TOWN OF RANDOLPH, NH

LAND USE ORDINANCE

AMENDMENT HISTORY

Adopted at Town Meeting on March 8, 1988
Amended at Town Meeting on March 14, 1989
Amended at Town Meeting on March 8, 1994
Amended at Town Meeting on March 14, 1995
Amended at Town Meeting on March 10, 1998
Amended at Town Meeting on March 9, 1999
Amended at Town Meeting on March 14, 2000
Amended at Special Town Meeting on November 13, 2001
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Amended at Town Meeting March 8, 2011
Amended at Town Meeting March 12, 2013
(Filed with the Town Clerk on March 18, 2013)

NOTE: This Ordinance is Subject to change by amendment. All amendments will be filed with the Town Clerk of the Town of Randolph and it is the responsibility of interested parties to consult the Town Clerk for the most recent amendments.

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Article I - TITLE

Pursuant to the authority conferred by New Hampshire Revised Statutes Annotated 674:16, 1986, as amended, for the purpose of promoting the health, safety, and general welfare of the Town of Randolph, New Hampshire, the following ordinance is hereby enacted by the voters of the Town of Randolph, New Hampshire. This Ordinance shall be known and may be cited as the Randolph Land Use Ordinance -- hereinafter referred to as "this Ordinance."

Article II - PURPOSE

In accordance with RSA 674:17, this Ordinance is designed to promote the health, safety, and general welfare of the inhabitants of Randolph, to protect the value of property, to prevent the overcrowding of land, to avoid undue concentration of population, and to facilitate the adequate provisions of other public requirements.

Article III - DEFINITIONS

For purposes of this Ordinance, words are to be given the meanings ascribed to them by this Article; words which are not defined herein are to be given the meanings ascribed to them by the Randolph Subdivision Regulations.

For purposes of interpretation, the present tense includes the plural; and the plural number includes the singular. The word "shall" is mandatory; the word "may" is permissive; the words "used" or "occupied" include the words "intended," "designed," or "arranged" to be used or occupied, and certain terms or words shall be interpreted as follows:

3.01 **ACCESSORY BUILDING OR USE.** A building or use located on the same lot as the principal building or use, and use of which is considered incidental to those of the principal building, such as, but not limited to, detached garages, swimming pools, and equipment sheds.

3.02. **ACT**. "Act" means the federal laws governing telecommunications facilities, as amended, including the Telecommunications Act of 1996, and FCC regulations promulgated thereunder.

3.03 **ANTENNA**. "Antenna" means any exterior apparatus designed for telephonic, radio, television, personal communications (PCS), pager network or any other communications through the sending and/or receiving of electromagnetic waves of any frequency and bandwidth.

3.04 **AUTOMOTIVE REPAIR SHOP**. Building where gasoline, oil, grease, batteries, tires, and automotive accessories are sold at retail; minor servicing and repairs are made;

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3.04 **AUTOMOTIVE REPAIR SHOP**. Building where gasoline, oil, grease, batteries, tires, and automotive accessories are sold at retail; minor servicing and repairs are made;

and cold drinks, candy, tobacco, and similar goods may be sold. Outdoor storage of motor vehicles that are both inoperative and unregistered is not permitted unless screened from view.

3.05 **CO-LOCATION**. "Co-location" means the use of an existing tower or an existing telecommunications facility, for multiple purposes or users.

3.06 **CONDOMINIUM**. An interest in real property subject to RSA Chapter 356-B, the New Hampshire Condominium Act, in which a unit or lot is owned individually together with an undivided interest in the common area appertaining to that unit or lot. Condominiums shall be considered a sub-division under the requirements of RSA 356-B.

3.07 **DRIVEWAY.** A private access way serving one or two dwellings or lots, except in the case of an open space development, which may have up to four dwellings served by one driveway.

3.08 **DWELLING**. A structure designed for residential occupancy by one or more families but excluding hotels, motels, tourist homes, overnight cabins.

3.09 **DWELLING UNIT**. A building or portion of a building which contains a single set of living quarters to be occupied by one family group only.

3.10 **FAA**. "FAA" means the Federal Aviation Administration.

3.11 **FCC**. "FCC" means the Federal Communications Commission.

3.12 **FRONTAGE**. The length of a lot at its front line which borders on a public street or a proposed public street that has been approved by the Planning Board.

3.13 **HEIGHT**. The vertical distance between a mean finished grade at the base of the structure and the highest point of the roof of a structure and, when referring to a tower or other telecommunications structure, the highest point on the tower or structure, even if such highest point is an antenna and including lightening rods or other apparatus

3.14 **HOME OCCUPATION**. A home occupation is that accessory use of a dwelling that shall constitute either entirely or partly the livelihood of a person living in the dwelling, subject to the conditions of Article 6.01.

3.15 **IMPACT FEE**: A fee or assessment imposed upon development, including subdivision, building construction or other land use change, in order to help meet the needs occasioned by that development for the construction or improvement of capital facilities owned or operated by the Town, including and limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; public road systems and rights-of-way; municipal office facilities; public school facilities; public safety facilities; solid waste collection, transfer, recycling, processing and

disposal facilities; public library facilities; and public recreational facilities not including public open space.

3.16 **LOT**. A parcel of land of at least sufficient size to meet the minimum requirements of this Ordinance for use, area, setback and other open spaces, and having frontage on a street.

3.17 **LOT LINE, FRONT**. Any lot line that coincides with a line of a street.

3.18 **LOT LINE, REAR**. The lot line most distant from the front line, except that in the case of a corner lot, the owner shall have the option of choosing which of the lot lines shall be the rear lot line.

3.19 **LOT LINE, SIDE**. Any lot line not a front or a rear lot line.

3.20 **MANUFACTURED HOUSING**. A structure, transportable in one or more sections, which exceeds either eight body feet in width or 40 body feet in length, built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities.

3.21 **MANUFACTURED HOME PARK** . Any tract of land on which two or more manufactured homes are parked and occupied for living purposes.

3.22 **MONOPOLE -** A type of mount that is self-supporting with a single shaft of wood, steel or concrete and a platform (or racks) for panel antennas arrayed at the top, constructed without guy wires.

3.23 **MULTI-FAMILY HOUSING**. A residential building designed for and occupied by three or more families, regardless of the type of ownership, such as, but not limited to, condominiums, apartments, or other common wall or row-type housing units of the same type. The number of families shall not exceed the number of single-family dwelling units provided.

3.24 **NON-CONFORMING USE**. A use which lawfully exists at the time this Ordinance becomes effective but which does not conform with the regulations of this Ordinance.

3:25 OPEN SPACE DEVELOPMENT. A purely residential subdivision of a tract of land carried out in accordance with the provisions of Section 6.06 below, where, instead of subdividing the entire tract into house lots of conventional size, a portion of the land is placed into permanent open space.

3.26 **PLANNING BOARD.** The Randolph Planning Board.

3.27 **PERMITTED USE**. A use of property which is allowed by right in the provisions of this Ordinance.

3.28 **PERSONAL WIRELESS SERVICE FACILITY** or PWSF'S or "facility" means any "PWSF" as defined in the federal Telecommunications Act of 1996, 47 U.S.C. section 332(c)(7)(C)(ii), and any amendments or revisions thereof, including facilities used or to be used by a licensed provider or an FCC-regulated provider of personal wireless services or any wireless telecommunications.

3.29 **RADIO FREQUENCY RADIATION** - The emissions from personal wireless service facilities.

3.30 **SETBACKS**:

Front: The depth of the front yard as measured from the street right- of-way to the front line of the closest building.

Side: The depth between the side of the closest building and the nearest side lot line.

Rear: The depth of the rear yard as measured from the rear lot line to the rear line of the closest building.

3.31 **SIGN:** Any placard, billboard, poster or other structure which is visible from a public street and is erected for the purpose of conveying a message by means of words or graphic symbols, and the word "signs" includes advertising signs and temporary signs, as defined in Section 6.02.

3.32 **SPECIAL EXCEPTION**. A use of a building or lot which may be permitted under this Ordinance only upon formal application to the Board of Adjustment, and subject to the approval of that Board, when such use would not be detrimental to the public health, safety, and general welfare and only in cases where the words "Special Exception" in this Ordinance pertain.

3.33 **STREET**. A road, avenue, highway, and other public way. The entire width of the right-of-way whether unimproved or improved is included in the definition.

3.34 **STRUCTURE**. Anything constructed or installed or portable, the use of which requires a location on a parcel of land. It includes a movable structure, while it is located on land, usable for housing, business, commercial, agricultural, storage or other purposes either temporarily or permanently. Structure also includes swimming pools, manufactured homes, external wood boilers, solar panels, fences, billboards, poles, pipelines, transmission lines, tracks and exterior signs. Tents or other shelters made of canvas or other fabrics erected and placed on the same property for four months or less in a twelve month period shall not be considered a structure. Trailers used as residences for more than four months in a twelve month period shall be considered as structures.

3.35 **TELECOMMUNICATIONS FACILITY**. "Telecommunications Facility":

1. Includes "personal wireless service facilities" and all other wireless telecommunication facilities such as any structure, antenna, tower or other device which provides services including but not limited to commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), and personal communications services (PCR) and common carrier wireless exchange access services.

2. does not include any tower or antenna that is under 70 feet in height and is used solely for non-commercial purposes.

3.36 **TOWER** "Tower" means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers (not permitted by this ordinance), and including guy towers, monopole towers, and radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, any towers for providing PWSF or any wireless or conventional telecommunications facilities, alternative tower structures and the like.

3.37 **VARIANCE**. As defined in RSA 674:33, a relaxation of the terms of this Ordinance granted by the Board of Adjustment, on appeal, as long as it is not contrary to the public interest and if, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship, and so that the spirit of the Ordinance shall be observed and substantial justice done.

Article IV - PERMITTED USES

4.01 Every use now being made of land, structures, or buildings in the Town of Randolph, on the effective date of this Ordinance, may be continued and such use is not affected by this Ordinance.

4.02 The following uses are permitted in the Town of Randolph:

A. Residential uses:
   1. Single- and two-family dwellings.
   2. Farm buildings.
   3. Manufactured housing (single-family).
   4. Accessory uses customarily incidental to the permitted use such as buildings to house automobiles, equipment, supplies, pets, or animals.
   5. Open space development as provided for in Section 6.06.

B. Group facility uses:

   1. Municipal schools.
   2. Community center, park, or playground operated by the Town.
   3. Accessory uses customarily incidental to allowed uses.

C. Other uses: Agricultural, which includes dairy farming, greenhouses, animal and poultry husbandry, horticultural uses, pasturage, maple syrup production and timber harvesting.

4.03. The Board of Adjustment may authorize any one of the following additional uses by means of a Special Exception. Uses authorized by Special Exception shall remain in effect unless the activity for which such use was authorized shall have been abandoned. For purposes of this Section, abandonment shall be deemed to have taken place after a period of five (5) years during which there has been no exercise of such activity.

A. Hotels, motels, tourist accommodations, and/or lodging units.
B. Day care facilities.
C. Kennels (small animals).
D. Multi-family housing.
E. Warehouses.
F. Restaurants.
G. Home occupations as provided in Section 6.01
H. Retail establishments that include, but are not limited to, groceries, drugs, apparel, antiques, books, specialty goods, and/or tobacco.
I. Commercial removal of gravel, loam, rocks, clay, and/or sand in accordance with RSA 155-E.
J. Private schools.

K. Auto repair shops.
L. Church, parish house, or other religious use.
M. Membership recreational clubs and facilities.

4.04 A Special Exception will be allowed if the following conditions are met:

A. The specific site is an appropriate location for such a use.
B. Property values in the district will not be reduced by such a use.
C. No nuisance or unreasonable hazard shall result.
D. Adequate and appropriate facilities, including parking space according to parking guidelines on file in the Town office, will be provided for the proper operation and maintenance of the proposed use.

4.05 Additional conditions may be attached to the Special Exceptions by the Board of Adjustment consistent with the intent and purpose of this Ordinance to protect the health, safety, and general welfare of the Town's residents.

4.06 A non-conforming use permitted by Section 4.01 may be expanded in size or floor area, provided that the expanded structure be no nearer to the lot line or right of way than was the non-conforming distance of the original structure, and provided that the remaining setbacks are at least 25 feet.

4.07 A nonconforming use permitted by Section 4.01 which is partially or totally destroyed by obsolescence, fire, accident, or other cause may be repaired or replaced provided that the repaired or replacing structure be no nearer to the lot line or right of way than was the non-conforming distance of the original structure, and that the remaining setbacks are at least 25 feet.

4.08 All nonconforming lots on record at the Country Registry of Deeds prior to the enactment of this Ordinance shall be considered buildable lots only if all other requirements pertaining to the proposed use are met.

Article V - AREA REGULATIONS

5.00 **DRIVEWAY LENGTH**. Driveways for lots in proposed subdivisions shall not exceed 750 feet in length.

5.01 **LOT SIZE.** Each residential lot shall have a minimum of 80,000 conjoint sq. ft. (1.84 acres) of buildable land per dwelling unit. Buildable land is land which meets the minimum soil type requirements of the Randolph Subdivision Regulations. Lot sizes for group facilities, other permitted uses and special exceptions shall be determined by the Board of Adjustment.

[Definition of “conjoint:” 1. joined together; united; combined; associated.]

5.02 **Frontage.** All lots shall be accessed from a public or private street and shall have a minimum continuous frontage of 200 feet along that street.

5.03 **FRONT SETBACKS**. Every structure placed on a lot shall have a setback of at least 25 feet from the nearest right-of-way.

5.04 **REAR AND SIDE SETBACKS**. Every structure placed on a lot shall have a space of at least 25 feet from the side and rear property lines; however, minor extensions to structures, such as, but not limited to, greenhouses, bay windows, steps, stoops or porches, may project to a point no closer than 20 feet from the lot line.

5.05 **HEIGHT**. No structure erected on any lot shall exceed 35 feet in height, except that this restriction shall not apply to farm buildings.

5.06 **WATER SETBACKS**. No structure or paved area, excluding streets, driveways and bridges, shall be located within 100 feet of the ordinary high water mark of a perennial stream or body of water as defined by RSA 483-B:4.

The leaching field portion of any septic system shall be set back from the ordinary high water mark of a perennial stream or body of water, as defined by RSA 483-B:4, based on the receiving soil downgradient as follows:

A. For porous sand and gravel soils with a percolation rate equal to or faster than 2 minutes per inch, the setback shall be at least 125 feet.

B. For soils with restrictive layers within 18 inches of the natural soil surface, the setbacks shall be at least 100 feet.

C. For all other soil conditions, the setback shall be at least 75 feet.

5.07 **SLOPE**. No portion of a driveway shall exceed 12% in slope.

Article VI - GENERAL REGULATIONS

6.01 **HOME OCCUPATIONS**. The Board of Adjustment may grant a Special Exception for any home occupation upon finding that the criteria for a Special Exception have been met and if: (a) the home occupation is carried on wholly within the principal or accessory structure, and (b) objectionable noise, vibrations, smoke, dust, odors, heat, or glare shall not be produced.

6.02 **SIGNS AND OUTDOOR LIGHTING**.

A. For purposes of this Section:

i) the word "sign" shall have the meaning ascribed to

it in Section 3.27;

ii) the term "advertising sign" shall mean a sign which is erected, at least in part, for the purpose of publicizing a product or a service or of inviting, attracting or directing customers to a commercial establishment; and

iii) the term "temporary sign" shall mean a sign which is erected in connection with a specific event and which will cease to be relevant after such event occurs or is completed.

B. The area of a sign shall consist of the area of one side of such sign, including the surface containing a message plus any framing or molding and any air space contained within it, but excluding the supporting structure.

C. All signs, except temporary signs, shall be constructed of durable materials and shall be maintained in good condition and repair at all times.

D. Signs may be attached to buildings or be free-standing; but may not exceed 16 square feet in area and may not extend above the roof line of any building to which they are attached or, if free-standing, be more than 25 feet in height.

E. Signs shall not interfere with the line of sight for street traffic nor with the the passage of bicyclists or pedestrians, and shall be located outside of a road right-of-way or at least 15 feet from the near edge of the paved or gravelled surface of such road, whichever distance is the greater.

F. Signs on and indicating the existence of private property, including but not limited to those forbidding, regulating or guiding trespassing and hunting, and informational and directional signs relating to hiking trails and other recreational activities, are permitted, but shall be no larger than 2 square feet in area.

G. Advertising signs are not permitted unless they advertise a business located in the Town of Randolph and, except as provided in subsection J below, unless they are located on the premises where the business is carried on.

H. Existing residential uses and home occupations continued in accordance with section 4.01, residential uses allowed as of right under Section 4.02(A) and home occupations permitted as special exceptions under Section 6.01 are allowed one advertising sign, not to exceed five square feet in area, which contains the name and address of the occupant of the premises and the profession or nature of the business carried on within it.

I. All uses other than those referred to in subsection H shall be allowed three advertising signs, each of which may have a maximum area of 16 square feet.

J. The selectmen may authorize or establish multi-sign poles at street or road intersections, shall adopt uniform standards for the signs to be attached thereto, and may allow any business located in Randolph to attach a single panel to each such pole for the purpose of directing the public to the premises where such business is being carried on; and such panels shall be allowed in addition to any other advertising signs permitted under this Section.

K. Temporary signs, including real estate signs and construction signs, shall conform to these regulations, and shall be removed by the person or organization responsible for putting them up within 21 days after the occurrence or completion of the event to which they relate; if not so removed such signs may be confiscated by the selectmen and the cost thereof recovered from the responsible party.

L. Political signs are considered to be temporary signs and shall be treated in conformity with subsection K, except to the extent that state regulations provide otherwise.

M. External lighting on premises is permitted but shall be restricted to the minimum necessary to ensure safety and security or provide information, and shall not adversely affect adjoining property owners or the community.

N. Lighting of roads, driveways, parking lots, pedestrian ways or other facilities used by occupants or the public shall be directed downwards and shall be designed to avoid interference with the night vision of persons using public streets.

O. Lighting of signs for nighttime informational purposes is permitted but such signs shall be lighted by continuous, uninterrupted illumination only and shall be so designed that the source of light is not visible outside the premises.

P. Flashing lights, moving or mechanical objects or signs are not permitted for advertising or other purposes, except as used or authorized by public authorities to warn of danger and except for temporary decorations put up in connection with holidays, religious practices or other special occasions which do not adversely affect adjoining property owners or the community and which are removed within a reasonable time after the occasion to which they relate**.**

Q. The Randolph Site Plan Review Regulations may contain or authorize allowances with regard to specific uses governed by those Regulations which are inconsistent with the provisions of this Section; and those allowances shall prevail only to the extent of such inconsistency.

6.03 **MULTI-FAMILY HOUSING**.

A. All multi-family developments must comply with all other required local, State, or Federal regulations including, but not limited to, the Randolph Subdivision Regulations and the Condominium Act as may be amended.

B. Further information/investigation may be requested by the Board of Adjustment to ensure adequate protection of the future residents of the complex as well as of the community.

6.04 **PERMANENT AND TEMPORARY RESIDENCE.**

A. All permanent residences have to meet the requirements of the Land-Use Ordinance.

B. For purposes of this section, any structure, vehicle or other module or shelter which occupies the same site for more than four months out of a twelve month period and is used as a dwelling or sleeping place while on such site shall be deemed to be a permanent residence.

6.05 **TRANSPORTATION OF USED MATERIALS RESTRICTED**

No land within the Town of Randolph shall be used for the storage or disposal by burning, burying or otherwise, of any construction debris, used materials or other waste or superfluous objects or matter which does not result from activity carried out within the Town.

6.06 **OPEN SPACE DEVELOPMENT**

A. In conformance with RSA 674:21, the purposes of Section 6.06, among others, are as follows:

i To conserve open land, including those areas containing unique and sensitive natural features such as woodlands, steep slopes, streams, floodplains and wetlands by setting them aside from development;

ii To provide greater design flexibility and efficiency in the location of services and infrastructure, including the opportunity to reduce length of roads and utility runs required for residential development;

iii To reduce erosion and sedimentation by the retention of existing vegetation and the minimization of development on steep slopes;

iv To provide for a diversity of lot sizes, building densities and housing choices to accommodate a variety of age and income groups, and residential preferences, so that the community's population diversity may be maintained;

v To protect areas of the Town with productive agricultural soils for continued or future agricultural uses;

vi To provide for the conservation and maintenance of open land within the municipality to achieve the above-mentioned goals and for active or passive recreational use by residents;

vii To provide multiple options for landowners in order to minimize impacts on environmental resources (sensitive lands such as wetlands, floodplain and steep slopes) and disturbance of natural or cultural features (such as mature woodlands, hedgerows and tree lines, critical wildlife habitats, historic buildings and stone walls);

viii To provide standards reflecting the varying circumstances and interests of individual landowners and the individual characteristics of their properties; and

ix To conserve scenic views and elements of the municipality's rural character, and to minimize perceived density by minimizing views of new development from existing roads.

B. This ordinance is enacted by the Town of Randolph pursuant to NH RSA 674:21, I(h) and (i), innovative land use controls. This innovative land use control ordinance shall provide for all approvals, including the granting of conditional or special use permits by the Planning Board. Any decision made by the Planning Board under this innovative land use control ordinance may be appealed directly to Superior Court in the same manner provided for by statute for appeals from the Planning Board, as set forth in RSA 676:5, III and RSA 677:15. A waiver from particular requirements set forth in this Section may be employed by the Planning Board where the applicant demonstrates substantial compliance with the standards set forth in this ordinance.

C. Requirements

i The overall density in an open space development area shall not exceed that permitted by the soil lot size requirements of the Randolph Subdivision Regulations.

ii The maximum number of dwelling units in an open space development area shall not exceed the number permitted under Section 5.01.

iii A minimum of 50% of the parcel must be designated as protected open space, excluding lands with slopes over 25 percent, poorly drained soils and very poorly drained soils. All open space land shall be permanently deeded as open space and no re-subdivision shall be permitted.

iv All lots created shall have a minimum of 100 feet of street frontage.

v No open space development shall be approved unless it is reviewed and approved by the Planning Board and is in compliance with the Randolph Subdivision Regulations.

vi In all cases, residential lots shall provide state approved sewage disposal and an adequate water supply.

vii All open space land shall be permanently restricted from future subdivision and development. The following methods may be used, either individually or in combination, to preserve open space or common facilities:

a. Fee simple dedication to the Town of Randolph. The Town may, but shall not be required to, accept any portion of the common facilities provided there is no cost of acquisition to the Town and the Town agrees to, and has access to, maintain such facilities.
b. Homeowner or condominium association in accordance with state law. The applicant shall provide the Town with a description of all documents governing ownership, maintenance and use restrictions for common facilities. Membership in the association must be mandatory for purchasers of lots in the development.

c. Private conservation organization. The organization shall be acceptable to the Planning Board, the open space permanently protected, the conveyance contain provisions for reverter or retransfer in the event that the organization becomes unwilling or unable to continue carrying out its functions, and a maintenance agreement acceptable to the Planning Board is established between the applicant and the organization.

d. Dedication of easements to the Town. If so desired by the Town, easements may be provided to the Town provided there is no cost to the Town for acquisition of said easements, easements are accessible to the residents of Randolph, and a maintenance agreement is reached between the applicant and the municipality.

6.07 **PLANNING BOARD IMPACT FEES.**

The purpose of this section is to authorize the Planning Board, as a condition of subdivision or site plan approval, to require a developer to pay reasonable costs for off-site improvements occasioned by the development, as authorized by the New Hampshire Supreme Court in cases such as *N.E. Brickmaster, Inc. v. Town of Salem*, 133 N.H. 655 (1990) and *Land-Vest Properties, Inc. v. Town of Plainfield*, 117 N.H. 817 (1977), and in particular to comply with the Court's decision in *Simonsen v. Town of Derry*, 145 N.H. 382 (2000), that such fees cannot be imposed in the absence of an impact fee ordinance enacted under RSA 674:21, V.

A. The Planning Board may, as a condition of approval of any Site Plan or Subdivision, and when not inconsistent with applicable Board regulations, require an applicant to pay an impact fee for the applicant's fair share of off-site improvements to public facilities affected by the development.

B. Nothing in this section limits the existing authority of the Planning Board to disapprove proposed development which is scattered and premature, or which would require an excessive expenditure of public funds, or which would otherwise violate applicable ordinances and regulations. Nothing in this section shall limit the Board's authority to require off-site work to be performed by the applicant, in lieu of paying an impact fee, or the Board's authority to impose other types of conditions of approval.

C. The amount of any impact fee shall be calculated by the Planning Board as a proportional share of municipal capital improvement costs which is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee. Upgrading of existing facilities and infrastructures, the need for which is not created by the new development, shall not be paid for by impact fees.

D. In accord with RSA 673:16, II and RSA 674:21, V(c), impact fees shall be held in a separate, non-lapsing account, shall not be commingled with other Town funds, and shall be used solely for the capital improvements for which they were collected, or to recoup the cost of capital improvements made in anticipation of the needs which the fees were collected to meet. Such fees shall be paid out only upon order of the Planning Board or its designated agent.

E. An impact fee imposed under this section shall be assessed prior to, or as a condition for, final subdivision or site plan approval, and shall be collected prior to the issuance of any building permit, or at such other time as specified by the Board in its decision. In the interim between assessment and collection, The Planning Board may require a developer to provide a bond, letter

of credit or other suitable security so as to guarantee future payment of the impact fee.

F. Any portion of an impact fee which has not become encumbered, or otherwise legally bound to be spent for the purpose for which it was collected, shall be refunded, with any accrued interest:

(1) When a subdivision or site plan approval expires under the respective rules of the Board, or under the terms of a decision, without having become vested under RSA 674:39, and without any extension being granted by the Board; or

(2) When an approval is revoked under RSA 674:4-a; or

(3) Six years after its collection, or, if any extension of approval is requested by the applicant and granted by the Board, six years after such extension is granted.

G. As set forth in RSA 676:5, III, the assessment of any impact fee by the Planning Board under the authority of this section cannot be appealed to the Board of Adjustment, but may be appealed only to the superior court as provided by RSA 677:15, in the same manner as any other Planning Board decision concerning a subdivision or site plan. Notwithstanding Article 11 of this Ordinance, the Board of Adjustment shall not have authority to hear appeals of, or grant variances from, such an assessment.

Article VII - TELECOMMUNICATIONS EQUIPMENT AND FACILITIES

7.01 **FINDINGS.** The Town of Randolph finds that regulation of the placement, spacing, installation, location and number of both wireless and conventional telecommunications facilities, consistent with federal and state policies and law, is in the public interest (a) in order to reduce the potential adverse impacts of such facilities upon the unique natural assets of the Town, including its scenic mountain views, its recreational trail network accessing the White Mountain National Forest and its wilderness environment; (b) in order to minimize the number and height of towers, avoid congestion in their location and lessen their intrusive effect; (c) in order to conserve and enhance property values; and (d) in order to ensure the optimum location of such facilities.

7.02 **INTENT**.

A. In compliance with Section 253 of the Federal Telecommunications Act of 1996, the Town hereby states that it does not intend to create barriers to the ability of any entity to provide interstate or intrastate telecommunications services.

B. The Town hereby states its intent not to discriminate against or favor providers of telecommunications facilities and services.

7.03 **PURPOSES and GUIDANCE STANDARDS**. The purposes of this Article, which shall serve as standards for guiding its administration, are as follows:

A. To further the goals, objectives, and recommendations of the Randolph Master Plan.

B. To preserve the authority of the Town to regulate the siting of telecommunications facilities and to allow reasonable opportunity for providing telecommunication services to the community.

C. To enable the town to take such steps as may be needed to reduce any adverse impacts such facilities may create, including, but not limited to, impacts upon aesthetics, environmentally sensitive areas, recreational uses of wild lands, historically significant locations, bird flight corridors, health and safety, and to preserve prosperity through protection of property values.

D. To encourage the use of innovative siting and configuration options, including siting possibilities beyond the political jurisdiction of the Town, the use of existing structures, disguised PWSF's, camouflaged PWSF's or custom designed PWSF's to minimize visual impact on the surroundings; to require cooperation and co-location between competitors and the exhaustion of all other reasonable alternatives before the construction of new towers is permitted; and

E. To ensure that there is an adequate assumption of responsibility for maintenance, repair and safety inspections of operational facilities, for the prompt and safe removal of abandoned facilities and for the removal or upgrade of facilities that are technologically outdated.

7.04 **REGULATION OF TELECOMMUNICATION FACILITIES**.

A. In accordance with RSA 674:16(II) and 674:21, authorizing the adoption of innovative land use controls, the location, siting, establishment, erection, installation or operation of a telecommunications facility within the Town of Randolph is hereby declared to be a use, either a primary or accessory use, which is allowed only when authorized by special use permit.

B. Responsibility for issuance of special use permits shall be vested in the Randolph Planning Board and made part of its Site Plan Review jurisdiction. Permits shall be renewable every three (3) years. When possible this time frame shall be consistent with the timing for the performance bond renewal.

C. Except to the extent of any inconsistency with federal or state law, and subject to the standards contained in section 7.03 of this ordinance, the Randolph Site Plan Review Regulations shall operate with regard to telecommunications structures, equipment and facilities as they do with regard to any other use to which they apply; provided, however, that the Planning Board may make and adopt special provisions of those Regulations, consistent with the provisions of this ordinance, for the governing of such structures, equipment or facilities.

D. All telecommunications facilities shall comply with the following standards, subject to such additional specific provisions as are contained in the Site Plan Review Regulations:

1. Towers, antennas or other telecommunications facilities shall be located and designed so as to preserve the ability of the public to enjoy the mountain scenery surrounding the Town, including but not limited to, views of or from the northern Presidential Range of the White Mountains, the Crescent Range, and other important natural and historical features including but not limited to Randolph Mountain Club hiking trails and riparian areas.

2. The use of DAS (distributed antenna system) or other alternative technologies shall be thoroughly studied and determined to be infeasible before the construction of any new towers is approved.

3 All towers shall be designed to accommodate co-location. No new tower or other facility shall be permitted if service can feasibly be provided through co-location.

4. Towers 70 feet or more in height shall not be located within three miles of any other tower that is 70 feet or more in height.

5. No telecommunications tower shall exceed 20 feet over the average tree canopy height within a one hundred and fifty (150) foot radius of the mount, security barrier, or designated clear area for access to equipment whichever is greater; within the 150 foot radius, the natural buffer and tree canopy shall be preserved.

6. Telecommunications towers, antennas and other electrical and mechanical equipment shall be made with a neutral finish or color or otherwise treated so as to reduce their visual impact; at the tower site the design of the buildings and related equipment structures shall to the maximum extent possible, use materials, colors, textures, screening and landscaping that will blend the tower facilities with the natural setting and character of the area; if an antenna is installed on a structure other than a tower, the antenna and related equipment must be of a neutral color that is closely compatible with the color of the supporting structure so as to make the antenna and related equipment visually unobtrusive.

7. Lattice towers are not permitted.

8. Towers shall not be artificially lighted unless required by some applicable authority, and if lighting is required the Planning Board may review the available lighting alternatives and approve a design that would cause the least impact upon surrounding properties or the community; secondary lighting for towers shall be installed so that it cannot be seen beyond the property line.

9. Towers shall not contain any permanent or temporary signs, writing, symbols or other graphic representation of any kind, except as may be allowed or required by the Planning Board in the interests of public safety.

10. Towers shall be set back a minimum distance of 125% of the height of the tower from all property lines or any off-site structure.

11. Towers, guys, accessory structures and other telecommunications facilities and equipment shall comply with setback requirements applicable to commercial uses.

12. Towers shall be enclosed by security fencing at least 6 feet in height and shall be equipped with appropriate anti-climbing devices; and a landscaping buffer shall be provided that effectively screens the view of the fence and compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least 10 feet wide outside the perimeter of the compound. Natural vegetation is preferred. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.

13. Access for motorized vehicles to sites where telecommunications facilities are located shall conform to Town requirements relating to driveways whenever possible; but if the Planning Board determines that such conformity is not feasible, it may permit such access subject to any conditions it deems reasonably necessary to minimize the impact of the access route upon the surrounding environment. Any clearing of vegetation done in conjunction with such an access way shall be minimized and shall be considered part of the facility project itself for purposes of applying review standards, including but not limited to paragraphs 5.and 12.of this section. The Planning Board may require whatever vegetation or landscaping plans it deems necessary to ensure compliance with such standards.

14. Balloon test: The applicant shall provide notice of a date on which a visible balloon (or balloons) will be floated at the proposed site at the tallest height of the proposed tower, and provide pictures from all locations around town and within 20 miles from which the balloon(s) is visible.

15. Environmental standards:

A. Telecommunications facilities shall be 75 feet from any wetlands. Telecommunications facilities shall not be located on ridgelines, in such a way as to be visible against the skyline, or near or above tree line or on other fragile ecosystems.

B. No hazardous waste shall be discharged on the site of any telecommunications facility. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with sealed floor, designed to contain at least 150% of the volume of the hazardous material stored or used on site.

C. If fuel is required propane should be used instead of oil or diesel fuel.

D. The Randolph Fire Department shall make recommendations regarding the safe storage and handling of all hazardous materials located and proposed to be stored on site including fuels.

E. Noise emanating from the facility's equipment shall not be noticeable at the boundary of the lot or beyond. Measurement of noise will be per Article 8.04 of the Land Use Ordinance of the Town of Randolph; the noise standard to be adhered to will be a 0 (zero) Db upper limit on the decibel level at the boundary of the lot at all times of the day and night. Any tower or other facility shall be designed to minimize noise from wind.

F. Radio Frequency Radiation (RFR) Standards: All equipment for the telecommunications facilities shall be authorized and approved for use by the FCC. When measured at the nearest property line of a lot which is or may be occupied, the RFR from the facilities shall not exceed the federal limits for power density levels and shall not interfere with radio and television reception in the vicinity. If necessary a RFR engineer can test for interference at the applicant's expense.

16. For purposes of determining whether the installation of a tower or antenna complies with Town regulations, including but not limited to set-back, lot coverage and other requirements, the boundaries and dimensions of the entire lot shall control, even though the tower or antenna may be located on a leased parcel within the lot.

17. The installation or operation of telecommunications equipment or facilities shall not be considered, or permitted, as an extension of a nonconforming use.

18. The grant of an application for any telecommunications facility has to be based on substantial evidence based on coverage needs. Examples of supporting proof to be provided by the applicant include but are not limited to propagation maps, drive test results that demonstrate need and coverage and capacity of services. All supporting evidence provided by applicant will be reviewed and independently tested and verified by the Reviewing Engineer chosen and hired by the Town at the applicant's expense.

7.05 **APPLICABILITY**.

Telecommunications facilities shall not be considered infrastructure, essential services or public utilities and the siting of such facilities shall constitute a use of land to be regulated by this ordinance and Town regulations.

7.06 **PERFORMANCE STANDARDS and ABANDONMENT**.

A. All towers, antennas and other telecommunications facilities and equipment shall meet or exceed current standards and regulations of the FAA, FCC and any other agency of the federal or state governments having controlling regulatory authority and if such standards or regulations are changed, the owners or operators of such facilities or equipment shall ensure that it complies with the revised standards or regulations within 6 months of the effective dates of the revision, unless a more stringent compliance schedule is mandated by the controlling authority; and failure to comply in accordance with the applicable schedule shall constitute abandonment and shall be grounds for the removal of such facilities or equipment at the owner's expense through execution of the posted security.

B. The owner of the facility shall maintain the wireless telecommunications facility in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, and maintenance of the buffer areas and landscaping.

C. To insure the structural integrity of towers and antennas, all facilities will be inspected every 3 years by an engineer approved by the Town, with the cost to be paid by the owner. The engineer will submit a report to the Planning Board. If the report concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, the owner will receive notice that the owner has ninety (90) days to bring such tower into compliance with the standards. If the owner fails to comply within ninety (90) days, such action shall constitute an abandonment and grounds for the removal, in accordance with Section 7.06 (E), of the tower or antenna, at the owner’s expense through execution of the posted security.

D. Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned and such antenna or tower shall be removed in accordance with the following procedure**:**

E. Notification: At such time that a carrier plans to abandon or discontinue operation of a wireless telecommunications facility, such carrier will notify the town by certified U.S. Mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than ninety (90) days prior to abandonment or discontinuation of operation. In the event that a carrier fails to give such notice, the wireless telecommunications facility shall be considered abandoned upon such discontinuation of operations.

F. Removal: Upon abandonment or discontinuation of use, the owner of the facility shall physically remove the wireless telecommunications facility within ninety (90) days from the date of abandonment or discontinuation of use. This shall include, but not be limited to:

1. Removal of antennas, mount, equipment shelters and security barriers from the subject property.

2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.

3. Restoring the location of the facility to its natural condition, or to a condition approved by the Planning Board.

G. Failure to Remove: If the owner of the facility does not remove the facility upon the Planning Board's order, then the Planning Board shall, after holding a public hearing with notice to the owner and abutters, issue a declaration of abandonment. The owner of the facility shall dismantle and remove the facility within ninety (90) days of receipt of the declaration of abandonment by the Planning Board. If the abandoned facility is not removed within (90) days, the town may execute the security to pay for this.

H. The facility owner shall enter into a written agreement with the Town, in a form to be reviewed by the Town's attorney at the owner's expense, which incorporates, at a minimum, all of the requirements and remedial procedures of this section and Section 7.08.

7.07 **WAIVERS**. In accordance with Section 253 of the Act, and with RSA 674:21(V)(g), if any entity believes that the procedures or standards contained in this ordinance or in the Site Plan Review Regulations have created a barrier to its ability to provide interstate or intrastate telecommunication services, it may apply to the Planning Board for administrative relief in accordance with the waiver provisions of the Site Plan Review Regulations and the Planning Board may grant such waivers if it determines that:

A. strict adherence with the such regulations is not required to effectuate the purposes of this ordinance;

B. strict compliance would create practical difficulty and unnecessary inconvenience; or

C. strict compliance would potentially cause a conflict with the Act.

7.08 **SECURITY BONDS**.

A. Before, and as a condition of, the approval of a Site Plan filed in connection with the installation of any telecommunications facility, the Planning Board shall require the developer or installer to file with the Town a bond, or other form of security deemed adequate by the Board, in an amount adequate to cover the costs of removing the facility, together with any structures or equipment appurtenant thereto, and of returning the site to its condition prior to such installation.

B. Recognizing the hazardous situation presented by abandoned and unmonitored towers, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned telecommunications facilities in the event that such a facility is abandoned and the facility owner is incapable and/or unwilling to remove the tower. The amount of security shall be based upon the removal cost plus fifteen percent (15%). The removal cost estimate shall be provided by the applicant and certified by a professional civil engineer licensed in New Hampshire. Every three (3) years from the date of the Planning Board approval of the site plan, the owner of the facility shall provide the Planning Board with a structural evaluation and a revised removal cost estimate prepared by a professional civil engineer licensed in New Hampshire. The Planning Board shall revise the amount of the security to be provided by the applicant to be the removal cost plus fifteen percent (15%).

C. The provisions of the Site Plan Review Regulations relating to performance bonds shall apply to a bond required under this Section; provided, however, that it shall remain on file with the Town, and shall not be released unless the installation has been decommissioned, dismantled and removed.

D. The Planning Board shall require the owner/operator of any antenna or tower to provide, annually, proof that it is maintaining adequate liability insurance covering accident or damage.

7.09 **ENFORCEMENT.**

This Ordinance, or any portion thereof, shall be enforced by the Board of Selectmen or its appointed designee, and they may initiate any and all enforcement procedures provided for by New Hampshire law, including but not limited to criminal and civil penalties under RSA 676:17, cease and desist orders under RSA 676:17-a, local land use citations under RSA 676:17-b, and injunctive relief under RSA 676:15.

Article VIII - NOISE REDUCTION

8.01 **NOISE STANDARDS**. It shall be unlawful to project a sound or noise, from a public or private place into another public or private place within the Town of Randolph, which exceeds, at the point of perception, the limits on noise levels set forth in this Article.

8.02 **DECIBEL LEVELS ON NOISE**. The following maximum noise levels are established:

A. Between the hours of 7 AM and 7 PM, the limit shall be 65 dB, subject to sub-section D, below;

B. Between the hours of 7 PM and 10 PM and 6AM and 7AM, the limit shall be 55dB, subject to sub-section D, below;

C. Between the hours of 10PM and 6AM the limit shall be 0 dB;

D. If the noise is judged by the selectmen to be of a periodic character, such as hammering, or to be of an impulsive character, such as a hum or screech, or to be otherwise than smooth and continuous a deduction of 5 dB shall be made in the levels listed above.

8.03 **EXPLANATIONS AND COMPARISONS.**

A. Noise limits are expressed in decibels (based on twenty (20) micro Pascals) measured on the A-weighting network of a sound-level meter meeting the standards described in 8.04 (B) below.

B. For purposes of clarification; a sound level of sixty (60) compares to normal conversational speech heard from a distance of three (3) feet; and sound levels of sixty-five (65) to seventy (70) approximate the sound of a passing freight train heard from a distance of one hundred (100) feet.

8.04 **MEASUREMENT OF NOISE.**

A. Measurement of sound or noise shall be made at the location it is perceived by the complainant, or upon a public way; at a level of five (5) feet above the floor, ground or pavement.

B. The measurement shall be made with a sound-level meter meeting standards prescribed by ANSI S1.4 - 1971, Type 1 or Type 2, and IEC 179 or the most

recent version of these standards, and the instrument shall be maintained in calibration and good working order.

C. A calibration check shall be made of the system both before and after the time of any noise measurement.

D. Measurements recorded shall be taken so as to provide a proper representation of the noise source, and to that end the microphone, during measurement, shall be positioned so as not to create any unnatural enhancement or diminution of the measured noise, a windscreen for the microphone shall be used when required and traffic, aircraft, other transportation noise sources and other background noise shall not be considered in taking measurements, except where such background noise interferes with the primary noise being measured.

E. The slow meter response of the sound-level meter shall be used in order to best determine that the amplitude has not exceeded the noise limits set forth in 8.02, above.

8.05 **EXEMPTIONS.** The requirements of this Article shall not apply to the following:

A. Noise caused by vehicles using State and Town roads or through OHRV recreational trails;

B. Noise resulting from intermittent and short-term activities on private property in connection with the non-commercial use of such property;

C. Noise created in connection with intermittent and short-term activities on public property permitted by the selectmen; and

D. Noise produced by emergency vehicles, used as public warning signal or otherwise employed by authorized officials.

Article IX - RANDOLPH TOWN FOREST

9.01**. PREAMBLE.** Pursuant to the authority conferred by RSA 31:110, 674:16, 674:17 and 674:21, and Chapter 35 of the Laws of 2001, the following ordinance is hereby enacted by the Town of Randolph. This Ordinance shall be known as the Randolph Town Forest Ordinance (hereinafter "this Ordinance"), and shall be considered an appendix to, and a part of, the Town of Randolph Land Use Ordinance.

9.02 **PURPOSE.** This Ordinance is enacted for the purpose of regulating and governing the use and management of those lands which have been, or hereafter shall be, acquired by the Town and designated by vote of the Town as Town Forest lands, in accord with the purposes set forth in RSA 31:111. Such lands have been, or are anticipated to be, acquired subject to conservation easements, held by the State of New Hampshire or other parties, or to be acquired without being subject to such easements. The Town Forest Commission will undertake to place easements on any unprotected lands as soon after acquisition as possible. But, pending the placement of such an easement on such land, or in the event the Commission is unable to make such arrangement, the Commission shall manage the land as if it were covered by the conservation easement covering the original Randolph Town Forest. Since all conservation easements governing Town Forest lands may impose affirmative forest management duties upon the Town, it is the further purpose of this ordinance to ensure that such lands are used and managed in accord with the terms of those conservation easements, and the purposes stated therein

9.03**. DELEGATION OF AUTHORITY.** Authority over the governance and management of Town Forest lands owned by the Town of Randolph, whether located within or outside the Town's boundaries, shall be exercised, in accord with the provisions of this Ordinance, by the Town of Randolph Planning Board (hereinafter "Planning Board"), and by a Town Forest Commission (hereinafter "Commission"), created under Section 5 of this Ordinance.

9.04. **DUTIES AND AUTHORITY OF PLANNING BOARD.** The Planning Board shall have the following duties and authority:

A**.** Adoption and amendment of management plans under Section 7.

B**.** Approval of the forest management budget, and supplemental appropriations from the forest management revolving fund, under Section 11.

C**.** Appointment of activity managers under Section 8.

D**.** Resolution of disputes, as set forth in Section 13, including the authority to override decisions concerning the Town Forest made by other bodies or agents of the Town.

E. The enactment of regulations pursuant to RSA 41:11-a, consistent with the adopted management plan and applicable conservation easements, governing the management of the Town Forest and its use by the public. No such regulation shall be enacted without a public hearing in accord with Section 14. Any person violating such regulations shall be guilty of a violation, as set forth in RSA 41:11-b.

9.05**. TOWN FOREST COMMISSION.** The Commission shall be composed of five persons, one of whom shall be appointed by the Planning Board from among its regular or alternate members, one of whom shall be appointed by the Randolph Conservation Commission from among its members, and three of whom shall be appointed by the Selectmen. No Commission member shall serve concurrently as Selectman or Town Treasurer. No member appointed by the Selectmen shall serve concurrently on the Planning Board or Conservation Commission. The members appointed by the Selectmen shall serve 3-year terms, however the initial terms shall be staggered, in the manner set forth for local land use boards under RSA 673:5, II. The members appointed by the Planning Board and Conservation Commission shall serve at the pleasure of the appointing body.

9.06**. DUTIES AND AUTHORITY OF TOWN FOREST COMMISSION.** The Commission shall have the following duties and authority:

A. To direct and manage all activities upon, and functions pertaining to, the Town Forest, in accordance with the management plan adopted under Section 7, with any applicable conservation easement, and with any regulations adopted by the Planning Board under Section 4(E). This responsibility includes the coordination of activities and functions assigned to activity managers under Section 8, in a manner consistent with each activity manager's cooperative agreement with the Planning Board.

B. To select and engage a licensed professional forester, or other qualified person approved by the Planning Board, and by the holder of the conservation easement if required. The forester shall assist the Commission in preparation of draft management plans or amendments and, subject to the Commission's supervision, shall be responsible for the day to day management of the Town Forest in accord with the adopted management plan.

C. To prepare draft management plans or amendments thereto, as set forth in Section 7, and to present such drafts at public hearings held by the Planning Board.

D. To prepare drafts of the forest management budgets under Section 11.

E. To approve all expenditures from the Forest Management Revolving Fund, in conformity with Planning Board appropriations as set forth in Section 13.

F. To make all such contracts as are consistent with the fulfillment of the adopted management plan and any adopted Planning Board regulations; provided, however, that a contract which creates any binding obligation of more than twelve months' duration shall not be valid unless approved by the Planning Board.

9.07**. MANAGEMENT PLAN.**

A**.** Periodically, as instructed by the Planning Board or as required by an applicable conservation easement, the Commission, with the assistance of the forester, activity managers appointed under Section 8, and such other persons as the Commission deems appropriate, shall prepare a draft town forest management plan and present it to the Planning Board.

B. Amendments to an existing management plan may be proposed by the Commission, any activity manager, or by the Planning Board itself, at any time.

C. Prior to taking action on any draft management plan or proposed amendment thereto, the Planning Board shall hold a public hearing as set forth in Section 14.

D**.** At or following the public hearing, the Planning Board shall approve or disapprove the draft management plan or proposed amendment, or approve it with alterations, provided however that no substantive alteration shall be made unless first discussed at a noticed public hearing or adjourned session thereof. Any plan or amendment not acted upon within 60 days after the public hearing shall be deemed rejected, and may not thereafter be approved without an additional public hearing.

E**.** Adopted management plans or amendments thereto shall be consistent with the purpose of this Ordinance and with any applicable conservation easement, and shall be forwarded by the Planning Board to the easement holder for such approval as may be required by the conservation easement.

9.08**. ACTIVITY MANAGERS.**

A**.** The Planning Board may appoint one or more individuals, companies, organizations or institutions as Activity Managers, to be responsible for one or more of the non-commercial multiple uses of the Town Forest, as identified and authorized by the adopted management plan, including but not limited to any form of outdoor recreation, education, wildlife management or watershed protection. The Planning Board shall enter into a cooperative agreement with each activity manager detailing the tasks which the activity manager shall undertake. Such an agreement may include mapped land areas or corridors under the activity manager's responsibility, the facilities, if any, to be developed, and the expected timing of such development.

B. The cooperative agreement shall set forth in detail the scope of the powers and duties being delegated to the activity manager. All actions taken by an activity manager shall be consistent with the cooperative agreement, the adopted management plan, and any applicable conservation easement, and shall be undertaken in such a manner as to minimize any negative impacts upon the other purposes and functions of the Town Forest.

C. Appointed activity managers may make recommendations and otherwise assist in the preparation of the management plan or amendments thereto. Activity managers are entitled to notice of all public hearings in accord with Section 14.

9.09 **THE CRYSTAL MINE**

A. The crystal mine, otherwise known as the Randolph quartz location, situated within the Randolph Community Forest, is hereby declared to be a natural area for purposes of RSA 164:2 and a natural resource and the Town is authorized by Article 5 (D) of the Conservation Easement to restrict access to land within the Forest for the purpose of preventing natural resource degradation. In exercise of that authority, the Town hereby adopts the following measures:

(1) The Planning Board, upon the recommendation of the Forest Commission, after a publicly notified hearing held for the purpose, may restrict access to the crystal mine, and the area immediately around it and shall post notices to that effect on public notice boards within the Town and on similar notice boards posted in the vicinity of the mine.

(2) Anyone wishing to visit the mine or its environs shall be required to sign a register, indicating the date, time and purpose of the proposed visit. A register will be made available in the vicinity of the mine.

(3) The Planning Board, upon the recommendation of the Forest Commission, may recognize a club, constituted for the pursuit of the hobby of mineral collecting, and authorize the club members and their guests, as a group, to have access to the mine and the area immediately around it at any time without the need to sign the register.

(4) Minerals taken from the mine site shall not be sold or otherwise used for commercial purposes. Anyone engaged in the hobby of collecting minerals on the Randolph Community Forest, as is permitted under Article 3 (J) of the Conservation Easement, may remove minerals from the ground for his/her own use by employing hand tools only. Use of power equipment or explosives is prohibited. Excavated holes shall be limited to a maximum depth of three feet and no more than one cubic yard of material may be removed. No roots measuring one half inch or more shall be damaged. Prior to leaving the site excavations will be filled and the disturbed area restored to a condition similar to that which existed prior to the digging.

(5) The Planning Board, on the recommendation of the Forest Commission, after a publicly notified hearing held for the purpose, may adopt such additional measures or restrictions as it shall deem necessary to protect this valuable natural resource. Any such additional measures or restrictions adopted by the Planning Board shall be posted and published as provided in section (1) above.

9.10**. LISTING OF ACTIONS REQUIRING PRIOR APPROVAL.** As part of a management plan or amendment thereto, the Planning Board may designate a list of potential uses or management actions which will require prior approval from the Planning Board. Whenever the Commission or an activity manager proposes to initiate one of the

listed actions, it shall give the Planning Board one month's prior notice, describing the proposed action, its timing, the area of land to be affected, and any temporary measures needed to facilitate it, including measures needed to protect or accommodate the public while the action is underway. Upon receiving such a notice, the Planning Board shall hold a public hearing in accord with Section 14, and shall, following the hearing, approve, approve with conditions, or disapprove the proposed action.

9.11. FOREST MANAGEMENT REVOLVING FUND.

A. All income or proceeds from the management of the Town Forest shall be placed in a separate Forest Management Revolving Fund, as authorized by Laws of 2001, Chapter 35, Section 2. The amounts in the Fund shall be held by the Town Treasurer, invested and accounted for separately, and not commingled with other Town funds, and shall not be considered part of the Town's general fund balance, but shall be allowed to accumulate from year to year until expended or withdrawn in accord with this Ordinance.

B. The Town Meeting may, from time to time, vote to place additional amounts from any source into the Fund.

C. The Planning Board may, without further approval by the Town Meeting, accept grants or gifts of money to be placed into the Fund, provided, however, that such grants or gifts, and all interest or other investment income derived therefrom, shall be accounted for separately, and such amounts shall not be subject to withdrawals under Section 12. Nothing in this Ordinance shall be construed to affect in any way the authority of the Town or its officers to accept gifts or trusts for forest-related purposes under the provisions of other statutes.

D. Appropriations from the Fund shall be made by the Planning Board in the manner set forth in Section 11, without further approval of the Town Meeting. Nothing in this Ordinance shall be construed as authorizing the Planning Board to make appropriations from the Town's general fund.

9.12. FOREST MANAGEMENT BUDGET APPROVAL AND EXPENDITURES.

A. The Commission, with the assistance of the forester and appointed activity managers, shall prepare a draft annual forest management budget, and shall present that draft to the Planning Board on or before the 15th day of October in each calendar year. The draft budget shall include:

(1) The balances in the forest management revolving fund at the beginning and end of the previous year, and all sources of income or revenue received during that year, together with any applicable conditions or restrictions attached thereto;

(2) All purposes and amounts of appropriations approved by the Planning Board for the previous year, including any supplemental appropriations, shown together with the actual expenditures made pursuant to those appropriations for each purpose during that year;

(3) Any withdrawals made under Section 12 during the previous year;

(4) Estimated revenues to be realized over the coming year, including probable sources and conditions, if any; and

(5) The purposes and amounts recommended by the Commission to be appropriated for the use and management of the Town Forest for the coming year.

B. On or before January 15 in each calendar year, the Planning Board shall hold a public hearing on the draft annual budget prepared by the Commission. The Commission, activity managers, and the general public may testify.

C. Following the public hearing the Planning Board shall vote to approve a final annual forest management budget, making such changes in the Commission's recommendations as it deems appropriate.

D. The Planning Board shall forward its approved budget, including all elements set forth in paragraph A of this Section, to the Selectmen, together with such other information it deems appropriate, as an annual report. The report shall be included in the Town Report, but shall not require any action by the Town Meeting.

E. Each annual town forest management budget shall include a payment in lieu of taxes, to be paid out of the Forest Management Revolving Fund into the general fund of the Town of Randolph and of any adjoining town in which Randolph Town Forest lands are located. The amount of the payment shall be based on an estimate of the amount of taxes which would be paid with respect to Town Forest lands if such lands were in private ownership, using Current Use rates under RSA 79-A, together with any timber yield taxes which would be payable under RSA 79; provided, however, that the amount of the payment in lieu of taxes may be reduced if the balance in the Forest Management Revolving Fund – exclusive of grants or gifts accounted for separately under Section 10(C) – is, in the judgment of the Planning Board, otherwise inadequate to meet operating expenses, or to fulfill a mandatory duty imposed upon the Town by an applicable conservation easement.

F. The Commission shall have approval authority over all expenditures from the Forest Management Revolving Fund and the Town Treasurer shall pay out moneys from the Fund upon orders of the Commission. Such expenditures shall be in conformity with the budget approved by the Planning Board. The Commission shall keep public records of all such expenditures. The Commission shall have the authority, during the year, to transfer an unexpended balance remaining in one appropriation to another appropriation, so long as every expenditure is properly classified and entered, and so long as any expenditures exceeding the original appropriation are offset by unexpended balances remaining in other appropriations; provided, however, that the Commission may not transfer any amount appropriated to an activity manager, and provided further that the Planning Board shall have the authority to designate particular amounts or purposes of appropriations as non-transferable.

G. During the year the Planning Board, on its own motion, or upon request of the Commission or any activity manager, shall have the authority to make supplemental appropriations from the Forest Management Revolving Fund, for purposes pertaining to

Town Forest use and management. Prior to approving any supplemental appropriation, the Planning Board shall hold a public hearing in accord with Section 14.

9.13. **WITHDRAWALS.** The Town by majority vote under an article properly placed in the warrant of any Town Meeting, may vote to withdraw an amount from the Forest Management Revolving Fund, and appropriate it to a purpose unrelated to forest management, provided, however, that no such vote shall be valid to the extent that it withdraws any amount attributable to grants or gifts made to the fund, or to the extent that it draws the fund down to a level below that of the total expenditures made from the fund during the previous three years, including payments in lieu of taxes made during those years. A withdrawal under this Section shall only be made pursuant to a separate warrant article, and not as part of the Town's operating budget. When such an article appears in the warrant, the Planning Board shall be given an opportunity to present to the Town its recommendation with respect to the article, prior to any vote.

9.14. **RESOLUTION OF DISPUTES AND OVERRIDING.** On its own motion, upon request by the Commission or an Activity Manager, or upon petition of 10 or more citizens of the Town, the Planning Board shall review any decision made concerning the Town Forest by the Commission, any activity manager, or any other agent of the Town. The review shall include a public hearing with notice as set forth in Section 14, provided, however, that the Planning Board may, at any public meeting, make such orders as will preserve the status quo, pending such review. Following such review the Planning Board may in its discretion, by an affirmative vote of at least 3 members, vote to override or modify the decision under review. The Planning Board shall state its reasons for any modification or override.

9.15. **PUBLIC HEARINGS.** At least 10 calendar days before any public hearing required by this Ordinance, notice of the hearing shall be published in a paper of general circulation in the Town of Randolph, shall be posted in at least one public place within the Town, and shall be mailed by first class mail to the Commission and to all activity managers appointed under Section 8. Notice shall include the time, date and place of the hearing, a general description of the subject matter under consideration, and the place where any relevant materials are available for examination. The Planning Board shall provide an opportunity for testimony, orally or in writing, by the Commission, activity managers, and members of the public. The Planning Board may in its discretion invite persons with special knowledge or information to assist it in making decisions.

9.16. **NOTICE TO PLANNING BOARD.** All notifications to the Planning Board under this Ordinance, including submission of draft management plans and proposals for amendments under Section 7, notice of intent to initiate a listed action under Section 9, presentation of draft budgets or requests for supplemental appropriations under Section

10, and requests for review under Section 13, shall be made by first class mail, sent to The Randolph Town Hall, Durand Road, Randolph NH 03570.

9.17. **SEVERANCE AND LIMITATION.** The invalidity of any provision of this Ordinance shall not affect the validity of any other provision of this Ordinance. Nothing in this Ordinance shall be deemed to affect any property held by the Town of Randolph which has not been designated a Town Forest by vote of the Town.

9.18. **EFFECTIVE DATE.** This Ordinance shall take effect upon its adoption by the Town by official ballot vote in accordance with RSA 675:3.

Article X: WIND ENERGY SYSTEMS

10.01. **PURPOSE.** This ordinance is adopted in accordance with the provisions of RSA 674: 62-66 and 674:21 (ii) and the purposes outlined by RSA 672:1 I-III-a and RSA 162-H, with the aim of providing a permitting process for wind energy systems subject to the Town's jurisdiction. It applies to all such systems, whether they are designed to produce energy for use on-site or off-site. The requirements and standards set forth herein are intended to ensure that the construction, use, maintenance and decommissioning of such systems are accommodated, while protecting the public health, safety and welfare and scenic amenities of the Town.

10.02. **DEFINITIONS**.

a. "Net metering" shall mean the difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's wind energy system that is fed back into the electric distribution system over a billing period.

b. "Off-site system" shall mean a wind energy system designed to produce electric power, when the Board determines that a significant amount of such power is intended for use outside the property on which it is generated.

c. "On-site system" shall mean a wind energy system designed to produce electric power primarily for the benefit of the property on which it is located or, in the case of excess power production, for the electric utility providing power to such property.

d. "Shadow flicker" shall mean the visible effect when rotating blades of a wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.

e. "System height" shall mean the vertical distance from ground level to the top of the wind generator blade when it is at its highest point.

10.03 **PROCEDURE FOR REVIEW.** Except where jurisdiction of the town of Randolph is preempted by state law, no wind energy system subject to the jurisdiction of the Town of Randolph shall be constructed or otherwise introduced or shall be physically modified without a conditional use permit and all applications for such permits shall observe the following procedure:

a. Conditional Use Permit: A permit for a wind energy system

shall be treated as a conditional use permit and shall be issued by the Planning Board under the authority of RSA 674:21 (ii).

b. **Pre-application Review** (recommended)**:**

i. An applicant may appear at a meeting of the Planning Board for a non-binding discussion. Such discussion shall be informal and directed toward:

i) reviewing the basic concepts of the proposal;

ii) reviewing the Town's regulations as they may apply to the proposal, together with a determination as to whether the proposal would relate to an "on-site" or "off-site" system;

iii) making a determination as to whether the Town's Site Plan Review Regulations would be applicable to the Planning Board's review of proposal; and

iv) Advising the applicant as to all of the State and local requirements which would apply to the proposal.

c. Completed Application

i. An application and check list provided by the Board shall be completed with information considered sufficient to invoke jurisdiction of the Board and shall be filed only at a regularly scheduled meeting of the Board and the Board shall make a determination as to whether or not it meets the requirements of a completed application at the next scheduled meeting after such filing.

ii. A completed application shall include;

i) all data required in subsections f and g below;

ii) a completed checklist;

iii) where applicable, all information and data required by the Town's Site Plan Review Regulations; and

iv) a list of abutters together with all fees required by the Board for notices and administrative fees; however the payment of such fees shall not preclude the Board from later imposing upon the applicant the costs of

iii. An application that is considered complete shall be submitted and considered only at a regularly scheduled meeting after due notification as required by subsection h below, provided that no further notification shall be required if the meeting is the continuation of a properly notified previously adjourned meeting.

iv. Only the Planning Board has the authority to decide whether or not an application meets the requirements for a completed application and acceptance of a submitted application as complete requires the affirmative vote of a majority of the members of the Planning Board present.

v. An application may be rejected by the Planning Board without a public hearing on the grounds of failure of the applicant to supply required information or to pay fees as required by this Ordinance. The Board will inform the applicant of the respect(s) in which the application is not complete.

vi. Acceptance of an application as complete shall be recorded in the minutes of the meeting and shall mark the start of the 65-Day review period within which the Board needs to rule on the application.

d. Planning Board Action on Completed Application

i) The Board shall act to approve, conditionally approve or disapprove a completed application within sixty-five days of the vote accepting the application as complete. Where applicable, the review shall be undertaken in conjunction with a Site Plan review.

ii) The Board may apply to the selectmen in writing for an extension not to exceed an additional ninety days before making a decision with regard to an application and, if such extension is approved, shall make it decision within the period of the extension. An applicant may waive the requirement for the board to act within the prescribed time period and consent to such extension as may be mutually agreed.

iii) Approval of the application shall be certified by the signatures of three members of the Planning Board on

iv) Disapproval of the application shall be stated in the minutes of the Planning Board with the grounds for such disapproval and shall be conveyed to the applicant in writing.

v) If the Planning Board does not act on the completed application within the time period prescribed, including any extension thereof, the applicant may request the selectmen to order the Board to act within thirty days from the date of the order. If the Board does not act within the thirty day period, the selectmen shall certify the application as approved.

vi) The Planning Board may determine whether or not an applicant for a conditional use permit for an off-site system shall be required to post a bond in an amount adequate to cover the cost of removal of such system should the system, or any part thereof, be abandoned.

e. Conditional Approval: The Planning Board may grant conditional approval of an application in accordance with the provisions of RSA 676:4 1(i)

f. Contents of an Application: Applications submitted to the Planning Board shall contain a site plan with the following information with respect to the applicant's property and all other areas within a 1000 foot radius of the proposed tower location:

i. Property lines and physical dimensions of applicant's property and all other areas within a 1000 foot radius of the proposed tower location;

ii. Location, dimensions and types of existing major structures on the applicant's property and all other areas within a 1000 foot radius of the proposed tower location;

iii. Location of the proposed wind energy system, foundations, guy anchors and associated equipment;

iv. Blueprints or drawings of the tower and its foundation showing construction details, including the height above ground at their lowest point of the rotor blades, ladders for climbing the tower and

v. Setback requirements as called for in this ordinance;

vi. The rights-of-way or traveled ways of all public highways, private roads and any shared driveways used by more than one landowner if contiguous to the property or within a 1000 foot radius of the proposed tower location;

vii. Any overhead utility lines crossing the applicant's property or adjacent to it or within a 1000 foot radius of the proposed tower location;

viii. Wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate and generation capacity;

ix. Any wind energy system that will be connected to a power grid shall include a copy of the application for interconnection with the electric utility provider;

x. Sound level analysis prepared by the wind energy system manufacturer or qualified engineer;

xi. Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code;

xii. Evidence of compliance with Federal Aviation Administration requirements or of their non-applicability;

xiii. Evidence of insurance coverage against the possibility of a failing system being a danger to neighbors or the public;

xiv. List of abutters to the applicant's property; and

xv. Such additional information as the board may require to carry out the purposes of this ordinance.

g. Application in the Case of an Off-site system: An applicant seeking a conditional use permit for an off-site system shall, in addition to the material listed in subsection (b) above, provide the Planning Board with the following information:

i. Identification of the properties to be served by the power produced with a description of the manner in which the power is to be transmitted.

ii. Describe in reasonable detail the type and size of each major part of the proposed facility;

iii. Identify both the preferred choice and any other choices for the site of each major part of the proposed facility; identify, also, the preferred route or routes, and possible alternatives, for lines or other mechanisms for transmitting the power;

iv. Describe in reasonable detail the impact of each major part of the facility of the environment for each site proposed;

v. Describe in reasonable detail the applicant's proposals for studying and solving environmental problems; and

vi. Describe in reasonable detail the applicant's financial, technical and managerial capability for construction and operation of the proposed facility.

vii. Where applicable, any additional information required under the Town's Site Plan Review regulations

h. Abutter and Regional Notification: If the applicant is seeking a conditional use permit to construct an on-site system, the Planning Board, following its standard procedures, shall schedule a public hearing on the matter and, in accordance with RSA 674:66 shall send notifications thereof by certified mail to the applicant, all abutters of the property on which the system is to be constructed and the Board of Selectmen. If the applicant is seeking a permit to construct an off-site system, notifications shall in like manner also be sent to the abutters of each site of any major component of the facility and to owners of other properties which are, in the opinion of the Board, likely to be impacted by the proposed facility. All notices shall inform the recipients of a thirty day period within which they have the opportunity to submit written comments to the Board. The cost of notifications shall be borne by the applicant. Abutters and the public may but need not respond to the notifications with comments in writing and may but need not attend the public hearing in person. The applicant or representative of the applicant shall be expected to attend the hearing to respond to Board questions or concerns. The Board shall also review the application for regional impact in accordance with RSA 36:55. If the proposal is determined to have regional impacts, the Board shall follow the procedures set forth in RSA 36:57, IV.

i. **Appeal:** Any person aggrieved by the approval of an application by the Planning Board may administratively appeal to the Board of Adjustment

10.04 **STANDARDS**: The Planning Board shall evaluate the application for compliance with the following standards:

a. **Tower Setbacks:** The setbacks for a tower shall be calculated by multiplying the following minimum setback requirement numbers by the system height and measured from the center of the tower base to property line, public roads or nearest point on the foundation of an occupied building:

i) occupied building on participating landowner property = 0
ii) occupied building on abutting property = 1.5
iii) property line of abutting property and utility lines = 1.1
iv) public or private roads or shared driveways used by more than one landowner = 1.5

b. Structure Setbacks: Setbacks for other structures associated with a wind energy system must meet the setback requirements for buildings established by the Randolph Land-Use Regulations.

c. Guy Wires: Guy wires used to support a tower are exempt from setback requirements.

d. Tower Height: The maximum tower height shall be restricted to 35 feet above the tree canopy within 300 feet of the tower. In no situation shall the tower height exceed 150 feet.

e. Sound Level: No part of a wind energy system subject to the jurisdiction of the Town shall produce a noise level exceeding 55 decibels using the A scale (dBA), as measured at the property line nearest to the structure emitting the noise.

f. Shadow Flicker: Wind energy system towers shall be sited in a manner that does not result in significant shadow flicker impacts on residents of properties abutting and in the vicinity of the property on which the tower is situated. Significant shadow flicker is defined as more than 30 hours per year on buildings occupied by such residents. The applicant has the burden of proving that the shadow flicker will not have a significant

adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.

g. Signs: All signs, including but not limited to flags, streamers and decorative items, both temporary and permanent, except for manufacturer identification and appropriate warnings, are prohibited on any part of a wind energy system.

h. Code Compliance: All parts of a wind energy system shall comply with all applicable sections of the New Hampshire State Building Code.

h. Aviation: Wind energy systems shall be built to comply with all applicable Federal Aviation Administration regulations including, but not limited to, 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424.

j. Visual Impacts: Towers shall not significantly impair a scenic vista or scenic corridor. Recognizing that wind energy systems are likely to pose some visual impacts due to the tower height needed to access wind resources and the need for wires or other conduits to transmit energy, the purpose of this section is to require the reduction or minimization of such impacts to the extent practicable.

i) The applicant shall demonstrate through project planning and proposed mitigation measures that the visual impacts of the wind energy system will be minimized for surrounding neighbors and the community. This may include, but not be limited to, information regarding the selection of sites, wind generator design or appearance, buffering and screening of structures and ground mounted electrical and control equipment. All electrical conduits shall be underground, unless the Planning Board issues a waiver of this rule.

ii) All structures erected or constructed as part of a wind energy system shall be painted with a non-reflective, unobtrusive color that blends in with the surrounding environment, such as white, off-white or gray, except that manufactured components may preserve the

stock color as received from the manufacturer.

iii) No part of a wind energy system shall be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA) . If lighting is required the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights.

k. Approved Wind Generators: The manufacturer and model of the wind generator to be used in any on-site system must have been approved by the California Energy Commission or the New York State Energy research and development Authority, or a similar list approved by the State of New Hampshire, if available.

\ **l. Utility Connection.** If a proposed on-site wind energy system is to be connected to the power grid through net metering, it shall adhere to RSA 362-A:9.

m. Access: The tower or towers installed as part of any wind energy system shall be designed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground. All ground-mounted electrical and control equipment and structures shall be labeled and secured with fences or other devices to prevent unauthorized access.

n. Blade Height: All wind generators for wind energy systems shall be designed so that the blades never come closer to the ground than 30 feet.

o. Landscaping: Appropriate landscaping shall be provided to screen accessory structures from roads and adjacent residences.

p. Interference With Personal Communications: No wind energy system shall interfere with the reception of radio, television, wireless phone or other personal communications systems.

10.05. **STUDIES AND CONNSULTANTS FOR INFORMED DECISIONS:** At any time during the consideration of an application for a permit for a wind energy system the Board may, for the purpose of making an informed decision:

a. commission such studies, environmental assessments, power

need assessments, legal reviews or other research as the Board may consider necessary;

b. appoint one or more consultants to assist the Board in ascertaining whether such application meets the standards and requirements of these Regulations and the Building and Electrical codes of the State of New Hampshire; or to review claims made by an applicant regarding the limitations and feasibility of alternative sites and technologies or any other matter connected with an application.

c. The costs of any reviews referred to in this section, including the fees or other charges incurred by the engagement of consultants, attorneys or other persons asked to advise the Board, shall be paid by the applicant. At the request of the applicant the Board shall promptly provide a detailed accounting as provided in RSA 676:4-b.

10.06. **ABANDONMENT:**

a. At such time as a wind energy system under the jurisdiction of the Town, or any part thereof, is to be abandoned or discontinued, the current owner of such system, or part thereof, shall notify the selectmen by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.

b. Upon abandonment or discontinuation of a wind energy system under the jurisdiction of the Town, or part thereof, the owner shall physically remove the abandoned or discontinued facilities, equipment, structures, wires, poles or other appurtenances installed under the permit approved by the Planning Board and shall restore the location of the system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in the same condition as at the initiation of abandonment. Such removal shall take place within ninety days from the date of the notification to the selectmen, but, at the request of the owner, the selectmen may extend the period for an additional period.

c. In the event that the owner of any wind energy system under the jurisdiction of the Town, or part thereof, fails to give such notification, a system, or part thereof, shall be considered abandoned or discontinued if the system, or part, is out-of-service for a continuous twelve-month period. At the end of this period, the selectmen may issue a Notice of Abandonment to the

owner of such system, or part thereof, and shall forward a copy of the Notice to the Planning Board. The owner shall have the right to respond to the Notice within thirty days of receiving it, by appearing in person before the Planning Board at its next scheduled meeting.

d. After a review of the information provided by the owner, the Planning Board shall determine if the wind energy system, or part thereof, has been abandoned or discontinued. If it is determined that no abandonment or discontinuation has taken place, the planning Board shall vacate the Notice of Abandonment and notify the owner thereof.

e. If the owner does not respond to a Notice of Abandonment, or if, after review by the Planning Board, it is determined that the wind energy system, or part thereof, has been abandoned or discontinued, the owner of the discontinued facilities, equipment, structures, wires, poles or other appurtenances installed under the permit approved by the Planning Board shall remove the same at the owner's expense within three months after receipt of the Notice, or within two months after the notification of the determination by the Planning Board. If the owner fails to complete such removal in timely fashion, the selectmen may purse legal action to have the removal take place at the owner's expense, and such action may, where applicable, include the forfeiture of an applicant's posted bond.

10.07. **VIOLATION:**

It is unlawful for any person to construct, install or operate a wind energy system which falls within the jurisdiction of the town, or any part thereof, that is not in compliance with this ordinance. Systems installed prior to the adoption of this ordinance are exempt from this ordinance except when modifications are proposed to the system.

10.08**. PENALTIES:**

Any person who fails to comply with any provision of this ordinance or a permit issued pursuant to this ordinance shall be subject to enforcement of, and penalties provided under RSA 676.17

Article XI ADMINISTRATION

11.01 **REGULATING AUTHORITY**. It shall be the duty of the Board of Selectmen or their designees to administer this Ordinance.

11.02 **BUILDING PERMITS**.

(1) A building permit shall be obtained from the Selectmen or their authorized agent before a building or structure is constructed, extended, relocated, or demolished. [This requirement also applies to swimming pools, manufactured homes, external wood boilers, wind powered equipment, solar panels and exterior signs.] Alterations to an existing building or structure which change its use, its exterior dimensions, the basic materials of which it is constructed or changes the number of bedrooms within it, shall also require a permit.

(2) No permit shall be required for painting, cleaning, modifications undertaken solely for decorative purposes, basic repairs and/or other treatments which do not involve changes specified in subsection (1) including, but not limited to, the replacement of roofs, sidings, installation or replacement of sheds or fences in their original locations and within the original footprint.

(3) No permit shall be required for a dumpster or storage container brought onto a site in connection with construction or demolition, the disposal of trash or other activity of a non-permanent duration, so long as the dumpster or storage container is removed within thirty days after the cessation of such activity.

(4) All buildings, building components and structures constructed in the Town shall comply with the State Fire Code adopted pursuant to RSA 153:5 (Chapter Saf-C 6000) and so far as they are not inconsistent with the Fire Code or, if inconsistent, have been given precedence by State determination, also with the provisions of the State Building Code (RSA 155-A.)

(5) The installation of oil-burning equipment shall be in compliance with RSA 153:5. The installation of outdoor wood boilers (outdoor wood-fired hydronic heaters) shall require a permit and installation shall comply with RSA 125-R(6.) All new proposed buildings, or proposed changes to a building or structure which increase the load on a sewage disposal system, shall have a construction approval number from the New Hampshire Department of Environmental Services prior to a building permit being issued by the Town. Any other expansion, relocation or replacement of any structure, building or use which does not increase the load on a sewage disposal system will not require that a DES number be provided to the Town as long as the provisions and requirements of RSA 485-A:38 have been met.

(6) All new buildings or structures, both residential and commercial, must comply with the provisions of the New Hampshire Energy Code. Any additions, alterations and renovations to existing buildings, as well as any changes in space conditioning, must also meet the requirements of the NH Energy Code for those portions of the building or structure which is being altered. Prior to the issuance of a building permit by the Town, the applicant must provide a New Hampshire Public Utilities Approval Number as part of the building permit application.

11.03 **DRIVEWAY PERMITS**:

A. A driveway permit shall be obtained from the selectmen before the construction or substantial alteration of any driveway or private street and failure to conform to such permit shall be unlawful.

B. An application for a driveway permit must be obtained from and filed with the selectmen, and a permit issued, prior to commencement of any construction; Provided however, that submission of a written permit issued by the state commissioner of transportation under RSA Chapter 236 shall constitute full compliance with the requirement of this section.

C. All driveway permits shall be subject to the relevant provisions of Article V of this Ordinance - Area Regulations - and to other applicable state and local requirements.

D. A driveway permit issued under this section shall:

(1) describe the location of the driveway or private road, its proposed connection to a street and measures taken to protect the safety of the traveling public.

(2) describe any drainage structures needed to protect streets or abutting properties;

(3) establish grades that adequately protect and promote the drainage and winter snow plowing of the street and that permit a safe and controlled approach to the street in all seasons of the year; and

(4) include any other terms and specifications necessary for the safety of the travelling public.

E. The selectmen may require the town road agent to review the application for a driveway permit and to inspect the site during construction.

11.04 **ENFORCEMENT**. The Board of Selectmen or their designee, upon well-founded information of any violation, is hereby authorized to initiate immediate steps for enforcement of this Ordinance by issuing due notice to cease and desist such violation

and/or be subject upon conviction to a fine of one-hundred dollars ($100) for each day the violation continues.

Article XIi - BOARD OF ADJUSTMENT

12.01 A five-person Board of Adjustment shall be elected and up to three alternate members may be appointed by the Board of Adjustment for a term of three years each, as provided by State Statutes 673 and 673:3, 673:6 which may, upon application and after notification of abutters and an advertised public hearing:

A. Review and decide on alleged error in administrative finding, or

B. Consider and decide on a Special Exception request, or

C. Grant a Variance if the following conditions are met:

1. No diminution in value of surrounding properties would be suffered.

2. Granting the Variance would not be contrary to the public interest.

3. Denial of the Variance would result in unnecessary hardship to the owner seeking it.

4. By granting the Variance, substantial justice would be done.

5. The use is not contrary to the spirit of this Ordinance.

12.02 **APPEALS**. As specified in RSA 674:33, the Board of Adjustment shall hear and decide any case in which it is alleged there is an error in any order, requirement, decision, or determination made by any official in the enforcement of this Ordinance.

12.03 **FEES**. Prior to the hearing, the costs of advertising, posting, and the mailing of notices to the abutters shall be paid for by the person making the appeal.

Article XIII - AMENDMENTS

This Ordinance may be amended as provided by RSA 674, as it is now or may be amended.

Article XIV - SAVING CLAUSE

The invalidity of any provision of this Ordinance shall not affect the validity of any other provision of the Ordinance.

Article XV - EFFECTIVE DATE

This Ordinance shall become effective immediately upon its passage.