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NORTH EAST TOWNSHIP

ORDINANCE NO.2013-

AN ORDINANCE AMENDING THE NORTH EAST TOWNSHIP ZONING ORDINANCE, NO. 2005-001, AS AMENDED, ESTABLISHING A WIND TURBINE AREA AND SETTING FORTH SETBACK DISTANCES AND CRITERIA FOR THE CONSTRUCTION AND OPERATION OF WIND ENERGY FACILITIES IN NORTH EAST TOWNSHIP.

WHEREAS ,it is appropriate that the North East Township Zoning Ordinance, No.2005-001, as amended, ordained and enacted under the provisions of the Pennsylvania Municipalities Planning Code, be further amended to establish an area permitting the construction of wind energy facilities and criteria for their construction and operation in North East Township.

NOW THEREFORE BE IT ENACTED AND ORDAINED by the Supervisors of North East Township, that the North East Township Zoning Ordinance, No. 2005-001, as previously amended, is hereby further amended to include the following:

Section 1. TITLE: This Ordinance shall be known as the Wind Energy Facility Ordinance for North East Township and shall be incorporated into and become a part of the North East Township Zoning Ordinance.

Section 2. PURPOSE: The purpose of the Ordinance is to provide for the construction and operation of Wind Energy Facilities in North East Township, subject to rules and regulations intended to protect the public health, safety and welfare.

Section 3. DEFINITIONS:

A. "Applicant" is the person or entity filing an application under this Ordinance.

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B. "Facility Owner" means the entity or entities having an equity interest in the Wind Energy Facility, including their respective successors and assigns.

C. "Operator" means the entity responsible for the day-to-day operation and maintenance of the Wind Energy Facility.

D. "Hub Height" means the distance measured from the surface of the tower foundation to the height of the Wind Turbine hub, to which the blades are attached.

E. "Occupied Building" means a residence, school hospital church, public library or other building used for public gathering that is occupied or in use when the permit application is submitted.

F. "Turbine Height" means the distance measured from the surface of the tower foundation to the highest point of the turbine rotor plane.

G. "Wind Turbine" means a wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, and includes the nacelle, rotor, tower, and pad transformer, if any.

H. "Wind Energy Facility" means an electric generating facility, whose main purpose is to supply electricity, consisting of one or more Wind Turbines and other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures and facilities.

I. "Wind Energy District" means the area as shown on the map attached hereto, made a part hereof and labeled "Wind Energy District Map".

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J. "Non-Participating Landowner" means any landowner except those on whose property all or a portion of a Wind Energy Facility is authorized pursuant to an agreement with the Facility Owner or Operator.

Section 4. APPLICABILITY:

A. This Ordinance applies to all Wind Energy Facilities proposed to be constructed after the effective date of the Ordinance, except that this Ordinance is not intended to apply to stand-alone Wind Turbines less than two hundred (200) feet in total height and constructed primarily for residential or farm use on the property where the Wind Turbine is located.

B. Wind Energy Facilities constructed prior to the effective date of this Ordinance shall not be required to meet the requirements of this Ordinance, provided that any physical modification to an existing Wind Energy Facility that materially alters the size, type or number of Wind Turbines or other equipment shall require a permit under this Ordinance.

Section 5. PERMITTED USE: A Wind Energy Facility shall be considered a permitted only in the "Wind Energy District".

Section 6. PERMIT REQUIREMENT:

A. No Wind Energy Facility, or addition of a Wind Turbine to an existing Wind Energy Facility, shall be constructed or located within North East Township unless a permit has been issued to the Facility Owner or Operator, approving construction of the facility under this Ordinance.

B. The permit application or amended permit application shall be accompanied with a fee equal to four (\$4.00) Dollars for each and every One Thousand (\$1,000.00) Dollars in construction costs for each wind turbine.

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C. Any physical modification to an existing or permitted Wind Energy Facility that materially alters the size, type or number of Wind Turbines or other equipment shall require a permit modification under this Ordinance and a fee as set forth in B, above, shall be paid. Like-kind replacements shall not require a permit modification.

Section 7. PERMIT APPLICATION:

A. The permit application shall demonstrate that the proposed Wind Energy Facility will comply with this Ordinance.

B. The application shall contain the following:

1. A narrative describing the proposed Wind Energy Facility, including an overview of the project; the project location; the approximate generating capacity of the Wind Energy Facility; the approximate number, representative types and height or range of heights of Wind Turbines to be constructed, including their generating capacity, dimensions and respective manufacturers, and a description of ancillary facilities.
2. An affidavit or similar evidence of agreement between the property owner(s) and the Facility Owner or Operator demonstrating that the Facility Owner or Operator has the permission of the property owner(s) to apply for necessary permits for construction and operation of the Wind Energy Facility.
3. Identification of the properties on which the proposed Wind Energy Facility will be located, and the properties adjacent to where the Wind

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Energy Facility will be located and copies of all recorded setback waivers.

4. A site plan showing the planned location of each Wind Turbine, property lines, setback lines, access road and turnout locations, substation(s), electrical cabling from the Wind Energy Facility to the substation(s), ancillary equipment, buildings, and structures, including permanent meteorological towers, associated transmission lines, and layout of all structures within the geographical boundaries of any applicable setback.
5. Documents related to decommissioning.
6. Other relevant studies, reports, certifications and approvals as may be reasonably requested by North East Township to ensure compliance with this Ordinance and such permits as are required by applicable state or federal law, rule or regulations.

C. Within (30) days after receipt of a permit application, North East Township Zoning Officer will determine whether the application is complete and advise the applicant accordingly.

D. Within sixty (60) days of a completeness determination, North East Township will schedule a public informational meeting. The applicant shall present the project to the public and municipal officials, and answer questions about the project. The public shall be afforded an opportunity to ask questions and provide comment on the proposed project.

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E. Within one hundred and twenty (120) days of a completeness determination, or within forty-five (45) days after the informational meeting, whichever is later, the Zoning Officer will issue or deny the permit.

F. Throughout the permit process, the Applicant shall promptly notify North East Township of any changes to the information contained in the permit application.

G. Changes to the pending application that do not materially alter the initial site plan may be adopted without a renewed informational meeting.

Section 8. DESIGN AND INSTALLATION

A. *Design Safety Certification.* The design of the 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, Germanischer Lloyd Wind Energies, or other similar certifying organizations. Wind Energy Facilities shall be promptly modified to comply with changes in design standards.

B. *Uniform Construction Code.* The Wind Energy Facility shall comply with the Pennsylvania Uniform Construction Code, 34 Pa. Code §§403.1 –403.142 and a building permit or permits shall be obtained and all related fees paid prior to construction.

C. *Controls and Brakes.* All Wind Energy Facilities shall be equipped with a redundant braking system. This includes both aerodynamic overspeed controls (including variable pitch, tip, and other similar 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

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protection. Ice sensors and control systems shall be employed to limit potential damage from falling ice.

D. *Electrical Components.* All electrical components of the Wind Energy Facility shall conform to relevant and applicable local, state and national codes, and relevant and applicable international standards.

E. *Visual Appearance; Power Lines.*

1. Wind Turbines shall be a non-obtrusive color such as white, off-white or gray.
2. Wind Energy Facilities shall not be artificially lighted, except to the extent required by the Federal Aviation Administration or other applicable authority that regulates air safety.
3. Wind Turbines shall not display advertising, except for reasonable identification of the turbine manufacturer, Facility Owner and Operator.
4. On-site transmission and power lines between Wind Turbines shall, to the maximum extent practicable, be placed underground.

F. *Warnings.*

1. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
2. 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 often feet from the ground.

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G. *Climb Prevention/Locks.*

1. Wind Turbines shall not be climbable up to fifteen (15) feet above ground surface.
2. All access doors to Wind Turbines and electrical equipment shall be locked or fenced, as appropriate, to prevent entry by non-authorized persons.

H. Turbine Height shall not exceed five hundred fifty (550) feet.

Section 9. **SETBACKS.**

A. *Occupied Buildings.* Wind Turbines shall be set back from the nearest Occupied Building a distance of not less than five (5) times the Hub Height, as measured from the center of the Wind Turbine base to the nearest point on the foundation of the Occupied Building.

B. *Property lines.* All Wind Turbines shall be set back from the nearest property line a distance of not less than the normal setback requirements for that zoning classification, 1.1 times the Turbine Height or one thousand (1,000) feet, whichever is greater. The setback distance shall be measured to the center of the Wind Turbine base.

C. *Public Roads:* All Wind Turbines shall be set back from all public roads a distance of not less than 1.1 times the Turbine Height, as measured from the nearest right-of-way line of the public road to the center of the Wind Turbine base.

Section 10. **WAIVER OF SETBACKS**

A. Property owners may waive the setback requirements in 9(A) (Occupied Buildings) and 9(B) (Property Lines) by signing a waiver that sets forth the applicable setback provision(s) and the proposed changes.

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B. The written waiver shall notify the property owner(s) of the setback required by this Ordinance, describe how the proposed Wind Energy Facility is not in compliance, and state that consent is granted for the Wind Energy Facility to not be setback as required by this Ordinance.

C. Any such waiver shall be recorded in the Recorder of Deeds Office for Erie County. The waiver shall describe the properties benefitted 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.

Section 11. USE OF PUBLIC ROADS

A. The Applicant shall identify all state and local public roads to be used within North East Township to transport equipment and parts for construction, operation or maintenance of the Wind Energy Facility.

B. North East Township's engineer or a qualified third party engineer hired by North East Township and both to be paid for by the Applicant, shall document road conditions prior to construction. The engineer shall document road conditions again thirty (30) days after construction is complete or as weather permits.

C. North East Township may require bonding of the road in compliance with state regulations and applicable Township Ordinances.

D. Any road damage caused by the applicant or its contractors shall be promptly repaired at the applicant's expense.

E. The Applicant shall demonstrate that it has appropriate financial assurance to ensure the prompt repair of damaged roads.

Section 12. LOCAL EMERGENCY SERVICES

A. The Applicant shall provide a copy of the project summary and site plan to local emergency services, including paid or volunteer Fire Department(s).

B. Upon request of the Township, the Applicant shall cooperate with emergency services to develop and coordinate implementation of an emergency response plan for the Wind Energy Facility.

C. Applicant shall obtain a street address for each Wind Turbine.

Section 13. NOISE AND SHADOW FLICKER

A. Audible sound from a Wind Energy Facility shall not exceed fifty (50) dBA, as measured at the exterior of any Occupied Building on a Non-participating Landowner's property. Methods for measuring and reporting acoustic emissions from Wind Turbines and the Wind Energy Facility 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. Upon request of the Township, the Facility Owner and Operator shall institute testing and provide all data showing compliance.

B. The Facility Owner and Operator shall make every effort to minimize shadow flicker to any Occupied Building.

Section 14. SIGNAL INTERFERENCE. The Applicant shall make every effort to avoid any disruption or loss of radio, telephone, television or similar signals, and shall mitigate any harm caused by the Wind Energy Facility.

Section 15. LIABILITY INSURANCE. There shall be maintained a current general liability policy covering bodily injury and property damage with limits of at least \$10 million per

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occurrence and \$20 million in the aggregate. The Facility Owner or Operator shall ensure that current certificates of insurance are continuously on file at North East Township.

Section 16. DECOMMISSIONING.

A. The Facility Owner and Operator shall, at its expense, complete decommissioning of the Wind Energy Facility, or individual Wind Turbines, within (12) twelve months after the end of the useful life of the Facility or individual Wind Turbines. The Wind Energy Facility or individual Wind Turbines will presume to be at the end of its useful life if no electricity is generated for a continuous period of twelve (12) months.

B. Decommissioning shall include removal of Wind Turbines, buildings, cabling, electrical components, roads, foundations to a depth of 36 inches, and any other associated facilities.

C. Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.

D. An independent and certified Professional Engineer shall be retained by the Facility Owner or Operator to estimate the total cost of decommissioning ("Decommissioning Costs") without regard to salvage value of the equipment. Said estimates shall be submitted to North East Township prior to construction and every fifth year thereafter.

E. The Facility Owner or Operator shall post and maintain Decommissioning Funds in an amount equal to Decommissioning Costs. The Decommissioning Funds shall be posted and maintained with a bonding company or Federal or Commonwealth chartered lending institution chosen by the Facility Owner or Operator, provided that the bonding company or lending institution is authorized to conduct such business within the Commonwealth and is approved by North East Township.

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F. Decommissioning Funds may be in the form of a performance bond, surety bond, letter of credit or other form of financial assurance as may be acceptable to North East Township.

G. If the Facility Owner or Operator fails to complete decommissioning within the period prescribed by Paragraph 17(A), then the landowner shall have six (6) months to complete decommissioning.

H. If decommissioning is not completed within the periods prescribed by Paragraphs 17(A) and 17(G), then North East Township may take such measures as necessary to complete decommissioning. The entry into and submission of evidence of a Participating Landowner agreement to North East Township shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors and assigns that North East Township may take such action as necessary to implement the decommissioning plan.

I. The Decommissioning Funds shall be released when the Facility Owner or Operator has demonstrated and North East Township concurs that decommissioning has been satisfactorily completed; or upon written approval of North East Township, in order to implement the decommissioning plan.

Section 17. PUBLIC INQUIRIES AND COMPLAINTS

A. The Facility Owner and Operator shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project.

B. The Facility Owner and Operator shall make reasonable efforts to respond to the public's inquiries and complaints.

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Section 18. **REMEDIES.** It shall be unlawful for any person, firm, or corporation to violate or fail to comply with or take any action which is contrary to the terms of this Ordinance, or any permit issued under the Ordinance, or cause another to violate or fail to comply, or to take any action which is contrary to the terms of the Ordinance or any permit issued under the Ordinance.

Section 19. **SEVERABILITY.** If any section, subsection, sentence, clause or phrase or portion of this document is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion thereof.

Section 20. **PENALTIES.** Any Owner, Operator, or other person who violates or permits a violation of this Ordinance shall be subject to the enforcement procedures and penalties set forth in the North East Township Zoning Ordinance, as amended.

Section 21. **EFFECTIVE DATE.** This Ordinance shall take effect ten (10) days after its adoption.

ENACTED AND ORDAINED by the Board of Supervisors of the North East Township, Erie County, Pennsylvania, this ____ day of July, 2013.

NORTH EAST TOWNSHIP

BY: _____
Vernon Frye, Chairman

ATTEST:

Karen Ahlgrim, Secretary