

June 14, 2013

**RESS & COURIER**

Ontario Energy Board  
P.O. Box 2319  
27th Floor  
2300 Yonge Street  
Toronto ON M4P 1E4

Attention: Ms. K. Walli, Board Secretary

Dear Ms. Walli:

**Re: Application by East Durham Wind, Inc. ("East Durham")**

We are counsel to East Durham. Enclosed please find East Durham's application and pre-filed evidence under Section 41(9) of the *Electricity Act* to determine the location of East Durham's distribution facilities within certain road allowances.

Yours truly,



Tyson Dyck

Tel 416.865.8136  
Fax 416.865.7380  
[tdyck@torys.com](mailto:tdyck@torys.com)

cc: N. Geneau, NextEra  
A. Pinnock, NextEra  
M. Turner, Municipality of West Grey

## **ONTARIO ENERGY BOARD**

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

**AND IN THE MATTER OF** an application by East Durham Wind, Inc. for an Order or Orders pursuant to Section 41(9) of the *Electricity Act, 1998* (as amended) establishing the location of the applicant's distribution facilities within certain road allowances owned by the Municipality of West Grey, all as set out in this application.

### **APPLICATION**

**EAST DURHAM WIND, INC.**

June 14, 2013

**EXHIBIT A - ADMINISTRATIVE**

Exhibit A, Tab 1, Schedule 1

Exhibit List

**EXHIBIT LIST**

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Exhibit A, Tab 2, Schedule 1  
Application

## ONTARIO ENERGY BOARD

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

**AND IN THE MATTER OF** an application by East Durham Wind, Inc. for an Order or Orders pursuant to Section 41(9) of the *Electricity Act, 1998* (as amended) establishing the location of the applicant's distribution facilities within certain road allowances owned by the Municipality of West Grey, all as set out in this application.

### APPLICATION

1. East Durham Wind, Inc. ("**East Durham**" or the "**Applicant**") is a corporation, headquartered in Toronto, that was formed pursuant to the laws of the Province of New Brunswick, and is a wholly owned subsidiary of NextEra Energy Canada, ULC ("**NextEra**"). East Durham is the entity that is developing and that will own and operate the generation and distribution assets associated with the East Durham Wind Energy Centre (the "**Project**") in the Municipality of West Grey (the "**Municipality**") in Grey County, Ontario.
2. The Applicant hereby applies to the Ontario Energy Board (the "**Board**") pursuant to Section 41(9) of the *Electricity Act, 1998*, as amended (the "**Electricity Act**") for an order or orders establishing the location of the Applicant's distribution facilities within the public streets, highways and rights-of-way more particularly described in Exhibit B, Tab 6, Schedule 1, Appendix A owned by the Municipality (collectively, the "**Road Allowances**"), all as set out in Exhibit B, Tab 6, Schedule 1 (Proposed Location of Distribution System Within Road Allowances).
3. The Project is expected to be approved for up to 16 wind turbines, 14 of which will be built (with 2 approved turbines available as alternates) (collectively, the "**Generation**



**Facilities**”). The Generation Facilities will have a total nameplate capacity of up to 23 MW. To convey the electricity generated by the Generation Facilities to the local distribution system, which is in turn connected to the IESO-controlled grid, the Applicant plans to own and operate certain distribution facilities. These facilities will include approximately 28.3 km of 34.5 kV distribution lines located on private property and municipal and county right-of-ways, which will convey electricity from each of the wind turbines to a transformer substation, from which an overhead 44 kV line will convey the electricity to Hydro One Networks Inc.’s distribution system (collectively, the **“Distribution System”**).

4. As the owner and operator of the Distribution System, East Durham is a “distributor” within the meaning of the Electricity Act and the Board’s Decision and Order in EB-2010-0253. As a distributor, East Durham has chosen to locate a portion of its Distribution System (approximately 9.1 km) within the Road Allowances owned by the Municipality pursuant to the statutory right of distributors under subsections 41(1) and 41(5) of the Electricity Act. These subsections, among other things, give distributors the right to construct and install structures, equipment and other distribution facilities over, under or on any public street or highway without the consent of the owner of or any other person having an interest in such public street or highway.
5. In accordance with subsection 41(9) of the Electricity Act, East Durham, as the distributor, and the Municipality, as the owner of the Road Allowances, are required only to agree on the exact location of the Distribution System within the Road Allowances, which location shall be determined by the Board in the event of a disagreement.
6. Notwithstanding its statutory rights, East Durham has sought, as is commonplace in Ontario, to negotiate an agreement with the Municipality with respect to the location, construction, operation and maintenance of the Distribution System within the Road Allowances (the **“Proposed Agreement”**).

7. However, the Municipality has not responded constructively in respect of the Proposed Agreement. Rather, the Municipality has effectively refused to engage East Durham in discussions on where in the Road Allowances the Distribution System will be located, despite East Durham's good faith efforts to initiate those discussions. Instead, the Municipality has stated that it will only engage in these discussions if East Durham agrees to certain other demands. As a result, the parties have been unable to reach an agreement regarding the location of the Distribution System within the Road Allowances.
8. Because East Durham and the Municipality cannot reach an agreement with respect to the location of the Distribution System within the Road Allowances, the Applicant requests that the Board issue an order or orders, pursuant to section 41(9) of the Electricity Act, establishing the location of the Distribution System within the Road Allowances, all as set out in Exhibit B, Tab 6, Schedule 1.
9. East Durham requests that the Board expedite its hearing of this application in accordance with sections 2.01 and 7.01 of the Board's *Rules of Practice and Procedure* because the only person directly affected by this application is the Municipality as the sole owner of the Road Allowances.
10. East Durham also requests that the Board, in hearing this application, be guided by its mandate, under section 1(1)(5) of the *Ontario Energy Board Act, 1998*, 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 systems and distribution systems to accommodate the connection of renewable energy generation facilities".
11. The Applicant requests that copies of all documents filed with or issued by the Board in connection with this Application be served on the Applicant and the Applicant's counsel as follows:

(a) The Applicant:

East Durham Wind, Inc.  
390 Bay Street, Suite 1720  
Toronto, ON M5H 2Y2

Attention: Ms. Nicole Geneau  
Tel: 647-789-5650  
Fax: 416-364-2533  
Email: [nicole.geneau@nee.com](mailto:nicole.geneau@nee.com)

(b) The Applicant's Counsel:

Torys LLP  
Suite 3000  
79 Wellington St. W.  
Box 270, TD Centre  
Toronto, ON M5K 1N2

Attention: Mr. Tyson Dyck  
Tel: 416-865-8136  
Fax: 416-865-7380  
Email: [tdyck@torys.com](mailto:tdyck@torys.com)

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

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

Dated at Toronto, Ontario, this 14th day of June, 2013.

**EAST DURHAM WIND, INC.**

By its counsel

Torys LLP



Tyson Dyck

Exhibit A, Tab 3, Schedule 1  
Summary of the Pre-Filed Evidence

**SUMMARY OF THE PRE-FILED EVIDENCE**

1 **THE APPLICATION AND THE PROJECT**

2 This is an application by East Durham Wind, Inc. (“**East Durham**” or the “**Applicant**”) for an  
3 order or orders pursuant to section 41(9) of the *Electricity Act, 1998* (as amended) (the  
4 “**Electricity Act**”) establishing the location of the Applicant’s distribution facilities within  
5 certain public rights-of-way, streets and highways owned by the Municipality of West Grey  
6 (collectively, the “**Road Allowances**”), all as set out in Exhibit B, Tab 6, Schedule 1 (Proposed  
7 Location of Distribution System within Road Allowances).

8 East Durham is a corporation, headquartered in Toronto, which was formed pursuant to the laws  
9 of the Province of New Brunswick, and is a wholly owned subsidiary of NextEra Energy  
10 Canada, ULC (“**NextEra**”). East Durham is the entity that is developing and that will own and  
11 operate the generation and distribution assets associated with the East Durham Wind Energy  
12 Centre (the “**Project**”) in the Municipality of West Grey (the “**Municipality**”) in Grey County,  
13 Ontario.

14 The Project is expected to be approved for up to 16 wind turbines, 14 of which will be built (with  
15 2 approved turbines available as alternates) (collectively, the “**Generation Facilities**”). The  
16 Generation Facilities will have a total nameplate capacity of up to 23 MW. To convey the  
17 electricity generated by the Generation Facilities to local distribution system, which is in turn  
18 connected to the IESO-controlled grid, the Applicant plans to construct certain distribution  
19 facilities. These facilities will include approximately 28.3 km of 34.5 kV distribution lines  
20 located on private property and municipal and county right-of-ways, which will convey

1 electricity from each of the wind turbines to a transformer substation, from which an overhead 44  
2 kV line will convey the electricity to Hydro One Networks Inc.'s distribution system  
3 (collectively, the "**Distribution System**").

#### 4 **PROPOSED USE OF MUNICIPAL ROAD ALLOWANCES**

5 Pursuant to sections 41(1) and 41(5) of the Electricity Act and the Board's Decision and Order in  
6 EB-2010-0253, distributors may construct or install distribution facilities over, under or on any  
7 public streets or highways without the consent of the owner of or any other person having an  
8 interest in such streets or highways. In this case, East Durham has chosen to locate a portion of  
9 the Distribution System (approximately 9.1 km) within the Road Allowances that are particularly  
10 identified in Exhibit B, Tab 6, Schedule 1, Appendix A. The Municipality has acknowledged  
11 that East Durham has the right to locate the Distribution System within the Road Allowances in  
12 its May 23, 2013 letter (see Exhibit B, Tab 5, Schedule 1, Appendix G). Moreover, as set out in  
13 Exhibit B, Tab 5, Schedule 1 and Exhibit B, Tab 7, Schedule 1, a balance of environmental,  
14 social, technical and economic considerations has resulted in East Durham's decision to locate  
15 the Distribution System within the Road Allowances.

#### 16 **PROPOSED ROAD USE AGREEMENT**

17 The only outstanding issue with respect to East Durham's use of the Road Allowances is the  
18 exact location of the Distribution System within the Road Allowances. In this regard, East  
19 Durham undertook to negotiate a road use agreement with the Municipality (the "**Proposed**  
20 **Agreement**", see Exhibit B, Tab 4, Schedule 1, Appendix A), even though East Durham is not  
21 aware of any statutory obligation to enter into such an agreement.

1 However, the Municipality has not responded constructively in respect of the Proposed  
2 Agreement. Rather, the Municipality has effectively refused to engage East Durham in  
3 discussions on where in the Road Allowances the Distribution System will be located, despite  
4 East Durham's good faith efforts to initiate those discussions. Instead, the Municipality has  
5 stated that it is an unwilling host for wind energy development. It has also indicated that it will  
6 only engage in these discussions if East Durham agrees to certain other demands, as described in  
7 Exhibit B, Tab 5, Schedule 1. As a result, the parties have been unable to reach an agreement  
8 regarding the location of the Distribution System within the Road Allowances.

## 9 **POTENTIAL IMPACTS**

10 East Durham has attempted to ensure that the Municipality would not be prejudiced by the  
11 location of the Distribution System within the Road Allowances (see Exhibit B, Tab 7, Schedule  
12 1). Under the Proposed Agreement, East Durham would have provided certain benefits and  
13 protections to the Municipality in respect of the construction, installation, operation, maintenance  
14 and decommissioning of the Distribution System (see Exhibit B, Tab 4, Schedule 1, Appendix  
15 A). For example, East Durham would have undertaken the work at its own expense in  
16 accordance with good engineering practices, and used reasonable efforts to avoid unnecessary  
17 adverse impacts on the public use of the Road Allowances. East Durham would have also  
18 repaired the surface of any Road Allowances that was broken in the course of the work.  
19 Moreover, East Durham has conducted a detailed siting process; developed comprehensive  
20 mitigation measures for the Project's environmental impacts.



1 In contrast, the Municipality's failure to enter into the Proposed Agreement could prejudice East  
2 Durham. For example, such failure is a potential source of delay in the development of the  
3 Project that can result in increased equipment storage, lost revenue and other costs.

4 **ORDER SOUGHT**

5 East Durham therefore applies to the Board pursuant to section 41(9) of the Electricity Act for an  
6 order or orders establishing the location of the Distribution System within the Road Allowances,  
7 all substantially in accordance with East Durham's plans as set out in Exhibit B, Tab 6, Schedule  
8 1 (Proposed Location of Distribution System Within Road Allowances).

9 Because of the limited scope of section 41(9), and because the Applicant and the Municipality  
10 have been unable to agree on the exact location of the Distribution System within the Road  
11 Allowances (see Exhibit B, Tab 5, Schedule 1), the only issue before the Board is determining  
12 that location. The Board has acknowledged the limited scope of, and its limited jurisdiction in,  
13 proceedings under section 41(9) of the Electricity Act for facilities that are similar in nature to  
14 the Distribution System. Specifically, in its Decision and Order in the section 41 application by  
15 Plateau Wind Inc. (EB-2010-0253), the Board states as follows:

16 [Section 41 of the Electricity Act] limits the Board's role in this proceeding to a  
17 determination of the location of Plateau's proposed Distribution Facilities within  
18 the Road Allowances. Given the legislative restriction on the Board's  
19 jurisdiction, it is not the Board's role in this proceeding to approve or deny the  
20 Project or the Distribution Facilities, to consider the merits, prudence or any  
21 environmental, health or economic impacts associated with it or to consider  
22 alternatives to the project such as routes for the Distribution Facilities that are  
23 outside of the prescribed Road Allowances. Also, it is not within the Board's

1 jurisdiction in this proceeding to consider any aspect of Plateau’s proposed wind  
2 generation facilities.<sup>1</sup>

3 Accordingly, the present application only concerns the question of where East Durham’s  
4 Distribution System will be located within the Road Allowances. Consideration of the  
5 application does not include a consideration of which Road Allowances East Durham has chosen  
6 to use.

7 East Durham further requests that the Board establish a written hearing of this application, and  
8 that the Board expedite such hearing in accordance with sections 2.01 and 7.01 of the Board’s  
9 *Rules of Practice and Procedure*, particularly because the only person affected by this  
10 application is the Municipality, as the sole owner and controller of the Road Allowances.

11 East Durham also requests that the Board, in hearing this application, be guided by its mandate,  
12 under section 1(1)(5) of the *Ontario Energy Board Act, 1998*, to “promote the use and generation  
13 of electricity from renewable energy sources in a manner consistent with the policies of the  
14 Government of Ontario, including the timely expansion or reinforcement of transmission systems  
15 and distribution systems to accommodate the connection of renewable energy generation  
16 facilities”.

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<sup>1</sup> Ontario Energy Board, Decision and Order, Section 41 Application by Plateau Wind Inc. (EB-2010-0253), para. 9.

**EXHIBIT B – PRE-FILED EVIDENCE**

Exhibit B, Tab 1, Schedule 1

The Applicant

**THE APPLICANT**

1 East Durham Wind, Inc. (the “**East Durham**”) is a corporation, headquartered in Toronto, which  
2 was formed pursuant to the laws of New Brunswick for the purposes of developing, constructing  
3 and operating the East Durham Wind Energy Centre. East Durham is a wholly owned subsidiary  
4 of NextEra Energy Resources Canada, ULC (“**NextEra**”). NextEra constructs, manages and  
5 operates wind generation facilities with over 10,000 MW of wind energy generation in North  
6 America (installed capacity).

Exhibit B, Tab 2, Schedule 1

Project Description

## **PROJECT DESCRIPTION**

1 The East Durham Wind Energy Centre (the “**Project**”) will be located within the Municipality of  
2 West Grey (the “**Municipality**”), which is situated in Grey County in south-central Ontario.

### 3 1. **FIT Contract**

4 The Project is being developed pursuant to a contract with the Ontario Power Authority under  
5 the FIT Program. The Project will therefore further the Government of Ontario’s policy  
6 objectives of increasing the amount of renewable energy generation that forms part of Ontario’s  
7 energy supply mix, while promoting a green economy. To help facilitate these objectives, the  
8 distribution facilities that are associated with the Project will deliver electricity from the Project  
9 turbines to the local distribution system, which is in turn connected to the IESO-controlled grid.

### 10 2. **The Generation Facilities and Distribution System**

11 As shown in Appendix A of this Exhibit B, Tab 2, Schedule 1, the site of the Project’s generation  
12 facilities (the “**Generation Facilities**”) is situated in the Municipality, east of the Community of  
13 Durham and west of the village of Priceville. The Generation Facilities will consist of up to 14  
14 wind turbines (plus two approved alternate wind turbine sites) and will have a total nameplate  
15 capacity of up to 23 MW. Each turbine will consist of a supporting tower, concrete tower  
16 foundation, rotor blades and a gearbox/electrical generator housing.

17 The distribution system associated with the Project (the “**Distribution System**”) will convey  
18 electricity from the Generation Facilities to the Hydro One Networks Inc. local distribution  
19 system, as follows. At the base of each turbine will be a small step-up transformer that will  
20 transform the electricity to 34.5 kV, making it suitable for transmitting along the collector  
21 system. The collector system will include approximately 28.3 Km of underground 34.5 kV  
22 feeder circuits that connect and convey electricity from each of the turbines to a transformer  
23 substation, from which an overhead 44 kV line will run to the Hydro One Networks Inc. local  
24 distribution system. Except for the 44 kV overhead line, the distribution lines will primarily be  
25 buried to a depth of approximately 0.5 to 2 meters by means of trenching or, where being  
26 installed underneath watercourses, wetland features or roads, by means of directional drilling.

1 The Applicant has secured rights in certain privately owned lots on which the turbines, turbine  
2 access roads and segments of the Distribution System will be situated. These segments of the  
3 Distribution System are illustrated on the map provided in Appendix A. Approximately 9.1 km  
4 of the Distribution System will also be located in certain public rights-of-way, streets and  
5 highways that are owned by the Municipality, as more particularly described in Exhibit B, Tab 6,  
6 Schedule 1 (the “**Road Allowances**”). Maps showing the Road Allowances are provided in  
7 Appendix A of this Exhibit B, Tab 2, Schedule 1 and in Appendix C of Exhibit B, Tab 6,  
8 Schedule 1.



**APPENDIX 'A'**

**MAP OF PROPOSED GENERATION AND DISTRIBUTION**

**FACILITIES ASSOCIATED WITH THE PROJECT**



# East Durham Project Overview Map

Ontario, Canada

### Legend

- Cities
- Proposed Turbines
- ◆ Planned MET Towers
- - - Collection Lines
- Service Roads
- Substation
- Temporary Laydown
- ▭ Project Boundary
- ▭ County Boudaries



Date: 3/25/2013  
 PROPRIETARY AND CONFIDENTIAL

Projection: NAD\_1983\_UTM\_Zone\_17N  
 Datum: NAD 83

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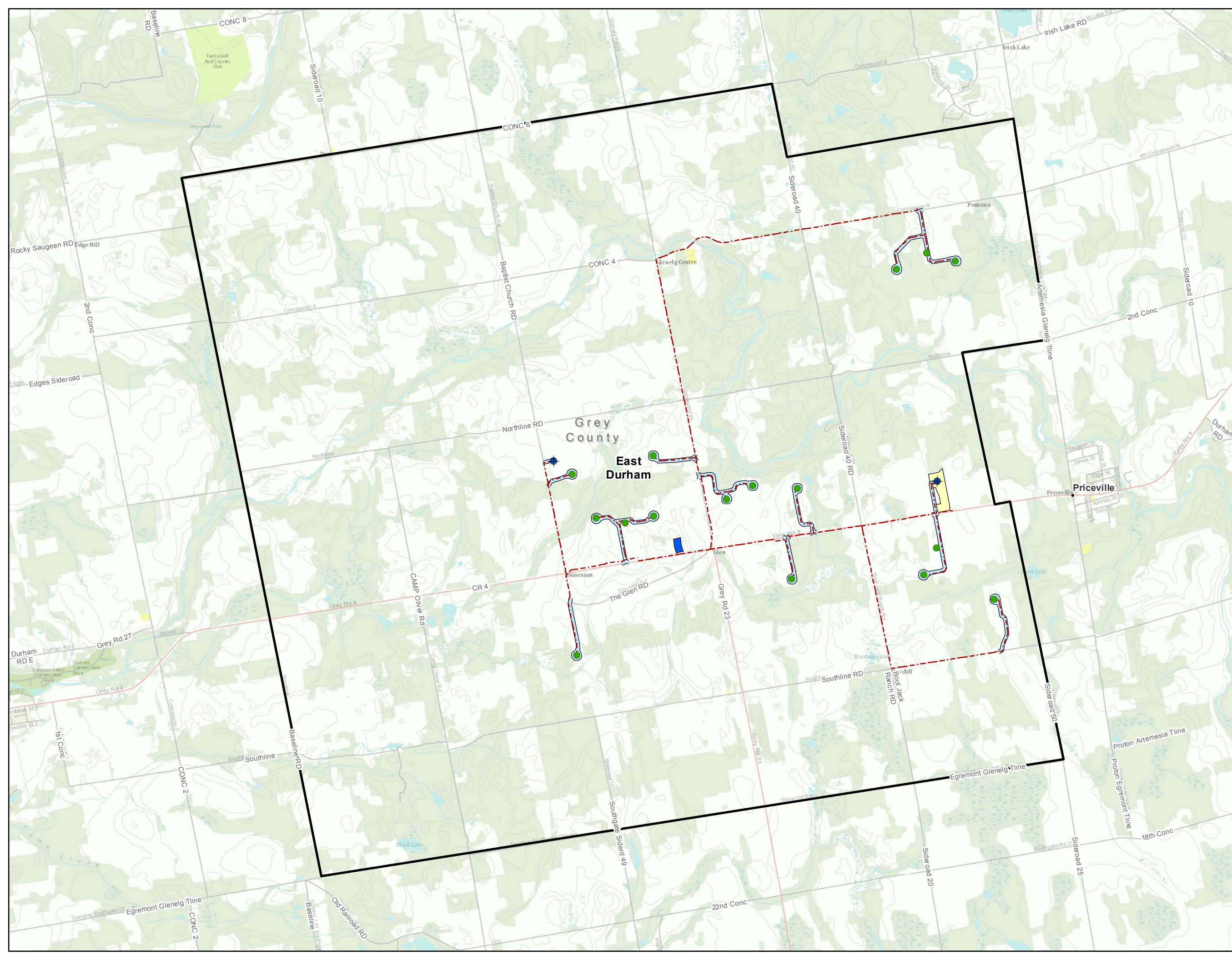


Exhibit B, Tab 3, Schedule 1  
Statutory Rights of Distributors

**STATUTORY RIGHTS OF DISTRIBUTORS**

1     **1.     East Durham is a “Distributor”**

2     Under the *Electricity Act, 1998* (the “**Electricity Act**”), a “distribution system” means a system  
3     for conveying electricity at voltages of 50 kV or less, and includes any structures, equipment or  
4     other things used for that purpose. The same definition is used under the *Ontario Energy Board*  
5     *Act, 1998* (the “**OEB Act**”). As described in Exhibit B, Tab 2, Schedule 1, the Applicant’s  
6     Distribution System will consist of underground 34.5 kV feeder circuits that connect and convey  
7     electricity from each of the turbines to the transformer substation and ultimately via an overhead  
8     44kV line and Hydro One Networks Inc.’s distribution system, which in turn connects to the  
9     IESO-controlled grid. As such, the Distribution System is a “distribution system” for purposes  
10    of the Electricity Act and the OEB Act, including the regulations thereunder.

11    Under this same legislation a “distributor” is defined simply as a person who owns or operates a  
12    “distribution system”. Accordingly, in respect of the Distribution System the Applicant is a  
13    “distributor”. Pursuant to Section 4.0.1(1)(d) of O. Reg. 161/99 under the OEB Act, a distributor  
14    will not be required to obtain or hold a distribution license under Section 57(a) of the OEB Act  
15    where, as will be the case with East Durham, the distributor distributes electricity for a price no  
16    greater than that required to recover all reasonable costs with respect to a distribution system that  
17    they own or operate, if the distributor is a generator and distributes electricity solely for the  
18    purpose of conveying it into the IESO-controlled grid. While the Applicant will not require a  
19    license from the Board in respect of the Distribution System, this will not affect the Applicant’s  
20    status as a “distributor” for purposes of the Electricity Act or OEB Act or the regulations  
21    thereunder.

22    The above analysis is consistent with the Board’s findings in EB-2010-0253, where the Board  
23    considered an application by Plateau Wind Inc. under section 41 of the Electricity Act in

1 circumstances similar to the present application.<sup>1</sup> A copy of the Board’s Decision and Order in  
2 EB-2010-0253 is provided in Appendix A of this Exhibit B, Tab 3, Schedule 1.

3 **2. Rights of Distributors Under Section 41**

4 Pursuant to subsections 41(1) and 41(5) of the Electricity Act, a distributor may construct or  
5 install such structures, equipment and other facilities as it considers necessary for the purpose of  
6 its distribution system, including poles and lines, within any public street or highway without the  
7 consent of the owner of or any other person having an interest in such street or highway — in  
8 this case, the Road Allowances of the Municipality of West Grey (the “**Municipality**”).<sup>2</sup> In the  
9 event that a distributor and the owner of the chosen public streets or highways cannot agree to  
10 the exact location of the distribution facilities within such public streets or highways, section  
11 41(9) of the Electricity Act provides that the Board shall determine such location.<sup>3</sup>

12 Under section 41 of the Electricity Act, the Applicant therefore has the right to locate the  
13 Distribution System within the Road Allowances and the right to bring this application. These  
14 rights arise because the Applicant, as the owner and operator of the Distribution System, is a  
15 “distributor” within the meaning given to such term in the Electricity Act. The Municipality has  
16 acknowledged that East Durham has the right to locate the Distribution System within the Road  
17 Allowances in its May 23, 2013 letter (see Exhibit B, Tab 5, Schedule 1, Appendix G).

18 Also notable is that subsections 41(2) and (3) of the Electricity Act grant related rights to the  
19 distributor to inspect, maintain, repair, alter, remove or replace any structure, equipment or  
20 facilities constructed or installed under subsection 41(1), as well as to enter the street or highway

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<sup>1</sup> Ontario Energy Board, Decision and Order, Section 41 Application by Plateau Wind Inc. (EB-2010-0253), paras. 39-41.

<sup>2</sup> Section 41(1) states, “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.” Section 41(5) states, “The exercise of powers under subsections [41] (1), (2) and (3) does not require the consent of the owner of or any other person having an interest in the street or highway.”

<sup>3</sup> Section 41(9) states, “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.”

1 at any reasonable time to exercise the powers referred to in subsections 41(1) and (2).<sup>4</sup> In this  
2 regard, East Durham has the right, pursuant to section 41(3) of the Electricity Act, to enter into,  
3 and travel and carry equipment along the public streets, highways and right-of-ways of the  
4 Municipality as East Durham deems necessary to construct, install, operate, maintain and  
5 decommission the Distribution System within the Road Allowances.

6 Because of the limited scope of section 41(9), and because the Applicant and the Municipality  
7 have been unable to agree on the exact location of the Distribution System within the Road  
8 Allowances (see Exhibit B, Tab 5, Schedule 1), the only issue before the Board is determining  
9 that location. The Board has acknowledged the limited scope of, and its limited jurisdiction in,  
10 proceedings under section 41(9) of the Electricity Act for facilities that are similar in nature to  
11 the Distribution System. Specifically, in its Decision and Order in the section 41 application by  
12 Plateau Wind Inc. (EB-2010-0253), the Board states as follows:

13 [Section 41 of the Electricity Act] limits the Board's role in this proceeding to a  
14 determination of the location of Plateau's proposed Distribution Facilities within  
15 the Road Allowances. Given the legislative restriction on the Board's  
16 jurisdiction, it is not the Board's role in this proceeding to approve or deny the  
17 Project or the Distribution Facilities, to consider the merits, prudence or any  
18 environmental, health or economic impacts associated with it or to consider  
19 alternatives to the project such as routes for the Distribution Facilities that are  
20 outside of the prescribed Road Allowances. Also, it is not within the Board's  
21 jurisdiction in this proceeding to consider any aspect of Plateau's proposed wind  
22 generation facilities.<sup>5</sup>

23 Accordingly, the present application only concerns the question of where East Durham's  
24 Distribution System will be located within the Road Allowances.

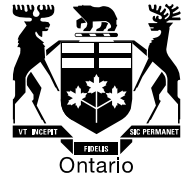
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<sup>4</sup> Section 41(2) states, "The transmitter or distributor may inspect, maintain, repair, alter, remove or replace any structure, equipment or facilities constructed or installed under subsection (1) or a predecessor of subsection (1)." Section 41(3) states, "The transmitter or distributor may enter the street or highway at any reasonable time to exercise the powers referred to in subsections (1) and (2)."

<sup>5</sup> Ontario Energy Board, Decision and Order, Section 41 Application by Plateau Wind Inc. (EB-2010-0253), para. 9.

**APPENDIX 'A'**

**DECISION AND ORDER (EB-2010-0253)**



**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*<sup>1</sup>. 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.

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<sup>1</sup> 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."<sup>2</sup>

[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.

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<sup>2</sup> 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 Service<sup>3</sup> 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*.

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<sup>3</sup> 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-Artermesia Townline), between Provincial Highway No. 10 and East Back Line.  
PIN: 37265-0133(LT)
2. East Back Line from 210 Sideroad Road to Melancthon Artemisia Townline.  
PIN: 37265-0136(LT) and 37265-0134(LT)
3. Melancthon Artemisia 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 Artemisia 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.<sup>9</sup> 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.<sup>10</sup>
- 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.<sup>11</sup>  
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.<sup>12</sup>

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:

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<sup>9</sup> 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 guy anchors on private properties, as well as to accommodate the flow of the ditch drainage.

<sup>10</sup> See Exhibit B, Tab 4, Schedule 1, Page 3 of the Application.

<sup>11</sup> 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.

<sup>12</sup> 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.<sup>13</sup>
- 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.<sup>14</sup>
- 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

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<sup>13</sup> 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 ...."

<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> 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.

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

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

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



Exhibit B, Tab 4, Schedule 1  
Proposed Road Use Agreement

**PROPOSED ROAD USE AGREEMENT**

1 As set out in Exhibit B, Tab 5, Schedule 1, East Durham has sought to reach an agreement with  
2 the Municipality on the location of the Distribution System within the Road Allowances. In an  
3 attempt to formalize such an agreement, East Durham undertook to negotiate a road use  
4 agreement with the Municipality (the “**Proposed Agreement**”), even though East Durham is not  
5 aware of any statutory obligation to enter into such an agreement. As part of these negotiations,  
6 East Durham and the Municipality held various discussions and exchanged various information,  
7 including with respect to East Durham’s plans for locating segments of its Distribution System  
8 within the Road Allowances.

9 Attached as Appendix A to this Exhibit B, Tab 4, Schedule 1 is a copy of the Proposed  
10 Agreement that East Durham provided to the Municipality for comments on September 27, 2012.  
11 Under the Proposed Agreement, East Durham would have provided certain benefits and  
12 protections to the Municipality in respect of the construction, installation, operation, maintenance  
13 and decommissioning of the Distribution System. For example, East Durham would have  
14 undertaken the work at its own expense in accordance with good engineering practices (see  
15 section 4.1), and used reasonable efforts to avoid unnecessary adverse impacts on the public use  
16 of the Road Allowances (see section 4.2). East Durham would have also repaired the surface of  
17 any Road Allowances that was broken in the course of the work (see section 4.4).

18 Moreover, the Proposed Agreement set out a proposal for the location of the Distribution System  
19 within the Road Allowances (see section 6.2). This location would have been appropriately set  
20 back from the travelled portion of the Road Allowances, at an appropriate depth to avoid  
21 conflicts with other existing infrastructure. It would have also minimized the need for crossing  
22 the Road Allowances.

23 However, since receiving the Proposed Agreement on September 27, 2012, the Municipality has  
24 failed to respond constructively in respect of East Durham’s attempts to determine the location of  
25 the Distribution System within the Road Allowances. In fact, the Municipality has to date not  
26 provided any specific comments on the Proposed Agreement. As set out further in Exhibit B,

1 Tab 5, Schedule 1, the Municipality's position on the Proposed Agreement demonstrates that the  
2 parties are unable to reach an agreement regarding the location of the Distribution System in the  
3 Road Allowances.

**APPENDIX 'A'**

**PROPOSED AGREEMENT**

**THIS ROAD USE AGREEMENT** (the “Agreement”) made as of this \_\_\_\_ day of \_\_\_\_\_, 2012 (“Effective Date”),

**BETWEEN:**

**THE CORPORATION OF THE MUNICIPALITY OF WEST GREY**

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

- AND -

**EAST DURHAM WIND, INC. (“East Durham”)**, a company incorporated pursuant to the laws of the Province of New Brunswick and authorized to conduct business in the Province of Ontario

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

**WHEREAS** the Proponent is developing an approximately 23 megawatt commercial wind energy project known as the East Durham Wind Energy Centre (the “Wind Project”) in The Municipality of West Grey (the “Municipality”) pursuant to a Power Purchase Agreement dated July 13, 2011, between the Ontario Power Authority and the Proponent (the “PPA”);

**AND WHEREAS** the Proponent wishes to make use of certain Road Allowances as hereinafter defined within the Municipality to make deliveries of materials and components to, and to allow for construction, operation and maintenance 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, maintain and operate Electrical Infrastructure as hereinafter defined over, across, along, within or under the 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 to the Road Allowances to permit ongoing access to the turbines during Wind Project operations;

**NOW THEREFORE IN CONSIDERATION** of the Proponent’s execution of the Agreement, and of the undertakings and agreement hereinafter expressed by the Municipality and the Proponent (each a “Party” and collectively the “Parties”), the receipt and sufficiency of which consideration is hereby acknowledged, and upon the terms hereinafter set forth, the Parties mutually covenant and agree as follows:

Draft: Created on 6/13/2013 9:37:00 AM

## 1. Interpretation

### 1.1 In this Agreement:

- (a) “**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 of like application to the extent, in each case, that the same are legally binding on the Parties in the context of this Agreement;
- (b) “**Commercial Operation Date**” means the Commercial Operation Date as defined in the PPA between the Proponent and the Ontario Power Authority.
- (c) “**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 wind turbines for the Wind Project;
- (d) “**Effective Date**” is defined at the top of page 1 herein;
- (e) “**Electrical Infrastructure**” means infrastructure for the transmission and distribution of electricity, including a line or lines of towers and/or poles, with such wires and/or cables (whether above ground or buried), for the transmission of electrical energy, and all necessary and proper foundations, footings, cross arms and other appliances, facilities and fixtures for use in connection therewith including without limitation, 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;
- (f) “**Emergency**” shall mean a sudden unexpected occasion or combination of events necessitating immediate action.
- (g) “**Entrance Work**” is defined as constructing and maintaining Entrances to private wind turbine access roads;
- (h) “**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 that lead to Wind Project turbines and other infrastructure;
- (i) “**Installation Work**” means Road Work and other work involving or incidental to the installation, construction, enlargement, relocation or removal of Electrical Infrastructure and Entrances;

- (j) “**Plans**” is defined as detailed plans that identify the location, size, elevation and scope of the Installation Work and demonstrate that the Installation Work will comply with applicable safety, technical and regulatory standards and the requirements of Applicable Law;
- (k) “**Public Authority**” means any governmental, federal, provincial, regional, municipal or local body having authority over the Municipality, the Proponent, the Wind Project, the Electrical Infrastructure or the Road Allowances;
- (l) “**Repair Work**” means work involving the maintenance, repair and 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;
- (m) “**Road Allowance(s)**” means public rights of way, highways, streets, sidewalks, walkways, driveways, ditches and boulevards and the allowances therefore, including the Entrances, all owned or managed under the legal jurisdiction of the Municipality, as shown on the map attached as Schedule “A” hereto;
- (n) “**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;
- (o) “**Secured Party**” or “**Secured Parties**” is defined as the Proponent’s lenders;
- (p) “**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;
- (q) “**Transmission Work**” is defined as installing, constructing, operating, inspecting, maintaining, altering, enlarging, repairing, replacing, relocating and removing Electrical Infrastructure over, along, across, within or under the Road Allowances in connection with the Wind Project;
- (r) “**Tree Work**” is defined as cutting, trimming or removing trees or bushes growing in the Road Allowances; and
- (s) “**Work**” means, collectively, Deliveries, Road Work, Entrance Work, Tree Work, Repair Work and Transmission Work as defined herein.

1.2 The following schedules to this Agreement are an integral part of this Agreement:

Schedule A - Plan showing applicable Road Allowances and Entrances from Road Allowances to access roads leading to Wind Project turbines

Schedule B - Decommissioning Report prepared for the Proponent’s “Renewable Energy Application” for the Wind Project

1.3 Nothing contained in this Agreement shall abrogate or prejudice any statutory rights held by either Party under any applicable statutes 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 Municipality grants and transfers to the Proponent for a period of fifty (50) years from the Effective Date hereof (the “Term”) 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) 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 wind turbines for the Wind Project (the “Deliveries”), and temporarily reconstructing or re-aligning road sections, turns and intersections on the Road Allowances to permit the passage of said overweight or over-size cargoes (the “Road Work”).
- (b) constructing and maintaining Entrances to private wind turbine access roads (“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.
- (c) installing, constructing, operating, inspecting, maintaining, altering, enlarging, repairing, replacing, relocating and removing Electrical Infrastructure over, along, across, within or under the Road Allowances in connection with the Wind Project (the “Transmission Work”).

2.2 Subject to subsections 6.6 and 6.8 of this Agreement, the Municipality reserves its right to enter upon and use the Road Allowances without notice to the Proponent 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 such entry, use, grant or transfer by the Municipality does not adversely affect the Electrical Infrastructure, the Deliveries, the Road Work, the Entrances, the Entrance Work, the Transmission Work, the Wind Project or the exercise of the Proponent’s rights under this Agreement (individually, an “Adverse Effect”).

2.3 The Municipality represents that it:

- (a) 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) has obtained the full and unconditional due authorization for execution and delivery of this Agreement by all required resolutions and other required municipal approvals; and



- (c) shall defend its title to the Road Allowances against any person or entity claiming any interest adverse to the Municipality 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.
- 2.4 The Municipality agrees, in the event it decides to permanently close and/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 registerable form and in priority to any encumbrances having an Adverse Effect, over that part of the Road Allowance closed or disposed of sufficient as further assurance to the preservation of any part of the Electrical Infrastructure in its then existing location, to enter upon such closed or disposed of Road Allowance to perform Work in respect of such Electrical Infrastructure and to gain access to the Wind Project on the terms and conditions set out in this Agreement.
- 2.5 In the event that the Municipality decides to dispose of any Road Allowance or part thereof which may affect the interests of the Proponent, the Municipality 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 Municipality's obligations hereunder from and after the date of the transfer or assignment.
- 2.6 In the event that the Proponent obtains an extension of the term of the PPA or the operational term of the Wind Project, the Proponent and the Municipality shall enter into good faith negotiations regarding the extension of the Term and any appropriate amendments to this Agreement.

### **3. Conditions Precedent to Commencement of Work**

- 3.1 Prior to the commencement of any Work, the Proponent shall arrange for and maintain liability insurance satisfactory to the Municipality, acting reasonably, insuring, for the joint benefits of the Proponent, any lender(s) to the Proponent and the Municipality against all claims, liabilities, losses, costs, damages or other expenses of every kind that the Proponent, such lender(s) and the Municipality may incur or suffer as a consequence of personal injury, including death, and property damages arising out of or in any way incurred or suffered in connection with the Work as contemplated by this Agreement, which insurance, at a minimum, shall provide coverage with limits of liability not less than Five Million Dollars (\$5,000,000.00) per occurrence in the aggregate at the commencement of the term hereof, and the Proponent shall satisfy the Municipality, from time to time upon reasonable request by the Municipality, that the premiums of such insurance haven been paid and that such insurance is in full force and effect.

- 3.2 Prior to the commencement of any Work, the Proponent and the Municipality shall document, by means of video recording or another means satisfactory to the Municipality 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, and also at a date no earlier than twelve (12) months following the Commercial Operation date a post condition survey, subject to the same conditions as outlined in section 3.2, shall be completed, 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 Municipality in the amount of two hundred and fifty thousand dollars (\$250,000) to guarantee the Proponent's performance of its obligations under subsection 4.4 and 4.5 hereof. The Municipality 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 subsection 4.4 and 4.5 of this Agreement. The Municipality shall refund or release any undrawn security to the Proponent no later than twelve (12) months after the Commercial Operation Date, and the successful review of the post condition surveys and completion of 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 Municipality acting reasonably.
- 3.5 Where it is deemed preferable to the Municipality, that the repair work is best incorporated into the costs of a larger restoration or reconstruction project, the costs of the repair work are to be agreed upon by the parties and paid to the Municipality.

#### **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 as defined herein approved by the Municipality, this Agreement and Applicable Law.
- 4.2 The Proponent further agrees to use 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 the temporary modification of traffic patterns or the imposition of temporary restrictions on public access to or use of the Road Allowances ("Traffic Effects"). The Proponent agrees to:
- (a) give five (5) days notice of anticipated Traffic Effects to the Municipality and affected residents and to coordinate with the Municipality 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 which existed prior to the commencement of such Work and, further thereto, the Proponent also agrees that it shall thereafter, for a period of twelve (12) months following the Commercial Operation Date, monitor that portion of such restored Road Allowances, at the sole expense of the Proponent, and repair any settling thereof caused by the Work, to the satisfaction of the Municipality, acting reasonably.
- 4.5 The Proponent shall be liable at all times for the repair, to the reasonable satisfaction of the Municipality, of any damage to the Roads caused by the Proponents use. Any repairs undertaken shall restore the road surface to the same or better condition it was in immediately prior to the use of the Road. The Proponent shall, providing that the weather and weather-related conditions permit, complete these repairs within five (5) business days of being notified by the Municipality of the need for such repairs.
- 4.6 The Proponent agrees to make reasonable efforts to rely on the Municipality road maintenance staff to implement measures to mitigate the Traffic Effects pursuant to subsection 4.3 of this Agreement and to repair, reinstate and restore the Road Allowances pursuant to subsection 4.4 of this Agreement, and the Proponent agrees to reimburse the Municipality for the reasonable costs of any such work conducted by the Municipality staff, including the Municipality staff and supervisory time, materials and contracted services.
- 4.7 The Parties agree to cooperate with each other and with local emergency services to develop and adopt protocols applicable 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 for the purpose. The Proponent shall be responsible for all costs associated with such Emergencies.
- 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 Municipality not less than fifteen (15) days prior to commencement of such

Installation Work that identify the location, size, elevation and scope of the Installation Work and demonstrate that the Installation Work will comply with applicable safety, technical and regulatory standards and the requirements of Applicable Law (the “Plans”).

- 5.2 The Municipality, acting reasonably and with diligence, shall review the Plans either approve the Plans or advise the Proponent in writing of any modifications or amendments to the Plans that the Municipality may seek and the reasons therefore. During its review of the Plans the Municipality shall be entitled to take into consideration any specific municipal or engineering interests affected by the Plans.
- 5.3 The Proponent shall not proceed with the Installation Work before receiving:
  - (a) written approval of the Plans from the Municipality, 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 coordinate with any other person, entity or body operating 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 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 Municipality 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 Municipality, 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 Municipality. The Municipality 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 Municipality 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. Transmission Work**

- 6.1 The Parties acknowledge and agree that the Proponent, when undertaking the Transmission Work, will install Electrical Infrastructure, excluding Electrical Infrastructure greater than fifty kilovolts (50 kV), below-grade within the Road Allowances except where the Proponent in consultation with the Municipality identifies environmental, topographical or other obstacles that require the installation of poles or other above-grade Electrical Infrastructure to permit the transmission of electricity over, around or across the obstacle. Any Plans submitted by the Proponent in connection with Transmission Work shall identify the locations in which the Proponent proposes to install above-grade Electrical Infrastructure and shall set out the reasons therefore. Electrical Infrastructure greater than fifty kilovolts (50 kV) within the Road Allowances may be installed above grade.
- 6.2 The Proponent further agrees to make commercially 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;
  - (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.
- 6.3 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 property adjoining any relevant Road Allowance to full access to and egress from their property 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 property 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 Municipality may have previously granted to any other person or party to such Road Allowance or lands.
- 6.4 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;

- (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 Municipality through its officials or authorized agents, or otherwise, properly and accurately identify the location of any Electrical Infrastructure within the Municipality, 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 Municipality or a third party commencing work that may conflict with the Electrical Infrastructure.
- 6.5 The Parties agree and acknowledge that the Proponent shall be entitled to relocate installed Electrical Infrastructure or Entrances on its own initiative by complying with the terms of this Agreement respecting Installation Work.
- 6.6 In the event that the Municipality, acting reasonably and with diligence, deems it necessary for the Municipality or the Municipality’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, in accordance with the terms of this Agreement respecting Installation Work, and the Municipality shall reimburse the Proponent 100% of its costs involved for such modifications or relocations.
- 6.7 If the provisions of Section 6.6 are triggered as a result of the Municipality’s compliance with a legislative requirement, Ministerial order or such other law or order of a body which has the ability to force the Municipality to act, then all costs of the alteration or relocation of the installed Electrical Infrastructure system shall be 50% responsibility of the Proponent and 50% responsibility of the Municipality.
- 6.8 Where any part of the installed Electrical Infrastructure relocated in accordance with Section 6.6 is located on a bridge, viaduct or structure, the Proponent shall modify or relocate that part of the Electrical Infrastructure at its sole expense.

## **7. Repair Work**

- 7.1 The Proponent shall be entitled to conduct Repair Work without prior approval of the Municipality provided that:
- (a) all Repair Work complies with the requirements of Sections 4 and 9 of this Agreement; and
  - (b) the Proponent gives at least five (5) days notice to the Municipality 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.
- (iv) is located in the Right of Way

## **8. Entrances and Entrance Work**

- 8.1 Subject to the limitation in subsection **Error! Reference source not found.** below, the Municipality agrees to clear snow from and otherwise maintain and repair the Road Allowances so as to permit adequate vehicular access from the Road Allowances to the Entrances to access roads leading to Wind Project infrastructure. Schedule “A” to this Agreement identifies the Road Allowances that the Municipality agrees to maintain.
- 8.2 The Municipality confirms and acknowledges that to the extent it approves Entrance Work, any new Entrance constructed by the Proponent pursuant to this Agreement shall be considered part of the Road Allowances, and Schedule “A” shall be amended accordingly and the provisions of the Agreement shall apply, *mutatis mutandis*, to such Entrance.

## **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 (“Tree Work”), the Proponent shall be entitled to conduct 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 subsection 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 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 subsection 9.2 of this Agreement shall include a schedule of available tree species, and landowners receiving said offer shall be entitled to select from this schedule the tree species or mix of tree species 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 Municipality to find suitable alternative locations for such trees within the Municipality.

## **10. Abandonment and Decommissioning of Electrical Infrastructure**

- 10.1 During the term of this Agreement, the Parties agree that the Proponent may elect to permanently discontinue the use of (“Abandon”) any part of the Electrical Infrastructure on at least sixty (60) days prior written notice of such abandonment to the Municipality specifying the part of the Electrical Infrastructure to be abandoned and the date when the abandonment will occur.
- 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 Municipality 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 Municipality, the Municipality may remove and dispose of so much of the abandoned and deactivated part of the Electrical Infrastructure as the Municipality 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 decommissions part of its Electrical Infrastructure affixed to a bridge, viaduct or structure, the Proponent shall, at its sole expense, remove the part of its Electrical Infrastructure affixed to the bridge, viaduct or structure.
- 10.4 Within one hundred and eighty (180) days after the date that this Agreement expires or otherwise terminates, the Proponent shall consult with the Municipality in good faith to come to an agreement with respect to the decommissioning and removal or abandonment of any Electrical Infrastructure 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, the text of which is attached to this Agreement as Schedule “B”, will generally apply to Electrical Infrastructure within Road Allowances as well.

## **11. Assignment**

- 11.1 The Proponent may not assign this Agreement without the written consent of the Municipality, 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 Municipality 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 be entitled to assign this Agreement and all of its rights thereunder without the consent of the Municipality to the Proponent's lenders ("Secured Parties" or "Secured Party" as applicable) 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.
- 11.3 The Proponent shall be entitled, with the written consent of the Municipality, 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 Municipality, in a form acceptable to the assignee and the Municipality 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 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 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 termination of this Agreement in accordance with Section 12.1, such termination shall not derogate from 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 Municipality deemed necessary by the Proponent for the purpose of its transmission or distribution system.
- 12.3 Notwithstanding any other term or provision of this Agreement, if the Proponent's PPA expires or is terminated and not otherwise extended or renewed during the Term of this Agreement, and the Proponent acting diligently does not secure an adequate replacement market for the electricity generated by the Wind Project within ninety (90) days of the expiry or termination of the PPA, this Agreement shall, at the option of the Proponent, be terminated.
- 12.4 Whenever, and to the extent that a Party will be unable to fulfil 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 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 any financial condition of the parties hereto); 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 or 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. The Party relying on Force Majeure will be required and is entitled to perform such obligation within a period of time immediately following the discontinuance of such impediment that is equal to the period of time that such impediment existed. 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 the Municipality 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 Municipality 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 Municipality, anyone directly or indirectly employed by the Municipality or anyone for whose acts the Municipality is in law responsible.
- 15.2 The Proponent will defend, indemnify and save harmless the Municipality from and against all claims, liabilities, losses, and damages that the Municipality may incur or suffer as a consequence of or in connection with the Work undertaken by the Proponent. Proponent shall not be required to defend, indemnify and save harmless the Municipality for losses, damages, claims, demands, costs, including legal costs, expenses and/or other obligations or liabilities arising out of the negligence of, intentional misconduct by the Municipality, or anyone directly or indirectly employed by the Municipality. In the event of any claim, Proponent will select and pay for and provide legal counsel, and direct the provision of a full and complete legal defense to Municipality, both at the trial court and appellate levels, unless either the Municipality or Proponent believe in good faith, for reasons of conflict of interest or otherwise, that their interests would be better served by separate representation from more than one law firm, a single law firm. To the extent that

more than one law firm is employed to defend the Municipality and Proponent against any legal action in which both have been jointly sued, Proponent will continue to be responsible for the selection of and payment of fees to the law firms providing said defense. In cases of joint representation, the Municipality will be consulted with at all stages of any litigation up to and including disposition of any litigation, and shall have final say on any disposition of its rights. The Municipality may not settle any claim, demand or other obligation or liability pursuant to this paragraph without the written consent of Proponent.

- 15.3 The Parties agree and acknowledge that no relationship is formed between the Parties in the nature of a joint venture, partnership, co-ownership arrangement or other similar relationship.

**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 Municipality:

THE CORPORATION OF THE MUNICIPALITY OF  
WEST GREY  
402813 Grey Road 4, RR#2, Durham, Ontario N0G 1R0  
Attention Christine Robinson, Chief Administrative Officer  
Phone: 519-369-2200

To the Proponent:

EAST DURHAM WIND, INC.  
ATTN: General Counsel  
700 Universe Blvd.  
Juno Beach, Florida 33408  
Phone: (561) 691-7575

With a copy to:

EAST DURHAM WIND, INC.  
ATTN: Business Management  
700 Universe Blvd.  
Juno Beach, Florida 33408  
Phone: (561) 691-7171

- 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. Foreign Corrupt Practices Act**

18.1 Notwithstanding anything to the contrary herein, Municipality, in its administration of this Agreement, shall refrain from offering, giving or promising, directly or indirectly, money or anything of value to a Canadian or foreign governmental official to influence the official in his or her official capacity, induce the official to do or omit to do an act in violation of his or her lawful duty, or to secure any improper advantage in order to assist in obtaining or retaining business for or with, or directing business to, any person. For the purposes of this Section, “anything of value” includes, but is not limited to, cash or a cash equivalent, discounts, gifts, use of materials, facilities or equipment, entertainment, drinks, meals, transportation, lodging, insurance benefits, or promise of future employment. “Governmental official” shall mean any person holding any level of legislative, administrative, or judicial office of the Canadian or a foreign government or any of its departments or agencies or divisions; any person acting on behalf of the Canadian or a foreign government, including a local or provincial agency, enterprise, or organization; any official or agent of a Canadian or a foreign public administration or publicly funded organization; any official of a Canadian or a foreign political party; any officer or agent of a public international organization (e.g., World Bank, International Monetary Fund, World Health Organization, United Nations, World Trade Organization); or any relatives or close family/household members of any of those listed above.

**19. Miscellaneous**

19.1 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.

19.2 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 Municipality 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*.

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

19.4 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.

- 19.5 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.
- 19.6 No supplement, modification, amendment, or waiver of this Agreement shall be binding unless executed in writing by the Parties.
- 19.7 This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario irrespective of any conflict of laws provisions.

**(SIGNATURES ARE ON THE FOLLOWING PAGE)**

**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 stated at the top of this Agreement.

**THE MUNICIPALITY OF WEST GREY**

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Name:  
Title

---

Name:

Title:

I HAVE THE AUTHORITY TO BIND THE  
CORPORATION

**THE PROPONENT**  
**EAST DURHAM WIND, INC.**

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Name:

Title:

I HAVE THE AUTHORITY TO BIND THE  
CORPORATION

DRAFT

**SCHEDULE "A"**

Plan showing applicable Road Allowance and Entrances from Road Allowances to access roads leading to Wind Project turbines.

DRAFT



**SCHEDULE “B”**

Decommissioning Report prepared for the Proponent’s “Renewable Energy Application” for the  
Project

DRAFT

Exhibit B, Tab 5, Schedule 1

Chronology of Events

## CHRONOLOGY OF EVENTS

1 Further to section 41(9) of the Electricity Act, East Durham has sought to reach an agreement  
2 with the Municipality as to the location of the Distribution System within the Road Allowances.  
3 Although East Durham is under no statutory obligation to formalize such agreement by  
4 executing the Proposed Agreement, it has sought, as is commonplace in Ontario, to define its  
5 rights and responsibilities in this form.

6 To date, although the Municipality has not expressly rejected the Proposed Agreement or the  
7 proposed location of the Distribution System within the Road Allowances, the Municipality has  
8 failed to respond constructively to the Applicant's overtures. The result is a fundamental  
9 inability of the parties to reach an agreement regarding the location of the Distribution System in  
10 the Road Allowances.

11 This chronology is set out in two parts. The first is demonstrates the opposition of the Municipal  
12 Council to further wind energy development within the Municipality. The second outlines the  
13 key events resulting in the parties' inability to reach an agreement regarding the location of the  
14 Distribution System within the Road Allowances.

### **15 Part I – Council Opposition to Further Wind Energy Development in the Municipality**

16 On various occasions the Municipality has clearly stated that it is an unwilling host for wind  
17 energy development. Notably:

- 18 • On January 11, 2010, the Municipal Council passed a resolution which, among other  
19 things, called on the Province of Ontario to place an indefinite moratorium on industrial  
20 wind turbines in the Municipality of West Grey and other Ontario municipalities (see  
21 page 6-7 of Exhibit B, Tab 5, Schedule 1, Appendix A.1);
- 22 • On October 15, 2012, the Municipal Council passed a resolution declaring that the  
23 Municipality is not a willing host for any further industrial wind turbines, as of that date  
24 (see page 4 of Exhibit B, Tab 5, Schedule 1, Appendix A.2).
- 25 • On May 23, 2012, in a letter to East Durham, the Municipality reiterated its position that  
26 "it is not in the best interest of the Municipality for [the East Durham] project to proceed

1 as Council has deemed the Municipality as not being a willing host for industrial wind  
2 turbine projects” (see page 2 of Exhibit B, Tab 5, Schedule 1, Appendix G).

3 **Part II – Key Events Resulting in the Parties’ Inability to Agree to the Location of the**  
4 **Distribution System Within the Road Allowances**

5 To summarize the events below, East Durham has conducted considerable environmental,  
6 technical and related studies to determine the routing of its Distribution System. As part of the  
7 routing exercise, and in accordance with its statutory rights, East Durham determined that a  
8 portion of the Distribution System would be located within the Road Allowances. In  
9 determining this routing, East Durham consulted extensively with the Municipality, and in doing  
10 so, attempted to ensure that the Municipality would not be prejudiced by the location of the  
11 Distribution System. As the Distribution System routing was being finalized, East Durham  
12 commenced its efforts to negotiate the Proposed Agreement. Since that time, the Municipality  
13 has not constructively engaged East Durham on the location of the Distribution System within  
14 the Road Allowances. This has resulted in an inability of the parties to agree to the location of  
15 the Distribution System within the Road Allowances, which has given rise to the present  
16 application. The key events are as follows:

- 17 • On September 27, 2012, East Durham forwarded an initial draft of the Proposed  
18 Agreement to both the Municipal Clerk and the Municipal Chief Administrative Officer  
19 (“CAO”), requesting comments. As indicated in Exhibit B, Tab 4, Schedule 1, the  
20 Proposed Agreement contained East Durham’s proposal for the location of the  
21 Distribution System within the Road Allowances.
- 22 • On December 3, 2012, at a meeting of Municipal Council, the Council reminded East  
23 Durham of the resolution passed by Council indicating that the Municipality is not a  
24 willing host for industrial wind turbines, and requested that East Durham stop the project.  
25 Council also emphasized to East Durham representatives that the Municipality does not  
26 support buried cable construction and would only support buried cabling if it was  
27 enclosed in a concrete conduit. East Durham expressed its willingness to meet with  
28 Municipal staff to discuss the cabling requirements. See page 4 of Exhibit B, Tab 5,  
29 Schedule 1, Appendix B.
- 30 • On December 11, 2012, East Durham had a conversation with the Municipal Director of  
31 Public Works to discuss project engineering. East Durham requested an in-person  
32 meeting, and documented that request in an email that same day.

- 1 • On December 12, 2012, East Durham sent a letter to the Municipality responding to the  
2 matters that Council raised at the December 3, 2012 meeting, including with respect to  
3 the Distribution System. See Exhibit B, Tab 5, Schedule 1, Appendix C. The  
4 Municipality did not respond to this letter or request any additional information with  
5 respect to the Distribution System.
- 6 • On December 12, 2012, East Durham contacted the Municipal Director of Public Works  
7 again to ask whether an in-person meeting on January 9, 2013 would work for him.
- 8 • On December 19, 2012, after not receiving a reply from the Director of Public Works,  
9 East Durham followed up again regarding an in-person meeting. The Director responded  
10 that the Municipality had formed a sub-committee that was scheduled to have meetings in  
11 the new year, and that he wished those meetings to occur before he met in-person with  
12 East Durham.
- 13 • On February 12, 2013, East Durham emailed the Municipal Clerk to inquire whether the  
14 Municipality had had any further discussion on the Proposed Agreement.
- 15 • On February 15, 2013, the Municipal Clerk replied to the February 12, 2013 email  
16 indicating that the Director of Public Works would contact East Durham shortly to  
17 arrange a meeting regarding the Proposed Agreement.
- 18 • On February 28, 2013, the Municipal Clerk confirmed this in-person meeting for March  
19 15, 2013.
- 20 • On March 1, 2013, still having received no comments on the Proposed Agreement, East  
21 Durham contacted the Municipal Clerk by phone to request an update of the  
22 Municipality's review of the Proposed Agreement.
- 23 • On March 11, 2013, East Durham provided the Municipality with drawings showing how  
24 it proposed to attach a portion of the Distribution System to a Municipal bridge in order  
25 to cross the Saugeen River. See the drawings attached at Exhibit B, Tab 6, Schedule 1,  
26 Appendix D. East Durham had received feedback from the Municipal Director of Public  
27 Works that the Municipality was open to East Durham's preference to attaching the  
28 distribution line to the bridge.
- 29 • On March 15, 2013, East Durham held a meeting with the Mayor of West Grey,  
30 Municipal councilors and staff members and the Director of Public Works. At this  
31 meeting, East Durham requested a further update on the status of the Municipality's  
32 review of the Proposed Agreement. The Mayor indicated that the Municipality was  
33 considering a by-law that would impose fees on the Project, and that would impact the  
34 monetary benefits that the Municipality would be requesting. Also, at the meeting, the  
35 Director of Public Works reiterated that the Municipality was open to having East  
36 Durham attach the distribution line to the bridge over the Saugeen River.

- 1 • On March 19, 2013, East Durham sent a follow up email to the Municipality that  
2 included the Proposed Agreement and requested that the Municipality provide comments  
3 by mid-April 2013. See page 2 of Exhibit B, Tab 5, Schedule 1, Appendix E.
- 4 • On April 8, 2013, East Durham, still having received no comments on the Proposed  
5 Agreement, contacted the Municipal Clerk by email to request a further update on the  
6 status of the Municipality's review.
- 7 • On April 8, 2013, the Municipal Clerk forwarded a letter to East Durham indicating that  
8 the Municipality would take no further action on the Proposed Agreement until East  
9 Durham paid the Municipality to retain a third party to complete a peer review of the  
10 Project's renewable energy approval ("REA") application. This letter was further to an  
11 April 1, 2013 resolution of the Municipality (#94-13) which instructed that the peer  
12 review not commence until unspecified fees/securities were posted with the Municipality.  
13 See page 6 of Exhibit B, Tab 5, Schedule 1, Appendix D.
- 14 • On April 26, 2013, East Durham responded to the Municipality's April 8, 2013 letter  
15 addressing the issues the Municipality had raised in respect of the Distribution System,  
16 and stressing that East Durham's wish to work with the Municipality to determine the  
17 location of the Distribution System within the Road Allowances. The letter also stressed  
18 that importance of the timely execution of the Proposed Agreement. In addition, the  
19 letter explained again, in detail, why it is not appropriate to require the encasement of  
20 collector lines in concrete. For a copy of the letter, see Exhibit B, Tab 5, Schedule 1,  
21 Appendix E.
- 22 • On May 6, 2013, at a Council meeting, Council reiterated its positions that the Project  
23 should not proceed and that any conduit lines should be encased in concrete. See Exhibit  
24 B, Tab 5, Schedule 1, Appendix F.
- 25 • On May 23, 2013, in a letter to East Durham, the Municipality reiterated its position that  
26 "it is not in the best interest of the Municipality for [the East Durham] project to proceed  
27 as Council has deemed the Municipality as not being a willing host for industrial wind  
28 turbine projects". The letter did not provide any feedback specifically on the Proposed  
29 Agreement or on East Durham's proposed location for the Distribution System within the  
30 Road Allowances. See Exhibit B, Tab 5, Schedule 1, Appendix G.
- 31 • On May 24, 2013, to provide further detail on its proposal for the location of the  
32 Distribution System in the Road Allowances, East Durham emailed the Municipal Clerk  
33 with detailed diagrams showing, among other things, where in the Road Allowances it  
34 was proposing to locate the Distribution System. These drawings are included in Exhibit  
35 B, Tab 6, Schedule 1, Appendix B. In the email, East Durham also indicated that it  
36 would like a meeting to discuss the drawings.

- 1 • On May 28, 2003, East Durham emailed the Municipal Clerk asking for a meeting with  
2 the appropriate Municipal staff/council team to discuss, among other things, the location  
3 of Distribution System in the Road Allowances.
- 4 • On May 29, 2013, East Durham received an email from the Municipal Clerk indicating  
5 that he would bring East Durham's request for a meeting to Council on June 3, 2013 for  
6 Council to provide direction on whether a meeting was warranted.
- 7 • On June 4, 2013, the Municipal Clerk responded that Council had determined, on June 3,  
8 2013, that a meeting is not warranted until East Durham identifies how it will meet the  
9 Municipality's requirements to encase the collector lines in concrete and conduct stray  
10 voltage testing across the site. The Clerk indicated that Council's new position was that  
11 East Durham must bore collector lines under the Saugeen River instead of locating them  
12 along the bridge as proposed by East Durham. This position was contrary to their  
13 previous position expressed by the Municipality as recently as March 15, 2013.
- 14 Effectively, the Municipality has refused to engage East Durham in discussions on where in the  
15 Road Allowances the Distribution System will be located, despite East Durham's good faith  
16 efforts to initiate those discussions. Instead, the Municipality has indicated that it will only  
17 engage in these discussions if East Durham agrees to certain other demands, noted above, which  
18 East Durham considers to be unreasonable. As a result, the parties have been unable to reach an  
19 agreement regarding the location of the Distribution System within the Road Allowances.

**APPENDIX 'A'**

**MUNICIPAL COUNCIL RESOLUTIONS**



**APPENDIX 'A.1'**

**MUNICIPAL COUNCIL RESOLUTION DATED JANUARY 11, 2010**

**MINUTES**  
**For the Regular Meeting of the**  
**Council of the Municipality of West Grey**  
**Held on Monday, January 11, 2010 at 9:00 a.m.**  
**At the Council Chambers – West Grey Municipal Office**

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<u>Council</u>	Mayor Kevin Eccles, Deputy Mayor Dan Sullivan, Councillor John A. Bell, Councillor John S. Black, Councillor Bev Cutting, Councillor Carol Lawrence, Councillor Don Marshall, Councillor David Mollison (left meeting at 2:00 p.m.), Councillor Bev Plume
<u>Staff</u>	Christine Robinson, CAO/Clerk; Mark Turner, Deputy Clerk Kerri Mighton, Treasurer-Deputy Tax Collector; Ken Gould, Public Works Manager; Ron Davidson, Municipal Planner – during reports

**Lord’s Prayer/Moment of Reflection**

**Declarations of Pecuniary Interest**

Councillor Bell declared a pecuniary interest relating to the delegations from Rick Dixon and Gord Manarey, and the Municipal Planner’s Report. Councillor Bell left the Council meeting prior to commencement of discussions on same, and did not participate on any discussions accordingly.

**Closed Session**

**MARSHALL-PLUME, WHEREAS, the Municipal Act, S.O. 2001, Section 239 (2), authorizes Councils of municipalities to close to the public a meeting or part of a meeting for dealing with certain subject matters, NOW THEREFORE BE IT RESOLVED, that the Municipality of West Grey, does now go into a closed session of Council at 9:05 a.m., with the CAO/Clerk, Deputy Clerk, and Public Works Manager, to discuss items which relate to personal matters about an identifiable individual, including municipal or local board employees; a proposed or pending acquisition or disposition of land for municipal or local board purposes; labour relations or employee negotiations; litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board; and the receiving of advice that is subject to solicitor-client privilege, including communications necessary for that purpose.**

... #01-10

**CARRIED.**

**CUTTING-BLACK, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby returns to Open Session of Council at 10:16 a.m.**

... #02-10

**CARRIED.**

(Mayor Eccles confirmed that only closed session items identified were discussed in closed session).

**Matters Arising from the Closed Session – None**

(2) January 11, 2010

**Public Meetings - None**

**Part I - Consent Agenda**

**CUTTING-LAWRENCE, BE IT RESOLVED THAT, Items A1 to C2 inclusive, contained in Part 1 – Consent Agenda, be adopted; AND FURTHER THAT, authorization be given for the action to be taken as may be necessary to give effect to the recommendations contained therein.**

**... #03-10**

**CARRIED.**

**Adoption of Minutes**

**Council:**

A1 Minutes of Regular Council Meeting – December 21, 2009

**Committees:**

A2 Normanby Recreation Advisory Committee – October 14, 2009

**Other**

A3 Elmwood Community Centre Board – November 17, 2009 – resolution #04-10

**MOLLISON-BLACK, BE IT RESOLVED THAT, the minutes of the Regular Meeting of the Council of the Municipality of West Grey, held on December 21, 2009, be adopted as printed;**

**AND FURTHER THAT, the Minutes of the West Grey Committees – A2, be received, as circulated;**

**FURTHER THAT, the Other Minutes – A3, be received, as circulated.**

**... #04-10**

**CARRIED.**

**Award of Tenders**

B1 None

**Routine Department Reports**

C1 CBOC/By-law Enforcement Officer – Report #CBOC 01/11/10 (received for information)

C2 CAO/Clerk - Report #CC 01/11/10 – resolution #05-10 (Council requested more detailed year end Building Reports in the future)

**BELL-MOLLISON, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby approves the following payments for livestock claims:**

**Don Emke, Lot 7, Concession 7, Bentinck, suffered the loss of one Dorsett ewe with an estimated live weight of 225-230 pounds in the amount of \$200.00, killed by coyotes on or about December 9, 2009. ... #05-10**

**CARRIED.**

(3) January 11, 2010

**Miscellaneous Correspondence** (For Information Only - Not Circulated but Available for Viewing at Meeting)

D1 Bruce Grey Regional Economic Development Partnership – re: successful grant application from the Investment Canada Community Initiatives – ICCI

**Future Committee Meetings**

E1 West Grey Waste Management & Environmental Committee – January 14, 2010, 9:00 a.m., West Grey Municipal Office

**Part II - Regular Agenda**

**Communications from the Mayor and Council**

Mayor Eccles and Deputy Mayor Sullivan reported on past activities and events since the last regular meeting of Council, and on upcoming activities and events.

**Delegations**

**Steve Field, Chair, Durham & Community Health Care Foundation**

Steve Field, Chair, Durham & Community Health Care Foundation, introduced Eric Ferguson, a Director of the Durham & Community Health Care Foundation.

Mr. Ferguson provided some background information and updated news to Council regarding the Durham & Community Health Care Foundation. It is anticipated there will be more demands on purchasing updated equipment required to carry out necessary operations.

Mr. Field requested that Council consider an annual amount of money (unspecified by the Foundation) to be set aside to assist the Durham & Community Health Care Foundation.

John Bell declared a pecuniary interest relating to the delegations from Rick Dixon and Gord Manarey, and the Report from the Municipal Planner.

**Rick Dixon, Jewitt and Dixon Ltd., Ontario Land Surveyors**

Rick Dixon, Jewitt and Dixon Ltd., noted the proposed Planning Report forming part of this Council Agenda finally provides a justifiable proposal for Durham expansion as it includes lands (Area E) already provided with municipal servicing along Durham Road East.

Mr. Dixon also provided his opinion on why Area D would be suitable for urban expansion purposes.

(4) January 11, 2010

Rick Dixon noted his original concerns with the inclusion of the Bell property (Area F) in the original draft Durham Expansion Area Reports, and West Grey discussions with a Korean development group, for the potential location of an incinerator. In Mr. Dixon's opinion, this type of development would inhibit residential growth in Area E and elsewhere in Durham.

#### Gord & Betty Manarey

Betty Manarey indicated concerns with the proposed incinerator on the Bell property, and if the Planning Report is approved, feels it will devalue their property, and surrounding properties.

Mrs. Manarey asked why West Grey didn't consider their property as part of the Durham Expansion area as it has access to Highway 6, and the NE Zone would not interfere with development on the property.

Mayor Eccles stated the Municipality is not going to build an incinerator, it would be a private development, and will not be using taxpayer dollars. There is a Memorandum of Understanding regarding an incinerator that is being proposed in or around West Grey. Mayor Eccles indicated the Bell property is not a favourable site of the developers for the proposed development.

### **Business Arising from the Previous Meeting - None**

#### **Managers' Reports**

##### Municipal Planner

The Municipal Planner provided a brief background to the Durham Settlement Area Comprehensive Review Report (January 4, 2010, and noted his recommendations.

The requested amendments to the Report include the following:

- Delete recommendation #7 on page 25, and any other references to phasing, including a reference on page 23
- .Retain Study Area 9 in the urban area of Durham, amend textual references accordingly, combine Areas 9 & 10
- Change reference at bottom of page 19 from "industrial" to "highway commercial"
- Add reference to "looping of services and Hwy 6 access to Jackson Street" in second last paragraph on page 21 as it pertains to Study Area E

(5) January 11, 2010

**MOLLISON-BLACK, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby approves the Municipality of West Grey Comprehensive Review for the Primary Settlement Area of Durham, dated January 4, 2010, as amended, prepared in support of the County of Grey Official Plan 5-Year Review, by Ron Davidson, Municipal Planner;**

**AND FURTHER THAT, Council authorizes municipal staff to forward required copies of the aforementioned Report to the County of Grey Planning & Development Department for consideration of approval, and subsequent forwarding to the Ministry of Municipal Affairs & Housing. ... #06-10** **CARRIED.**

Treasurer - Report #TR 01/11/10

Approval of Accounts, Voucher #24-2009 – resolution #7-10

Approval of 1/3 of 2010 Municipality Contribution to Saugeen Municipal Airport – resolution #8-10

Trillium Grant Application for Play in Bruce Grey – resolution #9-10

Ontario Disaster Relief Assistance Program (ODRAP) Claim – resolution #10-10

Table resolution #10-10 – resolution #11-10

Saugeen Valley Conservation Authority Draft 2010 Budget Information (Council requested an updated list of expenditures. SVCA staff would be attending West Grey to present and discuss the engineer's report for McGowan's Dam.)

(Council temporarily adjourned Council at 12:40 p.m., and reconvened at 1:28 p.m.)

Purchase Order Approval for Fitness Equipment – resolution #12-10

Information Correspondence – Council Remuneration - Council Remuneration Summary for the month of December 2009 and Year-To-Date. (received for information)

**PLUME-LAWRENCE, BE IT RESOLVED THAT, the Treasurer be authorized to pay the accounts presented as Voucher #24-2009 of the Municipality of West Grey, in the amount of \$920,563.92. ... #7-10** **CARRIED.**

**MOLLISON-BELL, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby approves payment in the amount of \$7,121.66 to the Saugeen Municipal Airport for 1/3 of the 2010 municipal contribution. ... #8-10** **CARRIED.**

**MARSHALL-LAWRENCE, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby supports the “PLAY in Bruce Grey” Collaborative Agreement. ... #9-10** **CARRIED.**

**SULLIVAN-BLACK, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby supports the final ODRAP Municipal Claim in the amount of \$93,953.72. ... #10-10** **TABLED.**

**SULLIVAN-LAWRENCE, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby tables resolution #10-10. ...#11-10** **CARRIED.**

(6) January 11, 2010

**MARSHALL-LAWRENCE, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby approves issuing a Purchase Order as recommended by the Durham Activity Centre to Refitness Inc for cardio equipment as provided by Quote RefQ1602 up to an amount of \$67,929.95, subject to any reductions provided through further negotiations. . . . #12-10 CARRIED.**

Public Works Manager - Report #PWMR 01/11/10

College and Chester St. Parking (received for information)

Snowplow Truck Purchase Proposal – resolution #13-10

**BELL-MOLLISON, BE IT RESOLVED THAT, the 2010 Capital Budget for the Municipality of West Grey be approved to a maximum of 50% of the 2009 budget to allow for tendering of specific projects**

**AND FURTHER THAT the following additional project be approved:**

- Tandem Truck combination Snow Plow from Viking Cives at \$210,000.  
... #13-10 CARRIED.

(Councillor Mollison left the meeting at 2:00 p.m.)

CAO/Clerk – Report #CR 01/11/10

Wind Turbines- Draft Resolution and Proposed Public Meeting – resolution #14-10 (Add to resolution a request for Provincial moratorium; concerns regarding assessment reductions, additional clauses as proposed by Mayor, and additions to circulation list. Include media release with notice to national press associations. Proposed public meeting on industrial wind turbines with Next Era Energy on February 4, 7:00 p.m., at the Durham & District Community Centre. Notify news/radio/local TV regarding proposed public meeting. Invite MPAC to meeting to discuss property value implications for properties with industrial wind turbines)

Municipal Delegation Requests - Ontario Good Roads Association (OGRA) / Rural Ontario Municipal Association (ROMA) Conference 2010 (Mayor Eccles or Councillor Lawrence will represent West Grey in an observer capacity at Crystal Meth symposium during the OGRA/ROMA Conference. Request West Grey delegation to OGRA/ROMA regarding wind turbines (M.O.E.); may be a partner with Chatsworth/Grey Highlands delegation re: farm tax rebate and managed forests. Request OGRA/ROMA delegation with Minister of Transportation respecting dry wells relating to Ministry Infrastructure Enhancements)

Agreement Between the Municipality of West Grey and the Royal Canadian Legion - Durham Branch 308 (received for information)

West Grey Library Board Appointment – resolution #15-10

West Grey Activity Centre (Council approved completion of wiring for sound system, cable purposes to facilitate commencement of drywall)

**LAWRENCE-CUTTING, WHEREAS the need for renewable energy resources is recognized at the federal, provincial, municipal and local community levels;**

(7) January 11, 2010

**AND WHEREAS** the Council of the Municipality of West Grey has concern over the *Green Energy and Green Economy Act* in relation to its application to industrial wind turbines;

**AND WHEREAS** there is evidence that the *Act* has created incentives for one group of residents to profit at the expense of others, the *Act* does not acknowledge infringement on the rights of property owners who have not leased their land for industrial wind turbine development, and thereby receive no compensation despite the reduced value and enjoyment of their land;

**AND WHEREAS** there is also evidence of reduction in property values in areas currently with industrial wind turbines or in broad geographical areas where industrial wind turbines are being considered;

**AND WHEREAS** these issues will bring about a reduction of assessment to any municipality within these areas which would have a deleterious effect on the tax base of affected municipalities;

**AND WHEREAS** the Council of the Municipality of West Grey is dissatisfied with the Province of Ontario removing industrial wind turbine approvals and overall decision making approvals from the Municipal Governments;

**AND WHEREAS** the Council of the Municipality of West Grey is dissatisfied with regulations imposed by the Province of Ontario on the erection and operation of industrial wind turbines with respect to land use planning and the impact on building economically viable and sustainable communities;

**AND WHEREAS** the Council of the Municipality of West Grey is concerned with the overall adverse health effects that would be imposed on people in this community due to industrial wind turbines;

**AND WHEREAS** the potential health effects is proving to be destructive and divisive to the social and cultural fabric of our rural urban community;

**AND WHEREAS** other Ontario municipalities have passed resolutions articulating concern with the health effects and other issues associated with industrial wind turbines;

**AND WHEREAS** the Council of the Municipality of West Grey requires validated reports and studies regarding the total impact and projected future impacts of industrial wind turbines on our rural urban community;

**AND WHEREAS** the Council of the Municipality of West Grey raises the issue that there are enough industrial wind turbines erected and operating in the Province of Ontario at this time that should be studied for overall economic, social and cultural impact on rural urban communities, the people of the rural urban communities, the environment, wildlife, livestock and domestic animals;

**AND WHEREAS** these necessary Province of Ontario reports and studies should be provided to the Ontario Municipal and County Governments;

**NOW THEREFORE BE IT RESOLVED** that the Council of the Municipality of West Grey request the Province of Ontario to place an indefinite moratorium on industrial wind turbines in the Municipality of West Grey and other Ontario municipalities in order for the Province of Ontario to commission a third-party study regarding the health, safety and well-being of persons, and the protection of persons and property, including consumer protection of persons;

**AND FURTHER** that the Council of the Municipality of West Grey request that the moratorium on industrial wind turbines remain in place until the Council of the Municipality of West Grey is satisfied that the health, safety and well-being of persons of the Municipality of West Grey and the protection of persons and property, including consumer protection of persons of the Municipality of West Grey is satisfied;

**AND FURTHER** that the Council of the Municipality of West Grey call upon the Province of Ontario to consider the issues raised by the Municipality of West Grey and other Ontario municipalities and to consider alternative approaches to address the issues created by industrial wind turbines;

**AND FURTHER** that this resolution be circulated to all municipalities within Grey and Bruce Counties, including Grey County and Bruce County, requesting their support and that this resolution be forwarded to AMO for circulation to all municipalities in Ontario also requesting support of this resolution;

**AND FURTHER** that this resolution be circulated to all Provincial Ministers and MPP's, and the local and area MP's . . .#14-10

**CARRIED.**



(8) January 11, 2010

**BELL-BLACK, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby supports the recommendation of the West Grey Public Library Board to appoint Anne Saunders as a member to said Board. ... #15-10 CARRIED.**

**By-Laws – First, Second & Third Readings**

- D1 1-2010 A By-law to confirm the proceedings of Council in 2009 – resolution #16-10
- D2 2-2010 A By-law respecting construction, demolition and change of use permits and inspections – resolution #17-10, #18-10

**MARSHALL-PLUME, BE IT RESOLVED THAT, By-law Number 1-2010, being a By-law to confirm the proceedings of Council, be now read a first, second and third time, passed and numbered and that the said by-law be signed by the Mayor and CAO/Clerk, sealed with the seal of the Corporation and be engrossed in the by-law book. ... #16-10 CARRIED.**

**BLACK-BELL, BE IT RESOLVED THAT, By-law Number 2-2010, being a By-law respecting construction, demolition and change of use permits and inspections, be now read a first, second and third time, passed and numbered and that the said by-law be signed by the Mayor and CAO/Clerk, sealed with the seal of the Corporation and be engrossed in the by-law book. ... #17-10 TABLED.**

**MARSHALL-SULLIVAN, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby tables resolution #17-10. ... #18-10 CARRIED.**

**New Business - None**

**Addendum - None**

**Notice of Motion/Direct Motions - None**

**Closed Session – Incomplete Items Only – n/a**

**Matters Arising from Closed Session – Incomplete Items Only – n/a**

**Question Period - None**

**Municipal Act – Notices - None**

**Adjournment**

**BELL, RESOLVED THAT, we do now adjourn at 4:12 p.m., to meet again on Monday, January 18<sup>th</sup>, 2010, 7:00 p.m., or at the call of the Mayor. CARRIED.**

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Kevin Eccles, Mayor

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Christine Robinson, CAO/Clerk

**APPENDIX 'A.2'**

**MUNICIPAL COUNCIL RESOLUTION DATED OCTOBER 15, 2012**



**MINUTES**  
**For the Regular Meeting of the**  
**Council of the Municipality of West Grey**  
**Held on Monday, October 15, 2012, at 6:00 p.m.**  
**At the Council Chambers – West Grey Municipal Office**

Council Deputy Mayor John A. Bell, Councillor Bev Cutting, Councillor John Eccles, Councillor Carol Lawrence, Councillor Don B. Marshall, Councillor David Mollison, Councillor Mark Rapke, Councillor Rob Thompson

Absent Mayor Kevin Eccles

Staff Christine Robinson, CAO; Mark Turner, Clerk.  
 Kerri Mighton, Director of Finance/Treasurer; Ken Gould, Director of Infrastructure and Public Works – during reports.

**Lord’s Prayer/Moment of Reflection**

**Declarations of Pecuniary Interest & General Nature Thereof – None**

**CLOSED SESSION**

**MARSHALL-THOMPSON, WHEREAS, the Municipal Act, S.O. 2001, Section 239 (2), authorizes Councils of municipalities to close to the public a meeting or part of a meeting for dealing with certain subject matters,**

**NOW THEREFORE BE IT RESOLVED, that the Council of the Municipality of West Grey, does now go into a closed session of Council at 6:02 p.m., with the CAO, Clerk, and Chief Librarian/CEO, to discuss items which relate to personal matters about an identifiable individual, including municipal or local board employees (West Grey Library Board applications); and a proposed or pending acquisition or disposition of land for municipal or local board purposes. ... #254-12 CARRIED.**

**MOLLISON-CUTTING, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby returns to Open Session of Council at 7:03 p.m. ... #255-12 CARRIED.**

(Deputy Mayor Bell confirmed that only closed session items identified were discussed in closed session).

**Matters Arising from the Closed Session**

West Grey Public Library Board Appointment – resolution #256-12

**LAWRENCE-CUTTING, BE IT RESOLVED THAT, the Council of the Corporation of the Municipality of West Grey hereby appoints Helga Brown & Carol Dyck to the West Grey Public Library Board. ... #256-12 CARRIED.**

**Public Meetings - None**

(2) October 15, 2012

**Part I - Consent Agenda**

**THOMPSON-MARSHALL, BE IT RESOLVED THAT, Items A1 to C2 inclusive, contained in Part 1 – Consent Agenda, be adopted; AND FURTHER THAT, authorization be given for the action to be taken as may be necessary to give effect to the recommendations contained therein. ... #257-12** **CARRIED.**

**Adoption of Minutes**

**Council:**

A1 Minutes of Regular Council Meeting – October 1, 2012

**Committees:**

A2 Normanby Recreation Advisory Committee – August 29, 2012  
Neustadt Recreation Advisory Committee – September 11, 2012  
Neustadt Recreation Advisory Committee – October 9, 2012 (draft)

**Other**

A3 Saugeen Municipal Airport Commission – December 20, 2011; January 18, 2012; February 15, 2012; March 21, 2012; April 18, 2012; May 16, 2012; August 14, 2012 – resolution #258-12

**JOHN ECCLES-MARSHALL, BE IT RESOLVED THAT, the minutes of the Regular Meeting of the Council of the Municipality of West Grey, held on October 1, 2012, be adopted as printed; AND FURTHER THAT, the Minutes of the West Grey Committees – A2, be received, as circulated; AND FURTHER THAT, the Minutes of the Other Committees – A3, be received, as circulated. ... #258-12** **CARRIED.**

**Award of Tenders**

B1 None

**Routine Department Reports**

C1 Director of Building Services/C.B.O. – Report #CBOC 10/15/12 (received for information)  
C2 Clerk – Report #CC 10/15/12 – resolution #259-12, #260-12

**THOMPSON-JOHN ECCLES, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby approves the following payments for livestock claims: Steve Shelley, Lots 17 & 18, Concession 5, former Township of Bentinck, suffered the loss of one Suffolk ewe with an estimated live weight of 250 pounds in the amount of \$300.00, on or about October 10, 2012. Laverne Lipsett, Lot 8, Concession 8, former Township of Glenelg, suffered the loss of one Suffolk lamb with an estimated live weight of 50 pounds in the amount of \$100.00, on or about October 5, 2012. ... #259-12** **CARRIED.**

(3) October 15, 2012

**THOMPSON-MARSHALL, WHEREAS, the Council of the Municipality of West Grey is pleased that both the Liberal government and the PC party have kept the issue of interest arbitration reform at the forefront of major policy discussions; AND WHEREAS, the Council of the Municipality of West Grey supports the overall intention of interest arbitration reform; AND WHEREAS, a preliminary review indicates that there appears to be room for improvement in both pieces of draft legislation before the legislature; AND WHEREAS, the Council of the Municipality of West Grey is aware that AMO and the Emergency Services Steering Committee are reviewing these issues and look forward to further discussion and input; NOW THEREFORE, the Council of the Municipality of West Grey requests that the legislature will work collectively in the best interest of Ontario municipalities and taxpayers on this important issue of interest arbitration reform.**  
... #260-12 **CARRIED.**

**Miscellaneous Correspondence** (For Information Only - Not Circulated but Available for Viewing at Meeting)

- D1 Ministry of Municipal Affairs & Housing – 2012 Ontario West Municipal Conference
- D2 County of Grey – re: upcoming Grey County Transportation Master Plan – Public Information Centre meetings
- D3 Ministry of Citizenship and Immigration – Achievement Award for Voluntarism in Ontario
- D4 Rick Parker, Canine Control Officer/Livestock Valuer Report – September 2012

**Future Committee Meetings**

- E1 West Grey Committee of the Whole – October 29, 2012, 9:00 a.m., West Grey Municipal Office

**Part II – Regular Agenda**

**Communications from the Mayor and Council**

Deputy Mayor Bell, and Councillors Lawrence, Cutting, and Rapke, reported on past activities and events since the last regular meeting of Council, and on upcoming events and activities.

**Delegations - None**

**Business Arising from the Previous Meeting**

Proposed Wind Turbine Resolution – resolution #261-12

(4) October 15, 2012

**LAWRENCE-CUTTING, WHEREAS, the Council of the Corporation of the Municipality of West Grey , whose municipal motto is “Nestled In Nature”, in the interest of the pending Federal Health Study, health issues, land values, aesthetics, quality way of life, and at the demands of the many area residents; AND FURTHER, based on Premier McGuinty’s statement that no municipality will be forced to accept industrial wind turbines where they are not wanted; BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby declares that it is not a willing host for any further industrial wind turbines, as of October 15, 2012; AND FURTHER THAT, this resolution be forwarded to the Premier; Minister of Energy, Chris Bentley; Minister of the Environment, Jim Bradley; Minister of Natural Resources, Michael Gravelle, and local M.P.P.’s and M.P.’s.**

**RECORDED VOTE**

**FOR: Deputy Mayor Bell, Councillor Cutting, Councillor Eccles, Councillor Lawrence, Councillor Marshall, Councillor Mollison, Councillor Rapke, Councillor Thompson**

**AGAINST None**

**... #261-12**

**CARRIED.**

**Staff Reports**

Director of Finance/Treasurer - Report #FTR 10/15/12

Approval of Accounts, Voucher #19-2012 – resolution #262-12

Municipal Infrastructure Investment Initiative Funding for Asset Management – resolution #263-12

Information Correspondence – 4<sup>th</sup> Quarter 2012 Mileage Reimbursement Rate - The mileage reimbursement rate for the period **Oct. 1, 2012 to Dec. 31, 2012 is \$0.48 per kilometer.**

This is based on the Ontario Ministry of Energy’s Southern Ontario previous quarter’s average price per litre for unleaded gasoline of \$1.268 (received for information)

Council Remuneration – month of September 2012 (received for information)

**MOLLISON-RAPKE, BE IT RESOLVED THAT, the Director of Finance/Treasurer be authorized to pay the accounts presented as Voucher #19-2012 of the Municipality of West Grey, in the amount of \$509,322.87. ... #262-12**

**CARRIED.**

**THOMPSON-JOHN ECCLES, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby approves the submission of an Expression of Interest for the Municipal Infrastructure Investment Initiative Funding for Asset Management;**

**AND THAT the Expression of Interest is factually accurate and that the development of an asset management plan will include all the information and analysis described in the Building Together: Guide for Municipal Asset Management Plans;**

(5) October 15, 2012

**AND THAT this funding for the Asset Management Plan is a priority for the Municipality of West Grey to ensure a sustainable asset management planning policy. ... #263-12** **CARRIED.**

Clerk – Report #CR 10/15/12

Big Brothers Big Sisters of Hanover & District (Council requested the Clerk to verify if Big Brothers Big Sisters of Hanover & District have their own sign that they would be willing to have on a temporary basis only (i.e. one week per year), or alternatively, the Municipality may be able to provide usage of the municipal mobile sign at the gazebo at the Heritage Bridge Park on Garafraxa Street. Council indicated it is not willing to waive or reduce the fee for use of municipal facilities as per Council policy)

Proposed Smoke Free Outdoor Spaces Bylaw (Council requested the Clerk to send a letter to the Grey Bruce Health Unit and Grey County indicating West Grey Council is not prepared to support the proposed smoke free outdoor spaces bylaw due to projected municipal enforcement requirements and inherent costs. Council also indicated the Province should introduce Province-wide legislation in this regard, and be responsible for payment of any costs associated with such legislation.)

**By-Laws – First, Second & Third Readings**

- 49- 2012 A By-law to rezone Lots 32-35 and Lot 36, Concession 3 WGR, former Township of Normanby (Lembke/Parkbridge Lifestyle Communities Inc.) – resolution #264-12
- 50- 2012 A By-law for setting the rate of speed of motor vehicles – resolution #265-12

**LAWRENCE-CUTTING, BE IT RESOLVED THAT, By-law Number 49-2012, being a By-law to rezone Lots 32-35 and Lot 36, Concession 3 WGR, former Township of Normanby (Lembke/Parkbridge Lifestyle Communities Inc.) , be now read a first, second and third time, passed and numbered and that the said by-law be signed by the Mayor and CAO, sealed with the seal of the Corporation and be engrossed in the by-law book. ... #264-12** **CARRIED.**

**THOMPSON-JOHN ECCLES, BE IT RESOLVED THAT, By-law Number 50-2012, being a By-law for setting the rate of speed of motor vehicles, be now read a first, second and third time, passed and numbered and that the said by-law be signed by the Mayor and CAO, sealed with the seal of the Corporation and be engrossed in the by-law book. ... #265-12** **CARRIED.**

**New Business** - None

**Addendum** - None

(6) October 15, 2012

**Notice of Motion/Direct Motions**

Bylaw Number 51-2012 – resolution #266-12

Hanover Rotary Club – resolution #267-12

**CUTTING-MOLLISON, BE IT RESOLVED THAT, By-law Number 51-2012, being a By-law to authorize the Mayor and CAO to enter into a Winter Maintenance Agreement between the Municipality of West Grey and the County of Grey, be now read a first, second and third time, passed and numbered and that the said by-law be signed by the Mayor and CAO, sealed with the seal of the Corporation and be engrossed in the by-law book. ... #266-12 CARRIED.**

**MARSHALL-THOMPSON, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby proclaims Wednesday, October 24, 2012 as Polio Awareness Day in West Grey and encourage all citizens to join Rotary International in the fight for a polio-free world. ... #267-12 CARRIED.**

**Closed Session – Incomplete Items Only – n/a**

**Matters Arising from Closed Session – Incomplete Items Only – n/a**

**Question Period**

Don Crosby asked if the industrial wind turbine resolution passed this evening by Council is intended to apply to the proposed NextEra Energy industrial wind turbines. Council responded that the said resolution is intended to apply to the proposed NextEra Energy industrial wind turbines as well..

**Municipal Act – Notices - None**

**Adjournment**

**MOLLISON, RESOLVED THAT, we do now adjourn at 8:12 p.m., to meet again on Monday, November 5, 2012, 10:00 a.m., or at the call of the Mayor. CARRIED.**

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John A. Bell, Deputy Mayor

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Christine Robinson, CAO



**APPENDIX 'B'**

**MINUTES FROM DECEMBER 3, 2012 COUNCIL MEETING**



**MINUTES**  
**For the Regular Meeting of the**  
**Council of the Municipality of West Grey**  
**Held on Monday, December 3, 2012, at 9:00 a.m.**  
**At the Council Chambers – West Grey Municipal Office**

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<u>Council</u>	Kevin Eccles, Deputy Mayor John A. Bell, Councillor Bev Cutting, Councillor John Eccles, Councillor Carol Lawrence, Councillor Don B. Marshall, Councillor David Mollison, Councillor Mark Rapke (left meeting at 1:50 p.m.)
<u>Absent</u>	Councillor Rob Thompson
<u>Staff</u>	Christine Robinson, CAO; Mark Turner, Clerk. Kerri Mighton, Director of Finance/Treasurer; Ken Gould, Director of Infrastructure and Public Works – during reports

**Lord’s Prayer/Moment of Reflection**

**Declarations of Pecuniary Interest & General Nature Thereof – None**

**CLOSED SESSION**

**MARSHALL-MOLLISON, WHEREAS, the Municipal Act, S.O. 2001, Section 239 (2), authorizes Councils of municipalities to close to the public a meeting or part of a meeting for dealing with certain subject matters,**

**NOW THEREFORE BE IT RESOLVED, that the Council of the Municipality of West Grey, does now go into a closed session of Council at 9:11 a.m., with the CAO and Clerk, to discuss items which relate to litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board (Ayton Mill Pond and Elmwood Fire Department Joint Board of Management).**

... #307-12

**CARRIED.**

**JOHN ECCLES-BELL, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby returns to Open Session of Council at 10:05 a.m.**

... #308-12

**CARRIED.**

(Mayor Eccles confirmed that only closed session items identified were discussed in closed session).

**Matters Arising from the Closed Session - None**

**Public Meetings - None**

**Part I - Consent Agenda**

**MARSHALL-JOHN ECCLES, BE IT RESOLVED THAT, Items A1 to C1 inclusive, contained in Part 1 – Consent Agenda, be adopted, save and except November 26, 2012 Committee of the Whole minutes;**

(2) December 3, 2012

**AND FURTHER THAT, authorization be given for the action to be taken as may be necessary to give effect to the recommendations contained therein.**

... #309-12

**CARRIED.**

**Adoption of Minutes**

**Council:**

- A1 Minutes of Regular Council Meeting – November 19, 2012
- Minutes of Special Committee of the Whole Meeting – November 23, 2012
- Minutes of Committee of the Whole Meeting – November 26, 2012

**Committees:**

- A2 West Grey Economic Development Committee – October 11, 2012

**Other**

- A3 None – resolution #310-12

**RAPKE-MOLLISON, BE IT RESOLVED THAT, the minutes of the Regular Meeting of the Council of the Municipality of West Grey, held on November 19, 2012; and the minutes of the Special Committee of the Whole meeting, held on November 23, 2012, be adopted as printed;**

**AND FURTHER THAT, the Minutes of the West Grey Committees – A2, be received, as circulated. ... #310-12**

**CARRIED.**

(Council requested the issue of the proposed elimination of the Durham Recreation Advisory Committee as noted in the November 26, 2012 Committee of the Whole draft minutes be referred for discussion purposes to the December 10, 2012 Committee of the Whole meeting)

**Award of Tenders**

- B1 None

**Routine Department Reports**

- C1 Clerk – Report #CC 12/03/12 – resolution #311-12, #312-12, #313-12, #314-12

**MOLLISON-CUTTING, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby approves the following payments for livestock claims:**

**Randy Francis, Lots 16 & 17, Concession 5, former Township of Bentinck, suffered the loss of one samuran buck with an estimated live weight of 200 pounds in the amount of \$500.00, on or about November 21, 2012. ... #311-12**

**CARRIED.**

**MOLLISON-RAPKE, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby appoints Val & Andy Stimpson to the West Grey Parks Committee. .... #312-12**

**CARRIED.**

(3) December 3, 2012

**CUTTING-LAWRENCE, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby receives the Infrastructure and Public Works Service Review – Report and Options document and take direction as recommended by the Committee of the Whole. ... #313-12 CARRIED.**

**CUTTING-RAPKE, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby approves the placement of clothing bins at West Grey landfill sites by Adi Tunkl, as recommended by the Committee of the Whole. ... #314-12 CARRIED.**

**Miscellaneous Correspondence** (For Information Only - Not Circulated but Available for Viewing at Meeting)

- D1 LCBO – notice of extension of Durham LCBO store hours during holiday season
- D2 Ontario Good Roads Association – notice of 2013 OGRA/ROMA Combined Conference
- D3 PITCH-IN ONTARIO – re: PITCH-IN WEEK campaign
- D4 Ministry of Infrastructure – re: Ontario’s Municipal Infrastructure Strategy
- D5 Ministry of Community Safety and Correctional Services – re: Summit on the Future of Policing in March 2012
- D6 Association of Municipalities of Ontario – “Ontario Launches Municipal Infrastructure Strategy, Phase 2 - \$51 million for Municipal Infrastructure

**Future Committee Meetings**

- E1 West Grey Police Services Board – December 3, 2012, 4:00 p.m., West Grey Municipal Office
- E2 West Grey Committee of the Whole – December 10, 2012, 9:00 a.m., West Grey Municipal Office
- E3 West Grey Planning Advisory Committee – December 10, 2012, 2:00 p.m., West Grey Municipal Office

**Part II - Regular Agenda**

**Communications from the Mayor and Council**

Mayor Eccles and Councillor Lawrence reported on past activities and events since the last regular meeting of Council, and on upcoming events and activities.

**Delegations**

**NextEra Energy Canada**

Derek Dudek, Community Relations Consultant, and Adam Rinkel, Project Manager, NextEra Energy, participated in the municipal consultation with West Grey regarding the proposed East Durham Wind Energy Project.

(4) December 3, 2012

Derek Dudek updated Council on the status of the project, and noted NextEra Energy's response by email dated November 29, 2012, to questions previously posed by West Grey Council and staff.

Mr. Dudek indicated they Reay meteorological tower has been removed from the property, and the Hartley meteorological tower will be demolished, and a new meteorological tower will be placed on another property.

Mr. Rinkel recited the Renewal Energy Approval (REA) timelines, noting the municipal consultation period commenced on October 12, 2012, with the submission of the reports, and ends on January 15, 2013. The second mandatory public meeting is being held on January 15, 2013. The 5/12 REA documents are anticipated to be submitted by NextEra Energy to the Ministry of Environment by the end of January, 2013.

Council reminded the NextEra Energy representatives of the resolution passed by Council indicating the municipality is not a willing host for industrial wind turbines, based on the opinions and concerns expressed by municipal ratepayers, particularly within the proposed project area, and requested NextEra Energy to stop their project. Mr. Dudek responded that NextEra Energy wants to proceed with project, and is trying to address the concerns expressed by Council and ratepayers.

Council expressed its displeasure respecting the decision of NextEra Energy to pay for a police presence at the Council meeting. Mr. Rinkel noted that NextEra Energy would prefer not to require a police presence, however, some incidents in the community by a very small minority of individuals have resulted in warranted concerns for safety.

Council emphasized to NextEra Energy representatives that the municipality does not support buried cabling construction, and would only support buried cabling if it was enclosed in concrete conduit. Mr. Rinkel indicated a willing to meet with municipal staff to discuss municipal cabling requirements.

Council stated it is requesting an independent peer review of the reports completed by NextEra Energy, at the expense of NextEra Energy.

Council asked how the potential for stray voltage will be addressed by NextEra Energy. Mr. Rinkel responded that stray voltage can't be predicted as it is only supposed to potentially occur with overhead cabling, and not with underground cabling, which is proposed by NextEra Energy. Mr. Rinkel indicated if a stray voltage issue arises, NextEra Energy will work with Hydro One Networks to resolve the issues. Council mentioned stray voltage has been a major issue with other wind turbine projects in the area, including Kincardine, Ripley, and Melancton. Mr. Dudek noted that there were stray voltage issues with the Ripley and Melancton wind turbine projects, however, the Electricity Act was amended to address this issue.

(5) December 3, 2012

Council asked when the NextEra Energy leases of the subject lands are to be registered at the registry office. Mr. Rinkel stated the leases have not been registered to date, but will be some time next year depending on the REA process.

Council asked the NextEra Energy representatives how they are going to address the issue of required reductions in boundary setbacks for five turbines, noting that the property owner abutting wind turbine #2 that requires a boundary setback reduction is opposed to the wind turbine project. Mr. Dudek responded that NextEra Energy completed the reduced boundary setback report as a requirement of the REA process to reduce setback, and the analysis to address what the setback reduction impacts might be on abutting agricultural lands. Mr. Dudek noted there will only be minor impacts on trees and crop fields of abutting lands, and mitigation measures will be undertaken. Council requested that NextEra Energy representatives meet with the property owners to be impacted by the boundary setback reductions. Mr. Dudek indicated NextEra Energy does not normally meet with these property owners, but indicated a willingness to do so.

Council indicated in the decommissioning report respecting the dismantling of the wind turbines that the report spoke about the "project owner" instead of NextEra Energy, and reiterated the need for adequate securities/bonds to be provided by NextEra Energy to ensure West Grey has adequate financial securities to complete any decommissioning of wind turbines or road remediation works if not completed by NextEra Energy.

Council expressed its understanding that the Minister of Energy has stated that wind turbine companies are responsible for the removal of all below and above ground works, and the municipality will require the same. Mr. Dudek stated that the Minister misspoke on this issue, and noted that NextEra Energy plans to remove everything to 1 metre below ground so farmers can re-use the land for agricultural purposes. Mr. Dudek added that the Ontario Ministry of Agriculture, Food & Rural Affairs has confirmed that the removal of works to one metre below ground is acceptable to the Ministry.

Council indicated that one report for NextEra Energy indicates that 1-2 meteorological towers are proposed for the project, however, another report states there are three meteorological towers being proposed. Mr. Rinkel responded that if one report indicates three meteorological towers are proposed, it was a typographical error and will be corrected, as there are a maximum of two meteorological towers being proposed.

Council asked NextEra Energy representatives to clarify what quantifies as unacceptable losses of birds or bats due to the wind turbines during the three year monitoring proposed, and what remedial actions would be taken if birds and bats are being impacted. Mr. Rinkel stated he will obtain an answer to this question and respond to Council. Derek Dudek stated if the acceptable limit is exceeded, the Ministry of Natural Resources will shut down the wind turbine during bird migration, and NextEra Energy will propose other mitigation measures.

(6) December 3, 2012

Council stated that although there are no heritage properties listed in the heritage registry, there are heritage structures of importance to the community of West Grey in the proposed project area. Council stressed that NextEra Energy must ensure there are no impacts on the McKechnie Cemetery due to the proposed substation, if the project proceeds despite Council's opposition.

Council questioned what happens if the noise level guidelines are exceeded. Mr. Rinkel responded that the noise study uses a modeling technique that indicates acceptable noise levels will not be exceeded, however if it does happen, NextEra Energy will have to bring the wind turbine into compliance

Council reiterated the need for NextEra Energy to provide adequate bonds/security for possible road and bridge damage that may incur if the wind turbine project is approved and wind turbines are being hauled to the proposed properties and installation of the works takes place. Council also reiterated the need for adequate bonds/securities that covers the estimated cost of decommissioning the wind turbines. Mr. Derek indicated NextEra Energy is prepared to enter into road user agreements that included clauses stating that NextEra Energy will fix any road damages they cause. Council stated this will not be sufficient, as the municipality must have adequate bonds/security provided by NextEra Energy in case the company defaults or becomes bankrupt.

Council asked where the 15 to 20 people required at the site during installation of wind turbines come from. Mr. Rinkel retorted that for construction, NextEra Energy hires an Engineering, Procurement and Construction (EPC) contractor, and noted the company tries to hire local people within a certain radius of the project. Mr. Dudek stated that electrical workers are hired from within local electrical unions.

Council stated their demand for the municipality to hire a Project Manager to oversee the proposed wind turbine development, if approved by the Ministry of Environment, at the expense of NextEra Energy.

Council asked how the wind turbines are monitored. Mr. Rinkel stated that the wind turbines can be monitored and shut down locally at the site; at the operations centre; or from the headquarters in Florida. Council asked what the operating range of speed is for the wind turbines. Mr. Dudek stated he will verify this information for Council.

Council noted that adverse events involving major components are rare, but do occur, and asked how often this does occur. Mr. Rinkel stated that major repairs are seldom required shortly after the installation of wind turbines, but will occur in later years. Mr. Rinkel indicated he does not have current statistics available, however, wind turbine life spans are typically at least 25 years, but for reporting purposes, conservatively place wind turbine life spans at 20 years.

(7) December 3, 2012

Council questioned why the geotextile fabric is not able to be salvaged. Mr. Dudek stated that the geotextile fabric is placed under access roads, and if the farmer wants to leave the road intact, NextEra Energy will leave it intact for the farmer, but otherwise, will remove it.

The CAO stated that the municipality is exploring through the municipal insurers the necessity to have West Grey named as being an additional insured party in this project by NextEra Energy..

Council noted the draft insurance certificate provided by NextEra Energy contained the name of a property owner, and questioned if this is a public document. Mr. Dudek stated this was a mistake, and NextEra Energy would take issue with the municipality releasing the insurance document to the public, and stated the municipality should not release it.

Council stated that the surface water and groundwater study was completed in October 2012 when water levels were likely at their lowest levels, and indicated that the these levels should be re-checked in Spring 2013.

Council indicated it wants to know if NextEra Energy's insurance company will cover abutting property owners if a wind turbine fire occurs and impacts abutting properties. Mr. Rinkel responded that NextEra Energy's insurance coverage will cover this circumstance, and will verify this with their insurance team. Council requested NextEra Energy provide a copy of their insurance policy from another wind energy project they have completed to confirm their insurance covers abutting properties if impacted. Mr. Rinkel stated he will investigate this further.

The CAO asked how NextEra Energy plans to haul the wind turbines on municipal roads and turning lanes that may not be sufficient for their purposes. Mr. Dudek responded that their traffic/haul route issues report identifies how to facilitate turning lanes, for instance, with temporary turning radii. Mr. Rinkel stated that if there is a need for infringement on private property, NextEra Energy will have to arrange this with the landowner, and if it is in a municipal right-of-way, the municipality will decide if they wish to retain the road improvement. Mr. Rinkel stated he will dialogue with NextEra engineers regarding this matter..

Council stressed that West Grey is not a willing host, and are requested that NextEra Energy stop this project as they will not be able to satisfy the objections of the municipality and ratepayers in the area of the proposed project. Mr. Rinkel stated NextEra Energy is doing their best to resolve the concerns and objections of the municipality and ratepayers, and noted landowners that are part of the West Grey community have signed on for the proposed wind energy project.



(8) December 3, 2012

Council noted in a recent Ontario farmer article that both Liberal and Conservative MPP's are speaking against wind turbines, and that a moratorium on wind turbines should be instituted until the completion of the Federal Health Study. Council noted there will be significant road improvements required to facilitate haulage of wind turbines, and mentioned the half load season restrictions.

Council noted the performance and objectives in the amphibian breeding report, and how NextEra Energy would replace failed plantings and institute control of invasive species. Mr. Dudek stated he will need to discuss this matter with the environmental technicians and consultants.

Council asked how NextEra Energy will facilitate daily monitoring during extended rain or snow melt periods. Mr. Rinkel noted there will be a NextEra Energy resources area manager on site and environmental consultant to consult with.

Council noted the municipal consultation form needs to be completed by West Grey by January 15, 2013, and the municipal consultation form will emphasize that West Grey is an unwilling host for wind turbines. Council stated NextEra Energy will have to address all questions/concerns posed by the municipality prior to the project proceeding, and noted there will likely be further questions of Council.

**Business Arising from the Previous Meeting - None**

**Staff Reports**

**Director of Finance/Treasurer - Report #FTR 12/03/12**

Approval of Accounts, Voucher #22-2012 -- resolution #315-12

Bylaw Number 27-2012 (see Bylaw Number 27-2012)

2013 Budget Deliberations (The draft 2013 Planning budget was reviewed. It was noted that the \$10,000 included in the 2012 budget for a D4 Study will not be completed and should be transferred to reserve for yearend. This reserve will be used to offset the expense in 2013. The transfer to Planning Reserve for a secondary official plan should be changed to an expense as it is anticipated that it will be completed in 2013. It was the consensus to add \$6,700 for the potential sharing of a GIS Technician through the County. This cost to be split between Roads/Fire/Planning. The Other Fire Payments budget was reviewed. It was decided to reduce the Other Fire - Elmwood for West Grey's share of the 2013 Operating Levy to \$120,000 and Capital Levy to \$20,000. A transfer to an Other Fire Reserve of \$20,000 will also be added to the 2013 draft Other Fire budget.)

**BELL-JOHN ECCLES, BE IT RESOLVED THAT, the Director of Finance/Treasurer be authorized to pay the accounts presented as Voucher #22-2012 of the Municipality of West Grey, in the amount of \$2,561,070.49. ... #315-12 CARRIED.**

(9) December 3, 2012

Director of Infrastructure and Public Works – Report #IPWR 12/03/12

Public Works Policies (see Bylaw Number 56-2012)

W.S.I.B. Insurance Changes (Workplace Safety and Insurance Board have amended the workplace law making W.S.I.B. clearance certificates mandatory effective January 1<sup>st</sup>, 2013. This means that all contractors working for West Grey must have a clearance certificate before starting work. This would also include contractors working in the Public Works Dept; municipal office, arena, library etc. All West Grey staff will be notified of the W.S.I.B. workplace changes. (received for information)

By-Laws – First, Second & Third Readings

- 56-2012 A By-law to adopt a West Grey Public Works Department Policy Manual – resolution #316-12
- 57-2012 A By-law to authorize entering into an Agency Agreement between the Municipality of West Grey and CHUMS Financing Corporation and Local Authority Services Limited, with respect to “The One Investment Program” – resolution #317-12

**MARSHALL-JOHN ECCLES, BE IT RESOLVED THAT, By-law Number 56-2012, being a By-law to adopt a West Grey Public Works Department Policy Manual, be now read a first, second and third time, passed and numbered and that the said by-law be signed by the Mayor and CAO, sealed with the seal of the Corporation and be engrossed in the by-law book. ... #316-12 CARRIED.**

**MOLLISON-LAWRENCE, BE IT RESOLVED THAT, By-law Number 57-2012, being a By-law to authorize entering into an Agency Agreement between the Municipality of West Grey and CHUMS Financing Corporation and Local Authority Services Limited, with respect to “The One Investment Program”, be now read a first, second and third time, passed and numbered and that the said by-law be signed by the Mayor and CAO, sealed with the seal of the Corporation and be engrossed in the by-law book. ... #317-12 CARRIED.**

New Business

Council reviewed the draft Memorandum of Understanding (MOU) from Grey County respecting sharing of the County’s GIS resources with six Grey County lower tier municipalities, including West Grey, at a cost of approximately \$6,700/year if all six lower tier municipalities participate in this initiative. There is some indication that one lower tier municipality may not participate, that would result in the annual fee increasing to approximately \$8,000/year. Council directed staff to inform Grey County of the interest in participating in this initiative, with a final MOU to be provided by the County, and subsequent bylaw drafted by municipal staff for consideration by Council at a future Council meeting.

(10) December 3, 2012

Council discussed some of their concerns and issues regarding the proposed East Durham Wind Energy Project by NextEra Energy, in advance of the delegation/municipal consultation by NextEra Energy.

**Addendum - None**

**Notice of Motion/Direct Motions**

2013 Proposed SVCA Budget – resolution #318-12

**LAWRENCE-CUTTING, RESOLVED THAT, the Council of the Municipality of West Grey hereby supports the proposed 2013 Saugeen Valley Conservation Authority budget in the amount of \$4,257,375.00, including a 2013 proposed general levy of \$1,507,507, of which West Grey's payable portion is \$177,287.00.**

... #318-12

**CARRIED.**

**Closed Session – Incomplete Items Only – n/a**

**Matters Arising from Closed Session – Incomplete Items Only – n/a**

(Council temporarily adjourned for lunch at 12:15 p.m., and reconvened at 1:07 p.m.)

**Question Period**

Dick O'Brien stated that it would be preferable if the project proceeds for NextEra Energy to use the 2.3 MW Siemens wind turbines instead of the GE 1.6 MW wind turbines as the GE wind turbines are known to make more noise.

Robert Gingerich stated NextEra should have their insurance policies in place to know when the wind turbine work is being completed in West Grey.


**Municipal Act – Notices**

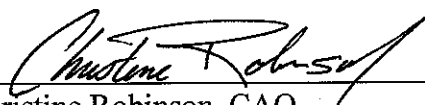
(Notices pursuant to Section 251 of the Municipal Act 2001, and in accordance with West Grey By-law No. 3-2003, are entered here for public notification purposes. Items listed will be placed on the next regularly scheduled meeting of the Council)

- **Notice of the intent to change the name of a portion of Jacob Street in Neustadt to Tower Street. This item will be considered during the December 17, 2012 Council meeting.**

**Adjournment**

**MOLLISON, RESOLVED THAT, we do now adjourn at 3:38 p.m., to meet again on Monday, December 17, 2012, 7:00 p.m., or at the call of the Mayor. CARRIED.**

  
\_\_\_\_\_  
Kevin Eccles, Mayor

  
\_\_\_\_\_  
Christine Robinson, CAO

**APPENDIX 'C'**

**LETTER FROM EAST DURHAM TO WEST GREY**

**DATED DECEMBER 12, 2012**

December 12, 2012

Mayor, Members of Council and Staff  
c/o Mark Turner, Clerk  
Municipality of West Grey  
402813 Grey Road 4, RR#2  
DURHAM, ON. N0G 1R0

Dear Mayor, Members of Council and Staff:

We want to take this opportunity to respond to questions and comments that were posed to us by Council and staff on the December 3, 2012 Council Delegation. As always, we wish to ensure that Council has the most accurate and up to date information with respect to our projects. The following summarizes matters that, in our opinion, needed further clarification:

- **Further detail on the installation of our buried cables and general collection cable specifications;**

NextEra representatives spoke with Ken Gould on December 11, 2012 to begin technical discussions with municipality regarding project construction and operations. The next step is to set up a meeting in order to discuss these specifications in more detail; NextEra's engineering team is currently working with Mr. Gould to schedule that meeting prior to the final public meeting. Cable installation and specifications are technical aspects of the project and need to be reviewed in detail between NextEra and municipal representatives with technical knowledge.

- **Concerns over our decommissioning plan (specifically, our plan to decommission to 1-metre);**

The decommissioning and abandonment of any underground interconnection cables is not expected to have long term environmental effects because the materials used (aluminum, copper, rubber, and plastic, with no insulating fluids) are considered inert. The decommissioning and abandonment of the foundation are not expected to have long term environmental effects because the materials used (steel encased in cement) are also considered inert. In addition, the disturbance caused by their removal (foundations and cables) would be greater than their abandonment. All of these components are materials common to the underground built environment we live in and accept as having benign environmental impacts (ie. house foundations, pipes, bridge piers, etc.).

With respect to any impacts to field drainage, we will work closely with our landowners at the time of construction to ensure disruption to tile drains is remedied at that time. Currently the only fields tiled within our proposed project are those fields in the northeast which house turbines T12, T14, T15. Existing tile drains on these properties are actually buried at a depth of 0.75m to 0.9m.

Future tile work should not be hindered by any underground infrastructure beyond 1.0 metre in depth. The Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) publication [Drainage Guide for Ontario - Publication 29](#) provides the technical references for the regulations of the [Agricultural Tile Drainage Installation Act, 1990](#), and specifically references the depth recommendations for drains based on specific soil conditions. The subject lands are located on Pike Lake Loam, which both have drainage design codes of G3. The recommended drain depth for G3 Class soils is a range of 0.9-1.2m.

As such, our plan should be sufficient at 1.0 metre based on existing drainage works, but may need to be slightly deeper to accommodate any potential future drainage works based on the above information

from OMAFRA. As such we will revise our Decommissioning Plan Report to include the removal of all subsurface infrastructure to a depth of **1.2 metres**.

In addition, in our verbal communications with OMAFRA engineers, it was noted that 1.0 metre should be suitable for not having an impact on crop production, and that given the relatively small area of the concrete foundation, any existing drainage works that abut the foundation area should adequately drain the area without the need to install additional drains above the subsurface foundations. All of the lands where foundations and cabling are located will be registered on the title of the lands, which should allow any future contractors to identify areas where extra caution is required to protect equipment.

Finally, we can confirm that according to Ontario Regulation 359/09, subsurface infrastructure may remain with justification as to how no negative environmental impacts would result. This is confirmed by our Conestogo Wind Energy Centre project in the Township of Mapleton, in Wellington County which has a similar decommissioning protocol and was approved by the Ministry of the Environment under the REA system.

- **Concerns over stray voltage;**

Through extensive industry and NextEra research, we have found that wind turbines do not specifically cause stray voltage. As the transmission/distribution system has dealt with stray voltage issues for many years, long before wind energy was integrated into the system, the local distribution system operator (Hydro One) oversees these types of issues. Hydro One has developed a protocol to proactively test for stray voltage and then mitigate any concerns, if found, all at no cost to the landowner. NextEra will assist any concerned landowner in the project area through this process with Hydro One. Below are some common questions regarding stray voltage followed by NextEra's responses. Additionally, we have attached a few fact sheets describing stray voltage and detailing the HONI investigation and mitigation processes, as well as the Distribution Code appendix on stray voltage which provides further information.

Q: What is stray voltage?

A: Stray voltage results from the normal delivery and/or use of electricity - usually smaller than 10 volts - that may be present between two conductive surfaces. Stray voltage is related to power system faults and is generally not considered hazardous.

Q: Do wind turbines cause stray voltage?

A: No. Wind energy has been incorrectly associated with stray voltage because wind turbines are often installed in agricultural areas. Stray voltage is not a consequence of wind energy but rather changes in the use pattern of the existing electrical system.

Wind turbines are not the root of the problem, but the addition of this or any other generation source may expose faults in that system. All types of generation, including wind generation, must fully comply with utility requirements to ensure that the electricity they supply is compliant with grid standards.

Stray voltage problems require on-site inspection to avoid grounding problems and to examine power quality issues with the distribution utility.

Q: What is being done to minimize stray voltage across these transmission lines?

A: NextEra Energy Canada will adopt industry best practices at all times to minimize the risk of stray voltage and ensure our projects are built and maintained within acceptable levels as prescribed by the local safety code.

\*Attachments: 1) "CanWEA\_StrayVoltageFactSheet" and 2) "StrayVoltage – Hydro One" and 3) "Distribution\_System\_Code\_AppH".

- **Clarification of REA report stating that “tingle voltage is not a health hazard;”**

In the Project Description Report (Sub-section 3.6.2), Design and Operations Report (sub-section 6.6.2.1) we discuss Stray Voltage and Effects to Livestock. The report states that "...at a voltage difference above about 10 volts, people may detect a tingle. This is not a health hazard to humans." By the nature of this report we are required to inform the public of any potential hazards. In reality, as expressed in the explanations and documentation referenced above, wind projects do not contribute directly to stray voltage. We will work with local landowners and the local distribution system operator to ensure that no voltage differences at or above 10 volts are present where public exposure may occur. Should there be a voltage concern, we will assist the local landowner through Hydro One's process to proactively mitigate any potential issue.

- **Clarify mention of 3 meteorological towers in the Project Description report;**

From our latest scan of this report, the report only mentions one to two **meteorological towers**. There is a discussion of "three guy wires" but only one to two **meteorological towers** are noted in the report.

- **Clarification of bird/bat mortality thresholds prior to on-site monitoring; description of appropriate mitigation measures;**

Information pertaining to monitoring of birds and bats is provided by MNR in the following guidance documents and summarized below:

*Ontario Ministry of Natural Resources (OMNR). July 2011. Bats and Bat Habitats: Guidelines for Wind Power Projects. Queen's Printer for Ontario. Ontario, Canada.*

*Ontario Ministry of Natural Resources (OMNR). December 2011. Birds and Bird Habitats: Guidelines for Wind Power Projects. Queen's Printer for Ontario. Ontario, Canada.*

**BIRDS:** 3 year monitoring is a requirement for all Class 3 and 4 wind turbine operations. Monitoring is required for at least 30% of total turbines when >10 turbines are in operation (minimum 10 turbines), once a month from May to Oct. Where significant annual bird mortality is identified, subsequent mortality monitoring is conducted for 2 years at individual turbines to determine cause-effect; and, where mitigation is implemented, effectiveness monitoring at individual turbines would be conducted for an additional 3 years.

Bird mortality is considered by MNR to be significant when a threshold of annual bird mortality exceeds:

- 14 birds/ turbine/ year at individual turbines or turbine groups;
- 0.2 raptors/ turbine/ year (all raptors) across a wind power project;
- 0.1 raptors/ turbine/ year (provincially tracked raptors) across a wind power project; or
- 2 raptors/wind power project (<10 turbines)

**BATS:** 3 year monitoring is a requirement for all Class 3 and 4 wind turbine operations. Monitoring is required at least 30% of total turbines when >10 turbines are in operation (minimum 10 turbines), twice a week from May to Oct. Where significant annual bat mortality is identified and operational mitigation is implemented, post construction monitoring is conducted for an additional 3 years from implementation of the operational mitigation to evaluate its effectiveness.

Bat mortality is considered by MNR to be significant when a threshold of annual bat mortality (averaged across the site) exceeds:

- 10 bats/ turbine/ year.

Mitigation measures are as outlined in NHA report.

- **Additional information on haul routes;**

NextEra previously sent initial, high-level routes for turbine deliveries showing which roads are planned to be traveled for such deliveries. Route design and haul process engineering are ongoing and are typically finalized after submission of the REA, but prior to construction; more specifics will be presented to municipal technical representatives once complete. NextEra would be happy to review the haul route plan submitted on November 29 with municipal staff.

- **Information on the Engineering, Procurement and Construction contractor's hiring process;**

We are now in the process of hiring an Engineering, Procurement and Construction (EPC) contractor. Once this contractor is hired for the project, we will be able to provide more detail regarding their hiring process. It is standard industry practice to wait until a certain level of project design is complete before hiring an EPC contractor. Additionally, each EPC contractor has different hiring protocols.

- **Clarification on the operating range for wind turbines;**

The cut-in wind speed is 3 m/s, and the cut-out speed is 25 m/s.

- **Clarification on number of major maintenances expected over the life of wind turbines, as well as the frequency of large equipment being required on-site during operations;**

We conduct 2 planned maintenance activities per turbine every year (1 "Major Maintenance Service" and 1 "Minor Maintenance Service"). These are planned activities and not in response to equipment failures.

How often large equipment is required on-site during operations will vary based on site location, wind resource, equipment, etc. We expect, based on operating history of the wind turbines planned to be operated at this site, that less than 1 major component repair per year requiring a crane can be expected.

- **More information on the geotextile fabric make-up, used in road construction;**

As noted, this is a permeable membrane intended to stabilize the road base while allowing water to penetrate through. We are still working on obtaining specific detail regarding this fabric and will provide this information to staff at a later date.

- **Necessity or appropriateness to have West Grey names as additional insured on NextEra's policy;**

NextEra does not believe that it is necessary to have West Grey named as an additional insured on our General Liability insurance policy. East Durham Wind, Inc. is proposing to use municipal Right-of-way for our underground collection line as well as municipal roads for turbine deliveries and transportation of heavy equipment when necessary throughout the operating phase. Adequate insurance provisions have been proposed in the Road Use Agreement delivered to the municipality via email on September 27, 2012; These provisions will protect West Grey from any damage caused by East Durham Wind, Inc. under the NextEra General Liability policy.

- **More information on our General Insurance policy:**

NextEra Energy Canada, ULC holds a General Liability insurance policy which covers all third parties for bodily injury and physical damage to property caused by any activities performed by a NextEra Energy Canada representative (or a rep of any of its subsidiaries or affiliates). As an entity under NextEra Energy Canada, all activity (including the development activity that is currently ongoing) that is



conducted at the proposed East Durham Wind Energy Centre is covered under this policy; consequently, West Grey and its citizens are covered under this policy. Our Risk Management team has obtained certificates of insurance as proof of this policy, as requested by West Grey; these certificates are included as attachments. NextEra's policy is to refrain from distributing copies of this overarching insurance policy to any 3rd party as it is considered proprietary information; however, should a third party request to view the policy, we could accommodate this in our corporate office. As such, we would request that any information obtained by the municipality regarding our policy not be released to the public without NextEra's prior consent.

Prior to NextEra's subsidiary or affiliate beginning construction on a project, all properties involved in that project are entered into a Builders Risk policy that lasts throughout the construction phase. Upon completion of construction, these properties are transferred into a long-term Operational Property Insurance policy. These policies cover any property damage caused by the Wind Energy Centre or its employees on property that is involved in the wind project. The Operational Property Insurance policy is renewed each year to ensure that all of our facilities are covered.

In addition to the policies described above, we also carry an Auto Liability policy (covering damage or injury to others caused by operation of a motor vehicle by a company representative), a Workers Comp policy covering injuries to company reps under the scope of employment, and a Pollution/Environmental policy covering any possible hazards caused by construction or operation of our projects.

- **Explanation on validity of dates in sample certificates previously provided to the municipality;**

NextEra has one master General Liability policy, not project specific to projects. This policy is renewed each year on September 15. As mentioned above, this covers any injury or damage caused by our projects in any phase of development, construction or operations. Thus, the dates on the sample insurance certificates previously shown to the municipality run from September 15, 2012 through September 15, 2013; this is the current policy period. Every year when we renew our insurance policies, new certificates will be issued; this is standard industry practice.

- **Request to examine water retention areas in Spring 2013;**

NextEra and its consultants are not familiar with the term "water retention area" in the context of the Natural Heritage Assessment or the Water Bodies Report. We will need additional clarification from the municipality in order to comment.

- **Additional information on turning radii plan;**

Our engineering and surveying teams are finalizing a draft of this plan. We will forward the plan once completed and discuss with municipal staff.

- **Additional information on amphibian woodland breeding (invasive species);**

NextEra requires more information from the municipality in order to provide a response.

- **Clarification on who will be monitoring ice and snow, as mentioned in a specific REA report;**

- **NextEra requires more information from the municipality in order to provide a response. Clarification on why we are using "noisier" GE 1.6 MW wind turbines as opposed to less-noisy Siemens 2.3 MW machines;**

This was a question that was posed by an audience member on the December 3 meeting. The GE1.6-100 turbines selected for East Durham are quieter than Siemens 2.3MW-101 turbines (103 dBA vs. 105 dBA); GE has new serrated blade technology to reduce noise which is planned to be

Mayor and Members of Council

December 12, 2012

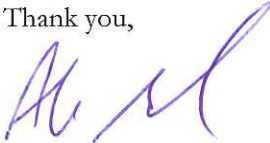
Page 6

used at this site. Our selection also has to do with other factors such as wind regime, soil composition/land use, density of housing in project area, etc. Regardless of turbine selection, the regulation is the same for 40 dBA at non-participating homes and Vacant Lot Receptors.

- **Clarification on when our wind energy options will be converted to leases;**

As per our current schedule, this is expected to occur in late summer/early fall 2013.

Thank you,



Adam Rickel  
Project Manager

***Attachments***

cc: Pat Becker, Genivar

**APPENDIX 'D'**

**COUNCIL RESOLUTION DATED APRIL 1, 2013**



**MINUTES**  
**For the Regular Meeting of the**  
**Council of the Municipality of West Grey**  
**Held on Monday, April 1, 2013 at 9:00 a.m.**  
**At the Council Chambers – West Grey Municipal Office**

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<u>Council</u>	Mayor Kevin Eccles, Deputy Mayor John A. Bell, Councillor Bev Cutting, Councillor John Eccles, Councillor Carol Lawrence, Councillor Don B. Marshall, Councillor David Mollison, Councillor Mark Rapke, Councillor Rob Thompson
<u>Staff</u>	Christine Robinson, CAO; Mark Turner, Clerk. Kerri Mighton, Director of Finance/Treasurer – during report. Brian Marcell, Director of Building Services/CBO (during “Ringrose” item in Clerks’ Report and during OSPCA delegation); Les MacKinnon, Environmental Health Officer (during “Ringrose” item in Clerks’ Report)

**Lord’s Prayer/Moment of Reflection**

**Declarations of Pecuniary Interest & General Nature Thereof – None**

**CLOSED SESSION**

**THOMPSON-JOHN ECCLES, WHEREAS, the Municipal Act, S.O. 2001, Section 239 (2), authorizes Councils of municipalities to close to the public a meeting or part of a meeting for dealing with certain subject matters,**

**NOW THEREFORE BE IT RESOLVED, that the Council of the Municipality of West Grey, does now go into a closed session of Council at 9:04 a.m., with the CAO, Clerk, Director of Building Services/C.B.O., and Director of Infrastructure and Public Works, to discuss an item which relates to a proposed or pending acquisition or disposition of land for municipal or local board purposes, and litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board. ... #88-13** **CARRIED.**

**RAPKE-JOHN ECCLES, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby returns to Open Session of Council at 10:03 a.m. ... #89-13** **CARRIED.**

(Mayor Eccles confirmed that only closed session items identified were discussed in closed session).

**Matters Arising from the Closed Session – n/a**

**Public Meetings - None**

(2) April 1, 2013

**Part I - Consent Agenda**

**MOLLISON-RAPKE, BE IT RESOLVED THAT, Items A1 to C1 inclusive, contained in Part 1 – Consent Agenda, be adopted; AND FURTHER THAT, authorization be given for the action to be taken as may be necessary to give effect to the recommendations contained therein.**  
... #90-13 **CARRIED.**

**Adoption of Minutes**

**Council:**

- A1 Minutes of Regular Council Meeting – March 18, 2013
- A2 West Grey Committee of Whole – March 25, 2013

**Committees:**

- A2 Neustadt Recreation Advisory Committee – February 12, 2013

**Other**

- A3 Saugeen Municipal Airport Commission – February 21, 2013  
Elmwood Community Centre Board – February 22, 2013 – resolution #91-13

**THOMPSON-MARSHALL, BE IT RESOLVED THAT, the minutes of the Regular Meeting of the Council of the Municipality of West Grey, held on March 18, 2013, and the minutes of the Committee of the Whole meeting, held on March 25, 2013, be approved, as printed; AND FURTHER THAT, the Minutes of the West Grey Committees – A2, be received, as circulated; AND FURTHER THAT, the Minutes of the Other Committees – A3, be received, as circulated. ... #91-13** **CARRIED.**

**Award of Tenders**

- B1 None

**Routine Department Reports**

- C1 Director of Infrastructure and Public Works – #IPWC 05/01/13 – resolution #92-13

**MARSHALL-JOHN ECCLES, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby supports the recommendation of the Committee of The Whole to accept the following tenders:**

- Dalton R. Lowe and Sons Construction Ltd. to crush load, haul and spread 26,000 tonnes of “A” gravel in the Glenelg Patrol at a unit price of \$3.85 per tonne and an approximate total cost of \$100,100.00 plus applicable taxes;
- Dalton R. Lowe Const. Ltd. to load, haul and spread 24,000 tonnes of “A” gravel in the Normanby Patrol at a unit price of \$2.30 per tonne and an approximate total cost of \$55,200.00 plus applicable taxes;

(3) April 1, 2013

- Joe Kerr Ltd; to load, haul and spread 24,000 tonnes of "A" gravel in the Bentinck Patrol at a unit cost of \$2.25 per tonne and an estimated total cost of \$54,000.00 plus applicable taxes;
- Da-Lee Dust Control to supply dust suppressant to West Grey at a unit price cost of \$215.42 per flake tonne for an estimated total cost of \$123,866.50 plus applicable taxes;
- MSO Const. Ltd; for surface treatment at a cost of .935 cents per kilogram for emulsion, \$15.00 per tonne to load, haul and apply HL3 stone and \$21.00 per tonne to supply, load, haul and apply high float aggregate at a cost of \$21.00 per tonne;
- Wayne Schwartz Construction Ltd. (Miller Paving Ltd.) to haul, mix and place approximately 10,050 tonnes of winter sand at a unit price of \$4.19 per tonne in the Normanby Sand Shed, a unit price of \$5.26 per tonne in the Glenelg Sand Shed and a unit price of \$2.95 per tonne in the Bentinck Shed for an approximate total cost of \$41,599.50 plus applicable taxes;
- L & S Spraytex for line painting at a cost of \$3,160.95 plus applicable taxes;
- S + E Lawncare and Snow Removal for roadside grass cutting at a unit cost of \$6.70 per swath kilometer and a total cost of \$8,040 plus applicable taxes for 1,200 swath kilometers;
- Foster Sewer Services for Catch Basin Cleaning at a unit cost of \$11.00 per catch basin and a total cost of \$6,314.00 plus applicable taxes to clean 574 catch basins.

... #92-13

**CARRIED.**

**Miscellaneous Correspondence** (For Information Only - Not Circulated but Available for Viewing at Meeting)

- D1 Minister Responsible for Seniors – invitation to participate in the 2013 Senior Achievement Award Program
- D2 Carl R. Noble – letter expressing concerns with the Ontario Society for Prevention of Cruelty to Animals (OSPCA)

**Future Committee Meetings**

- E1 West Grey Committee of Adjustment – April 8, 2013, 1:00 p.m., West Grey Municipal Office
- E2 West Grey Planning Advisory Committee – April 8, 2013, 2:00 p.m., West Grey Municipal Office

**Part II - Regular Agenda**

**Communications from the Mayor and Council**

Mayor Eccles, Councillors Thompson and Lawrence, reported on past activities and events since the last regular meeting of Council, and on upcoming events and activities.

(4) April 1, 2013

### **Delegations**

#### **Jennifer Bluhm, Inspector, Ontario SPCA, Bruce Grey Branch**

Jennifer Bluhm, Inspector, Ontario SPCA, Bruce Grey Branch, and Brad Dewar, Inspector, Provincial OSPCA office, gave a powerpoint presentation to Council to provide information relating to services provided by the Ontario SPCA, cost to provide said services, and a proposed fee for service contract for municipalities.

Jennifer Bluhm reported that options that municipalities are considering to provide required services pursuant to the Ontario Society for the Prevention of Cruelty to Animals Act include a fee for service contract with the OSPCA, utilizing their own police force, or establishing a County wide service level.

Mayor Eccles noted the Ontario Society for the Prevention of Cruelty to Animals Act is a provincial piece of legislation, however, the province does not provide funding. Ms. Bluhm indicated the OSPCA received \$500,000.00 for training inspectors, however, the province does not provide funding for operational expenses.

Ms. Bluhm stated that if there is no direction for funding from a municipality or the province, the OSPCA (Bruce-Grey) would like to initiate a transitional phasing-in with the respective municipality by May 1, 2013.

Rene Berger, West Grey Police Services Chief, recommended this issue be discussed with the West Grey Police Service Board for subsequent direction and deliberation by Council. Council agreed with the recommendation from Chief Berger.

### **Business Arising from the Previous Meeting - None**

### **Staff Reports**

#### **Director of Finance/Treasurer - Report #FTR 04/01/13**

Approval of Accounts, Voucher #60-2013 – resolution #92-13 (Council requested the West Grey Fire Chief report on the newly purchased used pumper truck for the Neustadt Fire Hall, and associated outfitting costs. at the April 29, 2013 Committee of the Whole meeting.)

Resolution to adopt a budget amount for 2012 Amortization – resolution #93-13

**MOLLISON-CUTTING, BE IT RESOLVED THAT, the Director of Finance/Treasurer be authorized to pay the accounts presented as Voucher #6-2013 of the Municipality of West Grey, in the amount of \$299,805.89. ... #92-13 CARRIED.**

(5) April 1, 2013

**BELL-THOMPSON, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby approves a 2012 budget amount for total amortization of \$2,596,541. ... #93-13**  
**CARRIED.**

Clerk – Report #CR 04/01/13

Ontario Convenience Stores Association (OCSA) (received for information)

Dave & Angela Ringrose (Council authorized discussion on this item prior to the OSPCA delegation. The Director of Building Services/CBO and Clerk noted that the revenue and expenses for the services of the West Grey Environmental Health Officer are revenue neutral, and were approved by Council by by-law. Council authorized the Clerk to forward a letter to Mr. & Mrs. Ringrose indicating the fees charged by the municipality that are reflected in the invoice are applicable, and noting the municipality hired Les MacKinnon as the West Grey Environmental Health Officer for consistency purposes and based on his extensive background in this field.)

SOLARIZE Energy LP (Council requested staff to contact a number of solar power companies to come to a future Special Committee of the Whole meeting to discuss the services their companies have to offer regarding ground mounted or rooftop solar power projects for municipal facilities/lands. Council requested staff to contact other municipalities that already have ground mounted or rooftop solar power developments at their facilities to determine successes/shortcomings of such ventures)

West Grey Soccer Club Draft Facility Use Agreement (Council requested the following amendments to the draft Facility Use Agreement:

- Section 1 – amend effective term to commence “as of the date of signing thereof.”;
- Section 3 – this section to remain unchanged, although requested to be deleted by the West Grey Soccer Club;
- Section 8 – increase minimum liability insurance by the West Grey Soccer Club to a minimum of \$5,000,000.00;
- Section 11 – amended to read “That the West Grey Soccer Club will be the contact and scheduler of facility use for West Grey Soccer Club/Ontario Soccer Association sanctioned events”;
- Section 12 – amended to read “That the Municipality of West Grey provides the right of use to the facility parking lot during West Grey Soccer Club/Ontario Soccer Association sanctioned events, subject to the use of the parking lot for the Fall Fair and other Municipality of West Grey sponsored events.”;
- Section 14 – amend to read “... not a registered member of the West Grey Soccer Club or opposing team participating in an Ontario Soccer Association sanctioned event.”

**By-Laws – First, Second & Third Readings - None**



(6) April 1, 2013

**New Business**

NextEra Energy Canada (Council discussed the proposed municipal consultation form and road use agreement requested by NextEra Energy Canada) (see resolution #94-13)

Council was advised that the Wind Works wind turbine project proposed in Ontario was withdrawn due to insufficient economic justification.

**Addendum** – n/a

**Notice of Motion/Direct Motions**

NextEra Energy Canada (Council agreed to include Councillor Cutting in discussions relating to requests for quotations for peer review services) – resolution #94-13

**CUTTING-LAWRENCE, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby requests staff to obtain quotations for a peer review to be completed for the studies submitted by NextEra Energy Canada for the proposed East Durham Wind Energy Centre Project;  
AND FURTHER THAT, the applicable peer review is not to commence until fees/securities are posted with the municipality in advance by NextEra Energy Canada. ... #94-13**  
**CARRIED.**

**Closed Session – Incomplete Items Only** – n/a

**Matters Arising from Closed Session – Incomplete Items Only** – n/a

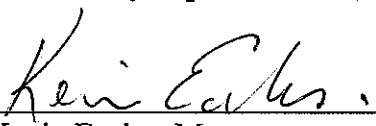
**Question Period**

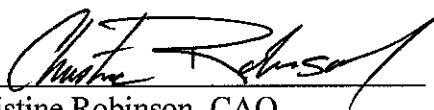
The Clerk noted the West Grey Director of Building Services/CBO will be discussing at a future Council meeting the possible implementation of fees to address the issue of treatment of effluent from milkhouse.

**Municipal Act – Notices**

**Adjournment**

**MOLLISON, RESOLVED THAT, we do now adjourn at 12:02 p.m., to meet again on Monday, April 15, 2013, 7:00 p.m., or at the call of the Mayor. CARRIED.**

  
\_\_\_\_\_  
Kevin Eccles, Mayor

  
\_\_\_\_\_  
Christine Robinson, CAO

**APPENDIX 'E'**

**LETTER FROM EAST DURHAM TO WEST GREY**

**DATED APRIL 26, 2013**

April 26, 2013

Municipality of West Grey  
c/o Mark Turner, Clerk  
402813 Grey Road 4, RR2  
Durham, ON. N0G 1R0

Dear Mr. Turner:

East Durham Wind, Inc. (“East Durham”), a wholly-owned subsidiary of NextEra Energy Canada, ULC (“NextEra”), is in receipt of the letter from the Municipality of West Grey (“Municipality”) dated April 8, 2013 (the “Letter”) with respect to the East Durham Wind Energy Centre (“Project”). The purpose of this letter is to (i) respond to the Municipality’s request for the posting of certain fees in connection with the peer review, (ii) reiterate East Durham’s willingness to work with the Municipality to negotiate and enter into a mutually acceptable Road Use Agreement (“RUA”) and (iii) respond comprehensively and in writing to certain previously communicated requests of the Municipality with respect to the RUA and the Project.

#### A. Peer Review

East Durham understands and appreciates the Municipality’s interest in having Project documents and studies peer reviewed as part of the consultation process. Pursuant to By-Law Number 2-2013 (the “Fee Bylaw”) East Durham is required to post a fifty thousand dollar (\$50,000) deposit (the “Deposit”) in connection with peer review and is further liable for any related expenses for outside consultants incurred by the Municipality in excess of the Deposit. In addition, in the Letter, the Municipality indicated that it would advise East Durham when “quotations” for the peer review were received and approved by the Municipality.

As set forth in that certain letter dated March 15, 2013, from East Durham’s counsel, Torys LLP, to the Municipality, it is East Durham’s position that the Fee Bylaw (including any fees or deposits required thereby) is in conflict with or violates the *Green Energy and Green Economy Act, 2009*, the *Municipal Act, 2001* and the *Electricity Act, 1998*, and is therefore invalid. This remains East Durham’s position and in no way does East Durham agree with any part of the Fee-Bylaw as it was written and adopted.

However, as it is East Durham’s sincere desire to work with the Municipality and move forward with the Project on a cooperative basis, and without prejudice and in full reservation of East Durham’s right to challenge the Fee Bylaw and seek a full refund of any deposit or fee paid pursuant thereto including the Deposit, East Durham will agree to post the Deposit on the understanding that the balance thereof will be refunded by the Municipality in the event that the expenses incurred by the Municipality in connection with peer review are less than \$50,000. Once East Durham has posted the Deposit, it will have satisfied any provision of By-Law Number 26-2013 and the resolution passed during the April 1, 2013 Council meeting requiring such Deposit, and the Municipality will have no cause to further delay submission of the Municipal Consultation Form or its review of the RUA.

#### B. Road Use Agreement

Pursuant to the Electricity Act 1998, all distributors have a statutory right to place distribution facilities in public streets or highways. East Durham maintains that it would like to work with the Municipality to determine the location of its distribution facilities within the public road allowances as part of an RUA.

An initial draft of an RUA was sent to the Municipality on September 27, 2012. Following several attempts by our representatives to obtain the Municipality's comments to the agreement (through emails, phone calls and requests to set up a face-to-face meeting), the parties met on March 15, 2013 to discuss project engineering and the terms of the RUA. At the meeting, the Municipality indicated that it still had not yet fully reviewed the agreement. On March 19, 2013, a follow-up email was sent to the Municipality that included the original proposed RUA and requested that the Municipality provide comments by mid-April 2013. None have been received to date.

Although the Municipality has not completed its review of the draft RUA, the Municipality has occasionally inquired about the following matters that relate to the proposed distribution facilities:

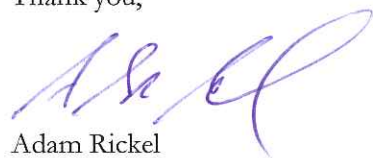
1. Whether East Durham will conduct baseline stray voltage tests, prior to commencement of operations, at all residences near project infrastructure;
2. Whether East Durham will encase all collection in Municipal Right-of-way in concrete;
3. Whether a pre-construction survey evaluating the condition and integrity of municipal infrastructure to be used by the Project would be commissioned.

Below are the responses that NextEra has previously provided to such inquiries:

- (a) As mentioned in a letter to the Municipality dated December 12, 2012 (attached hereto), throughout its extensive history in developing and operating wind energy projects across North America, NextEra has found that wind turbines do not specifically cause stray voltage. Stray voltage results from the normal delivery and/or use of electricity – usually smaller than 10 volts – that may be present between two conductive surfaces. Stray voltage is related to power system faults and changes in the use pattern of the existing electrical system and is not specifically a consequence of wind energy or any other power generation source. Moreover, Hydro One has developed a protocol to proactively test for stray voltage and mitigate any concerns, if found, at no cost to the landowner.
- (b) It is not standard engineering practice to encase underground collection lines in concrete. Upon a review of the local engineering code, we have not found a requirement to encase our collection in concrete in the Municipality. It is also our understanding that the Municipality does not require concrete encasement of similar-voltage, buried electric lines associated with other local development projects (including new residential developments as well as local distribution company infrastructure). For these reasons, East Durham believes that it is not appropriate for the Municipality to request that all collection lines be encased in concrete.
- (c) East Durham will agree to fund a survey to be conducted by a third-party reasonably agreed upon by the Municipality and East Durham, as is NextEra's common practice. A copy of the survey will be submitted to the Municipality prior to the start of construction, provided the parties agree upon such third-party in a timely manner in order to avoid any adverse impact on the construction schedule of the Project. At this time, East Durham anticipates that such third party consultant would need to be identified on or before June 1, 2013, and expects that the survey would be complete on or before September 30, 2013. This is an item that would normally be addressed in a RUA.

To reiterate East Durham's position, timely negotiation and execution of an RUA is in both party's best interests. East Durham hopes it can work with The Municipality to advance its project in a safe manner and with the interests of both the company and the Municipality in mind.

Thank you,



Adam Rickel  
Project Manager  
East Durham Wind, Inc.

NextEra Energy Canada, ULC

**APPENDIX 'F'**

**MINUTES FROM MAY 6, 2013 COUNCIL MEETING**



**MINUTES**  
**For the Regular Meeting of the**  
**Council of the Municipality of West Grey**  
**Held on Monday, May 6, 2013 at 9:00 a.m.**  
**At the Council Chambers – West Grey Municipal Office**

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<u>Council</u>	Mayor Kevin Eccles, Councillor Bev Cutting, Councillor John Eccles, Councillor Carol Lawrence, Councillor Don B. Marshall, Councillor David Mollison, Councillor Mark Rapke, Councillor Rob Thompson
<u>Absent</u>	Deputy Mayor Bell
<u>Staff</u>	Christine Robinson, CAO; Mark Turner, Clerk. Kerri Mighton, Director of Finance/Treasurer; Ken Gould, Director of Infrastructure and Public Works – during reports.

**Lord’s Prayer/Moment of Reflection**

**Declarations of Pecuniary Interest & General Nature Thereof**

Councillor Eccles declared a pecuniary interest relating to the “Lind Condominium Exemption Application” item contained in the Clerk’s Report #CC 05/06/13

**CLOSED SESSION**

**RAPKE-CUTTING, WHEREAS, the Municipal Act, S.O. 2001, Section 239 (2), authorizes Councils of municipalities to close to the public a meeting or part of a meeting for dealing with certain subject matters,**

**NOW THEREFORE BE IT RESOLVED, that the Council of the Municipality of West Grey, does now go into a closed session of Council at 9:07 a.m., with the CAO, Clerk, Director of Infrastructure and Public Works, Director of Building Services/CBO, and Environmental Health Officer, to discuss items which relate to personal matters about an identifiable individual, including municipal or local board employees; a proposed or pending acquisition or disposition of land for municipal or local board purposes; and litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board.**  
... #113-13 **CARRIED.**

**MARSHALL-CUTTING, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby returns to Open Session of Council at 10:04 a.m.**  
... #114-13 **CARRIED.**

(Mayor Eccles confirmed that only closed session items identified were discussed in closed session).

**Matters Arising from the Closed Session**

Kincardine Street Property – resolution #115-13

(2) May 6, 2013

**THOMPSON-JOHN ECCLES, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby accepts the Agreement of Purchase and Sale submitted by Candue Homes Ltd., in the amount of \$90,000.00 plus HST, as applicable, for the municipal property described as Plan 500, Lots 4, 5 & 6, Kincardine E/S, former Town of Durham. ... #115-13 CARRIED.**

**Public Meetings - None**

**Part I - Consent Agenda**

**MOLLISON-RAPKE, BE IT RESOLVED THAT, Items A1 to C1 inclusive, contained in Part 1 – Consent Agenda, be adopted; AND FURTHER THAT, authorization be given for the action to be taken as may be necessary to give effect to the recommendations contained therein. ... #116-13 CARRIED.**

**Adoption of Minutes**

**Council:**

A1 Minutes of Regular Council Meeting – April 15, 2013

**Committees:**

A2 West Grey Economic Development Committee – February 14, 2013

Normanby Recreation Advisory Committee – March 14, 2013

**Other**

A3 Drinking Water Source Protection Committee – November 30, 2012

Saugeen Valley Conservation Board of Directors – January 30, 2013 & February 14, 2013

West Grey Public Library Board – March 18, 2013

Saugeen Municipal Airport Commission – March 20, 2013

Elmwood Fire Department Joint Board of Management – March 26, 2013 – resolution #117-13

**MARSHALL-JOHN ECCLES, BE IT RESOLVED THAT, the minutes of the Regular Meeting of the Council of the Municipality of West Grey, held on April 15, 2013, and the minutes of the Committee of the Whole meeting, held on April 29, 2013, be approved, as printed; AND FURTHER THAT, the Minutes of the West Grey Committees – A2, be received, as circulated; AND FURTHER THAT, the Minutes of the Other Committees – A3, be received, as circulated. ... #117-13 CARRIED.**

**Award of Tenders**

B1 None

(3) May 6, 2013

**Routine Department Reports**

C1 Clerk – Report #CC 05/06/13 – resolution #118-13, #119-13, #120-13, #121-13, #122-13, #123-13

**THOMPSON-JOHN ECCLES, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby approves up to \$5,000 as seed money for the Durham Library Branch Expansion Fundraising, to be allocated from the Durham Library Expansion Reserve, as recommended by the Committee of the Whole.**

... #118-13

**CARRIED.**

**JOHN ECCLES-THOMPSON, RESOLVED THAT, the Council of the Municipality of West Grey hereby approves the installation of a new high efficiency furnace for the West Grey Police Service building at an approximate cost of \$3,250.00, with \$2,200.00 plus HST being derived from the West Grey Police Service budget, and the remainder of the cost being derived from the West Grey Fire Department budget, as recommended by the Committee of the Whole.**

... #119-13

**CARRIED.**

**THOMPSON-JOHN ECCLES, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby approves the following Public Works Machine Time Rates effective April 7, 2013, as recommended by the Committee of the Whole:**

	2012 Rate	2013 Rate
Backhoes	\$ 25.00	\$ 30.00
Graders	\$ 30.00	\$ 35.00
Plow Truck - Tandem	\$ 30.00	\$ 35.00
Plow Truck - Single Axle	\$ 25.00	\$ 30.00
Tractors	\$ 25.00	\$ 30.00
Trackless	\$ 30.00	\$ 30.00
Mower	\$ 25.00	\$ 25.00
Float	\$ 15.00	\$ 15.00
Compactor	\$ 24.00	\$ 24.00
Loader	\$ 24.00	\$ 24.00
Street Sweeper	\$ 55.00	\$ 55.00
Pickup Truck	\$ 12.00	\$ 12.00
Wood Chipper	\$ 30.00	\$ 30.00

...#120-13

**CARRIED.**



(4) May 6, 2013

**MARSHALL-THOMPSON, RESOLVED THAT, the Council of the Municipality of West Grey hereby authorizes the Clerk to submit a letter to the County of Grey requesting as a condition of approval of the Lind Condominium Exemption application that the proponent enter into a Development Agreement with the Municipality, with said Agreement to include a clause for the proponent to pay \$1,100.00 to the Municipality as payment for cash-in-lieu of parkland dedication, as recommended by the Committee of the Whole. ... #121-13 CARRIED.**

**THOMPSON-MARSHALL, BE IT RESOLVED THAT, the Council of The Municipality of West Grey hereby designates the 28<sup>th</sup> Annual Community Festival and Family Fun Slow Pitch Tournament, to be held at the Ayton Centennial Hall Grounds on the weekend of August 9, 10 & 11, 2013, as a Community Festival/Significant Event. ... #122-13 CARRIED.**

**THOMPSON-MARSHALL, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby appoints the following individuals to the respective committees/subcommittees:**  
**Elmwood Homecoming Committee 2014 – Ed Stangler, Jack MacLeod, Shirley Young, Mary Lou Stangler, Jackie Penfold, Anita Van Vuuren, Alf Brenndorfer, Dawn Brenndorfer, Pat Brunner, Jodi Lang, Rob Thompson – West Grey Council representative**  
**Elmwood Homecoming 2014 Sub-committee - Suzanne Leifso, Amy Stephen, Leona Kennedy, Kim Molan, Reg Tanner, Dean Leifso, Rick Monk, Marion Leifso, Pat Brunner, John Brunner, Morley Leifso, Jackie Klerks, Jodi Lang, Patsy Becker, Brian Nogler, Jackie Penfold, Monika Walters, Alf Brenndorfer, Anita Van Vuuren, Dawn Brenndorfer. ... #123-13 CARRIED.**

**Miscellaneous Correspondence** (For Information Only - Not Circulated but Available for Viewing at Meeting)

- D1 Grey Bruce Health Unit – re: “Reducing Alcohol-Related Harms in Municipalities – Licensing Municipal Facilities” presentation by Alcohol and Gaming Commission of Ontario on May 15, 2013 at the Williamsford Community Centre
- D2 Municipality of Brockton – copy of resolution from Brockton Council re: Elmwood Joint Fire Board Budget
- D3 City of Brampton – re: “Hire a Veteran Program”
- D4 Ontario Good Roads Association – “Ontario Announces Plan for New Infrastructure Fund”
- D5 Association of Municipalities of Ontario – “Ontario government responds to Infrastructure needs for small, rural and northern Municipalities
- D6 Association of Municipalities of Ontario – OMERS Update
- D7 Southwest Economic Alliance (SWEA) – re: 8<sup>th</sup> Annual SWEA Assembly, June 13-14, 2013 in Goderich

(5) May 6, 2013

- D8 Ontario Highlands Friends of Wind (OHFOWP) – re: wind turbine viewpoint (hard copy only)
- D9 County of Grey – Grey County Rural Guide 2013 (hard copy only)
- D10 Independent Electricity System Operator (IESO) – 2012 Annual Report (hard copy only)

**Future Committee Meetings**

E1 None

**Part II - Regular Agenda**

**Communications from the Mayor and Council**

Mayor Eccles, and Councillors Cutting, Eccles and Lawrence, reported on past activities and events since the last regular meeting of Council, and on upcoming events and activities.

**Delegations**

**Randy Schwartz and Sarah Whitehouse**

Randy Schwartz and Sarah Whitehouse came before Council to express their opposition to the proposed zoning bylaw amendment to facilitate the expansion of the Varney Speedway in the Township of Southgate, and requested Council to rescind resolution #104-13 noting support for the expansion of the Varney Speedway.

Mr. Schwartz indicated new information has been provided to indicate the expansion of the Varney Speedway is not in the best interests of the community. Factors cited to consider for not supporting the application include the wide spread community opposition to the speedway, submission of a petition signed by over 100 individuals opposing the proposed expansion of the Varney Speedway; additional information now available concerning the extent of the proposed expansion of the Varney Speedway, being, to turn it into a motorplex, with more and louder vehicles and racing on additional days and expanded hours/day; the proponents have conceded that the increase in noise will be over 75%, that will be intolerable for area residents; property devaluation, loss of enjoyment of property, impact of health on individuals, livestock, and wildlife; environmental impacts; unanswered questions during the Southgate Council public meeting i.e. no schedule to date regarding hours of operation; Southgate Mayor agreed that further reports had to be completed by the proponent; West Grey's support of the expansion may influence Southgate's decision; and the resolution violates West Grey's noise bylaw

(6) May 6, 2013

Council asked Mr. Schwartz if the current agreement between Southgate and the Varney Speedway has any stipulations regarding days and hours of operation. Mr. Schwartz indicated he is not sure of the conditions of the existing agreement, however, the current owner is operating during additional days and hours than the previous owners that were subject to the original agreement.

Mayor noted Council may consider this request later in the meeting and the intent of Council may have been just to support the application going forward for consideration.

Randy Schwartz requested Council send a letter indicating not support the proposed application.

**Business Arising from the Previous Meeting – n/a**

**Staff Reports**

Director of Finance/Treasurer - Report #FTR 05/06/13

Approval of Accounts, Voucher #8-2013 – resolution #124-13

West Grey – Durham Lions Club – Durham Loves Canada – resolution #125-13

OMPF 2010 Final Reconciliation Notice – resolution #126-13

Letter from Special Olympics Ontario – South Saugeen – request for financial assistance to help cover the costs incurred by their athletes to attend the 2013 Provincial Summer Games in York Region from July 11<sup>th</sup> to 14<sup>th</sup>. (received for information)

Saugeen Mobility and Regional Transit – 1<sup>st</sup> Quarter 2013 Operational Report - our budget included \$38,500 and based on the 2013 SMART Budget our levy is \$33,827.29 so this item will be \$4,672.71 under budget. With the addition of two additional partners, West Grey's share dropped from approximately 11% in 2012 to 9% in 2013. (received for information)

**LAWRENCE-RAPKE, BE IT RESOLVED THAT, the Director of Finance/Treasurer be authorized to pay the accounts presented as Voucher #8-2013 of the Municipality of West Grey, in the amount of \$515,830.23. ... #124-13 CARRIED.**

**JOHN ECCLES-MARSHALL, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby grants permission for the West Grey – Durham Lions Club to host a fireworks display on the Durham Ball Diamonds on Saturday, June 29<sup>th</sup>, 2013 and further that Council approves a donation of \$500.00 towards the Durham Loves Canada event. ... #125-13 CARRIED.**

**MOLLISON-RAPKE, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby approves the transfer of the \$80,900 OMPF 2010 Reconciliation Payment to the General Capital Reserve. ... #126-13 CARRIED.**

(7) May 6, 2013

Director of Infrastructure and Public Works – Report #IPWR 05/06/13

Portable Sound System – resolution #127-13

Load Limits for Roads - West Grey's rural patrol staff has reported many infractions this spring on West Grey roads that are posted with a restricted five tonne per axle load limit. There has been many permits issued by Grey County this spring and logging companies have been harvesting trees in all rural areas of West Grey. The logging companies are not complying with the load limit signs. Also the logging companies are stacking logs that have been harvested on road allowances right to the edge of the travelled portion of the road. This could become a liability matter if an accident occurred where the logs are placed on the road allowance. The Ministry of Transportation Enforcement Branch will come to West Grey and investigate an infraction if they are called but they are based out of Owen Sound and cover a wide area. (Mayor Eccles will contact the Grey County Clerk and Grey County Forester to discuss these issues, and request the County consider logging companies being required to provide a security to local municipalities in case of violations)

Botanical Designs Contract – resolution #128-13 (Council requested an amendment to the proposed contract to include a provision that the services will be at the discretion of the West Grey Director of Infrastructure and Public Works and West Grey Parks Committee)

Normanby Prefab Bridge, Lot 63, Con. 2 WGR - contractor is forming abutments today and further update to be provided at next Council meeting (received for information)

Dust Suppressant – application of dust suppressant starting next week (received for information)

**LAWRENCE-CUTTING, BE IT RESOLVED THAT, the Council of the Municipality of West Grey accepts the recommendation of the West Grey Parks Committee and approves the purchase of portable sound system from The Canadian Hearing Society at a cost of \$1,408.00 plus applicable taxes. ... #127-13 CARRIED.**

**JOHN ECCLES-MARSHALL, BE IT RESOLVED THAT, the Council of the Municipality of West Grey accepts the maintenance contract as per terms in the contract from May 1<sup>st</sup>, 2013 to April 30<sup>th</sup>, 2014 from Botanical Designs and Installations, as amended, at a cost of \$38,807.50 plus applicable taxes.**

**... #128-13**

**CARRIED.**

Clerk – Report #CR 05/06/13

Proposed D-4 Study for the Durham Landfill Site – resolution #129-13

Bill Walker, MPP Bruce-Grey-Owen Sound – resolution #130-13

(8) May 6, 2013

Ontario Municipal Board – Severance Application B03/2013 - the Municipality has received an appeal to the Ontario Municipal Board by Harry Walker respecting severance application B03/2013 submitted by Geoffrey Hewitt on lands described as 125 William Street, former Village of Neustadt. There was no appeal of Minor Variance Application A03/13 submitted by Geoffrey Hewitt in conjunction with severance application B03/2013. (received for information. Council indicated no municipal representation to be provided at this OMB Hearing)

Township of Wainfleet – resolution #131-13

Saugeen Conservation re: Emerald Ash Borer (received for information)

Tile Drainage Loan – John Glencross – resolution #132-13

NextEra Energy Canada (Council discussed the letter dated April 26/13, received by email April 30/13, from NextEra Energy Canada. NextEra indicates in the letter that they will provide the \$50,000 security for peer review subject to the municipal consultation form being submitted by West Grey. Council noted that the peer review study will need to be completed prior to submission of municipal consultation form, and the peer review study process will not commence until payment of the required security. Council indicated that contrary what is stated in section B, page 2 of the NextEra letter, Council stated it has a right to request conduit lines to be encased in concrete, and this is not a request, but is a requirement of the Municipality for any proposed wind energy project. Council noted that the Town of Lincoln required conduit lines be encased in concrete for a wind energy project occurring in their County. Council disputed the statement in the NextEra letter noting “...East Durham hopes it can work with the Municipality to advance its project in a safe manner and with the interests of both the company and the Municipality in mind.”, as Council noted it is in the best interests of West Grey for the project not to proceed. Council also disputed the statements made by NextEra on page 2, section a), regarding stray voltage. Mayor Eccles reported that he and the Deputy Mayor recently met with the Minister of Energy to discuss industrial wind turbine issues and in the Minister’s opinion, the Municipality was sound with their opinions and requests. Council requested staff, Mayor Eccles and Council members on the wind turbine sub-committee to draft a letter for consideration by Council at the next Council or Committee of the Whole meeting. Council agreed that it will exercise seeking legal advice if so warranted, although stated a preference to correspond without legal threats.

Council temporarily adjourned for lunch at 12:30 p.m., and reconvene at 1:08 p.m.

**MOLLISON-RAPKE, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby authorizes staff to request quotations for the completion of a D-4 Study for the Durham Landfill Site. ... #129-13** **CARRIED.**

**THOMPSON-JOHN ECCLES, WHEREAS the Owen Sound Harbour is a port facility in Ontario, with direct links to regional and national economic development and the agriculture industry;**

(9) May 6, 2013

**AND WHEREAS fully functional commercial port capabilities in Owen Sound remain vitally important to importing and exporting agricultural crops nationally and internationally;**

**AND WHEREAS local agricultural based business would be greatly impacted by the loss of this commercial port, including but not limited to financial impacts, employment loss and related support service industries;**

**BE IT RESOLVED THAT the Council of the Municipality of West Grey requests and urges the Federal Government of Canada to fully consider the broader economic development and agriculture industries impacts of not having the Owen Sound Harbour dredged in a timely manner, to commercial port requirements; AND FURTHER THAT Transport Canada officials work progressively with the City of Owen Sound to ensure harbour dredging occurs prior to the Spring of 2015; AND FURTHER THAT a copy of this resolution be forwarded to Bruce-Grey-Owen Sound MP Larry Miller, the Federal Government's Minister of Transport, Bruce-Grey-Owen Sound MPP Bill Walker, and the City of Owen Sound.**

... #130-13

**CARRIED.**

**CUTTING-LAWRENCE, BE IT RESOLVED THAT, the Council of the Municipality of West Grey, also declared as an unwilling host for wind turbines, supports the resolution dated April 9, 2013 by the Council for the Township of Wainfleet respecting the Township of Wainfleet not being a "willing host" for Industrial Wind Turbines (IWTs);**

**AND FURTHER THAT, a copy of this resolution be forwarded to the Premier of Ontario, Minister of Environment, Minister of Energy, Minister of Rural Affairs, local M.P.s, and the Township of Wainfleet. ... #131-13**

**CARRIED.**

**THOMPSON-JOHN ECCLES, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby approves the Application for Tile Drainage Loan by John William Glencross, being the property owner of Part Lots 2 & 3, Concession 7, Municipality of West Grey (former Township of Glenelg), property roll no. 42 05 220 005 12100 0000, in the estimated loan amount of \$18,800.00, subject to the availability of funding from the Province of Ontario;**

**AND FURTHER THAT, a tile drainage loan by-law will be brought before Council at a later date after the completion of the required works and submission of necessary documents and invoices from the property owner.**

... #132-13

**CARRIED.**

**By-Laws – First, Second & Third Readings**

30-2013 A By-law to further amend Zoning Bylaw Number 37-2006, to permit an accessory apartment dwelling unit within certain detached dwellings in Durham and Neustadt, pursuant to per Bill 140 – resolution #133-13, 108-13

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- 31-2013 A By-law to further amend Zoning Bylaw Number 37-2006, to permit an accessory apartment dwelling unit within certain detached dwellings in West Grey, excluding Durham and Neustadt, pursuant to Bill 140 – resolution #134-13, #110-13
- 33-2013 A By-law to provide for the adoption of the estimates of all sums required during the year, to strike the tax rates, and to provide for penalty and interest in default of payment thereof for the year 2013 – resolution #135-13
- 34-2013 A By-law to enter into an Energy Planning Tool Services Agreement with Local Authority Services Limited (LAS) – resolution #136-13
- 35-2013 A By-law to purchase lands described as 185 Elizabeth Street East, former Town of Durham (former Durham RONA property) – resolution #137-13
- 36-2013 A By-law to establish a Site Plan Control Area on lands described as Part of Lot 24, Division 3, Concession 1 EGR, Parts 1 & 3, Plan 16R-10322, former Township of Glenelg (Barber) – resolution #138-13
- 37-2013 A By-law to enter into a Site Plan Agreement on lands described as Part of Lot 24, Division 3, Concession 1 EGR, Part 1, Plan 16R-10322, former Township of Glenelg (Barber) – resolution #139-13
- 38-2013 A By-law to rezone lands described as Part of Lot 24, Division 3, Concession 1 EGR, Parts 1, 2 & 3, Plan 16R-10322, former Township of Glenelg (Barber) – resolution #141-13
- 39-2013 A By-law to enter into a Site Plan Agreement on lands described as Part of Lot 24, Division 3, Concession 1 EGR, Part 3, Plan 16R-10322, former Township of Glenelg (Barber) – resolution #140-13
- 40-2013 A By-law to enter into a Lease Agreement between the Municipality of West Grey and Durham Furniture Inc., on lands described as Part of Park Lots 6 & 7, Plan 500, former Town of Durham – resolution #142-13
- 41-2013 A By-law to enter into a Sign Reflectivity Meter Agreement between the Municipality of West Grey, Township of Southgate, Municipality of Grey Highlands, and Township of Chatsworth – resolution #143-13
- 42-2013 A By-law to rezone lands described as Part Lots 1 & 2, Concession 13, former Village of Neustadt (Gutzke) – resolution #144-13
- 43-2013 A By-law to enter into a Soccer Pitch Use Agreement between the Municipality of West Grey and the West Grey Soccer Club – resolution #145-13

**THOMPSON-JOHN ECCLES, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby lifts resolution no. 108-13 from the table.**

**... #133-13**

**CARRIED.**

(11) May 6, 2013

**CUTTING-RAPKE, BE IT RESOLVED THAT, By-law Number 30-2013, being a By-law to further amend Zoning Bylaw Number 37-2006, to permit an accessory apartment dwelling unit within certain detached dwellings in Durham and Neustadt, pursuant to per Bill 140, be now read a first, second and third time, passed as amended and numbered and that the said by-law be signed by the Mayor and CAO, sealed with the seal of the Corporation and be engrossed in the by-law book. ... #108-13**

**CARRIED.**

**LAWRENCE-RAPKE, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby lifts resolution no. 110-13 from the table. ... #134-13**

**CARRIED.**

**THOMPSON-BELL, BE IT RESOLVED THAT, By-law Number 31-2013, being a By-law to further amend Zoning Bylaw Number 37-2006, to permit an accessory apartment dwelling unit within certain detached dwellings in West Grey, excluding Durham and Neustadt, pursuant to Bill 140, be now read a first, second and third time, passed as amended and numbered and that the said by-law be signed by the Mayor and CAO, sealed with the seal of the Corporation and be engrossed in the by-law book. ... #110-13**

**CARRIED.**

**CUTTING-LAWRENCE, BE IT RESOLVED THAT, By-law Number 33-2013, being a By-law to provide for the adoption of the estimates of all sums required during the year, to strike the tax rates, and to provide for penalty and interest in default of payment thereof for the year 2013, be now read a first, second and third time, passed and numbered and that the said by-law be signed by the Mayor and CAO, sealed with the seal of the Corporation and be engrossed in the by-law book. ... #135-13**

**CARRIED.**

**MARSHALL-THOMPSON, BE IT RESOLVED THAT, By-law Number 34-2013, being a By-law to enter into an Energy Planning Tool Services Agreement with Local Authority Services Limited (LAS), be now read a first, second and third time, passed and numbered and that the said by-law be signed by the Mayor and CAO, sealed with the seal of the Corporation and be engrossed in the by-law book. ... #136-13**

**CARRIED.**

**MOLLISON-RAPKE, BE IT RESOLVED THAT, By-law Number 35-2013, being a By-law to purchase lands described as 185 Elizabeth Street East, former Town of Durham (former Durham RONA property), be now read a first, second and third time, passed and numbered and that the said by-law be signed by the Mayor and CAO, sealed with the seal of the Corporation and be engrossed in the by-law book. ... #137-13**

**CARRIED.**



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**LAWRENCE-CUTTING, BE IT RESOLVED THAT, Bylaw Number 36-2013, being a By-law to establish a Site Plan Control Area on lands described as Part of Lot 24, Division 3, Concession 1 EGR, Parts 1 & 3, Plan 16R-10322, former Township of Glenelg (Barber), be now read a first, second and third time, passed and numbered and that the said by-law be signed by the Mayor and CAO, sealed with the seal of the Corporation and be engrossed in the by-law book.  
... #138-13 **CARRIED.****

**JOHN ECCLES-THOMPSON, BE IT RESOLVED THAT, By-law Number 37-2013, being a By-law to enter into a Site Plan Agreement on lands described as Part of Lot 24, Division 3, Concession 1 EGR, Part 1, Plan 16R-10322, former Township of Glenelg (Barber), be now read a first, second and third time, passed and numbered and that the said by-law be signed by the Mayor and CAO, sealed with the seal of the Corporation and be engrossed in the by-law book.  
... #139-13 **CARRIED.****

**MOLLISON-RAPKE, BE IT RESOLVED THAT, By-law Number 39-2013, being a By-law to enter into a Site Plan Agreement on lands described as Part of Lot 24, Division 3, Concession 1 EGR, Part 3, Plan 16R-10322, former Township of Glenelg (Barber), be now read a first, second and third time, passed and numbered and that the said by-law be signed by the Mayor and CAO, sealed with the seal of the Corporation and be engrossed in the by-law book. ... #140-13 **CARRIED.****

**MARSHALL-JOHN ECCLES, BE IT RESOLVED THAT, By-law Number 38-2013, being a By-law to rezone lands described as Part of Lot 24, Division 3, Concession 1 EGR, Parts 1, 2 & 3, Plan 16R-10322, former Township of Glenelg (Barber), be now read a first, second and third time, passed and numbered and that the said by-law be signed by the Mayor and CAO, sealed with the seal of the Corporation and be engrossed in the by-law book. ... #141-13 **CARRIED.****

**THOMPSON-MARSHALL, BE IT RESOLVED THAT, By-law Number 40-2013, being a By-law to enter into a Lease Agreement between the Municipality of West Grey and Durham Furniture Inc., on lands described as Part of Park Lots 6 & 7, Plan 500, former Town of Durham, be now read a first, second and third time, passed and numbered and that the said by-law be signed by the Mayor and CAO, sealed with the seal of the Corporation and be engrossed in the by-law book.  
... #142-13 **CARRIED.****

(13) May 6, 2013

**CUTTING-RAPKE, BE IT RESOLVED THAT, By-law Number 41-2013, being a By-law to enter into a Sign Reflectivity Meter Agreement between the Municipality of West Grey, Township of Southgate, Municipality of Grey Highlands, and Township of Chatsworth, be now read a first, second and third time, passed as amended and numbered and that the said by-law be signed by the Mayor and CAO, sealed with the seal of the Corporation and be engrossed in the by-law book.  
... #143-13 **CARRIED.****

**THOMPSON-JOHN ECCLES, BE IT RESOLVED THAT, By-law Number 42-2013, being a By-law to rezone lands described as Part Lots 1 & 2, Concession 13, former Village of Neustadt (Gutzke), be now read a first and second time.  
... #144-13 **CARRIED.****

**RAPKE-MOLLISON, BE IT RESOLVED THAT, By-law Number 43-2013, being a By-law to enter into a Soccer Pitch Use Agreement with the West Grey Soccer Club, be now read a first, second and third time, passed and numbered and that the said by-law be signed by the Mayor and CAO, sealed with the seal of the Corporation and be engrossed in the by-law book. ... #145-13 **CARRIED.****

**New Business**

Councillor Thompson reported that he and West Grey Police Chief, Rene Berger, attended the Grey County Federation of Agriculture meeting last Monday regarding municipalities assuming responsibilities of the OSPCA effective June 1, 2013. Councillor Thompson noted there is a plan in place to deal with animal cruelty, however, there is a larger concern regarding dealing with large animals. The Grey County Federation of Agriculture will try to facilitate impoundment of abused livestock at the location where they are found, but if the need to be moved, Keady Livestock will house livestock and provide transportation at cost, but costs are not known to date. The Grey County Federation of Agriculture has produced a card with phone numbers and other contact information. Protocol can be developed by the municipality for response by police. Police Chief Berger is bringing a report on this issue to the May 21, 2013 Council meeting.

Varney Speedway – resolution #146-13 (Council may consider a position on this issue at a later date upon collection of additional information and in view of information received at the May 6, 2013 Council meeting. Staff to request additional information from Southgate when available)

(14) May 6, 2013

**LAWRENCE-RAPKE, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby rescinds resolution #104-13.**

**RECORDED VOTE**

**FOR: Councillor Lawrence, Councillor Marshall, Councillor Mollison,  
Councillor Rapke, Councillor Thompson**

**AGAINST: Councillor Eccles, Mayor Eccles  
... #146-13**

**CARRIED.**

(Councillor Cutting was not present at the time of voting on this resolution)

**Addendum – n/a**

**Notice of Motion/Direct Motions**

West Grey Parks Committee – resolution #147-13

**JOHN ECCLES-MARSHALL, BE IT RESOLVED THAT, the Council of the Municipality of West Grey hereby approves the following individuals to be authorized to make purchases on behalf of the West Grey Parks Committee: Steve Ayerhart, Bev Cutting, and Patricia Black. ... #147-13**

**CARRIED.**

**Closed Session – Incomplete Items Only – n/a**

**Matters Arising from Closed Session – Incomplete Items Only – n/a**

**Question Period**

Erich Kern reported to Council on ways to improve communications to the public, and requested Council address the dust problems on the roads. Mayor Eccles noted that the municipality will be applying dust suppressant to the roads starting next week.

**Municipal Act – Notices - None**

**Adjournment**

**MOLLISON, RESOLVED THAT, we do now adjourn at 2:02 p.m., to meet again on Tuesday, May 21, 2013, 10:00 a.m., or at the call of the Mayor. CARRIED.**

\_\_\_\_\_  
(SIGNED)  
Kevin Eccles, Mayor

\_\_\_\_\_  
(SIGNED)  
Christine Robinson, CAO

**APPENDIX 'G'**

**LETTER FROM WEST GREY TO EAST DURHAM**

**DATED MAY 23, 2013**



# The Corporation of the Municipality of West Grey

402813 Grey Road 4, R.R.2, Durham, Ontario NOG 1R0

Christine Robinson, Chief Administrative Officer  
Mark Turner, Clerk  
Ken Gould, Director, Infrastructure & Public Works

Kerri Mighton, Director of Finance/Treasurer  
Sharon Hinds, Tax Collector/Deputy Treasurer  
Brian Marcell, Director Building Services/CBO

Ph: 519-369-2200  
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E-Mail: [info@westgrey.com](mailto:info@westgrey.com)  
Website: [www.westgrey.com](http://www.westgrey.com)

May 23<sup>rd</sup>, 2013

EMAIL ONLY

NextEra Energy Canada, ULC  
390 Bay Street, Suite 1720  
Toronto, Ontario  
M5H 2Y2  
**Attn: Adam Rinkel, Project Manager**

Dear Sir,

**RE: Proposed East Durham Wind Energy Centre Project (East Durham Wind, Inc./NextEra Energy Canada, ULC) – Project Location: Municipality of West Grey, Grey County**

The Municipality of West Grey has the following comments in response to your letter dated April 26, 2013:

A. Peer Review

It is the position of the Municipality of West Grey Council that as per the letter dated April 8, 2013 to NextEra Energy Canada from the Municipality, resolution #94-13, and Bylaw Number 26-2013, that the peer review deposit needs to be provided to the Municipality prior to commencing the process of obtaining quotations from consulting firms for completion of a peer review of the studies submitted by NextEra Energy Canada as it relates to the proposed East Durham Wind Energy Centre Project. The Municipality of West Grey Council will need to review the completed peer review by a consulting firm prior to completion of the municipal consultation form in order to provide informed comments respecting the proposal.

B Road Use Agreement

In response to your response in the NextEra Energy Canada letter dated April 26, 2013, concerning stray voltage, please be advised that the requirement of the Municipality of West Grey, as previously expressed at the March 15, 2013 meeting, is that wind turbine projects will conduct baseline stray voltage tests at all receptor points as per Hydro One protocol. The report when completed will be provided to the Municipality for review as part of the process for completing the municipal consultation form.

In response to your response in the NextEra Energy Canada letter dated April 26, 2013, concerning the requirement of the Municipality to encase all collection lines in Municipal Right-of-way in concrete, please be advised that the Municipality does not dispute the right of generators/distributors to place distribution infrastructure in public streets or highways, however, the Municipality has specified conditions that are required to be met for placement of said distribution facilities in municipal roads. One such example, for safety reasons, includes the requirement specified in bylaw 59-2012 to encase all generation/distribution lines in municipal road allowances in concrete to a minimum depth of 1 metre with an increased depth in certain areas of road allowances as directed by the Public Works Department.

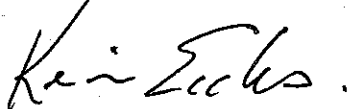
In response to your response in the NextEra Energy Canada letter dated April 26, 2013, concerning the completion of a pre-construction survey, the Municipality of West Grey acknowledges NextEra Energy Canada's agreement to conduct a pre-construction survey evaluating the condition and integrity of municipal infrastructure to be used by the Project. The Municipality of West Grey shall review the list of potential engineering firms, knowledgeable with rural infrastructure, that you are suggesting to complete this work. A copy of the pre-construction survey is required to be submitted to the Municipality upon completion, and will be incorporated in the peer review process.

To reiterate the position of the Municipality of West Grey - it is not in the best interest of the Municipality for this project to proceed as Council has deemed the Municipality as not being a willing host for industrial wind turbine projects. Nevertheless, the Municipality is proceeding with negotiations with the "Economic, social and environmental well-being of the municipality", "Health, safety and well-being of persons" and "Protection of persons and property..." in mind. (Municipal Act - subsections 10. (2) 5., 6., & 8.)

Please be advised the aforementioned comments are provided by the Municipality without prejudice, and in full reservation of West Grey's right to exercise its legal options.

Very truly yours,

MUNICIPALITY OF WEST GREY



Kevin Eccles, Mayor  
KE/mt

Cc: Environmental Assessment and Approvals Branch, Ministry of the Environment

Exhibit B, Tab 6, Schedule 1  
Proposed Location of Distribution System  
Within Road Allowances

**PROPOSED LOCATIONS OF DISTRIBUTION SYSTEM WITHIN ROAD**  
**ALLOWANCES**

1   **6.0    PROPOSED LOCATION OF THE DISTRIBUTION SYSTEM WITHIN THE**  
2   **ROAD ALLOWANCES**

3   Given that East Durham and the Municipality cannot agree to the location of the Distribution  
4   System within the Road Allowances, East Durham requests that the Board issue an order  
5   pursuant to section 41(9) of the Electricity Act determining such location as follows:

- 6   •     The Distribution System shall generally be located in the Road Allowances listed on  
7         Exhibit B, Tab 6, Schedule 1, Appendix A, as shown in the drawings included in Exhibit  
8         B, Tab 6, Schedule 1, Appendix B.
- 9   •     Where practicable, and where it meets all applicable engineering, environmental and  
10        health and safety standards, the Distribution System lines shall be located 1-4 meters  
11        from the abutting property line.
- 12  •     Where practicable, and where they meet all applicable engineering, environmental and  
13        health and safety standards, the diagrams shown at Exhibit B, Tab 6, Schedule 1,  
14        Appendices C and D shall be followed in constructing the Distribution System within the  
15        Road Allowances.



**APPENDIX 'A'**

**LIST OF AFFECTED ROAD ALLOWANCES**

1

**LIST OF AFFECTED ROAD ALLOWANCES**

- 1 Sideroad 40
- 2 Southline Road
- 3 Baptist Church Road
- 4 Concession Road 4

**APPENDIX 'B'**

**DRAWINGS SHOWING LOCATION OF DISTRIBUTION SYSTEM**

**WITHIN MUNICIPAL ROAD ALLOWANCES**

1