1.

# Wind Energy Development

## Ordinance for the Town of Stockton Springs

**Adopted: June 8, 2010**

**ATTESTED:** Christina Haasapulis

**TITLE:** Town Clerk

1. Title
2. Authority
3. Purpose
4. Definitions
5. Applicability, Effective Date, Conflicts, Severability and Amendments
   - 5.1. Pertaining to applicability
   - 5.2. Pertaining to WEDs extant before the Effective Date of this Ordinance
   - 5.3. Pertaining to subsequent development nearby
   - 5.4. Effective Date
   - 5.5. Conflicts
   - 5.6. Severability
   - 5.7. Amendments
6. Permitted Use and Review and Approval Authority
   - 6.1. Pertaining to Type 1
   - 6.2. Pertaining to Type 2
   - 6.3. Pertaining to Type 3
   - 6.4. Pertaining to Types 4 and 5
   - 6.5. Pertaining Code Enforcement Officer as Reviewing Authority
   - 6.6. Pertaining to Planning Board as Reviewing Authority
   - 6.7. Pertaining to Site Plan Review Applicability
7. Permit Requirement
   - 7.1. Pertaining to need for a Permit
   - 7.2. Pertaining to modification
   - 7.3. Pertaining to responsibility for obtaining other applicable Permits
8. Professional Services
9. Public Hearing Requirements
   - 9.1. Pertaining to when a public hearing is required
   - 9.2. Pertaining to notice requirements
10. Interpretation/Violation/Enforcement
    - 10.1. Pertaining to CEO interpretation
    - 10.2. Pertaining to violation
    - 10.3. Pertaining to notice of violation
    - 10.4. Pertaining to Selectmen, civil enforcement
    - 10.5. Pertaining to municipal access
11. Establishment of Fees
12. Application and Decision Deadlines
    - 12.1. Pertaining to pre-application conference
    - 12.2. Pertaining to notification of completeness, submission of materials, abandonment of application
    - 12.3. Pertaining to decision deadline of CEO WEDs
    - 12.4. Pertaining to waiver of requirements but not fees
    - 12.5. Pertaining to decision deadlines by Planning Board and site inspections
    - 12.6. Pertaining to public hearing for Type 3 WEDs where Planning Board is Reviewing Authority
    - 12.7. Pertaining to public hearing for Type 4 and 5 WEDs

13. Application Changes and Expiry
    13.1. Pertaining to notification of changes
    13.2. Pertaining to changes that do not require additional public hearing
    13.3. Pertaining to changes and requirements for subsequent public hearings
    13.4. Pertaining to expiration
14. Application Submission Requirements
    14.1. General Submission Requirements
    14.2. Additional Submission requirements for Large and Grid-Scale
15. Meteorological Towers
16. General Standards for All Wind Energy Developments
    16.1. Safety Setbacks
    16.2. Setbacks from Special Areas
    16.3. Design Safety Certification
    16.4. Hazardous, Special and Radioactive Materials
    16.5. Uniform Construction Code
    16.6. Controls and Brakes
    16.7. Electrical Components and Interconnections
    16.8. Fire Protection Systems
    16.9. Access
    16.10. Blade Clearance
    16.11. Signal Interference
    16.12. Structure Type
    16.13. Shadow Flicker
    16.14. Erosion Control
    16.15. Building-Mounted Wind Turbines
    16.16. Visual Appearance
    16.17. Visibility of Wind Turbines
    16.18. Effect on Scenic Resources
17. Additional Special Standards for Small Wind Energy Development
    17.1. Purpose Built Only
    17.2. Pertaining to setback requirements from Occupied Buildings and exceptions therefrom
    17.3. Noise
    17.4. Abandonment of Use
18. Special Standards for Large (Type 4) and Grid-Scale (Type 5) Wind Energy Developments
    18.1. Setback from Occupied Buildings and exceptions therefrom
    18.2. Noise
    18.3. Vibration
    18.4. Use of Public Roads
    18.5. Warnings
    18.6. Artificial Habitat
    18.7. Relation to DEP or Professional Certification
    18.8. Local Emergency Services
    18.9. Liability Insurance

18.10. Public Inquiries and Complaints
18.11. Inspections
18.12. Decommissioning
19. Approval Standards, Criteria, Guarantees
19.1. Pertaining to criteria
19.2. Pertaining to findings of fact
19.3. Pertaining to additional conditions of approval
19.4. Pertaining to the approved plan
19.5. Pertaining to recording requirement
19.6. Pertaining to requirement for guarantee
20. Appeals
20.1. Appeals to Zoning Board of Appeals
20.2. Appeals to Superior Court

**Title**
This Ordinance shall be known as the Town of Stockton Springs Wind Energy Development Ordinance.

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.A. Section 3001 (Home Rule), and the provisions of the Planning and Land Use Regulation Act, Title 30-A M.R.S.A. Section 4312, etc. seq.

3. **Purpose**
The purpose of the Ordinance is to provide for the construction and operation of Wind Energy Development in Stockton Springs, subject to reasonable conditions that will protect the public health, safety and welfare.

4. **Definitions**
Applicant is the Development Owner or Operator who files an application under this Ordinance.

Approved Residential Subdivision means a residential subdivision for which all applicable land use permits have been issued, provided that the time for beginning construction under such permits has not expired.

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

DEP Certification means a certification issued by the Department of Environmental Protection pursuant to Title 35-A M.R.S.A. §3456 for a Type 4 Wind Energy Development subject to this Ordinance.

Development Owner means the entity or entities having an equity interest in the Wind Energy Development, including their respective successors and assigns.

Generating Facilities means Wind Turbines and Towers and transmission lines, not including generator lead lines, that are immediately associated with the Wind Turbines.

Grid-Scale Wind Energy Development means a Wind Energy Development (Wind Energy Development, Type 5) that is of a size that qualifies as a development of state or regional significance as defined in Title 38 M.R.S.A. §482(2).

Historic Area means an Historic Site administered by the Bureau of Parks and Recreation of the Maine Department of Conservation.

Historic Site means any site, structure, district or archaeological site which has been officially included on the National Register of Historic Places and/or on the Maine Historic Resource Inventory, or which is established by qualified testimony as being of historic significance.

Hub Height means the distance measured from the surface of the Tower foundation to the height of the Wind Turbine hub to which the blade is attached.

Large Wind Energy Development means a generating facility (Wind Energy Development, Type 4)

consisting of one or more free-standing Wind Turbines and Associated Facilities with a rated capacity exceeding 100 kW in aggregate that does not qualify as a development of state or regional significance as defined in Title 38 M.R.S.A. §482(2).

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 power panels. MET Towers may also include wildlife-related equipment such as ultrasonic bat detectors, bird diverts and wildlife entanglement protectors.

Nacelle means the frame and housing at the top of the Tower that encloses the gearbox and generator.

Non-Participating Landowner means any landowner other than a Participating Landowner. Non-Participating Landowner may also refer to a Participating Landowner of a subject property, who also owns additional abutting or non-abutting property which is not part of the subject property.

Occupied Building means those structures which are or are likely to be occupied by persons, animals or property. This includes, but is not limited to dwellings, places of business, places of worship, schools, health facilities, barns and storage facilities.

Operator means the entity responsible for the day-to-day operation and maintenance of the Wind Energy Development.

Participating Landowner means one or more persons who hold title in fee to or a leasehold interest in the property on which the Wind Energy Development is proposed to be located pursuant to a written agreement with the Development Owner or Operator. Participating Landowner shall also include, but not be limited to: owners of deeded easements and rights of way on the property, mortgage holders, and others who may have a legal interest in or use of the property. A Participating Landowner is only considered as such with respect to his title or interest in the subject property. The same one or more persons' interest in other property is considered a Non-Participating Landowner, as per above.

Permit means the permit applied for by or issued to the Applicant by the applicable Reviewing Authority in accordance with this Ordinance.

Person means an individual, corporation, partnership, firm, organization or other legal entity.

Planned Residence means a Residence for which all applicable building and land use permits have been issued, provided that the time for beginning construction under such permits has not expired.

Protected Location means any location, accessible by foot, on a parcel of land owned by a Non-Participating Landowner containing a residence or Planned Residence, or Approved Residential Subdivision, house of worship, academic school, college, library, duly licensed hospital or nursing home near the development site at the time an application for a Wind Energy Development is submitted under this Ordinance; or any location within a State Park, National Park, a nature preserve owned by a land trust, the Maine Audubon Society or the Maine chapter of the Nature Conservancy, federally designated wilderness area, state wilderness area designated by statute, municipal park or locally designated by rule by the Bureau of Public Lands as a Protected Location. Protected location also includes areas identified by a governmental agency

such as the Maine Historic Preservation Commission as having significant value as an historic or archaeological resource and any such areas as may be identified in the Town of Stockton Springs Comprehensive Plan as amended from time to time.

Reviewing Authority means the Code Enforcement Officer or Planning Board, designated pursuant to Section 6 as responsible for conducting review of a particular Wind Energy Development application.

Scenic Resource means either
• a Scenic Resource of state or national significance, as defined in Title 35-A M.R.S.A. §3451(9); or
• a Scenic Resource of local significance that is located within the Town of Stockton Springs and is identified as such in the Town of Stockton Springs Comprehensive Plan as amended from time to time; or open space plan, or scenic inventory adopted by the Town of Stockton Springs; or
• Historic Area or Historic Site; or
• areas identified by a governmental agency such as the Maine Department of Conservation Natural Areas Program as having significant value as a natural area and any such areas identified in the Town of Stockton Springs Comprehensive Plan as amended from time to time; or
• any location within a State Park, National Park, a nature preserve owned by a land trust, the Maine Audubon Society or the Maine chapter of the Nature Conservancy, federally designated wilderness area, state wilderness area designated by statute, municipal park or locally designated by rule by the Bureau of Public Lands as a Protected location.

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.

Sight Line Representation means a profile drawing showing prominent features, including but not limited to topography, buildings and trees, along and in relation to a line of sight extending from an observer's eye to the lowest point visible on a proposed Tower.

Small Wind Energy Development means one (1) free-standing or roof-mounted Wind Turbine that has a rated capacity of not more than 100kW and is built for and connected with the use of a residence or business located on the site of the Small Wind Energy Development. Type 1, Type 2 and Type 3 Wind Energy Developments are Small Wind Energy Developments.

Snow and Ice Throw means accumulated snow and/or ice buildup on the blades of a Wind Turbine that is or can be thrown during normal spinning or rotation.

Substantial Start means that construction shall be considered to be substantially commenced when any work beyond excavation, including but not limited to: the pouring of a slab or footings, installation of piles, the construction of columns or the placement of a Tower on a foundation has begun.

Tower means the free-standing structure on which the wind measuring or energy conversion system is mounted.

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 Development means a generating facility consisting of one or more Wind Turbines.

Wind Energy Development, Type 1 means a Small Wind Energy Development with Turbine Height 60 feet or less.

Wind Energy Development, Type 2 means a Small Wind Energy Development with Turbine Height exceeding 60 feet but less than or equal to 80 feet.

Wind Energy Development, Type 3 means a Small Wind Energy Development with a Turbine Height exceeding 80 feet.

Wind Energy Development, Type 4 means a Large Wind Energy Development.

Wind Energy Development, Type 5 means a Grid-Scale Wind Energy Development.

Wind Turbine means a wind energy conversion system that converts wind energy into electricity through the use of a Wind Turbine generator and includes the nacelle, rotor, Tower and pad transformer, if any.

## 5. Applicability, Effective Date, Conflicts, Severability and Amendments

5.1. This Ordinance applies to any Wind Energy Development proposed or constructed in the Town of Stockton Springs.

5.2. A Wind Energy Development that is the subject of an application determined to be complete by the Reviewing Authority prior to the effective date of this Ordinance, or a Wind Energy Development that was installed prior to the effective date of this Ordinance, shall not be required to meet the requirements of this Ordinance, provided that any physical modification to an existing Wind Energy Development that materially alters the location, requires an increase of area of the site, increases the Turbine Height, increases sound emissions, or that otherwise materially alters the size, type or number of Wind Turbines shall require a Permit under and meet the requirements of this Ordinance.

5.3. Applications under this Ordinance are to be considered with regard to the surrounding buildings, developments and other features existing at the time of application submission and review. Changes to the area occurring after issuance of a Permit, including subsequent construction of nearby residential or commercial developments, shall not require further review of the Wind Energy Development, nor prevent the Wind Energy Development from continuing to operate in accordance with the Permit.

5.4. **Effective Date**
This Ordinance shall be effective upon approval by the Town of Stockton Springs Town Meeting.

5.5. **Conflicts**
If there is a conflict between provisions in this Ordinance, the more stringent shall apply. If there is a conflict between a provision in this Ordinance and that of another Stockton Springs Ordinance, the provision of this Ordinance shall apply.

5.6. **Severability**
The invalidity of any part of this Ordinance shall not invalidate any other part of this Ordinance.

5.7. **Amendments**
Amendments to this Ordinance may be initiated by the Selectmen or the Planning Board. No proposed amendments to this Ordinance shall be referred to a Town Meeting until the Selectmen have held a public hearing on the proposal, notice of which shall be posted at least thirteen (13) days prior to such hearing and advertised in a newspaper of general circulation in the Town of Stockton Springs at least two (2) times with the date of first publication being at least twelve (12) days prior to the hearing and the second at least seven (7) days prior to the hearing. The proposed amendments shall be adopted by a simple majority vote of a Town Meeting.

## 6. Permitted Use and Review and Approval Authority

Refer to the Stockton Springs Land Use Ordinance, Appendix A, for specific uses allowed or not allowed in each Zone.

6.1. A Type 1 Wind Energy Development shall be allowed in the following zones, in accordance with Section 7 and subject to all provisions of this Ordinance: Commercial, Rural, Residential 1, Residential 2, Residential 3, Village 2;

6.2. A Type 2 Wind Energy Development shall be allowed in the following zones, in accordance with Section 7 and subject to all provisions of this Ordinance: Commercial, Rural, Residential 1, Residential 2, Residential 3;

6.3. A Type 3 Wind Energy Development shall be allowed as a Permitted Use in the Rural zone only, in accordance with Section 7 and subject to all provisions of this Ordinance. A Type 3 Wind Energy Development shall be a conditional use in the following zones: Commercial, Residential 3;

6.4. A Type 4 and Type 5 Wind Energy Development shall be a conditional use in the following zones: Rural only.

6.5. Code Enforcement Officer — For a Type 1 or Type 2 Wind Energy Development, or a Type 3 Wind Energy Development in the Rural Zone, the Code Enforcement Officer is authorized to review all applications and may approve, reject or approve the project with conditions.

6.6. Planning Board — For Type 3 Wind Energy Developments in other than the Rural Zone, and Type 4, and Type 5 Wind Energy Developments, the Planning Board is authorized to review all applications and may approve, reject or approve the project with conditions.

6.7. Any building constructed either as an accessory structure, Occupied Building or dwelling unit in conjunction with a Wind Energy Development requiring Planning Board approval shall also meet the requirements of the Stockton Springs Site Plan Review Ordinance.

## 7. Permit Requirement

7.1. No Wind Energy Development, or addition of a Wind Turbine to an existing Wind Energy Development, shall be constructed or located within the Town of Stockton Springs after the effective

date of this Ordinance unless a Permit has been issued to the Development Owner or Operator approving construction of the facility under this Ordinance.

7.2. Any physical modification to an existing and Permitted Wind Energy Development that materially alters the size, type or number of Wind Turbines or other equipment shall require a Permit modification under this Ordinance. Like-kind replacements shall not require a Permit modification.

7.3. Receipt of a Permit under this Ordinance does not relieve the Development Owner or Operator from the responsibility to obtain any other Permits or approvals as required under the Town of Stockton Springs Land Use Ordinance, Mineral Extraction Ordinance, Subdivision Ordinance, Wellhead Protection Ordinance, Floodplain Ordinance and Shoreland Zoning Ordinance. Any Wind Energy Development requiring Planning Board review and approval must also meet the requirements of Section 9 of the Stockton Springs Site Plan Review Ordinance.

8. **Professional Services**

In reviewing an application for compliance with this Ordinance, the Reviewing Authority may retain such professional services as necessary to assist with its review, including but not limited to those of an attorney, engineer or land use professional. The professional shall first estimate the reasonable cost of such review and the Applicant shall deposit with the Town the full estimated cost, which the Town shall place in an escrow account. The Town shall pay the professional from the escrow account and reimburse the Applicant if funds remain after payment. If the escrow account is insufficient to pay for these professional services in full, the Applicant shall be responsible for payment of the balance due and shall deposit forthwith such additional funds with the Town. The Applicant shall be responsible for ensuring that sufficient funds are maintained in the escrow account at all times to cover any and all professional services until the Application is complete and the Reviewing Authority has authorized reimbursement of said funds to the Applicant, which authorization shall not be unreasonably withheld.

9. **Public Hearing Requirements**

9.1. A public hearing is required for any Wind Energy Development that requires Planning Board approval.

9.2. Notice of the date, time and place of the public hearing shall be posted and shall also be made as follows:

1. Published by the Reviewing Authority at least once in a newspaper having general circulation within the Town of Stockton Springs. The date of the first publication shall be at least 21 days before the hearing.

2. Mailed by the Reviewing Authority by certified mail to the Applicant.

3. Mailed by the Reviewing Authority by certified mail to the last-known addresses of owners of property located within 1,000 feet of any property line of the parcel(s) on which a Type 3 Wind Energy Development is proposed, at least 14 days before the public hearing, and mailed by the Reviewing Authority by certified mail to the last-known addresses of owners of property located within one mile of any property line of the parcel(s) on which a Type 4 or Type 5 Wind Energy Developments is proposed, at least 21 days before the public hearing. The Planning Board shall maintain a list of property owners mailed a notice in the application file. Failure of any of these property owners to receive a notice shall not invalidate the public hearing, nor shall it require the

Planning Board to schedule another hearing.

4. All costs of notification per the requirements of this section and any other section of this Ordinance shall be borne by the Applicant.

**10. Interpretation/Violation/Enforcement**

10.1. The Code Enforcement Officer (CEO) shall be responsible for enforcing the provisions of this Ordinance.

10.2. It shall be unlawful for any Person to violate or fail to comply with or take any action that is contrary to the terms of this Ordinance, or any Permit issued under this Ordinance, or cause another to violate or fail to comply or take any action which is contrary to the terms of this Ordinance or any Permit issued under this Ordinance.

10.3. If the Code Enforcement Officer determines that a violation of the Ordinance or the Permit has occurred, he or she shall provide written notice by certified mail to any Person alleged to be in violation of this Ordinance or Permit. If the alleged violation does not pose an immediate threat to public health or safety, the Code Enforcement Officer and the parties shall engage in good faith negotiations to resolve the alleged violation. Such negotiations shall be conducted within thirty (30) days of the notice of the violation. The Code Enforcement Officer shall notify and obtain the consent of the Board of Selectmen before proceeding with any enforcement action or negotiations.

10.4. If after thirty (30) days from the date of notice of violation the Board of Selectmen determines, upon consultation with the Code Enforcement Officer, that the parties have not resolved the violation, or if the alleged violation does pose an immediate threat to public health or safety, the Board of Selectmen shall pursue civil enforcement proceedings or any other remedy at law to ensure compliance with the Ordinance or Permit.

10.5. Appropriate officers and/or employees of the Town of Stockton Springs shall have access to the site at all times to review the progress of the work and shall have the authority to review all records and documents related to the project.

**11. Establishment of Fees**

The Selectmen shall, from time to time and after consultation with the Planning Board, establish appropriate application and technical review fees that shall be related to the Town's cost of administering the permit process for each type of Wind Energy Development. These will be appropriately posted and publicized.

**12. Application and Decision Deadlines**

**12.1.** Prior to submitting a formal application for any Wind Energy Development requiring Planning Board Approval, the Applicant or the Applicant's representative may request a pre-application conference with the Planning Board. Said request shall be made, in writing, to the Board Secretary at least twenty-one (21) days prior to the date of the meeting. The Applicant or representative shall provide the Planning Board with whatever information, relative to the proposed project, is available at the time of the pre-application conference. A pre-application conference is strongly advised. The pre-application conference shall be informal and informational in nature. There shall be no fee for a pre-application conference, and such conference shall not cause the project to be a pending application or

proceeding under Title 1 M.R.S.A. §302 or this Ordinance. No decision on the substance of the project shall be made at the pre-application conference, and no representation made by the Planning Board shall affect the Applicant's rights or obligations under this Ordinance.

1. The purposes of a pre-application conference are to:
   a. Allow the Applicant to understand the development and review process and required submissions; and
   b. Identify issues that need to be addressed in future submissions.

2. There are no formal submission requirements for a pre-application conference. However, the applicant should be prepared to discuss the following with the Board:
   a. The proposed site, including its location, size and general characteristics;
   b. Identify issues that need to be addressed in future submissions.

12.2. Within 30 days after receipt of an application for a Wind Energy Development, the Reviewing Authority shall notify the Applicant that the application is either complete or incomplete. If it is incomplete, such notice shall include notification of the deficiencies in the materials submitted. Applicants for Wind Energy Developments requiring Planning Board Approval must submit eight (8) copies of all materials to be considered, and must ensure that the Planning Board Chairman is notified of such submission within five (5) days thereafter. If the application is deemed to be incomplete, the Reviewing Authority shall indicate the evidence or information needed. The application shall be deemed abandoned unless the Applicant provides the evidence or information requested, or submits in writing a document indicating the reason for any delay and anticipated date of completion, within 30 days from the date of the notice indicating that the application is incomplete.

12.3. A decision to approve, reject or approve with conditions a Type 1 or Type 2 Wind Energy Development application, or a Type 3 Wind Energy Development in the Rural Zone, shall be made within 30 days of the determination of completeness.

12.4. Where the Code Enforcement Officer is the Reviewing Authority, the Code Enforcement Officer may waive any submission requirement by issuing a written finding that, due to special circumstances of the application, adherence to that requirement is not necessary to determine compliance with the standards of this Ordinance. The Code Enforcement Officer may not, however, waive the application fee.

12.5. For Wind Energy Developments requiring Planning Board approval, the Planning Board shall, after the first meeting other than any pre-application conference at which the application is considered, schedule a site inspection to review existing conditions, field-verify the information submitted and investigate the development proposal. Such inspection may take place whether or not the application is deemed complete. The Board may decide not to hold an on-site inspection when the site is impassable due to customary seasonable conditions. If an application is pending during a period when there is snow cover or the site is impassable, the deadline by which the Planning Board shall take final action on the application as specified in Section 12.6 or 12.7 may be extended, which extension shall not exceed thirty (30) days after the Board is able to conduct an on-site inspection. Written notice of the onsite inspection shall be provided to all parties entitled to notice under subsection 9.2.

12.6. A public hearing shall be held within 30 days of the Planning Board's determination that an application for a Type 3 Wind Energy Development in other than the Rural Zone is complete, and the Planning Board shall render a decision on the application within 30 days of the public hearing.

12.7. A public hearing shall be held within 60 days of the Planning Board's determination that an application for a Type 4 or 5 Wind Energy Development is complete, and the Planning Board shall render a decision on the application within 120 days of the determination of completeness or within 60 days following the public hearing, whichever is later.

## 13. Application Changes and Expiry

13.1. Throughout the Permit process, the Applicant shall notify the Reviewing Authority promptly of any changes to the information contained in the Permit application.

13.2. Changes to a pending application that do not materially alter the initial site plan may be considered and approved by the Reviewing Authority without an additional public hearing.

13.3. If the Reviewing Authority determines that proposed changes constitute a material alteration to the project, which may include but not be limited to Tower Height, layout and number of Towers as described in the application considered at a public hearing, the Reviewing Authority shall, within 30 days of such a determination, schedule and conduct another public hearing. In making its determination, the Reviewing Authority shall consider whether the proposed changes involve potential adverse effects different from or in addition to those addressed in the initial application.

The notice requirements applicable to the initial public hearing apply to any subsequent public hearings. This subsection 13.3 applies not only to projects initially requiring a public hearing, but also to projects where such changes affect the Type of the Wind Energy Development such that it becomes a project which requires a public hearing, i.e. a Type 2 Wind Energy Development in other than a Rural zone becoming a Type 3 Wind Energy Development as a result of the proposed changes.

13.4. Permits shall expire:

1. One (1) year after the date of approval unless a Substantial Start on construction has occurred and,

2. Two (2) years after the date of approval unless construction of the Wind Energy Development has been completed.

3. If a Permit for a Type 4 or Type 5 Wind Energy Development expires, the Applicant shall implement pertinent provisions of the approved decommissioning plan.

4. Upon the Applicant's written request made prior to the expiration of the applicable deadline, the Reviewing Authority may, after reviewing and evaluating the reasons for such request, grant a one-year Permit extension.

## 14. Application Submission Requirements

### 14.1. General Submission Requirements

The Applicant shall submit a written application, which shall include copies of each of the following

items listed in this section. For Wind Energy Developments for which the Planning Board is the Reviewing Authority, the Applicant shall submit eight (8) copies of this information.

1. Applicant and Participating Landowner(s) name(s) and contact information and the Applicant's signature;

2. Receipt showing payment of application fee in accordance with Appendix A.

3. Location of the proposed Wind Energy Development including address, tax map number, owner(s) with address(es) of the proposed facility site and any contiguous parcels owned by Participating Landowners, and any parcels that abut the proposed facility site or abut parcels of Participating Landowners that are contiguous to the proposed facility site, overlay and/or sub-districts, of the property and the location of zoning district boundaries if the property is located in two (2) or more zoning districts or sub-districts or abuts a different district, existing use and acreage of the parcel and identification of adjacent properties and their existing uses;

4. Evidence of the Applicant and Participating Landowner(s) right, title and interest in the property to be developed, such as a copy of a deed, easement, purchase option or other comparable document;

5. Location map showing the site of the proposed development, boundaries of all contiguous property under total or partial control of the Participating Owner or Applicant and any Scenic Resource or recognized Historic Site within 2,500 feet of the proposed development;

6. Description of the proposed Wind Energy Development including a narrative overview that includes the number of Wind Turbines and the overall generating capacity of the project, manufacturer's specifications for each Wind Turbine (including but not limited to: type, make, model, Turbine Height, Hub Height, maximum generating capacity, photograph, noise characteristics including noise emission levels and safety and stability data including safety results from independent testing facilities) and a description of Associated Facilities;

7. Site plan showing the location of each proposed Wind Turbine and any and all of the following features within 500 feet of that location: required setbacks, topography (maximum 10-foot contour interval), soils, property boundaries, roads, driveways, rights-of-way, utility lines, buildings (identified by use) and tree cover including average height of trees within 300 feet of proposed turbine location(s) and wetlands, streams, and water bodies within 1,000 feet as well as areas proposed to be cleared of vegetation, replaced and/or regraded;

8. Map showing within 2,500 feet of the proposed Wind Energy Development:
   a. Any parks and other designated areas considered locally important in the Comprehensive Plan;
   b. Recognized Historic Sites; and
   c. Significant wildlife habitats, rare animal occurrence locations, rare and exemplary natural communities, and rare plant habitat as depicted on the then-most-recent Beginning with Habitat maps of the Town of Stockton Springs, if such map exists (see Section 16.2);

9. Plan showing all proposed changes to the site, including temporary or permanent roads or driveways, grading, vegetation clearing and planting, and buffering/screening of the Wind Energy

Development with locations, types and planting size of proposed trees and shrubs;

10. Foundation and anchor design structural drawings from manufacturer for Type 1, 2 and 3 Wind Energy Developments and such drawings stamped by a qualified Maine licensed professional engineer for Type 4 and 5 Wind Energy Developments;

11. Sound level (noise emission)
    a. specifications prepared by the Wind Turbine manufacturer for Type 1 and 2 Wind Energy Developments; and
    b. a sound level analysis conducted by qualified engineers for all Wind Energy Developments except when the sound level analysis is waived by the Reviewing Authority for Type 1 and Type 2 Wind Energy Developments;

12. Snow and Ice Throw specifications prepared by the Wind Turbine manufacturer or a qualified Maine licensed professional engineer for all Small Wind Energy Developments.

13. A line drawing of the electrical components of the system in sufficient detail to establish that the installation conforms to all applicable electrical codes;

14. Emergency and normal shutdown procedures;

15. The location of all utilities, including fire protection systems;

16. If a roof-mounted system is proposed, a letter certified by a qualified Maine licensed professional engineer stating that the roof and the proposed mounting structure are sufficient to hold the proposed Wind Turbine in winds of 100 miles per hour for one hour;

17. If the system will be connected to the energy grid, evidence that the provider of electrical service to the property has been notified of the intent to install an interconnected electricity generator;

18. Elevation photographs of the site;

19. Certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas or other similar certifying organizations;

20. In addition to items 1 through 19 above, for Type 3, 4 and 5 Wind Energy Developments the following sight line, photographic and elevation information is required:
    a. Sight Line Representation. A Sight Line Representation shall be drawn from representative locations that show the lowest point of the Tower visible from each location. These locations shall include a Sight Line Representation from the closest Occupied Building to the applicable Wind Energy Development and from any public road or public area within 500 feet. Each Sight Line shall be depicted in profile, drawn at one inch equals 40 feet. The profiles shall show all intervening trees and buildings. There shall be at least two sight lines from the closest Occupied Building or public roads or other significant viewpoints within 500 feet.
    b. Existing (before condition) photographs. Each sight line shall be illustrated by one four-inch by six-inch color photograph of the current view.

c. Proposed (after condition) photographs. Each of the existing condition photographs shall have the proposed Wind Turbines superimposed on it to accurately simulate the Wind Energy Development when built.
d. Elevations of the top of any and all structures on the subject property relative to the elevation of the Wind Turbine(s).
e. The height and elevation relative to the Wind Turbine(s) of trees, both existing and proposed, that are expected to provide visual buffering. In the case of trees to be planted, the proposed height at time of installation as well as the projected mature height is to be provided.
f. Results from shadow flicker analysis based on modeling software approved by Department of Environmental Protection for Wind Energy Developments.
g. A visual impact assessment, if required, pursuant to and in accordance with Section 16.18.
h. Evidence of the Applicant's technical and financial capability to carry out the project as proposed.
i. Stormwater management plan stamped by a qualified Maine licensed professional engineer.
j. Foundation and anchoring system drawings that are stamped by a qualified Maine licensed professional engineer.
k. Other relevant studies, reports, certifications and approvals as may be reasonably requested by the Reviewing Authority to ensure compliance with this Ordinance.

14.2. **Additional submission requirements for Large and Grid-Scale Wind Energy Developments**
Applications for large (Type 4) and Grid-Scale (Type 5) Wind Energy Developments shall include the following additional information:

1. An affidavit or similar written evidence of agreement between the Participating Landowner and the Development Owner or Operator demonstrating that the Development Owner or Operator has the permission of the Participating Landowner(s) to apply for Permits necessary for construction and operation of the Wind Energy Development.

2. Site plan must additionally show access road and turnout locations, substation(s), electrical cabling from the Wind Energy Development to the substation(s), ancillary equipment, buildings and structures, including all permanent Meteorological Towers, associated transmission lines and layout of all structures within the geographical boundaries of any applicable setback.

3. Documents related to decommissioning requirements under Section 18.12, including without limitation estimates of decommissioning costs as specified in Section 18.12.4.

4. Other relevant studies, reports, certifications and approvals as may be reasonably requested by the Reviewing Authority to ensure compliance with this Ordinance.

5. For a Type 4 Wind Energy Development where the energy produced will be sold or used by a Person other than the Participating Landowner, Owner or Operator, certification from the Department of Environmental Protection pursuant to Title 35-A M.R.S.A. §3456 that the Wind Energy Development:
   a. Will meet the requirements of the noise controls adopted by the Board of Environmental Protection pursuant to Title 38 M.R.S.A. Chapter 3, Subchapter 1, Article 6;
   b. Will be designed and sited to avoid unreasonable adverse shadow flicker effects; and

c. Will be constructed with setbacks adequate to protect public safety.

6. For a Type 4 Wind Energy Development where the energy produced will be used only by the Participating Landowner(s), Owners or Operators, the Reviewing Authority will engage a professional under the terms of Section 8 of this Ordinance to ensure compliance with Section 14.2.5 a, 14.2.5.b, and 14.2.5.c above.

7. For a Type 5 Wind Energy Development, certification of compliance with the provisions of Title 38 M.R.S.A. §482(2).

8. A plan for maintenance of access roads and storm water controls as well as general procedures for operational maintenance of the Wind Energy Development.

9. Copies of all proposed leases secured by the Applicant if the Applicant is not the sole owner of the parcel or parcels on which the Wind Energy Development is proposed to be constructed. Boundaries of said leases shall be clearly illustrated upon the site plan.

10. Copies of all easements, existing and proposed, upon the site. The easements shall be clearly illustrated upon the site plan.

15. **Meteorological Towers (MET Towers)**

MET Towers shall be permitted under the same standards as a Type 1 Wind Energy Development but with no height limitations, other than those imposed under State or Federal law. A Permit for a temporary MET Tower shall be valid for a maximum of one (1) year after which the Code Enforcement Officer may grant up to two (2) extensions of up to one (1) year each. The site shall be restored to its original condition within 30 days following removal of the Tower. The provisions of this section do not apply to permanent MET Towers included as Associated Facilities in approved Wind Energy Development applications.

**16. General Standards for All Wind Energy Developments**

16.1. **Safety Setbacks**

A free-standing Wind Energy Development shall be set back a horizontal distance equal to 1.5 times the Turbine Height from above-ground utility lines, property lines, railways and horizontal right-of-way lines of public and private roads, unless appropriate easements or leases are secured from the adjacent property owner to provide no less than 1.5 times the Turbine Height when combining the properties' area. Building-mounted wind energy systems do not require setbacks.

16.2. **Setbacks from Special Areas**

Wind Turbines exceeding 60 feet or tree height on site, whichever is greater, must be set back 2,500 feet from any open space designated important in any Comprehensive Plan, open space plan, or Scenic Resource inventory adopted by the Town of Stockton Springs, and from any site registered in the National Registry of Historic Places. If an Applicant proposes to locate any portion or element of a Wind Energy Development within a rare animal occurrence consultation circle or within 250 feet of a significant wildlife habitat, as depicted on the then-most-recent Beginning with Habitat map of the Town of Stockton Springs, if such map exists, the Applicant must provide written documentation that the Applicant has consulted with the Maine Department of Inland Fisheries and Wildlife (MDIFW) Regional Wildlife Biologist and has addressed any MDIFW comments or recommendations. The

Applicant must demonstrate that the proposed Wind Energy Development will not have an undue adverse effect on any rare, threatened or endangered plants and rare and exemplary plant communities, or on rare, threatened or endangered wildlife, significant wildlife habitat, or resource area for which consultation is required with MDIFW under this subsection.

16.3. **Design Safety Certification**

The design of the Wind Energy Development shall conform to applicable industry standards, including those of the American National Standards Institute, and shall comply with standards promulgated by Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energies or other similar certifying organizations.

16.4. **Hazardous, Special and Radioactive Materials**

The handling, storage and use of all materials identified by the standards of a federal or state agency as hazardous, special or radioactive must be done in accordance with standards of these agencies.

No flammable or explosive liquids, solids or gases shall be stored in bulk above ground unless they are located at least seventy-five (75) feet from any lot line, or forty (40) feet in the case of underground storage. All materials must be stored in a manner and location which is in compliance with appropriate rules and regulations of the Maine Department of Public Safety and other appropriate federal, state and local regulations.

16.5. **Uniform Construction Code**

To the extent applicable the Wind Energy Development shall comply with Maine's Uniform Building and Energy Code (MUBC) upon its enactment and any other relevant and applicable local and state building codes.

1. All wiring shall be installed underground according to
   a. The national Electrical Code, 2008 Edition, designated as "NFPA 70-2008" and published by the National Fire Protection Association, and any amendments and/or replacements thereof.
   b. The National Electrical Safety Code, 2007 Edition, published by IEEE, and any amendments and/or replacements thereof.
   c. IEEE Standard 142, "Grounding for Industrial and Commercial Power Systems," 2007 Edition, published by IEEE, and any amendments and/or replacements thereof.
2. All construction shall be conducted in accordance with the International Building Code 2006, published by the International Code Council, Inc.

16.6. **Controls and Brakes**

All Wind Energy Developments shall be equipped with a redundant braking system. This includes both aerodynamic overspeed controls (including variable pitch, tip and other similar systems) and mechanical brakes. Mechanical brakes shall operate in fail-safe mode. Stall regulation shall not be considered a sufficient braking system for overspeed protection.

16.7. **Electrical Components and Interconnections**

All electrical components of the Wind Energy Development shall conform to relevant and applicable local, state and national codes. On-site power and transmission lines shall, to the maximum extent practicable, be placed underground.

16.8. **Fire Protection Systems**

The Applicant shall ensure that the project includes fire protection and suppression systems designed and constructed according to the highest industry standards and construction practices for the type of project being proposed.

16.9. **Access**

All ground-mounted electrical and control equipment and all access doors to Wind Turbines shall be labeled and secured to prevent unauthorized access. Wind Towers shall not be climbable up to fifteen (15) feet above ground surface.

16.10. **Blade Clearance**

The minimum distance between the ground and any blades of any free-standing Wind Turbine shall be 25 feet as measured at the lowest arc of the blades.

16.11. **Signal Interference**

The Applicant shall make reasonable efforts to avoid and mitigate any disruption or loss of radio, telephone, television or similar signals caused by the Wind Energy Development.

16.12. **Structure Type**

With the exception of Meteorological (MET) Towers, Towers shall be monopoles with no guy wires. This requirement may be waived if the Applicant demonstrates to the satisfaction of the Reviewing Authority that there is no practicable alternative. Bird flight diverters must be installed on any guy wires that are permitted.

16.13. **Shadow Flicker**

Wind Energy Developments with Wind Turbines exceeding 80 feet tall shall be designed and sited to avoid unreasonable adverse shadow flicker effects on any Occupied Building on a non-Participating Landowner's property as demonstrated by modeling software approved by the Department of Environmental Protection.

16.14. **Erosion Control**

Erosion of soil and sedimentation shall be minimized by employing "best management practices" as specified in the most recently amended "Maine Erosion Control Handbook for Construction: Best Management Practices."

16.15. **Building-Mounted Wind Turbines**

No building-mounted wind energy system may extend more than 20 feet above the roofline of the building to which it is attached. If the system is to be mounted on the roof, the roof must be sufficient to hold the system in winds of 100 miles per hour for one hour.

**16.16. Visual Appearance**

1. Wind Turbines shall be a non-obtrusive and non-reflective color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporates non-reflective surfaces to minimize any visual disruption.

2. Wind Energy Developments shall not be lighted artificially, except to the extent required by the Federal Aviation Administration or other applicable authority that regulates air safety, or as otherwise required by another governmental agency with jurisdiction over the Wind Energy Development.

3. Wind Turbines shall not include advertising or signs, except for reasonable and incidental identification of the turbine manufacturer, facility owner and Operator and any warnings.

16.17. **Visibility of Wind Turbines**

The following requirements apply to a Type 3 or 4 Wind Energy Development to the greatest extent practicable, and to a Type 5 Wind Energy Development to the extent it is not covered by applicable State of Federal regulations:

1. Each Wind Turbine should be located such that existing vegetation and structures screen the Wind Turbine from off-site views and so that mature vegetation and existing structures, if any, are between each Wind Turbine and public and private viewpoints.

2. When existing features do not screen views of a Wind Turbine from Occupied Buildings, Scenic Resources and public and private roads, screening shall be provided, where feasible and effective, through the planting of trees and/or shrubs. Generally, such plantings should be of native varieties. 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 Occupied Buildings, Scenic Resources and/or public and private roads.

**16.18. Effect on Scenic Resources**

1. Except as otherwise provided in this subsection, if a Type 4 or 5 Wind Energy Development is proposed for location in or is visible from a Scenic Resource, the Applicant shall provide the Reviewing Authority a visual impact assessment that addresses the evaluation criteria in Subsection 3. There is a rebuttable presumption that a visual impact assessment is not required for those portions of a Wind Energy Development that are located more than three (3) miles, measured horizontally, from a Scenic Resource. The Reviewing Authority may require a visual impact assessment for portions of the Wind Energy Development located more than three (3) miles and up to eight (8) miles from a Scenic Resource if it finds that a visual impact assessment is needed to determine if there is the potential for significant adverse effects on the Scenic Resource. Information intended to rebut the presumption must be submitted to the Reviewing Authority by any interested person at least 21 days prior to the date of the public hearing on the application. The Reviewing Authority shall determine if the presumption is rebutted based on a preponderance of evidence in the record.

2. The Reviewing Authority shall determine, based on consideration of the evaluation criteria in subsection 3, whether the development significantly compromises views from a Scenic Resource such that the development has an unreasonable adverse effect on the scenic character or existing uses related to scenic character of that Scenic Resource.

3. In making its determination pursuant to subsection 2, and in determining whether an Applicant for a Type 4 or 5 Wind Energy Development located more than three (3) miles from a Scenic Resource

must provide a visual impact assessment in accordance with subsection 1, the Reviewing Authority shall consider:

a. The significance of the potentially affected Scenic Resource;
b. The existing character of the surrounding area;
c. The expectations of the typical viewer;
d. The Wind Energy Development's purpose and the context of the proposed activity;
e. The extent, nature and duration of potentially affected public uses of the Scenic Resource and the potential effect on the public's continued use and enjoyment of the Scenic Resource;
f. The scope of and scale of the potential effect of views of the Generating Facilities on the Scenic Resource, including but not limited to issues related to the number and extent of Wind Turbines visible from the Scenic Resource, the distance from the Scenic Resource and the effect of prominent features of the development of the landscape.

## 17. Additional Special Standards for Small Wind Energy Developments

### 17.1. Purpose Built Only

A Small Wind Energy Development shall be built and permitted for the use of the Participating Landowner(s), and must be connected to one or more of the Participating Landowner's buildings or facilities to provide electricity for same. The purpose of this section relates to the primary function of the Small Wind Energy Development, and shall not be construed so as to prohibit the Participating Landowner from selling excess electricity back to the public electric utility.

17.2. Type 1, Type 2 and Type 3 Wind Energy Developments also shall be set back 1.5 times the Turbine Height from Occupied Buildings, except those owned and occupied by the Participating Landowner or Operator. Participating Landowners, Owners and Operators shall release and indemnify the Town of Stockton Springs from and against any and all liability for personal injury, property damage or otherwise arising from this exception to the general setback requirements for Wind Energy Developments. Said release and indemnification shall conform to language as set forth in Appendix *** and shall be binding on their respective heirs and assigns.

### 17.3. Noise

A Small Wind Energy Development shall not exceed 50 dBA or, in the Rural zone, 5 dBA above pre-construction background sound levels, as measured at the property line, except during short-term events such as severe wind storms and utility outages. Noise shall be measured with at least two readings twelve hours apart by a meter set on the A-weighted response scale, slow response. The meter shall meet American National Standards Institute (ANSI SI. 4-1961) "American Standard Specification for General Purpose Sound Level Meters." In all events, sound emissions shall comply with sound-level limits and other requirements described in Chapter 375, Section 10 of the rules promulgated by the Board of Environmental Protection concerning the Site Location of Development Law.

### 17.4. Abandonment of Use

1. A Small Wind Energy Development that has not generated electricity for twelve (12) consecutive months shall be deemed abandoned and shall be removed from the property by the Owner or Operator within 120 days of receipt of notice from the Code Enforcement Officer. If the development is not removed within this time period, the Board of Selectmen shall bring a civil action to prosecute the violation of this subsection.

a. Each year, within one (1) calendar month of the anniversary date of the Reviewing Authority's approval of the Wind Energy Development, the Operator shall submit to the Code Enforcement Officer a certification of continued use. If the Code Enforcement Officer does not receive such certification within said time, the Code Enforcement Officer shall be deemed to have received permission to enter the property to investigate whether it has been abandoned.

2. If a surety has been given to the municipality for removal of the development, the Applicant may apply to the Reviewing Authority for release of the surety when the Small Wind Energy Development has been removed to the satisfaction of the Reviewing Authority.

## 18. Special Standards for Large and Grid-Scale Wind Energy Developments

### 18.1. Setback from Occupied Buildings

Wind Turbines in a Type 4 or 5 Wind Energy Development shall be set back from the nearest Occupied Building of a Non-Participating Landowner a horizontal distance of not less than one mile, unless appropriate easements are secured from the adjacent property owner for a lesser setback, which can be no less than 1,000 feet from the property line. The easement must be recorded in the Waldo County Registry of Deeds. A horizontal distance not less than 1.1 times the Turbine Height is required for on-site Occupied Buildings.

1. **Participating Landowners,** Owners and Operators shall release and indemnify the Town of Stockton Springs from and against any and all liability for personal injury, property damage or otherwise arising from this exception to the general setback requirements for Wind Energy Developments. Said release and indemnification shall conform to language as set forth in Appendix *** and shall be binding on their respective heirs and assigns.

### 18.2. Noise

Audible sound from a large or grid-scale Wind Energy Development shall not exceed 50 dBA (time-weighted average), as measured at the boundary of the Participating Landowner's property unless the night time pre-development ambient hourly sound level at a Protected Location is equal to or less than 35 dBA, in which case the audible sound from the development shall not exceed 40 dBA. Methods for measuring and reporting acoustic emissions from Wind Turbines and the Wind Energy Development shall be equal to or exceed the minimum standards for precision described in Chapter 375 of the rules promulgated by the Board of Environmental Protection.

### 18.3. Vibration

Wind Energy Developments must comply with any and all federal, state and local regulations and requirements relating to ground vibration in the vicinity of Wind Turbines.

### 18.4. Use of Public Roads

1. The Applicant shall identify all public ways to be used within the Town of Stockton Springs to transport equipment and parts for construction, operation or maintenance of the Wind Energy Development.

2. The Town of Stockton Springs's engineer or a qualified third party engineer, hired by the Reviewing Authority and paid for by the Applicant, shall document road conditions prior to

construction. The engineer shall document road conditions again thirty (30) days after construction is complete or as weather permits.

3. The Town of Stockton Springs shall bond the road in compliance with state regulations.

4. Any road damage caused by the Applicant or its contractors shall be promptly repaired at the Applicant's expense.

5. The Applicant shall demonstrate that it has appropriate financial assurance to ensure the prompt repair of damaged roads.

18.5. **Warnings**

A clearly visible warning sign concerning voltage must be placed at the base of all pad–mounted transformers and substations.

18.6. **Artificial Habitat**

The Wind Energy Development shall avoid, to the extent practicable, the creation of artificial habitat for raptors or raptor prey, such as maintained clearings, electrical equipment boxes on or near the ground that can provide shelter and warmth, and horizontal perching opportunities on the Towers or related structures. The Reviewing Authority shall consider comments and recommendations, if any, made by the Maine Department of Inland Fisheries and Wildlife.

**18.7. Relation to DEP or Professional Certification**

1. For a Type 4 Wind Energy Development for which there is a DEP certification that has been submitted with the application in accordance with Section 14.2.5, or Professional certification in accordance with Section 14.2.6, the Reviewing Authority shall consider, at a minimum and to the extent applicable, pertinent findings in the DEP or professional certification when making its determination under sections 16.13, 18.2 and 18.4.

**18.8. Local Emergency Services**

1. The Applicant shall provide a copy of the project summary and site plan to all local emergency services, including paid or volunteer fire department(s).

2. Upon request by the Reviewing Authority, the Applicant shall cooperate with emergency services to develop and coordinate implementation of an emergency response plan for the Wind Energy Development.

3. Wind Turbines shall be equipped with fire suppression systems that will extinguish any fire located in the Nacelle portion of the Wind Turbine.

18.9. **Liability Insurance**

The Development Owner shall maintain a current general liability policy for the Wind Energy Development that covers bodily injury and property damage with limits in an amount commensurate with the scope and scale of the Wind Energy Development. The Applicant annually shall provide certificates of insurance to the Town of Stockton Springs.

**18.10. Public Inquiries and Complaints**

1. The Development Owner and Operator shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project.

2. The Development Owner and Operator shall make reasonable efforts to respond to the public's inquiries and complaints and shall provide written copies of all complaints and the company's resolution upon request.

18.11. **Inspections**

Type 4 and 5 Wind Energy Developments shall be inspected at least every two years for structural and operational integrity by a qualified Maine licensed professional engineer, and the Development Owner shall submit a copy of the inspection report to the Code Enforcement Officer. If such report recommends that the repairs or maintenance are to be conducted, the Owner shall within 14 days provide the Code Enforcement Officer a written schedule for the repairs or maintenance for the Code Enforcement Officer's review and approval. Failure to complete the repairs or maintenance in accordance with the approved schedule shall be deemed a violation of this Ordinance.

**18.12. Decommissioning**

1. The Applicant shall prepare and submit a decommissioning plan with the application. The Development Owner shall, at its expense, complete decommissioning of the Wind Energy Development or individual Wind Turbines, within twelve (12) months after the end of the useful life of the Wind Energy Development or individual Wind Turbines as specified in the materials provided at the time of application. The Wind Energy Development or individual Wind Turbines will presume to be at the end of their useful life if no electricity is generated for a continuous period of twelve (12) months.

2. Decommissioning shall include removal of Wind Turbines and foundations to a depth of twelve (12) inches. All buildings, cabling, electrical components, roads and any other Associated Facilities shall be removed unless, at the end of the Wind Energy Development's useful life, as determined in accordance with section 18.12.1, the Applicant provides written evidence of plans for continued beneficial use of these aspects of the Wind Energy Development.

3. Except as otherwise provided by section 18.12.2, disturbed earth shall be graded and reseeded, unless the Participating Landowner of the affected land requests otherwise in writing.

4. An independent and qualified Maine professional engineer shall be retained to estimate the total cost of decommissioning ("decommissioning costs") without regard to salvage value of the equipment and the cost of decommissioning net salvage value of the equipment ("net decommissioning costs"). Said estimates shall be submitted to the Town of Stockton Springs with the Application and every fifth year thereafter.

5. The Development Owner or Operator shall post and maintain decommissioning funds in an amount equal to net decommissioning costs, provided that at no point shall decommissioning funds be less than twenty-five percent (25%) of decommissioning costs. The decommissioning funds shall be posted and maintained with a bonding company or federal or state-chartered lending institution chosen by the Development Owner or Operator and Participating Landowner posting the financial

security, provided that the bonding company or lending institution is authorized to conduct such business within the State and is approved by the Town of Stockton Springs.

6. Decommissioning funds may be in the form of a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance as may be acceptable to the Town of Stockton Springs.

7. Decommissioning funds shall be posted before the Permit for a Wind Energy Development is issued, and the amount of such posting shall be reviewed and adjusted every fifth year.

8. If the Development Owner or Operator fails to complete decommissioning within the period prescribed by Section 18.12.1, then the Participating Landowner shall have six (6) months to complete decommissioning.

9. If neither Development Owner or Operator, nor the Participating Landowner completes decommissioning within the periods prescribed by sections 18.12.1 and 18.12.7, the development shall be deemed to be in violation of this Ordinance and the Town of Stockton Springs shall take such measures as necessary, including court action, to ensure the completion of decommissioning.

10. The escrow agent shall release the decommissioning funds when the Development Owner or Operator has demonstrated and the Code Enforcement Officer concurs that the decommissioning has been satisfactorily completed, or upon written approval of the municipality in order to implement the decommissioning plan.

**19. Approval Standards, Criteria, Guarantees**

19.1. The Reviewing Authority shall use the appropriate criteria contained in Sections 14, 15, 16, 17 and 18 of this Ordinance in reviewing applications for Wind Energy Developments, and such criteria shall serve as minimum requirements for approval of the application. The application shall be approved unless the Reviewing Authority determines that the Applicant has failed to meet one or more of these standards. In all instances, the burden of proof shall be on the Applicant, who must produce evidence sufficient to warrant a finding that all applicable criteria have been met.

19.2. In reaching its decision, the Reviewing Authority shall make and record written findings of fact establishing that the proposed Wind Energy Development does or does not meet the standards of approval appropriate to its Type within the guidelines of this Ordinance. The Reviewing Authority shall notify the Applicant and all parties who requested in writing to be notified of the action of the Reviewing Authority, including the findings of fact, and any conditions of approval. This requirement may be met through the distribution of minutes of the meeting containing the findings of fact and decision of the Reviewing Authority.

19.3. The Reviewing Authority may place reasonable conditions of approval on a Permit as necessary to address the standards of this Ordinance.

19.4. One copy of the approved Wind Energy Development plan must be included with the application for the Permit for the project and all construction activities must conform to the approved plan, including any conditions of approval and minor changes approved by the Code Enforcement Officer to

address field conditions.

19.5. The Applicant must record one (1) copy of the approved Wind Energy Development plan in the Waldo County Registry of Deeds within thirty (30) days of approval and the book and page number must be provided to the Code Enforcement Officer. Failure to record the plan within thirty (30) days shall void the approval. The Reviewing Authority may extend this period for cause.

19.6. The Reviewing Authority may require the posting of an improvement guarantee in such amount and form as is reasonably necessary to ensure the proper installation of some or all improvements required as conditions of approval. The nature and duration of the guarantee shall be structured to achieve this goal without adding unnecessary cost to the Applicant.

**20. Appeals**

20.1. Appeals to Zoning Board of Appeals

1. The Zoning Board of Appeals shall hear appeals from final decisions of the Planning Board or Code Enforcement Officer in the administration of this Ordinance. A request for such an appeal must be submitted in writing within 30 days of issuance of a written decision by the Reviewing Authority on the Permit. The Zoning Board of Appeals shall hear an appeal within thirty (30) days of the receipt of a written application, payment of applicable fees from an aggrieved party and public notice. Notice of said hearing shall be posted in the Town Office at least fourteen (14) days prior to the public hearing and advertised in a newspaper of general circulation in Stockton Springs, the date of publication to be at least seven (7) days prior to the hearing. The Zoning Board of Appeals shall send notice of such public hearing by Certified Mail, to all owners of property within the notification radius specified in Section 9.2.3 of this Ordinance, or within 1,000 feet, whichever is greater, of any boundary of the subject property. Said notice shall be mailed no later than fifteen (15) days prior to the date of the public hearing. The purpose of the public hearing shall be for the Zoning Board of Appeals to receive testimony from the Applicant and any interested parties regarding the final decision of the Reviewing Authority relative to any municipal or state ordinance, standard or regulation which is applicable to the proposed project. All costs related to the appeal process will be paid, in advance, by the Applicant.

2. Appeals from the interpretations of this ordinance or decisions of the Planning Board shall be reviewed by the Zoning Board of Appeals on an appellate basis and should be upheld if correct as a matter of law and based upon substantial evidence in the record.

3. Appeals from interpretations of this ordinance or decisions of the Code Enforcement Officer shall be reviewed by the Zoning Board of Appeals on a *de novo* basis, pursuant to State Law.

20.2. **Appeals to Superior Court**

An appeal may be taken to the Superior Court by any party within forty-five (45) days of the vote on the original decision by the Zoning Board of Appeals in accordance with State Law.

# Appendix A

## Fee Schedule for Wind Energy Development

Wind Energy Type 1 &2

The application fee is $30.00.

Wind Energy Type 3 in rural zone

The application fee is $50.00.

Wind Energy Type 3 other than rural zone

The application fee is $100.00.

Fees and Costs-Wind Energy Facility Type 4 & 5

Preliminary Cost Agreement. At the time an application for a WEF Site Permit is filed with the Town, the applicant shall execute for the benefit of the Town an agreement to pay and provide adequate surety guarantying payment of the cost of the investigation, review and processing of the application, including without limitation by way of enumeration, legal, engineering, acoustical, planning, environmental, and staff administrative costs as provided in this Ordinance.

The application fee for a Site Permit shall consist of a base application fee of $2500.00, plus $100.00 for every wind turbine included in the project

The application fee for an Operational License is $1000.00.

The annual fee for an existing Operational license is $250.00.