

Guidelines for Review of Local Laws Affecting Small Wind Energy Production Facilities

As energy costs increase and financial assistance becomes more available, an increasing number of farm operators are considering the installation of small wind energy production facilities to help offset on-farm production costs. In prior AML §305-a reviews, the Department has considered wind turbines used to supply a portion of a farm's electrical needs (not exceeding 110% of the farm's anticipated demand) to be on-farm equipment. The turbine must be part of a "farm operation" which otherwise meets the AML §301, subd. 11 definition of that term.

Regulations Affecting Small Wind Energy Production

Some local laws currently require building permits, site plan review and/or special use permits for small wind energy production facilities. If a town considers a small wind turbine to be a structure or building under its zoning regulations, the Department also considers the wind turbine to be an on-farm building. In general, the construction of on-farm buildings and the use of land for agricultural purposes within a county adopted, State certified agricultural district should not be subject to site plan review, special use permits or non-conforming use requirements. The purpose of an agricultural district is to encourage the development and improvement of agricultural land and the use of agricultural land for the production of food and other agricultural products as recognized by the New York State Constitution, Article XIV, Section 4. Therefore, generally, agricultural uses and the construction of on-farm buildings as part of a farm operation located within an agricultural district should be allowed uses.

Some current and proposed local laws have included provisions that require a farm operator to complete a Long Environmental Assessment Form (EAF) and visual impact assessments. Such requirements can be expensive and can cause delays in the installation of the wind energy equipment. Other provisions of local laws that could be considered unreasonably restrictive include height restrictions and excessive setbacks from buildings and property lines.

Agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with "generally accepted principles of farming" are designated as Type II actions which do not require preparation of an Environmental Assessment Form (EAF) and are not subject to compliance with State Environmental Quality Review (SEQR). 6 NYCRR §617.5(a), (c)(3). [See *In the Matter of Pure Air and Water Inc. of Chemung County v. Davidsen*, 246 A.D.2d 786, 668 N.Y.S.2d 248 (3rd Dept. 1998), for application of the exemption to the manure management activities of a hog farm.] The SEQR regulations require localities to recognize the Type II actions contained in the statewide list.

Many local governments share the Department's view that farm operations should not have to undergo site plan review and exempt farms from that requirement. However, the Department recognizes the desire of some local governments to have an opportunity to review agricultural development and projects within their borders, as well as the need of farmers for an efficient, economical, and predictable process. In view of both interests, the Department developed a model streamlined site plan review process which attempts to respond to the farmers' concerns while ensuring the ability to have local issues examined. Please see the Department's *Guidelines for Review of Local Zoning and Planning Laws* (pages 4-7) for discussion of site plan issues.

Provisions that would Generally not be Viewed as Unreasonably Restrictive

The following sets forth a suggested process for review of small wind energy production facilities:

1. Sketch of the parcel on a location map (e.g., tax map) showing boundaries and dimensions of the parcel of land involved and identifying contiguous properties and any known easements or rights-of-way and roadways.

Show the existing features of the site including land and water areas, water or sewer systems, utility lines, and the approximate location of all existing structures on or immediately adjacent to the site.

2. Show the proposed location and arrangement of small wind energy production facilities on the site.
3. Include copies of plans or drawings prepared by the manufacturer.
4. Provide a description of the project and a narrative of the intended use of the proposed wind energy production facility, including any anticipated changes in the existing topography and natural features of the parcel to accommodate the changes. Include the name and address of the applicant and any professional advisors. If the applicant is not the owner of the property, provide authorization of the owner.
5. List safety measures to prevent unauthorized climbing on the tower.
6. Prescribe requirements for automatic braking, governing, or feathering system to prevent uncontrolled rotation of the rotor blades and turbine components.

7. Include a requirement that the wind tower be setback 1.5 times the combined height of the tower and blades from existing structures and property not owned by the farm operation.

* The suggested provisions related to the safe operation of wind turbines is not intended to be an exhaustive list of the measures which may be desirable or necessary. Municipalities should consult with appropriate professionals to determine whether any additional or different measures should be required for small wind energy production facilities.