

Agenda

Ordinance Review Committee

October 12, 2017

- Call to order by facilitator Levi Brown

- Period for public comment (up to 30 minutes)

- Review discussions of September 30, 2017
 - p. 10, Setback Requirements, amended to 4,000 feet from the tower foundation to the property line
 - p. 10, Sound Restriction Requirements, unchanged at 25 dBA 7:00 pm to 7:00 am and 35 dBA between 7:00 am and 7:00 pm.
 - p. 11, Design Requirements, total tower height amended to 450 feet

- Further recommendations or actions of the Committee

- Recommendations, if any, to the Board of Selectmen

Town of Bethel
Commercial Wind Energy Facility Ordinance

Amendments Drafted 10.11.17

SECTION I - Title

This Ordinance shall be known as the Town of Bethel Commercial Wind Energy Facility Ordinance.

SECTION II – Purpose and Goals

*The purpose of this Ordinance is to protect the health, safety, and general welfare of the Citizens and Taxpayers of Bethel, by establishing reasonable and uniform regulations for the permitting, construction, operation and decommissioning of Commercial Wind Energy Facilities (CWEFs). This Ordinance is to be liberally construed so as to effect its purpose and goals. As there are many technical and non-technical terms used with specific meaning in this Ordinance, special attention should be paid to the **Definitions** in **SECTION VII**.*

This Ordinance is a supplement to the Town’s “Site Plan Review Ordinance”. All aspects of the development, operation and decommissioning of a CWF in the Town of Bethel are governed by the “Site Plan Review Ordinance” and by this “Commercial Wind Energy Facility Ordinance”.

SECTION III – Authority

A. Authority

This Ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution (Municipal Home Rule), 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, et. seq., (Comprehensive Planning and Land Use Regulation, or “Growth Management Act”), as these laws may be amended from time to time, and is consistent with the Town of Bethel’s Comprehensive Plan.

B. Permitting Authority

The Planning Board shall be the permitting authority for CWEFs in the Town of Bethel, responsible for all CWF related approvals.

C. Operational Oversight Authority

The Board of Selectmen shall be the operational oversight authority for CWEFs in the Town, responsible for all CWF related operation, complaints and decommissioning.

D. Enforcement Authority

The Town’s Code Enforcement Officer (CEO) shall be the enforcement authority and shall work with both the Selectmen and Planning Board to assure that the Applicant/Owner/Operator abides by all Town ordinances and regulations through the life-span of a CWF.

E. Inspection

Throughout the life of the CWF, the Planning Board, CEO or other authorized representative of the Town shall be allowed access to the site during reasonable hours, after informing the Applicant/Owner/Operator by phone or mail, for the purpose of evaluating the CWF proposal, to review the progress of work, or to determine compliance with the conditions of any approvals or other requirement of the Site Plan Review or

this ordinance.

SECTION IV – Validity and Severability, Conflict with other Ordinances, and Amendments

A. Validity and Severability

Should any section or provision of this Ordinance be declared by any court to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.

B. Conflict with other Ordinances

Whenever a provision of this Ordinance conflicts with, or is inconsistent with, another provision of this Ordinance or any other Town of Bethel Ordinance, State of Maine or Federal statute or regulation, the provision more restrictive to the CWF Applicant/Owner/Operator shall control, except when a provision of state or federal law expressly preempts local authority on the subject.

C. Amendments

This Ordinance may be amended by a majority vote of the Annual Town Meeting. Amendments may be initiated by a majority vote of the Planning Board or by request of the Board of Selectmen to the Planning Board or on written petition of a number of voters equal to at least 10% of the number of votes cast in the last gubernatorial election in the Town. The Selectmen shall conduct a public hearing on any proposed amendment.

SECTION V – Expert Consultants, Extension of Time Limits, Documentation, Change of Ownership

A. Expert Consultants and Specialists

*The Planning Board or the Board of Selectmen may, with notice to the Applicant, hire independent expert Consultants or Specialists as they may deem necessary to advise them in carrying out the provisions of this Ordinance including, but not limited to: legal counsel, qualified independent acoustical consultants, Maine professional land surveyors, licensed Maine engineers, insurance underwriters, videographers to record meetings/hearings. All regulatory fees, costs, and expenses incurred by any such experts or specialists shall be paid by the Applicant through an Escrow Account, described in **SECTION VIII, C**, below, established in the name of the Town.*

The qualifications of an “Independent Acoustical Consultant” include, at a minimum, demonstration of competence in the specialty of community sound testing and full and current Board Certified Membership in 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 are thus not, without further qualification, appropriate for work under this Ordinance regarding sound issues.)

B. Extension of Time Limits

*The Town Planning Board in permitting matters, or the Board of Selectmen in operational and enforcement matters, may, for good cause shown, and proof of no harm to the Town, grant up to a twelve (12) month extension to time limits in this Ordinance upon request by the applicant and a showing that the time limits cannot be complied with due to circumstances beyond the control of the applicant, provided such a written request is submitted prior to the lapse or expiration of the Site Plan Approval. (**NOTE:** there is a limitation to such an extension in **SECTION XV.**)*

C. Documentation

1. *The Applicant/Owner/Operator shall submit the following materials to the Town Planning Board or Board of Selectmen:*
 - a. *copies of the “Application”, “Land Use Permit”, and all other application materials the Applicant*

submits to the Maine Department of Environmental Protection or other governing State agency;

b. all application materials required by the Town's Site Plan Review Ordinance and by this Ordinance;

- 2. Through the life of the CWEF, the Owner/Operator shall provide the Town with copies of all periodic reports and updated documents required by the State, the Town's Site Plan Ordinance and by this Ordinance;*
- 3. In any phase of the CWEF project where such materials are required, the Applicant shall provide the Town at least eight bound copies of all written and other application, permitting and report materials required for submission by the State or the Town, including any maps, photographs or drawings, with one electronic copy of all such materials in a digital format acceptable to the responsible Board. These will provide access to the material by the Planning Board, the Board of Selectmen, the CEO and other Town officials, and a copy kept in the Town Office for Public review.*
- 4. The Board of Selectmen must be notified of any change in Ownership of an existing CWEF by the new Owner/Operator within fourteen (14) days of assuming Ownership.*

SECTION VI – Applicability

- A. An Applicant for a CWEF in Bethel must meet all procedures and requirements of the Town's "Site Plan Review Ordinance", as determined by the Planning Board during application phases and by the Board of Selectmen during operational and decommissioning phases, and all requirements of this Ordinance. The "Site Plan Review" and this Ordinance will be applied simultaneously in a process determined by the responsible Board. This Ordinance applies to all CWEFs proposed to be constructed and operated in Bethel on or after the effective date of this Ordinance and any proposed expansions or major changes to pre-existing CWEFs, including, but not limited to, constructing additional towers or turbines, upgrading the megawatt capacity, and thus the noise, of any turbine, or increasing the height of any towers and blades.*
- B. This Ordinance includes SECTIONS I through XIX, together with the APPENDIX.*
- C. It shall be unlawful and a violation of this Ordinance to begin construction, modification and/or operation of a CWEF in Bethel without appropriate permits and licenses required under local, state and federal law and regulations.*
- D. The burden of proof of compliance with all aspects of this Ordinance is on the Applicant and/or the Owner/Operator of a CWEF.*

SECTION VII – Definitions

Abandoned – *the condition of a CWEF that fails to produce electricity to the grid for a period of twelve (12) months.*

Applicant – *this term is interchangeable with the "Owner/Operator" during any CWEF application process. See definition of "Owner/Operator".*

A-Weighted Sound Level (dBA) – *is one 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.*

Board of Selectmen – *means The Board of Selectmen of the Town of Bethel, Maine.*

CEO – *means the Town of Bethel Code Enforcement Officer.*

Commercial Wind Energy Facility (CWEF) – means a wind energy installation that meets all of the following criteria:

1. consists of one or more Commercial Wind Turbines, (CWTs), with a combined tower and blade height of more than 150 feet from the grade to blade tip at its highest point;
2. has a nameplate capacity of more than 100 kilowatts per CWT;
3. requires a Site Location of Development permit from the Maine Department of Environmental Protection pursuant to Title 35-A M.R.S.A §3456, as may be amended from time to time;
4. the purpose of which facility is to generate electricity using ambient wind as a source of motive power in order to primarily supply electricity to off-site customers.

CWEFs include, without limitation, associated installations, structures and facilities such as meteorological towers, substations and any other accessory structures, cables/wires, generator leads lines, fences, lighting systems, access roads, parking lots, turnout locations, temporary staging areas, together with maintenance and all power collection and transmission systems, and any areas in which the soil is in any way disturbed.

Commercial Wind Turbine (CWT) – an energy system that converts wind energy into electricity and which meets the height, nameplate capacity and other criteria cited in the definition of a CWEF, above.

Days – refers to Calendar days.

Decibel (dB) – the practical unit of measurement for sound pressure level; the number of decibels of a measured sound is equal to 20 times the logarithm to the base 10 of the ratio of the sound pressure of the measured sound to the sound pressure of a standard sound, (20 micro pascals); abbreviated “dB”.

Decommissioning – the process of removing the CWEF and restoring the site to the standards described in the Applicant’s original Maine DEP “Application” and “Land Use Permit” or to the State’s standards in effect at the time of decommissioning, whichever are more restrictive to the Owner/Operator.

Height – means the total distance measured from the grade of the property at its base to the highest point of a CWEF, tower, turbine, or related facility. In the case of a CWT, this includes the length of the blade at its highest possible point.

Infrasound – sound-like waves having a frequency below the audible range, that is, below 20 hertz.

Issuance of Notice Date – the date that the Site Plan Application is approved by the Planning Board.

Land Survey – the practice of determining the boundaries, area, location and elevation of land, features and structures on the earth’s surface by means of measuring angles and distances, using the techniques of geometry and trigonometry, by a Maine Professional Land Surveyor (MPLS).

Liberal Construed – legal language that instructs a court to interpret the Ordinance broadly so that the intent and purposes of the Ordinance will be achieved.

Meteorological Tower (MET Tower) – a structure used for the measurement of wind force, direction, speed, and any other meteorological data, constructed as a tower to mount instruments at one or more heights above grade for the purpose of collecting such data.

Mitigation Waiver – means a legally enforceable, written agreement between the Applicant and a Non-Participating Landowner in the Town of Bethel for which the landowner waives certain protections afforded in this Ordinance. Such a waiver cannot infringe on the protections afforded by this Ordinance to other neighboring non-participating properties.

Nameplate Capacity – the electrical power rating of an individual CWT as certified by the manufacturer and the National Renewable Energy Laboratory and normally expressed in watts, kilowatts (kW), (one-thousand

watts), or megawatts (MW), (one million watts).

Non-Participating Parcel – a parcel of real estate that is neither a Project Parcel nor a Participating Parcel.

Notice or Notification – a written communication sent by mail.

Owner/Operator – the person(s) or entity(s) with legal ownership or control of the property on which the CWF is located or proposed to be located, including successors and assigns, that either had, has or is attempting to obtain, permission from the town of Bethel to build, operate on a daily basis, expand, decrease, change the use of, or decommission a CWF. An Owner/Operator is the entity which has full legal authority to represent and bind itself to fulfill all of the provisions of this Ordinance.

Participating Parcel – means a parcel of real estate that is not a Project Parcel, but whose owner has signed a Mitigation Waiver with the Applicant/Owner/Operator.

Phased Project Plan – means dividing the entire CWF project into phases for purposes of management and oversight by the Town, including establishing escrow accounts. The plan shall include the following phases at a minimum: MET Tower Application, MET Tower Reclamation, Construction Application, Construction, Operation, and Decommissioning. The Selectmen or Planning Board may sub-divide any of the major phases into specific shorter phases, or create additional management phases, as either Board deems necessary.

Planning Board – means The Planning Board of the Town of Bethel, Maine.

Project Boundary – means the boundaries of the CWF as shown on the construction site plan.

Project Parcel – any CWF property covered in the current Application process in which the developer has an ownership interest either in whole or in part, including leases, easements or Rights-of-Way.

Qualified Independent Acoustical Consultant – refers to a person with qualifications under this Ordinance for conducting baseline and other sound measurements, reviews and studies.

SCADA (supervisory control and data acquisition) – refers to industrial control systems (ICS): computer systems that monitor and control industrial, infrastructure or facility-based processes.

Scenic or Special Resource – means a scenic resource of state or national significance, as defined in Title 35-A M.R.S.A. Section 3451(9), as may be amended from time to time; any site registered in the National Registry of Historic Places; or a scenic or special resource of local significance identified as such in the Bethel Comprehensive Plan of 2003, amended in 2007.

Setback – the minimal distance required from the outer edge of each CWT Tower where it is attached to its concrete foundation to the closest point on any property line of any non-participating parcel, as measured on a horizontal basis.

State – the State of Maine is referred to in this Ordinance as the “State”.

Town of Bethel – for the purpose of this document, the Town of Bethel shall hereinafter be referred to as the “Town”. In the “Permitting” sections of this Ordinance, the Town is represented by the “Planning Board”. In “Oversight” and “Enforcement” sections, the Town is represented by the “Board of Selectmen” and the “CEO”.

SECTION VIII – Financial Responsibilities of the Applicant/Owner/Operator

A. Liability Insurance

1. Starting with the Initial Application and lasting throughout the life of the Facility, the Applicant/Owner/ Operator will maintain a current general liability (GL) policy for the CWF in an amount commensurate to the potential liability of the CWF. It will cover, but not be limited to, bodily injury and property damage or loss. The Board of Selectmen shall verify whether the coverage amounts are adequate, initially and at each Five-Year Update/Re-Valuation, (see

SECTION XIV). *The insurance company must be approved by the Board of Selectmen and must have an A.M. Best insurance Rating of at least “A to A- (excellent)”.*

- 2. The costs of said policy shall be borne entirely by the Applicant or Owner/Operator who shall provide a “Certificate of Insurance” to the Board of Selectmen within thirty (30) days of the establishment, and all renewals, of the policy.*
- 3. If there is a change made to the policy, notice shall be given to the Board of Selectmen by the Applicant/ Owner/Operator within fourteen (14) days of receiving such notice from the insurer. If the policy is canceled, the Applicant/Owner/Operator shall notify the Board of Selectmen immediately.*

B. Fees

The Applicant/Owner/Operator shall pay specific amounts to the Town when submitting its MET Tower Application and CWF Construction Application, and as required by the Board of Selectmen at each Five-Year Update/Re-Valuation. These fees are to be used by the Town for CWF-related administrative costs, such as, but not limited to, mailings, public hearings and meetings, staff time for such activities, or staff time for the CEO or others designated by the Board of Selectmen to inspect the progress and compliance of the CWF, to investigate any complaints about the CWF received from town residents or landowners and to enforce compliance.

C. Escrows

- 1. Funds will be pre-paid by the Applicant/Owner/Operator for each phase of the project that the Planning Board or Board of Selectmen, whichever Board is responsible for that phase, deems necessary. These funds will be held by a financial institution approved by the Board of Selectmen in the name of the Town. These funds are to be managed and disbursed by the Town Treasurer to pay the cost of the Town hiring its own independent experts for each phase of the project. The CEO will serve as the Town’s contact person with such experts. When the responsible Board certifies that a particular phase is complete, the funds will be returned to the Applicant/Owner/ Operator. When the responsible Board determines that a new phase begins, a new Escrow account will be established for that phase by that Board. By mutual agreement between the Applicant/Owner/Operator and the responsible Board, Escrow funds remaining from a completed phase of the project may be “rolled over” into the next phase.*
- 2. The Escrow amounts required shall be a maximum of \$20,000 for each phase of the Project. Failure to provide notice and proof of deposit to the Town Escrow Account by the Applicant/Owner/Operator within thirty (30) days of notice by the Board of Selectmen shall cause the application or its approval to be deemed withdrawn. If the Escrow Account falls below fifty (50) percent of the original required deposit amount, full replenishment is required within thirty (30) days of notice by the Board of Selectmen to the Applicant, Owner or Operator regarding the account deficiency. Failure by the Applicant/Owner/Operator to provide to the Board of Selectmen notice and proof of deposit to the Town Escrow Account for such replenishment shall cause the application or its approval to be deemed withdrawn.*
- 3. All interest accruing to the escrow accounts shall be paid to the Applicant/Owner/Operator on a yearly basis.*

D. Decommissioning Funds

- 1. As part of its permitting, the Applicant shall submit the complete and detailed decommissioning plan described in its Maine DEP “Application” and “Land Use Permit”. It shall include financial assurance, naming the Town as beneficiary, to cover the costs associated with decommissioning the abandoned CWF through the lifespan of the facility. An independent and certified Licensed Professional Engineer, selected by the Planning Board during the CWF Application phase, and selected by the Board of Selectmen for each Five-Year Update/Re-Valuation, will be retained to help the respective Board establish the cost of decommissioning the CWF, without regard to salvage value, and itemizing the estimated major expenses to restore the site to the requirements of the*

Applicant/Owner/Operator's initial Maine DEP "Application" and "Land Use Permit", or the requirements of the State in effect at the time of decommissioning, whichever is more restrictive to the Owner/Operator. If the Owner/Operator fails to complete the decommissioning of the CWF within established timelines, the Town may use the Decommissioning Funds to complete the work. The "established timeline" for decommissioning is twelve (12) months.

- 2. The Planning Board shall not approve an application until the applicant has submitted an executed Decommissioning Access Agreement that authorizes the Town, or its agents, to enter onto the CWF property for the purposes of implementing the Decommissioning Plan upon the occurrence of a "triggering event", as described in the Decommissioning Plan, that requires the implementation of decommissioning activities and the Owner/ Operator fails or refuses to commence decommissioning activities, such that the Town is authorized to access the bond or other financial guarantee to permit the Town to decommission the facility. The Decommissioning Access Agreement shall run with the land and shall be executed in a form suitable for recording in the County Registry of Deeds. Once a CWF has been decommissioned, the Town will release the Decommissioning Access Agreement.*
- 3. The financial assurance of decommissioning funds may be in the form of a performance bond, surety bond, or other form of bonded assurance, and shall demonstrate the financial assurance to the satisfaction of the Planning Board during Permitting phases, and to the Board of Selectmen thereafter. The Applicant/Owner/Operator shall post and maintain decommissioning funds in an amount no less than thirty-three per cent (33%) of the total decommissioning costs prior to construction; sixty-six percent (66%) by the fifth (5th) anniversary of the Issuance of Notice Date; and one hundred percent (100%) by the tenth (10th) anniversary of the Issuance of Notice Date. The financial assurance shall be maintained at one hundred percent (100%) for the rest of the life of the CWF. The Board of Selectmen will inform the Applicant or Owner/Operator of the amount of coverage required at each Five-Year Update/Re-Valuation, described in **SECTION XIV**, and the Applicant/Owner/ Operator will provide proof of required coverage within thirty (30) days of notification. Failure to do so will cause the Construction/Operating Permit to be rescinded.*
- 4. The Board of Selectmen shall review the financial stability of the financial institution providing the financial assurance initially and coincident with each Five-Year Update/Re-Valuation. The financial institution shall have a minimum AM Best rating of "A to A- (excellent)".*
- 5. In the event the Applicant or Owner/Operator is unable to secure an underwritten bond, etc., due to no underwriting entities existing, the Board of Selectmen may consider accepting a 100% funded Escrow Account as provided by **SECTION VIII. C. 1**, above, as an alternative. The Escrow Account would be opened by the Applicant/Owner/ Operator prior to construction at a financial institution approved by the Board of Selectmen, in the name of the Town, to be managed by the Town Treasurer, in an amount to be established initially and at every Five-Year Update/Re-Valuation as described in paragraph 3, above.*

SECTION IX – Meteorological Study Requirement and Application Procedure

A continuous MET study of no less than one (1) year and no more than two (2) years is required prior to the Site Plan Application. If the Applicant has not commenced construction of the MET Tower(s) within eighteen (18) months of its permit approval by the Planning Board, the applicant must reapply.

The removal of the MET Tower must be completed within ninety (90) days of the test completion and the land restored to the standards described in the Applicant’s Reclamation Plan described below.

A. Meteorological Tower (MET Tower) Application Requirements

- 1. A non-refundable Fee of \$200.00 will be assessed to cover all Planning Board and other Town costs associated with evaluation of the MET Application.*
- 2. The Applicant shall comply with all portions of the Town’s “Site Plan Review Ordinance” and Telecommunications Ordinance, as determined by the Planning Board.*

B. Meteorological Tower (MET Tower) Application Submission Requirements

In addition to requirements of the “Site Plan Review”, the Submission Requirements will include:

- 1. The names and current mailing addresses of all owners of parcel(s) within two (2) miles of all proposed MET tower sites;*
- 2. A reclamation plan that meets the intent to “Preserve and Enhance the Landscape” as outlined in “Performance Standards” of the “Site Plan Review”, indicating how the site will be restored after MET Tower removal and the time-frame involved in the reclamation;*
- 3. A copy of any Natural Resource Protection Permit required by the Maine DEP.*

SECTION X – Meteorological Study Application Review and Performance Standards

In addition to the Town’s “Site Plan Review”, the Applicant shall send the Planning Board’s announcement of the Public Hearing about the Application to all property owners within two (2) miles of the proposed MET Tower site at least fourteen (14) days prior to that Public Hearing.

SECTION XI – CWEF Application Procedure

A. Application Requirements

- 1. A non-refundable Application fee of \$1500 for 1-3 proposed CWTs; \$3000 for 4-10 CWTs; \$4000.00 for 11-15 CWTs; and \$5000.00 for 16 or more CWTs will be assessed to cover all Planning Board costs associated with the evaluation of the Construction Application.*
- 2. Supplement to “Site Plan Review”. See **SECTION V, C, Documentation** of this ordinance, above, for details of the Application Materials to be submitted for a CWEF Application.*
- 3. Supplement to “Site Plan Review” the Applicant shall notify all property owners within two (2) miles of the proposed CWEF footprint at least fourteen (14) days prior to the Planning Board’s consideration of the application.*

B. Submission Requirements

In addition to requirements of the “Site Plan Review”, the Submission Requirements will include an update of the following as part of the site plan for constructing and operating the CWEF:

1. *The names and current mailing addresses of all owners of parcel(s) within two (2) miles of all proposed Commercial Wind Turbine (CWT) sites;*
2. *A copy of any Natural Resource Protection Permit required by the Maine DEP;*
3. *A Phased Project Plan, (see SECTION VII, Definitions, above);*
4. *A copy of the MET study results;*
5. *Copies of all emergency and safety plans;*
6. *Eight copies, the format of which to be determined by the Planning Board, of the “Application” and “Land Use Permit”, and all other application materials that the Applicant submits to the State DEP or other governing State agency. These will include, or be supplemented with, a complete construction site plan with the CWF Project Boundary, including boundaries of Project and Participating Parcels so indicated, with roads, power lines, Commercial Wind Turbines, (CWTs), buildings and all other facility features included, drawn on a topographic map, with a legal description of the property suitable for permanent recording in the Oxford County Registry of Deeds, and a complete and detailed Decommissioning Plan meeting the State’s standards in effect at the time of the Applicant’s original “Application” and “Land Use Permit” to the State;*
7. *A Decommissioning Access Agreement as described in SECTION VIII, D, 2, above.*
8. *Proof that all financial requirements of SECTION VI, above, are fulfilled.*

SECTION XII – CWF Application Review

The Town’s “Site Plan Review” shall apply, with the following modifications:

- A. *The Planning Board is required to hold a public hearing within 30 days of the determination of a complete application. The Planning Board shall write an announcement describing the public hearing in detail, including its purpose, time, date, and location. At least fourteen (14) days prior to the Public Hearing the Applicant shall send the Planning Board’s announcement to all property owners within two (2) miles of the proposed CWF footprint.*
- B. *From the date of the announcement of the Public Hearing described in paragraph “A” above until at least forty-five (45) days following the Public Hearing, the public shall have access to the Site Plan Application in the Town Office during regular office hours. The public will have forty-five (45) days from the date of the public hearing to provide written comments to the Planning Board concerning the proposed CWF. The Owner/Operator will have an additional fifteen (15) days to provide the Planning Board with its responses to the public comments.*
- C. *In “Section VI, C” of the “Site Plan Review”, the time-frames for a CWF are lengthened to provide adequate opportunity for Public Input. Within sixty (60) days of the public hearing or ninety (90) days of the determination of a complete application, the Planning Board shall approve the application, approve the application with conditions, or disapprove the application.*
- D. *Any significant modification of the approved CWF, such as, but not limited to, the size of the Project’s footprint, the number of CWTs, tower height, tower locations, turbine design and specifications, shall require the Applicant to obtain an amended Site Plan pursuant to this ordinance. The application procedures and permit requirements and standards for amending a Site Plan Application are the same as for an initial application, as described in SECTION XI, above.*
- E. *Approval of a CWF Permit under this ordinance does not exempt an Applicant from obtaining other*

applicable permits from the Town, such as building, electrical, plumbing and shore-land zoning permits, or any applicable state or federal permit.

- F.** *The approved CWF Site Plan Application allows the Applicant/Owner/Operator to construct and operate the CWF for the complete life-span of the Project through Decommissioning as long as it abides by all provisions of this and other Town ordinances.*

SECTION XIII – CWF Supplements to the “Site Plan Review’s” Performance Standards

A. Exterior Lighting

Exterior lighting is only permitted for public safety purposes or as required by the Federal Aviation Administration.

B. Setback Requirements

All parts of a CWF shall comply with the following setback requirements.

1. *A Minimal Distance of 4,000 ft. is required from the outer edge of each CWT Tower where it is attached to its concrete foundation to the closest point on any property line of any non-participating parcel as measured on a horizontal basis.*
2. *All CWT Towers shall have a minimum setback of three thousand feet (3,000 ft.) from any Scenic or Special Resource, as indicated in the Town of Bethel’s Comprehensive Plan, of from a scenic resource of state or national significance, as defined in Title 35-A M.R.S.A. Section 3451(9), as may be amended from time to time; and from any site registered in the National Registry of Historic Places.*
3. *When all the CWT Towers are sited on the construction plan, before construction begins, the Planning Board will hire a Maine Professional Land Surveyor, paid for from the Escrow Account, to assess the construction plan to assure a reliable measure of proof that the CWTs are in compliance with the Setback requirements of this ordinance. A land survey may be conducted by a Maine Professional Land Surveyor at the completion of project construction at the Planning Board’s discretion to assure that the Towers meet Setback Requirements.*

C. Sound Restriction Requirements

All acoustical instrumentation and sound measurement protocols conducted under the ordinance shall meet all the requirements of the ANSI and IEC Standards cited in the Appendix.

1. *Audible Sound Restrictions in Decibels*
2. *No CWF shall be allowed to operate if it exceeds 25 dBA, (A-Weighted Sound Level), between 7:00 p.m. and 7:00 a.m., or 35 dBA between 7:00 a.m. and 7:00 p.m., anywhere in the Town beyond the boundaries of the Project Parcel and the boundaries of all Participating Parcels whose owners have waived noise restrictions.*
3. *Post-Construction Sound Measurements/Testing*
 - a. *Attended post-construction sound measurement studies for audible noise, (dBA) shall be conducted by a qualified independent acoustical consultant selected by the Board of Selectmen at as many specific locations along the project boundary, selected by the acoustical consultant and witnessed by the CEO so as to assure a reliable measure of proof that the CWF’s sound levels are in compliance. As new technologies become available, the consultant may use unattended devices that he/she deems most appropriate and reliable.*
 - b. *Such studies will be conducted within six (6) months of the CWF becoming operational, with all CWTs operating. Such tests will 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.*

- c. *The sound studies may be unannounced to the Owner/Operator or held during an announced period of, for example, November 1 to January 31, during which time the Owner/Operator shall archive SCADA stored at rates fast enough to give a clear picture of CWT operations, (hub wind speed, blade pitch, power output, and so on), during any period of interest. Within 30 days of notification by the Town, the Applicant/Owner/Operator shall provide the Board of Selectmen with all technical information required by the Board of Selectmen or acoustical consultant before, during, and/or after any acoustical studies required by this document.*

D. Mitigation Waivers

1. *Owners of any Non-Participating Parcel in Bethel may waive any of the setback or noise restrictions in this SECTION XIII. This can only be accomplished with a written Mitigation Waiver, legally enforceable as a contract between the owner of the Non-Participating Parcel and the Applicant/Owner/Operator, and conforming to the requirements of this ordinance. The property subject to the Mitigation Waiver thereby becomes a Participating Parcel. No other provisions of this ordinance may be so waived.*
2. *Such mitigation waivers shall specify which provision(s), setback and/or noise, are waived by the property owner, shall provide a legal description of the property subject to the waiver and shall be recorded by the Applicant/Owner/Operator with the Oxford County Registry of Deeds. Any subsequent deeds shall advise all later owners that the property is so burdened.*
3. *The Applicant shall provide a notarized, complete copy of such filing and recording to the Planning Board within thirty (30) days of having the waiver signed, omitting financial information. Until the Planning Board receives such a copy, the mitigation waiver shall have no legal force under this ordinance. The Applicant shall include, as part of the CWEF construction application, a complete list of all parcels subject to Mitigation Waivers, including the names and mailing addresses of the landowners.*

E. Design Requirements

The total height of any CWT shall not exceed four hundred and fifty (450) feet above grade at its base, as measured to the blade tips at their maximum distance above grade.

F. Blasting Plan Requirements

1. *Blasting must comply with the provisions set forth by Title 38, § 490-Z (14), as may be amended.*
2. *At least ten (10), but not more than thirty (30), days prior to commencement of blasting, the Applicant shall give notice of the planned blasting schedule to all property owners within one (1) mile of the blast site and shall notify the CEO before blasting can begin.*
3. *The applicant shall publish, at least one time, in a newspaper having general circulation, a notice of the blasting schedule. The date of the publication must be at least 7 days prior to blasting.*

SECTION XIV – Five-Year Updates/Re-valuation

On every fifth (5th) anniversary of the date of approval the Owner/Operator shall submit to the Board of Selectmen the following updated materials:

1. *Evidence of the current Owner/Operator's financial ability, or evidence of a new Owner/Operator's technical and financial ability, to operate the CWEF in accordance with the requirements of this ordinance;*
2. *Copies of any new agreements of the current Owner/Operator, or any agreements that a new Owner/Operator has entered into, involving any project parcel not owned by the Owner/Operator, or*

any participating parcel;

3. *Updates of all emergency or safety plans;*
4. *An Inspection/Enforcement Fee in an amount established by the Board of Selectmen to cover anticipated CWEF-related inspection/enforcement costs during the coming five year period, based on its past experience with such costs;*
5. *Proof that all financial responsibilities described in SECTION VIII, above, are fulfilled.*

SECTION XV - Expiration of Site Plan Approval

Site Plan approvals shall expire two (2) years after the date of approval unless substantial construction of permanent structures there-under has commenced, as determined by the Planning Board. "Permanent structures" may include, but not be limited to, CWT Tower pads and maintenance buildings. If the entire CWEF project is not completed within three (3) years from the date of approval, the approval lapses and a new application must be made and approved. There will be no additional fee for application review provided the application is unchanged. The Board may grant more than one extension only if there is pending litigation challenging the approval of the CWEF.

SECTION XVI – Complaints, Enforcement and Penalties

In addition to the requirements of "Section IX, Enforcement" of the "Site Plan Review", the following requirements apply to a CWEF.

A. Complaint Process

All CWEF 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 CWEF 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 Bethel may file such complaints.

1. *After receipt of a complaint, 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, 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 and the CEO decide the complaint is without merit, it will be dismissed, and the CEO will inform the complainant and the Owner/Operator. If the Board of Selectmen and the CEO decide the complaint(s) has merit, the CEO will assist the person in processing the issue with the Applicant/Owner/Operator to a suitable conclusion. If the complaint involves sound, and 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, the following will ensue:*
 - a. *The Board of Selectmen will hire a qualified independent acoustical 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 both the dBA noise levels. As new technologies become available, the consultant may use unattended devices that he/she*

deems most appropriate and reliable. Such tests will 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.

- b. Appropriate summary reports of all CWF 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, will be requested from the CWF. The Owner/Operator must provide this information to the Board of Selectmen within fourteen (14) days of notification.*
- c. Relevant monthly sound level reports from the Owner/Operator involving the CWF will be reviewed by the CEO/Board of Selectmen, with the assistance of such Expert Consultants or Specialists as they deem necessary.*
- 3. Findings of the acoustical consultant and summary reports and other data revealing evidence of higher sound pressure levels than are allowed by this ordinance, as determined by the acoustical consultant and reviewed by the CEO, will be sent by the CEO to the Owner/Operator and the complainant by certified mail, with evidence of receipt given to the Board of Selectmen.*
- 4. Higher than allowed sound pressure levels constitute a violation of this ordinance. The Owner/Operator shall submit a response to the CEO with an explanation and a mitigation plan within fourteen (14) days of receipt of the acoustical consultant's findings.*
- 5. If the Owner/Operator fails to respond to the CEO within fourteen (14) days, and to delineate and implement a correction acceptable to the CEO and the Board of Selectmen within thirty (30) days, the Selectmen may file an enforcement proceeding and ask the Court to order limited operation, shutdown of one or more CWTs, or other appropriate remedies.*
- 6. If a complaint related to sound pressure should continue after appropriate corrections have been made by the Owner/Operator, and which have been agreed upon by the Board of Selectmen with expert advice, the CEO shall visit the site for further information. If the continuing complaint is found to have merit, the CEO will continue the investigation and a qualified independent acoustical consultant will be hired by the Board of Selectmen to take appropriate attended sound level measurements as deemed reasonable and in accordance with the requirements of this ordinance.*
- 7. If the complaint is deemed to have merit, but concerns issues other than sound, the Board of Selectmen shall hire appropriate, independent, qualified experts to address the matter and conduct any needed tests or investigations. The general procedure for resolving sound issues will likewise apply.*

B. Enforcement

In addition to the provisions set forth above, when the CEO finds that provisions of this ordinance are being violated, he/she shall notify in writing by certified mail, return receipt requested, the person responsible for such violation indicating the nature of the violation and ordering the action necessary to correct it. 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 30-A M.R.S.A. § 4452. Each day that a violation continues shall be considered a separate violation.

C. Records of Complaints

The Town shall maintain a permanent record of all complaints, CEO investigations, reports by consultants and outcomes.

APPENDIX

Sound and Noise Measurement Standards

1. *The following technical requirements will ensure that critical sound measurements are conducted in an accurate and scientific manner. The American National Standards Institute (ANSI) and the International Electrotechnical Commission (IEC) cooperate in setting standards for many technical issues, including sound measurement protocols.*
2. *All sound and noise measurements and reporting of same, required by this ordinance, whether conducted by the Applicant or by the Town, shall be carried out in strict compliance with the specific ANSI and IEC technical standards as listed, and in some cases dated and modified, below. The following specific ANSI and IEC standards, with any noted modifications, are adopted by reference as part of this ordinance.*
3. *Specific options provided for in ANSI S12.9 Part 3 (1993, Revised 2008) shall be followed along with any additional requirements included below:*

5.2 Background Sound: Use definition (1): long term.

5.2 Long term background sound: The L90 excludes short term background sounds.

5.3 Basic measurement period: Ten (10) minutes L90.

5.6 Sound Measuring Instrument: Type 1 Precision meeting ANSI S1.43 or IEC 61672"1. The sound level meter shall cover the frequency range from 6.3 Hz to 20k Hz and measure dBA LN. The instrument must also be capable of accurately measuring low level background sounds down to 20 dBA.

6.5 Windscreen: Required.

6.6(a) An anemometer accurate to $\pm 10\%$ at 2m/s to full scale accuracy. The anemometer shall be located 1.5 to 2 meters (m.) above the ground and orientated to record maximum wind velocity. The maximum wind velocity, wind direction, temperature and humidity observed within 5 m. of the measuring microphone shall be recorded for each ten (10) minute sound measurement period.

7.1 Long term background sound.

7.2 Data collection Methods: Second method with observed samples to avoid contamination by short term sounds (purpose: to avoid loss of statistical data).

8. Source(s) Data Collection: All requirements in ANSI S12.18 Method #2, precision to the extent possible while still permitting testing of the conditions that lead to complaints. The meteorological requirements in ANSI S12.18 may not be applicable for some complaint tests.

For sound measurements in response to a complaint, the compliance sound measurements should be made under conditions that replicate the conditions that caused the complaint without exceeding instrument and windscreen limits and tolerances.

8.1(b) Measuring microphone with windscreen shall be located 1.2 m. to 1.8 m. (1.5 m. preferred) above the ground, and more than 8 m. from any large sound reflecting surface.

8.3(a) All meteorological observations required at both (not either) microphone and nearest 10 m. weather reporting station.

8.3(b) For a ten (10) minute background sound measurement to be valid the wind velocity shall be less than 2m/s (4.5 mph) measured less than 5 m. from the microphone. Compliance sound measurements shall be taken when winds are less than 4m/s at the microphone.

8.3(c) *In addition to the required acoustic calibration checks, the sound measuring instrument internal noise floor, including microphone, must also be checked at the end of each series of ten minute measurements and no less frequently than once per day. Insert the microphone into the acoustic calibrator with the calibrator signal off. Record the observed dBA reading on the sound level meter to determine an approximation of the instrument self-noise. Perform this test before leaving the background measurement location. The calibrator covered microphone must demonstrate that the results of this test are at least five (5) dB below the immediately previous ten (10) minute acoustic test results, for the acoustic background data to be valid. This test is necessary to detect undesired increase in the microphone and sound level meter internal self-noise. As a precaution, sound measuring instrumentation should be removed from any air conditioned space at least one (1) hour before use. Nighttime measurements are often performed very near the meteorological dew point. Minor moisture condensation inside a microphone or sound level meter can increase the instrument self-noise and void the measured background data.*

8.4 *The remaining sections, starting at 8.4 in ANSI S12.9 Part 3 Standard do not apply.*

4. *All procedures and standards shall be followed in ANSI S12.18 -- (1994 reaffirmed: 2009) "Procedures for Outdoor Measurement of Sound Pressure Level".*
5. *All of the Standardized acoustical instrumentation and sound measurement protocols conducted under this ordinance shall meet all the requirements of the following ANSI Standards in their most recent, updated, official ANSI version:*
 - a. *ANSI S1.43 Integrating Averaging Sound Level Meters: Type-1 (or IEC 61672-1).*
 - b. *ANSI S1.11 Specification for Octave and One-third Octave-Band Filters (or IEC 61260).*
 - c. *ANSI S1.40 Verification Procedures for Sound Calibrators.*