

# **Town of Garland**

## **Transportation and/or Utilities Corridor Ordinance**

Adoption Date \_\_\_\_\_

## **Section I - Purpose and Intent**

This Ordinance is adopted pursuant to 30-A M.R.S.A. § 3001, to protect the health, safety, and welfare of the Town of Garland and its residents. This Ordinance shall be known as the "Transportation and/or Utilities Corridor Ordinance". Transportation and/or Utilities Corridor will be referred to as "TUC" throughout this document.

## **Section II - Definitions**

The following terms are defined as follows.

- (a) **Applicant:** means the individual or business entity that seeks to secure a Permit or License under this Ordinance.
- (b) **Essential Wildlife Habitat:** means areas identified by the Commissioner, Maine Department of Inland Fisheries and Wildlife, in accordance with the provisions of 12 M.R.S.A., Chapter 925, Subchapter 3, and any Department of Inland Fisheries and Wildlife rules implementing that Subchapter.
- (c) **Good Utility Practice:** means any of the practices, methods and acts with respect to the safe operation of a TUC engaged in or approved by, in particular, those portions of the industry with experience in the construction, operation and maintenance of TUC during the relevant time period; or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could be expected to accomplish the desired result with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the region.
- (d) **Highway System:** means any road with private ownership interests capable of carrying motor vehicles.
- (e) **Occupied Structure:** means a building in which people live, work or frequent, including seasonal/recreational usages.
- (f) **Owner/operator:** means the person or entity with legal right, title, or interests of a TUC or the option to acquire the same, including successors and assigns, that has the authority and responsibility to operate the TUC on a day-to-day basis. An Owner/operator must have the legal authority to represent and bind.
- (g) **Project Boundary:** means the boundaries of the TUC within which the Owner/Operator has legal right title or interest, or the option to acquire the same, and as shown on the site plan submitted to and approved by the Planning Board in accordance with this Ordinance.
- (h) **Project Parcel:** means any parcel(s) of real estate on which all or any part of a TUC will be constructed.

- (i) **Property Line:** means the real estate boundary as described by recorded deeds and/or determined by a Professional Land Surveyor licensed in the State of Maine.
- (j) **Public Way:** means any road capable of carrying motor vehicles, including, but not limited to, any state highway, municipal road, county road, or other road dedicated to the public.
- (k) **Qualified Independent Acoustical Consultant:** Qualifications for persons conducting baseline and other measurements and reviews related to the Application for a TUC or for enforcement actions against an operating TUC include, at a minimum, demonstration of competence in the specialty of community noise testing and Board Certified Membership in the Institute of Noise Control Engineers (INCE). Certifications such as Professional Engineer (P.E.) do not test for competence in acoustical principles and measurement and are thus not, without further qualification, appropriate for work under this Ordinance. The Independent Qualified Acoustical Consultant can have no direct or indirect financial or other relationship to an Applicant.
- (l) **Scenic or Special Resource:** means a scenic resource of state or national significance, as defined in Title 35-A M.R.S.A. § 3451(9), any site registered in the National Registry of Historic Places, or a scenic or special resource of local significance.
- (m) **Sound:** A fluctuation of air pressure which is propagated as a wave through air.
- (n) **Transportation and/or Utilities Corridor (TUC):** Any project that contains a highway system with a total of three or more traveled lanes, inclusive of all traveled lanes in either direction; and/or an electrical transmission system with a capacity of 69 kV or more.

### **Section III - Applicability; Site Permit and Operational License Required**

- (a) This Ordinance applies to all TUC's, as defined herein, proposed to be constructed or operated after the effective date of the Ordinance.
- (b) It shall be unlawful and a violation of this Ordinance to begin construction or operate a TUC, as defined herein, without a Site Permit and Operational License.
- (c) It shall be unlawful and a violation of this Ordinance to construct or operate a TUC, as defined herein, that exceeds the following limitations to protect the health, safety, and welfare of the Town of Garland and its residents:
  - (1) No highway system shall be constructed with more than a total of three traveled lanes inclusive of all traveled lanes in either direction.
  - (2) No electrical transmission system shall be constructed with a capacity of more than 115 kV.

- (d) The burden of compliance with all aspects of this Ordinance is on the Applicant and the Owner/operator of a TUC. Approval of a Site Permit and Operational License by the Planning Board does not abrogate or reduce the responsibility of the Applicant or the Owner/operator to comply with this Ordinance. Consistent violations may lead to decommissioning and removal of the TUC.
- (e) This Ordinance includes Sections (I) through (XIII). Decisions regarding compliance or approval of an Applicant's Site Permit and Operational License must be made in light of the entire Ordinance.

#### **Section IV – Project Management Oversight & Experts**

The Planning Board may choose to hire a Project Manager to provide assistance and oversight of the applications submissions, reviewing, and approval process'. The selected individual or company shall estimate the cost of such oversight outlined by the Planning Board and the applicant shall deposit with the town the full estimated cost, which the town shall place in an escrow account. The town shall pay the individual or company from the escrow account and reimburse the applicant if funds remain after payments are completed. To be selected, the individual or company shall be fully qualified to provide the required services.

Should the Planning Board find there is a need for hiring an expert for advice, then the Planning Board may require the applicant to undertake any additional studies, which it deems reasonable and necessary, to ensure that the requirements of this Ordinance are met. The costs of all such studies shall be borne by the applicant.

#### **Section V - Site Permit Application Procedures & Time Lines**

- (a) Applications for a TUC Site Permit shall be submitted to the Planning Board. The application for a TUC Site Permit shall include all of the information, documents, plans, deposits and other items required to be submitted with an application under Section (VI), a preliminary cost agreement and the fees specified in Section (VIII). At least eight copies of all written materials, including maps or drawings, shall be provided. Written materials shall be contained in a bound report.
- (b) Upon receipt of all items required to be submitted with the application under sections V and VI of this ordinance, a public hearing will be scheduled at a time mutually agreed to by the Planning Board and the Applicant. Additional public hearings may be scheduled as deemed necessary by the Planning Board.
- (c) The Planning Board shall, with assistance from such staff, consultants, committees or commissions as it deems appropriate, determine whether the Application is complete and contains all of the materials, information, agreements, deposits and payments required to be submitted with an Application under Sections (VI), (VII), and (VIII). If an Application is not complete, then the Applicant shall be so advised, in writing outlining the reasons for being incomplete, and no further action shall be taken by the Planning Board until a complete Application is received.

- (d) After the Planning Board determines that an Application is complete, the Planning Board shall determine whether the Application meets all requirements of this Ordinance. In determining whether the Application meets the requirements of this Ordinance, the Planning Board may obtain assistance from such staff and consultants as it deems appropriate. The Planning Board shall process the Application as soon as reasonable and feasible, given the complexity of the Application, other business facing the Town, staff and other resources, questions that arise during the review process, and other matters affecting the time needed to complete the review process.
- (e) If an Application is complete and meets all requirements of this Ordinance, and the Applicant has paid all fees and costs pursuant to Sections (VI) and (VIII), then the Planning Board shall approve a TUC Site Permit for the TUC. If an Application does not meet all requirements of this Ordinance or the Applicant has not paid all fees and costs, then the Planning Board may deny the Application or approve the Application with conditions that will assure compliance with this Ordinance. If an Application is approved with conditions, then a TUC Site Permit for the TUC shall be issued when all conditions of approval have been satisfied.
- (f) Any significant modification of the approved TUC shall require the Applicant to obtain an amended Site Permit from the Planning Board, pursuant to this Ordinance. The application procedures and permit requirements and standards for amending a Site Permit are the same as for an initial application.
- (g) An Application for a TUC Site Permit shall include the following information and meet the following requirements. Items that are considered to be part of the Site Plan are followed by "(SP)" in the list below.
  - (1) The Applicant's name, address and phone number, and the name, address and phone number of the Owner/operator, if different.
  - (2) A narrative describing the proposed TUC, including an overview of the project, the project location, and proposed uses, including magnitude, of the TUC.
  - (3) Evidence of the Applicant's technical and financial ability to implement the project as proposed.
  - (4) An overview map that includes the extent of the entire Town, showing all roads, together with the location of TUC , access roads, power transmission lines, and any other features of the TUC deemed to be relevant by the Planning Board(SP)
  - (5) The tax map and lot number of all Project Parcels. (SP)
  - (6) For any Project Parcel that is not owned by the Applicant, a copy of any agreement(s) between the owner of the Project Parcel and the Applicant and/or the Owner/operator.
  - (7) The boundaries of all Project Parcels, surveyed by a Maine Professional Land Surveyor, with name, registration number and seal of the surveyor provided.

(SP)

- (8) The names, addresses and phone numbers of the owners of all Project Parcels, including the book and page reference of the identified owner's interest as recorded in the Penobscot County Registry of Deeds.
- (9) A current aerial photo showing all Project Parcels.
- (10) Existing shoreland zoning of each Project Parcel and all required zoning setbacks on each Project Parcel. (SP)
- (11) The location of all components of the TUC, including all roads, utilities, fences, barriers, structures, etc. (SP)
- (12) The location and description of all structures located on Project Parcels, and all Occupied Structures located located within 2,500 feet of any proposed TUC. (SP)
- (13) Dimensional representation and sizes of the structural components of any infrastructure. (SP)
- (14) The direction of proposed surface water drainage across and from Project Parcels, with an assessment of impacts on downstream properties and water resources, including, but not limited to, streams and wetlands. (SP)
- (15) The location of any of the following found within 5,280 feet of any proposed TUC: open drainage courses, wetlands, and other important natural areas and site features, including, but not limited to, floodplains, deer wintering areas, Essential Wildlife Habitats, Significant Wildlife Habitats, Scenic or Special Resources, habitat of rare and endangered plants and animals, unique natural areas, sand and gravel aquifers and historic and/or archaeological resources, together with a description of such features. (SP)
- (16) Provisions made for handling all solid wastes, including hazardous and special wastes and the location and proposed screening of any on-site collection or storage facilities. (SP)
- (17) The location, dimensions and materials to be used in the construction of proposed roads together with an assessment of any changes to traffic flow. (SP)
- (18) A topographical overlay for the Project Parcel(s) located within 5,280 feet of any proposed TUC.
- (19) The size and scale of maps and diagrams shall be as determined by the Planning Board, and shall include a north arrow, the date, the scale, and seal of a Maine Professional Land Surveyor or professional engineer. (SP)
- (20) The site plan shall include such additional relevant information as the Planning

Board may require. (SP)

- (21) Proof of notification of proposed project to all land owners within the setback limits as defined herein.

## **Section VI - Site Permit Requirements and Standards**

### **(a) Sound Requirements**

- (1) *Independent Pre-licensing Sound Study.* An Application for a TUC Site Permit shall include a four season sound study. This study shall be conducted by a Qualified Independent Acoustical Consultant, selected by the Planning Board. This study shall provide the town with expected sound levels to be generated by the proposed project. The Applicant shall provide financial surety that the cost of the study, and its review, will be borne by the Applicant, in accordance with Section (VIII) of this Ordinance.
- (2) *Sound Limits.* The sound levels of the operation of the proposed project shall not exceed 70 dBA as measured at the Project Boundary, nor shall it exceed 30 dBA as measured at any Occupied Structure that exists at the time the application is submitted. No Site Permit shall be issued if the pre-licensing information or sound study indicates that the proposed TUC will not comply with the resulting limitations set. If pre-construction estimates of the post-construction sound levels, exceed said limits, then the TUC Application will be denied; if these limits are exceeded after the TUC has been built, then the TUC will be in violation of this Ordinance.
- (3) *Post-construction Sound Measurements.* Starting within twelve months after the date when the TUC is operating, a post-construction sound study shall be performed. Post-construction sound studies shall be conducted by a Qualified Independent Acoustical Consultant chosen by the Planning Board. The Permittee will provide financial surety that the costs of these studies shall be paid by the Permittee. The surety required by Section (VIII) shall include these costs. A Consultant of the Permittee may observe the Town's consultant. The TUC Permittee shall provide all technical information required by the Planning Board or Independent Qualified Acoustical Consultant before, during, and/or after any acoustical studies required by this document and for local area acoustical measurements. The post-construction sound measurements shall be repeated at least every five years throughout the life of the facility.

### **(b) Set-Back Requirements**

- (1) A TUC shall comply with the following set-back requirements, which shall apply in addition to the siting requirements found elsewhere in this Ordinance. If more than one set-back requirement applies, the greater set-back distance shall be

met.

- A. TUC's shall be set back a minimum of 1,750 feet from any residence, business, school, daycare facility, church, hospital, or other Occupied Structure, including those located on Project Parcels.
- B. TUC's must be set back a minimum of 3,500 feet from any Scenic or Special Resource as defined in Section (II) and commercial farm facilities.
- C. All set-back distance measurements shall be based on horizontal distances.

(c) Plan and Risk Assessment for Road and Property Use

- (1) An Application for a TUC Site Permit shall include a road and property use and risk assessment plan containing the following information and meeting the following requirements.
  - A. A description and map of all public and private rights of way and easements, and other property, in the Town to be used or affected in connection with the construction of the TUC, including a description of how and when such ways and property will be used or affected.
  - B. A description of the type and length of vehicles and type, weight and length of loads to be used on all public ways in the Town.
  - C. A complete assessment of the proposed use of public ways in the Town in connection with the construction of the TUC, including the adequacy of turning radii; the ability of the public ways to sustain loads without damage; the need to remove or modify (permanently or temporarily) signs, trees, utilities, or anything else; any reasonably foreseeable damage to public ways or other property, public or private; any reasonably foreseeable costs that the Town may incur in connection with the use of property in the Town, including but not limited to costs relating to traffic control, public safety, or damage to public ways, or to other public or private property.
  - D. A traffic control and safety plan relating to the use of public ways in the Town in connection with the construction of the TUC.
  - E. Any additional relevant information that the Planning Board may request relating to the use of public ways or other effects on public and private property that may occur in connection with the construction and operation of the TUC.
- (2) The Planning Board will evaluate the risk assessment plan with assistance from such consultants that it deems appropriate, including without limitation a third-

party engineer chosen by the Planning Board, the cost to be solely borne by the Applicant. The Planning Board may document the condition of public ways and other property to be used in connection with the construction of the TUC in such manner as it deems appropriate. The Planning Board may require changes to the risk assessment plan that it deems to be appropriate to protect public safety, to protect public and private property, and to address anticipated costs to the Town associated with construction of the TUC.

- (3) If the Applicant requires the temporary closure of any public way, the Planning Board may require the Applicant to enter into an agreement relating to the use of the public way.
- (4) The Applicant shall be responsible for paying for any damage to any public way. If the risk assessment anticipates damage to any public way, the Planning Board may require the Applicant to provide a surety in an amount that the Planning Board determines appropriate to secure any obligations under the agreement, including but not limited to any obligation relating to alterations or modifications to public ways made in connection with the Applicant's activities.

(d) Additional Protection Requirements.

The Applicant must provide memoranda from the Maine Department of Inland Fisheries and Wildlife (MDIFW) Environmental Coordinator and from the Maine Natural Areas Program (MNAP) outlining any concerns that these bodies may have with the proposed TUC. In the absence of any such concerns, the Applicant must provide copies of correspondence with these bodies showing that no such concerns exist. The Applicant must demonstrate that the proposed TUC will not have an undue adverse effect on rare, threatened, or endangered wildlife, Significant Wildlife Habitat, Essential Wildlife Habitat, rare, threatened or endangered plants and rare and exemplary natural plant communities and ecosystems.

(e) Blasting Plan and Requirements.

The Application shall include a blasting plan containing the information and meeting the requirements in this section. The Applicant must execute this plan, and bears sole responsibility for the associated costs. Blasting shall be performed only after approval has been given to the Applicant for such operations and must comply with the following provisions set forth by the State of Maine Statute Title 38, Chapter 3, Subchapter 1, Article 8-A, § 490-Z(14).

- (1) The contractor or any subcontractor shall use sufficient stemming, matting or natural protective cover to prevent fly rock from leaving property owned or under control of the Applicant or from entering protected natural resources or natural buffer strips. Crushed rock or other suitable material must be used for stemming when available; native gravel, drill cuttings or other material may be used for stemming only if no other suitable material is available.
- (2) The maximum allowable airblast at any inhabited building not owned or

controlled by the Applicant may not exceed 129 decibels peak when measured by an instrument having a flat response ( $\pm 3$  decibels) over the range of 5 to 200 hertz.

- (3) The maximum allowable airblast at an uninhabited building not owned or controlled by the Applicant may not exceed 140 decibels peak when measured by an instrument having a flat response ( $\pm 3$  decibels) over the range of 5 to 200 hertz.
- (4) Monitoring of airblast levels is required in all cases for which a pre-blast survey is required by paragraph (6). The contractor may file a permit modification requesting a waiver of the monitoring requirement if the contractor or subcontractor secures the permission of affected property owners to increase allowable airblast levels on their property and the Planning Board determines that no protected natural resources will be adversely affected by the increased airblast levels. The cost to prepare the permit modification and the affect of project delay while the Planning Board reviews the request shall be borne solely by the contractor or his subcontractor.
- (5) If a blast is to be initiated by detonating cord, the detonating cord must be covered by crushed rock or other suitable cover to reduce noise and concussion effects.
- (6) A preblast survey is required and must extend a minimum radius of 2,640 feet from the blast site. The information gathered by the survey must be satisfactory to the Planning Board. Pre-blast surveys should include both the interior and exterior of each structure. The pre-blast survey must document any pre-existing damage to structures and buildings and any other physical features within the survey radius that could reasonably be affected by blasting. Assessment of features such as pipes, cables, transmission lines and wells and other water supply systems may be limited to surface conditions and other readily available data, such as well yield and water quality. The pre-blast survey must be conducted prior to the initiation of blasting. The contractor or subcontractor shall retain a copy of all pre-blast surveys for at least one year from the date of the last blast on the development site.

Notification that blasting will occur must be provided to all owners of structures to be surveyed at least 10, but not more than 30, days prior to commencement of blasting. The results of the preblast survey must be provided to the property owner no later than the date on which this notification is given.

The contractor or the subcontractor is not required to conduct a pre-blast survey on properties for which the Applicant or operator documents the rejection of an offer by registered letter, return receipt requested, to conduct a pre-blast survey. Any person owning a building within a pre-blast survey radius may voluntarily waive the right to a survey.

- (7) Blasting time frames shall be coordinated with the local emergency responders, or as otherwise restricted by the local Fire Department. Blasting shall not occur between the hours of 7:00 p.m. and 7:00 a.m. No blasting shall be done on weekends or holidays.
- (8) Sound from blasting may not exceed the following limits at any protected location as defined in the MDEP Regulations, 06-096 C.M.R. Ch. 400, § 1:

Number of Blasts Sound Level  
Per Day Limit

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1	129 dB
2	126
3	124
4 or more	123

(f) Signal Interference Requirements

The TUC shall not cause any disruption or loss of radio, telephone, television or similar signals. The Applicant shall provide a statement from the Federal Communications Commission that the proposed TUC will not cause any disruption of radio, television or similar signals.

(g) Stray Voltage Assessment and Requirements for Electrical Transmission Lines.

- (1) An Application for a TUC Site Permit shall include reports of stray voltage analysis in accordance with this section. The Applicant shall conduct and include a report of a pre-construction stray voltage test on all Occupied Structures located within a 2,500 foot radius of the Project Parcels. The tests shall be performed by an investigator, approved by the Planning Board, using a testing protocol which is approved by the Planning Board. A report of the tests shall be provided with the TUC Site Permit Application and shall be provided to the owners of all property included in the study area. Applicant shall seek written permission from property owners prior to conducting testing on such owners' property. Applicant shall not be required to perform testing on property where the owners have refused to grant permission to conduct the testing.
- (2) Following construction of the TUC and within one year after commencing operation, the Applicant shall conduct a post construction stray voltage test on all Occupied Structures located within a 2,500 radius of the Project Parcels. The tests shall be performed by an investigator approved by the Planning Board and shall be performed using a testing protocol which is approved by the Planning Board. A report of the tests shall be provided to the Planning Board and to the owners of all property included in the study area. Applicant shall seek written permission from property owners prior to conducting testing on private property. Applicant shall not be required to perform testing on property where the owners have refused to grant permission to conduct the testing.

- (3) The Applicant or subsequent holder of the Operational License shall provide neutral isolation devices to property owners where testing reveals neutral-to-earth voltages in excess of 0.5 volts caused by the TUC.

(h) Fire Prevention and Emergency Response Plan and Requirements.

An Application for a TUC Permit shall include a fire prevention and emergency response plan containing the information and meeting the requirements in this section. The plan shall describe the potential fire and emergency scenarios that may require a response from fire, emergency medical services, police or other emergency responders. The plan shall designate the specific agencies that would respond to potential fire or other emergencies, shall describe all emergency response training and equipment needed to respond to a fire or other emergency, shall include an assessment of the training and equipment available to the designated agencies, and shall provide for any special training or emergency response equipment that the designated agencies need to use in responding to a potential fire or other emergency. The study shall be conducted at Applicant's cost and the Applicant shall pay for the cost of any training or equipment required by local fire and emergency responders.

Access to the TUC and construction area(s) shall be constructed and maintained to provide maneuverability for service and emergency response vehicles.

(i) Emergency Shutdown Plan and Requirements.

An Application for a TUC Permit shall include an emergency shutdown plan. The plan shall describe the circumstances under which an emergency shutdown may be required to protect public safety, and shall describe the procedures that the Town and the Owner/operator and Licensee will follow in the event an emergency shutdown is required. This plan will include immediate notification of any emergency shutdown to the Garland town office.

(j) Decommissioning and Site Restoration Plan and Requirements.

An Application for a TUC Permit shall include a decommissioning and site restoration plan containing the information and meeting the requirements in this section.

- (1) The plan shall provide for the removal from the Project Parcels, and lawful disposal or disposition of, all structures, hazardous materials, electrical facilities, and all utilities. The plan shall provide for the removal of all access roads. The plan shall provide for the restoration of the Project Parcels to a condition similar to that which existed before construction of the TUC.
- (2) The plan shall provide for the decommissioning of the site upon the expiration or revocation of the TUC Permit, or upon the abandonment of the TUC. The TUC shall be deemed abandoned if its operation has ceased for twelve consecutive months.

- (3) The plan shall include provisions for financial surety to ensure completion of decommissioning and site restoration, in form and amount satisfactory to the Planning Board. A performance bond or a cash escrow account held by the Town with 10% of the estimated cost of decommissioning to be added by the Owner/Operator on an annual basis shall be acceptable surety, the total amount to be based on the estimated cost of completing the decommissioning and site restoration in accordance with the approved plan, adjusted for inflation, and as approved by the Planning Board.
- (4) The plan shall include written authorization from the TUC Permittee and all owners of all Project Parcels for the Town to access the Project Parcels and implement the decommissioning and site restoration plan, in the event that the TUC Permittee fails to implement the plan. The written authorization shall be in a form approved by the Planning Board and recorded in the Penobscot County Registry of Deeds.

(k) Inspections

- (1) The TUC, including its infrastructure, shall be inspected after construction is completed but before becoming operational, and at least every two years thereafter, for structural and operational integrity by a Maine licensed professional engineer hired by the Town of Garland with the expenses paid by the Owner/Operator. If the report from said engineer recommends that repairs or maintenance are to be conducted, then the Owner/operator and/or Licensee shall provide the Planning Board with a written schedule for the repairs or maintenance. Failure to complete the repairs or maintenance in accordance with the schedule shall be deemed a violation of this Ordinance.
- (2) Minor changes in approved plans necessary to address field conditions may be approved by the Planning Board, provided that any such change does not affect compliance with the Ordinance. The Permittee shall submit revised plans to the Planning Board showing the proposed minor change, which, if approved, shall be considered an amendment to an existing Site Permit and/or Operational License, as appropriate. In the event that a majority of the Planning Board believes that a requested change constitutes a material change to a Site Permit and/or Operational License, or if the changes will affect compliance with the Ordinance, full re-approval is required.
- (3) All construction activities must conform to the approved site plan, including any conditions of approval and minor changes approved by the Planning Board to address field conditions.
- (4) Upon completion of the project, the Permittee must provide the Planning Board with a set of construction plans showing the structures and site improvements as actually constructed. These "as-built" plans must be submitted within thirty days of completion of the TUC, and before commencement of operation of the TUC.

(l) Liability Insurance

The Applicant, Permittee, Owner/operator and Licensee, as applicable, shall maintain a current general liability policy for the TUC that covers bodily injury and property damage in an amount commensurate with the scope and scale of the TUC, and acceptable to the Planning Board, which acceptance shall not be unreasonably withheld. Certificates of insurance shall be provided to the Planning Board annually.

The policy must include the requirement that the Planning Board will be provided at least ten days notice by the policy provider in the case of cancellation or change to the policy. In addition, the Applicant, Permittee, Owner/operator and Licensee, as applicable, must inform the Planning Board of such changes.

(m) Local Traffic Flow

The TUC shall not cause any disruption to the flow of traffic in the town. No existing public road, private road, right of way, or recreational trail shall be obstructed by the construction of said TUC. Access over, under, or through the TUC must be provided and constructed for all routes described and shall be similar in nature and size as the original traveled surface, along with legal rights granted to parties of interests that use said way.

**Section VII - Operational License**

- (a) Applications for a TUC Operational License shall be submitted to the Planning Board.
- (1) Where an Applicant is applying for a new or amended TUC Site Permit, the application for a TUC Operational License, or amended license, shall be submitted to the Planning Board in conjunction with the Site Permit application, and shall include the application and the separate fee specified in Section (VIII).
  - (2) Where an Applicant is applying for a TUC Operational License renewal, a new License as the result of transfer of ownership or operation, or reinstatement or modification of an Operational License, the Applicant shall submit an application, a copy of the existing TUC Site Permit, and the fee specified in Section (VIII).
- (b) The application for a TUC Operational License shall include the following items:
- (1) The Applicant's name, address and phone number, and the name, address and phone number of the Owner/operator, if different;
  - (2) An emergency directory for the Owner/operator sufficient to allow the Town to contact the Owner/operator at any time;

- (3) Evidence of the Applicant's technical and financial ability to operate the TUC in accordance with this Ordinance, the Site Permit, and the Operational License;
- (4) For any Project Parcel that is not owned by the Applicant, a copy of any agreement(s) between the owner of the Project Parcel and the Applicant;
- (5) An updated fire prevention and emergency response plan in accordance with the requirements of Section (VII)(h);
- (6) An updated emergency shutdown plan in accordance with the requirements of Section (VII)(i);
- (7) An updated decommissioning and site restoration plan in accordance with the requirements of Section (VII)(i), including a transfer of financial surety rights from prior License holder;
- (8) Updated liability insurance information in accordance with the requirements of Section (VI)(l); and
- (9) A signed statement from the Applicant that the Applicant agrees to assume full responsibility for complying with the provisions of this Ordinance and the Site Permit, including agreeing to continue or complete any duties and obligations of the former Operational License holder under this Ordinance or former Operational License, including, but not limited to, the requirement for post-construction sound measurements, post-construction stray voltage testing, wind turbine inspections, and submission to inspections.

Items (3) through (8) do not need to be duplicated if the Operational License is submitted in conjunction with an application for a Site Permit.

- (c) The Planning Board shall, with assistance from such staff, consultants, committees or commissions as it deems appropriate, determine whether the Application is complete. If an Application is not complete, then the Applicant shall be so advised, and no further action shall be taken by the Planning Board until a complete Application is received.
- (d) After the Planning Board determines that an Application is complete, the Planning Board shall determine whether the Application meets all requirements of this Ordinance. In determining whether the Application meets the requirements of this Ordinance, the Planning Board may obtain assistance from such staff and consultants as it deems appropriate. The Planning Board shall process the Application as soon as reasonable and feasible, given the complexity of the Application, other business facing the Town, staff and other resources, questions that arise during the review process, and other matters affecting the time needed to complete the review process.
- (e) If an Application is complete and meets all requirements of this Ordinance, and the Applicant has paid all fees and costs, then the Planning Board shall approve a TUC Operational License for the TUC. If an Application does not meet all requirements of this Ordinance or the Applicant has not paid all fees and costs, then the Planning

Board may deny the Application or approve the Application with conditions that will assure compliance with this Ordinance. If an Application is approved with conditions, then a TUC Operational License for the TUC shall be issued when all conditions of approval have been satisfied, or, when the Planning Board deems appropriate under the circumstances, the Planning Board may issue a Temporary Operational License for up to 90 days.

### **Section VIII - Fees and Costs**

- (a) Preliminary Cost Agreement. At the time an Application for a TUC Site Permit is filed with the Town, the Applicant shall execute for the benefit of the Town an agreement to pay and provide adequate surety guaranteeing payment of the cost of the investigation, review and processing of the Application, including without limitation by way of enumeration, legal, engineering, acoustical, planning, environmental, and staff administrative costs as provided in this Ordinance. The agreement shall provide for the establishment of an escrow account and cash deposit to be provided by the Applicant in an amount deemed sufficient by the Planning Board to begin review under this Ordinance. The Town may use the funds in the escrow account in connection with the application review as allowed by this Ordinance. In the event that the cash deposit in escrow is insufficient to complete the review, the Town shall notify the Applicant that additional funds are necessary and of the amount reasonably believed necessary to complete the review, and the Applicant shall provide the additional funds. The Planning Board shall not begin processing, or in the case of where additional funds are requested, shall not continue processing, the Application until the preliminary cost agreement is approved and signed and until the required surety, or additional surety, and/or funds, are provided to the Town. Funds remaining in the escrow after project approval and issuance of an operational license shall be returned to the Applicant.
- (b) The application fee for a Site Permit shall consist of a base application fee of \$2,500.
- (c) The application fee for an Operational License is \$1,000.
- (d) The annual fee for an Operational License is \$500.

### **Section IX - Expiration of Site Permit Approval and Transportation and/or Utilities Corridor Operational License**

- (a) If on-site construction of a TUC is not significantly commenced within one year of the date of issue of a Site Permit, the Site Permit shall automatically lapse and become null and void. If an approved TUC is not completed within 30 months after a Site Permit is issued, then the Site Permit shall expire, and the Applicant must reapply. The Planning Board may, for good cause shown, grant a one-time extension of up to six months for either start of construction or completion of construction provided such request is submitted prior to the lapse or expiration of the Site Permit.

- (b) A TUC Operational License shall be deemed abandoned if its operation has ceased for twelve consecutive months. An Operational License expires immediately upon abandonment.
- (c) A TUC Operational License shall automatically terminate upon transfer of ownership or operation of the TUC. The proposed new owner or operator shall be required to obtain a new Operational License, which must be in place prior to the transfer of ownership or operation of the TUC.
- (d) A TUC Operational License shall automatically terminate upon any amendment to a Site Permit other than a minor change approved by the Planning Board in accordance with Section VI(k)(2).

## **Section X - Violations, Complaints and Penalties**

- (a) Violations of This Ordinance. It shall be unlawful to construct or operate any TUC or part thereof in violation of any provision of this Ordinance, a TUC Site Permit, or a TUC Operational License; any violation thereof is punishable, upon conviction, in accordance with 30-A M.R.S.A. § 4452(3), and shall include attorneys fees and a penalty to address economic benefit as provided in 30-A M.R.S.A. § 4452(3)(D) and (H). All fines assessed under this Ordinance shall inure to the benefit of the Town of Garland. Each day a violation exists or continues shall constitute a separate offense.
- (b) Complaints and Modification, Revocation or Suspension. The Planning Board shall retain continuing jurisdiction to modify, suspend or revoke all TUC Site Permit and/or Operational Licenses in accordance with this section. Such authority shall be in addition to the Town's authority to prosecute violations and take other enforcement action.
  - (1) In this section, "violation" means a violation of this Ordinance, or a violation of a TUC Site Permit issued under this Ordinance, or a violation of a TUC Operational License.
  - (2) Any resident of the Town, real property tax-payer to the Town, or Town official may file a written complaint with the Town Clerk alleging that a TUC Permittee, Owner/operator or Licensee has committed or is committing a violation. Such complaints shall be forwarded to the Planning Board and the Planning Board will notify, in writing, the Permittee, Owner/operator or Licensee of the alleged violation.
  - (3) The Planning Board shall preliminarily review the complaint. In connection with its preliminary review, the Planning Board may require the Code Enforcement Officer or other person or persons to conduct such investigations and make such reports as the Planning Board may direct. The Planning Board may request information from the TUC Permittee, Owner/operator and/or Licensee, the complainant, and any other person or entity to assist with its preliminary review.

- (4) Following its preliminary review, the Planning Board may:
- A. Dismiss the complaint;
  - B. Refer the complaint to the Town attorney for prosecution; or
  - C. Conduct a public meeting to determine whether the alleged violation(s) have occurred, and what remedial action should be taken. Prior to such meeting, notice of the meeting shall be given to the TUC Permittee, Owner/operator, Licensee, as applicable, and the complainant. The TUC Permittee, Owner/operator, Licensee, as applicable, and the complainant, and any other person, may appear at the meeting and may offer testimony and other relevant evidence, and may be represented by any attorney. If the Planning Board concludes that violations have occurred, the Planning Board shall:
    - i. Impose conditions on the TUC Site Permittee, Owner/operator and/or Licensee to the extent reasonably necessary to discontinue the violation(s) or avoid any recurrence thereof; or
    - ii. Recommend to the Select Board that the matter be referred to the Town's attorney for prosecution seeking that the TUC Site Permit and/or Operational License be suspended until such time as the TUC Permittee, Owner/operator and/or Licensee presents and implements a plan, satisfactory to the Planning Board that will discontinue the violation(s) or prevent any recurrence thereof, and meets such further conditions as the Planning Board deems appropriate to discontinue and prevent further violations; or
    - iii. Recommend to the Select Board that the matter be referred to the Town's attorney for prosecution seeking that the TUC Site Permit and/or Operational License be revoked and that decommissioning of the TUC be directed, if the Planning Board concludes that no reasonable modification can be made to the TUC to discontinue or prevent violations; or
    - iv. Refer the matter to the Select Board and Town's attorney for prosecution, subject to Planning Board and Select Board approval; or
    - v. Take no action, if the Planning Board concludes that no further action is needed to discontinue or prevent violations, and that prosecution is unwarranted.
  - D. Following any such hearing, the Planning Board's written decision shall be furnished to the TUC Permittee, Owner/operator and/or Licensee, as applicable, and to the complainant.

- E. An appellate appeal from the decision of the Planning Board may be taken to the Appeals Board by the TUC Permittee, Owner/operator or Licensee, or a complainant. Such appeal must be in writing and must specify the grounds thereof, and must be filed with the Town Clerk within 30 days after the final action of the Planning Board. The Town Clerk shall provide any appeal to the Appeals Board. The Appeals Board shall fix a reasonable time for the hearing of the appeal, and shall give public notice thereof as well as due notice to the TUC Permittee, Owner/operator and/or Licensee, as applicable, and the complainant. The action of the Planning Board shall be sustained unless the Appeals Board, by a favorable vote of the majority of all members of the Appeals Board, reverses or modifies the Planning Board's determination.
- F. An appeal from a decision of the Board of Appeals shall be made to Superior Court in accordance with M.R.Civ.P. 80B.

## **Section XI - Maintenance, Amendments, and Miscellaneous Requirements**

- (a) A TUC shall be constructed, operated, and maintained, and repaired in accordance with the approved Site Permit, Operational License, and this Ordinance. Where a standard or requirement is not provided by either this Ordinance, the TUC Site Permit or the TUC Operational License, the TUC Permittee and Licensee shall comply with Good Utility Practices.
- (b) All components of the TUC Project shall conform to relevant and applicable local, state and national codes.
- (c) A TUC Permittee may apply to the Planning Board for changes to a TUC Site Permit or Operational License. The Application shall describe the requested change or changes. The Planning Board shall review the Application and determine what provisions of this Ordinance will apply to the Application. The Application will then be processed in accordance with all provisions of this Ordinance deemed to be applicable by the Planning Board. The provisions of Section (VIII), together with all other instances where this Ordinance outlines financial obligations of the Applicant, Permittee, Owner/operator and Licensee shall apply to any Application for changes to a TUC Site Permit or Operational License. An Application for changes will be required for any significant modification to the approved TUC Permit, including, but not limited to: any change in infrastructure, utilities, roads, location, design, or specification; or any substantive change to any required plan or insurance coverage.
- (d) The TUC Permittee, Owner/operator and/or Licensee, as applicable, shall notify the Town of any extraordinary event as soon as possible, and in no case more than 12 hours after the event. "Extraordinary events" shall include but not be limited to fires, leakage of hazardous materials, unauthorized entry, any injury to a Facility worker or other person that requires emergency medical treatment, or other event that impacts the health and safety of the Town or its residents.

- (e) Approval of a TUC Permit under this Ordinance does not exempt an Applicant from obtaining other applicable permits from the Town of Garland, such as electrical, plumbing and shoreland zoning permits, as applicable, or any applicable state or federal permits.

## **Section XII - Severability; Conflicts with Other Ordinances, Laws, and Regulations; Appeal**

- (a) If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phrase or part thereof. The Town hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, phrase or part thereof even if any one or more sections, subsections, sentences, clauses, phrases or parts thereof may be declared invalid or unconstitutional.
- (b) Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other Town Ordinance, or Federal or State of Maine rule, regulation or statute, the more restrictive provision shall apply.
- (c) Except as provided in Section (X)(b)(4)(E), an aggrieved party may appeal a decision of the Planning Board to Superior Court in accordance with M.R.Civ.P. 80B.

## **Section XIII - Ethical Standards**

- (a) Transparency, Public Participation and Highest Ethical Standards

All public deliberations and decisions regarding a TUC shall be conducted in an open, transparent manner that encourages the broadest public participation and adherence to the highest ethical standards.

- (b) Public Access

All deliberations concerning TUC Projects, whether in writing or conducted verbally, by the Planning Board, Selectman, Appeals Board, and any other subcommittees or working groups of the afore mentioned bodies shall fully comply with the letter and spirit of State law regarding Freedom of Access pursuant to Title 1; Chapter 13; Subchapter 1. Specifically, all deliberations regarding TUC between members of the Planning Board, Selectmen, Appeals Boards and any subcommittees and working groups shall be conducted at public meetings for which notice has been duly given. Exceptions will be made only for: 1) appropriately recorded and executed executive sessions; and 2) communicating the minimal information necessary to set up and facilitate public meetings. Minutes of deliberations and decisions concerning TUC will be maintained and filed in the Garland Town Office. Copies of all correspondence and e-mails will be made available to the public with the exception of those publicly identified and disclosed as being subject to “attorney-client privilege” by the Town

attorney. All documents, correspondence and e-mails generated by consultants on behalf of the Planning Board, the Selectmen, Appeals Board, their subcommittees and working groups shall be part of the public record.

(c) Conflicts of Interest

The process to develop and permit TUC Projects shall be governed by a strict ethical code for conflicts of interest. No elected or appointed Town official or Town employee, their immediate family members, or their employees, who has a conflict of interest shall be directly or indirectly involved in the planning process or decision-making process for TUC Projects. Conflicts of interest include, but are not limited to:

- (1) having right, title or interest in a Project Parcel;
- (2) having a financial arrangement with an individual or company which derives income from the proposed project;
- (3) serving as a paid representative of an individual or company which derives income from the development of the proposed project, or a written or verbal promise for future employment or contracts from said project;
- (4) being directly or indirectly affiliated as an Applicant with a pending Application for a TUC Project;
- (5) knowing that there is a substantial opportunity to accept bids, receive remuneration, or employment valued at greater than \$1,000 on behalf of the applicant. Individuals with a conflict of interest must identify the conflict of interest and reclude themselves from all direct and indirect planning and decision-making regarding the proposed projects, with the exception of voting and debating as a private citizen at any public meeting and public hearings.

**Section IX - Effective Date**

This Ordinance shall take effect immediately upon passage.