

ARTICLE 1 - GENERAL PROVISIONS

- 1-1 **Authority and Enactment Clause:** An ordinance establishing comprehensive regulations for tall structures in Carteret County, North Carolina and providing for the administration, enforcement, and amendment thereof, in accordance with the provisions of North Carolina General Statutes 153A-121 and 153A-340 through 153A-349 inclusive and for the repeal of any portion of any ordinance in conflict herewith.
- 1-2 **Purpose:** The purpose of these regulations shall be to preserve the County's scenic beauty, to protect sensitive environmental areas, and to safeguard the general health, safety, and welfare of the residents of, and visitors to, Carteret County.
- 1-3 **Adoption:** The Carteret County Board of Commissioners on this 17th day of November, 2008 hereby adopts this Ordinance. The effective date of this regulation is December 1, 2008. There have been subsequent updatings, including a major rewrite that became effective January 13, 2014.
- 1-4 **Jurisdiction:** These regulations govern the development of tall structures in the unincorporated areas of Carteret County but not including the extra-territorial jurisdiction of any municipality.
- 1-5 **Reserved**
- 1-6 **Interpretation and application of these regulations:** In the interpretation and application of this Ordinance, the provisions of the Ordinance will be construed to be the minimum requirements adopted to promote the public health, safety, and general welfare.
- 1-7 **Severability:** It is not intended that this Ordinance will in any way repeal, annul, or interfere with the existing provisions of any law or ordinance. In addition, it is not intended that this Ordinance will in any way repeal, annul, or interfere with any rules or regulations that were legally adopted or issued under previous ordinances for Carteret County. If any term, condition or provision of this ordinance or the application thereof to any person, firm or other entity or circumstance shall ever be held to be invalid or unenforceable, then in each such event, the remainder of this ordinance or the application of this term, condition or provision to any other person from a corporation or to any other circumstance (earlier than those as to which as shall be invalid or unenforceable), shall not be thereby affected and each term, condition and provision hereof shall remain enforceable to its fullest extent permitted by law.
- 1-8 **Reserved**
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- 1-10 **Applicability:** This Ordinance governs the development and use of all land and structures for communication towers, wind energy facilities, and similar very tall structures. No building, structure, or land shall be used, occupied or altered, and no building, structure, or part thereof shall be erected, constructed, reconstructed, moved, enlarged, or structurally altered, unless in conformity with all the provisions of this regulation and all other applicable regulations, except as otherwise provided by this Ordinance.

ARTICLE 2 - RULES AND DEFINITIONS

- 2-1 **Word interpretation:** Words not defined in this Ordinance shall be given their ordinary and common meaning.
- 2-2 **Rules of construction:** For the purposes of this Ordinance, the following rules of construction shall apply:
- 2-2.1 **Tense:** Words used in the present tense include the future tense.
- 2-2.2 **Singular and plural:** Words used in the singular number include the plural number, and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise.
- 2-2.3 **Mandatory meaning:** The words "shall," "will," and "must" are mandatory in nature implying an obligation or duty to comply with the particular provision.
- 2-2.4 **Gender:** Words used in the male gender include the female gender.
- 2-2.5 **References:** Any reference to an article or section shall mean an article or section of this Ordinance, unless otherwise specified.
- 2-3 **Definitions:**
- Abandonment:** Cessation of use of a wireless support structure for wireless telecommunications activity for at least the minimum period of time specified under this ordinance.
- Accessory building:** A building that is located on the same parcel of property or manufactured home or recreational vehicle park space as the principal structure or use and the use of which is incidental to the use of the principal use or structure, except for accessory parking facilities located elsewhere plus pole barns, hay sheds, and the like qualify as accessory structures on farms and may or may not be located on the same parcel as the farm dwelling or shop building. Garages and carports are common accessory buildings. If a building is used for any residential, principal, or permitted use, it is not an accessory building. An accessory building can be attached to or detached from the principal structure.
- Accessory Equipment:** Any equipment serving or being used in conjunction with a Wireless Facility or Wireless Support Structure. The term includes utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures.
- Accessory structure (appurtenant structure):** A structure that is located on the same parcel of property or on the same manufactured home or recreational vehicle park space as the principal structure or use and the use of which is incidental to the use of the principal structure or use, except for accessory parking facilities located elsewhere plus pole barns, hay sheds, and the like qualify as accessory structures on farms and may or may not be located on the same parcel as the farm dwelling or shop building. Garages, carports, and storage sheds are common urban accessory structures. If a structure is used for any residential, principal, or permitted use, it is not an accessory structure. An accessory structure can be attached to or detached from the principal structure.
- Accessory use:** A subordinate use, clearly incidental and related to the principal structure or use of land, and located on the same parcel of property or manufactured home or recreational vehicle park space as that of the principal structure or use, except for accessory parking facilities located elsewhere. If a parcel is used for any residential, principal, or permitted use, it is not an accessory use.
- Administrative Approval:** Approval that the Planning Director or designee is authorized to grant after Administrative Review.
- Administrative Review:** Non-discretionary evaluation of an application by the Planning Director or designee.
- Anemometer:** An instrument that measures wind speed and might transmit that wind speed data to a controller.
- Antenna:** Communications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.
- Base Station:** A station at a specific site authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics.
- Blade Glint:** The intermittent reflection of the sun off the surface of the blades of one or more wind turbines.
- Board of Adjustment:** The Board of Adjustment is comprised of the members of the Zoning Board of Adjustment that is established by the Zoning Ordinance.

Carrier on Wheels or Cell on Wheels (COW): A portable self-contained Wireless Facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure.

Co-location: The use of an existing tower or structure to support antenna for the provision of wireless services.

Commercial impracticability or commercially impracticable: The inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be "commercially impracticable" and shall not render an act or the terms of an agreement "commercially impracticable".

Complete or Completed application: An application that contains all information and/or data necessary to enable an informed decision to be made with respect to that application.

Concealed Wireless Facility: Any Wireless Facility that is integrated as an architectural feature of an Existing Structure or any new Wireless Support Structure designed to camouflage or conceal the presence of antennas or towers so that the purpose of the Facility or Wireless Support Structure is not readily apparent to a casual observer.

Conservation Area: Such areas include natural areas protected by law, such as wetlands that meet the definition in the Clean Water Act; shore land areas; water bodies; riparian buffers; populations of endangered or threatened species, or habitat for such species; archaeological sites, cemeteries, and burial grounds; important historic sites; other significant natural features and scenic viewsheds; and existing trails or corridors that connect the tract to neighboring areas.

Electrical Transmission Tower: An electrical transmission structure used to support high voltage overhead power lines. The term shall not include any Utility Pole.

Equipment Compound: An area surrounding or near the base of a Wireless Support Structure within which are located Wireless Facilities.

Existing Structure: A Wireless Support Structure, erected prior to the application for co-location or substantial modification under this ordinance, that is capable of supporting the attachment of Wireless Facilities, including, but not limited to, Electrical Transmission Towers, buildings and Water Towers. The term shall not include any Utility Pole.

FAA: The Federal Aviation Administration or successor agency.

Fall Zone: The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

FCC: The Federal Communications Commission or successor agency.

Height: The distance measured from the lowest adjacent grade to the highest point of the structure (including any attachments, such as a lightning protection device, roof peak, but excluding chimneys, antennas and similar structures), of a sign, or a turbine rotor or tip of the turbine blade when it reaches its highest elevation.

Maintenance: The cleaning, painting, repair, or replacement of defective parts (including plumbing, electrical, or mechanical work that might require a building permit) in a manner that does not alter the basic design or composition of a structure, such as a sign, wind turbine, wireless telecommunications facility, or other structure.

Meteorological measuring device: An instrument, such as an anemometer, that measures wind speed and might transmit that wind speed data to a controller.

Modification or modify: Any change, addition, swap-out, exchange, and the like that does not qualify as "Repairs and maintenance" is a modification. Also included is any change, addition, swap-out, exchange, and the like that requires or results in changes and/or upgrades to the structural integrity of the wireless facility.

A modification shall include any other addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or change-out of equipment for better or more modern equipment.

Adding a new wireless carrier or service provider to a telecommunications tower or telecommunications site as a co-location is a modification.

A modification shall not include the replacement of any components of a wireless facility where the replacement is similar to, and no bigger than, the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing, or changing anything.

Monopole: A single, freestanding pole-type structure supporting one or more Antennas. For the purposes of this Ordinance, a Monopole is not a Tower or a Utility Pole.

Necessary: What is technologically required for the equipment to function as designed by the manufacturer and that anything less will result in prohibiting or acting in a manner that prohibits the provision of service as intended and described in the narrative of the Application. Necessary does not mean what may be desired or preferred technically.

NIER: Non-ionizing electromagnetic radiation.

Ordinary Maintenance: Ensuring that Wireless Facilities and Wireless Support Structures are kept in good operating condition. Ordinary Maintenance includes inspections, testing and modifications that maintain functional capacity and structural integrity; for example, the strengthening of a Wireless Support Structure's foundation or of the Wireless Support Structure itself. Ordinary Maintenance includes replacing Accessory Equipment within an existing Equipment Compound. Ordinary Maintenance does not include Modifications or Substantial Modifications. However, Ordinary Maintenance does not include adding to the height or profile of a Support Structure.

Person: An individual, trustee, executor, receiver, other fiduciary, corporation, firm, partnership, association, organization, club, or other entity acting as a unit.

Personal wireless facility: A variety of wireless telecommunications facility.

Personal wireless services (PWS) or personal telecommunications service (PTS): A PWS or PTS Shall have the same meaning as defined and used in the 1996 Telecommunications Act.

Repair: The replacement of existing work with the same kind of material used in the existing work, not including additional work that would change the structural safety of the structure or that would affect or change required existing facilities, a vital element of an elevator, plumbing, gas piping, wiring, or heating installations, or that would be in violation of a provision of law or ordinance. The term "repair" or "repairs" shall not apply to any change in construction.

Replacement Pole: Pole of equal proportions and of equal height or such other height that would not constitute a Substantial Modification to an Existing Structure in order to support Wireless Facilities or to accommodate Co-location. Requires removal of the Wireless Support Structure it replaces.

Residential Zoning Districts: The RA, R-35, R-20, R-15, R-15M, R-10, and R-5W zoning districts.

RF radiation: Radio Frequency (RF) radiation is emitted by transmitting antennas and is a form of electromagnetic radiation.

Shadow Flicker: The visual effect that results when the blades of an operating wind energy facility pass between the sun and an observer and cast a readily observable, moving shadow on a person or property and the immediate vicinity.

State: The State of North Carolina.

Stealth or stealth technology: A design or treatment that minimizes aesthetic and visual impacts of a wireless telecommunications facility on its surroundings, which shall mean using a design that is less visually and physically intrusive but is not technologically or commercially impracticable under the facts and circumstances.

Stealth or camouflage: Facility design or camouflage where the result is to make the wireless telecommunications facility less visually intrusive.

Substantial Modification: The mounting of a proposed Wireless Facility or Wireless Facilities on a Wireless Support Structure that:

1. Increases the existing vertical height of the Wireless Support Structure by
 - A. More than 10%, or
 - B. The height of one additional Antenna array with separation from the nearest existing Antenna not to exceed 20 feet, whichever is greater; or
2. Involves adding an appurtenance to the body of a Wireless Support Structure that protrudes horizontally from the edge of the Wireless Support Structure more than 20 feet, or more than the

width of the Wireless Support Structure at the level of the appurtenance, whichever is greater (except where necessary to shelter the Antenna from inclement weather or to connect the Antenna to the tower via cable); or

3. Increases the square footage of the existing Equipment Compound by more than 2,500 square feet.

Tall Structure: A structure that is taller than 60 feet and is not otherwise exempt from these regulations.

Telecommunications: The transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

Telecommunications site: A wireless telecommunications facility.

Telecommunications structure: A structure used in the provision of services described in the definition of wireless telecommunications facilities.

Temporary: Something intended to exist or does exist for fewer than 180 days, except for an anemometer or other meteorological measuring device that is used to test the wind conditions, which are considered temporary when it exists for two years or less.

Tower: Any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal.

1. **Lattice Tower:** A three- or four-legged steel girded structure, typically supporting multiple communications users and services.
2. **Monopole Tower:** A single-pole design, with a wide base and narrowing at the top.

Utility Pole: A structure owned and/or operated by a public utility, municipality, electric membership corporation, or rural electric cooperative that is designed specifically for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

Water Tower: A water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.

Wind Energy Facility (WEF): An electricity-generating facility, whose primary purpose is to supply electricity and consists 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/or facilities.

Wind Energy Facility, Large System: A wind energy facility that has a rated capacity of more than 25 kilowatts (kW) and less than 1,000 kW.

Wind Energy Facility, Small System: A wind energy facility that has a rated capacity of not more than 25 kW. Such a facility is used primarily for on-site consumption, is an accessory use, and consists of no more than one wind turbine and any associated tower, control and/or conversion electronics.

Wind Energy Facility, Utility-scale: A wind energy facility that has a rated capacity of 1,000 kW or more.

Wind Farm: A "Wind Energy Facility, Utility Scale" is a wind farm.

Wind Power: Electricity that is generated by converting the rotation of turbine blades into electrical current by means of an electrical generator.

Wind Pump: A type of windmill used for pumping water from a well or for draining land.

Wind Tower: The structure on which a wind driven machine that converts wind energy into electrical power is mounted.

Wind Turbine: A wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator. Such a system might include a nacelle, rotor, tower, pad transformer, and other appurtenant structures and/or facilities.

Wind Turbine Height: The distance measured from the lowest adjacent grade to the highest point of the structure, including any attachments, such as a lightning protection device or a turbine rotor or tip of the turbine blade when it reaches its highest elevation.

Windmill: A wind energy conversion system that uses rotating blades to convert the energy of the wind into mechanical energy to do physical work, such as crushing grain or pumping water.

Wireless Facility: The set of equipment and network components, exclusive of the underlying Wireless Support Structure, including, but not limited to, Antennas, Accessory Equipment, transmitters, receivers, Base Stations, power supplies, cabling and associated equipment necessary to provide wireless telecommunications services.

Wireless Support Structure: A freestanding structure, such as a Monopole or Tower, designed to support Wireless Facilities. This definition does not include Utility Poles.

Wireless telecommunications facility (WTF): A structure, facility, or location designed, intended to be used, or used to support one or more antennas or other transmitting or receiving devices. This includes towers of all types, kinds, and structures, including, but not limited to, buildings, church steeples, silos, water towers, signs, or other structures that can be used as a support structure for antennas or the functional equivalent of such. A WTF also includes all related facilities and equipment, such as cabling, equipment shelters, and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, personal communications services (PCS), commercial satellite services, microwave services, and any commercial wireless telecommunication service not licensed by the FCC. A "telecommunications site" or a "personal wireless facility" is a wireless telecommunication facility.

Wireless telecommunication services (WTS): Licensed or unlicensed wireless telecommunication services including cellular, digital cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), commercial or private paging services, or similar services marketed or provided to the general public. This definition does not include services by non-commercial entities in the Amateur Radio Service, Public Safety Radio Service, or licenses assigned to non-profit organizations, such as the Red Cross, Civil Air Patrol, and Military Affiliated Radio Service (MARS) that are licensed by the Federal Communications Commission.

ARTICLE 3 - WIND ENERGY FACILITIES

3-1 General:

3-1.1 **Small System Wind Energy Facilities:** A Small System Wind Energy Facility is considered to be an accessory use and does not require approval of a Wind Energy Permit Application. However, such a Small System shall comply with the dimensional requirements of this Article plus any other applicable ordinances.

3-1.2 **Anemometers or other meteorological towers:** A temporary pole or tower may be erected to use an anemometer or other meteorological measuring devices to test the wind conditions at that site and does not require approval of a Wind Energy Permit Application. However, each such temporary pole or tower shall comply with the dimensional requirements of this Article plus any other applicable ordinances. A copy of a FAA determination report as a result of filing the FAA Form 7460-1, Notice of Proposed Construction or Alteration of an Object that may Affect the Navigable Airspace, shall be submitted prior to submission of any building permits for such a temporary pole or tower.

The temporary pole or tower may be any height but it must be setback from all property lines, vacant or occupied dwelling unit, rights-of-way, and access easements by a distance that is equal to or greater than its height. The temporary pole or tower may not have any signs; may not be illuminated, except as required by the FAA or Department of Defense; and must be removed within two years of the date that it is erected, unless the Planning Commission grants a one year extension. In no case shall the original two years plus any extensions total more than five years.

3-1.3 **Wind Energy Permit Application:** Before a building permit may be submitted for a Large System Wind Energy Facility or a Utility-scale Wind Energy Facility, a Wind Energy Permit Application must first be approved by the Planning Commission.

3-2 **Permit Application information:** Throughout the permit process, the applicant shall promptly notify the Carteret County Planning and Development Department of any changes to the information contained in the permit application. Changes to the pending application that do not materially alter the initial site plan may be adopted administratively. The application for a Large System or Utility-scale Wind Energy Facility shall contain at least the following information:

3-2.1 **Summary:** A narrative overview of the project, including the generating capacity of the Wind Energy Facility.

3-2.2 **Inventory:** A tabulation describing the:

- A. Specific number, types, and height of each wind turbine to be constructed, including their generating capacity.
- B. Dimensions and respective manufacturers.
- C. Appurtenant structures and/or facilities.

3-2.3 **Vicinity map:** Identification of the property on which the proposed Wind Energy Facility will be located.

3-2.4 **Site Plan:** A plan showing the:

- A. Planned location of each wind turbine.
- B. All property lines within one mile of the property lines of the proposed site.
- C. Setback lines.
- D. Access road and turnout locations.
- E. Substation(s).
- F. Electrical cabling from the Wind Energy Facility to the substation(s) and from the substation(s) to where the electricity will leave the site.
- G. Ancillary equipment, buildings, and structures, including permanent meteorological towers.
- H. Associated transmission lines.
- I. Conservation Areas, including natural areas protected by law, such as wetlands that meet the definition in the Clean Water Act; shore land areas; water bodies; riparian buffers; populations of endangered or threatened species, or habitat for such species; archaeological sites, cemeteries, and burial grounds; important local historic sites; existing healthy, native forests consisting of at least one acre of contiguous area; individual existing healthy trees that are at least 100 years old; other significant natural features and scenic viewsheds; existing trails or corridors that connect the tract to neighboring areas.
- J. Location of all structures and properties within the geographical boundaries of any applicable setback.

K. A landscaping plan that shows proposed screening and buffering of all buildings and other non-tower structures on the site or sites.

3-2.5 **Environmental Impact Study:** For Utility-scale Wind Energy Facilities, an Environmental Impact Study (EIS) shall be submitted that includes review comments from all applicable state and federal agencies, including at least the:

- A. NC Department of Environment and Natural Resources,
- B. NC Department of Health and Human Services,
- C. NC Department of Transportation,
- D. NC Wildlife Resources Commission,
- E. US Fish and Wildlife Service, and
- F. US Army Corps of Engineers.

The EIS shall cover, at a minimum, the potential impacts on the human population (such as audible and inaudible sound, shadow flicker and blade glint, viewsheds, blade throw, hurricane resistance, etc.), as well as the animal populations, migratory areas used by waterfowl, the location of any and all air routes recognized by the FAA and/or established by any agency of the Department of Defense, land, and water (including impacts on groundwater resources due to foundations, pilings, etc.), and air. The study area shall include at least the 2 miles surrounding the proposed wind turbines.

The Applicant shall provide the County with an Escrow Account (as referenced in Section 3-4) to cover all costs and expenses incurred related to the Environmental Tests for the Wind Energy Facility (WEF). The County shall use Escrow Account funds to hire independent qualified experts, as needed, to conduct the tests specified below:

1. The location of any of the following found within the confines of, or within one mile from the perimeter of, any proposed WEF shall be identified: open drainage courses, streams, vernal pools, 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, wells, and historic and/or archaeological resources, together with a description of such features.
2. Pre-construction and post-construction field studies shall be conducted using the most advanced techniques available. Independent experts shall be chosen by the County and funded through the WEF Escrow Account. If the pre-construction field studies demonstrate significant adverse effect to birds, bats, game animals, water resources, or habitat fragmentation, the County and the WEF Applicant (includes Owner or Operator) shall develop an appropriate mitigation plan. It is acknowledged and accepted by the Applicant that some environmental impacts cannot be satisfactorily mitigated and that some of those projects will not be approved.
3. In determining the nature and effectiveness of such mitigation plans, the County will be guided by its own consultants, the appropriate state & federal agencies, and applicable state and federal laws and regulations. The WEF Applicant will be responsible for the full cost of implementing the mitigation plan under the supervision of the County and its designated agents.
4. After implementation of any mitigation plan, the County will review the plan to determine its effectiveness. Should the County find the mitigation efforts inadequate, the WEF Applicant will be given 60 days from that finding, to resolve the deficiencies. In the absence of a successful resolution, the County (at its discretion) shall have the right to: deny the WEF Permit.
5. The Applicant must provide a written memorandum from the appropriate state & federal agencies detailing their assessment of the proposed WEF.
6. The Applicant must demonstrate, to the satisfaction of the County, that the proposed WEF will not have an undue adverse effect on the proposed sites geological stability, surface or subterranean water resources, rare, threatened, or endangered wildlife, Significant Wildlife Habitat, Essential Wildlife Habitat, Raptor Habitat, threatened or endangered plants and rare and exemplary natural plant communities and ecosystems, and will not substantially increase storm water runoff.
7. The Applicant must provide a cumulative-impact assessment of the proposal in the context of other WEFs in the region, including migratory bird, bat and large mammal corridors, and demonstrate that the WEF is not located in an area that will result in degradation of important wildlife corridors.

- 3-2.6 **Ancillary Materials:** Other relevant studies, reports, certifications, and approvals as may be reasonably requested by Carteret County to ensure compliance with this Ordinance.
- 3-2.7 **Decommissioning Plan:** A description of how the structural and turbine materials will be disposed of and how the site will be restored, as well as:
- A. Anticipated life of the wind energy facility.
 - B. Estimated decommissioning costs (in current dollars), as provided by an appropriate licensed engineer, including contingency costs of at least 10%.
 - C. Method for ensuring that funds will be available for decommissioning and restoration as set forth in Section 3-8.
 - D. A verifiable means of determining if the decommissioning plan needs to be activated due to abandonment, such as a letter from the electric utility stating that it will notify the Planning Department within 10 business days if electricity is not received from the Wind Energy Facility for any 30 consecutive days.
- 3-2.8 The signature(s) of the property owner(s) and the facility owner/operator.
- 3-2.9 **Stand-down Plan:** The applicant shall certify that the proposal is for an International Electrical Congress (IEC) Class S wind turbine that is designed or will be designed to meet the NC Building Code. A Stand-down Plan for High Wind Conditions shall be included, along with any other materials needed for the certification.
- 3-2.10 **Potential Impacts on Property Values:** Applicant shall provide with their application competent evidence that the proposed project will not degrade or diminish values of surrounding real properties within one mile of the property lines of the property on which the project is located.
- 3-2.11 If any portion of a proposed Large System or Utility-scale wind energy facility is to be located within 2,000 feet of the right-of-way of any Federally-designated or State-designated Scenic Route or By-way, the applicant shall describe the proposed measures to be taken to minimize the visual impact of the proposed facility (including shadow flicker and blade glint) upon a Scenic Route or By-way.
- 3-2.12 **Air Space Impacts:**
- A. If any portion of a proposal will be more than 200 feet tall, the applicant shall provide a copy of a FAA determination as a result of filing the FAA Form 7460-1, Notice of Proposed Construction or Alteration of an Object that may Affect the Navigable Airspace.
 - B. If any portion of a proposal will be located within 20,000 feet of the runway surface of the Michael J. Smith Airport, Bogue Airfield, and/or Atlantic Field, the applicant shall provide a copy of a FAA determination as a result of filing the FAA Form 7460-1 plus demonstrate compliance with the County's Airport Height Ordinance..
 - C. The applicant shall establish to the satisfaction of the Planning Commission that the proposal will not adversely impact the restricted air space in Carteret County, particularly as it relates to the flight paths to and from MCAS Cherry Point, Bogue Field, Atlantic Field, Bombing Ranges PT 9 and BT 11, Seymour Johnson AFB, Camp Lejeune, and/or New River Air Station.
 - D. Any application submitted hereunder shall be forwarded to the Commanding Officer, Marine Corps Air Station Cherry Point, in order to provide for review and comment concerning any possible impacts on the operations and mission of Marine Corps Air Station Cherry Point, and no application submitted hereunder shall be deemed completed until such time as said review is completed and such comments are received.
 - E. The applicant shall provide a narrative description of all risks to:
 1. Civil air navigation and
 2. Military air navigation routes, military air traffic control areas, military training routes, military special-use air space, military radar or other potentially affected military operations, and shall further include documentation that addresses any potential adverse impact on military operations and readiness as identified by the Department of Defense clearinghouse and any mitigation action agreed to the by the applicant.
 - F. That the applicant provides evidence that the radar coverage for Michael J. Smith Airport is not degraded or diminished.
- 3-2.13 **Maintenance Plan:** The Applicant shall detail the triennial, storm follow-up, and non-scheduled maintenance actions that will be taken to keep the Wind Energy Facility operating quietly, efficiently, and non-polluting of the land, water, and air, including (but not limited to) the minimization of loud or high-pitched sound, low frequency sound or vibration, blade glint, and fluid leaks.

The Applicant shall conduct preventive maintenance inspections at least once every three years and after any wind event defined as a tropical storm or Category 1-5 Hurricane. Each inspection shall look for such things as metal fatigue, nut loosening, and other potential failures that might impact the public health and safety, as well as the items detailed in the Maintenance Plan. Such inspection reports shall be provided to the Planning Director or designee within 30 days of the inspection.

- 3-2.14 **Noise Impacts:** No Large System or Utility-scale wind energy facility or any generators, equipment, or apparatus shall produce noise above 35 decibels for more than five consecutive minutes, as measured at any property line. Each such occurrence shall be a separate violation of this ordinance and the penalties shall be cumulative.

If noise levels exceed 35 decibels for more than 48 consecutive hours, as measured at any property line, the applicant and/or owner shall shut down the wind energy facility within one business day of being informed to do so by the Planning Director or designee. The facility shall remain shutdown until it can be demonstrated to the satisfaction of the Planning Director or designee that the facility can be operated so as to not exceed 35 decibels for more than five consecutive minutes, as measured at any property line.

If noise levels exceed 80 decibels for more than 24 consecutive hours, as measured at any property line, the applicant and/or owner shall shut down the wind energy facility within one business day of being informed to do so by the Planning Director or designee. The facility shall remain shutdown until it can be demonstrated to the satisfaction of the Planning Director or designee that the facility can be operated so as to not exceed 80 decibels for more than 24 consecutive hours, as measured at any property line.

- 3-2.15 **Visual Impacts:** If warranted, as determined by the Planning Director or designee, the applicant shall furnish a visual impact assessment to the Planning Commission, which shall include:

- A. A computer-generated "zone of visibility map" covering at least a one-mile radius from the proposed facility shall be provided to illustrate locations from which the proposed installation may be seen, with and without foliage
- B. Pictorial representations of "before and after" views from key viewpoints inside of the county as may be appropriate and required, including, but not limited to, state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers, or residents.

Guidance will be provided concerning the appropriate key sites. The applicant shall provide a map showing the locations of where the pictures were taken and the distance of each location from the proposed facility.

- C. The Applicant shall not install any lighting that exceeds the minimum required by the FAA. Where alternatives to strobe lighting are available from the FAA, strobe lighting shall be the last resort and only if required by the FAA

- 3-2.16 **Impacts on surrounding Communities:** If the proposed wind energy facility is within three miles of a municipality or county, written notification of the application shall be provided by the Applicant to the legislative body of each, with copies of each to the Planning Department.

- 3-2.17 **Standards for Planning Commission Decision:** The Planning Commission will normally approve an application but it may disapprove an application for any of the following reasons:

- A. Conflict with safety and safety-related codes and requirements.
- B. The use or construction of a wind energy facility that is contrary to an already-stated purpose of a specific zoning or land use designation.
- C. The placement and location of a wind energy facility that would create an unacceptable risk to residents, the public, employees, and agents of the county, or employees of the service provider or other service providers, including Noise Impacts; Visual Impacts; Impacts on surrounding Communities; and/or adverse impacts identified in an Environmental Impact Statement.
- D. The placement and location of a wind energy facility would result in a conflict with, or compromise or change in, the nature or character of the surrounding area.
- E. Conflicts with the provisions of this ordinance.
- F. Failure to submit a complete application as required under this ordinance, including an incomplete or inadequate (as determined by the Planning Commission) Decommissioning Plan, Stand-down Plan, Maintenance Plan, and/or Road Analysis.

G. Conflicts, as determined by the Planning Commission, with the Military's unrestricted ability to use the Restricted Air Space above Carteret County, including no flight hazards and/or use limitations.

In addition, the Planning Commission will consider whether construction or operation of the proposed wind energy facility would encroach upon or would otherwise have a significant adverse impact on the mission, training, or operations of any major military installation or branch of military in North Carolina and result in a detriment to continued military presence in the State. In its evaluation, the Planning Commission will consider whether the proposed wind energy facility would cause interference with air navigation routes, air traffic control areas, and military training routes.

3-2.18 **Planning Commission Decision:** The approval by the Planning Commission shall be valid for a period of two years. Prior to the expiration of such approval, the Owner or Agent of the Wind Energy Facility may submit an approval extension application for up to an additional two years.

Such approval extension application shall be accompanied by the appropriate fees and a letter explaining the reasons that would justify an approval extension, rather than allowing the approval to lapse. The Planning Commission may not approve more than two extensions.

3-3 **Dimensional Requirements:** To provide for at least minimal operational safety for persons and property located outside of a wind farm, all wind energy facilities shall comply with the minimums and maximums contained in the following tabulation:

Type of Wind Energy Facility	Minimum Wind Turbine Setback from any Property Line, vacant or occupied dwelling unit, Public or Private r-o-w, and/or Access Easement	Maximum Wind Turbine Height*
Small System (up to 25 kW) Attached to a house	None	60 feet
Small System (up to 25 kW) Not attached to a house	1 foot for each foot of height from any property line and 1 foot for each foot of height from any vacant or occupied dwelling unit on the same property but If the Planning Director or designee determines there will be no significant impact on abutting properties or those across a stream, lake, or other body of water, no such setback is required from the waterward property line for a turbine placed in a body of water or on a dock or pier.	75 feet
Large System (more than 25 kW and less than 1,000 kW)	1,300 feet	199 feet
Utility-scale (1,000 kW or more)	One mile	275 feet
* Height is measured from the lowest adjacent grade to the highest point of the structure, including any attachments, such as a lightning protection device or a turbine rotor or tip of the turbine blade when it reaches its highest elevation.		

Such minimum setbacks for a wind energy facility shall be measured from its outermost extension (whether blade tip, nacelle/turbine housing, or tower/pole edge) that is nearest the subject property line, vacant or occupied dwelling unit, public or private r-o-w, and access easement. To measure maximum height, see the Definitions.

No portion of any wind turbine blade shall be closer than 25 feet to any portion of the ground that surrounds any wind energy facility.

3-4 **Escrow Account:** The Applicant shall pay to the County a fee as set forth in the County's Fee Schedule. The Planning Director and/or Planning Commission reserve the right to obtain engineering, economic impact, aviation impact, or other professional services to aid it in the review of any submitted application. The applicant shall reimburse Carteret County for the cost thereof prior to receiving the decision of the Planning Commission on the application.

- 3.4.1 The Applicant shall reimburse the County for all oversight expenses incurred related to the Wind Energy Facility (WEF), from application through decommissioning. This reimbursement will be from an Escrow Account.
- 3.4.2 These WEF-related oversight expenses include (but are not limited to) amounts required for Building Permits, Licensing, Re-Licensing, and Decommissioning — e.g. administration, engineering, expert health and wildlife evaluations, handling complaints, legal, etc. “Legal” includes reasonable attorney fees for the County if the County has to sue the Applicant.
- 3.4.3 Any interest accruing to the Escrow Account shall stay with the account and be considered new principle.
- 3.4.4 This Escrow Account will be setup by the Applicant at the time of the WEF permit Application. This Escrow Account will be at a financial institution approved by the County, solely in the name of the County, to be managed by the County Finance Director. The Applicant will make an initial deposit of \$50,000. A WEF Application will not be processed until consent to these terms and proof of deposit has been provided by the Applicant.
- 3.4.5 If the WEF Application is denied, all Escrow Account funds will be returned to the Applicant, less related expenses incurred by the County. The money will be returned, along with a statement as to these costs, within 30 days of the Application being formally denied or receipt of a Letter of Withdrawal.
- 3.4.6 This Escrow Account will be maintained during the life of the WEF by the Applicant/Owner/Operator. The Applicant/Owner/Operator will replenish any Escrow funds used by the County within 14 days of being sent written notification (and explanation) of said withdrawals. Failure to maintain the Escrow Account at \$50,000 shall be cause for revocation (or denial of renewal) of the WEF Permit.
- 3.4.7 If the WEF is decommissioned to the satisfaction of the County, all Escrow Account funds will be returned to the Applicant/Owner/Operator, less related expenses incurred by the County. The money will be returned, along with a statement as to these costs, within 30 days of the decommissioning process being completed.

3-5 Installation and Design.

- 3-5.1 **Power Collection:** The electrical connection system from the wind turbines to a collection point or substation shall, to the maximum extent possible, be placed underground. The power from that collection point or substation may use overhead transmission lines, if approved by the Planning Director or designee.
- 3-5.2 **Road Analysis:** The applicant shall reimburse the NC DOT and/or County (as appropriate) for any and all repairs and reconstruction to roads that are necessary due to the construction or decommissioning of the Large System or Utility-scale Wind Energy Facility. A qualified independent third party or other qualified person, agreed to by the NC DOT and/or County (as appropriate) and the applicant, shall be hired to pre-inspect the roadways to be used during construction and/or decommissioning. This third party shall be hired to evaluate, document, and rate the roads condition prior to construction or decommissioning of the Large System or Utility-scale Wind Energy Facility, and again 30 days after the Wind Energy Facility is completed or removed.
 - A. Any road damage during construction that is done by the applicant and/or one or more of its contractors or subcontractors that is identified by this third party shall be repaired or reconstructed to the satisfaction of the NC DOT and/or County (as appropriate) at the applicant’s expense prior to the final inspection. In addition, the applicant shall pay for all costs related to work of this third party pre-inspection prior to receipt of the final inspection.
 - B. The surety for removal of a decommissioned wind energy facility shall not be released until the Planning Director or designee is satisfied that any road damage that is identified by this third party during and after decommissioning that is done by the applicant and/or one or more of its contractors or subcontractors has been repaired or reconstructed to the satisfaction of the NC DOT and/or County (as appropriate) at the applicant’s expense. In addition, the applicant shall pay for all costs related to work of this third party’s inspection prior to receipt of the release of the surety.
- 3-5.3 **The Large System or Utility-scale Wind Energy Facility shall:**
 - A. Be a non-obtrusive color (such as light blue, off-white, or light gray) that blends with the sky, as determined by the Planning Director or designee.
 - B. Not be artificially lighted, except to the extent required by the Federal Aviation Administration or other applicable authority that regulates air safety.

- C. Not contain any signs or other advertising (including flags, streamers or decorative items or any identification of the turbine manufacturer, facility owner and operator). This does not include any identification plaques that might be required by the electric utility or governmental agency.
- D. Be sited and operated so as to not interfere with television, internet service, telephone (including cellular and digital), microwave, satellite (dish), navigational, or radio reception in neighboring areas. The applicant and/or operator of the facility shall be responsible for the full cost of any remediation necessary to provide equivalent alternate service or correct any problems; including relocation or removal of the facility caused or exacerbated by the operation of such equipment and any and all related transmission lines, transformers, and other components related thereto.
- E. Have a leak containment system for oil, hydraulic fluids, and other non-solids that is certified by an expert (such as an engineer, turbine manufacturer, etc.) acceptable to the Planning Director or designee that all such fluids will be captured before they reach the ground. The applicant shall pay the cost of the expert.

3-6 **Minimization of Shadow Flicker and Blade Glint Impacts by a Large System or Utility-scale Wind Energy Facility.**

- 3-6.1 The applicant shall provide a shadow flicker and blade glint report for each proposed wind energy facility. The report shall:
- A. Evaluate the worst case scenarios of wind constancy, sunshine constancy, and wind directions and speeds.
 - B. Map and describe the zones where shadow flicker and blade glint will likely be present within the project boundary and a one-mile radius beyond the project boundary.
 - C. Identify existing residences and the locations of their windows, locations of other structures, wind speeds and directions, and existing vegetation and roadways.
 - D. Calculate the locations of shadow flicker caused by the proposed project and the expected durations of the flicker at these locations, including outdoor viewsheds.
 - E. Calculate the total number of hours per year of flicker at all locations, including the outdoor viewshed.
 - F. Identify problem zones within a 1-mile radius where shadow flicker will interfere with existing or future residences and roadways and describe proposed measures to mitigate these problems.
- 3-6.2 Based upon the findings of the report, the wind energy facility shall be designed so that shadow flicker or blade glint will not fall on or in any roadway or occupied property, unless approved by the Planning Commission.
- A. Shadow flicker or blade glint that falls on a portion of an occupied property is acceptable only under the following circumstances:
 1. The flicker or glint does not exceed 120 seconds per day for seven consecutive days, with a five hour maximum per year and
 2. The flicker or glint falls more than 100 feet from an existing residence or business property.
 - B. Shadow flicker or blade glint that falls on a roadway is acceptable only under the following circumstances:
 1. The traffic volumes are less than 500 vehicles per day on the roadway and
 2. The flicker or glint shall not fall onto an intersection of public roads.
- If shadow flicker or blade glint exceeds any of the conditions listed in this Section, the source wind energy facility shall be shut down until the flicker or glint problem is remedied. Each such occurrence shall be a separate violation of this ordinance and the penalties shall be cumulative.

3-7 **Decommissioning or Abandonment:** If the chief building official condemns any portion of a Large System or Utility-scale Wind Energy Facility or if no electricity is generated for three consecutive months, the Wind Energy Facility owner and/or property owner shall have three months to remedy the safety issues or complete the decommissioning of the Wind Energy Facility, according to the approved plan.

- 3-7.1 The Planning Commission may grant extensions of time for repair and/or maintenance, for good cause, such as the need to back-order parts that are not currently available from the manufacturer or supplier or the need to repair a Large System or Utility-scale Wind Energy Facility damaged by a hurricane.
- 3-7.2 Decommissioning shall include the complete removal of wind turbines, buildings, cabling, electrical components, roads, and any other associated facilities and/or structures, including below-ground items such as foundations and power lines.
- 3-7.3 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.

3-8 Surety for Removal of Large System or Utility-scale Wind Energy Facilities, if Decommissioned or Abandoned: The applicant shall place with the county an acceptable letter-of-credit, bond, or other form of security that is sufficient to cover the cost of removal at the end of the facility's useful life, as detailed in the decommissioning plan. Such surety shall be at least \$200,000 for each wind turbine. The Planning Director or designee may approve a reduced surety amount that is not less than 150% of a cost estimate that is certified by an Engineer, salvage company, or other expert suitable to the Planning Director or designee.

The surety shall be used by the county to assure the faithful performance of the terms and conditions of this law and conditions of this ordinance, as well as to serve as a removal security to prevent the taxpayers from bearing the cost of removal in the event of the abandonment or cessation of use for more than 90 consecutive days. The full amount of the bond or security shall remain in full force and effect until any and all necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the facility, as determined by the Planning Director or designee.

3-9 Security of Large System or Utility-scale Wind Energy Facilities: All wind energy facilities shall be:

3-9.1. Located, fenced, or otherwise secured so as to prevent unauthorized access.

3-9.2. Made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with.

3-9.3. Installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

3-10 Reservation of Authority to Inspect Large System or Utility-scale Wind Energy Facilities: In order to verify that the holder of a permit for a wind energy facility and any and all lessees, renters, and/or licensees of it, have placed and constructed such facilities in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the county may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification, and maintenance of such facilities, including all towers, buildings, and other structures constructed or located on the site.

3-11 Liability Insurance:

3-11.1 The holder of a permit for a Large System or Utility-scale wind energy facility shall secure and maintain for the duration of the permit public liability insurance, as follows:

A. *Commercial general liability covering personal injuries, death and property damage.* \$1,000,000 per occurrence -- \$2,000,000 aggregate, which shall specifically include the county and its officers, councils, employees, committee members, attorneys, agents and consultants as additional named insured.

B. *Umbrella coverage.* \$3,000,000.

3-11.2 The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with at least a Best's rating of "A".

3-11.3 The insurance policies shall contain an endorsement obligating the insurance company to furnish the county with at least 30 days prior written notice in advance of a cancellation.

3-11.4 Renewal or replacement policies or certificates shall be delivered to the county at least 15 days before the expiration of the insurance that such policies are to renew or replace.

3-11.5 No more than 15 days after the grant of the permit and before construction is initiated, the permit holder shall deliver to the county a copy of each of the policies or certificates representing the insurance in the required amounts.

3-11.6 A certificate of insurance that states that it is for informational purposes only and does not confer rights upon the county shall not be deemed to comply with this ordinance.

3-11 Indemnification:

Any application for a Large System or Utility-scale wind energy facility on county property shall contain an indemnification provision. The provision shall require the applicant to at all times defend, indemnify, protect, save, hold harmless, and exempt the county, and its officers, councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the county, or its servants or agents. With respect to the penalties,

damages, or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the county.

An indemnification provision will not be required in those instances where the county itself applies for and secures a permit for a Large System or Utility-scale wind energy facility.

3-13 Real Property Value Protection Plan:

The WEF Owner(s) ("Applicant") shall assure the County that there will be no loss in real property value within two miles of each wind turbine within their WEF. To legally support this claim, the Applicant shall consent in writing to a Real Property Value Protection Agreement ("Agreement") as a condition of approval for the WEF. This Agreement shall provide assurance to non-participating real property owners (i.e. those with no turbines on their property) near the WEF, that they have some protection from WEF-related real property values losses.

The Applicant shall agree to guarantee the property values of all real property partially or fully within two miles of the WEF. Any real property owner(s) included in that area who believe that their property may have been devalued due to the WEF, may elect to exercise the following option:

3-13.1 All appraiser costs are paid by the Applicant, from the Escrow Account. Applicant and the property owner shall each select a licensed appraiser. Each appraiser shall provide a detailed written explanation of the reduction, if any, in value to the real property ("Diminution Value"), caused by the proximity to the WEF. This shall be determined by calculating the difference between the current Fair Market Value (FMV) of the real property and what the FMV would have been at the time of exercising this option, assuming no WEF was proposed or constructed.

- A. If the higher of the Diminution Valuations submitted is equal to or less than 25% more than the other, the two values shall be averaged ("Average Diminution Value": ADV).
- B. If the higher of the Diminution Valuations submitted is more than 25% higher than the other, then the two appraisers will select a third licensed appraiser, who shall present to Applicant and property owner a written appraisal report as to the Diminution Value for the real property. The parties agree that the resulting average of the two highest Diminution Valuations shall constitute the ADV.
- C. In either case, the property owner may elect to receive payment from Applicant of the ADV. Applicant is required to make this payment within 60 days of receiving said written election from property owner, to have such payment made.

3-13.2 Other Agreement Conditions:

- A. If a property owner wants to exercise this option, they must do so within 10 years of the WEF receiving final approval from the County.
- B. A property owner may elect to exercise this option only once.
- C. The Applicant and the property owner may accept mutually agreeable modifications of this Agreement, although the Applicant is not allowed to put other conditions on a financial settlement (e.g. confidentiality). If the property owner accepts some payment for property value loss, based on an alternative method that is considered an exercise of this option.
- D. This Agreement applies to the property owner of record as of the date of the WEF application, and is not transferrable to subsequent owners.
- E. The property owner of record as of the date of the WEF application must reasonably maintain the property from that time, until they choose to elect this option.
- F. The property owner must permit full access to the property by the appraisers, as needed to perform the appraisals.
- G. The property owner must inform the appraisers of all known defects of the property as may be required by law, as well as all consequential modifications or changes to the property subsequent to the date of the WEF application.
- H. This Agreement will be guaranteed by the Applicant (and all its successors and assigns), for 10 years following the WEF receiving final approval from the County, by providing a bond (or other surety), in an amount determined to be acceptable by the County.
- I. Payment by the Applicant not made within 60 days will accrue an interest penalty. This will be 12 percent annually, from the date of the written election from property owner.
- J. For any litigation regarding this matter, all reasonable legal fees and court costs will be paid by the Applicant.
- K. Upon application, Applicant shall provide a performance bond (or equivalent) in an amount determined by the County and held by the County. This surety account will ensure execution of

all aspects of this Agreement (including compensation of eligible property owners in the case of default by Applicant). Failure to maintain this surety account shall be cause for revocation (or denial of renewal) of the WEF Permit.

ARTICLE 4 - COMMUNICATION TOWERS

4-1 **General:** The Telecommunications Act of 1996 affirmed the county's authority concerning the placement, construction, and modification of wireless telecommunications facilities. North Carolina General Statutes governing the regulation of Wireless Telecommunication Facilities, §153A, Article 18, Part 3B, provide for the safe and efficient integration of facilities necessary for the provision of advanced wireless telecommunications services throughout the county and to ensure the ready availability of reliable wireless services to the public, government agencies, and first responders, with the intention of furthering the public safety and general welfare.

In order to insure that the placement, construction, or modification of Wireless Telecommunications Facilities is consistent with the County's land use policies, the County is adopting a single, comprehensive, Wireless Telecommunications Facilities application and permitting process as a part of this Tall Structures Ordinance.

The intent is to minimize the physical impact of Wireless Telecommunications Facilities on the county; to protect the nature, character, and quality of life of and within the county, to the extent reasonably possible; to establish a fair and efficient process for review and approval of applications; to assure an integrated, comprehensive review of environmental impacts of such facilities; and to protect the health, safety and welfare of the County and its residents.

The purpose of this Wireless Telecommunications Ordinance is to provide for the public health, safety and welfare by ensuring that residents, businesses and public safety operations in Carteret County have reliable access to wireless telecommunications networks and state of the art mobile broadband communications services while also ensuring that this objective is accomplished according to Carteret County's zoning, planning, and design standards and applicable safety codes, such as ANSI 222.

By enacting this Ordinance it is Carteret County's intent to ensure that Carteret County has sufficient wireless infrastructure to support its public safety communications throughout Carteret County and to ensure access to reliable wireless communications services throughout all areas of Carteret County.

To accomplish these objectives, the County hereby adopts an overall policy to review, approve, and issue permits for Wireless Telecommunications Facilities that will:

4-1.1. Be fair and consistent.

4-1.2. Promote the sharing and/or co-location of Wireless Telecommunications Facilities among service providers wherever possible.

4-1.3. Encourage the placement, height, and quantity of Wireless Telecommunications Facilities in such a manner as to minimize the physical and visual impact on the community, wherever possible, including but not limited to, the use of stealth technology.

4-1.4. Ensure that the site that is approved for a Wireless Telecommunications Facility is the least visually intrusive among those available in the County, given the facts and circumstances.

4-2 **Exceptions:** All proposed exceptions must make application for a determination by the Planning Director or designee that the proposal qualifies as an exception.

Any proposed exception that will be more than 200 feet tall shall first provide the Planning Department with a copy of an FAA determination as a result of filing the FAA Form 7460-1, Notice of Proposed Construction or Alteration of an Object that may Affect the Navigable Airspace.

Any proposed exception that will be within 20,000 feet of a runway surface at the Michael J. Smith Airport, Bogue Airfield, and/or Atlantic Field shall provide with the application a copy of an FAA determination as a result of filing the FAA Form 7460-1.

The applicant shall establish to the satisfaction of the Planning Director or designee that the proposal will not adversely impact the restricted air space in Carteret County, particularly as it relates to the flight paths to and from MCAS Cherry Point, Bogue Field, Atlantic Field, Bombing Ranges PT 9 and 11, Seymour Johnson AFB, plus Camp Lejeune and New River Air Station.

Upon review of a complete application, the Planning Director or designee may determine that the proposal qualifies as one of the following kinds of exceptions:

4-2.1. Public service facilities owned by County, State, or Federal governments and their agencies; Carteret-Craven Electric Cooperative; or Progress Energy, including their successors.

4-2.2. When placing wireless facilities on electric utility or government-owned property or facilities, only non-commercial wireless carriers and users are exempt from the requirements of this ordinance.

4-2.3. Any facilities expressly exempt from the county's siting, building, and permitting authority.

- 4-2.4. Facilities used exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio, and other similar non-commercial telecommunications.
- 4-2.5. Facilities used exclusively for providing unlicensed spread spectrum technologies, such as IEEE 802.11a, b, g services (e.g. Wi-Fi and Bluetooth), where the facility does not require a new tower or increase the height of the structure being attached to that do not provide service for a distance greater than 100 linear feet from the transmission and reception equipment.
- 4-2.6. Any legally-permitted wireless telecommunications facility that existed before the effective date of this ordinance shall be allowed to continue as it presently exists, including maintenance, repair, or replacement, so long the result is that the wireless telecommunications facility remains substantially the same as it was prior to the maintenance, repair, or replacement, as determined by the Planning Director or designee.

However, any substantial structural and/or visible modification, as determined by the Planning Director or designee, of an existing facility shall require that the complete facility and any new installation will comply with this ordinance, as will anything that will increase the structural load to more than 100 percent of capacity.

- 4-2.7. Any repair and maintenance of a wireless telecommunication facility that might require a building permit but does not require any other permit. However, construction or site work is not exempt.
- 4-2.8. Reserved
- 4-2.9. Any reception or transmission device expressly exempted by the Telecommunications Act of 1996.
- 4-2.10. Radio towers for AM or FM stations and television towers are permitted above the height limit in any zoned or unzoned area but each must be located no closer to any property line than 150% (one hundred fifty percent) of its height.
- 4-2.11. The following structures, features, or equipment are permitted above the height limit in any zoned or unzoned area: silos; towers used to support electric power and other utility lines; skylights and roof structures for elevators; stairways; tanks; ventilating fans; air conditioning or similar equipment for the operation or maintenance of the building; and any device used for screening such structures and equipment.
- 4-2.12. This Ordinance shall in no way regulate, restrict, prohibit, or otherwise deter any bona fide farm and its related uses. Non-farm uses on a farm shall be subject to this Ordinance.
- 4-2.13. The following are exempt from all Carteret County planning approval processes and requirements but not the NC Building Code:
 - A. Removal or replacement of transmission equipment on an existing wireless tower or base station that does not result in a substantial modification or in an increase in the structural load to above 100% of the host structure's structural capacity.
 - B. Ordinary Maintenance of existing Wireless Facilities and Wireless Support Structures that does not result in a substantial modification or in an increase in the structural load to above 100% of the host structure's structural capacity;
 - C. Wireless Facilities placed on Utility Poles; and
 - D. Carrier on Wheels or Cell on Wheels (COWs) placed for a period of not more than 120 days at any location or for more than 120 days at any location but only after a declaration of an emergency or a disaster by the Governor.

4-3. **Administrative Approvals by the Planning Director or designee:**

- 4-3.1 **Eligible Facilities and activities:** The following types of applications are subject to the Administrative review process. No other type of zoning or site plan review is necessary:
 - A. New Wireless Support Structures that are 60 feet or less feet in height, in any zoning district, including unzoned areas;
 - B. New Wireless Support Structures that are less than 200 feet in height, in any Industrial District;
 - C. Concealed Wireless Facilities that are 60 feet or less in height, in any residential district;
 - D. Concealed Wireless Facilities that are 150 feet or less in height, in any unzoned area or non-residential zoning district;
 - E. Replacement Monopoles located on public property or within utility easements or rights-of-way, in any zoning district or unzoned area;
 - F. Carrier on Wheels or Cell on Wheels (COWs) that are not exempt;
 - G. Modifications, including Substantial Modifications; and
 - H. Co-locations.

4-3.2 **Minimum Contents of an Application for Administrative Approval:**

- A. Application form signed by applicant or agent;
- B. Copy of lease or letter of authorization from property owner evidencing applicant's authority to pursue application. Such submissions need not disclose financial lease terms;
- C. Site plans that demonstrate that the proposed improvements comply with Carteret County's existing site plan requirements. Such plans must depict improvements related to the applicable requirements, including property boundaries, setbacks, topography, elevation sketch, detailed description of improvements, and dimensions of improvements; and
- D. Documentation from a licensed professional engineer of calculation of the fall zone and certification that the wireless support structure has sufficient structural integrity to accommodate the entire tower, including the proposed improvements. Such documentation shall include at least an ANSI Structural Analysis.

4-3.3 **Fees for an Administrative Application:** The Applicant shall pay to the County a fee as set forth in the County's Fee Schedule.

4-3.4 **Procedure and Timing for an Administrative Application:**

- A. Within 15 days of the receipt of an application, the Planning Director or designee will finish a completeness review of the application.
- B. An application is deemed to be complete upon written notification to that effect from the Planning Director or designee or on day 16, if there is no such written notification within the 15-day completeness review period.
- C. If the completeness review determines that an application is incomplete, the Planning Director or designee will make written notification to the applicant within the 15-day completeness review period regarding the specific deficiencies in the application which, if cured, would make the application complete.
- D. If the applicant does not cure those deficiencies within 45 days of the written notification, the application shall be considered withdrawn and a new application and fees will be required should the applicant wish to proceed with the proposal.
- E. Once the application is complete, the Planning Director or designee will review the application for compliance and make a final decision regarding the application within 45 days of the date that the application became complete.
- F. An application is deemed to be approved upon written notification to that effect from the Planning Director or designee or on day 46, if there is no written notification within the 45-day ordinance compliance review period.
- G. If an application is denied, the Planning Director or designee will provide written justification of the denial, which must be based on substantial evidence of inconsistencies between the application and this Ordinance.

4-3.5 **Building Permit:** A building permit application shall not be approved until all necessary approvals under this Ordinance have been made.

4-4. **Non-administrative Approvals by the Planning Commission**

4-4.1 Approval by the Planning Commission is required for any Wireless Facility or Wireless Support Structure that does not qualify for Administrative Approval. Upon the granting of a Permit by the Planning Commission, the Wireless Facility or Wireless Support Structure is permitted in all unzoned areas and in all zoning districts, where Permitted..

4-4.2 The approval or denial by the Planning Commission shall be based upon the degree of proposed compliance with the following Standards

A. Air Space Impacts:

1. If any portion of a proposal will be more than 200 feet tall, the applicant shall provide a copy of a FAA determination as a result of filing the FAA Form 7460-1, Notice of Proposed Construction or Alteration of an Object that may Affect the Navigable Airspace.
2. If any portion of a proposal will be located within 20,000 feet of the runway surface of the Michael J. Smith Airport, Bogue Airfield, and/or Atlantic Field, the applicant shall provide a copy of a FAA determination as a result of filing the FAA Form 7460-1.
3. The applicant shall establish to the satisfaction of the Planning Commission that the proposal will not adversely impact the restricted air space in Carteret County, particularly as it relates to the flight paths to and from MCAS Cherry Point, Bogue Field, Atlantic Field, Bombing Ranges PT 9 and 11, Seymour Johnson AFB, Camp Lejeune, and/or New River Air Station.

4. Any application submitted hereunder shall be forwarded to the Commanding Officer, Marine Corps Air Station Cherry Point, in order to provide for review and comment concerning any possible impacts on the operations and mission of Marine Corps Air Station Cherry Point, and no application submitted hereunder shall be deemed completed until such time as said review is completed and such comments are received.
 5. The applicant shall provide a narrative description of all risks to:
 - a. Civil air navigation and
 - b. Military air navigation routes, military air traffic control areas, military training routes, military special-use air space, military radar or other potentially affected military operations, and shall further include documentation that addresses any potential adverse impact on military operations and readiness as identified by the Department of Defense clearinghouse and any mitigation action agreed to the by the applicant.
- C. **Noise Impacts:** The Applicant shall affirm in writing that any generators or other noise-producing and/or noise-creating equipment or apparatus will not produce noise above 60 decibels for more than five consecutive minutes at the property line.
- D. **RF Emissions Impacts:**
1. The Applicant shall provide a signed statement that the Applicant will expeditiously remedy any physical or RF interference with other telecommunications or wireless devices or services.
 2. As recommended by the Federal Communications Commission (FCC), where the new wireless facilities will be 40 feet or more above ground level, signed documentation (such as the FCC's "Checklist to determine whether a Facility may be Categorized Excluded") shall be provided to the Planning Commission to verify that the facility will be in full compliance with the current FCC's RF emissions regulations. If not categorically excluded, a complete RF emissions study is required and shall be provided to the Planning Commission to enable verification of compliance, including providing all calculations so that such may be verified.

In compliance with the FCC's regulations, the RF radiation from all wireless facilities shall be included in the calculations to show the cumulative effect on any area of the building or structure deemed accessible by the public. Such report or analysis shall be signed and sealed by a professional engineer licensed in the State.
 3. If any section or portion of the structure to be attached to is not in compliance with the FCC's regulations regarding RF radiation, that section or portion must be barricaded with a suitable barrier and shall be marked off with yellow and black-striped warning tape or a suitable warning barrier, as well as placing RF radiation signs (as needed and appropriate) to warn of the potential danger.
- E. **Visual Impacts:** If warranted, as determined by the Planning Director or designee, the applicant shall furnish a visual impact assessment to the Planning Commission, which shall include:
- A. A computer-generated "zone of visibility map" covering at least a one-mile radius from the proposed facility shall be provided to illustrate locations from which the proposed installation may be seen, with and without foliage
 - B. Pictorial representations of "before and after" views from key viewpoints inside of the county as may be appropriate and required, including, but not limited to, state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers, or residents.

Guidance will be provided concerning the appropriate key sites. The applicant shall provide a map showing the locations of where the pictures were taken and the distance of each location from the proposed facility.
- F. **Impacts on surrounding Communities:** If the proposed wireless telecommunications facility is within three miles of a municipality or county, written notification of the application shall be provided by the Applicant to the legislative body of each, with copies of each to the Planning Department.
- G. **General Impacts:** The Planning Commission may disapprove an application for any of the following reasons:
1. Conflict with safety and safety-related codes and requirements.
 2. The use or construction of a wireless telecommunications facility that is contrary to an already stated purpose of a specific zoning or land use designation.

3. The placement and location of a wireless telecommunications facility that would create an unacceptable risk to residents, the public, employees, and agents of the county, or employees of the service provider or other service providers.
4. The placement and location of a wireless telecommunications facility would result in a conflict with, or compromise or change in, the nature or character of the surrounding area.
5. Conflicts with the provisions of this ordinance.
6. Failure to submit a complete application as required under this ordinance.
7. Conflicts, as determined by the Planning Commission, with the Military's unrestricted ability to use the Restricted Air Space above Carteret County, including no flight hazards and/or use limitations.

In addition, the Planning Commission may consider whether construction or operation of the proposed wind energy facility would encroach upon or would otherwise have a significant adverse impact on the mission, training, or operations of any major military installation or branch of military in North Carolina and result in a detriment to continued military presence in the State. In its evaluation, the Planning Commission may consider whether the proposed wind energy facility would cause interference with air navigation routes, air traffic control areas, and military training routes.

4-4.3 Content of Application Package for a Non-administrative Approval by the Planning Commission: All application packages for a Non-administrative Approval by the Planning Commission must contain the following:

- A. The appropriate application form signed by applicant or agent;
- B. Copy of lease or letter of authorization from the property owner evidencing applicant's authority to pursue the application. Such submissions need not disclose financial lease terms;
- C. Written descriptions and scaled drawings of the proposed Wireless Support Structure or Wireless Facility to describe and illustrate how the proposal complies with the Planning Commission Permit Standards, including structure height, ground and structure design, and proposed materials;
- D. Number of proposed Antennas and their height above ground level, including the proposed placement of Antennas on the Wireless Support Structure;
- E. Line-of-sight diagram or photo simulation, showing the proposed Wireless Support Structure set against the skyline and viewed from at least four directions within the surrounding areas;
- F. A statement that the proposed Wireless Support Structure will be made available for Co-location to other service providers at commercially reasonable rates, provided space is available and consistent with Section 4-6.1A of this Ordinance; and
- G. Responses and data submissions to address the proposal's Air Space Impacts, Noise Impacts, RF Emissions Impacts, Visual Impacts, Impacts on surrounding Communities, and General Impacts, as well as the required General Standards and Design Requirements.

4-4.4 Fees: The Applicant shall pay to the County a fee as set forth in the County's Fee Schedule.

4-4.5 Procedure and Timing: Within 150 days of receiving an application, the Planning Director or designee will complete the process for reviewing the application for completeness conformity and in the same timely manner as for Administrative Approvals, as provided below.

- A. **Completeness Review:** After 30 days, an application for a non-administrative approval is deemed to be complete, unless the Planning Director or designee notifies the applicant in writing within 30 days of submission of the application of the specific deficiencies in the application which, if cured, would make the application complete.

If the written notice identifies deficiencies, the applicant may take 30 days from receiving such notice to cure the specific deficiencies. If the applicant cures the deficiencies to the satisfaction of the Planning Director or designee within this 30-day period, the application shall be deemed complete.

The Planning Director or designee will then review and process the complete application within the remainder of the 150 days from the initial date the application was received. If the applicant requires a period of time beyond 30 days to cure the specific deficiencies, the 150 calendar days deadline for review shall be extended by the same period of time that the applicant takes to respond beyond the 30 days;

- B. **Approval Process:** Once the application is complete, the Planning Director or designee will prepare a staff report and conduct a public hearing by the Planning Commission at its next regularly-scheduled meeting date, based upon the published schedule of submission deadlines.

The Planning Commission will make a final decision to approve or disapprove the application within the remainder of the 150 days; and

- C. The Planning Director or designee will advise the applicant in writing of the Planning Commission's final decision. If the Planning Commission denies an application, the Planning Director or designee must provide written justification of the denial.
- D. Failure to issue a written decision within one hundred fifty calendar days, or any mandated extension thereof, shall constitute an approval of the application.

4-5. **Existing Wireless Facilities and Wireless Support Structures:**

4-5.1 Wireless Facilities and Wireless Support Structures that were legally-permitted before the date this Ordinance was enacted shall be considered a non-conforming but permitted and lawful use.

4-5.2 **Activities at Non-Conforming Wireless Support Structures:** Notwithstanding any provision of this Ordinance:

- A. Ordinary Maintenance, as determined by the Planning Director or designee, may be performed on a Non-Conforming Wireless Support Structure or Wireless Facility.
- B. Co-location of Wireless Facilities on an existing non-conforming Wireless Support Structure shall not be construed as an expansion, enlargement, or increase in intensity of a non-conforming structure and/or use and shall be permitted through the Administrative Approval process; provided that the co-location does not substantially modify the size of the equipment compound at that location or otherwise substantially modify the existing non-conformity, as determined by the Planning Director or designee.
- C. Substantial Modifications may be made to non-conforming Wireless Support Structures utilizing the Planning Commission Permit process.

4-6. **General Standards and Design Requirements:**

4-6.1 **Design**

A. **Wireless Support Structures:**

- 1. Shall be engineered and constructed to accommodate a minimum number of Co-locations, based upon their height: Support structures 60 to 100 feet high shall be designed to support at least two telecommunications providers;
 - a. Support structures greater than 100 feet but less than 150 feet shall be designed to support at least three telecommunications providers;
 - b. Support structures 150 feet or taller shall be designed to support at least four telecommunications carriers.
- 2. The Equipment Compound area surrounding the Wireless Support Structure must be of sufficient size to accommodate Accessory Equipment for the proposed number of telecommunications providers.
- 3. Upon request of the Applicant, the Planning Commission may waive the requirement that new Wireless Support Structures accommodate the Co-location of other service providers, if it finds that Co-location at the site is not essential to the public interest or that the construction of a shorter support structure with fewer Antennas will promote community compatibility.

B. **Concealed Wireless Facilities:** shall be designed to accommodate the Co-location of other Antennas, whenever economically and technically feasible. Antennas must be enclosed, camouflaged, screened, obscured, or otherwise not readily apparent to a casual observer.

C. **Monopole or Replacement Pole:** Such poles shall be permitted within utility easements or rights-of-way, in accordance with the following requirements:

- 1. The utility easement or right-of-way shall be at least 100 feet wide.
- 2. The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are 80 feet or greater in height.
- 3. Monopoles and the Accessory Equipment shall be set back a minimum of 15 feet from all boundaries of the easement or right-of-way.
- 4. The height of the Monopole or Replacement pole may not exceed by more than 30 feet the height of existing utility support structures. Due to these height restrictions, single-carrier Monopoles may be used within utility easements and rights-of-way.
- 5. Poles that use the structure of a utility tower for support are permitted. Such poles may extend up to 20 feet above the height of the utility tower.

- 4-6.2 **Setbacks:** Unless otherwise stated herein, each Wireless Support Structure shall be set back from all property lines a distance equal to its engineered fall zone or, if there is no engineered fall zone, 150% of its height.
- 4-6.3 **Height:** For non-residential areas, no new tower or co-location shall exceed 199 feet above grade or preconstruction ground level. For residential areas, new wireless telecommunications towers or co-locations taller than the building height limit in zoned residential districts or taller than 100 feet in unzoned residential districts are prohibited. The term "residential district" includes residential zoning districts, residential subdivisions, group housing developments, unzoned housing clusters, manufactured home parks, and recreation vehicle parks.

4-6.4 **Aesthetics:**

- A. **Lighting and Marking:** Wireless Facilities or Wireless Support Structures shall not be lighted or marked, unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).
- B. **Signage:** Signs located at the Wireless Facility shall be limited to ownership and contact information, FCC antenna registration number (if required), and any other information as required by government regulation. Commercial advertising is strictly prohibited.

Notwithstanding the foregoing, nothing in this Ordinance shall prohibit signage that is approved for other uses on property on which Wireless Facilities are located, such as approved signage at locations on which Concealed Facilities are located.

- 4-6.5 **Accessory Equipment:** Accessory Equipment, including any buildings, cabinets, or shelters, shall be used only to house equipment and other supplies in support of the operation of the Wireless Facility or Wireless Support Structure. Any equipment not used in direct support of such operation shall not be stored on the site.
- 4-6.6 **Fencing:** The Planning Director or designee may require that Ground-mounted Accessory Equipment and Wireless Support Structures shall be secured and enclosed with a green or black vinyl-clad chain link fence that is at least six feet high. If requested by the Applicant, the Planning Director or designee may approve alternative fence types and security features, such as a privacy fence, barbed-wire topping, or may waive the fencing requirement, if it is deemed that a fence is not appropriate or needed at the proposed location.

4-7. **Miscellaneous Provisions:**

- 4-7.1 **Abandonment and Removal:** If a Wireless Support Structure is Abandoned for more than 12 consecutive months, the Planning Director or designee may require that such Wireless Support Structure be removed but only after first providing written notice to the owner of the Wireless Support Structure and giving the owner the opportunity to take such action(s) as may be necessary to reclaim the Wireless Support Structure within 60 days of receipt of said written notice

In the event the owner of the Wireless Support Structure fails to reclaim the Wireless Support Structure within the 60-day period, the owner of the Wireless Support Structure shall be required to remove the same within six months thereafter. The Carteret County shall ensure and enforce removal by means of its existing regulatory authority, with costs of removal charged to the owner, minus any monies received by the County for the scrap metals and other reclaimed/recycled elements.

- 4-7.2 **Reservation of authority to inspect wireless telecommunications facilities:** In order to verify that the holder of a permit for a wireless telecommunications facility and any and all lessees, renters, and/or licensees of it, have placed and constructed such facilities in accordance with all applicable laws, ordinances, and regulations, the Applicant, by payment of any Fee and/or submission of any Application and/or plan for a wireless telecommunications facility, agrees that the Planning Director or designee may inspect the pertinent facets of said Applicant's placement, construction, modification and maintenance of such facilities, including all towers, antennas, buildings, and other structures constructed or located on the site.

- 4-7.3 **Multiple Uses on a Single Parcel or Lot:** Wireless Facilities and Wireless Support Structures may be located on a parcel containing another principal use on the same site or may be the principal use itself.

- 4-7.4 **Default and/or revocation:** If a wireless telecommunications facility is repaired, rebuilt, placed, moved, relocated, modified, or maintained in a way that is inconsistent or not in compliance with the provisions of this ordinance or of the special use permit, then the county shall notify the holder of the permit in writing of such violation. A permit holder in violation may be considered in default and subject to fines and, if a violation is not corrected to the satisfaction of the county in a reasonable period of time, the permit is subject to revocation

- 4-7.5 **Responsible Party(s):** The owner(s) of a Wireless Telecommunications Facility, any support structure used to accommodate wireless facilities, and the land upon which a Facility or support structure is located shall be jointly and severally responsible for:
- A. The physical and safe condition of the Facility, support structure, and all components on the site related to the Facility;
 - B. Assuring that all activities of owners, users, or lessees occurring on the Facility or property, support structure, and all components on the site related to the Facility are at all times in compliance with all applicable laws, ordinances, rules, regulations, orders, and permits related to the Facility; and
 - C. Assuring the proper permitting as required by this Article and other County regulations by all lessees and users of the Facility, including but not limited to any upgrades and/or modifications of equipment.

Said owner(s) shall monitor activities at the site to assure that the Facility is operated in compliance with all pertinent laws, rules, and regulations.

If a tower is involved, the owner of the tower and/or the leasehold property involved shall be the primary applicant for any permit required under this ordinance. Carrier, user, or lessee information shall be provided as needed and as allowed under law.

ARTICLE 5 – OTHER TALL STRUCTURES

5-1 Special Cases and Exemptions for other tall structures.

5-1.1 The following structures, features, or equipment are permitted above the height limit in any zoned or unzoned area: silos; towers used to support electric power and other utility lines; skylights and roof structures for elevators; stairways; tanks; ventilating fans; air conditioning or similar equipment for the operation or maintenance of the building; and any device used for screening such structures and equipment.

5-1.2 Towers, steeples, flagpoles, chimneys, water tanks (including water towers), or similar structures are permitted above the height limit on lots in the business, church campus, and industrial zoning districts that do not abut lots in any residential district and, for unzoned areas, are permitted when not abutting any residential use or district.

If this type of structure is on a lot that abuts a residential use or district, then the part of the structure above the height limit must be separated from any such abutting lot line by a distance equal to at least one-half of its height measured from the ground. Towers used to support electric power and other utility lines are exempt from this separation requirement.

5-1.3 Towers, steeples, flagpoles, chimneys, water tanks (including water towers), or similar structures are permitted above the height limit on lots next to residential uses or districts. However, any part of such a structure that extends above the height limit must be separated from any such abutting property line by a distance equal to at least one-half of its height. Otherwise, the structure will be subject to the usual requirements for setbacks. Towers used to support electric power and other utility lines plus towers and other similar structures used solely for the purposes of amateur radio reception and transmission shall be exempt from this one-half of its height requirement.

ARTICLE 6 – AMENDMENTS

6-1 Amendments.

The Board of County Commissioners on its own motion or by application may amend, supplement, change or repeal the boundaries or regulations established by this Ordinance. Any such amendment will be adopted only after public notice and public hearing as required by general law.

6-2 Application for Amendment.

Amendments to this Ordinance must be filed with the Planning and Development Department. An official application form shall be obtained and returned to the Planning and Development Department no later than four weeks prior to the date of the Planning Commission meeting. The filing fee shall be in accordance with the county fee schedule and must accompany the application.

6-3 Withdrawal or Suspension of Application.

6-3.1. Application for amendment to the Ordinance may be withdrawn or suspended by the applicant at any time up to, and including, 10 days prior to the hearing date. After that time, requests to withdraw or suspend an application must be filed with the clerk to the Carteret County Board of Commissioners and, on the day of the hearing, the Board of Commissioners will decide if the withdrawal/suspension will be allowed. If the request for a suspension is granted, the applicant shall incur all costs associated with the readvertisement of the public hearing. If an application is withdrawn, any reapplication shall be treated as a new application and all required fees shall be paid.

6-3.2. The applicant will not be allowed to amend or change the application after the Board of Carteret County Commissioners authorizes a public hearing to hear the request.

6-4 Public Hearing.

6-4.1. No amendment of the Ordinance may be adopted until after a public hearing has been held on the application. (Amended 10-17-2011)

6-4.2. The total amount of time allowed for the supporters or the opponents of an application to provide verbal comments shall be determined at the public hearing. At the hearing, the presiding officer of the hearing will decide whether to grant all or part of any request for additional time.

6-4.3. In cases involving a controversial matter and a large number of persons wishing to speak at the public hearing in favor of or against a request, the Planning Department shall have the right to require persons to sign up in advance of the public hearing in order to facilitate and organize the speakers. Persons who do not register to speak in advance shall be allowed that right at the public hearing. If such a requirement for pre-registration is necessary, the advertised public hearing notice shall clearly indicate this requirement.

6-5 Recommendation of the Planning Commission.

No proposal to amend this Ordinance will be approved unless it is first submitted to the Planning Commission for its recommendations.

ARTICLE 7 – NONCONFORMING

7-1 Purpose.

This Ordinance places restrictions on the use and development of land by establishing minimum standards. In many instances, land and improvements were developed or proposals for the use of land were initiated prior to the adoption of this Ordinance. These uses may not meet the minimum standards contained in this Ordinance because they were developed under no specific standards or under standards which were less restrictive.

The Board of Carteret County Commissioners recognizes that the strict application of these standards to such uses may create certain hardships for the property owner. The Board also recognizes that these uses may be allowed to continue in use in accordance with the spirit of this Ordinance, even though not meeting the Ordinance standards. Therefore, the uses or situations described below are accorded a nonconforming status with all the specific privileges and limitations set forth to govern their existence.

7-2 Nonconforming Vacant Lots.

A nonconforming vacant lot is a lot that does not conform to the lot regulations of this Ordinance, either at the effective date of this Ordinance or as a result of subsequent amendments which may be incorporated in this Ordinance. A nonconforming vacant lot may be used for any use, if the use of the lot meets the following standards:

7-2.1. The minimum requirements for front, side and rear yards, buffers, and height must be met.

7-2.2. The lot in question does not abut a lot which could be combined with it to make it conforming.

7-3 Nonconforming Occupied Lots.

A nonconforming occupied lot is a lot that contained a structure at the time this Ordinance was adopted but which does not meet the minimum requirements for width, area, front, side or rear yard, height and buffer. Any structures on this type of lot may be improved or expanded but the expansion of any building on this type of lot must comply with the minimum requirements of this Ordinance for front, side and rear yard, height and buffer in which the lot is located, provided any expansion does not increase the nonconformity.

7-4 Reconstruction of damaged or destroyed structures.

This Ordinance applies to all new construction. Any existing structures, sheds, out buildings, etc. will be allowed to be rebuilt on existing building footprint; however at such time, the structure, must comply with local Flood Damage Prevention Ordinance and FEMA requirements. Substantially damaged structures, as defined by the County Flood Damage Prevention Ordinance (damaged more than 50% structural value), could be rebuilt in the existing building footprint. At the time the structure(s) is rebuilt, the landowner(s) is encouraged to comply with this Ordinance to protect the existing areas of environmental concern. In order to rebuild on the existing building footprint, a complete application must be submitted within two years from the date the structure was damaged or destroyed. If deemed incomplete due to the need for additional technical information, the applicant shall have no longer than 90 days to supply that information to the Planning Department or the application will be null and void.

7-5 Reconstruction of Structures.

At the time an existing structure(s) is rebuilt or improved by a property owner for reasons not related to fire, flood, wind, act of God, or condemnation proceedings, the reconstruction must be in compliance with this Ordinance.

ARTICLE 8 – ADMINISTRATION**8-1 Administration.** (Amended 2-26-14)

The Planning Director or designee is hereby authorized, and it will be their duty, to administer and enforce the provisions of this Ordinance.

Any appeal or variance for the Wind Energy Facility portion of this Ordinance shall be taken to the Board of County Commissioners. All other appeals and variances shall be taken to the Board of Adjustment.

8-2 Enforcement Methods.

The provisions of this Ordinance may be enforced by any one or more of the following methods. The County may apply for any appropriate equitable remedy to enforce the provisions of this Ordinance.

8-2.1 *Injunction.* The provisions of this Ordinance may be enforced by injunction. When a violation of this Ordinance occurs, Carteret County may apply to the appropriate division of the general court of justice for a mandatory or prohibitory injunction commanding the defendant to correct the unlawful condition or cease the unlawful use of the property.

8-2.2 *Order of abatement.* In addition to an injunction, the County may enter an order of abatement as part of the judgment in the case. An order of abatement may direct any of the following actions: that buildings or other structures on the property be closed, demolished, or removed; that fixtures, furniture or other moveable property be moved; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the Ordinance.

8-2.3 *Execution of court decisions.* If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he or she may be cited for contempt. The County may execute the order of abatement and will have a lien on the property in the nature of a mechanic's and material man's lien for the cost of executing the order. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and by posting a bond for compliance with the order. The bond must be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter was heard and will be conditioned on the defendant's full compliance with the terms of the order of abatement within the time fixed by the judge. Cancellation of an order of abatement does not suspend or cancel an injunction issued in conjunction with the order.

8-3 Violations of Ordinance.

Any person, firm, or corporation convicted of a violation of any provision of this Ordinance will be guilty of a misdemeanor. Such a conviction is punishable by a fine not exceeding \$50 or imprisonment not exceeding 30 days. After notice of a violation is given, the violator will have 30 days to correct the violation. After that time, each additional day that the violation continues to exist will be considered a separate violation.

8-4 Permit(s).

No excavation shall be commenced, no wall, structure, premises, or land use, building or part thereof shall be built, constructed, or altered, nor shall any building be moved, until application has been made and the proper permit(s) has been obtained by the appropriate government agency.

8-5 Variances. (Amended 2-26-14)

The Board of Adjustment/County Commissioners may authorize a variance from the provisions of this Ordinance if such variance can be made without destroying the intent of this Ordinance. Approval of variances shall be based upon written justification by the applicant and may be granted under one of the following circumstances:

8-5.1 *Equal or better performance.* Where, in the opinion of the Board of Adjustment/County Commissioners, a variance will result in equal or better performance in furtherance of the purposes of this Ordinance.

8-5.2 *Unintentional error.* Where, through an unintentional error by the applicant, the applicant's agent, or the reviewing authorities, there is a minor violation of a standard of this Ordinance and where such violation is not prejudicial to the value or development potential of the land or adjoining properties.

In the event that the Board of Adjustment/County Commissioners grant a variance, it shall be the minimum variance necessary in order to allow reasonable use of the applicant's land. Any variance granted by the Board of Adjustment/County Commissioners shall require an affirmative vote of two-thirds of the members present at the meeting at which the variance is requested. Any variance thus authorized is required to be entered in writing in the minutes of the Board of Adjustment/County Commissioners with the reasoning

on which the departure was justified set forth. In approving variances, the Board of Adjustment/County Commissioners may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements of this Ordinance.

The variance request shall be accompanied by a Site Plan. The variance request shall be decided by the Board of Adjustment/County Commissioners before an Application is considered by the Planning Commission. A fee (as established by the Carteret County Board of Commissioners) shall be paid by the applicant for a variance to cover the administrative expenses involved.

No variance may be issued until after a public hearing has been held on the request. (Amended 10-17-2011)

The total amount of time allowed for the supporters or the opponents to present arguments at the hearing shall be determined at the time of public hearing. At the hearing, the presiding officer of the hearing will decide whether to grant all or part of the request for additional time.

In cases involving a controversial matter and a large number of persons wish to speak at the public hearing in favor of or against a request, the planning department reserves the right to require those persons to sign up in advance of the public hearing in order to facilitate and organize the speakers. Persons who do not register to speak in advance shall be allowed that right at the public hearing. If such a requirement for pre-registration is necessary, the advertised public hearing notice shall clearly indicate this requirement.

8-6 Appeals.

The Board of Adjustment/County Commissioners shall hear and decide appeals from and review any order, requirement, decision, or determination made by the enforcement officer charged with the enforcement of this Ordinance. Any person or persons aggrieved by a decision or determination made by the enforcement officer, administrator, or the Carteret County Planning Commission may appeal the decision to the Board of Adjustment/County Commissioners within 30 days of the decision. (Amended 8-16-2010; 2-26-14)

8-7 Appeals from the Board of Adjustment/County Commissioners.

Any person or persons, jointly or severally, aggrieved by decision of the Board of Adjustment/County Commissioners, may within 30 days after the filing of the decision of the Board of Adjustment/County Commissioners, but not thereafter, appeal to the Superior Court by petition in the nature of certiorari, which petition shall be duly verified and shall set forth the reasons why such decision is illegal, in whole or in part, specifying the grounds of illegality. (Amended 2-26-14)

8-8 Alterations to an approved preliminary or final plan. (Added 7-19-10)

Changes to approved plans and conditions of development require Planning Commission approval. However, minor changes (as determined by the Planning Director) in the detail of the approved plan that:

8.8-1 Will not alter the basic relationship of the proposed development to adjacent property,

8.8-2 Will not alter the uses permitted or increase the density of development, and

8.8-3 Will not decrease the off-street parking ratio or reduce the yards provided at the boundary of the site may be approved by the Planning Director without going through the plan amendment process. The Planning Director, at his (her) discretion, may elect not to allow any proposal as a minor change and will, in that event, forward the detailed application for changes to the Planning Commission for its consideration.

8-9 Notice requirements. (Added 10-17-2011; amended 2-26-14)

For any request that is to go before the Zoning Board of Adjustment, Planning Commission, or Board of County Commissioners that pertains to a particular property or properties, Staff shall complete the following requirements:

8.9-1 A notice of the request will be placed in a local Carteret County newspaper once a week for two successive calendar weeks. The notice will appear for the first time no more than 25 days and no less than 15 days prior to the meeting or hearing date.

8.9-2 In addition, notice shall be given by first class mail to the owners of surrounding properties, as well as any others whose property (or any portion thereof) lies within 200 feet or two properties, whichever distance is greater, of any portion of the subject property or properties. Such notification must be mailed at least 10 days in advance of the meeting/hearing date.

8.9-3 A sign shall be posted on the subject property or properties at least 10 days prior to the meeting or hearing date.