

APPENDIX H

Tall Structures Ordinance

1.1. Purpose

The purpose of this Ordinance 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 citizens of Craven County. Additionally, this Ordinance will serve to mitigate conflicts stemming from the development of Tall Structures in relation to military, civilian and commercial aircraft operations.

1.2. Authority

This Ordinance establishing comprehensive regulations for Tall Structures, as defined under Section 1.17, in Craven County, North Carolina, and providing for the administration, enforcement, and amendment thereof, is adopted pursuant to the authority of North Carolina General Statutes 153A-121.

1.3. Applicability

This Ordinance shall apply to all of the land located within the unincorporated portions of Craven County, North Carolina, which are not located in an established municipal extraterritorial jurisdiction, as well as within the corporate boundaries and extraterritorial jurisdiction of any municipality that requests this Ordinance be effective therein, and the County so agrees. The effective date of this Ordinance is May 6, 2013. This Ordinance governs the development and use of all land and structures for Tall Structures. No Tall Structure, or land shall be used, occupied or altered therefore, and no Tall 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. This Ordinance is intended to comply with and be consistent with the United States Telecommunications Act of 1996, and the Federal Communications Act, 47 U.S.C., paragraph 332, as amended.

1.4. Location

The proposed Tall Structure 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 other existing buildings, the Tall Structure shall be a minimum of five hundred (500) feet from an existing residential structure of a Non-Participating Landowner. If located less than 500 feet from an existing residential structure of a Non-Participating Landowner, a continuous screen of evergreen vegetation intended to be at least six feet high and three feet thick at maturity shall be planted around the Tall Structure(s) and all

accessory structures and/or security fencing prior to receiving a Certificate of Occupancy. Additionally, all proposed Tall Structure projects are subject to review and comment by representatives of Marine Corps Air Station (MCAS) Cherry Point and Seymour Johnson Air Force Base.

1.5. Approval by Craven County Board of Commissioners Required

Approval by the Craven County Board of Commissioners of any proposed Tall Structure, and related accessory structures and equipment, must be based upon review and recommendation of the Craven County Planning Board for compliance with this Ordinance, and be based on compliance with the standards and provisions set forth in this Ordinance, as well as any comments received from representatives of MCAS Cherry Point, Seymour Johnson Air Force Base, and/or the North Carolina Utilities Commission.

1.6. Co-Location of Communication Towers

Approval for a proposed Communication Tower within a radius of ten thousand (10,000) feet from an Existing Communication Tower or other similar structure shall not be issued unless the applicant certifies that the Existing Communication Tower does not meet applicant’s structural specifications or technical design requirements, or that a co-location agreement could not be obtained at a reasonable market rate and in a timely manner.

1.7. Height, Setbacks, and Minimum Lot Size

<u>Facility Type</u>	<u>Minimum Lot Size</u>	<u>Minimum Setback Requirements</u> ¹		<u>Maximum Height from Grade</u>
		<u>Setback factor regarding property</u> ² <u>lines</u>	<u>Setback factor regarding public</u> ² <u>right-of-way</u>	
<u>Wind Energy Generator (Accessory)</u>	Dictated by the Tall Structure setback requirements	1.0	1.0	100 Ft.
<u>Wind Energy Facility</u>	Dictated by the Tall Structure setback requirements	1.0	1.5	500 Ft.
<u>Communication Tower</u>	Dictated by the Tall Structure setback requirements	1.0	1.0	350 Ft.

¹ Measured from the center of the wind turbine base or Communication Tower to the property line.

² Calculated by multiplying the required setback distance by the proposed structure height. (example: a Wind Energy Facility of 200 feet in height must be located at least 300 feet from a public right-of-way [200 feet in height * 1.5 = 300 feet]).

1.8. Wind Energy Facility Requirements

The following Wind Energy Facility noise, shadow flicker, ground clearance and electromagnetic interference standards apply to potential impacts associated with Wind Generators. These standards shall not apply to the installation of a Wind Energy Generator installed as an accessory use.

- (1) Audible sound from a Wind Turbine shall not exceed fifty-five (55) dBA, as measured at the exterior foundation of any building of a Non-Participating Landowner that is occupied at the time the application is filed.
- (2) Shadow flicker at any occupied building on a Non-Participating Landowner's property caused by a Wind Energy Facility located within 2,500 feet of the occupied building 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.
- (4) Wind Turbines may not interfere with normal aviation radar, radio and television reception in the vicinity. The applicant shall mitigate any interference with electromagnetic communications, such as aviation radar, radio, telephone or television signals caused by any Wind Energy Facility.

1.9. Replacement of Tall Structures

Tall Structures that are in operation prior to May 6, 2013, can be replaced at no greater than their current height as follows:

- (1) Conforming Tall Structures may be replaced or repaired, but only if the applicant presents engineering data to the Craven County Board of Commissioners that the replacement poses no threat to the surrounding property owners or that tower replacement does not have an adverse impact on aircraft operations. Replacement of a Tall Structure exceeding the maximum height listed under Section 1.7 will require full project review as outlined under Section 1.11.
- (2) Non-conforming Tall Structures may be repaired if damaged by no more than fifty percent (50%) of the Tall Structure's fair market value, but only if the applicant presents engineering data to the Craven County Board of Commissioners that the replacement poses no threat to the surrounding property owners or that tower replacement does not have an adverse impact on

aircraft operations. Repair of a Tall Structure exceeding the maximum height listed under Section 1.7 will require full project review as outlined under Section 1.11.

1.10. Abandoned Facilities

Any Tall Structure that is not utilized for its permitted purpose for more than one hundred and eighty (180) days shall be considered abandoned; and once considered abandoned shall be removed by the owner within ninety (90) days.

1.11. Permit Review and Approval Process

All applications for Tall Structures subject to this Ordinance shall be subject to the following review and approval process:

- (1) Applications shall be submitted to Craven County Planning Staff. Applications must comply with any applicable federal, state or local statutes, ordinances, rules or regulations.
- (2) Site plan required as specified under Section 1.15.
- (3) The application will be forwarded to the Craven County Planning Board for review and approval. Prior to review by the Craven County Planning Board, the application will be forwarded to MCAS Cherry Point and Seymour Johnson for review to determine if any potential adverse impacts may be associated with the proposed project.
- (4) Once review comments have been received from the representatives of MCAS Cherry Point and Seymour Johnson, they will be forwarded to the applicant. The applicant will have an opportunity to address any identified adverse impacts and take necessary action to mitigate issues identified through the military review process. Following receipt of the revised application, the application and all supporting documentation shall be forwarded to the Planning Board for review.
- (5) The final application will be reviewed by the Craven County Planning Board. The Planning Board will provide a recommendation for consideration by the Board of Commissioners. This recommendation shall be based on the requirements of this Ordinance, as well as comments received through the Base review process.

- (6) In the event that the County believes it needs to retain engineering services to review issues related to adverse impacts and/or mitigation of the same, the applicant will be required to reimburse the County for the cost thereof.
- (7) If an application is denied by the Craven County Board of Commissioners, the applicant may appeal the decision to the Superior Court of Craven County.
- (8) Approval of a Tall Structure shall be valid for a period of twenty-four (24) months from such approval. In the event that the Tall Structure is not substantially constructed for its intended purpose within such time, said approval shall be deemed automatically revoked, and of no further force or effect, without any action required by Craven County. Upon a showing of good cause, the Craven County Board of Commissioners may grant an extension hereunder, upon such terms and conditions it deems advisable, and upon payment of any additional fees that may be associated with the same.

1.12. Installation and Design

The installation and design of all Tall Structures shall conform to the following standards:

- (1) The installation and design of the facility 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 of the facility shall be in conformance with the International Building Code with North Carolina Amendments.
- (3) Any on-site collection and distribution lines shall, to the maximum extent possible, be installed underground.
- (4) The facility shall be constructed of a corrosion resistant material that will not fade, show rust spots or otherwise change the appearance as a result of exposure to the elements, and be a non-obtrusive color such as white, off-white or gray.
- (5) The facility shall not be artificially lit, except to the extent required by the Federal Aviation Administration or other applicable authority that regulates air safety or recommended by military.
- (6) Designed to mitigate any identified adverse impacts on aircraft operations.

1.13. Maintenance

Any Tall Structure that is not functional as permitted shall be repaired or removed by the owner within 6 months of non-functionality. In the event that the County becomes aware of any Tall Structure that is not operated for a continuous period of 6 months, the County will notify the owner by certified mail and provide 30 days for a written response; provided however, in the event the owner cannot be located, then the County shall post such notice at a conspicuous place at the Tall Structure property. In its response, the owner shall set forth reasons for the operational difficulty and provide a reasonable timetable for corrective action. If the County deems the timetable for corrective action as unreasonable, the County shall notify the landowner that the Tall Structure has been deemed abandoned, and such landowner shall remove the facility with 180 days of receipt of said notice. Any 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.

1.14. Decommissioning and Removal of Incomplete/Abandoned Tall Structures

When required, the following decommissioning requirements shall apply:

- (1) The applicant must remove the tall structure facility if, after the completion of the construction, the facility fails to begin operation, or becomes inoperable for a continuous period of six months.
- (2) The six month period may be extended upon a showing of good cause to the Craven County Board of Commissioners.
- (3) Any person, firm, or corporation receiving approval for an application to construct a Tall Structure Facility, excluding Communication Towers, must provide to the County a form of surety equal to 125% of the entire cost, as estimated by a licensed engineer under seal, and approved by the County Attorney, either through a surety performance bond, irrevocable letter of credit or other instrument readily convertible into cash at face value, either with the County or in escrow with a financial institution designated as an official depository of the County. This surety shall be retained by the County to cover the cost of removal in the event the applicant is unable to perform any required removal hereunder. Following initial submittal of the surety, the cost calculation shall be reviewed annually every 12 months, and adjusted accordingly based upon an updated estimate of a licensed engineer under seal, of the estimated removal costs. The adjustment must be approved by the Director of the Craven County Planning Department. Failure to comply with any requirement of this

paragraph shall result in the immediate termination and revocation of all prior approval and permits; further, Craven County shall be entitled to make immediate demand upon, and/or retain any proceeds of, the surety, which shall be used for decommissioning and/or removal of the Tall Structure, even if still operational.

1.15. Tall Structures Facility Plans

No Tall Structure shall be constructed or permitted without a set of facility plans bearing an engineer's seal that has been filed with the Craven County Planning Staff and Building Inspector and approved through the review process outlined under Section 1.11.

Tall Structure facility plans shall contain the following:

- (1) Fee. A fee determined by the County's Fee Schedule.
- (2) Narrative. A written narrative of the development plan.
- (3) Co-Location on Existing Towers (communications towers only). Documentation that co-location on existing towers or structures within a radius of ten thousand (10,000) feet was attempted by the applicant, but found unfeasible with reasons noted.
- (4) Co-Location on Proposed Tower (telecommunications towers only). A notarized affidavit that states the applicant's willingness to allow location on the proposed tower, at a fair market price and in a timely manner, of any other service provided licensed by the Federal Communications Commission (FCC).
- (5) Other Permits. Copies of all county, state, and federal permits with the application building permit where prior local approval is not required.
- (6) Elevation Drawings. Elevation drawings of all towers, antennas, and accessory structures and equipment, indicating height, design, and colors.
- (7) NEPA Compliance. A copy of approved National Environmental Policy Act of 1969 (NEPA) compliance report for all towers, antennas, accessory structures, or equipment proposed for the site.
- (8) Structural Requirements. Documentation signed and sealed by a North Carolina registered engineer that indicates any proposed tower meets the structural

requirements of the Standard Building Code and the co-location requirements of this article.

- (9) Other Approvals, Certifications, or Recommendations. Appropriate approvals, certifications, or recommendations required to allow review of approval criteria such as sight line analysis, aerial photographs, or other such tests as determined by the Craven County Planning Staff.
- (10) Type of Facility (wind energy facilities only). Provide the representative type and height of the wind turbine in the form of horizontal and vertical (elevation) to-scale drawings, including its generating capacity, dimensions and respective manufacturer, and a description of ancillary facilities.
- (11) Utility Commission Certification (wind energy facilities only). An applicant for a commercial wind generation facility shall state in the application whether a Certificate of Public Convenience and Necessity for the system is required from the North Carolina Utilities Commission and, if so, the anticipated schedule for obtaining the certificate. The County may ask the Utilities Commission to determine whether a Certificate of Public Convenience and Necessity is required for a particular wind power project for which the County has received an application. The County shall not approve a project requiring a certificate unless and until such certificate is issued by the Utilities Commission. If a certificate is not required from the Utilities Commission, the permit shall include with the application a discussion of what the applicant intends to do with the power that is generated.
- (12) Any preliminary approvals of the proposed Tall Structure received prior to the application submittal from any State or Federal agency may be submitted for County consideration with the application.

1.16 Penalties

Any violation of this Ordinance shall be governed by the provisions of Chapter 1 of the Craven County Code of Ordinances.

1.17. 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 tall structure.

Adverse Impact

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

Alternative Energy Facility

A facility that uses a variety of sources and/or products for the production of power for sale as a primary use. Types of energy facilities may include, but are not limited to: petroleum; methane; ethanol; thermal; wind; solar; hydro-electric; and other energy generation facilities.

Antenna

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

Communication Tower

Any tower or structure, natural or man-made, existing or erected, for the purpose of supporting; including, but not limited to, one or more antennas designed to transmit and/or receive television, AM/FM radio, digital, microwave, cellular, analog.

Existing Communication Tower

Any communication tower existing or permitted in Craven County, which was placed, built, erected or permitted prior to May 6, 2013.

Height

The distance measured from grade elevation above mean sea level at the time of application, to the highest point of the proposed facility while in operation.

Non-Participating Landowner

An owner of land, not the applicant or owner of the Tall Structure.

North Carolina Utilities Commission

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

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 and nearby structures causing the repeating pattern of light and shadow.

Tall Structures

All structures over 100 feet in height above ground level used for communication towers, wind energy facilities, and other similar structures used for wind energy generation, wind power, wind turbines, wireless communication facilities, or alternative energy facilities. Specifically excluded from this definition are buildings and accessory structures used primarily for residential, commercial, industrial or institutional purposes other than those contained in the preceding sentence, as well as any appurtenances related thereto.

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.

Wind Energy Generator (Accessory)

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.

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.

Wireless Communication Facility

Any unstaffed facility for the transmission and/or reception of wireless telecommunications services, usually consisting of an antenna array, connection cables, an equipment facility, and a support structure to achieve the necessary elevation.