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TOWN OF SUMNER INDUSTRIAL WIND ORDINANCE

Section 1. Title

This Ordinance shall be known as the Town of Sumner Industrial Wind Ordinance.

Section 2. Principle and Purpose

A Community is not a risk taking entity. Businesses, on the other hand, do take risk as a matter of course. We considered it our responsibility to craft an ordinance which minimized risks to the Town, without precluding economic opportunities. The purpose of this Ordinance is to regulate Industrial Wind Energy Facility (IWEFs) or and Industrial Wind Turbine (IWT) to protect and safeguard the health, safety, and general welfare of the citizens of Sumner by establishing reasonable and uniform regulations.

Section 3. 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"), and consistent with the Town of Sumner's Comprehensive Plan,

Section 4. 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.

Section 5. Indemnification

The Owner Operator must agree to indemnify and hold-harmless the Town, Town Officials, Town Employees and Committee Members from any and all litigation pertaining to any IWEF litigation costs and any and all consequential damages.

Section 6. Insurance Liability Protection

The Applicant or an Applicant's designee acceptable to the Planning Board will maintain a current general liability policy for the Industrial Wind Facility in an amount commensurate with the scope and scale of the Wind Energy Facility. This will cover bodily injury, property damage, loss of property, business interruption, destruction of resources, incurred by the Town or any resident or property or business owners, from the existence of the IWEF either due to the IWEF or incurred by the IWEF from external events including tornadoes, earthquakes, hurricanes, ice storms, other weather or naturally occurring related events as well as vandalism, plane incursions, forest fires, etc. This insurance shall also cover losses in tax revenue due the Town, had the event not occurred-and for the expected life of an IWT/IWEF.

The costs of such policy shall be borne entirely by the Applicant or it designee. The Applicant or its designee shall provide "***Certificates of Insurance***" to the town office, The Select Board and Planning Board annually or whenever requested. In addition the Town of Sumner shall also be listed as an "***ADDITIONAL INSURED***" on the Applicant or Applicant's General Liability Insurance Policy. The applicant will also provide a copy of each annual renewal of Liability Insurance to the Town of Sumner Planning

Board. If deemed necessary by the Town of Sumner Planning Board, the Applicant will also be responsible for expenses incurred for legal or other expert insurance advice. Notice by the policy provider in the case of cancellation or change to the policy. Such notice must include the exact text of the proposed changes. In addition, the Applicant, Permittee, Owner/Operator and Licensee, as applicable, must inform the Planning Board of such changes in writing.

Section 7. Revenue

Any Owner Operator who makes representations to the Town of the expected tax and/or revenue opportunities from the project will be expected to guarantee the represented revenue as a minimum contribution to the Town for the life of the IWEF, whether the IWEF continues to exist or not. To the degree that IWEF revenue increases the Town revenue from the IWEF will increase proportionally.

Section 8. Expertise

The Planning Board may at its discretion hire expertise of whatever type it deems necessary, at any time during the application process and throughout the life of the IWEF, with advance notice to the applicant and/or Owner/Operator and at the Applicant/Owner/Operator's expense.

Section 9. Reimbursement of Fees and Costs

A. Owner/operator shall reimburse all of the Town's costs incurred due to the IWEF, including but not limited to the Planning Board's fees and costs, including but not limited to, costs of preparation, negotiation, review, administration, travel/food/lodging, inspection of IWEFs and enforcement of this Ordinance. Such reimbursement shall include, without limitation, the Planning Board's attorneys' fees, all engineering, court stenographer, videographer and/or consultant fees **including any experts hired by the Planning Board to help review IWEF applications, hourly fees for Planning Board members attending IWEF-related meetings and hearings which extend beyond its regularly scheduled meetings or which extend beyond one hour at any regularly scheduled meeting**, administrative and clerical costs incurred by the Town Office **and/or the CEO including hourly fees for work pertaining to IWEFs**, and the costs of public notices, including mailings, use of graphical artists, and creation of signs to be placed within the Town **and websites created to administer and provide public notice regarding the IWEF . The owner/operator shall also reimburse the Town of Sumner for the costs of purchasing, maintaining and updating any office equipment needed due to the IWEF, including but not limited to, computers, software, printers and scanners.**

B. Reimbursement shall also include, without limitation, all costs of actual Emergency Response to any situation arising at the IWEF, including the costs of repair and/or replacement of any vehicles or equipment damaged or ruined in such a response. The owner/operator shall also pay for insurance policies regarding: injuries to Emergency Responders, their medical care, both short term and long term, and disability for loss of employment for individual emergency responders.

C. The funds shall be placed in an escrow account in the name of the Town of Sumner under the management of the Town Clerk, with the Planning Board having the authority, by majority vote, to authorize expenditures according to the needs of this Ordinance. The Applicant shall deposit \$100,000 in such an escrow account within ten calendar days of submitting an application for a Permit to Build, **or for an operational license by a new owner/operator. If the owner/operator**

fails to provide notice and proof of such deposit to the Planning Board, the application shall be deemed to have been withdrawn.

D. If at any time throughout the operational life of the IWEF the escrow account falls below \$50,000, and is not replenished to the full \$100,000 amount within thirty days of notice from the Town of Sumner, the Planning Board shall then order an immediate shutdown of the IWEF until such time as notice and proof of full escrow replenishment has been provided to the satisfaction of the Planning Board.

E. The Town of Sumner may recover all reasonable costs of collection for monies owing to the Town under this Ordinance, including attorneys' fees, from the owner/operator.

Section 10. Validity and Severability

If there is a conflict between provisions of this ordinance, the more stringent provision shall govern. If there is a conflict between a provision of this Ordinance and that of another Town of Sumner ordinance, the provision of this ordinance shall govern, but only as it relates to an IWEF.

If there is a conflict between the provisions of this Ordinance and any state rule or law applying to IWEFs, the more stringent provision shall govern.

The invalidity of any part of this Ordinance by a court of competent jurisdiction does not invalidate any other part of this Ordinance.

Section 11. Venue of Jurisdiction

Any legal disputes arising out of an IWEF the venue for jurisdiction shall in every case shall be in Oxford County Superior Court, Maine.

Section 12. Effective Date

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

If this Ordinance is enacted within 90 days after the expiration of an Ordinance entitled "Moratorium on Wind Power Development for the Municipality of Sumner" (Moratorium) adopted June 06, 2011, the effective date of this Ordinance will be retroactive to the expiration date of the Moratorium.

Section 13. Applicability

This Ordinance applies to any Industrial Wind Turbine that is the subject of a permit or license application pending before, or filed with the Town of Sumner, after the effective date of the Ordinance.

Section 14. Wind Turbine Classifications

Industrial Wind Energy Facility (IWEF) --

Industrial Wind Energy Facility" (IWEF) means all of the following -- any wind energy installation:

- A. consisting of one or more industrial wind turbines with a combined tower and blade height of more than 150 feet (from ground to blade tip at its highest point); and
- B. with a nameplate capacity of more than 100 kilowatts of power a year; and

C. **not** requiring a Site Location of Development permit from the Maine Department of Environmental Protection pursuant to Title 35-A M.R.S.A. §3456; and

D.. the purpose of which facility is to primarily generate electricity using ambient wind as a source of power in order to supply electricity to off-site customers; and

E. includes, but is not limited to, any associated installations such as meteorological towers, substations and any other structures accessory to such facility including but not limited to, cables/wires, and generator lead lines, fences, lighting systems, access roads, parking lots, and any areas to be stripped, cleared, grubbed, blasted or graded, landscaped or screened, or any areas in which the soil is in any way disturbed.

Section 15. Approval Authority for an IWEF

An IWEF proposal is only approved if permission is granted in writing by at least two-thirds (sixty six and two-thirds percent) vote of each of the following Town bodies: in the following order:

1. The five voting members of the Planning Board and:
2. The Board of Select Persons and:
3. The town citizens voting at a special town meeting convened solely for that purpose, but only if the number of votes cast is equal to at least twenty percent of the total number of votes cast in the Town of Sumner at the most recent, prior election for the office of the Governor of Maine.

If any one of the above town bodies fails to approve the IWEF, permission for the IWEF shall be immediately deemed to have been denied and may not be considered again, if requested by the same Owner/Operator, for a period of one year following the date of denial.

Section 16. Permit and Applications

A. No person may construct or locate an IWEF or a MET tower within the Town of Sumner without a permit issued in accordance with this Ordinance.

B. Any physical modification to an existing IWEF that materially alters the location or increases the area of development on the site, increases the number, type, design or size of wind turbines or otherwise increases the generating capacity, increases wind tower or turbine height or may increase the level of sound emissions from any wind turbine requires an amended permit under this ordinance.

C. No person may lease, sell, assign or otherwise transfer an IWEF or portion thereof without a permit under this ordinance from the Town of Sumner. Such a permit shall be granted only if the applicant or transferee demonstrates to the satisfaction of the planning board that: the transferee has sufficient title, right or interest in the facility; the transferee has the technical capacity and financial ability to fully comply with the provisions of the permit issued for the Wind Energy Facility and this ordinance; and the facility is in complete compliance with all applicable ordinances and permits.

D. The Planning Board may approve, reject, or conditionally approve applications in accordance with the standards of this Ordinance.

E. The Town of Sumner Planning Board and/or its designated agents or representatives shall have the right to access and inspect IWEF sites and MET Sites at any time at its own discretion.

F. Only one application for a MET or IWEF permit will be accepted for processing at any given time.

G. The Maine Department of Environmental Protection (DEP) may be required to review MET and IWEF applications within the Town of Sumner. When making its own determination about such applications, the Planning Board shall consider, to the extent applicable, findings in the DEP review.

H. An Application to erect and operate a MET tower for the purposes of assessing meteorological conditions prior to submission of an application for a WEF is subject to the submission and review standards for an Industrial Wind Energy Facility, as applicable, except that no tower height limitation shall apply. A permit issued for a MET tower is valid for 30 months from the date of issuance after which the applicant shall remove the MET tower within 30 days and restore the site to its pre-existing condition. For MET Permit Criteria see Appendix (---).

Section 17. IWEF Pre-Application Meeting

Prior to filing an application for an IWEF, the applicant will meet with the Planning Board to discuss the application requirements. At such a pre-application meeting, the Planning Board can explain the ordinance's provisions, application forms, and submission requirements. At that time, the applicant should provide photos of the proposed site and written descriptions of the proposed facility and the proposed site, including its location and lot number. See Appendix for Details (---)

Such discussions with the Planning Board are informational only and may not be construed to decide, formally or informally, the merits of any substantive aspects of proposal under discussion.

Section 18. IWEF Application Criteria

See Appendix (---) for Details

Section 19. Setbacks, Noise Restrictions and Acoustical Hazards

A. General

1. This section addresses the interrelated standards of setbacks and noise restrictions.
2. Setbacks provide, in conjunction with noise restrictions, a primary means of eliminating potential and unforeseen noise complaints and potentially serious harm to both human and animal health due to the potential acoustical hazards posed by IWEFs. Setbacks also provide a margin of safety for nearby people, property and animals from the dangers of IWT blade throw, ice throw, tower collapse and forest fires. The primary goal of this section is to protect the health, safety and **welfare** of the people of Sumner by requiring precautionary measures to guard people and animals against all the potential hazards from IWTs. In addition, setbacks and noise restrictions protect nearby properties from possible serious loss in value due to the presence and operation

of IWEFs. Although larger wind turbines may cause greater low frequency disturbance, poorly designed smaller turbines can also cause serious noise.

3. Property owners may waive any of the **setback and noise restrictions in this ordinance with a written Mitigation Waiver that conforms to the requirements of this ordinance.**

B. Setback Requirements:

1. A Minimal Fixed Distance of **“1.25 - 1.75 miles as determined by public input”** is required between each IWT within the IWEF and any point on the property line of any non-participating property owner.

2. This distance shall be measured in a 360 degree radius, horizontally between the outer edge of the base of each IWT within the IWEF and the closet point on any non-participating Landowner’s Property Line.

3. Turbines shall be spaced both between turbines within rows and between rows a minimum of ten (10) rotor diameters apart, using the largest proposed or existing rotor diameter for the spacing calculation. This distance can be lengthened but not shortened, if deemed necessary by the Planning Board to prevent harmful turbulence, on the advice of an independent acoustical consultant of the Planning Board’s choice at the applicant's expense.

4. Setback to Public Roads – All IWT will be set back from any public road, both in Sumner and in any adjacent town, a distance no less than 2,500 feet, measured horizontally from each IWT of an IWEF to any point on the center of such road.

C. Noise Restriction Requirement:

1. Audible Noise Restrictions: not to exceed thirty-five (35) dBA day and night, anywhere in the Town of Sumner. No IWEF shall be located to cause it to exceed (35) dBA day or night, or the pre- construction L90A+5dB whichever is lower. L90 results are valid when L10 results are no more than 15 dBA above L90 for the same time period. Pre-construction ambient noise studies for audible noise shall be conducted by a qualified independent acoustical consultant selected by the Planning Board, at the applicant’s expense, for all properties any part of whose property lines are located within two (2) miles of the IWEF Property Line, whether in Sumner or in adjacent towns. Such ambient noise studies shall also be conducted before a new owner/operator’s application is approved by the Planning Board and every three years during the operational life of the IWEF, unless such a study has already been conducted during the previous twelve (12) months.

2. Inaudible Noise Restrictions: (Low Frequency “Infrasound” & Vibration) Sumner baseline background noise levels (separate dBA numbers for day & night) plus fifteen (15) equals maximum dBC levels allowed, but never to exceed 50 dBC. Pre-construction ambient noise studies for infrasound shall be conducted by a qualified independent acoustical consultant selected by the Planning Board, at the applicant’s expense, for all properties any part of whose property lines are located within two (2) miles of the IWEF Property Line, whether in Sumner or in adjacent towns. Such ambient noise studies shall also be conducted before a new owner/operator’s application is approved by the Planning Board and every three years during the operational life of the IWEF, unless such a study has already been conducted during the previous twelve (12) months.

D. Noise Measurement Standards and Procedures

1. A qualified independent acoustical consultant who is a Full Member of the Institute of Noise Control Engineering (INCE) shall conduct all noise studies. The applicant shall conduct and present to the Planning Board for its review, any predictive sound modeling required in this ordinance. The acoustical consultant shall be hired by and report to the Planning Board. The Applicant shall pay for the studies. Prior to the granting of the initial operational license a pre-construction ambient noise level study to include A-weighting (dBA) and low frequency C-weighting (dBC) shall be conducted at each occupied building located on any property with any part of its property lines within two (2) miles of the Property Line of any proposed IWEF.

2. The IWEF Applicant/Licensee shall provide all technical information and IWEF data required by the qualified independent acoustical consultant before, during, and/or after any acoustical studies required by this document and for acoustical measurements.

3. 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.

4. Except as specifically noted otherwise, measurements shall be conducted in compliance with ANSI Standard S12.18-1994 "Outdoor Measurements of Sound Pressure".

5. Along with information about the make, model, and name plate capacity of all turbines potentially used in the proposed IWEF, the Applicant will also supply their sound power levels (Lw) for each 1/3 octave band from 6.3 Hz to 10k Hz.

6. The applicant shall provide a sound propagation model predicting the sound levels emitted into the community computed using at minimum 1/1 octave band sound power levels to compute the L_{Ceq} and L_{Aeq} levels to generate L_{Aeq} and L_{Ceq} contours in 5 dB increments overlaying an aerial view and property survey map from the IWEF Property Line out to a distance to include all residential property lines within two (2) miles measured horizontally from the IWEF Property Line, including properties in Sumner and in adjacent towns.

7. Predictions and testing shall be made at all property lines within two (2) miles of the IWEF measured horizontally from the IWEF Property line, including properties in Sumner and in adjacent towns, for the wind speed, direction and operating mode that would result in the worst case IWEF nighttime sound emissions.

8. Tests shall be reflective of seasonal changes to vegetation and atmospheric conditions. At a minimum, one set of tests shall be performed during the middle of each of the four (4) calendar seasons of the year. These seasonal tests shall be conducted during:

- a. the first twelve months of a new IWEF's operation, or the first twelve months of operation by a new owner/operator; and

- b. the twelve months prior to the expiration of an Operational License; and
- c. the first twelve months following the expansion of an IWEF through additional IWT's, or an increase in the height, blade length or nameplate capacity of existing IWTs. Whenever an operational license is renewed, this four season testing will be conducted. During those years when four season testing is not required, noise studies will be conducted on the anniversary of the approval date of the operational license. Also, during those years when four season testing is not required, at least one unannounced test will be conducted at a time and date determined by the Planning Board.

9. All measuring points shall be located in consultation with the property owners and such that no significant obstruction blocks noise and vibration to the IWEF site.

10. When conducting their pre-construction noise prediction analysis, the Applicant shall make specific reference to:

- a. the unique aspects of the mountainous contours, ponds and terrain of the area and its effect on noise predictability and;
- b. line source noise predictions (emanating from a line of Wind Turbines) in addition to the traditional single point source predictions.

11. Measurements should be obtained during representative weather conditions when the IWT noise is most noticeable, including periods of temperature inversion most commonly occurring at night.

12. Each measurement shall be replicated during the same time period over three different days within the same season for a total of nine (9) measurements per location per season (e.g., three daytime measurements in the winter, three evening measurements in the winter, and 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.

13. A comparison of the expected sound levels from the proposed IWEF with the sound level limits of this regulation shall be submitted. Per Maine TA Bulletin #4, a written report comparing the expected sound levels with the pre-development ambient sound levels will help determine compliance with the standard.

14. 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 IWTs. Per Maine TA Bulletin #4, intermittent noise is a more serious nuisance than constant noise.

15. 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.

16. Outdoor noise levels must be taken at 1.2 – 1.8 meters above the ground and at least 25 ft. from any reflective surface.

17. Each measurement shall include, at a minimum:
 - a. Lmax, Leq, L10, L90 in both dBA and dBC
 - b. wind speed and direction at the time of measurement
 - c. and weather conditions at the time of measurement
 - d. description of topography and contours relative to proposed or actual IWEFs
 - e. a narrative description of any intermittent noises registered during each measurement
18. Any noise level falling between two (2) whole decibels shall be deemed the higher of the two.
19. The duration of each measurement shall be ten continuous minutes for each test at each location. Multiple ten minute samples over longer periods may be used to improve the reliability, in which the quietest ten minute sample will be used.
20. For sites being measured with existing Wind Turbines see Appendix (---).
21. When testing for IWEF noise compliance, all measurements at the test location must be the pre- turbine background noise measurement location nearest to the home of the complainant in line with the IWEF and nearer to it. See Appendix (---)
22. For noise complaints after the IWEF is 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.

See Appendix For Supporting Details.

Establishing LongTerm Background Noise

Sound Measuring Instrument – Requirements

Level Meter Standards

Reporting Testing Results – Requirements

Sites with Existing IWEFs

Written Reports Provided by the Testing Firm – Requirements

Post Construction Measurements -- Requirements

Wind Turbine Siting Acoustical Measurements - Requirements

Sound Regulations Compliance

Complaints

Complaint Resolution

Violations and Enforcement

Section 20. Inspections

A. The Planning Board reserves the right to establish a time for a site inspection at any time during the application process. Planning Board and Applicant will set a mutually agreeable time for the Planning Board to inspect the site. 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 IWEF and relevant property boundaries. The Applicant or a representative will accompany the Planning Board to describe the project and answer any questions.

B. Wind Turbines shall be inspected after construction is completed but before becoming operational, and at least every year thereafter, for structural and operational integrity by a Maine licensed professional engineer chosen by the Planning Board, and the Owner/Operator and/or Licensee shall submit ten copies of the written report and five digital versions of the inspection report to the Planning Board. These inspections are also to be conducted coincidentally with Decommissioning, re-valuation and also on an unannounced basis as determined by the Planning Board.

C. If the report recommends that repairs or maintenance are to be conducted, then the Owner/Operator and/or Licensee shall provide the Planning Board with 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 and subject to fines deemed appropriate by Maine Statute Title 30-A, Section 4452, Subsection 5, § 5, or to shut down such IWT(s) responsible or the entire IWEF if deemed appropriate or the immediate decommissioning by the Planning Board of the Town of Sumner.

Section 21. Environmental Impact Standards

The site and construction of any Wind Energy Facility (WEF) within the town of Sumner shall meet all the applicable standards of the Comprehensive Plan and Site Plan Review Ordinance of the Town of Sumner.

The applicant must submit a site plan showing the proposed location of each wind turbine, the ground area occupied by the turbine, and associated facilities.

A. Environmentally Sensitive Areas

The design, construction and maintenance of an IWEF shall protect all environmentally sensitive areas that may be affected by its siting. Such areas shall include but not limited to wetlands, vernal pools, seeps or springs, steep slopes (equal to or greater than 15%), watersheds, flood plains, significant habitat for wildlife, fish and plants. An application for any IWEF permit shall

demonstrate appropriate measures for protecting all such areas during both construction and operation of the IWEF.

Given that areas within the Town of Sumner are wildlife management areas and that protected bird species and migratory birds are regularly observed within the boundaries of the Town, the applicant must comply with the "Guidelines for Wind Project Ecological Study" by the Maine Department of Environmental Protection and Maine Department of Inland Fisheries and Wildlife.

B. Wildlife Protection

The Applicant will demonstrate that the wind turbines will not have a significant adverse effect on area wildlife and wildlife habitat. Such analysis shall include but not be limited to adverse effects to birds, bats, game animals, and habitat fragmentation. In addition, the Applicant must demonstrate that the wind turbines will have no significant adverse effect on rare, threatened or endangered wildlife, including rare plant species or old growth tree stands.

The applicants may not apply for DEP variance on taking endangered species. 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. These studies will be conducted by a qualified wildlife biologist hired by the Town of Sumner 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.

Post Construction field studies will be conducted using the most advanced techniques available. If the post construction field studies demonstrate significant adverse effect to birds, bats, game animals or habitat fragmentation, the Planning Board, the Owner/operator and the Maine Department of Inland Fisheries and Wildlife (MDIFW) shall develop an appropriate mitigation plan. The Owner/operator will be responsible for the full cost of implementing the mitigation plan under the supervision of MDIFW and the Sumner Planning Board. After implementation, the Planning Board will review the mitigation plan to determine its effectiveness and if they believe it is not adequate, can revoke the project permit.

C. 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.

D. Erosion Control

The wind turbines will be designed, constructed and maintained in accordance with accepted erosion and sedimentation control methods. The acceptability of the proposed methods will be judged utilizing the "Maine Erosion Control Handbook for Construction: Best Management Practices", March 2003 or as revised. 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. Any watercourses within the drainage basin of the site will be monitored by the town code enforcement officer from the start of the road installation to the finish of the turbine installation.

E. Water Quality Protection

An IWEF must be designed, constructed, maintained and decommissioned so as to avoid adverse impacts to groundwater bedrock, sand and gravel aquifers.

Applicants for an IWEF permit shall finance through the IWEF Ordinance Escrow Account set up with the Town of Sumner, a pre-construction baseline study of all wells, springs, and public water sources within a two mile radius of the proposed IWEF site by an environmental firm chosen by the Sumner Planning Board.

The applicant must, through said escrow account, monitor the said wells, springs and public water sources at four month intervals during the construction. After completion of construction of the approved IWEF monitoring of said wells will be conducted at 12 month intervals for the life of the project.

If contamination or degradation is found to have occurred, then compensation 10% greater than remediation costs will be paid by the IWEF owner/operator to those affected within 90 days or less, while supplying adequate fresh drinking water to the homes affected. All water testing results shall be submitted to the Town of Sumner Planning Board within 3 business days of the applicants' receipt of test results.

F. 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. The Planning Board shall require that a detailed plan be submitted by the Applicant demonstrating the ability and intent to meet such compliance. The planning board reserves the right to hire a hazard waste expert to review the detailed plan at the expense of the owner/operator. The detailed plan will include procedures for the mitigation of adverse effects from the potential contamination of the project area, abutting properties, and properties located downstream. This responsibility shall extend to safe and lawful disposal of the by-products of any Acid Rock Testing and Mitigation Plan.

G. Light Pollution

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

H. Relation to DEP Certification and Permitting

If the Maine Department of Environmental Protection (DEP) has issued a Site Location of Development Act permit for an IWEF there is a rebuttable presumption that the development meets the requirements of this Ordinance. If a DEP Site Location of Development permit is required, the Planning Board will require the permit to be issued before the application is

deemed complete and may take the recommendations under advisement to determine compliance with this Ordinance.

I. Scenic or Special Resource Standards

In keeping with the “The Town of Sumner’s Goal is to preserve and protect natural resources and scenic views in Sumner as well as those it shares with Neighboring communities (Sumner Comprehensive Plan 2006:pg 5). See Appendix (---) Scenic or Special Resource Standards

J. Geological Stability

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

Section 22. General Performance Standards

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

See **General Performance Standards** in Appendix (---) for Details

Section 23. Blasting Plan and Requirements

The Owner/Operator of an IWEF shall not ever undertake any blasting without notifying the Town of Sumner and submitting a pre-blast survey of all non-participating property owners within a minimum of a 3 mile radius (measured horizontally) from the blast site. The survey shall include Baseline Radon Levels and Air & Water quality baseline levels and subsequent blasting plan in accordance with the latest State and Federal DEP Standards. The blasting plan shall be reviewed and approved by the Sumner Planning Board before any blasting takes place. If the Planning Board deems necessary, they may engage an Independent Licensed Engineer to review the blasting plan at the Owner/Operator’s expense. In addition, the Owner/Operator shall at their expense provide for Post-Blast testing and mitigation. A seventy-two hour notice shall be given to all residents within a two mile radius of the blasting area (measured horizontally) before blasting can begin. **See Blasting Plan in Appendix (---)**

Communications and Electromagnetic Interference Standards

See Appendix (---)

Risk Assessment for Road and Property Use

An application for an IWEF Site Permit shall include a road and property use and risk assessment plan See Appendix (---) for Road & Property Use

Section 24. Emergency Shutdown Plan and Requirements

An Application for an Industrial Wind Energy Facility Site Permit shall include an emergency shutdown plan. The plan shall describe the circumstances under which an emergency shutdown may be required to protect public safety, and shall describe the procedures that the Town and the Owner/Operator and Licensee will follow in the event an emergency shutdown is required. See Appendix (---)

Section 25. Complaints, Violations, Enforcement

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 or Operational License issued under this Ordinance.

A. Enforcing Authority

The Planning Board will serve as the Enforcing Authority for IWEF's. The Planning Board will:

1. Have the authority to conduct investigations, resolve complaints, ensure compliance with and enforce standards, and levy penalties if required.
2. Appoint qualified representatives to investigate complaints. The reasonable costs and fees for the qualified representative will be paid by the Owner/operator and may include engineers, consultants, lawyers and other professionals.
3. The planning Board shall have the authority under this ordinance to propose amendments to this Ordinance. To propose amendments to be added to a Warrant to be voted on at the Annual Town meeting or a Special Town meeting to this Ordinance deemed necessary to address health or safety concerns not currently addressed in this Ordinance.
4. Have access to legal counsel as required and paid for by the Owner/Operator of the IWEF.

B. Enforcement

Standards in this Ordinance will be enforced through a series of enforcement options. See Appendix (---)

C. Penalties

Any Person or Applicant who fails to comply with any provision of this Ordinance by failing to reach agreement with the Planning Board shall be penalized. See Appendix (---).

Section 26. Appeals

A. The Board of Appeals shall have the power to hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board.

B. The Board of Appeals may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The Board of Appeals may only review the record of the proceedings before the Planning Board. The Planning Board shall not receive or consider any evidence that was not presented to the Planning Board but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Planning Board's proceedings is inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

C. For the purposes of hearing appeals, at a minimum, all property owners and residents within the Town of Sumner shall be deemed to have interested party standing. The Appeals Board may grant other individuals interested party standing as special circumstances warrant. All interested parties must be sent notice by certified mail with mailing costs paid for by the Applicant. The Appeals Board will give interested parties a reasonable and appropriate amount of time to present information and rebuttals. A final Town vote as outlined in this Ordinance shall not be subject to Appeals Board review.

Section 27. Decommissioning Standards

(See Appendix H)

Decommissioning is expected to be completed by the Owner/Operator within six months of reaching the end of useful life. This includes the removal of turbines, towers, poles, power lines, buildings, etc. unless expressly waived in writing by the PB. Foundations are to be removed to a depth of 36" and fill placed in the excavation with appropriate grading of all land within the facility. Plantings are considered part of the decommissioning as well as the removal of roads.

Decommissioning will not be deemed complete by the PB until an environmental assessment, commissioned by the Town at the OO's expense, has certified the facility as fully decommissioned and free of any and all environmental hazards.

Proof of Financing:

See Appendix

Section 28. Property and Business Value Guarantee (See Appendix G)

A. Any IWEF, to be located within the Town of Sumner, shall enter into a "Property Value Guarantee" agreement with any/all Non-Participating Property Owners who:

1. own property within a two and one half mile (2 ½) (measured horizontally) radius from the base of each proposed IWT to be constructed, or who have a direct line-of-sight and can argue that this has impacted the value of their property or business, and
2. have not signed any mitigation waivers.

This shall be a legally binding contract with the Owner/Operator or its designees and Property Owners. Each of these contracts must be submitted with the application of the IWEF.

B. The Applicant, at their costs, shall provide written notification no less than thirty (30) days to all Property Owners (within 2.5 miles) (measured horizontally) regarding the Property Value Guarantee Agreement prior to submission of a permit application to the Town of Sumner Planning Board.

C. Written notification shall be sent via certified mail, return receipt requested, and must include a detailed description of the Property Value Guarantee Agreement, as well as clearly defined instructions regarding the Property Owners participation.

D. Additional certified written notification also requiring return receipt confirmation (at Applicant's costs) must be sent within 14 days of the issuance of a Development Permit and/or notification, advising that any/all participating Property Owners must enter into a Property Value Guarantee Agreement within 180 days of the Development Permit and/or notification.

E. Notice must include a clear and concise description of the process that will be used in establishing a pre-development baseline of property values. Notice shall also include but is not limited to all Property Owners legal rights and obligations under the Property Value Guarantee Agreement and a copy of the Property Value Guarantee. Property Value Guarantee shall be legal and binding for both the Applicant (Guarantor) and the Property Owners and shall be as follows: (See Appendix)

Section 29. Tax Valuation Agreement and Tax Impact Statement

A. Tax Valuation Agreement

1. IWEFs that have a taxable property value of greater than \$10 million dollars; or, if the project will be qualified as a "designated business" for the purposes of state tax incremental financing as defined in Title 30-A M.R.S.A. §5241, are required to have a written agreement between the Town of Sumner and the Owner/operator designating the financial methodology that will be used for tax valuation purposes ("Tax Valuation Agreement").
2. The Tax Valuation Agreement must be in a format approved by the Town of Sumner Select Board, with advice of legal counsel, and comply with all applicable state and federal tax codes and laws.
3. The Tax Valuation Agreement must include a financial projection of the tax valuation for the useful life of the project and be prepared by a qualified CPA and reviewed by a qualified tax attorney selected by the Town and paid for by the Applicant.

B. Tax Impact Statement

A Tax Impact Statement must be prepared and presented to the Town. It will contain year-by-year for 10 years estimates of Sumner's resident's tax burden using the following data: 1) re-appraised values for all residents within 3 miles of the IWEF, 2) State re-assessment for school tax amounts (assume constant school budget and constant contributions from Towns other than Sumner), 3) other residents properties are presumed to stay at their same value. This Tax Impact Statement will be prepared by an Accountant hired by the Town at Owner/operator's expense. The Tax Impact Statement will be presented to the Town for information.

Section 30. Jurisdiction across Multiple Municipalities

This section addresses issues unique to the geography of the Town of Sumner and its neighboring towns with which it shares a common boundary. In the event that potential sites for IWEF's share multiple municipal jurisdictions, project permits should 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.

This Ordinance applies to IWEF's located wholly or partially in the Town of Sumner to the fullest extent allowable by municipal, state, and federal law.

Approval to build or operate an IWEF applies only to that portion of the IWEF located within the boundaries of the Town of Sumner. However, the application must take into account the entire IWEF 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 IWEF located in the Town of Sumner.

Setback, Noise, Shadow Flicker and Mitigation Waiver standards for IWEF's located and operated in the Town of Sumner shall apply to property lines and roads irrespective of Town boundaries. For the purpose of this section a resident of such abutting towns is afforded the same protections as a resident of Sumner.

This subsection applies to IWEF's that are located partially in Sumner and partially in neighboring Towns. To receive a permit from the Town of Sumner for that portion of the IWEF located in the Town of Sumner, the Owner/Operator shall agree in writing that the most protective setback and noise ordinance standard from any Town located within the IWEF area shall control. The controlling ordinance must be in effect at the time the permit is granted.

The Town Clerk shall forward notice of IWEF permit applications within 10 days of receipt, and notice of hearings and public meetings 14 days in advance, to the Selectmen and Planning Boards of adjacent communities for all IWEF if the neighboring community is located within a defined Setback of this Ordinance.

Section 31. Ethical Standards

A. Transparency, Public Participation and Highest Ethical Standards

All public deliberations and decisions regarding IWEF's be conducted in an open, transparent manner that encourages the broadest public participation and adherence to the highest ethical standards.

B. Public Access

All deliberations concerning IWEF's, 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 Title 1; Chapter 13; Subchapter 1. Specifically, all deliberations regarding IWEF's 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 IWEF's will be recorded and posted. Copies of all correspondence and e-mails will be made available to the public with the exception of those publicly identified and disclosed as being subject to "attorney-client privilege". 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.

C. Conflicts of Interest

The process to develop, permit and administer IWEF's 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 IWEF's. Conflicts of interest include but are not limited to:

1. having a lease as a Participating Landowner for a Wind Turbine or a lease for a 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 or related to an Applicant with a pending application for a IWEF, and
5. knowing there is a substantial opportunity to accept bids, receive remuneration, or employment valued at greater than \$1,000 on behalf of a wind development company.

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 IWEF's, with the exception of voting and debating as a private citizen at any public meetings and public hearings.

D. Code of Ethics for Wind Companies and Municipal Employees

1. Wind companies will not hire municipal employees or their relatives, give gifts of more than \$10 during a one-year period, or provide any other form of compensation that is contingent on any action before a municipal agency
2. Wind companies will not solicit, use, or knowingly receive confidential information acquired by a municipal officer in the course of his or her official duties.
3. Wind companies will establish and maintain a public Website to disclose the names of all municipal officers or their relatives who have a financial stake in IWEF development.
4. Wind companies will submit, in writing to the municipal clerk for public inspection, and additionally will publish in the local newspaper, the nature and scope of the municipal officer's financial interest.

5. All wind easements and leases will be in writing and filed with the County Clerk for public Inspection.

Section 32. IWEF Submission Standards and Fees

See Appendix (---).