

Pamlico County Wind Energy Ordinance

Section 1.1

Purpose

The purpose of this Ordinance shall be to preserve Pamlico County's scenic beauty, to protect sensitive environmental areas, to safeguard the general health, safety, and welfare of the citizens of Pamlico County and to protect the interests of military and civilian aviation and training concerns.

Section 1.2

Authority

This Ordinance establishing comprehensive regulations for Wind Energy Facilities, as defined under Section 1.12, in Pamlico County, North Carolina, and providing for the administration, enforcement, and amendment thereof, is adopted pursuant to the authority of North Carolina General Statutes Section 153A-121.

Section 1.3

Applicability

This Ordinance shall govern the development, placement and construction on or after the Effective Date of any Wind Energy Facility on any real property located within the unincorporated portions of Pamlico County, North Carolina, which is not located in an established municipal extraterritorial jurisdiction. After the Effective Date, no Wind Energy Facility or part thereof shall be erected, constructed, reconstructed, moved, enlarged, or structurally altered, nor shall any real property subject to the territorial jurisdiction hereof be used for same, except in conformity with all the provisions of this Ordinance and all other applicable federal, state and local rules, regulations, and statutes.

This Ordinance shall not apply to Accessory Wind Energy Facilities.

Section 1.4

Location of Wind Energy Facilities

All proposed Wind Energy Facilities and accessory structures and equipment shall be placed in a location and in a manner that will minimize the visual impact on the surrounding area. To ensure the safety of the public and Non-Participating Landowners, all Wind Energy Facilities shall be located a minimum distance equal to 2.5 times the height of the Wind Energy Facility from existing grade from the boundary line of all Non-Participating Landowners and from all public rights of way. Provided, however, that no minimum distance shall be required between Wind Energy Facilities and contiguous boundaries shared by Participating Landowners.

Section 1.5

Height Limitations

Wind Energy Facilities shall have a maximum height of five hundred (500) feet from existing grade.

Section 1.6

Wind Energy Facility Operational Requirements

Wind Energy Facilities may be operated only in accordance with the following requirements:

- (1) Audible sound from a Wind Turbine shall not exceed fifty-five (55) dBA as measured at the property lines of all Non-Participating Landowners.
- (2) Shadow flicker caused by a Wind Energy Facility at the property lines of all Non-Participating Landowners property shall not exceed thirty (30) hours per year.
- (3) Rotor blades on wind turbines must maintain at least twenty-four feet (24') of clearance between their lowest point and the ground.

Section 1.7

Repair of Wind Energy Facilities

Wind Energy Facilities that are in operation prior to the Effective Date can be repaired at their then-current height as follows:

A. A Wind Energy Facility which would be in compliance with the requirements of this Ordinance if newly constructed may be repaired at the discretion of the Owner.

B. Wind Energy Facilities which would not be in compliance with the requirements of this Ordinance if newly constructed may be repaired to the extent of no more than fifty percent (50%) of the Wind Energy Facility's fair market value if the Owner presents engineering data to the Pamlico County Board of Commissioners that the Wind Energy Facility as repaired will pose no threat to Non-Participating Landowners and that the Wind Energy Facility as repaired does not have an adverse impact on military and civilian aircraft operations and training.

C. Wind Energy Facilities which would not be in compliance with the requirements of this Ordinance if newly constructed may be repaired to the extent of more than fifty percent (50%) of the Wind Energy Facility's fair market value only upon compliance with all provisions of this Ordinance.

Section 1.8

Abandoned Facilities and Decommissioning

Any Wind Energy Facility that is not utilized for its intended purpose for more than three hundred sixty-five (365) consecutive days shall be considered abandoned and shall thereafter be removed by the Owner within three hundred sixty-five (365) days of abandonment. Upon such removal, the property upon which the removed Wind Energy Facility was located shall be returned to its original condition.

The failure of any Owner to comply with the provisions of this Section shall entitle the County to make demand upon the financial guaranty required under Section 1.9 in order to provide for the removal and decommissioning required under this Section.

Any Owner of any Wind Energy Facility may request a waiver of the provisions of this Section for good cause shown, which request the Pamlico County Board of Commissioners may grant upon such terms and conditions, and for such length, as deemed advisable.

Section 1.9

Application Review and Approval Process

Wind Energy Facilities subject to this Ordinance shall be subject to the following review and approval process:

- (1) Application shall be made by the Owner on a form provided by the Pamlico County Planning Staff, and shall be submitted with all information required by this Ordinance or which may be requested by the Pamlico County Planning Staff in order to perform a meaningful review of the application and to determine compliance with all requirements of this Ordinance.
- (2) Any application submitted hereunder shall be accompanied by all fees required under any fee schedule set by the Pamlico County Board of Commissioners and which may from time to time be amended.
- (3) Any application submitted hereunder shall contain appropriate confirmation of compliance with all federal, state and local statutes, rules and ordinances, and shall contain all other permits required to be issued by any other governmental body have jurisdiction thereof. Any application submitted hereunder shall be forwarded to the Commanding Officer, Marine Corps Air Station Cherry Point, in order to provide for review and comment concerning any possible impacts on the operations and mission of Marine Corps Air Station Cherry Point, and no application submitted hereunder shall be deemed complete until such time as said review is completed and such comments are received.

- (4) Any application submitted hereunder shall contain a narrative description of all risks (a) to civil air navigation and (b) to military air navigation routes, military air traffic control areas, military training routes, military special-use air space, military radar or other potentially affected military operations, and shall further include documentation that addresses any potential adverse impact on military operations and readiness as identified by the Department of Defense Clearinghouse pursuant to Part 211 of title 32 Code of Federal Regulations (July 1, 2012 edition) and any mitigation action agreed to the by the applicant.

- (5) Any application submitted hereunder for a Wind Energy Facility shall be accompanied by a bond, a surety, a cash deposit or such other financial instrument approved in advance by legal counsel for Pamlico County in an amount of one hundred fifty percent (150%) of the estimated cost of removal of the proposed Wind Energy Facility, as computed by a licensed professional engineer under seal, which will guarantee and secure the performance of the obligations of the applicant under Section 1.8 hereunder. At least sixty (60) days prior to the maturity of any non-cash financial guaranty or at least every three (3) years for a cash deposit, the Owner of the Wind Energy Facility shall provide to Pamlico County an updated estimate of the cost of removal of the proposed Wind Energy Facility, as computed by a licensed professional engineer under seal, and if necessary provide an extension of and/or increase in the amount of the financial guaranty as required hereunder. In no event may a non-cash financial guaranty have a maturity of less than one (1) year.

- (6) Any application submitted hereunder shall be accompanied by a site plan prepared and sealed by a licensed professional engineer and containing the following:
 - (a) A written narrative of the development plan.
 - (b) The location of the proposed Wind Energy Facility, including depiction of surrounding topographical features and the boundaries of adjoining properties.
 - (c) Elevation drawings of all towers, antennas, and accessory structures and equipment, indicating height, design, and colors.
 - (d) The representative type and height of proposed wind turbines in the form of horizontal and vertical to-scale drawings, including its generating capacity, dimensions and respective manufacturer, and a description of all ancillary facilities.

- (e) All other information required or requested to be depicted by the Pamlico County Planning staff, the Pamlico County Planning Board and the Pamlico County Board of Commissioners.
- (7) Any application deemed complete by the Pamlico County Building Staff shall be forwarded to the Pamlico County Planning Board for consideration.
- (8) The Pamlico County Planning Board shall thereafter review a completed application, and shall recommend to the Pamlico County Board of Commissioners (a) that the application be approved; (b) that the application be denied or (c) that the application be approved with modifications. The Planning Board shall recommend denial of the application if it determines that one or more of the following conditions exist:
 - a) Construction or operation of the proposed wind energy facility would encroach upon or would otherwise have a significant adverse impact on the mission, training, or operations of any major military installation or branch of military in North Carolina and result in a detriment to continued military presence in the State. In its evaluation, the Planning Board may consider whether the proposed wind energy facility would cause interference with air navigation routes, air traffic control areas, military training routes.
 - b) Construction or operation of the proposed wind energy facility would result in significant adverse impacts to ecological systems, natural resources, cultural sites, recreation areas, or historic sites.
 - c) Construction or operation of the proposed wind energy facility would have a significant adverse impact on fish or wildlife.
 - d) Construction or operation of the proposed wind energy facility would have significant adverse impact on the safety and welfare of the public.
- (9) After receipt of the recommendation of the Pamlico County Planning Board, the Pamlico County Board of Commissioners shall thereafter (a) approve the application; (b) deny the application or (c) approve the application with modifications. The Board of Commissioners shall hold a public hearing on the application. The Planning Staff shall provide notice including the time and location of the public hearing in a newspaper of general circulation in Pamlico County. The notice of public hearing shall be published for at least two consecutive weeks beginning no less than 45 days prior to the scheduled date of the hearing. The Board of Commissioners shall

deny the application if it determines that one or more of the following conditions exist:

- a) Construction or operation of the proposed wind energy facility would encroach upon or would otherwise have a significant adverse impact on the mission, training, or operations of Marine Corps Air Station Cherry Point and result in a detriment to continued military presence in the state. In its evaluation, the Board of Commissioners may consider whether the proposed wind energy facility would cause interference with air navigation routes, air traffic control areas, military training routes.
 - b) Construction or operation of the proposed wind energy facility would result in significant adverse impacts to ecological systems, natural resources, cultural sites, recreation areas, or historic sites.
 - c) Construction or operation of the proposed wind energy facility would have a significant adverse impact on fish or wildlife.
 - d) Construction or operation of the proposed wind energy facility would have significant adverse impact on the safety and welfare of the public.
- (10) Pamlico County reserves the right to obtain engineering or other professional services to aid it in the review of any submitted application, and the applicant will be required to reimburse Pamlico County for the cost thereof prior to consideration of the application.
- (11) Any final approval hereunder by the Pamlico County Board of Commissioners shall be valid for a period of twenty-four (24) months from such approval. Prior to the expiration of such approval, the Owner of any Wind Energy Facility shall submit a renewal application made on a form provided by the Pamlico County Planning Staff. Such renewal application shall be accompanied by sufficient information demonstrating compliance with each and every provision of this Ordinance and all federal, state and local statutes, rules and regulations. Upon receipt of a completed renewal application accompanied by all fees required under any fee schedule set by the Pamlico County Board of Commissioners and which may from time to time be amended, such renewal application shall be reviewed and considered by the Pamlico County Planning staff, the Pamlico County Planning Board and the Pamlico County Board of Commissioners as would an application for a new Wind Energy Facility.

Section 1.10

Installation and Design

All Wind Energy Facilities shall conform to the following standards:

- (1) The installation and design of all Wind Energy Facilities shall conform to applicable industry standards, including those imposed by the NC General Statutes, North Carolina Administrative Code and/or the NC Utilities Commission.
- (2) All electrical, mechanical, and building components all Wind Energy Facilities shall be in conformance with the International Building Code with North Carolina Amendments.
- (3) Any on-site collection and distribution lines shall be installed underground.
- (4) All Wind Energy Facilities shall be constructed of a corrosion resistant material that will resist fading, showing rust spots or otherwise changes in appearance as a result of exposure to the elements, and shall be a non-obtrusive color such as white, off-white or gray.
- (5) No Wind Energy Facilities shall be artificially lit, except to the extent required by the Federal Aviation Administration or other applicable governmental authority that regulates air safety.
- (6) All Wind Energy Facilities shall be designed to mitigate any identified adverse impacts on aircraft operations.

Section 1.11

Penalties

Any violation of this Ordinance shall be governed by the following provisions:

- (1) Any act constituting a violation of the provisions of this Ordinance or a failure to comply with any of its requirements shall subject the offender to a civil penalty of \$500.00 per day for each day such violation continues. If the offender fails to remedy the violation and pay any civil penalty within ten days after being cited for said violation (or within the time prescribed by a citation if it provides for a longer period of time than ten days), the civil penalty may be recovered in a civil action in the nature of a debt. Civil penalties begin to accrue from the date of the first notice of violation.
- (2) This Ordinance may also be enforced by any appropriate equitable action authorized by law, including injunctive relief, whether or not there is an adequate remedy at law.

(3) Each day that any violation continues, regardless of the date of notice, shall be considered a separate offense for purposes of the penalties and remedies specified in this section. In such an event, civil penalties begin to accrue from the date of the first notice of violation. For continuing violations, the initial citation and requirement that the civil penalty be paid within the time prescribed therein shall be the only notice required to be given; and shall be deemed to be an on-going citation and notice for continuing violations after the date of the citation.

(4) Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this Ordinance.

(5) Violations of this Ordinance or failure to comply with any of its requirements shall constitute a misdemeanor as provided in G.S. 14-4.

(6) Failure to comply with the provisions of Section 1.9(5) relating to the renewal of the financial guaranty for decommission shall, in addition to the other penalties set forth herein, constitute an immediate abandonment under Section 1.8, and shall authorize the County to make immediate demand upon the financial guaranty and to remove the Wind Energy Facility without further cause or notice.

Section 1.12

Definitions

Accessory Use: A use incidental to and customarily associated with the operation/maintenance of a tall structure and located on the same lot or parcel as the Wind Energy Facility.

Adverse Impact: A negative consequence impacting the physical, social, or economic environment resulting from an action or project.

Antenna: A conductor, usually located at the top of a wireless communication tower, by which electromagnetic waves are transmitted and/or received.

Effective Date: _____, 2013.

Height: The distance measured from existing grade elevation at the time of application, to the highest point of the proposed facility while in operation.

Non-Participating Landowner: An owner of land with a contiguous boundary (or boundaries) with the tract or parcel upon which a Wind Energy Facility is located or proposed to be located. For purposes of this definition, public and private rights of way shall be ignored in

determining whether tracts or parcels of land are “contiguous,” and tracts or parcels of land under common or related ownership shall be considered as a single tract or parcel.

North Carolina Utilities Commission: The North Carolina Utilities Commission, or any successor state agency or department.

Owner: An Owner of a Wind Energy Facility shall be the individual(s) or entity(ies) which (a) submit an application for approval under Section 1.9 of this Ordinance or (b) are in apparent or actual control of the operations of a Wind Energy Facility during any time period in which the Wind Energy Facility is in operation.

Participating Landowners: Owners of land with a contiguous boundary (or boundaries) upon which Wind Energy Facilities are located or proposed to be located as part of a common plan or development. For purposes of this definition, tracts or parcels of land are not deemed to share a “contiguous” boundary if such tracts or parcels are separated by public or private rights of way.

Setback: The required distance between the facility and the property line or right-of-way line.

Shadow Flicker: The visible flicker effect when rotating turbine blades cast shadows on the ground or nearby structures causing the repeating pattern of light and shadow.

Wind Energy Facility: An electricity-generating facility whose main purpose is to supply electricity to the electrical grid, consisting of one or more wind turbines and other accessory structures and buildings including substations, meteorological towers, electrical infrastructure, transmission lines, and other appurtenant structures and facilities, which has a rated capacity of greater than 100 kW.

Accessory Wind Energy Facility : A single system consisting of a single wind turbine, a tower, and associated control or conversion electronics designed to supplement other electricity sources as an accessory use to existing buildings or facilities, which has a rated capacity of not more than 100 kW, and which is not designed, intended or used primarily to supply electricity to the electrical grid.

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

Wind Turbine: A wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, and may include a nacelle, rotor, tower, and pad transformer.