

ARTICLE 3 - WIND ENERGY FACILITIES^[4]

Carteret County, NC

 Municode Codification

Footnotes:

--- (4) ---

Editor's note— *An ordinance adopted Nov. 18, 2013, amended App. F, Art. 3 in its entirety to read as herein set out. Former Art. 3, §§ 3-1—3-13, pertained to similar subject matter, and derived from an ordinance adopted Nov. 17, 2008; an ordinance adopted Jan. 12, 2011; an ordinance adopted April 18, 2011.*

Sec. 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 2 (two) years of the date that it is erected, unless the Planning Commission grants a 1-year (one-year) extension. In no case shall the original 2 years plus any extensions total more than 5 (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.

(Ord. of 11-18-13)

Sec. 3-2. - Permit application information.

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. N.C. Department of Environment and Natural Resources,

B. N.C. Department of Health and Human Services,

C. N.C. Department of Transportation,

D. N.C. Wildlife Resources Commission,

E. U.S. Fish and Wildlife Service, and

F. U.S. 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 two 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 and 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 and 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 ten percent.
- 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 (ten) business days if electricity is not received from the Wind Energy Facility for any 30 (thirty) consecutive days.

3-2.8. *[Signature(s):]* 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. *[Scenic Route or By-way:]* 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 5 (five) 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 (thirty) 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 5 (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 (forty-eight) consecutive hours, as measured at any property line, the applicant and/or owner shall shut down the wind energy facility within 1 (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 5 (five) consecutive minutes, as measured at any property line.

If noise levels exceed 80 (eighty) decibels for more than 24 (twenty-four) consecutive hours, as measured at any property line, the applicant and/or owner shall shut down the wind energy facility within 1 (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 (eighty) decibels for more than 24 (twenty-four) consecutive hours, as measured at any property line.

- 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 2 (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 2 (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 2 (two) extensions.

(Ord. of 11-18-13; Ord. of 2-10-14)

Sec. 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:

EXPAND

Carteret County, NC Energy Facility Code Codification	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 [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.

(Ord. of 11-18-13; Ord. of 2-10-14)

Sec. 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 \$50,000.00. 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 \$50,000.00 shall be cause for revocation (or denial of renewal) of the WEF Permit.
- 3.4.7

Carteret County, NC
Municode Codification

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.

(Ord. of 11-18-13; Ord. of 2-10-14)

Editor's note— Ord. of 2-10-14 amended § 3-4 and in so doing changed the title of said section from "Fees" to "Escrow account," as set out herein.

Sec. 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.

(Ord. of 11-18-13)

Sec. 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 7 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.

(Ord. of 11-18-13; Ord. of 2-10-14)

Sec. 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 3 consecutive months, the Wind Energy Facility owner and/or property owner shall have 3 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.

(Ord. of 11-18-13)

Carteret County, NC

Sec. 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 \$200,000.00 for each wind turbine. The Planning Director or designee may approve a reduced surety amount that is not less than 150 percent 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.

(Ord. of 2-10-14)

Sec. 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.

(Ord. of 11-18-13)

Sec. 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.

(Ord. of 11-18-13)

Carteret County, NC

Sec. 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.* \$1,000,000.00 per occurrence — \$2,000,000.00 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.* \$3,000,000.00.
- 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.

(Ord. of 2-10-14)

Sec. 3-12. - 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.

(Ord. of 2-10-14)

Sec. 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 percent 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 percent 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.



- A. If a property owner wants to exercise this option, they must do so within ten 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 ten 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.

(Ord. of 2-10-16)

ARTICLE 4. - COMMUNICATION TOWERS^[5]

⋮