

LOCAL LAW NO. 14-2009 TO ADOPT AND IMPLEMENT CHAPTER 206 ENTITLED "WIND ENERGY CONVERSION SYSTEMS" OF THE TOWN CODE OF THE TOWN OF VICTOR

BE IT ENACTED, by the Victor Town Board, Ontario County, State of New York, as follows:

Section I. Authorization.

This law is enacted pursuant to the legislative authority at New York Municipal Home Rule Law Section 10, and has been duly adopted according to the procedures set forth therein.

Section II. Title.

This law shall be known as the Town of Victor "Wind Energy Conversion Systems" Code and may be cited as Local Law No. 14-2009 of the Town of Victor.

Section III. Purpose and Intent.

The Town of Victor recognizes the increased demand for alternative energy-generating facilities and the corresponding need for more inexpensive power that wind energy conversion facilities (wind turbines) may provide. Often these facilities require the construction of single or multiple wind turbines. The purpose of this local law is to implement Chapter 206 entitled "Wind Energy Conversion Systems" in order to regulate the use of wind turbines within the Town of Victor by,, among other things, protecting the community's interest in properly siting wind turbines in a manner consistent with sound land planning, and more generally to promote the government, protection, order, conduct, safety, health and well-being of the persons and property within the Town of Victor.

Section IV. Applicability.

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

Section V. Findings.

A. The Town of Victor finds and declares that:

(1) Wind energy is an abundant, renewable, and nonpolluting energy resource of the Town and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.

(2) The generation of electricity from properly sited wind turbines can be cost effective, and can be used to reduce or offset on-site consumption.

(3) The Town of Victor wishes to encourage the residential, commercial, industrial and institutional use of alternative energy-generating facilities for the purposes of reducing on-site consumption of utility power provided a project can be defined that is in general harmony with, and promotes, the general purposes and intent of related town laws, and ordinances regulating land use.

(4) The Town of Victor has a limited wind resource, and the residential population and parcel configuration limit opportunities for development of Utility-Scale (Non-Private) wind energy conversion facilities of multiple, large turbines.

(5) The Town of Victor finds that the visual impact, including lighting, of Utility-Scale (Non-Private) wind energy conversion facilities of multiple, large turbines is significant.

(6) If not properly regulated, installation of wind energy conversion facilities can create drainage problems through erosion and lack of sediment control for facility sites and access roads, and harm farmlands through improper construction methods.

(7) Wind energy conversion facilities may present a risk to bird and bat populations if not properly sited.

(8) Construction of wind energy conversion facilities can create traffic problems and damage local roads.

(9) Regulation of the siting and installation of wind energy conversion facilities is necessary for the purpose of protecting the environment as well as the health, safety, and welfare of neighboring property owners and the general public from any potential impacts including, but not limited to, the following:

(a) Wind energy conversion facilities represent significant potential aesthetic impacts because of their size, height, lighting, and shadow flicker effects.

(b) If not properly sited, wind energy conversion facilities may present risks to the property values of adjoining property owners.

(c) Wind energy conversion facilities are sources of noise, which, if unregulated, can negatively impact adjoining properties.

(d) Wind energy conversion facilities can cause interference issues with various types of communications.

Section VI. Definitions.

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

AMBIENT NOISE LEVEL: The noise level which is exceeded 90 percent of the time (expressed as L90) or 54 minutes of every hour.

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

HABITABLE: Capable of being occupied or lived in.

NON-RESIDENTIAL WECS: Private WECS whose power output serves an agricultural, commercial, industrial, institutional use or building. For the purposes of this law, any Private WECS not meeting the requirements of a Residential WECS shall be considered a Non-Residential WECS even if located within a residential zoning district.

PRIVATE WIND ENERGY CONVERSION SYSTEM ("Private WECS"): A wind energy conversion system (WECS) consisting of one or more wind turbines with associated towers, buildings, equipment, and control or conversion electronics, meeting the requirements of this law whose power output is intended to be used on-site by the property owner or tenant to reduce or offset on-site consumption of utility power. Private WECS include Residential and Non-Residential WECS.

RESIDENCE: Any dwelling suitable for habitation existing in the Town of Victor on the date that a specific application is deemed complete, including seasonal homes, but not including hotels, hospitals, motels, dormitories, sanitariums, nursing homes, senior housing, schools, correctional institutions or other buildings used for educational purposes. A residence may be part of a multi-dwelling building.

RESIDENTIAL WECS: Private WECS whose power output serves a residence as defined herein.

ROOF-MOUNTED WIND TURBINE: A relatively small Private WECS, whether Residential or Non-Residential, mounted on a building's roof.

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.

SHADOW FLICKER: The alternating changes in light intensity due to the moving shadows of the rotating blades of a WECS cast by the sun on the ground, objects, or structures. Shadow flicker is not the viewing of the sun through the rotating blades of a WECS.

SITE: The parcel(s) of land where the Wind Energy Conversion Facility is to be placed. The Site may be publically or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where there are multiple applicants, their joint lots shall be treated as one lot for purposes of applying the requirements of this law. Any property which has a Wind Energy Conversion Facility or has entered an agreement for said Facility or a setback agreement shall not be considered off-site.

TOTAL HEIGHT: The height of the WECS tower and blade at the highest vertical extension of the blade above finished grade.

UTILITY SCALE WIND ENERGY CONVERSION SYSTEM ("Utility Scale WECS"): Wind energy conversion systems consisting of wind turbines, towers, and all related infrastructure including electrical lines and substations, access roads, and accessory structures which generates original power on-site to be transferred to a transmission system for distribution to customers. The definition of Utility Scale WECS shall not include wind power-generating facilities whose power output is intended to be used on-site by the property owner or tenant to reduce or offset on-Site consumption of utility power. Any Wind Energy Conversion System not meeting the definition of a Private Wind Energy Conversion System shall, for the purposes of this Local Law, be considered a Utility Scale Wind Energy Conversion System.

WECS OPERATIONAL SOUND PRESSURE LEVEL: means the level which is equaled or exceeded a stated percentage of time. An L10 – "X" dBA indicates that in any hour of the day "X" dBA can be equaled or exceeded only 10% of the time, or for six minutes. The measurement of the sound pressure level shall be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other accepted procedures. WECS operational sound pressure level restrictions shall mean the cumulative existing ambient sound pressure level (as defined herein) plus the sound generated by the WECS.

WIND ENERGY CONVERSION FACILITY: Any Wind Energy Conversion System or Wind Measurement Tower, associated equipment, and structures.

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 MEASUREMENT TOWER ("Met Tower"): A tower used for the measurement of meteorological data such as temperature, wind speed, and wind direction.

Section VII. General Provisions.

A. No Wind Energy Conversion Facility shall be constructed, reconstructed, modified, or operated in the Town of Victor except pursuant to a Special Use Permit approved pursuant to this law, and issuance of a building permit.

B. Utility Scale WECS are not permitted. No WECS other than a Private WECS, as defined herein, shall be constructed, reconstructed, modified, operated or replaced in the Town of Victor.

C. A different existing use or an existing structure on the same site shall not preclude the installation of a Private WECS, Met Tower or a part of such facility on a site. Private WECS and Met Towers constructed

and installed in accordance with this Local Law shall not be deemed expansions of a nonconforming use or structure.

D. The Town Planning Board acknowledges that prior to construction of a WECS, a Wind Measurement Tower is commonly erected to measure the wind speeds and this data is used to determine the feasibility of using a particular site to generate power. Installation of Wind Measurement Towers, also known as anemometer ("Met") towers, shall be permitted as a Special Use pursuant to the requirements of this law.

E. Special Use Permits for Wind Energy Conversion Facilities and Wind Measurement Towers shall be issued by the Town Planning Board.

F. Special Use permits for Wind Measurement Towers may be issued by the Town Planning Board for a period of up to two years. Permits may be renewed if the Facility is in compliance with the conditions of the Special Use Permit.

G. No additions or modifications to the WECS or Met Tower, of any nature, shall be permitted without application to and approval of the Planning Board. In order to gain such approval, the applicant shall be required to show the following:

- (1) That the proposed addition or modification is necessary and appropriate for the full implementation and usage of the WECS or Met Tower.
- (2) That the WECS or Met Tower can structurally accommodate the additions or modifications. Plans shall be provided which are stamped and certified by a Professional Engineer licensed in the State of New York.
- (3) That any additions or modifications will not interfere with existing or proposed telecommunication, radio or microwave signals.
- (4) That the visual effects of any additional equipment will not unduly or unreasonably interfere with or restrict the visual aesthetics of the surrounding neighborhood.
- (5) That the health, safety or general welfare of the public will not be otherwise impaired.

H. Applications for Special Use Permits for Wind Measurement Towers subject to this Law may be jointly submitted with the WECS.

I. Non-Residential WECS shall be permitted:

- (1) In Commercial, Light Industrial, Commercial-Light Industrial, and Planned Development districts, subject to the limitations of any applicable overlay districts; and
- (2) With a Special Use Permit from the Planning Board, and Site Plan approval from the Planning Board.

J. Non-Residential WECS, for agricultural use, shall be permitted:

- (1) In R-1, R-2, R-3, Manufactured Home, Multiple Dwelling, and Senior Citizen districts, subject to the limitations of any applicable overlay districts; and
- (2) With a Special Use Permit from the Planning Board, and Site Plan approval from the Planning Board.

K. Residential WECS shall be permitted:

- (1) In R-1, R-2, R-3, Manufactured Home, Multiple Dwelling, and Senior Citizen districts, subject to the limitations of any applicable overlay districts; and
- (2) With a Special Use Permit from the Planning Board.

L. Met Towers shall be permitted:

- (1) In Commercial, Light Industrial, Commercial-Light Industrial, and Planned Development districts, subject to the limitations of any applicable overlay districts; and
- (2) In R-1, R-2, R-3, Manufactured Home, Multiple Dwelling, and Senior Citizen districts, subject to the limitations of any applicable overlay districts; and
- (3) With a Special Use Permit from the Planning Board.

M. Other Wind Energy Facility structures and improvements shall comply with the underlying zoning district regulations.

N. Roof-mounted wind turbines are permitted as Private WECS provided they are in compliance with the requirements for either a Residential or Non-Residential WECS.

O. The applicant shall pay all costs associated with the Town of Victor's engineering and legal costs of reviewing and processing all applications. This may include the cost of the review required by SEQRA, or modification to the current Town of Victor Comprehensive Plan. The Applicant shall submit a deposit fee with the application in the amount specified in Section 27-8, Chapter 211 of the Town Code for a Special Use Permit and Site Plan (accessory structure) approval. If the engineering and legal review fees exceed the amount submitted at the time of application, the applicant will be billed monthly and receive a copy of the Town Engineer's invoice. The Town of Victor may require the applicant to enter into an escrow agreement to cover the engineering and legal costs of reviewing and processing all applications.

P. The Town may employ an independent engineering consultant to review construction plans and/or inspection service to monitor construction/erection activities. The Applicant shall assume all costs of this service.

Q. Prior to the issuance of a building permit, the Town Planning Board may, within the confines of the law, negotiate a Payment In Lieu of Taxes and/or a Host Community Agreement with any applicant. Refer to Section XIX, Tax Exemption.

R. The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of the Wind Energy Facility.

Section VIII. Requirements for WECS and Met Tower Special Use Permit Applications.

A. Non-Residential WECS will not be deemed residential additions or accessory structures for purposes of exemption from site plan review. Rather Non-Residential WECS will be fully subject to site plan review as set forth in Victor Town Code at Chapter 211.

B. An application for a Special Use Permit for a WECS shall include the following:

(1) 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.

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

(3) Address, or other property identification, of each proposed tower location, including Tax Map section, block, and lot number.

(4) The names, property addresses, mailing address and tax map numbers of all owners of land within 500 feet of the boundary of the property upon which the property is proposed shall be provided to the Planning Board for review and record retention.

(4) A comprehensive description of the project, including details and dimensions of all proposed equipment, accessory structures, access roads and driveways.

(6) Manufacturer's product information including make, model, picture, and equipment specifications including noise decibels data. electrical characteristics of equipment, maximum rated capacity, utilities required, and operating manuals, Material Safety Data Sheets for the type and quantity of construction and operation materials including, but not limited to, all lubricants, and coolants.

(7) If required, a scaled site plan which shall include all of the information listed below. The Planning Board may require additional information, if necessary to complete its review. The plan shall be drawn in sufficient detail (maximum scale of 1 inch = 400 ft) to clearly describe the following:

(a) Title block showing the drawing title, date of preparation, name and address of applicant, name and address of the person or firm preparing the drawing.

(b) Property lines and physical dimensions of the Site.

(c) Existing watercourses and bodies of water, including any state and federal wetlands.

(d) Existing residential and non-residential structures and driveways located on-site.

(e) Location of the proposed tower, equipment, foundations, guy points, substations, accessory structures, fences, staging areas, access roads, electrical lines, and any other ancillary facilities.

(f) Location of all existing and proposed utility lines on the Site or within a radius of 1 times the Total Height of the WECS plus 25 feet.

(g) Shall present construction plan detailing access routes, on site disturbance of landscape, trees, soils and restoration thereof at completion of facility erection period.

(h) Location, type, and dimensions of permanent and temporary (construction) storm water and erosion control measures.

i) Provide a copy of a Stormwater Pollution Prevention Plan (SWPPP), if required to satisfy New York State Department of Environmental Conservation permitting requirements. Refer to requirements of Section 211-52 Stormwater Pollution Prevention Plans.

j) The zoning designation of the subject and adjacent properties as set forth on the official Town Zoning Map.

(8) Vertical drawing of the WECS showing Total Height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each WECS of the same type and Total Height.

(9) 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 by the Town Engineer. Such review by the Town Engineer shall be at the Applicant's expense.

(10) Lighting Plan showing any proposed site lighting. Stroboscopic lighting to satisfy FAA requirements is prohibited. Refer to Section IX for restrictions.

(11) Sufficient information demonstrating that the system will be used to reduce on-site consumption of electricity. Such information shall include, as a minimum, a description of how the WECS will be connected to the Applicant parcel's electrical or mechanical system. The system shall not produce significantly more energy than will be used onsite annually

(12) Written evidence that the electric utility service provider that serves the proposed Site has been informed of the applicant's intent to install an interconnected customer owned electricity generator, unless the applicant does not plan, and so states in the application, to connect the system to the electricity grid.

(13) Tower design and foundation information sufficient to demonstrate compliance with structural loading requirements such as wind, seismic, and icing. Unless waived by the Planning Board, the information shall be stamped or certified by a Professional Engineer licensed in the State of New York.

(14) Unless waived by the Planning Board, documentation shall be provided from a New York State Licensed Professional Engineer or the turbine manufacturer of potential ice-throw and blade throw distances, damage and impacts. The basis of calculation and all assumptions shall be disclosed.

(15) Shadow Flicker: Where a habitable structure (receptor) is located within 10 rotor diameters of a WECS, the applicant shall include in the application an analysis and report on potential shadow flicker by a Professional Engineer licensed in the State of New York. The report shall identify receptors where shadow flicker may be caused by the WECSs, and the expected times and durations of the flicker at these receptors. The report shall describe measures that shall be taken to eliminate or mitigate the problems, including reduction of WECS operations during shadow flicker periods.

(16) Noise Analysis: Unless manufacturer data is provided that demonstrates sound levels produced by the WECS are anticipated not to exceed 35 dBA at the property line of the Site, the applicant shall provide with the application a noise analysis and report by a professional engineer licensed in the State of New York documenting the potential noise levels associated with the proposed WECS. The report shall document noise levels at the Site property lines, and habitable structures (receptors) not on the Site within 1500 feet of the turbine. The noise analysis shall provide pre-existing ambient noise levels, combined ambient and turbine sound levels, and include low frequency noise. Refer to Section XVII for testing in response to complaints.

(17) Visual Impact: Unless waived by the Planning Board, applications shall include visual impact documentation of the proposed WECS as installed. This documentation shall include scaled color photographic simulations demonstrating the visual appearance of the WECS from strategic

vantage points (for example, adjacent habitable buildings). Unless additional simulations are requested by the Planning Board, a minimum of four vantage points (one from each quadrant of a circle around the WECS) shall be provided. Color photographs of the proposed Site from each location accurately depicting the existing conditions shall also be included for comparison. The documentation 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. *The photograph simulations may be produced by overlying photographs from the proposed vantage points with digital, scaled images of the WECS using commonly available computer software. For Residential WECS, in lieu of photograph simulations showing the turbine superimposed on a photograph, the applicant may provide a simple balloon study in addition to manufacturer photographs and other WECS information. This balloon study shall consist of photographs of the site from the required vantage points with a balloon(s) tethered at the location of the proposed WECS and suspended aloft at the total height of the WECS above the ground line. Such balloon study photographs shall be taken on a calm day with minimal wind such that the balloons approximate the maximum elevation and location of the WECS and blade tip elevation.*

(18) Telecommunications: The applicant shall include information in the application demonstrating due diligence to investigate that the WECS will not interfere with cellular telephone, television, radio, microwave, satellite, and other forms of telecommunication in the area. The information may include WECS manufacturer material specifications that demonstrate the WECS construction materials will not interference with specific types of telecommunication. Unless waived by the Planning Board, the Applicant shall provide information documenting any directional telecommunication signal antennas on adjacent parcels, their distance, and receiving or transmitting direction. If the Planning Board deems that a potential conflict may exist, additional study and documentation may be required of the Applicant at the Applicant's expense.

(19) Other Information: Provide such additional information as may be reasonably requested by the Town Planning Board or Town Engineer.

(20) 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) any Decommissioning Bond required per Section IX(29), and the method of ensuring that funds will be available for decommissioning and restoration; and 5) the manner in which the WECS will be decommissioned and the Site restored, which shall include any necessary widening of roads, removal of all structures and debris, removal of all access roads, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation). The decommissioning costs shall not be offset by salvage values.

(21) A statement, signed under penalty of perjury, that the information contained in the application is true and accurate.

(22) Completed Part 1 of the Full EAF.

Section IX. WECS and Met Tower Standards for Special Use Permit.

A. The following standards shall apply to all WECS, Met Tower and related infrastructure, unless specifically waived by the Town Planning Board as part of a permit.

(1) Use of nighttime and overcast daytime condition stroboscopic lighting to satisfy tower facility obstruction lighting requirements of the FAA is prohibited.

(a) No wind turbine tower plus its rotor radius (total height) may exceed the minimum height requirement of the FAA (200 feet) or any obstruction standard contained at 14 CFR 77 requiring obstruction lighting. This limitation shall also apply to WECS whose power output serves an agricultural building.

(2) The permissible number of Private tower WECS or roof-mounted turbines per lot shall be determined on an individual basis at the discretion of the Planning Board based on review of potential impacts including aesthetic impact, shadow flicker, noise.

(3) No experimental, homebuilt or prototype wind turbines shall be allowed without documentation from a licensed professional engineer estimating the probable blade or ice throw distance in the event of failure, a submittal of the complete design specifications and calculations and an acceptance by the Town Planning Board of setbacks which may exceed the minimums established elsewhere in the Code.

(4) All WECS and Met tower structures shall be tubular monopole, lattice, or other appropriate industry design constructed to be in compliance with pertinent provisions of applicable design and operation codes.

(5) WECS components shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporates non-reflective surfaces to minimize any visual disruption.

(6) All WECS 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 Planning Board if the project terrain is determined to be unsuitable due to reasons of excessive grading, environmental impacts, or similar factors.

(7) No television, radio, or other communication antennas may be affixed or otherwise made part of any WECS.

(8) No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.

(9) Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of rotating machinery, electrical shock or high voltage. A sign shall be posted on the parcel road frontage, and on the entry area of the fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information, including a local telephone number for emergency shutdown of the WECS with 24 hour, 7 day a week coverage. The Town Planning Board may require additional signs based on safety needs. The means of posting this information shall comply with applicable provisions of town law regarding signs.

(10) Lighting. No tower shall be lit. Minimum lighting for ground level facilities shall be allowed only as approved on the Site plan. Lighting shall be designed to minimize light pollution, including the use of motion detectors, light hoods, low glare fixtures, and directing lights at the ground.

(11) The WECS or Met Tower shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas (e.g., public parks, roads, and trails). To the greatest extent feasible a WECS or Met Tower shall:

(a) Minimize projection above the top of ridgelines.

(b) If visible from public viewing areas, shall use natural landforms and existing vegetation for screening.

(c) Shall be screened to the maximum extent feasible by natural vegetation or other means to minimize potentially significant adverse visual impacts on neighboring residential areas.

(12) No WECS shall be installed in any location or at any height where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems would produce 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 interference in the link's operation. If it is determined that a WECS is causing 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 interference is grounds for revocation of the Special Use Permit for the specific WECS or WECSs causing the interference.

(13) Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:

(a) Tower-climbing apparatus located no closer than 12 feet from the ground.

(b) A locked anti-climb device installed on the tower.

(c) A locked, protective fence at least six feet in height that encloses the tower, unless waived by the Planning Board.

(14) WECSs and Met Towers shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked.

(15) The minimum distance between the ground and any part of the rotor or blade system shall be 20 feet unless protective fencing is installed.

(16) Roof-mounted turbines shall have a maximum total height no greater than ten (10) feet above the roof or parapet to which it is mounted. If mounted to the roof, and parapet surrounds the roof on all sides, the turbine shall not project more than ten (10) feet above the lowest elevation of the surrounding parapet.

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

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

(19) All tower structures shall be designed and constructed to be in compliance with pertinent provisions of the applicable design and operational codes.

(20) All WECS shall be equipped with manual and automatic over-speed controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the WECS. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer.

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

(22) WECSs shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided. The use of previously developed areas will be given priority wherever possible.

(23) During construction, topsoil shall be stockpiled. After construction is complete, the site shall be restored by grading the soil, replacing the topsoil, and restoring compatible vegetation or ground cover to the site as approved by the Planning Board.

(24) WECSs shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity, particularly bird and bat species.

(25) WECS and related infrastructure shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations.

(26) Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable local, state, and Federal laws and regulations.

(27) Construction of the WECS shall be limited to Monday to Friday between the hours of 7 a.m. to 7 p.m. and 7 a.m to 6 p.m. Saturday. No construction shall occur on holidays (Observed Memorial Day, July 4th, Labor Day, Thanksgiving, and Christmas).

(28) The applicant is responsible for remediation of damaged roads during construction and upon completion of the installation or maintenance of a Wind Energy Conversion Facility or Met Tower. Roads shall be repaired to pre-construction condition. If deemed necessary by the Planning Board, a public improvement bond shall be posted prior to the issuance of any Special Use permit in an amount determined by the Town Engineer, sufficient to compensate the Town of Victor for any damage to local roads and infrastructure.

(29) 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.

(30) Decommissioning Bond or Fund. The issuance of a special use permit shall be conditioned upon the submission to the Code Enforcement Officer of a written estimate from an approved company engaged in the installation and removal of WECS of the cost of dismantling and removing the WECS and any attached structures or facilities, or wind measurement tower. The costs shall not be offset by any salvage value. If the estimated cost exceeds \$250,000, the Planning Board may require that the applicant maintain an irrevocable letter of credit or other security in form acceptable to the Town Attorney in an amount not less than 125% of said estimated cost, which letter of credit or other security shall provide that said funds shall be made available to the Town for the removal of such facilities and any attached structures or facilities upon the failure of the holder of the special use permit to comply with the provisions of this law. The letter of credit shall be approved by Town Board resolution.. The amount of the security shall be adjusted every 5 years, based upon an updated estimate of the removal costs by an approved company engaged in the installation and removal of WECS submitted to the Code Enforcement Officer. For projects valued at below \$250,000 dollars removal cost, removal shall be performed at the Owner's expense, or if the Town removes it, a lien will be placed on the property for that amount.

(31) Prior to beginning construction, the Applicant shall stake out the locations of the proposed facilities for review and approval by the Town Code Enforcement Officer. Construction shall not commence until such approval from the Town Code Enforcement Officer is received in writing.

(32) Accurate maps of the "as-built" underground WECS facilities shall be filed with the Town and with "Dig Safely New York (1-800-962-7962)" or its successor.

(33) All WECS and Met Towers shall be maintained in good condition and in accordance with all requirements of this law.

Section X. WECS Setbacks for Special Use Permits.

A. Refer to Section XV(C) for Met Tower Setbacks.

B. Each WECS shall be setback, as measured from the center of the WECS, a minimum distance of:

- (1) 100 feet from state- or federal-identified wetlands.
- (2) 1 times the total height plus 25 feet from the nearest public road.
- (3) 1 times the total height plus 25 feet from the nearest Site boundary property line.
- (4) 1.5 times the total height from the property line of any parcel adjacent to the Site with no habitable buildings.
- (5) 2 times the total height from the nearest off-Site habitable building existing at the time of application, measured from the exterior of such building.
- (6) 3 times the total height from any school, place of worship, hospital, or public building including those on the Site.
- (7) Guy anchor points shall not be located closer than 10 feet to a Site property line.
- (8) Shadow flicker exposure shall be limited to a maximum of 25 hours per year at off-site habitable buildings.
- (9) The statistical operational sound pressure level generated by a WECS shall not result in a cumulative (ambient sound plus proposed turbine noise) increase of more than 6 dBA over pre-existing ambient sound levels measured at the property line.
- (10) In the event audible noise due to WECS operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph (9) of this subsection shall be reduced by five dBA. A pure tone is defined to exist if the one-third octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two contiguous one third 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. Refer to Section XVII(A) for testing in response to complaints.
- (11) The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA. Where required, ambient noise levels shall be measured at the property line.
- (12) Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project Site are sufficient to allow Wind Turbine operation, provided that the wind velocity does not exceed thirty mph at the ambient noise measurement location.

Section XI. WECS And Met Tower Abatement.

A. The owner of the site shall notify the Town, in writing, within ten (10) days of the discontinuance of the use of such facility.

B. WECS or Met Towers which are not used for 6 successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner. Removal and site restoration shall be completed within six (6) months of a determination of inoperability.

C. Failure to abide by and faithfully comply with this law or with any and all conditions that may be attached to the granting of any building permit shall be a violation of this law and constitute grounds for the revocation of the permit by the Town and use of any decommissioning bond or fund to remove the WECS or Met Tower.

D. Non-function or lack of operation may be proven by reports from the Public Service Commission, NYSERDA, or local utility company(s). The applicant shall make available to the Town Planning Board all reports to and from these entities, if requested, necessary to prove the WECS is functioning, which reports may be redacted or subject to a reasonable non-disclosure agreement as necessary to protect proprietary information.

Section XII. WECS and Met Tower Special Use Permit Application Review Process.

A. Applicants may request a pre-application meeting with the Town Planning Department Staff, Town Planning Board, and with any consultants retained by the Town Planning Board for application review.

B. The application and review process for the issuance of a Special Use Permit shall comply with the provisions of Chapter 211 of the Victor Town Code governing Special Use Permits.

C. Upon receipt of the report of the recommendation of the County Planning Board (where applicable), the holding of any public hearing, consideration of the standards in this Law, and the completion of the SEQRA process, the Town Planning Board may issue a written decision setting forth the reasons for approval, conditions of approval, or disapproval.

D. If approved, the Town Planning Board will authorize Town staff to issue a Special Use Permit for each WECS upon satisfaction of all conditions for said Permit, and authorize the Building Department to issue a building permit, upon compliance with the applicable design and operational codes, and satisfaction of all other criteria.

Section XIII. Non-Residential WECS Additional Requirements.

A. Non-Residential WECS Special Use Permit Applications.

In addition to the requirements of Section VIII, an application for a Special Use Permit for Non-Residential WECS shall include the following:

(1) The scaled site plan shall be prepared by a licensed Professional Engineer, licensed Land Survey or Landscape Architect in the State of New York.

(a) The Title block shall include the signature and seal of a licensed Professional Engineer, Land Surveyor or Landscape Architect.

(b) To demonstrate compliance with the setback requirements of this Law, circles drawn around each proposed tower location equal to:

(i) The total height of the WECS plus 25 feet.

(ii) Five-hundred foot radius.

(iii) 2 times the total height radius.

(iv) 3 times the total height radius.

(c) Topography by 5 foot (5 ft.) contours, maximum.

(d) Location and size of structures above 35 feet within a 500 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.

(2) Landscaping Plan depicting vegetation describing the area to be cleared and any specimens proposed to be added, identified by species and size of specimen at installation and their locations.

(3) Decommissioning Plan: Plan shall include any Decommissioning surety required under Section IX.

B. Non-Residential WECS Standards for Special Use Permit.

In addition to the requirements of Section IX, the following standards shall apply to all Non-Residential WECS and related infrastructure, unless specifically waived by the Town Planning Board as part of a permit.

(1) If required for the WECS, substations shall be screened from public view to the extent possible.

(2) Any construction or ground disturbance involving agricultural land shall be done according to the NYS Department of Agriculture and Markets' publication titled Guidelines for Agricultural Mitigation for Wind Power Projects.

C. Non-Residential WECS Setbacks for Special Use Permits.

In addition to the requirements of Section X, Non-residential WECS Setbacks shall meet the following requirements.

(1) Independent testing and certification, at the Applicant's expense, shall be provided before and after construction demonstrating compliance with the sound level requirements of Section IX.

D. Non-Residential WECS Abatement.

In addition to the requirements of Section XI, Non-Residential WECS shall comply with the following requirement.

(1) Removal of the system shall include at least the entire above ground structure, including transmission equipment and fencing, from the property. Removal of Non-Residential WECS in agricultural fields shall comply with New York State Department of Agriculture and Markets Guidelines.

Section XIV. Residential WECS Additional Requirements.

A. Residential WECS Special Use Permit Applications.

In addition to the requirements of Section VIII, applications for Residential WECS Special Use Permits shall include:

(1) It is not required that the scaled site plan be signed and stamped by a licensed surveyor, engineer, or architect.

B. Residential WECS Standards for Special Use Permits

In addition to the requirements of Section IX, applications for Residential WECS special use permits shall include:

(1) Applicable provisions of Town Code regarding signs in Residential Districts, including prohibition, shall be applied to warning signs required under Section IX.

C. Residential WECS Setbacks for Special Use Permits.

In addition to the requirements of Section X, Residential WECS Setbacks shall meet the following requirements.

- (1) Independent testing and certification is not required to be provided before construction to demonstrate compliance with the sound level requirements of Section IX.

D. Residential WECS Abatement.

In addition to the requirements of Section XI, Residential WECS shall meet the following requirements.

- (1) Removal of the system shall include at least the entire above ground structure, including transmission equipment and fencing, from the property.

Section XV. Wind Measurement Towers Additional Requirements

A. Wind Measurement Tower Special Use Permit Applications.

In addition to the requirements of Section VIII, Met Tower Special Use Permit applications shall include the following requirements.

- (1) It is not required that the scaled site plan be signed and stamped by a licensed surveyor, engineer, or architect.
- (2) To demonstrate compliance with the setback requirements of this Law, circles drawn around each proposed tower location equal to:
 - (a) The total height of the Met Tower plus 25 feet.
 - (b) Five-hundred foot radius.
- (3) Decommissioning Plan, based on the criteria in Section IX, including a security bond or cash for removal as required.

B. Wind Measurement Tower Standards for Special Use Permits.

In addition to the requirements of Section IX, Met Tower standards shall include the following requirements.

- (1) Only one Wind Measurement tower per legal lot shall be allowed, unless there are multiple applicants, in which their joint lots shall be treated as one lot for purposes of this Law.
- (2) A sign shall be posted on the entry area of the fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information, including a local telephone number with 24 hour, 7 day a week coverage. The Town Planning Board may require additional signs based on safety needs. Applicable provisions of Town Code regarding signs, including prohibition, shall be applied to warning signs as required under Section VIII.

C. Wind Measurement Tower Setbacks for Special Use Permits.

In addition to the requirements of Section 1X, Met Tower setbacks shall include the following requirements.

- (1) Met Towers shall be setback from Site boundaries, measured from the center of the tower, a minimum distance of:
 - (a) 100 feet from state- or federal-identified wetlands.
 - (b) 1 times the total height plus 25 feet from the nearest Site boundary property line.
 - (c) 1 times the total height plus 25 feet from the nearest public road.

(d) Guy anchor points shall not be located closer than 10 feet to a Site property line.

D. Wind Measurement Tower Abatement.

In addition to the requirements of Section XI, Met Tower abatement shall include the following requirements.

(1) Removal of the system shall include at least the entire above ground structure, including fencing, from the property. Removal of Met Towers in agricultural fields shall comply with New York State Department of Agriculture and Markets Guidelines.

Section XVI. Setback Easements; Variances.

Refer to the requirements of Section 211-8 of the Town of Victor Code.

Section XVII. Permit Revocation.

A. Noise and Shadow Flicker Complaints. Noise and Shadow Flicker testing or monitoring may be required to verify complaints. Such work shall be performed by a qualified independent third party at the request of the Town Planning Board in response to complaints received by the Building Department. The scope of the testing shall be to demonstrate compliance with the terms and conditions of the Special Use Permit, and shall also include an evaluation of any complaints received by the Town. The applicant shall have 30 days after written notice from the Code Enforcement Officer to cure any deficiency verified by testing. An extension of the 30 day period may be considered by the Code Enforcement Officer, but the total period may not exceed 60 days. Such testing shall be at the expense of the WECS owner. However, testing or monitoring to verify complaints is subject to a) one investigation per complainant property annually, and b) a maximum annual dollar amount spent on testing by the owner equal to 5% of the value of the WECS. The Town Code Enforcement Officer shall determine the value of the WECS. The Town Planning Board has the discretion to deem complaints frivolous, duplicative or otherwise unwarranted and hold that testing is not therefore required. Notwithstanding the aforementioned, where the owner is not required to bear the expense of testing under the conditions set forth herein, the Town shall have the authority to test at the Town's own expense if it deems so appropriate, with the approval of the Town Board. If the Town Board shall find the WECS to be in violation of this chapter, it may charge back to the owner the costs of any testing expenses incurred by the Town.

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 violate a permit condition, the owner or operator shall have 30 days after written notice from the Code Enforcement Officer, to cure the deficiency. An extension of the 30 day period may be considered by the Code Enforcement Officer, but the total period may not exceed 60 days.

C. Notwithstanding any other abatement provision under this law, if the WECS is not repaired or made operational or brought into permit compliance, the Town Board may (1) order remedial action within a specified timeframe, or (2) order revocation of the Special Use Permit for the WECS and require the removal of the WECS within 90 days. Where removal is ordered, the owner shall have the opportunity to be heard at a public hearing in front of the Town Board. If, after the public hearing, the Town Board finds it is in the public interest to remove the WECS, it shall order as much and require removal. If the WECS is not removed, at the direction of the Town Board, the Code Enforcement Officer shall have the right to use any security posted as part of the Decommission Plan to remove the WECS. If no security is required to be posted and if the WECS is not removed, at the direction of the Town Board, the Code Enforcement Officer shall have the right to remove the WECS and bill the Owner for said costs.

D. Any costs incurred by the Town that exceeds the amount of any financial surety or are not covered by said surety shall be the complete and sole responsibility of the owner. If the owner is insolvent and such costs cannot be practicably collected from said owner, then such costs shall become a lien upon the property upon which the costs were incurred and said lien shall thereafter be assessed on the next succeeding years tax bill for such parcel and collected in accordance with normal tax foreclosure proceedings if such tax bill remains unpaid thereafter.

Section XVIII. Miscellaneous.

A. Fees.

Refer to the Town of Victor Code, Sections 27-8 A and Z (engineering review, special permit, and/or site plan review) for applicable fees.

B. Building Permits.

(1) The applicant shall, prior to the receipt of a building permit, demonstrate that the proposed facility meets the system reliability requirements of the New York Independent System Operator, or provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and/or the applicable Transmission Owner.

(2) The applicant will provide copies of all necessary State and County DOT permits prior to receiving a building permit.

Section XIX. Tax Exemption.

The Town may, upon the adoption of a local law by the Town Board, exercise its right to opt out of the Tax Exemption provisions of Real Property Tax Law §487, pursuant to subsection 8 of that law.

Section XX. Validity and Severability.

Should any word, section, clause, paragraph, sentence, part or provision of this Local Law be declared invalid by a Court of competent jurisdiction, such determination shall not affect the validity of any other part hereof.

Section XXI. Enforcement Procedures.

The provisions within this Chapter shall be enforced as described herein. Additionally, the provisions herein may be enforced in accordance with Section(s) 83-15 or 211-11 of the Victor Town Code. To the extent those provisions are inconsistent with the enforcement provisions identified within this Chapter, the enforcement provisions herein shall govern.

Section XXII. Repeal, Amendment and Supersession of Other Laws.

All other Ordinances or Local Laws of the Town of Victor which are in conflict with the provisions of this Local Law are hereby superseded or repealed to the extent necessary to give this Local Law force and effect during its effective period.

Section XXIII. Effective Date.

This Local Law, after its adoption by the Town Board of the Town of Victor, shall take effect immediately upon its filing with the Office of the Secretary of State of the State of New York.