

Local Law No __ of 2007
Local Law to Amend the Zoning Local Law of the Town of Gorham

- I. Purpose & Intent: The purpose of this local law is to implement changes to the zoning local law of the Town of Gorham to address the construction of facilities to convert wind energy to electricity and the electric transmission and transmission facilities often associated with commercial scale enterprises. Such facilities are growing in popularity, as the need for energy sources other than fossil fuels is increasing. At the same time, the importance of aesthetics of the Canandaigua Lake area is recognized, and must be protected to ensure the health of tourism industry in the region and the character of the lake front neighborhoods protected. In addition, this local law strives to establish standards that will minimize environmental impacts that result from the physical construction of these facilities, especially commercial scale facilities on prime farm land.
- II. Amend Section 31.10 of the Town Code by adding the following definitions:

WIND ENERGY CONVERSION SYSTEMS OR WECS: – Any mechanism designed for the purpose of converting wind energy into electrical energy. This definition shall include the tower, monopole, or other structure supporting the mechanism at its final working location. The height of a WECS shall be considered the vertical distance as measured from the average elevation at the base of the structure to the tip of the highest point of the structure including all blades when at their apex position.

WIND FARM – A commercial enterprise where one or more WECS are located and attached to the commercial utility grid for the purpose of generating and selling electric power for off premises use. The energy created on a wind farm is not intended to be used primarily for consumption on the premises. Wind Farms shall require rezoning to WFD – Wind Farm Zoning District. Review of Wind Farms shall include all interconnections with the power utility grid, and all buildings and electrical substation or stations required for such interconnection. Rezoning a property to WFD shall grandfather compatible uses on the property where a pre-existing principal use or uses exist, such as agriculture, provided all setback requirements of this local law are met.

RESIDENTIAL WECS – A WECS that is incidental and subordinate to a residential use on a property and intended to supply electrical power solely for consumption of said residence. Where such residence is also supplied with electric power by a utility company, excess electrical power generated by the WECS on site may be sold back to the utility company. The generation capacity of the WECS shall be roughly equivalent to the expected peak load demand of the residential use on the property. All Residential WECS shall require a Site Plan Review and Approval by the Planning Board.

COMMERCIAL WECS – A WECS that is incidental and subordinate to a commercial, industrial, or farm use on the same parcel and supplies electrical power solely for on-site use, except that when a parcel on which a commercial WECS is installed also receives electrical power supplied by a utility company. The generation capacity of the WECS shall be roughly

equivalent to the expected peak load demand of the commercial use on the property. All Commercial WECS shall require a Special Use Permit and Site Plan Review and Approval by the Planning Board.

III. Replaced existing paragraph C in Section 31.14 with the following:

C: The following districts shall function as floating zones, meaning requests to have property rezoned to these designations may be made to the Town Board where uses exist or are proposed consistent with the requirements of these districts:

PRD Planned Residential Development District

WFD Wind Farm District

IV. Add a new paragraph G to Section 31.19 (Limited Development Overlay District) of the Town Code as follows:

G. Prohibited Uses:

1. Wind Farms: No property shall be considered for rezoning to WFD within the boundaries of the Limited Development Overlay District.
2. No Commercial WECS shall be allowed within the boundaries of the Limited Development Overlay District, except within the AG Agricultural District.
3. No Residential WECS shall be allowed within the LDO district except in the AG and RR District.

V. Amend Section 31.21 (Agricultural District) of the Town Code as follows:

A. Add a new subparagraph 8 to Paragraph C (Accessory Uses) as follows:

8. Residential WECS, provided that the WECS is setback from all property lines, overhead transmission lines, and residences a distance equal to one and one half times the maximum height of the WECS above grade, intermittent shadow or flutter shadow is cast on any adjacent residence shall not exceed an average of 10 minutes a day, and the sound produced from such equipment is not more than 40 dBA at all property lines. All Residential WECS shall require a site plan review. The maximum height of a Residential WECS shall be 100 ft.

B. Add a new subparagraph 13 to Paragraph D (Uses Permitted with a Special Use Permit) of the Town Code as follows

13. Commercial WECS with a height of no more than 200 feet.

C. Add a new Paragraph F as follows:

F. Permitted Temporary Use: The construction of a tower for the collection of wind data in a location of a proposed wind farm. Such temporary use shall be for a period of not more than 18 months, and shall be subject to Site Plan Review and Approval by the Planning Board and the issuance of a zoning permit by the zoning officer, and the posting of a surety in a form acceptable to the town in an amount sufficient to fund the removal of such tower at the conclusion of the use. The tower shall be setback from all property lines a distance equal to the maximum height above grade of the tower, including any appurtenances thereto.

VI. Add Residential WECS to the list of allowed accessory uses in the Rural Residential District by adding paragraph 10. to Section 31.25, Paragraph C. as follows:

10. Residential WECS, subject to Site Plan Review and Approval by the Planning Board, with a maximum height of 100 feet.

VII. Add Commerical WECS to the list of allowed special uses in the Hamlet Commercial District by adding a paragraph 2 to Section 31.26, Paragraph C. as follows:

2. Commercial WECS, with a maximum height of 100 feet.

VIII. Add Residential WECS to the list of allowed accessory uses in the Hamlet Residential District by adding a paragraph 4 to Section 31.23, Paragraph C. as follows:

10. Residential WECS with a maximum height of 100 feet.

IX. Add Commerical WECS to the list of allowed special uses in the Industrial District by adding a paragraph 4 to Section 31.28, Paragraph C. as follows:

4. Commercial WECS, with a maximum height of 200 feet.

X. Insert new Section 31.33 as follows:

31.33 Wind Farm District

A. Purpose: To accommodate Wind Farms while ensuring that they protect the character and value of the neighborhood and the quality of life of the residents of the Town.

B. Location: The Town Board can approve rezoning to Wind Farm District (WFD) of property or a group of properties located in the AG or I districts outside of the boundaries of the Limited Development Overlay District.

C. Procedure:

The owner or owners, or their duly appointed representatives, of property shall petition the Town Board for rezoning to WFD. Such a petition shall be accompanied by a preliminary site plan to scale showing the number of WECS, the proposed location of all utility infrastructure and interconnections, maintenance buildings, and means of egress and ingress. Within ten (10) days of receipt by the Town, such an application shall be forwarded to the

Planning Board for recommendation. The Planning Board shall make a recommendation within 45 days to the Town Board. After receiving the recommendation of the Planning Board, the Town Board shall hold a public hearing and render a decision within 45 days. The town shall notify owners of property within 1 mile of the proposed Wind Farm District boundary of said public hearing, at the expense of the applicant. All rezonings approved by the Town Board shall be subject to subsequent Site Plan Review by the Planning Board.

D. Requirements for Wind Farms: All applications for a rezoning to Wind Farm and the Site Plan Approval required shall comply with the following:

1. Lot size: Lots shall be of a sufficient size to ensure:
 - a. WECS are setback a sufficient distance from all property lines, overhead transmission lines and dwellings a distance equal to one and one half times the maximum height of the WECS.
 - b. The resulting sound pressure level generated by the WECS on a wind farm is equal to or less than 45 dbA at the property line on which the WECS is located.
2. Transmission facilities: All electrical connections to the local utility company transmission lines or the transmission grid installed to support the wind farm shall be constructed underground.
3. Determination of height: The height of WECS shall be the minimum required for practical commercial use, up to a maximum of 300 feet. The applicant shall provide a minimum of one year's worth of on site wind data collected from a temporary tower located on the site of the proposed wind farm.
4. A preliminary site plan shall be submitted with the rezoning application. The location of all proposed WECS that are part of the Wind Farm rezoning application shall be shown, as shall all existing and proposed buildings and structures, including the interconnection with the public utility infrastructure and any electrical substations that are part of the project. All WECS shall be designed so that the towers are not climbable from grade on the outside, and a landscaping plan shall be included showing plantings to screen utility buildings, electric substations, and security fencing where it is found to be desirable by the Planning Board.
5. A visual assessment of the proposed wind farm shall be submitted with the rezoning and site plan application. The assessment shall include a regional view shed analysis so that the Town Board and or Planning Board may designate locations from which photo simulations shall be prepared by the applicant. The selection of such locations shall be based upon the scenic views and vistas documented in the Comprehensive Plan of the Town of Gorham and the determination of other existing public viewpoints and adjacent land uses which may be impacted by the proposed wind farm.
6. The applicant shall submit evidence that the wind farm shall be granted the right to connect to a local utility's transmission system and/or the transmission grid. The applicant shall produce a certificate of need for the proposed facility from the New

York State Public Service Commission. No special use permit shall be granted by the Planning Board without such documentation.

- E. Sureties in a form and amount acceptable to the Town shall be required as a condition of approval of any wind farm for the following:
1. Repair of all potential damage to all public roads and infrastructure caused during the construction of the wind farm. Such surety shall remain in force until the completion of construction
 2. Environmental clean up of any lubricant, solvent, or other toxic or hazardous materials on site. Such surety shall remain in force until the wind farm, including all contamination, buildings, structures and related improvements are removed from the site.
 3. Construction and maintenance of all erosion and sedimentation control infrastructure. After construction, the surety covering maintenance of such facilities shall remain in effect until the wind farm, including all contamination, buildings, structures and related improvements are removed from the site.
 4. Removal of all WECS, transformer, electric substations, and all related improvements on site. Such surety shall remain in force until the wind farm, including all contamination, buildings, structures and related improvements are removed from the site.
 5. To cover all rezoning and site plan approval conditions and requirements imposed by the Town Board and Planning Board.
- F. Site Plan Application for a Wind Farm shall:
1. Be accompanied by a Noise Analysis. The noise analysis shall be prepared by a competent acoustical consultant documenting the noise levels associated with the proposed Wind Farm. The study shall document noise levels at property lines and at the nearest residence not on the Site (if access to the nearest residence is not available, the Planning Board may modify this requirement). The noise analysis shall include low frequency noise.
 2. Be accompanied by a study on potential shadow flicker caused by the blades interrupting sunlight. The study shall identify locations where shadow flicker may be caused by the WECS's on the wind farm and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or mitigate the problems.

3. Specify the lighting plan for the WECS. Towers supporting WECS shall not be lighted unless required by the Federal Aviation Administration (FAA). In such case where the FAA does require such lighting, the applicant shall propose the use of strobe lights during the day time switching to lower intensity red lighting at night, employing light fixtures that direct the light away from the ground.
4. Be accompanied by a painting plan for the WECS based upon a study establishing a color scheme minimizing the visual impact of the WECS.
5. Advertising: No lettering or logo of any kind shall be allowed on the blades or other portion of the WECS that can be seen by a person of normal vision in normal daylight from more than 50 feet away.
6. Rotor safety: Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the blade below the design limits of the rotor. This shall be documented by a statement stamped by a professional engineer possessing a valid license from the New York State Department of Education submitted with the application for site plan review.
7. Shadow Flicker: All WECS shall be located so that shadow flicker caused by the blades interrupting sunlight will not strike off site residences or property more than 5 minutes per day on average in a year. Shadow flicker of longer duration may be allowed if the owners of such property where shadow flicker occurs sign an agreement with the owner of such WECS that they accept the proposed duration of such shadow flicker, and a description of the duration of such shadow flicker on their property calculated and bearing the stamp of a professional engineer licensed by the New York State Department of Education is attached to such agreement. A condition of the granting of a building permit and where applicable a special use permit for a wind farm shall be the recording of all such fully executed agreements in the office of the County Clerk.
8. Guy Wires and Anchors: All guy wires or cables shall be marked with high-visibility orange or yellow sleeves from the ground to a point ten (10) feet above the ground. Setbacks for anchor points, guy wires, or cables shall be 50 feet from any property line.
9. Broadcast Interference
 - a. No individual WECS shall be installed in any location along the major axis of an existing microwave communication link where its operation is likely to produce electromagnetic interference in the link's operation.
 - b. No individual tower facility shall be installed in any location where its proximity with existing fixed broadcast transmission or reception antenna (including residential reception antenna) for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception.

- c. The recipient of the Special Use Permit must correct any unforeseen interference to the satisfaction of the Code Enforcement Officer within sixty (60) days of any complaint.

G. Insurance Requirements for Wind Farms:

1. The owners and operators of a proposed and/or operating wind farm in the Town of Gorham shall submit proof of insurance that they propose as adequate for such wind farm.
2. The Town Board in consultation with the Town's insurer, shall determine the level of insurance necessary to cover damage or injury that might result from the failure of a tower or towers, including stray voltage discharge from said tower or towers, or any other part or parts of the generation and transmission facility.
3. A condition of the issuance of a special use permit for a wind farm shall be the provision of insurance by the owner, contractors, and operators of insurance in the amount and form prescribed as adequate by the Town.
4. Such insurance of the owner and operator shall be maintained in effect for as long as the Wind Farm is in operation.
5. Such insurance of any contractor involved in the construction shall be in force for the duration of the construction.
6. Any lapse in such requisite insurance shall void the special use permit.

H. In approving a site plan for a wind farm, the Planning Board shall find:

1. That existing roads were used to the maximum extent practical, minimizing the need for construction of new roads for construction.
2. That construction and access roads built as part of the construction, operation, and maintenance of the wind farm have been located in such a manner as to preserve future use of the property for agriculture.
3. The number of new electric substations has been minimized.
4. That the number of new transmission lines and connections to the power grid have been minimized to the extent practical.
5. That the wind farm is not located in or proximate to a significant bird migration path such that it poses a hazard to migrating birds.
6. That the Town has sufficient authority to enforce compliance with and the owner(s) and operator(s) of the WECS has sufficient means and resources to meet all

conditions imposed by the Town Board as part of the rezoning to Wind Farm District. The owner(s) and operator(s) of the WECS shall be responsible for meeting all such conditions and shall not pass on such responsibility to any other party without the express written consent of the Town.

7. That the Town has sufficient authority to enforce compliance with and the owner and operator of the WECS has sufficient means and resources to meet all conditions imposed by the Planning Board as part of the site plan approval for the Wind Farm WECS. The owner and operator of the WECS shall be responsible for meeting all such conditions and shall not pass on such responsibility to any other party without the express written consent of the Town.
8. That grounding of the WECS and other structures shall meet all manufacturer's requirements and include sufficient provisions to address and monitor stray voltage discharge and lightning protection.
9. That the color of the WECS and support structure have been specified to minimize visual impact to the maximum extent possible.
10. That the height of WECS(s) is/are the minimum required for practical use up to the maximum of 300 feet. The applicant shall provide a minimum of one year's worth of on site wind data collected from a temporary tower located on the site of the proposed WECS.

I. Requirements and Standards

1. Permitted Principal Uses:
 - a. Wind Farm
 - b. Agriculture
 - c. Any use existing prior to the rezoning to Wind Farm, provided that the use is not discontinued for any reason for a period of more than one year. The Town Board may, at the time of rezoning to WFD establish a condition for the rezoning the removal of any existing use on the subject property that is found to be incompatible with the proposed Wind Farm.
2. Multiple principal uses are allowed on a single parcel, subject to the requirements of 1 above.
3. Frontage. The property must contain at least 200 feet of road frontage.
4. Services and Utilities
 - a. All utilities (sewer, water, electric, natural gas, cable television, etc.) shall be provided to the dwellings below grade (underground).
5. Landscaping and Buffer Areas: There shall be provided proper landscaping for screening from adjacent properties and public streets and roads.

6. Setbacks
 - a. WECS located within the Wind Farm District must be a minimum of 2,000 feet from any property line or building not located in the Wind Farm District.
 - b. Buildings and WECS within the Wind Farm District shall be separated in compliance with the requirements of the New York State Uniform Fire Prevention and Building Code and as dictated by the requirements for energy production.
7. The maximum height above grade for WECS shall be 300 feet.
8. Density: Individual WECS shall have a density within the WFD of no more than 10 per 100 acres.

XI. Replace existing Section 31.65 (Reserved) of the Town Code with the following:

31.65 Requirements for all WECS: All WECS shall comply with the following:

- A. All Residential WECS shall be subject to Site Plan review and approval by the Planning Board.
- B. All Commercial WECS shall require a special use permit and Site Plan approval by the Planning Board.
- C. Number of WECS allowed per lot: In all districts except the Wind Farm District, no more than 2 WECS shall be allowed on a parcel.
- D. Except in the Wind Farm District, no WECS or pair of WECS shall be constructed on a parcel that does not contain a residential, agricultural, or commercial building, that has a peak load demand roughly equivalent to the generation capacity of the WECS to be constructed on the property. Owners of multiple adjoining parcels may locate WECS that serve buildings on one parcel while the WECS is located on a different adjoining parcel. In such cases, the total number of WECS on the parcels with the buildings to be served and on which the WECS are located shall be no more than 2.
- E. Rotor safety: Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the blade below the design limits of the rotor.
- F. Electromagnetic interference: The WECS shall be operated such that no disruptive electromagnetic interference is caused to surrounding properties. It shall be the responsibility of the WECS owner to remedy any documented electromagnetic interference at the expense of the WECS owner.
- G. Setback: All WECS shall be setback from the property line, overhead transmission lines and dwellings a distance at least equal to one and one half times the maximum height of the WECS above finished grade. Additional requirements for WECS within the Wind Farm District shall also be met as established in Section 31.33 herein.

H. Shadow Flicker: WECS shall be located so that shadow flicker caused by the blades interrupting sunlight will not strike off site residences or property to the maximum extent practical. Additional requirements for WECS within the Wind Farm District shall apply as designated in Section 31.33 herein. Where the Planning Board identifies that shadow flicker of sufficient duration on adjacent property may pose a significant impact, the Planning Board may require additional analysis of the duration of such flicker be conducted by a Professional Engineer, or the presentation of a signed agreement by the owners of such potentially impacted property that they are aware of and accept the proposed shadow flicker.

I. Maximum WECS height above grade:

1. Residential WECS shall be no more than 100 ft.
2. Commercial WECS shall be no more than 100 ft., except in the AG district where the maximum height shall be 200 ft.
3. WECS in the WFD shall be no more than 300 feet.

J. Minimum distance of blades above finished grade:

1. Blades on a WECS located as part of a wind farm shall be a minimum of 35 ft above grade.
2. Blades on a Residential or Commercial WECS shall be a minimum of 15 ft. above grade.

K. Blades on a Residential or Commercial WECS that is roof mounted shall be a minimum of 10 feet in every direction from the roof surface on which it is mounted.

L. Any construction involving agricultural land should be done according to the NYS Department of Agriculture and Market "Guidelines for Agricultural Mitigation for Wind Power Projects."

M. All WECS shall be grounded per manufacturer's specifications.

XII. Add a new section 31.85I of the Town Code as follows:

31.85I Commercial WECS

The Planning Board may issue a special use permit for a Commercial WECS, as defined herein, outside of the LDO in the AG, HC, and I districts and in the portion of the AG district in the LDO, as a principal use even if another use such as agriculture or industry exists on the subject property provided that the following standards and requirements are maintained:

A. Lot size: Lots shall be of a sufficient size to ensure:

1. WECS are setback a sufficient distance from all property lines, overhead transmission lines, and dwellings and other buildings not on the subject property a distance equal to one and one half times the maximum height of the WECS.
 2. The resulting sound pressure level generated by the WECS is equal to or less than 45 dbA at the property line on which the WECS is located.
- B. Transmission facilities: All electrical connections to the local utility company transmission lines and to the building or buildings to be powered by the WECS shall be constructed underground.
- C. Determination of height: The height of WECS shall be the minimum required for practical commercial use up to the maximum allowed for WECS in the zoning district it is located in. The applicant shall provide a minimum of one year's worth of on site wind data collected from a temporary tower located on the site of the proposed WECS.
- D. An erosion control plan shall be submitted with the special use permit application.
- E. A preliminary site plan shall be submitted with the special use permit application. The location of all proposed WECS that are part of the Wind Farm Special Use Permit Application shall be shown, as shall all existing and proposed buildings and structures, including the interconnection with the public utility infrastructure and any electrical substations that are part of the project. All WECS shall be designed so that the towers are not climbable from grade on the outside, and a landscaping plan shall be included showing plantings to screen utility buildings, electric substations, and security fencing where it is found to be desirable by the Planning Board.
- F. A visual assessment of the proposed wind farm shall be submitted with the special use permit application. The assessment shall include a regional view shed analysis so that the Planning Board may designate locations from which photo simulations shall be prepared by the applicant. The selection of such locations shall be based upon the scenic views and vistas documented in the Comprehensive Plan of the Town of Gorham and the determination of other existing public viewpoints and adjacent land uses which may be impacted by the proposed wind farm.
- G. Noise Analysis: The Application shall be accompanied by a Noise Analysis. The noise analysis shall be prepared, stamped and signed by a Professional Engineer with a valid license from the New York State Department of Education, with a specialty in acoustics. Said study shall document the noise levels associated with the proposed Wind Farm, including a map of sound pressure levels in dbA, and shall document noise levels at property lines and at the nearest residence not on the Site (if access to the nearest residence is not available, the Planning Board may modify this requirement). The noise analysis shall include a separate analysis and map of low frequency noise levels in db.
- H. Shadow Flicker: The applicant shall conduct a study on potential shadow flicker caused by the blades interrupting sunlight. The study shall identify locations where shadow flicker may

be caused by the WECS(s) on the wind farm and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or mitigate the problems.

- I. Tower lighting: Towers supporting WECS shall not be lighted unless required by the Federal Aviation Administration (FAA). In such case where the FAA does require such lighting, the applicant shall propose the use of strobe lights during the day time switching to lower intensity red lighting at night.
- J. In approving a special use permit for a Commercial WECS, the Planning Board shall find:
 - 1. That generation capacity of the proposed WECS is roughly equivalent to the peak demand load for the buildings and uses located on the premises.
 - 2. That the color of the WECS and support structure have been specified to minimize visual impact to the maximum extent possible.
 - 3. That all practical measures have been taken to minimize the impact on adjacent uses and residences in regard to shadow flicker, noise, and stray voltage discharge.
 - 4. That the WECS has been sited so that it does not pose a hazard to migrating birds.