

**Town of Jonesport -
Commercial Wind Energy Facility Ordinance**



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**TOWN OF JONESPORT
WASHINGTON COUNTY, MAINE**

**COMMERCIAL WIND ENERGY FACILITY
ORDINANCE**

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Section 1. TITLE

This Ordinance shall be known and may be cited as the "Commercial Wind Energy Facility Ordinance" for the Town of Jonesport, Maine and will be referred herein as "this Ordinance".

Section 2. AUTHORITY

This Ordinance is adopted pursuant to Home Rule Powers as provided for in Article VIII of the Maine Constitution and under the authority granted to the Town by the Statutes of the State of 30-A, M.R.S.A. § 2102 et seq. (Municipal Home Rule), § 3001–3006 et seq. (Ordinance Powers), § 4312 et seq. (Growth Management), § 4352 et seq. (Zoning Ordinances), and 38, M.R.S.A. § 401 et seq., as amended.

The Jonesport Planning Board ("Planning Board" or "PB") may hire independent professional consultants to review Commercial Wind Energy Facility (CWEF) applications to determine impacts to nearby properties, public health, welfare, and safety implications and to address any issues with a CWEF application. The cost (if any) for such consulting services shall be borne by the Applicant. The Planning Board will notify the Applicant of the consultant's name, address, and the reason for the consultation and estimated cost.

Section 3. APPLICABILITY

1. This Ordinance applies to any CWEF proposed for construction in the Town of Jonesport ("Town") after the effective date of this Ordinance. This Ordinance does not apply to Associated Facilities unless the Generating Facilities are located within the Town, in which case this Ordinance applies to both the Generating Facilities and the Associated Facilities.
2. This Ordinance applies to the entire Town of Jonesport, including without limitation its islands and any waterways located within the designated boundaries of the Town.
3. This Ordinance does not address Type 1, Residential Wind Energy Facilities, where the primary purpose of the system is to generate power for residential or local personal use.
4. This Ordinance shall apply to all proposals for new CWEF projects, including structures, enlargement of existing structures, and all new land uses. CWEF projects are subject to location and permitting requirements as set forth in Section 15 of the Jonesport Land Use and Development Ordinance "Table of Land Uses."
5. CWEFs that are the subject of an application determined to be complete by the Planning Board prior to the effective date of this Ordinance shall not be required to meet the requirements of this Ordinance; provided that any physical modifications after the effective date of this Ordinance are subject to the permitting requirements of "Section 8 "Standards."
6. Any physical modification to any existing CWEF, including projects approved or constructed prior to the effective date of this Ordinance, that expands or relocates the footprint of the CWEF, shall require approval by the Planning Board.
7. Routine maintenance or the installation of replacement equipment for the CWEF does not require a permit unless planned work increases the size, scope and design power generating capacity of the CWEF.

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Section 4. PURPOSE AND INTENT

The purpose of this ordinance is to regulate the construction and operation of CWEFs in the Town of Jonesport and to establish municipal review procedures and performance standards to regulate CWEFs including those typically characterized as "wind farms". These standards are intended to:

1. Establish guidelines, standards, and time frames for the Town of Jonesport to regulate CWEFs.
2. Protect property owners from new uses of land or structures which would make their own property less desirable and to protect the established character, social and economic stability of the Town.
3. Promote safe and healthful conditions by protecting public health, safety, and welfare.
4. Protect the town character including the scenic and natural beauty of the area by maintaining open spaces and anticipating and responding to the potential adverse effects of CWEF development on surrounding land use.
5. Protect bird and other wildlife habitats and nesting areas, protect freshwater and coastal wetlands, conserve shore cover, and maintain visual/actual points of access to inland and coastal waters.
6. Protect archaeological and historic resources.
7. Prevent water and soil pollution.
8. ~~Provide~~ Require the decommissioning of CWEFs that are no longer being used for power generation and transmission purposes.
9. Be mindful of future economic and energy goals within the Town of Jonesport Comprehensive Plan.

Section 5. PROCEDURES

1. General Procedures

- a. It shall be unlawful and a violation of this Ordinance to begin construction, operation, or modification of a CWEF without a Site Permit and Operation License. Similarly, it shall be unlawful to undertake actions which violate or fail to comply with an approved permit or license including conditions that may have accompanied issuance of a license.
- b. If certification has not been issued at the time of application, the Applicant shall include evidence that Department of Environmental Protection (DEP) certification has been applied for.
- c. The burden of compliance with this Ordinance is on the Applicant, e.g., the prospective Owner or Operator of a CWEF. Approval of a Site Permit or Operation License by the Planning Board does not relieve the Applicant from compliance with Ordinance demands that may be un-mentioned in the permit or license.

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2. Applicant & Permit Contact Requirements

The name, address, and telephone number of the individual or firm proposing to apply for a Turbine Site permit or Operation permit ("Applicant") shall be filed with the Town Planning Board. The individual who will direct or manage a proposed CWEF shall also be identified. The Applicant or named designee shall publicize a telephone number and name an individual to respond to citizen inquiries and complaints throughout the life of a CWEF. Complaints shall be addressed to the Town Code Enforcement Officer (CEO) and responded to within seven (7) days after the Applicant or Operator has been notified.

3. Performance Bond

Construction and operation of a CWEF shall be undertaken only after the Applicant has submitted estimated costs of the project and the cost of removing the obsolete, unused, or defective CWEF. A demonstration in the form of a Performance Bond, Surety Bond, Letter of Credit, or other financial instrument, acceptable to the Planning Board, has been created to assure that the Applicant will have the funds necessary to complete the project and to remove the CWEF at the end of its useful life. At the discretion of the Planning Board, an Independent Engineering Agency may be hired at the cost of the Applicant to assist the Planning Board in Ordinance adjustments that may be needed relating to removal of the Tower or CWEF.

4. Pertinent Locations

The CWEF may be constructed only at pertinent locations. Proposals will be considered only if the CWEF:

- a. affords one (1) mile of separation from boundary line of the site to the nearest Protected Land,
- b. affords one (1) mile of separation from boundary line of the site to Route 187, Scenic Byway in Jonesport
- c. affords one (1) mile of separation from boundary line of the site to any working blueberry barrens.

5. Sound Level management, measurement and controls

Prior to CWEF construction and as part of the data submitted when a Site Permit is sought, ambient sound levels shall be measured at all Protected Locations within one (1) mile of the proposed CWEF location. The time or times of measurement shall be done when ambient levels are expected to be at least and when they are greatest. The seasons of the year and possible meteorological effects shall be considered when choosing measurement times. Costs associated with measurements shall be assumed by the Applicant or Operator.

The Applicant shall review the standards of the noise control rules per the Department of Environmental Protection (DEP) regulations and pursuant to the Site Location of Development Act. CWEF sound levels shall be estimated at each Protected Location within one (1) mile of the CWEF. The side of region of the Protected Location that is nearest or otherwise most likely to receive the highest sound level should be the subject of estimation. Measurements shall be supervised by personnel who are certified by training and/or extensive experience in the measurement and evaluation of environmental sound.

The model theoretical basis and structure shall be documented and include:

- a. Effects of topology,
- b. Wind speeds and directions,
- c. Likely meteorological conditions, and,
- d. Such physical elements as forested areas, large buildings, pond areas, etc. as these may be significant in the model.

Sound measurement procedures and apparatus shall be applied as defined in American National Standards Institute Section 12.9, "Quantities and Procedures for Description and Measurement of Environmental Sound."

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6. Tax Valuation Agreements

Wind Turbine Generators that have a taxable property value of greater than \$10M (ten million) dollars; or if the project will be qualified as a “designated business” for the purposes of state tax incremental financing as defined in Title 30-A, M.R.S.A. Section 5241, are required to have a written Tax Valuation Agreement (TVA) between the Town of Jonesport and the Applicant, or Operator designating the financial methodology to be used for tax purposes. The TVA must be in a format approved by the Town attorney and comply with all applicable state and federal tax codes and laws. Tax Valuation Agreement requirements:

- a. A financial projection of the tax valuation for the useful life of the project.
- b. Must be prepared by a qualified CPA and reviewed by a qualified tax attorney selected by the Town and paid for by the Applicant.
- c. A Tax Impact Statement must be prepared by an accountant hired by the Town at the Applicant, or Operator’s expense and presented to the Town containing year-by-year, for ten (10) years, and estimate Jonesport residents’ tax burden using the following data:
 - (i) Re-appraised values for all residents within two (2) miles of the Wind Turbine Generators.
 - (ii) State reassessment for school tax amounts (assume constant school budget and constant contributions from Towns other than Jonesport.
 - (iii) Other residents’ properties are presumed to remain at no less than their same value.

7. Fire Protection and Safety Plan

- a. The Applicant shall prepare a Fire Protection Plan in consultation with the Town and the Town Fire Chief as part of the permitting process. The plan shall address:
 - (i) All activities at the Wind Turbine Generator from the start of construction through the end of power generation.
 - (ii) The final removal and restoration of the site; and
 - (iii) Shall discuss a response plan to address all identified potential fire, rescue, and hazardous material scenarios.
- b. The Applicant, or Operator shall ensure the Wind Turbine Generator complies with the following control and prevention measures and assumes responsibility for all associated incremental costs:
 - (i) Use of fireproof or fire-resistant building materials and buffers or fire-retardant landscaping around Wind Turbine Generator as appropriate.
 - (ii) Incorporation of a self-contained fire protection system to address nacelle fires, including but not limited to redundant fire quenching systems in the nacelle.
 - (iii) Maintenance of firebreak areas as appropriate, cleared of vegetation and maintained as a fire/fuel break as long as the Wind Turbine is in operation.
 - (iv) Provision for any additional firefighting or rescue personnel, services, training materials, or vehicles as may be required to address any emergency related to Wind Turbine Generator(s) that are beyond the current capabilities and duties of the local fire department.

8. Permits and Fees

The Planning Board shall define fees for Permits and Licenses required by this Ordinance. Fees are noted in the CWEF and MET Tower PERMIT Fee Table in Section 5 “Procedures” of this Ordinance.

a. CWEF and MET Tower Permit Fees

Before any activity to which this Ordinance applies may commence, a permit fee shall be filed with the Planning Board for review, payable to the Treasurer, Town of Jonesport. The application shall be accompanied by a

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permit fee based upon the planned size of the CWEF. The CWEF initial development project, and any subsequent modification project(s), is subject to a permit fee of \$1.00 per kW of design power energy.

Per the Land Use Ordinance, a Code Enforcement Officer (CEO) Inspection Form must accompany each permit application. A CEO fee of \$150.00 is to be made payable to the Treasurer, Town of Jonesport, which includes the Certificate of Compliance inspection.

The application will not be considered without payment of the CEO fee and a completed Certificate of Compliance. The CEO shall document the Applicant's deficiencies if inspiring a rejection without implying that all problems are listed.

The Town will impose a recurring CEO inspection fee of \$100 per turbine per year which is for the purpose of monitoring the CWEF for compliance with this Ordinance. The CEO will coordinate monitoring visits with the Applicant, or current responsible party.

b. CWEF and MET Tower Permit Fee Table

Facility Type (CWEF)	Nameplate Capacity	Turbine /Tower Height	Max # of Turbines	Acreage	DEP Site Loc Permit Required	Local Review & Approval	Permit Fee
2	< 100 kW	< 100 Ft.	1	3 ac.	No*	CEO, PB	\$1.00 per kW
3	< 1 MW	< 300 Ft.	3	3 ac.	Yes**	CEO, PB	\$1.00 per kW
3A	≥ 100 kW	> 150 Ft.	3	3 ac.	Yes**	CEO, PB	\$1.00 per kW
4 Industrial	≥ 1 MW	≥ 300 Ft.	3+ (i.e., 3+ type 3 - turbines)	3+ ac.	Yes**	CEO, PB	\$1.00 per kW
MET Tower	N/A	state/local guidelines	N/A	N/A	No***	CEO, PB	--

* Pursuant to Title 35-A M.R.S.A., not requiring a Site Location of Development Permit from Maine DEP

** Pursuant to Title 35-A M.R.S.A., Section 3451, 3456 and Title 38, M.R.S.A., Section 482. DEP Certificate required unless Operator does not sell or convert electricity for offsite use, including net metering and does not qualify as a Structure with a total land area in excess of 3 acres or more.

*** MET Towers shall be permitted at the discretion of the PB with no height limitation other than those imposed by State/Federal Law and are valid for a maximum of 5 (five) years.

9. Ordinance Compliance Review

- a. The Planning Board and CEO may retain professional services, including but not limited to, attorneys and technical consultants to verify data presented in the Applicant's permit.

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- b. A professional fees escrow shall be established by the Applicant at the time of the compliance review to cover expected professional fees, including engineering, environmental studies, legal review, and other services as may be required by the Planning Board.
- c. The professional fees escrow shall be maintained for two (2) years after project completion. The remaining escrow fees may be returned to the Applicant after the two (2) year period.

10. Preapplication Meeting

The applicant is strongly suggested to meet with the CEO before submitting an application. The applicant may also request a preapplication meeting with the Planning Board. The purpose of the preapplication meeting is for the Applicant to present general information regarding the proposed CWEF to the Planning Board. It is also an opportunity for the Applicant to receive Planning Board input prior to incurring expenditures for surveying, soils identification, engineering, and various other costs.

- a. The Applicant may present a preliminary sketch plan and make a verbal presentation regarding the site and details of the proposed CWEF.
- b. Following the Applicant's presentation, the Planning Board may question or suggest information for incorporation by the Applicant into the application.
- c. The Planning Board may consider whether an on-site inspection is needed. If so, a date is scheduled, and public notice given regarding the date and location.
- d. The preapplication meeting, the submittal or review of the sketch plan or the on-site inspection shall not be considered the initiation of the review process for the purposes of bringing the plan under the protection of Title 1 M.R.S.A. Section 302, "Construction and Effect of Repealing and Amending Acts."

11. Application Review

- a. Application permit forms are available in the Town Office. Permits are not transferable, existing permits expire upon transfer of ownership.
- b. The application permit form shall be signed by 1) a Person with right, title, and interest in the subject property or 2) a Person having written authorization to act as an agent from a Person with right, title, and interest in the subject property. The signature shall be dated, and the signatory shall certify that the information in the application is complete and correct and that the proposed CWEF will be constructed and operated in accordance with the standards of this ordinance and all approval and permit conditions, if any.
- c. The burden is on the Applicant to assure that all Federal and State permits are completed, documented and available prior to the start of the Application Permit review by the Planning Board.
- d. The Applicant will inform abutters of proposals by certified return receipt mail where CWEF development will occur. The Applicant must include the certified returned receipt notice(s) to abutters as part of the application process.
- e. The application permit review lies with the CEO and the Planning Board. Within 30 (thirty) days of receiving application submission and in consultation with the Planning Board or the CEO shall notify the Applicant that the application is complete or if specific additional material is required.
- f. Once the application is completed, the Planning Board shall set a time and place for a meeting with the Applicant to consider the application.
- g. The Town shall post notices of proposals and meetings in the Town Office and publish the same in a local newspaper for the general public. The notice must be posted not less than ten (10) days prior to the planned public meeting. The notice shall state the proposed CWEF location, type of permit, the date, time, and place where consideration will take place.

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12. Application Hearing

- a. The Planning Board may hold a public hearing on the proposal within thirty (30) days of receipt of the completed application if it feels such a hearing will be helpful in considering the proposal. However, if requested by one or more abutters, the Planning Board shall hold a public hearing.
- b. All CWEF Type 3 and Type 4 permit applications will be subject to a public hearing.
- c. Within thirty (30) days of a public hearing, the Planning Board shall either approve, approve with conditions, or disapprove the application. The time limit for review may be extended by mutual agreement between the Planning Board and the Applicant.
- d. The Applicant shall promptly notify the Planning Board of any changes the Applicant proposes to make to information contained in the application.
- e. If the Applicant proposes changes to a pending application after a public hearing has occurred, the Planning Board may continue the review process without a renewed public hearing if it determines that the proposed changes do not materially affect the application. Should the Planning Board determine that the proposed changes involve potential adverse effects in addition to or distinct from those addressed in the initial application, another public hearing shall be scheduled within thirty (30) days of that determination.

13. Permit Expiration

- a. The issued permit will expire one (1) year after the date of approval unless a Substantial Start of construction of 30% of the permitted structure has occurred. For an explanation of what constitutes a Substantial Start, refer to the definitions in Section 10.
- b. Upon the Applicant's written request, the Planning Board may extend the expiration time limit ~~by one (1) year~~ at the discretion of the Planning Board.
- c. If the permit has expired, the Applicant shall implement pertinent provisions of the approved Decommissioning Plan.

14. Appeals

Any person aggrieved by a decision of the CEO, or the Planning Board, may appeal to the Town Board of Appeals for modification or reversal of an aggravating requirement.

Section 6. CLASSIFICATION OF WIND TURBINES AND METEROLOGICAL TOWERS

1. **Type 1 – Small Wind Turbine** means a single wind Turbine with a nameplate capacity less than 10kW and turbine height less than 100 feet. Note that this Ordinance does not apply to Type 1 small wind turbines typically used in residential or small business settings. However, Type 1 wind turbines remain subject to the provisions outlined in the Jonesport Land Use and Development Ordinance.
2. **Type 2 - Intermediate Wind Turbine** means a single wind turbine with a nameplate capacity less than 100 kW and a turbine height less than 100 feet, and not requiring a Site Location of Development permit from the Maine Department of Environmental Protection (DEP) pursuant to Title 35-A, M.R.S.A. Section 3456.
3. **Type 3 – Large Wind Turbine** means up to three (3) wind turbines with a nameplate capacity less than 1MW, and an individual turbine height less than three hundred (300) feet. A Site Location of Development permit from the Maine DEP pursuant to Title 35-A M.R.S.A. Section 3451, Title 35-A M.R.S.A. Section 3456 and Title 38 M.R.S.A. Section 482 is normally required unless the Wind Turbine:
 1. Does not sell or convert electricity for off-site use including net metering, and,
 2. Does not qualify as a Structure with a total land area in excess of three (3) acres for the entire Wind Turbine Generator.

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4. **Type 3A – Large Wind Turbine** means any turbine(s) of nameplate capacity greater than or equal 100 kW and a turbine height greater than one hundred fifty (150) feet if the energy generated is for sale or use by a Person other than the generator.
5. **Type 4 – Industrial Wind Turbine** means a single wind tower with a nameplate capacity of greater than or equal to 1MW, or a turbine height greater than or equal to three hundred (300) feet; or more than three Type 3 Wind Turbines. A Site Location of Development permit from the Maine DEP pursuant to Title 35-A M.R.S.A. Section 3451, Title 35-A M.R.S.A. Section 3456 and Title 38 M.R.S.A. Section 482 is normally required unless the Wind Turbine:
 1. Does not sell or convert electricity for off-site use including net metering; and,
 2. Does not qualify as a Structure with a total land area in excess of three (3) acres for the entire Wind Turbine Generator.

Section 7. APPLICATION REQUIREMENTS

An application for permit to construct and operate a CWEF must include the following submitted items at the cost of the Applicant:

1. Identities of the owner and operator if different, with contact information, detailed qualifications of the operator, and an overview of their experience and safety record.
2. A receipt attesting to payment of the permit fee and Code Enforcement Officer (CEO) fee together with the Applicant's affirmation that the proposed CWEF will be designed and in compliance with this Ordinance and any conditions of approval.
3. Copies of notifications and receipts shall be sent via certified mail to all abutters with return receipt at least two (2) months prior to application submission to the Planning Board. Written notification shall include a detailed description, overall sketch, and location of the proposed CWEF.
4. A copy of public postings published in local newspapers with the widest local community circulation with proof of publication date shall be submitted, and also to specified local public locations and in local business postings. The public postings shall include an overview of the CWEF and intent to seek Planning Board approval.
5. If the Applicant, or Operator has an agreement to lease the site, a copy of the agreement (excluding financial consideration terms) and documentation detailing the roles, rights, and responsibilities of the CWEF owner, operator, landowner, and any other responsible parties over the life of the lease agreement are required.
6. A copy of the deed detailing the property boundaries and lot description for the proposed CWEF project from the Washington County Registry of Deeds and the survey of the property conducted by a Licensed Maine Surveyor including their name and business information.
7. A copy of a deed, easement, purchase option, or comparable documentation demonstrating the Applicant's rights on the proposed CWEF site. The address, tax map and number of the proposed CWEF location together with identification of contiguous parcels owned by Participating Landowners shall be reported. Owner names and addresses of the contiguous Participants shall be documented.

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8. The names and addresses of non-participants owning parcels (identified by map, lot number, and current usage) which are adjacent to the proposed CWF and Participating Landowner properties shall be listed and notified by certified mail by the Applicant.
9. Standard boundary survey of subject property certified by a Licensed Maine Engineer. The Licensed Engineer's certification, name and business shall be disclosed.
10. Photographs of existing conditions at the site shall be provided. Insofar as the site may be visible from Protected Locations within one (1) mile, photographs and Sight Line Representations from those locations will be required.
11. A description of how and to whom the energy produced will be sold and or used, including any agreements in place and any schematic details of connection arrangements with transmission or grid systems indicating the roles, rights, and responsibilities of all parties involved over the development, operation, and decommissioning of the CWF.
12. An estimate of total cost for CWF construction together with a description of the financial arrangement that will assure availability of necessary funds to support the proposed project from inception to a complete operation. The cost of removing an obsolete or defective CWF shall be included in the estimate.
13. Certificates of design compliance obtained by the equipment manufacturer from Underwriters Laboratories, Det Norske Veritas (DNV), or other similar certifying organization. CWF design and equipment layout plan showing conformance to applicable industry standards, including, but not limited to the American National Standards (ANSI), Underwriters Laboratories (UL), the American Society for Testing and Materials (ASTM), Institute of Electrical and Electronics Engineers (IEEE), Electrical Testing Laboratory (ETL), or other similar certifying organizations.
14. A description of the major components, and equipment to be installed, including manufacturer, make and model, and design specifications.
15. Documentation to include structural drawings of the Tower foundation and anchoring system:
 - a. Prepared by the Wind Turbine or Tower manufacturer,
 - b. Prepared in accordance with the manufacturer's specifications; or
 - c. Prepared by a Licensed Maine Engineer with Licensed Engineer certification, name and business disclosed.
16. A CWF Site Plan shall be provided showing the proposed location of each Wind Turbine and Associated Facilities. The Plan shall:
 - a. Encompass all area with one (1) mile of the proposed CWF,
 - b. Indicate parcel boundaries and required setbacks,
 - c. Indicate topographic contour lines (maximum 20- feet interval),
 - d. Public and private roads and rights-of-way,
 - e. Overhead utility lines apart from those integral to the CWF,
 - f. Forested areas, streams, wetlands, water bodies, and,
 - g. Proposed area to be graded or cleared of vegetation.

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17. Written notice that the Environmental Coordinator of the Maine Department of Inland Fisheries and Wildlife Management have been notified of the pending application for the proposed CWEF. The notification shall include the number, location, and height of the proposed Wind Turbine(s) and/or Associated Facilities.
18. A statement, signed by the Applicant, that certifies that the proposed CWEF is designed to meet applicable sound standards as identified in Section 8.31 of this Ordinance and acknowledges the Applicant's, or Operator's obligation to take remedial action when informed of a noise violation by the Code Enforcement Officer (CEO).
19. A Construction Project Plan with Site Plan and timeline, identifying known contractors, site security controls, electrical schematics, and anticipated date of operation. Such plan shall be submitted to the Fire Chief with a signed waiver acknowledging that the Town of Jonesport and the Jonesport Town Fire Department have no liability beyond containing said fire to the property.
20. An Emergency Management Plan addressing all reasonably anticipated potential hazards which has been approved by and filed with the Fire Chief.
21. An Operations and Maintenance Plan shall be submitted by a qualified expert indicating the qualified expert(s) name(s) and place of business. The plan shall include:
 - a. site security controls and identify the projected operating life of the CWEF,
 - b. measures for maintaining safe access to the installation,
 - c. measures for access to stormwater controls and general procedures for operational maintenance,
 - d. procedures to protect and support beneficial flora and fauna (e.g., wildlife, birds, honeybees, butterflies, wildflowers, etc.) with certification that pesticides, herbicides, fungicides, and/or insecticides will not be used.
22. A Stormwater Management Plan, as certified by a Licensed Maine Engineer. The Licensed Engineer's certification, name and business shall be disclosed.
23. A Soils and Groundwater Assessment, a Soils Management Plan, and a Soils Testing Plan from a qualified soils and water expert that contains proper provisions by the expert for yearly testing for contamination that may be produced by or leach from the CWEF. The soils and water expert's name and business shall be provided as part of the plan.
 - a. The plan will include appropriate soils and groundwater testing before construction to determine existing baseline conditions.
 - b. The plan shall ensure overall site conditions are tested during construction and after operation starts on an annual frequency until decommissioning of the CWEF is complete. Annual test results and reports shall be sent to the Planning Board. The frequency of testing required will be determined by the Planning Board in conjunction with the Applicant. Testing will be conducted at the expense of the Applicant.
 - c. Should soil or groundwater contamination occur at any point over the life of the CWEF, a Point Source Contamination Remediation Plan should be developed and submitted to the Planning Board and reviewing authorities. The plan will include remedial actions required to be performed by a qualified soils specialist. The specialist's name and business shall be disclosed as part of the plan.
24. Hazardous waste disposal plan demonstrating compliance with Local, State and Federal waste disposal regulations

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25. Measurement of minimum and maximum ambient sound levels at each Protected Location to establish the noise levels at all property lines, public roads and right of ways, or any coastal or inland shoreline will not exceed preconstruction noise levels at any time during steady state operation of the CWF.
26. An Electromagnetic and Radiofrequency Radiation (EMFR) Management Plan provided by an EMFR expert. The EMFR Management Plan will include the qualified EMFR experts name and business information. The plan shall demonstrate baseline EMFR survey results and planned actions to keep EMFR emissions from the CWF within the limits specified by The International Commission on Non-Ionizing Radiation Protection (ICNIRP) at any property lines, public roads and right of ways, or any coastal or inland shoreline.
27. A Blasting Plan and Blasting Notification is prepared. If blasting is to occur, the Applicant, or Operator, of a CWF shall not undertake any blasting without notifying the Town of Jonesport and submitting a blasting plan in accordance with the latest DEP Standards. The blasting plan shall be reviewed and approved by the Planning Board and CEO before any blasting takes place.
28. A Decommissioning Plan that conforms with the requirements “Decommissioning Plan Requirements” within Section 9 of this Ordinance. The plan shall be provided by a qualified expert and include the qualified expert's name and business information. The plan must adhere to the Maine Wind Energy Act, 35-A M.R.S. §§ 3401 – 3459, as incorporated into applications under the Site Location of Development Act (SLODA), and the Natural Resources Protection Act (NRPA), 38 M.R.S. §§ 480-A – 480-JJ. Wind energy developments may be subject to review under other regulations pursuant to the Site Law or the NRPA.
29. An escrow, Performance Bond, Surety Bond, Letter of Credit, or other financial instrument deemed acceptable by the Planning Board to ensure that at the end of the CWFs useful life, the Applicant, or Operator will have the necessary financial resources to pay for one-hundred and ten percent (110%) of the estimated total inflation adjusted cost of decommissioning. The financial assurance shall include a provision granting the Town of Jonesport the ability to access the funds and property to perform the decommissioning if the CWF, or a Wind Turbine is abandoned, or the Applicant, or Operator fails to meet their obligations after reasonable notice.

Section 8. STANDARDS

Standards listed in this section shall be used by the Planning Board for judging an application and shall serve as minimum requirements for approval of the proposal unless a waiver is granted in accordance with Section 8, “Waivers” in the Jonesport Land Use and Development Ordinance.

1. **Narrative** – An application shall include a narrative from the Applicant that describes the proposed CWF, or modification, that includes the number and aggregate generating capacity of all Wind Turbines, the Turbine height, and manufacturer’s specifications for each Turbine (including but not limited to make, model, maximum generating capacity, sound emission levels, type of over speed controls and a description of Associated Facilities.
2. **Visual and Scenic Impact** - The Planning Board shall be made to ensure that the scenic beauty, views, and visual character of the community are maintained. CWFs must adhere to the one (1) mile setback requirement(s) as defined in this Ordinance under Section 5, “Procedures”. The Planning Board shall determine, based upon the following criteria, whether the proposed CWF significantly compromises views from a Scenic Resource that is within five (5) miles from a proposed CWF:

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- a. The significance of the potentially affected resource,
- b. The existing character of the surrounding area,
- c. The expectations of the typical viewer - the extent, nature, and duration of potentially affected public uses of the Scenic Resource including but not limited to issues related to the number and extent of Wind Turbines visible from the resource, the distance from the resource, and effect of prominent CWEF features on the viewscape.

3. **Natural Resources** – A CWEF shall not have an unreasonable adverse effect on rare, threatened, or endangered wildlife, significant wildlife habitat, threatened or endangered plants, and rare and exemplary plant communities. The Town Planning Board and reviewing authorities of the Permit application shall seek the written comments and recommendations of the Maine Department of Inland Fisheries and Wildlife Environmental Coordinator and Maine Natural Areas Program representative.
4. **Archeological and Historic Sites** - Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible under the National Register of Historic Places (NRHP), and the Maine Historic Preservation Commission (MHPC) requires review/approval by the Maine Historic Preservation Commission prior to rendering approval for any Applicant application.

Municipal officials should contact the Maine Historic Preservation Commission to verify locations of Historic Places within the community. CWEF's must adhere to the one (1) mile distance requirement as identified within this Ordinance. CWEF Applicants shall provide location maps showing the boundaries of the CWEF site, including contiguous property under total or partial control by the Applicant and participating landowners.

5. **Building Codes** – All components of CWEFs shall conform to relevant State and Local building codes. Building mounted Wind Turbines are not permitted under this Ordinance.
6. **Electrical Codes** – All electrical components of a CWEF shall be installed to comply with applicable State, Local and National Codes. Electrical Equipment must have an Underwriters Laboratory (UL) or equivalent listing.
7. **Structure Type** – Wind Turbine Towers shall be monopoles, with no guywires unless, to the satisfaction of the Planning Board and reviewing authorities, it is demonstrated that a guy-wired Tower is the most practical and economical alternative and adhering to best practices. Bird flight diverters must be installed on permitted guywires.
8. **Access** – All ground-mounted electrical and control equipment and all access doors to a Wind Turbine shall be labeled and secured to prevent unauthorized access. A Wind Tower shall not be climbable up to a minimum of fifteen (15) feet above the ground surface. Access to the Wind Tower should not be inhibited with the understanding that the Wind Tower shall be located to maximize effectiveness of existing vegetation, structures, and topographic features in screening views of a Wind Turbine from Protected Locations and Scenic Resources.
9. **Screening Views** – For Type 2 Wind Turbine Towers, when existing features do not screen views of a Wind Turbine from Protected Locations and Scenic Resources, screening may be feasible using plantings of trees and shrubs. Plantings should be native varieties placed as close as possible to the point from which the Turbine is viewed.

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10. **Lots and Coverage** - Lot coverage shall be calculated based on the total CWEF structure surface area on and/or projected over the ground. The lot size and boundaries shall be confirmed and mapped by a Licensed Maine Surveyor. All CWEFs should be designed and located to ensure access without reliance on and/or interference with adjacent properties.
11. **Legal Responsibilities** - The Applicant must provide proof that it has authorization to construct, use and maintain the property including any access required over the life of the project, including access required for decommissioning.
- a. If the project site is leased, the lease term must cover the life of the project including decommissioning with the property owner jointly and severally liable for the implementation and decommissioning plans.
 - b. If the project is transferred, the Applicant remains jointly and severally liable for implementation and decommissioning plans. The roles and responsibilities of the system owner, operator, landowner, and any other party involved in the project must be clear and meet the satisfaction of the Planning Board that the public interest is protected.
 - c. The Applicant, or Operator shall build and maintain any structures, equipment, and facilities in compliance with all relevant Federal, State and Local Laws, Regulations, and Ordinances.
12. **Deed Registration** — A notice of the CWEF decommissioning requirements for the property shall be properly notarized and recorded with the Town Clerk of Jonesport within thirty (30) days of CWEF operation.
13. **Setback**— CWEFs will be constructed with setbacks adequate to protect public safety. Wind Turbines shall be setback a horizontal distance equal to 2000 feet from CWEF property boundaries, public and private rights of way, and overhead utility lines that are not part of the proposed CWEF. The Town Planning Board may allow a reduced setback if the Applicant submits in writing:
- a. Evidence such as operating protocols, safety programs, or recommendations from the equipment manufacturer or a licensed professional engineer having relevant experience with Wind Turbines, that demonstrates that the reduced setback does not compromise safety of adjacent Protected Lands existing at the time of application.
 - b. Turbine setbacks require a separation of one (1) mile from the nearest Protected Land.
 - c. CWEFs shall be constructed only at locations which afford a distance of one (1) mile from any location along the Scenic Byway 187 in Jonesport.
14. **Prohibited Locations** — A CWEF may not be located within one (1) mile of State Route 187, the Bold Coast National Scenic Byway, identified Protected Lands, Historic or Archaeological sites within Jonesport. A WEF is not permitted within the Shoreland Zone. CWEF shall be constructed only at locations which afford one (1) mile of separation from the nearest Prohibited Location in Jonesport.
15. **Stormwater and Conveyance Systems** - CWEF Facilities, structures or equipment shall not be placed within any legal easement or right-of-way, within any stormwater conveyance system, or in any location that would alter or impede the operation of any stormwater conveyance system and must comply with all requirements in the Town Land Use and Development Ordinance.
16. **Stormwater Management** — CWEF developments shall have a stormwater management system designed by a Maine Professional Engineer for both pre- and post-development conditions. Components of CWEFs must not be located so that stormwater runoff could negatively impact an adjacent water supply (e.g., domestic well) or a septic system.

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17. **Waterbodies** — All CWEF types are prohibited from being constructed on, in or near any inland waterways or waterbodies.
18. **Erosion Control** – Erosion of soil and sedimentation shall be minimized by employing best management practices as found in the “Maine Erosion Control Handbook for Construction: Best Management Practices” which can be located online at <http://www.maine.gov/land/erosion/escbmps>
19. **Equipment Quality** - CWEF equipment produced by any manufacturer, as determined by the Planning Board, known to produce poor quality equipment that is unsafe, and/or is known to leach toxic or hazardous chemicals into the environment is prohibited.
20. **Equipment Safety** - Each Wind turbine shall be equipped with an over speed control system that includes both an aerodynamic control such as stall regulation, variable blade pitch or similar system, and a mechanical brake that operates in fail-safe mode.
21. **Utility Notification** - Grid-integrated CWEFs shall not be authorized until evidence has been provided to the Planning Board that the Applicant has an agreement with the utility to accept the power and that the power meets all infrastructure requirements.
22. **Utility Connections** - Reasonable efforts shall be made to place all utility connections for the CWEF underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider and those interconnections meet the standard requirements of the Utility Grid System.
23. **Signal Interference** – To the extent practical, Wind Turbines should be positioned to avoid and mitigate disruption or loss of radio, television, telephone, cell phone transmitter, and similar signals.
24. **Fence** - CWEFs shall be protected by a well-constructed perimeter security fence at least eight feet in height. Such fences shall be raised 6 (six) inches above the ground to allow for small wildlife passage and movement.
25. **Signage** - Clear and visible signage shall be installed which identifies the CWEF operator and provides a 24-hour emergency contact phone number. Clearly visible warning signs shall be placed within twenty-five (25) feet of each other at the base of all pad mounted CWEFS and substations and on any fence surrounding the CWEF informing individuals of potential voltage or other hazards. Danger Warning signs shall be posted on all Associated Facilities at ground level where voltages greater than 120 volts may be encountered.
26. **Advertising** – Wind Turbine Towers or any Associated Facilities may not be used to support advertising signs apart from reasonable and incidental identification of the Turbine manufacturer, CWEF owner and operator, and safety warnings.
27. **Physical Screening** - CWEFs shall have perimeter screening that ensures structures, equipment, and facilities are screened from view to the greatest extent practical from any adjacent properties, roads, public ways, or waterways. The screen shall consist of plantings, berms, or natural topographic features that will provide a visual screen.

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28. **Blade Clearance** – The minimum clear distance between ground and Turbine blades shall be twenty-five (25) feet to the lowest position of the base of the blade.
29. **Blade Reflection** – Reflections (glint) from Wind Turbine blades shall be minimized with non-reflective coatings on the blades.
30. **Shadow Flicker** — Shadow Flicker, caused by moving Wind Turbine blades and the sun, shall be estimated for all Protected Locations within a one (1) mile distance from a proposed CWEF. Estimations shall derive from assumed duration of worst positions of the sun and screening effects of trees in leaf and without leaves. Worst Case estimation flicker duration shall be less than thirty (30) hours per year at all Protected Locations. CWEFs will be designed and sited to avoid unreasonable Shadow Flicker effects. CWEFs shall be situated and constructed in a way that eliminates shadow flicker from being visible from other properties, abutters, roadways, scenic areas, waterways, and waterbodies.
31. **Sound Level Standards** - The level of sound that emanates from the proposed CEWF shall be monitored using the best available mathematical model of sound distribution from the CWEF as per the Department of Environmental Protection (DEP) regulations and pursuant to the Site Location of Development Act. The Applicant agrees to follow the standards below:
- a. The background noise measurement is conducted during the quietest time of the night,
 - b. Noise standards must be met at all property lines, public roads and right of ways, or any coastal or inland shoreline,
 - c. For Protected Locations located in an area that is, or will be, predominately commercial, or transportation, the limit shall be always 45 dBA. Sounds, always, should never exceed 48 dBA.
 - d. Any property line of the CWEF site or contiguous participating property, the acceptable level shall be 50 dBA or less at all times of the day,
 - e. The CEO may perform measurements of sound levels resulting from routine operation of an installed CWEF at the CEO's own initiative or in response to a noise-related complaint to determine compliance with the pertinent standards noted above.

The Sound Level limits contained in this section apply only to areas that are defined as Protected Locations and to property boundaries that describe the outer limits of the CWEF site in combination with any parcel(s) owned by a participating landowner that are contiguous with the CWEF site.

The Sound Level limits contained in this section do not apply to the CWEF site or any parcel(s) owned by a participating landowner that are contiguous with the CWEF site.

32. **Construction and Maintenance Noise** – All equipment used in construction and maintenance of a CWEF shall comply with federal noise regulations and shall include environmental noise control devices in proper working order as provided by the manufacturer.
33. **Lighting** — CWEF lighting shall be limited to that required for safety and operational purposes and be shielded to the maximum extent possible from visibility at abutting properties. Lighting of the CWEF shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution and shall otherwise comply with the provisions of the Jonesport Land Use and Development Ordinance. Other than required lighting, lighting shall not be used between the hours of 7:00 PM and 7:00 AM. A Wind Turbine shall not be lighted artificially except to the extent it is consistent with the Federal Aviation Administration (FAA) recommendations using an ADLS System (Aircraft Detection Lighting System) for safety lighting.

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- 34. Emergency Services** — The Applicant shall provide a copy of the CWF development project plan, electrical schematics, and site plan to the Fire Chief. The plan shall address all activities at the Wind Turbine Generator from the start of construction through the end of power generation and the final removal and restoration of the site along with a response plan to address all identified potential fire, rescue, and hazardous material scenarios.
- a. The Applicant shall coordinate with the Fire Chief and any local emergency services in developing an emergency response plan.
 - b. Site access shall be maintained to a level acceptable to the Fire Chief for emergency response.
 - c. A "3200 Series KNOX-BOX", or agreed equivalent, shall be provided and installed by the Applicant to be used to allow emergency service personnel continuous access. All means of shutting down powered systems shall be clearly marked.
 - d. The Applicant shall identify a responsible person to address and respond to public inquiries throughout the life of the CWF.
 - e. The Applicant or Operator must provide emergency action training to Jonesport emergency services personnel upon start of operations and at least once every 3 (three) years to the satisfaction of the Fire Chief. Fire Chief shall request additional training for new personnel when such training is deemed necessary.
- 35. Fire Safety** - CWFs shall be installed in accordance with the International Building Code or International Residential Code. The electrical portion of the CWF shall be installed in accordance with NFPA 70. Ground-mounted WFs shall comply with section 1205.5 of the International Fire Code.
- 36. Electromagnetic and Radiofrequency Radiation Emissions (EMFR)** — Emissions of any frequency from Wind Turbine Generators or CWF or Associated CWF operations shall be minimized within the limits established by the International Commission on Non-Ionizing Radiation Protection (ICNIRP) and the Institute of Electrical and Electronics Engineers at any property lines, public roads and right of ways, or any coastal or inland shoreline.
- 37. Public Roads** – The Applicant shall identify all state and local public roads to be used within the Town of Jonesport to transport equipment and parts for construction, operation, and maintenance of a CWF. A qualified third-party engineer acceptable to the Applicant and the Planning Board, shall document road conditions prior to CWF construction at the Applicant's expense. A licensed Maine engineer shall certify and document road conditions thirty (30) days after construction is complete.
- Any road damage caused by the Applicant's activity during construction and operation of a CWF shall promptly be repaired at the Applicant's expense. The Applicant shall demonstrate to the Planning Board the necessary funds are or will be included as part of the Performance or Surety Bond.
- 38. Ongoing Maintenance** — The Applicant shall provide an Operations Maintenance Plan. CWFs must be properly maintained and be kept free from all hazards detrimental to public health/safety or general welfare.
- a. Maintenance shall include, but not be limited to, painting, structural repairs, vegetative screening, fences, landscaping and plantings, and security measures.
 - b. Cleaning of CWFs using harsh chemicals shall be avoided. as they may leach into the local watershed. A mixture of water, mild detergent and ammonia may be safely used for cleaning.
 - c. The Applicant shall be responsible for the cost of maintaining the CWF and any access road(s), including regular plowing of snow to maintain road access.

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- d. When any portion of a CWEF is removed, any earth disturbance must be graded and reseeded, unless authorized for another use.

39. Decommissioning & Removal – All CWEFs shall have a Decommissioning Plan developed by a qualified expert, reviewed by the Code Enforcement Officer (CEO), and approved by the Planning Board. The plan shall include the qualified expert's name, their credentials, and business information. The Applicant may also be subject to review under other regulations pursuant to the Site Location of Development Application (SLODA) or the Natural Resource Protection Act (NRPA). Refer to Section 9, of this Ordinance for "Decommissioning Plan Requirements".

Applicants are referred to regulations pertaining to the Maine Wind Energy Act, 35-A M.R.S. §§ 3401 – 3459, as incorporated into applications under the Site Location of Development Act (SLODA), and the Natural Resources Protection Act (NRPA), 38 M.R.S. §§ 480-A – 480-JJ.

40. Required Financing - The Planning Board must find that the Applicant has the financial resources to fund development, safely operate, and to decommission the CWEF. A demonstration in the form of a Performance Bond, Surety Bond, Letter of Credit, or other financial instrument, acceptable to the Planning Board must be provided to show that the Applicant has the funds necessary to complete the project and remove the CWEF at the end of its useful life.

41. Liability Insurance – The Applicant, or designee, shall maintain a current liability policy, acceptable to the Planning Board, that covers bodily injury and property damage within limits in an amount commensurate with the scope and scale of the CWEF.

42. Discontinued Use – The Applicant confirms that in the instance that the CWEF, or an individual Wind Turbine, that has not generated electric power for twelve (12) consecutive months shall be deemed discontinued, and that decommissioning shall commence. This requirement may be waived if the Applicant provides the Planning Board and reviewing authorities with information demonstrating that the CWEF has continuing value. Upon removal of a CWEF, the Owner shall pay all costs associated with its removal, including all costs for waste removal and site reclamation deemed reasonable, i.e. road removal, vegetation, and tree restoration, etc.

Section 9. DECOMMISSIONING PLAN REQUIREMENTS

1. Decommissioning Plan Specifications

- a. The Applicant shall provide a plan for decommissioning of a CWEF at the time of submission of the application. A Decommissioning Plan is required for CWEF Types: 3, 3A, 4 and for a MET. The Decommissioning Plan shall be prepared by a qualified expert for review and approval by the Planning Board and CEO. The plan shall include qualified expert's name and business information.
- b. Decommissioning means the physical removal of all components of a CWEF development, including but not limited to turbines, blades, cabling, electrical components, and associated anchoring systems and foundations to a depth of at least twenty-four (24") inches or to the depth of bedrock, whichever is less.
- c. Any other structures, buildings, roads, fences, cables, electrical components or associated facilities and foundations are also be removed to a depth of at least twenty-four (24") inches or to the depth of bedrock, whichever is less. Certain components of the development, which are agreed by the permitting entity or current landowner to be placed in productive use or are otherwise authorized to remain in place, may be left intact.

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- d. All earth disturbed during decommissioning must be graded and re-seeded unless the current landowner of the affected land requests otherwise in writing.
- e. For any portion of a CWEF development located on land classified as farmland anytime within 5 years preceding the start of construction of the development, “decommissioning” means the physical removal of all such components of the development to a depth of at least forty-eight (48”) inches or to the depth of bedrock, whichever is less, to the extent such components are not otherwise in or proposed to be placed in productive use or otherwise authorized to remain in place by environmental permitting entity or current landowner.

2. Decommissioning Plan Components

The Decommissioning Plan provides a detailed description of the work required to physically remove all CWEF structures, equipment, security barriers, foundations above and below grade, and transmission lines from the site. The plan shall include a detailed decommissioning schedule.

At the time of decommissioning, the Applicant, or Operator, may provide evidence of plans for continued beneficial use of any or all components. Any changes to the approved decommissioning plan shall be raised to the attention of the CEO and subject to review of the CEO and approval by the Planning Board.

Decommissioning shall consist of:

- a. Physical removal of all CWEF structures, equipment, security barriers and transmission lines from the site, unless otherwise agreed to be placed in productive use by the permitting entity or current landowner.
- b. Disposal of all solid and hazardous waste in accordance with Local, State and Federal waste disposal regulations (i.e., Voluntary Response Action Program).
- c. Stabilization and re-vegetation of the site as necessary to minimize erosion. The CEO may allow the Applicant, or Operator to leave landscaping or designated below-grade foundations to minimize erosion and disruptions to vegetation.
- d. Any earth disturbance must be graded and re-seeded, unless authorized for another developed use. Reseeding will be only with native species of this area, and no invasive species shall be used.
- e. An estimate of the total cost to decommission the CWEF, including an itemized list of estimated major expenses, less salvage value. The estimates will also include measures to be taken to minimize or prevent adverse impacts on the environment during Decommissioning Plan execution.
- f. A listing of itemized costs which may include, but are not limited to, panel, equipment, foundation, building, transmission corridor, and road removal and permanent stabilization.
- g. An inflation guard provision where cost will be adjusted yearly for inflation based on the Consumer Price Index (CPI) forecasts over the design life of the project. Such adjustment shall be reflected in the amount covered and/or available for the estimated total cost of decommissioning as itemized in Item 2 above in this section.
- h. A performance bond, surety bond, letter of credit, or other form of financial assurance deemed acceptable by the Planning Board to ensure that at the end of the CWEFS useful life, the Applicant, or Operator will have the necessary financial resources to pay for one-hundred and ten percent (110%) of the estimated total inflation adjusted cost of decommissioning.
- i. The financial assurance shall include a provision granting the Town of Jonesport the ability to access the funds and property to perform the decommissioning if the CWEF is abandoned, or the Applicant, Operator, or any subsequent responsible party fails to meet their obligations after reasonable notice.
- j. The decommissioning cost estimate should be reviewed and adjusted every two (2) years to assure sufficient funds are available to complete all, or a portion of CWEF component decommissioning. This

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updated cost estimate will be presented to the Planning Board who will review with a financial analyst as the board deems necessary.

- k. A disposal plan is also prepared for all decommissioned equipment and facilities with specific provisions for solid and hazardous waste in accordance with Local, State and Federal waste disposal regulations.
- l. If the Applicant, or Operator, of the CWEF does not complete decommissioning within a period of twelve (12) months from start (unless otherwise agreed with the Selectboard), the Town of Jonesport may take such action as necessary (including court action) to secure the escrowed decommissioning funds and to ensure completion of the decommissioning.
- m. A letter acknowledging and agreeing to the Decommissioning Plan performance triggers detailed in Section 3.c. below.

3. Decommissioning Plan Performance Triggers

The following decommissioning plan triggers shall be acknowledged and agreed to by the Applicant:

- a. Following commencement of project operations, the Applicant, or Operator, will decommission the project, or individual turbines, if electricity is not being generated for a continuous period of twelve (12) months. The only exceptions permitted are in the case of a force majeure event, or if the Applicant provides acceptable evidence to the CEO and Selectboard that the project should not be decommissioned.
- b. Otherwise, the CWEF, or individual turbine, will be presumed to be abandoned if it ceases operation for more than twelve (12) consecutive months. Upon such occurrence, the Town will notify the Applicant, Operator in writing that a presumption of abandonment has arisen.
- c. The Applicant, or Operator may file a ~~rebuttable~~ rebuttal within thirty (30) days of said notification. The Applicant, or Operator will then be afforded the opportunity to rebut the presumption to the Selectboard at a date to be mutually agreed between Applicant, or Operator, and the Selectboard. If the Selectboard finds that operation has not been abandoned, the Applicant, or Operator, will be required to file a reasonable timetable for recommencing operations or initiating decommissioning.
- d. If the Selectboard finds that the Applicant, or Operator has not rebutted the presumption of abandonment, then decommissioning will be initiated.
- e. The Applicant, or Operator may appeal the Selectboard's finding of abandonment to Superior Court pursuant to Maine Rules of Civil Procedure 80b. In such case of appeal, decommissioning will be stayed during any such period until the appeal is resolved.

In addition to the remedies for conviction of a violation of this Ordinance, the Court may order decommissioning for repeated, serious ordinance violations.

4. Applicant Reporting Requirements

The Applicant, or Operator, will provide the CEO a report detailing monthly power production output by turbine, and output as a percentage of capacity for the prior full six (6) months by January 15 and July 15 each year. The CEO will inform the Applicant, or Operator of no power generation during any 6-month period and provide a warning that no power generation may trigger a decommissioning notification to the operator of record.

5. Decommissioning Plan Execution

- a. CWEFs that have reached the end of their useful operating life, cease to generate power or have been abandoned shall be decommissioned in accordance with the approved Decommissioning Plan.
- b. Decommissioning should be completed in accordance with the decommissioning schedule contained in the Decommissioning Plan and is generally considered to be completed within twelve

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- (12) months unless other approved by the Selectboard.
- c. The Applicant, or Operator, shall notify the CEO by certified mail, return receipt requested, of the proposed date of the discontinued operations and its plans for decommissioning.
 - d. The Applicant, or Operator, may request from the CEO for release of any financial assurances at such time that it or its assignees remove the system and associated abandoned structures, and such completed removal is found to be satisfactory by the Selectboard.

Section 10. DEFINITIONS

Abutter: A person who owns property that adjoins the delineated project site property boundary, including owners of property directly across a public or private way.

Ambient Sound: is at a specified time, the all-encompassing sound associated with a given environment. It is usually a composite of sounds from many sources and directions.

Applicant: The legal entity, including successors and assigns, that files an application under this Ordinance.

Associated Facilities: Elements of a CWF other than its Generating Facilities that are necessary to the proper operation and maintenance of the WEF, including but not limited to, buildings, access roads, Generator Lead Lines, and substations.

Commercial Windmill Energy Facility (CWF): A Facility where the primary purpose of the system is to generate income from the power produced for off-site consumption.

DEP Certification: A certification issued by the Department of Environmental Protection (DEP) pursuant to Title 35-A M.R.S. Section 3456 for a Wind Energy Development.

Electromagnetic Field (EMF): Invisible lines of force created whenever electricity is generated or used. EMFs are produced by power lines, electric wiring, and electric equipment and appliances. The frequency of EMFs is measured in hertz (Hz, or cycles per second).

Force majeure: For the purpose of this Ordinance, *force majeure* includes any of the following: fire, earthquake, tornado, hurricane, or other acts of God and natural disasters: strikes or labor disputes; war, civil strife, or other violence; suspension of operations of all, or a portion of, the project for routine maintenance, overhaul, or reconditioning; or any act or condition beyond the reasonable control of a party involved.

Generating Facilities: Wind Turbines and electrical lines, not including Generator Lead Lines, that are immediately associated with the Wind Turbines.

Generator Lead Lines: A “generator interconnection transmission facility” as defined by Title 35-A M.R.S., Section 3132 (1-B).

Historic Area: A Historic Site administered by the Bureau of Parks and Recreation of the Maine Department of Conservation.

Historic Site: 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.

Kilowatt (kW): A unit for measuring power that is equivalent to 1,000 watts.

Megawatt (MW): A unit for measuring power that is equivalent to 1 (one) million watts, or 1,000 kW.

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Megawatt Hour (MWh): A megawatt hour is equal to 1,000 kilowatt hours (kWh). It is equal to 1,000 kilowatts of electricity used continuously for one hour.

Meteorological Tower (MET Tower): 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 ANAGAT detectors, bird diverts and wildlife entanglement protectors.

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

Non-Participating Landowner: Any landowner, other than a Participating Landowner, with property within five hundred (500) feet of a proposed CWEF who chooses not to participate in siting and operation of a CWEF.

Occupied Building: A residence, school, hospital, house of worship, public library or other building that is occupied or in use as a primary residence or is customarily frequented by the public during the daylight and early evening hours; for consideration as such the building must be occupied at the time of CWEF permit application.

Off-Grid Windmill Energy Facility: Windmill Energy Facilities that are not integrated with the utility grid power system.

Operator: A Windmill Energy Facility Operator is responsible for carrying out the operations related to the assembly and maintenance of the CWEF that will ensure the proper safe running of the CWEF, assessing and preventing possible professional risks associated with its operation.

Participating Landowner: means one or more persons that hold title in fee or a leasehold interest with sublease rights to property on which a Wind Turbine, or Turbines, and Associated Facilities are proposed to be located pursuant to an agreement with the Applicant or an entity that has entered into an agreement with the Applicant allowing the Applicant to demonstrate the requisite right, title, and interest in such property.

Person: A natural person, individual, partnership, association, company, corporation, firm, limited liability company or organization, or a manager, agent, owner, director, servant, officer, or employee thereof, or other legal entity. "Person" does not include any governmental organization.

Pure Tone: The simplest periodic sound which is a constant sound created as a pressure disturbance that fluctuates sinusoidally as a fixed frequency.

Private Windmill Energy Facility: Windmill Energy Facility where the primary purpose is to generate power for on-site personal residential or business use.

Planned Residence: 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 a location that is:

- a. Accessible by foot, on a parcel of land owned by a Non-Participating Landowner containing a residence or planned residence, or an 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 CWEF is submitted under this Ordinance;
- b. Within a State Park, Baxter State Park, a National Park, a nature preserve owned by a land trust, the Maine Audubon Society or the Maine chapter of the Nature Conservancy, the Appalachian Trail, the Moosehorn National Wildlife refuge, a federally designated wilderness area, a state wilderness area designated by statute, a

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municipal park or a locally-designated passive recreation area, or any location within consolidated public reserve lands designated by rule by the Bureau of Public Lands as a Protected Location, or;

- c. A hotel, motel, campsite, or duly licensed campground that the municipal authority responsible for review and approval of the pending application has designated a Protected Location after making a determination that the health and welfare of the guests or the economic viability of the establishment will be unreasonably impacted by noise in excess of that allowed according to applicable standards defined in this Ordinance.

Residence/Dwelling Unit: Any room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping, and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residence/dwelling units.

Scenic Resource: either a Scenic Resource of state or national significance, as defined in Title 35-A M.R.S. Section 3451 (9) or a scenic resource of local significance located within the municipality and identified as such in a Comprehensive Plan, open space plan or scenic inventory adopted by the municipal legislative body.

Shadow Flicker: Alternating changes in light intensity caused by the movement of Wind Turbine blades casting shadows on the ground or a stationary object. Wind Turbine blades casting shadows on the ground or other stationary objects.

Short Duration Repetitive Sounds: A sequence of repetitive sounds which occur more than once within an hour, each clearly discernible as an event and causing a significant sound level increase, on the fast meter response, above the sound level observed immediately before and after the event.

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

Significant Wildlife Habitat: A Significant Wildlife Habitat as defined in Title 38 M.R.S.A., Section 480-B(10).

Substantial Start: Construction shall be considered to be substantially started upon the completion of thirty percent (30%) of a permitted structure or use as measured as a percentage of the total estimated cost. Purchase of wind turbines and/or associated equipment shall not factor into this determination unless the wind turbines and/or associated equipment are physically located in the Town of Jonesport.

Tower: A free-standing structure on which a wind measuring, or energy conversion system is mounted. Towers are classified into three categories: guyed, cable-supported, & free-standing.

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

Wind Energy Facility (WEF): A CWF that uses one or more Wind Turbines to convert wind energy to electrical energy. A WEF includes Generating Facilities and Associated Facilities.

Type 1 – Small Wind Turbine: A single wind Turbine with a nameplate capacity less than 10kW and turbine height less than 100 feet, typically used in residential or small business settings.

Wind Energy Facility – Type 2: A CWF having a maximum generating capacity of less than 100 kW and a turbine height less than 100 feet, which does not require a state permit issued by the Department of Environmental Protection under the Site Location of Development Act, Title 38 M.R.S. Section 481, *et seq.*

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Wind Energy Facility – Type 3: A CWEF having up to three (3) wind turbines with a generating capacity of less than one (1) MW and an individual turbine height less than three hundred (300) feet and requires a state permit issued by the Department of Environmental Protection under the Site Location of Development Act, Title 38 M.R.S. Section 481, *et seq.*

Wind Energy Facility – Type 3A: A CWEF having a generating capacity greater than or equal to 100 kW and a turbine height greater than one hundred fifty (150) feet and requires a state permit issued by the Department of Environmental Protection under the Site Location of Development Act, Title 38 M.R.S. Section 481, *et seq.*

Wind Energy Facility – Type 4: A single wind tower with a generating capacity of greater than or equal to 1MW, or a turbine height greater than or equal to three hundred (300) feet; or more than three Type 3 Wind Turbines pursuant to Title 35-A M.R.S.A. Section 3451, Title 35-A M.R.S.A. Section 3456 and Title 38 M.R.S.A. Section 482.

Wind Turbine an apparatus for the conversion of wind energy into electrical energy; a Wind Turbine is conventionally mounted on a Tower.

Section 11. CONFLICT, PROVISIONS, AND SEVERABILITY

Whenever a provision of this Ordinance is inconsistent with another provision of any other ordinance, regulation, or statute, the more restrictive provision shall control.

In the event of a conflict between or among the provisions of this Ordinance, and an applicable State or local law, Ordinance, or regulation, the more restrictive provisions shall control. Conflicts between this Ordinance and any other Jonesport Ordinance(s) shall be resolved in favor of this Ordinance. Should a Court declare invalidity of any part of this Ordinance, such declaration shall not invalidate other parts of this Ordinance or the Ordinance as a whole.

Section 12. ENFORCEMENT

This Ordinance shall be enforced by the Selectboard or their designee. Violation of this Ordinance shall be subject to the enforcement and penalty provisions of 30-A, M.R.S. Section 4452, Enforcement of Land Use Laws and Ordinances.

1. Nuisances

Any violation of this Ordinance shall be deemed to be a nuisance.

2. Compliance

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 to violate or fail to comply with any permit issued under this Ordinance, or to cause another to violate or fail to comply or take any actions which is contrary to the terms of this Ordinance or any permit under this Ordinance.

3. Code Enforcement Officer (CEO)

- a. The Code Enforcement Officer (CEO) is authorized and shall have the authority to enforce all provisions of this Ordinance, including obtaining fines, injunctive relief, and reasonable attorney's fees and costs pursuant to Title 30-A, M.R.S.A. Section 4452.
- b. If the CEO or other Person charged with enforcement of municipal laws determines that a violation of this Ordinance or the permit has occurred, the CEO shall notify in writing, the Person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings, or structures, and abatement of nuisance conditions. A copy of such notice shall be maintained as a permanent record by the Planning Board.

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- c. Based upon neighbor complaints or on the initiative of the CEO, after a Wind Turbine is operational, sound level measurement shall be conducted at Protected Locations. If measured levels are 3 dBA or greater than levels mandated by this Ordinance in Section 8.31, "Sound Level Standards", for one (1) hour or more, the CWF shall be shut down. During a subsequent year the CWF may be operated only to test effectiveness of noise abatement modifications to the CWF. If the mandated sound levels are achieved, the CWF may resume operation. Should satisfactory noise abatement tests fail to be achieved during the year, the CWF shall be removed. If the turbine operator can demonstrate that an impending modification will silence the CWF, removal of the CWF may be postponed at the discretion of the Selectboard.
- d. If an alleged violation does not pose an immediate threat to public health or safety, the CEO and the alleged violator shall engage in good faith negotiations to resolve the alleged violation. Such negotiations shall be conducted within thirty (30) days of the notice of violation and, with the consent of the alleged violator, may be extended.
- e. If after thirty (30) days from the date of notice of violation or further period as agreed to by the alleged violator, the CEO determines, in the officer's reasonable discretion, that the parties have not resolved the alleged violation, the CEO may institute civil enforcement proceedings or any other remedy at law to ensure compliance with this Ordinance or permit.

4. Legal Actions

- a. When the above action does not result in the correction or abatement of the violation or nuisance condition, the Selectboard, upon notice from the CEO, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the Town.
- b. The Selectboard, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of elimination violations of this Ordinance and recovering fines with Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by and authorized Selectboard member and there is no evidence that the Applicant acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety, or will result in substantial environmental damage.

5. Appeals

- a. Except as otherwise stated herein, the Board of Appeals may, upon written application of an aggrieved party and after public notice, hear appeals from determinations of the Planning Board or CEO in the administration of this Ordinance. Such hearings shall be held in accordance with State laws. Following such hearing, the Board of Appeals may reverse the decision of the Planning Board or CEO only upon a finding that the decision is clearly contrary to specific provisions of this Ordinance.

Section 13. AMENDMENTS

- 1. An amendment to this Ordinance may be initiated by the Selectboard, provided a majority of them have so voted; or, by written petition conducted in accordance with Title 30-A M.R.S.A Section 2522, and Section 2528, as applicable.

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2. The Selectboard shall hold a public hearing on the proposed amendment. Notification of the hearing shall be posted and advertised in a newspaper of general circulation in the municipality at least seven (7) days prior to the hearing.
3. An amendment of this Ordinance shall be adopted by a majority vote of a Town Meeting.

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Section 14. EFFECTIVE DATE

This Ordinance will be enacted on 00/00/0000, following the approval by the Voters of the Town of Jonesport and shall take effect immediately thereafter.

Date Approved: _____

Attested: Tonia Merchant, Town Clerk _____

Harry Fish Jr., Selectman _____

Denise Cilley, Selectwoman _____

Logan Alley, Selectman _____