

TOWN OF EDDINGTON
WIRELESS TELECOMMUNICATIONS
FACILITIES ORDINANCE

PREPARED BY
EDDINGTON PLANNING BOARD

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WIRELESS TELECOMMUNICATIONS FACILITIES ORDINANCE

Section 1. Title

This Ordinance shall be known and cited as the "Wireless Telecommunications Facilities Siting Ordinance" of Eddington, Maine, (hereinafter referred to as the "ordinance").

Section 2. Authority

This ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution; the provisions of Title 30-A M.R.S.A. Section 3001 (Home Rule), and the provisions of the Planning and Land Use Regulation Act, Title 30-A M.R.S.A. Section 4312 *et seq.*

Section 3. Purpose

The purpose of this ordinance is to provide a process and a set of standards for the construction of wireless telecommunications facilities in order to:

- a.) Implement a municipal policy concerning the provision of wireless telecommunications services, and the siting of their facilities;
- b.) Establish clear guidelines, standards and time frames for the exercise of municipal authority to regulate wireless telecommunications facilities;
- c.) Allow competition in telecommunications service;
- d.) Encourage the provision of advanced telecommunications services to the largest number of businesses, institutions and residents of Eddington;
- e.) Permit and manage reasonable access to the public rights of way of Eddington for telecommunications purposes on a competitively neutral basis;
- f.) Ensure that all telecommunications carriers providing facilities or services within Eddington comply with the ordinances of Eddington;
- g.) Ensure that Eddington can continue to fairly and responsibly protect the public health, safety and welfare;
- h.) Encourage the co-location of wireless telecommunications facilities, thus helping to minimize adverse visual impacts on the community;
- i.) Enable Eddington to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development;
- j.) Further the goals and policies of the comprehensive plan, while promoting orderly development of the town with minimal impacts on existing uses

Protect the scenic and visual character of the community.

Section 4. Applicability

This local land use ordinance applies to all construction and expansion of wireless telecommunications facilities, except as provided in section 4.1.

4.1. Exemptions

The following are exempt from the provisions of this ordinance:

- A.) Emergency Wireless Telecommunications Facility.** Temporary wireless communication facilities for emergency communications by public officials.
- B.) Amateur (ham) radio stations.** Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).
- C.) Parabolic antenna.** Parabolic Antennas less than four (4) feet in diameter, that are an accessory use of the property.
- D.) Maintenance or repair.** Maintenance, repair or reconstruction of a wireless telecommunications facility and related equipment provided that there is no change in the height or any other dimension of the facility.
- E.) Temporary wireless telecommunications facility.** Temporary wireless telecommunications facility, in operation for a maximum period of one hundred eighty (180) days.
- F.) Antennas as Accessory Uses.** An antenna that is an accessory use to a residential dwelling unit.

Section 5. Review and Approval Authority

5.1. Approval Required

No person shall construct, alter or expand a wireless telecommunication facility without approval of the Planning Board as follows:

- A.) Expansion of an Existing Facility and Colocation.** Approval by the Planning Board is required for any expansion of an existing wireless telecommunications facility; accessory use of an existing wireless telecommunications facility; or colocation on an existing wireless telecommunications facility.
- B.) New Construction.** Approval of the Planning Board is required for construction of a new wireless telecommunications facility.

5.2 Approval Authority

In accordance with Section 5.1 above, the Planning Board shall review applications for wireless telecommunications facilities, and make written findings on whether the proposed facility complies with this Ordinance.

Section 6. Approval Process

6.1. Pre-Application Conference

All persons seeking approval of the Planning Board under this ordinance shall meet with the CEO no less than thirty (30) days before filing an application. At this meeting, the CEO shall explain to the applicant the ordinance provisions, as well as application forms and submissions that will be required under this ordinance.

6.2. Application

All persons seeking approval of the Planning Board under this ordinance shall submit an application as provided below. The CEO shall be responsible for ensuring that notice of the application has been published in a newspaper of general circulation in the community.

A.) Application for Planning Board Approval. An application for approval by the Planning Board must be submitted to the Code Enforcement Officer. The application must include the following information:

- 1.) Documentation of the applicant's right, title, or interest in the property on which the facility is to be sited, including name and address of the property owner and the applicant.
- 2.) A copy of the FCC license for the facility, or a signed statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations.
- 3.) A USGS 7.5 minute topographic map showing the location of all structures and wireless telecommunications facilities above 150 feet in height above ground level, except antennas located on roof tops, within a five (5) mile radius of the proposed facility, unless this information has been previously made available to the municipality. This requirement may be met by submitting current information (within thirty days of the date the application is filed) from the FCC Tower Registration Database.
- 4.) A site plan:
 - a.) prepared and certified by a professional engineer registered in Maine indicating the location, type, and height of the proposed facility, antenna capacity, on-site and abutting off-site land uses, means of access, setbacks from property lines, and all applicable American National Standards Institute (ANSI) technical and structural codes;
 - b.) certification by the applicant that the proposed facility complies with all FCC standards for radio emissions is required; and
 - c.) a boundary survey for the project performed by a land surveyor licensed by the State of Maine.

5.) A scenic assessment, consisting of the following:

a.) Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level;

b.) A landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees, and other significant site features; the type and location of plants proposed to screen the facility; the method of fencing, the color of the structure, and the proposed lighting method.

c.) A visual analysis which may include photo montage, field mock-up, or other techniques shall be prepared by or on behalf of the applicant which identifies the potential visual impacts, at design capacity, of the proposed facility to the satisfaction of the Planning Board. Consideration shall be given to views from public areas as well as from private residences. The analysis shall assess the cumulative impacts of the proposed facility and other existing and foreseeable telecommunication facilities in the area, and shall identify and include all feasible mitigation measures consistent with the technological requirements of the proposed telecommunication service. All costs for the visual analysis, and applicable administrative costs, shall be borne by the applicant.

d.) A narrative discussing:

i.) the extent to which the proposed facility would be visible from or within a designated scenic resource,

ii.) the tree line elevation of vegetation within 100 feet of the facility, and

iii.) the distance to the proposed facility from the designated scenic resource's noted viewpoints.

6.) A written description of how the proposed facility fits into the applicant's telecommunications network. This submission requirement does not require disclosure of confidential business information.

7.) Evidence demonstrating that no existing building, site, or structure can accommodate the applicant's proposed facility, the evidence for which may consist of any one or more of the following:

a.) Evidence that no existing facilities are located within the targeted market coverage area as required to meet the applicant's engineering requirements,

b.) Evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicant's engineering requirements,

c.) Evidence that existing facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment. Specifically:

i.) Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.

ii.) The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment on the existing facility would cause interference with the applicant's proposed antenna.

iii.) Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.

d.) For facilities existing prior to the effective date of this ordinance, the fees, costs, or contractual provisions required by the owner in order to share or adapt an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable. This evidence shall also be satisfactory for a tower built after the passage of this ordinance;

e.) Evidence that the applicant has made diligent good faith efforts to negotiate colocation on an existing facility, building, or structure, and has been denied access;

8.) Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).

9.) A signed statement stating that the owner of the wireless telecommunications facility and his or her successors and assigns agree to:

a.) respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;

b.) negotiate in good faith for shared use of the wireless telecommunications facility by third parties;

c.) allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for colocation;

d.) require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction,

financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the useful life span of the facility.

10.) A form of surety approved by the Planning Board to pay for the costs of removing the facility if it is abandoned.

a.) The amount of the surety will be determined by specifics of each site installation. The amount shall be determined by a registered Professional Engineer with certified experience in the field of tower construction and deconstruction and as approved by the Selectmen.

b.) The surety shall be payable to the Town of Eddington and shall be in an amount sufficient to cover the full cost of removal as established in section (10.a) above.

11.) Evidence that a notice of the application has been published in a local newspaper of general circulation in the community.

6.3. Submission Waiver

The Planning Board may waive any of the submission requirements based upon a written request of the applicant submitted at the time of application. A waiver of any submission requirement may be granted only if the Planning Board finds in writing that due to special circumstances of the application, the information is not required to determine compliance with the standards of this Ordinance.

6.4. Fees

A. Planning Board Application Fee

An application for Planning Board approval shall include payment of an application fee of as specified in the current Town of Eddington fee schedule. The application shall not be considered complete until this fee is paid. An applicant is entitled to a refund of the application portion of fee if the application is withdrawn within fifteen (15) days of date of filing, less all expenses incurred by the Town of Eddington to review the application.

B. Planning Board Review Fee

An applicant for approval by the Planning Board shall pay all reasonable and customary legal, engineering and other professional consultant fees incurred by the municipality that are necessary to review the application. The review fee shall be paid in full prior to the start of construction. Please consult fee schedule for amount.

That portion of the review fee not used shall be returned to the applicant within fourteen (14) days of the Planning Board's decision.

6.5. Notice of Complete Application

Upon receipt of an application, the CEO shall provide the applicant with a dated receipt. Within five (5) working days of receipt of an application the CEO shall review the application and determine if the application meets the submission requirements. The Planning Board shall review any requests for a waiver from the submission requirements and shall act on these requests prior to determining the completeness of the application.

If the application is complete, the CEO shall notify the applicant in writing of this determination and require the applicant to provide a sufficient number of copies of the application to the Planning Board.

If the application is deemed to be complete the CEO shall notify all abutters to the site as shown on the Assessor's records, by first-class mail, that an application has been accepted. This notice shall contain a brief description of the proposed activity and the name of the applicant, give the location of a copy of the application available for inspection, and provide the date, time, and place of the Planning Board meeting at which the application will be considered. Failure on the part of any abutter to receive such notice shall not be grounds for delay of any consideration of the application nor denial of the project.

If the application is incomplete, the CEO shall notify the applicant in writing, specifying the additional materials or information required to complete the application.

6.6. Public Hearing

For applications for Planning Board approval under Section 5.1(B), a public hearing shall be held within 30 days of the notice of the complete application.

6.7. Approval

A.) Planning Board Approval. Within ninety (90) days of receiving a complete application for approval under section 5.1(B), the Planning Board shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. However, if the Planning Board has a waiting list of applications that would prevent the Planning Board from making a decision within the required ninety (90) day time period, then a decision on the application shall be issued within sixty (60) days of the public hearing, if necessary, or within 60 days of the completed Planning Board review. This time period may be extended upon agreement between the applicant and the Planning Board.

Section 7. Standards of Review

To obtain approval from the Planning Board, an application must comply with the standards in this section.

7.1. Planning Board Approval Standards

An application for approval by the Planning Board under Section 5.1(A) (Expansion) and Section 5.1(B) (New) must meet the following standards.

A.) Priority of Locations. New wireless telecommunications facilities must be located according to the priorities below. The applicant shall demonstrate that a facility of a higher priority cannot reasonably accommodate the applicant's proposed facility.

- 1.) Co-location on an existing wireless telecommunications facility or other existing structure in the following districts, as identified in the Town of Eddington Zoning Ordinance:
- 2.) New wireless telecommunications facilities may be permitted only in Agricultural/Farming Zone.
- 3.) No tower may be located within 1000' from any state, town or subdivision road.

B.) Siting on Municipal Property. If an applicant proposes to locate a new wireless telecommunications facility, or expand an existing facility on municipal property, the applicant must show the following:

- 1.) The proposed location complies with applicable municipal policies and ordinances.
- 2.) The proposed facility will not interfere with the intended purpose of the property.
- 3.) The applicant has adequate liability insurance and a lease agreement with the municipality that includes reasonable compensation for the use of the property and other provisions to safeguard the public rights and interests in the property.

C.) Co-located and Multiple User Facilities.

1.) An analysis shall be prepared by or on behalf of the applicant, subject to the approval of the decision making body, which identifies all reasonable, technically feasible, alternative locations and or facilities which would provide the proposed telecommunication service. The intention of the alternatives analysis is to present alternative strategies, which would minimize the number, size, and adverse environmental impacts of facilities necessary to provide the needed services to the Town of Eddington and surrounding rural and urban

areas. The analysis shall address the potential for co-location at an existing or a new site and the potential to locate facilities as close as possible to the intended service area. It shall also explain the rationale for selection of the proposed site in view of the relative merits of the feasible alternatives. Approval of the project is subject to the decision making body making a finding that the proposed site results in fewer or less severe environmental impacts than any feasible alternative site. The Town of Eddington may require independent verification of this analysis at the applicant's expense. Facilities which are not proposed to be colocated with any other telecommunication facility shall provide a written explanation why the subject facility is not a candidate for colocation.

2.) All colocated and multiple user telecommunication facilities shall be designed to promote facility and site sharing. To this end telecommunication towers and necessary appurtenances, including but not limited to, parking areas, access roads, utilities, and equipment buildings shall be shared by site users. This will minimize overall visual impact to the community.

3.) The facility shall make available un-utilized space for co-location of other telecommunication facilities, including space for those entities providing similar, competing services. A good faith effort in achieving co-location shall be required of the host entity. Requests for utilization of facility space and responses to such requests shall be made in a timely manner and in writing and copies shall be provided to the Town of Eddington for its permit files. Unresolved disputes may be mediated by the CEO or Planning Board, as appropriate. Colocation is not required in cases where the addition of the new service or facilities would cause quality of service impairment to the existing facility or if it became necessary for the host to go off line for a significant period of time.

4.) Approval for the establishment of facilities improved with an existing microwave band or other public service use or facility, which creates interference or interference, is anticipated as a result of said establishment of additional facilities, and shall include provisions for the relocation of said existing public use facilities. All costs associated with said relocation shall be borne by the applicant for the additional facilities.

D.) Location

All telecommunication facilities shall be located so as to minimize their visibility and the number of distinct facilities present. To this end all of the following measures shall be implemented for all telecommunication facilities, except exempt facilities as defined in this Land Use Code.

No telecommunication facility shall be installed within the safety zone of the Bangor International Airport or the Brewer Airport unless the airport owner or operator indicates that it will not adversely affect the operation of the airport.

No telecommunication facility shall be installed at a location where special painting or lighting will be required by the FAA regulations unless technical evidence

acceptable to the Planning Board is submitted showing that this is the only technically feasible location for this facility.

No telecommunication facility shall be installed on an exposed ridge line, in or at a location readily visible from highways or roadways, a public trail, public park or other outdoor recreation area, or in property designated as a park or open space on any Site or Subdivision Plan as approved by the Planning Board, unless the facility blends with the surrounding existing natural and man-made environment in such a manner as to be effectively unnoticeable.

No telecommunication facility that is readily visible from off-site shall be installed closer than one-half mile from another readily visible un-camouflaged or unscreened telecommunication facility unless it is a co-located facility, situated on a multiple user site or blends in with the surrounding existing natural and man-made environment in such a manner as to be effectively unnoticeable.

E.) Height.

A new wireless telecommunications facility must be no more than 195 feet in height.

The height of a telecommunication tower shall be measured from the natural undisturbed ground surface below the center of the base of said tower to the top of the tower itself or, if higher, to the tip of the highest antenna or piece of equipment attached thereto.

In the case of building mounted towers the height calculation of the tower includes the height of the portion of the building on which it is mounted.

In the case of crank up or other similar towers whose height can be adjusted, the calculated height of the tower shall be the maximum height to which it is capable of being raised.

F.) Setbacks. A new or expanded wireless telecommunications facility must comply with the set back requirements for the zoning district in which it is located, or be set back one hundred fifty percent (150%) of its height from all property lines whichever is greater, including any attached transmitting or receiving devices. Guy wire anchors shall meet the minimum setback of the zoning districts.

All set backs shall be measured from the base of the tower or structure closest to the applicable property line or structure.

Tower setback requirements may be waived under any of the following circumstances:

- 1.) The facility is proposed to be co-located onto an existing, legally established telecommunication tower
- 2.) Overall, the reduced setback enables further mitigation of adverse visual and other environmental impacts that would otherwise be possible.

G. Basic Design.

All telecommunications facilities shall be designed to blend into the surrounding environment the greatest extent feasible. To this end the following measures shall be implemented:

- 1.) Telecommunication towers shall be designed and constructed as set forth by this Land Use Code and other ordinances and codes of the Town Of Eddington.
- 2.) Telecommunications towers taller than thirty five (35') shall be monopoles or guyed/lattice towers except where satisfactory evidence is submitted to the Planning Board or Code Enforcement Officer, as appropriate, that a self-supporting tower is required to provide the height and/or capacity necessary for the proposed telecommunication use to minimize the need for screening from adjacent properties.
- 3.) Satellite dishes other than microwave dishes shall be of mesh construction, except where technical evidence is acceptable to the Code Enforcement Officer or Planning Board, as appropriate, is submitted showing that this is infeasible.
- 4.) Telecommunication support facilities (i.e. vaults, equipment rooms, utilities, and equipment enclosures) shall be constructed out of non-reflective materials(visible exterior surfaces only) and shall be placed in under ground vaults to all extent possible.
- 5.) Telecommunication support facilities shall be no taller that one story (fifteen feet) in height and shall be treated to look like a building or facility typical found in the area.
- 6.) Telecommunication support facilities in areas of high visibility shall, where possible , be sited below the ridge line or designed (i.e. placed under ground, depressed, or located behind earth berms) to minimize their profile.
- 7.) All buildings, poles, towers, antenna supports, antennas, and other components of each telecommunications site shall be initially painted and thereafter repainted as necessary with a flat paint. The color selected shall be one that will minimize their visibility to the greatest extent possible. To this end improvements which will be primarily viewed against soils trees or grasslands shall be painted colors matching these landscapes while elements which rise above the horizon shall be pained a blue gray that matches the typical color at that location.
- 8.) The project description and permit shall include a specific maximum allowable gross cross-sectional area, or silhouette of the facility. The silhouette shall be measured from the worse case elevation perspective.

9.) The Town of Eddington shall have the authority to require special design of the telecommunication facilities when findings of particular sensitivity are made (e.g. proximity to historic or aesthetically significant structures, views and/or community features).

H.) Landscaping. A new wireless telecommunications facility and related equipment must be screened with plants from view by abutting properties, to the maximum extent practicable. Existing plants and natural land forms on the site shall also be preserved to the maximum extent practicable. To this end all of the following measures shall be implemented for all telecommunications facilities. Except exempt facilities as defined in this Land Use Code.

A landscape plan shall be submitted with project application. This plan will indicate all existing vegetation; identify landscaping that is to be retained on the site, any additional vegetation that is needed to satisfactorily screen the facility from adjacent land uses and public view areas. The landscape plan shall be subject to review and approval during the site plan review process. All trees larger than four inches (4") in diameter shall be identified in the landscape plan with indication of species type, diameter at four and on half (4 1/2') high, and whether each is to be retained or removed with project development.

Existing trees and other screening vegetation in the facility and along the access road and power/telecommunications line routes involved shall be protected from damage, both during the construction period and thereafter. To this end, The following measures shall be implemented:

- 1.) A Tree Protection Plan shall be submitted with building permit or improvement plan. This Plan shall be prepared by a certified arborist and give specific measures to protect trees during project construction.
- 2.) Grading, cutting/filling, and the storage /parking of equipment /vehicles shall be prohibited in landscaped areas to be protected and the drip kind of any trees required to be preserved. Such areas shall be fenced to the satisfaction of the Code Enforcement Officer or Planning Board, as appropriate. Trash, debris, spoils shall not placed within these fences nor shall the fences henceforth be opened or moved until the project is complete and written approval to take the fences down has been received fro the Code Enforcement Officer.
- 3.) All underground lines shall be routed such that a minimum amount of damage is done to tree root systems.
- 4.) All areas disturbed during project construction other than the access road and parking areas shall be replanted with vegetation compatible with the vegetation in the surrounding area.

Any existing trees or significant vegetation, on the facilities site or along the

affected access area that die shall be replaced with native trees and vegetation of a size and species.

No action shall be taken subsequent to the project completion with respect to the vegetation present that would increase the visibility of the facility itself or of the access road and power/telecommunication lines serving it.

I.) Fencing and Access. A new wireless telecommunications facility must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.

All telecommunications facilities shall be located and equipped with step bolts and ladders to be readily accessible for inspection purposes.

Guy wires and other accessories shall not cross or encroach upon any street or public space, be located over electric power lines, or encroach upon any other privately owned property without the written consent of the owner of record.

J.) Lighting.

All telecommunications facilities shall be unlit except for the following:

- 1.) Security lighting may be used as long as it is shielded to be down-directional to retain light within the boundaries of the site. (to the maximum extent practicable).
- 2.) The minimum tower lighting required under FAA regulation. Where tower lighting is required it shall be shielded or directed to the greatest extent possible in such a manner to minimize the amount of light that falls onto nearby properties, particularly residences.

K.) Color and Materials. A new wireless telecommunications facility must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable. Unless otherwise required, muted colors, earth tones, and subdued hues shall be used.

L.) Structural Standards. A new wireless telecommunications facility must comply with the current Electronic Industries Association/ Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures."

Said design shall be certified by a structural engineer experienced in the construction of towers and licensed by the State of Maine. The cost of certification shall be borne by the applicant.

M.) Visual Impact. The proposed wireless telecommunications facility will have no unreasonable adverse impact upon designated scenic resources within the Town, as identified either in the municipally adopted comprehensive plan, or by a State or federal agency.

Facility structures and equipment shall be located, designed, and screened to blend with the existing natural or built surroundings so as to reduce visual impacts to the extent feasible considering the technological requirements of the proposed telecommunication service and the need to be compatible with the neighboring residences and the character of the community.

Following assembly and installation of the facility all waste and debris shall be removed and disposed of in a lawful manner.

1.) In determining the potential unreasonable adverse impact of the proposed facility upon the designated scenic resources, the Planning Board shall consider the following factors:

a.) The extent to which the proposed wireless telecommunications facility is visible above tree line, from the viewpoint(s) of the impacted designated scenic resource;

b.) the type, number, height, and proximity of existing structures and features, and background features within the same line of sight as the proposed facility;

c.) the extent to which the proposed wireless telecommunications facility would be visible from the viewpoint(s);

d.) the amount of vegetative screening;

e.) the distance of the proposed facility from the viewpoint and the facility's location within the designated scenic resource; and

f.) the presence of reasonable alternatives that allow the facility to function consistently with its purpose.

N.) Noise. During construction, repair, or replacement, operation of a back-up power generator at any time during a power failure, and testing of a back-up generator between 8 a.m. and 9 p.m. is exempt from existing municipal noise standards.

O.) Historic & Archaeological Properties. The proposed facility, to the greatest degree practicable, will have no unreasonable adverse impact upon a historic district, site or structure which is currently listed on or eligible for listing on the National Register of Historic Places.

P.) Environment Resource Protection.

All telecommunication facilities shall be sited so as to minimize the effect on environmental resources. To that end the following measures shall be implemented for all telecommunication facilities.

1.) No telecommunications facility or related improvements including but not

limited to access roads and power lines shall be sited so as to create a significant threat to the health or survival of rare, threatened, or endangered plant or animal species.

2.) No telecommunications facility or related improvements shall be sited such that their construction will damage an archeological site, or have an adverse effect on the historic character of a historic feature or site.

3.) No telecommunications facility shall be sited such that its presence threatens the health or safety of migratory birds.

4.) The facility shall comply with all applicable Floodplain, Floodway, and Storm drainage and Erosion Control Regulations of Town of Eddington, State of Maine, and U.S. Government.

5.) Potential adverse impacts on nearby public use areas such as parks or trails shall be minimized

6.) Drainage, erosion, and sediment controls shall be required as necessary to avoid soil erosion and sedimentation of waterways and wetlands during and after construction. Structures and roads on slopes of 10% or greater shall be avoided. Erosion control measures shall be incorporated for any proposed facility that involves grading near a waterway or on lands with a slope of 10%.

7. 2 Standard Conditions of Approval

The following standard conditions of approval shall be a part of any approval or conditional approval issued by the Planning Board. Where necessary to ensure that an approved project meets the criteria of this ordinance, the Planning Board can impose additional conditions of approval. Reference to the conditions of approval shall be clearly noted on the final approved site plan and shall include:

1.) The owner of the wireless telecommunications facility and his or her successors and assigns agree to:

a.) respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;

b.) negotiate in good faith for shared use of the wireless telecommunications facility by third parties;

c.) allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for colocation.

d.) require no more than a reasonable charge for shared use of the wireless telecommunications facility, based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata

share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the life span of the useful life of the wireless telecommunications facility.

2.) Upon request by the municipality, the applicant shall certify compliance with all applicable FCC radio frequency emissions regulations.

Section 8. Amendment to an Approved Application

Any changes to an approved application must be approved by the Planning Board, in accordance with Section 5.

Section 9. Abandonment

A wireless telecommunications facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The CEO shall notify the owner of an abandoned facility in writing and order the removal of the facility within ninety (90) days of receipt of the written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the CEO that the facility has not been abandoned.

If the Owner fails to show that the facility is in active operation, the owner shall have sixty (60) days to remove the facility. If the facility is not removed within this time period, the Town of Eddington may remove the facility at the owner's expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition, including the removal of roads, and reestablishment of vegetation. If the owner of the facility fails to carry out its responsibilities under the section, then the owner of the property on which the facility is located shall be responsible for the removal of the facility and all other actions required by this section at its expense.

New construction after adoption of this ordinance will be covered by surety as described in Section 6.2A, subsection 10.

Section 10. Appeals

See Section 515.2 of the Eddington Zoning Ordinance.

Section 11. Administration and Enforcement

The CEO, as appointed through either the Zoning Ordinance or by the Board of Selectmen or Town or City Council, shall enforce this ordinance. If the CEO finds that any provision of this ordinance has been violated, the CEO shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering

the action necessary to correct it. The CEO shall order correction of the violation and may take any other legal action to ensure compliance with this ordinance. The [Municipal Officers], or their authorized agent, are authorized to enter into administrative consent agreements for the purpose of eliminating violations of this ordinance and recovering fines without court action. Such agreements shall not allow a violation of this ordinance to continue unless: there is clear and convincing evidence that the violation occurred as a direct result of erroneous advice given by an authorized municipal official upon which the applicant reasonably relied to its detriment and there is no evidence that the owner acted in bad faith; the removal of the violation will result in a threat to public health and safety or substantial environmental damage.

Section 12. Penalties

Any person who owns or controls any building or property that violates this ordinance shall be fined in accordance with Title 30-A M.R.S.A. § 4452. Each day such violation continues after notification by the CEO shall constitute a separate offense.

Section 13. Conflict and Severability

13.1 Conflicts with other Ordinances

Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation, or statute, the more restrictive provision shall apply.

13.2 Severability

The invalidity of any part of this ordinance shall not invalidate any other part of this ordinance.

Section 14. Definitions

The terms used in this ordinance shall have the following meanings:

"Antenna" means any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

" Tower Height" means the vertical distance of the tower.

Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the natural undisturbed ground surface below the center of the base of said tower to the tip of the highest antenna or piece equipment attached thereto.

If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

"Colocation" means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

"Expansion" means the addition of antennas, towers, or other devices to an existing structure.

"FAA" means the Federal Aviation Administration, or its lawful successor.

"FCC" means the Federal Communications Commission , or its lawful successor.

"Height" means the vertical measurement from a point on the ground at the mean finish grade adjoining the foundation as calculated by averaging the highest and lowest finished grade around the building or structure, to the highest point of the building or structure. The highest point shall exclude farm building components, flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, processing towers, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of buildings.

"Historic or Archaeological Resources" means resources that are:

- 1.) Listed individually in the National Register of Historic Places or eligible for listing on the National Register;
- 2.) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- 3.) Individually listed on a state inventory of historic places in states with historic preservation programs approved by the Secretary of the Interior;
- 4.) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by Secretary of the Interior through the Maine Historic Preservation Commission; or
- 5.) Areas identified by a governmental agency such as the Maine Historic Preservation Commission as having significant value as an historic or archaeological resource and any areas identified in the municipality's comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

"Historic District" means a geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development and identified in the municipality's comprehensive plan, which is listed or is eligible to be listed on the National Register of Historic Places. Such historic districts may also comprise individual elements separated geographically, but linked by association or history.

"Historic Landmark" means any improvement, building or structure of particular historic or architectural significance to the Town relating to its heritage, cultural, social, economic or political history, or which exemplifies historic personages or important

events in local, state or national history identified in the municipality's comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

"Line of sight" means the direct view of the object from the designated scenic resource.

"Parabolic Antenna" (also known as a satellite dish antenna) means an antenna which is bowl-shaped, designed for the reception and or transmission of radio frequency communication signals in a specific directional pattern.

"Principal Use" means the use other than one, which is wholly incidental or accessory to another use on the same premises.

"Public Recreational Facility" means a regionally or locally significant facility, as defined and identified either by State statute or in the municipality's adopted comprehensive plan, designed to serve the recreational needs of municipal property owners.

"Designated Scenic Resource" means that specific location, view, or corridor, as identified as a scenic resource in the municipally adopted comprehensive plan or by a State or federal agency, that consists of:

1.) a three dimensional area extending out from a particular viewpoint on a public way or within a public recreational area, focusing on a single object, such as a mountain, resulting in a narrow corridor, or a group of objects, such a downtown skyline or mountain range, resulting in a panoramic view corridor; or

2.) lateral terrain features such as valley sides or woodland as observed to either side of the observer, constraining the view into a narrow or particular field, as seen from a viewpoint on a public way or within a public recreational_area.

"Targeted Market Coverage Area" means the area which is targeted to be served by this proposed telecommunications facility.

"Unreasonable Adverse Impact" means that the proposed project would produce an end result which is:

1.) excessively out-of-character with the designated scenic resources affected, including existing buildings structures and features within the designated scenic resource, and

2.) would significantly diminish the scenic value of the designated scenic resource.

"Viewpoint" means that location which is identified either in the municipally adopted comprehensive plan or by a federal or State agency, and which serves as the basis for the location and determination of a particular designated scenic resource.

"Wireless Telecommunications Facility" or "Facility" means any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange phone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal communications service (PCS) or pager services.

Section 15. Effective Date – March 19, 2002

Amended July 16, 2002 (Section 7.2 E. Setbacks added, whichever is greater. No tower located within 500' of Route 46.)

Revised March 24, 2009