

Chapter 160. Wind Energy Facilities

[HISTORY: Adopted by the Town Board of the Town of Colton 7-14-2021 by L.L. No. 1-2021. Amendments noted where applicable.]

Article I. General Provisions

§ 160-1. Title.

This chapter shall be cited as the "Wind Energy Facility Law of the Town of Colton, New York." By reason of enactment of this chapter, Local Law No. 1 for the year 2020 of the Town of Colton, New York, is superseded by this chapter and hereby repealed.

§ 160-2. Purpose.

The Town Board of the Town of Colton adopts this chapter 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, welfare, and the environment will not be jeopardized.

§ 160-3. Authority.

The Town Board of the Town of Colton enacts this chapter under the authority granted by:

- A. Article **IX** of the New York State Constitution, § 2(c)(6) and (10).
- B. New York Statute of Local Governments § 10(1), (6), and (7).
- C. New York Municipal Home Rule Law § 10(1)(i) and (ii) and § 10(1)(a)(6), (11), (12), and (14).
- D. New York Town Law Article 16 (Zoning).
- E. 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) (Excavated lands), (16) (Unsafe buildings), (19) (Trespass), and (25) (Building lines).
- F. New York Town Law § 64(17-a) (Protection of aesthetic interests) and (23) (General powers).
- G. New York Real Property Tax Law § 487.

§ 160-4. Findings and declarations.

The Town Board of the Town of Colton finds and declares that:

- A. 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.
- B. 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.
- C. Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety, and well-being of neighboring property owners, the general public, the local economy and local ecosystems.
- D. Wind energy facilities and conversion systems may represent significant potential aesthetic impacts because of their large size, lighting, and shadow flicker effects.
- E. 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, farmland segregation and isolation.
- F. Wind energy facilities may present a risk to birds, bats and other creatures if not properly sited.
- G. If not properly sited, wind energy facilities may adversely affect the property values of adjoining property owners.
- H. Potential risks from wind turbines may include ice shedding, tower collapse, blade failure, and fire in turbines, and they may be significant sources of noise, which if unregulated can negatively impact the safety and quiet enjoyment of properties in the vicinity.
- I. Construction of wind energy facilities can create traffic problems, stream sedimentation and damage local roads.
- J. By reason of the foregoing, the siting of wind energy conversion systems, as hereafter defined, is best determined to be within specific defined locations hereafter referred to as "Wind Overlay Zones." It is not anticipated that the impact and effect of small wind energy conversion systems, as hereafter defined, will require the same sort of siting limitations, it being believed that the provisions of this chapter adequately address issues attendant to such small wind energy conversion systems.

§ 160-5. Definitions.

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

AMBIENT NOISE LEVEL

The composite of sound pressure from all sources near and far on a 24/7 basis. The normal or existing level of environmental sound pressure at a given location. It is the noise level that is exceeded 90% of the time (expressed as "L90") or 54 minutes of every hour.

ARTICLE 10

That portion of New York State Law, Chapter 388 of the Laws of 2011, providing for the siting review of new and repowered or modified major electric generating facilities by the New York State Public Service Commission's Board on Electric Generation Siting and the Environment (referred to as the "Siting Board").

A-weighted decibels; an expression of the relative loudness of sounds in air as perceived by the human ear.

CERTIFIED ACOUSTICAL CONSULTANT

A person with demonstrated competence in the specialty of community noise testing who is contracted for the purposes of noise measurement or evaluation of noise analysis.

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.

MODIFICATION

Any change, addition, removal, swap-out or exchange that requires or results in changes and/or updates to the original design of a WECS.

NONPARTICIPATING PROPERTY

Real property within a designated wind zone where the owner does not have a contract with the developing wind power company.

ORDINARY MAINTENANCE

Actions that ensure that all WECS are kept in good operating condition. This includes inspections, testing, and repairs that maintain safe functional capacity and structural integrity of the original design. It does not include modifications.

PARTICIPATING PROPERTY

Real property within a designated wind zone where the owner has a contract with the developing wind power company.

RESIDENCE

Any dwelling suitable for habitation existing in the Town of Colton on the date an application is received. This includes any dwelling not attached to public utilities, that does not have running water or is hooked to a sewer or septic system. A residence may be part of a multidwelling or multipurpose building, and shall include buildings such as hunting camps, seasonal residences, hotels, hospitals, motels, dormitories, sanitariums, nursing homes, medical centers, schools or other buildings used for educational purposes, or correctional institutions.

SECTION 94-C

The Accelerated Renewable Energy Growth and Community Benefit Act, which provides an expedited review process with uniform permit standards for New York State renewable energy projects in place of the procedures set forth in Article 10 of the Public Service Law.

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.

SETBACKS

A distance measured from the center of a turbine tower or measurement tower to the center line of a road right-of-way, property line, Wind Overlay Zone limits, Adirondack Park boundary, edge of wetlands, or closest point of residence foundation.

SHADOW FLICKER

A repeating cycle of changing light intensity that occurs when the shadow cast by rotating turbine blades passes over an object or a window.

SITE

The parcel(s) of land where the wind energy facility is to be placed. The site could be publicly or privately owned or leased by an individual or a group of individuals controlling single or adjacent properties. Where multiple lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements to the closest lot. Any property which has any component of a wind energy facility or whose owner has entered into an agreement for said facility or a setback agreement shall not be considered off-site.

SMALL WIND ENERGY CONVERSION SYSTEM (Small WECS)

A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of at least five kW not more than 100 kW and which is intended to primarily generate on-site power or reduce on-site consumption of utility power.

SOUND PRESSURE LEVEL

The level of sound which is equaled or exceeded a stated percentage of time. For example, an L10-45 dBA indicates that in any hour of the day, 45 dBA can be equaled or exceeded for 10% of the time or six minutes. The measurement of the sound pressure level should be done according to the International Standards for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11) or other accepted procedures. Sound Measurements shall use sound meters that meet the American National Standard Institute Specifications for Integrating Average Sound Level Meters, SI.43-1997, for Type 1 instruments and be capable of accurate readings at 20 dBA or lower.

TOTAL HEIGHT

The total distance measured from the grade of the site that existed prior to construction at the base of the WECS to its highest point at the full vertical extension of a blade.

WIND ENERGY CONVERSION SYSTEM (WECS)

A machine that consists of a wind turbine, a tower, rotating blades, and associated control or conversion electronics that converts the kinetic energy in the wind into a usable form (commonly known as a "wind turbine" or "windmill") and which has a rated capacity of more than 100 kilowatts (100 kW).

WIND ENERGY FACILITY (WEF)

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. Public utility uses otherwise allowed under this chapter do not include wind energy facilities.

WIND MEASUREMENT TOWER

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

WIND OVERLAY ZONE

Those areas of the Town of Colton which 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 Wind Overlay Zone is designated on the Zoning Map as a part of the Town of Colton Land Use and Development Code.

§ 160-6. Permits required.

- A. No wind energy facility shall be constructed, reconstructed, modified, or operated in the Town of Colton, except in compliance with this chapter.
- B. No WECS shall be constructed, reconstructed, modified, or operated in the Town of Colton, except in a Wind Overlay Zone as designated on the Town of Colton Zoning Map as a part of the Town of Colton Land Use and Development Code pursuant to this chapter.
- C. No special permit shall be issued for construction, reconstruction, modification or operation of a WECS in the Town of Colton, unless it is located within a Wind Overlay District created by act of the Town Board.
- D. No construction, reconstruction, modification or operation of a WECS in the Town of Colton shall occur or be commenced until a special permit has been issued by the Town

and until all other permits as may be required by county, state and federal authorities have been issued and evidence of same is provided to the Town of Colton.

- E. No wind measurement tower shall be constructed, reconstructed, modified, or operated in the Town of Colton, except pursuant to a special use permit issued pursuant to this chapter.
- F. No small wind energy conversion system shall be constructed, reconstructed, modified, or operated in the Town of Colton, except pursuant to a special use permit issued pursuant to this chapter.
- G. Exemptions. No permit or other approval shall be required under this chapter for mechanical, nonelectrical WECS utilized solely for on-site agricultural operations.
- H. 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 written acceptance by the transferee of the obligation of the transferor under this chapter. Notice of such transfer shall be filed with the Town of Colton within 30 days. No transfer shall eliminate the liability or responsibility of an applicant or of any other party under this chapter for acts or omissions occurring prior to such transfer or sale.
- I. Notwithstanding the requirements of this section, replacement in kind or modification of a wind energy facility may occur without Town Board approval when there will be:
 - (1) No increase in total height of the WECS;
 - (2) No change in the location of the WECS;
 - (3) No additional lighting or change in facility color; and
 - (4) No increase in noise produced by the WECS.
- J. The Highway Superintendent shall be consulted prior to any such modifications to review the scope of impacts to the Town roads, and any required protective measures shall be incorporated into the modifications project.

§ 160-7. Applicability.

- A. The requirements of this chapter shall apply to all wind energy facilities proposed, operated, modified, or constructed in that part of the Town of Colton which is located outside of the Adirondack Park after the effective date of this chapter.
- 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 chapter, shall not be required to meet the requirements of this chapter; provided, however, that:
 - (1) Any preexisting wind energy facility which does not provide energy for a continuous period of 12 months shall meet the requirements of this chapter 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 chapter.
 - (3) Any wind measurement tower existing on the effective date of this chapter shall be removed no later than 26 months after said effective date, unless a special use permit for said wind energy facility is obtained.
- C. Wind energy facilities may be either principal or accessory uses. A different existing use or 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 chapter shall not be deemed expansions of a nonconforming use or structure.

- D. No permit or other approval shall be required under this chapter for mechanical, nonelectrical WECS or its accessory structures utilized solely for on-site agricultural operations.

Article II. Wind Energy Facilities and Conversion Systems

§ 160-8. Creation of Wind Overlay Zones.

- A. Wind Overlay Zones are designated by the Town Board in the most current Town of Colton Land Use and Development Code to delineate those areas in the Town of Colton that are appropriate for the development of wind energy conversion systems (WECS) and related infrastructure, electrical lines and substations, access roads and accessory structures. The Town's Wind Overlay Zone is concurrent with the district boundaries for Residential Town (RT), less 500 feet from the Adirondack Park boundary. Any revisions to a Wind Overlay Zone may only be approved through a revision to said Town of Colton Land Use and Development Code.
- B. The Town Board shall refer any requested revisions or additions of the Wind Overlay Districts to the Town Planning Board. The Town Planning Board shall hold at least one public hearing after public notice at which the Planning Board shall consider the landscape and topography of the Town, current land uses and future development patterns, natural resources, unique or sensitive environments, the local existence of wildlife and plant species, viewsheds, zoning districts, residents' opinions, and other pertinent information.
- C. After considering these and any other information presented at the public hearing, the Town Planning Board shall determine those areas which are or are not appropriate for development of wind energy conversion systems (WECS) and related infrastructure, electrical lines and substations, access roads and accessory structures.
- D. The Town Planning Board shall report its findings and make recommendations to the Town Board.
- E. The Town Board shall hold a public hearing after public notice as required, and shall consider the recommendations of the Town Planning Board and all other comments, reviews and statements pertaining thereto. After considering these and any other information presented at the public hearing, the Town Board shall determine which areas of the Town of Colton shall be determined to be Wind Overlay Zones.
- F. If approved, the Town Board will direct the Town Clerk to modify the Official Map to reflect the creation of the Wind Overlay Zones.
- G. Once a Wind Overlay Zone has been created, a new WECS or its related infrastructure, accessory structures or facilities may be added in that zone by grant of a special use permit pursuant to the requirements of this article.
- H. Construction, reconstruction, modification or operation of small wind energy conversion systems (small WECS) or wind measurement towers, as defined in this chapter, shall not be limited to Wind Overlay Zones, as long as these other projects comply with all other regulations contained herein.

§ 160-9. Applications for wind energy facilities and conversion systems.

An application for special use permit for individual WECS shall comply with all aspects and requirements of Article 10 of the New York State Laws of 2011 and shall also include the following:

- A. Name, address, and telephone number of the applicant, owner, contractors and project sponsor. 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.
- B. 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.
- C. Address, or other property identification, of each proposed tower location, including Tax Map section, block and lot number, and latitude and longitude coordinates.
- D. A description of the project, including the number and maximum rated power output capacity of each WECS.
- E. For each WECS proposed, a plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following:
 - (1) Property lines and physical dimensions of the site.
 - (2) Location, approximate dimensions and types of existing structures and uses on the site, public roads, and adjoining properties within 2,500 feet of the site.
 - (3) Location and ground elevation of each proposed WECS.
 - (4) Location of all aboveground utility lines on the site, and all related transformers, power lines, interconnection points with transmission lines, and other ancillary facilities or structures.
 - (5) Location, height and size of all structures within a 500-foot radius of the proposed WECS.
 - (6) The zoning designation of the subject and adjacent properties as set forth in the Town Land Use and Development Code Local Law.
 - (7) Boundaries of the Wind Overlay Zone, to demonstrate that each proposed WECS is located within said overlay zones.
 - (8) To demonstrate compliance with the setback requirements of this article, circles drawn around each proposed tower location equal to:
 - (a) A radius equal to 1 1/2 times the tower height.
 - (b) A radius five times the proposed tower height.
 - (c) A radius of one mile.
 - (d) Information shall be provided concerning ownership and land uses within the above mentioned perimeters.
 - (9) Location of the nearest residential structure on the site and located off site, and within a distance of 2,500 feet from the proposed WECS.

- (10) All proposed facilities, including access roads, electrical lines, substations, points of interconnection, storage or maintenance units, and fencing.
- F. Elevation drawing of the WECS showing total height, turbine dimensions, tower and turbine 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. Elevation drawings showing any proposed overhead transmission line poles, structures and conductor clearance from the ground.
- G. 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 including the operations building and all other built structures.
- H. Lighting plan showing any FAA-required lighting and other proposed lighting for staging areas, parking lots and any structures, such as the operations building. The lighting plan should demonstrate downcast and minimum lighting to minimize glare and off-site light pollution. 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.
- I. Decommissioning plan. The applicant shall submit a decommissioning plan as specified in Article II, § **160-18**, of this chapter which shall include:
- (1) The anticipated life of the WECS;
 - (2) The estimated decommissioning cost, in current dollars, and adjusted to account for inflation at the time of decommissioning;
 - (3) How said estimate was determined not including salvage value;
 - (4) The method of ensuring that funds will be available for decommissioning and restoration either by standing letter of credit to the benefit of the Town or by creation of an escrow account;
 - (5) The method, such by biannual reestimates by a licensed engineer, that the decommissioning cost will be kept current and the timetable and procedure which will include review of the estimate by consultants to the Town; 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 required by NYSDAM, 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.
- J. Complaint resolution. The application will include a complaint resolution process to address complaints from nearby residents during construction and operation of the WECS. The process shall use an independent mediator or arbitrator and include a time limit for acting on a complaint. The applicant shall make every reasonable effort to resolve any complaint. All reasonable costs incurred by the Town for the conduct of an independent review by consultants to the Town or legal fees incurred by the Town will be reimbursed by the permittee.
- K. An application shall include information relating to the construction/installation of the wind energy conversion facility as follows:
- (1) A construction schedule describing commencement and completion dates and hours of construction;

- (2) A description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicle trips per turbine site; and
 - (3) A plan for public notice to school district officials, Town officials and emergency services during periods in which roads may be temporarily obstructed or closed by the transport of components or construction equipment.
- L. Completed Part 1 of the full environmental assessment form (EAF).
- M. Applications for wind energy permits for wind measurement towers subject to this chapter may be jointly submitted with the WECS.
- N. For each proposed WECS, include the make, model, picture, tower and turbine colors and manufacturer's specifications, including noise decibels data. Include manufacturer's 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.
- O. If a positive declaration of environmental significance is determined by the SEQRA lead agency, the following information shall be included in the draft environmental impact statement (DEIS) prepared for a wind energy facility. Otherwise, the following studies shall be submitted with the application:
- (1) Shadow flicker: The applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECSs and the expected duration of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or mitigate the problems to a maximum annual exposure of 30 hours per year of shadow flicker at any residence.
 - (2) 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 10 locations accurately depicting the existing conditions shall be included. The Town shall have input into the locations of the simulations. 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.
 - (3) Fire protection: A fire protection and emergency response plan, which includes a list of equipment needed to readily respond to an emergency at a facility, created in consultation with the fire department(s) having jurisdiction over the proposed zone.
 - (4) Noise analysis: A noise analysis by an INCE board certified acoustical consultant documenting the noise levels associated with the proposed WECS. The study shall document noise levels at property lines and at the nearest nonparticipating 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 include low frequency noise.
 - (5) Property value analysis: A 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.
 - (6) Electromagnetic interference: An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems and other wireless communication.
 - (7) Transportation impacts: An analysis of impacts on local transportation shall be prepared regarding impacts anticipated during construction, reconstruction, decommissioning, modification or operation of WECS. Transportation impacts to be considered shall include, at a minimum, potential damage to local road surfaces, roadbeds and associated structures; potential traffic tie-ups by haulers of WECS

materials; impacts on school bus routes; and impacts of visitors to the WECS facilities.

- (8) Groundwater impacts: An analysis of impacts on local groundwater resources shall be prepared regarding impacts anticipated during construction, reconstruction, modification or operation of WECS. Provide a response plan during construction to replace or supplement any on-site wells impacted by or during construction activities.
 - (9) Cultural resources: An analysis of impacts on cultural resources shall be prepared regarding impacts anticipated during construction, reconstruction, modification or operation of WECS.
 - (10) 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.
- P. The applicant shall, prior to the receipt of a building permit, provide proof that it has executed an interconnection agreement with the New York Independent System Operator and the applicable transmission owner.
 - Q. A statement, signed under penalty of perjury, that the information contained in the application is true and accurate.
 - R. A list of property owners (whether or not within the Town) with their mailing addresses within 2,500 feet of the project. The applicant may delay submission of this list until the Town Planning Board and/or Zoning Board of Appeals calls for a public hearing on the application.

§ 160-10. Application review process.

- A. Applicants may request a preapplication 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.^[1]
[1] Editor's Note: See Public Officers Law § 100 et seq.
- B. Twelve copies and one digital copy of the application shall be submitted to the Town Clerk for distribution as follows:
 - (1) Seven for the Town Planning Board;
 - (2) One for the Code Enforcement Officer;
 - (3) Two for the Town Clerk, one to be kept as part of the project record and one for public review;
 - (4) One for the St. Lawrence County Planning Board; and
 - (5) One for review by the Town's consultant, as appropriate.
- C. 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 receipt of the application.
- D. Town staff or Town-designated consultants shall, within 60 days of receipt, or such longer time if agreed to by the applicant, determine if all the 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.

- E. 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 submission of the additional information unless the number of WECSs proposed is increased.
- F. 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.
- G. 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 2,500 feet of each proposed WECS and published in the Town's official newspaper no less than 10 nor more than 20 days before any hearing. The notice shall include a statement that a copy of the application is available at the Town Hall building for public review. 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.
- H. The public hearing may be combined with public hearings on any environmental impact statement or requested variances. Notice for SEQRA public hearings must meet the requirements of Section 617.12(c) of the SEQRA document.
- I. Notice of the project shall also be given, when applicable, to i) the St. Lawrence County Planning Board, if required by General Municipal Law §§ 239-l and 239-m, and ii) adjoining Towns under Town Law § 264.
- J. 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, 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.
- K. 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 application, in accordance with the standards in this article.

§ 160-11. Standards for WECS.

The following standards shall apply to all WECS.

- A. All power collection and transmission lines from the tower to any substation, point of interconnection, building or other structure shall be located underground to the extent practicable. The applicant shall include the basis for any requested variance from this requirement. In the event a variance is granted, all utility poles shall be tall enough to provide 18 feet of clearance as measured from the shortest distance between the transmission lines and finished grade.
- B. No television, radio or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the Town Zoning Law. Applications may be jointly submitted for WECS and telecommunications facilities.
- C. No advertising signs are allowed on any part of the wind energy facility, including fencing and support structures.

- D. Lighting of a tower. No tower shall be lit except to comply with FAA requirements. Minimum security lighting that is downcast with recessed bulbs and cutoff shields 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 WECSs to the maximum extent practicable.
- F. All structures in a project shall be finished in a single, nonreflective matte finished color or a camouflage scheme. Individual WECSs within a Wind Overlay Zone shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the zone, 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.
- G. 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.
- H. No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, wireless phone, or other personal or emergency communication systems would produce electromagnetic interference with signal transmission or reception. No WECS shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that a WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference, including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the wind energy permit for the specific WECS or WECSs causing the interference.
- I. 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.
- J. 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 topsoil 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, except where the underlying fee owner of the land requests otherwise.
- K. 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 and Wildlife Service as threatened or endangered.
- L. Wind energy conversion facilities shall be located in a manner consistent with all applicable state and federal wetlands laws and regulations.
- M. Stormwater runoff and erosion control shall be managed in a manner consistent with all applicable state and federal laws and regulations.
- N. The most current version of the New York State Department of Agriculture and Markets guidelines for agricultural mitigation for wind power projects (as now existing or hereafter amended) shall be adhered to, both inside and outside of agricultural districts. The applicant/project sponsor shall be responsible to provide financial funding to the Town in order for the Town to retain the services of an Environmental Monitor to oversee the construction and restoration in agricultural fields and to ensure that the applicant/project sponsor adheres to these aforementioned guidelines to the extent reasonably practicable. The Environmental Monitor will also be responsible for monitoring compliance with permit conditions in the field, including but not limited to wetland protection, erosion control, surface water runoff, oil and hazardous waste controls, and sound construction practices.

The Environmental Monitor will be responsible for ensuring sound environmental practices by all contractors and subcontractors. The Environmental Monitor shall have "stop-work authority" where necessary to protect public health and safety.

- O. Construction of the WECS shall generally be limited to the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday, except for certain activities which may require work outside of that period, but which shall be limited to work at project component sites and may only occur with notice to and approval of the Town's Code Enforcement Officer.
- 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 wind energy permit for the specific WECS or WECSs causing the problems.
- Q. There shall be, in all respects, compliance with and adherence to the New York State Historic Preservation Office guidelines for wind farm development cultural resource survey work, as now existing and as hereafter amended.
- R. No WECS shall make abnormal noises caused by mechanical malfunction or maintenance deficiencies within the required 1 1/2 times the height of the WECS distance from the residences above the level allowed in § 160-14 of this herein chapter. The WECS must be taken offline within eight hours of notification by the Town Code Enforcement Officer, Town Supervisor, or other person designated by the Town Board. The WECS shall not be reactivated until the problem has been resolved.
- S. Insurance requirement. Prior to commencement of construction and throughout the operation of the wind energy facility, the applicant shall have the Town of Colton included as additional insured under all insurance policies acquired and maintained to fulfill the requirements of this chapter. The applicant shall maintain in force, at its own expense, comprehensive general liability insurance with the minimum of at least \$5,000,000 per occurrence with a total policy minimum of \$20,000,000 per year indicating coverage for potential damages or injury to landowners. The applicant will immediately provide the Town of Colton, in writing, any notice of cancellation or change to any of the insurances referred to herein.

§ 160-12. 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. 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 the 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 twenty-four-hour, seven-day-a-week coverage. The Town Planning Board may require additional signs based on safety needs such as warnings for all-terrain vehicles and snowmobiles.
- C. No climbing pegs or tower ladders shall be located closer than 12 feet to the ground level at the base of the structure for freestanding single-pole or guyed towers.
- D. The minimum distance between the ground and any part of the rotor or blade system shall be 35 feet.
- E. WECSs shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked.

- F. Copies of all reports concerning operating and safety inspections for each WECS shall be filed with the Town Clerk.

§ 160-13. Traffic routes.

- A. Construction of WECS poses potential risks because of the large size of 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.
 - (5) Permit conditions may limit WECS-related traffic to specific 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. The condition of the roads prior to the onset of construction shall be documented by video documentation and a site visit with the Town Highway Superintendent or his designee.
- 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 snowplowing. 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. No seasonal roads shall be plowed without consulting the Highway Superintendent and local snowmobile clubs.

§ 160-14. Noise standards and setbacks for wind energy conversion systems.

- A. The total sound pressure level generated by a WECS and sources unrelated to the turbines shall not exceed those Leq A-weighted decibels (dba) listed below measured at ten-minute intervals at the nearest residence, school, hospital, place of worship or public buildings existing at the time of application not on site not to exceed 50 decibels. Independent certification shall be required before and after construction demonstrating compliance with this requirement. If the ambient noise level measured at the nearest such structure is greater than the levels mentioned above, the standard shall be equal to the ambient noise level.
- 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 Subsection A shall be reduced by five dBA. A pure tone is defined to exist if the 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 contiguous 1/3 octave bands by five dBA for center frequencies of 500 Hz and above, by eight dBA for center frequencies between 160 Hz and 400 Hz, or by 15 dBA for center frequencies less than or equal to 125 Hz.

- C. The ambient noise level shall be expressed in terms of the minimum sound pressure level measured in any one hour over a twenty-four-hour period in L90 A-weighted decibels (dBA). Ambient noise levels shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches and public buildings. 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 15 mph or the limits of a microphone with windscreen at the ambient noise measurement location. For these purposes, the term "ambient noise level" is defined as the composite of sound pressure level from all sources near and far being the normal or existing level of environmental sound pressure at the given subject location.
- D. Any noise level falling between two whole decibels shall be the lower of the two.
- E. For WECS that are accessory to a farm operation in an agricultural district, the setback from site boundaries shall be 1.1 times the total height of the proposed WECS. For all other WECS, each WECS shall be set back from site boundaries, measured from the center of the WECS a minimum of:
 - (1) One and five-tenths times the total height of the proposed WECS from the nearest nonparticipating property line.
 - (2) One and five-tenths times the total height of the proposed WECS from the nearest public road.
 - (3) One and five-tenths times the total height of the proposed WECS from the nearest edge of the Wind Overlay Zone.
 - (4) One and five-tenths times the total height of the proposed WECS from the nearest participating residence existing at the time of application (with owner's approval), measured from the exterior of such residence.
 - (5) One and five-tenths times the total height of the WECS from any state or federally identified wetlands or bodies of water. This distance may be adjusted to be greater at the discretion of the Town Planning Board, based on topography, land cover, land uses and other factors that influence the flight patterns of resident birds, bats or other creatures.
 - (6) One and five-tenths times the total height of the proposed WECS from the Adirondack Park Agency boundary.

§ 160-15. Noise compliance monitoring.

- A. Long-term monitoring station. Upon the issuance of a permit for a wind energy facility, and as a condition thereof, the applicant shall, within 90 days, submit to the Town a proposal for two remote noise monitoring stations on site. The long-term noise monitoring stations would be accessible remotely through a dedicated website, and the data would clearly demonstrate compliance (or violation) with the Towns' noise limits by allowing the website visitor to view sound levels real-time and correlate them with audio records, as well as to review data and sound records from the previous 12 months.
- B. Proposal. The proposal for long-term monitoring stations shall include but not be limited to:
 - (1) The location of the monitoring stations and the basis for the sites chosen.
 - (2) The name, contact information, and credentials of the consultant who prepared the proposal for the applicant and the name and contact information for the applicant's

consulting sound professional once the station is operational, if different.

- (3) A detailed description of the equipment and capabilities of the equipment proposed for the monitoring station, including power sources.
 - (4) A plan for regular and emergency maintenance, replacement or repair of the equipment comprising the monitoring station.
 - (5) A timeline for installation and testing of the capabilities of the stations, including one or more field visits by professionals acting on behalf of the Town.
 - (6) The establishment of an escrow fund, or identification of any existing fund, through which the costs of review on behalf of the Town by its sound consultants, attorneys and any other related costs to the Town shall be made. Both the costs of the review of the proposal and the costs of review of the data and sound records of long-term monitoring once established shall be reimbursed.
 - (7) A recommendation ensuring regular communication and periodic review of the long-term monitoring program and the data and audio records between the Town, the applicant, and/or their sound consultants.
 - (8) Proposed data collection methods, trigger levels for audio records, retention time for both data and audio records, and provisions for periodic summary reports to the Town.
 - (9) A recommendation for the duration of long-term monitoring once the wind energy facility is operational.
 - (10) Actions that will be taken by the applicant to moderate or cease operation of any turbine during icing conditions should the long-term monitoring demonstrate that additional sound mitigation measures are necessary during icing conditions.
- C. Approval. Final approval of the long-term monitoring proposal and installation shall rest with the Town Board. The Town Board, after review by its sound consultant, may require modifications to the proposal or to the location of the monitoring stations. The Town Board, in its own discretion, may waive the requirement for a second monitoring station, and may direct the closure of the monitoring stations if it deems one or both unnecessary after reviewing the data over multiple seasons. The Town Board may require a presentation on the long-term monitoring proposal by the applicant at a regular meeting of the Board prior to final approval. Final approval of the Town Board will be made prior to the installation of turbines on site, and shall not be unreasonably withheld.

§ 160-16. Issuance of special use permits.

- A. Upon completion of the review process, the Town Planning Board shall, upon consideration of the standards in this chapter, Article 10 and/or Section 94-C, and SEQRA review, issue a written decision with 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 chapter as determined by the Building Inspector and the Town Engineer.
- 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. Digital copies may also be emailed to the applicant.

- D. If any approved WECS is not substantially commenced within two years of issuance of the permit, the special use permit shall expire.

§ 160-17. Variances.

The Zoning Board of Appeals is hereby granted the power to vary or modify the strict application of the requirements contained in this chapter as they relate to area or dimensions upon the application of the criteria hereafter listed. In no event shall the Zoning Board of Appeals issue a use variance to permit the location of WECS in an area outside of the Wind Overlay District as established under this chapter that is contrary to the public purpose of the Wind Overlay District, which is to protect the public health and safety.

- A. Upon specific request from the applicant, the Zoning Board of Appeals 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 Zoning Board of Appeals may consider:
 - (1) Whether an undesirable change will 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 Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.
- B. The Zoning Board of Appeals, in granting an area variance, shall grant the minimum variance that 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 Zoning Board of Appeals 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 Zoning Board of Appeals in connection with the application.

§ 160-18. Abatement decommissioning.

- A. If any WECS remains nonfunctional or inoperative for a continuous period of one year, the applicant, and/or its successors or assigns, are responsible, without any further action by the Town, shall remove said system and restore the site at its own expense. 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's ability to order remediation after a public hearing.

- B. Nonfunction 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 to the Town 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. Removal of the system shall include:
- (1) 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.
 - (2) All aboveground components, including, but not limited to, substations, switch gear, turbines, blades, nacelles, towers, transformers, aboveground collection cables and poles and fencing. Removal of the system may also include aboveground collection cables and poles.
 - (3) Foundations and buried project components, other than buried collection lines, must be removed to a depth of the NYSDAM regulations.
 - (4) Buried collection lines must be removed to a depth of NYSDAM regulations. Collection lines below the depth of the NYSDAM regulations may remain in place.
 - (5) Removal activities must be completed within one year of decommissioning initiation unless otherwise approved by the Town.
- D. Restoration of each site shall include:
- (1) Ground disturbance must be minimized to the extent practical and the site restored to its original ground contours if possible.
 - (2) Disturbed on-site soils and vegetation will be reasonably restored and reestablished using native seed mix or in coordination with the landowner to allow desired vegetation to be planted.
 - (3) Roads must be adequately restored to their original condition following decommissioning activities.
 - (4) Access roads, fencing and residual minor improvements may remain with written consent from the landowner.
- E. Financial assurance for decommissioning bond or fund. The applicant and his successors and assigns shall continuously maintain a bond or fund in the amount of the decommissioning costs according to this section. It will be payable to the Town for the removal and restoration of nonfunctional or inoperable WECS. This financial assurance will be in place before the commencement of construction and will be in the amount of the decommissioning costs to be determined by a qualified independent engineer licensed to practice in the State of New York, at the applicant's expense. This estimate is then reviewed by engineers hired by the Town, at the applicant's expense. This estimate will be determined and reviewed every two years. This financial assurance may be in the form of a letter of credit, a bond, escrow account, a parent guarantee or other form approved by the Town. The applicant will make an initial deposit of \$150,000 to the fund. A LWECS permit application will not be processed until proof of deposit has been provided by the applicant. All costs of this financial assurance shall be borne by the applicant.

§ 160-19. Limitations on approvals; easements on Town property.

- A. Nothing in this chapter 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 chapter 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. In instances where trees and vegetation are cleared, the applicant shall submit a landscaping plan to replant and revegetate a comparable amount of land that is displaced so that there is no net loss caused by the wind energy facility.
- 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 Planning Board deems appropriate, as long as said agreements are not otherwise prohibited by state or local law.

§ 160-20. Permit revocation.

- A. Testing fund. A special use permit shall contain a requirement that the applicant fund periodic noise testing by a certified independent third-party acoustical measurement consultant, which may be required as often as every two years, or more frequently upon request of the Town Board in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the special use permit and this chapter and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Town Board to cure any deficiency. An extension of the ninety-day period may be considered by the Town Board, but the total period may not exceed 180 days.
- B. Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, the applicant shall have 90 days after written notice from the Town Board to cure any deficiency. An extension of the ninety-day period may be considered by the Town Board, but the total period may not exceed 180 days. Where a violation of the noise standard by the operation of a WECS is readily apparent or has been documented by sound testing, the Town Board upon written notice may require that the WECS be taken offline within 48 hours, to remain offline until repairs or a remedy is effected.
- C. Notwithstanding any other abatement provision under this chapter, and consistent with §§ **160-18A** and **160-20B**, 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, i) order either remedial action within a particular time frame, or ii) order revocation of the wind energy permit for the WECS and require the removal of the WECS within 180 days, and the restoration of the site. 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

§ 160-21. Wind site assessment.

The Town Board acknowledges that prior to construction of a WECS or a small 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 not be limited to those areas delineated as Wind Overlay Districts.

§ 160-22. Applications for wind measurement towers.

An application for a wind measurement tower shall include:

- A. Name, address, and telephone number of the applicant, owner, contractors and project sponsor. 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.
- B. Name, address, and 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.
- C. Address of each proposed tower site, including Tax Map section, block and lot number.
- D. Site plan.
- E. Decommissioning plan, including a security bond, irrevocable line of credit, or cash for removal.

§ 160-23. Standards for wind measurement towers.

- A. The distance between a wind measurement tower and the property line shall be at least 1 1/2 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 26 months. Permits may be renewed if the facility is in compliance 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 three feet to eight feet above the ground.
- D. The New York State Department of Agriculture and Markets guidelines for agricultural mitigation for wind farm projects (as now existing or hereafter amended) shall be adhered to both inside and outside of agricultural districts.

§ 160-24. Application review process.

- A. Applicants may request a preapplication 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.^[1] The

preapplication meeting may be requested through the Code Enforcement Officer 15 days prior to the following Planning Board meeting.

[1] *Editor's Note: See Public Officers Law § 100 et seq.*

- B. Twelve paper copies and one digital copy of the application shall be submitted to the Code Enforcement Officer. 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 receipt of the application.
- C. The Town CEO and/or Town-designated consultants shall, within 60 days of receipt, or such longer time if agreed to by the applicant, determine if all the information required under this article is included in the application. No application shall be considered until deemed complete. This includes referrals to SLC, APA, Fort Drum, and any regulatory agency deemed pertinent.
- D. If the application is deemed incomplete, the Town CEO and/or CEO-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 submission of the additional information unless the number of wind measurement towers proposed is increased.
- E. Upon submission of a complete application, the CEO shall transmit the application to the Chairperson of the Planning Board.
- F. The Town Planning Board shall hold at least one public hearing on the application. Notice shall be given by first-class mail to property owners within 1,000 feet of each proposed wind measurement tower and published in the Town's official newspaper, no less than 10 nor more than 20 days before any hearing, but, where any hearing is adjourned by the Town 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 Town 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 i) the St. Lawrence County Planning Board, if required by General Municipal Law § 239-l and 239-m, and ii) 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 agencies 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. The applicant is responsible for the SEQRA process. The Town is responsible for the SEQRA 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 application, in accordance with the standards in this article.

Article IV. Small Wind Energy Conversion Systems

§ 160-25. 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.

§ 160-26. Permitted areas.

Small wind energy conversion systems (small WECS) may be permitted in any zoning district on a site of at least one acre, upon issuance of a special use permit. For WECS that are accessory to a farm operation in an agricultural district, the setback from site boundaries shall be 1.1 times its total height. All other small WECS shall be set back from all property lines a distance equal to at least 1 1/2 times its height; however, this requirement can be met by multiple owners submitting a joint application.

§ 160-27. Applications.

Applications for small WECS special use permits shall include:

- A. Name, address, and 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.
- B. Name, address, and 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.
- C. Address of each proposed tower site, including Tax Map section, block and lot number.
- D. 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.
- E. Ownership and land use information within a 500-foot radius of the location proposed for each tower.
- F. Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.
- G. 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 Electrical Code. An electrical inspection must be completed by a NYS certified electrical inspector prior to use and/or certification of occupancy completion.
- H. Sufficient information demonstrating that the system will be used primarily to reduce on-site consumption of electricity.
- I. 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 in the application.
- J. 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.

§ 160-28. Application review process.

- A. Applicants may request a preapplication 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.^[1] The preapplication meeting may be requested through the Code Enforcement Officer 15 days prior to the following Planning Board meeting.
[1] Editor's Note: See Public Officers Law § 100 et seq.
- B. Twelve paper copies and one digital copy of the application shall be submitted to the Code Enforcement Officer. 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 receipt of the application.
- C. The CEO and/or Town-designated consultants shall, within 60 days of receipt, or such longer time if agreed to by the applicant, determine if all the information required under this article is included in the application. No application shall be considered until deemed complete. This includes referrals to SLC, APA, and any regulatory agency deemed pertinent.
- D. If the application is deemed incomplete, the Town CEO and/or CEO-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 submission of the additional information unless the number of wind measurement towers proposed is increased.
- E. Upon submission of a complete application, the CEO shall transmit the application to the Chairperson of the Planning Board.
- F. The Town Planning Board shall hold at least one public hearing on the application. Notice shall be given by first-class mail to property owners within 1,000 feet of each proposed small WECS and published in the Town's official newspaper no less than 10 nor more than 20 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 i) the St. Lawrence County Planning Board, if required by General Municipal Law §§ 239-l and 239-m, and ii) adjoining Towns under Town Law § 264.
- I. SEQRA review. Applications for 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 agencies 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. The applicant is responsible for the SEQRA process. The Town is responsible for the SEQRA 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 application, in accordance with the standards in this article.

§ 160-29. Development standards.

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 purchased electricity. Maximum turbine output is limited to 100 kW. A small WECS with rated capacity less than five kW and not connected to a power grid is exempt from small WECS permit requirements.
- C. Tower height may be allowed to vary, dependent on the technology employed. However, setbacks from all property lines shall be maintained, at a minimum, at 1 1/2 times the total height of the tower, excluding farm operations in an agricultural district, where the setback is 1.1 times the total height of the tower. The allowed height shall be reduced if necessary to comply with all applicable federal aviation requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.
- D. The system's tower and blades shall be painted a nonreflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporate nonreflective surfaces to minimize any visual disruption.
- E. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas (e.g., public parks, roads, trails). To the greatest extent feasible, a small wind energy system shall use natural landforms and vegetation for screening.
- F. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
- G. 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. Any aboveground utility line shall use utility poles that are tall enough to provide 18 feet of clearance as measured from the shortest distance between the transmission lines and final grade.
- H. The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
- I. 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.
- J. 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's or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner.

- K. 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 anticlimb device installed on the tower.
- L. Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any aboveground electric transmission or distribution lines. The point of attachment for the guy wires shall be sheathed in bright orange or yellow covering from three feet to eight feet above the ground.
- M. Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be regraded and revegetated to the preexisting natural condition after completion of installation.
- N. To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a 250-foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.
- O. All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Building Code and National Electric Code.
- P. All small wind energy systems shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer.
- Q. The New York State Department of Agriculture and Markets guidelines for agricultural mitigation for wind power projects shall be adhered to both inside and outside of agricultural districts.
- R. Noise. Except during short-term events, including utility outages and severe windstorms, a small WECS shall be designed, installed, and operated so that noise generated by the system shall comply with the requirements of § 160-14 of this chapter as measured at the closest neighboring inhabited dwelling.

§ 160-30. Abandonment of use.

- A. Small WECS which are not used for 12 consecutive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit by the Town of Colton.
- B. All small WECS shall be maintained in good condition and in accordance with all requirements of this section.

Article V. Miscellaneous

§ 160-31. Fees.

- A. Nonrefundable application fees for the administration of this chapter in consideration of an application for a wind energy facility shall be as established by resolution of the Town

Board.

- B. Building permits. The Town of Colton believes the review of building and electrical permits for wind energy facilities requires specific expertise for those facilities. Accordingly, for such facilities an administrative fee of \$25 per permit request shall be charged for administrative costs, plus the amount charged to the Town by an 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 a case, the Town and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans, certifications or conduct inspections as agreed by the parties, document handling and storage.
- C. The applicant for either state or local siting approval shall deliver to the Town Board, along with its application if local approval is sought, and concurrent with the filing of an application with any state authority, if applicable, an amount equal to 1% of the estimated cost of the project (the "initial deposit"), to a maximum initial deposit of \$30,000. This sum shall be held by the Town in a non-interest-bearing account, and these funds shall be available to the Town to pay consultants and attorneys engaged by the Town to assist in application review if a local permit is sought, and to pay consultants and attorneys engaged by the Town to assist in review. Following the grant or denial of the state or local application, the Town shall return to the applicant any excess remaining in escrow. If the escrow account has been depleted prior to grant or denial of the application, the applicant shall deposit such funds necessary for the Town to pay any outstanding fees to said consultants.
- D. Nothing in this chapter 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.
- E. The Town Board may amend these fees, by resolution, after a properly noticed public hearing.

§ 160-32. Tax exemption.

The Town of Colton hereby exercises its right to opt out of the tax exemption provisions of Real Property Tax Law § 487 for all but small WECS, pursuant to the authority granted by Subdivision 8 of that law.

§ 160-33. Enforcement; penalties for offenses.

- A. The Town Board shall appoint such Town staff or outside consultants as it sees fit to enforce this chapter.
- B. Refer to the Code of the Town of Colton, NY, Part II, General Legislation, Chapter **105**, Land Use, Part **2**, Building and Sanitary Regulations, Article **VIII**, § **105-50**, for enforcement and violations.
- C. In case of any violation or threatened violation of any of the provisions of this chapter, including the terms and conditions imposed by any permit issued pursuant to this chapter, 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.

§ 160-34. Provision of notice.

Unless otherwise specifically provided herein, any notice, letter or otherwise written communication furnished to an applicant under any provision of this chapter shall be deemed furnished on the date that it is actually received by the person or entity specified in such provision.

§ 160-35. Headings.

The underlined heading of any section or provision of this chapter is for the convenience of the reader and shall not be construed as part of the respective section or provision in the interpretation of same.

Article VI. Severability and Effective Date

§ 160-36. Severability.

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

§ 160-37. When effective.

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