

# Town of Freedom Wind Turbine Ordinance

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# TOWN OF FREEDOM WIND TURBINE ORDINANCE

## 1.0 Title

This Ordinance shall be known as the Town of Freedom Wind Turbine Ordinance (Ordinance).

## 2.0 Purpose

The purpose and intent of this Ordinance is to protect the public safety, health and welfare of the residents and property owners of the Town of Freedom who may be affected by the development and operation of a Wind Turbine or Wind Turbine Project, and to support and promote appropriate wind energy development consistent with the goals of the Freedom Comprehensive Plan.

## 3.0 Authority

This Ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution (Municipal Home Rule), the provisions of Title 30-A M.R.S.A. Section 3001 (Home Rule), and the provisions of the Planning and Land Use Regulation Act, Title 30-A M.R.S.A. Section 4312, etc. seq. (*Comprehensive Planning and Land Use Regulation, or "Growth Management Act"*).

## 4.0 Conflicts with Other Ordinances, Laws and Regulations

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

## 5.0 Validity and Severability

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

## 6.0 Effective Date

This Ordinance shall become effective upon the date of its passage.

## 7.0 Applicability

- 7.1 This Ordinance applies to any Wind Turbine that is the subject of a permit or Operational License application pending before, or filed with the Town of Freedom on or after the effective date of the Ordinance.
- 7.2 Wind Turbines already constructed and in operation prior to the effective date of this Ordinance are exempt from this Ordinance, as long as any changes or upgrades made to the existing turbines conforms to the definition of Routine Maintenance. Any changes to the existing turbines that do not conform to the definition of Routine Maintenance shall comply with the provisions of this Ordinance. Any expansion of a Wind Turbine Project's total area of use, generating capacity, or number or rating of turbines, as well as addition of any supporting facilities, is subject to and shall comply with the provisions of this Ordinance regarding expansions.

## 8.0 Definitions

Abandonment of an Operational License means that the Owner/Operator has failed to operate a Wind Turbine or Wind Turbine Project to convert wind to electricity for a period of twelve consecutive months, whether the reason for not producing electricity is within the Owner/Operator's control or not.

Abandonment of an Application means the Applicant has failed to provide the necessary information required for an application within the deadlines outlined in Section 17.0.

Ambient Noise means the all-encompassing sound associated with a given environment, at a specified time, being usually a composite of sounds from many sources at many directions, near and far, including the specific development of interest.

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

Blade Reflection means the intermittent reflection of the sun off the surface of the blades of a Wind Turbine.

Community Owned Wind means a Wind Turbine Project that meets any one of the following criteria:

- 1) Town of Freedom owning 51% or more of the project,
- 2) Town of Freedom owning less than 51% of the project but in which the Town of Freedom serves as the managing partner,
- 3) The majority of the direct financial benefits of the project accruing to all of the residents of the Town of Freedom, exclusive of any tax considerations.

Community Owned Wind may include or incorporate consumer-owned transmission and distribution utilities, rural electric cooperatives, municipal electric districts, or other electrical generation and transmission models established by State law to facilitate and encourage local electrical generation. Community Owned Wind does not include partial or minority municipal ownership of Wind Turbine Projects without the Town of Freedom being the managing partner.

DEP Certification means a certification issued by the Department of Environmental Protection pursuant to Title 35-A M.R.S.A. §3456 for a Wind Turbine Project that is subject to this Ordinance.

Enforcing Authority means the Code Enforcement Officer of the Town of Freedom.

Good Utility Practice means any of the practices, methods and acts with respect to the safe operation of the Wind Turbine or Wind Turbine Project engaged in or approved by a significant portion of the electric utility industry and, in particular, those portions of the industry with experience in the construction, operation, and maintenance of wind turbines during the relevant period; or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability and safety.

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

Meteorological Tower (MET Tower) means a meteorological tower used for the measurement of wind speed.

Mitigation Waiver means a legally enforceable, written agreement between the Applicant and a Non-participating Landowner in which the non-participating landowner waives certain setback, noise or other protections afforded in the Ordinance.

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

Nameplate Capacity means the electrical power rating of an individual wind turbine as certified by the manufacturer and normally expressed in watts, kilowatts (kW), or megawatts (MW).

Noise means any sound produced by a Wind Turbine Project. Noise does need to be loud to constitute an interference with the health and well-being of residents.

Non-participating Landowner means any landowner other than a Participating Landowner.

Occupied Building means any structure that is, or is likely to be, occupied by persons or livestock. This includes, but is not limited to dwellings, places of business, places of worship, schools, and barns.

Operational License means a license or a license renewal issued by the Code Enforcement Officer to operate a Type 3, or Type 4 Wind Turbine Project in accordance with this Ordinance.

Owner/operator means the person or entity with legal ownership of the Wind Turbine Project, including successors and assigns, that has the authority and responsibility to operate the Wind Turbine Project on a day-to-day basis. An Owner/operator must have the legal authority to represent and bind.

Participating Landowner means one or more persons that hold title in fee to the property on which the Wind Turbine Project is proposed to be located pursuant to an agreement with the development Owner/operator.

Permit means a permit granted by the Planning Board to construct a Wind Turbine Project. A permit does not authorize operation of a Type 3 or Type 4 Wind Turbine Project. For Type 3 and Type 4 Wind Turbine Projects, an Operational License must be obtained after completion of construction.

Permitting Authority means the Code Enforcement Officer or Planning Board, designated as responsible for conducting the review of a particular Wind Turbine application

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

Routine Maintenance means any maintenance that could be defined as a repair of components to existing wind turbines, or the replacement of existing components as long as the resulting replacement would not increase name plate capacity, blade length, or turbine height.

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

Setback means the minimal allowable horizontal distance as measured from the center of a Wind Turbine to a defined point (i.e., a property line or an Occupied Building).

Setback Area means the entire land base that falls within a specified setback.

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

Shadow Flicker Receptor means any Occupied Building on a Non-participating Landowner's property plus an additional 100 foot boundary surrounding the exterior of the Occupied Building, the entire outdoor public area surrounding schools, churches and public buildings, and public roads with a posted speed limit greater than 25 mph.

Sight Line Representation means a line depicted in profile extending from an observer's eye to the lowest point of a viewed tower.

Significant adverse effect, with regard to wildlife protection, means an increase in species morbidity or mortality, or habitat fragmentation, which is deemed by a qualified wildlife biologist to be of concern for a particular species.

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

Structure has the same meaning as in 38 MRSA § 482.

Tower means the freestanding structure on which the wind measuring or energy conversion system is mounted.

Turbine Height means the distance measured from the surface of the tower foundation to the highest point of any turbine rotor blade measured at the highest arc of the blade.

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

Wind Turbine Project means one or more Wind Turbines and all related and supporting items including but not limited to all buildings, structures, electrical equipment, substations, transmission lines, access roads, parking lots, areas to be stripped or graded, and areas to be landscaped or screened.

**9.0 Classification of Wind Turbines and Meteorological Towers**

For the purpose of administering the permitting process, all Wind Turbines and Wind Turbine Projects will be classified and permitted according to the following definitions:

9.1 Wind Turbine Classifications:

Type 1 –Small Wind Turbine means a wind turbine with a nameplate capacity less than 10 kW, and a turbine height less than 150 feet.

Type 2 –Intermediate Wind Turbine means a wind turbine with a nameplate capacity between 10 kW and 100 kW, and a turbine height less than 150’.

Type 3 –Large Wind Turbine means up to three wind turbines with a nameplate capacity less than 1 MW, and a turbine height less than 300’, regardless of whether approval is required by the Department of Environmental Protection under 35-A M.R.S.A. §3451, et seq. (Expedited Permitting of Grid-Scale Wind Energy) or Title 38 M.R.S.A § 481, et seq. (Site Location of Development Act).

Type 4 – Industrial Wind Turbine means one or more wind turbines with a Nameplate capacity of greater than or equal to 1 MW, and/or a turbine height greater than 300’, regardless of whether approval is required by the Department of Environmental Protection under 35-A M.R.S.A. §3451, et seq. (Expedited Permitting of Grid-Scale Wind Energy) or Title 38 M.R.S.A § 481, et seq. (Site Location of Development Act).

These classifications are summarized in Table 1 below.

**Table 1: Classification of Wind Turbines**

Type/Scale	Nameplate Capacity	Turbine Height	Maximum Number of Turbines	Special Conditions
Type 1, Small Wind Turbine	<= 10 kW	and <150’	1	N/A
Type 2, Intermediate Wind Turbine/	<= 100 kW	and < 150’	1	N/A
Type 3, Large Wind Turbine/ Development	< 1 MW	and < 300’	<= 3	N/A
Type 4, Industrial Wind Turbine/ Development	>=1 MW	or >= 300’	N/A	Or > 3 Large Wind Turbines

9.2 Meteorological Towers (MET Towers)

MET towers shall be permitted under the same standards as a Type 1 Wind Turbine for MET towers less than 100 feet and Type 2 for MET towers greater than or equal to 100 feet. A permit for a temporary MET tower shall be valid for a maximum of one year after which a single extension of up to one year may be granted. The MET tower shall be removed within 90 days of the expiration of the permit.

**10.0 Permit Requirement**

- 10.1 A permit is required for all Wind Turbines and Wind Turbine Projects built in the Town of Freedom after the effective date of this Ordinance.
- 10.2 The Planning Board will aggregate, to the fullest and most practical extent possible, and pursuant to Section 27.0, all Wind Turbines to be held under common or related ownership into a single Wind Turbine Project. With the exception of Community Owned Wind projects, separate corporate legal structures under common or joint ownership or under common or joint control will be deemed to be a single project for purposes of permit and licensing notwithstanding separate corporate legal ownership.
- 10.3 Receipt of a permit under this Ordinance does not relieve the Owner/operator from the responsibility to obtain any other such permits or approvals as required under the Town of Freedom Land Use Ordinance or pursuant to other State or Federal law.

**11.0 Permitting Authority**

- 11.1 The Town of Freedom Code Enforcement Officer (CEO) is authorized to review all Type 1 Wind Turbine applications and may approve, reject or approve such applications with conditions in accordance with the standards of the Ordinance.
- 11.2 The Town of Freedom Planning Board (Planning Board, or “PB”) is authorized to review all Type 2, 3 and 4 Wind Turbine applications and may approve, reject or approve such applications with conditions in accordance with the standards of the Ordinance.
- 11.3 Maine Department of Environmental Protection (DEP) approval may be required for a Wind Turbine Project. The Planning Board shall consider, at a minimum and to the extent applicable, pertinent findings in the DEP certification when making its determination.

**Table 2: Summary of Permitting Review and Authority**

<b>Type</b>	<b>CEO</b>	<b>PB</b>	<b>Town</b>
1	Yes	N/A	If Town Property or Ownership
2	N/A	Yes	If Town Property or Ownership
3	N/A	Yes	If Town Property or Ownership
4	N/A	Yes	If Town Property or Ownership

- 11.4 The applicant is to provide evidence of Town approval to use Town property and evidence of approval of the Town:
  - Any Wind Turbine or Wind Turbine Project to be built on property owned by the Town.
  - Any Type 2, 3 or 4 Wind Turbine to be partially or totally owned by the Town.



## 12.0 Operational License

- 12.1 An Operational License is required for the operation of all Type 3 and Type 4 Wind Turbine Projects.
- 12.2 Applications for an Operational License shall be submitted to the Code Enforcement Officer.
- 12.3 An Operational License shall be valid for five years, at which point a renewal license must be sought.
- 12.4 The granting of an Operational License is conditional upon the following criteria:
  - 12.4.1 To be granted an initial or renewed Operational License, the Wind Turbine Project must successfully pass an inspection for structural and operational integrity conducted by a Maine licensed professional engineer. The inspection shall be conducted after construction is completed but before operations begin. Success will be demonstrated by submission of a copy of the engineer's inspection report to the Code Enforcement Officer. If the report specifies that repairs, maintenance or changes to safety procedures are necessary, the owner shall provide the Code Enforcement Officer with proof that the repairs have been completed, a written schedule for any recommended maintenance, and documentation of any updated safety procedures.
  - 12.4.2 Applications for renewal of an Operational License, shall be submitted to the Enforcing Authority 6 months prior to the expiration of the prior license. All inspections shall be completed and reports provided to the Code Enforcement Officer at the time the renewal application is submitted.
- 12.5 Failure to comply with the provisions of this Ordinance may result in the suspension or revocation of the Operational License pursuant to Section 23.
- 12.6 An Operational License shall be deemed abandoned if the Wind Turbine Project's operation has ceased for twelve consecutive months. An Operational License expires immediately upon abandonment.
- 12.7 An Operational License shall automatically transfer upon transfer of ownership of the Wind Turbine Project, provided notice has been given to the Code Enforcement Officer in accordance with this Ordinance.
- 12.8 An Operational License shall automatically terminate upon any amendment to a permit, and a new Operational License shall be obtained before operations begin in accordance with the amendment.
- 12.9 Fees
  - 12.9.1 The application fee for an Operational License is \$1,000.
  - 12.9.2 The annual fee for an existing Operational License is \$250.00. This must be paid by the owner/operator and will be used to support the Town's enforcement and oversight of the project.

**13.0 Standards for Setbacks, Noise, Shadow Flicker, and Mitigation Waivers**

13.1 Setback Standards

13.1.1 Setback standards for Type 1 Wind Turbines:

- a. Non-participating Landowner Property Lines –Type 1 Wind Turbines less than or equal to 100' shall be set back from the property line of any Nonparticipating Landowner a distance of no less than 1.5 times the turbine height. Type 1 Wind Turbines greater than 100' and less than 150' shall be set back from the property line of any Non-participating Landowner a distance of no less than 3 times the turbine height. Non-participating property owners may waive this setback with a written Mitigation Waiver. (See Section 13.4 - Mitigation Waiver), but in no event shall any Wind Turbine be located at a distance from an Occupied Building that is less than the height of the Turbine.
- b. Public Roads - Type 1 Wind Turbines shall be set back from any public road, from the edge of the right of way, a distance no less than 1.5 times the turbine height.

13.1.2 Setback standards for Type 2, 3, and 4 wind turbines:

- a. Non-participating Landowner Property Lines – Type 2, 3 and 4 Wind Turbines To protect the health, safety and welfare of the citizens of Freedom, Turbines shall be set back from the property line of any non-participating land owner a distance of no less than 13 times the turbine height. Nonparticipating property owners may waive this setback with a written Mitigation Waiver (see Section 13.4 - Mitigation Waiver), but in no event shall any WindTurbine be located at a distance from an Occupied Building that is less than the height of the Turbine.
- b. Public Roads - Type 2, 3 and 4 Wind Turbines will be set back from any public road, from the edge of the right of way, a distance no less than 4 times the turbine height.

13.1.3 Setbacks from Scenic or Special Resources:

All Wind Turbines exceeding 80 feet or average tree height on site, whichever is greater, must be set back a minimum of 2,500 feet from any Scenic or Special Resource as defined in Section 8.

**Table 3: Summary of Setback Standards**

<b>Turbine Type</b>	<b>Non-participating Property Line</b>	<b>Public Roads</b>	<b>Special Resources</b>
Type 1 <=100'	1.5x Turbine Height	1.5x Turbine Height	2500' if greater than 80' or tree height
Type 1 >100' and < 150'	3x Turbine Height	3x Turbine Height	2500' if greater than 80' or tree height
Type 2,3&4	13x Turbine Height	4x Turbine Height	2500' if greater than 80' or tree height

## 13.2 Noise Standards

### 13.2.1 Noise Standards for Type 1 and 2 wind turbines:

For Type 1 and Type 2 Wind Turbines, audible noise levels (dBA) at any property line due to wind turbine operations shall not exceed 35 dB(A) from 6 AM (8 AM on Sundays) to 8:30 PM and 30 dB(A) from 8:30 PM to 6 AM (8 AM on Sundays). Property owners may waive this noise restriction with a written Mitigation Waiver. (see Section 13.4 -Mitigation Waiver).

### 13.2.2 Noise Standards for Type 3 and 4 wind turbines:

- a. Audible noise levels (dBA) due to wind turbine operation shall not exceed either of the following two conditions:
  1. The pre-construction ambient noise level by more than 5dBA as measured at any property line. Pre-construction ambient noise studies shall be conducted, by the applicant, for all properties located within 2 times the setback of proposed wind turbine site.
  2. The audible noise levels will not exceed 40 dBA during the day or 35 dBA during the night.
- b. Low frequency noise levels (dBC) due to wind turbine operation as measured inside an occupied building or at any property line will not exceed:
  1. 20 decibels (measured as dBC) above the pre-construction ambient noise level (measured as dBA). Pre-construction ambient noise studies shall be conducted, by the applicant, for all properties located within 2 times the setback of proposed wind turbine site.
  2. 50 dBC.

Property owners may waive these noise restrictions with a written Mitigation Waiver. (see Section 13.4 Mitigation Waiver)

Noise measurement standards and procedures that must be used are contained in Appendix A.

### 13.2.3 Violations and Enforcement

- 13.2.3.1 A serious noise violation is defined as three (3) verified noise complaints as defined by a written or verbal complaint received by the Code Enforcement Officer attributed to the operation of a Wind Turbine within a period of one month or less with a measurable noise level greater than:
- 1) 10 dBA above the noise limits listed in section 13.2.1 for Type 1 and Type 2 Turbines; or
  - 2) 10 dBA above pre-construction ambient noise levels or 50 dBC inside or at an Occupied Building. For serious violations the Owner/operator will respond within five (5) days of the complaint. Testing, if necessary, will be paid for by the Owner/operator and hired independently by the Town, and will commence within ten working days

of the complaint. Testing will be conducted for a minimum of a one-month period according to the measurement standards and procedures in Appendix A. The Owner/operator is responsible for mitigating the problem within ten (10) days from the Code Enforcement Officer's final determination of any cause attributed to the operation of the Wind Turbine. Failure to mitigate the problem will result in the Wind Turbine being declared unsafe and emergency shutdown procedures will be implemented per Section 22.4 of this Ordinance.

13.2.3.2 Noise violations not determined to be a serious violation pursuant To Section 13.2.3.1 shall be managed pursuant to Section 22.6. Testing, if necessary, shall be hired by the Enforcing Authority and will be paid for from the testing escrow account. Testing will be conducted for an appropriate period of time and conducted according to the measurement standards and procedures set forth in Appendix A. The Owner/operator is responsible for mitigating the problem within 30 days from a final determination of any cause attributed to the operation of the Wind Turbine Project. Mitigation involving significant construction or physical modification may have up to 90 days to be completed pursuant to Section 16.4.1.

### 13.3 Shadow Flicker and Blade Reflection

13.3.1 Wind Turbines shall be designed and sited so that shadow flicker and/or blade reflection will not fall on a shadow flicker receptor as defined in Section 8. The flicker or reflection shall not exceed 10 hours per year for any given receptor.

#### 13.3.2 Violations and Enforcement

13.3.2.1 A serious shadow flicker or blade reflection violation is defined as: 1) three (3) days of shadow flicker or blade reflection, in any one month falling on an Occupied Building receptor that, if annualized, will be estimated to be more than 20 hours per year. The predictive annualized calculation for Occupied Buildings shall assume clear weather, but take into account seasonal tracking of the sun. For serious violations the Owner/operator will respond within five (5) days of the complaint. Field verification and modeling, if necessary, will be hired by the Enforcing Authority and paid for from the testing escrow account. The Owner/operator is responsible for mitigating the problem within ten (10) days from the Code Enforcement Officer's final determination of any cause attributed to the operation of the Wind Turbine. Failure to mitigate the problem will result in the Wind Turbine being declared unsafe and emergency shutdown procedures will be implemented per Section 22.4 of this Ordinance.

13.3.2.2 Shadow flicker and blade reflection not determined to be a serious violation pursuant to Section 13.3.1, shall be managed pursuant to Section 22.6. Field verification and modeling, if necessary, will be hired by the Enforcing Authority and paid for from the testing escrow account. The Owner/operator is responsible for mitigating the problem within 30 days from a final determination by the Code Enforcement Officer of any cause attributed to the operation of the Wind Turbine Project. Mitigation involving significant construction or physical modification may have up to 90 days to be completed pursuant to Section 16.4.1.

#### 13.4 Mitigation Waiver

Non-participating Landowners may waive specified protections of setbacks, noise and shadow flicker in this Ordinance using the Mitigation Waiver format in Appendix F, as negotiated between the wind turbine Applicant and the Non-participating Landowner. Copies of executed Mitigation Waivers must be included with the submission of the wind turbine application. The Mitigation Waiver must be recorded in the Waldo County Register of Deeds, describe the benefited and burdened properties and run with the land. The deed must advise all subsequent owners of the burdened property.

#### 14.0 Standards for all Wind Turbines (Type 1, 2, 3, and 4)

##### 14.1 Building Codes

All components of the Wind Turbine Project shall conform to relevant and applicable local, state and national building codes.

##### 14.2 Electrical Components and Interconnections

All electrical components of the Wind Turbine and Wind Turbine Project shall conform to relevant and applicable local, state, and national codes.

##### 14.3 Signal Interference

Wind Turbine Projects shall be designed and sited to prevent the disruption or loss of radio, telephone, television, or similar signals. Additional standards must be met for Type 3 and 4 Wind Turbines (See section 16.7)

##### 14.4 Guy wires

Bird flight diverters must be installed on any tower with guy wires.

#### 15.0 Additional Standards for Type 2, 3 and 4 Wind Turbines

##### 15.1 Appearance and Visibility Standards

15.1.1 Wind Turbines shall be a non-reflective, non-obtrusive color such as white, off white or gray, or as may otherwise be required by another governmental agency with jurisdiction over the Wind Turbine Project.

15.1.2 The design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening and landscaping that will blend the site to the natural setting and existing environment.

15.1.3 Wind Turbines shall not be artificially lighted, except to the extent consistent with Federal Aviation Administration recommendations or other applicable authority that regulates air safety or as is otherwise required by another governmental agency with jurisdiction over the Wind Turbine Project. Additional lighting standards must be met for Type 3 and Type 4 Wind Turbines (see Section 16.2.6).

15.1.4 Wind Turbines shall not be used to support signs and shall not display advertising except for reasonable and incidental identification of the turbine manufacturer, facility owner and operator, and for any appropriate warnings.

## 15.2 Safety Standards

### 15.2.1 Design

The design of the Wind Turbines and Wind Turbine Project shall conform to applicable industry standards, including those of the American National Standards Institute, and shall comply with standards promulgated by Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd WindEnergies or other similar certifying organizations appropriate for the turbines' size and classification. If two standards are in conflict, then the most restrictive shall apply.

### 15.2.2 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 fifteen (15) feet above ground surface.

### 15.2.3 Warnings

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

### 15.2.4 Controls and Brakes

Each Wind Turbine 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.

### 15.2.5 Blade Clearance

The minimum distance between the ground and all blades of a Wind Turbine shall be 25 feet as measured at the lowest arc of the blades.

## 15.3 Liability Insurance

The Applicant or its designee shall annually provide certificates of a current general liability policy for the Wind Turbine and/or Wind Turbine Project that covers bodily injury and property damage with limits in an amount commensurate with the scope and scale of the Turbine or Project as determined by the Planning Board, as part of the application, with the Town of Freedom named as additional insured. The amount may not be unreasonable as determined by industry standards.

## 16.0 Additional Standards for Type 3 and 4 Turbines

### 16.1 Financial Performance Standards

The Applicant must demonstrate that the Wind Turbine Project is financially viable and that the Owner/operator has the financial ability to complete the project. Proof of financial viability shall include proof of financing, where applicable.

### 16.2 Environmental Impact Standards

#### 16.2.1 Environmentally Sensitive Area

The plan for the Wind Turbine Project shall reflect the natural capabilities of the site to support development. Environmentally sensitive areas, including but not limited to wetlands, steep slopes, watersheds, floodplains, significant wildlife habitats, fisheries, habitat for rare or endangered plants and animals, unique natural communities and natural areas, sand and gravel aquifers will be maintained and preserved to the maximum extent. The Applicant shall demonstrate appropriate measures for protecting these resources, including both during construction and post construction.

#### 16.2.2 Wildlife Protection

##### Relation to DEP Certification and Permitting

If DEP has issued a Site Location of Development Act permit for a Type 3 Wind Turbine or Wind Turbine Project there is a rebuttable presumption that the development meets the requirements of section 16.2.1 and 16.2.2. If a DEP Site Location of Development permit is required for a Type 4 Wind Turbine or Wind Turbine Project, the Planning Board may take the DEP's findings under advisement to determine compliance with Section 16.2.1 and 16.2.2.

- 16.2.2.1 The Applicant shall demonstrate that the Wind Turbine or Wind Turbine Project will not have a significant adverse effect on area wildlife and wildlife habitat. Such analysis shall include adverse effects to birds, bats, game animals, and habitat fragmentation. In addition, the Applicant must demonstrate that the Wind Turbine Project will have no significant adverse effect on rare, threatened or endangered wildlife. The wildlife and habitat analysis must include appropriate pre-construction field studies and at least three sets of corresponding post-construction field studies conducted at periodic intervals within 3 years after the Wind Turbines become operational as outlined in Section 16.5.4. These studies will be conducted by a qualified wildlife biologist hired by the Town of Freedom and paid for by the Applicant. In making its determination under this section the Planning Board shall also consider the written comments and/or recommendations, if any, of the Maine Department of Inland Fisheries and Wildlife (MDIFW) and the Maine Natural Areas Program (MNAP).

16.2.2.2 If the post-construction field studies demonstrate significant adverse effect to birds, bats, game animals or habitat fragmentation, the Town, and the Owner/operator shall develop an appropriate mitigation plan. The Owner/operator will be responsible for the full cost of implementing the mitigation plan.

#### 16.2.3 Raptor Habitat

To the extent practicable, the creation of artificial habitat for raptors or raptor prey shall be minimized. In making its determination under this subsection the Planning Board shall consider comments and recommendations, if any, provided by the Maine Department of Inland Fisheries and Wildlife.

#### 16.2.4 Erosion Control

The Wind Turbine Project shall be designed, constructed and maintained in accordance with accepted erosion and sedimentation control methods. The acceptability of the proposed methods will be reviewed utilizing the "Maine Erosion Control Handbook for Construction: Best Management Practices", March 2003, as amended. Whenever sedimentation is caused by stripping vegetation or grading it shall be the responsibility of the Owner/operator to remove it from all adjoining surfaces, drainage systems and watercourses and to repair any damage at the Owner/operator's expense as quickly as possible.

#### 16.2.5 Groundwater Protection

The Wind Turbine Project shall not adversely affect the quality or quantity of groundwater. The Applicant shall demonstrate to the Planning Board's satisfaction that there are no unusual risks to the groundwater created by the project. The Board may require, as a condition of permit approval, that spill prevention and control measures be installed, and that all activities involving potentially permeable pollutants, including at delivery and transfer points, be conducted under cover and over an impervious surface surrounded by dikes. If a Wind Turbine foundation is proposed in a bedrock area, a baseline of all wells, springs and certified public water sources within a half-mile radius of the foundation shall be established. If degradation or contamination occurs, permanent remedies shall be the responsibility of the Owner/operator.

#### 16.2.6 Light Pollution

The Wind Turbine Project shall be designed to minimize the amount of nighttime light pollution. The Applicant shall provide a plan showing lighting on and around all Wind Turbines and Associated Facilities. Lighting on Wind Turbines shall be illuminated to Federal Aviation Administration (FAA) minimal standards using only red rather than white lights, if possible. The minimum number of Wind Turbines shall be illuminated, per FAA rules. Lighting shall be shielded from ground view to FAA maximum standards.



### 16.3 Scenic or Special Resource Standards

- 16.3.1 Except as otherwise provided in this subsection, if a Type 3 or Type 4 Wind Turbine is proposed for location in, or is visible from, a Scenic or Special Resource, the Applicant shall provide the Planning Board with a visual impact assessment that addresses the evaluation criteria in subsection 16.3.3. There is a rebuttable presumption that a visual impact assessment is not required for those portions of a Type 3 or Type 4 Wind Turbine Project that are located more than 3 miles, measured horizontally, from a Scenic or Special Resource. However, the Planning Board may require a visual impact assessment for portions of the Type 3 or Type 4 Wind Turbine Project located more than 3 miles and up to 8 miles from a Scenic Resource if it finds that a visual impact assessment is needed to determine if there is the potential for unreasonable adverse effects on the Scenic or Special Resource. Any interested person must submit information intended to rebut the presumption to the Planning Board within 30 days of acceptance of the application as complete. The Planning Board shall determine if the presumption is rebutted based on a preponderance of evidence in the record.
- 16.3.2 A permit for a Type 3 or 4 Wind Turbine Project shall be denied if the Planning Board determines, based on consideration of the evaluation criteria in subsection 16.3.3, that the Type 3 or Type 4 Wind Turbine will have an unreasonable adverse effect on the scenic character or existing uses related to scenic character of that Scenic or Special Resource.
- 16.3.3 In making its determination pursuant to subsection 16.3.2, and in determining whether an Applicant for a Type 3 or 4 Wind Turbine located more than 3 miles from a Scenic Resource must provide a visual impact assessment in accordance with subsection 16.3.1, the Planning Board shall consider:
- a. The significance of the potentially affected Scenic or Special Resource;
  - b. The existing character of the surrounding area;
  - c. The Type 3 or Type 4 Wind Turbine Project's purpose and the context of the proposed activity;
  - d. The extent, nature and duration of potentially affected public uses of the Scenic or Special Resource and the potential effect on the public's continued use and enjoyment of the Scenic or Special Resource; and
  - e. The scope and scale of the potential effect of views of the Wind Turbine Project on the Scenic or Special Resource, including but not limited to issues related to the number and extent of Wind Turbines visible from the Scenic or Special Resource, the distance from the Scenic or Special Resource and the effect of prominent features of the Wind Turbine Project on the landscape.

#### 16.3.4 Relation to DEP Certification and Permitting

If the DEP has issued a Site Location of Development Act permit for a Type 3 Wind Turbine Project, there is a rebuttable presumption that the development meets the requirements of Sections 16.3.1, 16.3.2 and 16.3.3 as they pertain to a scenic or special resource considered by the DEP. If a DEP Site Location of Development permit is required for a Type 4 Wind Turbine or Wind Turbine Project, the Planning Board may take the DEP's findings under advisement to determine compliance with Sections 16.3.1, 16.3.2 and 16.3.3.

### 16.4 Construction/Design Standards

#### 16.4.1 General Construction Standards

All Wind Turbines shall be constructed in compliance with Good Utility Practice for Wind Turbines. In the event that, after inspection by a qualified expert in Good Utility Practice, the Town concludes that any of the Wind Turbines was not constructed in compliance with Good Utility Practice or constitutes a danger to persons or property, then upon notice being provided, Owner/operator shall have 90 days to bring the non-compliant Wind Turbine(s) into compliance with such standards. If 90 days is insufficient time to cure the non-compliance, the Owner/operator shall present a plan to the Town describing the reason for the delay and the time frame for the cure to be put in place.

#### 16.4.2 Electrical Design Standards

On-site power and transmission lines shall be placed underground. Wind Turbines shall be engineered according to Good Utility Practice to absolutely prevent transient ground currents and stray voltage. The Applicant shall demonstrate how these standards will be met prior to permit approval.

#### 16.4.3 Transmission Line Standards

The Applicant must, after consultation with the Maine Public Utility Commission (PUC), prepare a written report documenting all anticipated changes, modifications or up-grades to the public utility grid within the Town of Freedom due to the Wind Turbine Project. The consultation shall include any needed modifications or changes to the utility grid, regulatory approvals necessary, and alternatives available. The written report must include necessary approvals from the PUC, proof of leases or required right of ways for transmission lines, and any alternatives to the final plan considered. The report must document the residual capacity remaining in the local utility grid that is available for use by other local electrical generating projects.

#### 16.4.4 Geological Stability

Wind Turbines shall not be constructed on areas of geological instability. The Applicant shall demonstrate that this standard is met.

## 16.5 Operational Performance Standards

### 16.5.1 General Performance Standards

All Wind Turbines shall be operated and maintained consistent with Good Utility Practice for comparable facilities.

### 16.5.2 Repairs and Maintenance

The Owner/operator shall be required to repair and replace the wind turbine generator and associated equipment consistent with Good Utility Practice as needed to keep the Wind Turbine and Associated Facilities in good repair and operating condition.

### 16.5.3 Inspections

Wind Turbines shall be inspected after construction is completed but before becoming operational, and at least every five years thereafter, for structural and operational integrity by an independent Maine licensed professional engineer not employed by the Owner/operator and approved by the Code Enforcement Officer. The Owner/operator shall submit a copy of the inspection report to Code Enforcement Officer. If such report recommends that repairs or maintenance are to be conducted, the owner shall provide the Code Enforcement Officer a written schedule for the repairs or maintenance. Failure to complete the repairs or maintenance in accordance with the schedule shall be deemed a violation of this Ordinance.

### 16.5.4 Wildlife Protection

The wildlife and habitat analysis outlines in Section 16.2.2.1 must have at least three sets of corresponding post-construction field studies conducted at periodic intervals within 3 years after the Wind Turbines become operational. These studies will be conducted by a qualified wildlife biologist hired by the Town of Freedom and paid for by the Applicant.

## 16.6 Public Safety and Health Standards

### 16.6.1 Fire Protection

The Applicant shall prepare a plan in consultation with the Town of Freedom fire department as part of the permitting process. The plan shall address all activities at the Wind Turbine Project from the start of construction through the end of power generation and the final removal and restoration of the site, and shall describe a response plan to address all identified potential fire, rescue and hazardous materials scenarios. The Owner/operator shall ensure that the Wind Turbine Project complies with the following control and prevention measures and assumes responsibility for all associated incremental costs:

- i. Use of fire proof or fire resistant building materials and buffers or fire retardant landscaping around Wind Turbines and Wind Turbine Projects as appropriate.

- ii. Incorporation of a self-contained fire protection system to address nacelle fires or a written explanation of why this standard would create an undue hardship.
- iii. Maintenance of firebreak areas as appropriate, cleared of vegetation maintained as a fire/fuel break as long as the Wind Turbine is in operation.
- iv. All private road access to the Wind Turbine Project shall be brought up to Town of Freedom minor roads standards, as per the Freedom Land Use Ordinance Section 7, to accommodate fire and rescue vehicles and paid for by the Owner/Operator.
- v. Provision for any additional firefighting or rescue personnel, services, training, materials, or vehicles as may be required to address any emergency related to the Wind Turbine Project that is beyond the current capabilities and duties of the local fire department.

#### 16.6.2 Hazardous Wastes:

The Owner/operator shall be responsible for compliance with all ordinances, state regulations and laws applicable to the generation, storage, cleanup, and disposal of hazardous wastes generated during any phase of the project's life.

#### 16.6.3 Blasting

Owner/operator shall not undertake any blasting in connection with the construction of the Wind Turbine Project unless Applicant has notified the Town and submitted a blasting plan consistent with applicable laws and regulations. The plan must be reviewed and approved by the Enforcing Authority before any blasting may take place.

### 16.7 Communications and Electromagnetic Interference Standards

16.7.1 Wind Turbine Projects shall be sited and operated so that they do not interfere with emergency (fire, police/sheriff, ambulance) radio two way communications (base stations, mobile, and hand held radios, including digital) and/or paging, television, telephone (including cellular and digital), microwave, satellite (dish), navigational, internet or radio reception to neighboring areas. The Owner/operator of the project shall be responsible for the full cost of any remediation necessary to provide equivalent alternate service or correct any problems, including relocation or removal of the Wind Turbine, and any and all related transmission lines, transformers, and other components related to the interference.

16.7.2 The Owner/operator of the Wind Turbine Project shall respond within one day to any request for communications interference investigation by any emergency agency (fire, police/sheriff, ambulance). Testing shall commence within two days of the request. The Owner/operator is responsible for mitigating any interference within two days from the determination of interference attributed to the operation of the Wind Turbine.

16.7.3 The Owner/operator of the Wind Turbine Project shall respond within five business days to any request for communications interference investigation by a property owner or resident within a three-mile radius of the Wind Turbine Project. Testing shall commence within ten business days of the request. The owner/operator is responsible for mitigating any interference within ten business days from the determination of interference attributed to the operation of the Wind Turbine.

16.8 Ground Transportation Standards

16.8.1 The Applicant shall identify all public ways to be used within the Town of Freedom to transport equipment and parts for construction, operation or maintenance of the Wind Turbines.

16.8.2 A qualified third party engineer, hired by the Planning Board and paid for by the Applicant, shall document road conditions prior to construction. The engineer shall document road conditions again thirty (30) days after construction is complete or as weather permits.

16.8.3 The Planning Board will determine the potential cost to bring the roads back into shape and require that the applicant provide the town with a performance bond that will be released only upon the completion of construction.

16.8.4 Any road damage caused by the Applicant or its contractors shall be promptly repaired at the Owner/operators expense.

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

16.9 Reporting Requirements:

16.9.1 Extraordinary Events.

The Owner/operator shall notify the Code Enforcement Officer of any extraordinary event within 24 hours of that event. "Extraordinary events" shall include but not be limited to tower collapse, catastrophic turbine failure, fires, leakage of hazardous materials, unauthorized entry to the tower base, thrown blade or hub, any serious injury to a Facility worker or other person that requires emergency medical treatment, or other event that impacts the public health and safety of the Town or its residents.

16.9.2 Change of Owner/operator

The Owner/operator will notify the Town of Freedom of a pending change of ownership in writing 90 days before the effective change.

16.9.3 The Owner/operator must provide copies of reports from safety inspections required by Section 16.5.3 within 30 days of each inspection.

16.9.4 The Owner/operator must provide copies of liability insurance required by Section 15.3 annually prior to relicensing.

## **17.0 Application Submission Requirements and Procedural Time Frames for Type 1,2,3 & 4**

### **17.1 Type 1 Application**

#### **17.1.1 Pre-application Meeting**

The Applicant shall schedule a pre-application meeting with the Code Enforcement Officer. The meeting will be used to review the scope of the proposed project and submission requirements. The meeting may be scheduled up to six months prior to submission of the application.

#### **17.1.2 Application Submission**

The Applicant shall submit an application to the Code Enforcement Officer. The Code Enforcement Officer will conduct an on-site inspection and collect any required fees associated with the application. Submission requirements and fees for a Type 1 Application are outlined in Appendix B. The Town Clerk will establish a file for the application. The Town Clerk will notify, in writing, all abutters.

#### **17.1.3 Completeness Review**

The Code Enforcement Officer shall notify the Applicant within 30 days from the date of submission whether the application is complete. If the application is deemed to be incomplete the Code Enforcement Officer shall indicate the additional information needed. The application shall be deemed abandoned unless the Applicant provides the information requested, or submits in writing the reason for any delay within 30 days from the date of notice indicating the application is incomplete, unless the Code Enforcement Officer has granted an extension of time.

#### **17.1.4 Final Determination**

A decision to approve or reject the application, or to approve the application with conditions, shall be made by the Code Enforcement Officer within 30 days from the date of completion. The Code Enforcement Officer's decision must be based on whether the application complies with the requirements of the Ordinance.

#### **17.1.5 Public Hearings**

Public hearings for Type 1 Wind Turbines are not required. Non-participating landowners within 1.5x Turbine height may request a meeting with the CEO to review compliance with the applicable standards, but any information provided to the Code Enforcement Officer in such a meeting shall be shared with the Applicant to allow its response.

## 17.2 Type 2 Applications

### 17.2.1 Pre-application Meeting

A pre-application meeting with the Planning Board shall be scheduled at a regularly scheduled public Planning Board meeting. At the meeting the Applicant will review the type and scope of the project and the Planning Board will review Ordinance Standards and submission requirements. The Planning Board will establish an application file at this time.

### 17.2.2 Determine Submission Requirements

Within 30 days of the pre-application meeting the Planning Board shall inform the Applicant in writing of the submission requirements for the application. The submission requirements for Type 2 Wind Turbine Projects are listed in Appendix C. The Planning Board may add to the submission requirements if, given the special characteristics of the planned Wind Turbine Project, additional information is needed to protect the general health, safety, and welfare of the Town or its residents or to adequately review the performance standards set forth in this Ordinance. The Planning Board may, independently and without influence or petition from the Applicant or Applicants representative, modify or waive submission requirements that would not be applicable and would not adversely affect abutting property owners or the general health, safety and welfare of the Town or its residents. The reasoning supporting changes to submission requirements must be substantiated in Board minutes and filed with the Applicant.

### 17.2.3 Application Submission

The Applicant has up to 120 days after the determination of submission requirements to submit a completed application with the required fees to the Town Clerk. The application shall be deemed abandoned unless the application has been received within 120 days of the determination of submission requirements. The Town Clerk will forward the application to the Planning Board.

### 17.2.4 Completeness Review

The Planning Board shall notify the Applicant within 30 days from the date of submission whether the application is complete. Specific studies may be required for a consideration of completeness including but not limited to noise studies, DEP certification and permitting, and environmental impact studies. If the application is deemed to be incomplete the Planning Board shall indicate the additional information needed. The application shall be deemed abandoned unless the Applicant provides the information requested, demonstrates that additional time is needed to complete required studies, or submits in writing the reason for any delay within 30 days from the date of notice indicating the application is incomplete.

#### 17.2.5 Site Inspection

The Planning Board and Applicant shall set a mutually agreeable time for the Planning Board to inspect the site. The inspection will be scheduled within 30 days of the Completeness review unless rendered impractical due to seasonal conditions. Site visits will normally be postponed if there is more than one foot of snow on the ground. The site inspection will be treated as a public meeting of the Planning Board with appropriate notices given to the community. While the Planning Board may set additional requirements for the site inspection at the pre-application meeting, the Applicant shall, at minimum, flag the location of the proposed Wind Turbine and relevant property boundaries. The Applicant or a representative will accompany the Planning Board to describe the project and answer any questions.

#### 17.2.6 Public Hearing

The Planning Board shall schedule a public hearing to be held within 30 days of the determination of completeness on the Wind Turbine Project. The hearing may be continued from time to time as necessary to allow full review of the Project, and does not need to be concluded within 30 days.

#### 17.2.7 Notice to Abutters

In addition to any required public notices, the Planning Board shall prepare a notice to abutting property owners and property owners within a distance of 2x the setback of the Wind Turbine. The notice will briefly describe the proposed Wind Turbine Project and notify the recipient of the date, time and place of the site inspection. The notice will be sent by certified mail with mailing costs paid for by the Applicant.

#### 17.2.8 Final Planning Board Determination

A decision to approve or reject the application in accordance with the provisions of this Ordinance, or to approve the application with conditions, shall be made by the Planning Board within 30 days from the date of the conclusion of the public hearing.

### 17.3 Type 3&4 Applications

#### 17.3.1 Pre-application Meeting

A pre-application meeting with the Planning Board will be scheduled at a regularly scheduled public Planning Board meeting. At the meeting the Applicant will review the type and scope of the project and the Planning Board shall review Ordinance Standards and submission requirements. The Planning Board will establish an application file at this time.



### 17.3.2 Determine Submission Requirements

Within 30 days of the pre-application meeting the Planning Board shall inform the Applicant in writing of the submission requirements for the application. The submission requirements for Type 3&4 Wind Turbine Projects are listed in Appendix D. The Planning Board may add to the submission requirements if, given the special characteristics of the planned Wind Turbine Project, additional information is needed to protect the general health, safety, and welfare of the Town or its residents or to adequately review the performance standards set forth in this Ordinance. The Planning Board may, independently and without influence or petition from the Applicant or Applicants representative, modify or waive submission requirements that would not be applicable and would not adversely affect abutting property owners or the general health, safety and welfare of the Town or its residents. The reasoning supporting changes to submission requirements must be substantiated in Board minutes and filed with the Applicant.

### 17.3.3 Application Submission

The Applicant has up to 180 days after the determination of submission requirements to submit a completed application with the required fees to the Town clerk. The application shall be deemed abandoned unless the application has been received within 180 days of the determination of submission requirements. The Town Clerk will forward the application to the Planning Board.

### 17.3.4 Completeness Review

The Planning Board shall notify the Applicant within 60 days from the date of submission whether the application is complete. Specific studies may be required for a consideration of completeness including but not limited to noise studies, DEP certification and permitting, and environmental impact studies. If the application is deemed to be incomplete the Planning Board shall indicate the additional information needed. The application shall be deemed abandoned unless the Applicant provides the information requested, demonstrates that additional time is needed to complete required studies, or submits in writing the reason for any delay within 30 days from the date of notice indicating the application is incomplete.

### 17.3.5 Site Inspection

The Planning Board and Applicant will set a mutually agreeable time for the Planning Board to inspect the site. The inspection will be scheduled within 30 days of the Completeness review unless rendered impractical due to seasonal conditions. Site visits will normally be postponed if there is more than one foot of snow on the ground. The site inspection is a public meeting of the Planning Board with appropriate notices given to the community. While the Planning Board may set additional requirements related to the ordinance for the site inspection at the pre-application meeting, the Applicant shall, at minimum, flag the location of the proposed Wind Turbine(s) and relevant property boundaries. The Applicant or a representative will accompany the Planning Board to describe the project and answer any questions.

#### 17.3.6 First Public Hearing

The Planning Board shall schedule a public hearing to be held within 30 days of the site inspection on the Wind Turbine Project.

#### 17.3.7 Notice to Abutters

In addition to any required public notices for the site inspection and first public hearing, the Planning Board will prepare a notice to abutting property owners and property owners within a distance of 2x the setback of the Wind Turbine Project. The notice will briefly describe the proposed Wind Turbine Project and notify the recipient of the dates, times and places of the site inspection and first public hearing. The notice will be sent by certified mail with mailing costs paid for by the Applicant.

#### 17.3.8 Second Public Hearing

The Planning Board will schedule a second public hearing to be held within 60 days of the determination of completeness on the Wind Turbine Project, at which meeting the application will be reviewed for compliance with the permitting standards under this Ordinance. The hearing may be continued from time to time as necessary to allow full review of the Project, and does not need to be concluded within 60 days.

#### 17.3.9 Notice to Town of Freedom

In addition to any required public notices for the second public hearing, the Planning Board will prepare a notice to all residents and property owners in the Town of Freedom. The notice will briefly describe the proposed Wind Turbine Project and notify the recipient of the date, time and place of the second public hearing.

#### 17.3.10 Final Planning Board Determination

A decision to approve or reject the application in accordance with the provisions of this Ordinance, or to approve the application with conditions, will be made by the Planning Board within 60 days from the date of conclusion of the public hearing.

## **18.0 Professional Services**

- 18.1 In reviewing an application for compliance with this Ordinance for Type 3 or Type 4 the Permitting Authority may 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. Within fourteen (14) days of filing an application the Applicant shall deposit in a joint escrow account with the Town an amount equal to one half of one percent of the estimated cost of the project. If the amount drops below 25% of the initial escrow amount, the Applicant upon notice shall submit an additional one half of one percent of the estimated cost of the project, as partial payment for the appropriate Town expenses in hiring consultants and experts, as the Permitting Authority shall, at its discretion, deem necessary. If at any time the balance of this fund falls below 25% of the initial escrow amount for a period of 30 days after notification the application 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, and after a permit is granted or the Applicant has withdrawn.
- 18.2 After construction, the Applicant shall deposit in a joint escrow account with the Town, an amount equal to one quarter of one percent of the estimated cost of the project. This shall be known as the testing escrow account. The funds in this account are available to the Code Enforcement Officer to use testing mandated by this ordinance.

## **19.0 Application Changes / Changes to an Approved Wind Turbine Project**

- 19.1 Throughout the permit process, the Applicant shall promptly notify the Permitting Authority of any changes to the information contained in the permit application.
- 19.2 Material changes may not be made to a Wind Turbine Project from the point an application is determined to be complete and following approval of a permit, without initiating a new application process. Material changes include, but are not limited to, increasing the number of Wind Turbines, increasing Turbine Height, changes to the location of Wind Turbines, or material changes to Associated Facilities. Non-material changes require a permit modification as determined by the Permitting Authority. The Permitting Authority shall have sole discretion for determining what is a material or non-material change.

## **20.0 Cumulative Effect of Multiple Permits**

The Town of Freedom reserves the right to limit the total number of Type 3 and Type 4 applications that are under review for approval at any given time. As a guideline:

- 20.1 The Permitting Authority will process no more than 2 Type 3 or Type 4 applications at the same time ,or the deadline for submission and review may be modified correspondingly to reflect the increased workload of multiple permits.

## 21.0 Appeals

- 21.1 The Board of Appeals shall have the power to hear and decide administrative appeals filed with the Board within 30 days from a decision, on an appellate basis, where it is alleged by an aggrieved party that there is a clear error in any order, requirement, decision, or determination made by, or failure to act by, the Reviewing Authority.
- 21.2 The Board of Appeals may reverse the decision of the Permitting Authority only upon finding that the Permitting Authority committed a clear error. The Board of Appeals may only review the record of the proceedings before the Permitting Authority. The Board of Appeals shall not receive or consider any evidence that was not presented to the Permitting Authority, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Permitting Authority's proceedings is inadequate, the Board of Appeals may remand the matter to the Permitting Authority for additional fact finding.
- 21.3 For the purposes of hearing appeals for Type 1 and Type 2 permits, at a minimum, all property owners and residents within the maximum setback standard shall be deemed to have interested party standing and be granted a reasonable and appropriate amount of time to present information and rebuttals. For Type 3 and Type 4 permits, all property owners and residents of the Town shall be deemed to have interested party standings and be granted a reasonable and appropriate amount of time to present information and rebuttals.

## 22.0 Complaints/ Violations/ Enforcement

### 22.1 General Standard

It shall be unlawful for any person, firm or corporation to violate or fail to comply with or take any action that is contrary to the terms of this Ordinance, or any permit or Operational License issued under this Ordinance, or cause another to violate or fail to comply or take any action which is contrary to the terms of this Ordinance or any permit issued under this Ordinance.

### 22.2 Enforcing Authority

The CEO shall serve as the Enforcing Authority for all Wind Turbine Projects.

22.2.1. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person or entity responsible for such violation, indicating the nature of the violation, and order the action necessary to correct it, including discontinuance or unlawful use of land, buildings, structures, or work being done. A copy of such notices shall be filed with the Town Clerk, to be maintained as a permanent record.

22.2.2. The Code Enforcement Officer shall conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to permit or license approvals. The Code Enforcement Officer shall investigate all complaints in a timely manner.

22.2.3. The Code Enforcement Officer shall issue all Operational Licenses and renewals, consistent with the terms and conditions as provided herein.

22.2.4. The Municipal Officers are hereby authorized to enter into consent agreements for the purpose of eliminating violations of this Ordinance and recovery of appropriate fines prior to or during Court actions.

22.2.5. The Code Enforcement Officer may appoint qualified representatives to investigate complaints. The reasonable costs and fees for the qualified representative will be paid by the Owner/operator and as a condition of licensing and may include engineers, consultants, and other professionals.

### 22.3 Enforcement & Penalties

22.3.1 Standards in this Ordinance will be enforced through a series of enforcement option which may include but are not limited to

- 1) Emergency shutdown;
- 2) 5 day response to serious violations with a 10 day mitigation period;
- 3) 30 day complaint resolution with a 30 day mitigation period;
- 4) Suspension or revocation of Operational License; and
- 5) Prosecution and penalties as set forth in 30-A M.R.S.A. § 4452.

22.3.2 Any person or entity that violates the terms or conditions of this Ordinance or the terms and conditions of any permit or license issued pursuant to this Ordinance shall pay the reasonable attorney fees incurred by the Town of Freedom to prosecute said violation, including filing fees, expert fees and costs.

22.3.3 Each day of violation shall be a separate violation, for which penalties pursuant to 30-A MRSA 4452, as amended, may be assessed.

22.3.4 The Code Enforcement Officer may seek temporary and/or permanent injunctive relief as he or she deems appropriate, consistent with Maine law, in any prosecution for unlawful use of property, or for violation of the terms and conditions of a permit or license, or for any violation of the terms and conditions of this Ordinance.

### 22.4 Emergencies and Emergency Shutdown

The Owner/operator shall be required to immediately cease operations for the duration of any Emergency. Emergency shall mean a proven condition or situation as determined by the Enforcing Authority caused by the Wind Turbine or Wind Turbine Project that presents an imminent physical threat of danger to life or significant threat to property. A Wind Turbine Project that is found to present an imminent physical threat of danger to life or significant threat of damage to property shall be immediately shut down and repaired or otherwise made safe and certified so by a professional engineer prior to resumption of operation. The Enforcing Authority shall have the right to access all Wind Turbines to verify conditions and/or repair progress with reasonable notice to the Wind Turbine owner/operator. Within 24 hours of an occurrence of a tower collapse, turbine failure, property damage or contamination, fires, thrown blade or hub, collector or feeder line failure, injured Wind Turbine worker or private person, the Owner/operator shall notify the Enforcing Authority of the occurrence and proposed remedial action.

### 22.5 Serious Violations of Standards

The Owner/operator of the Wind Turbine Project shall respond within five business days to any complaints of serious violations of standards, deemed by the Enforcing Authority to have merit. Serious violations shall include but not be limited to:

- 1) 3 verified noise complaints within a period of 1 month or less with a measurable noise level greater than;
  - a.) For Type 1 and Type 2, greater than 45 dBA daytime and 40 dBA nighttime;
  - b.) For Type 3 and Type 4, 10 dBA above pre-construction ambient noise at an Occupied building or 50 dBC at an Occupied Building;
- 2) Serious violations of Shadow Flicker or Blade Reflection standards projected to be in excess of 20 hours annually at an Occupied Building;
- 3) Contamination of potable groundwater sources used for domestic or livestock water supplies,
- 4) Complaints of communication/electromagnetic interference; and
- 6) Any complaints of hazardous waste spills.

Testing, paid for by the Owner/operator, will commence within ten working days of the complaint. Except as noted for interference with emergency communications, the Owner/operator is responsible for mitigating the problem within ten business days from the final determination of any cause attributed to the operation of the Wind Turbine Project. Pursuant to Section 16.7.2, interference with emergency communications must be responded to in one day and mitigated within 2 days.

#### 22.6 Other Violations

If the Code Enforcement Officer determines that a violation of the Ordinance or the permit has occurred, and the violation is determined neither to be an emergency pursuant to Section 22.4, nor a serious violation pursuant to Section 22.5, the Enforcing Authority shall provide written notice to the Owner/operator alleged to be in violation of this Ordinance or permit. The Enforcing Authority and the involved parties shall engage in good faith attempts to resolve the issues. Such attempts shall be conducted within thirty (30) days of the written notice of violation. The Owner/operator shall pay for any necessary testing if the Owner/operator is subsequently determined to be in non-compliance. The Owner/operator is responsible for mitigating the problem within 30 days from the final determination of any cause attributed to the operation of the Wind Turbine Project. Mitigation involving significant construction or physical modification may have up to 90 days to be completed pursuant to Section 16.4.1.

#### 22.7 Suspension or revocation of Operational License

If an Owner/operator fails to comply with any provision of this Ordinance by failing to reach agreement to resolve a violation with the Code Enforcement Officer after the expiration of the mitigation periods defined in Section 22.5 and Section 22.6, the Code Enforcement Officer may suspend or revoke the Operational License, after notice and opportunity for hearing. The Owner/operator has the right to appeal the suspension or revocation of the Operational License as per Section 21.0.

## 22.8 Other Remedies

The Code Enforcement Officer may order other remedies as he or she deems necessary to assure the safe operation of the Wind Turbine Project in accordance with this Ordinance.

## 22.9 Identifying Violations and Registering Complaints

22.9.1 Pursuant to Section 16.9.1, the Owner/operator will report to the Enforcing Authority all extraordinary events within 24 hours of their occurrence.

22.9.2 For Type 1 and 2 Wind Turbines the CEO will receive complaints. Complaints will be forwarded to the CEO in a timely manner.

22.9.3 For Type 3 and Type 4 Wind Turbines the Town will maintain, at the Owner/operator's expense, a system for recording and investigating all complaints related to the Wind Turbine Project. The system must be able to receive complaints 24 hours a day, 365 days a year. A permanent record of all complaints, investigations and outcomes will be maintained. The Owner/operator will designate a representative and method to receive and respond to complaints from the Town 24 hours a day, 365 days a year. Complaints for Type 3 and 4 Wind Turbine Projects will be referred to the Code Enforcement Officer in a timely manner.

## 23.0 **Decommissioning Standards:**

23.1 The Owner/operator shall, at its expense, complete decommissioning of the Wind Turbine Project within:

- 1) twelve (12) months after the end of the useful life of the Wind Turbine as determined by the Owner/operator or;
- 2) as specified in the materials provided at the time of application or;
- 3) pursuant to remedies described in Section 22.8, The Wind Turbine will be presumed to be at the end of its useful life if no electricity is generated for a continuous period of twelve (12) months.

23.2 Decommissioning shall include removal of wind turbines and foundations to a depth of 36 inches. All buildings, cabling, electrical components, roads, and any other associated facilities shall be removed unless, at the end of the Turbine or Wind Turbine Project's useful life, as determined in accordance with section 23.1, the Applicant provides written evidence of plans for continued beneficial use of these components of the Wind Turbine Project.

23.3 Except as otherwise provided by section 23.2, disturbed earth shall be graded and re-seeded, unless the Participating Landowner of the affected land requests otherwise in writing. Any alterations to Town roads or property during decommissioning must be approved by the Town.

23.4 Special Decommissioning Standards for Type, 3 and 4 Wind Turbine Projects

- 23.4.1 An independent and certified Professional Engineer shall be retained to estimate the total cost of decommissioning (“Decommissioning Costs”) without regard to salvage value of the equipment and the cost of decommissioning net salvage value of the equipment (“Net Decommissioning Costs”). The Planning Board shall review the estimates and determine the amount of decommissioning funds that must be guaranteed prior to operation of the Wind Turbine Project. Additional estimates by an independent and certified Professional Engineer shall be submitted to the Code Enforcement Officer every fifth year after approval, along with the application for renewal of the Operational License, and additional funds shall be guaranteed at that time if necessary in accordance with the revised estimate.
- 23.4.2 The Owner/operator shall post and maintain decommissioning funds in an amount equal to Net Decommissioning Costs; provided that at no point shall decommissioning funds be less than twenty five percent (25%) of Decommissioning Costs. The decommissioning funds shall be posted and maintained with a bonding company or Federal or State-chartered lending institution chosen by the Owner/operator and Participating Landowner posting the financial security, provided that the bonding company or lending institution is authorized to conduct such business within the State and is approved by the Town of Freedom, whose approval shall not be unreasonably withheld. Adequate funds shall be posted or guaranteed before the Code Enforcement Officer may issue an Operational License to the Owner/operator.
- 23.4.3 Decommissioning funds may be in the form of a performance bond, surety bond or other similar form of financial assurance as may be acceptable to the Town of Freedom, whose approval shall not be unreasonably withheld.
- 23.4.4 If the Owner/operator fails to complete decommissioning within the period prescribed by Section 23.1, then the Participating Landowner shall have an additional six (6) months to complete decommissioning.
- 23.4.5 If neither the Owner/operator, nor the Participating Landowner completes decommissioning within the periods prescribed by Sections 23.4.1 and 23.4.4 the Wind Turbine or Wind Turbine Project shall be deemed to be in violation of this Ordinance and the Town of Freedom may take such measures as necessary, including court action, to ensure the completion of decommissioning.
- 23.4.6 The escrow agent may release the decommissioning funds when the Owner/operator has demonstrated and the Enforcement Authority concurs that the decommissioning has been satisfactorily completed, or upon written approval of the Town in order to implement the decommissioning plan.

## **24.0 Community Owned Wind**

- 24.1 Pursuant to Title 35-A M.R.S.A. §3402, the Town of Freedom encourages the development of appropriately sited Community Owned Wind Turbine Projects.
- 24.2 Section 24.0 is governed by the definition of Community Owned Wind pursuant to Section 8 of this Ordinance. Nothing in this definition or in Section 24.0 precludes the Town from entering into Wind Turbine Projects in which the Town is a minority owner or general partner. However, by definition, these types of business models are not considered Community Owned Wind.
- 24.3 A request to pursue a Community Owned Wind Project can be initiated by:
  - 1. The Planning Board provided a majority of the Board has so voted;



2. Request of the municipal officers;
  3. Written petition of at least 25 voters registered to vote in Freedom;
  4. The majority of the voters at a Town meeting.
- 24.4 A request or decision to lease Town property to a wind company as part of a Type 4 Industrial Wind Turbine applications shall automatically trigger a feasibility study, unless the Town specifically votes to forgo the study.
- 24.5 After a request is initiated or triggered by Section 24.5, the Selectmen shall be authorized to conduct a feasibility study for the Community Owned Wind Project. The Selectmen will establish a steering committee to conduct the feasibility study. The steering committee shall be authorized to hire appropriate professional consultants to assist with the feasibility study, within financial guidelines established in the Town budget or, if possible, through outside grant funding. The feasibility study shall include but not be limited to:
1. Measuring local wind resources through the use of MET towers or using other methods to identify wind resources.
  2. Identifying best options for Wind Turbine technology consistent with project scale and local ordinances.
  3. Identifying best options for financial performance and financial risk management.
  4. Identifying best options for ownership and legal structure.
  5. Identifying best options for financing including but not limited to state funding, municipal bonds, equity partners, bank financing, state and federal grants.
  6. Identifying best options for daily management and governance of the project.
  7. Identifying opportunities to maximize local financial benefit to both the Town and Town residents, including but not limited to: profit sharing, net metering, tax incentives, and local ownership and investment.
  8. Identifying opportunities for public-private partnerships and methods for competitive bidding and issuing requests for proposals (RFP).
  9. Identifying a project time line and recommended next steps to be taken.
- 24.6 The feasibility study, including collection of 12 months of wind data, must be completed within 18 months from the date of request.
- 24.7 The final feasibility study shall be approved by the full Planning Board and presented to the Town at a special Town meeting and made available to all Town residents.
- 24.8 Action to pursue a Community Owned Wind Project shall require approval of the Selectmen, ongoing communication with Town residents through newsletters and mailings, appropriate public hearings and final Community Owned Wind Project approval by majority vote at a Town meeting. The process shall do everything reasonable to maximize open, transparent public participation.
- 24.9 All work related to a Community Owned Wind Project, if adopted, shall be contracted for using a competitive bidding process.

24.10 The Town of Freedom may partner with other municipalities in creating a Community Owned Wind Turbine Project, if together the municipalities create a legal structure giving the combined municipalities majority ownership or control and the majority of the direct financial benefits accrue to all of the residents of the municipalities.

24.11 All Community Owned Wind Projects shall be subject to review as required for other Wind Turbine Projects under this Ordinance.

24.12 Bidding and Contracting

All bidding, contracts and employment for Community Owned Wind Projects must be awarded through a process of public notice and competitive bidding. The Town of Freedom reserves the right to accept or reject any or all bids.

## **25.0 Jurisdiction Across Multiple Municipalities**

Review of permits for Wind Turbine Projects that are located within more than one municipal jurisdiction shall be coordinated to the fullest extent possible across town boundaries, while at the same time maintaining each individual Town's right to individual Home Rule.

25.1 This Ordinance applies to Wind Turbine Projects located wholly or partially in the Town of Freedom to the fullest extent allowable by municipal, state, and federal law.

25.2 Approval to build or operate a Wind Turbine or Wind Turbine Project applies only to that portion of the Wind Turbine Project located within the boundaries of the Town of Freedom. However, the application must take into account the entire Wind Turbine Project across municipal boundaries, including but not limited to the total number of Wind Turbines, Turbine Height, Wind Turbine location and all other relevant facts and data that may directly or indirectly effect the operation and viability of that portion of the Wind Turbine Project located in the Town of Freedom.

25.3 Setback, Noise, Shadow Flicker and Mitigation Waiver standards for Wind Turbines and Wind Turbine Projects located and operated in the Town of Freedom shall apply to Occupied Buildings, property lines, and roads irrespective of Town boundaries. For the purpose of this section a resident of a neighboring town is afforded the same protections as a resident of Freedom.

25.4 The Town Clerk shall forward notice of Wind Turbine permit applications within 10 days of receipt, and notice of hearings and public meetings 10 days in advance, to the Selectmen and Planning Boards of adjacent communities for all Type 2, 3 and 4 Wind Turbine or Wind Turbine Projects if the neighboring community, or an Occupied Building within the neighboring community, is located within a defined Setback of this Ordinance.

## **26.0 Ethical Standards**

26.1 Transparency, Public Participation and Highest Ethical Standards

All public deliberations and decisions regarding Wind Turbine Projects and Community Owned Wind shall be conducted in an open, transparent manner that encourages the broadest public participation and adherence to the highest ethical standards.

## 26.2 Public Access

All deliberations concerning Wind Turbine Projects and Community Owned Wind, whether in writing or conducted verbally, by the Planning Board, Selectmen, Appeals Board, and any subcommittees or working groups of the aforementioned bodies shall fully comply with the letter and spirit of State law regarding Freedom of Access pursuant to Title1; Chapter 13; Subchapter 1. Specifically, all deliberations regarding Wind Turbine Projects between members of the Planning Board, Selectmen, Appeals Boards and any subcommittees and working groups shall be conducted at public meetings, which have been duly posted. Exceptions will be made only for: 1) appropriately recorded and executed executive sessions; and 2) communicating the minimal information necessary to set up and facilitate public meetings. Detailed minutes of deliberations and decisions concerning Wind Turbines and Community Owned Wind will be recorded and posted. Copies of all correspondence and e-mails will be made available to the public with the exception of those publically identified and disclosed as being subject to “attorney-client privilege” by the Town attorney. All documents, correspondence and e-mails generated by consultants on behalf of the Planning Board, the Selectmen, Appeals Board, their subcommittees and working groups shall be part of the public record.

## 26.3 Conflicts of Interest

26.3.1 The process to develop, permit and administer Wind Turbine or Community Owned Wind Projects shall be governed by a strict ethical code for conflicts of interest. No elected or appointed Town official or Town employee, their immediate family members, or their employees, who has a conflict of interest shall be directly or indirectly involved in the planning process or decision-making process for Wind Turbine Projects. Conflicts of interest include but are not limited to:

- 1) Having a lease or other agreement as a Participating Landowner for a Wind Turbine or transmission right-of-way;
- 2) Having an identified financial arrangement with a wind development company including a signed Mitigation Waiver with financial remuneration,
- 3) Serving as a paid representative of a wind development company, or a written or verbal promise for future employment or contracts from a wind development company;
- 4) Being directly or indirectly affiliated as an Applicant or intended Owner/operator with a pending application for Type 3 or Type 4 Wind Turbine Project;
- 5) Knowing there is a substantial opportunity to accept bids, receive remuneration, or employment valued at greater than \$10,000 on behalf a wind development company or as a subcontractor or employee of the Community Owned Wind Project;
- 6) Individuals with a conflict of interest must identify the conflict of interest and recuse themselves from all direct and indirect planning and decision-making regarding Wind Turbine Projects or Community Owned Wind, with the exception of voting and debating as a private citizen at any public meeting and public hearings.

## **Appendix A - Noise Measurement Standards and Procedures**

1. A qualified independent acoustical consultant shall conduct all noise studies. The acoustical consultant shall be hired by and report to the Permitting Authority during the permitting review stage, and by the Code Enforcement Officer for review of any suspected violations or for review of an Operational License.
2. Sound level meters and calibration equipment must comply with the latest version of the American National Standards Institute "American Standard Specifications for General Purpose Sound Level Meters" (ANSI Standard S1.4) and shall have been calibrated at a recognized laboratory within one month prior to the initiation of the study.
3. Except as specifically noted otherwise, measurements shall be conducted in compliance with ANSI Standard S12.18-1994 "Outdoor Measurements of Sound Pressure.
4. Prior to permit application approval, a pre-construction ambient noise level study shall be conducted at each Occupied Building within 2 miles of any proposed Wind Turbine.
5. The tests shall be conducted using both an A-weighting scale (dBA) and low frequency C weighting scale (dBC).
6. Tests shall be reflective of seasonal changes to vegetation and atmospheric conditions. At a minimum one set of tests should be performed during each of the four (4) calendar seasons of the year.
7. All measuring points shall be located in consultation with the property owners and such that no significant obstruction blocks noise and vibration to the site.
8. Outdoor noise level measurements must be taken at 6 feet above the ground and at least 15 feet from any reflective surface.
9. Duration of measurements shall be a minimum of ten continuous minutes for each criteria at each location.
10. Measurements must be made when the wind levels are less than 4.5 mph and with appropriate wind screening for the recording device.
11. Measurements should be obtained during representative weather conditions when the Wind Turbine noise is most noticeable, including periods of temperature inversion most commonly occurring at night.
12. Measurements shall be taken at each of the following three time periods:
  - Day (10 a.m. – 2p.m.)
  - Evening (7p.m. -11 p.m.)
  - Night (12 midnight – 4 a.m.)
13. Each measurement shall be replicated during the same time period over three different days within the same season for a total of 9 measurements per location per season (i.e., three daytime measurements in the winter, three evening measurements in the winter, three night time measurements in the winter). The lowest of the three measurements per time period, per season, will be used to determine the pre-construction ambient noise for that time period and season.

14. For each measurement the following minimum criteria will be recorded:

- $L_{max}$ ,  $L_{eq}$ ,  $L_{10}$  and  $L_{90}$  in dBA<sup>1</sup>
- $L_{max}$ ,  $L_{eq}$ ,  $L_{10}$  and  $L_{90}$  in dBC
- A narrative description of any intermittent noises registered during each measurement
- Wind speed and direction at time of measurement
- Description of weather conditions at time of measurement
- Description of topography and contours relative to proposed or actual Wind Turbines

15. A 5 dBA and/or a 5 dBC penalty shall be applied for short duration repetitive noise or repetitive impulse noise. This is a characteristic “thumping” or “whooshing” sometimes exhibited by larger Wind Turbines. Per Maine TA Bulletin #4, intermittent noise is a more serious nuisance than constant noise.

16. A 5 dBA penalty shall be applied for tonal noise. This is a single or limited frequency noise (vs. broadband noise) associated with mechanical noise artifacts (i.e. high pitched whining, screeching, buzzing). Per Maine TA Bulletin #4, noise over a narrow frequency is a more serious nuisance than broadband noise.

17. For sites being measured with existing Wind Turbines two sets of measurements are required: 1) one set with the Wind Turbine(s) off and; 2) one set with the Wind Turbine(s) running.

18. For nuisance complaints after the Wind Turbines are operational, the measurement points, season, time, and duration of measurements shall be selected in consultation with the affected property owner. If requested by the property owner, continuous measurements may be taken for longer periods of time to capture intermittent nuisance noise patterns.

19. When conducting their pre-construction noise prediction analysis, the Applicant shall make specific reference to: 1) the unique aspect of the mountainous contours and terrain of the area and its effect on noise predictability and 2) line source noise predictions (emanating from a line of Wind Turbines) in addition to the traditional single point source predictions.

20. Any noise level falling between two (2) whole decibels shall be deemed the higher of the two.

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<sup>1</sup>  $L_{max}$  - the maximum noise level measured;  $L_{eq}$  – average noise level for a given period time;  $L_{10}$  – Sound level exceeded 10% of the time;  $L_{90}$  Sound level exceeded 90 % of the time, generally equivalent to ambient noise.

## **Appendix B – Type 1 Small Wind Turbine Submission Standards and Fees**

Application Fee: \$25

The Applicant shall submit a written application, which shall include:

1. The Applicant's name, contact information and designation of Owner/operator if different from Applicant.
2. Location of the proposed Wind Turbine including tax map lot number.
3. General description of the proposed Wind Turbine Project including nameplate capacity of turbine, turbine height, manufacturer's specifications for turbine and tower, and proposed use of electricity to be generated (i.e., on-site use, net metering, etc.)
4. Written description and map demonstrating that the Wind Turbine meets the setback requirements of this Ordinance. Include a plot sketch showing Wind Turbine, all nearby structures in the Setback Area, all adjacent Occupied Buildings, property lines and public roads.
5. Written description of how the Wind Turbine Project will comply with noise standards. Manufacturer's noise specifications or similar documentation are adequate.
6. Line drawing of electrical components and description of how the Project will comply with applicable electrical codes.
7. Design of tower, anchoring system and wind rating. If guy wires will be used, provide a declaration that bird diverters will be used (these are inexpensive colored plastic flags that clip to guy wires to increase the wires' visibility to birds).
8. Description of blade clearance and any potential hazards from blade throw or tower collapse.
9. Written description of Wind Turbine braking system.
10. Written description of how Wind Turbine will be designed and/or sited to prevent shadow.
11. For owner designed, owner built, or owner modified systems the CEO may require field testing to measure Wind Turbine noise, additional electrical design review or tower construction review.
12. Attach executed Mitigation Waiver agreements, if any.
13. Other documentation identified by the Code Enforcement Officer during the pre-application Meeting or completeness review as necessary to allow adequate review of the applicable performance standards..
14. Signed affidavit that Applicant has read and is familiar with the Town of Freedom Wind Turbine Ordinance and agrees to abide by its provisions, as may be amended from time to time.

## **Appendix C – Type 2 Intermediate Wind Turbine Submission Standards and Fees**

Application Fee: \$100

The Applicant shall submit a written application, which shall include:

1. The Applicant's name, contact information and designation of Owner/operator.
2. Location of the proposed Wind Turbine including tax map lot number.
3. General description of the proposed Wind Turbine Project including nameplate capacity of turbine, turbine height, manufacturer's specifications for turbine and tower, and proposed use of electricity to be generated (i.e., on-site use, net metering, etc.).
4. Written description and map demonstrating that the Wind Turbine meets setback requirements. Include a plot sketch showing Wind Turbine, all nearby structures in Setback Area, all adjacent Occupied Buildings, property lines and public roads.
5. Written description of how the Wind Turbine Project will comply with noise standards. Manufacturer's noise specifications or similar documentation are adequate.
6. Line drawing of electrical components and description of how project will comply with applicable electrical codes.
7. Design of tower, anchoring system and stability rating. If guy wires will be used, provide a declaration that bird diverters will be used (these are inexpensive colored plastic flags that clip to guy wires to increase the wires' visibility to birds).
8. Description of blade clearance and any potential hazards from blade throw or tower collapse.
9. Written description of Wind Turbine braking system.
10. Written description of how Wind Turbine will be designed and/or sited to prevent shadow
11. Written description of how the Wind Turbine Project will comply with Section 15.1 "Appearance and Visibility Standards".
12. Written description of how Wind Turbine Project meets or will meet Section 15.2 "Safety Standards".
13. For owner designed, owner built, or owner modified systems the Permitting Authority may require field-testing to measure Wind Turbine noise, additional electrical design review by a certified electrician, or tower construction review by a certified engineer.
14. Proof of Liability Insurance.
15. Contract with Maine licensed professional engineer to conduct post construction structural and operational inspection and written agreement by Applicant to submit proof of successful inspection as a condition of permitting before operating Wind Turbine Project.
16. Other documentation identified by the Permitting Authority during the pre-application meeting or completeness review as necessary to allow adequate review of the applicable performance standards.
17. Attach executed Mitigation Waiver agreements, if any.
18. Signed affidavit that Applicant has read and is familiar with the Town of Freedom Wind Turbine Ordinance and agrees to abide by its provisions as may be amended from time to time.

## **Appendix D – Type 3&4 Large Wind Turbine Submission Standards and Fees**

Type 3 Application Fee\*: \$1000

Type 4 Application Fee\* \$5000

Professional Fees Escrow\*: one half of one percent of the estimated cost of the project

Road Damage Bond\*: The value of the bond will be determined by the Planning Board.

Decommissioning Fund\*: A performance bond or a cash escrow account held by the Town with 5% of the estimated cost of decommissioning to be added by the Owner/Operator on an annual basis shall be acceptable surety, the total amount to be based on the estimated cost of completing the decommissioning and site restoration in accordance with the approved plan, adjusted for inflation, and as approved by the Planning Board.

Other:

All information in this application, unless specified, will become part of the public record. Information submitted by the Applicant must be continuously updated throughout the application process as changes are made or new information becomes available.

The Applicant shall include a written application, which shall include:

1. Applicant's name and contact information.
2. Legal Owner/operator and contact information.
3. Description of the legal structure of the Wind Turbine Project including a corporate organizational chart, ownership and equity structure, and all investors.
4. Description of the proposed Wind Turbine Project that includes the number of Wind Turbines, the nameplate capacity, Turbine Height and manufacturer's specifications for each Wind Turbine, the aggregate generating capacity of the entire project, and a description of associated facilities.
5. Location map(s) of the project showing the location of the each Wind Turbine, associated facilities, all property under partial or total control of the Applicant including easements and those under lease with Participating Landowners, roads, municipal boundaries, proximity to Scenic or Special Resource features in the Town of Freedom and major geographical features.
- 6 . Detailed site plan showing the location of each Wind Turbine and Associated Facility and any of the following features located within 1.5 x the required setback: property boundaries, required setbacks, topographic contour lines (maximum 20-foot interval), buildings (identify use), roads, driveways, right-of-ways, overhead utility lines, Scenic or Special Resources, tree cover, wetlands, streams, water bodies, areas proposed to be cleared of vegetation or re-graded, and areas proposed to be significantly excavated or blasted.
- 7 . Copies of all Participating Landowner agreements and easement agreements. Only dollar amounts may remain confidential.
8. Copies of any deeds or purchase agreements for land owned or under option by the Owner/operator.
9. Receipt showing payment of application fees and escrow for professional and public hearing fees.\*



10. Proof of financing.
11. Reference list of all previous Wind Turbine Projects with which the Owner/operator has been affiliated.\*
12. Proof of compliance with all required setbacks. The Applicant shall work with the Permitting Authority to complete a pre-construction noise study per Appendix A. This study must be completed before the permit can be approved.
13. A detailed noise prediction model for worst-case noise scenarios based on wind speed and wind direction for the Wind Turbine Projected. The study shall be projected onto a contour map for a minimum of two miles from each Wind Turbine. Worst-case scenarios for each Occupied Building within the 2-mile radius shall be reported in table form. The model will address the unique mountainous terrain of the area. Noise predictions will include both single source and line source origination. All underlying assumptions and algorithms in the model will be documented.
14. The Wind Turbine manufacturer's noise emission specifications for each Wind Turbine model.
15. A shadow flicker and blade reflection model for the proposed Wind Turbine Project. The model will provide a worst-case scenario (100%) seasonal representation for each Occupied Building within two miles of any Wind Turbine. The model will calculate maximum hours of shadow flicker and blade reflection in table form for each Occupied Building.
16. Copies of all executed Mitigation Waiver agreements concerning Setbacks, Noise and Shadow Flicker/Blade Reflection. Only dollar amounts may remain confidential.
17. Written demonstration that the Wind Turbine Plan is consistent with the Freedom Land Use Ordinance.
18. Documentation showing compliance with Section 16.2.1 "Environmentally Sensitive Areas", both during construction and post construction.\*\*
19. Documentation showing compliance with Section 16.2.2 "Wildlife Protection" and with Section 16.2.3 "Raptor Habitat".
20. Documentation showing compliance with Section 16.2.4 "Erosion Control" Documentation must include a construction site erosion plan and storm water runoff control plan that minimizes potential adverse impacts on streams and wetlands.
21. Documentation showing compliance with Section 16.2.5 "Groundwater Protection".
22. Documentation showing compliance with Section 16.2.6 "Light Pollution".
23. Written evidence that the Environmental Coordinator of the Maine Department of Inland Fisheries and Wildlife and the Maine Natural Areas Program have both been notified of the pending application and the location and Turbine Height of all proposed Wind Turbines.
24. A Location of Development permit from the Maine Department of Environmental Protection (DEP) pursuant to Title 35-A M.R.S.A. §3451, Title 35-A M.R.S.A. § 3456 and Title 38 M.R.S.A § 482 if required.
25. A visual impact assessment pursuant to Section 16.3.\*

26. Photographs of existing conditions of each Wind Turbine and associated facility site.
- A Sight Line Representation shall be drawn that shows the lowest point to the Wind Turbine visible from each location. Each sight line shall be depicted in profile, drawn at one-inch equals 40 feet. The profiles shall show all intervening trees and physical structures.
  - Each Sight Line shall be illustrated by one four-inch by six-inch color photograph of the current view.
  - Each of the existing condition photographs shall have the proposed Wind Turbines superimposed on it to accurately simulate the Wind Turbine Project when built.
  - Elevations of the tops of any structures on the subject property relative to the elevation of the Wind Turbine(s)
  - The height and elevation relative to the Wind Turbine(s) of trees, both existing and proposed, that are to provide visual buffering. In the case of trees to be planted, the proposed height at the time of planting as well as the projected mature height is to be provided. [State Model Ordinance]
27. Written narrative regarding how the Project will comply with 15.1 "Appearance and Visibility Standards".
28. Written narrative regarding how the Project will comply with 15.2 "Safety Standards". Provide a written description of emergency and normal shut down operations.
29. Submit contract with Maine licensed professional engineer to conduct post construction structural and operational inspection and written agreement by Applicant to submit proof of successful inspection as a condition of permitting before operating Wind Turbine Project
30. Proof of ability to obtain Liability Insurance for the Project, and applicable limits.
31. Timeline showing all aspects of the construction.
32. Photographs and detailed drawings of each Wind Turbine, including foundation design. Details must be provided of all significant excavation and blasting.
- 33 Demonstrate compliance with Section 16.4.3 "Transmission Line Standards". A map shall be provided showing all transmission lines and rights-of-way that will need to be built or upgraded to accommodate the Wind Turbine Project. Applicant shall submit copies of signed letters of intent to grant easements, long-term leases or other property rights from involved landowners and any governmental unit responsible for access, approval or construction of electric transmission and distribution lines, whether part of the Wind Turbine Project or part of the local electrical distribution grid. The Applicant shall submit an affidavit stating that no property will need to be taken by eminent domain to facilitate transmission lines necessary to support the project.
34. A geological report from a registered geotechnical engineer demonstrating that the soils can support the Wind Turbines and the underlying ground is geologically stable. The report shall include a slope stability analysis and any underlying fault zones.

35. A written summary of all routine operation and maintenance procedures for the Wind Turbine Project.
36. Demonstrate compliance with Section 16.6 “Public Safety and Health Standards”. Provide an estimate of required new equipment and training to be provided.
37. Document all potential hazardous wastes that will be used on the Wind Turbine Project, and how these wastes will be transported, handled, stored, cleaned up if spilled, and disposed of during any phase of the project’s life.
38. A communication/electromagnetic interference study prepared by a registered professional engineer showing that the proposed Wind Turbine Project will comply with Section 16.7 “Communication/Electromagnetic Interference Standards”. The Owner/operator shall sign an affidavit stating that the Owner/operator shall be responsible for the full cost remediation to remain in compliance with this Section.
39. Demonstrate compliance with Standard 16.8 “Ground Transportation Standards” Before and after photographs or videos of the roadways, in a format approved by the Permitting Authority, shall be submitted as part of the documentation process.
40. An affidavit agreeing to comply with all provisions in Section 16.9 “Reporting Requirements”.\*
41. A decommissioning plan in compliance with Section 23.0 “Decommissioning Standards”.
42. If the Wind Turbine Project crosses multiple municipal jurisdictions the Applicant shall demonstrate compliance with Section 25.0.
43. Applicant shall deliver a letter by certified mail to the owner of any property that the Applicant proposes to be restricted by the permit. The letter will state that the Applicant has filed an application, list future development that will be restricted, and to what extent it will be restricted, on abutting properties by virtue of the permit being granted. Examples of restrictions include, but are not limited to, Occupied Buildings within the setback area without a Mitigation Waiver, building structures (i.e. Wind Turbines or cell towers that the Wind Turbine Project would interfere with), zones in which future telecommunication installations can expect interference from the Wind Turbine Project.
44. Proof that the Applicant has notified the following agencies via certified mail and received any necessary permits or permissions for the project:
  - Federal Aviation Administration.
  - U.S. Department of Defense facilities located within 50 miles from the proposed Wind Turbine Project.
45. Other relevant studies, reports, plans, information, certifications and approvals as may be reasonably requested by the Permitting Authority to ensure compliance with this Ordinance.
46. Signed affidavit from the Owner/operator that Applicant has read the Town of Freedom Wind Turbine Ordinance and agrees to abide by its provisions, as may be amended from time to time.

\* May be waived for Community Owned Wind Turbine Projects.

## Appendix F – Mitigation Waiver Form

THIS DECLARATION OF COVENANT is made by \_\_\_\_\_ (collectively, "Grantor"), the owner(s) of a certain lot or parcel of kind situated in the Town of Freedom and State of Maine, more particularly described in the deed dated \_\_\_\_\_ and recorded at the \_\_\_\_\_ (hereinafter referred to as the "Servient Land").

WHEREAS \_\_\_\_\_ having a mailing address at \_\_\_\_\_ ("Grantee"), plans to construct and operate a wind power project, including wind turbine generators and towers and related equipment, facilities, infrastructure and substructures (hereinafter referred to as the "Wind Power Project"), on lands near the Servient Land, including (without limitation) the lands described on the attached Exhibit A;

WHEREAS, the Wind Power Project may include activities that produce annoyance, inconvenience, or discomfort to Grantor in connection with its 'use and enjoyment of the Servient Land; and

WHEREAS, Grantor has agreed to grant a perpetual negative covenant to Grantee, whereby Grantor covenants and agrees not to object to the Wind Power Project operations;

Now, THEREFORE, for good and valuable consideration received, Grantor hereby grants a perpetual negative covenant to Grantee, whereby Grantor covenants and agrees for itself, its heirs, successors and assign, not to object to the Wind Power Project, or to any activities arising from the construction or operation of the Wind Power Project that produce annoyance, inconvenience, or discomfort to Grantor in connection with its use and enjoyment of the Servient Land. Without limiting the generality of the foregoing, Grantor hereby: (a) agrees not object to visual impacts, sound ( including, without limitation, sound that exceeds otherwise applicable state or local maximum sound level limits for the Servient Land), shadow flicker, cell tower interference, or construction or operation impacts made or arising in connection with the Wind Power Project; and (b) waives, releases, and forever discharges Grantee from any action, claim, suit or proceeding in equity, law and/or administrative proceeding that Grantor may now have or may have in the future against Grantee ( including, without limitation, any claim of negligence, public or private- nuisance, trespass, or infliction of emotional distress) relating to any effect of the construction or operation of the Wind Power Project upon Grantor's use and enjoyment of the Servient Land.

This Declaration of Covenant shall extend to, be binding upon and shall inure to the benefit of heirs, personal representatives, successors and assigns of the parties hereto. The burden of the negative covenant hereby granted shall run with the Servient Land. The benefit of the negative covenant hereby granted is not appurtenant to any particular property, but shall be transferable in whole or in part, and may be sold, leased, assigned, pledged, and mortgaged by Grantee, it being the intent of the parties that such benefit maybe transferred to any successors or assignees of Grantee that own or operate the Wind Power Project, as it may be modified, divided or expanded.

The benefit of the negative covenant hereby granted may be enforced by Grantee, its successors and assigns, by any appropriate legal or equitable remedy. In the event that Grantee, its successors or assigns, shall bring an action against Grantor, it's successors or assigns, by reason of a breach or violation of this negative covenant by Grantor, it's successors and assigns, the substantially prevailing party in such action shall be entitled to recover their reasonable attorneys' fees and court costs incurred in such action from the substantially non-prevailing party.

Witness our hands and seals \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

In the presence of: GRANTOR

\_\_\_\_\_

Print \_\_\_\_\_

STATE OF: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

Personally appeared the above-named \_\_\_\_\_  
and acknowledged the foregoing instrument to be his/her/their free act and deed.

Before me,

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Notary Public/Attorney-at-Law

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

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