

ORDINANCE NO. 040708B

AN ORDINANCE OF THE TOWNSHIP OF WEST PROVIDENCE, BEDFORD COUNTY, PENNSYLVANIA, CONCERNING AND REGULATING THE PLACEMENT, CONSTRUCTION, OPERATION, MAINTENANCE AND DECOMMISSIONING OF WIND TURBINE GENERATORS, THE ISSUANCE OF LAND USE PERMITS IN CONNECTION THEREWITH, AND PRESCRIBING PENALTIES FOR VIOLATIONS HEREOF.

WHEREAS, the Board of Supervisors of West Providence Township (hereinafter "Township" or "Supervisors" or "Board") is vested with the responsibility for protecting the public health, safety and welfare under provisions of the Second Class Township Code; and

WHEREAS, the Township is concerned that the placement of unregulated wind turbine generators creates a potential danger to the public health, safety and welfare, as well as to natural and historic landmarks, natural resources and wildlife; and

WHEREAS, the Board of Supervisors of West Providence Township believe that regulating the placement, construction, operation, maintenance and decommissioning of wind turbine generators is in the best interests of the citizenry and consistent with promoting the public health, safety and welfare; and,

WHEREAS, the Supervisors intend to establish non-discriminatory land use regulations within the context of this Ordinance to provide for the placement, construction, operation, maintenance and decommissioning of wind turbine generators that are reasonable under the circumstances and that do not impose undue hardship;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Supervisors of West Providence Township, Bedford County, Pennsylvania, pursuant to the authority granted to it, and it is hereby ordained and enacted by the authority of the same as follows:

### Section 1: Title.

This Ordinance shall be known and identified as the Wind Turbine Generator Ordinance for West Providence Township.

### Section 2: Findings.

The Board of Supervisors of West Providence Township make the following findings with respect to the construction, placement, operation, maintenance and decommissioning of wind turbine generators:

- a. The construction, placement, operation, maintenance and decommissioning of wind turbine generators which fail to comply with all criteria and regulations set forth in this Ordinance, present tangible and immediate dangers to the public and neighboring landowners in the nature of ejection of projectiles, continuous generation of noise during night time hours, and glare from sunlight continually flashing off of rotating blades;
- b. The construction, placement, operation, maintenance and decommissioning of wind turbine generators present a danger following the useful life of the wind turbine generators from deteriorating structures, if provisions are not made in accordance with this Ordinance;
- c. The construction, placement, operation, maintenance and decommissioning of wind turbine generators, which fail to comply with all criteria and regulations set forth in this Ordinance, unreasonably interferes with the reasonable use, comfort and enjoyment of property in the vicinity and/or endangers the health, safety and/or welfare of the occupants of the property in the vicinity, and prohibits or denies the property owners and taxpayers the legitimate enjoyment of their reasonable rights and use of property;
- d. The construction, placement, operation, maintenance and decommissioning of wind turbine generators, which fail to comply with all criteria and regulations set forth in this Ordinance, constitute a danger and threat to migratory birds, other wildlife, natural and historic resources and water resources.

### Section 3: Definitions.

- a. "Applicant" is the person or entity, whether corporation, limited partnership, partnership, sole proprietorship, unincorporated association, or any other legitimate and recognized business structure filing an application under this Ordinance.

- b. "Facility Owner" means the person, entity or entities having an equity interest in the wind turbine generator, including their respective successors, assigns and heirs.
- c. "Operator" means the person, entity or entities entrusted with the responsibility for the day-to-day operation and maintenance of the wind turbine generator.
- d. "Hub Height" means the distance measured from the surface of the tower foundation to the height of the wind turbine generator's hub to which the blade is attached.
- e. "Non-participating Landowner" means any landowner, except those on whose property all or a portion of the wind turbine generator and its appurtenances are located, pursuant to an agreement with the facility owner or operator.
- f. "Turbine Height" means the distance measured from the surface of the tower foundation to the highest point of the turbine rotator blade.
- g. "Occupied Building" means a residence, school, hospital, church, public library or any other building that is occupied or in use when the permit application is submitted.
- h. "Wind Turbine Generator" means real and personal property, which are composed of generators, blades, tower, base, components of the aforementioned, and appurtenances of the aforementioned.
- i. "Wind Energy Facility" means an electric generating facility, whose main purpose is to supply electricity, consisting of one or more wind turbine generators and other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures and facilities.

#### Section 4: Applicability.

4.1 This Ordinance applies to all wind turbine generators and wind energy facilities proposed to be constructed after the effective date of the Ordinance; except, however, it shall not apply to wind turbine generators nor wind energy facilities constructed and dedicated solely for the use and benefit of a residence or farm located upon the same tract of land which said wind turbine generators and/or wind energy facilities are placed.

4.2 Wind turbine generators and/or wind energy facilities constructed prior to the effective date of this Ordinance shall not be required to meet the terms and conditions of this Ordinance; provided that any physical modification to an existing wind turbine generator or wind

energy facility that materially alters the size, type and number of wind turbine generators or other equipment appurtenant thereto shall require a permit under this Ordinance.

#### Section 5: Permit Required.

5.1 No wind turbine generator, nor wind energy facility, nor any addition of a wind turbine generator to an existing wind energy facility, shall be constructed or located within West Providence Township unless a permit has been issued to the facility owner or operator, thereby approving construction of the wind turbine generator or wind energy facility pursuant to this Ordinance.

5.2 Any physical modification to an existing and permitted wind turbine generator or wind energy facility that materially alters the size, type and/or number of wind turbine generators or other equipment appurtenant thereto shall require a permit under this ordinance. Like-kind replacements shall not require a permit hereunder.

5.3 A separate application shall be filed for each wind turbine generator and/or each energy turbine located within a wind energy facility. Application for permits shall be made on forms provided by the Township.

5.4 Applicant, facility owner and/or operator shall be responsible for overseeing compliance with the conditions of the permit issued pursuant to this Ordinance. Same shall designate a contact person for the Township who will be responsible for overseeing compliance with the conditions of the permit issued pursuant to this Ordinance for the duration of the term of such permit. Information provided to the Township relative to said contact person shall include name, addresses, daytime telephone number and emergency telephone number of any other designated representative. The Township may make the contact information available to local police department, fire department and emergency response personnel. Applicant, facility owner

and/or operator shall be entitled, upon prior written notice to the Township, to change the contact person and/or contact information.

#### Section 6: Permit Fee.

6.1 The permit application shall be accompanied with a fee in the amount of \$2,500.00 per proposed megawatt. The Supervisors may modify or amend this fee by resolution from time to time in keeping with the Township's experience with the cost of administering the provisions of this Ordinance. The fee submitted with a permit application shall not be refundable, even if the application is denied and/or rejected.

6.2 Prior to final approval of such permit, the facility owner or operator shall directly pay and/or reimburse the Township for all engineering fees, attorney's fees, other expert fees, costs and expenses charged in connection with the review of the permit application.

#### Section 7: Duration of Permit.

A permit issued pursuant to this Ordinance shall be valid for a period of fifteen (15) years. Any application for renewal shall satisfy all criteria, terms, provisions and regulations in effect at the time of renewal, including but not limited to that set forth in this Ordinance and amendments hereto, if any.

#### Section 8: Notice of Application.

The applicant must provide written notice of application to all property owners and tenants occupying property within 2,500 feet of the boundaries of the property upon which the wind turbine generator and/or wind energy facility shall be located. Proof of service of such notice by certified mail or notarized affidavit of hand delivery must be provided with the application.

## Section 9: Permit Application.

9.1 The permit application shall demonstrate that the proposed wind turbine generator and/or wind energy facility shall comply with this Ordinance.

9.2 In addition to the land development requirements of local, state and federal enactment, as well as that which may be required elsewhere within this Ordinance, the application hereunder shall contain the following:

- a. A narrative describing the proposed wind turbine generator and/or wind energy facility, including an overview of the project; the project location; the approximate generating capacity of the wind turbine generator and/or wind energy facility; the approximate number, representative types and height or range of heights of wind turbine generators to be constructed, including their respective generating capacity, dimensions and respective manufacturers, and a description of ancillary facilities.
- b. An affidavit or similar evidence of agreement between property owner and the facility owner or operator demonstrating that the facility owner or operator has the permission of the property owner to apply for necessary permits for the placement, construction, operation and maintenance of the wind turbine generator and/or wind energy facility.
- c. Identification of the properties upon which the proposed wind turbine generator and/or wind energy facility will be located, and identification of the properties adjacent thereto;
- d. A site plan depicting and showing the planned location of each wind turbine generator, property lines, setback lines, access road and turnout locations, substations, electrical cabling from the wind turbine generators to the substations, ancillary equipment, buildings and structures, including permanent meteorological towers, associated transmission lines, and layout of all structures within the geographic boundaries of any applicable setback.
- e. Documents related to decommissioning.
- f. A copy of the application for those clearances and/or permits required by the Bedford County Airport Authority and/or Federal Aviation Administration, as well as demonstrated compliance prior to construction of any wind turbine generator and/or wind energy facility of all applicable local, state and federal statutes, rules and regulations.

- g. Documentation and/or proof demonstrating compliance with the National Pollution Discharge Elimination System (NPDES) regulations.
- h. Documentation and/or proof demonstrating compliance with the Pennsylvania Natural Heritage Program (PNHP), or any successor thereto, to protect biological species listed as endangered, threatened, or rare as listed by the Department of Conservation and Natural Resources (DCNR), Pennsylvania Game Commission, Pennsylvania Fish and Boat Commission, U.S. Fish and Wildlife Services, and species recommended by the Pennsylvania Biological Survey. In the event such agencies issue suggested guidelines that are not required or do not have the force and effect of law, such guidelines are hereby incorporated into this Ordinance, made a part hereof, and shall be binding so as to be required and binding, thereby having the full force and effect of law.
- i. Documentation depicting any historic structure, resource, district or site listed or eligible to be listed on the Pennsylvania Heritage Inventory, the National Register of Historic Places and/or National Historic Landmark Registry, or any successor thereto. Such documentation shall include the distance from each identified structure, resource, district or site to a proposed wind turbine generator. Proof shall be submitted indicating that facility owner or operator has made contact with the above-indicated agencies or institutions, as well as the Pennsylvania Historical and Museum Commission, to verify the existence and location of all structures, resources, districts or sites within the ambit of this provision.
- j. Documentation depicting any Important Bird Area (IBA) as identified by the Audubon Society, BirdLife International and/or any other similar recognized agency of authority. Such documentation shall include the distance from each identified IBA to a proposed wind turbine generator. Proof shall be submitted indicating that facility owner or operator has made contact with the above-indicated societies, agencies or institutions to verify the existence and location of all IBA's within the ambit of this provision.
- k. Documentation depicting any lake, dam, wetlands, vernal pools, pond, public water source, well and spring. Such documentation shall include the distance from each identified lake, vernal pool, dam, pond, public water source, well and spring to a proposed wind turbine generator. Proof shall be submitted indicating that the facility owner or operator has made contact with the Bedford County Conservation District, Pennsylvania Department of Environmental Resources and any other local, state or federal agency having jurisdiction over such matters to verify the existence and location of same.
- l. Documentation and/or proof of compliance with all applicable local, state and federal statutes, rules and regulations pertaining to wetlands.
- m. Proof of notification of landowners and tenants occupying lands pursuant to Section 8 of this Ordinance.

n. Proof that applicant has complied with the applicable ordinances of any adjoining municipality, including but not limited to those ordinances governing wind turbine generators and/or wind energy facilities, where a wind turbine generator or wind energy facility owned or operated by an applicant is located in more than one (1) municipality.

o. Any other relevant studies, reports, certifications and approvals as may be reasonably requested by West Providence Township to ensure compliance with this Ordinance.

9.3 Within thirty (30) days after receipt of a permit application, the Board of Supervisors of West Providence Township shall determine whether the application is complete and advise the applicant accordingly.

9.4 Within sixty (60) days of a completeness determination, the Board of Supervisors of West Providence Township shall schedule a public hearing. The applicant shall participate in the hearing and be afforded an opportunity to present the project to the public and municipal officials, and answer questions regarding the project. The public shall be afforded an opportunity to ask questions and to provide comment on the proposed project.

9.5 Within one hundred twenty (120) days of a completeness determination, or within forty-five (45) days after the close of any public hearing, whichever occurs later, the Board of Supervisors of West Providence Township shall make a decision whether to issue or to deny the permit application.

9.6 Throughout the permit application process, the applicant shall promptly notify West Providence Township of any changes to the information contained in the permit application.

9.7 Changes to the pending application that do not materially alter the initial site plan or any information contained in the original submission may be adopted without a renewed public hearing.

## Section 10: Design and Installation.

10.1 The design of the wind turbine generator and/or wind energy facility shall conform to applicable industry standards, including but not limited to those of the American National Standards Institute. The applicant shall submit certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, or other similar certifying organizations.

10.2 To the extent applicable, the wind turbine generator and/or wind energy facility shall comply with the Pennsylvania Uniform Construction Code, 34 Pa.Code Sections 403.1-40.142, as amended, including but not limited to paying all fees and costs of inspection as provided thereunder.

10.3 All wind turbine generators and/or wind energy facilities shall be equipped with a redundant braking system. This includes both aerodynamic overspeed controls (including variable pitch, tip and other systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for overspeed protection.

10.4 All electrical components of the wind turbine generator and/or wind energy facilities shall conform to relevant and applicable local, state and national codes, and relevant and applicable international standards.

10.5 Visual appearance of wind turbine generators and/or wind energy facilities, as well as power lines erected therewith shall be regulated in the following manner:

- a. Wind turbine generators and/or wind energy facilities shall be a non-obtrusive color, such as white, off-white or gray. The towers and generators of the wind turbine generators and/or wind energy facilities shall have a non-reflective, painted steel finish,

subject to any applicable standards of the Federal Aviation Administration or other regulatory agency with jurisdiction of the matter.

b. Wind turbine generators and/or wind energy facilities shall not be artificially lighted, except to the extent required by the Federal Aviation Administration or other applicable authority. If lighting is required, the lighting alternatives and design chosen shall seek to minimize the disturbance to the surrounding views.

c. Wind turbine generators and/or wind energy facilities shall not display advertising, except for reasonable identification of the turbine manufacturer, facility owner and operator.

d. On-site transmission and power lines between wind turbine generators, as well as those emanating to and from wind energy facilities, to the extent practical shall be placed underground. All underground transmission cabling shall consist of fiber optic lines.

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

f. Visible, reflective, colored objects, such as flags, reflectors or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of ten (10') feet from the ground.

10.6 Wind turbine generators and/or wind energy facilities shall not be climbable up to fifteen (15') feet above ground surface.

10.7 All access doors to wind turbine generators and/or wind energy facilities, as well as electrical equipment, outbuildings and all appurtenances thereto, shall be locked or fenced, as appropriate, to prevent entry by non-authorized personnel. Said fencing shall be no less than eight (8') feet in height, and shall include a locking portal that secures the access area through the fencing.

10.8 Facility owner and/or operator shall utilize industry standards and good utility practice to minimize, to the extent practical, the impact, if any, of stray voltage and/or EMF on adjacent property/non-participation property.

10.9 Each wind turbine generator shall consist of a tubular support, generator, nacelle, and three (3) blades. Facility owner and/or operator shall install wind turbine generators of two (2) megawatts nameplate capacity each, unless otherwise approved by the Board of Supervisors.

10.10 Facility owner and/or operator shall ensure that the design and operation of any wind turbine generator and/or wind energy facility avoids disruption or loss of radio, telephone, television or similar signals, and shall mitigate any harm caused thereby.

10.11 Facility owner and/or operator shall abide by all applicable local, state and federal fire code and emergency guidelines. Upon request the applicant, facility owner and/or operator shall cooperate with emergency services to develop and coordinate implementation of an emergency response plan for wind turbine generators and/or wind energy facilities.

10.12 All wind turbine generators shall be equipped with portable fire extinguishers, unless the local fire department or municipal engineer provides written documentation establishing that the same are not necessary.

#### Section 11: Use of Public Roads.

11.1 Applicant must provide evidence, satisfactory to the Township, of access to and from the wind turbine generators and/or wind energy facility from public (state, federal or township) roads within the geographic limitations of the Township.

11.2 Applicant shall identify all state, federal and local public roads to be used within the Township to transport equipment and parts for construction, operation and maintenance of wind turbine generators and/or wind energy facilities.

11.3 The Township's engineer, or a qualified third party engineer hired by the Township and paid for by the applicant, shall document public road conditions prior to construction of the wind turbine generator and/or wind energy facility. The engineer shall

document road conditions within thirty (30) days after construction of the permitted project is complete, or as soon thereafter as weather may allow.

11.4 The Township shall require applicant to secure a bond for the road(s) to be used within the Township in compliance with applicable regulations at an amount consistent therewith; or, if not provided by regulation, an amount set at the discretion of the Board of Supervisors in consultation with the hired engineer.

11.5 Any road damage caused by the applicant, facility owner, operator, or contractors shall be promptly repaired to the Township's satisfaction at the expense of the applicant and/or facility owner.

11.6 The Township shall require demonstration of appropriate financial assurance, including but not limited to requiring applicant or facility owner, to post financial security to ensure the prompt repair of damaged public roads.

11.7 Every effort should be made to use existing roads and logging roads. New deforestation and forest fragmentation should be kept to a minimum. Private entrance roads to wind turbine generators and/or wind energy facilities, as well as associated meteorological towers, communications towers and auxiliary buildings shall not be paved, but must be maintained in a mud-free condition.

## Section 12: Set backs.

12.1 The wind turbine generators within a wind energy facility shall comply with the following setbacks:

- a. In relation to the date upon which a permit hereunder shall be issued, each wind turbine generator shall be set back from the nearest existing school, hospital, church, or public library a distance of no less than two thousand five hundred (2,500') feet. The set back distance shall be measured from the center of the wind turbine generator base to the nearest point of the foundation of such buildings.

b. In relation to the date upon which a permit hereunder shall be issued, each wind turbine generator shall be set back from all structures, including but not limited to residences, garages and outbuildings located within or upon land of a participating landowner, a distance of no less than one thousand five hundred (1,500') feet. The set back distance shall be measured from the center of the wind turbine generator base to the nearest point of the foundation of such buildings. This provision shall not include structures or other appurtenances related strictly to the wind energy facility. A "participating landowner" shall mean a property owner or property that is subject to an agreement or lease with the facility owner or operator regarding the installation and maintenance of a wind turbine generator and/or wind energy facility.

c. In relation to the date upon which a permit hereunder shall be issued, each wind turbine generator shall be set back from all structures, including but not limited to residences, garages and outbuildings located within or upon land of a non-participating landowner, a distance of no less than two thousand five hundred (2,500') feet. The set back distance shall be measured from the center of the wind turbine generator base to the nearest point of the foundation of such buildings.

d. In relation to the date upon which a permit hereunder shall be issued, each wind turbine generator shall be set back from all existing property lines adjacent to the participating landowner a distance of no less than two thousand (2,000') feet. The set back distance shall be measured from the center of the wind turbine generator base to the nearest point of the property lines. This distance may be waived among both participating and non-participating landowners by written agreement executed by the interested parties (i.e. both participating and non-participating landowners).

e. In relation to the date upon which a permit hereunder shall be issued, each wind turbine generator shall be set back from all public roads a distance of no less than 2.0 times its total height, determined at the nearest boundary of the right-of-way for such public road. The set back distance shall be measured from the center of the wind turbine generator base to the nearest point of the road right-of-way. Unless conclusive evidence exists to the contrary, the public road right-of-way shall be presumed to be a distance (width) of sixty-six (66') feet.

f. In relation to the date upon which a permit hereunder shall be issued, each wind turbine generator shall be set back from above-ground electric power lines, public telephone lines and television cable lines a distance of no less than 2.0 times its total height. The set back distance shall be measured from the center of the wind turbine generator base to the nearest point of such lines.

g. In relation to the date upon which a permit hereunder shall be issued, each wind turbine generator shall be set back from any historic structure, district, site or resource listed or eligible to be listed on the Pennsylvania Heritage Inventory, the National Register of Historic Places, the National Historic Landmarks Registry, or any successor thereto, a distance no less than two thousand five hundred (2,500') feet. The set back distance shall be measured from the center of the wind turbine generator base to the

nearest point on the foundation of an historic building, structure or resource, or the nearest property line of an historic district or site.

h. In relation to the date upon which a permit hereunder shall be issued, each wind turbine generator shall be set back from any Important Bird Area (IBA) as identified by the Audubon Society, BirdLife International and/or any other similar recognized agency of authority, a distance of no less than two thousand five hundred (2,500') feet. The set back distance shall be measured from the center of the wind turbine generator base to the nearest point of an identified IBA. The term "Important Bird Area" shall constitute critical habitat for known bird populations of North America.

i. In relation to the date upon which a permit hereunder shall be issued, each wind turbine generator shall be set back from any lake, vernal pool, dam, wetlands, pond, public water source, private wells and springs, a distance of no less than two thousand five hundred (2,500') feet. The set back distance shall be measured from the center of the wind turbine generator base to the nearest point of an identified lake, vernal pool, dam, wetlands, pond, public water source, private well and spring.

12.2 In addition to the agencies, societies or organizations identified elsewhere in this Ordinance, the applicant shall be required to contact and to present proposals by certified mail return receipt mail to each of the following agencies:

U.S. Fish and Wildlife Service  
PA Field Office  
315 South Allen Street, Suite 322  
State College, PA 16801-4850

Department of Conservation and Natural Resources  
Bureau of Forestry  
Central Office  
6th Floor, Rachel Carson State Office Building  
P.O. Box 8553  
Harrisburg, PA 17105-8552

Pennsylvania Game Commission  
2001 Elmerton Avenue  
Harrisburg, PA 17110-9797

Pennsylvania Fish and Boat Commission  
1601 Elmerton Avenue  
P.O. Box 67000  
Harrisburg, PA 17106-7000

Department of Conservation and Natural Resources  
Office of Conservation Science  
Wild Resource Conservation Fund  
PO Box 8764  
Harrisburg, PA 17105-8764

12.3 The applicant shall submit the proposal to the identified agencies for review and recommendations regarding the matters pertaining to the agency. Applicant shall be required to adhere to all recommendations and all directives of the agencies, and shall provide the Township with a letter of consistency or compliance from each agency. Should any agency identified in Section 12.2 fail to respond within one hundred twenty (120) days of the date of return receipt to an applicant's request for review of the proposal, Subsection 12.3 shall be satisfied as to the need to obtain a finding of consistency or compliance from that specific agency.

Setback requirements or recommendations of the agencies as they relate to natural resources and historic sites or structures shall supercede the setbacks required in this Ordinance; provided, however, that such agency requirements or recommendations are greater in distance than that established herein.

Where specific standards, recommendations or requirements as to any of the historic sites and structures, or natural resources listed in this Ordinance are not obtained by the applicant, the terms and provisions of this Ordinance shall apply. Where multiple agencies with jurisdiction over a matter offer differing standards, recommendations and/or requirements, the more strict standards, recommendations and/or requirements shall apply; provided, however, that such standards, recommendations and/or requirements are more strict than that established herein. In such event, the terms and provisions of this Ordinance shall apply.

### Section 13: Waiver of Setbacks.

13.1 Property owners may waive the setback requirements in Section 12.1(d) as herein above provided by signing a written waiver that sets forth the applicable set back provision and the proposed changes.

13.2 The written waiver shall notify the property owners of the setback required by this Ordinance, describe how the proposed wind turbine generator and/or wind facility is not in compliance therewith, and state that consent is granted for the wind turbine generator and/or wind energy facility to not be set back as required. Further, the written waiver shall be signed by all parties for whom the waiver shall be applicable.

13.3 Any such waiver between property owners shall be recorded in the Recorder of Deeds Office for the County where the wind turbine generator and/or wind energy facility is located, as well as the Recorder of Deeds Office for the County where the non-participating landowner is located. The waiver shall specifically set forth the properties benefited and burdened, and advise all subsequent purchasers of the burdened property that the waiver of setback shall run with the land and may forever burden the subject property.

13.4 Upon application, the Township may waive the setback requirement for public roads; provided, however, that good cause is demonstrated by the applicant, facility owner and/or operator.

### Section 14: Noise and Shadow Flicker.

14.1 Audible sound from a wind turbine generator and/or wind energy facility, or addition of a wind turbine generator to an existing wind energy facility, shall not exceed forty-five (45) dBA and forty-five (45) dBC (L10, meaning not to be exceeded by more than 10% of

the time), as measured at the property line between participating and non-participating landowners. Methods for measuring and reporting acoustic emissions from wind turbine generators and/or wind energy facilities shall be equal to or exceed the minimum standards for precision described in AWEA Standard 2.1 - 1989 titled *Procedures for the Measurement and Reporting of Acoustic Emissions from Wind Turbine Generation Systems Volume I: First Tier*.

14.2 The facility owner and operator shall conduct and provide to Township and all non-participating landowners of occupied buildings a modeling study demonstrating that shadow flicker shall not occur on any occupied building on a non-participating property.

#### Section 15: Waiver of Noise and Shadow Flicker Provisions.

15.1 Property owners, including participating and non-participating landowners, may waive the noise and shadow flicker provisions of this Ordinance by signing a written waiver of their rights herein provided.

15.2 The written waiver shall notify the property owners and state that the consent is granted for the wind turbine generator and/or wind energy facility not to comply with the sound or flicker limit set forth in this Ordinance.

15.3 Any such waiver between property owners shall be recorded in the Recorder of Deeds Office for the County where the wind turbine generator and/or wind energy facility is located, as well as the Recorder of Deeds Office for the County where the non-participating landowner is located. The waiver shall specifically set forth the properties benefited and burdened, and advise all subsequent purchasers of the burdened property that the waiver of sound or flicker limit shall run with the land and may forever burden the subject property.

## Section 16: Maintenance, Repair, Replacement and Removal.

16.1 Facility owner and/or operator shall repair, maintain and replace the wind turbine generators and associated equipment during the term of the permit in a manner consistent with wind turbine generator and/or wind energy facility industry standards as needed to keep the wind turbine generator and/or wind energy facility in good repair and operating condition.

16.2 Each wind turbine generator and all related improvements shall be removed within twelve (12) months of the date when the use of the particular wind turbine generator has been discontinued or abandoned by a facility owner and/or operator, or upon expiration of the permit issued pursuant to this Ordinance, whichever is earlier. A wind turbine generator shall be decommissioned as further described in this Ordinance.

16.3 At least once every thirty-six (36) months the individual wind turbine generators shall be inspected qualified operations and maintenance personnel, or a qualified agent thereof, who is regularly involved in the maintenance, inspection and/or erection of wind turbine generators, towers, antennas and all appurtenances thereto. At a minimum, this inspection shall be conducted in accordance with a wind turbine generator inspection check list as established by the engineers of the Township and facility owner, or duly qualified agents thereof. The inspection herein required shall be considered a major inspection.

16.4 At least once every twelve (12) months a visual inspection from the ground shall be conducted by operations and management personnel. This inspection shall include, but not be limited to, visual inspection of wind turbine generator foundations, structures, guys and connections, for evidence of settlement or lateral movement; soil erosion; condition of paint or galvanizing; rust or corrosion; loose or missing bolts; loose or corroded lightning protection

connectors; wind turbine generator tower plumbness; significant variation in guy sags (i.e. guy tensions); and other material areas or matters relating to the structural integrity of the wind turbine generator. The inspection herein required shall be considered a minor inspection.

16.5 In addition to the regularly scheduled major and minor inspections herein set forth, a minor inspection shall be conducted if a wind turbine generator or its appurtenances are noted at any time to be visibly damaged. Additionally, a major inspection shall be conducted if the visible damage to a wind turbine generator is significant or when, after conducting a minor inspection, significant questions remain about the integrity of a wind turbine generator. The facility owner and/or operator shall notify the Township when it detects and/or learns of damage to a wind turbine that requires an inspection pursuant to this subsection.

16.6 Facility owner and/or operator shall provide an annual letter to the Township certifying compliance with the inspections requirements of this section.

#### Section 17: Decommissioning.

17.1 Each wind turbine generator and all related improvements associated therewith shall be removed within twelve (12) months of the date when the use of the particular wind turbine generator has been discontinued or abandoned by facility owner and/or operator, or upon termination of the useful life of same. The wind turbine generator shall be presumed to be discontinued or abandoned if no electricity is generated by such wind turbine generator for a continuous period of six (6) months.

17.2 Decommissioning shall include removal of wind turbine generator and/or wind energy facilities, as well as all improvements or appurtenances related thereto, including but not limited to buildings, cabling, electrical components, roads, foundations and other associated

facilities. At the time of removal, a wind turbine generator shall be decommissioned and removed, including removal of the base to a depth of four (4') feet below grade.

17.3 Prior to the issuance of a permit provided by this Ordinance, applicant, facility owner and/or operator shall submit to the Township financial security (which shall be in addition to any other financial security required pursuant to the Township's Subdivision and Land Development Ordinance) which shall be deposited with the Township in an amount sufficient to cover the costs of decommissioning all improvements or common amenities, including but not limited to the wind turbine generator, all appurtenances, the base and footing, storm water detention and/or retention basins and other related drainage facilities, electrical apparatus, fencing, all auxiliary buildings, and restoration of the land to its original condition, including forestry plantings of the same type/variety and density as the original.

17.4 The financial security herein required for decommissioning shall be in the form of a bond posted with a bonding company chosen by the party posting the financial security, provided said bonding company is authorized to conduct such business in the Commonwealth of Pennsylvania. Such bond shall provide for and secure to the public the decommissioning of any improvements, structures and appurtenances related to the wind turbine generator and/or wind energy facility. In the event the Township approves a successor as facility owner and/or operator to a wind turbine generator and/or wind energy facility, such successor must provide for the security bond as herein required.

17.5 The amount of the bond to be posted for decommissioning of any improvements, structures and appurtenances as required by this Ordinance shall be equal to one hundred twenty (120%) percent of the anticipated cost. Annually, the Township may adjust the required amount of the bond by Resolution. Subsequent to said adjustment, if any, the Township may require the

facility owner and/or operator to post additional security in the form of an increased bond in order to assure that the financial security equals said one hundred twenty (120%) percent. Any additional security shall be posted by the facility owner and/or operator in accordance with this Ordinance.

17.6 The amount of financial security required shall be based upon an estimate of the cost of decommissioning of any improvements, submitted by the facility owner and/or operator and prepared by a professional engineer licensed as such in this Commonwealth and certified by such engineer to be a fair and reasonable estimate of such cost. The Township, upon the recommendation of the municipal engineer or hired by the Township in this instance, may refuse to accept such estimate for good cause shown. If the facility owner and/or operator (or the developer) and the Township are unable to agree upon an estimate, then the estimate shall be recalculated and re-certified by another professional engineer licensed as such in this Commonwealth and chosen mutually by the Township and the facility owner and/or operator (or the developer). The estimate shall be the final estimate. In the event that a third engineer is so chosen, fees for the services of said engineer shall be paid equally by the Township and the facility owner and/or operator (or the developer).

17.7 As the work of decommissioning of any improvements proceeds, the party posting the bond may request the governing body to release, or authorize the release from time to time, such portions of the bond necessary for payment to the contractor(s) performing the work. Any such requests shall be in writing addressed to the Board of Supervisors, upon which the Board of Supervisors shall request the municipal engineer (or an engineer hired in this instance) to certify in writing to the Board of Supervisors that such portion of the decommissioning of any improvements has been completed. Upon such certification, the Board of Supervisors shall

authorize the release by the bonding company of an amount as estimated by the municipal engineer (or an engineer hired in this instance) fairly representing the value of the decommissioning of any improvements.

17.8 When decommissioning has been completed, the facility owner and/or operator shall notify the Board of Supervisors in writing, by certified or registered mail, of the completion of the aforesaid decommissioning or all improvements and shall send a copy thereof to the municipal engineer (or engineer hired in this instance). The Board of Supervisors shall direct and authorize the municipal engineer (or engineer hired in this instance) to inspect the site. The municipal engineer (or engineer hired in this instance) shall indicate to the Township approval or rejection of said decommissioning of all improvements, either in whole or in part, and if said improvements or a portion thereof shall not be approved or shall be rejected, said report shall contain a statement of reasons for such non-approval or rejection.

17.9 The Board of Supervisors shall notify the facility owner and/or operator as to the municipal engineer's acceptance or rejection (or that of the engineer hired in this instance) of the decommissioning. If the decommissioning is acceptable, the Township shall authorize release of the bond. If the decommissioning is not acceptable or rejected, the facility owner and/or operator shall within thirty (30) days of notice by the Township of the deficiencies, correct the same and in the event said deficiencies are not so corrected within the said time period, or in the event the decommissioning is not commenced, the Township may utilize the bond to accomplish the same as herein set forth.

17.10 In the event that any decommissioning of improvements which are required have not been completed as required in this Ordinance, the Board of Supervisors is hereby granted the power and authority to enforce any corporate bond by appropriate legal and equitable remedies.

If proceeds of such bond are insufficient to pay the cost of decommissioning of improvements covered by said security, the Board of Supervisors may, at its option, proceed with decommissioning all improvements, or completing the decommissioning as necessary to satisfy the terms and provisions of this Ordinance, and may institute appropriate legal or equitable action to recover the monies necessary to complete the remainder of the decommissioning project.

17.11 The Township may prescribe that the facility owner and/or operator shall reimburse the Township for the reasonable and necessary expenses incurred for the inspection of decommissioning of improvements. Such expenses shall be reasonable and in accordance with the ordinary and customary fees and expenses charged by the municipal engineer (or engineer hired in this instance) for work performed for similar services, as well as attorney's fees incurred by the Township in connection therewith.

17.12 The owner of any participating property which is subject to decommissioning shall be given the option to keep the road(s) created on such owner's property by or in connection with the construction of any wind turbine generator and/or wind energy facility. In such event, the owner desiring to keep the road(s) shall inform the Township in writing of his/her intent to do so and to have the subject road(s) exempted from the decommissioning provisions of this Ordinance.

#### Section 18: Insurance.

18.1 There shall be maintained by the facility owner and/or operator a current general liability policy with limits of at least the following:

a. One million (\$1,000,000.00) dollars for personal or bodily injury to or death of any one (1) person;

b. Three million (\$3,000,000.00) dollars for personal or bodily injury to or death of any number of persons arising from any one (1) occurrence; and,

c. One million (\$1,000,000.00) dollars for any instance of property damage.

18.2 Umbrella liability insurance coverage shall also be maintained with coverage to be in excess of the insurance required in Subsection 18.1. The limits of liability for such coverage shall not be less than three million (\$3,000,000.00) dollars for each occurrence and three million (\$3,000,000.00) in the aggregate.

18.3 There shall be maintained by the facility owner and/or operator worker's compensation insurance coverage in an amount required by Pennsylvania law. Facility owners and/or operators shall require all contractors, subcontractors and all others not protected under its worker's compensation insurance policy to obtain worker's compensation insurance and employer's liability insurance coverage as required by Pennsylvania law.

18.4 The Township shall be identified as an additional insured on all insurance policies referenced herein. No policy of insurance shall be cancelled without first providing the Township with at least thirty (30) days prior written notice of intent to cancel. In the event of cancellation, facility owner and/or operator shall obtain new insurance coverage that satisfies the terms and provisions of this Ordinance, without causing any lapse or delay in coverage in the amounts herein prescribed.

18.5 Certificates of insurance evidencing compliance with these requirements shall be provided to the Township. All policies other than worker's compensation insurance shall be written on an occurrence basis, rather than a claims made basis.

18.6 Coverage limits set forth in this Ordinance may be revisited by the Board of Supervisors from time to time, and may be amended hereafter as deemed necessary and

appropriate by the Board of Supervisors by resolution. Facility owners and/or operators shall be required to provide updated insurance certificates to document any amended coverage limits deemed necessary and appropriate by the Board of Supervisors.

#### Section 19: Public Inquiries and Complaints.

19.1 The facility owner and/or operator shall maintain a phone number and identify a person responsible for the public to contact with inquiries and complaints throughout the life of the project.

19.2 The facility owner and/or operator shall make reasonable efforts to respond to the public's inquiries and complaints.

#### Section 20: Remedies.

20.1 It shall be unlawful for any person, firm, corporation or other entity to violate or to fail to comply with or take any action which is contrary to the terms of this Ordinance. It shall be unlawful to cause another to violate or fail to comply or to take any action which is contrary to the terms of this Ordinance.

20.2 If the Board of Supervisors determines that a violation of the Ordinance or the permit has occurred, the Township shall provide written notice to any person, firm, corporation or other entity alleged to be in violation of this Ordinance. If the alleged violation does not pose an immediate threat to public health or safety, the Township and the parties shall engage in good faith negotiations to resolve the alleged violation. Such negotiation shall be conducted within thirty (30) days of the notice of violation.

20.3 If after thirty (30) days from the date of the notice of violation the Township determines, in its discretion, that the parties have not resolved the alleged violation, the Township may institute civil enforcement proceedings or any other remedy at law or in equity,

including but not limited to seeking injunctive relief, to ensure compliance with this Ordinance.

In the event that civil enforcement proceedings are required to be instituted by the Township, any party determined to be in violation of this Ordinance and enjoined or required by Court Order to comply therewith shall reimburse the Township for all attorney's fees, costs and expenses incurred in such litigation.

20.4 Any person authorized by the Township may enforce the provisions of this Ordinance. The Township's solicitor may institute summary criminal proceedings to enforce this Ordinance.

20.5 Any person who shall violate any provision of this Ordinance shall, upon conviction of such summary offense, be sentenced to pay a fine of one thousand (\$1,000.00) dollars, plus the cost of prosecution, and/or be sentenced to a period of imprisonment for a term not to exceed ninety (90) days. Each day that a violation of this Ordinance continues shall constitute a separate and distinct offense which shall be subject to the aforesaid penalties.

Section 21: Appeals of Decisions by Board of Supervisors.

21.1 Any person aggrieved by any determination or action by the Township shall have an opportunity to present and to explain its position before the Township Board of Supervisors. Any and all decisions and/or determinations by the Board of Supervisors may be appealed to the Court of Common Pleas of Bedford County, and all appeals are *de novo*.

21.2 Any such request to be heard by the Board of Supervisors shall be on forms provided by the Township and shall include a complete statement of the reasons the person is aggrieved, together with a written statement of all evidence to be provided to the Board of Supervisors. The factual basis or summary of any expert testimony that will be presented at such

meeting of the Board of Supervisors must also be attached to the form provided by the Township.

21.3 Failure to request the opportunity to present evidence to the Board of Supervisors under this Ordinance within thirty (30) days from the date of determination or action by the Township shall result in the waiver of any right to request an opportunity to present evidence to the Board of Supervisors and appeal to the Court of Common Pleas of Bedford County.

21.4 The person requesting an opportunity to be heard under this Ordinance must provide a written notice of same to all property owners and tenants of occupying buildings within two thousand five (2,500') feet of the boundaries of the property upon which a wind turbine generator and/or wind energy facility is located. Proof of service of notice by certified mail or notarized affidavit of hand delivery must be submitted with the form provided by the Township. Failure to provide notice required by this Ordinance shall constitute a material defect and result in a waiver of the right to be heard by the Board of Supervisors and a waiver of the right to appeal to the Court of Common Pleas of Bedford County.

21.5 The appeal shall be accompanied by a fee of three hundred (\$300.00) dollars. The person seeking to be heard under this Ordinance shall be responsible for all costs of the appeal in excess of three hundred (\$300.00) dollars. Failure to file a complete appeal form together with statements and the filing fee shall constitute a waiver of the right to be heard by the Board of Supervisors and a waiver of the right to appeal to the Court of Common Pleas of Bedford County.

Section 22: Severability.

If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such determination shall not affect or impair any of the

remaining provisions, sentences, clauses, section or parts of this Ordinance. It is hereby declared as the intent of the Board of Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part hereof not have been included herein.

Section 23: Repealer.

All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed.

Section 24: Effective Date.

This Ordinance shall go into effect upon final passage as provided by law.

ORDAINED AND ENACTED the \_\_\_\_ day of \_\_\_\_\_, 2008, by the Board of Supervisors of West Providence Township.

WEST PROVIDENCE BOARD OF SUPERVISORS

By: \_\_\_\_\_  
Supervisor

ATTEST: By: \_\_\_\_\_  
Supervisor

\_\_\_\_\_  
Secretary By: \_\_\_\_\_  
Supervisor