

Chapter 298

WIND ENERGY FACILITIES

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[HISTORY: Adopted by the Town Board of the Town of Potsdam 3-12-2008 by L.L. No. 1-2008 (Ch. 108 of the 1986 Code). Amendments noted where applicable.]

ARTICLE I

General**§ 298-1. Title.**

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

§ 298-2. Purpose.

The Town Board of the Town of Potsdam adopts this chapter to promote the effective and efficient use of the Town's wind energy resources 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.

§ 298-3. Authority.

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

- A. Article 9 of the New York State Constitution § 2(c)(6) and (10).
- B. Statute of Local Governments § 10(1), (6), and (7).
- C. Municipal Home Rule Law § 10(1)(i) and (ii) and § 10(1)(a)(6), (11), (12), and (14).
- D. The supersession authority of New York Municipal Home Rule Law § 10(1)(d)(3), specifically as it relates to determining which body shall have power to grant variances under this chapter, to the extent such grant of power is different than under Town Law § 267.
- E. Town Law Article 16 (zoning).
- F. 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).
- G. Town Law § 64(17-a) (protection of aesthetic interests) and (23) (general powers).

§ 298-4. Findings.

The Town Board of the Town of Potsdam, 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 welfare of neighboring property owners and the general public.
- D. Wind energy facilities 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.
- 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. Wind energy facilities may be significant sources of noise, which, if unregulated, can negatively impact the quiet enjoyment of properties in the vicinity.
- I. Construction of wind energy facilities can create traffic problems and damage local roads.
- J. Wind energy facilities can cause electromagnetic interference issues with various types of communications.
- K. Site plans will be reviewed and acted upon by the Town Planning Board.

§ 298-5. Permits required.

- A. No wind energy facility shall be constructed, reconstructed, modified, or operated in the Town of Potsdam, except in compliance with this chapter.
- B. No WECS shall be constructed, reconstructed, modified, or operated in the Town of Potsdam, except pursuant to a special use permit issued pursuant to this chapter.
- C. No special use permit shall be issued for construction, reconstruction, modification or operation of a WECS in the Town of Potsdam, 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 Potsdam Planning Board.
- D. No wind measurement tower shall be constructed, reconstructed, modified, or operated in the Town of Potsdam, except pursuant to a special use permit issued pursuant to this chapter.
- E. No small wind energy conversion system shall be constructed, reconstructed, modified, or operated in the Town of Potsdam, except pursuant to a special use permit issued pursuant to this chapter.
- F. Exemptions. No permit or other approval shall be required under this chapter for mechanical, nonelectrical 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 chapter. No transfer shall eliminate the liability of an applicant or of any other party under this chapter.
- H. Notwithstanding the requirement 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.

§ 298-6. Definitions.

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

EAF — An 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 — Any dwelling suitable for habitation existing in the Town of Potsdam on the date an application is received. 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, 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 Part 617 of Title 6 of the New York Codes, Rules and Regulations.

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

SMALL WIND ENERGY CONVERSION SYSTEM ("SMALL WECS") — A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily generate on-site power or reduce on-site consumption of utility power.

SOUND PRESSURE LEVEL — The level which is equaled or exceeded a stated percentage of time. An L¹⁰ of 50 dBA indicates that in any hour of the day 50 dBA can be equaled or exceeded only 10% of the time, or for six minutes. The measurement of the sound pressure level can be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other accepted procedures.

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 a usable form (commonly known as a "wind turbine" or "windmill").

WIND ENERGY FACILITY — Any wind energy conversion system, small wind energy conversion system, or wind measurement tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

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 Potsdam 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.

§ 298-7. Applicability.

- A. The requirements of this chapter shall apply to all wind energy facilities proposed, operated, modified, or constructed 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 such 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 modifications 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.

ARTICLE II
Wind Energy Conversion Systems

§ 298-8. Creation of Wind Overlay Zones.

- A. Wind Overlay Zones shall be created by the Town Board to delineate those areas in the Town of Potsdam that are appropriate for the development of wind energy conversion systems (WECS) and related infrastructure, electrical lines and substations, access roads and accessory structures.
- B. The Town Board shall refer development of Wind Overlay Zones to the Town Planning Board. The Town Planning Board shall hold public meetings, 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 items and any other information presented at the public hearing, the Town Planning Board shall determine those areas which are not considered appropriate for development of wind energy conversion systems (WECS) and related infrastructure, electrical lines and substations, access roads and accessory structures. Any other areas of the Town of Potsdam may be designated by the Town Planning Board to be potential Wind Overlay Zones.
- 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 items and any other information presented at the public hearing, the Town Board shall determine which areas of the Town of Potsdam 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, new WECS or 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.

§ 298-9. Applications for special use permit.

An application for a special use permit for an individual WECS shall include the following:

- A. Name, address and 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.
- 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:
 - (1) Confirming that the property owner is familiar with the proposed applications; and
 - (2) 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, 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 site, public roads, and adjoining properties within 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 point with transmission lines, and other ancillary facilities or structures.
 - (5) Location and size of structures above 35 feet within a five-hundred-foot radius of the proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open lattice towers are not considered structures.
 - (6) The zoning designation of the subject and adjacent properties as set forth in Town Zoning Law.¹
 - (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: i) perimeter equal to 1 1/2 times the tower height; ii) five-hundred-foot perimeter; iii) one-thousand-foot perimeter. 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 the distance from the proposed WECS.
 - (10) All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.
- F. 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.
- 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.
- H. 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.

1. Editor's Note: See Ch. 306, Zoning.

- I. 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 as 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 three 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.
- J. Complaint resolution. The application will include a complaint resolution process to address complaints from nearby residents. 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.
- 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; and
 - (2) A description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.
- L. Completed Part 1 of the full 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 make, model, picture 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 the applicant agrees in writing in the application that the proposed WECS may have a significant adverse impact on the environment, the Town Board may issue a positive declaration of environmental significance.
- P. 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 WECS 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.

- (2) Visual impact. Applications shall include a visual impact study of the proposed WECS as installed, which may include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed site from at least two locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the 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, created in consultation with the fire department(s) having jurisdiction over the proposed Zone.
 - (4) 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 include low-frequency noise.
 - (5) 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.
 - (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, 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.
 - (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.
 - (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.
- Q. 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.
- R. A statement, signed under penalties of perjury that the information contained in the application is true and accurate.

§ 298-10. Special use application review process. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

- 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.
- B. Twelve 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 as 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 WECS proposed is increased.
- E. 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. No application will be deemed complete until the SEQRA review has received a declaration or final findings as per SEQRA regulations.
- 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. The Planning Board shall consider the application and render its decision in accordance with special use permit regulations § 306-28B(2) of this Code.
- 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 1,000 feet of each proposed WECS and published in the Town's official newspaper, no fewer 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.
- H. The public hearing may be combined with public hearings on any environmental impact statement or requested variances.
- I. 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) Adjoining Towns under Town Law § 264.
- J. Upon receipt of the report of the recommendations 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.

§ 298-11. Standards for WECS.

The following standards shall apply to all WECS, unless specifically waived by the Town Board as part of a permit:

- 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 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 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, nonreflective matte finished color or a camouflage scheme. Individual WECS 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.
- 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 to existing fixed broadcast, retransmission, or reception antennas for radio, television, or wireless phone or other personal communication systems could 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.
- 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. WECS shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided when feasible. The use of previously developed areas will be given priority wherever possible. 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.
- J. WECS 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.
- K. Wind energy conversion facilities shall be located in a manner consistent with all applicable state and

federal wetlands laws and regulations.

- L. Stormwater run-off and erosion control shall be managed in a manner consistent with all applicable state and federal laws and regulations.
- M. 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.
- N. The maximum total height of any WECS shall be 500 feet from the ground, including the blades.
- O. 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.

§ 298-12. 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. 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 on the basis of individual applications as safety needs dictate.
- C. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information, 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.
- D. 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.
- E. The minimum distance between the ground and any part of the rotor or blade system shall be 35 feet.
- F. WECS shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked.
- G. Copies of all reports concerning operating and safety inspections for each WECS shall be filed with the Town Clerk.

§ 298-13. 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.

§ 298-14. Noise standards and setbacks for wind energy conversion systems.

- A. The statistical sound pressure level (L^{10}) generated by a WECS shall not exceed 50 dBA 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 50 dBA, the standard shall be ambient dBA plus five dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.
- B. In the event audible noise due to wind energy facility operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in Subsection A of this section 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. In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than five 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 30 miles per hour 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 set back from site boundaries, measured from the center of the WECS:
 - (1) From the nearest site boundary property line: 500 feet.
 - (2) From the nearest public road: 500 feet.
 - (3) From the nearest edge of the Wind Overlay District Zone: 500 feet.
 - (4) From the nearest off-site residence existing at the time of application: 1,000 feet, measured from the exterior of such residence.
 - (5) From any non-WECS structure or any aboveground utilities: 1 1/2 times the total height of the WECS.

- (6) From state-identified wetlands or bodies of water: 500 feet. This distance may be adjusted to be greater at the discretion of the reviewing body, based on topography, land cover, land uses, and other factors that influence the flight patterns of resident birds, bats, or other creatures.

§ 298-15. Issuance of special use permits; expiration.

- A. Upon completion of the review process, the Town Planning Board shall, upon consideration of the standards in this chapter 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 Code Enforcement Officer to issue a building permit, upon compliance with the Uniform Fire Prevention and Building Code and the other conditions of this chapter.
- 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.

§ 298-16. Abatement.

- A. If any WECS remains nonfunctional or inoperative for a continuous period of one 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 aboveground 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. 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 (subject to a nondisclosure 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 removal of nonfunctional 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.

§ 298-17. Limitations on approval; 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.

- 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.

§ 298-18. 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 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 the WECS violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Town Board. 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.
- C. Notwithstanding any other abatement provision under this chapter, and consistent with Subsections A and B, if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, 1) order either remedial action within a particular time frame, or 2) order revocation of the wind energy permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security posted as part of the decommission plan to remove the WECS.

ARTICLE III
Wind Measurement Towers

§ 298-19. 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 not be limited to those areas delineated as Wind Overlay Zones.

§ 298-20. Applications for special use permit. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

An application for a wind measurement tower shall include:

- A. Name, address and 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.
- 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:
 - (1) Confirming that the property owner is familiar with the proposed applications; and
 - (2) Authorizing the submission of the application.
- C. Address of each proposed tower site, including Tax Map section, block, and lot number.
- D. A site plan.
- E. A decommissioning plan, including a security bond or cash for removal.

§ 298-21. Standards.

- 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 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 aboveground electric transmission or distribution lines. The point of attachment for the guy wires shall be sheathed in bright orange or yellow covering for 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 shall be adhered to both inside and outside of agricultural districts.

§ 298-22. Special use application review process. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

- 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.
- B. Twelve 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 as 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. 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. No application will be deemed complete until the SEQRA review has received a declaration or final findings as per SEQRA regulations.
- 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. The Planning Board shall consider the application and render its decision in accordance with special use permit regulations § 306-28B(2) of this Code.
- 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 1,000 feet of each proposed wind measurement tower and published in the Town's official newspaper, no fewer 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.
- H. The public hearing may be combined with public hearings on any environmental impact statement or requested variances.
- I. 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) Adjoining Towns under Town Law § 264.
- 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

§ 298-23. 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.

§ 298-24. Permitted areas.

Small wind energy conversion systems (small WECS) may be permitted in any zoning district on a site of at least two acres, 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 and must conform to all existing building codes in relationship to towers.

§ 298-25. Applications for special use permit. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

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:
 - (1) Confirming that the property owner is familiar with the proposed applications; and
 - (2) 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 five-hundred-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 Electric Code.
- 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 so 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.

§ 298-26. Special use application review process. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

- 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.
- B. Twelve 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 as 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 small WECS proposed is increased.
- E. 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 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. No application will be deemed complete until the SEQRA review has received a declaration or final findings as per SEQRA regulations.
- 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. The Planning Board shall consider the application and render its decision in accordance with special use permit regulations § 306-28B(2) of this Code.
- 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 1,000 feet of each proposed small WECS and published in the Town's official newspaper, no fewer 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.
- H. The public hearing may be combined with public hearings on any environmental impact statement or requested variances.

- I. 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) Adjoining towns under Town Law § 264.
- 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.

§ 298-27. 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 two acres in size; however, this requirement can be met by multiple owners submitting a joint application.
- B. Small WECS may be used primarily to generate on-site power or to reduce the on-site consumption of electricity.
- 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.
 - (1) The allowed height shall be reduced if necessary to comply with all applicable Federal Aviation Administration requirements, including Subpart B (commencing with Section 77.111) 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 as 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.
- 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 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 to the ground.
 - (2) A locked anti-climb device installed on the tower.
- L. Anchor points for any guy wires for a system tower shall be located within the property on which the system is located 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 two-hundred-fifty-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.

§ 298-28. Standards.

A small wind energy system shall comply with the following standards:

- A. Setback requirements. A small WECS shall not be located closer to a property line than 1 1/2 times the total height of the facility.
- B. 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 not exceed 50 decibels (dBA), as measured at the closest neighboring inhabited dwelling.

§ 298-29. Abandonment of use; revocation of permit; maintenance.

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

of Potsdam.

- B. All small WECS shall be maintained in good condition and in accordance with all requirements of this section.
- C. Failure to comply with this section will be enforced according to § 298-32 of this chapter.

ARTICLE V
Miscellaneous

§ 298-30. Fees.

- A. Nonrefundable application fees shall be as follows: **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- (1) WECS special use permit: fee as set from time to time by resolution of the Town Board.
 - (2) Wind measurement towers: fee as set from time to time by resolution of the Town Board.
 - (3) Small WECS: fee as set from time to time by resolution of the Town Board.
 - (4) Wind measurement tower special use permit renewals: fee as set from time to time by resolution of the Town Board.
- B. Building permits. The Town of Potsdam 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 as set from time to time by resolution of the Town Board 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 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. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- C. 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.
- D. The Town Board may amend these fees by resolution after a properly noticed public hearing.

§ 298-31. Tax exemption.

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

§ 298-32. 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. 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 chapter or in noncompliance with the terms and conditions of any permit issued pursuant to this chapter, 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 \$250 or to imprisonment for a period of not more than 15 days, or subject to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

- 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.
- D. In addition to the remedies provided in Subsection B and C, the violator of any section of this chapter shall be responsible for all litigation costs and expenses, including reasonable attorney's fees.