

TOWN OF NEW PORTLAND, MAINE WIND ENERGY FACILITY ORDINANCE

1.0 Title. This ordinance shall be known as the Town of New Portland, Maine, Wind Energy Facility Ordinance.

2.0 Purpose. The purpose of this Ordinance is to protect the health, safety, and general welfare of the residents and property owners of New Portland by establishing reasonable and uniform regulations for Wind Energy Facilities (WEFs).

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

3.1 Conflicts with Other Ordinances, Laws and Regulations. If there is a conflict between provisions in this Ordinance or between a provision in this Ordinance and a provision of any other ordinance, regulation, or statute from any jurisdiction, the more restrictive provision shall apply.

3.2 Validity and Severability. Should any section or provision of this Ordinance be declared by the courts to be invalid, such a decision shall not invalidate any other section or provision of the Ordinance.

3.3 Administration. This Ordinance shall be administered by the Planning Board and Code Enforcement Officer of the Town of New Portland.

3.4 Amendments. Amendments may be proposed by a majority of the Planning Board. This Ordinance may be amended by a majority vote at a Town Meeting which must be presented at a Public Hearing before such a vote may be taken. If the Ordinance is amended as described above, the amendments shall apply retroactively to any Application that is pending.

4.0 Effective Date.

4.1 This Ordinance shall become effective on the date of its passage. **MARCH 3, 2012**

5.0 Applicability. This ordinance applies to all Wind Energy Facilities and Meteorological Towers in the Town of New Portland proposed to be constructed or operated after the effective date of this Ordinance.

6.0 Definitions.

Acoustic Hazard. Annoyances and hazards owing to the sound produced by a WEF.

Applicant. Person, or persons or entity applying for a Meteorological Tower permit or Wind Energy Facility permit to the Town of New Portland Planning Board.

Blade glint. The intermittent reflection of the sun off the surface of the blades of a Wind Turbine

Board Of Appeals (BOA)

CEO means Town of New Portland Code Enforcement Officer

Covenants. A legal agreement, convention or promise by two or more parties by deed in writing, signed, and delivered, by which one of the parties pledges himself to the other that something is done, or shall be done, or shall not be done, or stipulates the truth of certain facts. For this Ordinance this legal agreement shall contain stipulations required and put forth herein and shall be a covenant running with land.

D = Distance measured in feet.

Debris Hazard. Hazard owing to the possibility that the parts of a WEF or material (ice or other debris) accumulated on its rotating elements could be dislodged and fall or be thrown some distance onto surrounding property.

Decibel (dB) means 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 micropascals); abbreviated "dB."

dB(A) or dBA means the abbreviation designating both the unit of measure sound level, the decibel, and the mode of measurement that uses the A-weighting of a sound level meter.

dB(C) or dBC means the abbreviation designating both the unit of measure sound level, the decibel, and the mode of measurement that uses the C-weighting of a sound level meter.

Engineering drawing. Rendering of an object or land area using drafting instruments or CAD showing all critical features and appropriate dimensions to describe the subject.

Environmentally Sensitive Areas. Such areas shall include but not limited to wetlands, vernal pools, seeps or springs, steep slopes (equal to or greater than 15%), watersheds, flood plains, significant habitat for wildlife, fish, and plants.

Flicker Hazard. Annoyance and hazard produced by alternating changes in light intensity caused by the movement of wind turbine blades casting shadows on the ground or a stationary object.

Flicker Receptor – any Non-participating Landowner's property within two miles of any Turbine.

Flicker Hazard Report – see section 9.9

Geological Instability. Can include possible fault lines, areas of potential landslides, heavily fractured or unstable bedrock that would cause the tower and/or structure to fall or collapse.

Ho. Height overall. Height of a Meteorological Tower or WEF Turbine from ground level to the highest point on the structure or the highest point of any rotating element, whichever is higher.

Inhabitant means one who resides actually and permanently in a given place, and has his domicile there.

LAeq means the energy-equivalent sound pressure level measured in decibels with a sound level meter set for A-weighting, "Fast" response over a measurement period; expressed as LAeq or Leq in dBA.

Lc = Criterion sound level, dBA, set to 30 dBA, consistent with the World Health Organization's Night Noise Guideline 2009, to prevent biological effects, to protect public health in risk groups including children, elderly and those with disease or pre-existing health conditions and, to minimize sleep disturbance at night; a criterion level of 30 decibels (LAeq) for continuous intrusive noise as the level above which biological effects, medical impacts on sensitive populations, and sleep disturbance were found with sufficient evidence under comprehensive medical and scientific peer review by World Health Organization.

LCeq means the energy-equivalent sound pressure level measured in decibels with a sound level meter set for C-weighting, "Fast" response over a measurement period; expressed as LCeq or Leq in dBC.

Lp = Sound Pressure Level measured in dBA in accordance with American National Standards S12.9 – Part 3, "Quantities and Procedures for Description and Measurement of Environmental Sound" or ANSI S12.18.

Ls = Safety Factor, shall be 2 dBA unless otherwise authorized by the Town Planning Board, to account for variations in meter total instrument response.

Lu = Uncertainty factor, shall be 5 dBA unless otherwise authorized by the Town Planning Board, based on measured maximum hourly sound levels at wind turbine facilities in Maine compared to predicted sound levels and the resulted required corrections of 5 dB.

Lw = Manufacturer's Guaranteed Maximum Sound Power Level, in dBA re 1pW, under any operating conditions, including high

winds, yawing, furling, and power outages, whether electrically loaded or unloaded. The Manufacturer's Guaranteed Maximum Sound Power Level in dBA that is reported must be the maximum level that the turbine produces over its entire operational range at all wind speeds and this figure must also have been verified by an independent certified testing laboratory.

Maximum sound level (also Lmax) means the maximum sound pressure level measured in decibels with a sound level meter set for A-weighting, "Fast" meter response over a measurement period; expressed as Lmax in dBA.

Meteorological Tower (MT). Tower constructed to mount instruments at one or more heights above grade for the purpose of collecting wind or other meteorological data.

n = Number (quantity) of wind turbines, where the expression $4\log(n)$ represents the change in sound level due to the increase in the number of turbines based on independent analysis of measured noise levels around wind turbine facilities in Maine, and -0.5 dB is required when converting from sound power level to sound pressure level assuming spherical spreading, for dimensions in feet.

Owner/Operator. The person or entity that is the legal owner of the WEF, including successors and assigns, and that has the authority and responsibility to operate the WEF on a day-to-day basis. An Owner/Operator must have the legal authority to represent and bind.

Property line. Any boundary between parcels of land owned or leased by different persons or groups of persons.

S_{fd}. Falling and Debris Hazard setback requirement (ft)

S_c. Flicker Hazard setback requirement (ft)

S_s. Acoustic Hazard setback requirement (ft)

Sound level meter means an instrument for the measurement of sound levels conforming to ANSI type I or type II standards.

Sound pressure level means the level of a sound measured in dB units with a sound level meter which has a uniform (flat) response over the band of frequencies measured. Sound pressure levels are referenced to 20 micropascals; expressed as [sound level] dB re 20uPA.

Sound power level is calculated from a sound pressure level at a given distance by the formula $L_w = L_p + 20\log D + 0.5$, dB re 10^{-12} W where L_p is measured in accordance with American National Standards S12.9 – Part 3, "Quantities and Procedures for Description and Measurement of Environmental Sound" or ANSI S12.18, or $L_w = L_p - 6 + 10\log(4\pi(D^2))$, dB re 10^{-12} W where L_p is measured in accordance with AWEA/IEC 61400-11 using a 1-meter flat ground board. D is the distance from the source (typically the hub height plus $\frac{1}{2}$ the rotor diameter).

Setback Area. The entire land base that falls within the Setback for a particular MT or WEF.

Setback. A distance measured horizontally in feet from a property line to the closest point of any WEF turbine or Meteorological Tower.

Type 0: Micro Wind Energy Facility. One or more wind turbines, each with a nameplate capacity of less than 1 kW and a turbine height (measured to the top of an upright blade) of 35 feet or less.

Type 1: Small Wind Energy Facility. A single wind turbine with a nameplate capacity of 10 kW or less and a turbine height (measured to the top of an upright blade) of 80 feet or less.

Type 2: Intermediate Wind Energy Facility. A single wind turbine with a nameplate capacity of less than 100 kW and or a turbine height (measured to the top of an upright blade) of 150 feet or less.

Type 3: Large/Commercial Wind Energy Facility. A single wind turbine with a nameplate capacity of 100 kW or a turbine height (measured to the top of an upright blade) of more than 150 feet. Or a WEF composed of two or more turbines each

with a nameplate capacity of 100 kW or more. Or a WEF (of any size or number of turbines) 25% or more of whose power is intended for sale or use by entities or persons other than the generator.

W means power in Watts.

Wind Energy Facility (WEF). All equipment, structures, roads, and power lines that together form a system for the production of electrical power using ambient wind as a source of motive power.

Wind Energy Facility Turbine (WEFT). Any machine constructed to convert ambient wind energy to electromotive energy.

7.0 Documents. Various State documents and Standards Bodies' documents are referred to throughout this document

8.0 Design, Manufacture, and Construction Standards

8.1 The design and manufacture of all meteorological towers, all wind turbines, and all other components of a WEF shall conform to applicable national, state, and local standards for the wind industry, such as those established by the American National Standards Institute (ANSI), Underwriters Laboratories, and similar certifying organizations. All MTs and all components of a WEF shall conform to local, state, and national building codes.

8.2 Meteorological towers (MT) must be less than 200 feet in height, and must be designed so as not to require lighting. Guy wires are allowed but must be designed so as to limit Environmental Hazard to wildlife, especially birds and bats. For MTs connected with the potential development of commercial WEFs, a Decommissioning Bond will be required to ensure timely removal of the equipment.

8.3 Underground power and transmission lines shall be buried at a depth consistent with state public utility engineering standards to prevent transient ground currents and stray voltage.

8.4 An application for a permit for a Type 3 WEF that will be connected to the Public Utility Grid shall include a Public Utility Grid Impact Statement documenting all anticipated changes to the public utility grid within the Town of New Portland due to the WEF. The Statement shall be signed and approved by the Maine Public Utilities Commission and shall include proof of leases or rights of way for transmission lines, and an analysis of the residual capacity in the grid that will be available to other local generating projects after the construction of the WEF.

8.5 A WEFT with a nameplate capacity of more than 10 kW shall be equipped with a redundant braking system that includes both aerodynamic over-speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall operate in fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over-speed protection on WEFTs with a nameplate capacity of more than 10 kW.

8.6 WEFs shall be designed and sited to prevent the disruption or loss of emergency or private radio, telephone, television, or similar signals. Interference with such communications shall be grounds for ordering the immediate shut down of the WEF until the interference has been remedied.

8.7 The minimum distance between the ground and the blades of a WEF shall be 25 feet as measured at the lowest point in the arc of the blades.

8.8 WEFs shall be mounted on towers or on poles with guy wires except that WEFs with a nameplate capacity of less than 1 kW may be mounted on structure roof tops.

8.9 The color of WEFTs and MTs shall be off-white or grey or some other unobtrusive color approved by the Town of New Portland Planning Board.

8.10 WEFs shall not be used to display signs or advertising except for signs at ground level identifying the turbine manufacturer, the WEF Owner/Operator, emergency contact information, and appropriate warnings as required by national, state, and local laws.

8.11 All construction activities must conform to the approved detailed site plan, including any conditions of approval

and changes approved by the Code Enforcement Officer and/or the Planning Board.

8.12 **Modification During Construction** If at any time it appears necessary or desirable to modify the approved plans before or during construction of the WEF, the Code Enforcement Officer, with assistance at the Applicant's expense from such staff, consultants or experts as the CEO deems appropriate, is authorized to approve minor modifications due to unforeseen circumstances such as encountering hidden outcrops of bedrock, natural springs, etc. The Code Enforcement Officer shall issue any approval under this section in writing and shall transmit a copy of the approval to the Selectmen and Planning Board. Revised plans shall be filed with the Planning Board for the record. For major modifications such as relocation of rights-of-way, relation of WEFTs, changes in grade by more than 1%, etc., the Applicant shall submit to the Planning board an amended plan for review and approval.

9.0 Public Health and Safety Standards

9.1 **Setback Standards.** All MTs and WEFs must be sited so as to satisfy the Setback Standards calculated in Table 1 for the following hazards: If more than one set-back requirement applies, the greatest set-back distance shall be met. All set-back distance measurements shall be based on horizontal distances between the center axis of any WEF Turbine and a property line.

- Falling and Debris Hazard
- Flicker Hazard
- Acoustic Hazard (See Table 2 for calculations of typical setback distances)

TABLE 1

SETBACK DISTANCE STANDARDS ALL MEASUREMENTS AND DISTANCES ARE MEASURED HORIZONTALLY IN FEET FROM TURBINE(S) TO PROPERTY LINES

SETBACK (FT)	METEOROLOGICAL TOWER	TYPE 0 & TYPE 1	TYPE 2	TYPE 3
FALLING & DEBRIS HAZARD	$S_{f/d} = H_o \times 1.5$ Where: $S_{f/d}$ Setback Distance H_o Height Overall	$S_{f/d} = H_o \times 1.5$ Where: $S_{f/d}$ Setback Distance H_o Height Overall	$S_{f/d} = H_o \times 1.5$ Where: $S_{f/d}$ Setback Distance H_o Height Overall	$S_{f/d} = H_o \times 1.5$ Where: $S_{f/d}$ Setback Distance H_o Height Overall
FLICKER HAZARD	Not Applicable H_o Height Overall	$S_c = (H_o / .176) \times 1.5$ Where: S_c Setback Distance H_o Height Overall Not including 120° to 240° True	Flicker Hazard Report Must not exceed limits specified in section 9.9 H_o Height Overall	Flicker Hazard Report Must not exceed limits specified in section 9.9 H_o Height Overall
ACOUSTIC HAZARD	Not Applicable	$S_s = 10^{((L_w + L_u + L_s + 4 \log(n) - 5 - 30) / 20)}$ Where: S_s Setback Distance L_w Manufacturer's Guaranteed Maximum Sound Power Level, in dBA re 1pW L_u Uncertainty Factor = 5 L_s Safety Factor = 2 n No. of Turbines for one turbine $4 \log(n) = 0$	$S_s = 10^{((L_w + L_u + L_s + 4 \log(n) - 5 - 30) / 20)}$ Where: S_s Setback Distance L_w Manufacturer's Guaranteed Maximum Sound Power Level, in dBA re 1pW L_u Uncertainty Factor = 5 L_s Safety Factor = 2 n No. of Turbines for one turbine $4 \log(n) = 0$	$S_s = 10^{((L_w + L_u + L_s + 4 \log(n) - 5 - 30) / 20)}$ Where: S_s Setback Distance L_w Manufacturer's Guaranteed Maximum Sound Power Level, in dBA re 1pW L_u Uncertainty Factor = 5 L_s Safety Factor = 2 n No. of Turbines for one turbine $4 \log(n) = 0$

L_w - Manufacturer's Guaranteed Maximum Sound Power Level, in dBA re 1pW

The Manufacturer's Guaranteed Maximum Sound Power Level in dBA that is reported must be the maximum level that the turbine produces over its entire operational range at all wind speeds and this figure must also have been verified by an independent certified testing laboratory.

TABLE 2

Acoustic Setback Distance is MEASURED HORIZONTALLY IN FEET FROM TURBINE(S) TO PROPERTY LINES

Property Line Criteria, dBA:	30
Uncertainty Factor, dBA:	5
Safety Factor, dBA:	2

Manufacturer's Guaranteed Maximum Sound Power Level, dBA re 1pW	Number of Wind Turbines									
	1	2	3	4	5	6	7	8	9	10
70	211	243	263	279	292	302	312	320	328	335
71	237	272	295	313	327	339	350	359	368	376
72	266	306	331	351	367	381	393	403	413	422
73	299	343	372	394	412	427	441	452	463	473
74	335	385	417	442	462	479	494	508	520	531
75	376	432	468	496	519	538	555	570	583	596
76	422	484	525	556	582	603	622	639	654	668
77	473	544	589	624	653	677	698	717	734	750
78	531	610	661	701	732	760	783	805	824	841
79	596	684	742	786	822	852	879	903	924	944
80	668	768	833	882	922	956	986	1,013	1,037	1,059
81	750	861	934	989	1,035	1,073	1,107	1,137	1,164	1,189
82	841	967	1,048	1,110	1,161	1,204	1,242	1,275	1,306	1,334
83	944	1,084	1,176	1,248	1,303	1,351	1,393	1,431	1,465	1,496
84	1,059	1,217	1,320	1,398	1,461	1,516	1,563	1,606	1,644	1,679
85	1,189	1,365	1,481	1,568	1,640	1,701	1,754	1,801	1,844	1,884
86	1,334	1,532	1,661	1,760	1,840	1,908	1,968	2,021	2,069	2,113
87	1,495	1,719	1,864	1,974	2,064	2,141	2,208	2,268	2,322	2,371
88	1,679	1,928	2,091	2,215	2,316	2,402	2,478	2,545	2,605	2,657
89	1,884	2,164	2,347	2,485	2,595	2,695	2,780	2,855	2,923	2,985
90	2,113	2,428	2,633	2,789	2,916	3,024	3,119	3,203	3,280	3,350
91	2,371	2,724	2,954	3,129	3,272	3,393	3,500	3,594	3,680	3,758
92	2,661	3,066	3,315	3,511	3,671	3,807	3,927	4,033	4,129	4,217
93	2,985	3,429	3,719	3,939	4,119	4,272	4,406	4,525	4,633	4,732
94	3,350	3,848	4,173	4,420	4,622	4,793	4,943	5,077	5,198	5,305
95	3,758	4,317	4,682	4,959	5,186	5,378	5,547	5,697	5,832	5,957
96	4,217	4,844	5,253	5,564	5,818	6,034	6,223	6,392	6,544	6,683
97	4,732	5,435	5,894	6,243	6,528	6,771	6,983	7,172	7,343	7,499
98	5,309	6,098	6,613	7,005	7,325	7,597	7,835	8,047	8,239	8,414
99	5,957	6,842	7,420	7,860	8,219	8,524	8,791	9,029	9,244	9,441
100	6,683	7,677	8,326	8,819	9,221	9,564	9,863	10,130	10,372	10,693
101	7,499	8,614	9,342	9,895	10,347	10,751	11,067	11,366	11,637	11,885
102	8,414	9,665	10,482	11,102	11,609	12,040	12,417	12,763	13,057	13,335
103	9,441	10,844	11,780	12,457	13,025	13,509	13,932	14,309	14,650	14,962
104	10,593	12,168	13,185	13,977	14,615	15,168	15,632	16,055	16,438	16,788
105	11,886	13,652	14,806	15,662	16,398	17,007	17,545	18,014	18,444	18,836
106	13,325	15,318	16,612	17,596	18,399	19,082	19,680	20,212	20,694	21,135
107	14,962	17,187	18,639	19,743	20,644	21,411	22,081	22,679	23,215	23,714
108	16,780	19,284	20,913	22,152	23,163	24,023	24,776	25,446	26,052	26,607
109	18,836	21,637	23,465	24,855	25,989	26,954	27,798	28,551	29,231	29,854
110	21,135	24,278	26,328	27,888	29,160	30,243	31,190	32,035	32,788	33,497
111	23,714	27,240	29,541	31,290	32,719	33,934	34,996	35,943	36,800	37,584
112	26,607	30,564	33,145	35,108	36,711	38,074	39,266	40,329	41,290	42,170
113	29,854	34,293	37,190	39,392	41,190	42,720	44,057	45,250	46,329	47,316
114	33,497	38,377	41,728	44,189	46,216	47,933	49,433	50,771	51,981	53,088
115	37,584	43,172	46,819	49,592	51,855	53,781	55,465	56,965	58,324	59,565

9.2 The applicant shall compute by using the formula in Table 1 or look up in Table 2, as appropriate, and graph the required setback for each hazard as a circle for a single unit or as a series of connected arcs for multiple units centered on each turbine and submitted with the required setback graphically superimposed to scale on town maps identifying lot owners and lot property lines.

9.3 **Acoustic Standards.** Sound levels due to the operation of the WEF shall not exceed 30 dBA or 50 dBC at property lines or structures in the Town of New Portland.

9.3.1 Sound measurements shall be carried out at appropriate property lines or structures as soon as possible after the Town of New Portland Planning Board determines that a violation of the noise standards may have occurred.

9.3.2 All sound measurements shall be made by a professional acoustical engineer who is a Full Member of the Institute of Noise Control Engineering (INCE) or who possesses some comparable qualification. The engineer shall be chosen by the Owner/Operator from a list provided and contracted by the Planning Board and paid by the Owner/Operator.

9.3.3 Except as specifically noted otherwise, sound measurements shall be conducted in compliance with the American National Standards Institute (ANSI) Standard S12.18-1994, as amended, "Outdoor Measurements of Sound Pressure."

9.3.4 Sound level meters and calibration equipment shall comply with the latest version of ANSI Standard S1.4, as amended, "Specifications for General Purpose Sound Level Meters," and shall have been calibrated at a recognized laboratory within one year before the sound measurements are carried out.

9.4 An Application for a permit to construct a Type 3 WEF with one or more turbines having a nameplate capacity of 100 kW or more shall include a Fire Prevention and Fire Fighting Plan that has been approved by the Town of New Portland Fire Department. The plan shall identify a response plan to address all potential WEF fire scenarios and include a list of hazardous materials that may be encountered.

9.5 The Owner/Operator of a Type 3 WEF with one or more turbines having a nameplate capacity of 100 kW or more shall ensure that the WEF complies with the following fire control and prevention measures and assumes responsibility for all associated incremental costs.

- Use of fireproof or fire resistant building materials and buffers as required by state law or the New Portland Fire Department.
- Incorporation of a self-contained fire protection system in the WEF turbine nacelle.
- Maintenance of firebreak areas, cleared of vegetation, as required by state law or the New Portland Fire Department.
- Provision for any additional fire fighting or rescue personnel, services, training, materials, and vehicles as may be required to deal with any emergency related to the WEF that is beyond the current capabilities of the New Portland Fire Department.

9.6 The Owner/Operator of all WEFs shall be responsible for compliance with all ordinances, regulations, and laws applicable to the generation, storage, cleanup, and disposal of hazardous materials connected with the WEF.

9.7 **Road and Property Risk Assessment**

9.7.1 An application for a permit to construct a Type 2 or Type 3 WEF shall include a Road and Property Risk Assessment that has been approved by the Town of New Portland Road Commissioner and/or Board of Selectmen.

9.7.2 The Town of New Portland Planning Board shall require changes to the Road and Property Risk Assessment plan that it deems appropriate to protect public safety, to protect public and private property, and to address anticipated costs to the town.

9.7.3. A qualified third party engineer, chosen by the Applicant from a list provided and contracted by the Planning Board and paid by the Applicant, shall document road conditions prior to the construction of the WEF, and again within thirty days after construction is complete. Any road damage determined by the engineer to have been caused by the applicant or his contractors shall be promptly repaired at the applicant's expense.

9.7.4 The Town of New Portland may bond the roads in compliance with state regulations, and the bond is to be paid by the applicant prior to the transport of WEF components.

9.8. The Owner/Operator of the any WEF shall notify the Town of New Portland Planning Board of any "extraordinary event" within 24 hours after that event. Extraordinary events shall include but not be limited to tower collapse, catastrophic turbine failure, fires, leakage of hazardous materials, unauthorized entry into a tower base, thrown blade or hub, injury caused by the WEF, and any other event that affects the public health and safety of the town or its residents.

9.9 Flicker Hazard Limits and Flicker Hazard Report/study.

WEFs shall be designed and sited so that shadow flicker will not fall on a Flicker Receptor as defined in Section 6.0 . An exception to this standard may be made based on the following condition only, namely that the total flicker from all proposed WEF towers does not exceed 1 hour per year for any given Flicker Receptor.

If different amounts of flicker fall on different parts of a Flicker Receptor – the worst case amount shall be used for calculations.

The predictive annualized calculation shall assume clear weather, but take into account seasonal tracking of the sun.

Field verification and modeling, if necessary, will be paid for by the Applicant and hired independently by the Town.

The Application shall include a detailed shadow flicker assessment model and an estimate of the expected amount of flicker. This study must meet the following requirements.

- a . A registered professional regularly engaged in this type of work shall prepare the study. The Planning Board shall retain a Qualified Independent Shadow Flicker Consultant paid for in advance by the Applicant. The consultant will review this study and assist the Planning Board in determining whether the proposed WEF will comply with the standards set forth in this Ordinance. The Applicant shall pay in advance for the cost of the study and its review.
- b. The study will examine the areas within a two-mile radius of any WT in the proposed WEF.
- c. The model will be calculated using the following minimum inputs:
 - i. Turbine locations (proposed and existing)
 - ii. Flicker Receptor locations
 - iii. Existing topography (elevation contours and vegetation)
 - iv. Rotor diameter, blade width and hub height
 - v. Joint wind speed and direction distribution (wind rose table)
 - vi. Hours of sunshine (long term monthly references)
- d. The model may be prepared by use of current aerial photography and topographical maps.
- e. The study shall estimate the locations and durations of shadow flicker caused by the proposed WEF within the study area. The study shall clearly indicate the duration of shadow flicker at locations throughout the study area, showing the total number of hours per year anticipated.
- f. The study must include a statement of the assumptions made, methodology applied, and data used by the study. This information must be sufficient to allow an independent third party to

verify the results of the study.

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

Blade glint is prohibited.

9.10 – Visual Impact Assessment

A Visual Impact Assessment shall be submitted as part of the initial application for a Wind Energy Facility within the Town of New Portland. In determining whether or not the proposed development will have a negative effect on the scenic character and/or a negative aesthetic impact on the residents, the Board shall address the question, *Would this particular project result in undue harm to valuable aesthetic resources within the town of New Portland?*”

The Board shall weigh the following questions:

1. Is the proposed wind energy facility located within an area of obvious scenic significance?
2. Would the facility significantly degrade views or scenic resources of New Portland?
3. Is the facility in a landscape area that is visually distinct for the town?
4. Is the facility unreasonably close to residences that would be affected as a result of noise or shadow flicker?
5. Will the facility occupy an area valued for its wilderness characteristics?
6. Would the facility's scale in terms of turbine height or numbers of turbines overwhelm the landscape in which it is built?

The Preliminary Application for a Wind Energy Facility shall include the following:

Project Description:

1. Description of all elements of the proposed project (enumerated in the list of required documentation which must accompany an application for a permit)
 - i. Detailed Characteristics of proposed turbines (e.g. height, rotor diameter, color, rated noise levels, the number planned to be erected and their actual locations;
 - ii. Complete description of meteorological towers;
 - iii. Roads;
 - iv. Collector, distribution and transmission lines;
 - v. Temporary or permanent storage areas;
 - vi. Substations;
 - vii. Any other structures associated with the project.
 - viii. Identification of site clearings, including clearing for turbines, roads, power lines, substations.
 - ix. Description and location of all site regrading that will be engineered, including the amount of cut and fill, locations, and clearing required.

- x. Simulated photos and video of the proposed facility which illustrates items A-H above.
 - xi. Note. This information forms the basis for all aesthetic review by the Board
2. Viewshed analysis map showing all areas of New Portland, superimposed over the New Portland Property Map, from which any part of the WEFT's of a proposed wind-energy facility would potentially be visible. This shall be a computer generated map based on digital-elevation models which illustrate where the tips of each turbine and all aspects of the facility sited in section 1, i - xi above could potentially be visible from all year-round and seasonal residences within the boundaries of the Town. If complex topography makes it difficult to determine whether a particular turbine or other object will be visible from a particular point, a line-of-sight analysis shall be submitted.
 3. Virtual Simulations of how the facility will appear from each New Portland residence designated in paragraph 2 above and shall be prepared using photographic simulations or photomontages based on still photographs taken from each of the above locations. Photographs shall be taken with a 50-mm lens or digital equivalent that creates a 38.6 degree angle of view. Global positioning system (GPA) location points of all sites named above shall be recorded for each simulation. The accuracy of these simulations shall be verified by an expert in the field of digital images. This expert shall be commissioned by the Planning Board and paid for by the applicant.
 4. Using a DEM (digital-elevation model), create accurate digital images of the facility from each of the GPS coordinates representing each identified location. Exact turbine locations as well as roads, meteorological towers, and other project infrastructure will be inserted into the model. Images of the turbine and other structures and ancillary projects shall be created on the DEM using a program such as Visual Nature Studio and merged with a photograph using a digital photo-editing program. The relationship between the size of the each photograph and the distance of the observer shall be such that a realistic image is created. The formula for determining the correct size of the image in relation to the distance viewed is: $Distance\ from\ viewer = Width\ of\ image / (2 * \tan(hFoV/2))$
 5. Field assessment and Inventory of views.
A field inventory of views from all designated residences shall be presented. In addition to photographically documenting and mapping viewing locations above, the following information shall be recorded; distance from project, duration of view, angle of view, scenic quality of view, focal point of view of the project, characteristics of the view (intermittent, panoramic, and foreground, middle ground and background elements in the view.) The documents outlined in section 9.10 shall be presented to the residents of New Portland at a public hearing for their review and input to the Board.

10.0 Environmental Standards

10.1 The siting and construction of all WEFs shall meet all the applicable standards and ordinances of the Town of New Portland, Maine and be consistent with the Town of New Portland Comprehensive Plan.

10.2 If required by the laws of the State of Maine, a Department of Environmental Protection Site Location of Development permit shall be obtained and submitted with an application for a WEF permit. If submitted, this permit shall be considered adequate evidence that sections 10.3 and 10.4 of this Ordinance have been satisfied.

10.3 **Environmentally Sensitive Areas.** The design, construction, and maintenance of a WEF shall protect all environmentally sensitive areas that may be affected by its siting. Such areas shall include but not limited to wetlands, vernal pools, seeps or springs, steep slopes (equal to or greater than 15%), watersheds, 100 year flood plains, significant habitat for wildlife, fish, and plants as defined by The Maine Department of Inland Fisheries and Wildlife and The Maine Natural Areas Program. An application for a Type 3 WEF permit shall demonstrate appropriate measures for protecting all such areas during both construction and operation of the WEF.

10.4 Wildlife Protection.

10.4.1 The application for a Type 3 WEF shall include a Wildlife Protection Plan based on pre-

construction field studies designed and carried out by a qualified wildlife biologist chosen by the Applicant from a list provided and contracted by the Planning Board and paid by the applicant. Such studies shall describe the possible adverse effects of the WEF on birds, bats, animals and their habitats, and shall propose remedies for these effects.

10.4.2 Post Construction Wildlife Protection Field Studies. Within three years after completion of construction of a Type 3 WEF, studies to ascertain its actual effect on wildlife shall be designed and carried out by a qualified wildlife biologist chosen by the Owner/Operator from a list provided by the Planning Board and paid by the Owner/Operator. If these studies demonstrate undue adverse effects on wildlife caused by the WEF, the Owner/Operator in consultation with the Maine Department of Inland Fisheries and Wildlife (MDIFW) shall design and implement an appropriate mitigation plan. The plan shall be submitted to the Town of New Portland Planning Board for approval. The Owner/Operator shall be responsible for the full cost of carrying out the plan under the supervision of the MDIFW.

10.5 Erosion Control. Type 3 WEFs shall be designed, constructed, and maintained in accordance with accepted erosion and sediment control methods as set out in the Maine Erosion Control Handbook for Construction; The Best Management Practices, dated March (2003).

10.6 Water Quality Protection.

10.6.1 Type 3 WEFs shall be designed, constructed, and maintained so as to avoid undue adverse impacts to groundwater, including sand and gravel aquifers. The Planning Board may require as condition of issuing a permit for a Type 3 WEF that a pre-construction baseline study of all wells, springs, and public water sources within the watershed of the WEF site be conducted. The study shall be designed and carried out by a water quality professional chosen by the Applicant from a list provided and contracted by the Planning Board and paid by the Applicant.

10.6.2 Post Construction Groundwater Quality Study. Within two years after completion of construction of a Type 3 WEF for which the Planning Board has required a pre-construction baseline Water Quality Study as described in section 10.6.1 of this Ordinance, a Post Construction Water Quality study of all wells, springs, and public water sources within the watershed of the WEF site shall be designed and carried out by a water quality professional chosen by the Applicant from a list provided by the Planning Board and paid by the Owner/Operator. If degradation or contamination is found to have occurred, fines and/or permanent remedies as required by the Town of New Portland or the State of Maine shall be the responsibility of the Owner/Operator.

10.7 Hazardous Wastes. The Owner/ Operator shall be responsible for compliance with all state and federal regulations applicable to the use and disposal of hazardous wastes involved in or generated by the WEF's construction and operation. This responsibility shall extend to safe and lawful disposal of the by-products of any Acid Rock Testing and Mitigation Plan.

10.8 Blasting. Owner/Operator of a WEF shall not undertake any blasting without notifying the Town of New Portland and submitting a blasting plan in accordance with the latest DEP Standards. The blasting plan shall be reviewed and approved by the New Portland Planning Board before any blasting takes place. Forty-eight hour notice shall be given to all residents within a two mile radius of the blasting area (measured horizontally) before blasting can begin.

10.9 Light Pollution. All WEFs shall be designed and sited to minimize nighttime light pollution and shall not exceed the minimal requirements by the Federal Aviation Authority. Red lights shall be used instead of white if possible and shall be shielded to the greatest extent possible from viewers on the ground. An applicant for a WEF shall provide a plan showing all lighting on and around the WEF.

10.10 Radar Interference. The Applicant shall contact the FAA and The Department of Defense to obtain written approval that all proposed Wind Turbines and associated facilities are approved by them under all operating conditions.

11.0 Financial Standards

11.1 An applicant for a Type 3 WEF shall provide evidence satisfactory to the Town of New Portland Planning Board that the project is financially viable. Evidence of financial viability shall include the following:

- A budget for the construction of the WEF
- Proof of adequate financing for all aspects of the construction
- Proof of adequate financing for operations and maintenance including salaries over the lifetime of the project
- Proof of the applicant's technical ability to implement the project as proposed
- Proof of long-term power purchase contracts if 25% or more of the WEF output is intended for sale.
- Proof of adequate funds for Decommissioning as specified in section 11.3 of this Ordinance

11.2 The Owner/Operator of a Type 3 WEF shall maintain a current general liability policy for the WEF covering bodily injury and property damage commensurate with the scope and scale of the project. Proof of current insurance must be presented to the Planning Board with the application for a permit and every year thereafter on the date of the insurance's annual renewal.

11.3 The Owner/Operator of a Type 3 WEF shall, at his/her expense, be responsible for complete Decommissioning of the WEF and site restoration within twelve months after it ceases to generate electricity, or after its operational license has been revoked. Abandonment will be grounds for immediate revocation of license.

11.3.1 Decommissioning shall include removal and disposal outside the Town of New Portland of all parts of the WEF (including foundations) in accordance with local, state and federal laws and regulations. Areas of disturbed earth shall be graded, seeded, or otherwise re-vegetated following guidelines provided by the CEO.

11.3.2 A Professional Engineer shall be chosen by the Applicant from a list provided and contracted by the Planning Board and paid by the Applicant to estimate the total cost of Decommissioning without consideration of the salvage value of the equipment. No permit for a Type 3 WEF shall be issued until Decommissioning Funds have been posted by the Applicant with a bonding company or a Federal or State-chartered lending institution (the Escrow Agent) authorized to conduct such business in the State of Maine and approved by the Town of New Portland Planning Board and Board of Selectmen.

11.3.3 Estimates as described in section 11.3.2 shall be redone annually on the anniversary of the granting of a WEF Permit, and the Owner/Operator of the WEF shall be required to maintain Decommissioning Funds that are at least equal to the most recent estimate.

11.3.4 Decommissioning funds may be in the form of a performance bond, surety bond, letter of credit or other form of financial assurance acceptable to the Town of New Portland Planning Board and Board of Selectmen.

11.3.5 If the Owner/Operator of the WEF does not complete Decommissioning within the time prescribed in section 11.3 of this Ordinance, the Town of New Portland may take such action as necessary (including court action) to secure the posted Decommissioning Funds and to ensure completion of the Decommissioning.

11.3.6 The Escrow Agent shall not release the Decommissioning Funds except upon written approval of the Town of New Portland Planning Board and Board of Selectmen.

11.4 Any promises of any benefits to be conferred upon the Town of New Portland by the applicant shall be documented and submitted with the Final Application. These benefits shall become a legally enforceable provision of the permit.

11.5 In reviewing an application and/or ongoing WEF operations for compliance with this Ordinance, the Planning Board and/or CEO may, at their discretion, retain professional services as necessary to assist with its review, including but not limited to those of an attorney, engineer, biologist, or land use planner. If the Planning Board deems that such services are indeed necessary – then they shall inform the applicant who will then have fourteen (14) days to deposit in a joint escrow account with the Town the sum of \$50,000 as partial payment towards such expenses.

If such a fund is established and the balance of the fund falls below \$25,000, the Applicant upon notice shall submit an additional \$25,000 to replenish the fund. If at any time after such notification the balance of this fund stays below \$25,000 for a period of 30 days or any time the level of funds is insufficient to complete reviews that are required - the Application or Operational License shall be considered to have been withdrawn. The balance of the escrow account shall be returned to the Owner/operator after all expenses have been paid. If any delay in replenishing the fund generates a delay in reviewing the application or operations – then the deadline for completing the review is extended accordingly.

12.0 Ethical Standards

12.1 All deliberations concerning the permitting and regulation of WEFs shall be conducted at public meetings for which notice has been duly given.

12.2 Conflicts of Interest. No elected or appointed official or employee of the Town of New Portland who has a financial interest in the WEF under consideration shall be directly or indirectly involved in the permitting or other regulation of that WEF. Financial interest includes but is not limited to the following:

- Having right, title or interest in land on which any part of the WEF will be constructed
- Having signed for the Applicant's benefit a Covenant with financial remuneration
- Having a financial arrangement such as employment or the promise of employment—including employment as an outside contractor—with the Applicant Serving as a paid representative of an individual or company that derives income from the development of wind power

13.0 Permitting and Licensing Authority

13.1 No person shall construct or install a WEF without obtaining a permit from the planning board in accordance with this ordinance.

13.2 The Town of New Portland Planning Board is authorized to review all applications for permits to erect Meteorological Towers and to construct Wind Energy Facilities and all applications for operational licenses to operate such Facilities in the Town of New Portland. The Planning Board shall approve, reject, or conditionally approve with conditions all applications brought before it for WEF and MT permits in the Town of New Portland. No Wind Energy Facility as herein defined may be constructed or used, except in conformity with the provisions of this Ordinance. The Applicant has the burden of proving that the application is in compliance with the requirements of this Ordinance.

13.3 Approval of Variations From Plans

The granting of any permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted to and affirmed to by the applicant. Any variation from these plans, proposals and supporting documents is subject to review and approval prior to implementation.

13.4 Compliance With All Applicable Laws

The applicant shall secure and comply with all applicable federal, state and local licenses, permits, authorizations, conditions, agreements and orders prior to or during construction and operation, as appropriate.

13.5 The Town of New Portland Planning Board and/or its designated agents or representatives shall have the right to access and inspect WEF sites.

13.6 The Town of New Portland Planning Board reserves the right to limit the number of applications for WEF permits that are under review at any given time. Only one application for a Type 3 WEF permit will be accepted or processing at any given time.

13.7 The Maine Department of Environmental Protection (DEP) may be required to review WEF applications within the Town of New Portland. When making its own determination about such applications, the Planning Board shall consider, to the extent applicable, findings in the DEP review.

14.0 Permit and Operational License Requirements

14.1 **Meteorological Tower (MT).** The application for a permit for an MT shall be submitted in at least ten hard copies and five CDs to the Town of New Portland Planning Board and shall include the following information:

For type 0, 1, 2 and 3 WEF Applications

- Applicant and property owner name, address and contact information
- Proposed location of the MT including lot designation
- Intended period of data collection and date MT will be removed

For type 3 WEF Applications only – the following additional information is required:

- Engineering drawing of proposed tower structure, instrument package, and guy system, if any
- Engineering drawing of proposed tower base
- Engineering drawing of tower location showing property lines and setback requirements (as specified in Table 1 of this Ordinance)
- Any building, use or construction permits required by other authorities because of the size or construction of the tower
- Plans for mitigation of Environmental Hazard to wildlife for towers requiring guy systems
- Description of intention
- Decommissioning Bond for MT
- A legally enforceable agreement that the applicant shall pay (in advance if required by the Town of New Portland Planning Board) for the services of all consultants that the Planning Board deems necessary to evaluate the application.
- Application Fee: See WEF - Fees Document

14.1.1 Within 90 days of the Planning Board's receiving a Meteorological Tower (MT) application the Planning Board shall, with assistance from such staff, consultants, committees or

commissions as it deems appropriate, notify the applicant in writing that the application is complete or, if the application is incomplete, shall inform the applicant of the specific additional material needed to complete the application.

For Type 3 Applications only – the Funding for the above shall be paid for by applicant as per section 11.5. The Planning Board reserves the option to hold a public hearing for a proposed MT.

- 14.1.2 Within 45 days (or 60 days for Type 3 WEF Application) of determining the MT application is complete, the Planning Board shall approve the MT Application, approve the MT Application with conditions, or disapprove the MT Application. The time limit for review may be extended by mutual agreement between the Planning Board and the Applicant.

14.2 Wind Energy Facility (WEF). A Preliminary Application for a Permit to Construct a Type 0, Type 1, and Type 2 WEF shall include at least five hard copies. A Type 3 WEF shall include at least ten hard copies. Type 3 WEF applications shall also include five CDs of the complete application.

Upon approval of the Preliminary WEF Application, a Final WEF Application shall be prepared and submitted in at least five hard copies for Type 0, Type 1 and Type 2 WEFs. A Type 3 WEF shall include at least ten hard copies. Type 3 WEF applications shall also include five CDs of the complete application. Approval of the Final WEF Application shall constitute a Permit to Construct the WEF.

14.2.1 The Preliminary Application shall include the following items.

Type 0, 1, 2 and 3 WEFs:

- Applicant and property owner's name, address and contact information
- Nameplate data for the type of WEF turbine(s) to be used including manufacturer, model, rated power output and maximum sound power level

Type 3 WEFs shall also include the following:

- Evidence of the Applicant's right, title or interest in the land on which the project is proposed to be sited
- If the applicant is not the underlying fee owner of the land, a signed statement by the underlying landowner(s) in recordable form acknowledging that the landowner(s) will be financially responsible if the owner/operator fails to reclaim the site as required, and that any removal and reclamation costs incurred by the Town shall become a lien on the real estate and other property and may be collected from the landowner(s) in the same manner as property taxes.

A Detailed Site Plan that shall include

- Total acreage occupied by the facility;
- detailed map of the area showing parcel boundaries and individual wind Turbine locations and their distances to boundaries and existing structures;
- location of existing and proposed transmission lines, substations, driveways, access and maintenance roads. All proposed electric transmission and distribution lines shall be shown and shall be placed underground;
- location of meteorological or wind testing towers
- location of wells, abandoned and active, within a half mile radius of project boundary.
- Engineering drawing of the type of WEF turbine to be used

- Certification of the non-reflecting properties of the WEF turbine's external surfaces
- Engineering drawing of the tower base for the type of WEF turbine to be used
- Engineering or architectural drawings of all planned structures, including structures for support and maintenance of the WEF
- Description of intended use, including energy storage and grid connections, and the percentage (if any) of generation intended for sale or use by entities or persons other than the applicant
- Engineering drawings and/or electrical schematics of any energy storage equipment or facilities
- Calculations and supporting data for all setback requirements (as specified in Table 1 of this Ordinance). For Type 3 WEFs, setback requirements must be calculated for each WEF turbine.
- Overlay of Town of New Portland property maps showing the setback area and all property lines and rights of way affected by the setback requirements
- List of property owners whose property, wholly or in part, lies within the setback areas
- Shadow-Flicker Hazard Report as specified in Table 1 and section 9.9 of this Ordinance
- Visual Impact Assessment as specified in 9.10
- The applicant shall pay (in advance if required by the Town of New Portland Planning Board) for the services of all consultants that the Planning Board deems necessary to evaluate the application. Such consultants shall be chosen by the Planning Board. Failure of the Applicant to make such payment renders the Application void.
- Fire Prevention and Fire Fighting Plan as specified in sections 9.4 - 9.5 of this Ordinance
- Road and Property Risk Assessment as specified in section 9.7 of this Ordinance
- Plan to protect Environmentally Sensitive Areas, as specified in section 10.3 of this Ordinance
- Wildlife Protection Plan as specified in section 10.4 of this Ordinance
- Baseline Water Quality Study (if required) as specified in section 10.6 of this Ordinance
- Plan for the handling and disposal of Hazardous Wastes as specified in section 10.7 of this Ordinance
- Plan to minimize Light Pollution as specified in section 10.9 of this Ordinance
- Blasting Plan as specified in Section 10.8 of this Ordinance
- Fees: See WEF - Fees Document

14.2.1.1 Within 60 days for Type 0, 1 or 2 or within 120 days for Type 3 of the Planning Board's receiving a Preliminary WEF Application, the Planning Board shall, with assistance from such staff, consultants, committees or commissions as it deems appropriate, notify the applicant in writing that the application is complete or, if the application is incomplete, shall inform the applicant of the specific additional material needed to complete the application. The Planning Board may extend the amount of time for reviewing the Preliminary Application if resources do not allow for a proper review in the allotted time.

- For Type 3 Applications, the Planning Board shall hold a public hearing within 60 days of the date of determination of a completed preliminary application. The Planning Board shall publish the time, date, and place of the hearing in at least three public locations. All landowners within 2 miles of a

WEF shall be notified by the Planning Board of the hearing. All landowners within 2 miles of any WEF shall be notified by the Applicant via Certified Mail return receipt requested of the hearing. Public hearings by the Planning Board shall be conducted according to the procedures outlined in title 30-A M.R.S.A. Section 2691, Subsection 3 (A), (B), (C), (D), and (E).

14.2.1.2 After the Planning Board determines that a Preliminary WEF Application is complete, the Planning Board shall determine whether Preliminary WEF Application meets all requirements of this Ordinance. In determining whether the Application meets the requirements of this Ordinance, the Planning Board may obtain assistance from such staff and consultants as it deems appropriate which will be paid for by the applicant as per 11.5

14.2.1.3 Within 45 days for a Type 0, 1 or 2 or within 90 days for a Type 3 WEF of determining the Preliminary WEF Application is complete, the Planning Board shall approve the Preliminary WEF Application, approve the Preliminary Application with conditions, or disapprove the Preliminary WEF Application. The time limit for review may be extended by mutual agreement between the Planning Board and the Applicant.

14.2.1.4 The Planning Board shall make findings of fact and conclusions relative to the standards contained in this Ordinance. If the Planning Board finds that all standards have been met, they shall approve the Preliminary WEF Application. If the Planning Board finds that any of the standards of this Ordinance have not been met, the Planning Board shall either deny the Preliminary WEF Application or approve the Preliminary WEF Application with conditions to ensure all of the standards will be met. The reasons for any conditions shall be stated in the findings of facts and conclusions.

14.2.2 The Final Application shall include the following items:

- Updates to information provided in the preliminary application, including additions, corrections, and any other changes

For Type 3 Applications only:

- Results of any meteorological testing
- Any building use or construction permits required by other authorities due to the scope of the intended project
- Public Utility Grid Impact Statement as specified in section 8.4 of this Ordinance
- Financial analysis for Type 3 WEFs, including evidence of financial capacity to carry out the project, as specified in section 11.1 of this Ordinance
- Proof of general liability insurance as specified in section 11.2 of this Ordinance
- Decommissioning bond for Type 3 WEFs as specified in section 11.3 of this Ordinance
- Statement of Benefits promised to the Town of New Portland
- The applicant shall pay (in advance if required by the Town of New Portland Planning Board) for the services of all consultants that the Planning Board deems necessary to evaluate the application. Such consultants shall be chosen by the Planning Board. Failure of the Applicant to make such payment renders the Application void.
- Posting of the estimated total cost of Decommissioning Funds as specified in section 11.3
- Fees See WEF - Fees Document

14.2.2.1 Within 45 days for Type 0, 1 or 2 or 120 days for Type 3 of the Planning Board's receiving a Final WEF Application, the Planning Board shall, with assistance from such staff, consultants, committees or

commissions as it deems appropriate, notify the applicant in writing that the application is complete or, if the application is incomplete, shall inform the applicant of the specific additional material needed to complete the application. The Planning Board may extend the amount of time for reviewing the Final Application if resources do not allow for a proper review in the allotted time.

14.2.2.2 The Planning Board shall hold a public hearing within 60 days of the date of determination of a complete Final WEF Application for a Type 3 WEF. The Planning Board shall publish the time, date, and place of the hearing at least two times, the date of the first publication to be at least seven days prior to the hearing in a newspaper of area wide circulation. All landowners within 2 miles of a WEF shall be notified by the Applicant via Certified Mail return receipt requested of the hearing. Public hearings by the Planning Board shall be conducted according to the procedures outlined in title 30-A M.R.S.A. Section 2691, Subsection 3 (A), (B), (C), (D), and (E).

14.2.2.3 After the Planning Board determines that a Final WEF Application is complete, the Planning Board shall determine whether the Application meets all requirements of this Ordinance. In determining whether the Final WEF Application meets the requirements of this Ordinance, the Planning Board may obtain assistance from such staff and consultants as it deems appropriate.

14.2.2.4 Within 45 days for a Type 0, 1 or 2 or within 90 days for a Type 3 of determining the Final WEF Application is complete, the Planning Board shall approve the Final WEF Application, approve the Final WEF Application with conditions, or disapprove the Final WEF Application. The time limit for review may be extended by mutual agreement between the Planning Board and the Applicant. The Planning Board may extend the amount of time for approving the Final Application if resources do not allow for a proper review in the allotted time.

14.2.2.5 The Planning Board shall make findings of fact and conclusions relative to the standards contained in this Ordinance. If the Planning Board finds that all standards have been met, they shall approve the Final WEF Application. If the Planning Board finds that any of the standards of this Ordinance have not been met, the Planning Board shall either deny the Final WEF Application or approve the Final WEF Application with conditions to ensure all of the standards will be met. The reasons for any conditions shall be stated in the findings of facts and conclusions.

14.2.2.6 Initiation of Activity Within two Years. If construction or operation of the activity is not begun within 2 years, this permit shall lapse and the applicant shall reapply to the board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits shall state the reasons why the applicant will be able to begin the activity within two years from the granting of a new permit, if so granted. Reapplications for permits may include information submitted in the initial application by reference.

14.3 An Operational License is required for the operation of any type 3 WEF built in the Town of New Portland after the effective date of this Ordinance. An application for an Operational License shall be submitted in ten hard copies to the Town of New Portland Planning Board after the WEF has been fully built.

14.3.1 The application for an original Operational License shall include the following items:

- An Inspection Report certifying the structural and operational integrity of the WEF. This Report shall be signed by a Maine licensed professional engineer chosen by the Town of New Portland Planning Board and paid by the Owner/Operator of the WEF.
- A signed statement that the Applicant has read this Ordinance, understands all its provisions, and agrees to abide by them.
- Fee: See WEF - Fees Document.

14.3.2 An Operational License shall be valid for one year and can be renewed by submission of a new Inspection Report and Fee as specified in section 14.3.1 of this Ordinance at least thirty days before expiration of the License.

14.3.3 An Operational License shall be revoked and the WEF required to cease operations if the Town of New Portland Planning Board determines that the WEF is violating any of the standards and requirements of this Ordinance. The Operational License shall not be reinstated until the Planning Board is satisfied that all violations have ceased and all problems have been corrected.

14.3.4 An Operational License shall automatically terminate upon transfer of ownership of the WEF. The new Owner/Operator shall apply for a new Operational License and shall not operate the Type 3 WEF until the new License has been issued.

14.3.4.1 The Application for an Operational License by a new Owner/Operator shall contain the following items:

- Copies of the original Permit Applications, updated as necessary, and signed by the new Applicant
- A copy of the original Operational License Application, updated as necessary, and signed by the new Applicant
- A statement, signed by the new Applicant, that he/she has read this Ordinance, understands it, and will abide by all of its provisions.
- Fee: See WEF - Fees Document.

14.3.4.2 A new Applicant for an Operational License for a Type 3 WEF shall provide evidence satisfactory to the Town of New Portland Planning Board that the project remains financially viable. Evidence of financial viability shall include the following:

- Proof of long-term power purchase contracts
- Proof of ongoing subsidies from all sources
- Proof of adequate funds for Decommissioning as specified in Section 11.3 of this Ordinance.

14.3.4.3 Within 45 days of the Planning Board receiving an Application for a Type 3 WEF Operational License, the Planning Board shall, with assistance from such staff, consultants, committees or commissions as it deems appropriate, notify the applicant in writing that the application is complete or, if the application is incomplete, shall inform the applicant of the specific additional material needed to complete the application. The Planning Board may extend the amount of time for reviewing the Application if resources do not allow for a proper review in the allotted time.

14.3.4.4 Within 90 days of the determining that the Operational License Application is complete, the Planning Board shall determine whether the Type 3 WEF Application meets the requirements for an Operational License. In determining whether the Type 3 WEF Application meets the requirements of this Ordinance, the Planning Board may obtain assistance from such staff and consultants as it deems appropriate. The Planning Board may extend the amount of time for reviewing the Preliminary Application if resources do not allow for a proper review in the allotted time.

14.3.4.5 The Planning Board shall make findings of fact and conclusions relative to the standards contained in this Ordinance. If the Planning Board finds that all standards have been met, they shall approve the Type 3 WEF application. If the Planning Board finds that any of the standards of this Ordinance have not been met, the Planning Board shall either deny the Type 3 WEF Application or approve the Type 3 WEF Application with conditions to ensure all of the standards will be met. The reasons for any conditions shall be stated in the findings of facts and conclusions.

15.0 Violations and Enforcement

15.1 It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance and the Code Enforcement Officer is given all powers to do so under 30-A M.R.S.A. §4452.

If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he/she shall notify in writing the persons responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He/she shall order discontinuance of illegal use of land, buildings or structures, removal of illegal buildings, structures, additions, or work being done, or shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions. The Code Enforcement Officer shall use the monies deposited in the Escrow account described in 11.5 to help determine whether or not a violation has occurred. These monies are not refundable to the Applicant regardless of the outcome of the investigation.

15.2 The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected.

15.3 Legal Action and Violations: When the actions taken in Section 15.1 do not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, shall institute or cause to be instituted 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 Municipality.

15.4 Fines: Any person, including, but not limited to, a landowner, a landowner's agent or a contractor, who orders or conducts any activity in violation of this Ordinance, shall be penalized in accordance with Title 30-A, Maine Revised Statutes, Annotated, Subsection 4452 and by a fine of not less than \$100 nor more than \$2,500 per offense with each day on which such violation continues. Each day the violation exists shall be considered a separate violation. The Selectmen are authorized to enter into a Consent Agreement and in such cases court action is not necessary.

16.0 Appeals

Any appeal by an aggrieved party from an action of the Planning Board in administering the provisions of this Ordinance shall be made to the Somerset County Superior Court in accordance with the procedures of Rule 80B.

WEF – Fees Document

<u>WEF Type</u>	<u>Initial Application</u>	<u>Final Application</u>	<u>Operational</u>
Type 0	\$0	\$0	\$5 one time
Type 1	\$0	\$0	\$5 one time
Type 2	\$25	\$0	\$50 one time
Type 3	\$250	\$1000	\$5000 annual

I attest that this ordinance was passed on
March 3, 2012

Alicia Wild Town Clerk

