

## **Local Law No. 7 of 2006**

Be it hereby enacted by the Town Board of the Town of Chateaugay as follows:

**Section 1: Local Law No. 7 of 2006**, entitled “**WIND ENERGY FACILITIES,**” is hereby adopted to read in its entirety as follows:

### **WIND ENERGY FACILITIES**

#### **Article I**

##### **§1 Title**

This Local Law may be cited as the “Wind Energy Facility Law of the Town of Chateaugay, New York.”

##### **§2 Purpose.**

The Town Board of the Town of Chateaugay adopts this Local Law to promote the effective and efficient use of the Town’s wind energy resource through Wind Energy Conversion Systems (WECS), and to regulate the placement of such systems so that the public health, safety, and welfare will not be jeopardized.

##### **§3 Authority**

The Town Board of the Town of Chateaugay enacts this Local Law under the authority granted by;

1. Article IX of the New York State Constitution, §2(c)(6) and (10).
2. New York Statute of Local Governments, § 10(1) and (7).
3. New York Municipal Home Rule Law, § 10 (1)(i) and (ii) and §10 (1)(a)(6), (11), (12), and (14).
4. New York Town Law §130(1)(Building Code), (3)(Electrical Code), (5)(Fire Prevention), (7)(Use of streets and highways), (7-a)(Location of Driveways), (11)(Peace, good order and safety), (15)(Promotion of public welfare), (15-a)(Excavated Lands), (16)(Unsafe buildings), (19)(Trespass), and (25)Building lines).
5. New York Town Law §135 and 138.
6. New York Town Law §64(17-a) protection of aesthetic interests), (23)(General powers).

##### **§4. Findings.**

The Town Board of the Town of Chateaugay finds and declares that

1. Wind energy is an abundant, renewable and nonpolluting energy resource of the Town and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.
2. The generation of electricity from properly sited wind turbines, including small systems, can be cost effective, and in many cases existing power distribution systems can be used to transmit electricity produced.
3. Regulations of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners and the general public.
4. Wind Energy Facilities represent significant potential aesthetic impacts because of their large size, lighting, and shadow flicker effects, if not properly sited.
5. If not properly regulated, installation of Wind Energy Facilities can create drainage problems through erosion and lack of sediment control for facility and access road sites, and harm farmlands through improper construction methods
6. Wind Energy Facilities may present a risk to bird and bat populations if not properly sited.
7. If not properly sited, Wind Energy Facilities may present risks to the property values of adjoining property owners.
8. Wind Energy Facilities may be significant sources of noise, which, if unregulated, can negatively impact adjoining properties.
9. Without proper planning, construction of Wind Energy Facilities can create traffic problems and damage local roads.
10. If improperly sited, Wind Energy Facilities can cause electromagnetic interference issues with various types of communications.

**§5. Permits Required; Transfer; Modifications**

- A. All construction and any restoration or modifications of any Wind Energy Facility, WECS, Small Wind Energy Conversion System, Wind Measurement Tower or part thereof that is located in agricultural areas will be done to the extent practicable according to the New York State Dept. of Agriculture and Market Guidelines for Agricultural Mitigation for Windpower Projects, subject to landowner approval.

- B. No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Chateaugay except in compliance with this Local Law.
- C. No WECS shall be constructed, reconstructed, modified, or operated in the Town of Chateaugay except with a Wind Energy Permit approved pursuant to this Local Law.
- D. No Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of Chateaugay except pursuant to a Wind Energy Permit issued pursuant to this local law.
- E. No Small Wind Energy Conversion System shall be constructed, reconstructed, modified, or operated in the Town of Chateaugay except pursuant to a Wind Energy Permit issued pursuant to this local law.
- F. Exemptions. No permit or other approval shall be required under this Local Law for mechanical non-electrical WECS utilized solely for agricultural operations, provided the Town Board finds such proposed system or structure exempt or otherwise issues a waiver pursuant to provisions of Article V hereof. In considering an exemption, the Town Board shall find that the proposed location and height of such structure/system does not adversely affect the public health, safety and welfare of the adjoining parcels and property owners.
- G. Transfer. No transfer of any Wind Energy Facility, Wind Energy Permit or sale of the entity holding the permit for such facility or the sale of more than 15% of the stock of said Permittee (not counting sales of shares on a public exchange), to a third party, will occur without prior approval of the Town. Said approval shall be granted only upon the Town Board finding that the Transferee has provided a written assumption of all the Transferor obligations under this Local Law of the Wind Energy Permit, including but not limited to the Host Agreement, Pilot Agreement, Decommission Fund and such other agreements relative to the Wind Energy Facility, in a form acceptable to the Town Attorney. No transfer shall reduce the Permittee or any other party total obligations owed to the Town under this Local Law, except in the manner as provided herein.,
- H. Notwithstanding the requirements of this Section, replacement in kind or modification of a Wind Energy Facility may occur without Town Board approval when (1) there will no increase in Total Height; (2) no change in the location of the WECS; (3) no additional lighting or change in facility color; and (4) no increase in noise produced by the WECS.

## **§6 Definitions.**

As used in this Local Law, the following terms shall have the meanings indicated:

EAF - Environmental Assessment Form used in the implementation of the SEQRA as that term is defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.

RESIDENCE - means any dwelling suitable for habitation existing in the Town of Chateaugay on the date an application is received. A Residence may be part of a multi-dwelling or multipurpose building, but shall not include buildings such as hunting camps, hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools or other buildings used for educational purposes, or correctional institutions.

SEQRA - the New York State Environmental Quality Review Act and its implementing regulations in Title 6 of the New York Codes, Rules and Regulations, Part 617.

SOUND PRESSURE LEVEL -- means the level which is equaled or exceeded a stated percentage of time. An  $L_{10} - 50$  dBA indicates that in any hour of the day 50 dBA can be equaled or exceeded only 10% of the time, or for 6 minutes. The measurement of the sound pressure level can be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-1 1), or other accepted procedures.

SITE - The parcel(s) of land where a Wind Energy Facility is to be placed. The Site can be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where multiple lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements. Any property, which has a Wind Energy Facility or has entered an agreement for said Facility or a setback agreement shall not be considered off-site.

SMALL WIND ENERGY CONVERSION SYSTEM (“Small WECS”)-- A wind energy conversion system consists of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce consumption of utility power at that location.

TOTAL HEIGHT-- The height of the tower and the furthest vertical extension of the WECS. This is to be measured from pre-existing original grade.

WIND ENERGY CONVERSION SYSTEM (WECS)-- A machine that converts the kinetic energy in the wind into a usable form (commonly known as a wind turbine or windmill).

WIND ENERGY FACILITY--- Any Wind Energy Conversion System, Small Wind Energy Conversion System or Wind Measurement Tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures to such systems.

WIND MEASUREMENT TOWER — a tower used for the measurement of meteorological data such as temperature, wind speed and wind direction.

WIND ENERGY PERMIT — A permit granted pursuant to this Local Law granting the holder the right to construct, maintain and operate a Wind Energy Facility.

## **§7. Applicability**

A. The requirements of this Local Law shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed after the effective date of this Local Law.

B. Wind Energy Facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this Local Law, shall not be required to meet the requirements of this Local Law; provided, however, that

1. Any such preexisting Wind Energy Facility, which does not provide energy for a continuous period of twelve (12) months, shall meet the requirements of this Local Law prior to recommencing production of energy.
2. No modification or alteration to an existing Wind Energy Facility shall be allowed without full compliance with this Local Law.
3. Any Wind Measurement Tower existing on the effective date of this Local Law shall be removed no later than twenty-four (24) months after said effective date, unless a Wind Energy Permit for said Wind Energy Facility is obtained.

## **§~8-9 Reserved for Future Use**

### **Article II**

#### **Wind Energy Conversion Systems**

##### **§10. Applications for Wind Energy Permits for Wind Energy Conversion Systems**

An application for a Wind Energy Permit for individual WECS shall include the following:

1. Name, address, telephone number of the Applicant. If the Applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the Applicant authorizing the representation.
2. Name, address, telephone number of the property owner. If the property owner is not the Applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
3. Address, or other property identification, of each proposed tower location, including Tax Map section, block and lot number.
4. A description of the project, including the number and maximum rated capacity of each WECS.
5. A plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe

the following.

- (a) Property lines and physical dimensions of the Site;
  - (b) Location, approximate dimensions and types of major existing structures and uses on the Site, public roads, and adjoining properties within five hundred (500) feet of the boundaries of the proposed WECS Site.
  - (c) Location and elevation of each proposed WECS identified by specific I.D. #.
  - (d) Location of all above ground utility lines on the Site or within one radius of the Total Height of the WECS, transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.
  - (e) Location and size of structures above 35 feet within a five-hundred-foot radius of the proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open lattice towers are not considered structures.
  - (f) To demonstrate compliance with the setback requirements of this Article, circles drawn around each proposed tower location equal to:
    - (i) One and a half time the tower height.
    - (ii) Six hundred foot perimeter/radius.
    - (iii) Twelve hundred foot perimeter/radius.
    - (iv) Thirteen hundred twenty foot perimeter/radius.
  - (g) Location of the all structures with dwelling units on the Site
  - (h) Location of all structures with dwelling units located off-Site and within 1320 feet of the proposed WECS.
  - (i) All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.
6. Vertical drawing of the WECS showing Total Height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors. One drawing must be submitted for each WECS of the same type and total height.
7. Landscaping Plan depicting existing vegetation and describing any areas to be cleared and the specimens proposed to be added, identified by species and size of specimen at installation and their locations.
8. Lighting Plan showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure, but if such determination is not available at the time of the application, the Wind Energy Permit shall require the determination be provided prior to commencement of construction of the WECS.

9. List of property owners, with their mailing address, within 500 feet of the boundaries of the proposed Site. The Applicant must submit this list with the application.

10. Decommissioning Plan: The Applicant shall submit a decommissioning plan, which shall include: 1) the anticipated life of the WECS; 2) the estimated decommissioning costs in current dollars; 3) how said estimate was determined; 4) the method of ensuring that funds will be available for decommissioning and restoration; 5) acknowledgement that the decommissioning costs shall be re-estimated, by a licensed engineer, every three years, and that the decommissioning cost will be kept current indexed to inflation;; 6) the manner in which the WECS will be decommissioned and the Site restored, which shall include removal of all structures and debris to a depth of 4 feet, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation), except any fencing or residual minor improvements requested by the landowner and approved by the Town Board.

11. Complaint Resolution: The application will include a complaint resolution process to address complaints from nearby residents. The process may use an independent mediator or arbitrator and shall include a time limit for acting on a complaint. The Applicant shall make every reasonable effort to resolve any complaint.

12. An application shall include information relating to the construction/installation of the wind energy conversion facility as follows:

- (1) A construction schedule describing commencement and completion dates; and
- (2) Blasting schedule, if known and applicable at the time of application; and
- (3) A description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.

13. Completed Part I of the Full EAF. (Environmental Assessment Form)

14. Applications for Wind Energy Permits for Wind Measurement Towers subject to this Local Law may be jointly submitted with the WECS application.

15. For each proposed WECS, include make, model, picture and manufacturers specifications, including noise decibel data. Include Manufacturers' Material Safety Data Sheet documentation for the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants and coolants.

16. If the Applicant agrees in writing in the application that the proposed WECS may have a significant adverse impact on the environment, the Town Board may issue a positive declaration of environmental significance.

17. If a positive declaration of environmental significance is determined by the SEQRA lead agency, the following information shall be included in the Draft Environmental Impact Statement (DEIS) prepared for a Wind Energy Facility. Otherwise, the following studies shall be submitted with the application:

- A. Shadow Flicker: The Applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECSs and the expected

duration of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residential structures or dwellings and describe measures that shall be taken to eliminate or mitigate the problems.

- B. Visual Impact: Applications shall include a visual impact study of the proposed WECS as installed, which may include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed Site from at least two locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the systems components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
- C. A fire protection and emergency response plan created in consultation with the fire department(s) having jurisdiction over the proposed Site.
- D. Noise Analysis: A noise analysis by a competent acoustical consultant documenting the noise levels associated with the proposed WECS. The study shall document noise levels at property lines and at the nearest structures with dwelling units not on the Site (if access to the nearest such structures is not available, the Town Board may modify this requirement). The noise analysis shall include low frequency noise.
- E. Property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of values of properties neighboring WECS Sites.
- F. An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems and other wireless communication.

18. The Applicant shall, prior to the receipt of a Wind Energy Permit, provide proof that it has a System Reliability Impact Study (SRIS) approved by the Operating Committee of the New York Independent System Operator

19. A statement, signed under penalties of perjury, that the information contained in the application is true and accurate.

### **§11. Application Review Process**

A. Applicants may request a pre-application meeting with the Town Board or with any consultants retained by the Town Board for application review. Meetings with the Town Board shall be conducted in accordance with the Open Meetings Law.

B. Six copies of the application shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission. If any waiver of any provision of this Article is requested then an application for a waiver and fee shall be submitted, together with the application for a WECS. The waiver application shall comply with Article V and provide in detail the requirement that is being requested to be waived and address the factors in Article V. All waiver requests shall be publicly

noticed and shall be heard and may be considered with, prior to or concurrently with the Application for a Wind Energy Permit.

C. Town Clerk shall forward notice of the Application to the Town Board. The Town Board shall designate a Consultant to review the Application and direct the Clerk to forward a copy of the application to the Consultant. The Consultant shall, within 45 days of receipt review the application to determine if all information required under this local law has been provided. If the application is found not to comply the Consultant shall provide the Town Board a written statement detailing the missing information.

D. If the application is incomplete , the Town Board shall provide the Applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional application fee shall be required upon submittal of the additional information unless the number of WECS proposed is increased or the application is substantially changed, for the purpose of this provision adding additional properties to the WECS Site shall be deemed a substantial change. Upon a resubmission, the application shall be returned to the Consultant for his determination as provided subparagraph 11 (C) hereof, any additional fees for review by the Consultant, shall be paid by the Applicant.

E. Upon receipt of a notice from its Consultant that the application is complies with the requirements of this Article the Town Clerk shall transmit the application to the Town Board to schedule a hearing as required hereunder. No application shall be Noticed for Hearing until it has been found to comply with the provisions of this Article. The Consultant's finding that the application comply with the filing requirement of this Article shall be not a finding on the merits or sufficiency of the content in the application or otherwise preclude a review of the EAF or DEIS for SEQR process on the application, nor shall it restrict the need for further information for said SEQR process determination.

F. The Town Board shall hold at least one public hearing on the Application. The public hearing shall be held only after the Consultant has advised the Town Board that the application is complies with filing requirement of this article and the Town Board accepts the application. Notice of the application being found compliant, together with a summary of the application shall be given by first class mail to all property owners within 500 feet of the boundaries of any property where a WECSs is proposed (Site), and published in the Town's official newspaper, no less than ten nor more than twenty days before any public hearing, but, where any public hearing is adjourned by the Town Board to hear additional comments, no further publication or mailing shall be required, but in the discretion of the Town Board such additional notice as the Town Board may direct. The Applicant shall mail the Notice of Public Hearing prepared by the Town to all property owners within 500 feet of the Site, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses. The Town shall publish the Notice.

G. The public hearing for an Application hereunder may be combined with public hearings on any Environmental Impact Statement, other SEQR Process or requested waivers (see Article V).

H. SEQRA reviews. Applications for WECS are deemed Type I project under SEQRA.

I. The Town shall require an escrow agreement for the engineering and legal review of the applications

and any environmental impact statements before commencing its review.

J. At the completion of the SEQRA review process, if a positive declaration of environmental significance has been issued and an environmental impact statement prepared, the Town shall issue a Statement of Findings, which Statement may also serve as the Town's decision on the applications.

K. Once the Town Board has accepted the application, held a public hearing, and completed the SEQRA process, the Town Board may then approve, approve with conditions, or deny the applications, in accordance with the standards in this Article.

## **§12. Standards for WECS**

A. The following standards shall apply to all WECS, unless specifically waived by the Town Board as part of a Wind Energy Permit.

1. All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.

2. No television, radio or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the Town Code. Applications may be jointly submitted for WECS and telecommunications facilities.

3. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.

4. Lighting of tower. No tower shall be lit except to comply with FAA requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the Wind Energy Facility development plan.

5. All Applicants shall use measures to reduce the visual impact of WECS to the extent possible. WECS shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. WECSs within a multiple WECS project shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the Project, to provide reasonable uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.

6. The use of guy wires is prohibited.

7. No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. No WECS shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that a WECS is causing electromagnetic interference, the operator shall

take the necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the Wind Energy Permit for the specific WECS or WECS causing the interference.

8. All solid waste and hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations.

9. WECS shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided when feasible. The use of previously developed areas will be given priority wherever possible.

10. WECS shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity, particularly bird and bat species.

11. Wind energy conversion facilities shall be located in a manner consistent with all applicable state and Federal wetland laws and regulations.

12. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable state and Federal laws and regulations.

13. The maximum Total Height of any WECS shall not exceed 400 feet from existing/original grade.

14. Construction of the WECS shall be limited to the hours of 7 a.m. to 7 p.m., except for certain activities that require work at other times during the day. The Town Board may impose reasonable conditions to any such change in work hours.

### **§13 Required Safety Measures**

A. Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.

B. Fencing: A six-foot-high (6') fence with a locking portal shall be required to enclose each substation and each tower or group of towers, unless the applicant demonstrates in its Application that the Tower(s) is non-climbable and otherwise safe. The color and type of fencing for each WECS installation shall be determined on the basis of individual applications, as safety needs dictate.

C. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information. The Town Board may require additional signs based on safety needs.

D. No climbing pegs or tower ladders shall be located closer than twelve (12') feet to the ground level at the base of the structure for freestanding single pole or guyed towers.

E. The minimum distance between the ground and any part of the rotor or blade system shall be thirty (30') feet, provided it complies with all other provisions of this law.

F. WECSs shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times.

#### **§14 Traffic Routes**

A. Construction of WECSs poses potential risks because of the large size construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECSs or the associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include (1) minimizing traffic impacts from construction and delivery vehicles; (2) minimizing WECS related traffic during times of school bus activity; (3) minimizing wear and tear on local roads; and (4) minimizing impacts on local business operations. Wind Energy Permit conditions may limit WECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public.

B. The Applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a WECS. A public improvement bond shall be posted prior to the issuance of any Wind Energy Permit in an amount, determined by the Town Board, sufficient to compensate the Town for any damage to local roads.

#### **§15 Setbacks for Wind Energy Conversion Systems**

A. The statistical sound pressure level generated by a WECS shall not exceed  $L_{10} - 50$  dBA measured at the nearest Residence located off the Site. Sites can include more than one piece of property and the requirement shall apply to the combined properties. If the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus 5 dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.

B. In the event audible noise due to Wind Energy Facility operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph 1) of this subsection shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third (1/3) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one third (1/3) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and above, by eight (8) dBA for center frequencies between one hundred and sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred and twenty-five (125) Hz.

C. In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above; the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than five (5) minutes per hour. Ambient noise levels shall be

measured at the exterior of potentially affected existing Residences, schools, hospitals, churches and public libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project Site are sufficient to allow wind turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.

D. Any noise level falling between two whole decibels shall be the lower of the two.

E. Each WECS shall be setback from Site boundaries. All measurements shall be from the perimeter of the proposed Site, or from each proposed WECS, as applicable, and each of the following setbacks shall be met and maintained;

1. 600 feet from all Site Boundary lines, of which the first 100 feet shall be a green buffer zone to provide natural screening. For the purpose of this law a green buffer zone shall be defined as an area without structures and left naturally vegetated or *in an agricultural use*. Cutting and clearing within the green buffer zone is prohibited except *in connection with agricultural uses* or as necessary to construct and maintain Wind Energy Facility access roads and electric lines; and
2. 1200 feet from US Route 11 and NYS Route 374, and 600 feet from all other public roads; and
3. 1320 feet from the nearest off-Site Residence, measured from the exterior of such Residence. Notwithstanding any other provision of this Local Law regarding waivers or setback easements, no WECS shall be within 1200 feet of any Residence, whether or not said Residence is located in the Town of Chateaugay; and
4. 2500 feet from the property line of any school, hospital or nursing facility; and.
5. 1320 from a Church (not to include church owned cemetery); and
6. One and a half time the Total Height of the WECS from any existing non-WECS structure or any existing aboveground utilities, unless otherwise approved by the Town Board: and

#### **§16. Issuance of Wind Energy Permits**

A. Upon completion of the review process, the Town Board shall, upon consideration of the standard in this Local Law and the record of the SEQRA review, issue a written decision with the its findings in support of its approval, approval with conditions or disapproval, fully stated.

B. If approved, the Town Board will issue a Wind Energy Permit upon satisfaction of all conditions for said Permit, and upon Applicant demonstrating compliance with the Uniform Fire Prevention and Building Code and the other pre-construction conditions of this Local Law.

C. The decision of the Town Board shall be filed within 5 days in the office of the Town Clerk and a copy mailed to the Applicant by first class mail.

D. If any approved Wind Energy Facility is not substantially commenced within one year of issuance of the Wind Energy Permit, the Wind Energy Permit shall expire. Upon written request of the Owner, the Wind Energy Permit may be extended for one year so long as the the project has not significantly changed.

## **§17 Abatement**

A. If any WECS fails to generate electricity for a continuous period of one year the Town Board may determine that it is "non-functional or inoperative", and require the Owner (*or the purpose of this Section 17 an Owner is the holder of the Wind Energy Permit*) to remove said WECS at its own expense. Removal of the WECS shall include at least the entire above ground structure and connected facilities down **to 4 feet below** grade, including transmission equipment and fencing and such other associated parts as the Town Board may direct. This provision shall not apply if the Town finds that the Owner has been making good faith efforts to restore the WECS to an operable condition, or if the non-functional or inoperative condition is the result of a force majeure event beyond the Owner's control. Nothing in this provision shall limit the Town's ability to order a remedial action plan after hearing. The Town shall provide Owner with at least 15 days notice of the hearing. The Owner may present evidence at the hearing on the functioning or operation of the system, or explanation for delay in repair during such period. At such hearing, in order to warrant decommissioning of the system or any part thereof, the Town must first find by a preponderance of the evidence submitted and presented, that the WECS or any part thereof has been non-functional or inoperative continuously for 12 months. The Town after such hearing may order the removal of the WECS system or any part thereof **(down to 4 feet below grade)** that it finds has been non-functional or inoperative. Upon any direction by the Town Board to an Owner of a WECS to remove any system or part thereof and the failure of the Owner to comply with such directive or to substantially commence such removal within 30 days of the directive, then the Town may proceed against the Decommissioning Bond or Fund as established hereinafter in compliance with paragraph 17(3) hereof.

B. Generation of electricity (or lack thereof) by a WECS may be proven by reports or documents provided to the Public Service Commission, NYSERDA, New York Independent System Operator, or other reporting agencies or by lack of generation of revenues from the sale of energy. The Owner shall make available (subject to a non-disclosure agreement) to the Town Board all reports to and from the purchaser of energy from the Wind Energy Conversion Systems, if requested, and such other reports it finds necessary to prove the WECS is functioning. All such reports submitted by the Owner may be redacted as necessary to protect proprietary information.

C. Decommissioning Fund. The Owners shall continuously maintain a fund, letter of credit or bond payable to the Town, in a form and from a Provider approved by the Town for the removal of non-functional towers and appurtenant facilities, in an amount to be determined by the Town, for the period of the life of the facility. This Decommission Fund shall be adjusted every three years for changes in costs of decommissioning and restoration as well as adjusted for inflation. The Fund shall be issued or maintained by bank licensed and authorized to do business in the State of New York or such other

financial institution so authorized and approved by the Town Board. All costs of the financial security shall be borne by the Owner. All decommissioning fund requirements shall be fully funded before commencement of construction of any portion of WECS. Any Wind Energy Permit issued shall restrict construction until the Fund has been approved and accepted by the Town Board.

### **§18 Limitations on Approvals; Easements on Town Property**

A. Nothing in this Local Law shall be deemed to give any Owner or Operator the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the Wind Energy Facility.

B. Nothing in this Local Law shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any Wind Energy Facility. It shall be the sole responsibility of the Facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.

C. Future construction of Residence or dwellings within a distance of one and half times the tower height from any Tower on an approved Site shall be restricted and not allowed unless an application for a waiver and modification of such Approved Site is made and approved by the Town Board. The application for the Waiver shall comply with Article V hereof.

D.. Pursuant to the powers granted to the Town to manage its own property, the Town may enter into noise, setback, or wind flow easements on such terms as the Town Board deems appropriate, as long as said agreements are not otherwise prohibited by state or local law.

### **§19 Permit Revocation**

A. Testing fund. A Wind Energy Permit shall contain a requirement that the Owner fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as bi-annually, or more frequently upon request of the Town Board in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Wind Energy Permit and this Local Law and shall also include an evaluation of any complaints received by the Town. The Owner shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90-day period may be considered by the Town Board, but the total period may not exceed 180 days.

B. Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Town Board. The Owner shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90-day period may be considered by the Town Board, but the total period may not exceed 180 days.

C. Notwithstanding any other abatement provision under this Local Law, and consistent with §19(A) and §21(B), if the WECS is not repaired or made operational or brought into permit compliance after

said notice, the Town may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance: (1) order either remedial action within a particular time frame, or (2) order revocation of the Wind Energy Permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security posted as part of the Decommission Plan to remove the WECS.

### **Article III**

#### **Wind Measurement Towers**

##### **§20 Wind Site Assessment**

The Town Board acknowledges that prior to construction of a WECS, a wind site assessment is conducted to determine the wind speeds and the feasibility of using particular Sites. Installation of Wind Measurement Towers, also known as anemometer (“Met”) towers, shall be permitted on the issuance of a Wind Energy Permit in accordance with this Article.

##### **§21 Applications for Wind Measurement Towers**

A. An application for a Wind Measurement Tower shall include

I. Name, address, telephone number of the Applicant. If the Applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the Applicant authorizing the representation.

2. Name, address, telephone number of the property owner. If the property owner is not the Applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.

3. Address of each proposed tower location, including Tax Map section, block and lot number.

4. Proposed Development Plan and Map.

5. Decommissioning Plan, including a security bond for removal.

##### **§22 Standards for Wind Measurement Towers**

A. The distance between a Wind Measurement Tower and the property line of the Site shall be at least one and a half times the Total Height of the tower. The tower shall not be located nearer than one and half times the Total Height of the tower to any Residence. Site can include more than one piece of property. Exceptions for neighboring property are also allowed with the written consent of those property owners.

B. Wind Energy Permits for Wind Measurement Towers may be issued for a period of up to two years.

Permits shall be renewable upon application to the Town Board in accordance with the procedure of § 1-20.

## **Article IV**

### **Small Wind Energy Conversion Systems**

#### **§23 Purpose and Intent**

The purpose of this Article is to provide standards for Small Wind Energy Conversion Systems (“Small WECS”) designed for home, farm, and small commercial use on the same parcel, and that are primarily used to reduce consumption of utility power at that location. The intent of this Article is to encourage the development of Small WECS and to protect the public health, safety, and community welfare.

#### **§24 Applications.**

A. Applications for Small WECS Wind Energy Permits shall include:

1. Name, address, telephone number of the Applicant. If the Applicant will be represented by an agent, the name, address and telephone number of the agent as well as an original signature of the Applicant authorizing the agent to represent the Applicant.
2. Name, address, telephone number of the property owner. If the property owner is not the Applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
3. Address of each proposed tower location, including Tax Map section, block and lot number.
4. Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.
5. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Uniform Fire Prevention and Building Code.
6. Sufficient information demonstrating that the system will be used primarily to reduce consumption of electricity at that location.
7. Written evidence that the electric utility service provider that serves the proposed Site has been informed of the Applicant’s intent to install an interconnected customer-owned electricity generator, unless the Applicant does not plan, and so states so in the application, to connect the system to the electricity grid.
8. A visual analysis of the Small WECS as installed, which may include a computerized photographic

simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

## **§25 Development Standards.**

All Small WECS shall comply with the following standards. Additionally, such systems shall also comply with all the requirements established by other sections of this Article that are not in conflict with the requirements contained in this section.

1. A system shall be located on a lot having a minimum of one acre in size, however, this requirement can be met by multiple owners submitting a joint application. For the purpose of this provision a lot is tax parcel identified on the town tax assessment rolls. If a lot is smaller than one acre then adjoining lands under control of the Applicant can be included in the system application to meet setback and size requirements. Proof of such control shall be submitted with the application.
2. Only one small wind energy system tower per legal lot shall be allowed, unless there are multiple Applicants, in which their joint lots shall be treated as one lot for purposes of this Article.
3. Small Wind energy systems shall be used primarily to reduce the on-site consumption of electricity.
4. The maximum allowable height for a Small WECS shall be 150 feet. The allowed height shall be reduced if necessary to comply with all applicable Federal Aviation Requirements, including Subpart B (commencing with Section 7.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.
5. The maximum turbine power output is limited to 100KW.
6. The system's tower and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporate non-reflective surfaces to minimize any visual disruption.
7. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas.
8. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
9. All on-site electrical wires associated with the system shall be installed underground except for "tie-ins" to a public utility company and public utility company transmission poles, towers and lines. This standard may be modified by the decision-maker if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.
10. The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly

mitigate the harmful interference or cease operation of the system.

11. At least one sign shall be posted on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logo or advertising shall be placed or painted on the tower, rotor, generator or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner

12. Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:

- a. Tower-climbing apparatus located no closer than 12 feet from the ground.
- b. A locked and-climb device installed on the tower.
- c. A locked, protective fence at least six feet in height that encloses the tower.

13. Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground.

14. Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be re-graded and re-vegetated to the pre-existing natural condition after completion of installation.

15. To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a 300 foot radius. Modification of this standard may be made when the Applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure, or the public health, safety or welfare.

16. All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Fire Prevention and Building Code.

17. All small wind energy systems shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacture.

## **§26 Standards**

A Small Wind Energy System shall comply with the following standards:

1. Setback requirements. A Small WECS shall not be located less than one and half times the Total Height of the small WECS to a property line or a Residence, unless the Residence is that of the owner and Applicant of the Small WECS site. .

2. Noise. Except during short-term events including utility outages and severe wind storms, a Small WECS shall be designed, installed, and operated so that noise generated by the system shall not exceed

the 50 decibels (dBA), as measured at the closest neighboring inhabited dwelling.

### **§27 Abandonment of Use**

A Small WECS which is not used for twelve (12) successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any Wind Energy Permit shall constitute grounds for the revocation of the permit by the Town.

B. All Small WECS shall be maintained in good condition and in accordance with all requirements of this section.

## **Article V**

### **Waivers**

### **§28 Waivers.**

A. The Town Board may, after a public hearing (which may be combined with other public hearings on Wind Energy Facilities, so long as the waiver request is detailed in the public notice and the Application), grant a waiver, except as otherwise expressly provided for herein, from the strict application of the provisions of this Local Law if, in the opinion of the Town Board, the grant of said waiver is in the best interests of the Town.

B. The Town Board in making its determination on a waiver request shall consider the benefit to the Owner if the waiver is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the waiver; (2) whether the benefit sought by the Owner can be achieved by some method, feasible for the Owner to pursue, other than waiver; (3) whether the requested waiver is substantial; (4) whether the proposed waiver will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and the scope of the request.

C. The Board , in the granting of waivers, shall grant the minimum waiver that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

D. The Town Board may attach such conditions, as it deems appropriate to waiver approvals as it deems necessary to minimize the impact of the waiver.

## **Article VI**

## Miscellaneous

### §29 Fees

A. Non-refundable Application Fees shall be as follows:

1. WECS Wind Energy Permit: \$200 per megawatt of rated maximum capacity;
2. Wind Measurement Towers Wind Energy Permit: \$200 per tower, and \$200 for any other structure or part thereof not a tower;
3. Small WECS Wind Energy Permit: \$150 per WECS;
4. Wind Measurement Tower or Wind Energy Permits renewals/extensions {16(D)}: \$200 per Permit/WECS;
5. The fee for an Article 5 Waiver application (shall be \$250.00).

B. Wind Energy Permits; review, inspection, and approval fees. The Town believes the review of applications for Wind Energy Facilities and compliance monitoring of issued Wind Energy Permit requires specific third party expertise. In addition to the permit fees for the WECS system as provided in 29(A) above, the Owner of the WECS shall pay the costs of such review as follows:

1. An outside consultant, approved by the Town, to review the plans submitted by the Applicant or its representative for compliance with this regulation and inspection of work, together with monitoring compliance with any issued permit for any WECS. All such expense shall be made by the Applicant, or Holder of such issued permit, if different, providing a cash advance payment to the Town Clerk prior to issuing such permit or such other form of advance payment as the Town Board may direct and approve..
2. Annual Report. The Owner shall file annually a report of all repair work to the WECS system, detailing any improvements, alterations or changes to any WECS or other structure of the systems or any of its components, together with a review fee of \$200.00 each WECS. The report shall be certified by a licensed engineer that such work has not change any permit condition. The Town, upon notice to the Owner, may refer the report to consultant if it reasonably believes that any work may change or adversely impact a permit condition. The Owner shall be responsible for any costs of any outside consultant, if necessary, to review the report.
3. Any costs associated with reviewing materials submitted by the Owner or the review of any condition of a permit, including, but not limited to, ensuring the system continues to be safe and compliant with the terms of such permit issued shall be expense of the owner of the system. Such expense shall be paid by the Applicant/Owner. Prior to incurring such costs, the Town agrees to provide the Applicant/Owner of the system with notice of such costs and reason for the same. The Applicant/owner may protest the costs by filing a protest with the Town Clerk within ten days of such notice. Said protest shall contain a statement of what is protested, and if a cost item is protested then an estimate from an independent person for the costs protested shall be included. Notwithstanding a protest the Town may engage a consultant to review any submission by the Applicant/Owner of the system prior to approving the submission and all such expense and costs shall be an expense of the project (Applicant/Owner of the system). If any such

expense shall not be paid the same shall constitute a violation of the permit and be deemed an expense in decommissioning the system or any part thereof in question.

4. The permit fee for Town Board approval for cutting or clearing in green buffer area within a Site shall be \$100.00 per permit, no permit fee is necessary for maintaining agricultural uses within a green buffer zone.

5. Applications for approval of Transfer of ownership or control pursuant to section 5(G) shall be submitted to the Town Board together with information explaining the proposed change of control or the transfer. Such information shall include the names of the parties whose interest is being change or transferred together with their percentage of ownership being transferred and the names of each person, shareholder, member, partner or individual receiving such interest, together with a fee of \$500 and such consultant fees as the Town Board finds necessary to review any financial information submitted therewith. The Town Board reserve the right to request such other information it may reasonably request and finds necessary to complete it review of such application.

C. Nothing in this Local Law shall be read as limiting the ability of the Town to enter into Host Community Agreements with any Applicant to compensate the town for expenses or impacts on the community. The Town shall require any Applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA. Notwithstanding anything to the contrary provided herein, any and all Town agreements or permit conditions pertaining to a WECS shall be filed with the Town and in place prior to the issuance of the Wind Energy Permit, unless the approval for such WECS permit expressly provides otherwise, including Host Community Agreement, Decommission Plan and proof of Funds or escrow accounts, if required, related to the WECS.

### **§30 Tax Exemption.**

The Town hereby exercises its right to opt out of the Tax Exemption provisions of Real Property Tax Law §487, pursuant to the authority granted by paragraph 8 of that law.

### **§31 Enforcement; Penalties and remedies for violations.**

A. The Town Board shall appoint such Town staff or outside consultants as it sees fit to enforce this Local Law.

B. Any person owning or operating a Wind Energy Facility shall be responsible for the continued compliance of such facility with this local law and the terms and conditions of the Wind Energy Permit issued for such facility.

C. A violation of this local law or any provision of the Wind Energy Permit shall be subject the Owner or Operator of the facility to a civil penalty of One Thousand (\$1,000.00) Dollars. In lieu of proceeding with enforcement of this law as an offense the Town may institute a civil proceeding to collect civil

penalties in the amount of \$1000 for each violation. Each week's continued violation shall constitute and be deemed a separate additional violation

C. Revocation of Wind Energy Permit; Upon a finding of three separate violations by a court of competent jurisdiction by an Owner or Operator of the facility of a material provision of this Local Law in any one year period,, the Town Board may hold a hearing for a revocation of any Wind Energy Permit issued by such Board.

D. In lieu of a civil proceeding for enforcement of this local law, the Town Board may elect to proceed to charge any Owner or Operator who intentionally violates any material provision of this Local Law or be in noncompliance with any material term or condition of any permit issued pursuant to this Local Law, or any order of the enforcement officer with an offense, Each week such offense shall continue shall be a a separate offense . Each such offense shall be punishable by a fine not exceeding three hundred fifty dollars or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than three hundred fifty dollars nor more than seven hundred dollars or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than seven hundred dollars nor more than one thousand dollars or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this local law shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations.

E. In case of any violation or threatened violation of any of the provisions of this local law, including the terms and conditions imposed by any permit issued pursuant to this local law, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct or abate such violation, to prevent the illegal act.

### **§32 Severability**

Should any provision of this Local Law be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

**§33 Supercession.** This Local Law shall supercede all Town local laws and other land use regulations and specifically New York Town Law §131, §133, §266 and §268 that are contrary and in conflict with the provisions of this Local Law to the extent necessary to give this Local Law full force and effect.

### **§34 Effective Date**

This Local Law shall be effective immediately upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.