

ASHE COUNTY, NORTH CAROLINA

**AN ORDINANCE TO REGULATE
WIND ENERGY SYSTEMS
IN ASHE COUNTY, NORTH CAROLINA**

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF ASHE IN REGULAR SESSION ASSEMBLED:

ARTICLE I
TITLE

This Ordinance shall be known and may be cited as the Ashe County Wind Energy System Ordinance.

ARTICLE II
AUTHORITY AND PURPOSE

Inasmuch as Ashe County has determined that certain windmills are possibly exempt under the North Carolina Mountain Ridge Protection Act as codified under Article 14 of Chapter 113A of the North Carolina General Statutes, and pursuant to the authority granted to counties by G.S. §153A-121 *et seq.* and other pertinent statutes and amendments thereto, it is the purpose of this Ordinance to regulate the use of wind energy systems and to describe the conditions by which a permit for installing such a system may be obtained.

ARTICLE III
FINDINGS

Wind power is a clean, inexhaustible, reliable, and economical source of energy that can help reduce dependence on fossil fuels, help to preserve and protect the environment, and help to create new jobs and sustainable forms of development. As a result of these benefits, wind power has become the fastest growing energy source in the world and is helping to satisfy the growing demand for electricity cleanly and affordably.

At the same time, the unregulated construction of wind energy systems results in legitimate concerns with respect to noise and vibration, poses a potential hazard to air navigation, and detracts from the natural beauty and aesthetic integrity of Ashe County and the North Carolina mountains.

The Ashe County Board of Commissioners finds that in order to provide for the health, safety, and welfare of the citizens of Ashe County, and in order to balance the encouragement of an environmentally clean form of energy with the protection of the

County's natural scenic beauty, it is necessary and appropriate to provide for the regulation of wind energy systems as set forth in this Ordinance.

ARTICLE IV
TERRITORIAL COVERAGE

Pursuant to G.S. §153A-122, this Ordinance shall apply to all unincorporated areas of Ashe County.

ARTICLE V
DEFINITIONS

Section 1. Definitions.

The following definitions shall apply for purposes of this Ordinance:

- 1.1 **Agricultural Farm**: A place, premises, or property the primary purpose and use of which is activities or operations involving the cultivation of crops, husbandry of livestock or poultry, or any other agricultural activity or operation, whether agronomic, floricultural, horticultural, viticultural, silvicultural, aquacultural, dairy farming, animal operations under G.S. §143-215.10B(1), or otherwise.
- 1.2 **Business**: A commercial trade or enterprise in regular operation, including but not limited to retail, wholesale, manufacturing, industrial, agricultural, financial, professional, and other similar trades or operations.
- 1.3 **Crest**: The uppermost line of a mountain or chain of mountains from which the land falls away on at least two (2) sides to a lower elevation or elevations.
- 1.4 **County**: The County of Ashe.
- 1.5 **Large Wind Energy System**: A wind energy conversion system consisting of one or more wind turbine(s), a tower(s), and associated control or conversion electronics, which has a rated capacity of more than 20 kW.
- 1.6 **Ordinance Administrator**: The person or department designated by the Ashe County Board of Commissioners to be responsible for administration and enforcement of the provisions of this Ordinance.
- 1.7 **Person**: A firm, corporation, general partnership, limited partnership, limited liability company, association, sole proprietor, individual, individual acting on behalf of another, or any other entity of any type whatsoever.
- 1.8 **Planning Board**: The Ashe County Planning Board, or, for purposes of administration and enforcement of this Ordinance, such person as the Planning Board may duly designate.

- 1.9 Private Road: Any road, highway, or street which is not a public road as defined below but which is shown as a road, highway, or street on the County's E-911 system or on a plat recorded in the Ashe County Register of Deeds office.
- 1.10 Protected Mountain Ridge: Any mountain ridge whose elevation is 500 feet or more above the elevation of an adjacent valley floor.
- 1.11 Public Road: Any road, highway, or street which is now or hereafter designated and maintained by the N.C. Department of Transportation as part of the State Highway System; or which is maintained by a municipality pursuant to Article 15 of Chapter 160A of the North Carolina General Statutes; or which is located wholly or partly in a subdivision which has been duly approved pursuant to the Ashe County Subdivision Ordinance.
- 1.12 Ridge: The elongated crest or series of crests at the apex or uppermost point of intersection between two opposite slopes or sides of a mountain, including all land within 100 feet below the elevation of any portion of such line or surface along the crest.
- 1.13 Small Wind Energy System: A wind energy conversion system consisting of a single wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 20 kW. Multiple small wind energy systems located on agricultural farms are considered to be separate small wind energy systems even if the aggregate rated capacity exceeds 20 kW, provided that the primary intent is to generate power to reduce on-site consumption.
- 1.14 Utilities Commission: The North Carolina Utilities Commission as established under Article 2 of Chapter 62 of the North Carolina General Statutes.
- 1.15 Wind Turbine Height: The height above grade to the tip of the turbine blade when it reaches its highest elevation.

ARTICLE VI
REGULATIONS

Section 1. Small Wind Energy Systems.

Small wind energy systems shall be a permitted use by right subject to the requirements set forth in this Section 1:

- 1.1 Wind Turbine Height: Wind turbine height shall be limited to one hundred thirty-five (135) feet.
- 1.2 Setback: The base of the wind turbine shall be set back from surrounding property lines by a distance at least equal to one and one-half (1½) times the height of the

wind turbine. Relief from this section may be granted if the applicant can secure a permanent easement from the adjoining property owner(s) providing for a fall zone.

- 1.3 Clearance: Rotor blades on wind turbines must maintain at least twenty-four (24) feet of clearance between their lowest point and the ground.
- 1.4 Building Permit Requirements: A building permit shall be required and building permit applications for small wind energy systems shall be accompanied by standard drawings of the wind turbine structure, including the tower, base, and footings. An engineering analysis of the tower certified by a licensed professional engineer which includes standards for ice/wind loading shall also be submitted. This analysis may be supplied by the manufacturer. Wet stamps shall not be required.
- 1.5 Compliance with FAA Regulations: Small wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports. Evidence of compliance or non-applicability shall be submitted with the application for a building permit.
- 1.6 Utility Notification: No small wind energy system shall be installed until evidence has been furnished that the applicable utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Such evidence shall be in the form of a written verification from the utility company and shall be furnished along with the application for a building permit. Off-grid systems shall be exempt from this requirement.
- 1.7 Appearance: Towers and rotor blades for small wind energy systems shall maintain such finish or be painted in such manner as to conform the tower color and appearance to the surrounding environment to reduce visual obtrusiveness. No such tower shall have any signage, writing, or pictures that may be construed as advertising placed on it at any time. In addition, no flags, streamers, or decorative items shall be attached to a small wind energy system tower or turbine.
- 1.8 Removal of Nonfunctional or Abandoned Small Wind Energy Systems: Any small wind energy system which is nonfunctional or abandoned for a continuous period of six (6) months shall be repaired and placed back in operation by the owner or operator, or else the same shall be removed. The Planning Board shall notify the owner or operator of the small wind energy system by registered mail and provide forty-five (45) days for a written response. In such response, the owner or operator shall set forth reasons for the operational difficulty and provide a reasonable timetable for corrective action. If the Planning Board deems the timetable for corrective action to be unreasonable, it shall notify the owner or operator, and the owner or operator shall remove the small wind energy system within one hundred twenty (120) days of receipt of said notice, at the owner or operator's expense.

- 1.9 Removal of Illegal Small Wind Energy Systems: Any small wind energy system which remains in violation of this Ordinance following the expiration of the time for corrective action as established by the Planning Board under Article IX, Section 1 below, shall be removed. In said event the Planning Board shall so notify the owner or operator of the small wind energy system, and such owner or operator shall remove the small wind energy system within one hundred twenty (120) days of receipt of said notice.

Section 2. Large Wind Energy Systems.

Large wind energy systems shall be a use permitted by review and issuance of a permit, subject to the requirements of this Section 2.

- 2.1 General Requirements: Large wind energy systems shall comply at all times with the following requirements:
- (a) Same Requirements as for Small Wind Energy Systems: Large wind energy systems shall meet all of the requirements of Section 1 for small wind energy systems with the exception of wind turbine height, setbacks, and removal. Requirements for wind turbine height, setbacks, and removal shall be as set forth in this Section 2.
 - (b) Wind Turbine Height: The maximum wind turbine height for a large wind energy system shall be as approved by the Planning Board but shall in no event be more than one hundred ninety-nine (199) feet.
- 2.2 Spacing Requirements: No portion of a permitted large wind energy system shall be located within one thousand (1,000) feet of the property lines of any property adjoining the tract or tracts on which the large wind energy system is located; provided, that this requirement shall not apply to property owned or leased by the owner or operator of the large wind energy system if such property continues to be so owned or leased at all times while the large wind energy system remains permitted and/or in operation.

In order to establish permitted locations, measurement shall be made in a straight line, without regard to intervening structures or objects, from that portion of the large wind energy system which is closest to the nearest parcel boundary of the adjoining property. Presence of a city, county, or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the spacing requirements of this section. All measurements made hereunder shall be taken by the Planning Board, utilizing aerial photographs from the Ashe County Tax Mapping Office, scaled for distance, or such other method as the Planning Board determines in its discretion to be reasonable and accurate.

2.3 Spacing Requirements – Waiver:

The owners of an adjoining property as specified in section 2.2 above may waive all or any portion of the spacing requirements set forth therein. Said waiver shall be in writing and shall be in the form of an easement as set forth in Appendix “A” to this Ordinance. The waiver shall be signed by all of the owners of said adjoining property and, where said adjoining property or any portion thereof is the subject of a written lease agreement, by all lessees thereunder. The waiver shall also be signed by the owner(s) or operator(s) of the large wind energy system, and, if different, by all of the owners of the tract(s) of property on which the large wind energy system is situated. The waiver shall further be signed by the County Attorney, whose signature shall serve as a certification that the requirements of this section 2.3 above have been met. All of said signatures shall be notarized, whereupon the waiver shall be recorded in the Ashe County Register of Deeds Office at the expense of the owner(s) or operator(s) of the large wind energy system. Following such recording, the spacing requirements of section 2.2 as between said adjoining property and said large wind energy system shall be deemed amended to conform to the provisions of the waiver. The easement granted by said waiver shall be appurtenant to and run with the land and shall be binding on the parties, their heirs, successors, and assigns; provided, that the same shall by its express provisions terminate at such time as said large wind energy system ceases to have a valid permit under this Ordinance. The Planning Board shall, in the event a large wind energy system for which a waiver has been recorded ceases to have a valid permit, cause an instrument to be recorded in the Ashe County Register of Deeds Office evidencing the same.

2.4 Setbacks from Public and Private Roads: No portion of a large wind energy system shall be situated closer to the traveled portion of a public or private road than one and one-half (1½) times the height of the tallest wind turbine situated on the tract(s) of property on which the large wind energy system is located. This section 2.4 shall not apply to that portion of a private road or driveway which serves as access to a large wind energy system, as determined in the discretion of the Planning Board.

2.5 Setbacks from Streams, Creeks, Branches, and Rivers: All large wind energy systems shall comply with State and Federal requirements for setbacks from streams, creeks, branches, rivers, and other surface waters, and, where required by State laws, rules, or regulations, shall at all times possess a valid permit from the North Carolina Division of Water Quality with respect to the same.

2.6 Mountain Ridge Protection: No portion of a large wind energy system shall be located or maintained on any portion of the ridge of a protected mountain ridge if the wind turbine height exceeds the top of the vegetative canopy surrounding such large wind energy system by more than thirty-five (35) feet.

- 2.7 Noise: The aggregate noise and/or audible sound of a large wind energy system shall not exceed five (5) decibels above the existing average noise/decibel level on adjacent properties; provided, that in no event shall the aggregate noise and/or audible sound of a large wind energy system exceed forty-five (45) decibels as measured in any area surrounding the wind turbine site except on the property owned or leased for operation of the large wind energy system. Potential noise levels shall be determined by a duly licensed North Carolina engineer as approved by the Planning Board.
- 2.8 Utility Lines: That portion of the utility lines servicing a large wind energy system which are situated on the tract(s) of property on which the large wind energy system is located shall, insofar as is possible, and to the extent not otherwise prohibited by federal or state laws, rules, or regulations, be placed underground.
- 2.9 Removal of Large Wind Energy Systems: If at any point the site permit for a large wind energy system ceases to be effective as provided under section 2.5 of Article VII below, the Planning Board shall notify the owner or operator of the same to dismantle and remove it from the premises and to restore the premises, as nearly as practicable, to their condition prior to placement of the large wind energy system thereon. The Planning Board may impose such conditions and deadlines on the owner or operator of the large wind energy system as may be reasonable in order to accomplish the foregoing. In addition, the Planning Board shall be authorized to utilize such funds for the above stated purposes and to draw on such bond as may have been set aside or furnished by the owner or operator of the large wind energy system pursuant to section 2.1(h) of Article VII below.

ARTICLE VII

PERMITS

Section 1. Permit Required.

- 1.1 Large Wind Energy Systems: No person shall establish, place, operate, maintain, expand, or enlarge a large wind energy system without a site permit as required hereunder. The application for, issuance of, and all other matters pertaining to such site permit shall be governed by the provisions of this Article VII.
- 1.2 Small Wind Energy Systems: No person shall establish, place, operate, maintain, expand, or enlarge a small wind energy system without a site permit as required hereunder; provided, that the only provisions of this Article VII which shall apply to such site permits shall be sections 2.3 (Issuance or Denial of Permit), 2.4 (Conditions of Permit), 2.5 (Duration of Permit), 2.6 (Transferability of Permit), 2.7 (Alterations and Expansions), and 2.8 (Revocation of Permit); provided, further, that applications for site permits for small wind energy systems shall be on such forms as shall be developed by the Planning Board and shall require only

such information as is pertinent to the regulations for small wind energy systems under Section 1 of Article VI above.

Section 2. Permitting Process.

- 2.1 Permit Application: A person seeking a permit for a large wind energy system shall file an application with the Planning Board for review as follows.
- (a) Background Information: An applicant for a site permit must provide the following background information regarding the applicant:
- (1) A letter of transmittal signed by an authorized representative or agent of the applicant.
 - (2) The complete name, address, telephone number, and e-mail address of the applicant and any authorized representative.
 - (3) The signature of the person who prepared the application, if prepared by an agent or consultant of the applicant.
 - (4) The role of the permit applicant in the construction and operation of the wind power project.
 - (5) The identity of any other wind power project located in the State in which the applicant, or a principal of the applicant, has an ownership or other financial interest; the operator of the wind power project if different from the applicant; and the name of the person or persons to be the permittee if a site permit is issued.
- (b) Certificate of Public Convenience and Necessity: The applicant shall state in the application whether a certificate of public convenience and necessity for the system is required from the 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 a site permit 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 applicant shall include with the application a discussion of what the applicant intends to do with the power that is generated.
- (c) Compliance with State Policy: The applicant shall describe in the application how the proposed wind power project furthers State policy to site such projects in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources.

- (d) Site Information: The applicant shall include the following information about the site proposed for the wind power project and any associated facilities:
- (1) The surveyed boundaries of the site proposed for the wind power project.
 - (2) The location of other wind turbines in the general area of the proposed wind power project.
 - (3) The applicant's land rights both within and outside the boundaries of the proposed site, including acquisition by the applicant of all necessary utility easements for transmission lines serving the wind power project.
- (e) Design Information: The applicant shall provide the following information regarding the design of the proposed wind power project:
- (1) A project layout, prepared by a design professional, including a map showing the proposed location of the turbine(s).
 - (2) A description of the turbine(s) and tower(s) and other equipment proposed to be used in the wind power project, including the name of the manufacturers of the equipment.
 - (3) A description of the project electrical system, including transformers at both low voltage and medium voltage.
 - (4) A description and location of associated facilities, including but not limited to the building or buildings for operational monitoring of the wind turbine facilities.
 - (5) Photographs of a clearly visible balloon floated at the site of the proposed large wind energy system to the maximum height of the tallest wind turbine to be located thereon, taken from such locations as property lines, roadways, and other locations deemed necessary by the Planning Board in order to assess the visual impact of the same.
- (f) Impact Analysis: The applicant shall include with the application an approved independent analysis of the potential impacts of the wind power project, proposed mitigative measures, and any adverse environmental effects, together with an analysis of the effects of the same on the applicant's ability to comply with the applicable requirements of this Ordinance, in the following areas:

- (1) Demographics, including people, homes, and businesses.
- (2) Noise.
- (3) Visual impacts.
- (4) Public services and infrastructure
- (5) Cultural and archaeological impacts.
- (6) Recreational resources.
- (7) Public health and safety, including air traffic, electromagnetic fields, and security and traffic.
- (8) Hazardous materials.
- (9) Land-based economics, including agriculture, forestry, and mining.
- (10) Tourism and community benefits.
- (11) Job creation and ad valorem tax projections.
- (12) Topography.
- (13) Soils.
- (14) Geologic and groundwater resources.
- (15) Surface water and floodplain resources.
- (16) Wetlands.
- (17) Vegetation.
- (18) Avian impact assessment, including an indication of the type and number of birds and bats that are known or suspected to use a project site and the area surrounding that site.
- (19) Wildlife.
- (20) Rare and unique natural resources.

- (g) Construction, Operation, Maintenance, and Insurance Information : The permit applicant shall describe and/or provide evidence of compliance with all of the following:
- (1) The manner in which the wind power project, including associated facilities, will be constructed.
 - (2) How the wind power project will be operated and maintained after construction, including a maintenance schedule.
 - (3) The anticipated schedule for completion of the wind power project and the expected date of commencement of commercial operations.
 - (4) The energy expected to be generated by the wind power project.
 - (5) A certificate of general comprehensive liability insurance for the applicant's proposed operations at the site of the proposed wind power project, in such minimum amount as may be established by the Planning Board, the same to be maintained in full force and effect at all times for as long as the wind power project remains in operation, with such certificate being furnished to the Planning Board in updated form throughout the life of the wind power project.
- (h) Decommissioning Information: The applicant shall include the following information regarding decommissioning of the wind power project and restoring the site:
- (1) The anticipated life of the wind power project.
 - (2) The estimated decommissioning costs in current dollars.
 - (3) The method and schedule for updating the costs of decommissioning and restoration.
 - (4) The method of ensuring that funds will be available for decommissioning and restoration, including the details for establishment of a removal fund and depositing or setting aside sufficient monies in said fund on a sufficiently regular basis to pay for dismantling the large wind energy system and restoring the site. The Planning Board shall require the applicant to furnish a bond for this purpose, in such amount and by such surety as the Planning Board and the applicant may mutually agree upon, payable to the County and conditioned upon satisfactory completion by the

applicant of the dismantling and restoration requirements of this subsection (h).

- (5) The anticipated manner in which the wind power project will be decommissioned and the site restored.
- (i) Other Permits and Approvals: The applicant shall include in the application a list of all known federal, state, and local agencies or authorities from which permits or approvals must be obtained for the wind power project or any aspect of its operations, structures, equipment, or environmental impact, together with the titles of the permits and approvals.
- (j) Blue Ridge Parkway: If the site for a proposed large wind energy site is within the Blue Ridge Parkway viewshed, the applicant shall inform the National Park Service of the proposed wind turbine siting. Park Service recommendations shall be given reasonable consideration and documentation of this consideration shall be provided to the County. The Park Service shall be afforded thirty (30) days to respond to the applicant's written intention to erect a large wind energy system. No answer to the notification within the thirty (30) days shall be considered as an affirmation of the site as proposed. Viewshed shall be determined by the County using maps and documents prepared for that purpose by the Design Research Laboratory at N.C. State University and the Blue Ridge Parkway Division of Resource Planning and Professional Services.
- (k) State and National Parks and Forests: If the site for a proposed large wind energy system is within the viewshed of a State or National Park or Forest, the applicant shall inform the National Park Service, the U.S. Forest Service, or the appropriate State Park System of the proposed wind turbine siting. Recommendations from reviewing departments and agencies shall be given reasonable consideration and documentation of this consideration shall be provided to the County. Reviewing departments and agencies shall be afforded thirty (30) days to respond to the applicant's written intention to erect a large wind energy system. No answer to the notification within the thirty (30) days shall be considered as an affirmation of the site proposed. Viewshed shall be determined by the County using maps and documents prepared for that purpose by the Design Research Laboratory at N.C. State University with consultation with the appropriate national or state department or agency.
- (l) Application Fee: The application shall be accompanied by such fee as shall have been established by the Ashe County Board of Commissioners.
- (m) Certifications: The application shall contain certifications by the applicant that:

- (1) The large wind energy system use for which the permit is being requested will at all times comply with the applicable regulations and standards imposed under this Ordinance.
- (2) The proposed large wind energy system is properly permitted under and complies with, and at all times will be maintained and operated and will continue to be permitted under, all rules, regulations, and other requirements imposed by any other applicable regulatory agency or governmental body, whether federal, state, or local.
- (3) The proposed large wind energy system will not adversely affect the health or safety of persons living or working in the vicinity of the same, nor will it be detrimental to the public welfare.
- (4) The applicant has not constructed, maintained, operated, or modified any large wind energy system within Ashe County without the approval of the County.
- (5) No permit issued to the applicant under this Ordinance, or under any successor Ordinance hereto, has ever been revoked.
- (6) The applicant is the owner or lessee of the tract or tracts on which the large wind energy system is located or is proposed to be located, and will continue to be the owner or lessee of the same for so long as the large wind energy system is situated thereon unless recommended otherwise by the Planning Board and approved by the Board of Commissioners.

2.2 Hearing Required: Prior to granting or denying a permit for a large wind energy system, the Planning Board shall conduct a public hearing. The purpose of the hearing shall be to receive comments and information pertinent to the applicant's compliance or ability to comply with the requirements of this Ordinance. Comments and information not pertinent shall not be considered. The Planning Board shall cause notice of the hearing to be published once a week for two successive calendar weeks prior to the same. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. The Planning Board shall also cause notice of the hearing to be mailed by registered mail, return receipt requested, to the owners of all tracts adjoining the site of the proposed large wind energy system.

2.3 Issuance or Denial of Permit: No later than sixty (60) days following the public hearing, the Planning Board shall render a decision on the application and shall

notify the applicant in writing as to the same. The decision of the Planning Board shall be made in accordance with the following requirements:

- (a) If the Planning Board determines that the application fails to meet one or more of the requirements of this Ordinance, or that any one or more of the certifications in section 2.1(m) above cannot truthfully and correctly be made or reasonably complied with, the application shall be denied. Written notification of the denial from the Planning Board to the applicant shall note the reason(s) for the denial and shall refer to the specific section(s) of this Ordinance with which the application does not comply. The applicant shall have sixty (60) days from receipt of said written notification to bring the application into compliance, in which event the provisions of subdivision (c) below shall apply. If the applicant fails to do so within said period of sixty (60) days, the applicant shall be required to file a new application, or, in the alternative, the applicant may file an appeal under Article VIII below. The Planning Board shall provide written notification to the applicant as to the Planning Board's decision with regard to any attempts by the applicant to bring the application into compliance.
- (b) An application for a permit shall further be denied upon a determination by the Planning Board that said application or information submitted in connection therewith contains a material misrepresentation, either of commission or omission.
- (c) If the Planning Board determines that the application meets all of the requirements of this Ordinance, that all of the certifications in section 2.1(m) above are truthfully and correctly made and can reasonably be complied with, and that the application does not violate the provisions of subdivision (b) above, the Planning Board shall issue a permit to the applicant. The permit shall note thereon the effective date of issuance.
- (d) If the Planning Board fails within the above stated period of sixty (60) days to notify the applicant as to what action has been taken, the applicant shall be entitled to appeal to the Board of Commissioners for a decision on the application. Such appeal shall be governed by the provisions of Article VIII below.

2.4 Conditions of Permit: Each permit approved hereunder shall be issued on condition that:

- (a) The certifications contained in the application are true and correct and reasonably able to be complied with, and, if continuing in nature, shall at all times remain so;

- (b) The application, and information submitted in support of the same, contains no material misrepresentation, either of commission or omission;
- (c) The applicant is and will at all times remain in compliance with the terms and conditions of the permit and with all requirements of this Ordinance; and
- (d) The large wind energy system for which the permit is issued will not cease or discontinue operation for a period of one hundred eighty (180) or more consecutive days.
- (e) The applicant will at all times comply with any request of the County for information and verification concerning the establishment and sufficiency of the removal fund or bond as required under section 2.1(h) above.

2.5 Duration of Permit: A site permit under this Article VII shall be deemed to be effective on the date of issuance as set forth above and shall continue in effect without having to be renewed, unless and until such time as:

- (a) Said permit is revoked pursuant to the provisions of this Ordinance; or
- (b) Said permit is voluntarily surrendered by the holder thereof, in which event the same shall be deemed to have terminated on the date it is surrendered; or
- (c) The large wind energy system for which the permit was issued ceases operation, or is otherwise discontinued, for one hundred eighty (180) or more consecutive days, in which event the permit shall be deemed to have automatically terminated at the end of said one hundred eighty (180) days.

2.6 Transferability of Permit: No permit issued hereunder may be assigned or transferred by the holder to any other person, nor may a permit be transferred to any large wind energy system other than the large wind energy system for which it was issued, without the prior recommendation of the Planning Board and approval of the Board of Commissioners.

2.7 Alterations and Expansions: Any alteration, addition to, expansion, or enlargement of a large wind energy system shall require the application for and issuance of a new site permit hereunder, which permit shall be applicable to the entire large wind energy system as altered, added to, expanded, or enlarged. For purposes of this section 2.7, an alteration, addition to, expansion, or enlargement of a large wind energy system shall be deemed to require a new site permit if it is such as to require the issuance of a building permit, zoning permit, environmental health permit, watershed permit, or other permit or approval from any state or federal agency or authority.

- 2.8 Revocation of Permit: The Planning Board may, after due notice to the holder of a permit and an opportunity to be heard, revoke such permit upon a finding that:
- (a) The holder has violated any of the terms or conditions of the permit or any of the requirements of this Ordinance; or
 - (b) The application on which issuance of the permit was based contains a material misrepresentation, either of commission or omission.

ARTICLE VIII **APPEALS AND VARIANCES**

Section 1. Board of Commissioners.

The Board of Commissioners, as established by N.C.G.S. § 153A-25 et seq. shall hear all appeals, requests for variances, and all challenges to a decision or interpretation under this Ordinance by the Planning Board.

Section 2. Powers of Board of Commissioners.

The Board of Commissioners shall have the following powers:

- 2.1 Appeals: To hear, decide and review appeals from any order, requirement, decision, or determination made by the Planning Board in the performance of its duties hereunder, including appeals from the Planning Board's failure to notify an applicant as to the Planning Board's decision on an application within sixty (60) days under section 2.3(d) of Article VII above; and
- 2.2 Variances: To hear and decide applications for variances from the requirements of this Ordinance in accordance with Section 5 below. Nothing in this section 2.2 shall be construed to broaden the power of the Board of Commissioners to permit a use by variance beyond that power given in Section 5 below.

Section 3. Administration.

- 3.1 Rules of Procedure: The Board of Commissioners shall adopt rules of procedures and regulations for the conduct of its affairs.
- 3.2 Meetings: All meetings of the Board of Commissioners shall be open to the public. The Board of Commissioners shall keep a record of its meetings, including of the vote of each member on every question, a fair and accurate summary of the evidence submitted to it, the documents (or accurate copies thereof) submitted to it and of all official actions. The Board of Commissioners shall give due notice of matters coming before it.

- 3.3 Burden of Proof: In presenting an appeal, the petitioner shall bear the burden of proof, which shall be by the greater weigh of the evidence.
- 3.4 Evidence to be Sworn: All evidence presented to the Board of Commissioners shall be sworn.
- 3.5 Oaths: The person acting as Chairman of the Board of Commissioners is authorized to administer oaths to any witnesses in any matter coming before the Board of Commissioners.
- 3.6 Filing: Application for variances, requests for interpretations and appeals for review of decisions of the Planning Board shall be filed with the Clerk for the Board of Commissioners, on forms provided by the Clerk.
- 3.7 Notification of Disposition: It shall be the responsibility of the Planning Board to notify the applicant or appelland by certified mail as to the disposition which the Board of Commissioners makes of any matter before it.
- 3.8 Issuance of Permit: It shall be the responsibility of the Planning Board to issue a permit in accordance with the action of the Boardof Commissioners on an appeal or application, if a permit is authorized by the such action.

Section 4. Quorum and Vote Required:

- 4.1 Quorum: A quorum of the Board of Commissioners, necessary to conduct any business hereunder, shall consist of four-fifths (4/5) of the total membership of the Board of Commissioners (at least four of five members must be present to conduct any business).
- 4.2 Voting on Other Than Variances: The concurring vote of a simple majority of the total membership of the Board of Commissioners shall be necessary in order to:
- (a) Reverse any order, requirement, decision or determination of the Planning Board; or
 - (b) Decide in favor of the applicant any matter upon which it is required to pass by this Ordinance, other than a variance.
- 4.3 Voting on Variances: The concurring vote of four-fifths (4/5) of the total membership of the Board of Commissioners shall be necessary in order to approve an application for a variance.

Section 5. Application of the Variance Power.

A variance shall only be allowed by the Board of Commissioners upon findings as set forth in this Section 5. Any authorizing of a variance shall not destroy the intent of the Ordinance. Any authorized variance shall be recorded in the minutes of the Board of Commissioners. A hardship, as used in the context of this Section 5, shall be considered to be some unique or unusual character of the proposed site, including but not limited to unique size, shape, contour, or space requirement. An economic hardship to the applicant is not to be considered for a variance.

The Board may grant a variance upon finding that the following conditions exist:

- (a) Extraordinary and exceptional conditions exist pertaining to the particular place or property in question because of its size, shape, or topography, such that compliance with the Ordinance would cause an unnecessary and unreasonable hardship to the applicant.
- (b) The variance will not confer upon the applicant any special privileges that are, or would be, denied to other similarly situated individuals.
- (c) This Ordinance would deprive the applicant of rights commonly enjoyed by other similarly situated individuals.
- (d) The variance would not seriously deter from the purpose and intent of this Ordinance and will not be injurious to the neighborhood or to the general welfare.
- (e) The special circumstances causing the need for variance(s) are not the fault of the applicant.

The Board of Commissioners may impose reasonable conditions upon the granting of any variance in order to protect the public interest or neighboring property owners. Violation of any such conditions shall be a violation of this Ordinance and subject to the penalties set forth in Article IX of this Ordinance.

Section 6. Application of Interpretation Power.

An appeal from an order, requirement, or decision of the Planning Board shall be decided by the Board of Commissioners duly supported by competent evidence. In exercising this power, the Board of Commissioners shall act in a prudent manner so that the purposes and intent of the Ordinance shall be served. No decision shall have the effect of varying the terms of the Ordinance or permitting as a matter of right any use otherwise limited or prohibited hereunder.

Section 7. Appeal Stays Further Proceedings.

An appeal to the Board of Commissioners from a decision or determination of the Planning Board stays all proceedings in furtherance of the decision or determination appealed from, except as provided in Section 8, during the pendency of the appeal.

Section 8. Exceptions to Stay of Action.

An appeal to the Board of Commissioners of a decision or determination of the Planning Board shall not stay proceedings in furtherance of the decision or determination appealed from, if the Planning Board certifies either:

- (a) That a stay would cause imminent peril to life or property; or
- (b) That the situation subject to the appeal is transitory in nature and therefore, an appeal would seriously interfere with enforcement of this Ordinance.

In each instance, the Planning Board shall set forth in the certificate facts to support its conclusion.

Section 9. Appeals of Board Actions.

Every decision of the Board of Commissioners shall be subject to review at the instance of any aggrieved party in the Superior Court by proceedings in the nature of a petition for writ of certiorari. Such proceedings in the Superior Court shall be initiated within thirty (30) days of the filing of the decision in the office of the Planning Board or the delivery of the notice required under Section 3 above, whichever is later. Appeals not received within said thirty (30) day period are not timely. The Superior Court is authorized to stay enforcement of this Ordinance during the pendency of an appeal from the decision of the Board of Commissioners upon a hearing and the posting of a bond sufficient to the Court which will adequately protect the interests of the County.

ARTICLE IX
ENFORCEMENT AND PENALTIES

Section 1. Administration and Enforcement.

The Planning Board shall be responsible for the administration and enforcement of this Ordinance. If the Planning Board shall determine that any of the provisions of this Ordinance are being violated, it shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering that the action necessary to correct the violation be under taken within ten (10) working days and be completed within such reasonable time as the Planning Board shall establish. The Planning Board may order the discontinuance of illegal use of land, buildings, or structures; the removal

of illegal buildings or structures or of addition, alterations, or structural changes thereto; the discontinuance of any illegal work being done; and may take any other action authorized by this Ordinance to insure compliance with, or to prevent violation of, its provisions.

Section 2. Penalties and Enforcement.

- 2.1 Violations; Criminal Penalties: Any person who violates any provision of this Ordinance, or who shall violate or fail to comply with any order made hereunder, or who shall continue to work upon any structure after having received written notice from the Planning Board to cease work, shall, upon conviction, be guilty of a Class 3 misdemeanor as provided by G.S. §14-4. Each day such violation shall be permitted to exist shall constitute a separate offense. Notice of violation shall be sufficient if directed to the owner, the agent of the owner, or the contractor and left at his known place of residence or place of business.
- 2.2 Violations; Civil Penalties: In lieu of or in addition to the criminal penalties outlined above, each person violating this Ordinance shall be subject to a civil penalty, under G.S. §153A-123(c), in the amount of \$1,000.00 per day. No penalty shall be assessed prior to notice to the violator. For every day a violator is in violation of this Ordinance, it shall be considered a separate offense. If the violator does not pay such penalty within thirty (30) days of notification of its assessment by written citation, it and any subsequently accruing penalty may be recovered by the County in a civil action in the nature of a debt. Any contest of said penalty shall be by appropriate action taken in the General Court of Justice for Ashe County.
- 2.3 Equitable Enforcement; Order of Abatement: This Ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction, or by an order of abatement, as provided under G.S. §153A-123(d) and (e).
- 2.4 Cumulative Remedies: The remedies and penalties for violation of this Ordinance shall be cumulative, and the election of a remedy or enforcement of a penalty by the County hereunder shall not preclude the election of any other remedy or enforcement of any other penalty by the County which may be provided under this Ordinance or by law.

Section 3. Interference.

It shall be unlawful for any person to interfere with, hinder, or harass the employees, agents, or authorized representatives of the County in the performance of their duties under this Ordinance.

Section 4. Conflict with Other Laws.

Wherever the provisions or application of this Ordinance impose higher standards than are required in any other local ordinance or regulation, the provisions or application of this Ordinance shall govern. Wherever the provisions of any other statute or local ordinance or regulation impose higher standards than are required by the provisions or application this Ordinance, the provisions of such other statute or local ordinance or regulation shall govern.

Section 5. Severability.

Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Ordinance as a whole, or any part hereof other than the part so declared to be unconstitutional or invalid.

Section 6. Ordinance Amendments.

This Ordinance may be amended by the Board of Commissioners following a public hearing on the proposed changes. The Board of Commissioners shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

Section 7. Repeal of Prior Ordinance.

The provisions of the Ashe County Ordinance to Regulate Wind Energy Systems, as enacted by the Ashe County Board of Commissioners on _____, 2007, are repealed as of the effective date of this Ordinance.

Section 8. Effective Date.

This Ordinance shall become effective upon adoption.

**ON MOTION OF COMMISSIONER _____, SECONDED BY
COMMISSIONER _____, THE FOREGOING
ORDINANCE WAS READ, APPROVED, AND ADOPTED BY THE BOARD OF
COMMISSIONERS OF ASHE COUNTY, IN REGULAR SESSION ASSEMBLED
ON THE _____ DAY OF _____, 2007, BY A VOTE OF ____ IN FAVOR
AND _____ OPPOSED.**

ASHE COUNTY BOARD OF COMMISSIONERS

By: _____
Richard Blackburn, Chairman
Ashe County Board of Commissioners

ATTEST:

Clerk

APPENDIX “A”

NORTH CAROLINA

**EASEMENT AND WAIVER UNDER
ASHE COUNTY WIND ENERGY
SYSTEM ORDINANCE**

ASHE COUNTY

THIS EASEMENT AND WAIVER UNDER ASHE COUNTY WIND ENERGY SYSTEM ORDINANCE (hereinafter “Easement”) is made and entered into this _____ day of _____, 20__, pursuant to the provisions of Article VI, Section 2.3 of the Ashe County Wind Energy System Ordinance, as the same may be amended from time to time, by and between the following parties:

Adjoining Property:
(referred to in this Easement as the “Adjoining Property”)

Name(s)
of Owner(s) _____

Mailing
Address _____

Property
Address [if different] _____

Ashe County PIN No. _____ Deed Book _____, Page _____, ACR.

Name(s)
of Lessee(s) [if applicable] _____

Mailing
Address _____

Starting Date of Lease _____

Expiration Date of Lease _____

Lease Recorded in Book _____, Page _____, ACR [if applicable]

Large Wind Energy System:
(referred to in this Easement as the "Large Wind Energy System")

Name _____

Owner
(if different) _____

Address _____

Site
of Operations _____

Ashe County PIN No. _____ Deed Book _____, Page _____, ACR.

**Owner(s) of Property on which Large Wind Energy System
is Located (if different from above):**
(referred to in this Easement as the "Property Owners")

Name(s)
and Address(es) _____

W I T N E S S E T H :

THAT WHEREAS, Article VI, Section 2.2 of the Ashe County Wind Energy System Ordinance (hereinafter "Ordinance") as enacted by the Ashe County Board of Commissioners under date of _____, 2007, as the same may be amended from time to time, establishes certain spacing requirements between an adjoining property (as specified in the Ordinance) and a large wind energy system (as defined in the Ordinance); and

WHEREAS, Article VI, Section 2.3 of the Ordinance authorizes the owners of an adjoining property (as specified in the Ordinance) to waive the spacing requirements between such adjoining property and a large wind energy system (as defined in the Ordinance), said waiver to be in the form of an easement executed by the owners of the adjoining property, the

lessees (if applicable) of the adjoining property, the owner of said large wind energy system, and, if different, the owner(s) of the property on which the large wind energy system is situated; and

WHEREAS, the provisions of said easement are to be as prescribed in the Ordinance; and

WHEREAS, this Easement, being in form the same as that prescribed by the provisions of the Ordinance and attached to the Ordinance as Appendix "A" thereto, is executed by the above named parties for the purpose of complying with said provisions; and

WHEREAS, the above named parties desire by this Easement to evidence their agreement that the spacing requirements under the Ordinance as between the Adjoining Property and the Large Wind Energy System be waived and modified as hereinafter set forth;

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration in hand received by the Adjoining Property, the sufficiency of which is hereby acknowledged, and in further consideration of the mutual promises and covenants hereinafter set forth, the parties do hereby agree as follows:

1. Recitals. The foregoing recitals shall constitute an integral part of this Easement and shall be incorporated herein and made a part hereof.

2. Waiver and Grant of Easement. Adjoining Property waives the spacing requirements of the Ordinance as set forth under Article VI, Section 2.2 thereof, as the same may be amended from time to time, and agrees that Large Wind Energy System may be located within, but no closer than, _____ (_____) feet from Adjoining Property. For purposes of establishing and enforcing the foregoing, measurement shall be made as prescribed under Article VI, Section 2.2 of the Ordinance. In order to effectuate said waiver, Adjoining Property doe hereby grant, bargain, sell and convey unto Large Wind Energy System and Property Owners, their heirs, successors and assigns, a perpetual, non-exclusive, and irrevocable right and easement to locate said Large Wind Energy System within, but no closer than, that distance from Adjoining Property as set forth in this paragraph 2 and measured in accordance with the terms of the Ordinance, said right and easement to be appurtenant to and run with the land now owned by Large Wind Energy System and Property Owners; provided, however, that said right and easement, and the waiver granted hereunder, shall be subject to termination as set forth in paragraph 3 below.

3. Termination. The right and easement granted hereunder, and waiver effectuated thereby, shall terminate at such time as Large Wind Energy System ceases to have a valid permit under the provisions of Article VII of the Ordinance, as the same may be amended from time to time, for the permitted premises which are the subject of this Easement as set forth hereinabove.

4. Binding Effect. This Easement and all of the terms and provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, successors and assigns.

TO HAVE AND TO HOLD the aforesaid right and easement herein conveyed to Large Wind Energy System and Property Owners, their heirs, successors and assigns forever, subject only to the termination provisions of paragraph 3 above.

IN WITNESS WHEREOF, all the parties hereto have hereunto set their hands and seals, the date and year first above written.

ADJOINING PROPERTY

OWNERS:

[required signatures]

LESSEES (if applicable):

[required signatures]

LARGE WIND ENERGY SYSTEM

[required signatures]

PROPERTY OWNERS

[required signatures]

[NOTARIES]

THE UNDERSIGNED, County Attorney for Ashe County, North Carolina, does hereby certify pursuant to Article VI, Section 2.3 of the Ordinance, as the same may be amended from time to time, that the form and execution of this Easement comply with the requirements of said Ordinance.

County Attorney

NORTH CAROLINA

ASHE COUNTY

I, _____, a Notary Public of Ashe County, North Carolina, certify that _____ personally came before me this day and acknowledged the execution of the foregoing instrument in his capacity as County Attorney for Ashe County, North Carolina. Witness my hand and official stamp or seal, this the _____ day of _____, 20_____.

Notary Public

My commission expires: _____
