Project. The City has a duty to process the application in good faith as it would any other permit application. The refusal to do so is also inconsistent with provincial law that provides wpd with a right to access Gray Road for the purpose of constructing a collector line for the Project.

Specifically, subsection 41(1) of the *Electricity Act, 1998* grants an electricity distributor a right to access any public street or highway for the purposes of constructing and installing "such structures, equipment and other as it considers necessary for the purpose of its transmission or distribution system, including poles and lines." In the recent *Grey Highlands* case, the Ontario Energy Board ("OEB") confirmed that a renewable energy generator (such as wpd) qualifies as a distributor for the purposes of subsection 41(1) and has a right to locate electrical infrastructure in municipal roadways. We have enclosed a copy of that decision for your reference.

TORONTO
MONTRÉAL
OTTAWA
CALGARY
VANCOUVER
NEW YORK
LONDON
SYDNEY

The decision was subsequently upheld on appeal to the Divisional Court and the municipality was ordered to pay costs of \$20,000.

While wpd has applied for a permit and is willing to work cooperatively on a Road Use Agreement with the City, it is not required to do so to gain access to Gray Road. Subsection 41(5) of *Act* provides that an exercise of the right of access "does not require the consent of the owner of or any other person having an interest in the street or highway". Furthermore, by virtue of subsection 41(8), a renewable energy generator has no obligation "to pay any compensation in order to exercise its powers" under subsection 41(1).

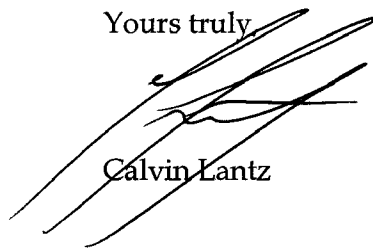
In the event a renewable energy generator and a municipality cannot reach an agreement on the location of electrical infrastructure, either party may apply to the OEB to have the location of the infrastructure determined by the Board. We enclose a map that shows wpd's proposed collector line route (this same map was enclosed with my letter of April 4, 2013).

We request that this matter be brought before Council at its meeting scheduled for May 28, 2013 and that Council provide a direction to staff to process wpd's application. We ask that a copy of this letter be provided to each member of Council in advance of the May 28, 2013 meeting.

If we have not received confirmation from the City that the application process has been initiated by June 3, 2013, wpd will commence an application before the OEB to have the location of the infrastructure determined. As part of that application, wpd will ask the Board to award costs against the City for refusing to negotiate road access in good faith. We hope that this step will not be necessary.

We would be happy to discuss or provide more information on any matters raised in this letter to you or to members of Council.

Yours truly,

A handwritten signature in black ink, appearing to read "Calvin Lantz", written over a horizontal line.

Calvin Lantz

il/

Encl.

cc: Office of the City Clerk, City of Kawartha Lakes
Patrick Duffy, *Stikeman Elliott LLP*



The Corporation of the
City of Kawartha Lakes
P.O. Box 9000, 28 Francis Street
Lindsay, ON K9V 5R8
Tel: (705) 324-9411 ext 1298, 1-888-822-2225
Fax: (705) 340-5961

Anthony J. Sutcliffe, City Solicitor

May 28, 2013

By e-mail to: clantz@stikeman.com

Stikeman Elliott LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Attention: Calvin Lantz

Dear Sir:

Re: Request for Permit – Gray Road
Sumac Ridge Wind Farm

We acknowledge receipt of your letter dated May 22, 2013 and enclosures. We have forwarded same to our solicitors, Gowling Lafleur Henderson LLP, for review. Unfortunately, this item will not be on the May 28, 2013 Council agenda however, we have forwarded the information to the Clerks department and asked that it be included in the June 11, 2013 agenda for Council consideration. Please note, at this time Council has not decided on this specific request only a staff review has been completed to date.

If you have any questions or concerns please do not hesitate to contact us.

Yours very truly,

Anthony J Sutcliffe
AJS:nw
Encl.



The Corporation of the
City of Kawartha Lakes
P.O. Box 9000, 28 Francis Street
Lindsay, ON K9V 5R8
Tel: (705) 324-9411 ext 1298, 1-888-822-2225
Fax: (705) 340-5961

Anthony J. Sutcliffe, City Solicitor

June 11, 2013

By e-mail to: clantz@stikeman.com

Stikeman Elliott LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Attention: Calvin Lantz

Dear Sir:

Re: Sumac Ridge Wind Farm – wpd Canada Corporation
Request for Permit – Gray Road & Wild Turkey Road, City of Kawartha Lakes

Further to my letters of May 28, 2013 and June 3, 2013, the legal opinion we have requested from our solicitors, Gowling Lafleur Henderson LLP, is not yet complete and is including your recent request regarding improvements to Wild Turkey Road. Therefore, this matter is not on the June 11, 2013 agenda for Council consideration.

We are practicing our due diligence and wish to confirm that upon receipt and due consideration of the fully completed legal opinion relating to the above-noted requests the matter will be presented to Council for consideration. We will advise you when our legal opinion has been received and the date that same along with your requests will be presented to Council.

If you have any questions or concerns please do not hesitate to contact us.

Yours very truly,

Anthony J. Sutcliffe
AJS:nw

July 22, 2013

DELIVERED BY EMAIL CLANTZ@STIKEMAN.COM

Harry Dahme
Direct 416-862-4300
Direct Fax 416-863-3410
harry.dahme@gowlings.com
File No. T996178

Stikeman Elliott
5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9

Attention: Calvin Lantz

Dear Mr. Lantz:

**Re: Request for Permit - Gray Road and Wild Turkey Road, City of Kawartha Lakes
Sumac Ridge Wind Farm**

We have been requested by the City of Kawartha Lakes ("Kawartha Lakes") to advise you of the resolution passed by Council of the City of Kawartha Lakes at the July 9, 2013 meeting of Council. A copy of the resolution is set out below.

Moved by Councillor Stauble, seconded by Councillor Strangway,

RESOLVED THAT the memorandum from the Director of Development Services regarding the application from wpd Canada Corporation for permits relating to Gray Road and Wild Turkey Road, in the Former Geographic Township of Manvers, now in the City of Kawartha Lakes, dated July 9, 2013, be received;

THAT Council confirms the applications from wpd Canada Corporation for permits relating to Gray Road and Wild Turkey Road, in the Former Geographic Township of Manvers, now in the City of Kawartha Lakes are premature and directs the City's legal counsel to advise the applicant accordingly; and

THAT staff be directed to advise wpd Canada Corporation that any action not authorized by the municipality on Gray Road and Wild Turkey Road shall be seen as trespassing under the Trespass to Property Act and authorities will be contacted to enforce.

CARRIED CR2013-644

In respect of the application or a permit to occupy and complete work beneath a portion of Gray Road for a 44 kV collector line for the Sumac Ridge Wind Farm (the "Project"), you had been previously advised by Kawartha Lakes that the application was "premature and not supported by Council". You responded by letter dated May 22, 2013 referring to subsection 41(1) of the *Electricity Act, 1998* and the recent decision of the Ontario Energy Board in the *Grey Highlands* case for the purpose of confirming that a renewable energy generator (such as wind) has a right to locate electrical infrastructure upon or over municipal roadways. What is not addressed in your letter is the threshold test as to when a given entity becomes a transmitter or a distributor for the purposes of Section 41(1) of the *Electricity Act, 1998*. Given the early stage of the development of the Project and our understanding that none of the approvals required for the Project have yet been obtained it is reasonable to conclude that the application is premature and that wind does not yet qualify as a generator, transmitter or distributor.

As for the application for a permit to make certain improvements to Wild Turkey Road, the application fails to disclose whether the proposed improvements are necessary for purpose of a transmission or distribution system. No supporting documentation has been provided in order to permit Kawartha Lakes to assess the purpose of the application and whether or not Section 41(1) of the *Electricity Act, 1998* would apply. Accordingly, it was determined that the application is premature.

Yours very truly,

GOWLING LAFLEUR HENDERSON LLP



Harry Dahme
Certified Specialist (Environmental Law)

HJD:jam

cc: Ms. Dianne McFarlane, Land Management Co-ordinator, City of Kawartha Lakes

T996178\TOR_LAW\8215103\1

The Corporation of the City of Kawartha Lakes

Council Report

Report Number Legal2013-010

Date: October 8, 2013

Time: 2:00 p.m.

Place: Council Chambers

Ward Community Identifier: 16

Subject: Opposition to Proposed Wind Projects in the City of Kawartha Lakes

Author/Title: Tony Sutcliffe, City Solicitor

Signature:



Author/Title: Ron Taylor, Director, Development Services

Signature:



Recommendation(s):

RESOLVED THAT Report Legal2013-010, Opposition to Proposed Wind Projects in the City of Kawartha Lakes, be received.

Department Head:

Corporate Services Director / Other:

Chief Administrative Officer:

Background:

Council has received several staff reports on information surrounding the Sumac Ridge Wind Farm Project in the City of Kawartha Lakes.

For the purpose of this report, Council adopted the following resolutions in 2013 regarding the Sumac Ridge Wind Farm Project:

At the **February 5, 2013** Session of Council the following resolutions were passed as follows

Moved by Councillor Stauble, seconded by Councillor Yeo,
RESOLVED THAT Report PLAN2013-003, "Sumac Ridge Wind Farm", be received;

THAT Council recommends that the Sumac Ridge Wind Farm Project as generally outlined in Appendix 'B' to Report PLAN2013-003 be refused by the Province; and

THAT Council's recommendations, together with Report PLAN2013-003 and the Part B Municipal Consultation Form as generally completed in Appendix 'C', be forwarded to the Province.

CARRIED CR2013-112

Moved by Councillor Stauble, seconded by Councillor Yeo,
RESOLVED THAT, if approval for the wind Canada - Sumac Ridge Wind Farm industrial wind turbine project is granted by the Provincial Government and/or any of its agencies, that staff, including the City's Solicitor, be directed to explore the opportunity to appeal said decision to the appropriate authority, including seeking a court injunction, and report back to Council with recommendations and actions.

Moved by Councillor Luff, seconded by Councillor Warren,
RESOLVED THAT this matter be deferred to the next Council meeting for a full report on the implications.

CARRIED CR2013-113

At the **March 26, 2013** Session of Council, the following resolutions were passed:

Moved by Councillor Warren, seconded by Councillor Campbell,
RESOLVED THAT Report LEGAL2013-005, "*Sumac Ridge Wind Farm Project - Appeal Options*", be referred back to staff to provide additional information and recommendations on all legal options including a possible format appeal with stay order request and/or injunction for the Sumac Ridge Wind Farm project at such time as the

Province's decision on the application is posted on the Environmental Registry.

CARRIED CR2013-298

Moved by Councillor Stauble, seconded by Councillor Junkin,
WHEREAS there are three (3) proposed industrial wind projects in the City of Kawartha Lakes (Sumac Ridge, Snowy Ridge and Settlers Landing); and

WHEREAS the Premier has stated that the Province will not force wind projects upon communities that are not willing hosts; and

WHEREAS our community is not a willing host;

THEREFORE BE IT RESOLVED THAT the City of Kawartha Lakes declares that it is 'not a willing host'; and

THAT this resolution be forwarded to the Premier, Minister of Energy, Minister of the Environment, Minister of Agriculture and Food, Minister of Rural Affairs, Doris Dumais, Director of Environmental Approval and Service Integration Branch of the Ministry of the Environment, MPP Laurie Scott and the Association of Municipalities of Ontario (AMO).

CARRIED CR2013-299

At the **May 14, 2013** Council Session, the following resolution was adopted:

Moved by Councillor Stauble, seconded by Councillor Luff,
RESOLVED THAT Report LEGAL2013-006, **Sumac Ridge Wind Farm Project - Appeal Options**, be received; and
THAT Report LEGAL2013-006 be forwarded to The Minister of the Environment, the Director of Environmental Assessments and Approvals Haliburton-Kawartha Lakes-Brock MPP's Office, the Association of Municipalities of Ontario, and the proponent, wpd Canada, for information.

CARRIED CR2013-449

Staff have continued to work under the Council resolutions stated above regarding the Sumac Ridge Wind Farm. In accordance with adopted Council Resolution CR2013-298, staff has obtained a legal opinion (attached as Appendix A to this report) from Harry Dahme, Gowling LaFleur Henderson LLP to outline any legal options and recommendations regarding the Sumac Ridge Wind Farm Project.

Mr Dahme's legal opinion is in depth and comprehensive. It explores in detail the Renewal Energy Act (REA) and past decisions of the Environmental Review Tribunal (ERT) as they relate to the Sumac Ridge Wind Farm.

It is in the best interest of the City of Kawartha Lakes to direct staff and resources towards managing and providing authorization for use of Municipal right of ways, if projects are approved by the Province.

Rationale:

The Ministry of Environment (MOE) is the approval authority for renewable energy projects. As part of the Renewable Energy Approval (REA) process, outlined in O. Reg. 359/09 under the Environmental Protection Act, the proponent must consult with the City to address municipal interests as defined by the Province. The proponent is obligated to complete Part A of the municipal consultation form and the City is required to complete Part B of the municipal consultation form, and forward to the MOE for consideration.

There are four (4) proposed Industrial Wind Turbine (IWT) projects in the former Township of Manvers, City of Kawartha Lakes, at various stages of development.

1. Sumac Ridge Wind Farm

Wpd Canada Corporation is proposing the installation of a 10.25 MW Class 4 wind facility. The current design uses five (5) 2.05 MW wind turbines with a maximum contract nameplate capacity of 11.5 MW. Two of these turbines are located in the Oak Ridges Moraine. The contracted commercial operation date of the Project is July 24, 2014. The operating footprint of the site is 4.52 ha. The approximate boundaries of the project area are Highway 7A to the north, Ballyduff Road to the south, and between Highway 35 and Porter Road.

On March 11, 2013, City staff forwarded the municipal consultation form, together with Council's recommendation that the project be refused, to the Province. In addition, on April 18, 2013, staff forwarded Council's resolution from March 26, 2013 to the Minister of Energy, the Minister of Environment, and the Director of Environmental Approvals Access and Service Integration Branch, among others.

On April 5, 2013, an Instrument Proposal Notice for Sumac Ridge was posted on the Environmental Bill of Rights Registry (EBR) for a comment period ending May 20, 2013. A comprehensive list of comments addressing health and safety concerns, inadequate setbacks, lack of information, impact of roads and infrastructure, conflicts with Oak Ridges Moraine legislation, and various other concerns, was prepared by staff for submission in response to the Notice. A decision by the Director to either issue or not issue a REA for the project is pending.

To date it still appears that the application and request from wpd Canada to utilize Gray Road and Wild Turkey Road in the former Manvers Township is premature as the project is pending Provincial approval. If however, wpd is successful and is granted the approval, staff have requested from wpd more information on the use and utility of the roads and would consider a long term roads agreement with wpd for Wild Turkey Road.

2. Settlers Landing Wind Park

The applicant is proposing to install a 10MW on shore wind farm, consisting of five (5) wind turbines of 2 MW each. Six (6) potential turbine locations have been selected for approval, however, only 5 turbines will be constructed. Each turbine will consist of towers assemblies: turbine foundations, rotor blades and a power generation unit. This project is considered a Class 4 wind energy generation facility. The project was awarded a Feed-in Tariff (FIT) contract, for a maximum 10 MW facility. The approximate boundaries of the project are Highway 35 to the east, Telecom Road to the south.

Staff was advised that the REA application was submitted to the Ministry of Environment on May 7, 2013 and the application is now undergoing a check for completeness. To date, a notice has not been posted on the EBR.

3. Snowy Ridge Wind Park

The applicant is proposing to install a 10MW on shore wind farm, consisting of 5 wind turbines of 2 to 2.5 MW each. Each turbine will consist of towers assemblies: turbine foundations, rotor blades and a power generation unit. This project is considered a Class 4 wind energy generation facility. The project was awarded a Feed-in Tariff (FIT) contract, for a maximum 11.5 MW facility. The project area is bounded by Twigg Road to the north, Highway 35 to the west, Hwy 7A to the south and Beers Rd to the east.

Staff was advised that the REA application was submitted to the Ministry of Environment on April 23, 2013 and the application is now undergoing a check for completeness. To date, a notice has not been posted on the EBR.

4. Stoneboat Community Wind Farm

The applicant is proposing to install a 10MW on shore wind farm, consisting of five (5) wind turbines of 2 MW each. Each turbine will be approximately 100 m. in height and will consist of towers assemblies:

turbine foundations, rotor blades and a power generation unit. This project is considered a Class 4 wind energy generation facility. The project was awarded a Feed-in Tariff (FIT) contract in 2010 and is not subject to the current rules that require municipal consent. The project is in the preliminary stage of municipal consultation.

The project is partially located in the City of Kawartha Lakes, and partially in the Township of Cavan-Monaghan (Peterborough County). The proposed location is north of Bethany, on the east side of Dranoel Road, in the City of Kawartha Lakes.

Staff are aware that on September 3, 2013, Cavan Monaghan Township Council passed a resolution declaring that they are an unwilling host for this turbine project and also passed a resolution to assemble a legal team of experts with a financial commitment of \$500,000.00 to defend the Municipality's position as an unwilling host. A copy of the resolution is attached to this report as Appendix D, however it should be noted that staff has not received a formal request from Cavan Monaghan Township to respond to their resolution to-date.

Other Alternatives Considered:

Take no action regarding the granting of Notice.

Financial Considerations:

Legal costs to retain & instruct Counsel TBD.

Relationship of Recommendation(s) To Strategic Priorities:

n/a

Review of Accessibility Implications of Any Development or Policy:

n/a

Consultations:

H Dahme (outside Counsel – Gowlings)
Diane McFarlane, Land Management Co-ordinator
Linda Russell, Planner 2

Attachments:

Appendix A: Related Confidential Report

Appendix B: Environmental Review Tribunal: "A Guide to Appeals by Members of the Public regarding renewable Energy Approvals under Section 142.1 of the *Environmental Protection Act*."



ERT Appeal
Guide.pdf

Appendix C: Report Plan 2013-003 "Sumac Ridge Wind Farm"



PLAN2013-003
Sumac Ridge Wind Fa

Appendix D: Letter from Cavan Monaghan Township



Cavan Monaghan
Letter.pdf

Phone: 705-324-9411 Ext. 1298

E-Mail: tsutcliffe@city.kawarthalakes.on.ca

Department Head: Mary Anne Dempster

Department File:



Environment and Land Tribunals Ontario

ENVIRONMENTAL REVIEW TRIBUNAL

**A Guide to Appeals by Members
of the Public regarding
Renewable Energy Approvals
under section 142.1 of the
*Environmental Protection Act***

July 9, 2010

www.elto.gov.on.ca

This Guide provides a general overview of renewable energy approval appeals by members of the public under section 142.1 of the *Environmental Protection Act* and should not be relied upon as an authoritative text. Instead, the statute, Ontario Regulation 359/09 and other regulations, and the Rules of Practice and Practice Directions of the Environmental Review Tribunal prevail. For appeals of renewable energy approvals that are commenced by the Holder of a renewable energy approval, please consult the separate Guide on appeals under the *Clean Water Act, 2006*, the *Environmental Protection Act*, the *Nutrient Management Act, 2002*, the *Ontario Water Resources Act*, the *Pesticides Act*, the *Safe Drinking Water Act, 2002*, and the *Toxics Reduction Act, 2009*.

Information about specific Hearings is available from:

Environmental Review Tribunal
Environment and Land Tribunals Ontario
655 Bay Street, Suite 1500
Toronto, Ontario M5G 1E5

| | | | |
|------------|--------------------------------------------------------------------------------------|------------|----------------|
| Telephone: | (416) 212-6349 | Toll Free: | 1-866-448-2248 |
| Facsimile: | (416) 314-4506 | Toll Free: | 1-877-849-2066 |
| TTY: | 1-800-855-1155 via Bell Relay | | |
| Email: | ERTTribunalSecretary@ontario.ca | | |
| Website: | www.elfo.gov.on.ca | | |

What appeals does this Guide deal with?

This Guide deals only with appeals brought by members of the general public in relation to an approval granted to a green energy project by the Director, Ministry of the Environment. Appeals by the person seeking to establish a green energy project are dealt with in a separate process.

What can an appeal deal with?

Under the *Environmental Protection Act*, there are only two grounds which can be considered on an appeal by a member of the public. They are that proceeding with the project, as approved by the Director will either:

- cause serious harm to human health, or
- cause serious and irreversible harm to plant life, animal life or the natural environment.

A person challenging the Director's approval of a project must be able to convince the Environmental Review Tribunal, by evidence and argument, that it is more likely than not that one of these two tests has been met. If they do not do so, then the law requires that the Director's decision must be confirmed.

What are the timelines?

With certain limited exceptions, the Tribunal is required to issue its decision in these matters no later than six months after a Notice of Appeal is served on the Tribunal, failing which the renewable energy approval is deemed to be confirmed.

Given the timeframe within which the Tribunal must make its decision, it was considered necessary to provide an innovative and expedited hearing process for these appeals. **Attached to this Guide as Appendix A is the timeline for the appeals dealt with in this Guide (i.e., appeals under section 142.1 of the *Environmental Protection Act*).** The Tribunal may vary the timeline as appropriate subject to the requirements of the statute and regulations, including the requirement to issue a decision within six months of the start of the appeal process.

Persons considering bringing an appeal should assume that they will have to be ready for a Preliminary Hearing within four weeks of starting their appeal, and ready to proceed with a full Hearing after a further four weeks.

Persons considering bringing an appeal should be aware of the limited issues and the tight timelines for these appeals, and should be prepared to work within the expedited procedures outlined in this Guide.

The Tribunal is committed to making its processes available to all persons who wish to take the opportunity to participate in an appeal, but Parties, Participants and Presenters must meet the obligations set out in the statute, regulations and the Tribunal's Rules of Practice and must be prepared to attend on the relevant dates scheduled by the Tribunal and to comply with any other procedural directions ordered by the Tribunal.

What is the Environmental Review Tribunal?

The Environmental Review Tribunal is an independent and impartial Tribunal established by provincial legislation. The Environmental Review Tribunal holds public Hearings on appeals arising from, amongst other things, decisions regarding the issuance, alteration or revocation of a renewable energy approval under the *Environmental Protection Act*.

The Members of the Tribunal are appointed by the Lieutenant Governor in Council for the Province of Ontario to conduct Hearings and make decisions on appeals. The Members have a variety of experience. None of the Members of the Tribunal are employees of the Ministry of the Environment.

Who can file an appeal of a renewable energy approval under section 142.1 of the *Environmental Protection Act*?

Under the *Environmental Protection Act*, a Director may approve a renewable energy project, and may establish terms and conditions for it. Under section 142.1 of that Act, any person resident in Ontario (including a corporation, but other than the person to whom the approval is issued) may appeal to the Tribunal a Director's decision to:

- issue or renew a renewable energy approval;
- impose terms and condition in issuing or renewing a renewable energy approval;
- alter the terms and conditions of a renewable energy approval;
- impose new terms and conditions on a renewable energy approval; or
- suspend or revoke a renewable energy approval.

This person is referred to as the "Appellant".

How is accommodation provided?

Parties, Participants, Presenters, witnesses and representatives are entitled to accommodation of *Human Rights Code*-related needs by the Tribunal and should notify the Tribunal Secretary as soon as possible if accommodation is required.

What language services are available?

A person should inform the assigned Case Manager at least fourteen days before the Preliminary Hearing or Hearing if he or she requires the Preliminary Hearing or Hearing to be translated into French.

Is a lawyer needed?

A Party may be self-represented or represented by a lawyer or other representative authorized under the *Law Society Act*.

Given the expedited hearing process for these appeals, it is essential that a Party or representative of a Party be available throughout the proceeding.

What are the deadlines for filing appeals?

The Appellant must file a Notice of Appeal with the Tribunal, and serve the Director and the person who has been granted approval for the project (the approval holder) with a copy, within 15 days of the notice of the decision respecting the renewable energy project being posted on the Environmental Registry. Proof that the Director and the approval holder have been served in accordance with the Tribunal's Rules (Rules 86 to 88) must be submitted when the appeal is filed with the Tribunal.

In determining whether a Notice of Appeal has been filed in time, the Tribunal calculates "days" as calendar days, according to the Tribunal's Rules of Practice. Please see Rule 15 for further information on this. If a Notice of Appeal is submitted late, the Tribunal has no legal authority to consider the application.

What information must a Notice of Appeal contain?

There is no required form for a Notice of Appeal. Most people send Notices of Appeal in a letter format.

The Notice of Appeal must include:

- the Appellant's name and address along with the name and address of anyone representing him or her;
- the address to which the Appellant wants notices and other official documents to be delivered;
- the telephone number, facsimile number and/or e-mail address where the Appellant can be contacted during business hours;
- a statement that the Appellant is appealing the decision of the Director in relation to a renewable energy project;
- a copy of the decision under appeal;
- an identification of the portions of the renewable energy approval that the Appellant is appealing;
- a description of how engaging in the renewable energy project in accordance with the renewable energy approval will cause serious harm to human health or serious and irreversible harm to plant life, animal life or the natural environment;
- a statement of the issues and material facts relevant to the subject matter of the appeal that the Appellant intends to present at the main Hearing;
- a description of the relief requested (i.e., what decision the Appellant would like the Tribunal to make); and
- an indication of whether the Appellant will seek a stay of the decision.

The reasons for the appeal should be specific and describe how engaging in the renewable energy project in accordance with the approval will cause the harm described above. Without the Tribunal's permission, an Appellant is not entitled to appeal any portion of the renewable energy approval that is not set out in the Notice of Appeal.

Does filing the appeal result in the decision under appeal not taking effect?

No. Decisions of a Director respecting renewable energy projects generally take effect as soon as they are issued even though a decision is being appealed. The Tribunal may, however, issue a stay order to postpone the legal effect of all or part of a decision.

How is a stay requested?

A person who intends to apply for a stay of a decision of the Director should include an indication of this intention in the Notice of Appeal. A stay is sought by making a motion to the Tribunal. After the Tribunal hears the motion, it will determine whether to issue a stay or not.

A person seeking a stay shall arrange through the assigned Case Manager a teleconference call with a Tribunal Member, the Director and any other Parties to seek directions as to the form and content of the motion; the exchange of necessary supporting materials, including affidavit materials; the scheduling of dates for cross-examination of witnesses, if required; and the scheduling of the Hearing of the motion.

What information is required on a stay motion?

After a date, time and place for the stay Hearing is established, the person seeking a stay must serve the Director and any other Parties with a formal Notice of Motion at least three days before the Hearing of the motion and file two copies with the Tribunal. The Tribunal may shorten this period if requested. The Notice of Motion must set out the grounds for requesting a stay and the date, time, and place of the stay Hearing. The Notice of Motion must also include evidence and submissions respecting:

- how the relevant statutory tests that are applicable to the granting of a stay are met;
- whether there is a serious issue to be decided by the Tribunal;
- whether irreparable harm will ensue if the relief is not granted; and
- whether the balance of convenience, including effects on the public interest, favours granting the relief requested.

What decisions can the Tribunal make on the appeal?

On an appeal by a member of the public in relation to a renewable energy project, the Tribunal is required to review the decision of the Director, and consider only whether engaging in the renewable energy project in accordance with the renewable energy approval will cause serious harm to human health, or cause serious and irreversible harm to plant life, animal life, or the natural environment. The onus is on the Appellant to prove that it is more likely than not that such harm will be caused.

If the Tribunal determines that engaging in the renewable energy project in accordance with the approval will cause such harm, the Tribunal may revoke the decision of the Director; by order, direct the Director to take such action as the Tribunal considers the Director should take in accordance with the Act and regulations; or alter the decision of the Director, for which purpose the Tribunal may substitute its opinion for that of the Director. If the Tribunal determines that no such harm will be caused, the Tribunal must confirm the Director's decision. The Tribunal's decision must be consistent with any policies issued by the Minister of the Environment

designed to guide decisions of this kind that were in place at the time the Director's decision was made.

When will the Tribunal make a decision?

On an appeal by a member of the public of a Director's decision in relation to a renewable energy project, the Tribunal must issue a written decision six months from the day that notice of the appeal is served on the Tribunal. If this is not done, the Director's decision is deemed to be confirmed by the Tribunal. The Tribunal has brought in new procedures (see below) designed to ensure that this tight timeframe can be met. However, if particular circumstances justify adjournments after a Notice of Appeal is filed, that time will not count against the six month deadline. Adjournments that have the effect of extending the six month deadline will be granted only on consent of the parties or where the Tribunal determines that an adjournment is necessary to secure a fair and just determination of the proceeding on its merits. An application for judicial review also stops the calculation of the six month period from the day the application is commenced until it is disposed of, if the proceeding before the Tribunal is adjourned by the Tribunal or stayed by the Divisional Court.

A copy of the decision is mailed to all Parties and Participants. Decisions of the Tribunal are also available on the Tribunal's website usually within 24 hours of their release.

How will the hearing process be expedited?

Because the Tribunal is required to issue a written decision within six months of the date that the Tribunal is served notice of an appeal by a member of the public, the hearing process will be expedited.

(a) Hearings to be peremptory

All Preliminary Hearing and Hearing dates are considered peremptory to all Parties, Participants and Presenters; that is, once a date has been set, the Preliminary Hearing or Hearing will proceed on that date except in exceptional circumstances. If a Party, Participant or Presenter has been notified of the time, date and place of a Hearing and fails to attend, the person will not be entitled to any further notice and Tribunal may, among other things, proceed with the Preliminary Hearing or Hearing; deem the person to have accepted all of the material facts set out in the materials of other parties; and make its decision in the absence of that person. For information on adjournments, please refer to the Tribunal's Rules of Practice at Rules 104 to 107.

(b) Director to provide names and addresses

Within four days of receiving the Notice of Appeal, the Director must provide the Tribunal with a list of names and addresses of all persons given notice during the consultation on the renewable energy approval application and a list of persons who have given notice to the Director that they have an interest in the particular renewable energy project. This information will ensure that the Tribunal can give notice of the Preliminary Hearing and Hearing in an expedited fashion.

(c) Schedule for hearing events issued

Within eight days from the appeal expiry date, the Tribunal will provide the Parties with a schedule for a determination of the appeal, prior to it being finalized by the Tribunal. Absent exceptional circumstances, the events and the intervals between them will be set in accordance with the timeline in Appendix A to this Guide.

(d) Director to provide information

Within 14 days of receiving the Notice of Appeal, the Director must file with the Tribunal all applicable reports that had been filed with the Director with respect to the renewable energy project and that relate to the grounds available on an appeal under section 142.1 of the *Environmental Protection Act*.

(e) Expedited hearing process

In the fourth week after the appeal has been launched, the Tribunal will hold a Preliminary Hearing into the matter. Before the Preliminary Hearing:

- the Parties must exchange and file with the Tribunal existing documents within their possession, control or power (with the exception of privileged documents), lists of witnesses and a summary of their anticipated evidence relevant to the subject matter of the appeal, and
- the Director and the approval holder must file a statement of the issues, material facts and submissions intended to be relied on in responding to the issues raised by the Appellant.

In the fifth week after the appeal has been launched, the Tribunal will conduct a mediation of the matter, if mediation is appropriate.

In the seventh week after the appeal has been launched, the Tribunal may continue the Preliminary Hearing for the purpose of finalizing the issues and witness list and issuing further directions about the scope of the Hearing. Before the continuation of the Preliminary Hearing the Parties must:

- exchange and file with the Tribunal any additional documents and witness lists as well as witness statements and resumes of any expert witnesses relevant to the subject matter of the appeal that the Parties intend to rely upon at the main Hearing; and
- file with the Tribunal a list of facts and issues that remain in dispute.

In the eighth week after the appeal has been launched, the Tribunal will commence the main Hearing.

How can neighbours and other concerned people participate?

Neighbours and other people who feel that they are affected by the renewable energy approval decision under appeal in relation to the permitted grounds of appeal may apply to the Tribunal for permission to participate in the Hearing – either to support the Appellant, to support the decision of the Director, or to advance a different position.

To participate in the Hearing, a person who wishes to be named as either a Party, Participant or Presenter must file with the Tribunal, no later than four days before the Preliminary Hearing a written request setting out:

- a statement of the issues and material facts relevant to the subject matter of the appeal that the person intends to present at the main Hearing;
- whether the person's participation is likely to make a relevant contribution to the Tribunal's determination of whether engaging in the renewable energy project in accordance with the renewable energy approval will cause serious harm to human health, or serious and irreversible harm to plant life, animal life or the natural environment;
- whether the person's interests may be directly and substantially affected by the Hearing or its result; and
- whether the person has a genuine interest, whether public or private, in the subject matter of the proceeding.

The Tribunal will provide requests for status to the Appellant, Director and approval holder or will provide their contact information to the person making the request so that the person can serve the request on them. The Appellant, Director and approval holder will be required to provide their responses to the request for status no later than one day before the Preliminary Hearing.

What is the difference between a Party, Participant, and Presenter?

The Tribunal has established various levels of participation to ensure that all those interested in the Hearing can be involved. The Tribunal encourages participation in its Hearings. As outlined below, different levels of participation are available according to a person's needs and interests.

Who can be a Party?

Those persons specified as Parties by the *Environmental Protection Act* and persons otherwise entitled by law to be Parties are automatically Parties to the proceeding. Additionally, if a person requests Party status, the Tribunal may name that person a Party after considering the matters discussed above.

What is the role of a Party?

Those who request and receive Party status from the Tribunal assume the fullest range of rights and responsibilities. Most Parties are represented by either a lawyer or other representative, but a Party may be self-represented. A Party can be either one person (including a corporation) or a group of persons. Generally speaking, unincorporated associations are not considered to be persons before the Tribunal. Therefore, unincorporated associations must be represented by an individual. A Party may:

- be a witness at the Hearing;
- be questioned by the Tribunal and the Parties;
- bring motions;
- call witnesses at the Hearing;
- cross-examine witnesses called by other Parties;

- make submissions to the Tribunal including final argument;
- receive copies of all documents exchanged or filed by the Parties;
- participate in mediation;
- attend site visits; and
- claim costs and be liable for costs, where permitted by law.

Who can be a Participant?

A person who has an interest in the subject matter of the Hearing may be named as a Participant. In deciding whether to name a person as a Participant rather than as a Party, the Tribunal may consider whether the person's connection to the subject matter of the proceeding or issues in dispute is more remote than a Party's would be. A person who may otherwise qualify as a Party may request Participant status.

What is the role of a Participant?

In addition to the right to observe and present relevant evidence at a Hearing, a Participant may:

- be questioned by the Tribunal and the Parties;
- make submissions to the Tribunal at the commencement and end of the Hearing;
- upon request, receive a copy of the documents exchanged by the Parties that are relevant to the Participant's interests; and
- attend site visits.

However, someone with Participant status cannot:

- raise issues that have not already been raised by a Party;
- call witnesses;
- cross-examine witnesses;
- bring motions;
- participate in mediation unless permitted to do so by the Tribunal; and
- claim costs or be liable for costs.

Who can be a Presenter?

A person who has an interest in the subject matter of the Hearing may be named as a Presenter. In deciding whether to name a person as a Presenter rather than as a Party or Participant, the Tribunal may consider whether the person's connection to the subject matter of the proceeding or issues in dispute is more remote than a Party's or Participant's would be. A person who may otherwise qualify as a Party or Participant may request Presenter status.

What is the role of a Presenter?

A Presenter need only attend at the Hearing when presenting evidence. In addition to the right to observe, be a witness and present relevant evidence at a Hearing either during the regular daytime sessions or, where there is a large public interest, at a special evening session, a Presenter may:

- be questioned by the Tribunal and the Parties;
- provide the Tribunal with a written statement as a supplement to oral testimony; and

- upon request, receive a copy of documents exchanged by the Parties that are relevant to the Presenter's interests.

However, someone with Presenter status cannot:

- raise issues that have not already been raised by a Party;
- call witnesses;
- cross-examine witnesses;
- bring motions;
- make oral and written submissions to the Tribunal at the commencement and at the end of the Hearing;
- participate in mediation unless permitted to do so by the Tribunal;
- attend site visits unless permitted to do so by the Tribunal; and
- claim costs or be liable for costs.

What is a Preliminary Hearing?

The Tribunal will hold a Preliminary Hearing four weeks after the time to file an appeal has expired in order to facilitate preparation for the main Hearing. The main Hearing will normally start approximately four weeks after the date of the Preliminary Hearing. The Member will issue a written order after the Preliminary Hearing regarding what was decided at the Preliminary Hearing.

A Preliminary Hearing may be held to:

- identify Parties, Participants and Presenters, and the scope of their participation in the Hearing;
- determine whether the Hearing will be conducted orally, electronically or in writing;
- hear preliminary motions;
- identify, define or narrow issues;
- develop an agreed statement of facts and evidence;
- determine whether any issues can be settled or withdrawn;
- determine the order of presentation of evidence and submissions; and
- consider any other matters that may assist in the just and expeditious disposition of the proceeding.

Is mediation available?

Tribunal-assisted mediation is offered to all Parties and is voluntary. Mediation is conducted after the Preliminary Hearing and generally prior to the commencement of the main Hearing. The member of the Tribunal who conducts the mediation will not conduct the Hearing unless all Parties consent.

The Tribunal's Members are trained and experienced in providing mediation services to help resolve disputes. This service is provided at no cost to the Parties. The mediator may exclude everyone but the Parties from the mediation, and all documents submitted and all statements made at the mediation are confidential and without prejudice. Any settlement agreement will be reviewed by the Tribunal in accordance with the Tribunal's Rules of Practice and Practice Directions. If the Tribunal is satisfied that the settlement agreement is in accordance with the

Rules, the Tribunal will accept the settlement agreement and attach the settlement agreement to its decision dismissing the proceedings.

How does one prepare for the hearing process?

The key to effective participation in the hearing process is being well informed and prepared to provide one's views and evidence at the Hearing. The Tribunal can only consider the information provided at the Hearing and the grounds for appeal discussed above. The evidence intended to be relied upon should be relevant to the issues before the Tribunal.

Parties, Participants and Presenters are strongly encouraged to review the Rules of Practice and Practice Directions of the Environmental Review Tribunal and the relevant provisions of the *Environmental Protection Act*, in particular, the limited grounds available on an appeal of a renewable energy project decision.

What are the disclosure requirements?

As discussed above, the Tribunal will provide a schedule for the exchange and filing of documents. The Tribunal must be given two copies of all documents filed.

Parties must provide without charge any documents they are required to provide to all other Parties. Participants and Presenters may make a request to the Tribunal to receive a copy of all documents relevant to their interests

The obligation to disclose is continuing. All relevant documents discovered during the course of the Hearing must be provided to the other Parties and the Tribunal.

What is a Witness Statement?

Witnesses may be trained professionals, members of the community, academic specialists, or individuals with specific knowledge who can give the Tribunal relevant information.

A witness statement is a concise, but complete, written statement of the evidence a witness intends to present.

A witness statement should be direct and to the point. It is intended that the statement be complete in the sense that the witness should not have to add anything new to the evidence at the Hearing. However, the witness is entitled to explain more fully anything contained in the statement.

A witness statement should contain the following information:

- the name, address and telephone number of the witness;
- whether the evidence will be factual evidence or, if the witness is a qualified expert, opinion evidence;
- a resume of the witness' qualifications, where the witness is to give opinion evidence;
- a signed form in accordance with Form 5 of the Tribunal's Rules of Practice, where the witness is to give opinion evidence;

- whether or not the witness has an interest in the application and, if so, the nature of the interest;
- a summary of the opinions, conclusions and recommendations of the witness;
- reference to those portions of other documents which form an important part of the opinions, conclusions and recommendations of the witness;
- a summary of answers to any interrogatories to or from other Parties that will be relied on at the Hearing;
- where applicable, a discussion of proposed conditions of approval that are in controversy among the Parties or agreed upon conditions that may be related to issues in dispute;
- the date of the statement; and
- the signature of the witness.

If the witness statement does not contain all of the above information Parties may jeopardize their right to have the evidence admitted or may delay the Hearing.

Witnesses will normally attend in person to give oral evidence and be subject to cross-examination. A Party who seeks to have witnesses present opinion evidence must have them accepted as experts by the Tribunal before their evidence can be admitted.

Witness statements should be exchanged among the Parties and filed with the Tribunal within the time directed by the Tribunal.

Can the Tribunal require a Witness to attend?

The Tribunal has the power to summon a witness to attend a Hearing, to give evidence and to bring relevant documents and material. A summons can be issued because the Tribunal wants to hear from the witness or because a Party has requested that the Tribunal require the person to act as a witness. The person calling a witness is responsible for paying for the witness' attendance costs at the same rate as is paid to a person summoned to appear before the Superior Court. It is the responsibility of a person calling a witness to obtain and serve the summons as soon as possible before the commencement of the Hearing.

How does the Tribunal hear an appeal?

The Tribunal may conduct a Hearing by a panel of one, two or three members. An appeal will normally be conducted by way of an oral Hearing. It might sometimes be conducted electronically (for instance by telephone), by way of written submissions, or by a combination.

At an oral or electronic Hearing, each Party will have an opportunity to present evidence and submissions, call and cross-examine witnesses and explain the Party's case to the Tribunal.

At a written Hearing, all Parties will be provided with the opportunity to make written submissions and to comment on other Parties' written submissions.

Who can attend Tribunal Hearings?

Tribunal Hearings are open to the public unless they are ordered otherwise by the Tribunal. The Tribunal may order a Hearing closed to the public on its own initiative, or at the request of a Party. The Tribunal will only order a Hearing closed to the public when the Tribunal determines

that intimate financial, personal or other matters may be disclosed at a Hearing that are of such a nature that the desirability of avoiding disclosure outweighs the desirability of adhering to the principle that Hearings will be open to the public.

Who can access Tribunal documents?

All documents filed with the Tribunal and all communications to and from the Tribunal form part of the Tribunal's Public Record and are, therefore, available for reasonable access by all persons unless the Tribunal orders otherwise.

What is the order of presentation at a Hearing?

Once the Parties, Participants and Presenters are identified, Parties and Participants will be asked in turn to give a very brief opening statement outlining what they feel are the issues in the case before the Tribunal, a brief summary of the evidence they intend to present, the names of the witnesses that they intend to call, and the amount of time they feel they will require to present their case.

While the Tribunal can direct the order of the presentation of evidence, in an appeal under section 142.1 of the *Environmental Protection Act*, the Appellant will usually present evidence first. At the conclusion of the examination of each of the Appellant's witnesses, the Parties are given an opportunity to cross-examine the witness. Upon completion of the cross-examination of each witness, the Appellant is entitled to re-examine a witness on any issue that arose for the first time during the cross-examination of the witness.

When the Appellant's evidence has been presented, other Parties, Participants and Presenters supporting the Appellant will be given an opportunity to present their case following the same procedures.

The Director and holder of the renewable energy approval and any other Parties supporting their position can then call their witnesses. Cross-examination and re-examination will be allowed of any evidence presented.

The Appellant will next be given an opportunity to present any additional evidence that arises out of the evidence of the other Parties. This reply will be limited to evidence that the Appellant could not reasonably have anticipated during the initial presentation of evidence.

When all the evidence has been heard, each Party and Participant will be entitled to make a final submission. This submission gives the Parties and Participants a chance to summarize the important facts on which they are relying, to summarize any points of law or policy which they think are relevant for the Tribunal's consideration, and to persuade the Tribunal to accept their argument or position.

At any time during the Hearing, the Tribunal may ask questions of Parties, Participants, Presenters, witnesses or their representatives.

What principles govern the Tribunal's Hearings?

The Tribunal conducts its hearings to ensure the just, most expeditious and cost effective determination of the proceedings. The Tribunal is committed to open, accessible, and

understandable hearing procedures which facilitate and enhance access to justice and public participation.

The Tribunal's objective is to consider all the evidence presented, and make a decision with written reasons in a manner that is consistent with the *Environmental Protection Act*.

Can the Tribunal award costs?

Participating in a Hearing invariably entails some costs. Typically these costs might include:

- fees for lawyers, representatives or agents;
- fees for expert assistance and witnesses;
- travel and accommodation expenses;
- costs for materials used for presentations (such as photographs, graphics, etc.).

In rare circumstances, costs may be awarded in appeals under section 142.1 of the *Environmental Protection Act* but only where there has been unreasonable conduct by a Party. Rules 212 to 220 and Rules 225 to 231 of the Tribunal's Rules of Practice should be consulted.

Can the Tribunal's decision be appealed/reviewed?

An appeal of the Tribunal's decision may be made in writing to the Minister of the Environment on any matter other than a question of law. The Minister of the Environment will then confirm, alter or revoke the decision of the Tribunal if the Minister considers that it is in the public interest to do so.

The appeal must be made within 30 days after the release of the Tribunal's decision.

An appeal of the Tribunal's decision on a question of law may be made to the Divisional Court. This appeal must be filed in accordance with the *Ontario Rules of Civil Procedure*.

The opportunity also exists for judicial review of the decision by the Divisional Court.

For more information:

For further information, please refer to the *Environmental Protection Act* and to the Rules of Practice and Practice Directions of the Environmental Review Tribunal. All of these documents are available on the Tribunal's website at www.elto.gov.on.ca.

Appendix A
Timeline for Appeals under Section 142.1 of the *Environmental Protection Act**

| | 15 days after notice of decision | Within 4 days after Director receives Appeal Notice | Within 8 days after Appeal expiry date | Within 14 days after Director receives Appeal Notice | Within 3 weeks after Appeal expiry date | At least 4 days before the Preliminary Hearing |
|---------------------------------------------------------------------------------|----------------------------------|------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Notice of decision on renewable energy project posted on Environmental Registry | Appeal expiry date | Notice list: Director gives Tribunal name and address list for notices | Notice from Tribunal: Preliminary Hearing, Continuation of Preliminary Hearing and Hearing dates | Disclosure: Director gives to Appellant and files with Tribunal material relevant to the statutory test from public consultation on renewable energy approval application | Disclosure: Exchange among Parties and filing of existing documents within Parties possession, control or power (except privileged documents), existing lists of witnesses, summary of intended evidence relevant to the subject matter of the appeal and a statement of the issues and material facts to be relied on by the Parties in responding to Appellant's issues | Request for Status: Written request to Tribunal to be added as Party, Participant and Presenter (must set out status sought, how test is met and statement of the issues and material facts) The Tribunal will subsequently forward the request to the Parties or direct the requestor to do so. |

| At least 1 day before the Preliminary Hearing | 4 weeks After Appeal expiry date | Within 5 weeks after Appeal expiry date | Within 5.5 Weeks after Appeal expiry date | At least 7 days Before the Hearing | At least 4 days before the Hearing | 8 weeks after Appeal expiry date | Within 6 months after Tribunal receives Appeal Notice |
|------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|-----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|----------------------------------|------------------------------------------------------------------------------------------|
| Response to status request: By Appellant, Director and Approval holder | Preliminary Hearing to: Determine Party, Participant, Presenter Status, define issues, hear preliminary motions | Mediation (if applicable) | Disclosure: Exchange among Parties and filing of additional documents, witness lists and statements, and resumes of expert witnesses, relevant to subject matter of the appeal, to be relied on at the Hearing | Issues and facts still in dispute: Filing by Parties of material, list of facts and issues still in dispute | Continuation of the Preliminary Hearing: To finalize issues and witness lists; issue further directions, if appropriate | Date of Hearing | Release of Tribunal's Decision (as required by the <i>Environmental Protection Act</i>) |

* Note: the Tribunal may vary the timeline as appropriate and issue directions at any stage of the proceeding, subject to the requirements of the statute or regulations, including the requirement to issue the decision within six months.

THE CORPORATION OF THE CITY OF KAWARTHA LAKES

COUNCIL REPORT

Report Number PLAN2013-003

Date: February 5, 2013
Time: 1:00 p.m.
Place: Council Chambers

| |
|----------------------------------------|
| Ward/Community Identifier 16 |
|----------------------------------------|

Subject: Proposal to develop a 10.25 MW on shore wind farm in the geographic Township of Manvers (wpd Canada – Sumac Ridge Wind Farm)

Author/Title: Linda Russell, Planner 2

Signature:



RECOMMENDATION(S):

RESOLVED THAT Report PLAN2013-003, "Sumac Ridge Wind Farm", be received;

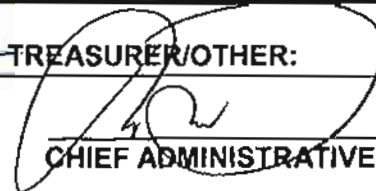
THAT Council recommends that the Sumac Ridge Wind Farm Project as generally outlined in Appendix 'B' to Report PLAN2013-003 be refused by the Province; and

That Council's recommendations, together with Report PLAN2013-003 and the Part B Municipal Consultation Form as generally completed in Appendix 'C', be forwarded to the Province.

DEPARTMENT HEAD:



TREASURER/OTHER:



CHIEF ADMINISTRATIVE OFFICER

BACKGROUND:

On November 22, 2012, Council adopted the following resolution:

RESOLVED THAT Report DEV2011-093, *"Renewable Energy Approvals Review Process Update"*, be received;

THAT the Province be requested to implement a reliable and accredited process to evaluate the impact of low frequency noise and perceptible infrasound (vibration) attributed to Industrial Wind Turbines (IWT), and established minimum requirements and mitigation measures for proponents to implement;

THAT until such time as low frequency noise and perceptible infrasound from IWT's is reviewed and mitigated through the REA approval process and based on conclusive and independent clinical health studies that eliminate the potential of adverse impacts to health, safety, and well-being of the public, the Province be requested to implement a moratorium on approvals of IWT projects in Ontario;

THAT the Province be requested to implement a minimum setback of two (2) km from the base of any IWT to the property line of any sensitive receptor;

THAT a review fee of \$2,000.00 be established by the City of Kawartha Lakes to offset costs and resources utilized to review, coordinate and complete the Municipal Consultation Form required as input into the REA approval process, and that this recommended fee be retroactively charged to include all active applications currently under review by the City;

THAT the Province be requested to consider amendments to the Green Energy Act and REA approval process that prescribe and give greater weight and consideration to meaningful consultation with both municipalities and the local community, and including a requirement for demonstrated municipal and local community support as a condition of project approval by the Minister of Environment;

THAT the Province be requested to require all Class 3, 4 and 5 wind projects under O. Reg. 359/09 to be subject to full Environmental Assessments; and

THAT these recommendations be forwarded to the Premier, the Minister of Environment, the Minister of Energy, MP Barry Devolin, MPP Laurie Scott, the Federation of Canadian Municipalities (FCM), the Association of Municipalities of Ontario (AMO), and to each proponent of an active application under the Environmental Protection Act - Ontario Regulation 359/09.

A copy of this resolution was mailed to all interested parties on February 22, 2012. This report (PLAN2013 -003) is consistent with that direction.

RATIONALE:

Wpd Canada Corporation is proposing the installation of a 10.25 MW onshore wind project. The project is known as the Sumac Ridge Wind Farm. The current design uses five 2.05 MW wind turbines with a maximum contract nameplate capacity of 11.5 MW. Two of these turbines are located in the Oak Ridges Moraine (ORM). As such, the entire project must be considered under the ORM legislation. The project is considered a Class 4 wind facility. The proposed contracted commercial operation date of the Project is July 24, 2014. The operating footprint of the site is 4.52 ha. in total, however the site is comprised of several separate parcels of privately owned land in the former Manvers Township. The approximate boundaries of the project area are Highway 7A to the north, Ballyduff Road to the south, and between Highway 35 and Porter Road. These parcels are denoted on the Aerial Photo (Appendix 'A').

1. S1/2 LT 15 CON 6 (851 Ballyduff Rd., McKim/Porter)
2. S1/2 LT 14 CON 6 (Preston)
3. PT LT 10 CON 6 (Porter)
4. N1/2 LT 14 CON 6, EXCEPT PT 1, 9R2356
5. PT LT 14 CON 6, PT 1 9R2356
6. PT LT 13-14, CON 7 (858 Hwy 7A, Parker)

The Ministry of Environment (MOE) is the approval authority for renewable energy projects. As part of the Renewable Energy Approval (REA) process, as outlined in O. Reg. 359/09 under the Environmental Protection Act, the proponent must consult with the City to address municipal interests as defined by the Province. The proponent must complete and submit Part A of the municipal consultation form (Appendix 'B'). The proponent has completed the requirements prescribed in the Regulation and the City is required to complete Part B of the municipal consultation form (Appendix 'C') and forward the completed application form to the MOE for review.

Submission of the Part B consultation form should not be interpreted as Council approval with conditions, but to identify and protect City interests should any development be granted approval by the province.

The following draft REA reports were submitted for review:

- Project Description
- Construction Plan
- Design and Operation
- Decommissioning Plan
- Environmental Effects Monitoring Plan
- Environmental Impact Study
- Water Report and Environmental Impact Study
- Turbine Specifications
- Stage 1 and Stage 2 Archaeological Assessment

These reports were circulated to various departments and divisions, including, Public Works, Engineering, Land Management, and Emergency Services. Comments provided are included in this report and in Part B of the municipal consultation form.

DEVELOPMENT SERVICES - PLANNING DIVISION COMMENTS:

The proposed placement of each turbine has been calculated using setback and buffer requirements based on the minimum setback of 550 m. for 5 turbines from sensitive receptors (excluding non-participating dwellings). This setback was established by the Ministry of the Environment. The Regulation (o. Reg. 359-09) calls for a greater setback where there are more than 5 turbines. Council requested a minimum 2 km (2000 m.) setback from any IWT to any sensitive noise receptor.

There appears to be in excess of 74 sensitive receptors located within the 2 km setback, and some receptors appear to have been excluded from the mapping provided by the developer. Appendix 'D' identifies the sensitive receptors as provided by wpd Canada.

In addition to the Sumac Ridge Wind Project, there are two other Industrial Wind Turbine Projects proposed for the area. Settlers Landing and Snowy Ridge each propose an additional 5 turbines, for a cumulative total of 15 turbines. Between the Sumac Ridge and Snowy Ridge Project, 10 turbines are proposed within a radius of approximately 4.6 km. Settlers Landing is approximately 7.5 km to the south west of the other two projects.

Through the Green Energy and Green Economy Act and amendments to the Planning Act, the Province of Ontario has not prescribed approval authority to municipalities for this project, or any renewable energy projects. In the event that the Province approves this project, the City will require the proponent to enter into a Development Agreement, which will outline, among other things, construction and financial security requirements, including decommissioning costs.

APPLICABLE PROVINCIAL POLICIES:

Oak Ridges Moraine Conservation Plan (ORMCP):

The ORMCP is an ecologically based plan established by the Ontario government to provide land use and resource management direction for the 190,000 hectares of land and water within the Moraine. Through the legislation and the ORMCP, the Ontario Government has set a clear policy framework for protecting the Oak Ridges Moraine. This provincial policy is reflected in our official plan and zoning by-laws to inform decisions on development applications. The Plan also provides that:

"Any City Official Plan is required to be in conformity with the ORMCP. Nothing in this Plan is intended to prevent municipalities from adopting official plan policies more restrictive than the ORMCP, except where prohibited by the ORMCP."

The REA process incorporates some restrictions for alternative energy applications with the ORMCP. These restrictions are intended to protect significant natural heritage features including provincially significant wetlands, areas of natural and scientific interest, significant woodlands and valleylands, and sensitive water bodies. Under the REA process, and subject to approval from the Ministry of Natural Resources, the developer must submit a Natural Heritage Assessment and geotechnical surveys which evaluate the ground water and hydrology of the area. Staff requested additional reports including detailed maps showing high aquifer vulnerability zones, natural heritage features and a hydrogeological report. This information has not been provided.

The applicants have not demonstrated that these environmentally significant features will be impacted and/or protected.

OFFICIAL PLAN CONFORMITY:

The subject lands are located partially in the City of Kawartha Lakes Official Plan (CKLOP) and partially in the Oak Ridges Moraine Official Plan (ORMOP). The land is

designated *Countryside Area* in the ORMOP, and *Prime Agricultural and Environmental Protection* in the CKLOP (Appendix 'E').

The purpose of Countryside Areas is to encourage agricultural and other rural uses that support the Plan's objectives by:

- a) Protecting prime agricultural areas;
- b) Providing for the continuation of agricultural and other rural land uses and normal farm practices;
- c) Maintaining the rural character of the Rural Settlements;
- d) Maintaining, and where possible improving or restoring, the ecological integrity of the Plan Area;
- e) Maintaining, and where possible improving or restoring, the health, diversity, size, and connectivity of key natural heritage features, hydro-logically sensitive features and the related ecological functions;
- f) Maintaining the quantity of groundwater and surface water;
- g) Maintaining groundwater recharge;
- h) Maintaining natural stream form and flow characteristics;
- i) Protecting landform features;
- j) Accommodating a trail system through the Plan Area and trail connections to it; and
- k) Providing for economic development that is compatible with clauses (a) and (k) above the Nature of the Countryside Areas.

The following uses are permitted with respect to land in Countryside Areas:

- 1) Fish, wildlife and forest management,
- 2) Conservation projects and flood erosion control projects,
- 3) Agricultural uses
- 4) Transportation, infrastructure, and utilities as described in Section 41 of the ORMCP. Section 41 provides that transportation, infrastructure and utility uses include: (a) public highways; (b) transit lines, railways and related facilities; (c) gas and oil pipelines; (d) sewage and water service systems and lines and stormwater management facilities; (e) power transmission lines; (f) telecommunications lines and facilities, including broadcasting towers; (g) bridges, interchanges, stations, and other structures, above and below ground, that are required for the construction, operation or use of the facilities listed in clauses (a) to (f); and (h) rights of way required for the facilities listed in clauses (a) to (g).
- 5) Home businesses
- 6) Home industries
- 7) Bed and breakfast establishments
- 8) Farm vacation homes
- 9) Low-intensity recreational uses as described in Section 37 of the ORMCP
- 10) Unserviced parks
- 11) Mineral aggregate operations
- 12) Wayside pits
- 13) Agricultural-related uses
- 14) Small-scale commercial, industrial, and institutional uses as described in Section 38, subject to subsection 13 (5) of the ORMCP

- 15) Major recreational uses as described in Section 38, subject to subsection 13 (5) of the ORMCP
- 16) Uses accessory to the uses set out in paragraph 1 to 15

Industrial Wind Turbines are not considered a permitted use, as there is no description provided for this use under the definition of transportation, infrastructure and utilities. In addition, these specific uses are only permitted to cross a key natural heritage feature or a hydrological sensitive feature if the applicant demonstrates that,

- a) the need for the project has been demonstrated and there is no reasonable alternative;
- b) the planning, design and construction practices adopted will keep any adverse effects on the ecological integrity of the Plan Area to a minimum;
- c) the design practices adopted will maintain, and where possible improve or restore, key ecological and recreational linkages;
- d) the landscape design will be adapted to the circumstances of the site and use native plant species as much as possible, especially along rights of way; and
- e) the long-term landscape management approaches adopted will maintain, and where possible improve or restore, the health, diversity, size and connectivity of the key natural heritage feature or hydrological sensitive feature.

The portion of the project that is located within the Oak Ridges Moraine Boundary has been identified as an area of High Aquifer Vulnerability. The Plan states that development in wellhead protection areas and areas highly vulnerable to groundwater contamination is limited. Development near these hydrological sensitive features is only permitted if it will not adversely affect these features. The City has requested a Hydrogeological Report from the proponent, but to date has not received the information requested.

The following uses are permitted within the Prime Agricultural designation of the City's Official Plan:

- Agricultural uses
- Agriculture-related uses
- Single detached dwellings accessory to the other permitted uses
- Garden suites
- Secondary uses including kennels
- Wayside pits or quarries, portable asphalt plants and portable concrete plants all of which shall only be used on public authority contracts
- Limited agri-business uses

Permitted uses within the Environmental Protection Designation should maintain the unique natural characteristics of such lands and should not contribute to problems of erosion, flooding, pollution or the deterioration of the environment. Except for erosion or flood control, buildings and structures are not permitted in this designation.

Based on the above, industrial wind turbines are not permitted by the policies contained in the above-noted Official Plans.

ZONING BY-LAW COMPLIANCE:

The southern portion of the subject lands are zoned 'Oak Ridges Moraine Country Side Area (ORMCS)'. The permitted uses in this zone are:

- a) Agricultural uses;
- b) Fish, wildlife and forest management;
- c) Low intensity recreational uses;
- d) Conservation projects and flood and erosion control projects;
- e) Transportation, infrastructure and utilities;
- f) Home business;
- g) Home industries;
- h) Bed and breakfast establishments;
- i) Farm vacation homes;
- j) Wayside pits;
- k) Agricultural-related uses;
- l) Single detached dwelling if:
 - i. The use, erection and location would have been permitted by the Township of Manvers Zoning By-law 87-06, as amended, on November 15, 2001; and
 - ii. The applicant demonstrates, to the extent possible, that the use, erection and location will not adversely affect the ecological integrity of the Oak Ridges Moraine Plan Area.
- m) Accessory uses to the above permitted uses.

An Industrial Wind Turbine is not a permitted use in any zone in the Oak Ridges Moraine Zoning By-law 2005 -133. The northern half of the subject lands are zoned 'Rural General (A1) Zone' in the Township of Manvers Comprehensive Zoning By-law 87-06 (Appendix 'F'). This zone permits a variety of agricultural uses, as well as hydro or communication facility. An Industrial Wind Farm is not a permitted use.

OTHER ALTERNATIVES CONSIDERED:

No other alternatives have been considered at this time.

FINANCIAL CONSIDERATIONS:

Council established a review fee of \$2000 to offset costs and resources utilized to review, coordinate and complete the Municipal Consultation Form required as input into the REA approval process. Staff confirms the review fee was paid in full.

ACCESSIBILITY IMPLICATIONS:

There are no accessibility implications for the City.

RELATIONSHIP OF RECOMMENDATION(S) TO STRATEGIC PRIORITIES:

The Sumac Ridge Wind Farm does not directly impact or align with a specific Strategic Priority.

CONSULTATIONS:

Should this project be approved by the province, staff will require that the proponent enter into a development agreement to address various City interests prior to any construction activity related to this project. Those interests include but are not limited to:

Public Works Operations and Water & Wastewater Division

Operations – dust control and road cleaning to be the responsibility of the developer during construction.

Water & Wastewater – no comments or objections

Engineering Division

The project requires upgrades to municipal roads and construction of private access roads to the turbine sites. Sight lines and grading must be confirmed by an engineer. Any entrance to and from private property will require an entrance permit. The City will not assume any roads as part of this project. Road assumption requires a petition that must contain signatures from 100% of property owners fronting the road in question.

Maintenance and access shall be the responsibility of the applicant. All rights of ways shall be left in a condition equal to or better than existing.

Engineering would like to stress the fact that the project shall not negatively affect adjacent properties, and all drainage shall be self contained or drain to a protected outlet (i.e. roadside ditch, etc.) A lot grading and drainage plan is requested in order to confirm the proposed drainage on the site. If during or after construction of the site, Engineering finds any issues or problems with the drainage it will be up to the proponent to rectify these issues so that there is no negative impact. Engineering also requests a copy of the Stormwater Management Report, once completed.

Any fill and/or site alteration activity must be approved by the City, in accordance with the City's Fill and Site Alteration By-law.

Land Management

Wild Turkey Road is a public road allowance in the former Township of Manvers. The Provincial Registry office does not reveal any easements or rights of way in favour of an abutting landowner over Wild Turkey Road; therefore there is no easement information relevant to this road.

City of Kawartha Lakes Fire & Rescue Service

Staff requests additional information including:

- a site plan showing all equipment disconnects, inverters, etc.
- a detailed emergency response plan, including 24 hour emergency contacts
- a site plan showing a reasonable amount/placement of access roads that will support responding apparatus (vehicles and personnel)

- approved fire extinguisher placement for structures/substations/inverters/transformers
- ground cover and ground cover control measures
- on-site orientation and training session prior to commissioning

Current City Fire and Rescue Services do not have suitable resources or equipment to adequately respond to some potential emergencies associated with these structures.

Building

No permanent buildings are proposed for this project. However, a permit is required for any building or structure greater than 10 sq. m.

Public Comments:

Over 1500 objections, including letters, emails, and petitions, have been submitted to the province (and copied to the city) from landowners and occupants within the community and surrounding area. Those letters identify a variety of concerns that include, but are not limited to, the following:

Health Concerns

Sounds (infrasound and low frequency sound) emitted from wind turbines can cause adverse health consequences including, sleep deprivation, headaches, nausea, hearing loss, seizures, vertigo and dizziness.

Property Values

Market evidence suggests that property values will decrease, as result of real or perceived nuisances resulting from the presence of wind turbines.

Impact on Environment

The disruption to the eco-system, including aquifers and sensitive habitats, both underground and surrounding, may cause irreparable damage. Birds, bats and animals on the endangered species list are present in the area. Proposed mitigation measures do not adequately address the loss and reduction of habitat. Protected woodland areas will be cut to provide access to the turbines.

Visual Impact

The size of the turbines will significantly alter character of the landscape, and will be an obvious intrusion to the natural features of the area.

Noise Studies

The noise report does not reflect the proximity to the other wind projects, rolling terrain, or low frequency noise.

Noise Pollution

The Ministry currently has no approval methodology for field measurement of the low frequency/infrasound noise emissions from multiple noise sources. As such there is no way for Ministry staff, to confirm compliance or lack thereof with the noise limits set in the approvals. The Ministry of the Environment has noted several hundreds reports of noise complaints are adverse health affects as a result of IWT's.

Noise Receptors

There have been reports of missing noise receptors. Residents are in the process of comparing the maps provided by the proponent.

Bird/Bat Population

Residents are concerned about the effect of IWT's on the bird and bat population. Representatives of the wind proponents stated that there were not bats in the area. Research studies do demonstrated that bats are severely impacted by the change in air pressure experienced. Residents reported that the bird, bat and natural heritage assessments done by the proponent were cursory and done during periods when neither birds or bats were present and therefore it was not possible to assess the population accurately. Studies are requested during periods when they will be present and during migration season to make a more accurate assessment of exciting populations and determine appropriate monitoring procedures to determine accurate levels of mortality.

Hydrology

Concerns regarding nearby wells and the High Aquifer Vulnerability have been raised. A Hydrogeological report was requested by a number of residents. Residents were told by the proponent that the City had a copy of this report. The proponent later confirmed that this was not the case. A Geotechnical Report and Water Report were provided by the proponent; however, these reports are not the same as a Hydrogeological Report. Under the REA process, Hydrogeological Reports are not required for this type of project. Nevertheless, reports that are not required may be requested were conditions warrant.

Archaeology

The proponents have did not provide the archaeological studies to the public at the time of the Final Public meetings. Due to changes in the site plans, some areas may not have been properly assessed.

Public Meeting

The final Public meeting was held at the Rolling Hills Public School on June 19, 2012. Many complaints/concerns were received from residents who attended that meeting.

Road Widening

There is no public support for the widening or re-alignment of either Wild Turkey Road or Ballyduff Road.

Shadow Flicker

A number of properties will be subject to shadow flicker on a regular basis. Mitigation measures propose closing curtains and blinds, or planting a tree to reduce the flickering effect. These measures will require some residents to keep their windows closed and covered during all periods of shadow flicker year round.

Wells

Surrounding property owners may experience fluctuation in water supply as a result of groundwater disruption during construction and operation of the turbines.

Setbacks

Setbacks from roadways to property lines do not meet the minimum requirements.

Setbacks to participating landowners do not meet the minimum requirements.

Setbacks to non-participating landowners do not meet the setbacks required for 15 turbines.

Setbacks will sterilize development on all neighbouring properties for future development.

Production Capacity

Reports by IESO show wind to be low efficiency; inconstant, unreliable and difficult to manage on the grid; extremely low production (0-4%) during peak demand periods (summer); over production during low demand periods (fall, winter and spring).

Summary

This application does not conform to the policies contained in either the City of Kawartha Lakes Official Plan or the Oak Ridges Moraine Conservation Plan. This project also does comply with the relevant provisions of the Oak Ridges Moraine Zoning By-law or the Township of Manvers Zoning By-law. The proponent has not demonstrated that the proposed development will not negatively impact the integrity and sensitive features of the Oak Ridges Moraine. In addition, Council has requested a minimum two (2) km setback from the base of any turbine to the property line of any sensitive receptor. This project does not meet that direction. Finally, Council has requested provincial evaluation criteria to determine the impact of low frequency noise and perceptible infrasound (vibration) originating from industrial wind turbines. There is no provincial evaluation criteria established, and no study or information addressing this issue in support of this project. Accordingly, staff recommends that Council not endorse this project.

ATTACHMENTS:



AppendicesA-F.pdf

Appendix "A" – Aerial Photo

Appendix "B"- Part A of the Municipal Consultation Form

Appendix "C"- Part B of the Municipal Consultation Form

Appendix "D" – Mapping from wpd Canada identifying Sensitive Receptors

Appendix "E" – Official Plan Designations/Wind Turbine Locations

Appendix "F"- Zoning Map/Wind Turbine Locations

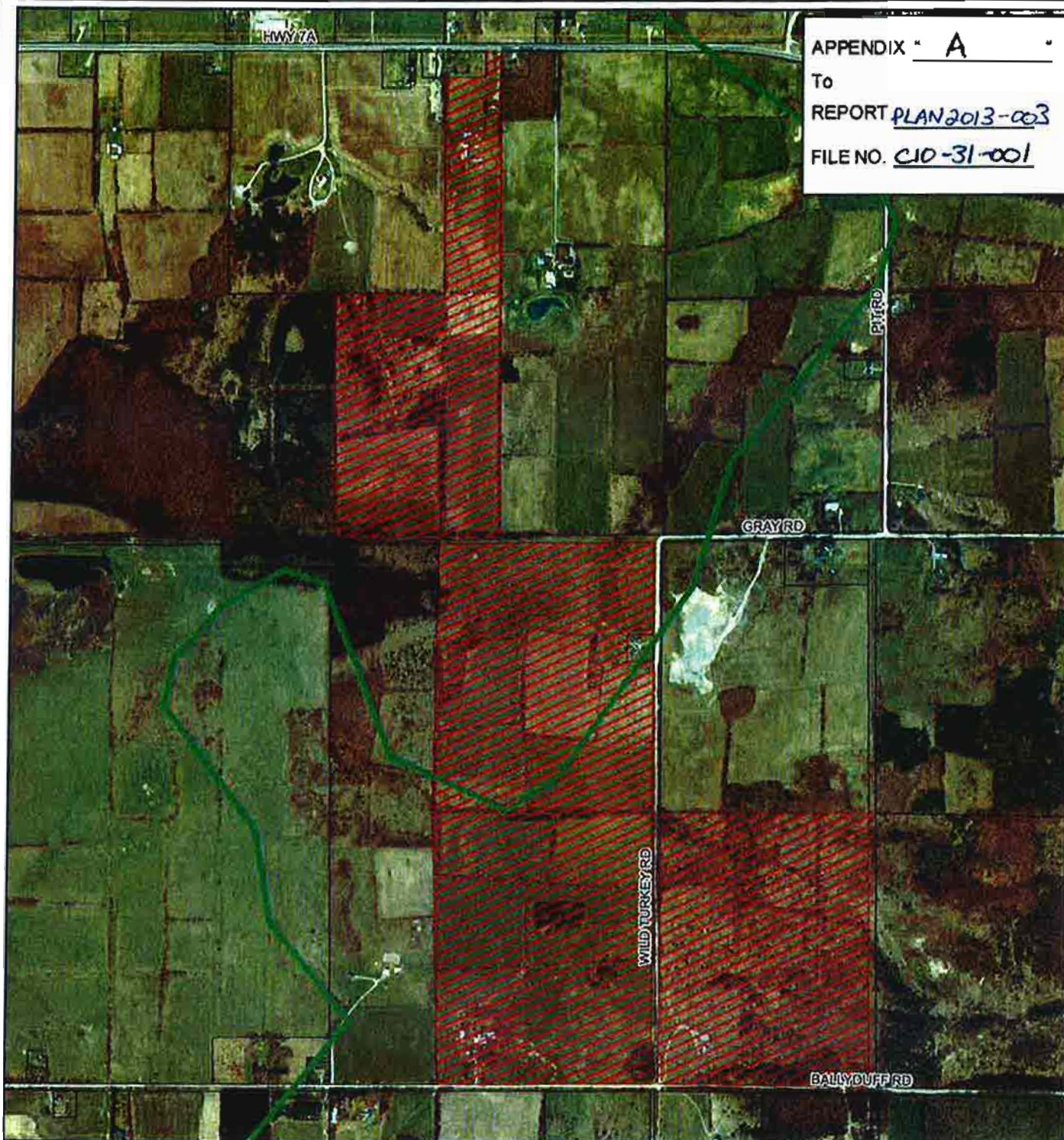
| | | | |
|---------|------------------------------------------------------------------------------------------|--------------|--------------------|
| Phone: | (705) 324-9411 Ext. 1367 | Director: | Ron Taylor |
| E-Mail: | lrussell@city.kawarthalakes.on.ca | Dept. Files: | C10-31-001/D38-265 |

APPENDIX " A "

To

REPORT PLAN2013-003

FILE NO. C10-31-001



**Sumac Ridge Wind Farm
Aerial Photo Image
(Manvers)
City of Kawartha Lakes**



Revisions

| | | |
|------------------|------------------|-----|
| Revision No.: | Date: | By: |
| Drawn By: csherk | Date: 22/01/2013 | |

Map produced by the City of Kawartha Lakes Planning Department with data obtained under license. Reproduction without permission is prohibited.

All distances and locations are approximate and are not of survey quality. This map is for informational use only. Do not rely on it as being a precise indicator of privately or publicly owned land, roads, locations or features, nor as a guide to navigation.

- Identified Properties - Sumac Ridge Wind Farm
- Oak Ridges Moraine Boundary
- Torontol Parcel Fabric - Apr 2012

1:15,000





Ministry of the Environment

APPENDIX B
to PLAN 2013 - 003
Renewable Energy Approval
Consultation Form: municipalities, local authorities
ss. 18(2) Ontario Regulation 359/09

Ce formulaire est disponible en français
FILE NO. 170-31-001

PART A: TO BE COMPLETED BY THE APPLICANT BEFORE SUBMITTING TO MUNICIPALITY OR LOCAL AUTHORITY

Section 1 - Project Description

| |
|-------------------------------------------------------------------------------|
| 1.1 - Renewable Energy Project |
| Project Name (Project identifier to be used as a reference in correspondence) |
| Sumac Ridge Wind Project |

| | | | | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|----------------|-----------------------------------------|
| Project Location | | | | | |
| Same as Applicant Physical Address? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If no, please provide site address information below) | | | | | |
| Civic Address- Street Information (includes street number, name, type and direction) | | | | | Unit Identifier (i.e. apartment number) |
| 01 Ballyduff Road, Pontypool, ON, L0A 1K0 | | | | | N/A |
| Survey Address (Not required if Street Information is provided) | | | | | |
| Lot and Conc.: used to indicate location within a subdivided township and consists of a lot number and a concession number. | | Part and Reference: used to indicate location within unorganized territory, and consists of a part and a reference plan number indicating the location within that plan. Attach copy of the plan. | | | |
| Lot | Conc. | Part | | Reference Plan | |
| | | | | | |
| Location Information (includes any additional information to clarify physical location)(e.g. municipality, ward/ township) | | | | | |
| Geo Reference (e.g. southwest corner of property) South East Corner of optioned properties <input checked="" type="checkbox"/> | | | | | |
| Map Datum | Zone | Accuracy Estimate | Geo Referencing Method | UTM Easting | UTM Northing |
| NAD83 | 17 | +/- 60 cm | Aerial Imagery from the Ministry of Natural Resources | 690737 | 4890646 |

| |
|-----------------------------------------------------------------------------------------|
| Project Phasing (outline construction, operation and decommissioning activities) |
| Please reference Draft Project Description Report. |
| |

| |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.2 - Environmental Context |
| Describe any negative environmental effects that may result from engaging in the project (consider construction, operation and decommissioning activities.) |
| Please reference Draft Project Description Report. |
| |
| Propose early avoidance/prevention/mitigation concepts and measures. |
| Mitigation and avoidance measures are provided in the Construction Plan Report (CPR), Decommissioning Report (DR), and Design and Operations Report (D&O). The D&O, DR, and CPR will be provided to the municipality a least 90 days before the final open house, for the municipal consultation period. The municipality is welcome to discuss mitigation and avoidance measures in advance of these publications or with us at any time. |

1.3 - Renewable Energy Generation Facility

Type of Facility / Operation (select all that apply & complete all appropriate sections)

| | |
|----------------------------------------------------------------|-------------------------------------------------------|
| <input checked="" type="checkbox"/> Wind Facility (Land Based) | <input type="checkbox"/> Biofuel Facility |
| <input type="checkbox"/> Wind Facility (Off-Shore) | <input type="checkbox"/> Solar Photo Voltaic Facility |
| <input type="checkbox"/> Biogas Facility (Anaerobic Digesters) | <input type="checkbox"/> Other Describe : |
| <input type="checkbox"/> Biomass Facility (Thermal Treatment) | <input type="checkbox"/> Class (if applicable) : 4 |

| Name Plate Capacity | Expected Generation | Service Area | Total Area of Site (hectares) |
|---------------------|---------------------|------------------|-------------------------------|
| Contracted: 11.5 MW | 26,500 MWh/year | Oshawa Wilson TS | Optioned properties: 210ha |

Provide a description of the facilities equipment or technology that will be used to convert the renewable energy source or any other energy source to electricity.

Please reference Draft Project Description Report.

1.4 - Renewable Energy Generation Activities

Describe the activities that will be engaged in as part of the renewable energy project

Please reference Draft Project Description Report.

Section 2 - Supporting Documents

| 2.1 - Requirement | Name of Draft documents distributed for consultation | Date available to Municipal or Local Authority Contact |
|------------------------------------|------------------------------------------------------|--------------------------------------------------------|
| DRAFT Project Description Report | Draft Project Description Report for Sumac Ridge | Enclosed |
| DRAFT Design and Operations Report | Draft Design and Operations Report for Sumac Ridge | Enclosed |
| DRAFT Construction Plan Report | Draft Construction Plan Report for Sumac Ridge | Enclosed |
| DRAFT Decommissioning Plan Report | Draft Decommissioning Plan Report for Sumac Ridge | Enclosed |
| List of other Documents | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

Location where written draft reports can be obtained for public inspection (physical location for viewing and the applicants project website if one is available):

Locations apply as per dates specified under Section 2.1:

Physical location: City of Kawartha Lakes Library - Bethany Branch - 1474 Highway 7A, Bethany, ON

Project website: <http://canada.wpd.de/projects/in-canada/sumac-ridge.html>

Section 3 – Applicant Address and Contact Information

| | | | | |
|--------------------------------------------------------------------------------------------------------------------------------|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|------------------------------------------------------------|
| 3.1 - Applicant Information (Owner of project/facility) | | | | |
| Applicant Name (legal name of individual or organization as evidenced by legal documents) | | | | Business Identification Number |
| wpd Canada Corporation | | | | 81151 4090 0001 |
| Business Name (the name under which the entity is operating or trading - also referred to as trade name) | | | | <input checked="" type="checkbox"/> same as Applicant Name |
| Civic Address- Street information (includes street number, name, type and direction) | | | | Unit Identifier (i.e. apartment number) |
| 2233 Argentia Rd., Mississauga, ON, L5N 2X7 | | | | Suite 102 |
| Survey Address (Not required if Street Information is provided) | | | | |
| Lot and Conc.: used to indicate location within a subdivided township and consists of a lot number and a concession number. | | Part and Reference: used to indicate location within an unsubdivided township or unsurveyed territory, and consists of a part and a reference plan number indicating the location within that plan. Attach copy of the plan. | | |
| Lot | Conc. | Part | Reference Plan | |
| | | | | |
| Municipality | County/District | Province/State | Country | Postal Code |
| | | | | |

PART B: TO BE COMPLETED BY THE MUNICIPALITY OR LOCAL AUTHORITY

APPENDIX "C"

to

Section 4 – Municipality or Local Authority Contact Information

REPORT PLAN2013-00

1.1 - Municipal or local authority information (complete one of the following sections)

FILE NO. CID-31-001

| | | |
|---------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|-----------------------------------------------------|
| Local Municipality / Unorganized Township Name of Municipality City of Kawartha Lakes | <input type="checkbox"/> Yes <input type="checkbox"/> No Address 26 Francis St. | Phone 1-800-822-2225 |
| Clerk's Name Judy Currins | Clerk's Phone/Fax 705-324-9411 ext. 1295 | E-Mail Address jcurrins@city.kawarthalakes.on.ca |
| Upper Tier Municipality Name of Municipality | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Address | Phone |
| Clerk's Name | Clerk's Phone/Fax | E-Mail Address |
| Local Roads Area Name of local roads board | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Address | Phone |
| Secretary-treasurer's Name | Secretary-treasurer's Phone/Fax | E-Mail Address |
| Local Service Board area Name of Local Service Board | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Address | Phone |
| Secretary's Name | Secretary's Phone/Fax | E-Mail Address |

Section 5 – Consultation Requirements

See Part A Section 2.2 to cross reference to locations in Draft Reports where information on specific Consultation Requirements can be found

5.1 – Project Location

Provide comment on the project location with respect to Infrastructure and servicing.

Development agreement required

5.2 – Project Roads

Provide comment on the proposed project's plans respecting proposed road access.

Development agreement required

Identify any issues and provide recommendations with respect to road access

Development agreement required

Provide comment on any proposed Traffic Management Plans

Development agreement required

Identify any issues and provide recommendations with respect to the proposed Traffic Management Plans

Development agreement required

5.3 – Municipal or Local authority Service Connections

Provide comment on the proposed project plans related to the location of and type of municipal service connections, other than roads.

N/A

Identify any issues and provide recommendations with respect to the type of municipal service connections, other than roads.

N/A

5.4 – Facility Other

Identify any issues and recommendations with respect to the proposed landscaping design for the facility

Development agreement required

Provide comment on the proposed project plans for emergency management procedures / safety protocols.

A detailed emergency response plan is required, addressing, but not limited to: access to sites, safe collapse zone, ground cover and ground control measures, approved fire extinguisher placement for structures/substations/inverters/transformers. Request on site orientation and training session prior to commissioning.

5.4 – Facility Other (continued)

Identify any issues and recommendations with respect to the proposed emergency management procedures / safety protocols.

Identify any issues and recommendations with respect to any Easements or Restrictive Covenants associated with the Project Location

There are no municipal easements or restrictive covenants registered against the property.

5.5 Project Construction

Identify any issues and recommendations with respect to the proposed rehabilitation of any temporary disturbance areas and any municipal or local authority infrastructure that could be damaged during construction.

Development Agreement Required

Identify any issues and recommendations with respect to the proposed location of fire hydrants and connections to existing drainage, water works and sanitary sewers

Development Agreement Required

Identify any issues and recommendations with respect to the proposed location of buried kiosks and above-grade utility vaults

Development Agreement Required

Identify any issues and recommendations with respect to the proposed location of existing and proposed gas and electricity lines and connections

N/A

5.5 Project Construction (continued)

Provide comment on the proposed project plans with respect to Building Code permits and licenses.

No permanent buildings are proposed for this project. However, a permit is required for any building or structure greater than 10 sq. m.

Identify any issues and recommendations related to the identification of any significant natural features and water bodies within the municipality or territory.

Project is located partially in the Oak Ridges Moraine.

Identify any issues and recommendations related to the identification any archaeological resource or heritage resource.

Not an archaeological resource. Not a heritage resource.

APPENDIX D
to
REPORT RAN-13-003
FILE NO. C10-31-001



APPENDIX " E "
to
REPORT PLAN 2013-003
FILE NO. C10-31-001

**Map Illustrating
A Portion of
City of Kawartha Lakes
Official Plan - Schedule A
Showing
Part Lot 13 & 14, Concession 7
Part Lot 14, Concession 6
Part Lot 15, Concession 6
Geographic Township of
Manvers (Former)**



1:15,000



Subject Properties

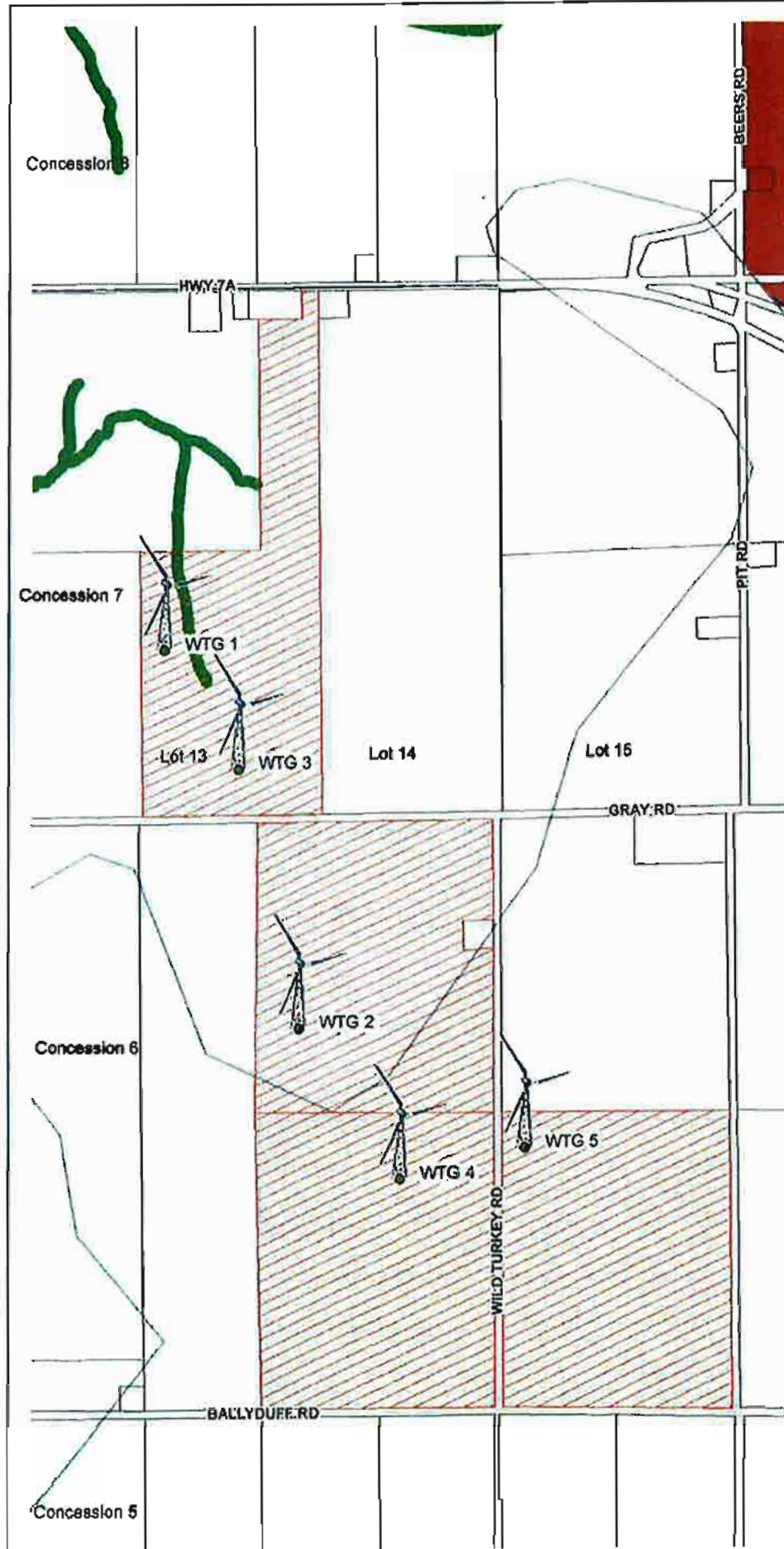
- Wind Turbine Location Points
- ▨ Sunac Ridge Wind Farm

Land Use Designations

- Oak Ridges Moraine Policy Area
- Environmental Protection
- Prime Agricultural
- Rural

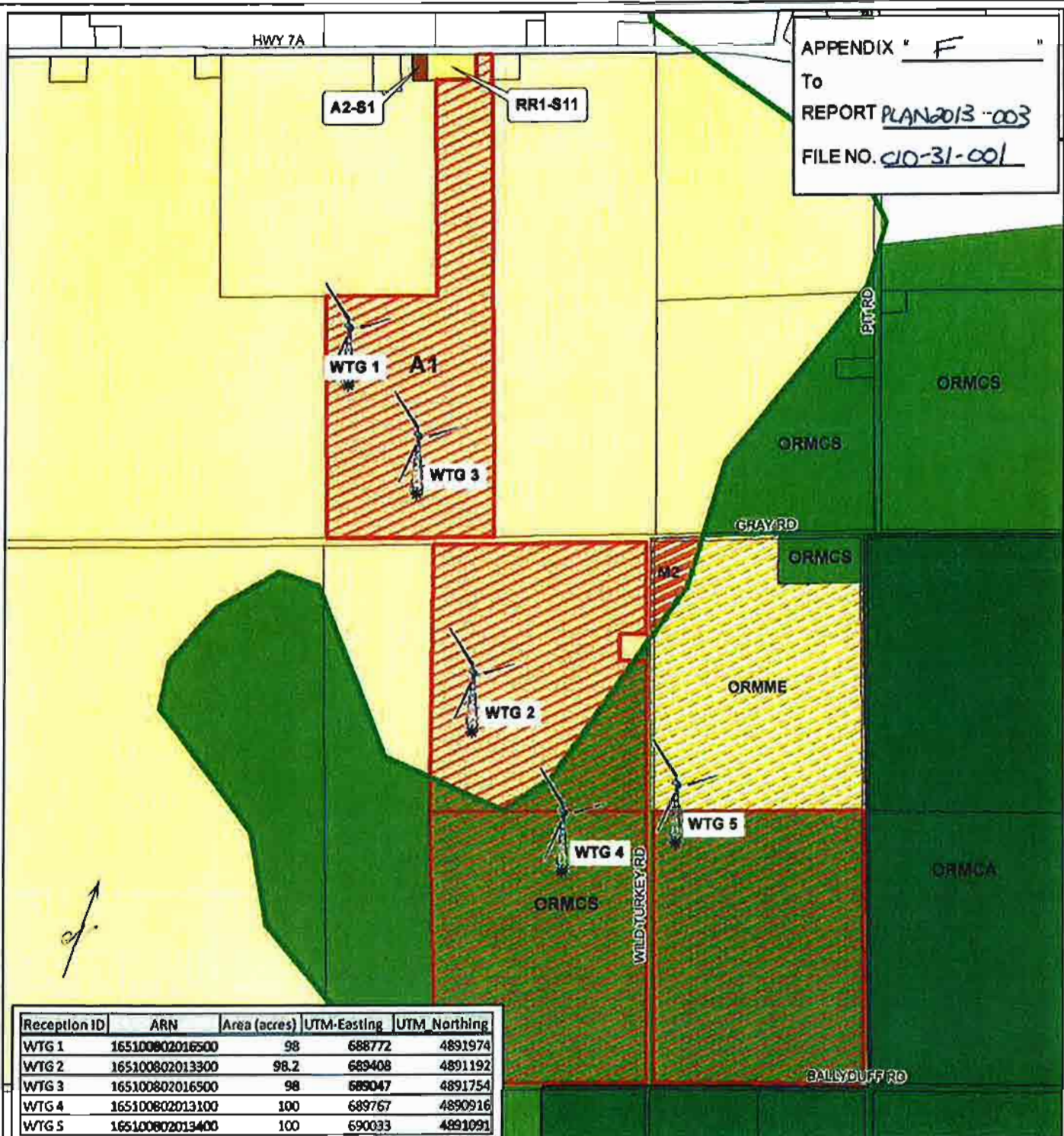


Printed March 14, 2012



APPENDIX " F "

To
REPORT PLAN 2013-003
FILE NO. C10-31-001



- * Wind Turbine Location Points
- Identified Properties - Sumac Ridge Wind Farm
- Oak Ridges Moraine Boundary
- Teranet Parcel Fabric - Apr 2012

Zoning

- A1 - Rural General (Manvers)
- A2-S1 - Rural Specialized Special Zone 1 (Manvers)
- RR1-S11 - Rural Residential One Special Zone 11 (Manvers)
- M2 - Industrial Extractive (Manvers)
- ORMCA - Oak Ridges Moraine Core Area
- ORMCS - Oak Ridges Moraine Country Side Area
- ORMME - Oak Ridges Moraine Mineral Extraction

Sumac Ridge Wind Farm Wind Turbine Generation Locations (Manvers) City of Kawartha Lakes

1:15,000



Revisions Zoning

Revision No.: 1 Date: 22.01.2013 By: CS

Drawn By: csherk

Date: 22/01/2013

This map was produced by the City of Kawartha Lakes Planning Department with data obtained under license. Reproduction without permission is prohibited.

All distances and locations are approximate and are not of survey quality. This map is illustrative only. Do not rely on it as being a precise indicator of privately or publicly owned land, values, locations or features, nor as a guide to navigate.



September 13, 2013

Diane McFarlane
Land Management Co-ordinator
City of Kawartha Lakes
P.O Box 9000
26 Francis Street
Lindsay, Ontario
K9V 5R8

Dear Diane,

Re: Wind Turbine Motion from the September 3, 2013 Regular Council Meeting

At the Regular Council meeting held on September 3, 2013 the following resolution was passed:

Whereas through Bill 150, Green Energy and Green Economy Act, 2009 the Province has taken away any municipal authority to protect its citizens from Industrial Wind Turbines,

And Whereas the municipality has requested a moratorium on the construction of Industrial Wind Turbines pending the outcome of the Health Canada Study on related Health Impacts and Exposure to Sound from Wind Turbines,

And Whereas Section 224 of the Municipal Act, 2001 states that the role of council is to represent the public and to consider the well-being and interests of the municipality,

Now Therefore be It resolved that staff be directed to transfer \$500,000 from the lottery reserve, to a legal reserve,

And Furthermore that staff be directed to assemble a legal team of experts to defend our municipalities position against the construction of Industrial Wind Turbines within Cavan Monaghan Township, and furthermore that a request be sent to the City of Kawartha Lakes seeking cooperation on this matter which spans both municipalities, and to consider the same financial commitment for its citizens,

988 County Road 10
Millbrook, Ontario L0A 1G0
www.cavanmonaghan.net
Phone: (705) 932-2929
Fax: (705) 932-3458
Email: services@cavanmonaghan.net

And Furthermore that consideration for additional funding of our legal reserve be added to our 2014 budget discussions, and furthermore that a request be sent to all other municipalities that have indicated that they are not willing hosts, outlining our financial commitment, and requesting their assistance on this matter.

Please feel free to contact myself or the CAO, Yvette Hurley with any questions.

Yours truly,

A handwritten signature in black ink, appearing to read "E. Arthurs".

Elana Arthurs
Clerk
Township of Cavan Monaghan

PROPOSED ROAD USE AGREEMENT

The only outstanding issue with respect to the Applicant's use of the Road Allowances is the location of the Distribution System within the Road Allowances. In this regard, and in anticipation of entering into discussions with the Municipality, the Applicant prepared a proposed Road Use Agreement to facilitate negotiations with the Municipality regarding the location of the Distribution System within the Road Allowances and to document the rights and obligations of the parties with respect to same.

Pursuant to the terms of the proposed Road Use Agreement, the Municipality would affirm the Applicant's right to use the Road Allowances for the Distribution System and agree to the location of the Distribution System within the Road Allowances. In exchange, the Applicant would provide certain protections to the Municipality, including security to guarantee the Applicant's performance of its obligations under the proposed Road Use Agreement. The terms of the Road Use Agreement are consistent with a distributor's obligations under section 41 of the *Electricity Act*.

In addition, the Applicant would perform all work associated with the location of the Distribution System within the Road Allowances at its own expense and in accordance with good engineering practices and applicable plans approved by the Municipality. The Applicant would also use commercially reasonable efforts to complete all work associated with the location of the Distribution System within the Road Allowances in a manner that avoids unnecessary adverse impacts on public use of the Road Allowances. Attached as Appendix "A" to Exhibit D, Tab 1, Schedule 3 is a copy of the proposed Road Use Agreement.

THIS ROAD USE AGREEMENT (the “**Agreement**”) made as of this ____ day of _____,
_____ (“**Effective Date**”),

BETWEEN:

[●]

hereinafter referred to as the “**Township**”

OF THE FIRST PART

- AND -

[**PROPONENT**]

hereinafter referred to as the “**Proponent**”

OF THE SECOND PART

WHEREAS the Proponent is developing an approximately ● megawatt commercial wind energy project known as the ● Wind Project (the “**Wind Project**”) located in ● (the “**Township**”) pursuant to a Power Purchase Agreement dated ● (the “**Power Purchase Agreement**”), between the Ontario Power Authority and the Proponent;

AND WHEREAS the Proponent wishes to make use of certain Road Allowances, as hereinafter defined, to make deliveries of materials and components to, and to allow for the construction, operation, repair, maintenance and decommissioning of the Wind Project;

AND WHEREAS the Proponent may wish to temporarily reconstruct or realign certain portions of the Road Allowances to permit delivery or movement of oversized Wind Project components, including wind turbine blades, tower sections and nacelles;

AND WHEREAS the Proponent also wishes to install, repair, maintain and operate Electrical Infrastructure, as hereinafter defined, over, across, along, within or under certain Road Allowances, pursuant to its statutory rights under the *Electricity Act, 1998*;

AND WHEREAS the Proponent also wishes to connect access roads from Wind Project turbines and other infrastructure to the Road Allowances to permit ongoing access to the wind turbines and other infrastructure during Wind Project operations;

NOW THEREFORE IN CONSIDERATION of the undertakings and agreements hereinafter expressed by the Parties, the Township and the Proponent mutually covenant and agree as follows:

1. Interpretation

1.1. In this Agreement:

- (a) “**Abandon**” shall have the meaning set out in Section 10.1 and “**Abandonment**” shall have the corresponding meaning;
- (b) “**Applicable Law**” means all present or future applicable laws, statutes, regulations, treaties, judgements and decrees and all present or future applicable published directives, rules, policy statements and orders of any Public Authority and all applicable orders and decrees of courts and arbitrators to the extent, in each case, that the same are legally binding on a Party in the context of this Agreement;
- (c) “**Commercial Operation Date**” means the Commercial Operation Date as defined in the Power Purchase Agreement;
- (d) “**Deliveries**” is defined as transporting materials, components and equipment, including overweight or over-size cargoes, across or along Road Allowances to provide for the construction, maintenance, repair, replacement, relocation or removal of material, components and equipment for the Wind Project;
- (e) “**Effective Date**” is defined at the top of page 1 herein;
- (f) “**Electrical Infrastructure**” means infrastructure for the transmission and distribution of electricity, including a line or lines of towers or poles, and wires or cables (whether above ground or buried), for the transmission or distribution of electrical energy, and all foundations, footings, cross arms, ground grid and other appliances, facilities and fixtures for use in connection therewith including without limitation, switching stations, vaults and junction boxes (whether above or below ground), manholes, handholes, conduit, fiber optics, cables, wires, lines and other conductors of any nature, multiple above or below ground control, communications, data and radio relay systems, and telecommunications equipment, including without limitation, conduit, fiber optics, cables, wires and lines;
- (g) “**Electrical Work**” is defined as installing, constructing, operating, inspecting, maintaining, altering, enlarging, repairing, replacing, relocating or removing Electrical Infrastructure over, along, across, within or under the Road Allowances in connection with the Wind Project;
- (h) “**Emergency**” shall mean a sudden unexpected occasion or combination of events necessitating immediate action to prevent or mitigate materially adverse consequences to the health and safety of individuals or the integrity and safety of public utilities and infrastructure;
- (i) “**Entrance Work**” is defined as constructing and maintaining Entrances to private wind turbine access roads and switching stations;

- (j) **“Entrances”** means points of access across and through the Road Allowances to be constructed by the Proponent, as applicable, from the travelled portion of the Road Allowances connecting to certain access roads in and upon adjacent lands that lead to Wind Project turbines and other infrastructure;
- (k) **“Installation Work”** means Road Work and other work involving or incidental to the installation, construction, enlargement, relocation or removal of Electrical Infrastructure and Entrances including, without limitation, widening or upgrades to the Road Allowances or Entrances;
- (l) **“Permits”** means, collectively, the **[insert applicable permits]**.
- (m) **“Plans”** is defined as detailed plans that identify the location, size, elevation and scope of the Installation Work within the Road Allowance and demonstrate that the Installation Work will comply with applicable safety, technical and regulatory standards and the requirements of Applicable Law;
- (n) **“Public Authority”** means any governmental, federal, provincial, regional, municipal or local body having authority over the Township, the Proponent, the Wind Project, the Electrical Infrastructure or the Road Allowances;
- (o) **“Repair Work”** means work involving the maintenance, repair or replacement of installed Electrical Infrastructure and Entrances that does not cause the location, elevation, position, layout or route of the Electrical Infrastructure or Entrance to materially change;
- (p) **“Road Allowances”** means public rights of way, highways, streets, sidewalks, walkways, driveways, ditches and boulevards and the allowances therefor, including those shown on the map attached as **Schedule “A”** hereto, and including the Entrances and unopened road allowances, all owned by or managed under the legal jurisdiction of the Township, and **“Road Allowance”** means one of the Road Allowances, as applicable in the context of this Agreement;
- (q) **“Road Work”** is defined as temporarily reconstructing or re-aligning road sections, turns and intersections on the Road Allowances to permit the passage of overweight or over-size cargoes;
- (r) **“Secured Party”** or **“Secured Parties”** is defined as a party or parties which from time to time provides financing to the Proponent in respect of the development, construction or operation of the Wind Project or the Work, as determined by the Proponent in its sole discretion;
- (s) **“Traffic Effects”** is defined as temporary modification of traffic patterns or the imposition of temporary restrictions on public access to or use of the Road Allowances;

- (t) “**Tree Work**” is defined as cutting, trimming or removing trees or bushes growing in the Road Allowances; and
 - (u) “**Work**” means, collectively, Deliveries, Road Work, Entrance Work, Installation Work, Tree Work, Repair Work and Electrical Work as defined herein.
- 1.2. The following schedule is attached to this Agreement and forms an integral part of this Agreement:
- Schedule “A”** - Plan showing Road Allowances expected to be required for the Wind Project.
- Schedule “B”** – Schedule of Permit Fees
- 1.3. Nothing contained in this Agreement shall abrogate or prejudice any rights held by either Party under Applicable Law including but not limited to the *Ontario Energy Board Act, 1998*, the *Municipal Act, 2001*, the *Green Energy Act, 2009* and the *Electricity Act, 1998*, as amended.

2. Grant and Transfer of Easement

- 2.1. The Township hereby grants and transfers to the Proponent the non-exclusive right and easement to enter upon and use the Road Allowances with such persons, vehicles, equipment and machinery as may be necessary for purposes of:
- (a) Deliveries, Road Work, Installation Work, Repair Work and Tree Work;
 - (b) Entrance Work, provided that the Proponent first acquires at its own expense any property rights to private lands required for the Entrance Work, and use of such Entrances; and
 - (c) Electrical Work.
- 2.2. This Agreement shall become effective as of the Effective Date and, unless earlier terminated, shall remain in effect until the earlier of (i) the date upon which the Wind Project has been fully decommissioned and all necessary reclamation and restoration has been completed; and (ii) the date which is thirty (30) years following the Effective Date (the “**Expiry Date**”). Provided that the Proponent is not then in material default of any of its covenants and obligations pursuant to this Agreement and further provided that the Wind Project or a project utilizing all or substantially all of the assets or properties comprising the Wind Project continues in operation, the Proponent shall be entitled to extend the term of this Agreement for a further period of twenty (20) years commencing on the original Expiry Date, provided that the Proponent shall provide to the Township not less than ninety (90) days’ written notice of its intention to so extend prior to such Expiry Date.
- 2.3. Subject to Section 6.10 of this Agreement, the Township reserves its right to enter upon and use the Road Allowances for its own municipal purposes and to grant and

transfer rights to third parties to enter upon and use the Road Allowances to construct, operate, maintain, alter, repair or relocate infrastructure, and to modify the Road Allowances, provided that such entry, use, grant or transfer will not adversely affect the Work, the Wind Project or the exercise of the Proponent's rights under this Agreement. The Township shall not be required to give prior Notice to the Proponent of the exercise of the foregoing rights, except that it will give the Proponent [24] hours' notice (i) if the Township intends to construct, operate, alter, repair or relocate infrastructure, or modify the Road Allowances within [2 meters] of the Electrical Infrastructure; or (ii) if the Proponent has previously notified the Township that it requires access or use of the applicable area of the Road Allowance at such time (including, without limitation, for maintenance or construction work).

2.4. The Township agrees that the fees to be charged to the Proponent for any Permits and approvals to be issued by the Township in connection with the Work, including the [list Permits], are set forth in **Schedule "B"** to this Agreement and the Township warrants that such fees do not exceed the usual and customary fees that are generally applicable to the public.

2.5. The Township represents and warrants that:

- (a) it has legal and beneficial title to the Road Allowances and full power and authority to grant the rights over the Road Allowances in the manner set out in this Agreement;
- (b) the execution and delivery of this Agreement by the Township will not result in a material breach of any other agreement to which the Township is a party and no rights, interests or privileges have been granted in respect of the Road Allowances by the Township which will or could adversely affect the rights, interests or privileges granted to the Proponent hereunder;
- (c) it has obtained the full and unconditional due authorization for the execution and delivery of this Agreement by all required resolutions and other required municipal approvals;
- (d) it shall defend its title to the Road Allowances against any person or entity claiming any interest adverse to the Township in the Road Allowances during the term of this Agreement, save and except where such adverse interest arises as a result of the act, omission, negligence or wilful misconduct of the Proponent or those for whom it is in law responsible; and
- (e) the Permits are the only permits, approvals, consents, or authority within the jurisdiction of the Township required in connection with the Work and the fees set forth in **Schedule "B"** attached hereto are the only fees payable by the Proponent in connection with the Permits.

2.6. The Township agrees, in the event it decides to permanently close or dispose of any Road Allowance which may affect the interests of the Proponent, or any part of a Road

Allowance, to give the Proponent reasonable advance written notice of such proposed closing or disposal and to grant and transfer to the Proponent, at no cost to the Proponent and prior to the proposed closure or disposal of the applicable Road Allowance, such further easements and rights-of-way, in registrable form and in priority to any encumbrances adversely affecting the rights and interests of the Proponent hereunder, over that part of the Road Allowance closed or disposed of, sufficient to allow the Proponent to preserve any part of the Electrical Infrastructure in its then existing location, to enter upon such closed or disposed of Road Allowance to perform Work and to gain access to the Wind Project on the terms and conditions set out in this Agreement.

- 2.7. In the event that the Township decides to dispose of any Road Allowance or part thereof which may affect the interests of the Proponent, the Township agrees to require the transferee or assignee of such Road Allowance, as a condition precedent to the transfer or assignment, to agree in writing with the Proponent, in a form acceptable to the Proponent acting reasonably, to be bound by the terms of this Agreement and to assume the Township's obligations hereunder from and after the date of the transfer or assignment.

3. Conditions Precedent to Commencement of Work

- 3.1. Prior to the commencement of any Work, the Proponent shall arrange for and maintain commercial general liability insurance satisfactory to the Township, acting reasonably, for the joint benefit of the Proponent and the Township as an additional insured. The Proponent will indemnify and hold harmless the Township from and against all claims, liabilities, losses, costs, damages or other expenses of every kind that the Township may incur or suffer as a consequence of personal injury, including death, and property damages arising out of the negligent performance of the Work or the wilful misconduct of Proponent or those for whom it is in law responsible. The commercial general liability insurance shall provide, at a minimum, limits of liability not less than Five Million Dollars (\$5,000,000.00) per occurrence and in the aggregate at the commencement of the term hereof. This policy will contain a cross liability and severability of interest clause and provide for a minimum of thirty (30) days' notice of alteration or cancellation of said policy. The Proponent shall provide the Township with a Certificate of Insurance evidencing the required insurance prior to the commencement of Work and, from time to time, upon reasonable request by the Township provide proof that the premiums of such insurance have been paid and that such insurance is in full force and effect.
- 3.2. Prior to the commencement of any Work, the Proponent shall document, by means of video recording or another means satisfactory to the Township acting reasonably, the then-existing condition of all Road Allowances and structures that the Proponent expects will or may be used for or subject to such Work, and both Parties shall receive a complete copy of such document.
- 3.3. Immediately following the Commercial Operation Date, if repairs are made to the Road Allowance as required by Section 4.5, and also at a date no earlier than twelve

(12) months following the Commercial Operation Date, the Proponent shall prepare post-construction condition surveys, conducted in substantially the same manner as outlined in Section 3.2 and both Parties shall receive a complete copy of such document.

- 3.4. Prior to the commencement of any Work, the Proponent shall provide security in favour of the Township in the amount of [●] to guarantee the Proponent's performance of its obligations under Sections 4.4 and 4.5 hereof. The Township shall have the right to draw upon the security for the purpose of making repairs to the Road Allowances if the Proponent has failed to meet its obligations in Sections 4.4 and 4.5 of this Agreement. The Township shall refund or release any undrawn security to the Proponent within 30 days after the later of (i) the delivery of the post condition survey referenced in Section 3.3 hereof and (ii) the completion of any required repair work. The Parties agree that the security may be in the form of a letter of credit issued by a Canadian chartered bank, a performance bond, or other security acceptable to the Township acting reasonably.
- 3.5. Where the Township deems it preferable that the repair work be incorporated into a larger restoration or reconstruction project to be undertaken by the Township, notice and written specifications of the extent and expected costs of such larger project shall be provided to the Proponent by the Township. The costs of the repair work shall be agreed upon by the Parties, each acting reasonably. The Parties agree that such cost will not exceed the reasonable expected cost of such work to the Proponent had the repair work not been incorporated into the larger restoration or reconstruction project. Upon written approval of such work and costs by the Proponent, (i) the Proponent shall pay the agreed costs to the Township within thirty (30) days of such agreement, whereupon the Proponent shall have no further responsibility for such repair work and the Proponent shall be deemed to be released from its obligations under Sections 4.4 and 4.5 with respect to such repair work.

4. Work Generally

- 4.1. Notwithstanding and without limiting any other term hereof, the Proponent agrees and undertakes that it will perform the Work at its own expense in accordance with and compliance with good engineering practices, any applicable Plans approved by the Township, this Agreement and Applicable Law.
- 4.2. The Proponent further agrees to use commercially reasonable efforts to undertake and complete all Work so as to avoid unnecessary adverse impacts on public use of the Road Allowances.
- 4.3. Notwithstanding and without limiting any other term hereof, the Parties acknowledge that the Work from time to time may require Traffic Effects. The Proponent agrees to:
 - (a) give five (5) days' notice of anticipated Traffic Effects to the Township and affected residents and to coordinate with the Township and local emergency services to

minimize and mitigate any adverse impacts of the Traffic Effects and to ensure public safety; and

- (b) use commercially reasonable efforts to maintain adequate public access to and use of the Road Allowances while Work is in progress and to remove the Traffic Effects as soon as reasonably possible following the completion of the Work.
- 4.4. The Proponent further agrees that, in the event that it becomes necessary to break, remove, or otherwise pierce the existing surface of any of the Road Allowances or any other municipal lands to undertake any Work, the Proponent will in all cases repair, reinstate and restore such surface to the same or better condition than that which existed prior to the commencement of such Work.
- 4.5. The Proponent shall be responsible for the repair, to the satisfaction of the Township acting reasonably, of any damage to the travelled portion of Road Allowances caused by the Proponents use in connection with the development and construction of the Project, reasonable wear and tear excepted. No later than thirty (30) days following the Commercial Operation Date, the Township will compare the condition of the travelled portion of the Road Allowances to the condition of the Road Allowance as at the commencement of the Work (as documented in accordance with Section 3.2), and will inform the Proponent whether the Township, acting reasonably, considers any repairs to be required. Any repairs undertaken shall restore the road surface to the same or better condition than that which existed immediately prior to the Proponent's use of the Road Allowances as provided in this Agreement, reasonable wear and tear excepted. The Proponent shall, provided that the weather and weather-related conditions permit, complete these repairs within thirty (30) days of being notified by the Township of the need for such repairs. The Proponent shall be deemed to be released of all of its obligations pursuant to Section 4.4 and this Section 4.5 on the date which is six (6) months following the Commercial Operation Date, save and except for any specific tasks or obligations of which the Township, acting reasonably, has provided specific written notice to the Proponent prior to such date.
- 4.6. The Proponent agrees to make commercially reasonable efforts to rely on the Township road maintenance staff to implement measures to mitigate the Traffic Effects pursuant to Section 4.3 of this Agreement and to repair, reinstate and restore the Road Allowances pursuant to Section 4.4 of this Agreement, and the Proponent agrees to reimburse the Township for the reasonable, actual and verifiable costs of any such work conducted by the Township staff, including the Township staff and supervisory time, materials and contracted services, provided that the Proponent, acting reasonably, shall have pre-approved in writing the quantum of any such costs prior to the performance of such work by the Township.
- 4.7. The Township acknowledges receiving a copy of the Proponent's Fire Safety and Emergency Plan and agrees to cooperate with the Proponent in the implementation of this plan in the event of an Emergency involving the Electrical Infrastructure or the Work.

- 4.8. Notwithstanding any other provision of this Agreement, in the event of any Emergency involving the Work or Electrical Infrastructure, the Proponent shall notify the local emergency services immediately upon becoming aware of the situation and shall do all that is necessary and desirable to control the Emergency, including such Work in and to the Electrical Infrastructure or the Road Allowances as may be required. The Proponent shall be responsible for any Work in respect of the Electrical Infrastructure associated with such Emergencies howsoever caused, without prejudice to its right to claim indemnity from the Township or from any third party for costs and expenses incurred in connection therewith by reason of the fault or negligence of the Township or any third party, as the case may be.
- 4.9. Notwithstanding the foregoing, the Proponent shall not be required to carry out and shall not be responsible for any costs associated with any maintenance, repairs or restoration of the Road Allowances other than as set out in this Agreement.

5. Installation Work

- 5.1. Prior to the commencement of Installation Work, the Proponent shall file detailed Plans with the Township not less than thirty (30) days prior to commencement of such Installation Work.
- 5.2. The Township, acting reasonably and with diligence, shall review the Plans within fifteen (15) days of receipt of the Plans from the Proponent and either approve the Plans or advise the Proponent in writing of any modifications or amendments to the Plans that the Township may seek and the reasons therefor. During its review of the Plans the Township shall be entitled to take into consideration any specific municipal or engineering interests affected by the Plans. If the Township fails to respond to the Proponent with its approval or any requested modifications or amendments to the Plans within such fifteen (15) day period, the Township shall be deemed to have approved the Plans.
- 5.3. The Proponent shall not proceed with the Installation Work before receiving:
- (a) written approval of the Plans from the Township, which approval shall not be unreasonably delayed, conditioned or withheld; and
 - (b) approval to proceed with the Installation Work from any other Public Authority having jurisdiction over the Installation Work, to the extent that Applicable Law requires such approval prior to the commencement of Installation Work.
- 5.4. Prior to commencing Installation Work, the Proponent agrees to notify any other person, entity or body operating, to the knowledge of the Proponent, any equipment, installations, utilities or other facilities within the Road Allowances or in the immediate vicinity of the Road Allowances where Installation Work is to be conducted, of the details of the anticipated Installation Work, and consult with such other party so as to minimize the potential interference with or damage to such

existing equipment, installations, utilities, and other facilities by the said Installation Work and so as to maintain the integrity and security thereof.

- 5.5. The Proponent further agrees to commence, perform and complete the Installation Work in accordance with the Plans for such Installation Work approved by the Township in all material respects.
- 5.6. In the event that physical features of the Road Allowances or other obstacles or circumstances frustrate the ability of the Proponent to complete the Installation Work in compliance in all material respects with the Plans approved by the Township, or render compliance in all material respects with the Plans commercially unreasonable, the Proponent agrees to revise the relevant Plans and submit such revised Plans for review by the Township. The Township agrees to expedite the review of such revised Plans and shall not unreasonably condition or withhold its approval of such revised Plans.
- 5.7. The Proponent agrees to deposit as-built drawings and plans with the Township within one hundred eighty (180) days after the Commercial Operation Date showing the location and specifications of any Electrical Infrastructure installed over, along, across, under or within the Road Allowances and the location and specifications of any Entrances constructed pursuant to this Agreement.

6. Electrical Work

- 6.1. The Proponent is currently planning to install Electrical Infrastructure within the Road Allowances identified in **Schedule “A”** and the Township agrees that such Road Allowances shall be available for Electrical Infrastructure, subject to the Township’s approval of specific Plans as provided in Section 5.
- 6.2. Without limiting the generality of Section 5.6, the Parties acknowledge and agree that the Proponent, when undertaking the Electrical Work, will install Electrical Infrastructure below-grade within the Road Allowances except where the Proponent in consultation with the Township identifies environmental, topographical or other features, obstacles, or circumstances that, in the opinion of the Proponent acting reasonably, require the installation of poles or other above-grade Electrical Infrastructure to permit the transmission of electricity over, around or across such feature or obstacle. Any Plans submitted by the Proponent in connection with Electrical Work shall identify the locations in which the Proponent proposes to install above-grade Electrical Infrastructure and shall set out the reasons therefor.
- 6.3. The Proponent further agrees to make commercially and technically reasonable efforts to install the Electrical Infrastructure:
 - (a) in appropriate locations between the outer limit of the travelled portion of the relevant Road Allowance and the property line of the Road Allowance (excepting road crossings);

- (b) at appropriate depths and/or elevations within the relevant Road Allowance so as to avoid conflicts with other existing infrastructure; and
 - (c) in consistent locations within the Road Allowances such that the number of road crossings is minimized.
- 6.4. The Proponent acknowledges and agrees that its rights under this Agreement to install Electrical Infrastructure over, along, across, within or under the Road Allowances are subject to the following rights:
- (a) the right of free use of the Road Allowances by all persons or parties otherwise entitled to such use;
 - (b) the rights of the owners of the properties adjoining any relevant Road Allowance to full access to and egress from their properties and adjacent rights-of-way, highways, streets or walkways and the consequential right of such persons or parties to construct crossings and approaches from their properties to any such right-of-way, highway, street, or walkway, subject to any necessary approvals from Public Authorities; and
 - (c) the rights and privileges that the Township may have previously granted to any other person or party to such Road Allowance or lands.
- 6.5. The Proponent agrees at its sole expense to:
- (a) mark the location of Electrical Infrastructure installed by the Proponent within the Road Allowances with appropriate markings, the approximate location of such markings being identified in **Schedule “A”**;
 - (b) **[participate in the “Ontario One Call” system to facilitate ongoing notice to the public of the location of the Electrical Infrastructure; and]**
 - (c) upon request of the Township through its officials or authorized agents, or otherwise, properly and accurately identify the location of any Electrical Infrastructure within the Township, such reports to identify the depth of the relevant portion of the Electrical Infrastructure, such request to be made in writing to the Proponent with advance notice of ten (10) business days prior to the Township or a third party commencing work that may conflict with the Electrical Infrastructure.
- 6.6. The Parties agree and acknowledge that the Proponent shall from time to time be entitled to relocate installed Electrical Infrastructure or Entrances on its own initiative by complying with the terms of this Agreement respecting Installation Work, with the necessary modifications.
- 6.7. In the event that the Township, acting reasonably and with diligence, deems it necessary for the Township or the Township’s agents or contractors to modify or change the location of any part of the installed Electrical Infrastructure or Entrances (the “**Relocation**”), the required Installation Work shall be conducted by the

Proponent, within a reasonable period of time of the Township's written request therefore, in accordance with the terms of this Agreement respecting Installation Work, and subject to Sections 6.9, the Township shall reimburse the Proponent 100% of its costs of such modifications or relocations during the initial ten (10) years after the date that the Township has approved the applicable Plan pursuant to Section 5.3 and one-half (50%) of its costs of such modifications or relocations for the remainder of the term of this Agreement.

- 6.8. If the provisions of Section 6.7 are triggered as a result of the Township's compliance with a legislative requirement, Ministerial order or other law or order of a body which has the ability to force the Township to act, then each Party shall bear fifty percent (50%) of the costs of the alteration or relocation of the installed Electrical Infrastructure system.
- 6.9. Where any part of the installed Electrical Infrastructure relocated in accordance with Section 6.8 is located on a bridge, viaduct or similar structure, the Proponent shall modify or relocate that part of the Electrical Infrastructure at its sole expense.
- 6.10. In the event that the Township, acting reasonably and with diligence, deems it necessary that installed Electrical Infrastructure or Entrances be modified or relocated by a third party ("**Third Party Work**"), the required Installation Work shall be conducted by the Proponent in accordance with the terms of this Agreement respecting Installation Work, and the full costs of such Installation Work shall be borne solely by the third party. Notwithstanding the foregoing, the Township agrees that it will not permit such Third Party Work, without the approval of the Proponent, if such Third Party Work would adversely affect the Work, the Wind Project or the exercise of the Proponent's rights under this Agreement. The Township agrees to give the Proponent sixty (60) days' notice of the need for any such Third Party Work and to require that the relevant third party or parties bear the full cost of the Proponent's Installation Work and indemnify the Proponent against all claims and liabilities arising from the required Installation Work as a condition precedent to any grant, permit or approval from the Township for the Third Party Work.
- 6.11. Notwithstanding anything to the contrary contained herein, the Township agrees to obtain the Proponent's prior approval to any relocation or modification of the Proponent's Electrical Infrastructure under this Article 6 if and to the extent the effect of such relocation or modification would, in the Proponent's opinion acting reasonably, require the Proponent to use overground wires rather than underground wires.

7. Repair Work

- 7.1. The Proponent shall be entitled to conduct Repair Work without prior approval of the Township provided that:
 - (a) all Repair Work complies with the requirements of Sections 4 and 9 of this Agreement; and

- (b) except in cases of Emergency, the Proponent gives at least five (5) days' notice to the Township that Repair Work will occur if such Repair Work
 - (i) will have or is likely to have Traffic Effects;
 - (ii) will involve or is likely to involve Tree Work as defined hereinafter; or
 - (iii) could present a danger to public health and safety.

8. Entrances and Entrance Work

- 8.1. Subject to the limitation in Section 8.2 below, the Township agrees to clear snow from and otherwise maintain and repair the Road Allowances identified in **Schedule "A"** so as to permit adequate vehicular access from the Road Allowances to the Entrances to access roads leading to Wind Project infrastructure.
- 8.2. To the extent that the Township as of the Effective Date does not routinely clear snow from or otherwise maintain adequate vehicular access to and from Road Allowances not identified in **Schedule "A"**, the Township is not obliged to begin doing so unless and until the Parties acting reasonably agree in writing on reasonable compensation to be paid by the Proponent to the Township for undertaking such additional snow clearance and maintenance work. Upon reaching such an agreement, **Schedule "A"** hereto shall be amended to identify the additional Road Allowances that the Township agrees to maintain pursuant to Section 8.1 of this Agreement.

9. Tree Work

- 9.1. In the event that the Proponent, acting reasonably, deems it necessary for purposes of undertaking and completing Work, to cut, trim or remove trees or bushes growing in the Road Allowances, the Proponent shall be entitled to conduct the necessary Tree Work provided the Proponent makes reasonable efforts to minimize the amount of Tree Work. In the event that trees are removed from within the Road Allowances, the Proponent agrees, at its sole expense, to remove the tree stump to a level below grade and to restore and remediate the surface of the Road Allowance in accordance with Section 4.4 of this Agreement.
- 9.2. In the event that Tree Work involves removal of trees from the Road Allowance, the Proponent shall offer, in writing, to the adjacent landowner to replace, at the Proponent's sole expense, such trees within **[500]** meters of the location of the existing tree, unless otherwise mutually agreed by the adjacent landowner and the Proponent, in accordance with the following protocol:
 - (a) Trees below 7.5 cm dbh (diameter at breast height) will not be replaced;
 - (b) Trees 7.5 cm dbh or greater but less than 15 cm dbh will be replaced at a ratio of two (2) trees for each tree removed;

- (c) Trees 15 cm dbh or greater but less than 30 cm dbh will be replaced at a ratio of three (3) trees for each tree removed; and
 - (d) Trees greater than 30 cm dbh will be replaced at a ratio of five (5) trees for each tree removed.
- 9.3. Written offers to replace trees pursuant to Section 9.2 of this Agreement shall include a schedule of available tree species, and landowners receiving such offers shall be entitled to select from this schedule the tree species or mix of tree species that they wish to receive as replacement trees.
- 9.4. In the event that an affected landowner does not wish to receive replacement trees, the Proponent may, in its sole discretion, offer such trees to other neighbouring landowners or may cooperate with the Township to find suitable alternative locations for such trees within the Township.

10. Abandonment and Decommissioning of Electrical Infrastructure

- 10.1. The Parties agree that the Proponent may from time to time during the Term of this Agreement, permanently discontinue the use of (“**Abandon**”) all or any part of the Electrical Infrastructure. The Proponent shall give written notice of any Abandonment to the Township within sixty (60) days of such Abandonment, specifying the part of the Electrical Infrastructure that has been Abandoned.
- 10.2. If the Proponent Abandons any part or all of the Electrical Infrastructure, the Proponent shall have the right to remove such part of its Electrical Infrastructure as has been Abandoned, but if the Proponent does not remove the Electrical Infrastructure that has been Abandoned, the Proponent shall deactivate all Abandoned Electrical Infrastructure and certify to the Township that such Electrical Infrastructure has been deactivated within sixty (60) days of its Abandonment. If the location of any such Abandoned Electrical Infrastructure interferes with the location of any construction, alteration, work or improvement undertaken by the Township, the Township may remove and dispose of so much of the Abandoned and deactivated part of the Electrical Infrastructure as the Township may require for such purposes and neither Party shall have recourse against the other for any loss, expense or damages occasioned thereby.
- 10.3. If the Proponent Abandons part of its Electrical Infrastructure affixed to a bridge, viaduct or structure, the Proponent shall, at its sole expense, remove that part of its Electrical Infrastructure.
- 10.4. Within one hundred and eighty (180) days after the Proponent Abandons any Electrical Infrastructure, the Proponent shall consult with the Township in good faith to come to an agreement with respect to removing such Electrical Infrastructure or leaving it in place within the Road Allowances. The Parties agree that the principles for decommissioning articulated in the Decommissioning Report prepared for the Proponent’s “Renewable Energy Approval” application for the Project will generally

apply to Electrical Infrastructure within Road Allowances. Notwithstanding the foregoing, the Township agrees that any Abandoned Electrical Infrastructure buried at a depth of more than three (3) feet below the surface may be left in place. Any Abandoned Electrical Infrastructure that is finally left in place upon the completion of decommissioning shall become the property of the Township.

11. Assignment

- 11.1. The Proponent may not assign this Agreement without the written consent of the Township, which shall not be unreasonably withheld, except that no consent shall be required for the Proponent to assign this Agreement to an affiliated or successor entity, or for purposes of securing indebtedness or other obligations respecting the Electrical Infrastructure or the Wind Project. The Township acknowledges that a change in control of the Proponent shall not be considered an assignment by the Proponent of this Agreement or of any of the Proponent's rights and obligations under this Agreement.
- 11.2. For greater certainty, the Proponent shall from time to time during the term of this Agreement be entitled to assign this Agreement and all of its rights hereunder without the consent of the Township to any Secured Party as security for the Proponent's obligations to such Secured Parties, which shall be further entitled to assign this Agreement and the Proponent's rights thereunder in connection with an enforcement of their security. The Township hereby agrees to execute and deliver an Acknowledgement and Consent Agreement in favour of any applicable Secured Party or assignee thereof, in a form acceptable to the Township, acting reasonably.
- 11.3. The Proponent shall be entitled, with the written consent of the Township, which may not be unreasonably delayed, withheld or conditioned, to assign this Agreement to a transferee of the Wind Project other than an affiliated or successor company, and the Proponent shall thereupon be released from any and all obligations under this Agreement from and after the date of such assignment, provided that such assignee has agreed in writing with the Township, in a form acceptable to the assignee and the Township, both acting reasonably, to be bound by the provisions of this Agreement from and after the date of the assignment.

12. Default

- 12.1. If a Party commits a breach of or omits to materially comply with any of the provisions of this Agreement (the "**Defaulting Party**"), the other Party (the "**Complainant**") may give the Defaulting Party notice in writing specifying the breach complained of and, if the Party intends to terminate the Agreement, indicating the intention of the Complainant to terminate this Agreement unless the Defaulting Party shall have remedied the breach within the period mentioned in the notice, which period shall be not less than sixty (60) days. If the Defaulting Party shall have within such notice period commenced to remedy the breach and has diligently pursued the remedying thereof, the Defaulting Party shall be allowed one hundred and fifty (150) days after the expiry of the original notice period to remedy the breach. After the

expiration of the later of the applicable periods, the Complainant may elect to terminate this Agreement or to remedy the breach, in which case the Defaulting Party shall be liable for reimbursing to the Complainant the reasonable costs of completing said remedy.

12.2. Notwithstanding any expiry or termination of this Agreement in accordance with Sections 2.2, 12.1 or otherwise, such expiry or termination shall not derogate from the Proponent's rights under Applicable Law, including the Proponent's statutory right under the *Electricity Act, 1998* to construct and install Electrical Infrastructure over, under or on any public street or highway in the Township deemed necessary by the Proponent for the purpose of its transmission or distribution system.

12.3. Whenever, and to the extent that a Party will be unable to fulfill or will be delayed or restricted in the fulfillment of any obligation under any provision of this Agreement by reason of:

- (a) strikes;
- (b) lock-outs;
- (c) war or acts of military authority;
- (d) rebellion or civil commotion;
- (e) material, energy, or labour shortage not within the control of the affected Party;
- (f) fire or explosion;
- (g) flood, wind, water, earthquake, or other casualty;
- (h) changes in Applicable Law not wholly or mainly within the control of the affected Party, including the revocation by any Public Authority of any permit, privilege, right, approval, license or similar permission granted to the Proponent or the Wind Project;
- (i) any event or matter not wholly or mainly within the control of the affected Party (other than lack of funds or the financial condition of the affected Party); or,
- (j) acts of God,
(in each case a "**Force Majeure**")

not caused by the default or act of or omission by that Party and not avoidable by the exercise of reasonable effort or foresight by it, then, so long as any such impediment exists, that Party will be relieved from the fulfillment of such obligation and the other Party will not be entitled to compensation for any damage, inconvenience, nuisance or discomfort thereby occasioned. A Party shall promptly notify the other Party of the occurrence of any Force Majeure, which might prevent or delay the doing or performance of acts or things required to be done or performed.

13. Dispute Resolution

- 13.1. In the event that either Party provides the other Party with written notice of a dispute regarding the interpretation or implementation of this Agreement (a “**Dispute**”) then both Parties shall use their best efforts to settle the Dispute by consulting and negotiating with each other in good faith to reach a solution satisfactory to both Parties. However, if the Parties do not resolve the Dispute within thirty (30) days following receipt of such notice, then either Party may provide written notice to the other Party (the “**Arbitration Notice**”) requiring resolution by arbitration and thereafter the Dispute shall be referred to arbitration in accordance with the provisions of the *Arbitration Act, 1991*.
- 13.2. The arbitration tribunal shall consist of one arbitrator appointed by mutual agreement of the Parties or, if the Parties fail to agree on an arbitrator within ten (10) days after receipt of the Arbitration Notice, then either Party may apply to a judge of the Superior Court of Justice to appoint an arbitrator. The arbitrator shall be qualified by education and training to pass upon the matter to be decided.
- 13.3. The arbitration shall be conducted in English and shall take place in ● or another place mutually agreed upon by the Parties.
- 13.4. The arbitration award shall be given in writing and shall address the question of costs of the arbitration and all related matters. The arbitration award shall be final and binding on the Parties as to all questions of fact and shall be subject to appeal only with respect to matters of law or jurisdiction.
- 13.5. Except to the extent that a matter is specifically the subject of a Dispute, both Parties shall continue to observe and perform the terms and conditions of this Agreement pending the resolution of a Dispute.

14. Further Assurances

- 14.1. Each of the Parties covenants and agrees with the other that it will at all times hereafter execute and deliver, at the request of the other, all such further documents, agreements, deeds and instruments, and will do and perform all such acts as may be necessary to give full effect to the intent and meaning of this Agreement.

15. Liability

- 15.1. The Proponent hereby acknowledges that its performance of the Work and operation of the Electrical Infrastructure and Wind Project is entirely at its own risk and the Township shall in no way and in no circumstances be responsible or liable to the Proponent, its contractors, agents, or customers for any damage or losses in consequence thereof, regardless of how such damage or loss was suffered or incurred, other than damage or loss arising out of the negligence of, intentional misconduct of, or a breach of this Agreement by the Township, anyone directly or indirectly

employed by the Township or anyone for whose acts the Township is in law responsible.

- 15.2. The Proponent will indemnify and save harmless the Township from and against all claims, liabilities, losses, costs, damages or other expenses of every kind that the Township may incur or suffer as a consequence of or in connection with the placing, maintenance, operation or repair of the Electrical Infrastructure or any part thereof by the Proponent, except to the extent that such claims, liabilities, losses, costs, damages or other expenses result from the Township's fault or negligence.

16. Notice

- 16.1. All notices, communications and requests for approval which may be or are required to be given by either party to the other herein shall be in writing and shall be given by delivery by courier or by facsimile addressed or sent as set out below or to such other address or facsimile number as may from time to time be the subject of a notice:

To the Township:

[Address]

Attention: [•], [TITLE]

Facsimile:

Emergency Telephone No.:

With a copy to:

[Address]

Attention: [•], [TITLE]

Facsimile:

Emergency Telephone No.:

To the Proponent:

Attention: [•], [TITLE]

Facsimile:

Emergency Telephone No.:

With a copy to:

[Address]

Attention: [•], [TITLE]

Facsimile:

Emergency Telephone No.:

- 16.2. Any notice, if delivered by courier, shall be deemed to have been validly and effectively given and received on the date of such delivery and if sent by facsimile

with confirmation of transmission, shall be deemed to have been validly and effectively given and received on the day it was received, whether or not such day is a business day.

17. Governing Law

17.1. This Agreement shall be governed by, and be construed and interpreted in accordance with, the laws of Ontario and the laws of Canada applicable in Ontario.

18. Miscellaneous

18.1. This Agreement may be executed by facsimile or PDF transmission and in one or more counterparts, all of which shall be considered one and the same Agreement.

18.2. This Agreement and the rights granted hereunder are and shall be of the same force and effect, to all intents and purposes, as a covenant running with the Road Allowances and these presents, including all of the covenants and conditions herein contained, shall extend, be binding upon and enure to the benefit of the Township and the Proponent, and their respective successors and permitted assigns, as the case may be. The Parties hereby acknowledge and agree that the purpose of the rights granted herein is for the transmission or distribution of electricity within the meaning of the *Electricity Act, 1998*.

18.3. Each obligation of the Parties contained in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant.

18.4. The invalidity or unenforceability of any provision or covenant contained in this Agreement shall affect the validity or enforceability of such provision or covenant only and any such invalid provision or covenant shall be deemed to be severable from the balance of this Agreement, which shall be enforced to the greatest extent permitted by law.

18.5. Each covenant in this Agreement is a separate and independent covenant and a breach of covenant by either Party will not relieve the other Party from its obligation to perform each of its covenants, except as otherwise provided herein.

18.6. No supplement, modification, amendment, or waiver of this Agreement shall be binding unless executed in writing by the Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives to be effective as of the Effective Date.

[MUNICIPALITY]

Name:
Title

Name:
Title:

[PROPONENT]

Name:
Title:

SCHEDULE “A”

Plan showing Road Allowances expected to be required for the Wind Project

SCHEDULE “B”

The Permits

| Permit | Requirements | Fee |
|---------------|---------------------|------------|
| | | |
| | | |
| | | |

POTENTIAL IMPACTS

In determining that the Road Allowances is the most viable option for the location of the Distribution System, the Applicant has attempted to mitigate any potential prejudice to the Municipality, including by taking the following measures:

- The Applicant engaged in extensive government and public consultation regarding the Sumac Ridge Wind Project, including the Distribution System, through the Renewable Energy Approval process.
- The Applicant's Renewable Energy Application identified and developed mitigation measures for all the significant environmental effects of the Wind Project including a spill response plan, training for employees on spill reporting requirements, a sediment and erosion control plan and a Tree Preservation Plan.
- Prior to beginning construction activities, the Applicant will take steps to minimize the potentially harmful construction and environmental effects of the Wind Project. The installation of the Distribution System within the Road Allowances will involve good site practices and procedures, including specification regarding soil conservation, disposal and/or segregation of excavated material, sediment control, dust control, artificial drainage system maintenance and soil compaction control.
- Under the proposed Road Use Agreement, wpd Sumac would have provided the Municipality with certain protections to guarantee wpd Sumac's obligations under the proposed Road Use Agreement, including security that the Municipality would have the right to draw upon for the purpose of making repairs to the Road Allowances should wpd Sumac fail to meet its obligations. In addition, all installation and construction activities would have been undertaken at the Applicant's sole expense. The Municipality will also benefit from the road

1 improvements that will result from the Applicant's construction activities within the
2 Road Allowances.

3 In light of these measures, there is no significant prejudice to the Municipality regarding the
4 Applicant's proposed location of the Distribution System within the Road Allowances.

5 Should the Municipality continue to refuse to engage with the Applicant regarding the
6 proposed location of the Distribution System within the Road Allowances, the Applicant
7 could suffer irreparable harm, including increased equipment storage fees, lost revenue and
8 inability to meet the milestones provided for in the Applicant's FIT Contract.

**THE BOARD'S AUTHORITY TO DETERMINE THE LOCATION OF THE
DISTRIBUTION SYSTEM**

As noted in Exhibit D, Tab 1, Schedule 1, above, pursuant to section 41(1) of the *Electricity Act* a distributor may install power lines and other facilities associated with a distribution system on public streets or highways. Where a distributor and the owner of a public street or highway cannot agree regarding the precise location of the distribution facilities within such public street or highway, pursuant to section 41(9) of the *Electricity Act*, the Board has the authority to determine the location of the distribution facilities. Section 41(9) provides:

The location of any structures, equipment or facilities constructed or installed under subsection (1) shall be agreed on by the transmitter or distributor and the owner of the street or highway, and in case of disagreement shall be determined by the Board.

In this case, given that the Municipality has refused to engage with the Applicant, the parties cannot agree regarding the location of the Distribution System within the Road Allowances. The Board may determine the location of the Distribution System within the Road Allowances.

In the Grey Highland's Decision, the Board acknowledged that the scope of its authority with respect to an application under section 41(9) of the OEB Act is limited to the determination of the location of the proposed distribution facilities, stating:

The [*Electricity Act*] limits the Board's role in this proceeding to a determination of the location of [the] proposed Distribution Facilities within the Road Allowances. Given the legislative restriction on the Board's jurisdiction, it is not the Board's role in this proceeding to approve or deny the Project or the Distribution Facilities, to consider the merits, prudence or any environmental health or economic impacts associated with it or to consider alternatives to the project such as routes for the Distribution Facilities that are outside of the prescribed Road Allowances. Also, it is not within the Board's jurisdiction

1 in this proceeding to consider any aspect of [the] proposed
2 wind generation facilities.¹

3 Further, as the Board noted in the Grey County Decision, “the [*Electricity Act*] does not
4 require that all necessary approvals, such as the [renewable energy approval] be obtained
5 prior to granting an application under subsection 41(9).”²

6 Accordingly, in this Application, the Board’s determination of whether to grant the relief
7 requested does not involve a consideration of matters that are covered by other regulatory
8 processes, including wpd Sumac’s Renewable Energy Application. Copies of the Grey
9 Highlands Decision and the Grey County Decision are included at Appendix “A” to Exhibit
10 D, Tab 1, Schedule 5 and Appendix “B” to Exhibit D, Tab 1, Schedule 5, respectively.

11 wpd Sumac requests that the Board issue an order pursuant to section 41(9) of the *Electricity*
12 *Act* providing that the Distribution System shall be located in the Road Allowances as
13 reflected in the map included at Appendix “B” to Exhibit C, Tab 1, Schedule 2.

¹ Grey Highlands Decision, para. 9

² Grey County Decision, p. 6



EB-2010-0253

IN THE MATTER OF the *Electricity Act*, 1998 as amended
(the “*Electricity Act*”);

AND IN THE MATTER OF an application by Plateau Wind
Inc. for an order or orders pursuant to section 41(9) of the
Electricity Act establishing the location of Plateau Wind
Inc.’s distribution facilities within certain road allowances
owned by the Municipality of Grey Highlands.

BEFORE: Paul Sommerville
Presiding Member

Paula Conboy
Member

DECISION AND ORDER

INTRODUCTION

- [1] Plateau Wind Inc. (“Plateau” or the “Applicant”) filed an application dated July 30, 2010 (the “Application”) with the Ontario Energy Board (the “Board”) under subsection 41(9) of the *Electricity Act*, 1998, S.O. 1998, c. 15, Schedule A, as amended (the “*Electricity Act*”) for an order or orders of the Board establishing the location of Plateau’s proposed distribution facilities within road allowances owned by the Municipality of Grey Highlands (“Grey Highlands”). The Board assigned File No. EB-2010-0253 to the application.
- [2] Plateau is in the business of developing wind energy generation projects and the associated distribution facilities in Ontario. Plateau is the corporate entity created to hold and operate the generation and distribution assets of the Plateau Wind Energy Project in Grey County and Dufferin County, Ontario.

- [3] Plateau plans to develop the Plateau Wind Energy Project (the “Project”) which will involve eighteen GE 1.5 megawatt (“MW”) wind turbine generators, together having a nominal nameplate capacity of 27 MW. Twelve of the wind turbine generators are relevant to this Application, eleven of which will be located in Grey Highlands and one of which will be located in Melancthon Township (collectively referred to as the “Turbines”). In total, the Turbines will have a nominal nameplate capacity of 18 MW. Plateau has entered into a feed-in tariff contract with the Ontario Power Authority for the Project.
- [4] As part of the Project, Plateau plans to construct 44 kilovolt (“kV”) overhead and underground electrical distribution facilities to transport the electricity generated from the Turbines to the existing local distribution system of Hydro One Networks Inc. (“HONI”) and ultimately to the IESO-controlled grid. Plateau would like to locate certain portions of the electrical distribution facilities (the “Distribution Facilities”) within road allowances owned by Grey Highlands (the “Road Allowances”).
- [5] Because Plateau and Grey Highlands have not been able to reach an agreement with respect to the location of the Distribution Facilities, Plateau requested that the Board issue an order or orders, pursuant to section 41(9) of the *Electricity Act*, determining the location of Plateau’s Distribution Facilities within the Road Allowances.
- [6] In support of the Application, Plateau filed a brief of documents which included descriptions of Plateau’s proposed Distribution Facilities, list of municipal road allowances proposed for location of the Distribution Facilities, maps showing the road allowances, a copy of the proposed road use agreement and other relevant project documents (collectively the “pre-filed evidence”).

THE PROCEEDING

- [7] The Board has proceeded with this application by way of a written hearing. The procedural steps followed are outlined below:

- | | |
|----------------------------------------------------------|-------------------|
| - Application filed | July 30, 2010 |
| - Notice of Application Issued | August 19, 2010 |
| - The Board issued its Procedural Order No. 1 | October 29, 2010 |
| - Plateau filed its submission | November 8, 2010 |
| - Grey Highlands and Board staff filed their submissions | November 29, 2010 |
| - Plateau filed its reply submission | December 6, 2010 |

Grey Highlands was granted intervenor status and ten parties were granted observer status in this proceeding.

THE LEGISLATION

- [8] The Board's authority in this proceeding is derived from section 41 of the *Electricity Act* which states as follows:

Subsection 41. (1)

A transmitter or distributor may, over, under or on any public street or highway, construct or install such structures, equipment and other facilities as it considers necessary for the purpose of its transmission or distribution system, including poles and lines. 1998, c. 15, Sched. A, s. 41 (1).

Subsection 41. (9)

The location of any structures, equipment or facilities constructed or installed under subsection (1) shall be agreed on by the transmitter or distributor and the owner of the street or highway, and in case of disagreement shall be determined by the Board. 1998, c. 15, Sched. A, s. 41 (9).

SCOPE OF PROCEEDING

- [9] The above-noted legislation limits the Board's role in this proceeding to a determination of the location of Plateau's proposed Distribution Facilities within the Road Allowances. Given the legislative restriction on the Board's jurisdiction, it is not the Board's role in this proceeding to approve or deny the Project or the Distribution Facilities, to consider the merits, prudence or any environmental, health or economic impacts associated with it or to consider alternatives to the project such as routes for the Distribution Facilities that are outside of the prescribed Road Allowances. Also, it is not within the Board's jurisdiction in this proceeding to consider any aspect of Plateau's proposed wind generation facilities.

EVIDENCE AND SUBMISSIONS

Plateau's Evidence and Submissions

Some key elements of Plateau's evidence and submissions are outlined below:

- [10] During 2008-2009, Plateau carried out an Environmental Assessment for the Project. The final Environmental Assessment report and a Notice of Completion were made publicly available for review and comment from June 12, 2009 to July 11, 2009. On April 14, 2010, Plateau publicly filed its Statement of Completion of the Environmental Assessment after the Ministry of the Environment rejected all requests to elevate the Project to an environmental review/individual environmental assessment.
- [11] Plateau submitted that a balance of environmental, social, technical and economic considerations impacted Plateau's decision on the location of the Turbines and therefore on the location of the Distribution Facilities. An excerpt from the Pre-Filed Evidence which lists the Road Allowances is attached to this Decision and Order as Appendix "A".
- [12] Plateau submitted that the only outstanding issue with respect to Plateau's use of the Road Allowances is the location of the Distribution Facilities within the Road Allowances. In this regard, Plateau undertook to negotiate a standard road use agreement with Grey Highlands.
- [13] According to Plateau's evidence, as a result of the above-noted negotiations, Plateau, the Municipal Staff of Grey Highlands (the "Municipal Staff") and Grey Highlands' legal counsel reached a mutually acceptable agreement with respect to the location, construction, operation and maintenance of the Distribution Facilities within the Road Allowances (the "Proposed Road Use Agreement").
- [14] In negotiating the Proposed Road Use Agreement, Plateau asserted that it addressed the concerns of the Municipal Staff regarding the routing of the Distribution Facilities. In addition, under the Proposed Road Use Agreement, Plateau indicated that it planned to confer certain monetary and non-monetary benefits on and provide numerous protections to Grey Highlands.
- [15] The evidence indicates that on May 17, 2010, the Municipal Staff issued Report PL.10.34 recommending a form of the Proposed Road Use Agreement to the Grey Highlands Committee of the Whole.
- [16] The evidence further indicates that in a letter dated June 24, 2010 to the Grey Highlands Mayor and Members of Council, the Grey Highlands Chief Administrative Officer recommended that the Proposed Road Use Agreement be approved by Grey Highlands Council (the "CAO Recommendation").

- [17] On June 28, 2010, the Grey Highlands Council rejected the CAO Recommendation. As a result, because Plateau and Grey Highlands could not reach an agreement with respect to the location of the distribution facilities, Plateau filed the Application with the Board for an order or orders, pursuant to section 41(9) of the *Electricity Act*, establishing the location of Plateau's Distribution Facilities within the Road Allowances.
- [18] Plateau stated that it has chosen to route certain power lines, poles and other facilities associated with the Distribution System within the Road Allowances pursuant to the statutory right of distributors under section 41(1) of the *Electricity Act*.
- [19] Plateau submitted that the Distribution Facilities as well as other 44 kV electrical facilities which transport the electricity generated from the Turbines to the existing 44 kV local distribution system of HONI, and ultimately to the IESO-controlled grid, is a "distribution system" and that Plateau is a "distributor" as defined in the *Electricity Act*¹. As such, Plateau submitted that it is a distributor and is entitled to the rights of distributors under section 41 of the *Electricity Act*, including the right, under the circumstances, to bring this Application pursuant to Section 41(9) of the *Electricity Act*.
- [20] Plateau submitted that section 4.0.1(1) (d) of O. Reg. 161/99 under the *Ontario Energy Board Act* exempts from the licensing requirements those distributors that distribute electricity for a price no greater than that required to recover all reasonable costs with respect to a distribution system owned or operated by a distributor that is also a generator and that distributes electricity solely for conveying it to the IESO-controlled grid.
- [21] Plateau also submitted that because of the limited scope of section 41(9) and because the two parties have been unable to reach an agreement on the location of the Distribution Facilities within the Road allowances, the only issue before the Board is determining that location.

¹ The *Electricity Act* definitions are as follows:

"distribute", with respect to electricity, means to convey electricity at voltages of 50 kilovolts or less;
"distribution system" means a system for distributing electricity, and includes any structures, equipment or other things used for that purpose;
"distributor" means a person who owns or operates a distribution system.

- [22] An excerpt from Plateau's submissions which describes the proposed location of the Distribution Facilities within the Road Allowances is attached as Appendix "B" to this Decision and Order.

Grey Highlands' Submissions

Some key elements of Grey Highlands' submissions are outlined below:

- [23] Grey Highlands stated that the Project is a "renewable energy generation facility" as that term is defined under the Electricity Act and Ontario Regulation 160/99 and, as such, it is afforded no rights under section 41 of the *Electricity Act*. Accordingly, Grey Highlands submits that the Board has no authority or jurisdiction to make a determination under subsection 41(9) of the *Electricity Act* as the Applicant is neither a transmitter nor distributor of electricity.
- [24] Grey Highlands submitted that the rights bestowed under section 41 of the *Electricity Act* represent a special privilege granted to transmitters and distributors and "Where special privileges are granted under statutory authority, the legislation granting such special privilege must be strictly construed."²
- [25] Grey Highlands submitted that, based on section 2 (1) of the *Electricity Act* and sections 1(4) and 1(5) of Ontario Regulation 160/99, any distribution line or lines under 50 kilometres in length that convey electricity from a renewable energy generation facility to a distribution system are not components of a distribution system, but rather are components of the "renewable energy generation facility". Grey Highlands further submitted that :
- a number or combination of distribution lines are not a "distribution system" as defined in the *Electricity Act* if they are components of a "renewable energy generation facility";
 - the defined terms "distribution system", "generation facility", "renewable energy generation facility" and "transmission system" are all mutually exclusive.

² Paragraph 7 of Grey Highlands' submission dated November 25, 2010.

- [26] Furthermore, Grey Highlands stated that Section 57 of the *Ontario Energy Board Act* requires all transmitters, distributors and generators to hold a licence issued under authority of that Act.
- [27] Grey Highlands asserted that, if the distribution lines associated with a "renewable energy generation facility" constituted a "distribution system" as defined in the *Electricity Act*, Plateau would be required to be licensed as a distributor under section 57 of the *Ontario Energy Board Act*.
- [28] Grey Highlands further asserted that the Applicant's submission concerning the applicability of subsection 4.0.1(1) (d) of Ontario Regulation 161/99 is erroneous because the Applicant is not in the business of generating electricity and supplying it to the ISEO-controlled grid on a "non-profit basis".
- [29] In its submission Grey Highlands also stated that:
- based on Section 26 of the *Electricity Act*, if the Applicant is a distributor then the Applicant is required to provide access to the distribution lines to "consumers" and the Applicant's evidence does not indicate or identify that consumers will have access to the distribution lines;
 - the Applicant's own description of its proposal indicates that it will deliver electricity to the HONI distribution system and not consumers; and
 - the Applicant does not have a Conditions of Service³ document because it has no intentions of distributing electricity to consumers and because it is not a "distributor".

Board Staff Submissions

Some key elements of Board staff's submissions are outlined below:

- [30] Board staff submitted that, in its view, based on the *Electricity Act* definitions of "distribute", "distribution system" and "distributor", the distribution component of the Applicant's proposed facilities does qualify as a distribution system and that the Applicant is a distributor and therefore has standing to bring an application under section 41 of the *Electricity Act*.

³ A document required under Section 2.4.1 of the Distribution System Code.

- [31] Board staff further submitted that Plateau's Distribution System would be exempt, under Section 4.0.1 (d) of Ontario Regulation 161/99, from the licence requirement of section 57(a) of the *OEB Act* because the Distribution System would transport electricity from its generation facilities to the Hydro One distribution system and ultimately to the IESO-controlled grid, and no other use of the Distribution System has been identified by Plateau.

Plateau's Reply Submissions

Some key elements of Plateau's reply submission are outlined below:

- [32] Plateau disagrees with Grey Highlands submission that no aspect of the Project meets the definition of "distributor" under the *Electricity Act* and that Plateau therefore cannot take advantage of the rights afforded to distributors under the section 41 of the *Electricity Act*. Plateau repeated that it clearly was a distributor, as that term is defined in the *Electricity Act* and that; consequently, as a distributor, it is entitled to the rights afforded to distributors under section 41 of the *Electricity Act*.
- [33] Plateau reiterated its submissions in chief that, under section 4.0.1(1) (d) of Ontario Regulation 161/99, it is exempt from the distribution licensing requirement in section 57(a) of the *OEB Act*. It added that it is irrelevant that it will profit from the sale of generated electricity since section 4.0.1(1)(d) only requires that the generated electricity be **distributed** at a price no greater than that required to recover all reasonable costs in order for the licensing exemption to apply.
- [34] Plateau stated that it disagrees with Grey Highlands' assertion that being a "distribution system", "generation facility", "renewable energy generation facility" and "transmission system" are all mutually exclusive terms. Plateau further stated that there is nothing in Section 57 of the *OEB Act* that suggests that there is such mutual exclusivity.
- [35] Plateau further states that the wording of section 4.01(1) (d) of Ontario Regulation 161/99 clearly demonstrates that a person can be both a distributor and a generator and that the exemption applies to a "distributor" that is also a "generator" and distributes electricity solely for the purpose of conveying it to the IESO controlled grid.

- [36] Plateau submitted that the enactment of the *Green Energy and Green Economy Act, 2009* (the “*Green Energy Act*”) amended section 1(1) of the *OEB Act* to require the Board, in carrying out its responsibilities under the *OEB Act* or any other legislation in relation to electricity, to be guided by the objective of promoting “the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.” Plateau further stated that the Board must therefore be guided by this objective, among others, in deciding the Application.
- [37] Plateau submitted that the sections in the *Power Corporation Act* and the *Public Utilities Act* that Grey Highlands referenced have been repealed and pertain to a former regulatory regime that is no longer in place.

BOARD FINDINGS

- [38] Given the Board’s limited jurisdiction in this proceeding, there are two decisions that need to be made. The first is a determination of whether Plateau is a “distributor” for the purposes of Section 41 of the *Electricity Act*. If so, the second determination is where should the location of Plateau’s distribution facilities within Grey Highlands’ road allowances be, given that the parties are not able to reach an agreement.
- [39] The Board agrees with Plateau’s and Board staff’s submissions to the effect that the Distribution Facilities, as well as other 44 kV electrical facilities which transport the electricity generated from the Turbines to the existing 44 kV local distribution system of HONI and ultimately to the IESO-controlled grid, are a “distribution system” as defined in the *Electricity Act*.
- [40] The Board disagrees with Grey Highlands’ submission that the defined terms “distribution system”, “generation facility”, “renewable energy generation facility” and “transmission system” are all mutually exclusive since there is nothing in the applicable legislation that would support such an interpretation. Indeed, when the words of the Statute and the Regulation are given their plain meaning, it is evident to the Board that the Legislature intended them to operate precisely as Plateau suggests they should. As the owner of the distribution system that is intended to transport the generated electricity to the IESO, Plateau is a distributor, but one

which has the benefit of the licensing exemption contained in Ontario Regulation 161/99.

- [41] The Board accepts Plateau's and Board staff's submissions that, as the owner or operator of the distribution system, Plateau is a distributor as defined in the *Electricity Act*.
- [42] Accordingly, the Board finds that, as a distributor, Plateau is entitled to bring an application under section 41 of the *Electricity Act* and is entitled to the relief the Board may grant on such an application.
- [43] Since the evidence indicates that Plateau and Grey Highlands could not agree on the location of Plateau's distribution facilities within Grey Highlands' road allowances, it is the Board's role to determine the location of the Distribution Facilities in accordance with section 41 (9) of the *Electricity Act*.
- [44] The Board notes Plateau's evidence that, during the course of negotiations between Plateau and the Municipal Staff regarding a road use agreement, the two parties had reached a mutually acceptable agreement with respect to the location, construction, operation and maintenance of the Distribution Facilities within the Road Allowances (the "Proposed Road Use Agreement") and that the Proposed Road Use Agreement was subsequently rejected by the Grey Highlands Council without apparent explanation.
- [45] The Board also notes that Grey Highlands' submissions focused on Plateau's status as a distributor, its rights under section 41 of the *Electricity Act* and the Board's authority or jurisdiction to make a determination under subsection 41(9) of the *Electricity Act*, but made no submissions regarding any alternative or preferred location for the Distribution Facilities within the Road Allowances.
- [46] In terms of determining the location of the Distribution Facilities, the Board has therefore considered the only evidence provided in this proceeding with respect to proposed location for the Distribution Facilities and that evidence has been provided by Plateau.
- [47] In the absence of any competing proposal, the Board accepts Plateau's proposed location of the Distribution Facilities within the Road allowances in Grey Highlands.
- [48] Furthermore, the Board agrees with Plateau's and Board staff's submissions that Plateau is exempt from the requirement for a distributor licence under Section

4.0.1 (d) of Ontario Regulation 161/99. Contrary to the assertion of Grey Highlands, the fact that Plateau does not require a licence does not imply that they are not a distributor. In the Board's view the Regulation giving rise to the exemption could not be clearer. It specifically contemplates that the "distributor" can be a generator, and that the exemption applies to such a distributor when it distributes electricity "solely for the purpose of conveying it into the IESO-controlled grid." This language really renders the Municipality's argument on this point untenable.

[49] The Board notes that there were a number of interested parties that were granted observer status and took an active role in terms of providing comments regarding various aspects of the Project. Some of the observer comments regarding Plateau's status as a distributor are addressed in the above findings. Other observer concerns were related to health effects, aesthetic impact of the Project and the Turbines as well as the impact on property values. These concerns are not within the scope of this proceeding (see paragraph [9] above) and were not considered by the Board in arriving at this decision.

THE BOARD ORDERS THAT:

- The location of Plateau's Distribution Facilities within the Road Allowances shall be as described in Appendix "A" and Appendix "B" to this Decision and Order except for any changes that are mutually agreed to between Plateau Wind Inc. and the Municipality of Grey Highlands.

DATED at Toronto, January 12, 2011

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX "A"

TO

DECISION AND ORDER

BOARD FILE NO. EB-2010-0253

DATED: January 12, 2011

EXCERPT FROM PRE-FILED EVIDENCE

(Exhibit B, Tab 3, Schedule 1, Page 6)

**LIST OF MUNICIPAL ROAD ALLOWANCES WITHIN WHICH THE
DISTRIBUTION SYSTEM WILL BE LOCATED**

1. 210 Sideroad Road (also known as Melancthon-Artemesia Townline), between Provincial Highway No. 10 and East Back Line.
PIN: 37265-0133(LT)
2. East Back Line from 210 Sideroad Road to Melancthon Artemesia Townline.
PIN: 37265-0136(LT) and 37265-0134(LT)
3. Melancthon Artemesia Townline from East Back Line to Road 41A.
PIN: 34151-0029(LT)
4. Melancthon Osprey Townline from Road 41A to the access road to Turbine #3.
PIN: 37260-0052(LT)
5. Road 41A, from the Melancthon Artemesia Townline to South Line B Road.
PIN: 37260-0199(LT)
6. South Line 'B' Road from Road 41 A to Grey County Road 2.
PIN: 37260-0198(LT)
7. Centre Line A Road from County Road 2 westerly to Turbine #6 entrance.
PIN: 37260-0125(LT)
8. Centre Line A Road from County Road 2 easterly to Turbines #10 and #12 road entrance.
PIN: 37260-0125(LT)

APPENDIX "B"

TO

DECISION AND ORDER

BOARD FILE NO. EB-2010-0253

DATED: January 12, 2011

EXCERPT FROM PLATEAU'S WRITTEN

SUBMISSIONS DATED NOVEMBER 8, 2010

(Tab 2, Pages 7-9)

1 located over, on or near traveled or untraveled sections of the Road Allowances. The
2 hearing does not concern which Road Allowances that Plateau has chosen to use.

3 **3.0 PROPOSED LOCATION OF THE DISTRIBUTION SYSTEM WITHIN**
4 **THE ROAD ALLOWANCES**

5 Plateau proposes that the location of the Distribution System within the Road Allowances
6 should be as follows:

- 7 • The Distribution System facilities shall generally be located 1.0-1.5 metres from
8 the abutting property line, provided this location is reasonable and meets all
9 applicable safety standards.⁹ A cross-sectional drawing included at Appendix C
10 shows the approximate location of where Plateau proposes to position the poles
11 and other Distribution System facilities within the Road Allowances. As
12 discussed below, this proposal accords with the terms of the proposed road use
13 agreement between Plateau and Grey Highlands.¹⁰
- 14 • Where practicable and with certain exceptions, the Distribution System facilities
15 that Plateau will construct, maintain or install shall not be located under the
16 existing or contemplated traveled portion of any of the Road Allowances.¹¹
17 Rather, Plateau will locate these facilities adjacent to such existing or
18 contemplated traveled portion of such Road Allowances. As discussed below, this
19 proposal accords with the terms of the proposed road use agreement between
20 Plateau and Grey Highlands.¹²

21 In addition to proposing this location for the Distribution System within the Road
22 Allowances, Plateau requests that the Board, pursuant to its authority under section 23(1)
23 of the OEB Act, include the following conditions in its Order:

⁹ For example, once the detailed engineering process is completed, Plateau may be required to slightly deviate from the 1.0-1.5 metre setback to minimize the need for tree cutting, road crossings and gully anchors on private properties, as well as to accommodate the flow of the ditch drainage.

¹⁰ See Exhibit B, Tab 4, Schedule 1, Page 3 of the Application.

¹¹ Exemptions include certain underground road crossings that allow the Distribution System to follow the existing HONI poles in order to minimize the need to place poles on both sides of the Road Allowances.

¹² See Exhibit B, Tab 4, Schedule 1, Page 3 of the Application.

- 1 • Plateau shall acknowledge that the rights to use the Road Allowances are not
2 exclusive rights. In addition, Grey Highland is not precluded from entering into
3 the Road Allowances for its own municipal purposes, and Grey Highlands has no
4 obligation to notify Plateau of such entry provided it does not adversely affect the
5 Distribution System.
- 6 • In constructing or decommissioning the Distribution System within the Road
7 Allowances (the "Work"), Plateau shall use all due care and diligence to prevent,
8 among other things, any unnecessary or unavoidable interference with the
9 travelled portion of any Road Allowance or with any traffic thereon.
- 10 • Prior to the commencement of any Work, Plateau shall file plans with Grey
11 Highlands and/or the Saugeen Valley Conservation Authority detailing the Work.
12 Plateau will undertake the Work in accordance with those plans.¹³
- 13 • Within 30 days of the completion of any construction Work, Plateau shall deposit
14 with Grey Highlands as-constructed plans detailing the location and specifications
15 of any installed infrastructure, including any distribution lines and poles.
- 16 • Plateau shall undertake and complete any Work requiring a permit from Grey
17 Highlands within the time specified in such permit, provided such time is
18 reasonable. Plateau shall also complete such Work so as not to cause unnecessary
19 nuisance or damage to Grey Highlands or any other user of the Road Allowance
20 where the Work is conducted.
- 21 • Prior to the commencement of any Work, Plateau shall obtain any necessary
22 approval of any federal, provincial, county or municipal government or agency.
23 Plateau shall also notify any other person or body operating any equipment,
24 installations, utilities or other facilities within the Road Allowances about the
25 details of the Work, including where it is to be conducted.
- 26 • In the event that it becomes necessary to break, remove, or otherwise pierce the
27 existing surface of any of the Road Allowances to undertake the Work, Plateau
28 shall, in so far as is practical, at its own expense, repair, reinstate, restore, or
29 remediate such surface to the same or better condition than existed prior to the
30 commencement of such Work.¹⁴
- 31 • Subject to section 41 of the OEB Act, if Plateau wishes to relocate any of the
32 Distribution System facilities previously installed, placed or constructed in the

¹³ This condition is in accordance with Section 41 (7) of the Electricity Act, which states: "If a transmitter or distributor exercises a power or entry under this section, it shall, (a) provide reasonable notice of the entry to the owner or other person having authority over the street or highway"

¹⁴ This condition is in accordance with Section 41 (7) of the Electricity Act, which states: "If a transmitter or distributor exercises a power or entry under this section, it shall, ... (b) in so far as is practicable, restore the street or highway to its original condition; and (c) provide compensation for any damages caused by the entry."

1 Road Allowances, it shall notify Grey Highlands in writing of its intent to do so,
2 and Grey Highlands shall not unreasonably withhold its consent to such
3 relocation.

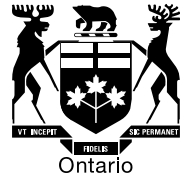
4 Notably, none of these requested terms or conditions vary from those already enshrined
5 in the standard road use agreement (the "Proposed Road Use Agreement") that Plateau
6 negotiated with the Municipal Staff of Grey Highlands (the "Municipal Staff") and Grey
7 Highlands' legal counsel.¹⁵ In the negotiations, the parties reached a mutually acceptable
8 agreement with respect to the location, construction, operation and maintenance of the
9 Distribution System within the Road Allowances.¹⁶ In particular, under the Proposed
10 Road Use Agreement, Grey Highlands would have affirmed Plateau's statutory right to
11 use the Road Allowances for the Distribution System and agreed to the location of the
12 Distribution System. In exchange, Plateau would have conferred certain benefits on and
13 provided numerous protections to Grey Highlands. A copy of the Proposed Road Use
14 Agreement is attached at Appendix D.

15 In addition, none of the requested terms and conditions vary substantially from the terms
16 and conditions contained in the agreement between Plateau and Melancthon, which
17 Melancthon Council has already approved, regarding the location of seven turbines and
18 the associated distribution facilities in its jurisdiction.¹⁷ One of these turbines is the
19 Turbine in Melancthon that is part of the Plateau I and II siting area, and some of the
20 distribution facilities will be located on the Melancthon side of some of the Road
21 Allowances that are jointly owned by Melancthon and Grey Highlands.

¹⁵ For a summary of those terms and conditions, see Exhibit B, Tab 4, Schedule 1, Pages 4-7 of the Application.

¹⁶ See Exhibit B, Tab 4, Schedule 1, Pages 1-2 of the Application.

¹⁷ See Exhibit B, Tab 4, Schedule 1, Pages 2-3 of the Application.



EB-2013-0233

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c.15, Schedule B;

AND IN THE MATTER OF an application by East Durham
Wind, Inc. for an Order or Orders pursuant to subsection
41(9) of the *Electricity Act 1998*, S.O. 1998, c. 15, Schedule
A, as amended, establishing the location of East Durham
Wind Inc.'s distribution facilities within certain road
allowances owned by the Municipality of West Grey.

BEFORE: Emad Elsayed
Presiding Member

Ellen Fry
Member

DECISION AND ORDER

November 7, 2013

DECISION

The location of East Durham's distribution system on road allowances owned by the Municipality of West Grey ("the Municipality") is approved as described in this Decision and Order.

BACKGROUND

East Durham Wind, Inc., ("East Durham") filed an application dated June 14, 2013 with the Ontario Energy Board (the "Board"), under subsection 41(9) of the *Electricity Act, 1998, S.O. 1998, c. 15, Schedule A*, (the "Act") for an order or orders of the Board establishing the location of approximately 9.1 kilometers of East Durham's proposed distribution system within certain public streets, highways and right-of-ways owned by the Municipality in Grey County, Ontario.

The Board issued a Notice of Application and Written Hearing on July 9, 2013. The Municipality and Karen and Syd Parkin (the "Parkins") requested and were granted intervenor status. The Board also received letters of comment from a number of local residents.

The Parkins submitted evidence. The Parkins and Board staff submitted interrogatories on East Durham's evidence. No party filed interrogatories on the evidence submitted by the Parkins. East Durham provided responses to all interrogatories.

East Durham filed its argument-in-chief on September 4, 2013. The Board received submissions from the Municipality and the Parkins. East Durham filed its reply submission on September 19, 2013.

On October 2, 2013, the Board issued a letter requiring East Durham to provide a more complete response to Board staff interrogatory no. 2(ii) by providing the analysis and supporting documentation that underpins its determination that it is appropriate to locate its facilities 1-4 meters from abutting property lines. The letter also asked East Durham to confirm the accuracy of a map provided as part of East Durham's argument-in-chief.

East Durham submitted its response on both matters on October 4, 2013. The Parkins submitted their comments on Oct 7, 2013.

THE APPLICATION

East Durham has entered into a Feed-in-Tariff contract with the Ontario Power Authority and is in the process of developing a wind generation facility, called the East Durham Wind Energy Centre (the “Project”) in the Municipality. The Project will have a total generation capacity of up to 23 MW and includes generation and distribution assets.

As part of the Project, East Durham is proposing to construct an underground distribution system to transmit power generated by the wind turbines to the distribution system of Hydro One Networks Inc. (“Hydro One”) for delivery ultimately to the IESO-controlled grid. Specifically, East Durham is proposing to construct 28.3 kilometers of underground 34.5 kV distribution lines on private and public lands, which will convey power from each of the turbines to a transformer substation. From that point, an overhead 44 kV line will convey the electricity to Hydro One’s distribution system. The components of East Durham’s proposed distribution system are collectively referred to in this Decision and Order as the “Distribution System”.

East Durham proposes to locate approximately 9.1 kilometers of the underground portion of the Distribution System on road allowances that are owned by the Municipality. The road allowances at issue are referred to in this Decision and Order as the “Road Allowances”.

Subsections 41(1) and 41(9) of the Act provide as follows:

41. (1) A transmitter or distributor may, over, under or on any public street or highway, construct or install such structures, equipment and other facilities as it considers necessary for the purpose of its transmission or distribution system, including poles and lines.

41. (9) The location of any structures, equipment or facilities constructed or installed under subsection (1) shall be agreed on by the transmitter or distributor and the owner of the street or highway, and in case of disagreement shall be determined by the Board.

East Durham submits that it is a “distributor” within the meaning of subsection 2(1) of the Act. Accordingly, East Durham submits that it has the right to install facilities for the purpose of the Distribution System under “any public street or highway” pursuant to subsection 41(1) of the Act.

East Durham submits that it has been unsuccessful in its attempts to agree with the Municipality on the location of the portion of the Distribution System that would be on the Road Allowances. The Municipality does not dispute this. East Durham also submits that neither the Municipality nor any other party in this proceeding has proposed an alternate location. This is not disputed. Accordingly, East Durham is applying to the Board under subsection 41(9) for a determination of the location of the portion of the Distribution System that would be installed under the Road Allowances as described below.

- The Distribution System shall generally be located in the Road Allowances listed on Exhibit B, Tab 6, Schedule 1, Appendix A, as shown in the drawings included in Exhibit B, Tab 6, Schedule 1, Appendix B (and updated in section 2.0 of East Durham's argument-in-chief and in response to the Board's letter dated October 2, 2013).
- Where practicable, and where it meets all applicable engineering, environmental and health and safety standards, the Distribution System lines shall be located 1-4 meters from the abutting property line.
- Where practicable, and where they meet all applicable engineering, environmental and health and safety standards, the diagrams shown at Exhibit B, Tab 6, Schedule 1, Appendices C and D shall be followed in constructing the Distribution System within the Road Allowances.¹

The submissions of the Municipality and the Parkins regarding the various issues are described under Board Findings. Board staff declined to file a submission.

SCOPE OF THE BOARD'S JURISDICTION

As indicated above, the Board's authority in this proceeding is derived from section 41 of the Act.

Subsection 41(9) limits the scope of this proceeding to a determination of the location of the applicable portion of the Distribution System within the Road Allowances.

As indicated above, the Board received a number of letters of comment from local residents. These letters dealt with the location of the Project's wind turbines and their

¹ Pre-filed evidence of East Durham, Ex B/Tab 6/Schedule 1

impact on property values, health, and aesthetics. They also dealt with the Ontario Government's renewable energy policy in general and broad environmental issues.

Given the scope of subsection 41(9), it is not the Board's role in this proceeding to decide whether the Project should be approved, consider issues relating to wind turbines or renewable energy policy generally, or consider alternatives to the Project such as routes for the Distribution System that are outside of the Road Allowances. Accordingly, the concerns in the letters of comment described above are not within the scope of this proceeding.

BOARD FINDINGS

Is The Applicant a Distributor?

The Municipality submitted that the application should be denied because East Durham is not a "distributor" within the meaning of section 41. It submitted that this is the case because East Durham does not own or operate a distribution system and that, until it receives its Renewable Energy Approval ("REA") from the Ministry of the Environment ("MOE"), it will not have the authority to do so. Distinguishing this case from the Board's Decision in the Plateau case², the Municipality submitted that Plateau, at the time of its application, had received MOE approval to construct and operate its "renewable energy generation facilities" which also authorized Plateau to construct, own and operate a distribution system.

In response, East Durham submitted that the Act does not require all necessary approvals to be in place prior to being able to access the rights afforded to a distributor under section 41.

Concerning the Plateau case, East Durham submitted that whether or not Plateau had certain approvals in place at the time of its section 41 application was not cited as a basis for the Decision. East Durham also referred to the Board's more recent Wainfleet Decision³. In that case, according to East Durham, the Board granted the section 41 application prior to Wainfleet having received the REA for its project. East Durham further submitted that the Board's Decision and Order in that case was not made conditional on receipt of the REA.

² EB-2010-0253

³ EB-2013-0031

The Board agrees with East Durham that the Act does not require that all necessary approvals, such as the REA, be obtained prior to granting an application under subsection 41(9). Accordingly, the Board does not consider that there is any relevant basis to distinguish this application from the applications in the Plateau and Wainfleet cases, in which the applicants were considered to be “distributors”. The Board notes, however, that in order to proceed with construction of the Distribution System, East Durham will need to obtain all legally required permits and other approvals.

Proposed Location of the Distribution System

East Durham has provided maps that identify the starting and ending points of the various segments of the Distribution System within Road Allowances. Further, the table at section 2.0 of East Durham's argument-in-chief provides the length and location (i.e. western side of the Road Allowance) of each segment. Concerning the proposed setback of the Distribution System as indicated above, East Durham has proposed that, where practicable, and where it meets all applicable engineering, environmental and health and safety standards, the Distribution System lines shall be located 1-4metres from the abutting property line.

The Municipality submitted that East Durham's application should be denied because East Durham had not provided the “location” of the proposed lines within the Road Allowances. The Municipality submitted that what East Durham provided was not actual locations but merely “guidelines” for determining locations. Although the Municipality acknowledged that East Durham had refined its general description of the proposed locations in its argument-in-chief, it maintained that these locations were not sufficiently precise. The Municipality submitted that it is not its duty to propose locations, and that it should be East Durham who must propose locations.

East Durham submitted that it has proposed a “narrow corridor” which provides the best balance of environmental, social, technical and economic considerations. East Durham also submitted that, given that the Board will be determining the location of the Distribution System in this proceeding prior to the start of construction, the approved location must allow for some reasonable flexibility to ensure that East Durham can address any engineering, environmental, health and safety or other practical challenges that may arise during construction.

East Durham also submitted that in its view section 41 does not require the identification of a “precise” or “exact” location. Section 41, according to East Durham, only states that the “location” shall be agreed upon by the transmitter or distributor and the owner. East Durham argued that this wording makes it a mutual obligation on the distributor and the owner of the Road Allowance. East Durham also submitted that the Municipality, by its own admission, had refused to provide feedback to help refine the proposed locations. East Durham submitted that if the Municipality had provided comments regarding the location and any existing infrastructure in the area, it would have enabled East Durham to further refine the proposed locations.

The Board issued a letter to East Durham, dated October 2, 2013, requesting additional information to support East Durham’s proposed 1-4 meter location parameter. East Durham responded, by letter dated October 4, 2013. East Durham provided examples of municipalities and counties in the vicinity of the Municipality that have adopted policies regarding the location of underground infrastructure that are consistent with the considerations described by East Durham. This included a policy issued by the County of Grey, in which the Municipality is located, titled, Policy for Utility Place on Grey County Rights of Ways.

East Durham also submitted that, as part of its REA application, it undertook various studies in the project area, such as the Natural Heritage Assessment, the Water Assessment, and Archeological Assessment and consulted all stakeholders in keeping with the requirements in Ontario Regulation 359/09. Following these studies and others, East Durham states that its initial proposal was refined and revisions were incorporated where appropriate, to ensure that the proposed location represents the best balance of environmental, social, technical and economic considerations.

The Parkins submitted that the additional information filed by East Durham did not support the request for a 1-4 meter corridor. The Parkins submitted that the requirement for a 1.5 meter setback in the Municipality of Lambton Shores was for overhead utility lines and not underground lines. The Parkins, submitted that although in their view the Municipality would likely not agree, a 1 meter setback from street line would be acceptable to them. The Parkins recommendation was based on the Municipality of Lambton Shores’ Infrastructure Design Guidelines and Construction Standards, dated January 2002.

While section 41 requires that the Board determine a “location” under the road allowance, the Board agrees with East Durham that this wording does not require a precise location. The Board considers that the mapping and location information provided by East Durham is sufficient to determine the location for the purpose of this application.

The Board accepts the evidence of East Durham that it is appropriate to locate the Distribution System lines 1-4 meters from the abutting property line. The Board considers, however, that this location could probably have been refined further if there had been more communication between East Durham and the Municipality. The Board encourages East Durham and the Municipality to consult during construction to address any issues or concerns about the precise location that may arise. As indicated below, the Board has made provision in its decision for any agreement reached as a result of such consultation.

Stray Voltage

The Municipality and the Parkins have raised concerns about the possibility that the Distribution System will cause stray voltage problems. The Parkins filed a copy of a Private Member’s Bill concerning stray voltage and the Ontario *Green Energy Act*. East Durham argued that wind turbines do not cause stray voltage. East Durham further argued that Hydro One oversees stray voltage issues and has developed a protocol to proactively test for stray voltage and mitigate any concerns at no cost to the landowner. East Durham stated that it will assist any concerned landowner in the Project area in this process with Hydro One.

East Durham also argued there is no nexus between the evidence filed by the Parkins concerning stray voltage generally and the issue before the Board in this proceeding (i.e. where portions of the Distribution System should be located within the Road Allowances). East Durham submitted that the Parkins have not filed any evidence suggesting that East Durham’s Distribution System in particular will cause stray voltage or that, if so, the proposed location of a portion of the Distribution System in the Road Allowances is such that stray voltage would cause an adverse impact.

The Board agrees with East Durham that the evidence does not indicate that the portion of the Distribution System proposed to be located in the Road Allowances would necessarily cause stray voltage, or if so, that the proposed location in the Road Allowances would cause an adverse impact due to stray voltage. The Board also notes

that section 4.7 and Appendix H of the Board's *Distribution System Code* sets out the investigation procedures related to stray voltage.

THE BOARD ORDERS THAT:

1. The location of East Durham's Distribution System on Road Allowances owned by the Municipality is approved as follows:
 - a. The Distribution System shall be located in the Road Allowances listed on Exhibit B, Tab 6, Schedule 1, Appendix A, as shown in the drawings included in Exhibit B, Tab 6, Schedule 1, Appendix B (and updated in section 2.0 of East Durham's argument-in-chief and in response to the Board's letter dated October 2, 2013).
 - b. The Distribution System lines shall be located 1-4 meters from the abutting property line unless otherwise agreed between East Durham and the Municipality.
 - c. The diagrams shown at Exhibit B, Tab 6, Schedule 1, Appendices C and D shall be followed in constructing the Distribution System within the Road Allowances.

ADDRESS

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DATED at Toronto, November 7, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary