

**Local Law No. 1 of 2009**

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

**Section 1: Local Law No. 1 of 2009, entitled 'WIND ENERGY FACILITIES;' is hereby adopted to read in its entirety as follows:**

**WIND ENERGY FACILITIES**

**Article I**

**General**

**FILED  
STATE RECORDS**

**DEC 16 2009**

**DEPARTMENT OF STATE**

**§1. Title**

This Local Law shall be cited as the "Wind Energy Facility Law of the Town of Hammond, New York".

**§2. Purpose**

The Town Board of the Town of Hammond 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 Hammond, 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), (6), and (7).
3. New York Municipal Home Rule Law, §10 (1) (i) and (ii) and §10 (l) (a) (6), (11), (12), and (14).

4. The supersession authority of New York Municipal Home Rule Law, §10 (2)(d)(3), specifically as it relates to determining which body shall have power to grant variances under this Local Law, and what variances may be granted to the extent such grant of power is different than under Town Law §267 and §274-b, and as it relates to the power of the Town Board to regulate land use within the Town to the extent the provisions of this Local Law differ from the authority granted to the Town by Article 16 of the Town Law.
5. New York Town Law, Article 16 (Zoning).
6. 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).
7. New York Town Law §64(17-a) (protection of aesthetic interests), (23) (General powers).
8. New York Real Property Tax Law §487.

#### **§4. Findings and Determinations**

The Town Board of the Town of Hammond makes the following findings and determinations:

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 from wind-generating stations to utilities or other users, or on-site consumption can be reduced.
3. Regulation of the siting and installation of wind turbines is necessary for protecting the health, safety, and welfare of neighboring property owners and the public.
4. Wind Energy Facilities represent significant potential aesthetic impacts because of their large size, lighting, and shadow flicker effects.
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 birds, bats and other creatures.
7. If not properly sited, Wind Energy Facilities may adversely affect the property values of adjoining property owners.
8. Wind Energy Facilities may be significant sources of noise, which, if unregulated, can negatively affect the quiet enjoyment of properties in the vicinity.
9. Construction of Wind Energy Facilities can create traffic problems and damage local roads.
10. Wind Energy Facilities can cause electromagnetic interference issues with various types of communications.
11. The installation of Wind Energy Facilities may affect ground water supplies.
12. Distance of setbacks have taken into consideration the potential hazards of ice throws, blade breakage, and tower blow downs.
13. Wind Energy Facilities may have an effect on future sub-divisions.
14. Considering all of the above factors, the geographic characteristics of the Town of Hammond and the density of certain residential areas within the Town, the Town Board has determined that there are limited areas within the Town where Wind Energy Conversion systems can be safely constructed and operated and will be compatible with other nearby land uses. These areas shall be designated by the Town Board through enactment of this Local Law as the Town of Hammond Wind Overlay District, the boundaries of which shall be as defined in Section 6 of this Local Law.
15. Unless the Town Board acts by separate law to have the Town of Hammond opt out of the provisions of §487 of the New York Real Property Tax Law, it shall be the policy of the Town of Hammond that the owner and developer/operator of any property on which a Wind Energy Conversion System is constructed pursuant to this Local Law, shall enter into a payment-in-lieu-of-taxes agreement with the town, the school district, and the county which shall require annual payments to the town, the school district and the county in the amounts which would otherwise be payable to the town, the school district and the county but for the exemption which may be granted to the owner and/or the operator under §487 of the Real Property Tax Law.

## **§5. Permits Required**

- A. No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Hammond, except in compliance with this Local Law.

- B. No Wind Energy Conversion System (“WECS”) shall be constructed, reconstructed, modified, or operated in the Town of Hammond, except in the Wind Overlay District, pursuant to a Special Use Permit approved pursuant to this Local Law.
- C. No Special Use Permit shall be issued for construction, reconstruction, modification or operation of a WECS in the Town of Hammond, until all other permits as may be required (e.g., FAA, DEC, etc.) have been issued and evidence of same provided to the Town of Hammond.
- D. No Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of Hammond, except pursuant to a Special Use 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 Hammond, except pursuant to a Special Use 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 on-site agricultural operations.
- G. Transfer. No transfer of any Wind Energy Facility or Special Use Permit, nor sale of the entity owning such facility including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), will occur without prior approval of the Town, which approval shall be granted upon written acceptance by the transferee of the obligations of the transferor under this Local Law. No transfer shall eliminate the liability of an applicant or of any other party under this Local Law.

## **§6. Definitions.**

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

**AMBIENT SOUND PRESSURE LEVEL** – The composite of sound pressure level from all sources near and far; the normal or existing level of environmental sound pressure at a given location.

**dBA – A-Weighted Sound Pressure Level.** The sound pressure level in decibels as measured on a sound level meter using the A-weighted filter network.

**dBC – C-Weighted Sound Pressure Level.** The sound pressure level in decibels as measured on a sound level meter using the C-weighted filter network.

**DECIBEL** – A unit describing the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the measured pressure to the reference pressure, which is 20 micropascals.

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 Hammond on the date an application is received. A residence may be part of a multi-dwelling or multipurpose building, and shall include buildings such as hunting camps, seasonal residences, 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 LIO - 45 dBA indicates that in any hour of the day 45 dBA can be equaled or exceeded only 10% of the time, or for 6 minutes. An LIO-33dBC indicates that in any hour of the day 33dBC can be equaled or exceeded only 10% of the time or for six minutes. The measurement of the sound pressure level shall be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other procedures accepted by the Town Planning Board.

SITE - The minimum area necessary for a Wind Energy Facility to satisfy the required setbacks and any other standards in this local law. The Site may be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where a WECS location is proposed nearer to a property line or off-site residence than required by the provisions of this Local Law, an easement shall be signed by the adjacent landowner or landowners and recorded in the real property records at the St. Lawrence County Clerk's Office. The easement must, at a minimum, describe all lands that may be impacted if the WECS fell and must remain in effect as long as the WECS is in place. In no instance shall the easement provide for a setback between a WECS and a residence that is less than one and one-half times the total height of the tower.

SMALL WIND ENERGY CONVERSION SYSTEM - ("Small WECS") - A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of no less than 500 watts and not more than 100 kW/hour and which is intended to primarily generate on-site power or reduce on-site consumption of utility power.

TOTAL HEIGHT - The height of the tower and the furthest vertical extension of the WECS.

WIND ENERGY CONVERSION SYSTEM ("WECS") - A machine that converts the kinetic energy in the wind into electricity with a rated capacity in excess of 100kW/hour (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.

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

WIND OVERLAY DISTRICT – Those areas of the Town of Hammond that the Town Board has determined are appropriate for the development of Wind Energy Conversion Systems (WECS) and related infrastructure, electrical lines and substations, access roads and accessory structures. The boundaries of the Wind Overlay District shall be as shown on the map entitled Town of Hammond Wind Overlay District dated \_\_\_\_\_, and on file in the Town Clerk's Office, a copy of which is attached to this local law as Appendix "B" and is described as follows:

1. Railroad bed from the St. Lawrence/Jefferson County line to the village limits of the Village of Hammond.
2. Black Lake Road from the village limits of the Village of Hammond to the town line between the Town of Hammond and the Town of Morristown.
3. South side of NYS Route 12 from the St. Lawrence/Jefferson County line to Hammond/Morristown town line.
4. St. Lawrence/Jefferson County line from the railroad bed to the south side of the NYS Route 12 right of way line.
5. Hammond/Morristown town line from Black Lake Road to the south side of the NYS Route 12 right of way line.

## **§7. Applicability**

- A. The requirements of this Local Law shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed within the Town of Hammond 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 pre-existing Wind Energy Facility that does not generate 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-six (26) months after said effective date, unless a Special Use Permit for said Wind Measurement Tower is obtained pursuant to the provision of this Local Law.
- C. Wind Energy Facilities may be either principal or accessory uses. Alternatively, an existing structure on the same Site shall not preclude the installation of a Wind Energy Facility or a part of such facility on such Site. Wind Energy Facilities constructed and installed in accordance with this Local Law shall not be deemed expansions of a nonconforming use or structure.

## **Article II**

### **Wind Energy Conversion Systems**

#### **§10. Wind Energy Conversion Systems Permitted.**

Wind Energy Conversion Systems shall only be permitted within the boundaries of the Wind Overlay District and only after receipt of a Special Use Permit issued by the Town Planning Board pursuant to the provisions of this Local Law.

#### **§11. Applications for Wind Energy Conversion Systems**

- A. An application for Special Use 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 and address 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 WECS location, including Tax Map section, block and lot number, latitude and longitude coordinates.
  4. A description of the project, including the number and maximum rated power output capacity of each WECS.
  5. For each WECS proposed, 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 existing structures and uses on Site, public roads, and adjoining properties within one thousand two hundred fifty feet of tower height of the Site.
- (c) Location and ground elevation of each proposed WECS.
- (d) Location of all above ground utility lines on the Site, and all related 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 one thousand two hundred fifty 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) Boundaries of the Wind Overlay District to demonstrate that each proposed WECS is located within said overlay district.
- (g) To demonstrate compliance with the setback requirements of this Article, circles drawn around each proposed tower site equal to:
  - (i) Radius equal to one and a half times the tower height.
  - (ii) Five Hundred foot radius.
  - (iii) One Thousand two hundred fifty foot radius.

Information shall be provided concerning ownership and land uses within the above-mentioned radii.

- (h) Location of the nearest residential structure on Site and off Site, and the distance from the proposed WECS.
  - (i) All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.
6. Elevation 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 may be submitted for each WECS of the same type and Total Height.
7. Landscaping Plan depicting vegetation describing the area to be cleared of vegetation and areas where vegetation shall be added, identified by species and size of specimens at installation, and their locations. Guideline listed in Appendix A of this law shall also adhere for this work.



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, no building permit for any lighted facility may be issued until such determination is submitted.
9. 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) the method, such by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current; and 6) the manner in which the WECS will be decommissioned and the Site restored, which shall include removal of all roads, structures and debris to a depth of 3 feet, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation), less any fencing or residual minor improvements requested by the landowner. Compliance with the New York State Department of Agriculture and Markets Guidelines for Agricultural Mitigation for Wind Power Projects in effect as of the effective date of decommissioning shall be required.
10. Complaint Resolution: The application will include a complaint resolution process to address complaints from nearby residents. The applicant shall make every reasonable effort to resolve any complaint within 45 days. Lacking resolution, an arbitrator shall be appointed by the Town Board and the results of the Arbitration shall be binding on both parties. Complaint resolution shall be filed by registered mail. In the event Arbitration is required to resolve any complaint, the applicant shall be responsible for the arbitrator's fees and any administrative expenses associated with the arbitration.
11. An application shall include information relating to the construction/installation of the wind energy conversion facility as follows:
  - (a) A construction schedule describing commencement and completion dates and hours of construction; and
  - (b) A description of the routes to be used by construction and delivery vehicles, the gross weights, and heights of those loaded vehicles.
12. Completed Part 1 of the Full EAF.
13. Applications for Wind Energy Permits for Wind Measurement Towers subject to this Local Law may be jointly submitted with the WECS.
14. For each proposed WECS, include make, model, picture, and manufacturer's specifications, including noise decibels 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.

15. 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. If the lead agency issues a Negative Declaration of environmental significance following its review of the EAF, an amended application shall be submitted which shall include at a minimum the following information:
  - (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 durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences 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 shall 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 system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
  - (c). Fire Protection/Emergency Response Plan: A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed WECS to address coordination with local emergency/fire protection providers during any construction or operation phase emergency, hazard or other event.
  - (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 residence not on the Site (if access to the nearest residence is not available, the Town Board may modify this requirement). The noise analysis shall be performed according to the International Standard For Acoustic Noise Measurement Techniques For Wind Generators (IEC 61400-11), or other procedure accepted by the Town Planning Board, and shall include both a dBA analysis and dBC analysis.
  - (e). Property Value Analysis: Property value analysis shall be prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of values of properties neighboring WECS Sites.

- (f). Electromagnetic Interference: An assessment of potential electromagnetic interference with microwave, radio, television, satellite systems, personal communication systems and other wireless communication, weather and other radar shall be prepared.
- (g). Transportation Impacts: An analysis of impacts on local transportation shall be prepared, regarding impacts anticipated during construction, reconstruction, modification, or operation of WECS. Transportation impacts to be considered shall include, at a minimum, potential damage to local road surfaces, road beds and associated structures; potential traffic tie-ups by haulers of WECS materials; impacts on school bus routes; impacts of visitors to the WECS facilities. Local roads shall include all state highways, county highways, town highways, and village streets and highways which will be or may be used by the applicant.
- (h.) Transportation Plan: A transportation plan describing routes to be used in delivery of project components, equipment and building materials, and those to be used to provide access to the Site during and after construction. Such plan shall also describe any anticipated improvements to existing roads, bridges or other infrastructure, and measures to restore damaged/disturbed access routes following construction. Roads shall include all state highways, county highways, town highways, and village streets and highways which will be or may be used by the applicant.
- (i). Ground Water Impacts: An analysis of impacts on local ground water resources shall be prepared, regarding impacts anticipated during construction, reconstruction, modification or operation of WECS.
- (j). Cultural Resources: An analysis of impacts on cultural resources shall be prepared, regarding impacts anticipated during construction, reconstruction, modification, or operation of WECS.
- (k). Wildlife Impacts: An analysis of impacts on local wildlife shall be prepared, regarding impacts anticipated during construction, reconstruction, modification, or operation of WECS. Wildlife impacts to be considered shall include, at a minimum, anticipated impacts on flying creatures (birds, bats, insects), as well as wild creatures existing at ground level. Any analysis or study shall follow the most current guidelines published by the DEC (when adopted) for aviation studies.
- (l). Operation and Maintenance Plan: An operation and maintenance plan providing for regular periodic Wind Energy Facility schedules, any special maintenance requirements and procedures and notification requirements for restarts during icing events.

16. The applicant shall, prior to the receipt of a Special Use Permit, provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and the applicable Transmission Owner.
17. A statement, signed under penalties of perjury that the information contained in the application is true and accurate.
18. The applicant shall provide evidence to the Planning Board that it has entered into or caused to be entered into a payment-in-lieu-of-taxes agreement as may be required by §4 (15) of this law.

## **§ 12 Application Review Process**

- A. Applicants may request a pre-application meeting with the Town Planning Board, and/or with any consultants retained by the Planning Board for application review. Meetings with the Planning 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 variances are requested, variance application fees shall be paid at the time of the receipt of the application.
- C. Town staff or Town-designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Article is included in the application. Unless the Planning Board waives any application requirement, no application shall be considered until deemed complete.
- D. If the application is deemed incomplete, the Planning Board shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of WECSs proposed is increased.
- E. Upon submission of a complete application, including the grant of any application waiver by the Planning Board, the Town Clerk shall transmit the application to the Planning Board.
- F. The Planning Board shall hold at least one public hearing on the application. Notice shall be given by first class mail to property owners within 1,250 feet of each proposed WECS and published in the Town's official newspaper, no less than ten nor more than twenty days before the hearing, but, where any hearing is adjourned by the Planning Board to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare and mail the Notice of Public Hearing prepared by the Planning Board, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses. In the event a variance is requested by the applicant pursuant to the procedure contained at §17, the notice shall specify the variance requested and that the Planning Board will consider the variance pursuant to §17 as part of its review of the application.

- G. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested variances. Notice for SEQR public hearings must meet the specification set out in 6 N.Y.C.R.R. §617.12 (c).
- H. Notice of the project shall also be given, when applicable, to (1) the St. Lawrence County Planning Board, if required by General Municipal Law §239-1 and 239-m, and (2) to adjoining Towns where the project site is located within 500 feet of the adjoining Town boundary.
- I. SEQRA review. Applications for WECS are deemed Type I projects under SEQRA. The Planning Board may conduct its SEQRA review in conjunction with other agencies or communities, in which case the records of review by said agencies or communities shall be part of the record of the Planning Board's proceedings. The applicant shall be responsible for the Town's legal and engineer's fees in connection with the SEQRA and other reviews under this Local Law. The Planning Board shall require an escrow agreement with the applicant to cover the engineering and legal review of the applications and any environmental impact statements before commencing its review. The escrow agreement shall provide a minimum balance that the applicant must maintain in escrow with the Town from which the Town may pay its professionals' fees for review.
- J. Upon receipt of the report of the recommendation of the County Planning Board (where applicable), the holding of the public hearing, and the completion of the SEQRA process, the Planning Board may approve, approve with conditions, or deny the applications, in accordance with the standards in this Article.

### **§13 Standards for WECS**

The following standards shall apply to all WECS.

- A. All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.
- B. No television, radio or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the Town Site Plan Review and Subdivision Law. Applications may be jointly submitted for WECS under this Law and telecommunications facilities under the Site Plan and Subdivision Law.
- C. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.
- D. 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 Site plan.



- E. All applicants shall use measures to reduce the visual impact of WECS to the extent possible. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. Individual WECS shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the Wind Overlay District, 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.
- F. The use of guy wires is disfavored. A WECS using guy wires for tower support shall incorporate appropriate measures to protect the guy wires from damage, which could cause tower failure.
- G. 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 Special Use Permit for the specific WECS causing the interference.
- H. 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.
- I. WECSs 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. All top soil disturbed during construction, reconstruction or modification of WECS shall be stockpiled and returned to the site upon completion of the activity, which disturbed the soil. Compliance with the New York State Department of Agriculture and Markets Guidelines for Agricultural Mitigation for Wind Power Projects is required. The guidelines in effect as of the adoption of this Local Law are attached hereto as Appendix "A".
- J. WECSs shall be located in a manner that minimizes significant negative impacts on animal species in the vicinity, particularly bird and bat species, including those that may be listed by the U.S. Fish & Wildlife Service as threatened or endangered.
- K. WECSs shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations.



- L. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable state and Federal laws and regulations. Compliance with the New York State Department of Agriculture and Markets Guidelines for Agricultural Mitigation for Wind Power Projects is required.
- M. The New York State Department of Agriculture and Markets guidelines for agricultural mitigation for wind power projects in effect as of the date of the application shall be adhered to, both inside and outside of agricultural districts. These guidelines in effect as of the effective date of this local law are reproduced at Appendix A for reference.
- N. The maximum Total Height of any WECS shall be 500 feet.
- O. Construction of the WECS shall be limited to the hours of 7 AM to 7 PM Monday through Friday, unless the prior written approval of the Town Planning Board is received to allow deviation from such hours.
- P. If it is determined that a WECS is causing stray voltage issues, the operator shall take the necessary corrective action to eliminate these problems including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy stray voltage issues is grounds for revocation of the Special use Permit for the specific WECS causing the problems.

#### **§14. Waiver of Criteria**

Pursuant to §274-b(5) of the New York Town Law, the Planning Board shall have the authority to waive the strict application of any of the above criteria when specifically requested by the applicant and where the Planning Board determines that such request is reasonable under the circumstances and that strict application is not required under the circumstances in order to protect the public health, safety and general welfare. The Planning Board shall specify in its findings the reasoning behind such determination.

#### **§15. 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. If the property owner submits a written request that fencing be required, a six-foot-high fence with a locking portal shall be required to enclose each tower or group of towers. The color and type of fencing for each WECS installation shall be determined based on 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, including a local telephone number with 24 hour, 7 day a week coverage. The Town Planning 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-five (35) feet.
- 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.
- G. The owner and/or operator of a WECS that has received approval under this Law and for which a permit has been issued shall file with the Town Code Enforcement on an annual basis an Operation and Maintenance Compliance report detailing the operation and maintenance activities over the previous year and certifying full compliance with the Operation and Maintenance Plan. The annual report shall include a noise analysis by an independent acoustical consultant performed according to the International Standard For Acoustic Noise Measurement Techniques For Wind Generators (IEC 61400-11) or such other procedure as accepted by the Town Planning Board during the permit review process which certifies to the Town that the noise level of the WECS is in full compliance with the provisions of this law and the permit as issued.

## **§16. Traffic Routes**

- A. Construction of WECS 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 WECS and/or 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. 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 building permit in an amount, determined by the Town Board, sufficient to compensate the Town for any damage to local roads.

- C. If the applicant uses any seasonal use highway in the off-season, it shall be solely responsible for the maintenance of said highway including but not limited to snow plowing. No act of maintenance on a seasonal use highway by an applicant shall be considered as Town maintenance of that highway for purposes of determining the seasonal use status of the highway.
- D. Prior to placing the WECS in operation, the applicant shall repair or reconstruct all state highways, county highways, town highways and village streets and highways used by the applicant to the standards set forth by the St. Lawrence County Highway Department regardless of the condition of such highways, roads and streets prior to the commencement of construction by the applicant.

#### **§17. Noise Standards and Setbacks for Wind Energy Conversion Systems**

- A. The statistical sound pressure level ( $L_{10}$ ) generated by a WECS shall not exceed 45 dBA and/or 33dBC when measured at the nearest inhabited off-site dwelling, school, hospital, church or public building existing at the time of application. If the ambient sound pressure level exceeds 45 dBA and/or 33dBC, the standard to be applied to the application shall be the ambient dBA plus 5 dBA and/or ambient dBC plus 5 dBC. Certification by an independent acoustical analyst shall be provided by the application to the Town before and after construction demonstrating compliance with this requirement. Such analysis shall be performed in accordance with the International Standard For Acoustic Noise Measurement Techniques For Wind Generators (IEC 61400-11), or other procedures accepted by the Town Planning Board. 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 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 and dBC, 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, measured from the center of the WECS:
  - 1. The greater of one and one-half times the total tower height or 500 feet from the nearest site boundary property line.
  - 2. The greater of one and one-half times the total tower height or 500 feet from the nearest public road.
  - 3. The greater of one and one-half times the total tower height or 500 feet from the nearest edge of the Wind Overlay District
  - 4. The greater of two and one-half times the total tower height or 1500 feet from the nearest off-site residence existing at the time of application.
  - 5. One and a half times the Total Height of the WECS from any non-WECS structure or any aboveground utilities.

#### **§18. Variances.**

The Planning Board is hereby granted the power to vary or modify the strict application of the requirements contained in this Law as they relate to area or dimensions upon the application of the criteria hereafter listed. In no event shall the Planning Board have the authority to issue a use variance to permit the location of WECS in an area outside of the Wind Overlay District as established under this Law.

- A. Upon specific request from the applicant, the Planning Board shall have the power to grant an area variance after taking into consideration the benefit to the applicant if the variance 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 Planning Board shall consider:
  - 1. Whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties would be created by the granting of the area variance.
  - 2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance.
  - 3. Whether the requested area variance is substantial.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
  5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Planning Board, but shall not necessarily preclude the granting of the area variance.
- B. The Planning Board, in granting an area variance, shall grant the minimum variance that it shall be 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.
  - C. The Planning Board shall, in granting an area variance, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.
  - D. All variances shall be considered as part of the overall permit review conducted by the Planning Board in connection with the application.

#### **§19. Issuance of Special Use Permits**

- A. Upon completion of the review process, the Town Planning Board shall, upon consideration of the standards in this Local Law and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated.
- B. If approved, the Town Planning Board will issue a Special Use Permit for each WECS upon satisfaction of all conditions for said Permit, and direct the Building Inspector to issue a building permit, upon compliance with the Uniform Fire Prevention and Building Code and the other conditions of this Local Law.
- C. The decision of the Town Planning Board shall be filed within five days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.
- D. If any approved WECS is not substantially commenced within two years of issuance of the permit, the special use permit shall expire.

#### **§20. Abatement**

- A. If any WECS remains non-functional or inoperative for a continuous period of 1 year, the applicant agrees that, without any further action by the Town Planning Board, it shall remove said system at its own expense. Removal of the system shall include at least the entire above ground structure, including transmission equipment and fencing, from the property. This provision shall not apply if the applicant demonstrates to the Town that it



has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town Planning Board's ability to order a remedial action plan after public hearing.

- B. Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSERDA or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Town Planning Board all reports to and from the purchaser of energy from individual Wind Energy Conversion Systems, if requested, necessary to prove the WECS is functioning, which reports may be redacted as necessary to protect proprietary information.
- C. Decommissioning Bond or Fund. The applicant, or successors, shall continuously maintain a fund or bond payable to 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 fund may consist of a letter of credit from a State of New York-licensed financial institution. All costs of the financial security shall be borne by the applicant. All decommissioning funding requirements shall be met prior to commencement of construction.

## **§21. Limitations on Approvals; Easements on Town Property**

- A. Nothing in this Local Law shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the Wind Energy Facility. 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.
- B. 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.
- C. Notwithstanding anything to the contrary contained in this Local Law or any other local law, ordinance, rule or regulation of the Town of Hammond, Building Permits shall not be issued for new construction on the same parcel as a permitted WECS when the proposed construction is located at a distance less than one and one-half times the total height of any WECS tower on the parcel unless the party requesting the permit has signed and recorded in the County Clerk's Office an easement in favor of the WECS and the Town of Hammond acknowledging and permitting such proximity. In addition, no property or lot upon which a WECS has been permitted shall be further subdivided in a manner that would result in a reduction of the setbacks required by this Local Law and/or as set forth in the permit, unless the party requesting the subdivision has signed and recorded an easement in the County Clerk's Office in favor of the Town of Hammond and the WECS owner acknowledging and consenting to such reduced setbacks.



## **§22. Permit Revocation**

- A. Testing fund. A Special Use Permit shall contain a requirement that the applicant fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which shall be included in the annual Operation Maintenance and Compliance report required under Section 14(G) of this Law, and may be required more frequently upon request of the Code Enforcement Officer in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Special Use Permit and this Local Law and shall include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Code Enforcement Officer, to cure any deficiency. An extension of the 90-day period may be considered by the Code Enforcement Officer, 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 Code Enforcement Officer. The applicant shall have 90 days after written notice from the Code Enforcement Officer, to cure any deficiency. An extension of the 90-day period may be considered by the Code Enforcement Officer, but the total period may not exceed 180 days.
- C. Notwithstanding any other abatement provision under this Local Law, and consistent with §18(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 timeframe, 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**

## **§23. Wind Site Assessment**

The Town Board acknowledges that prior to construction of a WECS, an assessment is typically needed to determine local wind speeds and the feasibility of using particular sites. Installation of Wind Measurement Towers, also known as anemometer ("Met") towers, shall be permitted as Special Uses, but shall be limited to those areas delineated as Wind Overlay Districts.

**§24. Applications for Wind Measurement Towers**

- A. An application for a Wind Measurement Tower shall include:
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 of each proposed tower Site, including Tax Map section, block and lot number.
  4. Site plan.
  5. Decommissioning Plan, including a security bond or cash for removal.

**§25. Standards for Wind Measurement Towers**

- A. The distance between a Wind Measurement Tower and the property line shall be at least 1.5 times the Total Height of the tower. Sites can include more than one piece of property and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent of those property owners.
- B. Special Use Permits for Wind Measurement Towers may be issued for a period of up to twenty-six (26) months. Permits may be renewed if the Facility complies with the conditions of the Special Use Permit.
- C. Anchor points for any guy wires for a Wind Measurement Tower shall be located within the property that the system is located on and not on or across any aboveground electric transmission or distribution lines. The point of attachment for the guy wires shall be sheathed in bright orange or yellow covering from original grade at the ground level to eight feet above the ground.
- D. The New York State Department of Agriculture and Markets guidelines for agricultural mitigation for wind farm projects shall be adhered to both inside and outside of agricultural districts.

**§26. Application Review Process for Wind Measurement Towers**

- A. Applicants may request a pre-application meeting with the Town Planning Board, or with any consultants retained by the Planning Board for application review. Meetings with the Planning 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 variances are requested, variance application fees shall be paid at the time of the receipt of the application.
- C. Town staff or Town-designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Article is included in the application. Unless the Planning Board waives any application requirement, no application shall be considered until deemed complete.
- D. If the application is deemed incomplete, the Planning Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of Wind Measurement Towers proposed is increased.
- E. Upon submission of a complete application, including the grant of any application waiver by the Planning Board, the Town Clerk shall transmit the application to the Planning Board.
- F. The Planning Board shall hold at least one public hearing on the application. Notice shall be given by first class mail to property owners within 1,250 feet of each proposed Wind Measurement Tower and published in the Town's official newspaper, no less than ten nor more than twenty days before any hearing, but, where any hearing is adjourned by the Planning Board to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare and mail the Notice of Public Hearing prepared by the Planning Board, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.
- G. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested variances.
- H. Notice of the project shall also be given, when applicable, to (1) the St. Lawrence County Planning Board, if required by General Municipal Law §239-1 and 239-m, and (2) to adjoining Towns under Town Law §264.
- I. SEQRA review. Applications for Wind Measurement Towers are deemed Unlisted projects under SEQRA. The Planning Board may conduct its SEQRA review in conjunction with other agencies, in which case the records of review by said communities shall be part of the record of the Planning Board's proceedings. The Planning Board may require an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review.

- J. Upon receipt of the report of the recommendation of the County Planning Board (where applicable), the holding of the public hearing, and the completion of the SEQRA process, the Planning Board may approve, approve with conditions, or deny the applications, in accordance with the standards in this Article.

## **Article IV**

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

#### **§27. Purpose and Intent**

The purpose of this Article is to provide standards for Small Wind Energy Conversion Systems designed for on-site home, farm, and small commercial use, and that are primarily used to reduce on-site consumption of utility power. The intent of this Article is to encourage the development of small wind energy systems and to protect the public health, safety, and community welfare.

#### **§28. Permitted Areas.**

Small Wind Energy Conversion Systems (Small WECS) may be permitted anywhere within the Town of Hammond on a Site of at least 1 acre, upon issuance of a Special Use Permit. A Small WECS shall be set back from all property lines a distance equal to at least 1.5 times its height.

#### **§29. Applications and Application Review Process.**

- A. Applications for Small WECS special use permits shall include the following:
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 application and (ii) authorizing the submission of the application.
  3. Address of each proposed tower Site, including Tax Map section, block and lot number.
  4. Site plan of each tower site, including but not limited to showing the location of the tower in relation to other structures and lot lines, topography of the site, location of trees and other landscape elements.

5. Ownership and land use information within a 1,250-foot radius of the location proposed for each tower.
6. Evidence that the proposed tower height does not exceed the height recommended by the manufacture or distributor of the system.
7. 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 Electric Code.
8. Sufficient information demonstrating that the system will be used primarily to reduce on-site consumption of electricity.
9. 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 to connect the system to the electricity grid, and so states so in the application.
10. 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.

### **§30. Application Review Process**

1. Applicants may request a pre-application meeting with the Town Planning Board, or with any consultants retained by the Planning Board for application review. Meetings with the Planning Board shall be conducted in accordance with the Open Meetings Law.
2. 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 variances are requested, variance application fees shall be paid at the time of the receipt of the application.
3. Town staff or Town-designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Article is included in the application. Unless the Planning Board waives any application requirement, no application shall be considered until deemed complete.
4. If the application is deemed incomplete, the Planning Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of Small WECSs proposed is increased.



5. Upon submission of a complete application, including the grant of any application waiver by the Planning Board, the Town Clerk shall transmit the application to the Planning Board.
6. The Planning Board shall hold at least one public hearing on the application. Notice shall be given by first class mail to property owners within 1,250 feet of each proposed Small WECS and published in the Town's official newspaper, no less than ten nor more than twenty days before any hearing, but, where any hearing is adjourned by the Planning Board to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare and mail the Notice of Public Hearing prepared by the Planning Board, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.
7. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested variances.
8. Notice of the project shall also be given, when applicable, to (1) the St. Lawrence County Planning Board, if required by General Municipal Law §239-1 and 239-m, and (2) to adjoining Towns under Town Law §264.
9. SEQRA review. Applications for small WECS are deemed Unlisted projects under SEQRA. The Planning Board may conduct its SEQRA review in conjunction with other agencies, in which case the records of review by said communities shall be part of the record of the Planning Board's proceedings. The Planning Board may require an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review.
10. Upon receipt of the report of the recommendation of the County Planning Board (where applicable), the holding of the public hearing, and the completion of the SEQRA process, the Planning Board may approve, approve with conditions, or deny the applications, in accordance with the standards in this Article.

### **§31. Development Standards for Small WECS.**

All Small Wind Energy Systems 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.

- A. A Small WECS system shall be located on a lot a minimum of one acre in size, however, this requirement can be met by multiple owners submitting a joint application.
- B. Small WECSs may be used primarily to generate on-Site power or to reduce the on-Site consumption of electricity.



- C. Notice of an application for installation of a small wind energy system shall provide to property owners within 1000 feet of the property line on which the system is to be located.
- D. Tower height of not more than 140 feet shall be allowed on parcels between one and five acres. For property sizes of five acres or more, there is no limitation on tower height, except as imposed by the FAA regulation, provided that the application includes evidence that the proposed height does not exceed the height recommended by the manufacturer or distributor of the system.
- E. Setbacks for the system tower shall be no closer to the property line than 1.5 times the height of the system and no part of the system, including guy-wire anchors, may extend closer than 10 feet of the property boundary. Additionally, the outer and innermost guy-wires must be marked and clearly visible to a height from the ground level to eight feet above the guy-wire anchors.
- F. The system's towers 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 and visible disruption.
- G. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
- H. 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 Town if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.
- I. Decibel levels for the system shall not exceed 45 dBA and/or 33 dBC measured at the property line of the closest neighboring inhabited off-site dwelling, school, hospital, church or public building existing at the time of application, except during short-term events such as utility outages and severe wind storms.
- J. 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 damage or cease operation of the system.
- K. The system shall be operated such that no damage is caused by stray voltage. If it has been demonstrated that a system is causing stray voltage, the system operator shall promptly mitigate the damage or cease operation of the system.
- L. The system shall comply with all applicable Federal Aviation Administration requirements, including Part 77 of Title 14 of the Code of Federal Aviation Administration Regulations regarding installation close to airports.

- M. 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 manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner.
- N. All small wind energy system tower structures shall be designed and constructed to comply with pertinent provisions of the Uniform Building Code and National Electric Code.
- O. All small wind energy system 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 manufacturer.
- P. Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:
  - 1. Tower-climbing apparatus located no closer than 12 feet from the ground.
  - 2. A locked anti-climb device installed on the tower.

### **§32. Variances for Small WECS.**

The Planning Board is hereby granted the power to vary or modify the strict application of the requirements contained in this Article as they relate to area or dimensions upon the application of the criteria hereafter listed.

- A. Upon specific request from the applicant, the Planning Board shall have the power to grant an area variance after taking into consideration the benefit to the applicant if the variance 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 Planning Board shall consider:
  - 1. Whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties would be created by the granting of the area variance.
  - 2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance.
  - 3. Whether the requested area variance is substantial.
  - 4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

5. Whether the alleged difficulty was self-created, which consideration be relevant to the decision of the Planning Board, but shall not necessarily preclude the granting of the area variance.
- B. The Planning Board, in granting an area variance, shall grant the minimum variance that it shall be 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.
- C. The Planning Board shall, in granting an area variance, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.
- D. All variances shall be considered as part of the overall permit review conducted by the Planning Board in connection with the application.

### **§33. 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 all conditions that may be attached to the granting of any permit shall constitute grounds for the revocation of the permit by the Town of Hammond.
- B. All Small WECS shall be maintained in good condition and in accordance with all requirements of this section.

## **Article V**

### **Miscellaneous**

### **§34. Fees**

- A. Non-refundable Application Fees shall be as follows:
  1. WECS Special Use Permit: \$1,000.00 per megawatt of rated maximum capacity
  2. Wind Measurement Towers: \$500.00 per tower.
  3. Small WECS: \$150.00 per Small WECS
  4. Wind Measurement Tower Special Use Permit renewals: \$50.00 per Wind Measurement Tower per year.

- B. Building Permits. The Town Board of the Town of Hammond has determined that the review of building and electrical permits for WECS requires specific expertise for those facilities. Accordingly, for such facilities (WECS), an administrative fee of \$500.00 per permit request shall be charged for administrative costs, plus the amount charged to the Town by the outside consultant hired by the Town to review the plans and inspect the work. In the alternative, the Town and the applicant may enter into an agreement for an inspection and/or certification procedure for these unique facilities. In such case, the applicant will agree to an escrow agreement account of \$75,000.00 to pay for the costs of the review of the plans, certifications or conduct inspections as agreed by the parties, document handling, and storage. If the escrow account balance falls below \$10,000.00, the applicant will agree to immediately remit the amount of \$25,000.00 to be placed in the escrow account.
- 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.
- D. The Town Board may amend these fees, by resolution, after a properly noticed public hearing.

**§35. Field Representative and Site Manager.**

- A. Upon approval by the Planning Board of a WECS Special Use Permit application, and as a condition to the issuance of a WECS Special Use Permit, the applicant shall designate a field representative and site manager who will be responsible for overseeing compliance with the conditions of the Permit. Such representative and site manager shall be in place for as long as the WECS is in place. The applicant shall provide and update, at all times, the names, addresses, daytime telephone numbers and emergency telephone numbers of field representative and site manager to the Town Code Enforcement Officer. The applicant shall also provide to the Code Enforcement Officer contact information for all entities providing operation, maintenance and monitoring services.
- B. The Code Enforcement Officer may make the telephone numbers of the field representative or site manager available to local residents and officials upon request.

**§36. Enforcement; Penalties and remedies for violations.**

- A. The Town Board shall appoint such Town staff or outside consultants as it may from time to time determine are necessary to enforce this Local Law.

- B. Any person owning, controlling or managing any building, structure or land who shall undertake a wind energy conversion facility or wind monitoring tower in violation of this Local Law or in noncompliance with the terms and conditions of any permit issued pursuant to this Local Law, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$1000.00. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amount of \$1,000.00 per day, for each violation; and each week said violation continues shall be deemed a separate violation.
- C. Special Proceeding: The designated enforcement officer may, with the consent of the Town Board, institute an action or proceeding available at law to prevent, correct or abate any unlawful construction, erection, structural alteration, reconstruction, modification and/or use of a Wind Energy Facility, Small Wind Energy Facility, or Wind Measurement Tower in the Town. This shall be in addition to other remedies and penalties herein provided or available at law.
- D. 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.

### **§37: 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.

### **§38: Effective Date**

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



## Appendix A

### New York State Department of Agriculture and Markets Guidelines for Agricultural Mitigation for Wind Power Projects

- The most recent approved version of these guidelines shall apply where stated in this local law.
- As of April 30<sup>th</sup>, 2008, the latest guidelines as listed below are found at:  
<http://www.agmkt.state.ny.us/AP/agservices/constructWind.html>

#### Guidelines for

### Agricultural Mitigation for Windpower Projects

The following guidelines shall apply to construction areas for wind power construction projects impacting agricultural land. The project sponsor shall coordinate with the New York State Department of Agriculture and Markets (Ag. and Markets) to develop an appropriate schedule for inspections to assure that the goals of these guidelines are being met. The project sponsor shall hire an Environmental Monitor to oversee the construction and restoration in agricultural fields.

#### Siting Goals

Minimize impacts to normal farming operations by locating structures along field edges and in nonagricultural areas where possible.

Avoid dividing larger fields into smaller fields, which are more difficult to farm, by locating access roads along the edge of agricultural fields (hedgerows and field boundaries) and in nonagricultural areas where possible.

Locate access roads, which cross agricultural fields, along ridge tops and following field contours, where possible, to eliminate the need for cut and fill and reduce the risk of creating drainage problems.

The permanent width of access roads in agricultural fields should be no more than 16 feet to minimize the loss of agricultural land.

All existing drainage and erosion control structures such as diversions, ditches, and tile lines shall be avoided or appropriate measures taken to maintain the design and effectiveness of the existing structures. Any structures disturbed during construction shall be repaired to as close to original condition as possible, as soon as possible, unless such structures are to be eliminated based on a new design.

#### Construction Requirements

The surface of access roads constructed through agricultural fields shall be level with the adjacent field surface.

Culverts and waterbars shall be installed to maintain natural drainage patterns.

All topsoil must be stripped from agricultural areas used for vehicle and equipment traffic and parking. All vehicle and equipment traffic and parking shall be limited to the access road and/or designated work areas such as tower sites and laydown areas. No vehicles or equipment will be allowed outside the work area without prior approval from the landowner and, when applicable, the Environmental Monitor.

Topsoil from work areas (tower sites, parking areas, "open-cut" electric cable trenches, along access roads) shall be stockpiled separate from other excavated material (rock and/or subsoil). At least 50 feet of temporary workspace is needed along "open-cut" electric cable trenches for proper topsoil segregation. All topsoil will be stockpiled immediately adjacent to the area where stripped/removed and shall be used for restoration on that particular site. Topsoil stockpile areas shall be clearly designated in the field and on the on-site "working set" of construction drawings.

Electric interconnect cables and transmission lines installed above ground can create long term interference with agricultural land use. As a result, interconnect cables shall be buried in agricultural fields wherever practicable. Interconnect cables and transmission lines installed above ground should be located outside field boundaries wherever possible. When above ground cables and transmission lines must cross farmland, the project sponsor shall minimize agricultural impacts by using taller structures that provide longer spanning distances and shall locate poles on field edges to the greatest extent practicable. The line location and pole placements shall be reviewed with the Department and the Environmental Monitor prior to final design.

In cropland, hayland and improved pasture a minimum depth of forty-eight inches of cover will be required for all buried electric cables. In unimproved grazing areas and land permanently devoted to pasture, a minimum depth of thirty-six inches of cover will be required. In areas where the depth of soil over bedrock ranges from zero to forty-eight inches, the electric cables shall be buried entirely below the top of the bedrock or at the depth specified for the particular land use whichever is less. At no time will the depth of cover be less than twenty-four inches below the soil surface.

All excess subsoil and rock shall be removed from the site. On site disposal of such material may be allowed if approved by the landowner and the Environmental Monitor, with appropriate consideration given to any possible agricultural or environmental impacts.\*

In pasture areas, work areas will be fenced to prevent livestock access, consistent with landowner agreements.



## Wind Energy Facility Local Law for Town of Hammond

All pieces of wire, bolts, and other unused metal objects will be picked up and properly disposed of as soon as practical after the unloading and packing of turbine components so that these objects will not be mixed with any topsoil.\*

Excess concrete will not be buried or left on the surface in active agricultural areas. Concrete trucks will be washed outside of active agricultural areas.\*

(\*Any permits necessary for disposal under local, State and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.)

## Restoration Requirements

Following construction, all disturbed agricultural areas will be decompacted to a depth of 18 inches with a deep ripper or heavy-duty chisel plow. In areas where the topsoil was stripped, soil decompaction shall be conducted prior to topsoil replacement. Following decompaction, all rocks 4 inches and larger in size will be removed from the surface of the subsoil prior to replacement of the topsoil. The topsoil will be replaced to original depth and the original contours will be reestablished where possible. All rocks 4 inches and larger shall be removed from the surface of the topsoil. Subsoil decompaction and topsoil replacement should be avoided after October 1, unless approved on a site-specific basis by the landowner in consultation with Ag. and Markets. All parties involved should be cognizant that areas restored after October 1st may not obtain sufficient growth to prevent erosion over the winter months. If areas are to be restored after October 1st, necessary provision should be made to restore any eroded areas in the springtime, to establish proper growth.

All access roads will be regraded to allow for farm equipment crossing and to restore original surface drainage patterns, or other drainage pattern incorporated into the design.

All restored agricultural areas shall be seeded with the seed mix specified by the landowner, in order to maintain consistency with the surrounding areas.

All surface or subsurface drainage structures damaged during construction shall be repaired to as close to preconstruction conditions as possible, unless said structures are to be removed as part of the project design.

Following restoration, all construction debris will be removed from the site.

## Two Year Monitoring and Remediation

The Project Sponsor will provide a monitoring and remediation period of no less than two years immediately following the completion of initial restoration. The two year period allows for the effects of climatic cycles such as frost action, precipitation and growing seasons to occur, from which various monitoring determinations can be made. The monitoring and remediation phase will be used to identify any remaining agricultural impacts associated with construction that are in need of mitigation and to implement the follow-up restoration.

General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, drainage and repair of severed fences, etc. Impacts will be identified by the Environmental Monitor through on site monitoring of all agricultural areas impacted by construction and through contact with respective farmland operators and the Department of Agriculture and Markets.

Topsoil deficiency and trench settling shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the affected site. Excessive amounts of rock and oversized stone material will be determined by a visual inspection of disturbed areas as compared to portions of the same field located outside the construction area. All excess rocks and large stones will be removed and disposed of by the Project Sponsor.

When the subsequent crop productivity within affected areas is less than that of the adjacent unaffected agricultural land, the Project Sponsor as well as other appropriate parties, will help to determine the appropriate rehabilitation measures to be implemented. Because conditions which require remediation may not be noticeable at or shortly after the completion of construction, the signing of a release form prior to the end of the remediation period will not obviate the Project Sponsor's responsibility to fully redress all project impacts.

Subsoil compaction shall be tested using an appropriate soil penetrometer or other soil compaction measuring device. Compaction tests will be made for each soil type identified on the affected agricultural fields. The subsoil compaction test results within the affected area will be compared with those of the adjacent unaffected portion of the farm field/soil unit. Where representative subsoil density of the affected area exceeds the representative subsoil density of the unaffected areas, additional shattering of the soil profile will be performed using the appropriate equipment. Deep shattering will be applied during periods of relatively low soil moisture to ensure the desired mitigation and to prevent additional subsoil compaction. Oversized stone/rock material which is uplifted to the surface as a result of the deep shattering will be removed.

Revised 1-04-08

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 20 09 of the ~~(County)(City)(Town)(Village)~~ Mayor of Hammond was duly passed by the Town Board on 20 09, in accordance with the applicable provisions of law.  
(Name of Legislative Body)

**2. ~~(Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)~~**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) \_\_\_\_\_  
(Name of Legislative Body)  
(repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted  
(Elective Chief Executive Officer\*)  
on \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) \_\_\_\_\_  
(Name of Legislative Body)  
(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_.  
(Elective Chief Executive Officer\*)

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special)(annual) election held on \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) \_\_\_\_\_  
(Name of Legislative Body)  
(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

~~5. (City local law concerning Charter revision proposed by petition.)~~

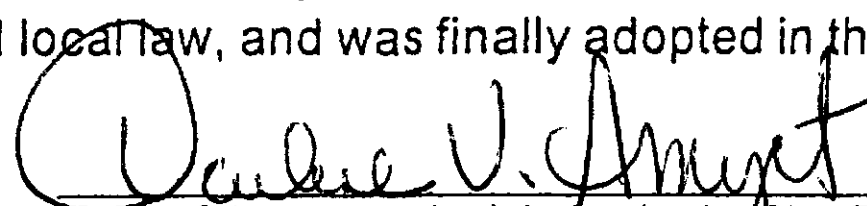
~~I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20 \_\_\_\_\_, became operative.~~

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20 \_\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.



Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Darlene Amyot, Clerk

Date: December 11, 2009

(Seal)

**(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)**

STATE OF NEW YORK  
COUNTY OF JEFFERSON

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.



Signature

Town Attorney

Title

~~County~~

~~City~~

of

Hammond

Town

~~Village~~

Date: December 9, 2009