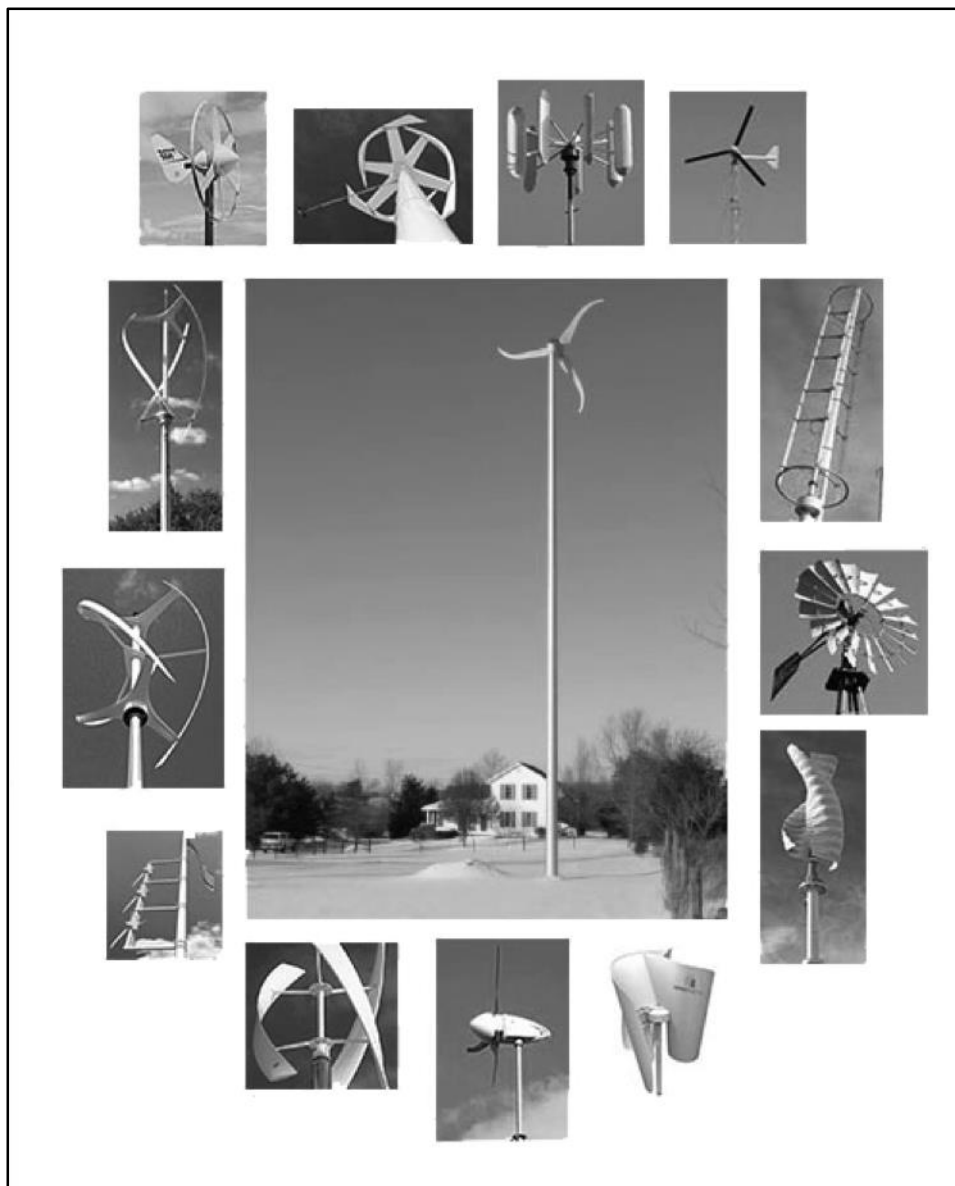


Wind Energy Systems Ordinance



Town of Rome, Maine
March 2017

Wind Energy Systems Ordinance for Rome, Maine

Table of Contents

1.0	Title.....	3
2.0	Authority.....	3
3.0	Purpose.....	3
4.0	Jurisdiction.....	3
5.0	Conflict with other Ordinances.....	3
6.0	Validity and Severability.....	3
7.0	Repeal of Prior Ordinances.....	3
8.0	Effective Date.....	3
9.0	Availability.....	3
10.0	Classification Criteria.....	4
11.0	Definitions.....	5
12.0	Procedures for Review.....	6
13.0	Application.....	6
14.0	Compliance Standards.....	7
15.0	Abandonment.....	9
16.0	Violations.....	10
17.0	Penalties.....	10
18.0	Appeals.....	11

Appendices

Appendix A: Scenic Viewsheds.....	13
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1.0 Title

This Ordinance shall be known as the Wind Energy Systems Ordinance for the Town of Rome.

2.0 Authority

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

3.0 Purpose

The purpose of this wind energy systems ordinance is to accommodate wind energy systems in appropriate locations within the Town of Rome, while protecting the public's health, safety and welfare. In addition, this ordinance provides a permitting process for wind energy systems to ensure compliance with the provisions of the requirements and standards established herein.

4.0 Jurisdiction

The provisions of this Ordinance shall govern all Wind Energy Systems within the boundaries of the Town of Rome, here after known as the "Town".

5.0 Conflict with other Ordinances

Whenever a provision of this Ordinance conflicts with, or is inconsistent with, another provision of this Ordinance or any other Town Ordinance, State of Maine, or Federal statute or regulation, the provision more restrictive to the Rome Wind Energy Systems Ordinance, Applicant/Owner/Operator shall control, except when a provision of State or Federal law expressly preempts local authority on the subject.

6.0 Validity and Severability

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

7.0 Repeal of Prior Ordinances

There is no prior "Wind Energy Systems Ordinance for the Town of Rome" to be repealed effective with the date of this Ordinance.

8.0 Effective Date

This Ordinance shall take effect and be in force from the date of its adoption.

9.0 Availability

A certified copy of this ordinance shall be filed with the Town Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this ordinance shall be posted.

10.0 Type 1 Classification Criteria

Type 1 facilities fall into two categories: 1A and 1B. This distinction is based on two criteria: turbine height and the total number of turbines. In order for a facility to be classified as Type 1A, it must fall below the threshold for both criteria. If the facility meets or exceeds the threshold for either criterion, it is classified as Type 1B.

Turbine Classification	Aggregate Capacity	Turbine Height	Max # of Turbines	DEP Site Location Permit Required	Local Review and Approval
1A	<100 kW	≤ 80'	1	No	Exempt from Ordinance
1B	<100kW	≤ 150'	≥1	No	Planning Board
2	≥ 100kW	≤ 150'	1	No	Planning Board
3	≥100kW	≤ 150'	≥2	Yes ¹	Planning Board

¹ A Location of Development permit from the Maine Department of Environmental Protection (DEP) pursuant to Title 35-A M.R.S.A. §3451, Title 35-A M.R.S.A. § 3456 and Title 38 M.R.S.A § 482 is normally required unless the Turbine: 1) does not sell or convert electricity for offsite use including net metering; and, 2) does not qualify as a Structure with a total land area in excess of three (3) acres for the entire Wind Energy Development.

Turbine Height

Wind Towers classified as 1A and 80 ft. in height or less are exempt from this Ordinance. All Wind Towers in the Ordinance are restricted to a maximum tower height of 150 ft. All Wind Towers in the Ordinance are restricted to a maximum systems height of 199 ft.

11.0 Definitions

AWEA. American Wind Energy Association.

Meteorological tower (met tower). Includes the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. For the purpose of this ordinance, met towers shall refer only to those whose purpose are to analyze the environmental factors needed to assess the potential to install, construct or erect a wind energy system.

Modification. Any change to the wind energy system that materially alters the size, type or location of the wind energy system. Like-kind replacements shall not be construed to be a modification.

Nacelle. Nacelle means the frame and housing at the top of the Tower that encloses the gearbox and generator. the

Net metering. The difference between the electricity supplied to a customer over electric distribution system and the electricity generated by the customer's wind energy system that is fed back into the electric distribution system over a billing period.

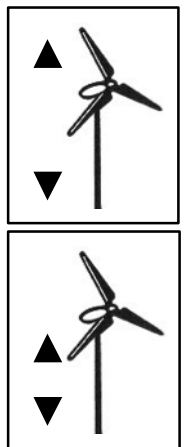
Power grid. The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

Shadow flicker. The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.

System height. The vertical distance from ground level to the tip of the wind generator blade when it is at its highest point.

Tower. The monopole, guyed monopole or lattice structure that supports a wind generator.

Tower height. The height above grade of the fixed portion of the tower, excluding the wind generator.



Wind Energy Facility. Wind Energy Facility means a facility that uses one or more Wind Turbines to convert wind energy to electrical energy. A Wind Energy Facility includes Generating Facilities and Associated Facilities.

Wind Energy Facility, Type 1A. Wind Energy Facility, Type 1A means a Wind Energy Facility having a maximum generating capacity of less than 100kW, a maximum of one Wind Turbine and a maximum Turbine Height of 80 feet. Wind Towers classified as 1A and are 80 ft. in height or less are exempt from this Ordinance.

Wind Energy Facility, Type 1B. Wind Energy Facility, Type 1B means a Wind Energy Facility having a maximum generating capacity of less than 100kW and one or more Wind Turbines with a Turbine Height greater than 80 feet.

Wind generator. The blades and associated mechanical and electrical conversion components mounted on top of the tower whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

12.0 Procedure for Review

1. Building Permit: No wind energy system, excluding Type 1A towers, shall be erected, constructed, or installed without first receiving a building permit from the Code Enforcement Officer. A building permit shall be required for any physical modification to an existing wind energy system. Met towers that receive a building permit shall be permitted on a temporary basis not to exceed 3 years from the date the building permit was issued.

2. Planning Board application fee: A permit application for Planning Board approval shall include payment of an application fee and the application shall not be considered complete until this fee is paid. An applicant is entitled to a refund of the application portion of the fee if the application is withdrawn within fifteen (15) days of the date of receipt of the application by the Planning Board, less all expenses incurred by the Town of Rome to review the application. Application Fees shall be set and may be amended by the Board of Selectmen.

3. Planning Board review fee: An applicant for a permit shall pay all additional reasonable and customary fees, i.e.: certified mailings, advertisements, etc., as well as expert fees as may be required, incurred by the Town that are necessary to review the application and assure that the Wind Energy System meets the conditions of this Ordinance after completion.

13.0 Application

Applications submitted to the Code Enforcement Officer shall contain a site plan with the following information:

- i) Property lines and physical dimensions of the applicant's property.
- ii) Location, dimensions, and types of existing major structures on the property.
- iii) Location of the proposed wind energy system, foundations, guy anchors and associated equipment and distance to setback lines, property lines, roads, driveways, right-of-ways, any overhead utility lines on the subject property and adjacent properties within 300 feet of any buildings including their purpose and tree cover and average height of trees.
- iv) Tower foundation blueprints or drawings.
- v) Tower blueprints or drawings.
- vi) Setback requirements as outlined in this ordinance.
- vii) The right-of-way of any public road that is contiguous with the property.

- viii) A survey map of an appropriate scale showing within 2500 feet of the proposed WES any parks and other designated areas considered locally important in an open space plan, recognized historic sites and important bird areas as identified in the state's Beginning with Habitat data.
- ix) Wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity.
- x) Structural drawings from manufacturer or engineer showing foundation and anchor design along with specifications for soil conditions at the site.
- xi) Wind energy systems that will be connected to the power grid shall include a copy of the application for interconnection with their electric utility provider.
- xii) Sound level analysis prepared by the wind generator manufacturer or qualified engineer.
- xiii) Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the Maine State Building Code.
- xiv) Evidence of compliance or non-applicability with Federal Aviation Administration requirements.
- xv) List of abutters to the applicant's property.
- xvi) Photographs of the proposed site.

13.1 Completeness

The Code Enforcement Officer shall review all applications for completeness prior to submittal to the Planning Board. Applications which are found to be incomplete shall be returned to the applicant along with written notice as to why they are incomplete.

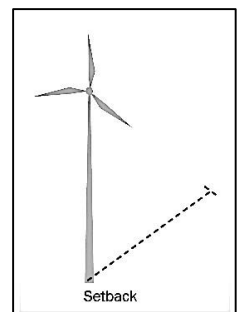
13.2 Abutter and Regional Notification

The Code Enforcement Officer shall notify all abutters and the local governing body by certified mail upon receipt of a complete application. The public will be afforded 30 days to submit comments to the Code Enforcement Officer prior to the issuance of the building permit. The Code Enforcement Officer shall review the application for any regional impacts. If the proposal is determined to have potential regional impacts, the Code Enforcement Officer shall follow necessary procedures.

14.0 Compliance Standards

1. The Planning Board shall evaluate the application for compliance with the following standards;

- a. **Setbacks:** The setback shall be calculated by multiplying the minimum setback requirement number by the system height and measured from the center of the tower base to property line, public roads, or nearest point on the foundation of an occupied building.



Multiplier for Minimum Setback Requirements			
Occupied Buildings on Participating Landowner Property	Occupied Buildings on Abutting Property	Property Lines of Abutting Property and Utility Lines	Public Roads
0	1.5	1.1	1.5

- i) Wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.
 - ii) Guy wires used to support the tower are exempt from the wind energy system setback requirements.
 - iii) All towers that exceed tree height must be setback 2500 feet from any open space designated important, recognized historic site, or important bird area indicated in the State's Beginning With Habitat data.
- b. **Tower:** The maximum tower height shall be restricted to 150 ft. In no situation shall the systems height exceed 199 feet.
- c. **Sound Level:** The wind energy system shall not exceed 60 decibels using the A scale (dBA), as measured at the site property line, except during short-term events such as severe wind storms and utility outages.
- d. **Shadow Flicker:** Wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. Significant shadow flicker is defined as more than 30 hours per year on abutting occupied buildings. The applicant has the burden of proving that the shadow flicker will not have significant adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.
- e. **Signs:** All signs including flags streamers and decorative items, both temporary and permanent, are prohibited on the wind energy system, except for manufacturer identification or appropriate warning signs.
- f. **Code Compliance:** The wind energy system shall comply with all applicable sections of the Maine State Building Code.
- g. **Aviation:** The wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations including but not limited to 14 C.F.R. part 77, subpart B regarding installations close to airports.
- h. **Visual Impacts:** It is inherent that wind energy systems may pose some visual impacts due to the tower height needed to access wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the optimal wind resources on the property.
 - i. The applicant shall demonstrate through project site planning and proposed mitigation that the wind energy system's visual impacts will be minimized for surrounding

neighbors and the community. This may include, but not be limited to information regarding site selection, wind generator design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground, except when the financial costs are prohibitive.

- ii. If any portion of the site is within an area designated as a scenic area or scenic viewshed by the Town of Rome, (Scenic areas and viewsheds are listed in Appendix A) the applicant shall develop appropriate measures for the preservation of the values that qualify the site for such designation.
 - iii. The color of the wind energy system shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive matte finished color that blends in with the surrounding environment. Approved colors include but are not limited to white, off-white or gray.
 - iv. A wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the wind energy system.
- i) **Approved Wind Generators:** The manufacturer and model of the wind generator to be used in the proposed system with Swept Areas up to 200m² shall be certified to the most current version of AWEA 9.1 by the Small Wind Certification Council, a Nationally Recognized Testing Laboratory or approved by the state of Maine, if available. Applications for provisionally certified or non-certified turbines with Swept Areas over 200m² must include a description of the safety features and sound emissions of the turbine and must show compliance with IEC61400-12-1 and IEC61400-11 and may be considered on a case by case basis.
- j) **Compliance with National Electrical Code (NEC):** The installation of a Wind Energy System shall comply with section 694 (or the most-current applicable section, if updated) of the NEC. Applications must be accompanied by a single-line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NEC. Wet-stamped drawings shall not be required.
- k) **Access:** The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

15.0 Abandonment

1. At such time that a wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the Code Enforcement Officer by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.
2. Upon abandonment or discontinuation of use, the owner shall physically remove the wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the Code

Enforcement Officer. “Physically remove” shall include, but not be limited to:

- a. Removal of the wind generator and tower and related above-grade structures.
 - b. Restoration of the location of the wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.
3. In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous 12-month period. After the 12 months of inoperability, the Code Enforcement Officer may issue a Notice of Abandonment to the owner of the wind energy system. The owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. After review of the information provided by the owner, the Code Enforcement Officer shall determine if the wind energy system has been abandoned. If it is determined that the wind energy system has not been abandoned, the Code Enforcement Officer shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.
 4. If the owner fails to respond to the Notice of Abandonment or if, after review by the Code Enforcement Officer, it is determined that the wind energy system has been abandoned or discontinued, the owner of the wind energy system shall remove the wind generator and tower at the owner’s sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the wind energy system after the Notice of Abandonment procedure, the Code Enforcement Officer or may pursue legal action to have the wind energy system removed at the owner’s expense.

16.0 Violations

It is unlawful for any person to construct, install, or operate a wind energy system that is not in compliance with this ordinance. Wind energy systems installed prior to the adoption of this ordinance are exempt from this ordinance except when modifications are proposed to the wind energy system.

17.0 Penalties

Whoever violates this Ordinance is subject to all of the penalties and remedies described under 30-A MRSA, Sec. 4452 and by a fine of not less than \$100 nor more than \$2,500 per offense with each day on which such violation continues. Each day in violation shall constitute a separate offense. When actions taken to enforce the Ordinance do not result in the correction or abatement of the violation or nuisance condition, the Board of Selectmen, upon notice from the Code Enforcement Officer, shall institute or cause to be instituted any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the Town of Rome. Each day that the violation continues constitutes a separate offense with maximum fines of two thousand five hundred dollars (\$2,500.00) per offense. There is a twenty-five thousand dollar (\$25,000.00) maximum fine per offense upon the second conviction within two (2) years for violations under this Ordinance.

18.0 Appeals

1. Powers and Duties of the Board of Appeals: The Board of Appeals shall have the following powers:

a. **Administrative Appeals:** To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board in the administration of this Ordinance; and to hear and decide administrative appeals on a denovo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this Ordinance. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals.

b. **Variance Appeals:** To authorize variances upon appeal, within the limitations set forth in this Ordinance. Variances may be granted only under the following conditions:

- i. Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.
- ii. Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.
- iii. The Board shall not grant a variance unless it finds that: The proposed structure or use would meet the provisions of Section 14.0 except for the specific provision which has created the non-conformity and from which relief is sought; and The strict application of the terms of this Ordinance would result in undue hardship. The term "undue hardship" shall mean: That the land in question cannot yield a reasonable return unless a variance is granted;
- iv. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- v. That the granting of a variance will not alter the essential character of the locality; and
- vi. That the hardship is not the result of action taken by the applicant or a prior owner.
- vii. The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.

3. Appeal Procedure:

a. Making an Appeal

1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board, except for enforcement-related matters. Such an appeal shall be taken within thirty (30) days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.

2. Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal which includes: A concise written statement indicating what relief is requested and why the appeal or variance should be granted. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
3. Upon receiving an application for an administrative appeal or a variance, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
4. The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within thirty-five (35) days of its receipt of a complete written application, unless this time period is extended by the parties.

b. Decision by Board of Appeals

1. A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.
2. The person filing the appeal shall have the burden of proof.
3. The Board shall decide all administrative appeals and variance appeals within thirty five (35) days after the close of the hearing, and shall issue a written decision on all appeals.
4. The Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. Copies of written decisions of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer, and the municipal officers.

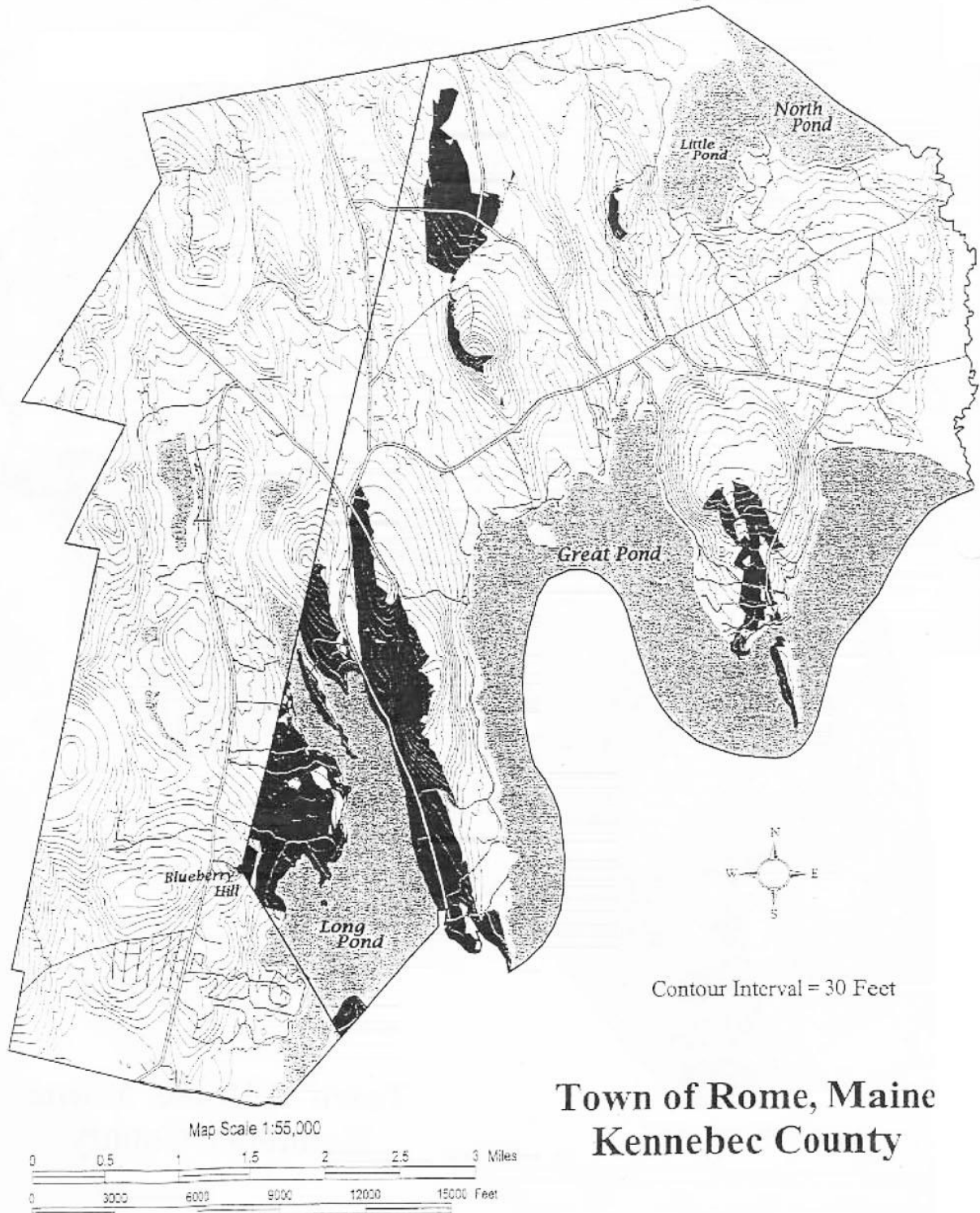
5. Appeal to Superior Court: Except as provided by 30-A M.R.S.A. section 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five (45) days from the date of any decision of the Board of Appeals.

6. Reconsideration: In accordance with 30-A M.R.S.A. section 2691(3)(F), the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

Appeal of a reconsidered decision to Superior Court must be made within fifteen (15) days after the decision on reconsideration.

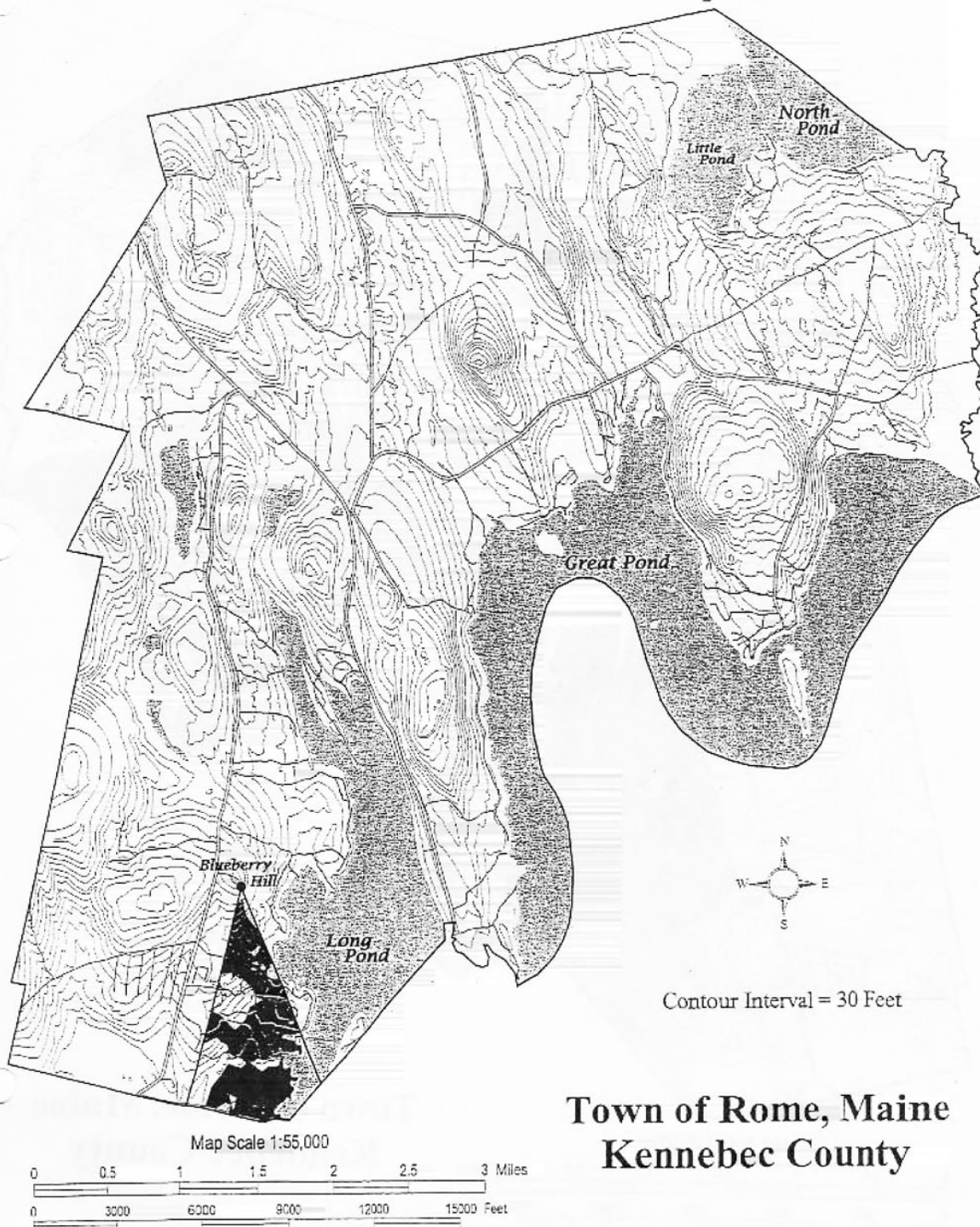
APPENDIX A

**AREAS VISIBLE FROM
Eastern Side of Blueberry Hill**



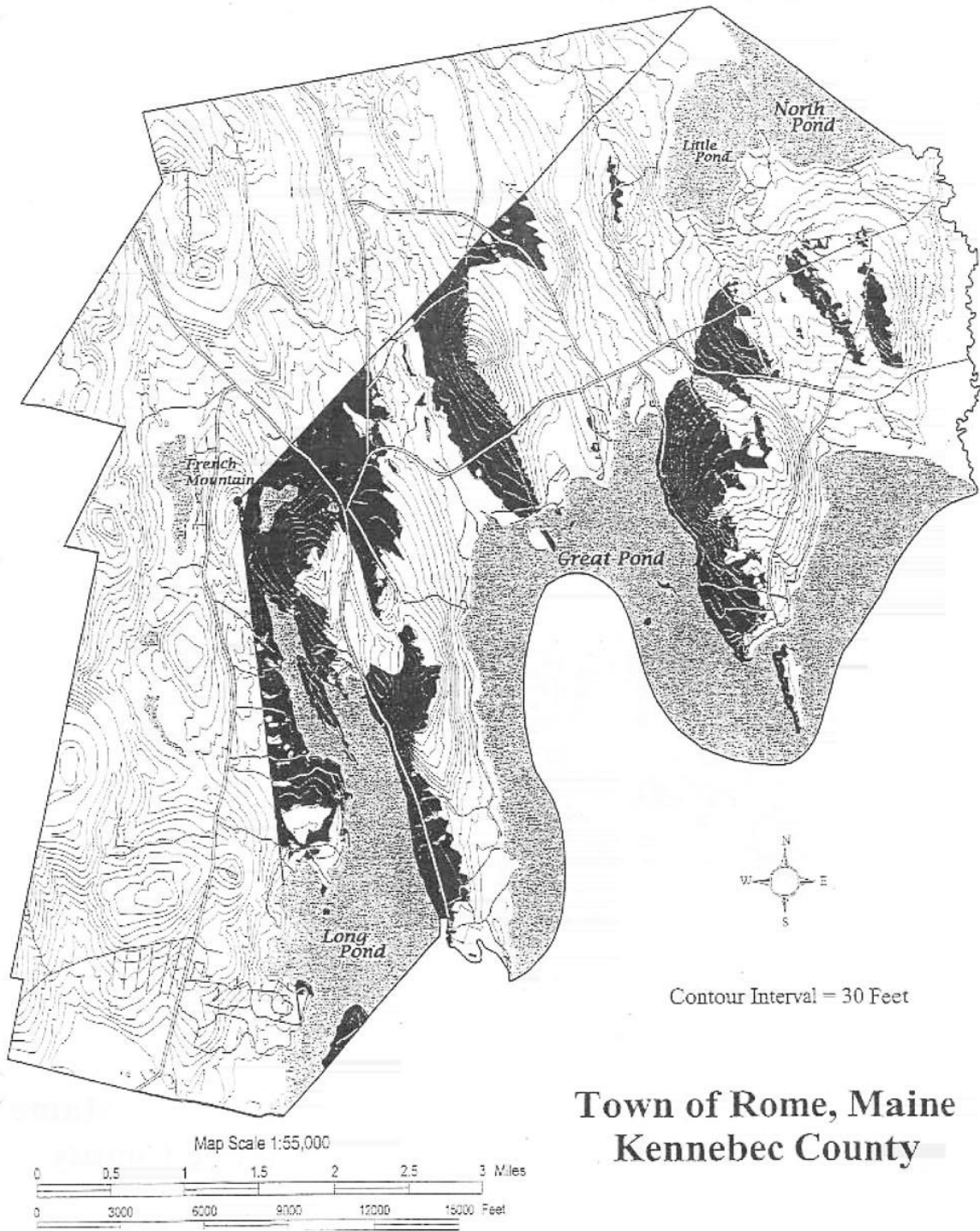
APPENDIX A

**AREAS VISIBLE FROM
Southern Side of Blueberry Hill**



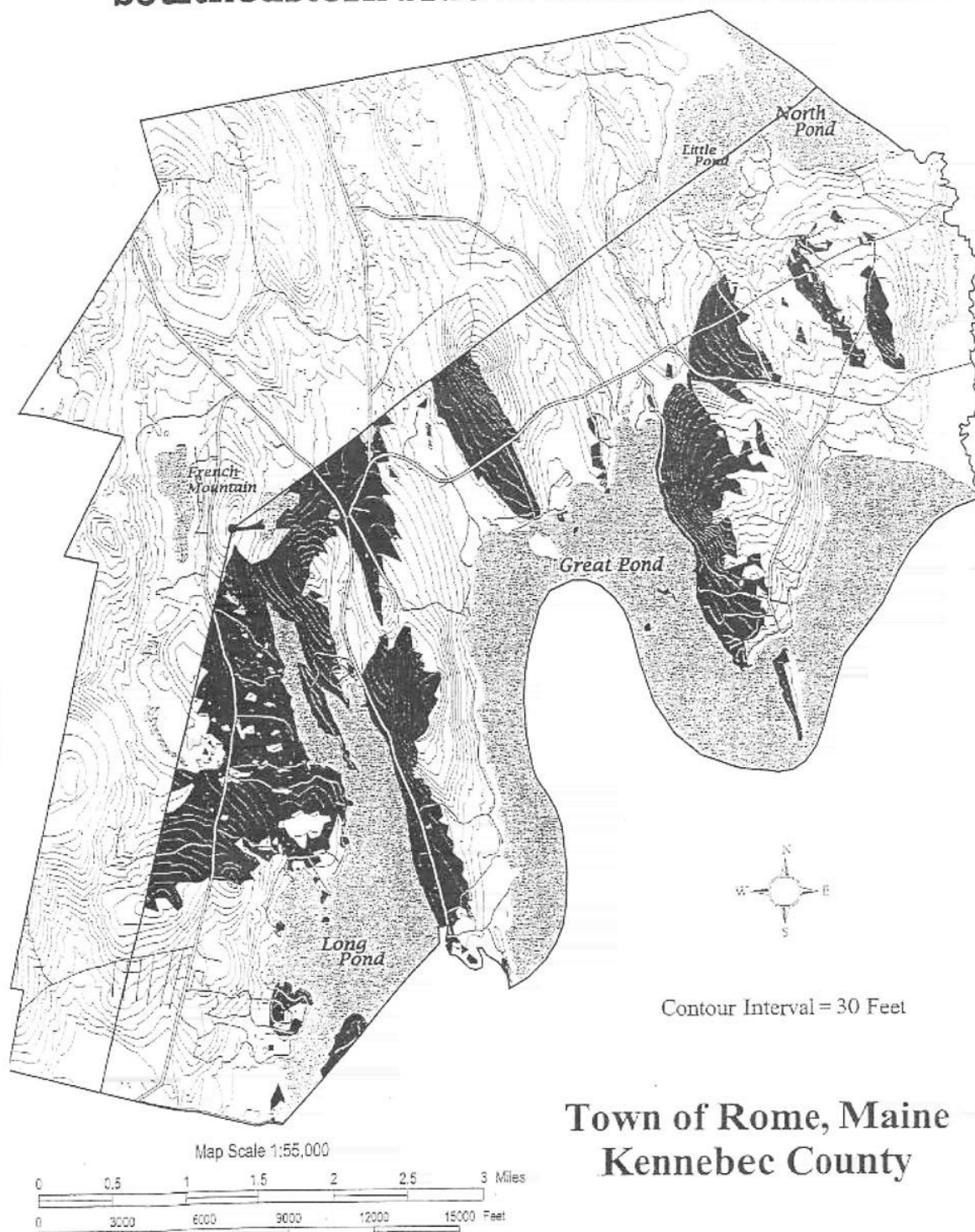
APPENDIX A

**AREAS VISIBLE FROM
Eastern Side of French Mountain**



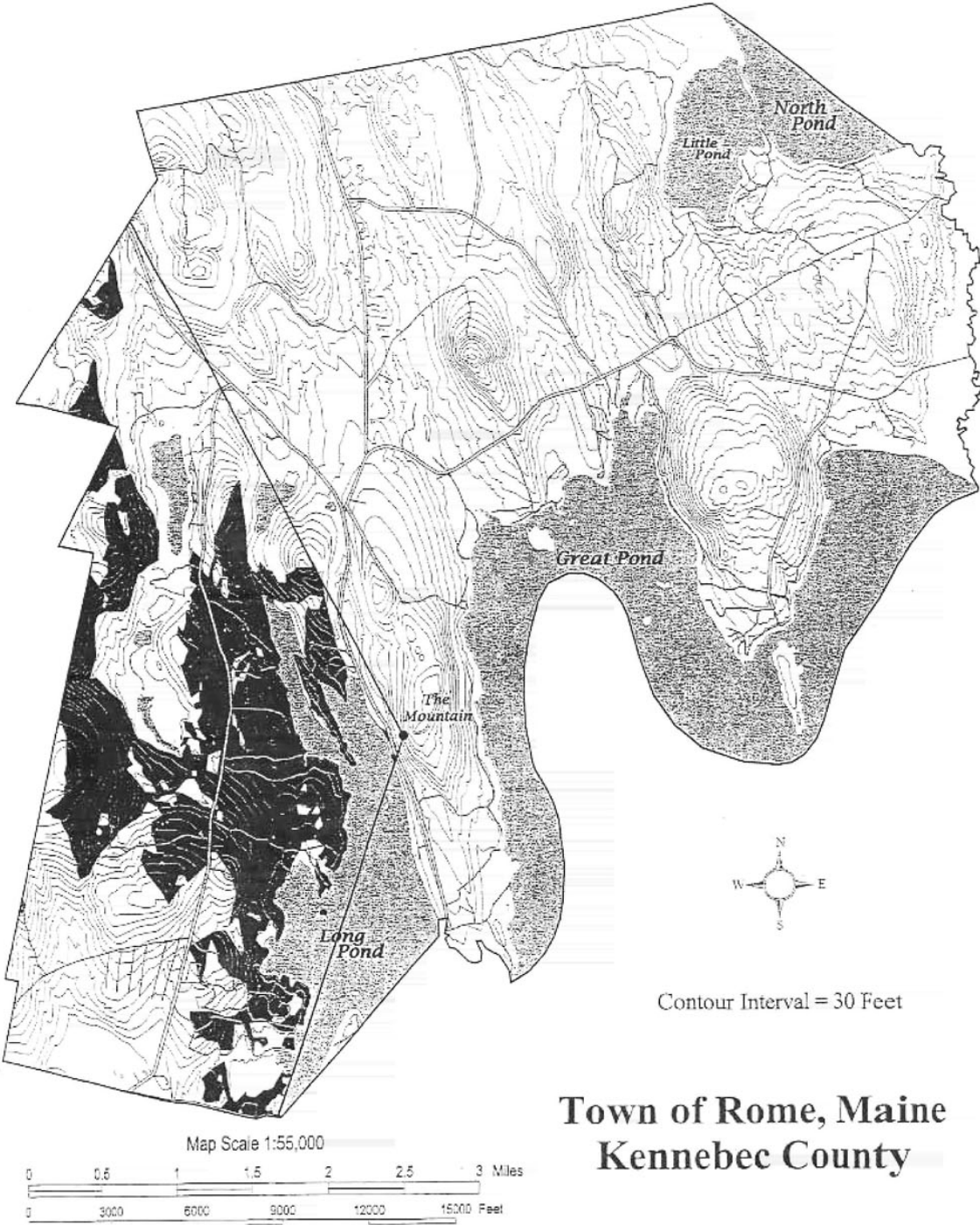
APPENDIX A

**AREAS VISIBLE FROM
Southeastern Side of French Mountain**



APPENDIX A

AREAS VISIBLE FROM
The Mountain



APPENDIX A

**AREAS VISIBLE FROM
Mount Phillip**

