

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, 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.

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 Bona Fide Farms Exempt.

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.

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 Conflict and Separability.

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.

1-8 Conformance with Official Plans.

All development shall comply with the principles, goals, and objectives of the then-current Carteret County Land Use Plan and all other officially-adopted plans and policies of the County.

1-9 Coordination with State and Federal Requirements.

All structures, land uses, utilities, land disturbing activities, and filling activities shall comply with all applicable State and Federal regulations, including but not limited to, the Coastal Area Management Act of 1974; Section 404 of the Clean Water Act, Code of Federal Regulations; and the Sedimentation Pollution Control Act of 1973. Whenever there is a conflict between requirements, the more restrictive shall apply.

1-10 Applicability.

This Ordinance shall apply to all of the land located within the unincorporated portion of Carteret County, North Carolina. The effective date of this regulation is December 1, 2008. 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.

1-11 Exceptions to Applicability.

All properties shall be subject to this Ordinance except those properties which, as of the effective date, have a valid building permit.

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.

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.

Accessory facility or structure: A facility or structure serving or being used in conjunction with a tall structure that is located on the same property, including but not limited to, utility or transmission equipment storage sheds or cabinets.

Anemometer: An instrument that measures wind speed and might transmit that wind speed data to a controller.

Antenna: A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.

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.

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".

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.

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.

FAA: The Federal Aviation Administration or successor agency.

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 or a turbine rotor or tip of the turbine blade when it reaches its highest elevation.

Maintenance: Plumbing, electrical, or mechanical work that might require a building permit but does not constitute a modification to a wind turbine or wireless telecommunications facility.

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: 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.

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.

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.

Person: Any individual, corporation, estate, trust, partnership, joint stock company, association of two or more persons having a joint common interest, or any other entity.

Personal wireless facility: A variety of wireless telecommunications facility.

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

Repairs and maintenance: The replacement or repair of any components of a wireless telecommunications facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless telecommunications facility without the addition, removal, or change of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility.

Residential Zoning Districts: The RA, R-35, R-20, R-15, R-15M, and R-10 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 when the blades of an operating wind energy facility pass between the sun and an observer, casting 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 adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of a wireless telecommunications facility, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances. Stealth technology includes such technology as DAS or its functional equivalent or camouflage where the tower is disguised to make it less visually obtrusive and not recognizable to the average person as a wireless telecommunications facility.

Stealth or camouflage: The disguising of a wireless telecommunications facility so as to make it less visually obtrusive and not recognizable to the average person as a wireless telecommunications facility.

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.

Wind Energy Facility: 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 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 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.

ARTICLE 3 - WIND ENERGY FACILITIES

3-1 General

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.

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.

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 A narrative overview of the project, including the generating capacity of the Wind Energy Facility.
- 3-2.2 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 Identification of the property on which the proposed Wind Energy Facility will be located.
- 3-2.4 A site 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 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, land, 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.
- 3-2.6 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 that describes the:
- A. Anticipated life of the wind energy facility.
 - B. Estimated decommissioning costs (in current dollars), including contingency costs of at least 10% (ten percent).
 - C. Method for ensuring that funds will be available for decommissioning and restoration.
 - D. Plan for decommissioning the wind energy facility, including disposing of the structural and turbine materials and restoring the site.
- 3-2.8 The signature of the property owner(s) and the facility owner/operator.
- 3-2.9 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 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.
- 3-2.11 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 If any portion of a proposed wind energy facility is to be located within 20,000 feet of the runway surface of the Michael J. Smith Airport, Bogue Airfield, and/or Atlantic Field, the applicant must demonstrate FAA approval prior to submission of any building permits. This includes showing proof of filing an FAA Form 7460-1, Notice of Proposed Construction or Alteration of an Object

that may Affect the Navigable Airspace, in accordance with FAA Advisory Circular 70/7460-2k, as amended. Such notice shall be included with the application.

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.

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.

The Applicant shall demonstrate compliance with the County's Airport Height Ordinance. If appropriate, as determined by the Planning Director or designee, the Applicant shall provide a Department of Defense release or approval for the construction of the wind energy facility in restricted air space.

- 3-2.13 A Maintenance Plan that details the quarterly, 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 in January, April, July, October, 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.

3-3 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, 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)	6 feet for each foot of height	550 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, 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.

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. The temporary pole or tower may be any height but it must be setback from all property lines, 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.

3-4 Waivers.

If a Wind Energy Facility parcel contains no vacant or occupied dwelling units, the owner may sign a waiver of the setback requirements without the prior approval of the Planning Commission. If a Wind Energy Facility parcel contains one or more vacant and/or occupied dwelling units, the owner may sign a waiver of the setback requirements only after receiving the express approval of the Planning Commission. The signed waiver must state that the waiver period shall expire when the Planning Director or designee agrees in writing that the Wind Energy Facility has been properly decommissioned.

Any signed waiver is not effective until it is recorded with the Carteret County Register of Deeds and a copy of the recorded waiver has been provided to the Planning Director within 5 business days of that recording. Such waiver shall be provided to subsequent owners and/or renters of the property during the waiver period on a Disclosure Form provided by the Planning Director or designee.

3-5 Installation and Design.

- 3-5.1 The installation and design of a Large System or Utility-scale Wind Energy Facility shall conform to applicable industry standards, including those of the American National Standards Institute.
- 3-5.2 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.
- 3-5.3 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.
- 3-5.4 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 maintained to minimize noise from the turbine, any engines or motors, and the blades or propellers.
- E. 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.

- F. 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 Noise and Shadow Flicker 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 one-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.

- 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 20-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.

3-6.3 No Large System or Utility-scale wind energy facility or any generators, equipment, or apparatus shall produce noise above 45 (forty-five) 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 80 (eighty) 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 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 45 (forty-five) decibels for more than 5 (five) consecutive minutes, as measured at any property line.

3-7 Decommissioning or Abandonment.

3-7.1 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.

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% (one hundred fifty per cent) 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.

- 3-9.1. All wind energy facilities shall be located, fenced, or otherwise secured so as to prevent unauthorized access.
- 3-9.2. All wind energy facilities shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with.
- 3-9.3. Wind energy facilities shall be 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 insureds.
 - 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.

3-12 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.

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.

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. 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 any proposed exception that will be more than 200 feet tall.

In addition, if any portion of a proposed exception is to be located within 20,000 feet of the runway surface of the Michael J. Smith Airport, Bogue Airfield, and/or Atlantic Field, the applicant must demonstrate FAA approval prior to submission of any building permits. This includes showing proof of filing an FAA Form 7460-1, Notice of Proposed Construction or Alteration of an Object that may Affect the Navigable Airspace, in accordance with FAA Advisory Circular 70/7460-2k, as amended. Such notice shall be included with the application.

Any exception shall first demonstrate compliance with the County's Airport Height Ordinance. If appropriate, as determined by the Planning Director or designee, the Applicant shall provide a Department of Defense release or approval for the construction of the proposed exception in restricted air space.

- 4-2.1. Public service facilities owned and/or operated by or on behalf of the 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 such 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 noncommercial 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.
- 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. 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 changing the structural load.
- 4-2.7. Any repair and maintenance of a wireless telecommunication facility might require a building permit but does not require any other permit. However, construction or site work is not exempt.
- 4-2.8. The co-location and/or shared use of antennas on existing telecommunication towers or other structures (such as utility poles, water towers, and other towers) shall be exempt from the Planning Commission review requirement otherwise required for a tower and shall be subject only to an administrative review process by the Planning Director or designee.
- 4-2.9. Any reception or transmission devices expressly exempted under 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.

4-3 Requirements for all wireless telecommunications facilities

The Planning Department may use expert consultants to accept, review, analyze, evaluate, and make recommendations to the Planning Commission with respect to an application for a wireless telecommunications facility. The Planning Commission is authorized to grant, grant with conditions, not grant, or revoke permits for wireless telecommunications facilities.

It is the intent of these regulations that an applicant will be granted permission for anything that will comply with the requirements of this Ordinance and the other County Ordinances.

Stealth or camouflage technology shall be used for any new or co-location wireless telecommunications facility proposed to be located in an area designated in the CAMA Land Use Plan as Developed, Urban, Community, Rural with Services, or Limited Transition.

- 4-3.1 Pre-application Meeting: The applicant shall meet with Staff prior to actually submitting a formal application. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process and certain issues or concerns the county may have. A pre-application meeting shall also include a site visit, if there has not been a prior site visit for the requested facility. Costs of county consultants to prepare for and attend the pre-application meeting will be borne by the applicant and paid for out of a Consultant Fee based on the fixed hourly rate to be set in the County's Fee Schedule applied to the anticipated time customarily required for the review of similar applications.
- 4-3.2 Planning and Zoning: The applicant shall provide the following information:
 - A. The name, address, and phone number of the applicant, property owner, and owner of the facility (if different than the applicant) and listing the tax parcel number.
 - B. A location map showing at least the area within one mile of the property;
 - C. A vicinity map showing the zoning, flood zone, wetlands, and related information for the site and all abutting properties (including those across any r-o-w or easement).

- D. A survey showing the location and dimension of all lot lines; the location and dimension of all leasehold lines; the size of the lot and any leasehold areas.
- E. A site map showing the location, size, and height of all existing and proposed structures and facilities, including fencing and access roads.
- F. A landscaping plan that shows proposed screening of all structures up to a height of five feet within three growing seasons.
- G. A statement that all utilities shall be installed underground.
- H. An elevation or similar vertical architectural or engineering rendition of the facility that identifies all users and attachments to the facility; shows all related fixtures, structures, appurtenances, and apparatus (including height above the roof, balustrade, pre-existing grade, whichever is appropriate); and describes the proposed materials, color, and lighting.
- I. The azimuth, size, and center line height location of all proposed and existing antennas.
- J. A listing of the make, model, type and manufacturer of the Facility and the structural design calculations, certified by a Professional Engineer licensed in the State of North Carolina, proving the Facility's capability to safely accommodate the facilities of the Applicant without change or modification or if any change or modification of the Facility is needed, a detailed narrative explaining what changes are needed, why they are needed and who will be responsible to assure that the changes are made.
- K. If any portion of a proposed wireless telecommunications 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 upon a Scenic Route or By-way.
- L. If any portion of a proposed wireless telecommunications facility is to be located within 20,000 feet of the runway surface of the Michael J. Smith Airport, Bogue Airfield, and/or Atlantic Field, the applicant must demonstrate FAA approval prior to submission of any building permits. This includes showing proof of filing an FAA Form 7460-1, Notice of Proposed Construction or Alteration of an Object that may Affect the Navigable Airspace, in accordance with FAA Advisory Circular 70/7460-2k, as amended. Such notice shall be included with the application.

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.

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.

The Applicant shall demonstrate compliance with the County's Airport Height Ordinance. If appropriate, as determined by the Planning Director or designee, the Applicant shall provide a Department of Defense release or approval for the construction of the wireless telecommunications facility in restricted air space.

- M. Retention of expert assistance cost to be borne by Applicant. The County may hire any consultant and/or expert necessary to assist the County in reviewing and evaluating the Application, including the construction and modification of the site, once permitted, and any site inspections. The Planning Director or designee shall determine the need for consulting services on a case-by-case basis.

The Applicant shall pay to the County a consultant fee based on the fixed hourly rate and the amount to be set forth in the County's Fee Schedule. The amount of the Fee shall be based on what has been usual and customary in Carteret County (or other North Carolina counties, as appropriate) for the review and permitting assistance related to Wireless Telecommunications towers and facilities and shall be based upon the anticipated time customarily required for the review of similar applications to cover all reasonable costs of consultant and expert evaluation and consultation with the County in connection with the submittal, review and permitting of any Application and, where applicable, any lease negotiation, pre-approval evaluation and any construction and modification of the site, once permitted.

The placement of the initial Consultant Fee with the County shall precede the pre-application meeting or any work being done as regards to processing an application. The

County will maintain accounting for the expenditure of all such funds. The County's consultants/experts shall invoice the County for all time expended for its services in reviewing the Application, including the construction and modification of the site, once permitted. If at any time during the process this Consultant fee has a balance of less than 1/4 (one-fourth) of the initial Consultant Fee due to an incomplete Application, incorrect information contained in the Application or non-compliance with the requirements of this Section, the Applicant shall immediately, upon notification by the County, provide a Consultant Fee equivalent to 1/2 (one-half) of the initial Consultant Fee. Such additional funds shall be deposited with the County before any further action or consideration is taken on the Application. In the event that the amount paid to the County is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the Applicant subsequent to the issuance of a Certificate of Completion, unless the application is abandoned or withdrawn, in which case there shall be no refund.

There shall be four categories of Consultant Fees:

1. Lease Negotiations Fee.
2. Application Assistance and Review Fee.
3. Application Amendment Fee.
4. Public Hearing Fee.

Said fees shall be set forth in the County's published Fee Schedule and may be adjusted from time to time by the Board of Commissioners.

The fixed fee shall be based on the hourly rate of the consultant, which may be adjusted from time to time, multiplied by the number of hours that have been usual and customary in Carteret County (or other North Carolina counties, as appropriate) for similar Applications for Wireless Telecommunications Structures and Facilities, which number of hours may also be adjusted from time to time based on experience. The total amount of the funds needed may vary with the scope of what is requested (e.g. lease negotiations in addition to any Application Review) and the complexity of the project, the completeness of the Application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

Records of all outside costs associated with the review and permitting process shall be maintained and available for public inspection, in compliance with applicable North Carolina law.

- N. The type and design of the Wireless Telecommunications Facility, the number of antenna arrays proposed and the basis for the calculations of the Wireless Telecommunications Facility's capacity to accommodate the required number of antenna arrays for which the structure must be designed.
 - O. Technical information regarding noise and/or sound generated by any generators or other equipment to be used on site; if multiple generators are to be used, then the data should show the cumulative impact of noise generated.
 - P. No building permit may be issued for the construction of the Wireless Telecommunications Facility until there is an Application for a specific carrier that documents that the Facility is necessary for that carrier to serve the community and that co-location on an existing Telecommunications Structure is not feasible within the applicant's search ring. Co-location on an existing structure is not reasonably feasible if co-location is technically or commercially impractical or impracticable or the owner of the Wireless Telecommunications Facility is unwilling to enter into a contract for such use at fair market value. Sufficient documentation in the form of clear and convincing evidence to support such claims shall be submitted with a Wireless Telecommunications Facility Application for the first carrier to determine whether co-location on existing structures is reasonably feasible and to document the need for a specific height and that less height will serve to prohibit or have the effect of prohibiting the provision of service.
- 4-3.3. Safety: The applicant shall demonstrate or provide documentation that:
- A. The proposed wireless telecommunications facility will be maintained in a safe manner and in compliance with all applicable county, state and federal laws, rules, and regulations.
 - B. A structural report signed and stamped by a professional engineer licensed to do business in the State that the structure is structurally adequate to accommodate the proposed facility, including

- any equipment shelter (unless the equipment shelter is located on the ground or on the lowest floor of a building).
- C. 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 Categorically Excluded") shall be provided 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 to enable verification of compliance, including providing all calculations so that such may be verified.
 - D. 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 to discourage approaching into the area in excess of the FCC's regulations 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. For any structure to which the public has or could reasonably have or gain access to, documentation (including all calculations) proving that the potential exposure to RF radiation (i.e. NIER or non-ion emitting radiation), will be in compliance with the most recent Federal Communications Commission regulations governing RF radiation and exposure thereto, and further denoting the minimum distance from any antennas an individual may safely stand without being exposed to RF radiation in excess of the FCC's permitted standards and any portion(s) of the structure that would be exposed to RF radiation in excess of the FCC's permitted standards. 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.
 - F. In certain instances, the county may deem it appropriate to have an RF survey done after the construction or modification and activation of the facility, such to be done under the direction of the county or its designee, and an unedited copy of the survey results provided, along with all calculations prior to issuance of the permit.
 - G. A signed statement that the Applicant will expeditiously remedy any physical or RF interference with other telecommunications or wireless devices or services.
 - H. The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the proposed new tower or existing structure intended to support wireless facilities is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. If this analysis determines that an FAA determination is required, then all filings with the FAA, all responses from the FAA, and any related correspondence shall be provided with the application.
 - I. That any generators or other noise-producing and/or noise-creating equipment or apparatus will not produce noise above 60 decibels for more than 5 consecutive minutes at the property line.
 - J. A copy of the installed foundation design, as well as a geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for the tower site or other structure.
- 4-3.4. The applicant shall demonstrate to the satisfaction of the Planning Director or designee that:
- A. The construction of the wireless telecommunications facility is legally permissible, including, but not limited to, the fact that the applicant is authorized to do business in the State.
 - B. Where a certification is called for in this ordinance, such certification shall bear the signature and seal of a professional engineer licensed in the State.
 - C. The facility will be sited to create the least visual intrusiveness reasonably possible on the residences in the area. The county expressly reserves the right to require the use of stealth or camouflage technology or techniques such as DAS (distributive antenna system technology) or its functional equivalent to achieve this goal and such shall be subject to approval by the county. The applicant shall furnish a visual impact assessment, which shall include:
 - 1. 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.
 - 2. 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 at the pre-application meeting. 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.

- 4-3.5. 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.
- 4-3.6. The holder of a wireless telecommunications facility permit shall notify the Planning Director of any intended modification of it and shall apply to the county to modify, relocate, or rebuild it.
- 4-3.7. Location of wireless telecommunications facilities.
- A. No new tower or co-location shall exceed 500 feet above grade or preconstruction ground level. New wireless telecommunications towers taller than 250 feet are prohibited in all residential zoning districts, residential subdivisions, group housing developments, manufactured home parks, and recreation vehicle parks but new co-locations are permitted. The applicant shall locate, site, and erect wireless telecommunications facilities in accordance with the following priorities, in the following order:
1. On existing Wireless Telecommunications Facilities on County-owned property without increasing the height of the tower or structure.
 2. On other existing Wireless Telecommunications Facilities without increasing the height of the tower or structure.
 3. On County-owned properties or facilities.
 4. On existing towers or other structures.
 5. On properties in areas zoned or used for business or industrial uses.
 6. On properties in areas zoned or used for agricultural uses.
 7. On properties in areas zoned or used for residential uses.
- B. If the proposed site is not proposed for the highest priority listed above, then a detailed explanation and justification must be provided as to why a site of higher priority designation was not selected. The discussion must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the applicant if the permit were not granted for the wireless facility as proposed.
- C. An applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected or because there is an existing lease with a landowner.
- D. The application shall address co-location as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the county why co-location is commercially impracticable or otherwise impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship.
- E. Notwithstanding the above, the county may approve any site located within an area in the above list of priorities, if the county finds that the proposed site is in the best interest of the health, safety, and welfare of the county and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood. Conversely, the county may direct that the proposed location be changed to another location that is more in keeping with the goals of this ordinance and the public interest, as determined by the county.
- F. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the county 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 wireless telecommunications facilities which is contrary to an already stated purpose of a specific zoning or land use designation.
 3. The placement and location of wireless telecommunications facilities 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.
 - G. Notwithstanding anything to the contrary in this ordinance, for good cause shown, such as the ability to utilize a shorter or less-intrusive facility elsewhere and still accomplish the primary service objective, the county may require the relocation of a proposed site, including allowing for the fact that relocating the site chosen by the applicant may require the use of more than one site to provide substantially the same service if the relocation could result in a less intrusive facility or facilities, singly or in combination.
- 4-3.8. Visibility of wireless telecommunications facilities. Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by ordinance, and shall comply with the following visibility requirements:
- A. *Stealth.* New facilities shall utilize stealth or camouflage techniques and technology, unless such can be shown to be commercially or technologically impracticable.
 - B. *Dual mode.* In order to minimize the number of antenna arrays and thus the visual impact, the county may require the use of dual mode antennas to be used, including by two different carriers, unless it can be proven that such will not work technologically and that such would have the effect of prohibiting the provision of service.
 - C. *Color.* Towers shall be painted a light blue or gray color with a rust-preventive paint to harmonize with the surroundings and shall be maintained in accordance with the requirements of this ordinance. The Planning Director or designee may approve other colors.
 - D. *Lighting.* If lighting is required, a detailed plan shall be provided for sufficient lighting that is as unobtrusive and inoffensive in effect as is permissible under state and federal regulations. 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. All towers requiring lighting shall be lighted so as to effectively eliminate the ground scatter effect of the lighting and to prevent the light from being seen from the ground.
 - E. *Flush mounting.* New or replacement antennas, except omni-directional whip antennas, shall be flush-mounted or as close to flush-mounted as is technologically possible, so long as such does not have the effect of prohibiting the provision of service to the intended service area, alone or in combination with another site(s), unless the applicant can prove that it is technologically impracticable.
 - F. *Placement.* If attached to a building, all antennas shall be mounted on the facade of the building and camouflaged so as to match the color and, if possible, texture of the building or in a manner so as to make the antennas as visually innocuous and undetectable as is possible, given the facts and circumstances involved.
 - G. *Preventing ground scatter effect.* Any lighting that is permitted to be attached or is required under FAA regulations shall be shielded and/or affixed with technology that enables the light to be seen as intended from the air but that prevents the ground scatter effect so that it will not be seen from the ground to a height of at least 12 degrees vertical for a distance of at least one mile in a level-terrain situation.
- 4-3.9. Security of wireless telecommunications facilities. All wireless telecommunications facilities shall be located, fenced, or otherwise secured so as to prevent unauthorized access. Specifically:
- A. All antennas, towers, and other supporting structures (including guy anchor points and wires) shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with.
 - B. Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.
- 4-3.10. Signage. Wireless telecommunications facilities shall comply with the following:
- A. A sign no larger than four square feet that gives notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area.
 - B. A sign no larger than four square feet that contains the names of the owners and operators of the antenna(s), as well as emergency phone numbers. The sign shall be located on the equipment shelter or cabinet of the applicant and be visible from the access point of the site.
 - C. On tower sites, an FCC registration is to be present, as applicable.
 - D. No sign shall be lighted, unless applicable law, rule, or regulation requires lighting.
 - E. No other signage, including advertising, shall be permitted.

- 4-3.11. 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 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, antennas, buildings, and other structures constructed or located on the site.
- 4-3.12. Liability insurance.
- A. The holder of a permit for a wireless telecommunications facility shall secure and maintain for the duration of the permit public liability insurance, as follows:
 1. *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 insureds.
 2. *Umbrella coverage.* \$3,000,000.
 - B. For a wireless telecommunications facility on county property, the commercial general liability insurance policy shall specifically include the county and its officers, councils, employees, committee members, attorneys, agents and consultants as additional insureds.
 - C. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least an "A".
 - D. 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.
 - E. 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.
 - F. 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.
 - G. 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.
- 4-3.13. Indemnification. Any application for a wireless telecommunication 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 wireless telecommunications facility.

4-4 Requirements for co-locating a new or modified wireless telecommunications facility on an existing tower or other structure without increasing the height of that tower or structure.

The Planning Director or designee is authorized to administratively review, analyze, evaluate, and make decisions with respect to granting, granting with conditions, not granting, or revoking permits for co-locating a new or modified wireless telecommunications facility on an existing tower or other structure, as long as the height of that tower or structure is not increased.

The Planning Director or designee may use expert consultants to accept, review, analyze, evaluate, and make recommendations to the Planning Director with respect to granting, granting with conditions, not granting, or revoking permits for the co-location of such wireless telecommunications facilities. The Planning Director or designee shall determine the need for consulting services on a case-by-case basis.

- 4-4.1. An application to increase the height of a tower or other structure shall be deemed a new tower and shall not qualify for treatment as an attachment to an existing structure under this ordinance.

- 4-4.2. The applicant shall document the legal right to proceed as proposed on the site by providing a letter of agency from, or executed lease with, the owner of the facility.
- 4-4.3. If co-locating on an existing structure, the following information shall be provided:
 - A. For towers only:
 - 1. The age of the tower, including the date of the grant of the original permit or authorization for the tower, if any.
 - 2. A description of the tower (guyed, self-supporting lattice, monopole, etc.).
 - 3. The make, model, type and manufacturer of the tower and the structural design calculations, certified by a professional engineer licensed in the State, proving the tower's capability to safely accommodate the facilities of the applicant without change or modification, taking into account the geotechnical situation and the foundation design.
 - 4. If any change or modification of the tower or other structure to be attached to is needed, a detailed narrative explaining what changes are needed, why they are needed, and who will be responsible to assure that the changes are made.
 - 5. No building permit shall be issued for any wireless facility where the structure being attached to is in need of remediation, unless and until all remediation work needed has been completed or a schedule for the remediation work has been approved by the county.
 - B. For any self-supporting tower that is five years old or older or for any guyed tower that is three years old or older, a copy of the latest ANSI inspection report done pursuant to the latest edition of ANSI-EIA/TIA 222F-Annex E for any self-supporting tower. If an ANSI inspection report has not been done pursuant to this schedule, such an ANSI report shall be submitted as part of the Application. No Building Permit shall be issued for any Wireless Facility where the structure being attached to is in need of remediation, unless and until all remediation work needed has been completed or a schedule for the remediation work has been approved by the County Planning Department.
 - C. For any building, water tank, or other non-tower structure with sides or walls:
 - 1. The antennas shall be mounted on the sides or walls, unless it can be proven to the satisfaction of the Planning Director or designee that such will prohibit or have the effect of prohibiting the provision of service.
 - 2. In order to maintain the current profile and height, mounting on the top of the structure or the use of a corral shall only be permitted if the Applicant can prove that to locate elsewhere will prohibit or have the effect of prohibiting the provision of service.
 - 3. All attachments and exposed cabling shall use camouflage or stealth techniques to match as closely as possible the color and texture of the structure.
 - D. Co-location shall consist only of the minimum antenna array technologically required to provide service primarily and essentially within the county, unless good cause is shown.
 - E. Prior to issuing a Building Permit for the co-location of an antenna array on an existing Wireless Telecommunications Facility, an Applicant shall demonstrate that the co-location is located appropriately on the Wireless Telecommunications Facility, with the overall goal being to preserve the carrying capacity of the Wireless Telecommunications Facility for future co-locations and to minimize the visual intrusiveness and impact, including the profile of the Wireless Telecommunications Facility.
 - F. In determining the necessary height for a Wireless Telecommunications Facility or the height or placement of a co-location on a Wireless Telecommunications Facility, the signal strengths analyzed shall be the threshold or lowest signal strength at which the customer equipment is designed to function, which may be required to be determined by the manufacturer's published specifications for the customer equipment.
 - G. As the County has made the policy decision that more towers of a shorter height is in the public interest, as opposed to fewer taller towers, spacing, or the distance between towers shall be such that the service may be provided without exceeding the maximum permitted height.

4-5 New tower or pole; increasing the height of an existing structure

Because of emerging wireless telecommunications technology, carriers will be seeking many more locations that will be serviced by lower towers or poles. In addition, height will be added to existing

structures (such as water towers and church steeples, and the like) to accommodate new antennas and lightning-protection systems.

An application to increase the height of a tower or other structure shall be deemed a new tower and shall not qualify for treatment as an attachment to an existing tower or structure under this ordinance.

- 4-5.1 Facility Description and Documentation of the Facility as Necessary: A detailed narrative description and explanation of the specific objective(s) for the new Wireless Telecommunications Facility, expressly including and explaining the purpose for the facility, such as coverage and/or capacity, technical requirements, and the identified boundaries of the specific geographic area of intended coverage.
- 4-5.2 Demonstration that co-location is not feasible: No new wireless telecommunications facility may be built unless it is conclusively demonstrated to the satisfaction of the Planning Commission that co-location is not feasible. The applicant shall take the following actions and provide the following information when a new facility is proposed:
- A. A report showing the applicant's meaningful efforts to secure shared use of existing tower(s) or other structures within the county that are at or above the surrounding tree height or the tallest obstruction and are within one mile of the proposed tower.
 - B. Copies of written requests and responses for shared use shall be provided to the county in the application, along with any letters of rejection stating the reason for rejection.
- 4-5.3 The tower shall be structurally designed to accommodate at least five additional antenna arrays that are equivalent to the applicant's in terms of the load and stress created on the tower and located as close to the applicant's antenna as possible without causing interference. A claim of interference because of a need to have greater than six feet of vertical clearance between facilities (measured from the vertical centerline of one array to the vertical centerline of another) must be proven by technical data and not merely verbal or written assertions. This requirement may be waived, provided that the applicant demonstrates in writing that the provisions of future shared usage of the tower is not technologically feasible, is commercially impracticable, or creates an unnecessary and unreasonable burden, based upon:
- A. The kind of wireless telecommunications facilities site and structure proposed;
 - B. Available space on existing and approved towers; and
 - C. The need for more than six feet of vertical clearance between antenna arrays, measured from the vertical centerline of one array to the vertical centerline of another, such that there would not be adequate vertical space to accommodate a total of six carriers.
- 4-5.4 The owner of a proposed new tower shall commit in writing that he/she and his/her successors in interest will negotiate in good faith for the shared use of the proposed tower by other wireless service providers in the future and will:
- A. Respond within 60 days to a request for information from a potential shared-user.
 - B. Negotiate in good faith concerning requests for shared use of the tower by other providers.
 - C. Allow shared use of the new tower if another provider agrees in writing to pay reasonable charges. The charges may include a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
 - D. Failure to abide by the conditions outlined above may be grounds for permit revocation.
- 4-5.5 The applicant shall disclose in writing any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share any new telecommunications tower that it constructs.
- 4-5.6 If deemed necessary or appropriate by the county, an access road, turnaround space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion and shall comply with any local or state regulations for the construction of roads. If the current access road or turnaround space is deemed in disrepair or in need of remedial work to make it serviceable and safe and in compliance with any applicable regulations as determined at a site visit, the application shall contain a commitment to remedy or restore the road or turnaround space so that it is serviceable and safe and in compliance with applicable regulations.

- 4-5.7 All antennas attached to a tower or other structure shall be flush-mounted, unless the applicant can document to the satisfaction of the county that flush-mounting can not be used and would serve to prohibit or have the effect of prohibiting the provision of service.
- 4-5.8 Safety: The applicant shall provide the following information:
- A. If increasing the height of a self-supporting tower that is five years old or older or of a guyed tower that is three years old or older, a copy of the latest ANSI inspection report done pursuant to the latest edition of ANSI-EIA/TIA 222F-Annex E for any self-supporting tower. If an ANSI inspection report has not been done pursuant to this schedule, such an ANSI report shall be submitted as part of the Application.
 - B. No building permit shall be issued for any wireless facility where the structure being attached to is in need of remediation, unless and until all remediation work needed has been completed or a schedule for the remediation work has been approved by the county.
- 4-5.9 Tower Type and Height: All new towers shall be of the monopole type, unless such is able to be proven to be technologically impracticable. No new towers of a lattice or guyed type shall be permitted, unless relief is otherwise expressly granted.
- A. Telecommunications towers and facilities shall be no taller than the minimum height technologically necessary to enable the provision of wireless service coverage or capacity as needed within the county, and only within the county.
 - B. The applicant shall submit documentation justifying the height of any tower, facility and/or antenna requested and the basis therefore, including propagation studies and all backup data used to produce the studies at the requested height and a minimum of ten feet lower height to enable verification of the need for the requested height. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the county, to the extent practicable, unless good cause is shown.
 - C. Spacing or the distance between towers shall be such that the service may be provided without exceeding the maximum permitted height.
- 4-5.10 Setbacks:
- A. All proposed towers shall be set back from abutting parcels, recorded rights-of-way, and road lines by the greater of the following distances:
 - 1. One hundred fifty percent (150%) of the height of the proposed tower or wireless telecommunications facility structure, otherwise known as the fall zone or
 - 2. The existing setback requirement of the underlying zoning district, whichever is greater.
 - B. No dwelling units, whether existing or proposed, may be located within the fall zone or setback area of any new tower.
 - C. Any accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.
 - D. The fall zone or setback shall be measured from the nearest portion of the right-of-way of any public road or thoroughfare and any occupied building or domicile.
 - E. No access road shall be closer than 15 feet to the nearest property line.
- 4-5.11 The applicant shall place with the county an acceptable letter-of-credit, bond, or other form of security of at least \$75,000. The Planning Director or designee may approve a reduced surety amount that is not less than 150% (one hundred fifty per cent) 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 throughout the term of the permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the facility.

4-6 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 Removal of wireless telecommunications facilities

The owner of any wireless telecommunications facility shall be required to provide a minimum of 30 days written notice to the Planning Director prior to abandoning any such facility. Under the following circumstances, the Planning Director or designee may determine that the health, safety, and welfare interests of the county warrant and require the removal of a wireless telecommunications facility:

- 4-7.1. The facility has been abandoned or otherwise not used as a wireless telecommunications facility for more than 365 consecutive days, except for periods caused by *force majeure* or acts of God, in which case repair or removal must begin in 90 days;
- 4-7.2. The facility falls into such a state of disrepair that it creates a health or safety hazard; and/or
- 4-7.3. The facility has been located, constructed, or modified without first obtaining the required permit or any other necessary authorization.

If the county makes a determination to remove the abandoned tower or wireless facility, then the county shall notify the holder of the permit within 48 hours that said wireless telecommunications facility is to be removed. The Planning Director or designee may approve an interim temporary use permit, such as to enable the sale of the wireless telecommunications facility or to allow a provider to overhaul its network.

Within 90 days of receipt of written notice from the county, the permit holder shall remove such facility and all associated structures and facilities from the site and restore the site to as close to its original condition as is possible. Such restoration shall be limited only by physical or commercial impracticability. However, if the owner of the property upon which the wireless telecommunications facility is located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so with the approval of the county.

If a wireless telecommunications facility is not removed or substantial progress has not been made to remove the wireless telecommunications facility within the 90 days, then the county may have the wireless telecommunications facility removed at the sole expense of the owner or permit holder.

If the county removes, or causes to be removed, a wireless telecommunications facility and the owner of the wireless telecommunications facility does not claim and remove it from the site to a lawful location within ten days, then the county may take steps to declare the wireless telecommunications facilities abandoned, and sell them and their components.

Notwithstanding anything in this ordinance to the contrary, the county may approve a temporary use permit/agreement for no more than 90 days for such a wireless telecommunications facility, during which time a suitable plan for removal, conversion, or relocation of the affected wireless telecommunications facility shall be developed by the holder of the permit. Before the plan can become effective, an agreement to such plan must have been executed by the holder of the permit and the county. If such a plan is not developed, approved, and executed within the 90-day time period, then the county may take possession of and dispose of the affected wireless telecommunications facility and utilize the bond in the manner provided in this ordinance.

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. A notice of the hearing 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 less than 15 days prior to the hearing date.

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 2 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.

The Planning Director or designee is hereby authorized, and it will be their duty, to administer and enforce the provisions of this Ordinance. An appeal from a decision of the Director or designee may 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 (fifty dollars) 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.

The Board of Adjustment 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, 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 grants 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 shall require an affirmative vote of two-thirds of the members of the Board of Adjustment 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 with the reasoning on which the departure was justified set forth. In approving variances, the Board of Adjustment 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 presented at the same time a Site Plan is considered by the Board of Adjustment. 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.

8-6 Appeals.

The Board of Adjustment 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.

8-7 Appeals from the Board of Adjustment.

Any person or persons, jointly or severally, aggrieved by decision of the Board of Adjustment, may within thirty (30) days after the filing of the decision of the Board of Adjustment, 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.