Town of Canaan, New Hampshire

Proposed Ordinance for
LARGE WIND ENERGY SYSTEMS

For Warrant Article March, 2018

Recommended by the

CANAAN PLANNING BOARD

December 14, 2017

ORDINANCE FOR LARGE WIND ENERGY SYSTEMS

Town of Canaan, New Hampshire

I. PURPOSE:

The purpose of this Ordinance is to provide for the development and use of wind power as an alternative energy source, benefiting both the economy and the environment, while protecting public *health*, safety, property values, wildlife, and general welfare; preserving environmental, historic and scenic resources; controlling *sound pressure levels*; and preventing electromagnetic interference.

This Ordinance provides regulation for Large Wind Energy Systems (*LWES*) which produce between 1 MW and 30 MW of electrical power. The N.H. SEC has only discretionary jurisdictional authority over systems within this power range. This ordinance is intended to provide a municipal ordinance, as contemplated by RSA 162-H:4, IV(a). This ordinance also provides guidance to the N.H. Site Evaluation Committee (N.H. SEC) regarding any proposed *LWES* by establishing guidelines to ensure that such an *LWES* does not unduly interfere with the orderly development of the region as provided by RSA 162-H:16, IV (b).

This Ordinance is adopted pursuant to the enabling provisions of NH RSA 674:1 V, NH RSA 674:16, NH RSA 674:17(j), and NH RSA 674:21. In addition, pursuant to the provisions of NH RSA 674:43, the Canaan Planning Board is hereby granted the authority to require preliminary review of site plans and to review and approve or disapprove site plans and issue authorization for the construction or operation of Large Wind Energy Systems including Meteorological Towers, in the Town of Canaan, subject to these provisions.

If there is a conflict between provisions in this Ordinance, or between its provisions and those in any other Town ordinance or regulation, the provision which imposes the greater restriction or higher standard shall be controlling.

Amendments to this ordinance shall be approved by the voters of the Town of Canaan.

II. DEFINITIONS: The following terms shall have the meanings indicated:

Adverse Noise Impacts - Disturbances that interfere with customary speech and communications both indoors and outdoors, telephone conversations, reading, tasks requiring concentration, listening to music or television, and sleep.

Applicant - The person, firm, corporation, company, or other entity who applies for approval under this Section, as well as the applicant's successor(s), assign(s) and/or transferee(s) as to any approved *LWES* or testing facility. An applicant must have the legal authority to represent and bind the landowner or lessee who will construct, own, and operate the *LWES* or testing facility. The duties and obligations regarding approval for any approved *LWES* or testing facility shall be with the owner of the *LWES* or testing facility, and jointly and severally with the owner and operator or lessee of the *LWES* or testing facility.

Automatic Obstruction Lighting System - A lighting system that provides continuous 360-degree surveillance of the air space around a wind farm from the ground level to above aircraft flight

altitudes, automatically activating obstruction lighting when aircraft are detected at a defined outer perimeter and course of travel.

A-weighting - Sound measurement weighting that emulates human hearing at normal sound levels, which is most sensitive in the upper mid-range of frequencies and effectively reduces the lower and higher frequencies to emulate what the average person can hear.

background sound pressure level - The *sound pressure level* represented without the *wind turbines* operating and when man-made and natural intrusive sounds are at a minimum. The intent of this definition is to exclude *sound pressure level* contributions from intermittent *noises* such as traffic and emergency vehicles, and from seasonal natural sounds such as tree frogs and crickets that are not present year round.

blade glint - The intermittent reflection of the sun off the surface of the blades of a single *wind turbine* or multiple turbines.

C-weighting - Sound measurement weighting the lowest frequencies perceptible in human hearing as strongly as the mid-range and higher frequencies, more similar to human perception of very loud sounds 100 dB and above.

dBA - The *A-weight*ed unit of measure for the human response to *noise*, using an electronic filter as specified by ANSI approximating the frequency response of the human ear from 20 Hz to 20 kHz.

debris hazard - Hazard owing to the possibility that the parts of an *LWES*, or material (ice or other debris) accumulated on its rotating elements, could be dislodged and fall or be thrown some distance onto surrounding property.

FAA -The Federal Aviation Administration.

health - State of complete physical, mental and social well-being and not merely the absence of disease or infirmity

impact - Includes any effect on the environment, including sound and visual impacts such as changes in sound pressure, *noise* and light in the environment.

LWES - Large Wind Energy System; an electricity-generating facility with a generating capacity rated for full-load sustained output of over 1 megawatt and less than 30 megawatts, consisting of one or more *wind turbines*, including any substations, *met towers*, cables/wires, and other buildings accessory to such facility.

Leq -The equivalent continuous *sound pressure level* is a a single decibel value which takes into account the total sound energy over the period of time of interest.

LAeq - A-weighted noise parameter describing a sound level with the same Energy content as the varying acoustic signal measured.

LA10 - noise level exceeded for 10% of the measurement period, *A-weight*ed and calculated by statistical analysis.

LA90 - noise level exceeded for 90% of the measurement period, *A-weight*ed and calculated by statistical analysis.

LCeq - C-weighted noise parameter describing a sound level with the same Energy content as the varying acoustic signal measured.

LC10 - C-weighted noise level exceeded for 10% of the measurement period.

LC90 - C-weighted noise level exceeded for 90% of the measurement period.

met tower - A meteorological tower used for the measurement of wind speed.

natural environment - Includes navigable waters, waters of a contiguous zone, ocean waters and any other surface water, groundwater, drinking-water supply, land surface or subsurface strata, or ambient air, including wildlife, ecosystems, and habitat, and historical, cultural, recreational and archeological resources.

neighboring area - Canaan and abutting towns, Dorchester, Enfield, Grafton, Hanover, Lyme and Orange.

noise - Any unwanted sound or any sound that is not part of the *natural environment*.

non-participating landowners - Any landowner who is not a *participating landowner* pursuant to the definition below.

octave band - A band of sound covering a range of frequencies such that the highest is twice the lowest, as defined in ANSI Standard S 1.11.

one-third octave band - A band of sound covering a range of frequencies such that the highest frequency is the cube root of two times the lowest, as defined in ANSI Standard S 1.11.

participating landowner - Any landowner on whose property all or a portion of a Large Wind Energy System is located pursuant to an agreement with the applicant, or any landowner who has waived his or her rights for protection under this ordinance.

project boundary - A continuous line that encompasses all *wind turbines* and related equipment to be used in association with a Large Wind Energy System.

public infrastructure - Roadways, culverts, and bridges maintained by the Town of Canaan or State of New Hampshire.

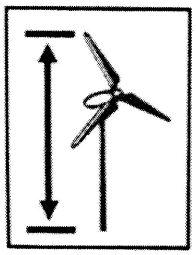
setback - The distance an *LWES* tower base, accessory structures and guy wires is set away from abutting property lines, structures, or other features.

shadow flicker -The effect when the blades of an operating *wind turbine* pass between the sun and an observer, casting a readily observable, moving shadow on the observer and his/her immediate environment.

sound power level - Ten times the logarithm to the base ten of the ratio of the sound power radiated by the source to a reference sound power, expressed in decibels (dB). The reference sound power is 1 picowatt (pW).

sound pressure level - Twenty times the logarithm to the base ten of the ratio of a given sound pressure to a reference sound pressure of 20 microPascals (uPa), expressed in decibels (dB).

total height - When referring to a *wind turbine*, the distance measured from ground level to the blade extended at its highest point.



tower shadowing - The shadow created on the surrounding area by the sun shining on a *wind turbine*.

useful life - The *LWES* or individual *wind turbine(s)* 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.

visual clutter - The accumulation of diverse built elements on a site, especially elements that contrast with their surroundings in form, color, texture, or pattern.

wind turbine - A wind-energy conversion system that converts wind energy into electricity through the use of a wind-turbine generator, blade, tower, base, and pad transformer, if any.

III. LARGE WIND ENERGY SYSTEM REQUIREMENTS:

A. Design, Manufacture, Construction, and Maintenance Standards

1. In order to minimize *visual clutter*, *wind turbines* shall use tubular towers of similar design, size, operation, and appearance throughout the project, which shall be painted a non-reflective, non-obtrusive color. Blades shall be coated or otherwise designed to minimize *blade glint*.
2. At *LWES* sites, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening, and landscaping that will blend with the existing natural setting and environment.
3. *Wind turbines* shall not be used for displaying any signs or advertising except for signs at ground level for reasonable identification of the manufacturer, owner, or operator of the *LWES*, the utility procuring the power, emergency contact information, and appropriate warnings as required by national, state, and local laws. Such identification shall not be illuminated. Any graffiti on *LWES* structures shall be removed as soon as practical.
4. Control wiring and power lines shall be wireless or below ground except where collector wiring is brought together for connection to the transmission or distribution network adjacent to the LWES. The Planning Board may permit above-ground wiring, if in the opinion of the Planning Board, its *impact*, including but not limited to environmental and visual *impact*s, is less than the *impact* of below-ground wiring.
5. The *applicant* for construction of an *LWES* shall not undertake any blasting without specific approval of such blasting during Site Plan Review. Terms and conditions for the blasting, including any necessary notifications, shall be specified during Site Plan Review, and shall be pursuant to a Blast Plan approved by the Planning Board and the Canaan Fire Chief.
    a. The *applicant* shall prepare an inventory of all structures, wells, bridges, and other seismically sensitive structures that could potentially be damaged by blasting.
    b. Before each blasting event, the *applicant* shall notify all participating and *non-participating landowners* whose property can be potentially damaged of the time and date of the event at least a week before the blasting. The *applicant* shall receive signature verification of such notice.
    c. Blasting mats shall be used to minimize flying rock traveling in the air or along the ground. Flying rock is not permitted to cross into the property of *non-participating landowners*.
    d. A blasting log for each blast shall be kept on site at the *LWES* office for not less than five (5) years, and copies of the required blasting log shall be promptly submitted to the Planning Board upon completion of construction of the *LWES*.
    e. Pre-blasting and post-blasting inspection and documentation may be required by the Planning Board.

f. If at any time during construction, operation, or maintenance of the *LWES*, the *applicant* wishes to modify the approved Site Plan, the *applicant* shall submit to the Planning Board an Amended Site Plan for review and approval.

6. Construction and maintenance activities shall be organized and timed to minimize *impact*s on residents and wildlife from *noise*, disruption (including disruption of wildlife habitat), and the presence of vehicles and people. Construction and maintenance, unless there is an imminent threat to life or property, shall be performed only on weekdays between the hours of 7am and 6pm. The Planning Board has the authority to waive this requirement if, in its opinion, there is good reason to do so.

B. Height

1. The total height of any wind turbine shall not exceed 350 feet.
2. *Met towers* must be less than 200 feet in height, and must be designed so as not to require lighting in compliance with *FAA* regulations. Guy wires are allowed on *met towers*, but must be designed so as to limit environmental hazards to wildlife, especially birds and bats.

C. *Setbacks*

1. All *LWES* tower bases, accessory structures and guy wires must be sited so as to be set back from adjacent property lines by at least 3 times the maximum height of the *wind turbine*.
2. The *applicant* shall submit a plan showing the required *setback* for each tower as a circle for a single tower or as a series of connected arcs centered on each turbine for multiple towers and submitted with the applicable *setbacks* graphically superimposed to scale on town maps identifying map and lot numbers, lot owners, structures, and lot property lines.

D. Communications Interference

Any *LWES* shall be sited and operated so that it does not interfere with emergency communications of any jurisdiction, television, telephone (including cellular and digital), microwave, satellite (dish), navigational, or radio reception to *neighboring areas*. The *applicant* shall be responsible for the full cost of any remediation necessary to provide equivalent alternate service or to correct any problems. Remedies may include relocation or removal of the *LWES*. The *applicant* of the LWES shall respond within ten business days to any request for a communications interference investigation by a property owner within a three-mile radius beyond the *project boundary*. Testing shall commence within that ten business day window. The *applicant* is responsible for mitigating the cause, within sixty business days from the determination of interference attributed to the operation of the *LWES* or, failing a determination of interference, the *applicant* shall provide certification from an N.H. licensed professional engineer confirming that the proposed project did not interfere with emergency communications of any jurisdiction, television, telephone (including cellular and digital), microwave, satellite (dish), navigational, or radio reception to *neighboring areas*.

E. *Sound Pressure Level* Limits and Measurement

The intent of this section is to preserve the quiet rural environment of Canaan and to provide protection from excessive *sound pressure levels* that cause adverse *impact*s to public *health*, welfare, and wellbeing, and to minimize *adverse noise impacts*.

1. *Sound pressure levels* produced by the *LWES* shall not exceed those specified by N. H. Site Evaluation Committee rules as measured at the project site property line. Any model used to predict *wind turbine noise* shall use the following parameters:

    a. Adherence to the ANSI/ASA S12.9-2013 Part 3 standard;

    b. Measurements shall be conducted at the property lines of the nearest properties from the proposed *wind turbines* that are representative of all properties within 2 miles of any turbine;

    c. Sound measurements shall be omitted when the wind velocity is greater than 4 meters per second at the microphone position, when there is rain, or with temperatures below instrumentation minima; following ANSI/ASA S12.9-2013 Part 3 protocol, and shall comply with the following additional specifications:

        i. Microphones shall be placed 1 to 2 meters above ground level, and at least 15 feet from any reflective surface;

        ii. A windscreen of the type recommended by the monitoring instrument's manufacturer must be used for all data collection;

        iii. Microphones should be field-calibrated before and after measurements;

        iv. An anemometer shall be located within close proximity to each microphone.

2. Pre-construction sound reports shall include a map or diagram clearly showing the following:

    a. Layout of the project area, including topography, *project boundary* lines, and property lines;

    b. Locations of the sound measurement points;

    c. Distance between any sound measurement point and the nearest *wind turbine*;

    d. Location of significant local non-turbine sound and vibration sources;

    e. Distance between all sound measurement points and significant local sound sources;

    f. Location of all sensitive receptors including schools, day-care centers, health care facilities, residences, residential neighborhoods, places of worship, and elderly care facilities;

    g. Indication of temperature, weather conditions, sources of ambient sound, and prevailing wind direction and speed for the monitoring period;

    h. Final reports shall include each of the following measurements:

        i. *LAeq*, *LA10*, and *LA90*; and

        ii. *LCeq*, *LC10*, and *LC90*;

3. Pre-construction sound prediction shall;

    a. Be conducted in accordance with ISO 9613-2 1996-12-15 standards and specifications;

    b. Include an adjustment to the *Leq* sound level produced by the model applied in order to adjust for turbine manufacturer uncertainty, such adjustment to be determined in accordance with the most recent release of the IEC 61400 Part 11 standard (Edition 3.0 2012-11); this standard anticipates that the analysis of *wind turbine* acoustic emissions

shall also consider *sound power level* and tonality for a batch of *wind turbines* as opposed to a single machine, pursuant to IEC 61400 Part 14 (First Edition 2005-03);

c. Include predictions to be made at all properties within 2 miles from the project *wind turbines* for the wind speed and operating mode that would result in the worst case *wind turbine* sound emissions during the hours before 8:00 a.m. and after 8:00 p.m. each day;

e. Disclose and account for other corrections for model algorithm error in the model;

f. Include no attenuation (zero) for ground cover or foliage; and

g. Include a plus-5-dB design margin to the predicted *sound pressure levels* to account for variations in meteorological conditions at the project site.

4. The predictive sound modeling study report shall include a complete description and the results of the modeling required above as well as a map with sound contour lines showing *dBA* sound emitted from the proposed wind energy system at 5 *dBA* intervals;

F. *Shadow Flicker*, *Tower Shadowing*, and *Blade Glint*

1. The facility shall be designed such that *shadow flicker* or *tower shadowing* falling on or in any *non-participating landowner*'s property or a public or private road shall be limited as follows:

   a. The *shadow flicker* or *tower shadowing* shall not exceed eight (8) hours per year in total.

   b. The traffic volumes of an affected road shall be fewer than 500 vehicles per day.

   c. The *shadow flicker* or *tower shadowing* shall not fall onto an intersection.

2. Blades shall be coated or otherwise designed to minimize *blade glint*.

3. Upon receipt by the Planning Board of a complaint of *shadow flicker*, *tower shadowing*, and/or *blade glint*, the Planning Board will consider the complaint and may require that the *LWES* operator submit a study certifying that *shadow flicker*, *tower shadowing* or *blade glint* present no deleterious effects for any occupied structure.

4. If *shadow flicker* and/or *blade glint* exceeds any of the conditions listed above, the source *wind turbines* shall be shut down until the *shadow flicker*, *tower shadowing*, or *blade glint* problem is remedied.

G. *Public Infrastructure*

The *applicant* shall not adversely *impact* any *public infrastructure* occasioned by or in any manner related to the installation, operation, maintenance, and repair or decommissioning of the *LWES*. The *applicant* shall provide documentation of written permission for any modifications to *public infrastructure*, including roadways and utilities, that may be required for the proposed *LWES*. This includes reimbursement to the Town or State for any repairs or reconstruction reasonably deemed necessary by the Town or State.

H. Erosion and Stormwater Control

1. All storm water management and erosion control measures shall adhere to the "Erosion and Sediment Control Design Handbook for developing Areas of New Hampshire", published by the Rockingham County Conservation District, dated August 1992, as may be updated and amended from time to time.

2. During the construction, operation, and decommissioning of the *LWES*, the *applicant* shall maintain any and all erosion and storm-water control practices described in the Erosion and Storm-Water Control Plans and Life Cycle and Decommissioning Plans submitted with the Application for Site Plan Review.
3. An application for an *LWES* approval shall include an Erosion and Storm-Water Control Plan prepared by an N.H. licensed engineer demonstrating compliance with this Ordinance.

I. Safety

1. Each *wind turbine* shall be equipped with both manual and automatic controls to limit the rotational speed of the blade to within the design limits of the rotor. All *wind turbines* shall be equipped with redundant braking systems. This includes both aerodynamic (including variable pitch) over-speed controls and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode, whereby they are engaged in the case of loss of load on the generator. Stall regulation shall not be considered a sufficient braking system for over-speed protection. A manual electrical and/or over-speed shutdown disconnect switch shall be provided and clearly labeled on/in the *wind turbine* structure.
2. The blade tip of any *wind turbine* shall, at its lowest point, have ground clearance of not less than 20% of the *tower height*.
3. Any *wind turbine* and/or accessory structure shall not be climbable within 15 feet of ground level.
4. The *LWES* shall be designed to prevent unauthorized access to electrical and mechanical components and shall have access doors that are kept securely locked at all times when service personnel are not present.
5. Appropriate warning and safety signage shall be placed on any *wind turbine*, accessory structure, and/or electrical equipment, and posted at all *LWES* entrances.
6. All structures over 100 feet high shall be self-supporting. No guy-wire-supported structures shall be permitted, with the exception of structures under 100 feet and *met towers*.
7. A sign bearing emergency contact information shall be posted near the tower(s) or operations and maintenance office building.
8. Signage shall be placed at the road access to warn visitors about the potential danger of falling and thrown ice and the *debris hazard*s.
9. Any *wind turbine* that is found to present an imminent physical threat of danger to human life, wildlife, or property, or that is found to exceed the *noise* standards of this Ordinance, shall be immediately shut down. Following repair or redesign to comply with the standards of this Ordinance, the *wind turbine* shall be certified to be safe and to comply with this Ordinance by an N.H. licensed professional engineer(s) prior to resumption of operation.

J. Rescue, Fire, and Hazard Protection

The *applicant* shall assure and provide documentation that the *LWES* complies with the following fire control and prevention measures.

1. A plan acceptable to the Select Board of Canaan, the Canaan Emergency Management Director, any contracted services secured by Canaan and the N.H. State Fire Marshal, for firefighting and rescue services year-round including water accessibility, any necessary

equipment, and/or training for local fire protection and rescue personnel, shall be prepared and updated annually. The full cost of implementing and maintaining the plan, including equipment, equipment maintenance, and staffing, shall be the responsibility of the *applicant*.

2. The *applicant* shall comply with all laws applicable to the generation, storage, clean-up, transportation, and disposal of hazardous wastes generated during any phase of the project's life
3. All structures and activities shall comply with the National Fire Protection Association (NFPA) Fire Code, including but not limited to the following (as updated): NFPA 1, 10, 12, 72 and 101, as well as the Recommended Practice for Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations, NFPA 850.
4. Nothing herein shall be construed to regulate the fire-fighting practices of municipal organizations responding to fire calls at the *LWES*.

K. Environmental *Impact*

The *applicant* shall take appropriate measures to minimize, eliminate, or mitigate adverse *impact*s on the *natural environment* during the entire life cycle of the *LWES* and shall comply with all Federal, State and local laws regulating environmental *impact*s. In making its determination under this section, the Canaan Planning Board shall require the *applicant* to demonstrate that the proposed *LWES* is consistent with the most current versions of the U.S. Fish and Wildlife Service *"Land-Based Wind Energy Guidelines, dated March 23, 2012" and the N.H. Site Evaluation Committee Rules, Chapters Site 100-300, adopted December 16, 2015*, and any recommendations of the New Hampshire Fish and Game Department and the Canaan Conservation Commission.

1. Environmentally Sensitive Areas - The plan for the *LWES* shall reflect the natural capabilities of the site to support development. Environmentally sensitive areas — including but not limited to wetlands, vernal pools, seeps or springs, steep slopes (greater than 15%), watersheds, floodplains, significant wildlife habitats, fisheries, habitat for rare or endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers — will be maintained and preserved to the greatest reasonable extent possible. The *applicant* shall demonstrate appropriate measures for protecting these resources during the entire lifecycle of the project.
2. Wildlife - The applicant shall provide a plan to minimize any adverse *impact* on area wildlife and wildlife habitat. Such analysis shall include but not be limited to adverse *impact*s on birds, bats, raptors, animals, migratory routes and habitat fragmentation. In addition, the *applicant* must demonstrate that the *LWES* will have no undue adverse *impact* on rare, threatened, or endangered wildlife. The wildlife and habitat analysis must include pre-construction field studies conducted by a qualified wildlife biologist selected by the Planning Board and paid for by the *applicant*.
3. Avian and Bat Species - The *LWES* shall be developed and operated in such a manner as to minimize adverse *impact*s on bird or bat species.
    a. All above-ground lines, transformers, or conductors should comply with the Avian Power Line Interaction Committee (APLIC, http://www.aplic.org/) published standards to prevent avian mortality.

b. The design and installation of the *LWES* shall avoid, to the extent practicable, the creation of artificial habitat for raptors or raptor prey; e.g., electrical equipment boxes on or near the ground that can provide shelter and warmth and horizontal perching opportunities on the towers or related structures.

4. Ground and Surface Water - The *LWES* will not adversely affect the quality or quantity of ground and surface waters. The *applicant* shall demonstrate to the Planning Board's satisfaction that there are no unusual risks caused by the *LWES*. The Board may require that spill prevention and control measures be installed, and that all activities involving potentially permeable pollutants, including at delivery and transfer points, be conducted undercover and over an impervious surface surrounded by dikes. Whenever sedimentation is caused by stripping vegetation or grading, it shall be the responsibility of the *applicant* to remove it from all adjoining surfaces, drainage systems, and watercourses and to repair any damage as quickly as possible at the *applicant*'s expense.

5. Historical, Cultural and Archeological - Because the preservation of historic resources is very important to the Town of Canaan, the *applicant* shall be required to:

   a. Inventory and map all historically significant sites located within two thousand (2000) feet of the proposed *LWES* project area, including but not limited to structures, roadways, cellar holes, mines, and sites of geological significance.

   b. Provide a plan outlining how the *applicant* proposes to minimize the *impact* of construction and ongoing operation of the *LWES* on those sites. As a condition of approving the *applicant*'s Historical, Cultural and Archæological protection plan, the Planning Board may require specific *setbacks* of *LWES* structures or roadways from significant sites and/or other actions that protect or restore items of historic significance.

L. Visual *Impact*

1. An *LWES* shall be designed and located so as to minimize visual *impact*s, including *visual clutter* and *impact*s caused by any lighting, and so as not to dominate views from residential areas, cultural resource areas, major public ways, public recreational and scenic areas, trails used by the public, or open space within the Town.

2. Dominance is determined by how an *LWES* will be seen within its visual context and occurs when the project would cause a change in the balance or feel of the character of the surrounding area or create a very dominant focal point that detracts from other important natural or cultural focal points. (Reference: *A Visual Impact Assessment Process for Wind Energy Projects,* Vissering, Sinclair, and Margolis, May 2011.) Some of the factors to be considered in evaluating the degree of dominance are:

   a. appearance of proximity,

   b. duration of view,

   c. expectation for natural or intact landscape setting,

   d. uniqueness of a scenic resource,

   e. whether the view is directly ahead over extended distances, and

   f. whether large numbers of turbines are visible in many views.

3. All available mitigation techniques to reduce the visual *impact*s of the *LWES* shall be considered, including methods prescribed by the American Landscape Institute. The use of *Automatic Obstruction Lighting System*s is mandatory for *wind turbines* with *FAA* lighting.

4. Photographic simulations shall be provided from potentially sensitive public and private viewpoints. The Planning Board may request that particular viewpoints be illustrated. Such locations could include the center of Town, public recreation areas, historic sites, and scenic sections of Town or State roads. Simulation photographs shall be taken and illustrated on 11" x 17" printed copies for each simulation. If several photographic frames are required to illustrate the breadth of the project from a particular viewpoint, illustrations shall be provided of each frame, plus a combined panoramic view. Any visible roads, site clearing, and all project infrastructure shall be depicted on the simulations. The report shall employ a standard visual-*impact*-assessment methodology for detailing what the visual *impact*s of the project would be and explaining why these may be acceptable or unacceptable.

5. The *applicant* shall identify all mitigation methods proposed, if any, to address the potential visual *impact*s of the *LWES*. These methods may include turbine siting and distance between towers; reductions in turbine height or numbers; design and size; hazard lighting mitigation by employing *Automatic Obstruction Lighting System*s; underground placement of collector lines; and other methods. The Planning Board may require additional mitigation measures to minimize the *impact* on scenic resources of the Town.

M. Financial, Technical, and Managerial Capability

Applicant shall demonstrate to the Planning Board that it has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of this ordinance.

IV. APPLICATION PROCEDURE AND REQUIREMENTS

A. Application for a new or replacement *LWES* shall be filed and processed in accordance with the Town of Canaan Planning Board's regulations and the provisions below. In case of any conflict with the regulations, the stricter requirement shall apply. Each of the studies and reports required below shall contain the information required by this Ordinance. If an application does not contain sufficient information to demonstrate compliance with the requirements of this Ordinance, the Planning Board shall reject the application as incomplete as provided by RSA 676:4, I (c).

B. An application for *LWES* is presumed to have regional *impacts*. Therefore the procedure shall include notification per NH RSA 36:54 - 57.

C. Submission Requirements: In addition to standard Planning Board requirements, an *applicant* for an *LWES* shall submit the following:

1. A Financial Resources Plan demonstration satisfactory to the Planning Board that the *applicant* has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of this ordinance. This Plan shall include the *applicant*'s proposal for performance guarantees for completion of the following: (1) street work; (2) public safety and fire response improvements; (3) stormwater and erosion control measures; (4) wildlife and other ongoing studies; (5) wetlands, wildlife or other mitigation measures; (6) decommissioning, including

site restoration; and (7) completion of such other studies, improvements or mitigation measures required by the Planning Board pursuant to this Ordinance. The *applicant*'s Financial Resources Plan shall provide for a performance guarantee in the form of a performance bond or some other type of indemnification acceptable to the Planning Board. The Financial Resources Plan shall include a cost estimate prepared by an N.H. licensed professional engineer of the above items for review by the Town's engineering or financial æconsultant.

2. Plans prepared and stamped by an N.H. licensed professional engineer that show the location, shape, size, color, materials, textures, landscaping, design, and *total height* of all proposed components of *met towers* and *LWES*, including the proposed access to the project site (including Town and State roads) and associated transmission lines.
3. A location map to scale of current and planned land uses within the *project boundary* and a one-mile radius beyond the *project boundary*, showing the location of all proposed wind turbines and required *setbacks* for each, and that identifies *participating landowners*. These maps must be prepared by an N.H. licensed land surveyor.
4. A site grading and clearing plan that shows all areas to be cleared and all grade changes. The plan shall include details on the collector lines, locations and heights of poles, clearing limits for aboveground lines, substations, transmission line details, and upgrades or changes to existing power lines. This plan should delineate environmentally sensitive areas.
5. Historical, Cultural, and Archæological Inventory and Resource Map prepared by an N.H. licensed land surveyor, and *applicant*'s plan to minimize *impact* of *LWES* construction and operation on these sites.
6. Environmental Resource Map prepared by a qualified N.H. licensed land surveyor.
7. Intended period of data collection for the *met tower*.
8. Certification of the non-reflecting properties of the external surfaces of the *LWES*.
9. Calculations and supporting data for all *setbacks* for each turbine.
10. List of property owners whose property wholly or in part falls within the *setback* areas specified in Section III. C., including copies of any and all agreements with *participating landowners*.
11. Studies and Reports as required by the Planning Board, including but not limited to those listed below. The cost of any required study, report, plan, mitigation effort, or any other work required to be done by the Planning Board, is the full responsibility of the *applicant*.
    a. *Sound Pressure Level* Study, including all of the applicable reports and information required by Section III.E. of this Ordinance.
    b. Rescue, Fire, and Hazard Protection Plan
    c. Road and Property Risk Assessment
    d. Wildlife and Bird *Impact* Study and Protection Plan
    e. Groundwater and Surface Water Quality studies
    f. Visual *Impact* Assessment, including photographic simulations. The Planning Board may request that particular viewpoints be illustrated.
    g. Communication Interference Certificate
    h. *Shadow Flicker*, *Tower Shadowing*, and *Blade Glint* study
    i. Safety Plan
12. StormWater Management Plan: pre- and post-decommissioning.
13. Erosion Control Plan.

14. A Complaint Resolution Plan to address any complaints from affected parties during construction and over the life of the operation. The Plan shall identify a contact person and a process for mediation.
15. Decommissioning and Site Restoration Plan as outlined in Section X (Decommissioning).
16. Landscape Plan showing restoration of disturbed areas after completion of construction.
17. Estimate of decommissioning costs prepared by an N.H. licensed professional engineer.
18. Blasting plan, including inventory of all potentially affected structures.
19. Any and all other State and Federal permits and approvals as may be required.
20. Any other information deemed necessary by the Planning Board in order to make an informed decision.

D. Permit to Construct.

1. Following site plan approval by the Canaan Planning Board and before commencing construction of an *LWES*, the *applicant* shall provide the Select Board with:
   a. documentation of planning board approval
   b. evidence of performance guarantee,
   c. a Town building permit.
2. On receipt of these materials the Select Board will issue a permit to construct.

E. Repowering.

When an *LWES* is planned for a retrofit, upgrade, reconstruction, substantial modification or any other significant change to the operating components of the turbine or its design specifications, for whatever cause or reason, which might affect its auditory, visual, or other *impact*s, the *applicant* must apply for, and obtain approval from the Planning Board before any portion of the *LWES* may be repowered.

F. Permit to Operate.

1. Following construction of an *LWES*, before commencing operation, the *applicant* shall apply to the Select Board for a Permit to Operate. The application shall include the following:
   a. An Inspection Report prepared and signed by an N.H. licensed professional engineer certifying the structural and operational integrity of the *LWES*, and completion of construction in accordance with all submitted and approved building, road, and lighting plans, and any other plans submitted to the Planning Board as required.
   b. A signed statement that the *applicant* and project site landowner(s) have read this Ordinance, understand all its provisions, and agree to abide by them.
2. Applications for a Permit to Operate will be heard at the next regularly scheduled Select Board meeting for which adequate legal notice has been posted. An Application for a Renewal Permit will be heard at the next regularly scheduled Select Board meeting for which adequate legal notice has been posted.
3. Before a permit to operate is transferred to a new owner or operator, the holder of the permit must satisfactorily demonstrate to the Planning Board that the new owner or operator has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of this Ordinance. An application to transfer ownership shall be considered as an application to amend the approved site plan and shall include a revised Financial Resources Plan and such other information as may be required by the Planning Board.

4. If a Permit to Operate is transferred to a new Owner or Operator, the new Owner or Operator is bound by all conditions, requirements, and financial obligations of the original permit.
5. A Permit to Operate may be revoked by the Select Board if an *applicant* or the *applicant'*s agent or successor in interest has performed work, erected a structure or structures, or established a use of land, which fails to conform to the statements, plans or specifications upon which the approval was based, or has materially violated any requirement or condition of such approval, or for other reasons as provided by RSA 676:4-a. The procedure for revocation shall be as provided by RSA 676:4-a or as specified by the Select Board in its approval.

V. ADMINISTRATION AND ASSOCIATED COSTS

A. At the time of formal submission of their application for the Site Plan Review, the *applicant* shall deposit funds into an escrow account in an amount acceptable to the planning board up to $50,000 depending on the scale of the project.

B. The purpose of this escrow account is to reimburse the town of Canaan for the costs incurred to hire consultants and experts as the Planning Board, at its sole discretion, deems necessary for the costs for notification of abutters and for the costs of special investigation and the review of documents and studies required by this ordinance by professionals retained by the Planning Board, and for other matters which may be required by particular applications.

C. The escrow account shall be managed as follows:

1. Funds may be withdrawn from this account only by the Planning Board.
2. If at any time the balance of this account shall fall below $15,000, the *applicant* shall, within 30 days of receipt of written notice, deposit an amount sufficient to bring the account to a minimum value determined by the Planning Board to be necessary for the costs of special investigations and review which may be required for the application.
3. The Planning Board shall deny an application if an *applicant* fails to pay for the costs of notice or other fees required by the Planning Board as provided by RSA 676:4, I (e)(2). If at any time the balance of this fund shall fail to maintain a balance of $15,000 or the amount specified by the Planning Board for a continuous period of thirty (30) days, the application shall be considered to have been withdrawn and the Planning Board shall deny the application as provided by RSA 676:4, I (e)(2).
4. The Select Board or its designee shall be charged with monitoring the escrow account and giving quarterly reports to the Planning Board and to the *applicant*.

D. Notwithstanding the above, the *applicant* shall be responsible for payment of all reasonable costs related to the Site Plan Review pursuant to RSA 674:44, V.

VI. EASEMENTS AND LEASES

A. Any landowner may grant an easement to the *applicant* for any *impact*s of the *LWES* on their property and shall advise all subsequent owners of the property that the standards permitted by this Section run with the land and are enforceable against the property owner. The terms of the easement shall be consistent with the current application for an *LWES*. All easements or leases shall include consent of the landowner to monitoring and inspections as required by the provisions of this Ordinance.

B. All leases and easements related to the *LWES* and the land on which it is located shall be recorded with the Registry of Deeds.

C. All easements and other agreements with *participating landowners* shall be submitted to the Planning Board for review to ensure that they meet the legal and other requirements of this Ordinance, including any conditions as may be imposed by the Planning Board.

VII. ONGOING REQUIREMENTS

A. Monitoring: Upon reasonable notice, Town of Canaan officials or their designated representatives may enter a lot on which an *LWES* has been approved for the purpose of monitoring *noise*, *impact*s on the *natural environment*, and other *impact*s that may arise, as well as to determine compliance with the approved Site Plan and the Permit to Operate. In such a case, the Town will provide the *applicant* with 24-hour advance telephone notice, followed by e-mail notification for the record.

B. The Planning Board shall require the following on-going studies to be completed for review and approval by the Planning Board, or its designee:

1. Post-construction Water-Quality Study:

   a. Within six (6) months of the first *wind turbine* becoming operational, and every twelve (12) months thereafter for a period of three (3) years, a water-quality study of all wells, springs, and water resources specifically identified during the Site Plan Review shall be designed and carried out by a water-quality professional approved by the Planning Board.

   b. Upon receipt of a substantiated complaint that the integrity or water quality of any well, spring, or water resource has been damaged by the *LWES* construction or operation, the Planning Board may require prompt investigation of the complaint by a water-quality professional approved by the Board, at the expense of the *applicant*.

   c. If degradation or contamination of any well, spring, or water resource is found to have occurred, the *applicant* shall be considered in violation of this Ordinance and its approved permit.

   d. The *applicant* is responsible for all costs associated with water-quality testing and corrective action if necessary.

2. Environmental *Impact* Studies: Recognizing the importance of wildlife as described in III.K.2., continuing environmental *impact* studies shall be required.

   a. At least every 3 years after a permit to operate has been issued, an environmental study shall be conducted by a qualified wildlife biologist approved by the Planning Board and paid for by the *applicant*.

   b. If the post-construction field studies demonstrate substantive harm to the *natural environment*, the *applicant* shall develop an appropriate mitigation plan for approval by the Planning Board after review by the Conservation Commission. The *applicant* shall be responsible for the full cost of implementing the mitigation plan.

   c. In addition, the *applicant* shall submit a quarterly report to the Select Board and Conservation Commission identifying all dead birds and bats found within 500 feet of the *LWES*. Reporting shall continue for at least three (3) years after the first *wind turbine* becomes operational, or longer if required by the Planning Board, during the site plan

review. In the event of an avian or bat mortality kill of threatened or endangered species, or discovery of more than six (6) dead birds or bats of any variety on site, the *applicant* shall notify the Planning Board, Conservation Commission and the New Hampshire Department of Fish and Game within 24 hours. Within thirty (30) days of the occurrence, the *applicant* shall submit a report to the Select Board describing the cause of the occurrence and the steps taken to avoid future occurrences. The Planning Board reserves the right to install and monitor video surveillance at the expense of the *applicant* as part of environmental-*impact* studies.

3. Decommissioning Costs. The owner shall submit an updated report of the total costs of decommissioning, prepared at the *applicant's* expense by an independent N.H. licensed professional engineer(s), to the Select Board every fifth year of operation. The updated report shall demonstrate that the owner has sufficient financial capabilities required to complete decommissioning as required by this Ordinance, the Financial Resources Plan approved by the Planning Board and any conditions of approval imposed by the Planning Board.
4. Noise compliance. Sound pressure levels produced by the LWES shall not exceed those specified by N. H. Site Evaluation Committee rules as measured at the site property line.
    a. All applicable post-construction noise monitoring surveys shall be conducted once within 3 months of commissioning, and once during each season thereafter for the first year; additional surveys shall be conducted at the request of Planning Board; adjustments to this schedule shall be permitted subject to review by the Planning Board.
    b. Post construction monitoring shall be performed by an independent N.H. licensed professional engineer qualified for acoustical monitoring.

C. Within thirty days of each monitoring survey, the owner shall submit to the Planning Board a *Noise-Compliance Report* certifying compliance with the *noise* requirements of this Ordinance and any conditions of approval imposed by the Planning Board. The report shall be prepared under the direction of an independant N.H. licensed professional engineer and shall be signed or stamped by this person. The owner shall be responsible for the costs for the Planning Board's review of the *Noise* Compliance Report which shall comply with the following:

1. Sound measurements shall be conducted in compliance with the most recent version of the American National Standards Institute (ANSI) Standards, ANSI/ASA S12.9 Parts 2 & 3. which define both short term attended monitoring and long term unattended monitoring.
2. Sound data shall be recorded with both *dBA* filtered and unfiltered down to 0.5Hz. Wind speeds shall be logged simultaneously with *sound pressure level* data.
3. Measurements shall be conducted at the property lines of the nearest properties from the proposed *wind turbines* that are representative of all properties within 2 miles of any turbine;
4. Post-construction sound monitoring reports shall include a map or diagram clearly showing the following:
    a. Layout of the project area, including topography, *project boundary* lines, and property lines;
    b. Locations of the sound measurement points; and
    c. Distance between any sound measurement point and the nearest wind turbine.

5. For each sound measurement period during post-construction monitoring, reports shall include each of the following measurements:

   a. *LAeq*, *LA10*, and *LA90*; and

   b. *LCeq*, *LC10*, and *LC90*;

6. *Sound pressure level* meters and calibration equipment shall comply with the most recent version of ANSI Standard S 1.4 "Specifications for General Purpose *Sound Pressure Level* Meters," and shall have a calibration traceable to the National Institute of Standards and Testing (NIST) performed within the preceding 24 months.

7. *Noise* measurements shall be taken at locations and times when the *wind turbine* is clearly audible and dominating the acoustical environment. All unattended measurements shall consider the *wind turbine* as dominating the acoustical environment.

8, *Noise* measurements shall be taken with the *wind turbines* on and off to determine any background *noise* to be accounted for. The *applicant* shall cooperate by shutting *wind turbines* off and turning them on during acoustic testing at times required by the acoustic monitoring personnel.

9. The acoustic-monitoring personnel shall determine if extraneous sounds such as those made by insects, frogs, or other wildlife are contributing to the measured *Leq* sound pressure level and remove their contributions either by relocating the measurement microphone to a spot not affected by such sounds or conducting testing at dates and times when such sounds are not present. The acoustic-monitoring personnel may correct the *Leq* sound pressure level using full or one-third octave band analysis to subtract wind turbine "off' levels from wind turbine "on" levels, and by removing data in one-third octave bands from the *Leq* computation that are contaminated by extraneous sounds.

10. The wind velocity at the sound-measurement microphone shall not exceed 4.5 mph during measurements of *background sound pressure level*, and the maximum wind speed at the microphone for *noise* measurements during turbine operation should not exceed 9 mph.

11. During *wind turbine* testing the atmospheric profile shall be Pasquill Stability Class E or F preferred, Class D as alternate. *Wind turbine* acoustic testing shall be conducted with hub-height wind speeds varying between cut-in and cut-out speeds.

12. The wind turbine shall be fully engaged blades-to-generator and running the standard power output program and producing the maximum power output for the incoming hub-height wind speed. Feathering or other blade angle manipulations that are not part of the normal *wind turbine* program to obtain maximum power output shall be prohibited during acoustic testing. If the *wind turbine* must be feathered due to a high wind condition for safety purposes, the testing shall be rescheduled.

13. *Wind turbine* power output and hub-height wind speed data at 10-minute or shorter intervals shall be provided to the acoustic-monitoring personnel by the *applicant* for the entire sound-measurement period.

D. Long-term unattended monitoring shall be conducted in accordance with the ANSI/ASA S12.9-1992 Part 2 (R2013), provided that audio recordings are taken in order to clearly identify and

remove transient *noises* from the data, with frequencies above 1250 hertz one-third octave band to be filtered out of the data;

E. Noise measurements shall be taken at locations specified by the Planning Board, to include, but not be limited to, those at which predictive sound modeling study measurements were taken pursuant to subsection E.3. above. The Planning Board may employ an N.H. licensed professional engineer, whose fees shall be paid by the *applicant*, for advice regarding these measurements.

VIII. PUBLIC INQUIRIES AND COMPLAINTS

A. Throughout the life of the project, including the decommissioning phase, the *LWES applicant* shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints. The Complaint Resolution Plan submitted with the initial application shall be used to resolve complaints.

1. Any individual, group of individuals, or reasonably identifiable entity may file a signed and dated written complaint with the *applicant* of the *LWES*. If any complaints are received by phone, the *applicant* shall inform the complainant that complaints must be submitted in writing. Any complaints received directly by the Select Board shall be referred to the *applicant*.
2. The applicant of the *LWES* shall report to the Select Board all complaints received concerning any aspect of the *LWES* construction, operation, or decommissioning as follows

   a. Complaints received by the *applicant* shall be reported to the Select Board or its designee within five business days; except that complaints regarding unsafe and serious violations of this Section shall be reported to public-safety personnel immediately, and the Select Board or its designee by the following business day.

   b. The *applicant* shall document each complaint by maintaining a record including at least the following information:

      i. Name of the *LWES* and the *applicant*,

      ii. Name of complainant, address, phone number,

      iii. A copy of the written complaint,

      iv. Specific property description (if applicable) affected by complaint,

      v. Nature of complaint (including weather conditions if germane),

      vi. Name of person receiving complaint, date received,

      vii. Date reported to the Select Board or its designee, and

      viii. Initial response, final resolution, and date of resolution.

3. The *applicant* shall maintain a chronological log of complaints received, summarizing the above information. A copy of this log including copies of each written complaint, and a summary of the log by type of complaint, shall be sent on or before January 15, March 15, July 15, and October 15 to the Select Board, covering the previous calendar quarter. An annual summary shall accompany the January 15 submission.

4. The Select Board shall forward copies of any *health*-related complaints to the Canaan Health Officer and the State Board of Health.
5. The Select Board may designate a person to seek a complaint resolution that is acceptable to the complainant, the Select Board, and the *applicant*. If such a resolution cannot be obtained, the Select Board may take action as authorized by Section I: Enforcement and Penalties.
6. The Select Board may at any time determine that a complaint shall be subject to enforcement and penalties as defined in Section I: Enforcement and Penalties.

B. This process shall not preclude the local government from acting on a complaint, and local provisions for complaint resolution shall prevail and supersede all *applicant* complaint resolution processes.

IX. ENFORCEMENT AND PENALTIES

A. The enforcement of this Section shall be the responsibility of the Canaan Select Board or its agent, who is hereby authorized to cause any *LWES* component, premises, use, or any related place to be inspected, and to order in writing the remedying of any condition found to exist in violation of this Section.

B. An *applicant*, owner or other person shall be deemed in violation of this Ordinance if such *applicant*, owner or other person violates any provision of this ordinance, any provision or specification of any application, plat, or plan approved by the Planning Board, or any requirement or condition of a permit or decision issued by the Planning Board or the Select Board.

C. Violation of this Ordinance shall result in such enforcement action, including but not limited to revocation of approval, fines, recovery of attorney's fees, or any other action authorized by law.

X. DECOMMISSIONING

The *applicant* shall provide a Decommissioning Plan as part of its Financial Resources Plan. The *applicant*'s Decommissioning Plan shall include the following requirements:

A. The *applicant* shall, at his or her expense, complete decommissioning (including site restoration) of the *LWES*, or individual *wind turbines*, within twelve (12) months after it is deemed unsafe, abandoned, or at the end of its *useful life*. The *LWES* or individual turbines will be presumed to be at the end of its *useful life* if no electricity is generated and sent to the power grid by it for a continuous period of (12) twelve months.

B. Site Restoration shall include:

1. Removal of *wind turbines*, buildings, cabling, electrical components, foundations, and any other associated facilities to a depth of two feet below the ground surface. Conduits buried deeper than two feet may remain in place, but all cables must be removed, and any pull boxes, junction boxes, transformer vaults, and other structures within two feet of the surface must be removed and remaining conduit ends permanently sealed and capped.
2. Removal from the property of all items in outdoor storage.
3. On-site-road and open-work-area removal, if any, to preconstruction conditions, excepting portions of roads useful for the proposed use of the site. The property owner or Town officials may approve retention of any roads that either may wish to retain. If any roads are

retained, excess paving and gravel shall be removed back to an appropriate width approved by the Planning Board, and the remaining areas loamed and seeded.

4. Regrading and revegetation necessary to return the subject property to the condition existing prior to establishment of the *LWES*. The restoration shall reflect the site-specific character including topography, vegetation, drainage, and any unique environmental features. If, in the opinion of the Planning Board, grades and vegetation existing at the time of decommissioning are sufficiently stable and well established, they may be allowed to remain.
5. Implementation of the post-decommissioning stormwater runoff plan.

XI. FINANCIAL ASSURANCE

A. As a condition precedent to obtaining a permit to construct an *LWES*, the *applicant* must submit an acceptable form of financial assurance including but not limited to cash, performance bond, or certificate of deposit. The amount of the financial assurance shall be established by the Planning Board and be based on what it would cost for the repair of *public infrastructure* and for the de-commissioning of the *LWES* and reclamation of the site in the event the *applicant* fails to do so.

B. The amount of financial assurance as prepared by the applicant and required in Section VII.B.3 shall be reviewed periodically by the Select Board to ensure that it equals outstanding decommissioning costs. Financial assurance may be adjusted, upwards or downwards, when required by the Select Board based on the applicant's study required in Section VII.B.3.

C. Such financial assurance shall be kept in full force and effect during the entire time the *LWES* facility exists or is in place, including decommissioning and site restoration. Such financial assurance shall be irrevocable and non-cancelable until such time as the Select Board certifies that decommissioning and reclamation are complete and releases the obligation.

D. If the *applicant* fails to remove the *LWES* and reclaim the site, the Town of Canaan may remove or cause the removal of the *LWES* and the reclamation of the site. The Town may recover the cost of decommissioning and reclamation from any financial assurance provided by the *applicant*. Any decommissioning and reclamation cost incurred by the Town that is not recovered from the *applicant* will become a lien on the property where the removal or reclamation takes place and may be collected from the landowner in the same manner as property taxes.

E. If the *applicant* fails to complete decommissioning within the periods prescribed above, the entry into and submission of evidence of a *participating landowner* agreement to the Town shall constitute agreement and consent of the parties to the agreement, and of their respective heirs, successors, and assigns, that the Town may take such action as necessary to implement the decommissioning plan.

F. The escrow agent shall release the decommissioning funds when the *applicant* has demonstrated and the Select Board concurs that decommissioning and site restoration has been satisfactorily completed, or upon written approval of the Town in order to implement the decommissioning plan.

G. The entry into and submission of evidence of a *participating landowner* agreement to the Town shall constitute agreement and consent of the parties to the agreement, and of their respective heirs, successors and assigns, that the Town may take such action as necessary to implement the Decommissioning Plan.

XII. CRITERIA FOR APPROVAL

The Planning Board shall approve an application, subject to conditions, only if the *applicant* demonstrates that all of the following criteria have been met:

A. The proposed *LWES* complies with all of the requirements of this Ordinance and the Town's Site Plan Regulations.

B. The proposed *LWES* will not have a negative financial *impact* on the Town.

C. The proposed *LWES* includes adequate financial and other assurances to ensure the continued operation and decommissioning of the proposed *LWES* in compliance with the terms of this Ordinance.

If an *applicant* fails to demonstrate that all of the above criteria have been met, the Planning Board shall deny the application as provided by RSA 676:3.

XIII. SEVERABILITY:

The invalidity of any provision of this Ordinance shall not affect the validity of any other provision, nor any prior decisions made on the basis of the valid provisions of this Ordinance.