

April 21, 2015  
Final Copy

**Town of Cherryfield**  
**Wind Energy Ordinance**

Section 1: Purpose

The purpose of this ordinance is to regulate the placement and construction of commercial wind energy systems, so as to preserve the Town's visual character, minimize adverse environmental impacts, and protect the public health, safety and welfare of the residents of Cherryfield.

Section 2: Authority

This ordinance is enacted pursuant to the Town of Cherryfield's home rule authority under 30-A M.R.S. section 3001 *et seq.* and Maine's growth management statute, 30-A M.R.S. section 4353.

Section 3: Effective Date; Applicability

(a) Effective Date.

This ordinance shall take effect upon approval by the voters of the Town of Cherryfield at a regular or special Town meeting or Town referendum election duly called for this purpose.

(b) Applicability.

Notwithstanding 1 M.R.S. section 302, this ordinance shall apply to all commercial wind energy systems proposed within the Town of Cherryfield that have not received final permit approvals from all applicable permitting authorities as of the effective date of this ordinance.

Section 4: Conflicts with Other Ordinances

In the event of a conflict between this ordinance and any ordinance of the Town of Cherryfield previously enacted, as related to commercial wind energy systems, the provisions of this ordinance shall be controlling.

Section 5: Permitting Authority

Installation or operation of a commercial wind energy system must be permitted through the Town of Cherryfield Planning Board. No person, entity, firm or corporation shall build or operate a commercial wind energy system in the Town of Cherryfield except in compliance with a final permit issued by the Planning Board following an application and hearing as provided in this ordinance.

The Planning Board shall have authority to approve a separate permit for one or more meteorological ("met") towers, for the purpose of evaluating the local wind resource on a proposed commercial wind energy system project site, prior to submission of a full project application under this ordinance. Permits for meteorological towers shall be submitted and approved in accordance

with the provisions of the Town of Cherryfield Land Use Ordinance, subject to the following additional requirements:

- i. Meteorological towers shall not exceed 400 feet height.
- ii. Meteorological towers shall be of free-standing mast, open lattice or monopole construction, with or without supporting cables or guy lines.
- iii. Permits for meteorological towers shall be valid for a maximum of five (5) years after final permit approval, with the tower to be removed within six (6) months after expiration of the permit, at the applicant's expense, unless the tower is subsequently incorporated into a full application for a commercial wind energy system permit as a permanent facility.
- iv. Prior to approval of a separate meteorological tower permit, the Planning Board shall require the applicant to provide a third-party estimate of tower decommissioning and removal costs. As a condition of permit approval, the Planning Board shall require the applicant to provide adequate security, in the form of a letter of credit, surety bond, performance bond or cash escrow, to fund decommissioning and removal costs.

#### Section 6: Permitted Locations

Subject to the other requirements of this Ordinance, wind energy systems shall be allowed only within the areas depicted in the area map attached hereto as Appendix 1.

In the event of uncertainty concerning the physical location of the permitted area boundary, the boundary as depicted in Appendix 1 shall be deemed to follow the nearest boundaries of tax map parcels depicted in the Town of Cherryfield assessors' maps existing as of the date of enactment of this Ordinance.

#### Section 7: Applications

Applications for approval of a commercial wind energy system shall be submitted and processed as applications for site plan review under section 5 of the Town of Cherryfield Land Use Ordinance. In addition to the application, fee and supporting materials required by section 5 of the Land Use Ordinance, the application shall include the following:

- i. Applicant's standing - evidence of the applicant's right, title or interest in the project parcel(s) sufficient to maintain a land use permit application. Evidence for this purpose may consist of a deed showing title in the applicant; a non-expired purchase and sale agreement or option to purchase; a lease or memorandum thereof; a non-expired option to lease; or written permission from the owner(s) of record to apply for the permit as agent for the owner(s) of record.
- ii. Site location map – a USGS quadrangle map (sized no smaller than 8 1/2" x 11") of the property on which the wind energy system is proposed, with the general area cross-hatched or otherwise graphically identified.

iii. Tax Map – a Town of Cherryfield property tax map (sized no smaller than 8 1/2" x 11") on which the wind energy system is proposed, with the property cross-hatched or otherwise geographically identified.

iv. Project description – including specific information regarding the type, size, tower type and height, rotor material and diameter, rated power output, performance, safety and noise, manufacturer, model and serial number of the wind energy system.

v. Site plan of the subject property – showing the planned location of the wind energy system as well as the location of and distance to setback lines, adjoining property lines, roads, easements, ROWs, habitable structures, utility lines, great ponds, streams and wetlands, proposed access roads, significant wildlife habitat, and any erosion control measures.

vi. Description of normal and emergency shutdown procedures – an automatic braking, governing or feathering system shall be required to prevent uncontrolled rotation.

vii. Copy of utility contract – if connecting to the publicly regulated utility grid is proposed, a copy of the Interconnection Feasibility study between the applicant and the utility verifying that the proposed construction is acceptable, and / or other evidence making clear that the utility is aware of the proposed connection and finds it acceptable.

viii. Photographs – photos of the proposed site.

ix. A visual analysis composed of elevation drawings of the proposed wind energy system and any other proposed structures, showing height above ground level. The analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the site that is intended to lessen the system's visual prominence.

x. A landscaping plan indicating the proposed placement of the tower on the site; location of existing trees and other significant site features; and the method of fencing, if any.

xi. Design documents or other evidence of compliance with the design standards of section 8(a) of this ordinance.

Upon request of the applicant, the Planning Board shall have authority to waive any submittal requirements under this ordinance or under section 5 of the Land Use Ordinance as provided in section 5(C)(1) of the Land Use Ordinance.

#### Section 8: Approval Standards

The Planning Board shall not approve an application for a commercial wind energy system unless a majority of the Planning Board members present and voting on the application affirmatively finds that the application and proposed project will meet the following approval standards:

(a) Design Standards.

i. All components of a wind energy system used to generate electricity including blades and all necessary parts shall have a radius of not more than two hundred seventy-five feet (275'); the minimum distance between the ground and any wind turbine blades shall be twenty-five feet (25') as measured at the lowest arc of the blades; and the wind energy system shall be designed such that unauthorized public access is prevented for a minimum of twelve feet (12') above the ground.

ii. A wind energy system shall be equipped with both manual and automatic over-speed controls.

iii. A wind energy system shall incorporate non-reflective surfaces to minimize any visual glare from the system's facilities.

iv. All on-site collection lines associated with the wind energy system shall be installed underground except for "tie-ins" to any public utility company transmission poles, towers and lines and /or generator lead lines. This standard may be modified by the Planning Board if the project terrain is determined to be unsuitable for underground installation. Generator lead lines may be installed above ground.

v. The wind energy system shall be lighted required by Federal Aviation Administration laws and regulations. To the extent allowed by such regulations, the system design shall incorporate proximity lighting or other lighting design features to minimize the visual impact of the system's facilities on other properties and "night sky" vistas.

vi. The wind energy system shall not display any permanent or temporary signs, writing, symbols, logos or any graphic representation of any kind except appropriate manufacturer's or installer's identification and warning signs.

(b) Electromagnetic Interference.

A wind energy system shall be designed and operated so as to minimize disruptive electromagnetic interference with signal transmission or reception beyond the project site. Complaints that the wind energy system, following construction, is causing disruptive electromagnetic interference beyond the project site shall be subject to the complaint resolution process set out in section 11(e) below.

(c) Setbacks.

All wind energy system towers shall be setback from all property lines of non-participating parcels a minimum of two thousand, five hundred feet (2,500'). All other facilities of the wind energy system (service buildings, generator lead lines, etc.) shall be subject to the setback requirements of the Land Use Ordinance. To provide a safety or "fall" zone, wind energy system towers that are set back less than 2,500 feet from the boundary line of a participating parcel shall be set back a minimum of 150% of the tower height from any occupied structures on the participating parcel concerned.

(d) Height.

A wind energy system shall have a maximum height of six hundred feet (600') as measured from the ground to the tower's highest point, including maximum blade sweep at the highest point of rotation.

(e) Noise.

The wind energy system shall not exceed 45 dBA as measured at the adjoining property lines of non-participating parcels and habitable structures, except during short-term weather events such as severe wind storms.

(f) Other Permits.

A wind energy system must receive all permits required by other governmental authorities to be approved under this ordinance. Other governmental permits include, without limitation, Site Location of Development Law approval by the Maine Department of Environmental Protection and any required wetlands permits from the Army Corps of Engineers. The Planning Board shall have authority to conditionally approve a permit under this ordinance for a wind energy facility subject to receipt of final permit approval from other governmental authorities.

(g) Community Benefit Agreement.

Applicants for approval of a wind energy system must demonstrate compliance with the host community benefit requirements of the Maine Wind Energy Act, 35-A M.R.S. section 3454. Upon preliminary approval of a host community benefit agreement for the project by the Cherryfield town selectmen, the Planning Board may conditionally approve a wind energy system application, such approval to become final without further action by the Planning Board upon final approval of the host community benefit agreement by the Cherryfield town meeting.

(i) Road Use Agreement.

Applicants for approval of a wind energy system permit must provide evidence that they have entered into a road use agreement with the Town of Cherryfield, satisfactory to and approved by the Town selectmen, to prevent or repair damage caused by operation of over-size and over-weight vehicles on Town roads during project construction. The Planning Board may conditionally approve a wind energy system permit, subject to compliance with this requirement prior to the start of project construction.

The Planning Board may waive the requirement of a road use agreement, if all access to the project for construction purposes shall be via state highways and / or private access roads. If the road use agreement is waived by the Planning Board, the project permit shall include a condition that no Town roads shall be used to access the project for project construction purposes.

(j) Decommissioning.



The applicant shall provide a third-party estimate of the cost of decommissioning and removal of the wind energy system at the end of its useful life and shall provide adequate security, in the form of a letter of credit, surety bond, performance bond or cash escrow, to fund decommissioning and removal costs. For this purpose, the Planning Board may accept the applicant's surety bond or other financial assurances provided to the Maine Department of Environmental Protection in connection with the applicant's Site Location of Development Law application, if the bond or other financial assurances include provisions granting the Town the right to access the security concerned in the event of a decommissioning default.

#### Section 9: Hearings

Upon a finding by the Planning Board that an application meets the submittal requirements of this ordinance, the Planning Board shall conduct hearings and render a decision as provided in section 5 of the Land use Ordinance.

As part of its review, the Planning Board shall conduct at least one public hearing at which residents of the Town of Cherryfield shall be entitled to express their views and provide information to the Board. In reaching its decision, the Board shall consider only that information presented that the Board determines to be relevant to the applicable approval criteria.

The Planning Board shall render a decision within the time required by section 5 of the Land Use Ordinance, unless the applicant consents in writing or at a public meeting of the Board to an extension.

#### Section 10: Appeals

Notwithstanding section 11 of the Land Use Ordinance, all appeals from the Planning Board's decision on a permit application shall be made to the Maine Superior Court, in accordance with Rule 80B of the Maine Rules of Civil Procedure. Any appeal for this purpose must be filed within thirty (30) days after Planning Board's final vote on the application.

#### Section 11: Enforcement

##### (a) Violations.

It shall be a violation of this ordinance to:

- (i) Construct or operate a commercial wind energy system without first obtaining the permit required under this ordinance;
- (ii) Construct or operate a commercial wind energy system without first obtaining any permit for the project required by other governmental authorities;
- (iii) Operate a commercial wind energy system following suspension or revocation of any required permit; or

(iv) Operate a commercial wind energy system in a manner contrary to the conditions or requirements of any required permit.

(b) Enforcement.

Any violation of this ordinance, including violations of permit conditions, shall be subject to prosecution and fines as a land use violation under 30-A M.R.S. section 4452, subject to the complaint resolution process set out in subsection (e) below, when applicable.

It shall be the duty of the Code Enforcement Officer (CEO) to enforce provisions of this ordinance. The CEO shall conduct on-site inspections of permitted projects to ensure compliance with all applicable laws and conditions attached to permit approvals. The CEO shall also investigate complaints of alleged violations of this ordinance. If the CEO finds a violation of this ordinance, he/she shall notify in writing the person responsible for the violation, indicate the nature of the violation and indicate the action necessary to correct the violation. This may include any discontinuance of illegal use of land, buildings or structures; work being done; removal of illegal buildings or structures; and abatement of nuisance conditions.

(c) Noise Complaints.

Upon complaint of an abutter, ambient and maximum decibel measurements shall be performed by an agent designated by the Code Enforcement Officer. The report shall be submitted to the Planning Board for information.

If the maximum decibel rating is exceeded, the owner of the commercial wind energy system shall be notified by the CEO in writing and given ninety days (90) from notification of the violation in which to correct the violation.

(d) Legal Actions.

When written notices of violation do not result in the correction or abatement of the violation, the CEO, in conjunction with the municipal officers, may institute any and all actions and proceedings. Such actions may be either legal or equitable, including seeking injunctions of violations and/or imposition of fines. The municipal officers may enter into administrative consent agreements for the purpose of eliminating violations of this ordinance and recovering fines without Court action, or by consent agreement in court. Fines for violations, including maximum fines, shall be as provided in 30-A M.R.S. section 4452. Fines will begin at \$100.00 per day. Every day the violation continues to exist following receipt of a written notice of violation shall be considered a separate offense. If the violation continues beyond 60 days, the minimum fine will double to \$200.00 per day. Administrative consent agreements shall not allow a violation of this ordinance to continue unless there is clear and convincing evidence that abatement of the violation will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

(e) Complaint Resolution Process.

Prior to commencement of legal action by the Town with respect to uncorrected violations of this ordinance based on resident or landowner complaints concerning noise or electromagnetic interference, the Town and the project permit holder shall engage in a complaint resolution process as follows:

i. The Town shall provide an initial notice to the permit holder, in writing, within thirty (30) days after the Town's receipt of a complaint. The Town's initial notice need not be in the form of a notice of violation. At a minimum, the Town and the permit holder shall hold a minimum of two informal meetings within thirty (30) days after the Town's initial notice, to attempt to resolve the complaint issue(s). The resident(s) or landowner(s) making the complaint shall be notified of the meeting dates and shall be given the opportunity to attend and participate.

ii. If the complaint has not been resolved at the first meeting, the Town and the permit holder shall each involve a senior manager at the second meeting.

iii. If the informal meetings fail to resolve the issue(s), the Town or the permit holder may request mediation before a qualified third-party within thirty (30) days following the second informal meeting. Mediation shall be by mutual agreement of the Town and the permit holder only. In the event the Town and the permit holder agree to mediation, each shall bear its own costs for participation in the mediation process, including payment of one-half of any mediation fees.

#### Section 12: Abandonment

A commercial wind energy system that does not generate electricity for sale to utility or commercial customers for twelve (12) consecutive months at any time after commencement of commercial operation shall be considered abandoned and shall be dismantled and removed from the property by the owner within one hundred twenty days (120) of receipt of notice from the town.

Upon failure of the owner to remove the system within the required period, the Town shall have the right, but not the obligation, to access the decommissioning fund or security for this purpose

The owner of a commercial wind energy system may request in writing that the Planning Board grant an extension of up to one (1) year if the owner is actively pursuing sale or repair of the wind energy system for a future resumption of use, or is actively seeking a new purchaser of the system's electricity production following expiration of a long-term power purchase agreement.

#### Section 13: Definitions

(a) Commencement of Commercial Operation. The date on which a commercial wind energy system first delivers electric power to utility or commercial purchasers through the regional electric grid.

(b) Commercial Wind Energy System. Non-utility facilities for generating and transmitting electric power from wind for sale to publicly-owned utilities or other purchasers via the regional electrical transmission grid. The term "commercial wind energy system" includes but



is not limited to wind towers, turbines, nacelles, blades, gearboxes, generator lead lines, meteorological ("met") towers, non-utility transformers and electric substations, service buildings and necessary private access roads.

(c) Collection Lines. Electrical lines installed as part of a Wind Energy System to collect power generated by individual Wind Turbines.

(d) Generator Lead Lines. Long-distance electrical transmission lines and associated towers, insulators, etc., installed in conjunction with a Commercial Wind Energy System for the purpose of transmitting power generated by the Commercial Wind Energy System as a whole to the regional electrical transmission grid.

(e) Non-Commercial Wind Energy System. Facilities for generating electric power from wind primarily for direct use by the owner of the facilities concerned on the same site, which may include incidental sales of excess electric power to public utility companies operating within the State of Maine through a system of "feed-in" tariffs, reverse metering or similar programs. To qualify as a non-commercial wind energy system, the power generation facilities proposed for any single parcel within the Town of Cherryfield must consist of three or fewer towers with a maximum tower height, including blade sweep, of 195 feet; with no turbine having a baseplate generating capacity rating of more than 100 kilowatts (kW). Non-commercial wind energy systems are not subject to the requirements of this ordinance, but shall remain subject to the applicable provisions of the Town of Cherryfield Land Use Ordinances.

(f) Occupied Structure. A building or other enclosed structure that is regularly used for residential, business, commercial, educational or recreational purposes that result in persons being within the building or structure concerned for extended periods on a daily or near-daily basis. Buildings such as storage buildings or vehicle barns that are subject to occasional, short or infrequent visits are not Occupied Structures for the purposes of this ordinance.

(g) Participating Parcel. Land outside of the Project Parcel, that nonetheless is subject to a deeded easement in favor of the Wind Energy System owner or developer, allowing effects of the Wind Energy System, such as noise, blade glint and shadow flicker, to extend onto the land that is subject to the easement.

(h) Project Parcel. All land owned or leased by the owner of a commercial wind energy system as a site for the location of generating facilities, including areas that are subject to a deeded wind energy easement allowing construction of Wind Energy Systems on the land that is subject to the easement.

(i) Tower. The structure supporting a wind turbine and nacelle. Towers for commercial wind energy systems shall be of a self-supporting monopole type, without an open latticework or supporting cables or guy lines. Notwithstanding section 3(E) and (3)(F)(9) of the Town of Cherryfield Land Use Ordinance, the enclosed area at the base of a monopole tower for a commercial wind energy system shall not be considered to be "floor area" for the purposes of the Land Use Ordinance's building height provisions.

(j) Wind Turbine. The blades, rotor, and associated mechanical and electrical conversion

components mounted on top of a supporting tower.

(k) Other Definitions. Other technical terms not expressly defined herein shall be defined as provided in the Maine Wind Energy Act, 35-A M.R.S. chapters 34 and 34-A and State of Maine regulations thereunder; The Maine Site Location of Development Act, 38 M.R.S. section 481 *et seq.* and State of Maine regulations promulgated thereunder; or if otherwise undefined, according to common usage and understanding within the wind energy industry.

Non-technical terms not expressly defined herein shall be defined as provided in the Town of Cherryfield Land Use Ordinance. If not defined in the Land Use Ordinance, they shall be given their common or ordinary meaning (“dictionary” definition), unless the context within this ordinance clearly requires a different construction.



Cherryfield Historic District Map Detail (L. Hubbell 1991)

