

**WIND ENERGY FACILITY ORDINANCE  
FOR THE TOWN OF DIXFIELD**



**November 7, 2017**

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## **Section 1 - Title**

This Ordinance shall be known as the Wind Energy Facility Ordinance for the Town of Dixfield.

## **Section 2 - Authority**

This Ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution; the provisions of Title 30-A M.R.S. §3001 (Home Rule), and the provisions of the Planning and Land Use Regulation Act, Title 30-A M.R.S. §4312, et seq.

## **Section 3 - Purpose**

The purpose of the Ordinance is to create a permitting and enforcement process that establishes standards for the construction and operation of Wind Energy Facilities in Dixfield, subject to conditions that will protect the public health, safety, welfare and fiscal responsibility. Fiscal responsibility means the impact of a Wind Energy Facility on the Town through taxes, property values and decommissioning costs.

## **Section 4 - Definitions**

As used in this Ordinance, the following terms shall have the meanings stated below. Terms not defined below shall be defined as provided in Title 35-A M.R.S. §3451, as may be amended. Terms not defined in Title 35-A M.R.S. §3451 or in this Ordinance shall be given their ordinary or “dictionary” definition.

**Applicant:** The person, partnership, firm, corporation, company, Limited Liability Corporation or other entity which applies for a permit under this Ordinance as well as the Applicant’s successor(s), assign(s) and/or transferee(s) as to any approved Wind Energy Facility (WEF) or testing facility. The owner and or other person holding rights of possession for the property upon which the WEF is proposed to be located shall be considered a co-applicant. Applicants must have the legal authority to represent and bind the landowner and the entity that will construct, own, and operate the WEFU, WEFS, transmission lines or testing facility. The duties and obligations regarding any approved WEFU, WEFS, or testing facility shall bind the Applicant or Owner/Operator of the WEFU, WEFS, or testing facility, and shall be shared jointly and severally between the Applicant/Permittee, Owner/Operator and any lessee of the WEFS or testing facility.

**Associated Facilities:** Elements of a Wind Energy Facility other than its Generating Facilities that are necessary for the proper operation and maintenance of the Wind Energy Facility, including but not limited to buildings, access roads, generator lead lines and substations.

**A-Weighted Sound Level (dBA):** One (1) measure of the overall sound level. This measure is designed to reflect the response of the human ear, which does not respond equally to all frequencies. Lower frequency sounds are given less weight than those in the mid-range of human perception. The resulting measure is said to be A-weighted and the units are dBA.

**Background Sound (L<sub>90</sub>):** Refers to sound that is normally present at least ninety percent (90%) of the time, and excludes any sound generated by a WEFU. It also excludes intermittent sound from flora, fauna, wind and human activity. Background sound levels vary during different times of the day and night. Because wind turbines operate continuously, the background sound levels of interest are those during quieter periods which are often the evening and night.

**Blade Reflection:** The intermittent reflection of the sun off the surface of the blades of a single or multiple WEFUs.

**Board:** The Planning Board for the Town of Dixfield, Oxford County, State of Maine, unless otherwise noted.

**Commercial:** Any WEFU or WEFS that is used for a primary purpose other than generating energy for the use of a single or multiple family residences.

**Decibel (dB):** A dimensionless quantity which is proportional to the logarithm (base 10) of a ratio of two (2) quantities that is proportional to the power, energy or intensity of sound. One (1) of these quantities is a reference level relative to which all other levels are measured.

**Employee/Subcontractor:** Any and all Persons, including but not limited to “operators” who work in or at, or are hired by the WEFS owners and will be required to follow the applicable provisions of this Ordinance.

**Frequency:** The number of oscillations or cycles per unit of time. Acoustical frequency is usually expressed in units of Hertz (Hz) where one Hz is equal to one (1) cycle per second.

**Generating Facilities:** Wind turbines and electrical lines, not including generator lead lines, that are immediately associated with the wind turbines.

**Good Utilities Practice:** Any of the practices, methods and acts with respect to the safe operation of the Wind Energy Facility System (WEFS) engaged in or approved by a significant portion of the electric utility industry with experience in the construction, operation and maintenance of wind turbines during the relevant period, as determined by the United States Federal Energy Regulatory Commission (FERC). Good Utilities Practices also means any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability and safety, as determined by FERC.

**Hertz (Hz):** A unit of cycles per second. A process that repeats itself a given number of times in one (1) second is said to occur at that many Hertz.

**Hub Height:** The distance to the center of the wind turbine hub as measured from ground level.

**Low Frequency Sound:** An ongoing sound emitted during periods of turbulence as the blades are buffeted by changing winds that can cause structural vibration.

**Megawatt:** One thousand (1,000) kilowatts (kW) of power.

**Meteorological Tower (MET Tower):** Means a Tower used for the measurement and collection of wind data that supports various types of equipment, including but not limited to anemometers, data recorders and solar wind panels. MET Towers may also include wildlife-related equipment such as ANABAT detectors, bird diverters and wildlife entanglement protectors.

**Mitigation Waiver:** A legally enforceable, written agreement between the Applicant and a Non-participating Landowner in which the landowner waives certain setback, sound or other protections afforded in the Ordinance. A Parcel in which the landowner has entered into such an agreement becomes a Participating Parcel. A complete copy of any such agreement must be provided to the Board and recorded in the Oxford County Eastern District Registry of Deeds.

**Noise:** Means any sound produced by a WEFS that is disruptive to the health, safety and quiet enjoyment of residence.

**Non-participating Landowner:** Means any landowner other than a Participating Landowner.

**Notification Area:** Means the entire Dixfield land base within two (2) miles, measured horizontally from each WEFU of the proposed project. All landowners of property located wholly or partly within the notification area, and all residences within the notification area must be notified as specified in the Ordinance.

**Occupied Building:** Means any legal, permanent structure designed for persons or animals, listed on the Dixfield assessment records or for which a building permit has been issued, that is occupied or likely to be occupied by persons or animals. This includes but is not limited to dwellings, places of business, places of worship, schools, libraries, public buildings, hospitals, daycare, and barns existing as of the date a permit application is decided or compliance with the performance standards of this ordinance are being reviewed.

**Owner/Operator:** Means the Person or entity with legal ownership of a WEFU or WEFS, including successors and assigns that hold the authority and responsibility to operate the WEFU or WEFS on a day-to-day basis. An Owner/Operator must have the legal authority to represent and bind all entities participating in ownership or control of the WEFU or WEFS, with respect to performance of all requirements of this Ordinance.

**Parcel:**

**1. Project Parcel:** Means all land in contiguous ownership upon which the WEFUs or WEFS will be sited including transmission lines and any other associated infrastructures.

**2. Participating Parcel:** Means a parcel of real estate that is not a Project Parcel, but is subject to a Mitigation Waiver. This includes any additional land owned by others upon which any project components including transmission lines may be sited, as well as any parcel concerning which a Mitigation Waiver has been entered to waive setback, sound or other protections afforded by this Ordinance. A complete copy of the Mitigation Waiver must be provided to the Board, and filed with the Oxford County Registry of Deeds.

**3. Non-Participating Parcel:** A parcel of real estate that is neither a Project Parcel nor a Participating Parcel.

**Participating Landowner:** Means one or more Persons that hold title in fee to the property on which the WEFU or WEFS is proposed to be located pursuant to an agreement with the development Owner/Operator.

**Permittee:** Means the Applicant and/or successor who has received a permit under this Ordinance.

**Person:** Means an individual, proprietorship, corporation, association, limited liability entity, or other legal entity.

**Project Boundary:** Means the boundaries of the WEFU or WEFS as shown on the site plan submitted to and approved by the Board in accordance with this Ordinance.

**Property Line:** Means the recognized property boundary line as established by deed, survey plan or agreement of abutters.

**Qualified Independent Acoustical Consultant:** Means a person with professional training and experience in the science of sound measurement and noise mitigation. As part of their professional credentials, persons conducting baseline and other measurements and reviews related to the application for a WEFU or WEFS or enforcement actions against an operating WEFU or WEFS must have experience in field measurement of wind turbine noise. An example is a person with Full Membership in or Board Certification by the Institute of Noise Control Engineers (INCE). Certifications such as Professional Engineer (P.E.) do not test for competence in acoustical principles and measurement and thus are not, without further qualification, appropriate for work under this Ordinance.

**Related Equipment:** Means transformers, towers, electrical conductors, termination points, switches, fences, substations, and any other related equipment necessary to operate a WEFU.

**Scenic or Special Resource:** Means a scenic resource of state or national significance as defined in Title 35-A M.R.S. §3451(9), or any site registered in the National Registry of Historic Places.

**Sensitive Environmental Area:** Means an identified habitat for threatened or endangered species, or another designated environmentally significant area as identified by Town, state, or federal agencies having jurisdiction.

**Sensitive Receptor:** Means places that are likely to be more sensitive to the exposure of the sound or vibration generated by a WEFU or WEFS. This includes but is not limited to: schools, day-care centers, hospitals, parks, Occupied Buildings, residential neighborhoods, places of worship, and elderly care facilities.

**Setback:** Means the minimal allowable horizontal distance from the outer edge of each WEFU tower where it is attached to the concrete foundation to the closest point of any property line, a thoroughfare right-of way, water line, or to the nearest vertical wall or other element of a building or structure.

**Shadow Flicker:** Means alternating changes in light intensity caused by the movement of wind turbine blades casting shadows on the ground or a stationary object.

**Shadow Flicker Receptor:** Means an Occupied Building on a Non-participating Landowner's property plus an additional one hundred (100) foot boundary surrounding the exterior of the Occupied Building; the entire outdoor public area surrounding schools, churches, libraries and public buildings; and Town Ways with a posted speed limit greater than twenty-five (25) mph.

**Short Duration Repetitive Sounds (“SDRS”):** SDRS is defined as a sequence of repetitive sounds that occur within a 10-minute measurement interval, each clearly discernible as an event resulting from the development and causing an increase in the sound level of 5 dBA or greater on the fast meter response above the sound level observed immediately before and after the event, each typically  $\pm 1$  second in duration, and which are inherent to the process or operation of the development.

**Sound:** A fluctuation of air pressure which is propagated as a wave through air.

**Sound Level ( $L_{10}$ ):** Refers to the sound level exceeded ten (10) % of the time, in which case it may be denoted  $L_{10A}$ .

**Sound Level ( $L_{90}$ ):** Refers to Background Sound (see above).

**Sound Level ( $L_{eq}$ ):** The frequency-weighted equivalent sound level. It is defined to be the steady sound level that contains the same amount of acoustical energy as the corresponding time-varying sound.  $L_{eq}$  may be measured relative to A-weighting in which case it may be denoted  $L_{eqA}$ .

**Sound Level (pre/post):** Each of the Sound levels defined above,  $L_{90}$ ,  $L_{10}$  and  $L_{eq}$ , may be followed by “(pre)” or “(post)”. Post-construction Sound Levels measured with all elements of the WEFU or WEFS turned on will be denoted with “(post)”. During the application process, before the WEFU or WEFS has been constructed, “(post)” will be used to denote the pre-construction estimate of the Post-construction Sound Level. Pre-Construction Sound Levels, or Sound Levels measured with all elements of the WEFU or WEFS turned off will be denoted with “(pre)”.

**Structure:** Means anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location in or on the ground, whether temporary or permanent, exclusive of fences.

**Tower:** Means the free-standing structure on which a wind measuring or energy conversion system is mounted.

**Town:** When capitalized, refers to the Town of Dixfield Maine, in its local governmental capacity.

**Tonal Sounds:** Sound that occurs at discrete frequencies.

**Town Way:** As used in this Ordinance, the term Town Way means

1. An area or strip of land designated and held by the Town for the passage and use of the general public by motor vehicle;
2. All Town or Oxford County roads and ways located in the municipal limits of Dixfield, Maine, and not discontinued or abandoned before July 29, 1976; and
3. All state and state-aid highways classified as town ways as of July 1, 1982 or thereafter, pursuant to Title 23 M.R.S. §53.

**Turbine Height:** Means the distance measured from the surface of the Tower foundation to the highest point of any turbine rotor blade measured at the highest arc of the blade.

**Wind Energy Facility Unit or Wind Energy Facility System Site Permit:** A permit to construct a Wind Energy Facility Unit or System issued by the Board in accordance with this Ordinance.

**Wind Energy Facility Unit (WEFU):** Means a wind driven machine that converts and transfers energy from the wind into usable forms of electrical energy with an output rating greater than one hundred (100) kilowatts (kW) for the primary purpose of sale, resale or offsite use.

**Wind Energy Facility System (WEFS):** Means the entire development used for collection and transfer of wind energy, including one or more WEFUs as well as buildings, structures, towers, turbines, footings, electrical equipment, sub-stations, transmission lines, access roads, parking lots, areas to be stripped or graded and areas to be landscaped or screened plus all related transformers, electrical conductors, substations and connection point to transmission or distribution lines. Sometimes it is referred to in this Ordinance as a “Wind Energy Facility”.



## **Section 5 - Jurisdiction**

### **5.1 Applicability**

This Ordinance shall apply to all commercial Wind Energy Facilities, as defined in Section 4 of this Ordinance, to be developed within the municipal limits of Dixfield, Maine, that have not received final permit approval from the Maine Department of Environmental Protection and all other regulatory agencies having jurisdiction as of the enactment of this Ordinance. It is the intention of this section that this Ordinance, upon enactment, shall apply retroactively to any pending Wind Energy Facility Project in Dixfield, Maine, to the extent constitutionally permissible, notwithstanding Title 1 M.R.S. §302. If this Ordinance is enacted less than ninety (90) days following the expiration of the Wind Energy Facility Moratorium Ordinance, then it shall be retroactive to the expiration date of the moratorium.

### **5.2 Effective Date**

This Ordinance shall take effect on the date of enactment of the Ordinance by the Town's voters at a duly called Town Meeting or Town referendum election, and shall repeal and terminate any moratorium then in place related to Wind Energy Facilities.

## **Section 6 - Conflicts and Severability**

### **6.1 Conflicts**

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of the Ordinance or of any other Town Ordinance, or Federal or State of Maine rule, regulation or statute, the more restrictive provision shall apply.

### **6.2 Severability**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, unconstitutional or unenforceable by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phrase or part thereof.

## **Section 7 - Other Permit Requirements**

Receipt of permits under this Ordinance does not relieve the Owner/Operator from the responsibility to obtain any other permits or approvals that may be required by any other ordinance of the Town of Dixfield or by State or Federal agencies with jurisdiction over the WEFU or WEFS.

## **Section 8 - Permitting Authority/Administration**

### **8.1 Local Permitting Authority**

The Dixfield Planning Board (hereinafter “the Board”) is authorized to review all applications for Wind Energy Facilities and may approve, deny, or approve with conditions such applications in accordance with this Ordinance.

### **8.2 Operational Oversight Authority**

The Dixfield Board of Selectmen shall be the operational oversight authority for WEFSs in the Town, responsible for all WEFS-related operation, complaints, enforcement, and decommissioning, and shall direct enforcement activities through the Code Enforcement Officer.

### **8.3 Ethics and Code of Conduct**

The process to develop and permit WEFS projects shall be governed by a strict ethical code for conflicts of interest. No elected or appointed Town official or Town employee who has, or whose immediate family members or their employees have, a conflict of interest shall be directly or indirectly involved in the planning, review or enforcement process for a WEFS project. Conflicts of interest may include, but are not limited to:

1. Having right, title or interest in a Project Parcel or a known potential Project Parcel subject to review or enforcement by the official or employee;
2. Having or pursuing a financial agreement with an individual or company which derives income from the WEFS, including a signed Mitigation Waiver with financial remuneration;
3. Serving as a paid representative or employee of an individual or company which derives income from the WEFS, or a written or verbal promise for future employment or contracts from the Applicant or Owner/Operator;
4. Serving as a paid representative or employee of an Applicant or Owner/Operator or of any individual which has negotiated or entered into an agreement with an Applicant or Owner/Operator to provide goods or services related to the WEFS.
5. Being an abutter to the land footprint of a proposed WEFS.

Individuals with a conflict of interest must identify the conflict of interest and recuse themselves from all direct and indirect planning and decision-making regarding WEFS projects, with the exception of voting and debating as a private citizen at any public hearing or meeting.

Individuals with a conflict of interest who cannot be objective in a municipal decision-making process and do not recuse themselves may violate the Applicant’s due process.

## **8.4 Other Permit Findings**

The Maine Department of Environmental Protection (DEP) may be required by statute to review WEFS applications. The Board shall consider, at a minimum and to the extent applicable, pertinent findings in the DEP final Site Location of Development Act permit decision when making its determinations under this Ordinance.

## **Section 9 - Permit Application Requirements/Procedures**

### **9.1 Permit Required**

No Wind Energy Facility Unit (WEFU) or System (WEFS), or any components thereof, shall be constructed or located within Dixfield without a permit issued in accordance with this Ordinance.

### **9.2 Permit Amendments**

Any physical modification to an existing Wind Facility System (WEFS) that materially alters the location or increases the area of development on the site or that increases the Turbine Height or the level of sound emissions of any Wind Turbine shall require a permit modification under this Ordinance. Routine maintenance and repairs shall not require a permit modification.

### **9.3 Application Components**

A Wind Energy Facility permit application shall consist of the application form, application fee, and supporting documents, as described below and in Section 10.0.

**9.3.1 Application Forms.** The Town shall provide the application form which shall be signed by: 1) the Owner/Operator of the proposed WEF; and 2) a Person with right, title and interest in the subject property or a Person having written authorization from a Person with right, title and interest in the subject property. The signature shall be dated and the signatory shall certify that the information in the application is complete and correct and that the proposed facility will be constructed and operated in accordance with the standards of this ordinance and all approval and permit conditions, if any.

**9.3.2 Application Fees.** An application fee in the amount established by the Town of Dixfield's Fee Schedule shall be assessed and paid for each WEFU upon submission of the application and subsequent applications for modification in accordance with this Ordinance.

**9.3.3 Supporting Documents.** The application shall include all additional documents necessary to satisfy the applicable submission requirements under Section 10 of this Ordinance.

#### **9.4 Application Submission / Pre-Application Meeting**

The Applicant shall meet with the Code Enforcement Officer (CEO) not less than thirty (30) days before submitting its application for a Wind Energy Facility permit. At this pre-application meeting, the CEO will explain the Ordinance's provisions, application forms, and submission requirements.

#### **9.5 Pre-Application Submissions**

At the Pre-Application meeting, the Applicant shall provide the CEO with photos of the proposed site and written descriptions of the proposed facility and the proposed site, including its location and lot area.

#### **9.6 Application Deadline**

Within one hundred and eighty (180) days after the pre-application meeting with the CEO, the Applicant shall submit a completed application to the Town Clerk accompanied by the required fees (see Section 9.3.2). The application shall be deemed abandoned unless the completed application has been received within one hundred and eighty (180) days of the pre-application meeting. The Town Clerk shall date and time stamp the application and shall forward the application to the CEO within ten (10) working days. At least fifteen (15) copies of all written materials, including maps or drawings, shall be provided. All materials shall be contained in a bound report.

#### **9.7 Code Enforcement Officer Review**

The CEO shall notify the Applicant whether the application includes the minimum submission requirements set forth in Section 10 within thirty (30) days after the date he/she receives the application from the Town Clerk. Any requests by the Applicant for modification or waiver of submission criteria shall not be acted upon by the CEO and will be left to the Board for consideration. If the application is deemed to be incomplete, the CEO shall indicate the additional information needed. The application shall be deemed abandoned unless the Applicant, within thirty (30) days from the date of notice indicating the application is incomplete, either provides the information requested or demonstrates in writing to the satisfaction of the CEO that additional time is reasonably necessary to provide the information requested. The CEO's determination of completeness is subject to review and modification by the Board.

#### **9.8 Submission to Planning Board**

The CEO shall note on the application the date on which it was received, the date of determination of completeness, and shall submit the application to the Board within seven (7) days of determination of completeness.

## **9.9 Site Inspection**

Upon receipt of the Application from the CEO, the Board Chair and Applicant shall set a mutually agreeable time (not less than thirty (30) or more than sixty (60) days following the submission of the application to the Board) for the Board to inspect the site unless rendered impractical due to seasonal conditions. Site inspections will normally be postponed if there is more than one (1) foot of snow on the ground. The site inspection will be treated as a public meeting of the Board with appropriate notices given to the community. No testimony shall be accepted during the site inspection, although the Applicant and Board members may speak as necessary to present and understand the layout of the proposed WEF. While the Board may set additional requirements for the site walk at the application meeting, the Applicant shall, at minimum, flag the location of the proposed WEFU(s), the proposed transmission corridor, access roads and relevant property boundaries. The Applicant and the project design engineer shall accompany the Board to describe the project and answer any questions. The Board may hold additional site walks as necessary to effectively review the application.

## **9.10 Notices to Affected Property Owners**

In addition to any required public notices for the site inspection, the Applicant shall, at its own expense, transmit a written notice to property owners and residents within the Notification Area by first class mail no less than fourteen (14) days prior to the scheduled site inspection. The notice shall briefly describe the proposed WEFS and notify the recipient of the date(s), time(s) and place(s) of the site walk. The notice shall be sent by first class mail with mailing costs paid for by the Applicant, and the Applicant shall certify to the Board the list of persons notified and the date of mailing.

## **9.11 Determination of Completeness**

Within thirty (30) days after the site inspection, the Board shall hold a preliminary meeting to determine whether it finds the application to be complete or if there are additional submission requirements necessary to adequately review the Application under the criteria of this Ordinance. Such findings shall be transmitted to the Applicant in writing within seven (7) days of the preliminary meeting. Any additional submission requirements must be submitted by the Applicant within thirty (30) days of the Board's request, or any other reasonable deadline imposed by the Board. A finding of completeness shall not preclude the Board from requiring additional submissions during the course of any hearings on the application, if relevant to the review criteria, in order to adequately review any issue that may arise.

## **9.12 Waiver of Submission Requirements**

On its own motion or on petition from the Applicant, the Board may modify or waive submission requirements that the Board deems inapplicable to the project, provided that modification or waiver does not adversely affect the general health, safety or welfare of the Town or its residents. Any modification or waiver of submittal requirements shall be acted on by the Board at a public

hearing held during the preliminary meeting under Section 9.11 above. The Board may not modify or waive any substantive review standards under this Ordinance.

### **9.13 Public Hearing**

The Board shall schedule a public hearing to be held within thirty (30) days after finding that the application is complete in accordance with Section 9.11 above. The thirty (30) day period may be extended by mutual agreement of the Board and Applicant. The Applicant shall, at its own expense, transmit a written notice of the hearing to property owners and residents within the Notification Area by first class mail no less than fourteen (14) days prior to the scheduled hearing. The notice shall identify the proposed WEFS and notify the recipient of the date(s), time(s) and place(s) of the hearing. The notice shall be sent by first class mail with mailing costs paid for by the Applicant, and the Applicant shall certify to the Board the list of persons notified and the date of mailing.

### **9.14 Continuances**

Once convened, the public hearing may be continued to successive or subsequent dates as necessary to review the application and determine compliance with all approval standards. Motions to continue shall be made and acted on at the public hearing, and shall state the date, time and location of the continued hearing. Provided that a motion to continue has been made and approved as provided in this section, additional individual notice under section 9.10 above shall not be required for the continued public hearing date(s).

If any scheduled session of the public hearing must be cancelled due to inclement weather, illness or public emergency, that session shall be automatically re-scheduled for one week following the originally scheduled date.

### **9.15 Board's Decision**

Within thirty (30) days following close of the public hearing, the Board shall issue a written order: 1) Denying approval of the proposed WEFU or WEFS; 2) granting approval of the proposed WEFU or WEFS; or 3) granting approval of the proposed WEFU or WEFS with conditions. In making its decision, the Board shall make findings of fact on whether the proposed WEFU or WEFS meets each of the applicable approval criteria set forth in this Ordinance.

### **9.16 Changes to a Pending Application**

**9.16.1 Notification.** The Applicant shall promptly notify the Board of any changes the Applicant proposes to an application that has been submitted to the Board for review.

**9.16.2 Board's Consideration.** If changes are proposed to an application after the public hearing has been completed, the Board may consider those changes in a public meeting and continue with its review and approval process without a renewed public hearing if the

Board determines that the changes are de minimis and do not materially alter the application. If the Board determines that the proposed changes do materially alter the application, it shall schedule and conduct another public hearing within thirty (30) days of that determination. In making its determination, the Board shall consider whether the proposed changes involve potential adverse effects different from or in addition to those addressed in the initial application.

### **9.17 Cumulative Effect of Multiple Permit Applications**

The Town of Dixfield reserves the right to limit the total number of WEFU or WEFS permits that are under review for approval at any given time. The Board will process no more than one (1) application while another application remains pending before the Board. Alternatively, the deadlines for submission and review may be modified to reflect the increased workload presented by multiple pending applications.

### **9.18 Professional Services**

In reviewing an application for compliance with this Ordinance, the Board may retain professional services as necessary to assist with its review, including but not limited to those of an attorney, engineer, biologist, and/or land use planner. The cost of all such professional services shall be borne by the Applicant, as provided in Section 12.

### **9.19 Permit Issuance**

If an Application is complete and meets all requirements of this Ordinance and the Applicant has paid all required fees and costs, the Board shall approve a Permit for the WEFU or WEFS. If an Application does not meet all requirements of this Ordinance or the Applicant has not paid all fees and costs, then the Board shall deny the Application or approve the Application with conditions that will assure compliance with this Ordinance.

Upon final approval by the Board, the Applicant shall provide for signature a recordable plan of the project as approved with all conditions. The Board shall sign the plan no later than its next regularly scheduled meeting following receipt. The Applicant must record said plans at the Oxford County Eastern District Registry of Deeds within thirty (30) days of signature and return a copy with all recording information to the Board. Any conditions of approval shall be noted directly on the plan or in an attached and referenced document that shall be recorded with the plan.

### **9.20 Liability Insurance**

The Applicant, Permittee, and Owner/Operator as applicable, shall maintain a current general liability policy for the WEFU or WEFS that covers bodily injury and property damage in an amount commensurate with the scope and scale of the WEFU or WEFS, and acceptable to the Board. Certificates of insurance shall be provided to the Board annually, naming the Town as an additional insured under all such policies. The policy must include the requirement that the

Board will be provided at least ten (10) days' notice by the policy provider in the case of cancellation or change to the policy. In addition, the Applicant, Permittee and Owner/Operator as applicable, must inform the Board of such changes.

## **10.0 Permit Application Submission Requirements**

The permit submission requirements are as follows:

**10.1** The names, addresses, and telephone numbers of the Applicant, the Owner/Operator (if different), and all Participating Landowner(s).

**10.2** The address, tax map number, zone and owner(s) of the proposed Wind Energy Facility site and any contiguous parcels owned by Participating Landowners.

**10.3** Evidence of the Owner/Operator's right, title and interest to the Project Parcel.

**10.4** An emergency directory for the Applicant (Owner/Operator) sufficient to allow the Town to contact the Applicant (Owner/Operator) at any time.

**10.5** Evidence of the Applicant's technical and financial ability to implement the project as proposed.

**10.6** A narrative description of the proposed WEFU or WEFS that includes the number and aggregate generating capacity of all Wind Turbine(s) and the Turbine Height(s). Also included must be the manufacturer's specifications for each Wind Turbine (including but not limited to the make, model, maximum generating capacity, sound emission levels and types of over-speed controls) and a description of Associated Facilities. This information must include dimensional representation and sizes of the structural components of the tower construction including the base, footings, tower, and blades.

**10.7** Written evidence of legal access to the Project Parcel through easements or ownership of any affected property/properties.

**10.8** An overview map that includes the boundaries of the proposed Wind Energy Facility site, all contiguous property under total or partial control of the Applicant or Participating Landowner(s) and the area at least two (2) miles in all directions from the boundaries of the project. This map must show all roads, access roads, any Scenic Resource or Historic Site(s), all current residences and Occupied Buildings in the area. The location of all WEFUs, Associated Facilities, control facilities, Meteorological Towers, turnout locations, substation(s), ancillary equipment, Structures, and temporary staging areas, together with maintenance facilities and all power collection and transmission lines and systems. The boundaries of all Participating Parcels must be shown.



**10.9** For any Project Parcel that is not owned by the Applicant, copies of all agreements between the owner of the Project Parcel and the Applicant and/or the Owner/Operator.

**10.10** The boundaries of all Project Parcels must be depicted with the tax map and lot numbers of all Project Parcels, including any deed restrictions or easements.

**10.11** The names, addresses and phone numbers of the owners of all Project Parcels, Participating Parcels, and Non-Participating Parcels located within four thousand (4,000) feet of any proposed WEFU, with each property owner's status indicated (Project Parcel, Participating Parcel or Non-Participating Parcel), including the book and page reference of the identified owner's interest as recorded in the Oxford County Registry of Deeds.

**10.12** The boundaries of all Non-Participating Parcels located within four thousand (4,000) feet of any proposed WEFU, together with the distance to, and bearing to, all boundary lines relative to each proposed WEFU as measured from the nearest point of the property line to the WEFU.

**10.13** The location and description of all Structures located on Project Parcels, and all Occupied Structures located on Participating and Non-Participating Parcels located within four thousand (4,000) feet of any proposed WEFU.

**10.14** Aerial photo(s) showing all Project Parcels, Participating Parcels, and Non-Participating Parcels located within four thousand (4,000) feet of any proposed WEFU or WEFS.

**10.15** Copies of all required approved Federal and approved State permits, to the extent that such permits have been obtained.

**10.16** Schematic drawings of all electrical systems associated with the proposed WEFU or WEFS including all existing and proposed transmission lines and electrical connections.

**10.17** Manufacturer's specifications and installation and operation instructions for each different model and size of wind turbine to be installed.

**10.18** The direction of proposed pre and post surface water drainage across and from Project Parcels and Participating Parcels, with an assessment of impacts on downstream properties and water resources, including, but not limited to, streams and wetlands.

**10.19** The location of any of the following found within seven hundred and fifty (750) feet of any proposed WEFU or WEFS: open drainage courses, wetlands, and other important natural areas and site features, including, but not limited to floodplains, deer wintering areas, Essential Wildlife Habitats, Significant Wildlife Habitats, Scenic or Special Resources, habitat of rare and endangered plants and animals, unique natural areas, sand and gravel aquifers, and historic and/or archaeological resources, together

with a description of such features. The Applicant is only required to gather information under this section on property to which the applicant has legal access; however any areas described herein that are known to the Applicant must be depicted.

**10.20** Provisions made for handling all solid wastes, construction wastes and excess excavated materials, including hazardous and special wastes and the location and proposed screening of any on-site collection or storage facilities.

**10.21** The location, grades, dimensions and materials to be used in the construction of proposed roads, driveways, parking areas and loading areas, together with an assessment of any changes to traffic flow.

**10.22** A topographical overlay for the Project Parcel(s), Participating Parcels and Non-Participating Parcels located within four thousand (4,000) feet of any proposed WEFU or WEFS.

**10.23** The size and scale of Plans and Profiles, maps and diagrams shall be as listed below, and shall include a north arrow, the date, the scale, other such details as required for clarity and legality, and date and seal of a licensed Maine Professional Land Surveyor or licensed Maine Professional Engineer. There must be one Plan and Profile for each of the proposed WEFUs showing the placement in a five-(5) acre plot with the WEFU at the center. The scale should be one (1) inch = forty (40) feet and must depict a grading plan of existing and proposed two-(2) foot land contours. Each must include an overall property view of one (1) inch = three hundred (300) foot scale. Additionally there must be an overall map including all WEFUs and proposed road network.

**10.24** A description and map of all Town Ways and other property in Dixfield to be used or affected in connection with access and/or construction of the WEFU or WEFS, including a description of how and when such ways and property will be used or affected.

**10.25** A description of the type and length of vehicles and type, weight and length of loads to be conveyed on all Town Ways in the Town.

**10.26** A complete assessment of the proposed use of Town Ways in the Town in connection with the construction of the WEFS, including the adequacy of turning radii; the ability of the Town Ways to sustain loads without damage; the need to remove or modify (permanently or temporarily) signs, trees, utilities, or anything else; any reasonably foreseeable damage to Town Ways or other property, public or private; any reasonably foreseeable costs that the Town may incur in connection with the use of property in the Town, including but not limited to costs relating to traffic control, public safety, or damage to Town Ways, or to other public or private property.

**10.27** A traffic control and safety plan relating to the use of Town Ways in the Town in connection with the construction of the WEFS.

**10.28** An Emergency Shutdown Plan. The plan shall describe the circumstances under which an emergency shutdown may be required to protect public safety, and shall describe the procedures that the Owner/Operator and Permittee will follow in the event an emergency shutdown is required.

**10.29** A Fire Prevention and Emergency Response Plan (including an environmental and or spill contingency plan) containing the material prescribed below:

**10.29.1** A description of the potential fire and emergency scenarios that may require a response from fire, emergency medical services, police or other emergency responders.

**10.29.2** The plan shall designate and be reviewed by the specific agencies that would respond to potential fire or other emergencies, shall describe all emergency response training and equipment needed to respond to a fire or other emergency, shall include an assessment of the training and equipment available to the designated agencies and shall provide for any special training or emergency response equipment that the designated agencies need to use in responding to a potential fire or other emergency. The plan shall be prepared at the Applicant's cost.

**10.29.3** A plan designed to provide maneuverability for service and emergency response vehicles.

**10.30** Such additional relevant information as the Board and appropriate Public Safety personnel may require, if reasonably necessary to determine compliance with this Ordinance.

**10.31** A pre-licensing sound study in accordance with Section 11.7.1.

**10.32** A detailed Shadow Flicker and blade reflection assessment model and an estimate of the expected amount of flicker and reflection, in accordance with Section 11.8.

**10.33** A Decommissioning and Site Restoration plan in accordance with the requirements of Appendix A including provisions to ensure the availability of decommissioning funds as set forth in Appendix A, Section 4.

**10.34** A signed statement from the Applicant and Owner/Operator that the Applicant and Owner/Operator agrees to assume full responsibility for complying with the provisions of this Ordinance, including agreeing to continue or complete any duties and obligations of the former Permit holder under this Ordinance including, but not limited to, the requirement for post-construction sound measurements, post-construction stray voltage testing, WEFU inspections, submission to inspections and decommissioning agreements.

**10.35** Evidence from an established insurance provider that the WEFS, when completed, is eligible to be covered through a liability policy meeting the requirements specified in this ordinance, and the applicable policy limits.

## **Section 11 Approval and Performance Standards**

### **11.1 Setback**

A WEFU or WEFS shall comply with the following setback requirements. If more than one (1) set back requirement applies, the greater set back distance shall be met. All measurements shall be based on horizontal distances.

**11.1.1** All WEFUs shall be set back a horizontal distance of four thousand (4,000) feet from any Occupied Building in Dixfield and two thousand (2,000) feet from the boundaries of the Project Parcel unless the Applicant submits in writing: 1) a waiver of the Occupied Building setback signed by the pertinent abutting landowner and; 2) evidence such as operating protocols, safety programs, or recommendations from the manufacturer or a licensed professional engineer with appropriate expertise and experience with WEFUs, demonstrating that the reduced set back proposed by the Applicant will not cause the WEFU to violate any other approval standards of this Ordinance.

**11.1.2** All WEFUs must be set back a minimum of four thousand (4,000) feet from any Scenic or Special Resource as defined in Section 4.0 of this Ordinance.

**11.1.3** Each WEFU shall be equipped with an over-speed control system that: 1) includes both an aerodynamic control such as stall regulation, variable blade pitch or other similar system and a mechanical brake that operates in fail safe mode; or 2) has been designed by the manufacturer or a licensed engineer and found by the Board, based on its review of a written description of the design and function of the system, to meet the needs of public safety.

**11.1.4** WEFUs shall be setback a horizontal distance equivalent to one hundred and fifty percent (150%) of the Turbine Height from Project Boundaries, Occupied Buildings, public and private rights-of-way and overhead utility lines that are not part of the proposed WEFS. No waiver of this standard is permitted.

### **11.2 Security and Safety**

**11.2.1** All electrical components of the WEFU shall conform to relevant and applicable local, state, and national codes.

**11.2.2** Site accessibility must be maintained on a year-round basis. Access must be maintained during construction in a way that allows for inspections by the Town and or

their designees. A “KNOX-BOX” shall be posted at every locked gate for use by all Public Safety personnel.

**11.2.3** All ground-mounted electrical and control equipment and all access doors to a WEFU shall be labeled and secured to prevent unauthorized access.

**11.2.4** A Tower shall not be climbable up to a minimum of fifteen (15) feet above ground surface.

**11.2.5** Warning signs shall be placed on each tower, all electrical equipment, and each entrance to any WEFU.

**11.2.6** The minimum distance between the ground and all blades of a Wind Turbine shall be twenty-five (25) feet as measured at the lowest arc of the blades.

**11.2.7** The Applicant shall pay for the cost of any training and/or necessary equipment required by local fire and emergency responders.

**11.2.8** The Permittee shall submit to the planning board a safety review of the items listed in Section 11.2.1 through 11.2.7 and Section 11.3 done in collaboration with the Code Enforcement Officer and the Fire Chief after the first year and every two years thereafter, until all WEFU’s are decommissioned at the Permittee’s expense.

### **11.3 Site Design and Road Access**

**11.3.1** The Applicant shall make reasonable efforts to avoid and shall mitigate to the extent practicable any disruption or loss of radio, telephone, television, or similar signals caused by the WEFS.

**11.3.2** With the exception of Meteorological (MET) Towers, Towers shall be monopoles with no guy wires. Building-mounted WEFUs are not permitted.

**11.3.3** Erosion of soil and sedimentation shall be minimized by employing “best management practice” as published in the most current version of the Maine DEP’s “Maine Erosion Control Handbook for Construction: Best Management Practices”. Access to the WEFUs or WEFS and construction area(s) shall be constructed and maintained following a detailed erosion control plan in a manner designed to control erosion and to provide maneuverability for service and emergency response vehicles.

**11.3.4** The Applicant shall identify all state and local public roads to be used within the Town of Dixfield to transport equipment and parts for construction, operation or maintenance of the WEFS. The Road Commissioner shall document road conditions prior to construction and again thirty (30) days after construction is complete or as weather permits. Any road damage caused by the Applicant or its contractors shall be promptly repaired at the Applicant’s expense.

## **11.4 Visual Appearance:**

**11.4.1** All WEFUs shall be a non-obtrusive color such as white, off-white or gray, or as may otherwise be required by another governmental agency with jurisdiction over the WEFUs.

**11.4.2** WEFUs shall not be lighted artificially, except to the extent required by Federal Aviation Administration regulations or by other applicable authority that regulates air safety or as is otherwise required by another governmental agency with jurisdiction over the WEFUs.

**11.4.3** WEFUs shall not be used to support signs and shall not display advertising except for reasonable and incidental identification of the turbine manufacturer, facility owner and operator, and for warnings.

**11.4.4** To the extent that doing so does not inhibit adequate access to the wind resources or cause additional impacts to environmentally sensitive resources such as wetlands, vernal pools and other protected areas, each WEFU shall be located to maximize the effectiveness of existing vegetation, structures and topographic features in screening views of the WEFU from Occupied Buildings and Scenic Resources.

**11.4.5** When existing features do not screen views of a WEFU from Residences and Scenic Resources, screening may be required within one (1) mile of a WEFU, where feasible and effective, through the planting of trees, and /or shrubs. In order to maximize the screening effect and minimize wind turbulence near the Wind Turbine, plantings should be situated as near as possible to the point from which the WEFU is being viewed. Such plantings should be of native varieties.

## **11.5 Blasting Plan and Requirements.**

**11.5.1** The Permittee and/or Owner/Operator shall not undertake any blasting in connection with the construction of the WEFU or WEFS unless the Applicant has notified the Town and the Oxford County Regional Communications Center (or other designated agency) and submitted a blasting plan consistent with applicable laws and regulations. The plan must be reviewed and approved by the Town's Code Enforcement Officer before any blasting may take place.

**11.5.2** No blasting shall be undertaken without forty-eight (48) hours' notice to all residents within a half mile radius, measured horizontally, from the blasting area. All blasting operations will cover the blasting area with sufficient stemming, matting, or natural protective cover to prevent debris from falling on nearby properties.

## **11.6 As-built Plans.**

Upon completion of the project, the Applicant must provide the Board with a set of construction plans showing the structures and site improvements as actually constructed. These “as-built” plans must be submitted within thirty (30) days of completion of the WEFS, and before commencement of operation of the WEFS. This requirement in no way relieves the Applicant of its responsibility to seek approvals for changes in the scope of the project.

## **11.7 Sound Modeling, Sound Standards and Sound-Related Enforcement Procedures**

### **11.7.1 Independent Pre-licensing Sound Study**

An application for a WEFU or WEFS Permit shall include at least ten (10) days of pre-construction sound monitoring during representative conditions and a four season predictive sound modeling study, all of which shall be performed by a Qualified Acoustical Consultant. The Pre-licensing Sound Study shall also include estimates of the post-construction sound levels to be expected from the completed WEFU or WEFS, taking into account the limits on Tonal Sounds and Short Duration Repetitive Sounds specified below. If the applicant has already done this work in connection with the DEP Site Location of Development (Site Law) application process, the Board may accept those reports or portions thereof and findings by the DEP as sufficient evidence that these provisions have been met. In an attempt to avoid duplication of studies, the Board may find that no additional, or only some additional studies need be undertaken by the applicant.

### **11.7.2 Sound Limits**

No Permit shall be issued if the pre-permit information or sound study indicates that the proposed WEFU or WEFS will not comply with the following requirements. No variance of these requirements shall be permitted.

If pre-construction estimates of the post-construction sound levels exceed the limits below, then the WEFU or WEFS Application shall be denied; if these limits are exceeded after the WEFU or WEFS has been built, then the WEFU or WEFS will be in violation of this Ordinance:

- A.** The sound limits below are stated in terms of  $L_{eqA}$  (post). Prior to construction of the WEFU or WEFS, the “pre” values are as measured and the “post” values are as calculated. After the WEFU or WEFS has been constructed, the “pre” values are the WEF-OFF values and the “post” values are the WEF-ON values.

## **B. Audible Sound Limit**

No WEFU or WEFS shall be located so as to generate post-construction sound levels that exceed forty-two (42) dBA at night (7:00 p.m. to 7:00 a.m.) or fifty-five (55) dBA during the day (7:00 a.m. to 7:00 p.m.) at any Sensitive Receptor in the Town located within four thousand (4,000) feet of any WEFU, except on Project Parcel(s) or on a Participating Parcel(s) which is subject to a Mitigation Waiver which specifies different sound limits.

**C. Tonal Sounds.** A tonal sound exists if, at a protected location, the 10 minute equivalent average one-third octave band sound pressure level in the band containing the tonal sound exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by 5 dB for center frequencies at or between 500 Hz and 10,000 Hz, by 8 dB for center frequencies at or between 160 and 400 Hz and by 15 dB for center frequencies at or between 25 Hz and 125 Hz. 5 dBA shall be added to any average 10 minute sound level ( $LeqA_{10-min}$ ) for which a tonal sound occurs that results from routine operation of the WEFU or WEFS.

## **D. Short Duration Repetitive Sounds (“SDRS”)**

SDRS is defined as a sequence of repetitive sounds that occur within a 10-minute measurement interval, each clearly discernible as an event resulting from the development and causing an increase in the sound level of 5 dBA or greater on the fast meter response above the sound level observed immediately before and after the event, each typically  $\pm 1$  second in duration, and which are inherent to the process or operation of the development.

When routine operation of a WEFU or WEFS produces short duration repetitive sound, a 5 dBA penalty shall be arithmetically added to each average 10-minute sound level ( $LeqA_{10-min}$ ) measurement interval in which greater than 5 SDRS events are present.

**E. Mitigation Waiver.** Property owners may waive these sound restrictions with a written Mitigation Waiver agreement. A complete copy of any such agreement must be filed with the Board and recorded in the Oxford County Registry of Deeds.

**F. Post-Construction Sound Measurements.** Starting within twelve (12) months after the date when the WEFU or WEFS has begun operating, a post-construction sound study shall be performed for all WEFUs or WEFSs that are operating. Post-construction sound studies shall be conducted by a Qualified Independent Acoustical Consultant. The Permittee shall also pay for a Qualified Independent Acoustical Consultant chosen by the Planning Board to review the Permittee’s study. The Permittee shall deposit the estimated cost of such review



upon notification by the Board. The Town's consultant may observe the Permittee's consultant's monitoring. The Permittee shall provide all technical information required by the Board or Independent Qualified Acoustical Consultant before, during, and/or after any acoustical studies required by this document and for local area acoustical measurements. The Post-construction sound measurements shall be repeated every three (3) years throughout the life of the facility and submitted to the Code Enforcement Officer. The applicant may seek a waiver from the Code Enforcement Officer of all but the first post-construction measurements if no valid noise complaints are received during the previous three (3) year period.

**G.** Pre-construction monitoring shall report sound levels in terms of LeqA, L<sub>90</sub>A, and L<sub>90</sub> for each hour of the monitoring period. Post-construction monitoring shall report sound levels in terms of LeqA<sub>7</sub> and L<sub>90</sub>A for 10-minute segment of the monitoring period.

### **11.7.3 Measurement Procedures**

Unless otherwise specified in this Ordinance, measurement instrumentation, calibration, procedures and reporting requirements shall be in conformance with the Sound Level Standards for Wind Energy Developments as promulgated by the Department of Environmental Protection in relation to the Site Location of Development Law and set forth in 06-096 CMR Chapter 375, as the same may be amended from time to time.

### **11.8 Shadow Flicker and Blade Reflection Assessment and Requirements**

**11.8.1** Shadow Flicker occurs when the blades of a wind turbine pass between the sun and/or moon and an observer, casting a readily observable, moving shadow on the observer and his or her immediate environment. If the WEFS has been reviewed under the DEP Site Location of Development application process, the Board may accept shadow flicker and blade reflection findings by the DEP as sufficient evidence that these provisions have been met. In an attempt to avoid duplication of studies, the Board may find that no additional, or only some additional studies need be undertaken by the applicant.

**11.8.2** The shadow flicker and blade reflection study submitted by the Applicant must meet the following requirements.

**A.** The study shall be prepared by a registered professional regularly engaged in this type of work. The Board may hire its own consultant or other professional regularly engaged in this type of work in order to evaluate and explain the Applicant's study. The Applicant shall be responsible for paying such professional's fees and costs.

**B.** The study shall examine the areas within a one (1) mile radius of any WEFU in the proposed WEFS.

**C.** The model shall be calculated using the following minimum inputs:

- 1) Turbine locations (proposed and existing)
- 2) Shadow Flicker Receptor locations
- 3) Existing topography (elevation contours and vegetation)
- 4) Rotor diameter, blade width and hub height
- 5) Joint wind speed and direction distribution (wind rose table)
- 6) Hours of sunshine (long-term monthly references)

**D.** The model may be prepared by use of current aerial photography and topographical maps. A site visit by the preparer is required to identify Sensitive Receptors and to verify the existing conditions.

**E.** The study shall estimate the locations and durations of Shadow Flicker caused by the proposed WEFU or WEFS within the study area. The study shall clearly indicate the duration of Shadow Flicker at locations throughout the study area, showing the total number of hours per year anticipated.

**F.** The study must include estimates for the duration of Shadow Flicker at all existing occupied structures, schools, churches, public buildings, and Town Ways. The estimated duration of Shadow Flicker at any residential parcel shall include flicker that occurs within one hundred (100) feet of the residence.

**G.** The study must include a statement of the assumptions made, methodology applied, and data used by the study. This information must be sufficient to allow an independent third party to verify the results of the study.

**H.** The study shall include a paint sample that demonstrates the color, texture and gloss of the proposed surface coating and a certification that the proposed surface coating will not create a reflective surface conducive to blade reflection.

**11.8.3** The Application shall not be approved if the study estimates that the duration and location of flicker will exceed any of the limitations:

**A.** More than thirty (30) hours of flicker per year on any Non-participating Occupied Building unless a Mitigation Waiver is obtained.

**B.** More than thirty (30) hours of flicker per year on any Town Way.

**C.** Flicker occurs at intersections of any Town Way in such a manner that traffic safety will be impaired.

Such limitations shall continue to apply to all WEFS once constructed and throughout the duration of their operation.

## **Section 12 - Fees and Costs**

**12.1** An application fee for each WEFU as established by the Fee Schedule shall accompany the application. Any subsequent application for modification of an approved WEFS shall be accompanied by an additional fee per affected WEFU if the modification involves number, type or placement of WEFUs or change of Project Parcel boundaries. Applications for other modifications of an approved WEFS shall be accompanied by a modification fee as established by the Fee Schedule.

**12.2** Within fourteen (14) days of filing an application the Applicant shall deposit with the Town the sum of twenty-five thousand (\$25,000) dollars as a partial payment for the appropriate and reasonable Town expenses in hiring consultants and experts, as the Board shall deem necessary to assist the Board in its review of the application or any post-construction sound testing required by this Ordinance. The Town shall deposit this money into a non-interest bearing escrow account. If at any time the balance of the fund falls below five thousand (\$5,000) dollars, the Applicant shall, upon written notice, submit an additional ten thousand (\$10,000) dollars so that the Town's full and actual expenses of examining and verifying the data presented by the Applicant can be paid in full. If at any time the balance of this fund falls below five thousand (\$5,000) dollars for a period of thirty (30) days after notification the application shall be considered to have been withdrawn. The balance of the escrow account shall be returned to the Applicant after all Town expenses have been paid, and/or after a permit is granted or denied, or the Applicant has withdrawn the application. All funds disbursed from the escrow fund shall be accounted for by invoice, copies of which shall be provided to the applicant upon request.

**12.3** Within sixty (60) days of receiving an approved permit under this Ordinance, the Permittee shall deposit the sum of four thousand (\$4,000) dollars per WEFU payable to the Town Clerk. The Town shall deposit this money into a non-interest bearing escrow account. If at any time the balance of the fund falls below two thousand (\$2,000) dollars per WEFU, the Permittee shall, upon written notice, submit such additional funds as necessary to bring the account balance back up to the minimum. This fee is intended to support the Town's cost of monitoring compliance of the WEFS with this Ordinance, including the hiring of any professionals or purchase of equipment needed to investigate any complaints related to the WEFS.

## **Section 13 - Expiration of Permit Approval**

**13.1** If on-site construction of a WEFU or WEFS is not substantially commenced within one year of the date of issue of a Permit, the Permit shall automatically lapse and become null and void. If an approved WEFU or WEFS is not completed within thirty (30) months after a Permit is issued, then the Permit shall expire and the Applicant must reapply. For the purposes of this section, no time during which any municipal, state or federal permit related to the WEFU or WEFS is the subject of a pending appeal or other court action shall be counted toward the requirement for substantial commencement or completion. The Board may also, for good cause shown, grant one-time extensions of up to six (6) months for either substantial commencement of construction or completion of construction provided such request is submitted prior to the lapse or expiration of the Permit. Pending appeal of a Permit shall be deemed good cause to grant extensions. For the purposes of this Section, “substantially commenced” means that any work beyond excavation, including but not limited to, the pouring of a slab or footings, the installation of piles, the construction of columns, or the placement of a WEFU on a foundation has begun.

**13.2** A WEFU or WEFS Permit may be transferred to a new Owner/Operator only upon the written consent of the Board, which consent shall not be unreasonably withheld. The proposed new Owner/Operator shall demonstrate the financial and technical capacity to continue the project as permitted. The permit may be modified by the Board to reflect proposed changes.

## **Section 14 - Violations, Complaints, Penalties and Enforcement**

### **14.1 Access**

For the purpose of monitoring compliance with the provisions of this Ordinance, the Code Enforcement Officer, once an application under this Ordinance is approved, shall have the authority to review the progress of the work and shall have legal access to the project. The Code Enforcement Officer shall have the authority to review all records and documents of the Permittee directly related to the design, construction and operation of the WEFU or WEFS and to insure that construction and operation are in accordance with the approved application and any conditions.

### **14.2 Violations**

It shall be unlawful and a violation of this Ordinance to:

- 1) Construct or operate any WEFU or WEFS or any part thereof without all permit approvals required by this Ordinance;

- 2) Construct or operate a WEFU or WEFS or any part thereof in a manner contrary to the conditions of any permit approved under this Ordinance, including the approved project plans;
- 3) Construct or operate a WEFU or WEFS or any part thereof in a manner contrary to any permit granted for the project by other governmental authorities (e.g., MDEP Site Location of Development Law Permit), or in a manner which conflicts with any other ordinance of the Town of Dixfield or any applicable State or Federal law or regulation;
- 4) Fail to maintain compliance with any of the performance standards set forth in this Ordinance, including but not limited to sound and shadow flicker limits and safety provisions.
- 5) Fail to maintain the liability insurance required under this Ordinance.

### **14.3 Penalties**

All violations of this Ordinance shall be punishable as land use violations in accordance with the procedure and penalties set forth in Title 30-A M.R.S. §4452. Each day that a violation continues after written notice of violation from the Town's Code Enforcement Officer shall constitute a separate offense.

In any prosecution for violations of this Ordinance, in addition to the Owner/Operator, any landowner or lessor of a Project Parcel may be held liable for the violation, to the extent that such landowner or lessor caused or contributed to the violation.

### **14.4 Complaints**

#### **A. Complaint Process**

All WEFS complaints shall be made in writing to the CEO, who shall provide copies to the Owner/Operator and keep a record for the Town of the complaint. Complaints involving WEFS sound, vibrations or other possible disturbances related to sound pressure require a written description of the event(s) to include date, time and subjective/objective intensity. Residents or landowners in Dixfield may file such complaints.

1. After receipt of a complaint or otherwise becoming aware of a potential violation, the CEO shall, in an expeditious manner, and in the order complaints are received, contact the complainant and the Owner/Operator, visit the site of the alleged violation, conduct other investigation he/she deems appropriate, and, within fourteen (14) days, unless additional study is required, submit a written report to the Board of Selectmen and the complainant. The CEO shall include his/her findings of fact and reasons for those findings in a report to the Board of Selectmen as to the merits of the complaint, with recommendations of actions to

be taken.

2. If, at its next regularly scheduled meeting, the Board of Selectmen decides the complaint is without merit, it shall be dismissed, and the CEO shall inform the complainant and the Owner/Operator. If the Board of Selectmen decides the complaint(s) has merit, the CEO will attempt to process the issue with the Owner/Operator to a suitable conclusion. If the complaint has not been corrected within fourteen (14) days of the Board of Selectmen deciding the complaint has merit and the CEO has informed the Owner/Operator of the Town's intent to pursue the complaint, the following shall ensue:
  - a. If the complaint involves sound, shadow flicker, or other issues requiring further study, the Board of Selectmen shall hire a qualified independent consultant of its choice who will conduct, as soon as possible, a complete attended study at the site of the complaint and/or at the Project Boundary nearest the site of the complaint, to determine the dBA and dBC noise levels, shadow flicker analysis or other relevant study. The consultant may use unattended devices that he/she deems most appropriate and reliable. Such tests shall be repeated on multiple days and during different weather conditions and wind directions so that the consultant is reasonably satisfied that sufficient and representative data has been obtained. The cost of all such studies shall be paid for directly from the escrow account held by the Town on behalf of the WEFS.
  - b. Appropriate summary reports of all relevant WEFS sound meter/meteorological data collected during the date(s) and time(s) of the complaint and for one (1) month prior and one (1) month subsequent to the complaint, if applicable, shall be requested from the WEFS. The Owner/Operator shall provide this information to the Board of Selectmen within fourteen (14) days of notification.
  - c. If the complaint concerns sound, relevant monthly sound level reports from the Owner/Operator involving the WEFS will be reviewed by the CEO/Board of Selectmen, with the assistance of such expert consultants or specialists as they deem necessary.
3. If, after sufficient study, the Code Enforcement Officer determines that violations have occurred, he or she shall send a notice of violation by certified mail, return receipt requested, to the Owner/Operator containing summary reports and other data revealing evidence of failure to meet the standards required by this Ordinance. The notice of violation shall detail the violation and the remedial action that is to be taken.
4. If the Owner/Operator fails to implement a correction acceptable to the CEO and

the Board of Selectmen within thirty (30) days of the notice of violation, the Selectmen may file an enforcement proceeding and ask the Court to order limited operation, shutdown of one or more WEFU, or other appropriate remedies.

5. If a complaint continues after corrections have been made by the Owner/Operator, the CEO shall visit the site for further information. If the continuing complaint is found to have merit, the CEO shall restart the enforcement process described herein.
6. If any complaint concerning issues other than sound or shadow flicker is deemed to have merit, the CEO may, after consulting with the Board of Selectmen, proceed immediately with issuance of a notice of violation, or may hire appropriate, independent, qualified experts if necessary to address the matter and conduct any needed tests or investigations.

## **B. Enforcement**

The Board of Selectmen may bring an action in the Superior Court or District Court to enjoin violators of this ordinance, for collection of penalties, for injunctive relief, and for such other relief as may be provided in accordance with Title 30-A M.R.S. §4452. Each day that a violation continues shall be considered a separate violation, and the violator shall be required to reimburse the Town for its costs of investigating a violation that were not funded by the escrow account established for the WEFS.

## **C. Records of Complaints**

The Town manager, under the direction of the Board, shall maintain a permanent record of all complaints, CEO investigations, reports by consultants and outcomes.

## **14.5 Permit Revocation or Suspension**

In addition to prosecution in court, in cases of repeated or continuous uncorrected violations as reported by the CEO to the Board of Selectmen, the Board of Selectmen may give written notice to the Permittee of a permit revocation hearing, to be held not less than fourteen (14) days following delivery of the written notice. At said hearing, the Board of Selectmen shall take testimony and receive evidence concerning the alleged violation(s), including testimony and evidence presented by the Permittee.

Upon conclusion of its hearing, the Board of Selectmen shall determine (1) whether violations of this Ordinance or of any permit issued hereunder have occurred and (2) whether the violations are of such nature, severity or duration as to warrant revocation of the WEFU or WEFS Permit. In reaching their determination, the Board of Selectmen shall consider the effect of the violations concerned on the public health, safety and welfare; the extent to which the Permittee failed to take appropriate corrective action following written notice of the violations concerned; the extent to which the violations were the result of foreseeable circumstances; and the extent of corrective actions

attempted by the Permittee. The Board of Selectmen shall issue a written decision containing their findings.

In the event the Board of Selectmen determines that revocation of the WEFU or WEFS permit is appropriate, they may require the Permittee to immediately and permanently cease operation of the WEFU or WEFS. Alternatively, the Board of Selectmen may order operation of the WEFU or WEFS to cease until such time as the violations concerned have been remedied to their satisfaction. Upon receipt of adequate assurances of future operation of the WEFU or WEFS in full compliance with this Ordinance and with all project permits, the Board of Selectmen may, after public hearing with notice given as above, reinstate any license that has been revoked, within one year after the original revocation.

## **Section 15 - Appeals**

Any party aggrieved by a decision of the Board to grant, deny or grant with conditions any permit application under this Ordinance may appeal the decision concerned to the Board of Appeals. Any party aggrieved by the decision of the Board of Appeals may appeal the decision to the Maine Superior Court in accordance with Rule 80B, Maine Rules of Civil Procedure, within thirty (30) days after issuance of the Board's final written decision.

Any party aggrieved by a decision of the Board of Selectmen to revoke or suspend a permit issued under this Ordinance may appeal the decision concerned to the Board of Appeals. Any party aggrieved by the decision of the Board of Appeals may appeal the decision concerned to the Maine Superior Court in accordance with Rule 80B, Maine Rules of Civil Procedure, within thirty (30) days after the Board has issued its final written decision.

Decisions by the Board of Selectmen to take, or not take, enforcement action in court with respect to any alleged violations of this Ordinance shall not be subject to appeal by any person.

## **Section 16 - Maintenance, Amendments, and Miscellaneous**

**16.1** A WEFU or WEFS shall be constructed, operated, maintained and repaired in accordance with the approved Permit and this or any other Ordinance or State or Federal law or regulation. Where a standard or requirement is not provided by ordinance, law or regulation, the Permittee or Owner/Operator shall comply with Good Utility Practices.

**16.2** All components of the WEFU or WEFS Project shall conform to relevant and applicable local, state and national building codes.



**16.3** A Permittee may apply to the Board for changes to a Permit. The Application shall describe the requested change or changes. The Board shall review the Application and determine what provisions of the Ordinance and Appendix will apply to the Application. The Application will then be processed in accordance with all provisions of this Ordinance deemed to be applicable by the Board. The provisions of Section 12 (see also Section 9.18), together with all other instances where this Ordinance outlines financial obligations of the Applicant, Permittee or Owner/Operator shall apply to any Application for changes to a WEFU or WEFS Permit. An application for changes will be required for any significant modification to the approved WEFS, including, but not limited to: any change in the number of WEFUs; any change in WEFU height, location, design, or specification; or any substantive change to any previously submitted study, plan or insurance coverage.

**16.4** The Permittee, or Owner/Operator as applicable, shall notify the Town of any extraordinary event as soon as possible and in no case more than twelve (12) hours after the event. “Extraordinary events” shall include but not be limited to tower collapse, catastrophic turbine failure, fires, leakage of hazardous materials, unauthorized entry to the tower base, thrown blade or hub, any injury to a worker or other person that requires emergency medical treatment, or other event that impacts the health and safety of the Town or its residents.

**16.5** Approval of a Permit under this Ordinance does not exempt an Applicant from obtaining other applicable permits from the Town of Dixfield, such as building, electrical, plumbing and Shoreland Zoning permits, as applicable, or any applicable state or federal permit.

## APPENDIX

### Decommissioning Site Restoration Plan

Pursuant to Section 10.33, the Applicant shall provide the Planning Board with a plan for decommissioning a WEFU or a WEFS if abandoned for any reason, decommissioning is governmentally imposed, or the permit has expired or been revoked. The decommissioning plan shall include, but shall not be limited to the following:

#### 1. Triggers for implementing the decommissioning plan:

**A.** There is a rebuttable presumption that decommissioning is required if no electricity or less than fifteen percent (15%) of capacity has been generated for a continuous period of twelve (12) months. The Applicant may rebut the presumption by providing evidence such as a force majeure event that interrupts the generation of electricity, that although the project has not generated electricity for a continuous period of twelve (12) months, the project has not been abandoned and should not be decommissioned.

**B.** The WEFU or WEFS will be considered abandoned and the decommissioning plan shall be initiated if the WEFU's or WEFS' operation has ceased for six (6) consecutive months without substantiating communication concerning the ceasing of operations to the satisfaction of the Board.

**2.** A description of the work required to physically remove and lawfully dispose of all WEFUs or WEFSs, associated foundations to a depth of twenty-four (24) inches, buildings, cabling electrical components, hazardous materials, and any other Associated Facilities to the extent they are not otherwise in or proposed to be placed into productive use. All the earth disturbed during decommissioning must be graded and re-seeded to a condition similar to that which existed before construction of the WEFU or WEFS, unless the landowner of the affected land requests otherwise in writing.

Note: At the time of the decommissioning, the Applicant may provide evidence of plans for continued beneficial use of any or all of the components of the WEFU or WEFS. Any changes to the approved decommissioning plan shall be subject to review and approval by the Board.

**3.** An independent and certified Licensed Professional Engineer shall be retained by the Board at the WEFU or WEFS Applicant's cost to estimate the total cost of decommissioning of the equipment without regard to salvage value of the equipment and itemization of the estimated major expenses, including the projected costs of measures taken to minimize or prevent adverse effects on the environment during implementation of the decommissioning plan. The itemization of major costs may include, but is not limited to, the cost of the following activities: turbine removal, turbine foundation removal and permanent stabilization, building removal and permanent stabilization,

transmission corridor removal and permanent stabilization and road infrastructure removal and permanent stabilization. Said estimates shall also be submitted to the Town after the first year of operation and every other year thereafter reflecting current year values.

**4.** The Decommissioning Plan shall demonstrate the financial assurance to the satisfaction of the Board which may be in the form of a performance bond, surety bond, or other form of financial assurance. The provision of financial assurance shall be in place of one hundred percent (100%) of the total cost of decommissioning as determined by the Board based upon the information submitted by the Applicant. The Applicant and/or Owner/Operator shall post and maintain decommissioning funds in amount no less than one hundred percent (100%) of the total decommissioning costs prior to construction and permit approval. At no time shall decommissioning funds be less than one hundred percent (100%) of the most current estimate of decommissioning costs.

To satisfy this requirement , the financial assurance must be one that will remain in place for the full expected life of the WEFU or WEFS, regardless of possible dissolution or bankruptcy of the Permittee and that can be independently drawn against by the Town in the event default by the Permittee of its decommissioning and site restoration obligations.

In its discretion, the Board may accept as adequate a financial assurance provided by the Applicant or Permittee to the State of Maine as a condition of permit approval by the Maine DEP under the Site Location of Development law, provided that the financial assurance can be drawn upon by the Town in default of action by the Permittee and the State of Maine to decommission and restore the project site. Decommissioning funds provided by the applicant as a condition of any state-issued permit shall be counted towards the decommissioning requirements under this Ordinance.

**5.** The plan shall include written authorization from the WEFU or WEFS Permittee and all owners of all Project Parcels for the Town to access the Project Parcels and implement the decommissioning and site restoration plan, in the event the Permittee or its assigns fail to implement the plan. The written authorization shall be in a form, approved by the Board and recorded in the Oxford County Registry of Deeds.

The decommissioning plan must be transferred to any subsequent Owner(s)/Operator(s) who may follow the original applicant(s).