

**TOWN OF COHOCTON TOWN BOARD
COHOCTON, NEW YORK**

**DETERMINATION OF NO SIGNIFICANT ENVIRONMENTAL IMPACT RELATING TO
THE ADOPTION OF LOCAL LAW NO. 2 OF 2006**

November 21, 2006

Motion by
Second by

WHEREAS, the Town of Cohocton Town Board intends to enact Local Law No. 2 of 2006, to amend the Town of Cohocton Zoning Law to allow, by special use permit, "Residential and Commercial Windmills" and "Industrial Windmills" and "Windmill Facilities" in designated Zoning Districts; and

WHEREAS, upon review of the action, the Town Board has determined that the adoption of Local Law No. 2 of 2006 is subject to the State Environmental Quality Review Act (ECL, Article 8) and its implementing regulations (6 NYCRR Part 617) (collectively, "SEQRA"); and

WHEREAS, the Town Board has compared the adoption of Local Law No. 2 of 2006 to the thresholds for classifying this action as set forth in 6 NYCRR §§ 617.4, and determined that the adoption of Local Law No. 2 of 2006 constitutes a Type 1 action pursuant to SEQRA; and

WHEREAS, the Town Board is the SEQRA Lead Agency, as there are no other SEQRA involved agencies; and

WHEREAS, the Town Board has completed Parts 1, 2 and 3 of a full Environmental Assessment Form ("EAF"); and

WHEREAS, SEQRA required the Town Board to identify impacts of the adoption of Local Law No. 2 of 2006 listed under Part 2 of the EAF, and to quantify those impacts as either small to moderate or potentially large; and

WHEREAS, the Town Board undertook review of Parts 2 and 3 of the EAF, and has consulted with its engineers, the Town Planning Board, as well as the Steuben County Department of Planning and Economic Development, and has determined that the adoption of Local Law No. 2 of 2006 will not have any potentially large or significant impacts; and

WHEREAS, the Town Board carefully considered the environmental impacts associated with this Type 1 action, including reviewing and evaluating the EAF and the criteria for determining significance contained in 6 NYCRR § 617.7(c) and has set forth its determination of significance in a written reasoned elaboration, a copy of which is attached hereto and incorporated by reference herein; and

WHEREAS, for the reasons set forth in the written findings statement annexed hereto, the Town Board has determined that the adoption of Local Law No. 2 of 2006 will have no significant adverse environmental impacts, and accordingly has decided to issue a Negative Declaration of Environmental Significance under SEQRA;

NOW, THEREFORE BE IT RESOLVED that:

1. The Town Board certifies that the requirements of 6 NYCRR Part 617 have been met.
2. As the SEQRA Lead Agency, the Town Board certifies that, consistent with social, economic, and other essential considerations from among the reasonable alternatives thereto, the action to be carried out is one which avoids or minimizes adverse environmental impacts to the maximum extent practicable.
3. The Town Board has weighed and balanced such relevant environmental impacts with social, economic and other essential considerations.
4. The facts and conclusions set forth in the Findings Statement annexed hereto are derived from the reports, submittals and other relevant information, including the personal knowledge and familiarity of the Town Board members with the proposed Local Law.
5. The Town Board hereby declares and adopts the Findings Statement annexed hereto.
6. Based upon the Findings Statement, the Town Board hereby declares that the adoption of Local Law No. 2 of 2006 will have no significant adverse environmental impact, and hereby issues a Negative Declaration under SEQRA.

BE IT FURTHER RESOLVED, that the Town Board directs the Town Clerk to:

1. Place on file the Negative Declaration (copy attached) in the Town Clerk's Office;
2. To make the Negative Declaration and a copy of this resolution available for inspection and copying by the public; and
3. To cause notice of the Negative Declaration and adoption of Local Law No. 2 of 2006 to be published in the Environmental Notice Bulletin;

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately.

Cohocton Town Board Member Yes No

Resolution Adopted: November 21, 2006

State Environmental Quality Review
NEGATIVE DECLARATION
Notice of Determination of Non-Significance

Date: November 21, 2006

This notice is issued pursuant to the State Environmental Quality Review Act ("SEQRA"), Article 8 of the Environmental Conservation Law and its implementing regulations at Part 617 of the New York Code of Rules and Regulations.

The Town Board of the Town of Cohocton ("Town Board"), as Lead Agency, has determined that the proposed action described below will not have a significant adverse effect on the environment and a Draft Environmental Impact Statement will not be prepared.

Name of Action:

Town of Cohocton Local Law No. 2 of 2006; a local law to amend the Town of Cohocton Zoning Law to provide for the control of windmills and windmill facilities in the Town.

Description of Action:

The Town Board of the Town of Cohocton proposes to enact Local Law No. 2 of 2006 to amend the Zoning Law of the Town of Cohocton and to supersede all prior inconsistent local laws. Local Law No. 2 of 2006 will regulate the placement and operation of windmills and windmill facilities throughout the Town of Cohocton through the use of review and performance criteria to ensure appropriate siting and avoidance and mitigation of potential impacts. Local Law No. 2 of 2006 will also regulate and restrict the height, color, type and other features of windmills and windmill facilities now or hereafter sited in the Town. "Residential and/or Commercial Windmills" and "Windmill Facilities" will be allowed in the AG-R, LDR, GB, I-C, and I Town Zoning Districts, and "Industrial Windmills" and "Windmill Facilities" will be allowed in the AG-R Town Zoning District. All windmills and windmill facilities will be subject to special use permit and site plan review as set forth under Local Law No. 2 of 2006, and sections 720 and 730 of the Town of Cohocton Zoning Law.

The proposed zoning amendments prescribe rigorous standards and require substantive review of windmill projects. In addition to special use permit and site plan review, Local Law No. 2 of 2006 requires compliance with the State Environmental Quality Review Act, including, at a minimum, the submission of a full Environmental Assessment Form for Residential and/or Commercial Windmill projects, and an Environmental Impact Statement for Industrial Windmill projects. A Visual Impact Analysis, Bird Migration Study, and Windmill-Only Noise Analysis must be prepared for any windmill project under Local Law No. 2 of 2006.

Local Law No. 2 of 2006 limits the placement of windmills and windmill facilities based upon predetermined setbacks designed to avoid potential impacts to public health and safety due to ice or blade throw or the collapse of a turbine, to limit windmill-only noise at non-project property

lines and pre-existing residences, and to mitigate impacts of lighting and broadcast interference. Local Law No. 2 of 2006 specifies height limits of one-hundred (100) feet for Residential and/or Commercial Windmills and five-hundred (500) feet for Industrial Windmills. The law establishes appropriate limits on kilowatt capacity, color choice, minimum blade to ground distance, windmill design type and allowable signage. It further mandates solid tube tower structure, underground power connection cables, fencing, tip speed control devices, and, for Industrial Windmills, ice buildup sensors.

Construction and operational components of windmills and windmill facilities are similarly governed by Local Law No. 2 of 2006, requiring routine inspection reports, compliance with applicable industry standards, including the Institute of Electrical and Electronic Engineers, and American National Standards Institute, lighting and ground strike devices, and certification of adequate wind load construction.

Local Law No. 2 of 2006 also governs operational characteristics of windmills and windmill facilities, including abandonment and removal, site reclamation and landscaping, buildings and ground maintenance, ownership changes, modifications to windmills, and operational noise level limits. Local Law No. 2 of 2006 sets forth required sureties, including performance bonds for removal, the maintenance of appropriate liability insurance, performance bonds concerning environmental contamination by oil, and performance bonds for road maintenance and repair with respect to Industrial Windmills.

While poorly designed or implemented windmill projects may potentially have adverse environmental impacts, enactment of Local Law No. 2 of 2006 is intended to require a level of review that would preclude such projects and instead permit only those projects for which it can be adequately demonstrated that adverse impacts will be avoided. The Town Board is aware of current windmill project applications pending in the Town. The applicants for those projects initially appeared before the Town of Cohocton Planning Board in accordance with Local Law No. 1 of 2006. Those projects will be subject to the requirements of Local Law No. 2 of 2006, following adoption of the same.

In response to public comments that the Town Board consider the potential significant adverse environmental impacts of the aforementioned projects as part of its immediate SEQRA review for the enactment of Local Law No. 2 of 2006, the Town Board finds that such a review would be inappropriate and beyond the scope of this particular legislative action. There is no dispute that this amendment to the Zoning Law has independent utility from pending windmill projects and will remain in force whether or not the projects are ever approved or constructed. As such, the Town Board finds that the specifics of pending projects are not relevant to the enactment of the Local Law.

The Town Board finds, further, that the application of its SEQRA review solely to the enactment of Local Law No. 2 of 2006, without reviewing a particular project or parcel, is not impermissible "segmentation" as that term is used in the SEQRA regulations. Enactment of a law of general applicability such as Local Law No. 2 of 2006 is clearly distinguished from a legislative action to rezone a particular parcel of property. This is not a rezoning of a particular property. Nevertheless, because public comments have raised the issue of segmentation, the

Town Board finds that circumstances warrant and legally justify affirmatively segmenting the enactment of the local law from any and all subsequent action, including actions which may be undertaken in accordance with Local Law No. 2 of 2006.

Reasons supporting segmenting the enactment of Local Law No. 2 of 2006 from future decisions or actions applying the local law include:

- (1) The enactment of Local Law No. 2 of 2006 is a law of general applicability throughout the Town. As such, it can be potentially applied to any of several separate parcel(s) or project(s) in the Town. An attempt to identify and assess potential significant adverse environmental impacts as applied to a particular project or hypothetical project is premature, impractical and would provide no meaningful guidance to the Town Board or other agencies in making SEQRA determinations or subsequent decisions;
- (2) Enactment of the law is in no way connected or contingent on future development plans or approvals. Likewise, the Town Board is not obligated or authorized to approve any action, nor is enactment of Local Law No. 2 of 2006 "practically determinative" of a subsequent action;
- (3) Enacting Local Law No. 2 of 2006 will require windmill and windmill facility project applicants to meet review, design and performance criteria otherwise unavailable to the Town Planning Board during review of windmill and windmill facility site plan and special use permit applications;
- (4) Future actions to approve the siting and operation of windmills and windmill facilities in the Town of Cohocton will require a separate and independent action by the Town Planning Board, through review and approval of site plan and special use permit applications, as well as agencies which will be involved during the Planning Board's review, including: New York State Department of Environmental Conservation; New York State Department of Transportation; and others. All of these agencies may be subject to and required to comply with SEQRA before any permit for development will be issued. As a result, segmenting the Town Board's general legislative action from the subjective application of Local Law No. 2 of 2006 during development review will be no less protective of the environment nor will it hinder or affect that review. Based on the foregoing, segmenting this SEQRA review is warranted and justified in accordance with the SEQRA regulations at 6 NYCRR 617.3(g)(l).

The Town Board's SEQRA review and significance determination memorialized herein are limited solely to the Town Board's enactment of Local Law No. 2 of 2006. This law is of general applicability throughout the Town and the SEQRA review and determination of significance do not apply to any particular project that may be undertaken in compliance with the Town of Cohocton Zoning Law, once amended. The separate site plan and special use permit review and approval action required prior to the issuance of any building permit for windmills and windmill-related improvements will be subject to an independent review under SEQRA, as required by the amended zoning law. Therefore, this limited legislative action is not expected,

in and of itself, to have any direct or indirect significant adverse impacts on any environmental resource.

Lastly, Local Law No. 2 of 2006 will clarify and supersede certain requirements set forth under Town of Cohocton Local Law No. 1 of 2006. Prior to enactment of Local Law No. 1 of 2006, such standards and review requirements were absent from the Town of Cohocton Zoning Law.

Location:

Local Law No. 2 of 2006 will amend the Town of Cohocton Zoning Law. Local Law No. 2 of 2006 is a law of general applicability, but does not permit, approve or authorize the construction of windmills or windmill facilities anywhere in the Town. Local Law No. 2 of 2006 subjects the siting and operation of windmills and windmill facilities, wherever they may be proposed within the Town, to site plan and special use permit review and approval by the Town of Cohocton Planning Board ("Planning Board").

Reasons Supporting this Determination:

The "action" triggering this SEQRA review is the Town Board's adoption of a local law (Local Law No. 2 of 2006) that may affect the "environment," as that term is defined in 6 NYCRR 617.2(b). The Town Board has identified the enactment of Local Law No. 2 of 2006 as a Type 1 action under SEQRA, based on its review of the thresholds set forth in 6 NYCRR 617.4. The Town Board is the agency directly undertaking this legislative action. There are no other "involved" agencies, as defined in 6 NYCRR 617.2(s), that have jurisdiction by law to fund, approve or directly undertake this action. Accordingly, the Town Board is the lead agency and only involved agency for purposes of this SEQRA review of a Type 1 action.

Pursuant to 6 NYCRR 617.6(a)(3), the Town Board completed an Environmental Assessment Form ("EAF") to assist its determination of significance. After considering the criteria for determining significance set forth in 6 NYCRR 617.7(c), the Town Board has determined, for the reasons discussed below, that enactment of Local Law No. 2 of 2006 will not have a significant adverse impact on the environment and the issuance of a negative declaration under SEQRA is warranted.

a. Water Resources

Enactment of Local Law No. 2 of 2006, in and of itself, is not expected to have any impact on water resources within the Town. However, windmill projects that potentially could be permitted subsequent to enactment of Local Law No. 2 of 2006 may impact water resources, including protected and non-protected water bodies and ground water. Appropriate project siting and the application of best management practices for construction activities can mitigate any impacts.

Impact avoidance and mitigation will be achieved through the SEQRA review process required under Local Law No. 2 of 2006. The site plan and special use permit review procedures set forth at sections 720 and 730 of the Zoning Law also expressly enable the Planning Board to: review

the adequacy of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion; and consult with representatives of Federal and State agencies, including, but not limited to the Soil Conservation Service and NYS Department of Environmental Conservation, in order to ensure that storm water will not be harmfully channeled onto adjacent properties, and that there will be no soil erosion onto adjacent properties. Furthermore, project-specific activities that occur in state- or federally-regulated water bodies or wetlands may require permitting from the New York State Department of Environmental Conservation and/or the U.S. Army Corps of Engineers, providing for an additional level of review and assurance that impacts will be appropriately mitigated.

c. Air Quality

Enactment of Local Law No. 2 of 2006, in and of itself, is not expected to have any impact on air resources within the Town. However, windmill projects that potentially could be permitted subsequent to enactment of Local Law No. 2 of 2006 may temporarily impact air quality during the construction phase. If construction-related air quality impacts are identified as significant during the SEQRA review process required for windmill projects under Local Law No. 2 of 2006, mitigation will be required, possibly including no-idling measures and other best management practices designed to curb emissions.

Notwithstanding potential minor impacts to air quality associated with windmill project construction, windmill projects are expected to have long-term beneficial impacts on regional and local air quality. It is well documented that electric generation by coal burning and other fossil fuel-based facilities contributes to serious environmental and health problems from CO₂, SO₂, NO_x, particulate matter, and mercury emissions. Windmill projects would displace electric generation from other generating plants that would have emitted significant levels of these pollutants.

d. Plant and Animal Resources

Enactment of Local Law No. 2 of 2006, in and of itself, is not expected to have any impact on plant and animal resources within the Town. However, windmill projects that potentially could be permitted subsequent to enactment of Local Law No. 2 of 2006 may impact plant and animal resources.

Impact avoidance and mitigation will be achieved through the SEQRA review process required under Local Law No. 2 of 2006. Although bird and bat mortality associated with windmill projects is not well documented or understood, the design and operational characteristics of windmills create a nexus between bird and bat impacts and large scale windmill projects. Accordingly, Local Law No. 2 of 2006 also requires all windmill project applicants to submit a bird migration study for the Planning Board's consideration and review during the site plan and special use permit review process. Project-specific potential impacts to threatened or endangered species, or to critical or significant wildlife habitats, will be identified and mitigation of impacts would be required under Local Law No. 2 of 2006.

e. Agricultural Land Resources

Enactment of Local Law No. 2 of 2006, in and of itself, is not expected to have any impact on agricultural land resources within the Town. However, windmill projects that potentially could be permitted subsequent to enactment of Local Law No. 2 of 2006 may impact agricultural land resources.

Impact avoidance and mitigation will be achieved through the SEQRA review process required under Local Law No. 2 of 2006. Mitigation may include stockpiling of agricultural soils, relocation of windmill turbine and access road locations, and other best management practices designed to conserve agricultural land resources and soils. To further limit permanent impacts related to the installation and ongoing maintenance of windmills, Local Law No. 2 of 2006 imposes appropriate setback distances necessary to ensure public safety. The imposition of excessive setback distances would cause unintended and unnecessary adverse impact to agricultural soils. The setback and locational requirements imposed by Local Law No. 2 of 2006 are consistent with guidance issued by the NYS Department of Agriculture and Markets, indicating that impacts should be minimized by siting windmills such that the clearing of land and the installation of new access roads are minimized.

Lastly, the installation of windmills on active pastoral agricultural lands is generally considered to be compatible with agricultural land uses and may provide revenue necessary to sustain farming operations. Agriculture is the largest industry in the area, and it has been challenged economically. The lease and royalty cash flow from windmill projects may well make the difference for the survival of a number of local farms. In light of local communities' historic reliance on a strong agricultural economy, windmill projects may represent an important economic and social benefit.

f. Aesthetic and Visual Impacts

Enactment of Local Law No. 2 of 2006, in and of itself, is not expected to have any impact on aesthetic/visual resources within the Town. However, projects that potentially could be permitted subsequent to enactment of Local Law No. 2 of 2006 may impact aesthetic/visual resources.

The Town of Cohocton is characterized predominantly by hills and valleys, with agricultural lands interspersed with rural single-family residences and minor commercial and industrial land uses. The relative size and number of windmill turbines that may be associated with an Industrial Windmill project or multiple projects could cause windmills to be visible within many background or mid-ground views throughout the Town of Cohocton. Accordingly, Local Law No. 2 of 2006 limits the placement of Industrial Windmill turbines, which may be between one-hundred (100) and five-hundred (500) feet hi height, to the Town's Agricultural-Residential (AG-R) Zoning District. Agricultural buildings and equipment are a visible part of the landscape in the AG-R Town Zoning District, and while windmill projects will result in a change to the visual landscape, this change is compatible with pre-existing agricultural uses.

Residential and/or Commercial Windmills are allowed in the AG-R Town Zoning District, as well as the Low Density Residential, General Business, Interchange Commercial and Industrial Zoning Districts. The visual impacts associated with Residential and/or Commercial Windmills are not anticipated to be significant due to height (maximum of one hundred feet) and density (one per lot) limitations imposed under Local Law No. 2 of 2006. Residential and/or Commercial Windmill projects would have visual impacts similar to other allowed uses in these Zoning Districts, including Commercial Antennae and Communication Towers.

Visual impacts have been mitigated under Local Law No. 2 of 2006 by affording the Planning Board discretion concerning the color of windmill turbine structures, and prohibiting the placement of signage or advertising on windmill structures. A visual buffer is afforded neighboring landowners under Local Law No. 2 of 2006 through the minimum setback distance of one-hundred (100) feet plus the height of the windmill from property lines, rights of way, easements and power lines.

Impact avoidance and mitigation will be further achieved through the SEQRA review process required under Local Law No. 2 of 2006. In addition to the SEQRA review required for windmill projects, Local Law No. 2 of 2006 requires applicants to submit a visual impact analysis for the Planning Board's consideration. The Analysis will include: (i) mapping of scenic resources of statewide and local significance; (ii) viewshed mapping to identify areas with potential views of the project; (iii) a description of the character and quality of the affected landscape; (iv) photographic simulations of what the proposed project will look like from a reasonable number of representative viewpoints within the five (5) mile radius study area selected in consultation with the Planning Board; (v) an evaluation of the project's visual impact based on the viewshed mapping and photographic simulations; and (vi) recommended visual mitigation measures. The Planning Board will also review and consider mitigation of visual impacts under sections 720 and 730 of the Town of Cohocton Zoning Law, including orientation of windmills so that there is no unreasonable impairment of access to sunlight, air and view from adjacent properties.

g. Historic and Archaeological Resources

Enactment of Local Law No. 2 of 2006, in and of itself, is not expected to have any impact on historic and archaeological resources within the Town. However, projects that potentially could be permitted subsequent to enactment of Local Law No. 2 of 2006 may impact such resources.

Impact avoidance and mitigation will be achieved through the SEQRA review process required under Local Law No. 2 of 2006. For "Industrial Windmill" projects the required Environmental Impact Statement (EIS) would include, among other information, a detailed assessment and analysis of project-specific impacts to historic and archaeological resources, as well as sites and structures that are listed or may be eligible to be listed on the New York State Register of Historic Places and the National Register of Historic Places. The Visual Impact Assessment required under Local Law No. 2 of 2006 requires an assessment of the character and quality of the affected landscape. This assessment would include identification of historic sites and structures that may be impacted by a project.

h. Open Space and Recreational Resources

Enactment of Local Law No. 2 of 2006, in and of itself, is not expected to have any impact on open space and recreational resources within the Town. However, projects that potentially could be permitted subsequent to enactment of Local Law No. 2 of 2006 may impact such resources.

Impact avoidance and mitigation will be achieved through the SEQRA review process required under Local Law No. 2 of 2006. Furthermore, potential "Industrial Windmill" projects will likely result in the payment of increased real property tax revenues, making funding available for community and school services, potentially including the conservation of open space and provision of community-based recreational resources. Additionally, the revenue stream that may be associated with windmill projects for the benefit of local farmers will enable the continued operation of the farms and therefore the conservation of agricultural / open space private lands.

i. Critical Environmental Areas

Enactment of Local Law No. 2 of 2006, in and of itself, is not expected to have any impact on critical environmental areas within the Town. No critical environmental areas have been designated within the Town of Cohocton. Impact avoidance and mitigation would nonetheless be achieved through the SEQRA review process required under Local Law No. 2 of 2006, if and in the event a windmill project is proposed within the Town that may impact a critical environmental area now or hereafter designated as such within proximity to said project.

j. Transportation

Enactment of Local Law No. 2 of 2006, in and of itself, is not expected to have any impact on transportation resources within the Town. However, projects that potentially could be permitted subsequent to enactment of Local Law No. 2 of 2006 may impact transportation resources.

Due to the technology, method of construction and relative size of "Industrial Windmill" projects, transportation impacts may result from and generally be limited to construction phase improvements. Impacts may include necessary road widening to accommodate increased curve radii, roadway improvements to accommodate heavy truck traffic, and temporary construction traffic delays and level of service impacts. It is not expected that transportation impacts will be associated with operational windmill projects.

Transportation impacts have been mitigated and avoided under Local Law No. 2 of 2006 by requiring that applicants will be responsible for any necessary road repairs once the project is fully built. The extent of road repairs necessary will be determined based upon pre-construction documentation by the project applicant, together with a quarterly report that will be submitted for the Town of Cohocton Town Highway Superintendent's review, identifying material road condition changes.

Impact avoidance and mitigation will be further achieved through the SEQRA review process required under Local Law No. 2 of 2006. Potential mitigation could include phasing construction activity, selecting material delivery routes, imposing construction personnel "car-

pooling" and/or other impact-specific mitigation techniques. Additionally, windmill project applicants would be required to obtain approvals from the Town of Cohocton Highway Department, the Steuben County Highway Department and/or New York State Department of Transportation, depending upon the road improvements, use and impacts that would be associated with project construction.

k. Fuel or Energy Supplies

Enactment of Local Law No. 2 of 2006, in and of itself, is not expected to have any impact on the sources of fuel or energy supplies within the Town. To the contrary, the wind resource that exists in and around the Town of Cohocton has the potential to be harnessed by windmill projects to produce energy that would be transferred onto the utility grid, and which would substantially reduce the total existing fossil fuel based energy use of residential, agricultural, commercial and industrial activity in the Town.

l. Noise Impacts

Enactment of Local Law No. 2 of 2006, in and of itself, is not expected to have any noise impacts within the Town. However, windmill projects that potentially could be permitted subsequent to enactment of Local Law No. 2 of 2006 may have noise impacts.

Sound levels in the Town of Cohocton are characterized predominantly by the Town's rural agricultural setting. Based upon a sound analysis performed in connection with a windmill project currently pending before the Town of Cohocton Planning Board under Local Law No. 1 of 2006, the ambient average sound pressure level (L_{eq}) at residences currently ranges from 20 dB(A) to above 60 dB(A). During the Town Board's and Town Planning Board's review and consideration of Local Law No. 1 of 2006, ambient sound pressure levels were measured at property lines in the AG-R Zoning District in excess of 50 dB(A). Sound levels from agricultural activity can be much higher, ranging from 50 to 96 dB(A) at 50 feet from the source of the sound. A noise level of 40 dB(A) is considered by the U.S. Department of Housing and Urban Development (HUD) to be faint, whereas noise levels above 60 dB(A) are considered loud, very loud (80 - 105 dB(A)) and deafening (105 - 140 dB(A)). The proposed levels of windmill-only noise at non-project property lines and residences would be considered in the HUD metric to be moderate (40 - 60 dB(A)).

Under Local Law No. 1 of 2006 a windmill-only noise level limit of 50 dB(A) was imposed at non-project property lines to accommodate windmill projects while avoiding a significant increase above rural nighttime ambient noise levels. U.S. Environmental Protection Agency noise guidance suggests acceptable rural nighttime noise levels of 45 dB(A). Based upon the NYSDEC Program Policy on Assessing and Mitigating Noise Impacts, dated October 6, 2000, increases ranging from 0-3 dB(A) should have no appreciable effect on receptors, while increases from 3-6 dB(A) may have potential for adverse noise impacts at receptor locations.

Subsequent to the enactment of Local Law No. 1 of 2006, the Town engaged the services of an environmental engineering firm, Bagdon Environmental, to assist the Town Planning Board with the administration of the law. Bagdon Environmental concluded in conjunction with the Town

Planning Board that although performance criteria were established under Local Law No. 1 of 2006 relating to windmill noise, Local Law No. 1 of 2006 did not prescribe a method to measure or enforce the 50 dB(A) performance limit. Local Law No. 1 of 2006 also did not prescribe any standards concerning noise level limits at residential receptors. The NYSDEC Program Policy identifies the measurement of noise at property lines as representing a conservative (as opposed to sensitive) receptor location, meaning that a given sound level measured at a property line will typically be lower when measured at occupied residences. Specifying a lower noise threshold applicable to residences ensures that this greater level of protection for sensitive receptors will be achieved. Accordingly, Local Law No. 2 of 2006 was drafted, in part, to provide greater protection to adjoining property owners concerning noise associated with windmill projects.

Noise impacts are avoided and mitigated under Local Law No. 2 of 2006 by requiring pre-construction analysis of noise levels at non-project property lines and existing residences. Windmills will be sited so that windmill-only noise at these sites should not exceed limits considered acceptable by the Town: 50 dB(A) at non-project property lines; and 45 dB(A) at non-project residences. Local Law No. 2 also ensures that windmill noise will not include a pulsing or rhythmic component, by limiting the type of allowable windmills to upwind design models only. Noise impacts arising from pure tone components are similarly avoided under Local Law No. 2 of 2006 by decreasing allowable noise levels by 5 dB(A) if pure tones are present. Bandwidth criteria indicating pure tone components are specified.

The 50 dB(A) noise level limit will be enforceable by the Town using a specified procedure for measuring the ambient noise level at non-project property lines. If the ambient noise level exceeds 50 dB(A), the project sponsor will be required to temporarily shut down windmills contributing to the noise level at the point of measurement. Windmill-only noise would then be determined by comparing ambient noise levels when the windmills are operational and non-operational. This procedure was determined to be the only practical method for separating windmill noise from other ambient noise.

In response to comments received, imposing performance-related noise level limits at residences was deemed unnecessary given the noise impact avoidance achieved by prescribing a siting and performance noise level limit of 50 dB(A) at non-project property lines. Requiring performance criteria only at non-project property lines will protect existing residences as long as pre-construction modeling is done correctly. However, under the Town's setback requirements in the Agricultural-Residential Zoning District, improvements may currently be constructed as close as twenty-five (25) feet from the rear and side property lines, and fifty (50) feet from the front property line of each parcel. Accordingly, residences built after windmill project construction within close proximity to a property line may experience noise levels in excess of 45 dB(A), and the application of performance standards in such instances could impose undue and presently immeasurable hardship on operating windmill projects.

Furthermore, it was deemed unnecessary to repeat the compliance testing at residences, since the modeling analysis required by Local Law No. 2 is intended to accurately characterize the difference between noise levels at property lines and residences. Additionally, there should be a greater difference between ambient and windmill-only noise levels at the property line, so test accuracy will be enhanced.

In response to other comments received on Local Law No. 2 of 2006, suggesting a total noise level limit (windmill noise and ambient noise) at non-windmill project property lines, such control would be unworkable due to the potential for high ambient sound levels throughout the Town. For example, noise arising from traffic on NYS Route 390 and existing agricultural operations may often exceed 50 dB(A) at property lines. Prohibiting windmill operation if the total ambient noise level exceeded a predetermined threshold at property lines may not cause a perceptible reduction in the ambient noise level.

Accordingly, Local Law No. 2 of 2006 achieves a fair balance between limiting noise contributed from windmill operation and acknowledging existing ambient noise levels. If noise levels at non-project property lines exceed 50 dB(A), but it is determined that windmill-only noise does not exceed the applicable windmill-only noise level limit, then it could be concluded that windmill operation was not a significant contributing factor to the ambient noise condition. It would be inappropriate in such situations to require that the windmills be shut down, because cessation of windmill activity would not result in a perceptible reduction of noise at the point of measurement. In the alternative, if windmill-only noise at non-project property lines was exceeding 50 dB(A), the Town Code Enforcement Officer would have authority to enforce the applicable noise level limit. Cessation of such windmill operation would likely reduce the ambient noise level at the point of measurement.

Impact avoidance and mitigation will be further achieved through the SEQRA review process required under Local Law No. 2 of 2006 and through the application by NYSDEC of their noise guidance policy in the context of relevant regulatory proceedings.

m. Public Health and Safety Impacts

Enactment of Local Law No. 2 of 2006, in and of itself, is not expected to have any impacts on public health within the Town. Windmill projects that may be permitted subsequent to the enactment of Local Law No. 2 of 2006 also are not expected to be associated with public health impacts. Windmill projects constitute a non-emitting renewable energy technology that displaces generation from local and regional fossil fuel-based energy production facilities.

Concerning public safety, the setback, fencing and lightning ground strike requirements established under Local Law No. 2 of 2006 will mitigate any potential impacts from projects that may be permitted subsequent to enactment. A number of public comments addressed the adequacy of setback requirements in Local Law No. 2 of 2006, and several recommended application of a more stringent minimum setback adopted in some European countries for windmills operating in cold climates where turbine icing may occur. That European setback standard is premised on the assumption that "no special precaution" will occur with regard to turbine operation in icing conditions. Based upon a review of available literature by the Town of Cohocton Town Board, Town Planning Board, and the Town's environmental consultant, Bagdon Environmental, the likelihood of injurious ice or blade throw is believed to be negligible. Local Law No. 2 of 2006 requires that all windmills utilize sensors that shut the turbine down in the event of blade icing. This feature constitutes a special precaution relative to the European

setback standard, indicating that the setback distance can thereby be reduced while maintaining a comparable degree of safety.

Impact avoidance and mitigation will be further achieved through the SEQRA review process required under Local Law No. 2 of 2006.

n. Community Character

Enactment of Local Law No. 2 of 2006 is not expected to have a significant impact on growth and community character. The Town of Cohocton is largely agricultural, with interspersed rural residential and limited commercial and industrial activity. Windmill projects that may be permitted subsequent to the enactment of Local Law No. 2 of 2006 will constitute a new land use, but one that is compatible with the rural character and agricultural land use that predominate in the Town. The siting and performance controls in Local Law No. 2 of 2006 will avoid impacts to community character and growth that may occur absent such regulatory controls.

As set forth in the Town's Comprehensive Plan, the Town's primary goal is to maintain the predominantly rural character of Cohocton and to encourage the preservation of valuable agricultural lands. The revenue stream to farmers and other landowners from potential windmill projects may facilitate the conservation and continuance of farming operations. Windmill projects will achieve many other of the general objectives stated in the Comprehensive Plan, including:

- providing revenue for community facilities and services;
- conserving agricultural lands;
- encouraging the siting of development projects to make use of pre-existing streets and farm roads;
- expanding the community's tax base; and
- avoiding the Town's municipal complex and population centers.

The siting and performance criteria set forth under Local Law No. 2 of 2006 will mitigate impacts of windmill projects to the character of the Town of Cohocton. Impact avoidance and mitigation will be further achieved through the SEQRA review process required under Local Law No. 2 of 2006.

In response to comments received asserting negative impacts to property values, which may be associated with windmill projects, no evidence, not even anecdotal evidence, was submitted to support these assertions. Furthermore, Local Law No. 2 of 2006 merely imposes regulatory restrictions on windmill projects; the Law does not allow projects that otherwise may not be allowed in the Town. Accordingly, the Town finds there is no evidence that Local Law No. 2 of 2006 will impair property values.

For all of the reasons set forth above, the Town Board's enactment of Local Law No. 2 of 2006 will not have any significant adverse impact on the environment and, therefore, the issuance of this negative declaration is warranted.

For Further Information:

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Telephone Number: 585-384-5330

Filing and Publication:

As required by 6 NYCRR 617.12(2), a copy of this Determination of Non-Significance shall be filed with the Town Clerk.