

Chapter 100

ALTERNATE ENERGY PRODUCTION

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[HISTORY: Adopted by the Town Board of the Town of Lowville as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Fire prevention and building construction — See Ch.
118.

Subdivision of land — See Ch. 240.
Zoning — See Ch. 250.

ARTICLE I
Wind Energy Facilities
[Adopted 2-19-2009 by L.L. No. 1-2009]

§ 100-1. Title.

The title of this article shall be and such article may be cited as the Town of Lowville "Wind Energy Facilities Law."

§ 100-2. Purpose.

The Town Board of the Town of Lowville adopts this article to regulate and promote the effective and efficient use of a wind energy conversion system (WECS) and to regulate by a wind energy permit (WEP), the placement of such systems so that the public health, safety, welfare, natural resources, aesthetics, land use for residential, agriculture and/or economic development will not be jeopardized.

§ 100-3. Legislative authority.

The Town Board of the Town of Lowville enacts this article 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) and (7).
- C. New York 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(2)(d)(3), specifically as it relates to determining which body shall have power to grant variances under this article, to the extent such grant of power is different than under Town Law § 267.
- E. New York Town Law § 130(3) (Electrical code), § 130(5) (Fire prevention), § 130(7) (Use of streets and highways), § 130(7-a) (Location of driveways), § 130(11) (Peace, good order and safety), § 130(15) (Promotion of public welfare), § 130(15-a) (Excavated lands), § 130(16) (Unsafe buildings), § 130(19) (Trespass), and § 130(25) (Building lines). [Amended 12-29-2011 by L.L. No. 1-2012]
- F. New York Town Law § 64(17-a) (protection of aesthetic interests), and § 64(23) (General powers).

§ 100-4. Findings.

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

- A. Wind energy is a renewable and nonpolluting energy resource and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease air and water pollution that results from the use of conventional energy sources. WECS enhance the reliability of power quality of the power grid, reduce peak power demands and help diversify the state's energy supply portfolio.
- B. The generation of electricity from a properly sited wind turbine can be cost effective and an existing power distribution system can be used to transmit electricity from wind generating facilities to utilities or other users.
- C. Small systems can be cost effective and can supply electrical power solely for on-site use, except when a parcel on which a noncommercial WECS is installed also receives electrical power supplied by a utility company.
- D. 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.
- E. The height of WECS can affect potential aesthetic impacts that include lighting, shadow flickering, and impair a scenic vista or corridor.
- F. WECS can cause electromagnetic interference issues with various types of communications.
- G. If not properly sited, WECS may present risks to the property values of adjoining property owners.
- H. Construction of WECS can create traffic problems, damage local roads, create drainage, sediment problems, harm farmland and damage environmentally sensitive areas if not regulated properly.
- I. The revenue sources for larger landowners can change, therefore affecting the local economic base of the community.
- J. Construction of any WECS shall comply with Chapter 118, Fire Prevention and Building Construction, § 118-4, Building permits, that requires compliance with the New York State Uniform Code as the Town of Lowville recognizes WECS as a generating facility structure.
- K. WECS may be a source for elevated noise levels which unregulated can impact adjoining properties.
- L. Agricultural land used for wind power generation is exempt from penalties that can be assessed when land use is converted to a nonagricultural use in an agricultural district.
- M. Construction of WECS facilities could limit emergency medical transport by helicopter from the Lewis County General Hospital and limit flights when there is a low cloud ceiling because of turbine height.

§ 100-5. Definitions.

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

AGRICULTURAL — Any land use that is considered production agriculture by the State of New York Agriculture and Markets Law or by Chapter 250, Zoning, of the Code of the Town of Lowville.

BOND or LETTER OF CREDIT — A form of security filed with the Town Clerk that is acceptable to the Town Board and Town Attorney as to the form, content and matter of execution, and amount sufficient to ensure faithful performance.

EAF — Environmental assessment form used in the implementation of the SEQRA as a term defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.

ENGINEER — Licensed professional engineer.

NONELECTRICAL WECS — A windmill or wind turbine used for pumping water for agricultural purposes.

RESIDENCE — Any dwelling suitable for habitation existing in the Town of Lowville on the date the application is received. A residence may be part of a multidwelling or multipurpose building but shall not include buildings such as seasonal homes, hotels, motels, hospitals, nursing homes, private or public schools, government office buildings or public safety buildings, churches, day-care facilities, restaurants, banquet facilities, tourist homes or bed-and-breakfasts.

ROOF-MOUNTED WIND TURBINE — A small wind-generating facility as hereinafter defined which generates original power on site for on-site use by property owner, and which are mounted on the principle building roof with a maximum height of no greater than 10 feet for residential and 20 feet for commercial users.

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.

SITE TOWER — The physical location of a WECS, including the related tower and transmission equipment.

SITE — The parcel(s) of land where a wind energy facility is to be placed. The site can be publicly or privately owned by an individual or entity or a group of individuals or entities controlling single or adjacent properties. Where there are multiple adjacent properties under one controlling ownership, the combined lots shall be considered as one for the purposes of applying setback requirements.

SMALL WIND ENERGY CONVERSION SYSTEM ("SMALL WECS") — An individual wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, that converts the kinetic energy of the wind, with a rated capacity not to exceed on-site use, to primarily reduce consumption of utility power.¹

SOUND PRESSURE LEVEL — The level which is equaled or exceeded a stated percentage of time.

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

1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

TOWN ATTORNEY — The Town of Lowville Attorney appointed by the Town Board of the Town of Lowville.

TOWN CLERK — The Town of Lowville Clerk appointed by the Town Board of the Town of Lowville.

TOWN CODE ENFORCEMENT OFFICER — The Code Enforcement Officer appointed by the Town Board of the Town of Lowville.

TOWN HIGHWAY SUPERINTENDENT — The Highway Superintendent appointed by the Town Board of the Town of Lowville.

VARIANCE — Use or area variance from the strict application of the provision of this article that may be given by the Town Board based on the criteria of § 100-23.

WIND ENERGY CONVERSION SYSTEM (WECS) — A machine that converts the kinetic energy in the wind into a usable form ("wind turbine" or "windmill"). The WECS includes all parts of the system except the tower and the transmission equipment; the turbine or windmill may be on a horizontal or vertical axis, rotor or propeller. The WECS definition will apply to any conversion system, including those that sell to and/or are not metered to a grid.

WIND ENERGY FACILITY or WINDMILL FARM — An energy facility that consists of one or more wind turbines or other devices and their related or supporting facilities that produce electric power from wind and are:

- A. Connected to a common switching station; or
- B. Constructed, maintained or operated as a contiguous group of devices.

WIND ENERGY PERMIT — The permit issued pursuant to this article by the Town Board of the Town of Lowville, subject to the advice and recommendation of the Town Attorney, Town Code Enforcement Officer and Town Highway and Special Districts Superintendent, for the applicant to construct, reconstruct, modify, operate and maintain a WECS or small WECS in the Town of Lowville.

WIND MEASUREMENT TOWERS — The anemometer ("met") tower shall be permitted on issuance of a wind energy permit.

§ 100-6. Wind energy permit (WEP) requirements.

- A. Application. Every application for a wind energy permit (WEP) shall be made in writing to the Town Board in accordance with requirement of the Town set forth by this article. All fees set forth by the Town shall accompany the application.
- B. A wind energy permit (WEP) shall not be granted to the applicant until the following have been approved by resolution of the Town Board and other taxing jurisdictions that are impacted by the proposed WECS:
 - (1) With respect to any property on or for which a violation of any law, code, or regulation currently exists, proof of the correction of such violation.

- (2) A wind energy special use permit shall not be issued for a use on a property where there is an existing violation of this article unless and until proof of the correction of such violation is submitted.
- (3) The applicant shall execute a road agreement with the Town of Lowville that is subject to approval by resolution of the Town Board and approved by the Town Highway Superintendent that the applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a WECS.
- (4) The applicant shall enter into an agreement for a payment in lieu of taxes (PILOT). The Town of Lowville opted out of the tax exemption provisions of Real Property Tax Law § 487, pursuant to the authority granted by Paragraph 8 of that law so as to enter into a host community agreement with any applicant to compensate the Town of expense and/or impacts on the community.
- (5) The Town Board shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs for any application review, including the review required by State Environmental Quality Review Act (SEQRA) and special inspectors' costs if required by the Town of Lowville Town Board, Town Attorney, Town Code Enforcement Officer or Town Highway Superintendent during construction and completion of a WECS.
- (6) The applicant shall post a bond or file a letter of credit, the amount to be determined by the Town Board, with the Town Clerk, to cover possible electromagnetic interference with television, radio and other various types of communication. The financial and remedial obligation by the applicant shall continue for one year after the WEP is issued or the WECS is installed, whichever is later.

§ 100-7. Applicability.

- A. The requirements of this article shall apply to all wind energy facilities proposed, operated, modified, or constructed after the effective date of this article.
- B. Wind energy facilities for which a required permit has been properly issued and upon which construction has been completed or commenced prior to the effective date of this article, shall not be required to meet the requirement of this article; 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 article 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 article.
 - (3) Any wind measurement tower existing on the effective date of this article shall be removed no later than 30 months after said effective date, unless a wind energy permit for wind energy facility is obtained.

§ 100-8. Requirements; zoning.

- A. A WECS or windmill farm may be allowed in an Agricultural (AG) or Conservation Zone (OC) at or above the 1,400 feet above sea level elevation by WECS use permit.
- B. A WECS or windmill farm may be allowed in an Agricultural Zone or Conservation Zone in the Town by WECS use permit.
- C. Neither a WECS nor a windmill farm shall be allowed in a Residential (R-30A, R-30B, R-30C, R-40), Commercial (CB), Industrial Overlay Zone (I-1, I-2), Commercial Residential Zone (CB-R) as identified in Chapter 250, Zoning, adopted by the Town Board of the Town of Lowville November 16, 1995, or a sewer or water district.
- D. WECS that are mechanical, nonelectrical and used for pumping water for agricultural purposes may be exempt from the general provisions of these requirements but they must be sited so as any tipover will be harmless to others; otherwise no permit or other approval shall be required.
- E. Small WECS shall be allowed in all zones, but shall be limited to 10 feet in height on the roofs of residential buildings, garages and outbuildings; 20 feet on commercial or industrial buildings.

§ 100-9. Applications for wind energy permits for wind energy conversion systems.

An application for a WEP for individual WECS shall include the following:

- A. Name, address, telephone, fax number of the applicant. If the applicant is represented by an agent, the application shall contain the name, address, telephone and fax number of the agent as well as an original signature of the applicant authorizing the representation.
- B. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include written permission signed by the property owner or power of attorney:
 - (1) Confirming that the property owner is familiar with the proposed application; and
 - (2) Authorizing the submission of the application.
- C. Address or property identification of each tower location, including Tax Map location, block and lot number.
- D. A description of the project, including the number and maximum rated capacity of each WECS.
- E. A plot plan prepared by a licensed surveyor drawn in sufficient detail to clearly describe the following:
 - (1) Property lines and physical dimensions of the site.
 - (2) Location and elevation of each proposed WECS.

- (3) Location, dimensions and types of existing structures and uses on site, public roads, and adjoining properties with 500 feet of boundaries of the proposed WECS site.
 - (4) Location, size, height and use of structures located within a one-thousand-foot radius of a proposed WECS. For purposes of this requirement, electrical transmission and distribution lines are not considered structures.
 - (5) Location of all aboveground utility lines on the site or within one radius plus 10% of total height of the WECS, transformers, power lines, interconnection point with transmission lines and other ancillary facilities or structures.
 - (6) To demonstrate compliance with setback requirements of this article, circles drawn around each proposed tower location equal to:
 - (a) One and a half times the total height of the WECS.
 - (b) One-thousand-foot perimeter.
 - (7) All proposed facilities, including access roads electrical lines, substations, storage or maintenance units and fencing.
- F. Vertical drawings of WECS showing total height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point on any blade or moving part of the structure, location of climbing ladder or pegs, and access doors. One drawing may be submitted for each WECS of the same type and total height.
- G. Landscaping plan depicting existing vegetation and reclamation of disturbed areas, for a WECS, topsoil shall be stripped, stockpiled and used for reclamation.
- H. Lighting plan showing any Federal Aviation Administration (FAA) required lighting or other purpose lighting. No WEP shall be issued until a copy of the determination by the FAA to establish required markings and/or lights for a WECS.
- I. List of property owners, with mailing address, within 1,000 feet of the boundaries of the proposed site.
- J. Decommissioning plan. The applicant shall submit a decommissioning plan which shall include:
- (1) The anticipated life of the WECS;
 - (2) The estimated decommissioning cost in current dollars;
 - (3) How said estimate was determined;
 - (4) The method of ensuring the funds will be available for decommissioning or restoration;
 - (5) The method, such as by annual re-estimate by a licensed engineer, that the decommissioning or restoration costs will be kept current; and

- (6) The manner in which the WECS will be decommissioned and the site restored, which shall include the removal of all structures and debris to a suitable depth, restoration of the soil and vegetation that is consistent and comparable with surrounding area, less any fencing or residual minor improvements requested by the landowner.
- K. Complaint resolution. The applicant will include a complaint resolution process to address complaints from the Town's residents. The applicant shall make every reasonable effort to resolve any complaint, and may use an independent mediator or arbitrator. The process shall include in the process that the applicant will provide requested information and documentation and will agree to a time limit for acting set by the Town Board.
- L. An application shall include information relating to the construction/installation of a wind energy conversion facility as follows:
 - (1) A construction schedule describing commencement and completion dates; and
 - (2) A description of the routes to be used by construction and delivery vehicles.
- M. Completed Part 1 of full environmental assessment form (EAF).
- N. For each proposed WECS, include make, model, picture and manufacturer's specifications, including noise decibels data. The type and quantity of all materials used in the operation of all equipment, but not limited to all lubricant and coolants, shall be documented as well as any other information requested by the Town Code Enforcement Office.
- 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 study shall identify location and duration where shadow flicker may be caused by WECS and describe measures that shall be taken to eliminate or mitigate the problem.
 - (2) Visual impact. Application 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. The visual analysis shall indicate the color treatment of the system's components and any visual screening incorporated to lessen the system's visual prominence.
 - (3) A fire and emergency response plan.
 - (4) Noise analysis. The study shall document noise levels at property lines, nearest resident or public assembly building not on site. Further documentation may be requested by the Town Code Enforcement Officer to assure noise levels associated with the proposed WECS are within acceptable sound pressure levels.
 - (5) An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems and other wireless communications.

- P. The applicant shall, prior to 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.

§ 100-10. Application review process.

- A. Applicants shall request a preapplication meeting with the Town Board and the Town Code Enforcement Officer.
- B. Six copies of the application shall be submitted to the Town Clerk. Payment of any application fees shall be made at the time of application submission.
- C. The Code Enforcement Officer shall, within 60 days of receipt, determine if all information required under this article is included in the application. Unless the Town Board waives any application requirement, no application shall be considered until deemed complete.
- D. If the application is deemed incomplete, the Town Board or the Town Code Enforcement Officer will provide the applicant with a written statement listing the missing information.
- E. Upon submission of a complete application, the Town Board shall hold at least one public hearing on the application. The public hearing may be combined with public hearings on any environmental impact statement or requested waivers.
- F. SEQRA review. Applications for WECS are deemed Type I projects under SEQRA.
- G. The Town may require an escrow agreement for engineering and legal review of the application and any environmental impact statement before commencing its review. If a positive declaration of environmental significance is issued and an environmental impact statement prepared at the completion of the SEQRA review process, the Town shall issue a statement of findings, which statement may also serve as the Town's decision on the application.

§ 100-11. Standards for WECS.

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

- A. All power transmission lines shall be located underground to the maximum extent possible.
- B. No television, radio or communication antennas may be affixed or otherwise made part of the WECS.
- C. No advertising signs are allowed on any part of the wind energy facility.
- D. Lighting of tower shall comply with FAA requirements. Security lighting for ground level facilities shall be allowed as approved on the development plan.

- E. All applications shall incorporate appropriate measures to reduce visual impacts of WECS to the extent possible.
- F. If it is determined that a WECS is causing electromagnetic interference, the operator shall take necessary corrective action to eliminate this interference or resolution of the issue with impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the WEP for specific WECS.
- G. Solid waste, hazardous waste and construction material shall be removed from the site.
- H. WECS shall be designed to minimize the negative impacts on the environment.

§ 100-12. Required safety measures.

- A. Each WECS shall be equipped with both manual and automatic controls to limit rotational speed of the rotor blade so it does not exceed design limits.
- B. Fencing shall be required for each WECS installation or group of towers and shall be determined on the basis of individual application as safety needs dictate.
- C. Appropriate signage shall be posted as required by the Town Board or Town Code Enforcement Officer to warn of electrical shock or high voltage on entry area of fence around each tower.
- D. No climbing pegs or ladders located closer than 15 feet to ground level on tower structures.
- E. Access doors shall be kept securely locked at all times to electrical and mechanical components of any WECS.

§ 100-13. Traffic route.

- A. Road agreement.
 - (1) A road agreement with the applicant shall be executed before a building permit is issued. Factors in establishing such agreement shall include:
 - (a) Minimizing traffic impacts;
 - (b) Minimizing wear and tear on local roads;
 - (c) Minimizing impacts on local business and agricultural operations.
 - (2) The agreement may limit WECS related traffic to specific routes.
- B. The applicant shall be responsible for remediation of damaged roads upon completion of the installation or maintenance of a WECS. A public bond shall be posted prior to issuance of any building permit in an amount to be determined by the Town Board, sufficient to compensate the Town for any potential damage to Town roads.

§ 100-14. Setbacks for wind energy conversion systems.

- A. The statistical sound pressure level generated by a WECS shall not exceed L-55 dBA measured at the nearest residence or public building located off site.
- B. Each WECS shall be set back from site boundaries, measured from the center of the WECS. Setbacks shall be required so as to minimize the level of audible or ambient nuisance noise at the property line site, off-site residence, public buildings and businesses as follows:
 - (1) A distance equal to 1 1/2 times the total height from the nearest site boundary property line.
 - (2) Two hundred fifty feet and 1 1/2 times total height from all public roads.
 - (3) No WECS shall be within 1,000 feet of an off-site residence, whether or not the said residence is located in the Town of Lowville, measured at the exterior of the residence.
 - (4) Two thousand feet from the property line of any public or private school, church, hospital or nursing home facility, government office building, correctional facility, public assembly buildings (convention centers, restaurants, funeral homes, libraries), or active cemeteries.
 - (5) A distance equal to 1 1/2 times the total height of the WECS from any non-WECS structure or aboveground utilities unless waived by the utility companies.

§ 100-15. Noise and setback easements.

In the event a wind energy facility does not meet a setback or exceeds noise or other criteria established in this article as it existed at the time the WEP is granted, a waiver may be granted from such requirements by the Town Board in the following circumstances:

- A. Written consent from the affected property owners, stating they are aware of noise and/or setback limitations, and that consent is granted to:
 - (1) Allow noise levels to exceed maximum limits; and
 - (2) Setbacks are less than required for safety.
- B. In order to advise all subsequent owners of the burdened property, the consent in the form required for an easement has been recorded in the County Clerk's office. Such easements shall be permanent and shall state that they may not be revoked without consent of the Town Board, which consent shall be granted upon completion of decommissioning or the acquisition of the burdened parcel by the owner of the benefited parcel or the WECS.
- C. Waivers granted under this section differ from waivers requested under § 100-23 of this article. If an adjoining property owner will not grant an easement pursuant to this section an § 100-23 waiver must be sought. No § 100-23 waiver is required if waiver is granted under this section of this article.

§ 100-16. Issuance of wind energy permits.

- A. Upon completion of the review process, the Town Board shall, upon consideration of the standards in this article and the record of SEQRA review, issue a written decision with reasons and conditions of approval or disapproval.
- B. If approved, the Town Board will direct the Town Clerk to issue a WEP and direct the Code Enforcement Officer to issue a building permit upon compliance satisfaction of all conditions.
- C. The decision of the Town Board shall be filed within five working days in the office of the Town Clerk and a copy mailed to the applicant.
- D. In the event of any approved wind energy facility that has not substantially commenced construction within one year of issuance of a WEP, the permit will expire.

§ 100-17. Abatement.

- A. If any WECS remains nonfunctional or inoperative for a continuous period of one year, the applicant shall agree, without further action by the Town Board, to remove said system at its own expense. Removal shall include at least the entire aboveground structure. This provision shall not apply if the applicant demonstrates that it has been making good faith efforts to restore the WECS to an operable condition.
- B. Nonfunction or lack of operation may be proven by reports to the Public Service Commission, NYSERDA, New York Independent System Operator, or lack of income generation. The applicant shall make available (subject to a nondisclosure agreement) to the Town Board all reports to and from the purchaser of energy from WECS, which reports may be redacted as necessary to protect proprietary information.
- C. Decommissioning bond or fund. The applicant or successor shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town, for the removal of nonfunctional towers and appurtenant facilities, in the amount to be determined by the Town for the period of life for the facility. All costs of the financial security shall be borne by the applicant and bond requirements shall be fully funded before a building permit is issued.

§ 100-18. Permit revocation.

- A. Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outage. Operational condition includes meeting all noise requirement and other permit conditions. Should a WECS become inoperable, damaged or violate a permit condition, the owner or operator shall remedy the situation with 90 days after written notice from the Code Enforcement Officer. An extension of the ninety-day period may be considered by the Town Board.
- 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 the 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 WEP or the WECS or require removal. If the WECS is not removed in the particular time frame set by the Town Board, the Town Board shall have the right to use the security posted as part of the decommission plan to remove the WECS.

§ 100-19. Wind site assessment.

The Town Board acknowledges that prior to construction of a WECS, a wind site assessment may be conducted. Installation of wind measurement towers, also known as anemometer ("met") towers, shall be permitted on the issuance of a WEP in accordance with this article.

§ 100-20. Applications for wind measurement towers.

An application for a wind measurement tower shall include.

- A. Names, 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 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 location, including Tax Map section, block and lot number.
- D. Proposed development plan and map.
- E. Decommissioning plan, including a security bond for removal.

§ 100-21. 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.
- B. Wind energy permits for wind energy measurement towers may be issued for a period of up to two years, and permits shall be renewable upon application to the Code Enforcement Officer.

§ 100-22. Small wind energy conversion systems.

- A. Purpose and intent. The purpose of this section is to provide standards for small wind energy conversion systems designed for home, farm and commercial use on the same parcel, and that are used to reduce consumption of utility power at that location. The

intent of this section is to encourage the development of small wind energy systems and to protect the public health, safety and community welfare.

B. Applications. Applications for small WECS wind energy permit shall include:

- (1) Name, address and telephone number of the applicant and/or property owner. If 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 and/or property owner.
- (2) A map with sufficient detail as to the location of the tower on the site.
- (3) Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.
- (4) A professional engineer shall certify, as part of the building permit application, that the foundation and tower design of the wind power facilities are within accepted professional standards, given local soil and climate conditions. **[Amended 12-29-2011 by L.L. No. 1-2012]**
- (5) Sufficient information demonstrating that the system is used to reduce the total consumption of electricity at that location.
- (6) Written evidence that the electric utility service provider that serves the proposed site has been informed of the applicant's intent to install an on-site small WECS.
- (7) A visual analysis of the small WECS as installed, that may include computerized photographic simulations, visual impacts from strategic vantage points, color treatment of the system's components and visual screening that is intended to lessen the visual prominence of the system.

C. Development standards. All small wind energy systems shall comply with the following standards:

- (1) A system shall be located on a lot of one acre in size, however, this requirement can be met by multiple owners submitting a joint application.
- (2) Small WECS shall be used only to reduce the on-site consumption of electricity.
- (3) Tower heights may be allowed as follows:
 - (a) One and one half the total tower height from property boundaries.
 - (b) Total tower height allowed shall comply with all applicable federal aviation requirements.
- (4) The maximum turbine power output shall be limited to on-site production of electricity.
- (5) The system's tower and blades shall be painted a nonreflective, unobtrusive color that blends the system and its components into the surrounding neighborhood and landscape to the greatest extent possible.

- (6) The system shall be designed and located to minimize adverse visual impacts from the viewing public.
- (7) Exterior lighting shall not be allowed except that which is specifically required by the Federal Aviation Administration.
- (8) All on-site electrical wires associated with the system shall be installed underground.
- (9) The system shall be operated such that no disruptive electromagnetic interference is caused. If it is demonstrated that a system is causing interference, the system operator shall promptly mitigate the interference or cease operation.
- (10) All towers and electrical components that have climbing ladders or pegs, including guy wires, shall be enclosed by a six-foot-high lock protective fence.
- (11) At least one sign posted at a height of five feet warning of electrical shock, high voltage or revolving machinery.
- (12) No logo, brand names or advertising shall be displayed.
- (13) A temporary access road may be utilized for initial installation but shall be regraded and revegetated to the preexisting natural condition after completion of installation.
- (14) All small wind energy systems over six feet in total height from ground level shall be equipped with manual and automatic overspeed controls and shall be certified by the manufacturer.
- (15) All roof top installations of a small wind energy systems shall have to be equipped with manual and automatic overspeed controls and be certified by the manufacturer.

D. Standards. Small wind energy systems shall comply with the following standards:²

- (1) Setback requirements. A small WECS shall not be located closer than 1 1/2 times the total height of the facility to a property line.
- (2) Noise. Except during short-term events, including outages or severe wind storms, a small WECS shall be designed and operated so that noise generated shall not exceed 55 decibels (dBA) as measured at the closest neighboring property line.
- (3) No small WECS shall be allowed to interconnect to an electric utility provider that serves that site, an on-site residential, farm, or commercial wind energy system.

E. Abandonment of use.

- (1) 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 comply with this section or with

2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

any or all conditions that may be attached to the granting of the building permit shall constitute ground for the revocation of the permit by the Town.

- (2) All small WECS shall be maintained in good working condition and in accordance with all requirements of this section.

§ 100-23. Waivers.

- A. The Town Board may grant a waiver from the provisions of this article where its strict application would cause undue or unnecessary hardship and such waiver is otherwise in the best interest of the Town. Applications for waivers shall be made in writing and shall specify in detail the nature and circumstances of the claimed hardship. The Town Board shall hold a public hearing upon each such application after publishing notice of such hearing in the Town's official newspaper at least five days before such hearing. The public hearing may be combined with other public hearings on wind energy facilities as long as the waiver request is detailed in the public notice.
- B. The Town Board may attach such conditions as it deems appropriate and necessary to waiver approvals as to minimize the impact of the waiver. Any waivers which are granted shall be the minimum waiver necessary to alleviate the claimed hardship.
- C. A small WECS may apply for a waiver to interconnect to a public utility company for excess on-site electrical generation that will result with the public utility's system using net metering. The applicant shall be required to meet all applicable provisions of this article and required conditions that, in the opinion of the Town Board, the grant of said waiver is in the best interest of the Town.
- D. The Town Board may waive setback requirements for any extension of any wind energy facility or windmill farm existing as of the effective date of this article or proposed WECS located 1,400 feet or more above sea level, providing the WECS meets all setback requirements, conditions, and restrictions of property boundaries, and off-site structures as provided in the provisions of this article.

§ 100-24. Fees.

- A. Nonrefundable application fees shall be as follows:
 - (1) WECS wind energy permit: \$50 per megawatt of rated capacity.
 - (2) Wind measurement tower WEP: \$200 per tower.
 - (3) Small WECS WEP: \$100 per WECS.
 - (4) Wind measurement tower WEP renewals: \$50 per tower.
- B. Building permits shall also be required and a fee for such building permit applications charged as provided for in the Code of the Town of Lowville.
- C. Nothing in this article 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 engineering and legal costs of any application review, including the review required by SEQRA.

§ 100-25. Tax exemption.

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

§ 100-26. Enforcement; penalties for offenses.

- A. The Town Board shall appoint the Town Attorney and such Town staff or outside consultants as it sees fit to enforce this article.
- B. Any person owning, controlling or managing any building, structure or land who shall undertake a wind energy facility in violation of this article or in noncompliance with the terms and conditions of any permit issued pursuant to this article, or any order by the Code Enforcement Office, shall be guilty of an offense and subject to a fine of not more than \$250 for each offense. Such person shall be deemed guilty of a separate offense for each week such violation continues, and the Town may institute a civil proceeding to collect civil penalties in amount of \$250 for each violation, and each week said violation continues shall be deemed a separate violation.
- C. In case of any violation or threatened violation of any of the provisions of this article, including the terms and conditions imposed on any permit issued pursuant to this article, in addition to other remedies and penalties herein provided, the Town may institute any appropriate actions or proceedings 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.

ARTICLE II

Anaerobic Digesters

[Adopted 7-18-2013 by L.L. No. 1-2013]

§ 100-27. Title.

This article shall be known as the "Town of Lowville Anaerobic Digester Local Law."

§ 100-28. Legislative authority.

This article is enacted pursuant to the authority conferred upon the Town Board by Article IX of the New York State Constitution, Municipal Home Rule Law § 10, New York Town Law § 130, and the zoning powers conferred by Article 16 of the Town Law.

§ 100-29. Definitions.

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

ANAEROBIC DIGESTER — A facility the main purpose of which is to use anaerobic digestion to convert livestock and poultry manure (primary catalyst) and feedstock into biogas, which is generally burned on site to produce electricity, heat and water as well as to manage livestock and poultry manure. Anaerobic digesters may include codigestion in which the livestock and poultry manure may be mixed with other organic materials (secondary catalysts).

ANAEROBIC DIGESTION — A series of processes in which microorganisms break down biodegradable material in the absence of oxygen, used for industrial or domestic purposes to manage waste and release energy.

APPLICANT — The person or entity filing application under this article.

BIOGAS — A fuel consisting of methane, carbon dioxide and small amounts of water and other compounds produced as a result of anaerobic digestion.

CODIGESTION — Anaerobic digestion of multiple biodegradable materials.

FEEDSTOCK — Any material which may be converted to methane gas by the process of anaerobic digestion. Nothing contained in this definition shall be construed to permit the use of any material generated off site in small anaerobic digesters as defined and regulated herein.

LARGE ANAEROBIC DIGESTER — An anaerobic digester which accepts animal waste, feedstock, and/or other organic waste generated off site or from more than one farm. It is noted that any system with a nameplate generating capacity of 25 megawatts or more is subject to the requirements, terms and conditions of Article 10 of the New York State Public Service Law.

SMALL ANAEROBIC DIGESTER — An anaerobic digester primarily intended to reduce on-site consumption of utility power. A system is considered a small anaerobic digester only if it supplies electricity or thermal power for on-site use, except that when a property upon which the facility is installed also receives electrical power from a utility company, excess electrical power not presently needed for on-site use may be used by the utility company. Small anaerobic digesters use livestock and poultry manure and other feedstock generated on site by one farm and are designed and intended solely to generate power to offset utility costs. Small anaerobic digesters may include codigestion.

§ 100-30. Small anaerobic digesters.

Small anaerobic digester systems are permitted as an accessory use to farming operations in any zone where agricultural uses are permitted subject to the definition of "small anaerobic digester" as set forth above and also to the following:

A. Setbacks and lot requirements.

- (1) Small anaerobic digesters are permitted only on lots of 10 acres or more.
- (2) Small anaerobic digesters shall not be located within 100 feet of any side property line, 100 feet of any rear property line, 300 feet from any residential structure other than that of the property owner and 100 feet from any public road right-of-way. For purposes of this subsection, the term "property owner" shall

include any person or persons who own such residential structure and who also have an ownership interest in any corporation, limited liability company, partnership or other entity which owns the farm property and/or operation. There shall be no discharge of any kind on any such road right-of-way.

- B. Small anaerobic digester permit. The installation of a small anaerobic digester shall require a small anaerobic digester permit from the Zoning Enforcement Officer.
- C. Design and installation. The permit applicant shall address and document performance standards for siting to minimize impacts on neighboring properties which shall include considerations of:
 - (1) Prevailing wind patterns.
 - (2) Proximity to residential and other nonagricultural properties regardless of how they are zoned.
 - (3) Operational noise.
 - (4) Specific hours of operation with regard to truck traffic.
- D. The application shall be accompanied by documentation from a person qualified to design and install the proposed system, explaining all details of construction, operation, maintenance and necessary controls related to the system.
- E. Anaerobic digester systems shall be designed and constructed in compliance with the regulations and guidelines of the New York State Department of Environmental Conservation and any amendments, revisions, supplements, and successors thereto.
- F. Anaerobic digester systems shall be designed and constructed in compliance with all applicable local, state, and federal laws, codes and regulations. Evidence of such compliance and of all federal and state agencies' required approvals shall be included with the application.
- G. Utility notification. No anaerobic digester system shall be installed until evidence has been provided that the electric utility company has been informed of the applicant's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

§ 100-31. Large anaerobic digesters.

- A. Statement of legislative findings.
 - (1) The Town Board finds that there are a number of concerns and negative factors concerning the operation of large anaerobic digesters. While small anaerobic digesters as defined above are an accessory use to and a normal part of handling animal and other organic waste incidental to farming, large anaerobic digesters involve factors which concern the Town Board on a much larger scale.
 - (2) These factors include the presence of pathogens and the difficulty of monitoring the source of such pathogens when waste is brought in from off site. They also

include odor and noise from operation of the facility, truck traffic and the potential that waste material would be hauled through residential areas or spilled on public highways, and the emission of greenhouse gases, nitrogen, sulfur oxides, carbon monoxide, ammonia and particulate matter on a much larger scale than with small anaerobic digesters.

- (3) The Town Board finds that these concerns and factors render large anaerobic digesters to be an unsuitable use within the Town of Lowville.

B. Large anaerobic digesters not permitted within the Town of Lowville.

- (1) Large anaerobic digesters as defined above shall not be permitted anywhere within the Town of Lowville.
- (2) The expansion or modification of an existing small anaerobic digester to receive organic material of any kind from off site or to supply electrical power off site except as provided in the definition of "small anaerobic digester" in § 100-29 above shall constitute a prohibited use.

§ 100-32. Complaints; enforcement; penalties for offenses.

Complaints, the enforcement of this article, penalties, and remedies with regard to violations of this article shall be governed by the provisions of § 250-117 of Chapter 250, Zoning, of the Code of the Town of Lowville.

§ 100-33. Fees.

The Town Board may by resolution establish a fee or fee structure for the receipt and review of any application filed under this article.³

ARTICLE III

Solar Energy Systems

[Adopted 7-18-2013 by L.L. No. 2-2013]

§ 100-34. Title.

This article shall be known as the "Town of Lowville Solar Energy System Law."

§ 100-35. Legislative authority.

This article is enacted pursuant to the authority conferred upon the Town Board by Article IX of the New York State Constitution, Municipal Home Rule Law § 10, New York Town Law § 130 and Article 16 of the Town Law.

3. Editor's Note: The current fee schedule is on file in the Town Clerk's office.

§ 100-36. Definitions.

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

APPLICANT — The person or entity filing an application under this article.

PRINCIPAL SOLAR ENERGY SYSTEM — A solar energy system consisting of one or more freestanding ground- or roof-mounted solar collector devices, solar-related equipment and other accessory structures and buildings, including light reflectors, concentrators and heat exchangers, substations, electrical infrastructure, transmission lines and other related structures and facilities, which has a rated capacity of more than 25 kilowatts for electricity or rated storage volume of more than 240 gallons or has a collector area of more than 1,000 square feet for thermal. It is noted that any system with a nameplate generating capacity of 25 megawatts or more is subject to the requirements, terms, and conditions of Article 10 of the New York State Public Service Law.

SMALL SOLAR ENERGY SYSTEM — Also known as an "accessory solar energy system." A solar collection system consisting of one or more roof- and/or ground- mounted related equipment, which has a rated capacity of less than or equal to 25 kilowatts (for electricity) or rated storage volume of the system of less than or equal to 240 gallons or that has a collector area of less than or equal to 1,000 square feet (for thermal) and is intended to primarily reduce on-site consumption of utility power. A system is considered a small solar energy system only if it supplies electrical or thermal energy solely for on-site use, except when a property upon which the facility is installed also receives electrical power supplied by a utility company and in such case excess electrical power may be used by the utility company.

SOLAR ENERGY SYSTEM — Also "solar collector system." A solar photovoltaic cell, panel, or array, or solar hot air or water collector device, which relies upon solar radiation as an energy source for collection, inversion, storage and distribution of solar energy for electricity generation or transfer of stored heat.

§ 100-37. Small or accessory solar energy systems.

Small solar energy systems are permitted as an accessory use in all zoning districts where structures of any sort are allowed, as long as the system meets the requirements of this article and all other building and construction codes. Small solar energy systems shall require a permit from the Building Inspector subject to the terms and conditions set forth in this article.

A. Applicability.

- (1) A system is considered a small solar energy system only if it supplies electrical or thermal power primarily for on-site use, except that, when a property upon which the facility is installed also receives electrical power supplied by a utility company, excess electrical power generated and not presently needed for on-site use may be used by the utility company. The owner of the small solar energy system shall provide written confirmation with the application that the public utility company has been informed of the customer's intent to install an interconnected customer-owned generator and also approves such connection. Off-grid systems shall be exempt from this requirement.

- (2) Any upgrades, modifications, or changes that materially alter the size or placement of an existing solar energy system shall comply with the provisions of this article.

B. Design and installation.

- (1) To the extent applicable, the solar energy system shall comply with all applicable building and construction codes and any local, state or federal law, rule, or regulation.
- (2) The design and installation of small solar energy systems shall conform to the existing industry standards, including those of the American National Standards Institute (ANSI), Underwriters Laboratory (UL), the American Society for Testing and Materials (ASTM), or other similar certifying organizations, and shall comply with the Uniform Building and Fire Code⁴ and with all other applicable fire and safety requirements. The manufacturer's specifications shall be submitted as part of the application.
- (3) All exterior electrical and/or plumbing lines must be buried below the surface of the ground and placed in a conduit, except for so called "plug and play" units, provided that they shall meet all requirements of the relevant building and electrical codes, or unless the panels for electrical or thermal are installed on a structure that is either the main structure or a structure attached to the main structure which is receiving the benefit from the panels.
- (4) Small solar energy systems shall be designed and located in order to prevent reflective glare toward any inhabited structure on adjacent properties as well as adjacent public streets, roads and highways.
- (5) No portion of a small solar energy system shall be located within any required setback of any property.

C. Height restrictions. Solar energy systems must meet the following requirements:

- (1) Building- or roof-mounted solar energy systems shall not exceed the maximum allowed height in any zoning district. For purposes of height measurement, solar energy systems other than building integrated systems are considered to be mechanical devices and are restricted consistent with other building-mounted mechanical devices.
- (2) Ground- or pole-mounted solar energy systems shall not exceed the maximum accessory structure height within the underlying district.

D. Setback. Solar energy systems must meet the accessory structure setback requirement for the zoning district and principal land use associated with the lot on which the system is located.

E. Roof-mounted solar systems. In addition to the building setback, the collector surface and mounting devices for roof-mounted solar energy systems shall not extend beyond the exterior perimeter of the building on which the system is mounted or built.

4. Editor's Note: See Ch. 118, Fire Prevention and Building Construction.

- F. Ground-mounted solar energy systems. Ground-mounted solar energy systems may not extend within the setback requirements for the zoning district when oriented at minimum design tilt.
- G. Plan applications. Plan applications for small solar energy systems shall be accompanied by to-scale horizontal and vertical (elevation) drawings. The drawings must show the location of the system on the building or on the property for a ground-mounted system, including the property lines. Applicants must identify a qualified installer or provide proof that the system they propose to install has been designed as a so called "plug and play" system so that the applicant can plug the system into an existing PV circuit.
 - (1) Pitched roof-mounted solar systems. For all roof-mounted systems, other than a flat roof, the elevation must show the highest finished slope of the solar collector and the slope of the finished roof surface on which it is mounted.
 - (2) Flat roof-mounted solar systems. For flat-roof applications, a drawing shall be submitted showing the distance to the roof edge and any parapets on the building and shall identify the height of the building on the street frontage side, the shortest distance of the system from the street frontage edge of the building, and the highest finished height of the solar collector above the finished surface of the roof.
- H. Utility notification. The owner of the small solar energy system shall provide written proof that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator and also that the utility approves of such connection. Off-grid systems shall be exempt from this requirement.
- I. Fees. The Town Board may establish by resolution fees or a schedule of fees for any application or the administration of this article with regard to small solar energy systems.⁵

§ 100-38. Principal solar energy systems.

- A. Permitted use. A principal solar energy system shall be permitted by special use permit in the industrial, commercial and agricultural zones.
- B. Acreage. A proposed principal solar energy system may not be installed on a lot smaller than 100 acres, and the footprint of the system may not occupy more than 50% of the lot.
- C. Height and setback. For purposes of determining compliance with lot coverage standards of the underlying zone, the total surface area of all ground-mounted and freestanding solar collectors, including photovoltaic cells, panels, arrays and solar hot air or water collector devices, shall be considered in the same fashion as impervious. Panels mounted on the roof of any building will be subject to the height requirements specified for the underlying zone, but in no event shall they stand more than 10 feet above the roof line of the building.

5. Editor's Note: The current fee schedule is on file in the Town Clerk's office.

- D. Compliance. The construction and operation of a principal solar energy system shall comply with all applicable local, state, and federal requirements, including but not limited to all safety, construction, electrical and communications requirements. All buildings and fixtures forming part of the system shall comply with the Uniform Building and Fire Code.⁶ No principal solar energy system shall be constructed without first obtaining a building permit.
- E. Fees. The Town Board may establish by resolution fees or a schedule of fees for any application and for the administration of this article with regard to principal solar energy systems.⁷
- F. Site plan review. The application will be subject to site plan review prior to construction, installation or modification.
- G. Plans and maps. All plans and maps shall be prepared and stamped by a professional engineer licensed in the State of New York.
- H. Application. The applicant shall provide:
- (1) A site plan showing property lines and physical features, including roads; proposed changes to the landscaping of the site, grading, vegetation clearing and planting, exterior lighting, screening, vegetation or structures; blueprints or drawings of the proposed system signed by a New York licensed professional engineer showing the proposed layout of the system; electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices; documentation of the major system components to be used.
 - (2) Name and address of the proposed installer.
 - (3) An operation and maintenance plan.
 - (4) Proof of liability insurance or the ability to secure same in an amount adequate for the size, scope, and other details of the proposed project.
 - (5) The Planning Board may waive certain documentary requirements as it deems appropriate.
- I. Utility notification. The applicant will provide proof that the local utility company has been informed of the system owner or operator's intent to install an interconnected system. Off-grid systems shall be exempt from this requirement.
- J. Signage. The facility shall have a sign which provides a twenty-four-hour emergency contact telephone number.
- K. Utility connections. Where at all possible, utility connections and transmission lines shall be underground depending on soil conditions, topography, and requirements of the utility company permitting.

6. Editor's Note: See Ch. 118, Fire Prevention and Building Construction.

7. Editor's Note: The current fee schedule is on file in the Town Clerk's office.

L. Safety and environmental.

- (1) The system owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local Fire Chief. Upon request, the owner or operator will cooperate with local emergency services to develop an emergency response plan. All means of shutting down the system will be clearly marked. At all times during the life of the project, the owner or operator shall identify a responsible person for inquiries.
- (2) Land clearing, soil erosion. Clearing of natural vegetation shall be limited to what is necessary for the construction and operation of the system or as otherwise governed by applicable law.

M. Monitoring and maintenance: system conditions. The system owner or operator shall maintain all facilities in good condition. Maintenance shall include but not be limited to painting, structural repairs, and integrity of security measures. Site access shall be maintained in an acceptable manner to local fire and emergency services departments.

N. Modifications. All material modifications shall be subject to further site plan review.

O. Abandonment or decommissioning. Any principal system which has reached the end of its useful life or has been abandoned, which shall mean failure to operate without consent of the Town Board, for more than one year, shall remove all facilities within 150 days of operations being discontinued. Decommissioning shall consist of removal of all installations, structures, equipment, security barriers and transmission lines from the site. All solid and hazardous waste will be disposed of according to applicable law. Stabilization or revegetation of the site will be done as necessary to minimize erosion.

P. Financial surety. Applicants shall provide prior to approval a form of surety through escrow account, bond, or otherwise in an amount sufficient to pay for removal of the installation and site remediation as set forth above in an amount and form determined to be reasonable by the Planning Board.