



Town of Lumberland Zoning Law





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Town of Lumberland

Local Law No. 1 of the Year 2012

A local law to supersede and replace: (i) the Town of Lumberland Zoning Law dated August 19, 1998 (Local Law No. 4 of 1998), (ii) the Town of Lumberland Campground Law (Local Law No. 2 of 2002), (iii) the Town of Lumberland Manufactured Home Law dated July 22, 1998 (Local Law No. 2 of 1998), and (iv) the Town of Lumberland Planning Board Alternate Member Voting [Law] dated August 8, 2007 (Local Law No. 2 of 2007), as any of the foregoing may have heretofore been amended or supplemented.

Be it enacted by the Town Board of the Town of Lumberland as follows:

1.0 GENERAL PROVISIONS

1.1. Title

This document shall be known and may be cited as the "TOWN OF LUMBERLAND ZONING LAW." Hereinafter, this Law is sometimes referred to as "this Zoning Law," "this Law," or "this law."

1.2. Introduction and Overview

This Zoning Law enables Lumberland to protect the character of the Town while also giving landowners a range of options and choices for the use, development, and conservation of their land. It is designed to achieve the community's goals as expressed in the Town's Comprehensive Plan while providing a development approval process that is predictable, efficient, and fair.

Overview

This Section provides a brief and very general overview of what is in the Zoning Law.

1. This Law divides the Town into zoning districts and establishes rules for the use of land in the various districts. The districts themselves are described in Article 3.0. The boundaries of the districts are reflected on the Zoning Map, which is a part of the Zoning Law. The official copy of the Zoning Map is kept on file in the office of the Town Clerk, and an unofficial, smaller copy of the Zoning Map is attached to copies of this Law at Article 11.0.

2. This Law also creates "overlay" districts, which are special districts designed primarily to protect special resources from inappropriate development and to maintain the Town's character and natural resources. Examples of these overlay districts are the historic overlay district and the (Delaware River) river overlay district. The provisions of these overlay districts apply in addition to those of the underlying land use districts. Standards and requirements specific to the overlay districts are set forth at Article 3.0.

3. The Law includes a Use Table which describes, by zoning district, what restrictions and

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requirements are *generally* applicable to certain land uses. The Use Table is set forth at Article 12.0. Some uses are allowed so long as a zoning permit, building permit, and/or a certificate of occupancy is obtained. Some uses require a special use permit and/or site plan approval, and some uses are not permitted at all, either within certain districts or throughout the entire Town. When a use is not specified in the Use Table as being permitted, that use is prohibited. Section 3.2.1 explains the meanings of the symbols used in the Use Table, and Section 2.2 contains definitions of certain of the uses and other terms contained in the Use Table.

4. The Use Table also sets forth, again by zoning districts, *generally* applicable dimensional regulations and requirements such as required yard setbacks, height restrictions, maximum allowable lot coverage, and maximum allowable lot clearing.

5. It is very important to understand that the provisions of the Use Table are always subject to and limited by any restrictions imposed by any applicable overlay district requirement (see Article 3.0), by any applicable general supplementary regulations (see Article 5.0) and special supplementary regulations (see Article 6.0), and by the various other provisions of the Zoning Law— such as Article 10.0 which explicitly prohibits certain uses anywhere and everywhere throughout the Town.

6. General and specific supplementary regulations (Articles 5.0 and 6.0) contain additional requirements for specific types of uses and structures (such as home based occupations, care cottages, signs, lighting, and parking, and certain non-fossil fuel energy sources such as solar collectors), as well as performance standards for all development.

7. Article 4.0 contains rules for allowing the continuation of lots, structures, and uses that were legal under previous regulations but do not conform to this Zoning Law. This is sometimes referred to as “grandfathering.”

8. Section 3.8 introduces the concept of conservation subdivisions – also known as ‘cluster development’ - which preserve open space by concentrating development on a portion of a parcel.

9. Articles 7.0, 8.0 and 9.0 explain the procedures for obtaining various types of permits from the Town, including zoning permits, building permits, and certificates of occupancy from the Code Enforcement Officer, site plan and special permit approval from the Planning Board, and, appeals, and variances from the Zoning Board of Appeals. Section 7.6 describes the penalties and consequences of violating the Zoning Law.

10. Article 10.0 sets forth certain uses that are explicitly prohibited in each and every zoning district within the Town. Violations of Article 10.0 are considered a threat to public health, safety, and welfare, and are deemed to be a public nuisance.

This overview is only a summary, and does not supersede or change any of the terms or provisions of the Zoning Law itself.

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1.3. Purpose and Intent

The purposes of this Zoning Law, its regulations and its zoning districts as outlined on the Zoning Map, are to:

- promote the health, safety and general welfare of the present and future inhabitants of the Town;
- guard against loss of life and damage to property due to flooding through protection of natural drainage features;
- preserve features of historical significance;
- encourage the most appropriate development of the Town in accordance with the Comprehensive Plan of the Town;
- encourage the preservation of the scenic and natural assets of the Town, and of the rural residential character of the community, and to discourage commercial or industrial development that is inconsistent with such preservation;
- protect property values;
- regulate location and use of buildings and the uses of land within each district with regard to residential, commercial, industrial, and other purposes;
- lessen congestion in streets;
- secure safety from fire, flood, panic, and other dangers;
- provide adequate light and air and acceptable noise levels;
- prevent overcrowding of land and avoid undue concentration of population;
- make provision for the siting and use of certain renewable energy facilities;
- facilitate the adequate provision of transportation, water, sewage disposal, schools, parks and other public requirements; and
- establish districts in which regulations concerning the size of buildings and other structures, the percentage of lots that may be covered, the size of yards, and the use of buildings, structures and land for trade, commerce, residence, and other purposes are restricted and regulated as hereinafter provided.

1.4. Replacement of Previous Zoning Laws

Upon the effective date of this Zoning Law, this Law shall supersede and replace the Previous Zoning Laws in their entirety. The "Previous Zoning Laws" shall mean and be (a) the Town of Lumberland Zoning Law dated August 19, 1998 (Local Law No. 4 of 1998), as amended by Local

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Law No. 3 of 2001, Local Law No. 6 of 2001, Local Law No. 1 of 2008, and Local Law No. 2 of 2009, (b) the Town of Lumberland Campground Law (Local Law No. 2 of 2002), (c) the Town of Lumberland Manufactured Home Law dated July 22, 1998 (Local Law No. 2 of 1998), and (d) the Town of Lumberland Planning Board Alternate Member Voting [Law] dated August 8, 2007 (Local Law No. 2 of 2007).

1.5. Effective Date

This Law shall take effective immediately upon filing with the New York Department of State.

1.6. Authority and Supersession

This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board of the Town of Lumberland under the New York State Constitution, and the Laws of the State of New York, including but not limited to the following authorities: New York State Constitution Article IX, Section 2 (c)(ii)(6), (10); Municipal Home Rule Law § 10(1)(i); Municipal Home Rule Law § 10(1)(ii)(a)(6), (11), (12), and (14); Municipal Home Rule Law § 10(1)(ii)(d)(3); Municipal Home Rule Law § 10(2); Municipal Home Rule Law § 10(3); Municipal Home Rule Law § 10(4)(a), and (b); Statute of Local Governments § 10(1), (6), and (7); Town Law § 64 (17-a), (20-b), and (23); Town Law § 130(5), (6), (7), (8), (11), (14), (15), and (23); Town Law § 135; Town Law Article 16 (Zoning & Planning) inclusive; Environmental Conservation Law § 17-1101, § 27-0711; and Public Health Law § 228 (2), and (3).

It is the specific intent of the Town Board, pursuant to Municipal Home Rule Law § 10(1)(ii)(d)(3) and § 22, to supersede: (a) any inconsistent provisions set forth in Town Law § 265-a; § 267; § 267-a, § 267-b, § 268; § 274-a, § 274-b; § 276, § 277, § 278, and § 279; (b) any other inconsistent provisions set forth in Article 16 of the Town Law; and (c) any inconsistent provisions of any and all other local ordinances, local laws or local resolutions of the Town of Lumberland.

1.7. Interpretation

The various statements of purpose, intent and findings are legislatively adopted along with the formal text of this Law. They are intended as a legal guide to the administration and interpretation of this Law and shall be treated as legislative history. All provisions of this Law shall be construed in a manner that advances the goals and strategies of the Comprehensive Plan.

1.8. Precedence of More Restrictive Standards

The provisions of this Law are in addition to the Town of Lumberland Uniform Fire Prevention and Building Code Enforcement Law and to the provisions set forth in other Town laws and regulations, as well as any other lawfully adopted rules, regulations, and ordinances of the state of New York, the federal government, and the New York State Department of Health. Wherever the requirements of this Law are at variance with the requirements of other lawfully adopted rules, regulations, or ordinances, the more restrictive or those imposing the higher standards shall govern.

1.9. Severability

If any word, phrase, sentence, part, section, subsection, or other portion of this Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board hereby declares that it would have enacted this Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.

1.10. Amendments

The regulations, restrictions, and boundaries set forth in this Law may be amended from time to time by the Town Board as provided by law.

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2.0 USAGE AND DEFINITIONS

2.1. Word Usage

Except where specifically defined herein, all words used in this Law shall carry their customary meanings. For purposes of this law, certain terms and words shall be interpreted as follows:

- (a) Words used in the present tense shall include the future.
- (b) The plural usage includes the singular, and the singular the plural.
- (c) The word "shall" is mandatory.
- (d) The word "may" is permissive.
- (e) The word "building" includes the word "structure," and "structure" includes any part thereof.
- (f) The word "lot" includes the words "plot" and "parcel."
- (g) The words "occupied" and "used" shall be interpreted as though followed by the words "or intended, arranged, or designed to be used or occupied."
- (h) The words "he" and "she" include the opposite gender, and in both instances includes the words "they" and "it."

2.2. Defined Terms

For purposes of this Law, the following terms shall have the meanings indicated below:

Abandoned Item – any item that has ceased to be used for its designed and intended purpose. The factors used in determining whether or not an item has been abandoned include, but are not limited to the following: (a) present operability and functional utility of the item; (b) the date of last effective use of the item; (c) the condition of disrepair or damage of the item; (d) the last time an effort was made to repair or rehabilitate the item; (e) the status of registration or licensing of the item; (f) the age and degree of obsolescence of the item; (g) the cost of rehabilitation or repair of the item when compared to its pre-repaired market value; or (h) the nature of the area where such item is located and location of the item within such area.

Accessory Apartment - a dwelling unit of no less than the minimum required habitable floor area, accessory to an owner-occupied single-family dwelling. For purposes of this definition, "minimum required habitable floor area shall mean: (a) seven hundred twenty (720) square feet, in the case of an accessory apartment detached from both the (principal building) owner-occupied single-family dwelling to which it is accessory and any related private garage, and (b) five hundred (500) square feet, in the case of an accessory apartment detached from the owner-occupied single-family dwelling to which it is accessory but located over or otherwise attached to a garage which is accessory to the (principal building) owner-occupied single-family dwelling.

Accessory Building - a structure detached from and subordinate to a principal building on the same lot, having less than one-half of the habitable floor area of the principal building, and which is used for purposes customarily incidental to those of the principal building or use, such as a

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private garage, storage, recreation, and home based occupation.

Accessory Use - a use customarily incidental and subordinate to the principal use, where the principal use is lawful, where there is unity of ownership between the principal and accessory use, where the principal and accessory uses are located on the same lot, and the use does not change the character of the principal land use. A use which dominates the principal use in area, extent or purpose is not eligible to qualify as an accessory use.

Acre - for the purpose of calculating lot area under this Law, an acre shall be considered to consist of forty three thousand five hundred sixty (43,560) contiguous square feet.

Adult-Oriented Businesses - any business involving one or more of the following:

(a) Adult arcades where, for any form of consideration, one or more motion picture projectors, slide projectors, video cassette players, computers, or similar electronic machines, for viewing by five (5) or fewer persons, each are used to show films, motion pictures, video cassettes, slides, DVDs, computer generated images, other visual representations, or other photographic or electronic reproductions, which are characterized by emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

(b) Adult bookstores which have a substantial (50% or more) portion of its stock in trade and offers for sale, any consideration, any one of more of the following:

(i) Books, magazines, periodicals, or other printed matter or photographs, film, motion pictures, video cassettes, slides, DVDs, computer generated images, other visual representations, or other photographic or electronic reproductions, which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas, or

(ii) Instruments, devices or paraphernalia that are designed for use in connection with specified sexual activities.

(c) Adult cabarets, meaning any night club, bar (including establishments which do not serve alcoholic beverages), restaurant, or similar establishment, which regularly feature live performances characterized by exposure of specified anatomical areas or by specified sexual activities or films, motion pictures, videos cassettes, slides, DVDs, computer generated images, other visual representations, or other photographic or electronic reproductions characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

(d) Adult motion picture theaters where, for any form of consideration, films, motion pictures, video cassettes, slides, DVDs, computer generated images, other visual representations, or other photographic or electronic reproductions are regularly shown, and in which a substantial portion of the total presentation time is devoted to the showing of material characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

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(e) Adult theaters meaning any theater, concert hall, auditorium or similar establishment which, for any form of consideration, regularly features live performances in which a substantial portion of the total presentation time is devoted to the exposure of specified sexual activities or specified anatomical areas.

(f) Massage parlors where, for any form of consideration, massage, alcohol rub, electric or magnetic treatment or manipulation of the human body is administered, unless by a medical practitioner, chiropractor, acupuncturist, physical therapist, licensed massage therapist, or similar professional person licensed by the state. This definition shall not include a health club, school, gymnasium, reducing salon, spa, or similar establishment where massage or similar manipulation of the human body is offered as an incidental accessory service.

(g) Peep shows where, for any form of consideration, persons may observe from individual enclosures shows which regularly feature live performances characterized by exposure of specified anatomical areas or by specified sexual activities or films, motion pictures, video cassettes, slides, DVDs, computer generated images, other visual representations, or other photographic or electronic reproductions characterized by an emphasis upon which the depiction or description of specified sexual activities or specified anatomical areas.

(h) Adult hotels or motels, meaning any hotel or motel that excludes minors because of age.

(i) Any other business the income of which is primarily derived from the display or sale of material portraying specified anatomical areas or specified sexual activities, and not otherwise defined in a-h above, that defines itself primarily through its exclusion of minors.

Agriculture Use - the use of land and on-farm buildings and equipment employed in the production of crops and/or livestock and livestock products (as those terms are defined at NYS Agriculture and Markets Law § 301) as a commercial enterprise. High-Density Industrial Cattle, Swine, or Fowl Production is excluded from this definition.

Alteration - as applied to a building or structure: (a) an enlargement by increasing in height or by extending on a side, front, or back; (b) moving from one location or position to another; (c) any change, addition, or removal of the structural parts; or (d) any change, addition, or removal of partitions, or any change in walls, ceiling, windows, or doors.

Alternative Energy Facilities - renewable electric generation equipment mounted on residential, commercial, educational, or industrial structures that generate power from non-fossil fuel sources primarily for that structure.

Animal Husbandry - the care and breeding of domestic animals, including but not limited to cattle, sheep, hogs, goats, horses, poultry, ratites (such as ostriches, emus, rheas, and kiwis), farmed deer, farmed buffalo, and fiber-bearing animals such as alpacas and llamas. Operation of a kennel and operation of a private or public stable are types of animal husbandry. For purposes of this Law, animal husbandry does not include ownership of individual companion animals such as dogs and cats, and does not include High-Density Industrial Cattle, Swine, or Fowl Production.

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Approved - shall mean approved by the Code Enforcement Officer under the provisions of this Law, or approved by an authority designated by law or this Law.

Automobile and Vehicle Sales – the use of any building, land area or other premises: (a) by any person required to be registered by the State of New York, engaged in buying, selling, or dealing in motor vehicles; or (b) by any person, whether or not required to be registered by the State of New York, whose activities at such premises consist at least in part in the business of buying, selling, or dealing in any of the following: all terrain vehicles, snowmobiles, farm-type tractors, or garden-type tractors. As used in this definition, “motor vehicle” means automobiles, light trucks (such as pickup trucks), panel trucks and vans, motorcycles, and recreational vehicles, but such term shall not include manufactured homes, commercial trucks or construction machinery. The term “automobile and vehicle sales” does not include, in the context of the preceding clause (b), persons who buy, sell, or deal in all terrain vehicles, snowmobiles, farm-type tractors, or garden-type tractors but who: (i) display a total of fewer than three (3) such vehicles at any one time on such premises, and (ii) sell fewer than six (6) such vehicles in a calendar year.

Automobile and Vehicle Repair – the use of any building, land area or other premises: (a) by any person required to be registered by the State of New York, for diagnosing or repairing motor vehicle malfunctions or for repairing motor vehicle bodies or other components; or (b) by any person, whether or not required to be registered by the State of New York, whose activities at such premises consist primarily of changing (motor vehicle) oil, water, batteries or tires, replacing fan belts, air filters or oil filters, installing windshield wiper blades or light bulbs, and similar minor motor vehicle repair and servicing functions. As used in this definition, “motor vehicle” means automobiles, light trucks (such as pickup trucks), panel trucks and vans, motorcycles, all terrain vehicles, manufactured homes and travel trailers, recreational vehicles, and farm vehicles and equipment, but such term shall not include commercial trucks or construction machinery. The term “automobile and vehicle service” does not include junkyards or businesses involved in dismantling motor vehicles for recycling or the sale of used parts, and does not include minor motor vehicle repairs and servicing conducted on non-commercial, personal motor vehicles owned by the person conducting such repair or service.

Automobile Fueling Station - the use of any building, land area or other premises for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles.

Awning – an attachment to a building to provide shade for the occupants. Similar structures used for outdoor storage are not considered awnings, but are sheds or carports.

Base Flood - the flood levels having a one percent (1%) chance of being equaled or exceeded in any given year.

Basement – (*same as “Cellar”*) - the space of a building that is partly or completely below grade and which has more than half its height, measured from floor to ceiling, above the established curb level or finished grade of the ground adjoining the building.

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Bed and Breakfast - an owner-occupied dwelling unit, used for providing overnight accommodations and a morning meal to transient lodgers, containing at least two (2) but not more than five (5) bedrooms for such lodgers, and in which no public restaurant is maintained and no other commercial services are offered. For the purpose of this definition, a transient lodger means a person who rents a room in a bed-and-breakfast establishment for fewer than thirty (30) consecutive days.

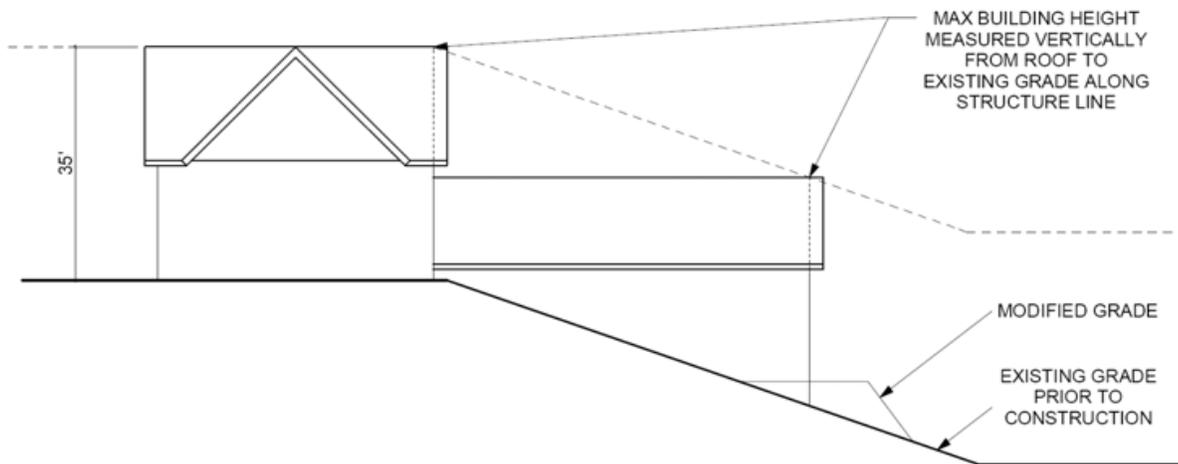
Below-Regulatory Concern - radioactive material in a quantity or of a level that is distinguishable from background (as that phrase is defined at 10 CFR § 20.1003), but which is below the regulation threshold established by any regulatory agency otherwise having jurisdiction over such material in the Town.

BMPs (Best Management Practices) - structural, vegetative, or managerial practices designed to treat, prevent, or reduce degradation of the environment including degradation of water quality due to stormwater runoff and snow-melt. To be considered a BMP, the practice must employ the most current research, resources and technologies available at the time of implementation.

Board of Appeals - the Zoning Board of Appeals of the Town of Lumberland.

Building - a structure wholly or partially enclosed with exterior walls and a roof, intended for shelter, protection, or enclosure of persons, animals, or property. Not all "buildings" are "structures" as defined herein.

Building Height - the vertical distance measured from any point on a proposed or existing building element to the existing grade directly below said point.



Building-Mounted Small Wind Energy Facility - a small wind energy facility that is specifically designed for installations on the roofs, sides or other elevated surfaces of buildings.

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Building Setback Line - shall mean the line, designated on a plan, beyond which no part of a structure, other than parts expressly permitted by Section 5.1. (Bulk Requirements) of this Law, shall extend.

Campground - any area of land which may contain cabins, tents, recreational travel vehicles, shelters, or accommodations used for what is commonly known as a tent camp, RV park, or overnight camp, or is otherwise designed for seasonal or other temporary recreational and living purposes occupied by adults, children, or any combination of individuals, families, or groups. For purposes of this definition, the non-commercial, recreational use of private property for personal use by the property owner or lessee, or guests thereof, is not a campground.

Canoe Livery - a facility for the leasing or renting of water-borne vessels (primarily canoes) for outdoor water-based recreation. (see "Commercial Recreation Use")

Care Cottage – a separate and detached dwelling unit, on the same lot as an owner-occupied single-family or two-family dwelling unit, authorized, constructed, and utilized in accordance with Section 6.3 (Care Cottages) of this Law.

Carport – an open sided structure for the storage and limited protection of vehicles. Carports may be free standing or formed by latticework or a roof projecting from the side of a building.

Cellar – (*same as "Basement"*) - that space of a building that is partly or completely below grade, and which has more than half its height, measured from the floor to ceiling, below the average established curb level or finished grade of the ground adjoining the building.

Cemetery - land used or intended to be used for the burial of dead human beings and dedicated for such purpose, including columbariums, mausoleums, and mortuaries when operated as part of a cemetery and within its boundaries, but excluding crematoria.

Children's Camps - a commercial or not-for-profit facility including buildings for eating and sleeping and amenities such as swimming pools, baseball fields, and tennis courts which is available for use by youths.

Clear-cutting - the removal of substantially all trees and vegetation from a tract of land.

Closed Loop Ground Source Heat Pump System – a ground source heat pump system that circulates a heat transfer fluid through pipes or coils buried beneath the land surface or anchored to the bottom in a body of water.

Club - meeting, recreational, or social facilities of a private or nonprofit organization that are primarily for use by members and their guests, are not primarily operated for profit, and on which merchandising and commercial activities are not conducted except as required to serve the needs of the membership.

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Co-location - the addition of communications equipment to any existing or approved communications tower or tall structure by any persons, corporations, firms, associations, or entities.

Commercial Recreation - facilities or equipment, exclusive of governmental facilities, for purposes of participant or spectator recreation or entertainment and utilized by the public for a fee. Examples include but are not limited to bowling alleys, ski slopes, canoe liveries, campgrounds, tennis courts, theme parks and golf courses.

Commercial Use – an activity involving the sale or rental or distribution of goods or services carried out for a fee.

Comprehensive Plan - the Comprehensive Plan adopted by the Town Board for the future preservation and development of the Town of Lumberland pursuant to NYS Town Law § 272-a, as the same may from time to time be updated, supplemented, and amended, including without limitation by planning policy statements, goals, and standards adopted by the Town Board.

Condominium - a system of ownership of dwelling units, either attached or detached, established pursuant to the Condominium Act of the State of New York (Art. 9-B of the NYS Real Property Law).

Conservation Easement - an agreement that permanently limits the type and amount of development on a specific parcel of land.

Conservation Subdivision – a form of development for single-family residential subdivisions that permits a reduction in individual lot area and modification of certain otherwise-applicable development standards, given the specific site conditions, and which requires that no less than a specified proportion of the total land area is devoted to permanent open space.

Copy - letters, numbers, symbols, designs or other pictorial matter located on any sign.

Child Day-Care Facility – a facility, home, or other establishment defined as a child day-care center in NYS Social Services Law § 390 providing child care for seven (7) or more children and required to be licensed by the New York State Department of Social Services at which day care is provided for hire, and which is not a day-care home or family day-care home.

Critical Facility – facilities/infrastructure that are critical to the health and welfare of the population and that are especially important after any flood hazard event occurs. Examples of such facilities are: police stations, fire stations, vehicle and equipment storage facilities, and emergency operations centers that are needed for flood response activities before, during, and after a flood; public and private utility facilities that are vital to maintaining or restoring normal services to flooded areas before, during, and after a flood; hospitals, nursing homes, and housing likely to contain occupants who may not be sufficiently mobile to avoid death or injury during a flood; and structures or facilities that produce, use, or store highly volatile, flammable, explosive,

toxic and/or water-reactive material.

Day-Care Home – a facility, home, or other establishment at which day care is provided for hire for more than three (3) hours per day per child for no more than two (2) children.

Degradation of Water - pollution of water that unreasonably reduces the quality of such water. Water quality may be considered unreasonably reduced when the quality of a representative sample of water is rendered harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare.

Demolition – the purposeful removal, disassembly, or destruction of (a) more than fifty percent (50%) of the sum of a building's total exterior walls, measured in lineal feet at the foundation level, or (b) more than seventy-five percent (75%) of a building's existing internal structural framework. This definition does not include removal and replacement of exterior elements of a building for repair or maintenance with like materials.

Development Project – any land use change, activity, or project that will result in changes to the physical condition, appearance, or type of use of the site or portions thereof, subject to the final sentence of this definition. Development projects include but are not limited to: (a) change in type of existing usage; (b) new construction; (c) reconstruction, modification, renovation or expansion of existing structures or site improvements; (d) surface disturbance, land filling, excavation or drilling operations, grading, mining, parking lot construction, or any other disturbances to the natural or existing topography or vegetation of the site; and (e) demolition of structures or site improvements. Notwithstanding any provision hereof to the contrary, the following activities shall not be considered a development project: (i) preparation, use, or recovery of land for cultivating; (ii) surface disturbance, land filling, or grading of an area smaller than one thousand (1000) square feet in surface area; or (iii) an activity that is limited to one or more of the following: (x) replacement in kind only; (y) interior construction only, which does not result in change in the type of existing usage; or (z) infrastructure maintenance only.

Development of an Area of Special Flood Hazard - any construction, mining, dredging, filling, grading, paving, or excavation, or other man-made change to any unimproved or improved real estate, within any area of special flood hazard.

Dock – a structure which (a) is attached to the shoreline; (b) extends over the water; (c) is not a vessel; (d) is removable on a seasonal basis; and (e) allows the free movement of water underneath.

Drinking Establishment (bar) - any place devoted primarily to the selling, serving, or dispensing of alcoholic beverages where such beverages are consumed on the premises and the service of food is subordinate to the consumption of such beverages.

Dwelling - a building designed or used as the living quarters for one (1) or more families. The term dwelling does not include motor homes but shall include seasonal homes, modular homes,

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and manufactured homes, so long as they meet all of the requirements of this Law, the Town of Lumberland Building Code, and all other regulations or laws applicable to dwellings.

Dwelling, one-family - a detached building containing only one (1) dwelling unit, and designed for use by one (1) family.

Dwelling, two-family - a building containing two (2) dwelling units.

Dwelling, multi-family - a building containing three (3) or more dwelling units, with separate cooking and sanitary facilities for each dwelling unit.

Dwelling Unit – a building or entirely self-contained portion thereof containing complete housekeeping facilities for a single family, including any domestic employees employed on the premises, and having no enclosed space (other than vestibules, entrances, or other hallways or porches) and no cooking or sanitary facilities in common with any other dwelling unit. A boarding house, dormitory, hotel, inn, nursing home or other similar structure is not a dwelling unit.

Educational Institution - a use of land for the primary purpose of providing educational services to children or adults, including but not limited to primary and secondary schools, nursery schools, colleges and universities, vocational schools, and facilities designed to provide instruction in any recognized skill or vocation.

Enclosed Structure - an engineered structure with a floor, walls, and a roof all made of non-pervious materials, providing structural support and preventing wind dispersal and contact with rainwater.

Exempted Vehicle - any of the following: (a) vehicles for agriculture use; (b) school buses or other mass transit buses; (c) emergency vehicles; (d) military vehicles driven by active duty military personnel; or (e) trucks used in the construction, repair or maintenance of state, county, or town roads or other public structures or property.

Excepted Telecommunications Equipment - shall mean and be: (a) telecommunications equipment used by amateur radio licensees regulated by the Federal Communications Commission; (b) telecommunications equipment that is used by a governmental unit or agency that is statutorily expressly exempt from regulation by the Town; (c) mobile telecommunications equipment that is contained in a car or other motor vehicle or is completely portable and not affixed in any manner to realty (note: for purposes of this definition of "Excepted Telecommunications Equipment, 'mobile telecommunications equipment' does not include or extend to any antenna(s) attached, directly or indirectly, such as on a tower or other structure, to realty or to other facilities used in connection with such mobile equipment); (d) devices covered by the Federal Communication Commission's over-the-air reception devices rule, found at 47 CFR § 1.4000; and (e) antennas that are not licensed by the Federal Communications Commission and are one meter or less in diameter or diagonal measurement or (for whip antennas) are three feet (3') or less in length and no more than three inches (3") thick.

Explosive Materials – substances capable of undergoing decomposition or combustion with great rapidity, involving much heat and producing a large volume of gas. The reaction products fill a much greater volume than that occupied by the original material and exert an enormous pressure, which can be used for blasting and for propelling. Examples include TNT, dynamite, nitroglycerin, and ammonium nitrate.

Family – except for purposes of Section 6.3 (Care Cottages), a family shall be considered either (a) a household of one (1) or more individuals related to each other by birth, marriage, adoption or legal document, or (b) a household of up to four (4) unrelated individuals. For purposes of Section 6.3, family means individuals related to each other by birth, marriage, or adoption.

Family Day-Care Home – a facility, home, or other establishment, defined as a family day-care home in NYS Social Services Law § 390, at which child care is provided for hire for three (3) to six (6) children and which is registered with the Sullivan County Department of Social Services and is operated in accordance with State and County regulations governing operations of a family day-care home.

Farm Stand - a business operated on a seasonal basis to sell regionally produced farm products.

Flammable – a solid, liquid or gas that will ignite easily and burn rapidly.

Float – a structure no larger than ten feet (10') by ten feet (10') in size, which: (a) is not attached to the shoreline; (b) designed to float over the water; (c) is anchored no closer than five feet (5') to the shoreline; (d) is not a vessel; (e) is removable on a seasonal basis; and (f) allows the free movement of water underneath.

Flood or Flooding - a general or temporary condition of partial or complete inundation or normally dry land areas from (a) the overflow of inland or tidal waters; and/or (b) the unusual and rapid accumulation of runoff of surface water from any source.

Flood Insurance Rate Map - the official map on which the Federal Emergency Management Agency (FEMA) has delineated both the special flood hazard areas (SFHAs), the Base Flood Elevations (BFEs) and the risk premium zones applicable to the Town.

Footprint - area of the ground covered by a structure, including the foundation and all areas enclosed by exterior walls and footings and covered or intended to be covered by roofing. In the case of party-wall buildings, each unit shall be considered a separate structure for purposes of measuring footprint area.

Forest Management - the practice of stewardship of wooded land for the purpose of promoting a balance of environmental, recreational and economic interests. Forest management practices include but are not limited to site preparation, planting, harvesting, road construction, insect and disease control, inventory, and fire protection.

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Funeral Home – an establishment primarily engaged in the provision of services involving the care or preparation of human dead, and typically providing for indoor funeral ceremonies. May involve space and facilities for: (a) embalming and the performance of other services used in the preparation of the dead for burial; (b) the performance of autopsies and other surgical procedures; (c) the storage for sale of caskets, funeral urns, and other related funeral supplies; and (d) the storage between use of funeral vehicles. Crematory facilities are excluded from this definition.

Gathering Line, or Production Line – any system of pipelines (and other equipment such as drip stations, vent stations, pigging facilities, valve box, transfer pump station, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), used to move oil, gas, or liquids from a point of production, treatment facility or storage area to a transmission line, which is exempt from the Federal Energy Regulatory Commission's jurisdiction under section 1(b) of the Natural Gas Act, and which does not meet the definition of a "Major utility transmission facility" under the NYS Public Service Law, Article 7, § 120(2)(b).

Garage, Private - an enclosed permanent structure that stores vehicles owned or leased by the occupant of the property. Does not include Carports.

Governmental Facility - any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated by a governmental body or public entity. This term does not include public utilities.

Ground Source Heat Pump System – a system that uses the relatively constant temperature of the earth or a body of water to provide heating or cooling. System components include open or closed loops of pipe, coils or plates; a fluid that absorbs and transfers heat; and a heat pump unit that processes heat for use or disperses heat for cooling; and an air distribution system. (see "Closed Loop Ground Source Heat Pump" and "Open Loop Ground Source Heat Pump.")

Habitable Floor Area - the floor area within the inside perimeter of the exterior walls of the building under consideration, exclusive of unoccupied accessory areas such as vent shafts, corridors, stairways, and mechanical rooms, but specifically inclusive of closets, kitchens, and bathrooms. The area of habitable finished basements is included, but the area of unfinished basements and cellars is excluded.

High-Density Industrial Cattle, Swine, or Fowl Production – High-Density Industrial Cattle or Swine Production, and/or High-Density Industrial Fowl Production.

High-Density Industrial Cattle or Swine Production - facilities used for the feeding or holding for more than forty-five (45) days, in preparation for sale or slaughter or otherwise, of at least two hundred (200) cattle or calves, or six hundred (600) swine, in confinement areas, production facilities, or pens or lots, in any case in an area where the ground surface has been prepared with concrete, stone or similar materials to support the animals, or where crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season.

High-Density Industrial Fowl Production - Facilities used for the feeding or raising of at least two thousand (2000) fowl, where there is one (1) square foot or less of floor space per bird in those structures housing the fowl.

High-Impact Truck - a truck or tractor, as defined in the NYS Vehicle and Traffic Law, with three (3) or more axles, or ten (10) or more wheels, and capable of hauling a gross vehicle weight of thirty four thousand (34,000) pounds or more. Exempted Vehicles are excluded from the definition of 'High-Impact Trucks.'

High-Frequency, High-Impact Truck Traffic – any one of the following: (a) more than twenty (20) one-way trips by high-impact trucks to or from the site of the proposed use during any twenty four (24) hour period at any time during the duration of the use; or (b) more than fifty (50) one-way trips by high-impact trucks to or from the site of the proposed use during any seven (7) day period at any time during the duration of the use; or (c) more than seven hundred (700) one-way trips by high-impact trucks to or from the site of the proposed use during any three hundred sixty five (365) day period during the duration of the use.

High Water Mark of River - the point where substantial vegetation begins at the water's edge.

Home Based Business - shall mean a subordinate use of a non-residential nature which is conducted within a dwelling unit, or building accessory thereto, by a member of the family residing in the dwelling unit, which is clearly incidental and secondary to the use of the property for residential purposes, which otherwise is in all respects in compliance with this Law, and which satisfies each of the following additional conditions: (a) the neighborhood's visual character will be maintained or improved by the use; (b) no pedestrian, truck or other vehicle traffic, or offensive color, lights, odor, substance, noise, vibration, smoke, dust, heat or glare, will be generated incident to the use in an amount, to a degree, or during hours that reasonably adversely impact the neighbors or neighboring properties; (c) no goods or products will be publicly displayed or offered for sale outside of the dwelling unit or permitted accessory structure, and the use will involve no exterior display, no exterior storage of materials, and no other exterior indication of the home based business or variation from the residential character of the principal building, other than a non-illuminated sign as may otherwise be permitted in this Law; (d) such business shall be conducted and carried on only by a person residing in the dwelling unit, with assistance from no more than one non-resident employee or assistant; (e) parking for all customers, clients, and others associated with the use shall be on site (as opposed to on any other property, or on the street); (f) no more than one (1) business vehicle used in connection with the Home Based Business, of no more than twenty four thousand (24,000) pounds gross vehicle weight, may be parked regularly in a location visible from a public road or neighboring properties; and (g) an area of no more than twenty five percent (25%) of the habitable floor area of the dwelling unit (whether the use is to take place in the dwelling unit or in an accessory building) or five hundred (500) square feet (whichever is less) is used for such business. Examples of home based businesses might include (subject always to the aforesaid additional conditions) a physician's, lawyer's, or other professional office.

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Home Based Occupation – shall mean a subordinate use of a non-residential nature which is conducted within a dwelling unit, or permitted building accessory thereto, by a member of the family residing in the dwelling unit, which is clearly incidental and secondary to the use of the property for residential purposes, which otherwise is in all respects in compliance with this Law, and which satisfies each of the following additional conditions: (a) the occupation is conducted in a manner which does not give the outward appearance of a business, and does not infringe on the right of neighboring residents to enjoy the peaceful occupancy of their dwelling units; (b) no pedestrian, truck or other vehicle traffic, or offensive color, lights, odor, substance, noise, vibration, smoke, dust, heat or glare, will be generated incident to the use in an amount, to a degree, or during hours that reasonably adversely impact the neighbors or neighboring properties; (c) no goods or products will be publicly displayed or offered for sale outside of the dwelling unit or permitted accessory structure, and the use will involve no exterior display, no exterior storage of materials, and no other exterior indication of the home based occupation or any variation from the residential character of the principal building, including without limitation any sign; (d) such occupation shall be conducted and carried on only by a person residing in the dwelling unit, with assistance from no more than one non-resident employee or assistant; (e) parking for all customers and others associated with the use shall be on site (as opposed to on any other property, or on the street); and (f) no physical modifications to the dwelling unit or accessory building shall have been made or be necessary to accommodate such use. Examples of home based occupations might include (subject always to the aforesaid additional conditions) dressmaking, cooking, baking, and meal preparation for consumption off premises, and word- and data-processing.

Hotel - an establishment providing, for compensation, sleeping accommodations and customary lodging services, including the furnishing and upkeep of furniture and bed linens. This use may include conference and meeting rooms, restaurants, bars, and recreational facilities. This classification does not include lodging businesses that are specifically listed elsewhere in this Law under another definition, such as bed and breakfast or motel.

Impervious Surface - any material or surface that substantially reduces or prevents the infiltration of water into the ground. Examples are pavement (asphalt, concrete, etc), buildings/ structures, conventionally surfaced roadways, driveways and parking lots, and sidewalks.

Industrial Use – any mining, production, assembly, harvesting, or manufacturing operation, in any event requiring: machinery and equipment. For purposes of this Law, the following uses shall not constitute 'industrial uses': (a) agriculture use or forest management, (b) residential use, (c) commercial use, (d) telecommunication facilities or communication transmission towers, (e) small wind energy facilities and similar structures that do not release dust, dirt, fly ash, odors, fumes, or vapors or gases that could be injurious to human or animal health or to the environment, or (f) retail gasoline station facility.

Injection Well – a bored, drilled or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension, through

which fluids (which may or may not include semi-solids) are injected into the subsurface and less than ninety (90) percent of such fluids return to the surface within a period of ninety (90) days .

Institution, Institutional Use – the use of land by a not-for-profit organization for educational, recreational, artistic, religious, spiritual, scientific, land conservation, health care, or community service programs. Facilities for the education, treatment, incarceration, punishment, or rehabilitation of persons with criminal records shall not be considered institutional uses for the purposes of this definition.

Junkyard - any place of storage or deposit, whether in connection with another business or not, where two (2) or more unregistered, old or secondhand motor vehicles or truck trailers, no longer intended or in condition for legal use on the public highways, or two (2) or more buses, boats, snowmobiles, all terrain vehicles, garden-type tractors, recreational vehicles, manufactured homes, trucks, truck bodies, or construction machinery no longer intended or in condition for use, are held, whether for the purpose of resale of used parts therefrom, for the purpose of recycling or reclaiming for use some or all of the materials therein, whether metal, glass, fabric or otherwise, or for the purpose of disposing of the same or for any other purpose. Such term shall include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles or equipment which, taken together, equal in bulk two (2) or more such vehicles or equipment. Excluded from this definition are storage of vehicles or machinery within fully enclosed structures.

Kennel – any commercial kennel or personal kennel.

Kennel, Commercial – any place at which there are kept, harbored, or maintained five (5) or more dogs or cats over the age of three (3) months, and/or more pups or kittens than from a single litter under the age of three (3) months, for care, boarding, breeding, training, exhibition, or other purpose, for a fee or receipt of other consideration.

Kennel, Personal – any place at which there are kept, harbored, or maintained five (5) or more dogs or cats over the age of three (3) months, and/or more pups or kittens than from a single litter under the age of three (3) months, for care, boarding, breeding, training, exhibition, or other purpose, where no fee is charged or other consideration received.

Land Application Facility – a site where any Natural Gas Exploration And/Or Petroleum Extraction, Exploration or Production Wastes are applied to the soil surface or injected into the upper layer of the soil.

Large Scale Water Use – any water withdrawal or sequestering water use of over one hundred thousand (100,000) gallons of water in any thirty (30) day period from water resources within the Town. Large scale water use does not include water withdrawn for agriculture use, for emergency uses such as fire fighting, or for drinking, recreational, cooking, washing, or sanitary purposes.

Lesser Scope Mineral Extraction – a mining operation where the open face of such operation is

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less than two acres, and where the lesser of fewer than seven hundred fifty (750) cubic yards or fewer than one thousand (1,000) tons of material (such as gravel, rock, stone, sand, fill or minerals) are extracted within any twelve (12) successive calendar months. "Open face" means the dimensional area where the extraction or removal of said natural resource use is underway, and for purposes of this Law includes any area of the property that has not been fully reclaimed and rehabilitated following prior natural resource removal.

Light-Impact Industrial Use – the manufacture or assembly of finished products or parts predominately from previously processed or prepared materials (including fabrication, treatment, packaging, and incidental storage, and sale and distribution of such products or parts); provided, that all operations are conducted entirely within an enclosed building, and provided, further, that such use: (a) does not produce or generate or otherwise involve on-site use or storage of Natural Gas And/Or Petroleum Extraction, Exploration or Production Wastes; and (b) does not involve high frequency, high-impact truck traffic, or any other Explicitly Prohibited Use set forth in Section 10 (Explicitly Prohibited Uses) of this Law.

Livestock Unit - for purposes of this Law a livestock unit shall be: (a) one cow or two calves (for purposes of this definition a "calf" is a bovine younger than one year old); (b) two horses or two ponies; (c) one pig or three goats or two sheep or two llamas, or two deer or two ratites; (d) fifty fowl; (e) ten rabbits; (f) four bee hives or (g) an equivalent number of other farm animals (determined by the Code Enforcement Officer or the Board of Appeals by reference to the amount of waste typically generated).

Lot - a parcel of land, whether occupied or unoccupied.

Lot Area - the total horizontal area included within lot lines.

Lot, Buildable - land occupied or to be occupied by a building and its accessory buildings having, not less than the minimum area and width required by this Law for a lot in the district in which such land is situated, and having its principal frontage on a street or on such other means as may be adequate as a condition of the issuance of a building permit for a building on such land.

Lot, Cleared - the amount of the area of a lot included within lot lines where the land will be physically altered by clearing of vegetation, leveling of the land, or construction of a structure, permanent or otherwise.

Lot Coverage - the percentage of the lot area that is occupied by the footprint of a building, any accessory building, and any other impervious surfaces.

Lot Line - a property boundary of a lot, except where the property boundary is the center line or other portion of a public highway, in which event for purposes of this Law the property line shall be the highway right-of-way line. Any lot line that is neither a rear line nor a front line shall be deemed a side line.

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Lot Width - the distance from one lot line to the other, measured parallel to the front street line at the building setback line.

Manufactured Home - a dwelling which is factory-built in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401) and which is transportable in one (1) or more sections, is affixed to a chassis with axles and wheels, and designed to be placed on a permanent or temporary foundation, and is registered as a manufactured home under NYS Vehicle and Traffic Law § 122-c.

Manufactured Home Lot - a designated site of specific total land area, which is located within a manufactured home park for the accommodation of one (1) manufactured home.

Manufactured Home Park - any parcel of land that is planned and improved for the placement of two (2) or more manufactured homes, which are used as dwellings.

Major Project – a project or use which requires a special use permit or is subject to the site plan review process and which exceeds any of the thresholds for a Minor Project.

Mining – any of the following activities: (a) the extraction of overburden and minerals from the earth; (b) the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, sorting, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use; (c) the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; (d) the disposition of overburden, tailings and waste at the mine location; or (e) any combination of the above activities. In no event shall “mining” be construed to mean, be, or include Natural Gas And/Or Petroleum Exploration Activities or Natural Gas And/Or Petroleum Extraction Activities, nor shall “mining” include the excavation, removal and disposition of minerals from the site of, and incidental to, a construction project, or excavations incidental to bona fide agriculture use activities; provided, however, that such excavations, removal and disposition incidental to construction shall have received and be in compliance with all approvals required by this Law. For the purpose of this definition:

(1) Minerals - mean any naturally formed, usually inorganic, solid material located on or below the surface of the earth. "Minerals" include, but are not limited to, peat, topsoil, gravel, and stone. Natural gas and other petroleum products shall not be considered "minerals."

(2) Overburden - means all of the earth, vegetation and other materials that lie above or alongside a mineral deposit.

(3) Spoil and Tailings - have the meanings given to them by Article 23 of the NYS Environmental Conservation Law or any similar or successor statute.

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Minor Project – a use or combination of uses on a lot or a series of adjoining lots that does not otherwise require a special use permit and that, over the most recent two (2) year period, is less than or equal to any of the following thresholds: (a) construction, alteration or expansion of one single family dwelling or one two-family dwelling and/or accessory structures on a lot legally in existence as of the date of this chapter, or on a lot that satisfies the requirements of this Law for single-family residential use; (b) construction or alteration of the interior of a building or structure; (c) routine property maintenance activities, including repainting, repair and in kind replacement; (d) the seasonal planting, cultivation and harvesting of field crops, fruits, vegetables, whether as part of an existing or new or expanded agricultural operation; (e) the development or redevelopment of any property or structure for a use or change in use that proposes a building or structure (i) of one thousand five hundred (1500) square feet for cumulative gross floor area or (ii) that will be used for two or more commercial uses; (f) the expansion or relocation of any existing use resulting in a building, structure or disturbed area of one thousand five hundred (1500) square feet of gross floor area; (g) the paving of nonresidential parking areas and associated driveways for the purposes of reviewing, maintaining or restoring stormwater facilities; (h) the grubbing, filling, grading or clearing of one acre of land; or (i) the construction of a road or accessway of one hundred fifty feet (150') in length, the terminus of which is on a Town highway.

Mixed Use – a development or building with any combination of approved residential, commercial (including office), and light-impact industrial uses.

Motel - a building or series of buildings in which lodging is offered for compensation, and which is distinguished from a hotel primarily by reason of providing direct independent access to, and adjoining parking for, each rented room.

Motor Home - a dwelling designed for temporary residence mounted on a self-propelled chassis designed for travel over roads and highways. Units may be self contained or designed for temporary connection to electric, water or sewerage utilities.

Motor Vehicle Service Station - an enterprise operated for gain and available to the public, other than a private garage and other than an automobile and vehicle repair enterprise, which is used for storage, washing, or fueling, of automobiles or other motor vehicles.

Natural Gas - methane and any gaseous substance, either combustible or non-combustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

Natural Gas And/Or Petroleum Exploration Activities - geologic or geophysical activities related to the search for natural gas, petroleum or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying and sampling techniques, *but only to the extent* that such activities involve or employ core, rotary, or any other type of drilling or otherwise making any penetration or excavation of any land or water surface in the search for and

evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits.

Natural Gas And/Or Petroleum Extraction Activities - the digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons, including without limitation any and all forms of shale fracturing.

Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes - any of the following in any form, and *whether or not* such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of "industrial waste," "hazardous," or "toxic," and whether or not such substances are generally characterized as waste: (a) below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, whether naturally occurring or otherwise, in any case relating to, arising in connection with, or produced by or incidental to the exploration for, the extraction or production of, or the processing, treatment, or transportation of, natural gas, petroleum, or any related hydrocarbons; (b) natural gas or petroleum drilling fluids; (c) natural gas or petroleum exploration, drilling, production or processing wastes; (d) natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material); (e) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of natural gas or petroleum; (f) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum; (g) drill cuttings from natural gas or petroleum wells; or (h) any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum. This definition specifically intends to include some wastes that may otherwise be classified as "solid wastes which are not hazardous wastes" under 40 C.F.R. § 261.4 (b). The definition of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes *does not include* (i) recognizable and non-recognizable food wastes, or (ii) waste generated by Agriculture Use.

Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility - any of the following: (a) tanks of any construction (metal, fiberglass, concrete, etc.); (b) impoundments; (c) pits; (d) evaporation ponds; or (e) other facilities, in any case used for the storage or treatment of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes that: (i) are being held for initial use; (ii) have been used and are being held for subsequent reuse or recycling; (iii) are being held for treatment; or (iv) are being held for storage.

Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump - land upon which Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded, without any intention of further use.

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Natural Gas Compression Facility – those facilities or combination of facilities that move natural gas or oil from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

Natural Gas Processing Facility – those facilities that separate and recover natural gas liquids (NGLs) and/or other non-methane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of CO₂ separated from natural gas streams.

Non-conforming Unit - a building, sign, other structure or use of land that was legal immediately prior to enactment of this Law but which does not conform to the requirements of this Law.

Non-regulated Pipeline – those pipelines that are exempt or otherwise excluded from regulation under federal and state laws regarding pipeline construction standards or reporting requirements. Specifically includes production lines and gathering lines.

Offices, Business and Professional – a workplace in which manufacturing processes, retail sales, construction, and warehousing do not occur on the premises, including offices of firms or organizations providing professional, executive, management, or administrative services, such as architectural, engineering, real estate, insurance, investment, legal, and medical and dental offices. Office also includes business offices that support or manage manufacturing, retailing, construction, and warehousing, as well as research laboratories and other facilities in which research activities are conducted. An office that is operated in connection with another primary use on the use table shall be considered accessory to that primary use, and not a separate use.

Open Loop Ground Source Heat Pump System – a ground source heat pump system that uses groundwater as a heat transfer fluid by drawing groundwater from a well to a heat pump and then discharging (as opposed to re-circulating) the water.

Open Space - that portion of the landscape upon which no buildings, structures, sidewalks, driveways, roadways, parking lots, or other impervious surface have been constructed or situated, and which is in its natural state or cultivated for agriculture use.

Outdoor Recreation – leisure time activities that are typically associated with open air, natural or semi-natural settings such as adventure racing, backpacking, bicycling, camping, canoeing, caving, fishing, hiking, hunting, kayaking, mountaineering, rock climbing, sailing and skiing.

Outdoor Recreation, Motorized - a recreational use particularly oriented to and utilizing the outdoor character of an area on a motorized vehicle including, but not limited to, snowmobile,

jeep and all terrain vehicle trails, or similar use in which no physical alteration to the land is made to accommodate the vehicle.

Performance Guarantee - a guarantee of future performance through a bond, letter of credit, or other mechanism, from an issuer reasonably acceptable (as to creditworthiness) to the Planning Board, in form and content acceptable to the Attorney for the Town, and in an amount required by the Planning Board as contemplated by Sections 5.2.6 and 6.8.4) of this law.

Pipeline – all parts of those physical facilities through which petroleum, natural gas, other gaseous substance, hazardous liquids, or chemicals move in transportation (including pipes, valves and other equipment and appurtenances attached to pipes and other equipment such as drip stations, vent stations, pigging facilities, valve boxes, transfer pump stations, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), whether or not laid in public or private easement or private right of way within the Town. This term includes, without limitation, gathering lines, production lines, and transmission lines.

Pollution – the contamination or other diminution of the physical, chemical or biological properties of land, water, or air, including a change in taste, color, turbidity or odor, and including a discharge of any liquid, gaseous, solid, radioactive or other substance on land, water or air, that will, or is likely to, create a nuisance or render such land, water or air harmful, detrimental or injurious to humans, animal life, vegetation, or property, or to the public health, safety or welfare.

Portable Storage Unit - a transportable storage unit designed and used primarily for temporary storage of building materials, household goods, personal items and other materials for use on a limited basis, which is located for such purposes outside an enclosed building.

Principal Permitted Use - for the purpose of this Law, any use that is allowed in a district as of right (that is, without review of a municipal board such as the Planning Board). (Note: such uses may and typically do require a zoning permit or a building permit and a certificate of occupancy from the Code Enforcement Officer.)

Private Water System – a system for the provision of water for human or animal consumption through pipes or other constructed conveyances, where such system has fewer than fifteen (15) service connections or regularly serves fewer than twenty-five (25) individuals.

Public Utility - a facility that provides electric, gas, steam, telephone service, water or sewerage directly to the general public. As used herein, a public utility is an entity which operates as a monopoly, and whose rates charged to customers are established by a utility commission.

Public Utility Facilities – building, structures, and facilities, including generating and switching stations, poles, lines, pipes, pumping stations, repeaters, antennas, transmitters and receivers, valves, operated by a public utility and relating to the furnishing of utility services to the public by that public utility.

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Public Park - a protected area, in public ownership, in its natural or semi-natural state, or planted, and set aside for non-commercial human recreation and enjoyment, or for the protection of wildlife or natural habitats. It may or may not have developed recreational facilities such as playgrounds, tennis courts, baseball fields, picnic areas, and/or lavatories.

Radioactive Material – material in any form that emits radiation, but only if such material has been moved from its naturally occurring location through an industrial process. Such material is “radioactive material” for purposes hereof, whether or not it is otherwise exempt from licensing and regulatory control pursuant to the NYS Department of Labor, the US Nuclear Regulatory Commission, the US Environmental Protection Agency, the US Department of Energy, the US Department of Transportation, or any other regulatory agency.

Radioactive Material, Below-Regulatory Concern - radioactive material in a quantity or of a level that is distinguishable from background (as that phrase is defined at 10 CFR § 20.1003), but which is below the regulation threshold established by any regulatory agency otherwise having jurisdiction over such material in the Town.

Radiation – the spontaneous emission of particles (alpha, beta, neutrons) or photons (gamma) from the nucleus of unstable atoms as a result of radioactive decay.

Ratite – a flightless bird such as an ostrich or an emu.

Recreational Facilities, Private Park - a protected area, in private ownership, in its natural or semi-natural state, or planted, and set aside for human recreation and enjoyment, or for the protection of wildlife or natural habitats. It may or may not have developed recreational facilities such as playgrounds, tennis courts, baseball fields, picnic areas, and/or lavatories.

Religious Institution - a church, synagogue, mosque, temple or other place of religious worship.

Retail Establishment – a building or lot used for the retail sale of merchandise which (merchandise) is not specifically listed elsewhere in this Law under another definition or use classification. By way of illustration, this classification includes without limitation clothing stores, pharmacies, furniture stores, appliance stores, grocery stores, and businesses retailing the following goods: toys, hobby materials, hand crafted items, jewelry, cameras, hardware, antiques, art supplies, office supplies, medical supplies, and bicycles. By way of illustration, this classification does not include (because the merchandise being sold is listed elsewhere in this Law under another definition or use classification) any of the following: adult-oriented businesses; automobile and vehicle sales; motor vehicle service station; drinking establishments; restaurants; or farm stands.

Restaurant - facilities primarily used for the sale of prepared food for public consumption on or off the premises.

Restaurant, Drive-through – a restaurant where food is provided to the customer under conditions where the customer does not have to leave the car or where fast service to the vehicle occupants is a service offered, regardless or whether food is also offered for consumption within a building.

Ridgeline – the line at the top of a hill where the average slope becomes less than five percent (5%). If the average slope never becomes this shallow at the top of a hill, then the line at the top of the hill as seen from the nearest public road providing access shall be the ridgeline.

Riparian Area – the transitional area adjacent to a wetland or body of water where the natural vegetation and habitat is different from the upland natural environment. Its function is important for flood protection, stream bank stabilization, soil conservation, water quality, and biodiversity.

Road - a public right-of-way affording primary access by vehicles to abutting properties, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, place or otherwise.

Sensitive Site – the site or location of any of the following: dwelling unit, religious institution, child day-care facility, day-care home, family day-care home, public park, hospital, health clinic, or other health care facility, children’s camp, commercial recreation use, school bus stop, nursery, elementary, middle-, or high school or other educational institution (including playing fields, administration, and maintenance buildings), commercial establishment that customarily employs minors, or funeral home.

SEQRA – the New York State Environmental Quality Review Act, Article 8 of the NYS Environmental Conservation Law, and any successor statute, together with any state regulations (presently 6 NYCRR Part 617) and local regulations promulgated thereunder.

Sequestering Water Use - water that is by virtue of the use in question is sequestered from the natural hydrologic cycle. This term does not include water that has evaporated, transpired, been consumed by humans or livestock, used for irrigating crops, or otherwise returned to the atmosphere or incorporated into food products.

Service Establishment - an enterprise, not specifically listed under another use classification, where the primary activity is the offering for compensation of services, as opposed to goods or products, to individuals, businesses, industry, government, or other enterprises. Examples of service establishments include: barber shops, beauty shops, shoe repair shops, dry cleaning shops, and tailors.

Shoreline – the ordinary high water level of a body of water.

Sign, Signage - any structure, natural object or part thereof, device, or inscription, which is represented on any land or the outside of any building used to attract attention to any object product, place, activity, person, institution, organization or business, or which shall display

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or include any letter, words, numerals, emblems, symbols, models, banners, flags, pennants, insignia, trademarks, devices or representations used as, or with is in the nature of, an announcement, direction, advertisement, attention-arrester, warning or designation of any person, firm, group, organization, place, commodity, product, service, business, profession, enterprise, industry or public performance. Sign types include:

(a) Banner: a sign applied to cloth, paper, balloons, fabric, bunting, or other flexible material of any kind. Flags and pennants other than Governmental Flags (defined below) are types of banners.

(b) Directional Sign: A sign identifying a public facility, or traffic control signs required for traffic control purposes shown on an approved site plan or posted pursuant to the order of traffic control agencies and conforming to the Manual of Uniform Traffic Control Devices of the NYS Department of Transportation.

(c) Electronic Sign: a sign which exhibits changing light or color effects, even though the intensity of light may be relatively constant.

(d) Governmental Flag: a banner sign in the nature of a flag or pennant containing the insignia or emblem of a nation or political subdivision.

(e) Governmental Sign: signs required by duly constituted governmental bodies and their agencies, where such signs are established in the interest of the safety, convenience or welfare of the general public.

(f) Ground Sign: a sign affixed to the ground independent of any adjacent building or structure.

(g) Illuminated Sign: a sign illuminated by artificial light, or which is composed of luminous tubing or other artificial lighting devices.

(h) Marquee: a permanent roofed structure projecting from a building, usually over an entrance, attached to the building or on freestanding supports, or both.

(i) Projecting Sign: a sign protruding at an angle from a building or structure.

(j) Property Protection Sign: a sign warning off trespassers such as "No Trespass" or "Beware of Dog."

(k) Real Estate Sign: a sign indicating the availability for sale, rent or lease of the specific lot, building, or portion of a building upon which the sign is posted.

(l) Roof Sign: a sign placed above the upper edge of a building, wall, or parapet, or placed or painted on or above the roof covering, or on an independent structural frame on a roof, or on the side of roof or roof structures such as marquees, penthouses, elevator housing, and cooling tanks.

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(m) Self-Illuminated Sign: an internally illuminated sign with graphics displayed on a translucent face, or individual letters or symbols with a translucent face, or with translucent or opaque edges.

(n) Streamer: any piece of cloth, plastic or other flexible material more than 10 feet in length when unfurled and placed on the ground or attached at one end or both ends to a mast, pole, building, or structure. A streamer must be solid in color, contain no copy and, when unfurled and placed flat on the ground, must have a width of no more than 12 inches. A streamer must be made of weatherproof material, and be securely fastened to a mast, pole, building, or structure. A streamer shall be considered a sign. A streamer is permitted only as a temporary sign.

(o) Temporary Sign: a sign that: (i) is typically constructed from non-durable materials, such as paper, cardboard, cloth, plastic, or wallboard; (ii) may easily be dismantled or removed and which can feasibly be displayed for a limited period of time in any one location; and (iii) does not constitute a structure subject to the Town's Building Code or Zoning Law provisions.

(p) Vehicular Sign: any letter, groups of letters, words or other devices or representations which form or are used as or are in the nature of an announcement, advertisement, or other attention-directing device, placed, painted, affixed, annexed or attached upon a motor vehicle, trailer, farm implement or other mobile equipment, whether or not such motor vehicle, trailer, farm implement or other mobile equipment is operable or registered.

(q) Wall Sign: a sign painted on, or affixed to and parallel to an exterior wall of a building or structure, but not on window glass.

(r) Warning Sign: a sign exclusively devoted to warning the public of dangerous conditions and unusual hazards such as drop offs, high voltage, fire danger and explosives. Does not include Property Protection Signs such as "Beware of Dog" or "No Trespassing."

(s) Window Sign: a sign visible from a sidewalk, street, or other public place, that is illuminated, painted or affixed on glass or other window material.

Sign, Abandoned – any sign (a) that is located on property that becomes vacant and unoccupied for a period of (90) consecutive days; (b) that pertains to an event or purpose that no longer applies or exists; or (c) no longer identifies or advertises a business, lessor, owner, product or activity presently conducted or available on the premises where such sign is displayed.

Sign Area - the surface area of the sign including the frame, plate or structure used to hold up any lettering or pictorial matter. Except as otherwise provided herein, if a sign is attached, painted or applied to the front or face of a building or is irregular in shape, the area of the sign shall be the area of the smallest rectangle that can be placed over the entire sign, edges, and background (if the background is of a different color than the predominant color surrounding the sign). In the event that a letter or letters or other pictorial matter are placed as separate units without a background board, the sign area shall be calculated as the area of the smallest rectangle that encloses all of the symbols. In the case of a flat or two-sided free standing or

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projecting sign, the sign area shall be the entire surface area of one face of the sign. The sign area of signs having more than two (2) sides shall be the sum of the surface area of all sides.

Solar Collector - a solar photovoltaic cell, panel, or array, or solar hot air or water collector device, which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored heat.

Solar Storage Battery - a device that stores energy from the sun and makes it available in an electrical form.

Solid Waste – generally refers to all putrescible and non-putrescible materials or substances, except domestic sewage, sewage treated through a publicly owned treatment works, or irrigation return flows, that is discarded or rejected as being spent or otherwise worthless, including but not limited to garbage, refuse, industrial and commercial waste, rubbish, tires, ashes, incinerator residue, construction and demolition debris, and discarded automobiles.

Small Wind Energy Facility – a wind energy facility consisting of a wind turbine, a tower, and associated control or conversion electronics which has a rated capacity of not more than 10 kW and which is intended primarily to reduce on-site consumption of public utility-generated power.

Special Flood Hazard Area- the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. This includes Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE, and V on the FEMA Flood Insurance Rate Maps.

Special Use - a use that because of its unique characteristics requires individual consideration through a procedure of review by the Planning Board, in order to determine whether a Special Use Permit should be granted, conditionally granted, or denied.

Specified Anatomical Areas – (a) Less than completely and opaquely covered human genital, pubic region, buttocks, and female breast below a point immediately above the top of the areola; and/or (b) Human male genitalia in a discernible turgid state even if completely and opaquely covered.

Specified Sexual Activities – (a) human genitals in a discernible state of sexual stimulation or arousal; (b) acts of human masturbation, sexual intercourse, or sodomy; and/or (c) fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.

Stable, Commercial - a structure or land use in or on which equines are kept for sale or hire to the public, and/or on which breeding, boarding, or training of equines is available for compensation.

Stable, Private - an accessory structure or land use that is designed, arranged, used, or intended to be used for the keeping of equines for the private use of the occupants of a principal dwelling and their guests, but in no event for hire.

Steep Slope—a significant change in the elevation of the land over a relatively short distance so as to create an incline/decline that impedes development.

Structure - anything that is constructed or erected, the use of which requires more or less permanent location on the ground; or anything that is attached to another structure. "Structure" also includes an enclosed edifice of any type, constructed parking spaces, anything that is constructed or erected underground and projects up to the ground surface or above, and anything that is constructed or erected wholly underground other than public utility lines, septic and water systems, or other similar types of underground construction wholly ancillary to a structure on the surface. A building is an example of one type of structure. Underground graves, vaults, and other underground facilities for the interment of bodies are excluded from the definition of structure. A structure is a "structure" without regard to how it is attached to or rests upon the ground or any other structure, and construction, erection, or attachment of a structure utilizing skids, wheels, or other non-permanent foundation shall not obviate any otherwise applicable requirement for any permit or compliance with setback or other requirements contained in this Law.

Subdivision - means the division of any parcel of land into two (2) or more lots, blocks, or sites, with or without streets or highways, and includes re-subdivision. Construction of or conversion to a condominium is a form of subdivision.

Substandard Lot - any lot on record in the office of the Sullivan County Clerk which does not meet the minimum area, width, or yard requirements for the district in which that lot is located.

Substantial Improvement - any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either: (a) before the improvement or repair is started; or (b) if the structure has been damaged and is being restored, before the damage occurred. For the purposes hereof, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. Substantial improvement does not, however, include either: (i) any project for the improvement of a structure to comply with existing State or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or (ii) any alteration of a structure listed on the National Register of Historical Places or State Inventory of Historic Places.

Subsurface - below the surface of the earth, or of a body of water, as the context may require.

Surface Disturbance - any man-made change in improved or unimproved land sub-surface and surface, including but not limited to: construction, external repair, land disturbing activity, grading, road building, pipe laying, or other activity resulting in a change in the surface or sub-surface physical character of any land, including clearing, grubbing, dredging, grading,

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excavating, extracting, stockpiling, paving, berming, soil disturbance, placement of fill, or storage of equipment or materials in pits, ponds or detention facilities. The scope of a surface disturbance includes all activities that are necessary or convenient for the project that is being undertaken, such as associated infrastructure developments including pipelines, access roads, utility transmission facilities, drainage ditches and the like. For determining the area or extent of a surface disturbance, a proposed project may not be segmented into smaller components, but rather the entire scope and larger common plan of development of a project shall be taken into account even though multiple separate and distinct land development activities may take place at different times on different schedules.

Swimming Pools - a structured in-ground or above-ground pool, basin, chamber, or tank which is intended for swimming, diving, recreational bathing or wading and which contains, is designed to contain, or is capable of containing water more than twenty four inches (24") deep at any point. Includes indoor pools, hot tubs and spas.

SWPPP - Stormwater Pollution Prevention Plan, as required by the NYS Department of Environmental Conservation (DEC) in conformance with DEC technical standards and SPDES (State Pollutant Discharge Elimination System) Stormwater Permit requirements. A Basic SWPPP consists of a plan for erosion and sediment control. A Full SWPPP consists of a plan for erosion and sediment control plus a post-construction stormwater control plan.

Telecommunications Facility - any equipment, other than Excepted Telecommunications Equipment, used in connection with the provision of two-way communication services of which at least one of the directions of communications is wireless, including cellular telephone services, personal communications services, private radio communications services, fire and emergency communications, and any other private or public radio communications transmissions regulated by the Federal Communications Commission in accordance with the Telecommunications Act of 1996 and other federal laws. Such uses shall include private commercial uses as well as public uses. A telecommunications facility shall include monopole, guyed, or latticework tower(s), as well as antenna(s), switching stations, principal and accessory telecommunications equipment and supporting masts, wires, structures and buildings.

Transmission Line – a pipeline that transports petroleum, natural gas, or water to end users as a public utility and which is subject to regulation either by: (a) the Federal Energy Regulatory Commission's jurisdiction under section 1(b) of the Natural Gas Act; or (b) as a "Major utility transmission facility" under the NYS Public Service Law, Article 7, § 120(2)(b).

Truck Trailer – a structure also commonly called a semi-trailer, designed primarily to be pulled by a road tractor or carried on a railroad car. Common varieties include dry freight vans, refrigerated vans (reefers), flatbeds, and tank trailers. For purposes of this Law, intermodal freight containers are included in this definition of "Truck Trailer."

Underground Injection – subsurface emplacement of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes by or into an Injection Well.

Underground Natural Gas Storage - subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location for the primary purpose of load balancing the production of natural gas. Includes compression and dehydration facilities, and pipelines.

Use Table – the Schedule of District Use and Dimensional Requirements set forth at Article 12.0 of this Law.

Variance – this term includes both area variances and use variances.

Variance, Area - the authorization by the Board of Appeals for the use of land in a manner that is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

Variance, Use - the authorization by the Board of Appeals for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning regulations. An increase in density or intensity of use shall be deemed to require a use variance if such increase is not allowed by right or by special use permit.

Warehouse – an enclosed structure or part of an enclosed structure, for storing goods, wares and/or merchandise.

Water; Water Resources – all streams, ditches, lakes, ponds, marshes, vernal pools, watercourses, waterways, wells, springs, drainage systems, and all other bodies or accumulations of water, surface or underground, intermittent or perennial, which are contained in, flow through, or border upon the Town or any portion thereof.

Water Withdrawal – removal or capture of water from water resources within the Town.

Wildlife Management - management of natural wildlife and associated habitats with the intent of enhancing the same to provide for hunting and/or fishing activities.

Wind Energy Facility – the structures and associated equipment which convert wind energy into usable mechanical or electrical energy, including towers, turbines, guy wires, associated anchors and foundations, mounts, connected facilities such as generators, alternators, inverters and batteries, and other associated equipment.

Wind Tower – the monopole, freestanding or guyed structure that supports a wind turbine generator, gearbox and rotor blades.

Yard – an open space on the same lot with a structure.

Yard, Front - an open space extending across the entire width of the lot between the front of the principal building and the street line.

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Yard, Rear - an open space extending across the entire width of the lot between the rear lot line and the wall of the principal building nearest the rear lot line.

Yard, Required/ Setback Area - that portion of any yard required to satisfy minimum setbacks. No part of such yard can be included as part of a yard required for structures on another lot.

Yard, Side - an open space extending across the entire length of the lot between the side wall of the principal building and the side line of the lot and extending through from the front yard to the rear yard. Side yards shall be measured in a line perpendicular to side lot lines.

3.0 DISTRICT REGULATIONS

3.1. Establishment of Districts

3.1.1. Zoning Districts

For the purpose of promoting the public health, safety, morals and general welfare of the Town of Lumberland, the Town is hereby divided into zoning districts and overlay districts. The zoning districts are as follows:

(a) River Hamlet Districts (Pond Eddy and Handsome Eddy) (RHD)

One purpose of this district is to complement the River Overlay District by centralizing river related commercial activity.

(b) Black Forest District (BFD)

One purpose of this district is to accommodate and augment the community's established regulations and deed restrictions. Nothing herein shall in any way be construed to impose any additional obligation on the Town to enforce the provisions of the community's established regulations and deed restrictions. To the extent that any purported proscribed conduct is alleged to be a distinct violation of this Chapter, however, the Town may enforce the provisions of this Chapter according to Section 7 of this Chapter, *infra*.

(c) Hillside District (HD)

One purpose of this district is to provide an area in Town for generally low-density residential development and complementary uses, while preserving open space and community character.

(d) Mongaup River Valley District (MRV)

One purpose of this district is to maintain the pristine quality of this area.

(e) Mohican Lake District (MLD)

One purpose of this district is to accommodate the existing dense settlement while allowing compatible growth.

(f) Rural Residential District (RR)

One purpose of this district is to protect the rural character of the less densely developed areas of the Town.

(g) Glen Spey District (GS)

One purpose of this district is to support a town center feel.

3.1.2. Overlay Districts

An "overlay district" is a special district that is drawn on a map over a specific area, primarily to protect special resources from inappropriate development and to maintain the Town's natural

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resources. The overlay districts supplement the existing land use regulations, such as subdivision requirements, site plan review and zoning districts of the Town. Overlay districts may overlap different zoning districts, but they do not change the use and dimensional requirements of the underlying zoning districts unless specifically so stated in this Law. Except as specifically otherwise provided in this Law, all uses in any overlay district require site plan review. The overlay districts are as follows:

(a) *Flood Plain Overlay*

One purpose of this overlay district is to reduce the potential for flooding and associated flood damage.

(b) *Historic Overlay*

One purpose of this overlay district is to preserve the historic buildings and qualities of this area.

(c) *Mohican Lake Access Overlay*

One purpose of this overlay district is to provide an area of shoreline that allows a high density of lake access points.

(d) *Riparian Overlay*

One purpose of this overlay district is to protect the Town's water supplies and reduce the potential for flooding and erosion.

(e) *River Overlay (Delaware River)*

One purpose of this overlay district is to enhance the scenic and recreational features of the Delaware River, to protect the Delaware River corridor, and to augment the Upper Delaware River Management Plan.

3.1.3. District Boundaries; Zoning Map

Except for the flood plain overlay district, the boundaries of each of the districts described in Sections 3.1.1 and 3.1.2 are hereby established as shown upon the duly adopted Zoning Map which accompanies this Law, and which with all notations, references, and other matters shown thereon is hereby declared to be a part of this Law and shall be kept on file in the office of the Town Clerk. Unofficial reductions of these maps are appended to this Law for reference purposes only. The boundaries of the flood plain overlay district are the areas within the Town from time to time designated as areas of special flood hazard by the Federal Insurance and Mitigation Administration on the then-current Flood Insurance Rate Map pertaining to property within the Town.

3.1.4. Interpretation

(a) *Generally.* The district boundary lines, unless shown otherwise, are intended generally to follow street centerlines, railroad right-of-way boundary lines, or their centerlines, other similar right-of-way lines, or lot lines or boundaries of subdivisions, or Town boundary lines. If the district

boundary line does not follow such a line, but is shown parallel to such a line on the Zoning Map, the distance between the parallel lines shall be as dimensioned on the Zoning Map. Such dimensions shall be construed to read from the centerline of all rights-of-way rather than from their outside edges. Where district boundaries are indicated as approximately following lot lines, such lot lines as they existed at the time of enactment or amendment of this Law shall be construed to be said boundaries. Where the boundary of a district is indicated as following shorelines of ponds and lakes, said boundary line shall be construed to follow such shorelines and, in the event of change in the shoreline, shall be construed as moving with the actual shoreline. Where the boundary of a district is indicated as following a stream or other watercourse, said boundary line shall be construed to follow the centerline of such stream or watercourse and, in the event of change in the same, shall be construed as moving with the actual stream or other watercourse.

(b) *Scaling.* When the location of a district boundary line cannot be otherwise determined, the determination thereof shall be made by scaling the distance on the Zoning Map from a line of known location to such district boundary line.

(c) *Interpretation by Board of Appeals.* In the case of uncertainty as to the true location of a district boundary line in a particular instance, an appeal may be taken to the Board of Appeals, as provided in this Law.

(d) *Division of Lot.* When a zoning district boundary line divides a lot in single ownership at the effective date of the Law or any subsequent amendment, the Planning Board shall have the authority, upon proper application therefore, to grant a special permit to authorize a use of land, buildings, and other structures permitted in one district to be extended into the other district, where such use would otherwise not be permitted, for a distance of not more than fifty feet (50'), in accordance with the provisions of Section 9.4. This clause (d) does not apply to *overlay* districts.

3.2. Schedule of District Use and Dimensional Regulations

3.2.1. Use Table

The Use Table sets forth, by zoning districts, restrictions and requirements applicable to certain land uses, including dimensional regulations and requirements such as required yard setbacks, height restrictions, maximum allowable lot coverage, and maximum allowable lot clearing. No structure or land shall be used except as provided in the Use Table, and what is provided in the Use Table is subject to and limited by any restrictions imposed by any applicable overlay district requirement (see Section 3.1.2, Overlay Districts), or by any applicable general or specific supplementary regulation (see Articles 5.0 and 6.0), or by the provisions of this Law explicitly prohibiting certain uses anywhere and everywhere throughout the Town (see Article 10.0).

The meanings of the symbols used in the Use Table are as follows:

"P" designates a principal permitted use in the particular district. Permitted as of right, such uses

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typically require a zoning permit or a building permit and a certificate of occupancy from the Code Enforcement Officer, but do not require review by any municipal board.

“SU” designates a use that is allowed in the particular district only upon receipt of a special use permit issued by the Planning Board. Typically, uses requiring special use permits also require site plan review by the Planning Board.

“A” is a use that may be allowed (as of right) within the particular district as customarily incidental and accessory to a principal permitted use that is allowed as of right.

“SU/A” is a use which is customarily incidental and accessory to a principal permitted use, but which within the district in question requires (separate and apart from any requirements applicable to the principal use in question) a special use permit issued by the Planning Board.

3.2.2. Use Requirements

No building or land shall hereafter be used or occupied, and no building or part thereof shall be erected, moved or altered, unless in conformity with the regulations herein specified for the district in which it is located.

3.2.3. Bulk Requirements

No building shall hereafter be erected or altered to exceed the height, to accommodate or house a greater number of families, to occupy a greater percentage of lot area or to have narrower or smaller rear yards, front yards, or side yards, than is specified herein for the district in which such building is located.

3.2.4. Yard and Open Space Requirements

No part of a yard or other open space about any building required for the purpose of complying with the provisions of this Law shall be included as a part of a yard or other open space similarly required for another building.

3.2.5. Lot Clearing

Trees and other vegetation perform numerous important and essential functions, including, but not limited to: (a) the stabilization and preservation of soil; (b) maintenance of watershed areas, which are essential to the Town’s fresh water supply; (c) absorption of air pollution and carbon dioxide; (d) production of oxygen; and (e) establishment of natural barriers to noise and habitats for wildlife. They are also a desirable aesthetic feature and key factors in the Town’s rural character. Accordingly, to promote desirable growth and prevent undue clearing of vegetation, the Use Table sets forth a maximum percentage of a lot that may be cleared of existing trees and vegetation. This maximum was designed to allow for a clearing size that will reasonably accommodate development needs (including construction staging) and associated water and

sewerage concerns.

3.2.6. Lot Coverage

Every addition to the impervious surfaces in the Town increases the amount of storm water runoff and reduces the amount of water reaching the aquifers. To prevent undue amounts of impervious surfaces, the Use Table sets forth a maximum percentage of a lot that may be covered by such surfaces.

3.2.7. Any Use Not Specifically Permitted is Prohibited

Any use not specifically set forth as a permitted use (whether as of right, or by special use permit) in any district shall be expressly prohibited in that district. A use specifically set forth as a permitted use in one district shall not be permitted in another district unless it is specifically set forth as a permitted use in said other district. . Any use, whether or not listed in the Use Table (Article 11) is prohibited if it does not satisfy the standards and criteria in Article 5 and Article 6.

3.2.8. Accessory Uses

Accessory uses shall be allowed by the same permit process as applies to the principal use, unless otherwise indicated on the Use Table. (So if a use requires a special permit in a particular zone, then an accessory use to that use also requires a special use permit.) Such accessory uses must be on the same lot as the principal use. If there is no principal use on a residential lot, a use that is typically a residential accessory use, such as a residential garage, swimming pool, tennis court or a tool shed, may be allowed by special use permit.

3.2.9. Change of Use or Structure

A change of use is the initiation of a use that is in a different use category, as listed on the Use Table (Article 11), from the existing use of the site or structure. A mere change of ownership, tenancy, or occupancy is not a change of use. Once a special use permit has been granted, it shall run with the land and apply to the approved use, as well as to any subsequent use of the property in the same use category for so long as there is no enlargement or modification of the building, and provided that the use does not lapse or the special use permit does not expire.

3.3 Flood Plain Overlay District

3.3.1 Purpose of Flood Plain Overlay District

The purpose of the Flood Plain Overlay District is to provide for sound floodplain management so as to protect life, health and property, minimize expenditures of public monies for flood control projects, rescue and relief efforts and restoration efforts. It remains the responsibility of the property owner to comply with the requirements of the National Flood Insurance regulations, in addition to the requirements of this Law.

3.3.2. Delineation of Flood Plain Overlay District

The Flood Plain (FP) Overlay District encompasses those portions of the Town mapped by the National Flood Insurance Program under the auspices of the Federal Emergency Management Agency (FEMA) as [100-year flood areas], referred to herein as “Special Flood Hazard Areas.”

3.3.3. Permitted Uses in the Flood Plain Overlay District

The following uses typically do not obstruct flood flows and accordingly are permitted uses within the Flood Plain Overlay District but only to the extent that such uses do not involve development of an area of special flood hazard or substantial improvement to a structure, and are not otherwise prohibited by any other law.

(a) Agriculture uses such as pasture or grazing, but only so long as they do not involve development of a special flood hazard area. Agricultural uses are permitted without site plan review.

(b) Private and public recreational uses such as swimming areas, open space, wildlife or natural preserves, hunting and fishing areas, and hiking and horseback trails, but only so long as they do not involve development of a special flood hazard area.

(c) Normal ground maintenance including mowing, trimming of vegetation, repair of decorative landscaping, planting of native species, repair of existing walkways, walls, driveways, operation of existing stormwater management facilities. Provided that such activities do not require structures, grading, fill, draining or dredging, the activities specified in this Section 3.3.3.(c) do not require site plan review.

3.3.4. Prohibited Uses in the Flood Plain Overlay District

The following uses are prohibited within any special flood hazard area:

(a) Critical facilities; and

(b) Activities that are hazardous to public health or water quality. Without limiting the generality of the foregoing, no new septic tank, leach field, or other sanitary sewage facility shall be located within the flood plain overlay district, but replacement of existing such facilities shall not be prohibited.

3.3.5. Development Standards in the Flood Plain Overlay District

No uses may diminish or constrict the capacity of the channel or floodway of any watercourse, or any tributary to the main stream, or any other watercourse, drainage ditch or any other facility or system to discharge the waters from the base flood.

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All new development of a special flood hazard area must set aside floodplain areas as open space or drainage easements, all new lots must be located on natural high ground, and conservation subdivisions must locate development on flood-free sites.

All new development of a special flood hazard area must include in the design of their stormwater management facilities appropriate BMPs that will improve the quality of surface water. These provisions must be permanently incorporated into the development's facilities.

All improvements, modifications, additions, and reconstruction projects to an existing building will be evaluated cumulatively over a period of at least five (5) years. Once the total cost of all the projects reaches fifty percent (50%) of the building's value, the project is considered a substantial improvement and the building is treated as a new building and the entire building must be elevated. All additions to buildings (regardless of size) must be elevated above the base flood elevation.

Fill is prohibited in the floodplain (not just in the floodway) unless compensatory storage is provided on site.

New buildings in a special flood hazard area must be constructed on properly designed and compacted fill that extends beyond the building walls before dropping below the base flood elevation and has appropriate protection from erosion and scour.

Building enclosures, including breakaway walls, are prohibited below the base flood elevation.

3.4 Mohican Lake Access Overlay District

3.4.1. Purpose of the Mohican Lake Access Overlay District

This intent of this district is to allow for a high density of lake accesses along a portion of the shoreline of Mohican Lake. This portion of the shoreline is currently used in this manner, and applying this overlay district will allow for a more equitable review of similar proposed uses in this district.

3.4.2. Subdivision and Development of Parcels in the Mohican Lake Access Overlay District

Lots may be subdivided and developed if approved by the Planning Board after a Site Plan Review.

3.4.3. Minimum Lot Size in the Mohican Lake Access Overlay District

There are no minimum lot sizes so long as the width of the lot is at least twenty feet (20') and that at least one parking space of eighteen feet (18') by ten feet (10') can be provided.

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3.4.4. Permitted Uses in the Mohican Lake Access Overlay District

In addition to the one (1) parking space, the lots may have:

(a) One dock and one float per shoreline property. No dock or float may be attached to a dock. Any dock shall be for the private, non commercial use of the owner.

(b) The docks and floats must be removable, but not necessarily actually removed, on a seasonal basis and have no permanent contact with the submerged land and require no excavation of the submerged land.

(c) There shall be free movement of water underneath the docks and floats.

(d) The dock shall be no more than eight feet (8') in width at its juncture with the existing shoreline. This eight foot (8') maximum width must not be exceeded within five feet (5') of the shoreline, and the dock alignment must be perpendicular to the shore, and remain so for at least ten feet (10') from the shoreline.

(i) Maximum size permitted

(x) Dock: Three hundred and sixty (360) square feet

(y) Float: Ten feet (10') by Ten Feet (10')

(ii) Maximum distance from shoreline

(x) Dock: Twenty five feet (25')

(y) Float: One hundred fifty feet (150')

(iii) The dock shall be fastened to the shoreline in a manner to minimize any disturbance to the existing shoreline. There shall be minimal recontouring or similar modification of the existing shoreline and surrounding land.

No other uses are permitted.

3.5 Historic Overlay District

3.5.1. Purpose of the Historic Overlay District

The purpose of the Historic Overlay District is to protect, enhance and perpetuate the landmarks and districts of historical and cultural importance and significance is necessary to promote the economic, cultural, educational and general welfare of the public. The Historic Overlay District is intended to foster civic pride, protect and enhance the Town's attractiveness to visitors and the support and stimulus to the economy provided thereby, and to promote economic prosperity by encouraging the most appropriate use of such property. The Historic Overlay District provides for architectural standards that will ensure the historic nature of this area of the Town is maintained.

3.5.2. Building Design in the Historic Overlay District

The following architectural standards are to ensure the exterior of new construction and additions to existing buildings are well designed, detailed and crafted to embody high standards of architectural design. Building design in the Historic Overlay District shall maintain historic building lines, shapes and angles and use materials in keeping with historic looks.

That portion of a building, as to façade, roof, windows, doors, chimneys, etc., shall be designed

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and constructed so as to complement the main architectural style of the structure and/or other nearby buildings within the Historic Overlay District. Examples of the main styles of architecture within the Historic Overlay District are as follows:



Akeson Road



Berne Church Extension



Route 42, Glen Spey



High Road, Glen Spey

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Proctor Road



Berme Church Extension

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Route 97



Route 31, Glen Spey



Proctor Road, Glen Spey



Route 42, Glen Spey

Materials appropriate to the Historic Overlay District are required, specifically, (i) building facades must be made of wooden clapboard, natural stone, Hardiplank or cedar shakes; (ii) the roof must be made of cedar shake, slate or architectural asphalt shingles. The Planning Board may approve other materials, however, the following materials are prohibited: for the façade, cultured stone, vinyl siding, T-111 siding, aluminum siding, and log style siding. Accent materials shall be used for cornices, sills, bases, lintels, banding, and decorative accent trims. Accent materials shall consist of materials that meet or exceed the quality of the primary exterior materials and shall be consistent with the building design.

3.6. River Overlay District

3.6.1 Purpose of the River Overlay District

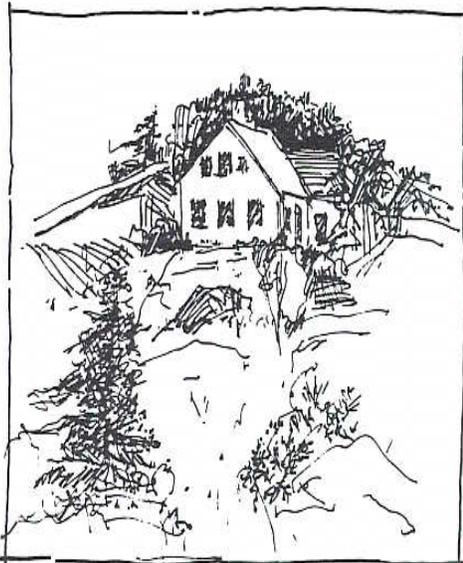
The purpose of this district is to allow the Town to establish special land use regulations, standards, and procedures that are protective of those qualities for which the Upper Delaware was designated a Scenic and Recreational River, and to augment those recommendations set forth in the Upper Delaware River Management Plan to: (a) maintain the high water quality found in the Upper Delaware River; (b) provide for the protection of the health, safety, and welfare of residents and visitors; (c) provide for the protection and preservation of natural resources; and (d) provide for recreational and other public uses while protecting the Upper Delaware River as a natural resource.

3.6.2. Applicable Regulations in the River Overlay District

The River Overlay zone spans the river corridor within the Town and is coterminous with the Upper Delaware River Management Plan boundaries. Except as modified by the overlay district, the provisions of the applicable base-zoning district shall apply to all development within the boundary of the designated area. If regulations conflict, the applicable overlay zoning district regulations shall prevail.

3.6.3. Land Use and Development Regulations in the River Overlay District

(a) *Visibility of Structures.*



This illustration shows how landscaping can reduce the visual impact of a structure while retaining the views seen from within.

All structures shall be sited to avoid occupying or obstructing public views of land within the overlay district. Public views shall be considered to be from the waters of the Delaware River and from the right-of-way of the Upper Delaware Scenic Byway (State Route 97). These areas are

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frequented by the public and are associated with the natural beauty of the area. Visibility shall be measured using a condition of no leaves on trees.

(b) *Building Sites*. Building sites shall be clearly noted on any plat or plan. All structures shall be sited away from ridge tops and ridgelines (see ridgelines below).

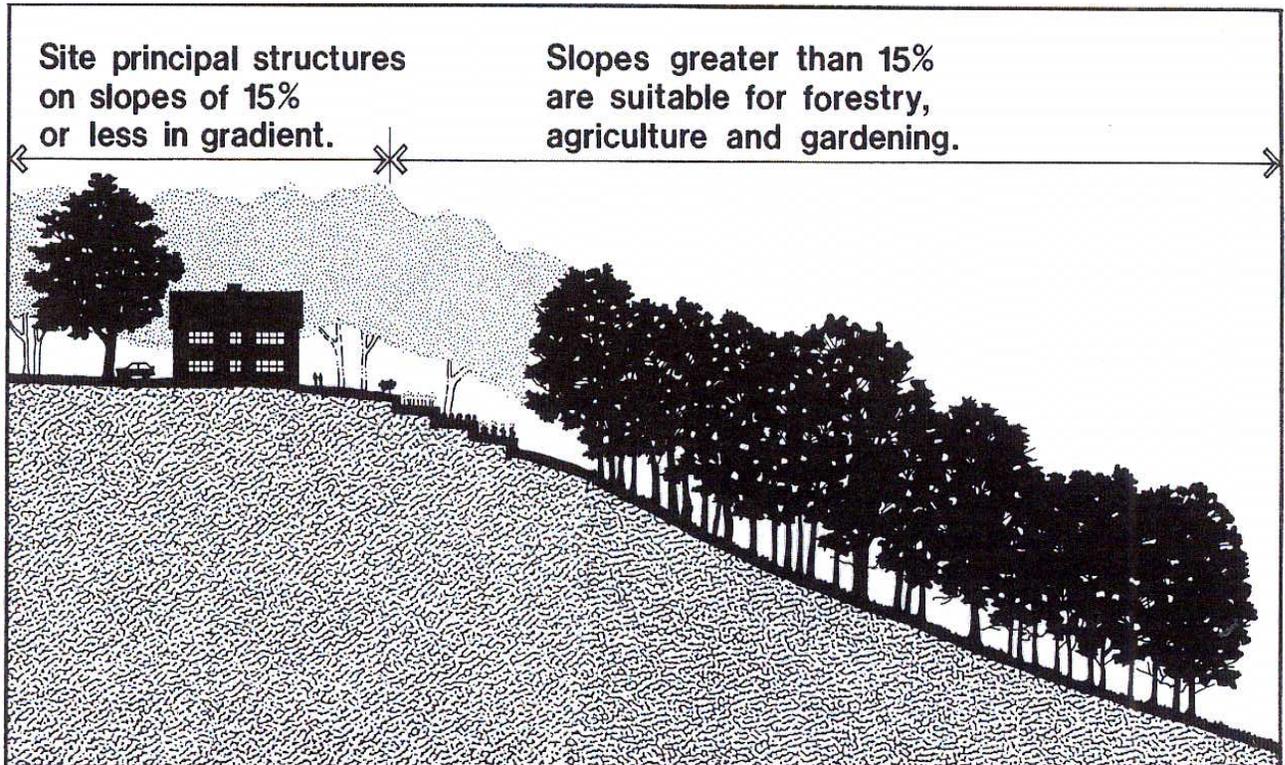
(c) *Structure Design*. Structures shall blend in with natural surroundings through preferred use of stone or natural wood siding and use of roofing materials with earthtone colors.

(d) *Lighting*. Exterior lighting shall be controlled in both height and intensity. Under no circumstances shall the light level at any lot line exceed 0.2 foot-candles, measured at ground level. Screening or shielding of luminaries may be required.

(e) *Structure Screening*. As a condition of approval an applicant may be required to preserve existing vegetation or provide new plantings of native vegetation to screen structures.

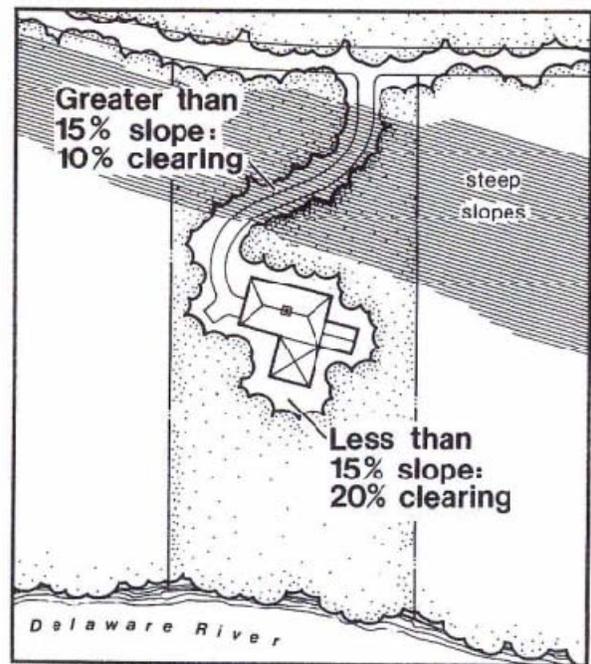
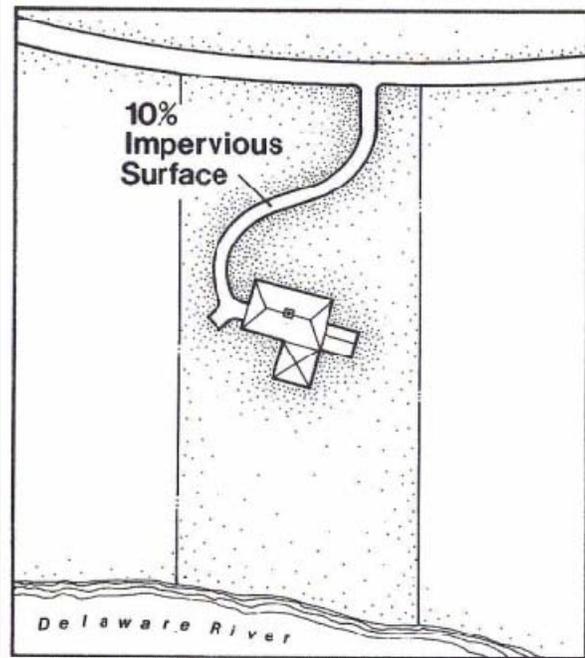
(f) *Underground Utilities*. All electric, telephone, television and other communication lines, both main and service connections, servicing new development shall be provided by underground wiring within easements of dedicated public rights-of-way, installed in accordance with the prevailing standards and practices of the utility or other companies providing such services.

(g) *Steep Slopes*. Construction must be limited to those areas with less than fifteen percent (15%) slope. Disturbance of slopes in excess of fifteen percent (15%) is limited to access as determined necessary by the Planning Board.

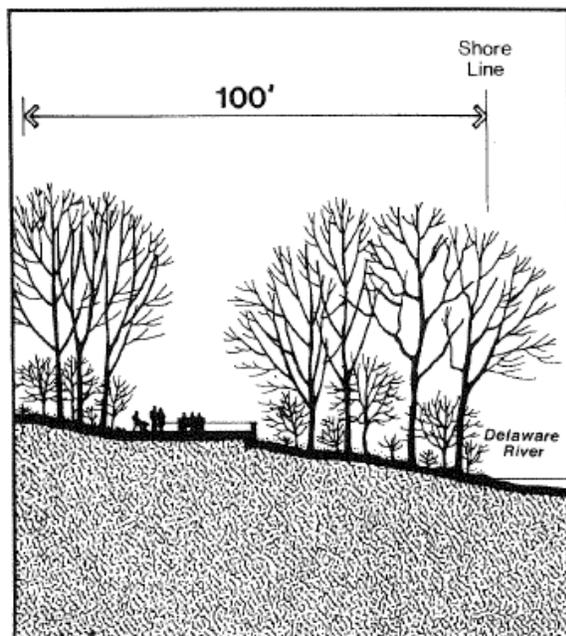


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(h) *Natural Cover*. Except in the River Hamlet Districts, impervious surfaces are limited to no more than ten percent (10%). Clearing of vegetation for building purposes shall be limited to twenty percent (20%) of the lot area, with a reduction to ten percent (10%) for slopes over fifteen percent (15%) in grade.

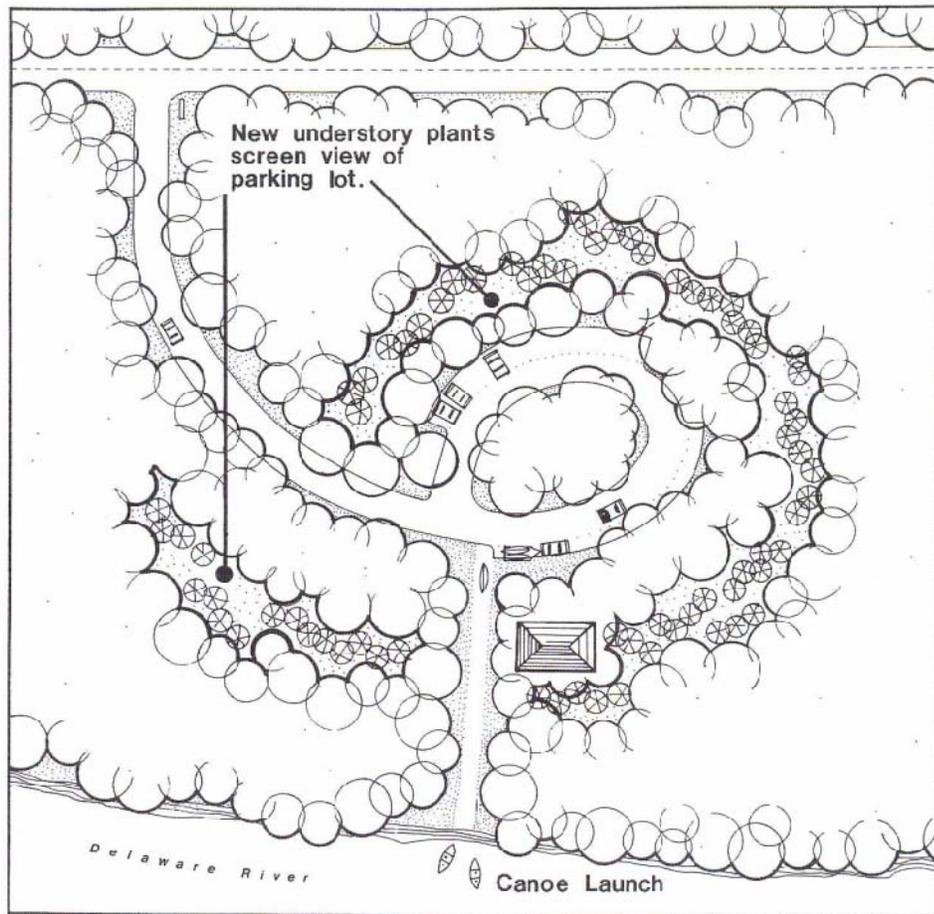


(i) *River Bank*. Construction within one hundred feet (100') of the average high water mark of the Delaware River is prohibited, with the exception of small decks, gazebos, or picnic areas not to exceed two hundred (200) square feet, and which require a special use permit, and recreational facilities, which also require a special use permit.



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(j) *Required Minimum Frontage.* No lot shall be created with less than three hundred feet (300') of frontage along the Delaware River.



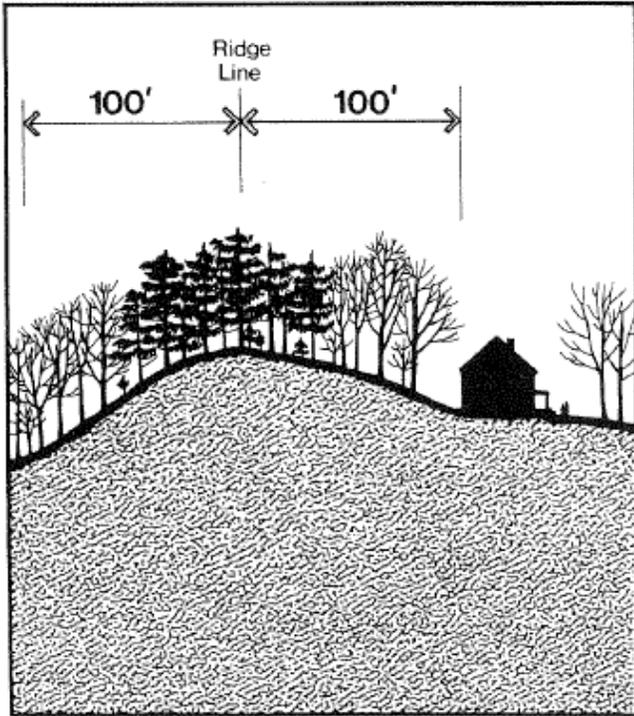
(k) *Plant Cover.* (i) Plant cover shall be maintained to help prevent erosion. Exceptions will be made for control of Japanese Knotweed or other listed invasive species, or removal of dead or diseased specimens. When removing vegetation for those purposes, vegetation can only be removed through the use of hand-held devices (i.e. chainsaws, pole pruners, hedge trimmers, weed eaters, etc.). Bulk application of chemical herbicides is prohibited. The removal of vegetation shall be conducted in such a manner as to preserve ground cover (through a vegetated cover or through the use of a substrate that will prevent sediment run-off from the site) Removal of healthy tree specimens greater than three inches (3") diameter at breast height is prohibited except when installing an approved accessory use or recreational facility.

(l) *Replanting.* Any land disturbance percentage in amounts that exceed those specified in this article shall be replanted according to the requirements of this subsection (l). All planted species shall be on a ten-foot (10') by ten-foot (10') spacing. A mix of one overstory and one understory species from the list of native plants, appropriate for site elevation and aspect shall be planted on each one hundred (100) square feet. Trees shall be three (3) to four (4) feet in height, with a minimum stem diameter at the ground of one inch (1"). The root ball shall be fourteen (14) and eighteen (18) inches. All overstory and understory plants shall be limed and slow-release fertilizer

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stakes shall be inserted around each plant. All plants shall be mulched with organic mulch to control weeds. Mulch shall extend two feet (2') around each plant.

(l) *Ridgelines*. Construction is prohibited within one hundred feet (100') of the ridgeline.



(m) *Recreational and Public Uses*. Recreational facilities shall be developed, operated, and maintained in such a way as to limit adverse impacts on adjacent landowners and the surrounding environment. All proposed recreational facilities shall have good site planning. Good site planning can minimize any adverse effects of development and provide a more enjoyable recreational experience.

(n) *Site Disturbance*. Site disturbance during construction shall be limited. Trees and shrubs shall be retained to keep the facility hidden from view. River bank access shall be controlled to limit erosion. Road access must be adequate and safe. The proposed facility also must comply with State health regulations.

(o) *Recreation – open space*. As a condition of approval, the Town may require up to fifty percent (50%) of any parcel within the overlay district for parkland, recreation and open space purposes, so long as this condition does not reduce the number of units allowable under applicable zoning. Such land shall be dedicated through a conservation easement.

(p) *Signs*. (i) The use of off-premises advertising signs shall be avoided. If used, they shall be limited to thirty (30) square feet in size, and two (2) per advertiser. River frontage signs shall be restricted to one (1) per riverfront parcel, and then only to provide directions or safety messages.

Signs shall harmonize with the surrounding landscape. (ii) On-premises advertising or business identification signs may be illuminated outside of developed areas. On-premises signs larger than ten (10) square feet shall be limited to one (1) per property line along a street or the river. Alternately, the total square footage of signage, rather than the number of signs, may be limited. (iii) Non-advertising signs shall be limited to less than ten (10) square feet in size and two (2) signs per property. This guideline clearly does not apply to temporary, institutional or trespassing signs.

3.7. Riparian Overlay District

3.7.1. Purpose of the Riparian Overlay District

The Riparian Overlay District applies to the land in the Town within one thousand feet (1000') of the shoreline of Swinging Bridge Reservoir, Cliff Lake, Lebanon Lake, Lake Champion, Lake DeVenoge, Sand Pond, Mohican Lake, Lake Metauque, Mohaph Lake, Lochada Lake (also known as Brookwood), Glen Lake, Lake Diana, the Mongaup River, and Rio Dam Reservoir. This district is intended to ensure that uses will be permitted in this district in a manner that will match development to the capacity of these waters, preserve shoreline buffers, preserve natural scenic beauty, protect sensitive areas, avoid deterioration of water quality, minimize runoff and the flow of nutrients and other harmful elements to these bodies of water, groundwater, and other wetlands and watercourses in the district.

3.7.2. New Construction in the Riparian Overlay District

(a) *Existing Structures.* In order to help preserve the water quality of these bodies of water, any addition to or enlargement of an existing structure occurring between fifty (50) and seventy-five (75) feet of the shorelines of Swinging Bridge Reservoir, Cliff Lake, Lebanon Lake, Lake Champion, Lake DeVenoge, Sand Pond, Mohican Lake, Lake Metauque, Mohaph Lake, Lochada Lake (also known as Brookwood), Glen Lake, Lake Diana, the Mongaup River, and Rio Dam Reservoir shall require a special use permit.

(b) *New Structures.* No new structure shall be located within (i) one hundred feet (100') of Swinging Bridge Reservoir, Cliff Lake, Lebanon Lake, Lake DeVenoge, Sand Pond, Lake Metauque, Mohaph Lake, Lochada Lake, Lake Diana, the Mongaup River, Rio Dam Reservoir, (ii) fifty feet (50') of Lake Champion, Mohican Lake, and Glen Lake, or any water body, watercourse, or wetland, or (iii) fifty feet (50') of a flood plain boundary line, with the exception of docks and floats which in addition to meeting the requirements of Section 3.7.3. also comply with erosion and sedimentation remediation measures as approved by the Planning Board and the NYS Department of Environmental Conservation.

(c) New construction related to hydroelectric projects and within the licensed boundaries of hydroelectric projects that are subject to the authority of the Federal Energy Regulatory Commission pursuant to Part 1 of the Federal Power Act is exempt from the requirements of this Section 3.7.

3.7.3. Docks and Floats and the Riparian Overlay District

No docks or floats shall be permitted in Rio Dam. Docks and floats shall otherwise be permitted, provided all of the following criteria are met:

- (a) Only one (1) dock and one (1) float are permitted per shoreline property.
- (b) No dock or float may be attached to a dock.
- (c) Docks and floats shall be only for the private, non-commercial use of the residents of such shoreline property.
- (d) Docks and floats must be removable, but not necessarily actually removed, on a seasonal basis.
- (e) Docks and floats must have no permanent contact with the submerged land and require no excavation of the submerged land.
- (f) There shall be free movement of water underneath such dock or float.
- (g) The dock shall be no more than eight feet (8') in width at its juncture with the shoreline. This eight foot (8') maximum width must not be exceeded for a length of at least five feet (5') from the shoreline.
- (h) The dock must be aligned to be perpendicular to the shore for at least ten feet (10') from the shoreline.
- (i) Docks may not exceed a total maximum size of three hundred sixty (360) square feet of total surface area. Floats may be no larger than ten feet (10') by ten feet (10').
- (j) Docks may not extend more than twenty five feet (15') from the shoreline. Floats may not extend more than one hundred fifty feet (150') from the shoreline.
- (k) The dock shall be fastened to the shoreline in a manner to minimize any disturbance to the existing shoreline. There shall be minimal regrading, recontouring, or similar modification of the existing shoreline and surrounding land.
- (l) If stairs are proposed to access the dock, the stairs shall be no more than five feet (5') in width and shall be elevated directly above the land in a manner that does not require regrading, recontouring, or similar modification of the existing shoreline and surrounding land. Masonry, stone stairs, and any other construction methods that require cutting into the shoreline and surrounding land are not allowed. Stair design shall minimize footings and maximize permeability.
- (m) The height above the water of docks and floats shall be minimized. Docks and floats may not

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include appurtenances such as roofs, raised platforms, raised decks, etc. Removable fabric canopies or umbrellas and removable water slides are allowed.

(n) Docks shall be subject to the side yard requirements, but not the front yard requirements, of this Law. In addition, no dock may be placed any closer than twenty five feet (25') from the lines formed by extending the side lot lines into the lake. The Planning Board may issue a special use permit for a dock to be placed closer than twenty five feet (25') to the lines of extension if it finds that the applicant cannot reasonably meet the twenty five feet (25') setback because of the size or shape of the lot, location of physical obstructions such as rock, or the location of sensitive natural resources at the shoreline or within the lake.

(o) For safety purposes, the street number, using numerals at least three inches (3") high, shall be affixed to the end of the dock, and float so as to be visible from the lake.

(p) Existing nonconforming structures that extend beyond the shoreline and are used as docks or could be used as docks — including concrete piers, overhanging boat-house decks whose upper surfaces are within three feet (3') of the water's surface and are accessible from the lake, and similar structures — shall be considered docks for the purposes of this Law, and any part of such structures which extends beyond the shoreline shall be included in any surface area calculations required under this Section 3.7.3.

(q) The existing nonconforming structures described in this Section 3.7 may be enlarged if: (i) the enlarged structure is to be used as a dock; and (ii) the added portions meet the requirements of this Section 3.7.3.; and (iii) the combined surface area of the original nonconforming structure and its extension meets the size requirements of this Section 3.7.3.

(r) Existing nonconforming concrete piers that extend beyond the shoreline may be resurfaced with wood or masonry if (i) the new deck surface is no more than eight inches (8") higher than the original surface of the nonconforming concrete pier, and (ii) the new deck surface does not extend more than one and one-half inches (1.5") beyond any edge of the existing nonconforming pier.

3.8. Conservation Subdivision

The Town encourages conservation subdivision as an alternative to conventional subdivision. In conservation subdivisions units are clustered or sited on those portions of a property most suitable for development, while leaving substantial portions as undeveloped open space. Conservation subdivision results in the preservation of contiguous open space and important environmental resources, facilitates the economical provision of streets and utilities, while allowing compact development, more walkable neighborhoods, and more flexibility than conventional subdivisions. The Planning Board shall be authorized (pursuant to NYS Town Law § 278 and simultaneously, with approval of plats under the Town of Lumberland Subdivision Regulations) to modify applicable provisions of this Law in accordance with this Section 3.8 so as to accommodate conservation subdivision projects.

3.8.1. Application for Conservation Subdivision

Conservation subdivision applications shall be processed in accordance with the subdivision approval procedures set forth in the Town of Lumberland Subdivision Regulations and all applicable development requirements of the said Regulations shall apply, except as modified by this Section 6.6. In order to approve a conservation subdivision, the Planning Board must find that the proposed subdivision meets the standards in this Section 3.8.

3.8.2. Preferred Conservation Subdivisions

Conservation subdivisions shall be allowed anywhere within the Town of Lumberland, and conservation subdivision is preferred for development of five (5) or more dwelling units in all zoning districts. The Planning Board shall have the authority in the case of an application for a conventional subdivision of five (5) lots or more to require that the applicant prepare an alternative sketch that depicts how the property might be developed using the conservation subdivision technique. If this alternative sketch plat is determined by the Planning Board to provide superior design in accord with the purposes of this Law and the same density can be achieved, then the Planning Board may require a conservation subdivision.

3.8.3. Density in Conservation Subdivision

The maximum number of individual building lots permitted for the project shall be determined by using one of the below described methods. These density formulas are intended to simulate the lot count that would result from preparing a conventional subdivision and yield the applicant with the same lot count. An applicant may elect to prepare its calculations using either of the below described methods.

(a) *Demonstration Plan Method.* The number of cluster lots permitted shall be the same as the total number of lots permitted in a conventional subdivision (i.e., conventional subdivision) of the same parcel. In order to determine the number of lots permitted for a conservation subdivision, an applicant shall submit a subdivision plan for the parcel as if it were to be developed in accord with all the standards and requirements in this Law and the Town Subdivision regulations for a conventional subdivision. The level of detail required for the plan shall be determined by the Planning Board based on site conditions and the nature of the proposed project. Any lot that due to slope, wetlands or other limitation does not contain a suitable area for erecting a dwelling and associated improvements using normal development and building practices, will not be considered an allowable lot and will not be included in the density calculation. The determination about whether a lot is allowable or not will be made by the Planning Board.

(b) *Calculation Method.* The total number of dwelling units permitted shall be determined after deducting:

- (i) Land contained within public rights-of-way;
- (ii) Land contained within the rights-of-way of existing or proposed private streets and

parking areas (where formal rights-of-way are not involved, the width of the street shall be assumed as fifty feet (50') wide);

(iii) Land contained within the boundaries of easements previously granted to public utility corporations providing electrical or telephone service, and any petroleum products pipeline rights-of-way;

(iv) The area of water bodies including lakes, ponds and streams (measured to the normal high water mark on each side); fifty percent (50%) percent of wetland areas; fifty percent (50%) percent of the riparian buffer areas; fifty percent (50%) percent of the areas with steep slopes; and areas used for improvements, from the total area of the project and dividing by the minimum lot size for the district.

(c) *Crossing Zoning District Boundaries.* In cases where the proposed development falls within two (2) or more zoning districts with differing density requirements, the density calculation may be derived by adding the lots allowed on each portion of the project area that falls in each district as determined in accordance with the above methods.

3.8.4. Individual Lot Size in a Conservation Subdivision

The limiting factor on lot size in conservation subdivisions is the availability of water and sewer infrastructure and the impacts of nitrate loading on well water supplies. The Planning Board may authorize that the size of individual building lots be reduced provided the water and sewer design meets the New York State Department of Health guidelines. Appropriate minimum yard setbacks in a conservation subdivision will depend upon the lot sizes, the type of road frontage (State, County, Town or private) and the character of the subdivision. Accordingly, yard requirements shall be established by the Planning Board at the time of plat approval and shall be shown in a chart on the plat.

3.8.5. General Planning Criteria in a Conservation Subdivision

The following criteria shall be used to provide an applicant and the Planning Board with guidelines and standards for creating and reviewing a conservation subdivision:

(a) *Preserve Natural Site Features.* Individual lots, buildings, streets, parking areas and other improvements must be designed and situated to minimize alteration of the natural site features and to limit creation of impervious surface coverage.

(b) *Open Space.* Open space preserved by the below described conservation easement shall include irreplaceable natural features located in the project area such as steep slopes, large areas of contiguous mature forest, wetlands, watercourses, and stream corridors, and may, as the Planning Board finds appropriate include significant stands of trees, individual trees of significant size, rock outcroppings.

(c) *Historic Features.* Site design shall preserve those manmade features considered of historic or cultural value. This may include stone walls, old farmhouses, root cellars and barns.

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(d) *Connection.* Open space shall connect to existing conservation areas, known animal communities, animal migration paths and, existing recreational trails

(e) *Visual Impacts.* Individual lots, buildings and units shall be arranged and situated to relate to surrounding properties, to improve the view from and the view of buildings, and to lessen area devoted to motor vehicle access, and reduce visual impacts to adjoining properties and public roads.

(f) *Site Design.* Diversity and originality in lot layout shall be encouraged to achieve the best possible relationship between development and the land. Lots shall be arranged in a manner that protects land of conservation value and facilitates pedestrian and bicycle circulation. Lots shall also be arranged to maximize protection of water wells from nitrate loading problems.

A density bonus of up to twenty percent (20%) may be granted at the discretion of the Planning Board during the sketch plan phase based upon the degree to which the applicant incorporates these criteria into its development plan.

3.8.6. Open Space in a Conservation Subdivision

One of the major purposes of conservation subdivision is to preserve open space.

(a) *Characteristics.* Open space requirements for a conservation subdivision project are as follows:

(i) a minimum of fifty percent (50%) of the gross area of the parcel shall remain as open space; (ii) open space may include trails for non-motorized uses (i.e. hiking, biking, and equestrian), picnic areas, and lavatories; (iii) open space areas shall be part of the project area and shall be contiguous; (iv) at least fifty percent (50%) of the open space shall be exclusive of wetlands, steep slopes, water bodies, riparian areas and otherwise unusable areas.

(b) *Permanent Protection.* Prior to final Planning Board approval, all areas of a conservation subdivision that are designated as open space must be protected from development by a permanent conservation easement. The conservation easement shall restrict development of the open space land and allow use only for recreation, protection of natural resources, or similar conservation purposes and shall prohibit residential, industrial or commercial use of the open space. The conservation easement shall be granted to a private conservation organization acceptable to the Town and that is a bona fide conservation organization as defined in Article 49 of the NYS Environmental Conservation Law or to a governmental body acceptable to the Planning Board.

(c) *Notations on Plat or Site Plan.* Preserved open space land shall be clearly delineated and labeled on the final subdivision plat and/or site plan as to its use, ownership, management, method of preservation and the rights, if any, of the owners of other lots in the subdivision to such land. The plat or site plan shall clearly show that the open space land is permanently preserved for open space purposes and shall contain a notation indicating the deed reference of any conservation easement or deed restrictions required to be filed to implement such

restrictions.

(d) *Ownership of the Open Space Land.* The fee ownership of the open space (the ownership of the land subject to the conservation easement), as well as identification of user groups and those responsible for any maintenance must be determined before final Planning Board approval. Open space land may be owned by a homeowner's association (HOA), transferred to a nonprofit organization acceptable to the Planning Board or held in such other form of ownership as the Planning Board finds adequate to properly manage the open space land and to protect its conservation value. If the land is to be owned by a HOA, the HOA must also be established prior to approval of the final subdivision plat and must comply with all applicable provisions of state law. In such case, membership in the HOA must be mandatory for each lot owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance and maintenance of common open space, private roads and other common facilities. The HOA must be responsible for liability insurance, property taxes, and the maintenance of recreational and other facilities and private roads. The property owners must be required to pay their pro rata share of these costs, and the assessment levied by the HOA must be able to become a lien on the homeowner's property. The HOA must have the ability to adjust assessments to meet changing needs for the operation and maintenance of the open space and any improvements. The Town Attorney must find that the HOA documents satisfy these conditions and such other conditions as the Planning Board determines are necessary in order to provide for maintenance of the open space land.

(e) *Maintenance.* Standards for maintenance of the open space shall be established prior to final subdivision plat approval. Such standards shall be enforceable by the Town against the owner of the open space land to ensure that the open space land is not used for storage or dumping of refuse, junk, or other offensive or hazardous materials.

4.0 PRE-EXISTING, NON-CONFORMING BUILDINGS, USES, ETC.

4.1 Pre-existing Non-Conforming Uses, Buildings, Signs, Lots, Manufactured Homes

4.1.1 Purpose

The Town is authorized to regulate the change, alteration, reconstruction, reestablishment, extension, destruction and abandonment of nonconforming uses in accord with the NYS Town Law and general case law. The purpose of this Section 4.1 is to limit the injurious impact of nonconforming uses and/or structures on other adjacent properties within a particular district and the community as a whole, while recognizing that the change, alteration, reconstruction, reestablishment, or extension of non-conforming uses and/or structures may not be contrary to the public interest or the general purpose of this Law, when failure to allow such change, alteration, reconstruction, reestablishment, or extension would itself lead to neighborhood or district deterioration.

4.1.2. Continuation of Pre-existing Uses

Except as provided elsewhere in this Section 4.1, any use of land, or a building or structure or part thereof legal in accord with ordinances existing at the time that this Law becomes effective may be continued so long as it remains otherwise lawful, although such building or use does not conform to the provisions of this Law.

4.1.3. No Change to a Different Non-Conforming Use; Change to a Conforming Use or Discontinuation of Use

A non-conforming use may not be changed to a different non-conforming use. Once changed to a conforming use, no building or land shall be permitted to revert to a non-conforming use. Whenever a non-conforming use has been discontinued for a period of one (1) year, such non-conforming use shall not thereafter be re-established, and any future use shall be in conformity with the provisions of this Law.

4.1.4. Pre-Existing Non-Conforming Buildings

Normal maintenance and repairs of a non-conforming building shall not require a special use permit. A non-conforming building may be reconstructed or structurally altered only upon issuance a special use permit from the Planning Board. Said reconstruction or alteration may not exceed fifty percent (50%) of the assessed value of the building as of the time of application for such special use permit, unless said building is changed to conform with the dimensional and all other requirements of this Law. Any structure or portion thereof declared unsafe by a proper authority may be restored to a safe condition. In no case may the non-conformity be increased.

Any non-conforming building damaged by fire, flood, earthquake, or act of God by less than fifty percent (50%) of the assessed value of such building immediately prior to such damage may be

restored to its former condition, or better, so long as (i) all applicable approvals are obtained and such restoration is completed no later than twelve (12) months after such damage, and (ii) the use of the building and the manner in which it was used prior to the loss is recommenced within one year of the date of the damage.

4.1.5. Pre-Existing Non-Conforming Signs

A pre-existing non-conforming sign may be continued so long as it is maintained in good condition. It may not, however, be replaced by another non-conforming sign. It may not be structurally altered so as to prolong the life of the sign. It may not be re-established after damage or destruction if the Code Enforcement Officer determines that the estimated cost of reconstruction exceeds fifty percent (50%) of the estimated replacement cost; provided, however, that it may be replaced so long as all applicable approvals are obtained and so long as such sign is otherwise in compliance with all applicable laws if intentionally damaged or destroyed by person (s) who are proven to be unconnected to the owner(s) of the sign.

4.1.6. Pre-Existing Legal Lots

Subject to Section 4.1.7, any Lot that does not meet the minimum area, width, or yard requirements of this Law, but which was a legal lot of record immediately prior to the effective date of this Law, shall be considered to be a legal lot under this Law; provided, however, that any such substandard lot must conform to and comply with all NYS Health Department requirements, as certified by a professional engineer licensed to practice in the State of New York. Adjacent substandard lots may be combined by making and recording of a single deed in order to meet the minimum lot size requirement.

4.1.7. Construction Approved Prior to Effective Date

Nothing herein contained shall require any change in plans, construction or designated use of a building for which a building permit has been heretofore issued and the construction of which shall have been diligently prosecuted within three (3) months of the date of such permit, so long as the ground story framework of which shall have been completed within six (6) months of the date of the permit, and so long as the entire building shall be completed according to such plans as filed within one (1) year from the effective date of this Law.

4.1.8. Manufactured Homes

Any manufactured home lawfully existing on the effective date of this Law and used or occupied as a dwelling may continue to be so used or occupied, and may be replaced by manufactured homes that comply with then-current applicable federal and state building standards.

4.1.9. Variance Criteria.

In the event an application is made to the Board of Appeals for a variance to enlarge or alter a

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non-conforming use, the Board shall apply the same criteria in determining the matter as would be applicable if the application had been made for property that was otherwise conforming. For example, if the application is to enlarge a building that already encroaches on a required side yard, the Board shall use the criteria applicable to considering an area variance. If the application is to change the use to another non-conforming use (which is not permitted by virtue of Section 4.1.7 above), the Board shall use the criteria applicable to considering a use variance.

5.0 GENERAL SUPPLEMENTARY REGULATIONS

(Certain Generally Applicable Matters; Performance, Landscape, and Parking Standards; Lighting, Loading, and Access Standards; Signs; Etc.)

Unless specified to the contrary elsewhere in this Law, the regulations and requirements specified in this Article 5.0 apply in each and every zoning district within the Town.

5.1. General Construction and Bulk Requirements

5.1.1. Abandonment of Construction; Unfenced Excavation

No later than three (3) months following the completion or cessation of a construction project, or the demolition or abandonment of a building or structure, all construction materials shall be removed from the site and excavation filled to normal grade. Unfenced excavation may not be carried out for a period in excess of ten (10) days.

5.1.2. Access to Structures

Every building hereafter erected or moved shall be on a lot adjacent to a public street or with access to an approved private street, and all structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection, and required off-street parking.

5.1.3. Accessory Buildings

A permitted accessory building may be located in any required side or rear yard, provided, however, that: such building (a) may not exceed the height of the principal building; (b) shall be set back no fewer than ten feet (10') from any lot line, and no fewer than ten feet (10') from the principal building; and (c) may not be located in the front yard setback

5.1.4. Corner Lots

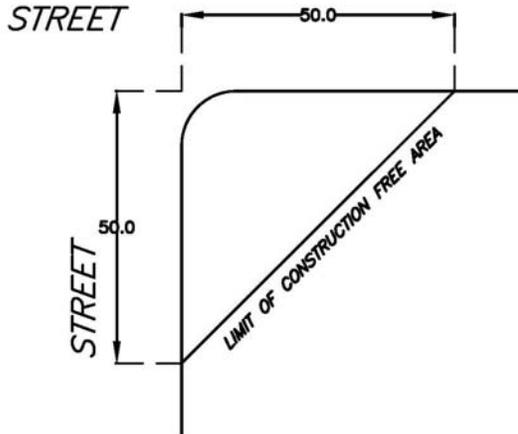
(a) *Street Frontages.* On a corner lot, front yard setbacks are required on both street frontages (that is, the yard depth on both streets shall be equal to the required front yard for adjoining properties on both streets), and one yard other than such front yards shall be deemed to be the rear yard and the other a side yard.

(b) *Visual Obstruction Free Area.* On a corner lot, no obstructions to vision, including but not limited to, walls, signs, brush, landscaping, dense low trees, or earth, in any case over three feet

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(3') high, shall be permitted at street intersections within a triangle formed by the intersections of street corner lines and a line drawn down between points along such lines fifty feet (50') distant from their point of intersection.

The following diagram illustrates the minimum required visual obstruction-free area:



5.1.5. Cul-de-Sac Lots

The minimum lot width of new lots fronting on a cul-de-sac may be reduced to seventy five feet (75') at the edge of the right-of-way provided the width at the building setback line meets applicable minimum lot requirements.

5.1.6. Fences and Walls

(a) *Permitted Fences and Walls.* Except as otherwise provided in this Section 5.1.6, in every district fences and walls up to six feet (6') in height are permitted as of right in all locations, including yards, setbacks, and buffer areas. In any event, fences and walls: (a) may not exceed eight feet (8') in height from the ground level; (b) shall conform to applicable corner lot requirements; and (c) except in the case of fences and walls utilized in connection with lawful agriculture use: (i) shall provide for emergency equipment access; and (ii) the use of barbed wire or electrification shall be prohibited except as provided in Section 5.1.6(e) below. Subject to applicable corner lot restrictions and to the first sentence of this paragraph, fences and walls up to eight feet (8') in height are permitted as of right in all locations, including yards, setbacks, and buffer areas, for lawful agriculture use.

(b) *Height Limitations Along Streets.* Fences and walls that have any portion located less than ten feet (10') from a street right-of-way shall have a maximum height as to such portion of three feet (3').

(c) *Building Permit Required.* Building permits are required for fences and walls exceeding six feet (6') in height.

(d) *Calculation of Height.* Fence and wall heights shall be measured vertically from the natural grade to the top of the fence or wall at each point along the fence or wall

(e) *Barbed Wire.* Notwithstanding the provisions of Section 5.1.6(a) barbed wire shall be permitted on Rural Residential District (RR) lots of twenty five (25) acres or more in conjunction with the lawful raising of large animals such as cows and horses.

(f) *Finished Side Facing Out.* Fences shall be erected with the finished side (if any) facing the street and abutting properties, and with backers, supports, and posts on the inside of the fence, unless they constitute an integral part of the finished side, or unless the fence is of the type that requires posts to be placed in an alternating pattern inside and outside the fence to maintain stability.

(g) *Common Lot Line.* A fence or wall may be built up to a common lot line but may not encroach on the adjoining property nor interfere with adequate sight distance for vehicles exiting from driveways on the parcels sharing the common lot line.

5.1.7. Height Requirements, Exemption

Otherwise applicable height restrictions shall not apply to spires, belfries, cupolas, chimneys, or approved small wind energy facilities or solar collectors, and shall not apply to approved free-standing telecommunications facilities that are no higher than two hundred feet (200') feet tall, or to approved telecommunications facilities attached to an existing building where such facility is no more than fifty feet (50') higher than the top of such building; provided, however, that the foregoing is not intended, and shall not be construed, to permit or allow any use within any district where such use is otherwise prohibited.

5.1.8. Minimum Habitable Floor Area; No Habitable Basement Rooms in Multi-Family Dwellings Without Separate Ingress and Egress

No dwelling shall have a habitable floor area of less than seven hundred twenty (720) square feet, except that accessory apartments and care cottages detached from the owner-occupied single-family dwelling to which they are accessory but located over or otherwise attached to a garage which is accessory to the principal owner-occupied single-family dwelling shall have a minimum habitable floor area of five hundred (500) square feet. No habitable rooms shall be permitted in basements or cellars of multi-family dwellings except where a separate outside entrance is provided for each such room.

5.1.9. Residential Front Yard Grade

Surface grade of residential front yards, measured at the mid-point of a residence front wall, shall be at least one foot (1') above the elevation of the street center line, unless the Code

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Enforcement Officer determines that adequate site drainage is provided.

5.1.10. Setback, Yard Compliance

Every part of a required yard shall be open from its lowest point to the sky unobstructed by structures, except that when determining compliance, fences not exceeding legal height, chimneys, open trellises, uncovered steps, terraces no higher than one foot (1') from ground level, overhanging canopies attached to a principal or lawful accessory building and not extending more than ten feet (10') into the yard in question, and overhanging roofs not extending more than two feet (2') into the yard in question, shall be disregarded.

5.1.11. Setback Prohibitions: No Carports, Etc., in Required Yards or Setbacks

Without limiting the generality of the foregoing, the following structures may not be located within required yards or setbacks: (a) metal or any other carports supported by poles or tubes and designed to stand alone from another structure, whether or not anchored to the ground; and (b) except as permitted pursuant to Section 6.16 of this Law, portable storage units.

5.1.12. Setbacks, Additional

Where a commercial, light-impact industrial use, or manufacturing use is contiguous to an existing residential use in any district (contiguous in this context to include being situated on the opposite side of a roadway), the Planning Board may require that the minimum front, side and rear yards be increased by up to fifty percent (50%) of what would otherwise be required for such commercial, light-impact industrial, or manufacturing use. The Board may also require, for the purpose of separating such incompatible activities or shielding the residential use from negative impacts, that a buffer consisting of a solid fence of wood and/or a twenty feet (20') wide dense evergreen planting not less than six feet (6') high be maintained, unless the properties are in the same ownership or the full width of the yard is already wooded.

5.2 Landscaping Plans and Standards

5.2.1. Purpose of Landscaping Plans and Standards

The purpose of this Section 5.2 is to provide specific standards to be applied to the design of non-residential sites or structures, and other types of land uses in the Town that would undergo special use permitting or site plan review or require a variance, in order to promote the orderly physical development of the community, ensure the health and safety of the public, conserve the natural and scenic resources and rural character of the community, and to minimize the negative environmental impact of such development.

5.2.2. Landscape Plan Minimum Requirements

Any landscape plan to which this Section is made applicable shall specify locations of all mature

shade trees or other species of six inch (6") caliper or greater (at breast height) and indicate existing vegetation to be removed or preserved. It shall demonstrate how building materials, colors and textures will be blended with the natural and man-made landscape. It shall also include visual depictions of the proposed landscape from the perspective of persons who will view the site from the roadway or adjoining properties. Specific locations, varieties, sizes, winter hardiness, and schedules for all proposed plantings shall be provided as part of the plan. Landscape plans shall be prepared by a New York State licensed landscape architect or other design professional qualified to perform such services, and shall include consideration of all man-made and natural features, including signs.

5.2.3. Consultants for Review of Landscape Plan

The Planning Board, in reviewing a landscape plan, may employ the assistance of a design professional and may seek the non-binding advice of interested civic organizations concerned with community beautification. The Board shall also specifically consider the following before approving, approving with modifications, or disapproving a landscape plan:

- (a) the plan should preserve vegetation to the maximum extent possible, enhance the appearance of the property, and complement the character of the surrounding area;
- (b) the plan should use landscaping to delineate or define vehicular and pedestrian ways and open space;
- (c) the plant material selected should be of complementary character to buildings, structures and native plant species, and be of sufficient size and quality to accomplish its intended purpose;
- (d) the plan should effectively buffer the activity from adjoining land uses as may be necessary and soften the impact of other site development as contrasted with the natural environment;
- (e) the plan should be realistic in terms of maintenance and should use materials which, at a minimum, are winter hardy for the Town;
- (f) the plan should not include plant species known to be invasive (see list at Article 14.0 of this Law); and
- (g) to the extent applicable, the plan shall reflect compliance with the standards set forth in this Section 5.2.

5.2.4. Landscaping Requirements

All new landscaping to which this Section 5.2.is made applicable shall meet the following minimum specifications:

- (a) The minimum branching height for all shade trees shall be six feet (6').
- (b) Shade trees shall have a minimum caliper of two and one half inches (2 1/2") (at breast height) and be at least twelve feet (12') in height when planted.
- (c) Evergreen trees shall be a minimum of six feet (6') in height when planted.
- (d) Shrubs shall be a minimum of twenty four inches (24") in height when planted and shall form a continuous visual screen within two (2) years of planting.
- (e) A buffer screen at least fifteen feet (15') in width along any residential lot line shall be provided.
- (f) A landscape strip of at least fifteen feet (15') in width, that includes at least one (1) deciduous

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tree for every thirty five (35) linear feet of perimeter lot line, shall be required for any non-residential use.

(g) All lot area (except where existing vegetation is preserved) shall be landscaped with grass, ground cover, shrubs, or other appropriate similar cover.

(h) Preservation of the majority of mature shade trees shall be required within required yard areas. Trees preserved pursuant to this subsection (h) may additionally be applied toward satisfaction of the other requirements of this Section 5.2., provided that the Code Enforcement Officer or the Planning Board, as the case may be, determines the purpose of this Section 5.2. will be achieved thereby.

(i) The buffer screen contemplated by the preceding clause (e) shall include, at a minimum, either an opaque wooden stockade fence six feet (6') in height, and one (1) evergreen tree for every fifteen (15) linear feet of property line, or, in lieu of the stockade fence, an additional row of evergreens off-set so that each row serves to place trees between the gaps of the other. No stockade or similar fence, however, may exceed eight feet (8') of height.

(k) No fence shall be constructed so as to interfere with the views from or admission of light to an adjoining residential property.

(l) The shade trees contemplated by this section shall be accompanied by smaller shrubs and ground cover as may be required to effectively separate and buffer the activity from the roadway while still allowing for visibility of the use. The widths of this buffer may be reduced along the rear and side lot lines for good cause, but not along the front lot lines.

5.2.5. Waiver by Planning Board of Landscaping Requirements

Where it is determined that a proposed special use or other matter to which the requirements of this Section 5.2. is made applicable would not have a significant impact on the natural environment, adjoining landowners, or the view from a public roadway, these requirements may be appropriately modified for good cause shown but may not be waived unless no new construction is involved.

5.2.6. Performance Guarantee for Landscaping Requirements

The Planning Board, in reviewing a landscape plan, may as a condition of approval require a performance guarantee in the amount of one-hundred-twenty-five percent (125%) of the cost of materials and installations to assure that all landscaping survives in a healthy condition for at least one (1) full year and that any required fencing is properly maintained. The Code Enforcement Officer shall have the authority to determine and confirm the amount of such costs, and shall report such determination to the Planning Board. The Code Enforcement Officer shall have the right, upon reasonable prior notice to the property owner, to enter upon the property or send as his agent a New York state licensed landscape architect, whose fee will be paid by the applicant, to inspect the landscaping and, after notifying the owner of any deficiencies, to require that the performance guarantee be accessed to pay for the replacement of any dead, dying, diseased, stunted or infested plant materials or defective fencing. The requirement to maintain such fencing and landscaping shall continue beyond the period of the guarantee and the Code Enforcement Officer may proceed as provided herein to remedy any deficiencies in this regard.

5.3. Performance Standards for All Uses

No use shall hereafter be established, altered, moved, or expanded unless it complies with the performance standards set forth in this Section 5.3. Continued conformance with these standards, once applicable, shall be a requirement for the continuance of any certificate of occupancy. These performance standards set specific controls on potential objections to negative external impacts from the operation of a use.

5.3.1. Containment Devices

All activities involving the possibility of contamination of surface or ground water shall be required to have safety devices adequate to prevent any such contamination.

5.3.2 Flammable or Explosive Materials

All activities involving the manufacturing, production, storage, transfer or disposal of flammable or explosive materials shall require the provision of adequate safety devices against the hazard of fire and explosion. Fire-fighting and fire suppression equipment and devices shall comply with any applicable National Fire Protection Association guidelines.

5.3.3. Electrical Disturbance

No activities shall be permitted which emit perceptible electrical disturbance or electromagnetic interference adversely affecting the operation of any equipment other than that of the creator of such disturbance, unless federal or state regulation mandate that such operation be permitted.

5.3.4. Freeboard

Freeboard for all new buildings and substantial improvements (i.e., all new buildings and their furnaces, utilities, ductwork, etc.) must be elevated or flood proofed to a level at least two foot (2') above the base flood elevation

5.3.5. Lighting

(a) *Purpose.* Appropriately regulated and properly installed outdoor lighting will contribute to the safety and welfare of the residents of the Town. Accordingly, this Section 5.3 is intended to assist property owners in their efforts to provide a safe and secure environment, control energy costs and keep unnecessary direct light from shining onto abutting properties or streets. It is also intended to reduce the problems of glare, minimize light trespass, and help reduce the energy and financial costs of outdoor lighting by establishing regulations which limit the area that certain kinds of outdoor lighting fixtures may illuminate and by limiting the total allowable illumination on lots located in the Town.

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(b) *Spillover and Glare.* All lighting shall be designed so as to avoid unnecessary, bothersome or unsafe spillover of light and glare onto operators of motor vehicles, pedestrians and land uses in proximity to the light source.

(b) *Lighting Standards.* Unless otherwise specifically provided herein, light sources shall comply with this Section 5.3.6, including the following standards:

Type of Light Sources	Maximum Illumination Permitted at Property Line	Maximum Permitted Height of Light
Globe Light	0.20 Foot-candles	15 Feet
>90% Cutoff	0.75 Foot-candles	25 Feet
<90% Cutoff	2.00 Foot-candles	30 Feet

No direct or sky-reflected glare, whether from floodlights or from high-temperature processes such as combustion or welding or other sources, so as to be visible at the property line, shall be permitted.

(c) *Illumination of Walkways and Outdoor Areas.* In order better to assure that walkways, parking lots and other outdoor areas accessible to the general public are safely illuminated at night, the following minimum standards for outdoor lighting levels shall be adhered to. These outdoor lighting levels are the minimum levels that are generally considered adequate for the designated areas. Individual site lighting requirements can vary considerably, however, and property owners are ultimately responsible for ensuring that adequate illumination of outdoor areas is provided. Any lights used to illuminate the exterior of a single-family, two-family, multi-family, dormitory or other group residence, or manufactured home park, or a commercial, industrial, or other nonresidential space or parcel, including buildings, signs and other structures, parking and pedestrian areas and landscaping, shall be designed and installed such that:

(i) any luminaire with a lamp or lamps rated at a total of more than 1800 lumens, and any flood or spot luminaire with a lamp or lamps rated at a total of more than 900 lumens, shall not emit any direct light above a horizontal plane through the lowest direct light-emitting part of the luminaire;

(ii) any luminaire with a lamp or lamps rated at a total of more than 1800 lumens, and any flood or spot luminaire with a lamp or lamps rated at a total of more than 900 lumens, shall be mounted at a height equal to or less than the value $3 + (D/3)$, where D is the distance in feet to the nearest property boundary; and

(iii) the maximum height of the luminaire may not exceed twenty five feet (25').

(d) *Exceptions.* Exceptions to the above shall be:

(i) any luminaire with a lamp or lamps rated at a total of 1800 lumens or less, and any flood or spot luminaire with a lamp or lamps rated at 900 lumens or less, may be used without restriction as to light distribution or mounting height, except that if any spot or flood luminaire rated 900 lumens or less is aimed, directed or focused such as to cause direct light from the luminaire to be directed toward residential buildings on adjacent or nearby land, or to create glare perceptible to persons operating motor vehicles on public ways, the luminaire shall be redirected or its light output controlled as necessary to eliminate such conditions;

(ii) luminaires used for public roadway illumination may be installed at a maximum height of twenty five feet (25') and may be positioned at that height up to the edge of any bordering property.

5.3.6. Noise, Vibrations, Odors

All activities must comply with the Town of Lumberland Noise Law (Local Law #1 of 1990), as the same may be amended from time to time. Sounds emitted at levels lower than those prohibited by the Town of Lumberland Noise Law shall not be permitted if, because of the type or frequency of the noise emitted, such sounds are offensive, disruptive, or in continual disharmony with the character of an adjoining or nearby residential neighborhood. No vibration shall be permitted which is detectable without instruments at the property line. Odors from any use shall not be discernible at or beyond the property line to the extent that they are reasonably obnoxious to a surrounding inhabitant within five hundred feet (500') of the property line.

5.3.7. Open Burning

Burning of waste materials in an open fire shall be prohibited.

5.3.8. Radiation

No activities shall be permitted which emit dangerous radioactivity.

5.3.9. Safety Plan

Details of any potential hazards and planned safety and accident and containment response actions shall be provided by the applicant, and if approvals are granted then along with any other required conditions the Planning Board may require that greater front, side and rear yards and/or fencing be provided by the applicant.

5.3.10. Smoke, Dust and Other Air Pollution

(a) There shall be no measurable emission of smoke, gas, or other atmospheric pollutant, except and unless as authorized by a permit granted pursuant to applicable state and federal regulations which are not lawfully superseded or preempted by any applicable Town permit or law, including this Law. In any event, the emission of one (1) smoke unit per hour and smoke with discernible density of No. 2 on the Ringelmann Smoke Chart shall be prohibited. For the purpose of grading the density of smoke, the Ringelmann Smoke Chart or EPA methods 9 or 22 shall be used to determine the total smoke emitted. Where the Ringelmann method is used, a reading shall be taken every minute for an hour or, if for a shorter period than an hour, until the total smoke emitted exceeds that allowed by these regulations. Each reading shall be multiplied by the number of minutes during which it was observed and the product added.

(b) Notwithstanding any provision hereof to the contrary, including without limitation the preceding Section 5.3.10(a) no emission of fly ash, dust, fumes, vapors, gases or other forms of air pollution shall be permitted which can cause any damage to health, to animals, vegetation, or other forms of property, or which can cause any excessive soiling. Pollutants that are not regulated by the EPA or the DEC shall not be emitted if they pose a substantial risk to public health, safety or welfare.

(c) Properties shall be suitably improved and maintained with appropriate landscaping, paving or other materials to minimize windblown dust and other particulate matter.

5.4. Parking, Loading, and Access Standards

5.4.1. Purpose and Intent of Parking, Loading and Access Standards

It is the intent of this Section 5.4. that all structures and land uses be provided with a sufficient amount of off-street parking, loading, and access, while allowing for some flexibility of site design to accommodate the unique characteristics of individual properties. The Town finds that large and highly visible parking lots represent one of the most objectionable aspects of commercial development. Such large and highly visible parking lots damage the historic layout and architectural fabric of the surrounding area, interfere with pedestrian safety and accessibility, and reduce the quality of life in developed areas. The Town also recognizes that inadequate parking can also diminish the quality of life by creating traffic congestion, safety hazards and inconvenience. The Town therefore seeks in this Section 5.4. to balance the need for adequate parking with the need to minimize harm resulting from the provision of parking and to avoid the negative impacts of excessive parking lot construction.

5.4.2. Provision of Parking

Except as otherwise provided herein, off-street parking facilities shall be provided as indicated in connection with every use, substantial change in use, construction, conversion, or increase in intensity of use of buildings or structures. The number of off street parking spaces for uses not

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listed in this section 5.4.2 will be determined by the Planning Board based on a parking study provided by the applicant. For the uses listed in Table 5.4.2, the minimum amount of parking should be constructed, but the project site must maintain a reserve area able to accommodate the maximum number of spaces. Off Street parking spaces shall be required in the amounts shown on Table 5.4.2, calculated per one thousand (1000) square foot (sf) of Gross Floor Area (unless otherwise indicated).

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Table 5.4.2 Parking Requirements

Land Use	Maximum Number of Parking Spaces	Minimum Number of Parking Spaces
Bank or other financial institution	3	2
Drive Thru Restaurant	9	2
Free Standing (single store) Retail	3	1
General Office	5	2
Medical Office Building	9	2
Nursing Home	3	2
Restaurants, other than drive thru	11	6
Bed and Breakfast	2 spaces per guest room or suite plus 2 spaces for owner/operator	1 space per guest room or suite plus 1 space for owner/operator.
Service establishment	3	2
Day Care Centers	1 space per 4 children at maximum capacity	1 space per 8 children at maximum capacity
Churches, Places of Worship, and Funeral Homes	1 space per 3 seats in portion of the building used for services	1 space per 5 seats in the portion of the building used for services
Museums and Libraries	2	1
Social, Fraternal Clubs and Organizations	4	3
Elementary, Middle and High Schools	1 space per 3 seats in the auditorium	1 space per 5 seats in the auditorium
Hotels and Motels	2 spaces per guest room or suite	1 space per guest room or suite
Warehouse	1	1
Self Service Warehouse	1 space per 10 compartments	1 space per 20 compartments
Home based business	4 per dwelling unit plus 1.5 per non-resident employee	2 per dwelling unit plus 1 per non-resident employee
Commercial Kennel	3	1
Automotive and Vehicle Sales (includes rental agency)	3	1
Automotive and Vehicle Repair and/or Service Station	4	2
Indoor Recreation Facilities	5	5
Dwelling, one-family	2 spaces/dwelling unit	1 per dwelling unit
Dwelling, two-family	2 spaces for the first dwelling unit, 1 space for the second	1 per dwelling unit
Dwelling, multi-family	1.5 spaces per dwelling unit	1 per dwelling unit
Dwelling, manufactured home	2 spaces/dwelling unit	1 per dwelling unit

5.4.3. Modification of Off-street Parking Standards for Good Cause Shown

This Section articulates standards for conditions under which a waiver or exception from the general parking requirements may be allowed by the Planning Board.

If the applicant believes that the required number of parking spaces are in excess of what is needed for the proposed use or if the applicant desires to construct more than the maximum number of otherwise allowed spaces, the applicant may submit a request with justification to the Planning Board for a waiver or exception from the parking space requirements. The Planning Board may require the submission of a parking demand analysis as part of any request for a waiver or exception from the general parking requirements.

The Planning Board may authorize a waiver or exception from the number of otherwise required parking spaces upon a finding that all of the following criteria are satisfied:

- (a) in the case of a reduction in the number of otherwise required spaces, that:
 - (i) the reduction will not adversely affect traffic flow on the site; (ii) the reduction will leave adequate parking for all of the reasonably anticipated uses or occupancies of the project; and (iii) that the reduction will not otherwise adversely affect the general welfare of the community; and
- (b) in the case of an increase beyond the otherwise maximum number of spaces, that:
 - (i) all other requirements of this Section 5.4.3. are complied with, including without limitation the parking lot storm water management and landscape standards contained herein; and
 - (ii) the increase will not otherwise adversely affect the general welfare of the community. If the Planning Board permits any such change in the number of required parking spaces, the Planning Board may impose such reasonable conditions as may in the Board's judgment be necessary or appropriate.

5.4.4. Location of Off Street Parking

Except as provided below with respect to dwelling units, there shall be no parking in any required front, side or rear yard, or buffer zone. With respect to dwelling units: not more than two parking spaces per dwelling unit shall be located in required front yard areas; and under no circumstances shall more than four (4) parking spaces for the entire building be located in any required front yard area. Front yards (required or otherwise) shall in no event be used for storage of abandoned or disabled vehicles.

5.4.5. Parking Space Design Standards

The minimum allowable dimension of a parking space shall be ten feet (10') wide by twenty feet (20') long. Travel aisles for vehicles within a parking lot shall be a minimum of twenty-four feet (24') in width for aisles intended for two-way traffic. Where angled parking with one-way traffic circulation is proposed, the minimum aisle width shall be thirteen feet (13') if the angle of the parking spaces is forty-five (45) degrees from the perpendicular, and eighteen feet (18') if the

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angle of the parking spaces is sixty (60) degrees from the perpendicular. All parking areas shall be paved, surfaced or covered with gravel so as to be well drained, and shall be maintained in a well-kept condition.

5.4.6. Handicapped Accessible Parking

All off street parking areas shall include paved handicapped accessible parking spaces as herein provided. Accessible parking spaces shall be at least fifteen feet (15') wide including eight feet (8') of cross hatch to accommodate wheelchair lifts. Handicap accessible parking spaces and access aisles shall be level, not exceeding two percent (2%) slope in all directions. Handicap accessible parking spaces shall be located so as to be the most convenient spaces in the lot, and shall be provided in the following amounts relative to the total number of spaces provided in the parking area:

Total Parking Spaces in Lot	Required accessible spaces
1-15	1
16-50	2
51-75	3
76-100	4

5.4.7. Parking for Mixed-Use Developments

In mixed-use developments i.e., a combination of allowed residential, commercial, or light-impact industrial uses on the same lot or in the same building), or developments where parking is affected by cooperative agreements between different land uses, for any proposed use, substantial change in use, construction, conversion, or increase in intensity of use of any buildings or structures, the applicant shall submit a parking demand analysis that demonstrates parking demand patterns. The parking demand analysis must be acceptable to the Planning Board as to form and content may be utilized by the Planning Board in connection with its determination of required parking at the mixed-use site.

5.4.8. Off-street Loading

Loading and unloading of vehicles shall not be permitted on public right-of-ways. Adequate off-street loading and unloading berths shall be provided for any commercial, institutional, manufacturing, wholesale use or other non-residential use. Loading docks and service areas shall be located in a manner that minimizes visual intrusion on public spaces and ensures pedestrian and automobile safety by separating truck traffic and loading operations from pedestrian and automobile circulation. Where appropriate, loading docks shall be screened by walls extending from a building face or placed within arcades or other architectural features designed to blend them in with the architecture of the building. Any land which is developed as a unit under single ownership and control shall be considered a single lot for the purpose of these requirements and

at least one (1) such berth shall be provided for each lot. In the case of any use requiring a special use permit or site plan review, additional berths may be required by the Planning Board.

Each required loading berth shall be at least twelve feet (12') wide, sixty-five feet (65') long and fourteen feet (14') high or uncovered. All permitted or required loading berths shall be on the same lot as the use to which they are necessary and shall not include any one area used to meet parking requirements.

5.4.9. Access Requirements to Parking Spaces

Access to and from all off-street parking, loading and vehicle service areas along public rights-of-way shall consist of well-defined separate or common entrances and exits and shall comply with the following provisions:

(a) *Sight distance.* Access drives shall not open upon any public right-of-way line of any intersecting public street or highway where the sight distance in either direction would be less than required by Town, County or State regulations applicable to the same.

(b) *Entrance and exit.* There shall be no more than one entrance and one exit to any business or parking area on any one public right-of-way way unless topography or other physical features dictate the use of more than one access for safety reasons. Each entrance and exit shall be clearly defined with curbing, fencing, or vegetative screening so as to prevent access to the area from other than the defined entrances and exits. In no case shall one entrance and exit be located within eighty feet (80') of any other on the same property or adjoining property along the same public right-of-way.

5.4.10. Shared Parking

The Town encourages parking lots for different structures or uses, or for mixed uses, to be shared in any zoning district in which uses are allowed. At the applicant's request, shared parking, including a reduction in required spaces to the extent contemplated by Section 5.4.11 below, may be evaluated for approval by the Planning Board. Any such approval shall be upon conditions that the Planning Board may reasonably prescribe, but in any event shall be subject to the following provisions:

(a) A reciprocal easement or other written agreement has been executed by all the parties concerned that assures the perpetual joint use of such common parking, a copy of which has been submitted to and is acceptable in form and content to the Town Attorney.

(b) The Planning Board may require the applicant to provide a parking study with information to evaluate the application for approval of the shared parking arrangement. This information shall include without limitation: (i) the type and hours of operation and parking demand, for each use; (ii) a site plan displaying shared use spaces in the lot; (iii) a description of the character of land

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use and parking patterns of adjacent land uses; and (iv) an estimate of anticipated turnover in parking space use over the course of a typical 12 to 24 hour parking cycle at the site.

(c) Parking spaces to be shared may not be reserved for individuals or groups on a 24-hour basis.

(d) Uses sharing a parking facility need not be contained on the same lot, but each use shall be a maximum of five hundred feet (500') from the closest parking space in the lot providing shared spaces. A waiver of the maximum allowable distance between the use and associated shared parking may be approved by the Planning Board for good cause shown with written justification and supporting information provided by the applicant.

(e) Uses sharing a parking facility shall provide for safe, convenient walking between uses and parking, including safe, well-marked pedestrian crossings, signage and adequate lighting.

(f) If the conditions justifying any approved shared parking change or the shared parking arrangement is discontinued for any reason, the applicant shall notify the Code Enforcement Officer of the same, and a violation of this Law shall exist with respect to any use approved upon the condition of such shared parking.

5.4.11. Reduction in Required Number of Parking Spaces for Shared Parking.

Where shared parking among a mix of land uses is otherwise approved by the Planning Board, upon request of the applicant the Planning Board may allow the following:

(a) Up to thirty percent (30%) of the parking spaces required for the predominant use on a site may be shared with other uses operating during the same time of day and days of the week. The predominant use shall be that use which requires the most parking of those sharing the parking facilities.

(b) Up to seventy five percent (75%) of the parking spaces required for uses such as theaters, public auditoriums, nightclubs, movie theaters, and similar predominantly evening uses, may be shared with uses such as banks, offices, and similar predominantly daytime uses.

(c) Up to seventy five percent (75%) of the parking spaces required for uses such as churches and other uses typically in operation primarily during the weekend may be shared with uses such as medical offices, banks, and other similar uses predominantly in operation on weekdays.

5.4.12. Parking Spaces Held in Reserve

For phased developments, the Planning Board may approve an applicant request that up to fifty percent (50%) of otherwise required parking spaces will not be immediately constructed and may be kept in reserve. Such reserve parking areas must be kept planted and maintained and may not be paved or utilized for other uses until such time as the additional parking space is necessary to serve completed phases of the associated development. No above ground improvements shall be

placed or constructed upon such reserve parking area. The area designated as reserve parking shall be clearly depicted on the phased development site plan and the terms and conditions of phasing of the parking area completion, as determined by the Planning Board, shall be clearly set forth in notations on the approved site plan.

5.4.13. Design Standards for Parking Lot Storm Water Management

In addition to complying with any other requirements of this Law and all other applicable laws pertaining to stormwater pollution prevention plans, parking lot stormwater management systems shall be designed, constructed, and maintained in accordance with best management practices to reduce degradation of water quality, minimize run-off volumes, prevent flooding, reduce soil erosion, protect water quality, maintain or improve wildlife habitat, and contribute to the aesthetic values of the project, and to achieve the goal of no net stormwater run-off from the site. No net run-off means that the volume of run-off from the site after development does not exceed the volume of site run-off that existed prior to development.

Without limiting the generality of the foregoing, parking lot stormwater management systems shall comply with the following general standards:

- (a) Infiltration of stormwater shall be accommodated to the extent possible through limitation of land disturbance and grade changes, retention of existing natural drainage areas and wetlands, and use or creation of vegetated perimeter buffer strips.
- (b) All stormwater detention and conveyance structures shall be constructed to control the post-development peak discharge rates from 10, 25, and 100-year storms to the corresponding pre-development peak discharge rates.
- (c) Site plans shall include information regarding all existing and proposed landscaping and stormwater management structures and features.
- (d) Natural drainage patterns shall be maintained to the extent practicable. The applicant must demonstrate through information provided on and in association with the proposed site plan, the existing and proposed drainage patterns and calculated flows.
- (e) Parking lot drainage shall be designed so that all surface runoff (both piped and overland flow) is conveyed through a vegetated swale, vegetated filter strip, created wetlands, rain gardens, or detention basins with bio-filtration prior to discharge into existing wetlands, streams, ponds, or other water bodies.
- (f) The use of native grasses and small-diameter wood-stemmed shrubs is encouraged as plantings for all vegetated strips, created wetlands, rain gardens, or detention basins with bio-filtration.

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(g) There shall be no direct discharge of untreated stormwater to any natural wetland or water body.

(h) Stormwater runoff discharged to wetlands shall be diffused to non-erosive velocities prior to reaching any natural wetland based on calculations submitted with the application package.

(i) The applicant must demonstrate that any receiving wetlands or water bodies have sufficient holding capacity.

(j) The Planning Board may send any or all information provided on anticipated stormwater flow patterns and volumes and proposed stormwater management system to the Town Engineer and/or other consulting professional or agency for review and advisory comment.

5.4.14. Landscaping Requirements for Parking Lots

The landscaping requirements in this Section are intended to maximize the natural areas retained in any parking lot in order to optimize natural infiltration of rainwater, intercept and manage stormwater runoff, and enhance aesthetics. Further to these goals, the following shall apply:

(a) Developments with proposed parking areas of fifteen (15) spaces or more shall provide a minimum of ten percent (10%) of the total parking lot area as landscaped or open space. Such required landscaped or open space may be provided in the form of islands, aesthetic landscape treatments, or pedestrian refuge/oasis areas and combinations thereof. Perimeter buffer between the parking lot and adjacent streets may be included as required landscaped or open space.

(b) Developments with proposed parking areas of twenty five (25) or more spaces shall additionally provide landscaped islands of a minimum width of nine feet (9') and eighteen feet (18') in length throughout the parking area, planted with a mix of shrubs and trees. Such islands shall be located as follows: (i) at each parking lot entrance; (ii) at the ends of each parking aisle; (iii) as intermediate islands in long rows of spaces, located every fifteen (15) spaces; (iv) as separation between long rows of parking spaces where they abut other rows; and (v) as separation between pedestrian walkways and parking spaces and/or driving aisles.

(c) All landscaped islands shall be situated below the grade of the parking spaces and driving aisles so that stormwater runoff flow is directed to and trapped by such islands.

(d) A minimum of one deciduous or evergreen tree and two shrubs shall be planted on the parking lot islands for every ten (10) parking spaces. Trees and shrubs shall conform to the following standards: (i) deciduous trees shall be planted at three inches (3") in caliper (at breast height) with a mature height of at least thirty five feet (35'); (ii) evergreen trees shall be coniferous species planted at six feet (6') in height; (iii) shrubs shall be either deciduous species planted at two and one-half feet (2 ½') in height or evergreen species planted at two and one-half feet (2 ½') in spread; (iv) trees and shrubs shall be situated such that they do not obstruct vehicle sight lines

when at full growth; and (v) all landscaped islands shall be protected where they met the driving aisles with bollards.

(e) Crushed stone and stone chips shall not be used.

5.4.15. Pervious Parking

In all districts, off-street parking provided and maintained as paved/impervious surface shall be counted as part of the allowable lot coverage as specified in the Use Table.

Parking areas composed of pervious surfaces are encouraged for all land uses and lots, unless there are over-riding environmental limitations, and may be provided to meet all or part of any required parking spaces on a lot. Twenty percent (20%) of such pervious surfaces shall be counted as part of the overall allowable lot coverage.

Measures that shall be considered to reduce the amount of impervious surfaces in all proposed parking lots include: (a) provision of pervious parking stall surfaces; (b) provision of pervious overflow parking; (c) provision of pervious snow-storage space; (d) conservation of existing natural areas, including trees on-site; and (e) minimization of clearing to the extent practicable while retaining access, sight distances, and safe vehicle flows.

5.4.16. Bicycle and Pedestrian Accommodations in Parking Lots

(a) *Purpose.* To promote and support walking and bicycling to the extent possible throughout the community, parking lots must be designed to provide safe and convenient pedestrian and bicycle access as a part of any parking lot design, including safe and convenient movement to and from public walkways and/or bikeways, streets or transit stops.

(b) *Bicycle Access Design Standard.* A minimum of one bicycle parking space shall be provided for every twenty (20) off-street automobile parking spaces. At a minimum, all bicycle parking spaces shall be provided in the form of bicycle racks with locking capability. Bicycle parking facilities shall be designed and installed to include:

- (i) spaces that are a minimum of two feet (2') by six feet (6') per bicycle;
- (ii) the minimum number possible of potential conflict points between bicycles and motor vehicles;
- (iii) lighting;
- (iv) provision for locking bicycles to the rack or bicycle locker;
- (v) adequate spacing for access to the bicycle and locking device when the spaces are occupied; and
- (vi) where practicable, bicycle parking shall be located within view of building entrances or in view of windows, and/or security personnel stations.

5.4.16. Pedestrian Access Design Standards

Provision for safe and convenient pedestrian access shall be incorporated into landscaping plans for all parking areas and reflected clearly shown on all site plans. Any parking lot designed, constructed, and maintained as part of a development shall be:

- (a) designed so that the flow of pedestrians can be directed through a system of convenient routes that brings them to central walkways leading to main entrances.
- (b) constructed so that there is safe separation of all walkways from motor vehicle traffic through the use of raised sidewalks and/or landscaping between sidewalks and parking spaces and/or driving aisles;
- (c) constructed so that there are safe, well-articulated pedestrian crossings demarcated with pavement markings, pedestrian warning signs, and lighting are provided that are a minimum of four feet (4') in width;
- (d) constructed to include plantings, benches, and lighting along walkways at all pedestrian crossings; and
- (e) designed, constructed and maintained to accommodate disabled individuals per applicable Americans with Disabilities Act (ADA) requirements.

5.5. Signs

5.5.1. Purpose and Applicability of Sign Regulations

This Law regulates all signs in the Town of Lumberland that are visible from the public highway right-of-way, public facilities, facilities, trails open to the public, and navigable waterways. The Town has a tradition and reputation as a community with a rich mix of land uses that blend into a landscape of high aesthetic quality. Depending on their size, numbers, and character, signs may attract or repel visitors, affect the visual quality enjoyed daily by residents, affect the safety of vehicular traffic, and define the character of the area. Thus aesthetic considerations impact economic values as well as public health, safety, and welfare. Therefore this Law sets standards for the following purposes:

- (a) Maintain and enhance the visual quality of the community.
- (b) Improve pedestrian and motorist safety by minimizing distractions and obstacles to clear views of the road and of directional or warning signs.
- (c) Protect and enhance economic viability by assuring that the Town of Lumberland will be a visually pleasant place to visit or live.
- (d) Protect property values and private/public investments in property.
- (e) Protect views of the natural landscape and sky.
- (f) Avoid personal injury and property damage from structurally unsafe signs.
- (g) Provide businesses with effective and efficient opportunities for identification by reducing competing demands for visual attention.
- (h) Allow for expression by signage subject to reasonable regulation.

5.5.2. Signs Authorized Without a Permit

Subject to other applicable requirements and permits, the following signs are authorized without a Sign Permit:

(a) *Small Signs.* One (1) sign per parcel, not illuminated, and not exceeding three (3) square feet in sign area. No such sign may exceed a height of forty-two inches (42") above ground level. This sign may contain any lawful message.

(b) *Property Protection Signs.* No more than one (1) on each side of all corners that can be reasonably identified on the parcel. In addition, no more than two (2) Property Protection Signs in any five hundred (500) linear feet of each side of the protected area of a parcel. Such signs are to be limited in size to one and one-half (1 1/2) square feet in area.

(c) *Real Estate Signs.* One (1) sign per parcel, not illuminated and not exceeding sixteen (16) square feet in sign area. No such sign may exceed a height of forty-two inches (42") above ground level. Such signs must be removed within seven (7) days after the closing or the signing of the rent or lease agreement.

(d) *Temporary Signs.* One (1) sign per parcel, not illuminated, and not exceeding sixteen (16) square feet in sign area. No such sign may exceed a height of forty-two inches (42") above ground level. Temporary Signs may not be placed on a parcel for more than six (6) months in any calendar year. These signs may carry any lawful message

(e) *Governmental Signs and Governmental Flags.*

(f) *Directional Signs.* Directional signs do not require a permit, however: (i) only one (1) entrance/exit Directional Sign is allowed per legal driveway; and (b) a directional sign may not exceed one and a half (1.5) square feet of sign area.

(g) *Warning Signs.* Warning signs do not require a permit so long as the area of the sign does not exceed three (3) square feet.

(h) *Historical, Cultural and Natural Site Signs.* Signs erected by a government agency, which exclusively denotes a recognized historical, cultural or natural site, do not require a permit so long as the area of the sign does not exceed three (3) square feet, or the size of such sign is prescribed or authorized by state or federal law.

(i) *Banners.* One (1) banner per residential property parcel, not illuminated, and not exceeding nine (9) square feet in sign area. Banners used on non-residential property parcels are signs subject to the permitting provisions of this law.

5.5.3. Signs Authorized with a Permit

Subject to the provisions of this Law, upon application therefore the Code Enforcement Officer shall issue sign permits in accordance with the following provisions:

(a) *Commercial/Retail/Industrial/Manufacturing Parcels.*

(i) *Wall and Ground Signs.* One (1) wall sign and one (1) ground sign are permitted on each commercial, retail, industrial or manufacturing parcel. Such signs shall not exceed ten percent (10%) of the area of the front face of the building on a parcel, or one hundred (100) square feet of sign area, whichever is less. Ground signs on such parcels may not exceed a height of ten feet (10') above ground level. Unless other provisions of this Law require a greater distance, setbacks of ground signs from property lines shall be at least equal to the height of the sign.

(ii) *Window Signs.* Signs may be placed inside the window areas of buildings used for approved retail uses. The sign area may not exceed twenty-five percent (25%) of the area of the window. Temporary signs shall be exempt from such window sign size restrictions.

(b) *Office Parcels - Wall or Ground Signs.* One (1) wall sign or one (1) ground sign is permitted for each office Parcel. Such signs shall not exceed ten percent (10%) of the area of the front face of the building on the parcel, or a sign area of fifty-six (56) square feet, whichever is less. A ground sign may not exceed a height of five feet (5') above ground level. Unless other provisions of this Law require a greater distance, setbacks of ground signs shall be at least equal to the height of the sign.

(c) *Agricultural Parcels.*

(i) *Wall and Ground Signs.* One (1) wall or one (1) ground sign per parcel with a total sign area not to exceed twenty (20) square feet in total area is permitted. Unless other provisions of this Law require a greater distance, ground signs setbacks shall be at least equal to the height of the sign. Ground signs may not exceed a height of five feet (5') above ground level.

(ii) *Temporary Signs.* Temporary signs relating to seasonal agricultural activities, i.e. crop variety trials, "pick your own berries" or produce sales, may not in aggregate exceed an additional sign area of twenty (20) square feet or be used for more than six (6) months in any calendar year. Such temporary signs may not exceed a height of five feet (5') above ground level.

(d) *Forestland Parcels.* One (1) wall sign or (1) ground sign per Parcel with an area not to exceed sixteen (16) square feet is permitted. A ground sign may not exceed a height of five feet (5') above ground level. Unless other provisions of this Law require a greater distance, ground signs setbacks shall be at least equal to the height of the sign.

(e) *Residential Neighborhood Identification Signs.* A residential neighborhood is permitted to have one (1) residential neighborhood identification sign for each entrance street. Such signs shall not extend into any public right-of-way. The sign area of the sign shall not exceed twelve (12) square

feet. The area of the structural supporting elements shall not exceed fifty percent (50%) of the area of the sign. The height of the sign may not exceed five feet (5') above ground level.

(f) *Residential Parcels*. A non-dwelling use in a residential area, such as a school, a religious facility, an institutional use, a clubhouse, etc. is permitted to have one (1) ground sign and one (1) wall sign, neither of which shall exceed twelve (12) square feet in area. The area of the structural elements supporting a ground sign shall not exceed fifty percent (50%) of the area of the message portion of the sign. The height of a ground sign may not exceed five feet (5') above ground level.

(g) *Special Event Signs*. Signs to be used on a temporary basis for a community event sponsored by a not-for-profit organization.

(h) *Streamers*. A streamer is allowed only on a temporary basis. A streamer may be strung for up to fourteen (14) days, and a maximum of two (2) permits per year per location will be issued. Each component of a streamer must be solid in color, contain no copy and, when unfurled and placed flat on the ground, must have a width of no more than 12 inches. A streamer must be made of weatherproof material, and be securely fastened to a mast, pole, building or structure.

5.5.4. Sign Permit Application Process

(a) *Authority to Issue Sign Permits*. Applications for sign permits shall be made to the Code Enforcement Officer, who shall have authority to administer the application process upon the conditions herein contained.

(b) *Signs in Existence As of the Effective Date of this Law*. A sign permit is not required for "Signs Authorized Without A Permit" as provided above in Section 5.4.2. A sign permit shall be required for all other signs, whether new or existing as of the date of this Law. Owners of signs in use as of the effective date of this Law that require a permit must register their signs with the Town no later than ninety (90) days of the Effective Date of the Law.

(c) *Applications*. Applications for sign permits shall be accompanied by the required fee amount as from time to time established by the Town Board and shall be made upon forms provided by the Code Enforcement Officer, which shall in any event contain the following information:

- (i) name, address, phone, and if available, fax and e-mail, of the applicant;
- (ii) name, address, phone, and if available, fax and e-mail, of the person owning the parcel upon which the sign is proposed to be placed;
- (iii) specification of the zoning and any overlay districts in which the parcel upon which the sign is proposed to be placed is located;
- (iv) location of the building, structure, and parcel on which the sign is or will be attached or erected;
- (v) position of the sign in relation to nearby buildings, structures, property lines, existing or proposed rights-of-way, ordinary high water marks of waterways, and required setbacks;

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- (vi) two (2) copies of the plans and specifications;
- (vii) a narrative description of the method of construction and/or attachment to a building or in the ground (as applicable);
- (viii) copy of stress sheets and calculations, if deemed necessary by the Code Enforcement Officer, showing the structure as designed for dead load and wind pressure; (ix) name, address, phone, and if available, fax and e-mail of the person who has erected or will be in charge of erecting the sign;
- (x) certificate of insurance as required below; and
- (xi) such other information as the Code Enforcement Officer may require to evaluate compliance with this Section 5.4, other provisions of this Law, and any other applicable laws.

Such application form shall contain an acknowledgment by the applicant that "Any change in the information in this Application, such as change of address, shall be submitted to the Code Enforcement Officer no later than seven (7) days after the change."

(d) *Required Insurance.* Applications for a sign permit shall must include a Certificate of Insurance evidencing public liability insurance in an amount of at least one hundred thousand dollars (\$100,000) for injuries to one (1) person and three hundred thousand dollars (\$300,000) for injuries to more than one (1) person, and property damage insurance in the amount of at least one hundred thousand dollars (\$100,000) regarding the installation, use and maintenance of the subject sign. It shall be a condition of any issued Sign Permit that such permit shall automatically lapse and be revoked if the insurance coverage required by this paragraph shall lapse or be cancelled for any reason. The certificate of insurance shall be in form and content acceptable to the Town Attorney, and in any event shall provide for written notice to the Town Supervisor at least sixty (60) days before the insurance evidenced thereby is cancelled or altered. The Town shall have no duty to advise the permit applicant, the property owner or any other person of any lapse, cancellation, or pending lapse or cancellation of such insurance coverage.

5.5.5. General Standards and Prohibitions Regarding Signs

The following limitations, obligations, and prohibitions apply in all districts:

- (a) Roof signs and projecting signs are prohibited.
- (b) No portion of a privately-owned sign, or its supporting structures such as poles or cables, shall be placed on or within the air space above any of the following: publicly owned property, a public right-of-way (such as a street, sidewalk, or waterway), or a proposed public right-of-way. Any sign violating this subsection may be removed by the Code Enforcement Officer/Building Inspector without prior notice to the owner. Such removal shall include the sign structure.
- (c) Cutting or killing vegetation growing on public rights-of-way (or below the ordinary high water mark of navigable streams) to enhance visibility of a sign is prohibited.

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(d) Self illuminated signs with a transparent or light background color are prohibited. Self illuminated signs with a dark background are permitted when in compliance with all other provisions of this Law.

(e) No sign shall be designed, constructed or maintained that shall move, oscillate or rotate. No sign shall be designed, constructed or maintained that shall produce any noise, sound, odor, smoke, flame or any other emission. No sign shall be designed, constructed or maintained that shall employ a mirror or other reflective device. Except as otherwise provided in this article, no sign shall be designed, constructed, or maintained that shall use or include any pinwheel, balloon or streamer.

(f) No sign (other than a traffic sign installed by a governmental entity) shall simulate or imitate the size, lettering, or design of any traffic sign in such manner as to interfere, mislead, or confuse the public.

(g) No motor vehicle, trailer, farm implement or other mobile equipment may be used primarily as a sign or structural support for a sign. Any vehicle that is parked in a position visible to traffic on a public road, waterway, or parking area for a period longer than six (6) days in any sixty (60) day period, is presumptively being used primarily as a sign or structural support for a sign. Excluded from this presumption is (a) any automobile, pickup truck, panel truck or van used to provide daily transportation to and from work and (b) any motor vehicle, vehicle or trailer lawfully registered and insured, regularly used in the business conducted on the premises and not having attached thereto any temporary or removable sign.

(h) Signs shall not be placed so as to obstruct the visibility of pedestrians or motorists at intersections and driveways.

(i) Signs in wetlands, other than governmental signs and warning signs, are prohibited.

(j) Electronic signs are prohibited.

(k) Any sign that is illuminated from any light source other than an internal light source shall be illuminated by a fully shielded source, designed and placed in a manner that (i) restricts the area of illumination to the sign face; (ii) directs light only in a downward manner; and (iii) precludes the casting of any glare or light from said source beyond the sign face in any upward direction, horizontally to the side of, or to the rear of the sign structure.

(l) An illuminated sign shall not be placed or located so as to permit the beams and illumination to cause glare or reflection that may constitute a traffic hazard or nuisance.

(m) Abandoned signs are prohibited and the permit for any abandoned sign shall be deemed to have expired at the time of abandonment.

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(n) No sign shall be constructed, erected or maintained that faces a public waterway except as permitted herein.

5.5.6. Sign Construction Requirements and Standards

The following apply in all districts:

(a) Where feasible, signs should be constructed of weather resistant wood, or other natural material. Neutral colors are encouraged.

(b) Signs shall conform to then-current applicable building and electrical codes.

(c) All signs must remain safe and secure during the period of use. All parts of the signs, including bolts and cables, shall remain painted, and free of corrosion.

(d) A sign may not obstruct or interfere with a fire escape.

(e) All signs for which a sign permit is required shall identify the name and operating telephone number of the person responsible for the sign.

(f) Signs and all supporting structures shall be no closer to electrical utilities than is permitted by applicable codes; any event, no sign, including cables and supports, shall be within six feet (6') of any electrical conductor, electrical light pole, electric street lamp, traffic light, or other public utility pole.

(g) Property surrounding any ground sign shall be maintained in a clean and sanitary condition, and shall be free from weeds, rubbish, and flammable material.

(h) The area beneath and around a ground sign shall be landscaped with plants, ground cover and materials so as to complement the site and integrate the sign with buildings, parking areas, surrounding vegetation and natural features of the landscape.

5.5.7. Appeals and Variances Regarding Signs

Appeals of denials of sign permits and other determinations made by the Code Enforcement Officer regarding signs, and requests for variance regarding sign requirements, may be made in writing directly to the Board of Appeals.

5.5.8. First Amendment Protection

Any sign allowed under this Law may contain, in lieu of any other text, any otherwise lawful non-commercial message that does not direct attention to a business operated for profit or to a commodity or service for sale and that complies with all other provisions of this Law including the specific provisions for signage in the land use category on which the sign is placed. The owner of

any sign that is otherwise allowed by this Law may substitute noncommercial copy in lieu of any other copy without additional approval or permitting. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over noncommercial speech, or favoring of any noncommercial message over any other noncommercial message.

5.6. Clear Cutting

5.6.1. Special Use Permit Required

Separate and apart from any applicable maximum lot clearing regulations (set forth in the Use Table), no area of land greater than two thousand (2,000) square feet in size (without regard to whether such area is itself a part of a larger lot, tract, or parcel) shall be clear cut. Clear cutting is allowed with a special use permit up to 2,000 square feet.

5.6.2. Restoration Required for Violation

In addition to all other sanctions applicable to violating this Law, any land disturbance that violates this Section 5.6 shall be restored to the condition in which it existed prior to the violation at the expense of the property owner. In any event, any trees removed in violation of this Section 5.6 shall be replaced in accordance with the following schedule, and all replacement trees shall be of the same or similar species as that/those of the tree(s) wrongfully removed: (i) each wrongfully removed tree of a size equal to or greater than six (6) and less than twelve inches (12") caliper shall be replaced by three (3) trees of a size three inches (3") caliper or greater; (ii) each wrongfully removed tree of a size equal to or greater than twelve (12) and less than twenty four (24) inches caliper shall be replaced by four (4) trees of a size three inches (3") caliper or greater; and (iii) each wrongfully removed tree of a size equal to or greater than twenty four inches (24") caliper shall be replaced by five (5) trees of a size three inches (3") caliper or greater. In the event that any restoration required pursuant to the terms of this Section 5.6 is not commenced and continuously prosecuted to completion within sixty (60) days after written order therefore from the Code Enforcement Officer, then, in addition to all other sanctions provided in this Law for a violation of the same, actions to effect such restoration (or so much thereof as may be practicable) may be taken by the Town at the expense of the owner, with a lien imposed to secure repayment of the same. Such lien may be added to the real estate taxes applicable to the lot on which the violation occurred, and collected in the same way as any other tax payable to the Town. For good cause shown, upon application therefore, the Planning Board may extend the aforesaid sixty (60) period one time, for a period of up to sixty (60) additional days.

5.6.3. Permit Hiatus Period for Violations

For a period of one (1) year commencing with completion of any land disturbance restoration required by this Section 5.6, no zoning permit, building permit, special permit, variance, or site plan approval shall be issued or extended with respect to the development project of which the property involved in such Section 5.6 violation was a part. Said one (1) year permit hiatus period shall be in addition to all other sanctions under this Law applicable to a violation of this Section 5.6.

6.0 SPECIAL SUPPLEMENTARY REGULATIONS FOR SPECIFIC LAND USES

6.1. Adult-Oriented Businesses

6.1.1. Findings of Fact

The Town Board has heretofore made certain findings, determinations, and declarations relative to the matters set forth in this Section 6.1, and a copy of the text of such findings, determinations, and declarations is set forth at Section A. of Appendix A attached hereto, which Appendix A is hereby incorporated and made a part of this Law for all purposes by this reference.

6.1.2. Purposes and Legislative Intent

The Purposes and Legislative Intent underlying the Town Board's passage of this Section 6.1 are set forth at Section B. of Appendix A attached hereto.

6.1.3. Special Permit Required

Adult-oriented businesses shall require special use permits and may only be sited as may be allowed by this Law.

6.1.4. Standards Applicable to Adult-Oriented Businesses

Upon application therefore, the Planning Board may approve the application for a special permit under this Section 6.1 if it finds that the proposed special permit use, the proposed site plan, and the proposed buildings and structures will conform to applicable provisions of this Law, and will comply with the following requirements:

(a) *Separation.* No more than one adult-oriented business shall be permitted on any lot. No adult-oriented business shall be located in any building any part of which is used for residential purposes. No adult-oriented business shall be located on any lot which is located within 1,000 feet of (i) any lot on which is located another adult-oriented business, (ii) any lot on which is located any (other) establishment licensed to sell alcoholic beverages, or (iii) any lot on which is located a sensitive site. For purposes hereof, the distance between an adult-oriented business and a sensitive site or other such business or establishment shall be computed by measuring a straight line from the most proximate (closest) points between the lot line of such business and the lot line of such sensitive site or other business.

(b) *Live Performance Security.* Each adult-oriented business featuring live performances (whether viewable from a stage, from individual booths, rooms, or cubicles, or otherwise) characterized by exposure of specified anatomical areas or by specified sexual activities shall maintain adequate security during hours of operation to ensure the public peace and order. The provisions of this subsection (b) shall require any adult-oriented business offering such live performances to employ not less than one uniformed security guard per every fifty (50) or fewer patrons on the premises.

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For any number of patrons over fifty (50), each adult-oriented business offering such live performances shall employ not less than two (2) uniformed security guards. All uniformed security guards shall be employed in accordance with the New York State Security Guard Act of 1992, as may be amended from time to time.

(c) *Interior Configuration and Layout.* Subject to the next sentence of this subsection (c), an adult-oriented business shall not offer adult materials or entertainments characterized by an emphasis on specified sexual activities or specified anatomical areas for viewing in rooms, booths or other cubicles, if the interior square footage of any one such room, booth or other cubicle is insufficient to accommodate the total number of persons who may lawfully occupy the premises of such business at one time.

Notwithstanding the preceding sentence, an otherwise permitted adult-oriented business may offer adult materials or entertainments characterized by an emphasis on specified sexual activities or specified anatomical areas for viewing in one or more rooms, booths or other cubicles insufficient to accommodate the total number of persons who may lawfully occupy the premises of such business at one time, provided that: (i) the interior of each such room, booth or other cubicle is visible, without obstruction by merchandise, display racks or any other materials, at all times from at least fifty percent (50%) of the interior square footage of the principal selling area of the establishment accessible to patrons; (ii) each such room, booth or other cubicle is equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons have access at an illumination of not less than five footcandles as measured at floor level, and such illumination is maintained at all times patrons are present on the premises; (iii) there is no opening of any kind between such rooms, booths or other cubicles; and (iv) no such room, booth or other cubicle is equipped with a nontransparent door, curtain or any similar device which may be used to block the view into each such room, booth or other cubicle.

(d) *Sign.* No more than one exterior sign or interior display that is visible from outside the business shall be permitted which identifies or portrays the adult-oriented business, and such sign or display shall not exceed a sign area of twenty (20) square feet total for both sides combined. Such sign or display shall not incorporate images containing nudity or semi-nudity, and shall be subject to all other requirements of this Law applicable to signs.

(e) *Persons under 18 Prohibited.* It shall be a condition of any special permit issued for an adult-oriented business use that no person under the age of eighteen (18) years shall be permitted into the premises.

(f) *Additional Requirements.* The Planning Board may impose such additional terms and conditions upon the issuance of any special permit hereunder as it deems appropriate to further the aims of this Section 6.1 and the remainder of this Law, including but not limited to restrictions on advertising, outdoor displays, and the location of merchandise.

6.2. Campgrounds

6.2.1. Standards Applicable to Campgrounds

Campgrounds with five (5) or more campsites shall require a special use permit. Upon application therefore, the Planning Board may approve the application for a special use permit under this Section 6.2 if it finds that the proposed special permit use, the proposed site plan, and the proposed buildings and structures will conform to all other applicable provisions of this Law, and comply with the following requirements: (a) the facility must be in compliance with all applicable State Health Department regulations; (b) independent on-site sewage disposal and water supply systems shall not be permitted on individual campsites; (c) a twenty five foot (25') planted or natural landscaped border will be provided for on all perimeters of the campground property; (d) the facility shall consist of ten (10) or more acres of land; (e) density shall not exceed more than eight (8) campsites per acre; and (f) permanent occupancy shall be prohibited.

6.3. Care Cottages

6.3.1. Purpose

It is the purpose and intent of this Section 6.3 to authorize, upon application and issuance of a special permit, the installation of small, removable homes in order to: (a) foster and support extended families; (b) permit adult children to provide small, temporary homes for their aging parents or grandparents who are in need of support, and to permit legal guardians and next of kin to provide small, temporary homes for relatives with infirmities, while maintaining as much of the independence of the different generations as possible; and (c) permit housing in a manner that protects the property values and character of neighborhoods by ensuring that the care cottages are compatible with the neighborhood and are easily removable.

6.3.2. Special Use Permit Required

Care Cottages shall require a special use permit.

6.3.3. Application Requirements for Care Cottage

The application for original issuance of a special use permit and renewal shall contain such information as the Planning Board or Code Enforcement Officer (as applicable) may require to adequately review qualifications for granting the permit, but, at a minimum, an original application shall contain: (a) the name of the owner of the lot; (b) the name of the occupants of principal building; (c) the name of the proposed occupants of the care cottage; (d) the age of the proposed occupants of the care cottage; (e) the relationship of the care cottage occupants to the owner-occupants of the principal dwelling; and (f) an agreement (acceptable in form and content to the Attorney for the Town) to remove the care cottage when it no longer qualifies as such, and authorizing and consent for the Town to enter on the property and remove the care cottage if the

owner fails to timely remove it, such consent to be indicated by a signed statement in substantially the form set forth below:

“By applying for a special use permit for the erection of a care cottage, the owner of the lot on which the care cottage is to be located, hereby irrevocably consents for himself or herself, his or her heirs, successors and assigns, to the entry of the Town and its authorized officials and agents upon the property, after notice and an opportunity to be heard before the Board of Appeals, for the purpose of removing the care cottage in the event the authorization for maintenance of same as a permitted use are no longer met, and further agrees that any *costs incurred by the Town in so removing the cottage shall become a lien upon the property on which the cottage was located, subject to collection in the manner set forth in Section 6.3 of the Zoning Law of the Town.*”

6.3.4. Use Limitations for Care Cottages

No more than two (2) persons, who shall be related to each other by birth, marriage, or adoption, shall occupy a care cottage. Occupants shall be the same persons enumerated on the application for the care cottage. All occupants shall be persons fifty five (55) years of age or older, or persons with infirmities; and at least one of such persons shall be a parent or grandparent, legal dependent, or next of kin, of one of the owner-occupants of the principal dwelling on the lot where the care cottage is located.

6.3.5. Dimensional Limitations for Care Cottages

The lot must be large enough to accommodate the care cottage, offer suitable space, and provide access to utility lines. The care cottage shall not exceed eight hundred (800) square feet in total habitable floor area. Notwithstanding any other provisions of this Law, the minimum size of the care cottage may be reduced to no less than five hundred (500) square feet of enclosed floor area. The care cottage shall not exceed one (1) story in height and under no circumstances shall the total height exceed twenty feet (20’).

6.3.6. Location Requirements for Care Cottages

A care cottage shall be located only on a lot where a one-family or two-family dwelling already exists. No care cottage shall be located within the front yard of any lot. No care cottage shall be permitted on a non-conforming lot. No more than one (1) care cottage shall be located on any lot. A care cottage shall meet the setback requirements applicable to an accessory building in the district in question.

6.3.7. Building Requirements for Care Cottages

A care cottage must be clearly subordinate to the owner-occupied dwelling on the lot, and its exterior appearance and character shall be in harmony with the existing principal use. A care cottage shall be constructed in accordance with all applicable laws, regulations, codes and

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ordinances, including the NYS Uniform Fire Prevention and Building Code. If a care cottage is a factory manufactured home or component, in addition to complying with any other law, it shall bear an insignia of approval or other equivalent, legally recognized indicia of compliance with applicable laws, issued by the NYS Fire Prevention and Building Code Council or the NYS Division of Housing and Community Renewal. A care cottage shall be constructed so as to be easily removable. The foundation of the care cottage shall be of easily removable materials so that the lot may be restored to its original use and appearance after removal with as little expense as possible. No permanent fencing, walls, or other structures shall be installed or modified that will hinder removal of the care cottage from the lot. Adequate water supply and sewage disposal arrangements must be provided, which may include connections of such facilities to the principal dwelling. If a care cottage is located in an area where electric, cable, and/or telephone utilities are underground, such utilities serving the care cottage shall also be underground. It shall be disclosed at the time of application whether the proposed inhabitants will have a car. If so, an adequate area for parking shall be required for the expected number of cars. All walkways from parking areas and from the principal dwelling unit to the care cottage shall be suitable for wheelchair and stretcher access.

6.3.8. Duration of Use of Care Cottage; Removal

The special use permit pursuant to this Section 6.3 shall be for a period of one (1) year (unless earlier terminated as hereinafter set forth), and thereafter renewed annually by the Code Enforcement Officer upon receipt of an application for same, provided that the circumstances obtaining at the time of the original application have not changed in a manner that would preclude issuance of a new special permit. Each special use permit issued pursuant to this Section 6.3 shall by its terms terminate one hundred twenty (120) days after: the first to occur of (a) the death or permanent change of residence of the original occupant or occupants of the care cottage, or (b) the date when the occupancy requirements set forth in this Law are no longer met. Continuous absence from the care cottage of a person for a period of one hundred eighty (180) consecutive days shall be considered a permanent change of residence.

No later than one hundred twenty (120) days following the first to occur of either of the circumstances described in the preceding clauses (a) or (b), the care cottage shall be removed and the site restored so that no visible evidence of the care cottage and its accessory elements remains. If the care cottage has not been removed by the end of such one hundred twenty (120) day period, in addition to all other applicable sanctions provided in this Law for a violation of the same, actions to insure removal (including removal and salvage) may be taken by the Town at the expense of the owner, with a lien imposed to secure repayment of the same. Such lien may be added to the real estate taxes applicable to the lot on which the care cottage is located and collected in the same way as any other tax payable to the Town. For good cause shown, upon application therefore, the Planning Board may extend the aforesaid one hundred twenty (120) period one time, for a period of up to one hundred twenty (120) additional days.

6.4. Geothermal Energy (Ground Source Heat Pump Systems)

6.4.1. Site Plan Approval Required

Closed loop ground source heat pump systems using a non-toxic and food-grade fluid as a heat transfer fluid are a permitted accessory use in all districts, subject, however, to site plan approval by the Planning Board and to all other provisions of this Law. Installation of a closed loop ground source heat pump system requires a building permit.

Open loop ground source heat pump systems, and closed loop ground source heat pump systems utilizing a heat transfer fluid that is not a non-toxic and food-grade liquid, are prohibited in every district within the Town.

6.4.2. Location of Ground Source Heat Pump System

(a) Closed loop ground source heat pump systems shall be located entirely within the subject property, or within appropriate easements secured for this particular purpose. No part of any such system may be located within public rights-of-way.

(b) The heat-exchanger part of a closed loop ground source heat pump system may be located within a pond or lake on the landowner's property, subject to the requirements of New York State law and site plan approval by the Planning Board. No portion of a closed loop ground source heat pump system may be located within a stream or the Upper Delaware River.

(c) All components of a closed loop ground source heat pump systems including pumps, borings and loops shall be set back at least five feet (5') from interior side lot lines and at least ten feet (10') from front and rear lot lines.

(d) Above-ground equipment associated with a closed loop ground source heat pump system shall not be installed in the front yard of any lot or the side yard of a corner lot adjacent to a public right-of-way, and shall meet all required setbacks for the applicable zoning district.

6.4.3. Abandonment and Removal of Ground Source Heat Pump System

If a closed loop ground source heat pump system remains nonfunctional or inoperative for a continuous period of twelve (12) months, the system shall be deemed to be abandoned and shall constitute a public nuisance. The owner shall remove such system in accordance with the following requirements: (a) the heat pump and any external mechanical equipment shall be removed; (b) pipes and coils below the land surface shall be filled with grout to displace the heat transfer fluid. (The heat transfer fluid shall be captured and disposed of in accordance with applicable regulations, and the top of the pipe, coil or boring shall be uncovered and grouted.); and (c) pond and similar ground source heat pump systems shall be completely removed from the body of water.

6.5. Home Based Businesses and Home Based Occupations

6.5.1. Special Use Permit Required for Home Based Businesses

Home based businesses shall require special use permits. The Planning Board shall attach any and all necessary conditions to any such special permit issued in order to assure compliance with this Law, and such conditions may include, but without limitation, restrictions as to hours of operation, water use restrictions, sewage disposal requirements, screening and other conditions deemed appropriate by the Board.

6.5.2. Special Use Permit Not Required for Home Based Occupations

Home based occupations do not change the neighborhood character and therefore are a permitted accessory use not subject to the special use permit process. If a home based occupation expands to a point where the activity is noticeable to the neighbors, it would then be classified as a home based business and subject to a special use permit.

6.6. Junkyards and Open Storage of Scrap and Used Materials

6.6.1. Purpose

A clean, wholesome, attractive environment is declared to be of importance to the health and safety of the inhabitants of the Town. Such an environment is essential to the maintenance and continued development of the Town, particularly in view of the unique natural beauty that exists in this area of the Upper Delaware River. By the adoption of this Law, the Town Board declares its intent, in so doing, to be to prohibit the use of land within the Town for activities or businesses known as "auto graveyards," "junkyards" and "secondhand parts collection areas," the processing of used metals for resale, and the dumping, storage and disposal of secondhand or used materials of whatever composition. The Town Board finds that such activities or businesses can constitute a hazard to property and persons and a public nuisance. Such materials may be highly inflammable and sometimes explosive. Gasoline tanks in old vehicles often contain some quantity of combustible gasoline; the engine and other parts of such vehicles are often covered with grease and oil that is also flammable. The tires, plastic seats, tops and other elements of such vehicles are also flammable. Batteries and other elements of such vehicles can contain acids and other matter potentially harmful to humans, animals, and the environment. These vehicles frequently contain sharp metal or glass edges or points upon which a human could receive serious cuts and abrasions. These vehicles can constitute attractive nuisances to children and certain adults. The presence of junkyards and scrap yards even in areas zoned for business or commercial activity is unsightly, and tends to detract from the value of surrounding land and property.

6.6.2. No New Junkyards

From and after the effective date of this Law, junkyards shall be prohibited in every district within the Town.

6.6.3. No New Open Storage of Scrap or Used Metals

From and after the effective date of this Law, no land within the Town shall be used for any activity, whether for profit or otherwise, which involves the outdoor storage, burning, disassembling, dismantling, salvaging, or sorting of used building materials, scrap metal, plastic, paper, rags, glass, broken appliances such as stoves, etc., refuse, or other debris (collectively, "junk"). Notwithstanding the foregoing, junk may be temporarily staged or stored outdoors to facilitate collection by a municipal or licensed carter, salvage dealer, or collector of recyclable materials, for a period not to exceed seven days prior to collection and removal of such materials.

6.7. Kennels and Animal Husbandry

6.7.1. Commercial Kennels Require Special Permit

Commercial kennels shall require a special permit. Upon application therefore, the Planning Board may approve the application for a special permit under this Section 6.7. if it finds that the proposed special permit use, the proposed site plan, and the proposed buildings and structures will conform to all other provisions of this Law, and shall comply with the following requirements: (a) all applicable State Health Department regulations and regulatory requirements of the NYS Agriculture and Markets Law; and (b) such other or additional buffering, setback, noise control, sanitation and other conditions as the Planning Board shall determine are necessary to protect the character of the neighborhood and address health and safety concerns.

The following regulations do not apply to New York State Wildlife Animal Rehabilitators.

6.7.2. Maximum Number of Animals

The following is the maximum number of animals that may be kept on a single lot:

<i>Number of Animals</i>	<i>Minimum Lot Area</i>
<i>Up to 2 cats or dogs total</i>	<i>No minimum</i>
<i>3-4 cats or dogs total</i>	<i>2 acres</i>
<i>5+ cats or dogs total</i>	<i>½ acre per animal</i>

6.7.3. Requirements Applicable to all Kennels

All buildings and structures housing animals and all pens, runs and open areas where dogs are allowed to be shall be located no closer than three hundred feet (300') from any lot or street line and shall also be located no closer than five hundred feet (500') from any residential dwelling that is located off the site. All dogs that present a potential nuisance by barking or other noises shall be contained within buildings or other areas between the hours of 8:00 p.m. and 8:00 a.m., local

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time, each day, so that such noise is not discernable beyond five hundred feet (500') of the building, or the nearest off-site residential structure. In all instances, all animals shall be adequately housed, fed, controlled, fenced, inoculated, and otherwise maintained in a sanitary and safe manner so as not to create a nuisance, health or safety hazard to nearby properties, property owners or inhabitants of the neighborhood, the animals themselves, or other domestic animals.

6.7.4. Operators of Commercial Kennels Must Obtain Annual Kennel License

Operators of commercial kennels must possess an annual kennel license issued by the Town Clerk. No such license shall be issued unless and until the Town Dog Control Officer has inspected the premises and found that the facility meets the conditions of this Law.

6.7.5. Animal Husbandry, Generally

The keeping of cows, poultry, and other farm animals shall be permitted in the Town only if:

- (a) the land on which they are kept (i) is a minimum of one (1) acre in size, and (ii) in any event shall be no smaller than one (1) acre in size for each Livestock Unit;
- (b) the enclosure in which they are sheltered shall be kept in good repair and be located no closer than two hundred (200') from any residence not located on the same parcel of land;
- (c) the building or enclosure in which they are sheltered shall be cleaned frequently of waste materials and all manure generated shall be disposed of in a manner that prevents pollution problems such as odors, dust, leaching, and runoff;
- (d) no pastures or buildings where animals are kept shall be located within one hundred feet (100') from the edge of any watercourse, or the edge of any wetland as defined by state or federal law;
- (e) any fowl allowed open range shall be confined to the property by a bird-tight fence;
- (f) no manure may be stored within two hundred feet (250') of any property boundary line or street line;
- (g) there is compliance with all applicable State Health Department regulations and regulatory requirements of the NYS Agriculture and Markets Law; and
- (h) all animals shall be adequately housed, fed, controlled, fenced, inoculated, and otherwise maintained in a sanitary and safe manner so as not to create a nuisance, health or safety hazard to nearby properties, property owners or inhabitants of the neighborhood, the animals themselves, or other domestic animals.

The density requirements set forth in the preceding clause (a) may be modified by the Planning Board upon issuance of a special permit as provided in the next sentence. The Planning Board may issue a special use permit for maintenance of animals in greater density than the maximum set forth above, provided that the applicant meets all conditions and satisfies generally applicable special permit criteria, that the Planning Board finds that adequate open space and facilities for the proper care of such animals are available or will be established, and that maintenance of such animals will not interfere with the reasonable use and enjoyment of the property of others.

6.8. Lesser Scope Mineral Extraction.

6.8.1. Special Permit Required.

Lesser scope mineral extraction shall require a special use permit and site plan approval and may only be sited as may be allowed by this Law within the Rural Residential, Hillside, Monagaup River Valley and the Black Forest Districts. No special use permit may authorize lesser scope mineral extraction for a period of time exceeding five (5) years.

6.8.2. Standards Applicable to Lesser Scope Mineral Extraction (“LSME”).

Upon application therefore, the Planning Board may approve the application for a special use permit under this Section 6.8 if it finds that the proposed special use permit use, the proposed site plan, and the proposed buildings and structures will conform to all applicable provisions of this Law, and if it shall find that the lesser scope mineral extraction (“LSME”) activities conform to the following standards and conditions:

(a) That the location, character and scope of the LSME activity, including access and any buildings, structures, facilities or processing equipment, will reasonably safeguard the character of the neighborhood and surrounding property values, will not hinder or discourage the appropriate development and use of adjacent property and, when completed, will conform to the appropriate and orderly development of the Town and neighborhood.

(b) That the property on which the LSME activity is to be conducted is of sufficient size and adequate dimension to permit the conduct of the specific operation in a manner that will not be detrimental to the neighborhood or adjacent property.

(c) That reasonable provision will be made for screening the LSME activity from view from adjacent streets and property, and that visual and sonic buffer transition areas will be provided to protect adjacent properties.

(d) That the streets serving the proposed LSME activity are adequate to carry prospective traffic, that provision will be made for entering and leaving the property in such a manner that no undue hazard to traffic or undue traffic congestion is created, and that adequate off-street parking and loading facilities will be provided for conduct of the operation.

(e) That the specific LSME activity, both when in process and when completed, will not result in creation of sharp declivities, pits or depressions, soil erosion, sedimentation or pollution problems, or drainage, sewerage or groundwater problems, which would impair the reasonable restoration of the property in accordance with this Law.

(f) That the proposed LSME activity, including without limitation associated buildings, structures, facilities and processing equipment and hours of operation, will make adequate provision for control of dust and lighting and otherwise will not be detrimental to the public health, safety or

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general welfare of the neighborhood and the community.

(g) That slopes will not exceed one foot of rise for two feet of horizontal distance or such lesser slope that the Board may specify as necessary for the public health and safety, soil stability or for the reasonable use of the property after completion of the operation.

(h) That the proposed LSME activity, including site restoration, can be completed within a period of five years or such lesser period as may be coterminous with the expiration date of the special use permit.

(i) There will be no excavation or grading or removal within two hundred feet (200') of any property or street line, except excavation or removal that would result in finished grades at or above the elevation of the adjoining street or property.

(j) That after excavation or grading or removal the property will be cleared of all debris within the period for which the special use permit is granted.

(k) Except in the location of wetlands and watercourses and exposed ledge rock, that the top layer of arable soil for a depth of four inches will be set aside and retained on the lot and will be re-spread over the excavated or graded area as the work progresses, that a suitable ground cover will be planted and grown to an erosion-resistant condition upon the completion of the excavation or removal in accordance with the approved contour lines, and that all such work will be completed within the period for which the special use permit is granted.

(l) If required by the Planning Board, that the area to be excavated or a portion thereof be enclosed within a fence of such type, height, and location as the Board approves.

(m) The establishment of a schedule setting forth the following: (i) limitations on the day of the week and the hours of the day during which any work may be performed; (ii) the place and manner of disposal on the lot of excavated material; and (iii) requirements as to the control of dust, noise and lighting.

(n) The submission by the applicant of periodic reports, prepared by and bearing the seal of a New York state licensed professional engineer, showing the status and progress of the LSME activity.

6.8.3. Application Requirements.

The application for issuance of a special permit pursuant to this Section 6.8 shall contain such information as the Planning Board may require to adequately review qualifications for granting the permit, but, at a minimum, an shall contain:

(a) the name, address and telephone number of the owner of the tract, parcel or lot and the proposed operator or person to be responsible for administration of the operation;

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- (b) a completed environmental assessment form, long form, and other materials intended to assist the planning Board in making a determination of significance pursuant to SEQRA;
- (c) maps and plans, prepared by and bearing the seal of a land surveyor licensed to practice in the State of New York, showing the following:
- (i) the location of the property and all streets and Tax Map parcels within five hundred feet (500') of the property, the name and address of the owner of each parcel as shown on current Tax Assessor's records, and the current use of each parcel and the location of existing zoning district boundaries and district codes;
 - (ii) the location and limits of the area on the property to be subject to the LSME activity and any lines delimiting areas not to be disturbed;
 - (iii) existing contour lines that are on the property within and within five hundred feet (500') of the area to be subject to the extraction operation, and proposed contour lines resulting from the intended extraction operation, drawn to a scale of not less than one hundred feet (100') equals one inch (1") and with a contour interval not to exceed two feet (2');
 - (iv) existing and proposed drainage on the property within and within five hundred feet (500') of the area to be subject to the extraction operation, the principal measures proposed for soil erosion and sediment control and water pollution control, and elements of a reclamation plan for the area of the property to be subject to the LSME activity;
 - (v) existing wetlands and watercourses on the property within and within five hundred feet (500') of the area to be subject to the extraction operation and within two hundred feet (200') of the property;
 - (vi) proposed truck access to the property, including roadway and access improvements proposed;
 - (vii) the location of wooded areas, existing buildings and structures and the location of any proposed buildings and structures on the property and within five hundred feet (500') of the area to be subject to the extraction operation; and
 - (viii) any proposed temporary or permanent screening of the soil extraction operation, such as by berms, fences and landscaping; and
- (d) a report addressing the following, and such additional information deemed appropriate by the Planning Board:
- (i) an evaluation of the proposed mining activity relative to surrounding land uses, including an evaluation of potential environmental impacts, including but not limited to noise, dust, and visual impacts on surrounding land uses;
 - (ii) the duration of the proposed operation through to site restoration, proposed hours and days of operation and the program for staging the site preparation, excavation and restoration in time and geographic sections;
 - (iii) the program of measures proposed to be undertaken for control of noise, dust, soil erosion and sedimentation, water pollution, and the mitigation of visual impacts, including outdoor illumination, and elements of a reclamation plan for the area of the property to be subject to the LSME activity;
 - (iv) an estimate of the number of vehicles expected to enter and exit the property on a daily basis and at peak hours, and description of any roadway capacity and safety improvement proposed on the streets giving access to the property; and

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(v) a description of the nature and capacity of any extraction equipment proposed to be established on the property.

6.8.4. Performance Guarantee for LSME Activity

Prior to obtaining a zoning permit or building permit to conduct LSME activities, the applicant must provide a Performance Guarantee securing performance of the restoration obligation set forth in the special permit, in an amount approved by the Planning Board but in no event less than two hundred fifty thousand dollars (\$250,000). Additionally, upon any modification of any special use permit relating to a LSME facility, the Planning Board may adjust the required amount of the Performance Guarantee to adequately cover increases in the anticipated cost of restoration.

6.9. Manufactured Homes and Parks

6.9.1. Purpose

It has been determined by the Town Board that there are persons who presently reside in the Town of and others who, in the coming years, will move to the Town and require and desire housing accommodations of a certain size and cost that are not now being constructed for their needs. It has further been determined by the Town Board that manufactured home living has proved to be a partial solution to the problem of housing people who cannot afford or are not otherwise able to own a conventional single-family house and who seek a viable alternative to apartment-type living. The Town Board finds that elsewhere, throughout the nation and New York State, manufactured home living has best been achieved when manufactured homes are placed in well-planned, strictly regulated and maintained manufactured home communities. It appears to the Town Board that such manufactured home communities are desirable when they are organized, planned, designed, constructed and maintained to serve the needs of the persons who desire to reside in the Town in this type of residential environment. However, if manufactured home communities are not properly organized, planned, designed, constructed and maintained in a satisfactory manner, with respect to adequate room, light, air, recreational and other facilities, the presence and occupancy of manufactured homes may adversely affect the health, safety and general welfare of the occupants and the surrounding community. Thus, the Town Board deems it advisable to ensure that any manufactured home community conforms to the provisions set forth herein.

6.9.2. Manufactured Home Parks

From and after enactment of this Law, no manufactured home shall be installed, located or sited in the Town except in a manufactured home park.

6.9.3. Special Use Permit Required

Manufactured Home Parks shall require special use permits. Notwithstanding any provision hereof to the contrary, new manufactured home parks may not be moved to or established in or within

one thousand (1,000) feet of the Historic Overlay District.

6.9.4. Existing Manufactured Home Parks

A manufactured home park which is in lawful existence and use on the effective date of this Law may continue in use, provided that:

- (a) the owner or operator shall apply to the Code Enforcement Officer for a permit for such existing manufactured home park no later than sixty (60) days after the effective date of this Law, or annexation of the park into the Town;
- (b) the application must be accompanied by the applicable fees required by the Town;
- (c) such application shall be accompanied by a suitable map of the area showing existing manufactured home sites, in triplicate;
- (d) a map with each manufactured home lot consecutively numbered shall be on file with the Chief of the Lumberland Fire Department;
- (e) each manufactured home shall be equipped with a fire extinguisher and smoke detector;
- (f) any substantial changes or additions to an existing manufactured home park shall require a special permit in accordance with this Section 6.9; and
- (g) any permit issued pursuant to this Section 6.9.4 shall be effective from the day of issuance to and including December 31 of that same year, and shall be reviewed thereafter in accordance with the provisions of Law.

6.9.5. Manufactured Home Park Standards.

Upon application therefore, the Planning Board may approve the application for a special use permit under this Section 6.9 if it finds that the proposed special use permit use, the proposed site plan, and the proposed buildings and structures will conform to applicable provisions of this Law, and comply with the following requirements:

(a) *Site*. The manufactured home park shall be located on a well-drained site where soil conditions are suitable and properly graded to ensure rapid surface runoff and free at all times from stagnant pools of water. The park shall be at least twenty (20) acres in size, with one hundred feet (100') or more feet of frontage on a public road, with seventy five feet (75') of setback from said road.

(b) *Manufactured home lots*. Each manufactured home park shall be marked off into manufactured home lots in compliance with this Law, and each manufactured home lot shall be numbered.

(c) *Setbacks*. Each manufactured home shall be placed or otherwise located no closer than: (i) fifty feet (50') from any other manufactured home; (ii) thirty five feet (35') from any adjacent property line; or (iii) twenty five feet (25') from the nearest edge of any roadway located within the manufactured home park.

(d) *Accessibility*. Each manufactured home park and each manufactured home within such park shall be easily accessible from an existing public highway. Where a manufactured home park has

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more than six (6) manufactured homes, two (2) points of entry and exit must be provided unless a large improved turnaround area sufficient for emergency vehicles is provided and maintained. Each manufactured home park shall have improved streets for convenient access to all manufactured home lots and other facilities. Streets shall be built to meet Town specifications. The street system shall be designed to permit safe and convenient vehicle circulation within the manufactured home park. Streets shall intersect at right angles or nearly so or shall be of a design acceptable to the Planning Board. All streets shall have two-way traffic. Except in cases of emergency, no parking shall be allowed on such streets. All streets shall remain as private roads and maintenance shall be the manufactured home park owner's responsibility, unless dedicated to and accepted by the Town. Any such dedication and acceptance shall be at the sole discretion of the Town.

(e) *Parking; Storage Units.* Two (2) off-street parking spaces shall be provided on each manufactured home lot and each shall have a minimum width of ten feet (10') and length of twenty feet (20'). Additional off-street parking spaces shall be provided for guest vehicles, and delivery and service vehicles. Recreational vehicles, utility trailers, and commercial vehicles shall not be located on manufactured home lots, except for loading and unloading. The manufactured home park owner shall provide an individual storage building, between twenty four (24) and one hundred (100) square feet in size, on each manufactured home lot for use of the residents thereof. The manufactured home park owner may provide a dedicated parking area for recreational vehicles, utility trailers, and commercial vehicles, separate from the home lots.

(f) *Utilities and Service Facilities.* All utilities within the park shall be underground. No lot within a manufactured home park shall be occupied unless and until the following utilities and service facilities shall have been provided to such lot, all such utility and service facilities to be in accordance with all applicable regulations and requirements of the NYS Department of Health:

(i) *Water.* An approved system of potable water for drinking and domestic purposes shall be supplied to all manufactured homes and facilities in the park. Each manufactured home lot shall be provided with proper and sanitary water connections. Maintenance of the water supply system within the park shall be the responsibility of the owner of the manufactured home park.

(ii) *Sewage line.* An approved system for processing sewage shall be maintained for all manufactured homes and facilities in the park. Each manufactured home lot shall be provided with an approved sewer line to receive the waste from such home. The sewer line shall be connected to the sewer system so as not to present a health hazard. Sewer connections in unoccupied lots shall be sealed to prevent the emission of any odors. Maintenance of the sewer system, including the lines shall be the responsibility of the owner of the manufactured home park.

(iii) *Trash removal.* Weekly disposal of garbage/rubbish and recyclable materials shall be the responsibility of the manufactured home park owner, and where dumpsters are utilized, they shall be attractively fenced in, located for the convenience of the residents.

(iv) *Lighting.* The manufactured home park lighting shall be designed to provide safe passage on the park streets.

(v) *Tow Bars, Skirting, Stands.* All manufactured home tow bars and hitches which are designed to be removable at the time of installation shall be removed when the dwelling is sited, in a manner consistent with the manufacturer's instructions. Each manufactured home shall be fully skirted with durable building materials, which the owner of the manufactured home shall thereafter maintain in good repair.

(vi) *Recreation Space.* Adequate common space shall be provided for recreational activities for residents of the manufactured home park.

(vii) *Landscaping.* The perimeter of the park shall be screened by a 100" landscaped and/or wooded visual buffer. For each home site, space shall be provided for a minimum of one shade tree.

(viii) *Stormwater.* All stormwater shall be handled on site.

6.9.6. Permitted Uses

In any manufactured home park, no building or structure shall be erected, altered or extended, and no land or building thereof shall be used, for any purpose or purposes other than occupancy of manufactured homes as single-family dwellings, and accessory uses.

6.10 Motor Vehicles Repair

(a) With respect to any use in whole or in part involving the on-site maintenance or repair (mechanical or body work) of motor vehicles or components thereof for a fee or other consideration: all repair and painting shall be performed only within enclosed buildings or such other area that is not visible from any public right of way; all parts and supplies, including without limitation parts to be discarded or replaced and replacement parts to be installed, shall be stored only within enclosed buildings; vehicles waiting to be repaired shall not be stored or parked within any (open) yard, setback, or buffer area required by this Law; and storage and disposal of all waste materials shall be in accord with applicable laws and industry best management practices.

(b) With respect to any use in whole or in part involving the on-site maintenance, repair (mechanical or body work) or painting of motor vehicles or components thereof not for a fee or other consideration: any repairs or painting that cannot reasonably be completed within any contiguous forty-eight (48) hour period shall be performed only within enclosed buildings or such other area that is not visible from any public right of way; all parts and supplies, including without limitation parts to be discarded or replaced and replacement parts to be installed, shall be stored only within enclosed buildings; vehicles waiting to be repaired shall not be stored or parked within any (open) yard, setback, or buffer area required by this Law; and storage and disposal of all waste materials shall be in accord with applicable laws and industry best management practices.

6.11. Multi-Family Residential Uses

6.11.1. Special Use Permit and Major Subdivision Approval Required

Multi-family dwelling projects shall require special use permits and shall be considered major subdivisions in accordance with the Town of Lumberland Subdivision Regulations. This "major subdivision" classification shall apply to all subdivisions of property in connection with the development, and the approvals required shall be applied for by the applicant and acted upon by the Planning Board as if they were an application for a single subdivision. The application shall be processed on a schedule identical with the requirements for review and approval of other subdivision plans in accord with the Subdivision Regulations.

The applicant shall submit all information required by the Town of Lumberland Subdivision Regulations together with the following additional data:

(a) *Application.* An application for multi-family dwelling approval on a form to be supplied by the Town or, in the absence of such form, by a letter or brief from the applicant or his or her representative indicating how the development will specifically comply with or meet the criteria set forth in this Law and in the Subdivision Regulations.

(b) *Lot Plan.* A proposed plot plan prepared by a New York state licensed professional engineer, New York state licensed and registered architect, or New York state licensed land surveyor showing (i) all of the information required by the Subdivision Regulations together with the approximate (generally within five feet) locations of all buildings and improvements including parking areas, planting strips (if any), signs, storm drainage facilities, water supply, sewage treatment and collection systems; (ii) the specific areas provided as open space in connection with the requirements of this Law and this Section 6.11; (iii) building layouts, floor plans and profiles indicating building dimensions, number of, and sizes of dwelling units, common ownership or use areas (distinct from the open space areas referenced below), lighting and such other information as shall be required to determine compliance with the design standards contained herein and any other building standards which may be applicable in the Town of Lumberland; (v) setbacks from property lines, improvements and other buildings.

(c) *Individually Owned Dwelling Units.* In the case of projects involving the sale of individual ownership interests in the dwelling units of the multi-family development (as opposed to singular ownership of the multi-family development with rental of the dwelling units), a plan and proposed agreement(s) for a Unit Owner's Association (UOA) for the purpose of dedicating, in perpetuity, the use and/or ownership of the Open Space Recreation Area (defined below in Section 6.11.6) and such other open space as is required by this Law to the dwelling unit residents. The UOA must be established prior to approval of the final subdivision plat and must comply with all applicable provisions of state law. Membership in the UOA must be mandatory for each dwelling unit owner, who must be required by recorded covenants and restrictions to pay fees to the UOA for taxes, insurance and maintenance of common areas, Open Space Recreation Area, and other open space. The UOA must be responsible for liability insurance, property taxes, and the

maintenance of recreational and other facilities. The dwelling unit owners must be required to pay their pro rata share of these costs, and the assessment levied by the UOA must be able to become a lien on the dwelling unit owner's real property. The UOA must have the ability to adjust the assessment to meet changing needs for the operation and maintenance of the Open Space Recreational Area and other open space. The Town Attorney must find that the UOA documents satisfy these conditions and such other conditions as the Planning Board determines are necessary in order to provide for maintenance of the Open Space Recreational Area.

(d) *Dwelling Units in Common Ownership and Rented by Owner of Development.* In the case of projects involving the rental of individual dwelling units (as compared to sale of ownership interests) in the multi-family development, a plan and proposed agreement(s) for the purpose of conserving the use and/or ownership of the Open Space Recreation Area and such other open space as is required by this Law.

(e) *Maintenance of Units, Common Areas.* A narrative description of how responsibility for maintenance and care of the dwelling units, common areas, Open Space Recreational Area and other open space will be assured together with a pro forma operating budget of the organization responsible for such maintenance expenses. This pro-forma operating budget shall include line item details for both long-term and on-going routine expenses for: (i) common area maintenance, (ii) maintenance of the dwelling units (only in the case of rental units), (iii) maintenance of all open space areas, including Open Space Recreational Areas. The applicant shall also provide a narrative description of how the applicant proposes to assure maintenance and care of the dwelling units and common areas during any sales program. The Planning Board may require additional temporary facilities to accommodate service demands. Copies of all management agreements, maintenance contracts and other instruments shall be provided in order for the Planning Board to determine and ensure that long-term arrangements for all such maintenance expenses have, in fact, been made by the applicant and/or with the occupants.

(f) *Building Permit Application.* A completed building permit application on forms to be supplied by the Town.

6.11.2. Preliminary Plan Review for Multi-Family Developments

The Planning Board shall act on the preliminary site plan and special use permit application concurrently. The Planning Board shall also conduct an Environmental Assessment pursuant to the NYS Environmental Quality Review Act. No building permit shall be issued to the applicant until all conditions attached to the approval of any Preliminary Plat shall have been satisfied and nothing herein shall be construed as permitting the issuance of a building permit prior to Preliminary Plat approval. This requirement notwithstanding, the building permit approval shall, if granted, be valid for a period equal to that for Preliminary Plat approval. If the Preliminary Plat shall be rejected, then no building permit shall be granted.

6.11.3. Construction of Improvements

Following Preliminary Plat approval, the applicant shall, in accordance with the Town of Lumberland Subdivision Regulations, provide for the installation of required or proposed improvements including but not limited to streets, parking areas, storm drainage facilities, Open Space Recreational Area facilities and lighting. Building improvements shall similarly be completed prior to the applicant's request for Final Plat approval; provided, however, that Final Plat approval may also be granted if a financial guarantee for completion of the improvements is provided upon terms satisfactory to the Town Attorney and pursuant to the applicable provisions of the Subdivision Regulations. No certificate of occupancy (where the same is required) shall, however, be issued until such time as: (a) Final Plat approval shall have been granted in accordance with the procedures and requirements of this Law and the Subdivision Regulations; and (b) buildings have been completed and inspected by the Code Enforcement Officer.

Complete final building plans shall also be submitted as part of the Final Plat Application.

6.11.4. No Transfers Prior to Final Plan Approval

No person shall sell, transfer, lease or agree or enter into an agreement to sell or lease any land and/or buildings or interests in the individual dwelling units to be created, or erect any building thereon except in accord with the provisions of this Law, unless and until Final Plat approval shall have been granted (unless the improvements shall have been guaranteed), and the Plat has been recorded in the Office of the Sullivan County Clerk. Nothing herein shall preclude agreements for purchase and sale or the taking of sales deposits in accordance with the requirements of New York State law.

6.11.5. Density Calculations for Multi-Family Developments

Multi-family dwelling density shall not exceed the number of dwelling units per acre which would otherwise be permitted in the Zoning District if the parcel on which the units are proposed to be constructed were to be developed for single-family residential use. The total size of the land area available for purposes of making the determination of allowed dwelling units shall be calculated by taking the total acreage of the development and deducting the area of the following: (a) land contained within public rights-of-way; (b) land contained within the rights-of-way of existing or proposed private streets (where formal rights-of-way are not involved, the width of the street shall be assumed as fifty feet (50') wide); (c) land contained with the boundaries of easements previously granted to public utility corporations providing electrical or telephone service; and any petroleum products pipeline right of way; and any railroad right of way; and (d) all wetlands, floodplains, slopes of fifteen percent (15%) or greater grade, water bodies and other undevelopable areas.

6.11.6. Open Space Requirements for Multi-Family Developments

In order to conserve sensitive or exceptional features of the multi-family development site and to

afford adequate recreational facilities for the development's residents, the subdivision plat shall portray open space and recreational areas and facilities that provide conservation and sufficient passive and active recreational opportunities.

(a) *Open Space Requirement.* No less than fifty percent (50%) of the land area of the proposed multi-family development [excluding any lands in a holding zone and designated "for future development" in accordance with Section 6.11.6.(b) shall be preserved as open space. Under no circumstance shall fees in lieu of the dedication be substituted for such open space. Land designated as open space or Open Space Recreation Area shall not be used to meet open space or recreation area requirements for any other developments. Open space land may include sensitive or exceptional natural features of the site.

(b) *Open Space Recreational Area Requirement.* No less than fifty percent (50%) of the area of such open space shall be dedicated to recreational areas for the sole benefit and enjoyment of the owners and/or occupants of the multi-family development (referred to as "Open Space Recreational Area"). Open Space Recreational Area shall be usable for active recreational activities and may contain facilities such as pedestrian paths, garden plots, playgrounds, and sports fields. Open Space Recreational Area shall not include wetlands, quarries, slopes over fifteen percent (15%) in grade, water bodies or acreage used for improvements such as storm drainage facilities or sewage effluent disposal areas. Such Open Space Recreational Area (as distinct from the remainder of the open space) shall be immediately adjacent (part of the same parcel and contiguous) to the proposed dwelling units and shall be freely and safely accessible to all residents of the multi-family development. As part of the Open Space Recreational Area requirement, multi-family developments of fifty (50) dwelling units or more must provide one-half (0.5) acre of playground area per fifty (50) dwelling units.

(c) *Reservation of Land for Future Development.* Land designated as open space and all lands designated as Open Space Recreational Area on the subdivision plat shall be permanently maintained as open space and may not be separately sold, used to meet open space or recreation area requirements for other developments, subdivided or developed; provided, however, that the applicant may designate a holding zone which is reserved for future development pursuant to density and other zoning requirements as they presently exist, provided such lands are specifically defined and indicated as "reserved for future development" on all plats. The land within such "holding zone" and designated as "reserved for future development" may not be included in calculating permitted density for the proposed development. The fact that any land has been designated as "reserved for future development" shall in no way be construed as granting or reserving to the developer, applicant or any future developer or future applicant any rights or privileges to develop on the basis of a "pre-approved plan" and only acts to preserve the density and other zoning requirements as they exist as of the time of the Final Plat Approval.

(d) *Permanent Protection.* Prior to final Planning Board approval, all areas of a multi-family development that are designated as open space and Open Space Recreational Area must be protected from development by permanent conservation easements. In the event that the dwelling units of the multi-family development are rented to the occupants and the dwelling units

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are not each in separate ownership, there may be two separate conservation easements granted, one for open space and the second for the Open Space Recreational Area. All such conservation easements shall restrict development of the open space land and allow use only for recreation, protection of natural resources, or similar conservation purposes and shall prohibit residential, industrial or commercial use of the open space. The conservation easement shall be granted to a private conservation organization acceptable to the Town and that is a bona fide conservation organization as defined in Article 49 of the NYS Environmental Conservation Law or to a governmental body acceptable to the Planning Board.

(e) *Notations on Plat or Site Plan.* All land areas designated as Open Space Recreational Area and all land areas designated as open space shall be clearly delineated and labeled on the final subdivision plat and/or site plan as to use, ownership, management, method of preservation and the rights of the residents of dwelling units in such multi-family development to such land. The plat and/or site plan shall clearly show that all such Open Space Recreational Area lands and all such open space land is permanently preserved for open space purposes and shall contain a notation indicating the deed reference of any conservation easement or deed restrictions required to be filed to implement such restrictions. All lands designated as "reserved for future development" shall also be clearly delineated and labeled on the final subdivision plat and/or site plan and shall state that the reservation of such lands does not constitute a "pre-approved plan" for development and merely acts to preserve the zoning density and other zoning requirements in effect as of the time that final approval is granted.

(f) *Ownership of the Open Space.* The fee ownership of the open space and the Open Space Recreational Area (the ownership of the land subject to the conservation easement(s)), as well as identification of those responsible for any maintenance must be determined before final Planning Board approval. In the case of individual ownership of the dwelling units, the open space land and the Open Space Recreational Area may be owned by the UOA, transferred to a nonprofit organization acceptable to the Planning Board or held in such other form of ownership as the Planning Board finds has adequate financial resources to properly manage the open space land and to protect its conservation and recreational values. In the case of common ownership of the multi-family development (dwelling units are rented out), (i) the Open Space Recreational Area shall be dedicated to a nonprofit organization acceptable to the Planning Board or held in such other form of ownership as the Planning Board finds adequate to properly manage the open space land and to protect its conservation value; and (ii) the open space lands that are not part of the Open Space Recreational Area may be retained in private ownership by the applicant. [Note: this provision is intended to allow the applicant to retain ownership and use of the open space that is not dedicated as Open Space Recreational Area for private use (for hunting, fishing, etc.) on the condition that the permanent conservation of the open space is ensured by a conservation easement.

No lots shall be sold nor shall any building be occupied until and unless such conservation arrangements or agreements have been finalized and recorded.

(g) *Maintenance.* Standards for maintenance of the open space and the Open Space Recreational

Area shall be established prior to final subdivision plat approval. Such standards shall be enforceable by the Town against the owner of such open space land to ensure that the open space land and/or the Open Space Recreational Area is not used for storage or dumping of refuse, junk, or other offensive or hazardous materials.

6.11.7. Sewage Requirements for Multi-Family Developments

All multi-family developments shall be served with central sewage facilities and central water supplies. Effluent disposal areas shall also be subject to the setback requirements applicable to other multi-family buildings and structures as a minimum.

6.11.8. Design Criteria

The following design criteria shall apply to multi-family development subdivision:

- (a) There shall be no more than eight (8) dwelling units in each multi-family building.
- (b) No structure shall be constructed within fifty feet (50') of the edge of any access road to or through the development within ten feet (10') of the edge of any parking area.
- (c) Access roads through the multi-family development shall comply with town street requirements as specified in the Town of Lumberland Subdivision Regulations and by the Highway Superintendent and no parking space shall be designed such that a vehicle would be backing or driving out onto a through road. Instead, there shall be a defined entrance and exit to and from each parking area.
- (d) Where a property line is not wooded, a planting strip of fifty feet (50') in width shall be required to buffer adjoining property owners and ensure privacy. Similar buffering of areas adjoining County and State highways shall be required. A landscaping plan shall also be prepared and submitted to the Planning Board for approval.
- (e) Multi-family developments shall be subject to the stormwater management requirements of the Subdivision regulations and facilities shall be designed to accommodate storms of a twenty five (25) year frequency unless a more stringent standard shall be recommended by the Town Engineer. The general performance standard shall be that the amount of uncontrolled stormwater leaving the site along any property line after development may not exceed that estimated for the site prior to development. In instances where stormwater facilities are impractical for engineering reasons the Town Engineer may modify this standard as it applies to a particular project but shall provide for the maximum practical reduction in flow which can be achieved under the circumstances.
- (f) All electrical and other utilities shall be placed underground and buried to a depth determined by the town Engineer as sufficient for safety purposes.

6.11.9. Management of Multi-Family Development

Maintenance of a multi-family development shall be vested in: (a) a UOA or other legal entity organized prior to the offering of the first unit for occupancy; or (b) a manager, who may be the applicant, or a person designated by the applicant before the applicant offers a unit for occupancy; or (c) the owners of the units themselves if the total number dwelling units within the development is no more than five (5). If the applicant shall opt to manage the project or designate a manager, the preliminary application shall include financial statements, a description of previous management experience and other data sufficient for the Planning Board to ascertain the financial responsibility of the proposed manager.

6.11.10. Maintenance of Common Areas, Units

The UOA or the manager, as the case may be, shall be responsible for maintenance, repair and replacement of the common areas of the development including buildings and, if applicable, the furniture, fixtures and equipment within the units. The project instruments purchasers as a maintenance fee and secure maintenance of the project as well as enforcement of applicable covenants and restrictions in perpetuity. The Planning Board may require that a Certified Public Accountant review such financial data for purposes of determining that proposed fees are, in fact, adequate to secure maintenance on a continuing basis.

6.11.11. Performance Guarantee for Multi-Family Development

Any applicant who proposes to construct multi-family dwellings and convey the common elements of said multi-family dwelling project, including Open Space Recreational Areas and other open space, to an UOA therein shall submit a Performance Guarantee ensuring long-term maintenance and repair of said common elements. Such Performance Guarantee shall be in form and content acceptable to the Attorney for the Town, and in any event shall: (a) be required for a period of not less than fifteen (15) years from the date of the final approval of said multi-family dwelling-transient use by the Town; and (b) be in an amount equal to the amount collected or to be collected for long-term maintenance (as indicated in the budget referenced above) by the applicant or other responsible parties for each purchaser during the first year after sales to such purchases begin, multiplied by the total number of expected purchasers.

6.11.12. Certification of Compliance with NYS Statutes

If the multi-family development shall be subject to any New York State statutes governing the sale of real property used for multi-family occupancy, the applicant shall certify as to his or her compliance with said statutes. To the extent the provisions of such statutes conflict with this subsection such certification shall suffice as to conformance with these requirements.

6.11.13. Conversions to Multi-Family Development

Conversions of motels, hotels or other existing structures to multi-family dwelling use, regardless

of whether such conversions involve structural alterations, shall be considered subdivisions and, moreover, be subject to the provisions of this Law. If the proposed project does involve structural alterations, the Preliminary Plat shall include a certification of a New York state licensed and registered architect or New York state licensed professional engineer to the effect that the existing building is structurally sound and that the proposed conversion will not impair structural soundness. However, the conversion of an existing single-family detached dwelling or single family semi-detached dwelling into not more than two (2) residential units shall be exempt from these requirements, unless such units are intended to be a condominium. This shall not, however, exempt an owner from any requirements of the State Building Code or other portions of this Law as they may pertain to such activities.

6.12. Solar Energy

6.12.1 Permits, Site Plan Approval

(a) Subject to all other provisions of this Law, ground-mounted solar collectors less than thirty-five feet (35') high and in the aggregate equal to or less than one thousand two hundred (1200) square feet in size and are a permitted accessory use in all zoning districts, and shall not require a special use permit, but all solar collectors shall require site plan approval and building permits are required for solar energy component installation.

(b) Solar collectors greater than one thousand two hundred (1200) square feet in size in the aggregate may be allowed in all districts upon issuance of a special use permit granted by the Planning Board. Ground-mounted solar collectors exceeding thirty-five feet (35') in height and placements on existing structures at an aggregate height of more than thirty-five feet (35') high shall require a special use permit, but are allowable in all zoning districts.

6.12.2. Height; Glare

(a) Solar collectors shall be placed on a principal or accessory structure, on the ground, or on a monopole. The height of the solar collector shall be the minimum necessary to generate useable energy. The height of equipment or the building and equipment combined shall, in all instances, be measured with the solar collector oriented toward a full tilt, where applicable.

(b) Solar collectors shall be located in a rear or side yard and shall be designed and located in order to prevent reflective glare toward any inhabited structure on adjacent properties or on adjacent street rights-of-way.

6.12.3. Setbacks

A solar collector shall, where attached to an existing structure, comply with the required setbacks for such structure, provided that attachments to existing non-conforming structures shall not further encroach on such setbacks where already exceeded.

6.12.4. Installation of Solar Collectors

Prior to operation of a solar collector, the electrical connections must be inspected by the Town and by the New York Board of Fire Underwriters or other appropriate electrical inspection agency as determined by the Town.

6.12.5. Energy Storage

When solar storage batteries are included as part of the solar energy system, they shall be placed in a secure container or enclosure meeting the requirements of the NYS Uniform Building and Fire Prevention Code and associated codes when in use. When no longer used, such devices shall be safely disposed of in accordance with the laws and regulations of New York State and the Town.

6.12.6. Removal of Solar Collectors

From and after the date that a solar collector ceases to perform its originally intended function for more than twelve (12) consecutive months, the property owner shall remove the collector, mount and associated equipment and facilities within ninety (90) days of an order by the Code Enforcement Officer for such removal.

6.13. Swimming Pools

Swimming pools, whether permanent or portable, that are accessory to single-family dwellings, shall be located no closer than twenty feet (20') to a front lot line.

Swimming pools that are part of a non-residential use, whether commercial or non-commercial, such as hotels, motels, clubs, campgrounds, or day-use recreational facilities shall be permanent construction and shall be located no closer than one-hundred feet (100') from any lot line.

All improvements associated with swimming pools shall comply with all applicable NYS Uniform Fire Prevention and Building Code requirements.

6.14. Telecommunications Facilities

6.14.1. Purpose

The purpose of this Section 6.14 is: to promote health, safety, and the general welfare of the residents of the Town; to provide standards for the safe provision of telecommunications

consistent with applicable federal and state regulations; to minimize the total number of telecommunications facilities in the community by encouraging shared use of existing and future towers and the use of existing buildings and other high structures and by encouraging alternative technologies that would minimize the need for multiple towers; and to minimize adverse visual effects from telecommunications facilities by requiring careful siting, visual impact assessment, and appropriate landscaping.

6.14.2. Special Use Permit and Site Plan Approval Required

So long as telecommunications facilities are deemed under New York law to be a utility, telecommunications facilities may be constructed anywhere in the Town but only if the person seeking to erect same shall have obtained a special use permit and site plan approval, and shall have complied with all other provisions of this Law prior to any construction.

6.14.3. Application for Telecommunications Facility

The application for a special use permit for the construction of a telecommunications facility shall include, in addition to any other application requirements set forth in this Section 6.14 or elsewhere in this Law:

(a) completed project application form in such detail and containing such information as the Planning Board may require.

(b) completed full long form EAF and visual EAF addendum. The Planning Board may require submittal of a more detailed visual analysis based on the contents of the visual EAF.

(c) site plan in accordance with the requirements for site plans generally, and where more detailed, in accordance with the site plan requirements of this Section 6.14 including, without limitation:

- (i) the exact location including geographic coordinates of the proposed telecommunications facility including any towers, guy wires and anchors, if applicable;
- (ii) the maximum height of the proposed facility, including all appurtenances;
- (iii) a detail of tower type, if any, including engineering drawings from the tower manufacturer (monopole, guyed, freestanding, or other);
- (iv) the location, type and intensity of any lighting on the tower;
- (v) property boundaries and names of all adjacent landowners;
- (vi) the location of all other structures on the property and all structures on any adjacent property within one hundred feet (100') of the property lines, together with the distance of these structures from any proposed tower, and whether or not any such structures are designated historic structures;
- (vii) the location, nature and extent of any proposed fencing, landscaping and screening;
- (viii) the location and nature of any proposed utility easements and access roads or drives;
- (ix) certification of a professional engineer licensed to practice in the State of New York

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that the telecommunication facility and all related components have been designed in accordance with generally accepted good engineering practices and in accordance with generally accepted industry standards, and if constructed in accordance with the plans the entire facility (including the soils of the site itself) will be safe, will be in accordance with all applicable governmental building codes, laws and regulations and in accordance with generally accepted good engineering practices and industry standards, including without limitation, acceptable standards as to stability, wind and ice loads, and bird protection;

(x) the site plan must bear the seal of a professional engineer licensed to practice in the State of New York; and

(xi) such additional information as the Planning Board may require, such as line-of-sight drawings, detailed elevation maps, visual simulations, before and after renderings, and alternate tower designs to more clearly identify adverse impacts for the purpose of their mitigation.

(d) proof of the landowner's consent to the erection of the facility and agreement to abide by the Law if the applicant is not the landowner.

(e) agreement that the applicant will negotiate in good faith with any subsequent applicant seeking to co-locate a telecommunications facility on the initial applicant's structures. This agreement shall commit the initial applicant and landowner and their respective successors in interest to:

- (i) respond in a timely, comprehensive manner to a request for information from a potential shared-use applicant;
- (ii) negotiate in good faith for shared use by third parties;
- (iii) allow shared use if an applicant agrees in writing to pay reasonable charges for same; and
- (iv) make no more than a reasonable charge for shared use, based upon generally accepted accounting principles. The 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, and depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference or causing uses on the site to emit electromagnetic radiation in excess of levels permitted by the Federal Communications Commission (FCC).

(f) The agreement for removal of the facility referred to below.

(g) Copies of all documents submitted to the FCC or any other governmental agency having jurisdiction.

(h) An adequate inventory report specifying existing telecommunications facility sites and structures exceeding seventy five percent (75%) of the height of the proposed tower within the search range of the cell grid. The inventory report shall contain an evaluation of opportunities for shared use as an alternative to the proposed location.

(i) When the application proposes the construction of a tower, evidence of written notification to all wireless service providers who supply service within the region for the purpose of assessing the feasibility of co-located facilities.

(j) All property owners and adjacent municipalities within five-hundred (500) feet of the outside perimeter of the communications structure, including guy wires, shall be notified by the applicant by certified mail prior to the Planning Board taking action. Proof of notification shall be provided as part of the final application.

(k) Any applicable application or other fees, including any deposits required by the Town for application to the costs of any consultants retained by the Town as provided herein.

6.14.4. Consultants for Review of Application for Telecommunications Facility

(a) The Town, at the expense of the applicant, may employ its own consultants to examine the application and related documentation. In addition, the applicant shall reimburse the Town for the costs of the Town, including the time of the Code Enforcement Officer, in reviewing the application. The consultants that the Town may retain include, but are not limited to, professional structural and/or electrical engineers, attorneys, and other experts reasonably required by the Town to competently and fully evaluate any application and the resulting construction. Such consultants may be requested, among other matters, to make recommendations as to whether the criteria for granting the special use permit have been met, including whether the applicant's conclusions regarding need, co-location, safety analysis, visual analysis, and structural inspection, are valid and supported by generally accepted and reliable engineering and technical data and standards, and whether the telecommunications facility as constructed is in compliance with the approved plans and in accordance with generally accepted good engineering practices and industry standards.

(b) To assure that sufficient funds are available to the Town to pay for the consultants referred to in the preceding subsection, any applicant shall be required to deposit review fees in escrow, in accordance with the terms of any town law, ordinance or resolution, as the same may be amended from time to time. Notwithstanding the provisions of any such law, ordinance or resolution, the minimum initial escrow deposit for any telecommunication facility application which anticipates construction of any type of tower shall be five thousand dollars (\$5,000) or the minimum prescribed by such law, ordinance or resolution as in effect at the date of the application, whichever is greater.

6.14.5. Special Use Permit Criteria

No special use permit or renewal thereof or modification of a current special use permit relating to a telecommunications facility shall be authorized by the Planning Board unless, in addition to satisfying all other applicable provisions of this Law, the Planning Board finds that such telecommunications facility:

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- (a) is necessary to meet current or reasonably expected demands for services;
- (b) conforms with all federal and state laws and all applicable rules or regulations promulgated by the FCC, Federal Aviation Administration (the FAA), and any other federal agencies having jurisdiction;
- (c) is considered a public utility in the State of New York;
- (d) is sited, designed and constructed in a manner which minimizes (i) visual impact to the extent practical; and (ii) adverse impacts upon migratory and other birds and other wildlife and; (iii) complies with all natural resource protection standards of this Law;
- (e) is the most appropriate site among those available within the technically feasible area for the location of a telecommunications facility;
- (h) is fully automated and unattended on a daily basis, and shall be visited only for periodic maintenance;
- (i) reasonable efforts have been made to co-locate within an existing telecommunications facility or upon an existing structure; and
- (j) when new construction is required, and a structure utilizing guy wires is proposed, a free standing pole type structure is not feasible.

In considering whether or not to grant the special use the Planning Board may, if the special use permit is granted, impose such reasonable conditions as the Board may deem necessary to minimize any adverse impacts of the facility or its construction, and to assure continued compliance with the terms of this Law.

6.14.6. Dimensional Standards for Telecommunications Facilities

The following dimensional requirements apply to telecommunications facilities:

- (a) the minimum land area required for a telecommunications facility shall be the sum of (i) five (5) acres, or such greater minimum size as may be specified in the Use Table for the district in which such facility is to be located, and (ii) the area required for any fall zone as contemplated by the succeeding clause (b).
- (b) a fall zone shall be provided around any tower constructed as part of a telecommunications facility, having a radius at least equal to the height of the tower and any attached antennae. The fall zone: (i) may not include or extend through public roads; (ii) must be located on property either owned or leased by the applicant or for which the applicant has obtained an easement for such purpose; (iii) may not, except as set forth in clause (c) below, contain any structure other than those associated with the telecommunications facility; and (iv) may not contain any active

recreational lands or fields.

(c) the provisions of the preceding clause (b) (iii) may be waived by specific permission of the Planning Board on a case-by-case basis if the subject telecommunications facility is or is to be attached to an existing structure, and if the Board finds that such waiver will not endanger the life, health, welfare or property of any person. In granting any such waiver, the Board may impose any conditions reasonably necessary to protect the public or other property from potential injury.

(d) all telecommunication facilities shall comply with the setback, frontage, minimum lot size and yard standards of the underlying zoning district and the fall zone requirements of this article. To the extent there is a conflict, the more restrictive provision shall govern.

(e) notwithstanding provisions to the contrary of any other provisions of this Law, the front, side, and rear yard requirements of the underlying zoning district in which a telecommunications facility is erected shall apply not only to a tower, but also to all tower parts including guy wires and anchors, and to any accessory buildings.

(f) an antenna may not be located on a building or structure that is listed on a historic register or within five hundred (500) feet of such a structure.

(g) the height of the telecommunications facility may not exceed the minimum height that the applicant has demonstrated is necessary for the service area. In the River Overlay District, the height may not exceed 195' and may not be illuminated.

6.14.7. Future Co-Location for Telecommunications Facilities

It shall be a condition of any approval of special permit that the proposed structure shall be constructed to provide available capacity for no fewer than two other providers should there be or arise a future additional need for such telecommunications facilities. Any subsequent location of telecommunications facilities by other service providers on existing towers specifically designed for shared use shall not require a new or modified special use permit if there would be no increase in the height of the tower and if the tower's original design was adequate to accommodate the proposed additional antennae and equipment. However, any additional telecommunications facilities proposed to be located on an existing tower, and any accessory buildings and equipment associated with same, shall require site plan review and issuance of a building permit before construction occurs.

6.14.8. Other Requirements for Telecommunications Facilities

(a) Towers shall not be artificially lighted and marked beyond the requirements of the FAA, unless the Planning Board determines that adding lighting and markings beyond FAA-style lighting and marking would be of direct benefit to public safety and would not unduly adversely affect residents of any surrounding property. In such case, the applicant shall be required to install such additional lighting and markings as the Planning Board directs.

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(b) The use of any portion of a telecommunications facility for signs, promotional or advertising purposes, including but not limited to company name, phone numbers, banners, streamers, and balloons is prohibited.

(c) The telecommunications facility shall be designed to have the least visual effect on the environment as is practicable, as determined by the Planning Board. To the extent not inconsistent with any FAA requirements, each tower shall: (i) have a galvanized finish, or shall be painted gray above the surrounding tree line and gray or green below the tree line, as deemed appropriate by the Planning Board, or (ii) be disguised or camouflaged to blend in with the surroundings, to the extent that such alteration does not impair the ability of the facility to perform its intended function.

(d) Accessory structures shall maximize the use of building materials, colors, and textures designed to blend in with the natural surroundings.

(e) The facility shall have appropriate vegetative buffering, reasonably satisfactory to the Planning Board, around the fences of the tower base area, accessory structures and the anchor points of guyed towers to buffer their view from neighboring residences, recreation areas, and public roads. The Planning Board may similarly require screening adjacent to waterways, landmarks, refuges, community facilities, or conservation or historic areas from which the facility would otherwise be visible.

(f) Without limiting the requirements of the preceding subsection, existing on-site vegetation shall be preserved to the maximum extent practicable.

(g) Equipment or vehicles not used in direct support, renovations, additions or repair of any telecommunications facility shall not be stored or parked on the facility site.

(h) Accessways required for the construction or maintenance of approved facilities shall make maximum use of existing public or private roads to the extent practicable. New accessways constructed solely for telecommunication facilities shall be at least twelve (12), and no more than twenty four feet (24') wide, and closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

(i) The road surface (driveways) shall be centered within accessways and shall not comprise more than sixty percent (60%) of the width of the accessway.

(j) Parking areas shall be sufficient to accommodate the usual number of service vehicles expected on the premises at any one time. Space off of public highways shall be provided (not necessarily in parking areas) to accommodate the greatest number of service vehicles expected on the premises at any one time.

(k) Driveways or parking areas shall provide adequate interior turnaround, so that service vehicles will not have to back out onto a public thoroughfare.

(l) All towers, anchor points of guyed towers, and accessory structures shall be surrounded by fencing at least eight feet in height, the top foot of which may, at the discretion of the Planning Board in consideration of the area where the facility is located, be composed of three-strands of barbed wire to discourage unauthorized access to the site. The Planning Board may waive the requirement of fencing if it determines that other forms of security are adequate, or that, by reason of location or occupancy, security will not be significantly compromised by the omission, or reduction in size, of the otherwise required fencing.

(m) There shall be no permanent climbing pegs within fifteen feet (15') of the ground of any tower.

(n) A locked gate at the junction of the accessway and a public thoroughfare may be required to obstruct entry by unauthorized vehicles. Such gate must not protrude into the public right-of-way.

(o) Towers and antennae shall be designed to withstand wind gusts of at least one hundred (100) miles per hour, or such higher wind resistance as may be specified by virtue of clause (p) below.

(p) Every facility shall be built, operated and maintained to acceptable industry standards, including but not limited to the most recent, applicable standards of the Institute of Electric and Electronic Engineers (IEEE) and the American National Standards Institute (ANSI).

6.14.9. Removal of Telecommunications Facility

No application for a special use permit for a telecommunications facility shall be approved by the Planning Board unless it contains, along with all other requirements set forth in this Law, an agreement, in form and content acceptable to the Attorney for the Town, by the applicant (and if different, the property owner) to remove all antennae, driveways, structures, buildings, equipment sheds, lighting, utilities, fencing, gates, and accessory equipment and structures, as well as any tower(s) dedicated solely for use within a telecommunications facility, when such facility becomes technologically obsolete or if such facility ceases to perform its originally intended function for more than twelve (12) consecutive months. Upon removal of said facility, the land shall be restored to its previous condition, including but not limited to the seeding of exposed soils.

In any event, any tower and antenna which becomes technologically obsolete, or which ceases to perform its originally intended function for more than twelve (12) consecutive months, shall be dismantled and removed from the site within sixty (60) days of the date the Code Enforcement Officer mails to the owner of the site a notice of removal.

Prior to obtaining a building permit for a telecommunications facility, the applicant must provide a Performance Guarantee securing performance of the aforesaid removal and restoration obligation, in an amount approved by the Planning Board but in no event less than One Hundred Thousand Dollars (\$100,000). Additionally, upon any modification of special use permit relating to a telecommunications facility, the Planning Board may adjust the required amount of the

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Performance Guarantee to adequately cover increases in the anticipated cost of removal and restoration.

6.15. Temporary Structures; Portable Storage Units; Truck Trailers for Storage

6.15.1. Temporary Structure Permit.

The Code Enforcement Officer is authorized to issue a permit for the temporary use of a portable storage unit upon application therefore and compliance with all other provisions of this Law. Such permit shall be authorized for a period of up to twelve (12) months and may be extended for two (2) similar periods when the Code Enforcement Officer finds such work has been diligently pursued.

6.15.2. Permitted Uses

Such uses and structures may include the storage of building materials and equipment, a real estate office for the sale of property on the premises, and a construction office for work being done on the premises.

6.15.3. Requirements

No portable storage unit may be utilized as a temporary structure unless a permit is obtained for each such structure by application to the Code Enforcement Officer. Such permits shall be issued by the Code Enforcement Officer only if the following requirements of this Section are satisfied: (i) the portable storage unit is located as a temporary structure on property within the town for a period not exceeding ten (10) days, from time of delivery to time of removal; (ii) no more than two (2) portable on-demand storage structures may be located on a lot at one time; (iii) such temporary structure(s) may not be located on a specific lot more than two (2) times in any given thirty (30) calendar-day period; (iv) such temporary structure shall be located no closer than ten feet (10') to the property line unless placed on an existing impervious driveway, and in any event shall comply with all requirements regarding visual obstructions; and (v) such structure may not exceed eight feet six inches (8' 6") in height, 10 feet (10') in width or 20 feet (20') in length. The Code Enforcement Officer may grant extensions of the foregoing time restrictions for good cause shown.

6.15.4. Prohibited Structures

Retired school buses, vans, railroad cars, recreational vehicles and similar vehicles or equipment shall not, under any circumstances, be permitted as temporary (or other) storage structures in any district.

6.15.5. Truck Trailers

Truck trailers may not be used as a permanent storage facility in any district. Truck trailers may

not be used as a temporary storage facility on any lot on which a dwelling is located. Truck trailers may be used for temporary storage upon issuance of a special use permit, where accessory to a lawfully permitted non-residential use, provided that they are removed no later than eighteen (18) months after placement, and that they are screened as specified by the Planning Board. Whether or not located on a lot on which a dwelling is located, truck trailers otherwise in legal existence at the Effective Date of this Law may continue, but once they have been removed they may not be replaced.

6.16. Wind Energy

6.16.1. Purpose

It is the purpose of this Section to promote and to provide standards for the construction and operation of small wind energy facilities in the Town, subject to reasonable restrictions intended to preserve the public health and safety. Small wind energy facilities are designed for on-site home, farm and small commercial uses and are primarily used to reduce on-site consumption of utility power.

6.16.2. Findings

The Town Board finds that wind energy is an abundant, renewable and nonpolluting energy resource and that its conversion to electricity will reduce dependence on nonrenewable energy resources and decrease the air and water pollution that results from the use of conventional energy sources, but that potential benefits must be weighed against potential impacts. Wind energy generated from properly sited small wind energy facilities can be a cost effective mechanism for enhancing the reliability and power quality of the power grid, reduce peak power demands and help diversify the State's energy supply portfolio, with a minimum of environmental impacts.

6.16.3. Special Use Permit Required for Small Wind Energy Facility

No Wind Energy Facility other than a small wind energy facility shall be constructed, reconstructed, modified or operated in the Town. No small wind energy facility shall be constructed, reconstructed, modified or operated in the Town unless in conformity with all applicable provisions of this Law and after the issuance of a special use permit.

Notwithstanding the requirements of this section, a replacement in kind or modification of a small wind energy facility that was itself the subject of an issued special use permit may occur without a special use permit upon a finding by the Code Enforcement Officer that there will be no increase in total height, no change in location, no additional lighting or change in facility color, and no increase in noise produced by the replacement small wind energy facility.

6.16.4. Applications

Small wind energy facilities are allowed as special uses in certain specified zoning districts. Upon

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application for a special use permit for a small wind energy facility the Planning Board may require the submission of information in addition to the standard special use permit application requirements as the Planning Board deems appropriate, including without limitation the following:

(a) the applicant and landowner's name and contact information. If the landowner is not the applicant, a statement by the landowner that the landowner is familiar with the contents of the application and authorizes the submission.

(b) the tax map numbers, existing use and acreage of the site parcel.

(c) a survey map at an appropriate scale showing the proposed location of the small wind energy facility (including access roads) as it relates to the boundaries of the parcel, adjacent ownerships and existing residences/schools, churches, hospitals, or libraries to a distance of two thousand (2,000) feet (or other measure).

(d) a survey map at an appropriate scale showing any federal, state, county or local parks, recognized historic or heritage sites, and important bird areas as identified in federal, state, county, local or New York Audubon's GIS databases or other generally-available documentation.

(e) standard drawings of the wind turbine structure, including the tower, base and footings, drawings of access roads, a line drawing of the electrical components of the system, and including an engineering analysis and certification of the tower, showing compliance with the applicable building and electrical codes and that the proposed total height of the facility does not exceed the height recommended by the manufacturer.

(f) data pertaining to the tower's safety and stability, including safety results from test facilities.

(g) a project visibility map, based on a digital elevation model, showing the impact of topography upon visibility of the project from other locations, to a radius of three (3) miles from the center of the project. The scale used shall depict the three (3) mile radius as no smaller than two and seven tenths inches (2.7"), and the base map used shall be a published topographic map showing man-made features, such as roads and buildings.

(h) no fewer than three (3) color photos, no smaller than 3" by 5", taken from locations within a three (3) mile radius from the site and to be selected by the Planning Board, and computer-enhanced to simulate the appearance of the as-built site facility as it would appear from these locations, indicating the color treatment of the facility's components, together with any visual screening incorporated into the project that is intended to lessen the facility's visual prominence.

(i) sufficient information to demonstrate that the facility will be used to reduce on-site consumption of electricity.

(j) written evidence that the electric utility provider that serves the proposed site has been informed of the applicant's intent to install an interconnected customer-owned electricity

generator, unless the applicant does not plan, and so states in the application, to connect the system to the electricity grid.

6.16.5. Development Standards for Small Wind Energy Facility

In addition to complying with all other provisions this Law, all small wind energy facilities shall comply with the following specific standards:

(a) Safety.

- (i) To prevent harmful wind turbulence, the minimum distance between the ground and any part of the rotor blade system shall be thirty feet (30').
- (ii) Wind towers shall not be climbable from the base to fifteen feet (15') above ground level.
- (iii) All access doors to wind towers and electrical equipment shall be lockable.
- (iv) Appropriate warning signage shall be placed on all wind towers, electrical equipment and small wind energy facility entrances.
- (v) Small wind energy facilities shall not be artificially lighted, except to the extent required by the FAA or other applicable authority.
- (vi) All wind turbines shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.
- (vii) Prior to issuance of a building permit for the facility, the applicant shall provide the Town proof (in form and content acceptable to the Town Attorney) of a level of insurance to be determined by the Town Board in consultation with the Town's insurer, to cover damage or injury that might result from the failure of a tower or any other part or parts of the facility.
- (viii) Any small wind energy system found to be unsafe by the Code Enforcement Officer shall, upon notification thereof to the owner forthwith be repaired by the owner to meet federal, state and local safety standards, or in the alternative shall be forthwith decommissioned, and be dismantled and removed within six (6) months following such notification by the Code Enforcement Officer. If any small wind energy system is not operated for a continuous period of twelve (12) months, the Town will notify the landowner by registered mail and provide forty-five (45) days for a response. In such a response, the landowner shall set forth reasons for the operational difficulty and provide a reasonable timetable for corrective action. If the Town deems the timetable for corrective action as unreasonable, the Town shall notify the landowner and such landowner shall remove the turbine within one hundred twenty (120) days of receipt of notice from the Town.
- (ix) Tower heights shall be limited as follows: (i) Eighty feet (80') or less on lots between one (1) and five (5) acres; and (ii) one hundred fifty feet (150') or less on lots of greater than five (5) acres.

(b) Siting and Installation.

- (i) Where practicable, existing roads shall be used to provide access to the facility site, and if new roads are needed, the amount of land used for new roads shall be minimized, and roads shall be located so as to minimize adverse environmental impacts. Temporary access roads

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for initial installation shall be re-graded and re-vegetated to the preexisting natural condition after completion of installation.

(ii) Transmission lines and points of connection shall be combined with local distribution lines.

(iii) The facility shall be connected to existing substations if possible.

(iv) All wiring between the wind turbine and the small wind energy facility substation shall be underground.

(v) No facility shall be located on any lot smaller than one (1) acre in size. In the case of multiple owners submitting a joint application, this requirement shall be satisfied so long as the aggregate size of the lots covered by the application is at least one (1) acre.

(vi) Only one (1) small wind energy facility per legal lot shall be allowed. Where there are multiple applicants, their joint lots shall be treated as one lot for the purpose of this limitation.

(vii) Anchor points for any guy wires for a system tower shall not be closer than twenty five feet (25') from the property line or highway right of way, and shall be located on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet (6') high or shall be sheathed in bright orange or yellow covering from two (2) to eight (8) feet above the ground.

(c) *Setbacks.*

(i) A wind tower shall be set back from the nearest property line a distance no less than 1.1 times its total height, unless appropriate easements are secured from adjacent property owners.

(ii) A wind tower shall be set back from the nearest public road a distance no less than 1.1 times its total height, determined at the nearest boundary of the underlying right-of-way for such public road.

(iii) A wind tower shall be set back from the nearest above-ground public electric power line or telephone line a distance no less than 1.1 times its total height, determined from the existing power line or telephone line.

(d) *Noise and Interference.*

(i) Wind towers shall be located so that the level of noise produced shall not exceed 50 dBA, measured at the site property line.

(ii) The small wind energy facility shall cause no interference with electromagnetic communications, such as radio, telephone or television signals.

(e) *Environmental and Visual.*

(i) Small wind energy facilities shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the wind energy facility.

(ii) The design of the small wind energy facility shall, to the extent practicable, use materials, colors, textures, screening and landscaping that will blend the facility into the natural setting and existing environment. The facility's tower and blades shall be painted a non-reflective unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporates non-reflective

surfaces to minimize any visual disruption.

(iii) Appropriate landscaping shall be provided to screen accessory structures from roads and adjacent residences.

(iv) Where wind characteristics permit, wind towers shall be set back from the tops of visually prominent ridgelines to minimize the visual contrast from any public access.

(v) Wind towers shall be designed and located to minimize adverse visual impacts from neighboring residential areas, to the greatest extent feasible.

(vi) No small wind energy facility shall be installed at any location that would substantially detract from or block the view of the major portion of a recognized scenic vista, as viewed from any public road right-of-way or publicly-accessible parkland or open space within the Town.

(vii) Placement of small wind energy facilities shall avoid, to the extent practicable, the creation of artificial habitat for raptors or raptor prey, such as (1) electrical equipment boxes on or near the ground that can provide shelter and warmth, (2) horizontal perching opportunities on the towers or related structures or (3) soil where weeds can accumulate.

(viii) Wind towers shall be set back at least two thousand five hundred feet (2,500') from a Important Bird Areas as identified by New York Audubon and at least one thousand five hundred feet (1,500') from State-identified wetlands. These distances may be adjusted to be greater or lesser at the discretion of the Planning Board, based on topography, land cover, land uses and other factors that influence the flight patterns of birds.

(ix) Small wind energy facilities shall be used primarily to reduce the on-site consumption of utility-provided electricity.

6.16.6. Tax Exemption for Small Wind Energy Facilities

The Town hereby exercises its right to opt out of the Tax Exemption provisions of the NYS Real Property Tax Law § 487, pursuant to the authority granted by paragraph 8 of that law.

7.0. ADMINISTRATION AND ENFORCEMENT

7.1. Schedule of Fees; Appointment of Code Enforcement Officer/Building Inspector; Duties

7.1.1. Schedule of Fees

The Town Board shall, by resolution, establish and periodically update a schedule of application and permit fees associated with the administration and enforcement of this Law. Such schedule may provide for the assessment to applicants of consultant and professional costs and expenses incurred in the processing and/or review of applications made pursuant to this Law.

7.1.2. Code Enforcement Officer/Building Inspector

The Town Board shall appoint a Code Enforcement Officer/Building Inspector who shall issue zoning permits, building permits, sign permits, certificates of occupancy, and notices and orders in accordance with the terms of this Law.

7.1.3. Duties of Code Enforcement Officer/Building Inspector

It shall be the duty of the Code Enforcement Officer/Building Inspector to interpret, apply and enforce the provisions of this Law in the manner and form and with the powers provided in the laws of this state and in the laws of the Town. Such interpretation and application shall be subject to appeal to the Board of Appeals. In interpretation and application, the provisions of this Law shall be held to be the minimum requirements for the promotion of the health, safety, morals, convenience and general welfare. The Code Enforcement Officer/Building Inspector shall issue no permit or certificate for any use, building or purpose if the same would be in conflict with the provisions of this Law. Any permit or certificate issued in conflict with the provisions of this Law shall be null and void.

7.1.4. Compliance with Law

Issuance of a zoning or building permit or certificate of occupancy shall in no case be construed as waiving any provisions of this Law. No zoning or building permit or certificate of occupancy shall be issued unless the development project is in full conformity with all of the provisions of this Law and all other applicable ordinances and local laws of the Town, unless the Code Enforcement Officer/Building Inspector receives a written order from the Board of Appeals or the Planning Board (as applicable) in the form of an administrative appeal, special use permit or variance as provided by this Law.

7.1.5. Time for Application, Certificate of Occupancy Required

In all cases where a zoning or building permit is required, application therefore shall be made prior to the commencement of any site preparation, demolition, or construction component of the

development project. No building or structure for which a zoning or building permit has been issued shall be used or occupied until the Code Enforcement Officer/Building Inspector has, after final inspection, issued a certificate of occupancy.

7.1.6. Pre-Application Meeting

The Code Enforcement Officer/Building Inspector shall prepare zoning and building permit checklists for the application requirements, and applicants may meet with the Code Enforcement Officer/Building Inspector prior to submitting an application for a zoning or building permit (and any other application) to discuss what materials and submissions the Code Enforcement Officer/Building Inspector will require.

7.1.7. Permit Application for Zoning or Building Permit

Any person intending to undertake a development project for which a zoning or building permit is required shall apply to the Code Enforcement Officer/Building Inspector for such permit by submitting the appropriate application form and paying the required fee. Applicants shall provide all the information set forth on the checklist for the category of their proposed development project. There shall be submitted with all applications for zoning or building permits:

- (a) two (2) copies of a layout or plot plan drawn to scale;
- (b) a narrative of the proposed development project including proposed uses, densities, utility needs, traffic expectations, and site amenities;
- (c) a base map locating the project site and showing the immediately surrounding neighborhood;
- (d) if the development project involves surface disturbance, a general indication of the existing natural features of the proposed development site; and
- (e) such other information as the Code Enforcement Officer finds may be necessary to determine compliance with this Law.

7.1.8. Issuance of Zoning or Building Permit

One copy of the application for zoning or building permit shall be returned to the applicant by the Code Enforcement Officer after he or she shall have marked such copy either approved or denied and attested to the same by his or her signature on such copy. The original, similarly marked, shall be retained by the Code Enforcement Officer/Building Inspector as a Town record. During the period of any surface disturbance or demolition such permit shall be posted or displayed in a conspicuous place and shall face the nearest public road.

7.1.9. Explicitly Prohibited Uses

No zoning or building permit or certificate of occupancy shall be issued for a development project that contains, in whole or in part, any one or more Explicitly Prohibited Uses proscribed by Article 10.0 of this Law, except upon the grant of a use variance by the Board of Appeals, issued as provided for under the terms and provisions of this Law. Prior to issuing a zoning or building permit for any development project, or making any referral to the Planning Board for site plan

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review or a special use permit, or making any referral to the Board of Appeals for a variance, the Code Enforcement Officer/Building Inspector shall make a determination as to whether or not, in his or her considered judgment, the proposed development project includes, in whole or in part, one or more of such Explicitly Prohibited Uses. If the Code Enforcement Officer/Building Inspector finds that the proposed development project does include, in whole or in part, any such Explicitly Prohibited Use, then the Code Enforcement Officer/Building Inspector shall deny any such permit, notify the applicant that the proposed development project has been denied for such reason, and inform the applicant that it may apply for a use variance, appeal the Code Enforcement Officer/Building Inspector's decision, or resubmit the application without inclusion of the Explicitly Prohibited Use(s) component.

7.1.10. Compliance with Plans and Law

Zoning and building permits issued on the basis of plans and applications approved by the Code Enforcement Officer/Building Inspector authorize only the use and arrangement set forth in such approved plans and applications, and no other use or arrangement. A use or arrangement that differs from that authorized shall be a violation of this Law. Any permit or certificate issued in violation of the provisions of this Law shall be null and void and of no effect, without the necessity for any proceedings for revocations or nullification thereof, and any work undertaken or use established pursuant to any such permit or certificate shall be unlawful.

7.1.11. Incomplete Appeals, Applications

If an applicant submits an appeal or application that the Code Enforcement Officer/Building Inspector determines is not complete, the Code Enforcement Officer/Building Inspector shall mail a written notice to the applicant specifying the deficiencies in the appeal or the application. In such case, the Town shall take no further action on the appeal or the application until such deficiencies are remedied. If the applicant fails to correct the deficiencies within thirty (30) days of a notice of deficiency, such application or appeal shall be considered withdrawn.

7.1.12. Appeals and Referrals

The Code Enforcement Officer/Building Inspector shall issue notices and orders and grant or deny applications for permits in accordance with this Law, or refer applications to the Planning Board if site plan review or a special use permit is required, or to the Board of Appeals if a variance is required. If the Code Enforcement Officer/Building Inspector denies a permit application and does not refer the application to the Planning Board or the Board of Appeals, the applicant may appeal to the Board of Appeals.

7.1.13. Inspections

In order to determine compliance with this Law, the Code Enforcement Officer/Building Inspector is authorized, to the extent permitted by law, to enter, inspect, and examine any building, structure, place, premises or use in the Town.

7.2. Zoning Permits

7.2.1. Zoning Permits Required

Except as provided in the next sentence, a zoning permit issued by the Code Enforcement Officer /Building Inspector shall be required for all development projects that involve the conversion or change in use of any existing building, structure or parcel of land, or surface disturbance of more than two (2) acres of land, or demolition of any structure larger than two hundred fifty (250) square feet, in any event without regard to whether such projects involve any new construction. A zoning permit is not required for any project that requires a building permit.

7.2.2. Expiration of Zoning Permit

Zoning permits shall expire unless the activity authorized thereby is completed within twenty four (24) months of the date of issue.

7.3. Building Permits

7.3.1. Building Permit Required

No development project for new construction, reconstruction, modification, renovation or expansion of existing structures, or site improvements, shall commence without a building permit issued by the Code Enforcement Officer/Building Inspector.

7.3.2. Expiration of Building Permit

Unless there has been substantial progress in the work for which the Building Permit was issued, said building permit shall expire twelve (12) months from the date of issue. Any structure for which a building permit has been issued which remains only partially complete with no substantial improvement over a twelve (12) month period shall be a violation of this Law.

7.3.3. Emergency Repairs

In the case of emergency action to deal with damage from fire or other casualty, a property owner may commence construction required to stabilize a structure without a building permit. In order to protect the safety of persons entering such a structure to stabilize it, a permit must be applied for as soon as possible and in any event within one (1) week following such fire or casualty.

7.4 Certificates of Occupancy

7.4.1. Certificates of Occupancy Required

No land shall be occupied or used, and no building hereafter erected, altered or extended shall be

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occupied and used or changed in use, until a certificate of occupancy shall have been applied for and issued by the Code Enforcement Officer/Building Inspector, stating that the building has been erected and the site developed in accordance with the approved plans and that the proposed use thereof complies with the provisions of this Law, and any other applicable local laws and regulations, and that the land and/or building may be occupied. No nonconforming use shall be maintained, renewed, changed or extended without a Certificate of Occupancy having first been issued. The Code Enforcement Officer/Building Inspector shall not issue a Certificate of Occupancy until the work has been completed, inspected and found to be in full compliance with the building permit.

7.4.2. Application for Certificate of Occupancy

Every application for a certificate of occupancy shall state that the building or the proposed use of the building or land complies with all applicable provisions of this Law and the terms of any permit or variance. The Code Enforcement Officer/Building Inspector shall determine the required materials and submissions for the application. No certificate of occupancy shall be issued for any use of a building or of land allowed by special use permit unless and until such special use permit has been duly issued by the Planning Board. Every certificate of occupancy relating to a use or structure for which site plan review approval has been granted, a special use permit or other permit has been issued, or a variance has been granted, shall contain a detailed statement of or reference to the conditions of use in such approval, permit or variance.

7.4.3. Inspection

The Code Enforcement Officer/Building Inspector shall examine the location of any new structures or improvements to existing structures and shall determine whether or not such new structures or improvements comply with the setback and other requirements of this law, including the terms and conditions of any site plan review approval, special use permit, variance, or other permit condition. The Code Enforcement Officer/Building Inspector shall maintain complete records of the dates of inspections conducted hereunder, the names of all persons attending such inspections, the extent of completion of the work on each date, and any other observations relevant to determining compliance with this law.

7.5. Violations and Enforcement

7.5.1. Enforcement

This Law shall be enforced by the Code Enforcement Officer/Building Inspector. The right of inspection, the power to issue notices and stop work orders, the power to issue cease and desist notices, the power to seek injunctive relief and the right to revoke permits are hereby conferred upon the Code Enforcement Officer/Building Inspector with respect to the enforcement of this Law. No provision of this Law shall be construed to deprive the Town or the Town Board or any citizen or taxpayer thereof of any other available remedy for the enforcement of this Law or the punishment or abatement of violations thereof, and all such remedies shall be cumulative and not

exclusive.

7.5.2. Violation of Law

The erection, construction, enlargement, intensification, conversion, moving or maintenance of any building or structure, and the use of any land or building or structure which is continued, operated or maintained, in any case contrary to the provisions of this Law, shall be a violation of this Law.

7.5.3. Complaints

Whenever a violation of this Law occurs or is alleged to have occurred, any person may file a complaint in regard thereto. All such complaints must be made in writing and shall be filed with the Code Enforcement Officer, who shall properly record such complaint and investigate the same forthwith. The Code Enforcement Officer/Building Inspector shall report thereon to the Town Board, and to the Board of Appeals where applicable.

7.5.4. Notice of Violation

Upon determining that any new construction, improvements, uses or other activities are in violation of this Law, the Code Enforcement Officer/Building Inspector shall transmit a written notice of violation, by certified mail, to the owner of record (with a courtesy copy of such notice to any tenants of which the Code Enforcement Officer/Building Inspector has actual notice) of the property upon which the alleged violation occurs, describing the alleged violation, with a copy to the Town Board. The notice of violation shall require an answer or correction of the alleged violation to the satisfaction of the Code Enforcement Officer/Building Inspector within a reasonable time specified by the Code Enforcement Officer in such notice. The notice shall further state that, upon request of the owner of record, technical determinations of the nature and extent of the violation as alleged will be made and that, if a violation as alleged is found, costs of the determinations will be charged against the owner of record (as well as any others responsible for such violation), in addition to such other sanctions as may be appropriate.

7.5.5. Response to Notice of Violation

If, within the time limit set, there is no reply, but the alleged violation is corrected to the satisfaction of the Code Enforcement Officer/Building Inspector, the notation "Violation Corrected" shall be made on the Code Enforcement Officer/Building Inspector's copy of the notice and filed with the Code Enforcement Officer/Building Inspector's records. If there is no reply within the time limit set and the alleged violation is not corrected to the satisfaction of the Code Enforcement Officer/Building Inspector within the time limit set, the Code Enforcement Officer/Building Inspector shall take action in accordance with this Law. If the property owner disputes the notice of violation, the property owner may file an appeal with the Board of Appeals.

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7.5.6. Enforcement Action

The Code Enforcement Officer/Building Inspector or the Town Board may issue a stop-work or cease and desist order and/or institute an appropriate legal action or proceeding to prevent, restrain, correct or abate any violation of this Law, including to prevent the occupancy of such building, structure or land, or to prevent any activity, conduct, business or use in or about such premises that violates this Law.

7.5.7. Responsible Parties

The owner of the property in question, as well as any tenant, occupant or contractor who participates in, assists, directs, creates, or maintains any violation of this Law, shall be jointly and severally responsible for such violation, and shall be subject to the penalties and remedies herein provided.

7.5.8. Public Record

Each order, notice, requirement, decision, interpretation, determination, and certificate of the Code Enforcement Officer/Building Inspector shall be filed in the office of the Code Enforcement Officer/Building Inspector within five (5) business days from the day it is rendered, and the same shall be made a public record. The date such order, notice, etc. is so filed in the office of the Code Enforcement Officer/Building Inspector is herein referred to as the Public Filing Date.

7.5.9. Appeals

No appeal from any order, requirement, decision, interpretation or determination by the Code Enforcement Officer/Building Inspector shall be allowed unless within thirty (30) days of the Public Filing Date (defined in Section 7.5.8) an application for appeal (on such form and accompanied by such fees as may be prescribed by the Town) specifying the grounds of appeal and relief sought shall have been filed with the Code Enforcement Officer/Building Inspector.

7.5.10. Stay of Proceedings

A timely and properly filed appeal shall stay all proceedings in furtherance of the action appealed, unless the Code Enforcement Officer/Building Inspector certifies to the Board of Appeals following the filing of such appeal that a stay could cause imminent peril to life or property, in which case such proceedings shall not be stayed except by a restraining order issued by a court of competent jurisdiction.

7.6. Violations and Penalties

7.6.1. Violations other than Article 10

Any person, owner, lessee, tenant, occupant, architect, builder or agent who violates or is

accessory to the violation of any provision of this Law (other than Article 10.0 hereof), who owns, occupies or uses any building, structure or premises which is in violation of any provision of this Law (other than Article 10.0 hereof), who fails to comply with any of the requirements thereof, or who erects, constructs, alters, enlarges, converts, moves, maintains or uses any building, structure or land in violation of any provision of this Law (other than Article 10.0 hereof), shall be guilty of a violation as defined in Article 10 of the NYS Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than Three Hundred Fifty Dollars (\$350) or imprisonment for not more than ten (10) days, or both, for the first offense. Any subsequent offense within a two-year period shall be punishable by a fine of not more than One Thousand Dollars (\$1,000) or imprisonment for a period of not more than thirty (30) days, or both. For purposes of this Section 7.6.1, each week (or portion thereof) that a violation exists shall constitute a separate and distinct offense.

7.6.2. Violations of Article 10

Any person, owner, lessee, tenant, occupant, architect, builder or agent who violates or is accessory to the violation of any provision of Article 10.0 hereof, who owns, occupies or uses any building, structure or premises which is in violation of any provision of Article 10.0 hereof, who fails to comply with any of the requirements of said Article 10.0, or who erects, constructs, alters, enlarges, converts, moves, maintains or uses any building, structure or land in violation of any provision of than Article 10.0 hereof, shall be guilty of an unclassified misdemeanor as contemplated by Article 10 and Section 80.05 of the NYS Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than Two Thousand Five Hundred Dollars (\$2,500) or imprisonment for not more than ten (10) days, or both, for the first offense. Any subsequent offense within a three (3) month period shall be punishable by a fine of not more than Five Thousand Dollars (\$5,000) or imprisonment for a period of not more than thirty (30) days, or both. For purposes of this Section 7.6.2, each week (or portion thereof) that a violation of Article 10.0 of this Law exists shall constitute a separate and distinct offense.

7.6.3. Injunctive Relief

Compliance with this Law may also be compelled and violations restrained by order or by injunction of a court of competent jurisdiction, in an action brought on behalf of the Town by the Town Board.

7.6.4. Costs and Attorney's Fees

In the event the Town is required to take legal action to enforce this Law, the violator shall be responsible for any and all necessary costs incurred by the Town relative thereto, including attorney's fees. In addition to the foregoing remedies, in the event of a violation of any provision of this Law, the Town Board may assess against the property owner a civil penalty of not more than Five Hundred Dollars (\$500) per violation, plus the cost of remediating the violation. For purposes of this Section 7.6.4, each week (or portion thereof) that a violation exists shall constitute a separate and distinct offense. The property owner shall be given notice and an

opportunity to be heard before adoption of such special assessment. If such expense is not paid in full within 30 days from the date it is determined and assessed by the Court, such expense shall be charged to the property(ies) within the Town on which the violation occurred, by including such expense in the next annual Town tax levy against such property, and such expense shall be a lien upon such property until paid.

7.7 Retention of Experts and Consultants; payment

A. In addition to any other fees required under the Town Code, the Planning Board and the Zoning Board of Appeals are authorized to retain engineering, legal, planning and other expert consulting services and clerical costs for: assistance related to the review and processing of applications coming before said bodies.

B. Payment for the services of any expert consultant is to be made from funds deposited by the applicant with the Town Supervisor to be placed in an escrow account established for that purpose. The Planning Board Chairman and/or Zoning Board of Appeals Chairman, as agent for the appropriate, involved board, shall confer with the applicant and compute the amount of the escrow to be posted with the Town. Said amount shall be reasonably related to the costs attendant to the Town's review and processing of the application and/or the monitoring or inspecting of the construction of the project. The Town shall engage any expert at a reasonable rate that is no greater than that customarily charged by said expert and in no event at a rate greater than that paid by the Town to said expert for similar work. If an applicant objects to the amount to be placed in escrow, the applicant may request the Planning Board or the Zoning Board of Appeals, as appropriate, to review the projected amount to be placed in escrow.

C. Once the expert consulting fees are fixed, it shall be the responsibility of the applicant to submit to the Town Supervisor a certified or bank check in an amount equal to the estimated costs of the expert consulting fees for services to be rendered to the Town. The Town retains the right from time to time to recompute the amount of the escrow deposit, after conferring with the applicant, in the event there will be a shortfall in the escrowed funds to cover the estimated costs of the expert consulting fees for services needed by the Town.

D. The escrow funds so deposited with the Town shall be paid to its expert consultant upon submission of an invoice and approved voucher and subject to audit in accordance with the provisions of New York State Town Law §§ 118 and 119. Any applicant may request to inspect said invoices and vouchers submitted by any expert retained by the Town.

8.0 ZONING BOARD OF APPEALS

8.1. Establishment and Membership

8.1.1. Zoning Board of Appeals Established, Membership

There is hereby established a zoning board of appeals pursuant to the New York State Town Law. Said Board of Appeals shall consist of five (5) members, including a chairperson appointed by the Town Board. Appointments shall be in accordance with the NYS Town Law and an appointment to a vacancy occurring prior to the expiration of a term shall be for the remainder of the unexpired term. In the absence of a Town Board appointment of a chairperson or in the absence of the Board member so appointed, the Board of Appeals may designate a member to serve as acting chairperson. The Town Board may also provide for compensation to be paid to experts, clerks and a secretary and provide for such other expenses as may be necessary and proper in connection with the operation of the Board of Appeals. In making such appointments, the Town Board may further require Board of Appeals members to complete training and continuing education courses.

8.1.2. Alternate Members

The Town Board hereby elects to supersede the NYS Town Law and to provide, pursuant to the NYS Municipal Home Rule Law, for the appointment of one (1) alternate member of the Board of Appeals to serve for a term of one (1) year or until a successor is appointed. Such alternate member shall attend meetings, and shall act in the capacity of a full member whenever regular members are absent or must recuse themselves due to conflicts of interest.

8.2. Powers and Duties

The Board of Appeals shall have the powers and duties authorized by the NYS Town Law and shall have the following specific powers and duties, provided that none of the following provisions shall be deemed to limit any power of the Board of Appeals that is conferred by law:

(a) The Board of Appeals may reverse or affirm, wholly or in part, or may modify, the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official or body charged with the enforcement of this Law, and to that end shall have all the powers of the administrative official or body from whose order, requirement, decision, interpretation or determination the appeal is taken.

(b) The Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official or body charged with the enforcement of this Law, after public notice and hearing and in accordance with the requirements of law and this Law, to grant area variances as defined herein.

(c) The Board of Appeals shall have the power, upon an appeal from a decision or determination

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of the administrative official or body charged with the enforcement of this Law, after public notice and hearing and in accordance with the requirements of law and this Law, to grant use variances as defined herein.

(d) The Board of Appeals shall, upon request from or appeal of a decision by the Code Enforcement Officer or any administrative body of the Town of Lumberland, including the Town Board, decide any question involving the interpretation of any provision of this Law, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.

8.3. General Procedures of the Zoning Board of Appeals

8.3.1. Appeals and Applications for Variance and Interpretation

The Board of Appeals shall act in accordance with the procedure specified by law and by this Law. The Board of Appeals may establish its procedures and requirements, within the framework provided by law and this Law, for conducting its business. All appeal, variance and interpretation applications made to the Board of Appeals shall be in writing on forms prescribed by the Board or provided for herein. Every application shall refer to the specific provision of the Law involved and shall exactly set forth the interpretation that is claimed, the use which is involved or sought, and (if applicable) the details and type of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. Every decision of the Board of Appeals shall be by resolution, each of which shall contain a full record of the findings of the Board in the particular case.

8.3.2. Required Copies and Fees

Ten (10) copies of any appeal or variance or interpretation application and supporting documentation shall be filed with the Code Enforcement Officer, accompanied by a fee in the amount set from time to time by resolution of the Town Board.

8.3.3. Content of Appeal or Application

Each appeal or application shall fully set forth the circumstances of the case and contain the following information and documentation:

- (a) The name, address and telephone number of the property owner and, if different, the name, address and telephone number of the applicant(s).
- (b) Address, tax id number for the property, existing use, acreage of parcel, and zoning district(s) designation.
- (c) A narrative description of the proposed development project, with reference to the applicable use and other regulations of this Law.

(d) A copy of the recorded deed must be furnished evidencing ownership of the property, together with copies of any leases, development agreements or other agreements between the property owner and the applicant(s).

(e) A list of all federal, state and other permits and other governmental approvals that would be required to implement the development project, and evidence of whether the applicant (or its agents) have applied for any such permits and approvals and whether the applicant (or its agents) have received any of the listed approvals.

(f) Copies of any environmental assessments or permit applications and supporting materials submitted to any other permitting agency in connection with the development project.

(g) A complete site development plan, in accordance with the requirements set forth in Section 8.

(h) Signature of the applicant, or the owner and the applicant if the applicant is not the owner, attesting to the accuracy of the statements and representations made in the application, and constituting a certification by the owner, or owner and applicant (as applicable), that each has undertaken due diligence with respect to the matters asserted in the appeal or application.

8.3.4. Public Hearings

The Board of Appeals shall fix a time for any required public hearings, give public notice thereof and issue decisions in accordance with the provisions of law. The applicant shall bear the cost of advertising and required public notice for public hearings. The Board of Appeals shall comply with SEQRA. Without limiting the generality of the foregoing, the Board of Appeals shall hold a public hearing to consider each appeal and application for a variance or interpretation (as applicable) prior to rendering any decision on an application or appeal. This public hearing may begin concurrently with any required public hearing for the purpose of environmental review of the same development project and may continue after any such environmental review public hearing is closed. The public hearing shall be advertised in the official newspaper of the Town at least five (5) business days before the date of the hearing and the applicant and adjoining property owners shall be notified by mail at least ten (10) business days before the date of the hearing.

8.3.5. Appearances

On hearing of an application or appeal, a party may either appear in person or by a representative who need not be an attorney. If the party is to be represented by a person who is not an attorney, a notarized affidavit of appointment of a representative for the party must be presented to the Board of Appeals prior to the hearing. The applicant or applicant's legal representative must attend the public hearing and describe the appeal to the Board of Appeals. The Board of Appeals may not hold a hearing on an application unless the applicant or his/her representative is present.

8.3.6. Conduct of Proceedings

The Board of Appeals shall be primarily concerned with facts, and not with technicalities, and shall decide the matters before it fairly and equitably having regard to the welfare of the community as a whole and to the rights of the applicant and neighbors. The Board of Appeals shall make its findings and determinations based upon substantial evidence contained in the record of its proceedings. It shall be the responsibility of the applicant to present evidence in the form of testimony, exhibits, documents, models, plans and the like to support the application for approval of a variance, or a favorable decision upon an appeal.

8.3.7. Referrals

The Board of Appeals may refer applications for variances and appeals for review by the Fire Department, the Department of Public Works, and any other Town officials or non-Town consultants deemed appropriate by the Board of Appeals. These may include, but shall not be limited to, local and county officials and representatives of county, state, and federal agencies, including the Upper Delaware Council, the Sullivan County Soil and Water District, the State Department of Transportation, and the State Department of Environmental Conservation. Any comments from these reviewers shall be forwarded to the Board to aid its decision on the application or appeal. Additional consultation where fees are involved shall require approval by the Town Board and any such fees shall be borne by the applicant.

8.3.8. Inspection

The Board of Appeals may defer decision on any matter for the purpose of an appropriate inspection by the Board of Appeals or any other agency that the Board deems to be an interested agency or to hear witnesses or procure the submission of pertinent records. An appeal or application on which determination by the Board is to be deferred shall become the first order of business at the next public meeting of the Board.

8.3.9. Imposition of Conditions

In granting a variance, or in making any determination upon which it is required to pass after public hearing under this Law, the Board of Appeals shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed development project and as are, in the opinion of the Board, required to promote the intent and purposes of the Comprehensive Plan of the Town and this Law. Such conditions shall be based on competent credible evidence on the record, be incorporated into the decision, and may include, without limitation, provisions for:

- (a) minimizing adverse impact of the development upon other land;
- (b) ensuring that the type, intensity, design, location, character and performance of activities shall be in harmony with the orderly development of the Town;
- (c) controlling the sequence of development, including when it must be commenced and

completed;

(d) controlling the duration of use or development and the time within which any temporary structure must be removed;

(e) assuring satisfactory installation and maintenance of required public improvements;

(f) designating the exact location and nature of development;

(g) establishing detailed records by submission of drawings, maps, plats or specifications; (h) ensuring all proposed structures, equipment and materials shall be readily accessible for fire and police and other emergency responder protection; and

(i) ensuring that the nature and intensity of operations involved in or conducted in connection with the proposed use, its site layout and its relation to access streets be such that both pedestrian and vehicular traffic to and from the use and assembly of persons in connection therewith will not be hazardous or inconvenient to or incongruous with the Town or conflict with the normal traffic of the Town.

If the applicant refuses to accept such requirements and conditions, the variance or permit shall be denied. Failure to abide by any conditions attached to a permit or a variance shall be a violation of this Law.

8.3.10. Conduct of Board of Appeals

Board of Appeals' action on applications and appeals shall additionally be subject to the following:

(a) Within sixty two (62) days of the completion of a public hearing on an application and completion of the required environmental review, the Board shall render one of the following decisions: (i) unconditional approval; (ii) conditional approval; (iii) request for revisions and resubmission; or (iv) denial.

(b) Every decision of the Board shall fully set forth in a statement the circumstances of the case and shall contain a full record of the findings on which the decision is based. The decision shall be mailed to the applicant. Every decision shall be filed in the office of the Town Clerk within five (5) business days after completion, and additionally copies shall be submitted to the Town Board, the Planning Board, and the Code Enforcement Officer.

(c) The Board of Appeals' statement may include recommendations of desirable modifications to be incorporated in a revised proposal, and conformance with specified modifications shall be considered a condition of any subsequent approval incorporating the same. In such a case, the Board may recommend to the applicant that it revise or redesign its application, and resubmit the same after it has been revised or redesigned. The Board of Appeals may grant to the applicant a continuance of the review process and/or adjourn the conclusion of the public hearing. However, if more than one hundred eighty (180) days has elapsed since the time of the Board's decision, the Board shall require a resubmission of the application.

(d) Upon any approval by the Board of the final proposal and payment by the applicant of all fees and reimbursable costs due to the Town, the Board of Appeals shall endorse its approval by

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signature or stamp on a copy of the application, and shall forward it to the Code Enforcement Officer.

(e) Upon disapproval of an application for use variance or area variance, the Board of Appeals shall so inform the Code Enforcement Officer and the Code Enforcement Officer shall not issue a zoning or building permit or certificate of occupancy to the applicant.

8.4. Matters Regarding Appeals

8.4.1. Requirements for Appeal

Every appeal application shall contain such information as the Board of Appeals requires and shall refer to the specific provision of the Law involved and shall exactly set forth the interpretation that is claimed. Appeals may be taken only within the time period allowed by law.

8.4.2. Additional Required Submissions for Appeal

All appeals made to the Board of Appeals shall contain, in addition to the information required by Section 7.3.3 above and by any other provision of this Law, the following additional information: (a) copy of the permit application, any materials submitted with the application, and a copy of the Code Enforcement Officer's denial; and (b) a brief narrative summary of the case explaining the relief sought and the reasons why the applicant is seeking relief, and why the applicant asserts that the zoning decision is in error.

8.5 Matters Regarding Variances and Variance Applications, Generally

8.5.1. No Existing Violations

No use variance shall be issued, and no application for a use variance shall be considered by the Board of Appeals, for a property where there is an existing violation of this Law upon such property. Other than an existing violation which is the subject of the area variance application being considered, no area variance shall be issued, and no application for an area variance shall be considered by the Board of Appeals, for a property where there is an existing violation of this Law upon such property.

8.5.2. Public Notice

Upon application for a use variance or area variance, a public notice of the proposed development, the size and form of which shall be approved by the Code Enforcement Officer, shall be posted by the applicant at the project site for a minimum of five (5) business days. Such notice must remain in place at least until a decision to approve or disapprove the variance application has been made. The notice shall contain a narrative description of the development project which is the subject of the variance application; specification of the nature of the variance requested and reference to the applicable use and other regulations of this Law; specification of the time and place of the public

hearing; and specification as to whom and by when any public comments are to be communicated. The notice must be placed at or near the property line in the front yard so that it will be plainly visible from the street, and, in cases where a property has frontage on more than one street, an additional sign must be placed at or near the property line on any additional street frontage so that the sign will be plainly visible from the street on which it has such additional frontage.

8.5.3. Failure to Comply

Any use variance or area variance granted pursuant to this Law shall be revocable upon the order of the Board of Appeals at any time upon the failure of the owner or the operator of the use or structure covered by the variance to observe all requirements of this Law with respect to the maintenance and conduct of the use, upon the failure to observe all conditions in connection with such variance which were designated by the Board of Appeals in issuing the same, or upon the discovery that material submitted with the request for the variance was materially false or misleading. Prior to revoking any such variance, the Board of Appeals shall give the holder of the variance at least ten (10) days written notice of the violation. If within such ten (10) days the variance holder so requests, the Board of Appeals shall hold a hearing upon the revocation of such variance and shall give the applicant for the hearing at least ten (10) days written notice thereof either by certified mail, return receipt requested or by personal service. The foregoing provisions shall not be deemed to preclude the use of any other remedy prescribed by law or by this Law with respect to violations of the provisions of this Law giving rise to such action for revocation.

8.5.4. Failure to Commence and Complete Construction

Any area variance or use variance granted pursuant to this Law shall automatically expire and be of no further force and effect six (6) months after the granting thereof unless, within such six (6) month period, substantial construction shall have been commenced. Unless otherwise provided in the granting of the variance, such construction must be completed within one (1) year of the date of commencement of substantial construction. If construction is not completed within such twelve (12) month period the variance shall automatically expire and be of no further force or effect. The Board of Appeals shall be authorized, upon application and without hearing, to grant extensions of the variance for periods not to exceed six (6) months in duration or to reinstate a lapsed variance for good cause shown.

8.5.5. Expiration of Use Variance

Whenever a use established pursuant to a use variance shall have been abandoned for a term of six (6) months or more, or whenever the location of such use is substantially destroyed, then in such event the land, building or structure in which said use shall have existed shall not thereafter be used for the previously established use. A structure shall be "substantially destroyed" if the cost to repair and replace the same exceeds fifty percent (50%) of the then-current structural replacement value thereof.

8.5.6. Effect of Denial

Where the Board of Appeals denies (on other than procedural grounds) a request for a use variance or area variance or otherwise rules against the applicant, the Board of Appeals may not consider another application requesting any or all of the same legal relief for a period of one (1) year from the date of such denial or withdrawal, except: (a) where ordered to do so by a court of competent jurisdiction, or (b) where the application is accompanied by an affidavit setting forth facts, to the satisfaction of the Board of Appeals, showing a substantial change of circumstances justifying a rehearing.

8.5.7. Appeal of Decision

A person aggrieved by any decision of the Board of Appeals may apply to the Supreme Court for a review by a proceeding under Article 78 of the NYS Civil Practice Law. Any such appeal shall stay all proceedings in furtherance of the action appealed from unless the Code Enforcement Officer certifies to the Board of Appeals, after the notice of appeal has been filed, that such a stay of proceedings would, in the Code Enforcement Officer's opinion, cause imminent peril to life or property by reason of facts stated in the certificate. In such a case, proceedings shall not be stayed except by a restraining order granted by a court of competent jurisdiction.

8.6. General Requirements Concerning Use Variances

8.6.1. Authority to Grant Use Variance

The Board of Appeals, on application following the denial or referral of a zoning permit, shall have the power to grant a use variance. If the use variance is granted, the applicant must obtain site plan review approval from the Planning Board prior to commencing the use or obtaining a building permit or zoning permit.

8.6.2. Required Finding of Unnecessary Hardship

No such use variance shall be granted by the Board of Appeals without a showing by the applicant and finding by the Board of Appeals that applicable zoning regulations and restrictions have caused unnecessary hardship.

(a) Unnecessary Hardship. In order to prove such unnecessary hardship the applicant shall be required to demonstrate to the Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located, all of the following four criteria are satisfied:

- (i) the applicant cannot realize a reasonable return on the entire parcel of property, provided that lack of return is substantial as demonstrated by competent financial evidence;

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(ii) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood involved;

(iii) that the requested Use Variance, if granted, will not alter the essential character of the neighborhood; and

(iv) that the alleged hardship has not been self-created.

(b) Reasonable Rate of Return. In order to make a determination that the applicant is unable to realize a reasonable rate of return, the Board of Appeals must find that the entire original or expanded property holdings of the applicant (and not just the site of the proposed development project) are incapable of producing a reasonable rate of return. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Board of Appeals finds that the applicant has clearly demonstrated, by detailed "dollar and cents" proof, the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed development project) and for each and every permitted use in the district (including those uses permitted by special use permit).

(c) Unique Hardship. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Board of Appeals finds that the entire parcel of which the development project is a part possesses unique characteristics that distinguish it from other properties in the area.

(d) Essential Character of the Neighborhood. In making its determination of whether a proposed development project will alter the essential character of the neighborhood, the Board of Appeals shall take into account factors that are of vital importance to the citizens of the Town, including without limitation:

(i) the rural residential and scenic and natural character of the Town,

(ii) its irreplaceable recreation and tourism sites,

(iii) the extent of hazard to life, limb or property that may result from the proposed development project,

(iv) health impacts,

(v) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation and other nuisances,

(vi) the impact on property values, and

(vii) whether the applicant will use a style of development that will result in degradation to the air quality, water quality or scenic and natural resources of the Town.

In order to find that the proposed development project does not alter the essential character of the neighborhood, the Board of Appeals shall interpret the public interest in said essential character of the neighborhood to require, at a minimum, that the development project will not do any of the following: (x) pose a threat to the public safety, including public health, water quality or air quality, (y) cause an extraordinary public expense, or (z) create a nuisance.

(e) Self-Created Hardship. The Board of Appeals shall find that the applicant suffers from a self-

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created hardship in the event that the Board determines that (i) the applicant's inability to obtain a reasonable return on the property as a whole results from having paid too much or from a poor investment decision; (ii) the applicant previously divided the property and is left with only a portion which suffers from some unique condition for which relief is sought and which did not apply to the parcel as a whole; or (iii) when the applicant purchased the property, he or she knew or should have known the property was subject to the zoning restrictions.

8.6.3. Additional Required Submissions for Use Variance

In addition to the application requirements set forth elsewhere in this Law, an application for a use variance shall contain a typewritten narrative explaining what the application is for, and how the development project meets or exceeds all of the criteria for a use variance, including:

(a) Competent financial evidence containing reasonable specification of the nature and factual particulars of such claim, and articulating the basis for the applicant's claim, and including, at a minimum (as to the entire parcel of which the proposed development project is a part): (i) date of acquisition; (ii) the purchase price; (iii) present value of the property; (iv) the amount of real estate taxes; (v) the amount of mortgages or liens and other expenses; (vi) the asking price for the property when it had been offered for sale; (vii) the costs of demolishing any existing structures on the property; (viii) cost of erecting a new building(s) for each and every permitted use in the zoning district (including uses allowed by Special Use Permit); (ix) efforts to market the property; and (x) a schedule of all other property in common ownership at either the date of the enactment of this Law or thereafter.

Competent financial evidence must include "dollars and cents proof" such as appraisals, economic studies, and any other evidence supporting the applicant's contention that the desired relief is appropriate, including appraisals relating to any alleged diminution of all or substantially all of the fair market value of property. For the purposes of this section, common ownership means all other interests in property either located within the Town or contiguous to the Town that is held by the applicant, whether such ownership is of a legal or equitable interest, in whole or in part, contiguous or not, and whether such property interest is held by the applicant through a legal or equitable interest in a(nother) corporation, partnership, trust, business, entity, association, fund, joint venture, or individually.

(b) Evidence demonstrating the unique nature of parcel as a whole. The fact that the improvements already existing at the time of the application are old, obsolete, outmoded or in disrepair or the fact that the property is then unimproved shall not be deemed to make the plight of the property unique or to contribute thereto. Exceptional topographic conditions are an example of a factor demonstrating the unique nature of the property.

(c) Evidence demonstrating that the proposed development project will not change the essential character of the neighborhood with regard to physical, economic, social or environmental elements. Adverse impacts to the essential character of the neighborhood include, but are not limited to, decreased quality or increased quantity of stormwater runoff, increased soil erosion,

increased traffic congestion, decreased road quality, impairment of the scenic or rural character of roads, increased noise, dust, odor and/or glare, reduced wildlife habitat, decreased air quality, decreased water quality, impairment of the viewshed, creation of solid wastes, negative impacts on sustainability efforts, increased social costs, increased emergency response times, negative impacts to public infrastructure, decreased property values, and negative impacts on the health of area residents.

(d) Evidence showing that the hardship is not self-created, to wit, that either (i) when the property was purchased the zoning restrictions from which a use variance is now sought were not in existence or did not otherwise apply, or (ii) some other change has occurred since the applicant's purchase which makes the use non-conforming, as long as the change was not caused by the applicant.

8.6.4. Minimum Use Variance to be Granted

The Board of Appeals, in the granting of use variances, shall grant only the minimum variance that it shall deem necessary and adequate to allow an economically beneficial use of the property, and at the same time preserve and protect the essential character of the neighborhood and the health, safety and welfare of the community.

8.7. Specific Requirements Concerning Use Variances in the Context of Explicitly Prohibited Uses

8.7.1. Required Submission for Use Variance for Explicitly Prohibited Use

In addition to all of the other information required for all use variance applications (set forth in Section 7.3.3. and Section 7.6.3. above) and/or all other information required for appeal applications (set forth in Section 7.4.2.), the following reports shall be required to be submitted as part of any application or appeal concerning what is otherwise an Explicitly Prohibited Use. The purpose of these reports in the context of otherwise Explicitly Prohibited Uses is to assist the Board of Appeals in its determination as to the impact of the proposed development project on the Town and/or the "essential character of the neighborhood" and/or to determine whether the proposed development project otherwise complies with the requirements of this Law:

(a) A completed draft of an Environmental Assessment Form, Part I.

(b) The approximate location of all neighboring residential, hamlet, park/recreational, and/or agricultural areas, as well as all Critical Environmental Areas (if any) within a two (2) mile radius of the perimeter of the site of the proposed use.

(c) A traffic impact report, containing the following: (i) the proposed traffic circulation plan, the projected number of motor vehicle trips to enter or leave the site, estimated for daily and peak hour traffic levels; (ii) existing and proposed daily and peak traffic hour levels and road capacity levels; (iii) a determination of the area of impact of traffic to and from the proposed development

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project; (iv) the proposed traffic routes to the nearest intersection with an arterial highway, including gross weights and heights of vehicles requirements presented by the proposed development project; (v) the projected traffic flow pattern including vehicular movements at all major intersections likely to be affected by the proposed development project; (vi) the impact of this traffic upon existing abutting public and private ways in relation to existing road capacities; (vii) a traffic impact analysis of the effects of the proposed development project on the transportation network in the Town using passenger car equivalents; (viii) articulation of the effects and impacts of the proposed development project on traffic based on existing conditions and projected future background traffic on the state, county, and Town road system; (ix) evaluation of whether the resulting traffic conditions are likely to hinder the passage of police, fire and emergency response vehicles, or degrade the quality of life, and/or otherwise contribute to hazardous traffic conditions; and (x) determination of whether there is sufficient road frontage so that any vehicle leaving the site may turn into the lane of traffic moving in the desired direction and be channeled within such lane before crossing the nearest intersection or proceeding along the road and any vehicle entering the property may turn out of the nearest lane of traffic without interfering with other traffic.

(d) An evaluation of (i) appropriate roadway geometry including required road widths, bridge widths, starting and stopping sight distances, intersection sight distances, horizontal and vertical curves along the proposed traffic routes; (ii) the adequacy of existing pavement structures along the proposed traffic routes to accommodate the full weight load of any high-impact trucks likely to be used in connection with the proposed development project; and (iii) impacts to the rural or scenic character of any roads along the proposed traffic route.

(e) A (i) description of ingress and egress through the proposed development project site through which equipment and supplies will be delivered and which will provide access during and after construction; and (ii) identification of any roads, streets, intersections, bridges, and other facilities along the proposed traffic route that do not meet New York State Department of Transportation standards. Such description and identification shall describe any anticipated improvements to existing roads, bridges, or other infrastructure, any new road or access construction, measures which will be taken to avoid damaging access/traffic routes and measures that will be taken to restore damaged routes following construction, and measures to maintain the scenic and/or rural characteristics of such roads.

(f) A noise impact report, on the following topics: (i) the existing audible conditions at the development project site to identify a baseline sound presence and preexisting ambient noise, including seasonal variation; (ii) a description and map of sound producing features of the proposed development project from any noise generating equipment and noise generating operations that will be conducted in connection with the proposed project site, including noise impacts from truck traffic travelling within the Town to and from the proposed development project; (iii) for the noise generated by construction and use of the proposed development project, the range of noise levels and the tonal and frequency characteristics expected, and the basis for the expectation; (iv) a description and map of the existing land uses and structures including any sound receptors (i.e. residences, hospitals, libraries, schools and places of worship,

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parks, areas with outdoor workers) within one (1) mile of the development project parcel boundaries. (Said description shall include the location of the structure/land use, distances from the proposed development project and expected decibel readings for each receptor); (v) the report shall specifically cover (without limitation) low frequency, A-weighted, infrasound, pure tone, and repetitive/impulse noise; and (vi) the report shall describe the development project's proposed noise-control features, including specific measures proposed to protect workers and mitigate noise impacts for sensitive receptors.

(g) A visual presentation of how the site of the proposed development project will relate to and be compatible with the adjacent and neighboring areas, within a two (2) miles radius of the perimeter of the site of the proposed development project. This presentation shall include computerized photographic simulation showing the site during construction and fully developed and demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed site from at least two locations accurately depicting the existing conditions shall be included. The study shall also indicate the color treatment of the facility's components and any visual screening incorporated into the project that is intended to lessen visual prominence.

(h) A report containing (i) a description of any Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes, and any other solid wastes, industrial wastes, hazardous wastes, toxic wastes, and pollutants expected to be produced, utilized, stored, injected, discarded, discharged, disposed, released, or maintained on the development project site; (ii) a description of controls and practices to eliminate or minimize release all such materials into the environment; and (iii) a plan for ultimate disposal of such materials whether on or off-site.

(i) A discussion of (i) the extent of the use of nonrenewable resources during the initial and continued phases of the proposed development project; (ii) the expected duration of the initial and continued phases of the proposed development project; and (iii) the extent to which the proposed development project may contribute to an irreversible commitment to the continuation of this proposed use by future generations.

(j) A discussion of characteristics of the proposed development project that may decrease the Town's and/or the neighborhood's suitability for other uses such as residential, commercial, historical, cultural, tourism, recreational, environmental or scenic uses.

(k) An assessment describing the adverse effects and impacts on Town revenue and costs necessitated by additional public facility and service costs likely to be generated by the proposed development project.

(l) A fire prevention, equipment failure, and emergency response report, containing the following: (i) description of the potential fire, equipment failures and emergency scenarios associated with the proposed development project that may require a response from fire, emergency medical services, police or other emergency responders; (ii) an analysis of the worst-case disaster associated with the proposed development project and the impact of such a disaster upon the health, safety and welfare of the inhabitants of the Town and their property; (iii) designation of

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the specific agencies that would respond to potential fires, equipment failures, accidents or other emergencies; (iv) description of all emergency response training and equipment needed to respond to a fire, accident, equipment failure or other emergency, including an assessment of the training and equipment available to local agencies; and (v) the approximate or exact location of all fire, police, and emergency response service facilities within a five (5) mile radius of the perimeter of the site of the proposed use; and a detailed fire control and pollution prevention and emergency response plan.

(m) A public facilities and services assessment, describing: (i) whether current Town public facilities and services, including water supply, fire protection, school services, recreation facilities, police protection, roads and storm-water facilities, are adequate for the proposed development project (taking into account all other uses that have been permitted or are currently operating in the Town); (ii) a comparison of the capacity of the public services and facilities to the maximum projected demand that may result from the proposed development project (in determining the effect and impact of the proposed development project on fire, police, and emergency services, the review shall take into consideration response times, and the number and location of available apparatus and fire, police and emergency service stations and specification as to whether the same are manned by full time, paid or volunteer professional service personnel; and where applicable, calculation of response time shall also include the time it takes volunteer emergency personnel to get to their stations); and (iii) a review of the impact of the proposed development project on the safety of all children going to and from school by car, bus, bicycle, and walking during and outside of school zone hours and whether safety measures such as signaled cross walks, elevated sidewalks, green space buffers for pedestrians/bikes where established walking/ biking route overlap/run along intended truck routes so as to prevent accidents.

(n) A property value analysis, prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of the development project on the value of properties adjoining the project site.

(o) A human health impact assessment that identifies ways in which the proposed development project could adversely affect the health of Town residents and a priority list of recommendations to minimize the potential health impacts of the proposed development project. The health impact assessment shall at a minimum include: (i) a risk assessment of possible impact of chemical exposure on the health of residents, including the Chemical Abstract Service number of all chemicals proposed to be used or generated at the development project site; (ii) an assessment of possible health effects due to industrial operations in non-heavy industrial zoned areas; (iii) an assessment of possible health effects due to community changes including the presence of an industrial activity in a previously non-heavy industrial area, a perceived loss of shared community ideals and cohesion, declining property values, impacts to the education system and sudden changes in population numbers, demographics and customs, and (iv) proposed remedies to address principal findings.

8.8. General Requirements Area Variances

8.8.1. Authority to Grant Area Variances

The Board of Appeals shall have the power, upon an appeal from a decision or determination of the Code Enforcement Officer or the Planning Board, to grant an area variance.

8.8.2. Required Considerations in Granting Area Variance

Area Variance shall mean the authorization by the Board of Appeals for the use of land in a manner that is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

In making its determination, the Board of Appeals shall take into consideration the benefit to the applicant if the area variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such a grant. In making such determination of the Board of Appeals shall also consider: (a) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (b) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (c) whether the requested area variance is substantial; (d) whether the proposed area variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (e) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

8.8.3. Minimum Area Variance to be Granted

The Board of Appeals, in the granting of area variances, shall grant only the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

8.8.4. Additional Required Submissions for Area Variance

In addition to the information required for all applications for set forth in Section 7.3.3. above applications for an area variance shall contain a typewritten narrative explaining what the application is for, and how the development project meets or exceeds all of the criteria for an area variance.

9.0. PLANNING BOARD

9.1. Establishment and Membership

9.1.1. Planning Board Established, Membership

There is hereby established a Planning Board pursuant to the NYS Town Law. Said Board shall consist of seven (7) members, including a chairperson appointed by the Town Board. Appointments shall be in accordance with the NYS Town Law and an appointment to a vacancy occurring prior to the expiration of a term shall be for the remainder of the unexpired term. In the absence of a Town Board appointment of a chairperson or in the absence of the Board member so appointed, the Board of Appeals may designate a member to serve as acting chairperson. The Town Board may also provide for compensation to be paid to experts, clerks and a secretary and provide for such other expenses as may be necessary and proper in connection with the operation of the Planning Board. In making such appointments, the Town Board may further require Planning Board members to complete training and continuing education courses.

9.1.2. Alternative Members

The Town Board hereby elects to supersede the NYS Town Law and to provide, pursuant to the NYS Municipal Home Rule Law, for the appointment of two (2) alternate members of the Planning Board to serve for a term of one (1) year or until a successor is appointed. Such alternate member shall attend meetings, and shall act in the capacity of a full member whenever regular members are absent, abstain, or must recuse themselves due to conflicts of interest.

9.2. Powers and Duties

The Planning Board shall have all the power and duties prescribed by law, including without limitation, NYS Town Law Sec. 271 and by this Law, which are more particularly specified as follows, provided that none of the following provisions shall be deemed to limit any power of the Planning Board that is conferred by law: (a) to issue upon application, after public notice and hearing, and in accordance with the requirements of law and this Law, special use permits; (b) to conduct upon application, after public notice and hearing, and in accordance with the requirements of law and this Law, site plan review and (where appropriate) approval when this Law requires the same; (c) to issue upon application, after public notice and hearing, and in accordance with the requirements of law, the Town of Lumberland Subdivision Regulations and this Law, subdivision approvals; and (d) to hear and decide such other matters, according to the terms of this Law or other statutes, and upon which the Planning Board may be authorized to pass under this Law or other law.

9.3. Procedures of the Planning Board

The Planning Board shall act in accordance with the procedure specified by law and by this Law.

9.3.1. Public Hearings

The Planning Board shall fix a time for any required public hearings, give public notice thereof and issue decisions in accordance with the provisions of law. The applicant shall bear the cost of advertising and required public notice for public hearings.

9.3.2. Appearances

On hearing of an application, a party may either appear in person or by a representative who need not be an attorney. If the party is to be represented by a person who is not an attorney, a notarized affidavit of appointment of a representative for the party must be presented to the Planning Board prior to the hearing. An application may be made by an applicant other than the owner of record, provided that the owner(s) shall join in any application.

9.3.3. Conduct of Proceedings

The Planning Board shall be primarily concerned with facts, and not with technicalities, and shall decide the matters before it fairly and equitably having regard to the welfare of the community as a whole and to the rights of the applicant and neighbors. The Planning Board shall make its findings and determinations based upon substantial evidence contained in the record of its proceedings.

9.3.4. Inspection

The Planning Board may defer decision on any matter for the purpose of an appropriate inspection by the Planning Board or any other agency that the Planning Board deems to be an interested agency or to hear witnesses or procure the submission of pertinent records. An appeal or application on which determination by the Board is to be deferred shall become the first order of business at the next public meeting.

9.4. Special Use Permits

9.4.1. Special Use Permits Authorized

Special uses are uses for which approval of the Planning Board is required and for which conformance to additional standards is required, in addition to all other requirements of this Law. All such uses are hereby declared to possess characteristics of such unique and special forms that each specific case or use shall be considered as an individual case that requires consideration of the merits and details of each proposed use to assure that such proposed use is in harmony with this Law and the Comprehensive Plan, and that such proposed use will not adversely affect the general character of the surrounding area if the conditions of the special use permit are met.

9.4.1. Required Findings

In granting a special use permit, the Planning Board shall require evidence of the satisfaction of each and every of the following standards by findings entered into the record of the proceedings:

(a) that the special use is specifically authorized by this Law (the decision shall set forth the exact subsection of this Law containing the jurisdictional authorization);

(b) that the special use meets all of the criteria set forth in the Section of this Law authorizing such special use; and

(c) that the granting of the special use permit will not alter the general character of the surrounding area or impair the intent or purpose of this Law of the Comprehensive Plan. In evaluating compliance with this clause (c), the Planning Board shall consider factors such as: (i) location and size of the proposed development project; (ii) the nature and intensity of the operations involved; (iii) the size of the site in relation to the size of the proposed development project; (iv) the location of the site with respect to the existing or future streets giving access to it with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe; (v) whether the location, nature and height of buildings walls, and fences will discourage the appropriate development and use of adjacent land and buildings and properties generally in the district or impair the value thereof; (vi) whether the operations in connection with the proposed development project will be more objectionable in nature to nearby properties and properties generally in the district by reason of noise, fumes, vibration, flashing lights, increased traffic or any other objectionable reasons, than would be the operations of any permitted use; (vii) the impact on existing and planned capacity of infrastructure systems, including but not limited to roads, water, sewer, energy and drainage; (viii) whether environmentally sensitive features will be protected; and (ix) whether any authorization hereunder shall create fiscal burdens upon the community at large.

If the Planning Board finds that the imposition of conditions will not be sufficient to enable the proposed development project to comply with all applicable special use permit criteria, it shall deny the special use permit application.

9.4.2. Additional Required Submissions for Special Use Permit

In addition to complying with all other applicable requirements set forth in this Law, applications for special use permits shall contain a typewritten narrative explaining what the application is for, and how the development project meets or exceeds all applicable criteria for the special use permit.

9.4.3. Imposition of Conditions

The Planning Board, in the granting of special use permits, shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the

proposed use of the property, and as are, in the opinion of the Planning Board, required to promote the intent and purposes of the Comprehensive Plan and this Law. Such conditions shall be imposed for the purpose of minimizing any adverse impact such special use permit may have on the neighborhood or community. Such conditions may include, but are not limited to, landscaping, lighting, access and egress, signs, screening, architectural features, location and layout of buildings, limitations upon the use or characteristics of the use which are reasonably related to the public health, safety and general welfare and as may be necessary to carry out the intent of this Law. If the applicant refuses to accept such requirements and conditions, the special use permit shall be denied. Failure to abide by any conditions attached to a special use permit shall constitute a violation of this Law.

9.4.4. Special Use Permit Conditioned Upon Periodic Renewal

The grant of a special use permit may be conditioned upon periodic renewal, which renewal may only be granted following public notice and hearing. Such renewal shall be withheld or granted subject to terms or conditions additional to or different from those in the original grant only upon a determination that (a) the factors which justified the original grant no longer exist or have changed sufficiently to require additional or different terms and conditions; or (b) the terms and conditions of the original special use permit have not been or are not being complied with, in whole or in part. A pending notice of violation shall be prima facie evidence of lack of conformity with such terms and conditions.

9.4.5. Maintenance and Small Extensions of Special Use

Normal maintenance of any use approved by special use permit shall not require an additional review by the Planning Board. Small extensions of an approved special use, not to exceed in the aggregate ten percent (10%) of the floor area of the originally approved special use, shall not require an additional review by the Planning Board.

9.4.6. Waiver of Application Requirements

The Planning Board may, when reasonable, waive any application requirements for the approval, approval with modifications, or disapproval of special use permits submitted for approval.

9.5. Site Plan Review

9.5.1 Site Plan Review Authorized

Site plan review and approval shall be conducted by the Planning Board in accordance with the provisions of this Law and NYS Town Law § 274a. Site plan review is intended to apply to all development that is above the thresholds described below. When determining the applicability of these thresholds, the scope and definition of the proposed development shall include all previous development on the property occurring within the past two (2) years within three hundred feet (300') of the proposed development.

9.5.2. Effect of Site Plan Review Approval

A Planning Board decision to approve a site plan review shall not excuse an applicant from obtaining and complying with all other permits and approvals that may be needed. For development projects subject to site plan review, zoning permits and building permits shall be issued only after site plan review approval. When an application is for a permit for site work only, the permit may be issued based on preliminary or preliminary conditional site plan review approval, following adequate review of at least the layout and grading components of the site plan. In a case where a conditional site plan review approval has been given, no certificate of occupancy shall be issued until final site plan review approval has been given and all provisions of such final approval have been met. Any costs for site adjustments required in the final site plan review shall be borne by the applicant.

9.5.3. Timing of Site Plan Review

Any required use variance, area variance and special use permits must be obtained before a site plan can be approved by the Planning Board.

9.5.4. Required Findings, Imposition of Conditions

The Planning Board shall not approve a site plan unless it makes a recorded finding that the site plan will satisfy the criteria set forth herein. In order to reach positive findings in support of the site plan approval, the Planning Board may require conditions and/or modifications to the proposed development project. Site Plan Review shall, consider factors reasonably related to the health, safety and general welfare of the community and, where applicable, shall include, but shall not be limited to consideration of the following items

- (a) general criteria;
- (b) criteria for plant materials and maintenance;
- (c) criteria for parking areas where applicable;
- (d) natural site design;
- (e) additional site plan review criteria. In addition to the general criteria set forth in subsections (a) through (d) that are applicable to all site plan reviews, site plan review shall consider conformity with the additional design criteria set forth in Sections 5.0 and 6.0, as well as any other additional design requirements that may be adopted by the Town Board.

9.5.5. Waiver

The Planning Board may, when reasonable, waive any requirements for the application for, approval of, approval with conditions or disapproval of site plan. Any such waiver may be exercised in the event that any such requirements are found not to be requisite in the interest of public health, safety or general welfare or inappropriate to a particular site plan

9.5.6. Site Plan Review Application Requirements

The information to be submitted for a site plan review and which, in total, constitutes a "site development plan" shall be as follows:

- (1) The title of development, date, North point;
- (2) Scale (not less than one inch equals 50 feet);
- (3) Name and address of record owner;
- (4) Name and address of the New York state licensed professional engineer, New York state licensed and registered architect, land planner or New York state licensed land surveyor preparing the site development plan;
- (5) Property lines, including metes and bounds;
- (6) The names of all owners of record of all adjacent property or within five hundred (500) feet of the perimeter boundary of the site, including owners of easements or right-of-way, together with tax parcel numbers for all such owners;
- (7) The tax identification number(s) of the site;
- (8) Existing zoning district boundaries and overlay district boundaries;
- (9) The actual shape, location, dimensions and area of the proposed development site;
- (10) Building or setback lines and other buffers;
- (11) Lines of existing streets, lots, reservations, easements and areas dedicated to public use;
- (12) A copy of any covenants or deed restrictions that are intended to cover all or any part of the tract;
- (13) The shape, size, and location of any buildings or other structures, retaining walls, walkways, driveways and fences already on the lot;
- (14) The existing and intended use of the lot and of all structures upon it, and any open spaces;
- (15) The location of existing watercourses, marshes, rock outcrops, wooded areas, single trees with a diameter of six inches or more measured three feet above the base of the trunk, and other significant existing features within twenty feet (20') of all property lines;
- (16) The location of existing water mains, culverts and drains on the property with pipe sizes, grades and direction of flow;
- (17) The estimated maximum quantity of material to be excavated and/or removed and the estimated maximum quantity that will be used for regarding or filling computed from cross sections of a proposed excavation or disturbed area;
- (18) A description of any material to be used for land filling. Where fill is to be brought onto the premises, state its source, method of transport and estimated volume;
- (19) The location, either existing or proposed, of tents, ramada structures, rigs, inflatable structures and similar structures or facilities which are erected or intended to be erected for more than thirty (30) days within any one (1) year period;
- (20) All proposed lots, easements and public and community areas;
- (21) All proposed streets with profiles indicating grading and cross sections showing width of the roadway, location and width of the sidewalk and locations and size of utility lines;
- (22) The expected storm drainage loads and the details of any drainage system proposed to be installed and maintained by the applicant, designed to provide for proper surface drainage of the land, both during the performance of the work applied for and after the completion thereof;

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- (23) If a proposed excavation is for the purpose of making a lake, pond or impoundment, the details of the proposed construction of the dam or other structure or embankment intended to impound the water or other contents thereof;
- (24) All means of vehicular, bicycle and pedestrian access and egress to and from the site onto public streets, paths, and walkways;
- (25) The location of all proposed waterlines, valves and hydrants and of all sewer lines with profiles, indicating connections with existing lines or alternative means of water supply or sewage disposal and treatment;
- (26) Landscaping;
- (27) Location, size and height of any signs;
- (28) The proposed type, design, mounting height, location, direction, power and time of proposed outdoor lighting by means of data, details and an illumination contour plan;
- (29) Proposed screening devices;
- (30) The location, dimensions, and design of any off-street parking areas or loading area;
- (31) Scaled building elevation plans at a scale of 1/4" for all exterior facades of the proposed structure(s) and/or existing facades, plus additions showing design features and indicating type and color of material to be used;
- (32) Locations of off-site material, equipment, and staging areas;
- (33) The approximate construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in surface disturbance; and
- (34) Location of any flood zones if applicable.

9.5.7. Site Plan Review Procedures

The procedure for consideration of a site plan review shall be as follows:

(a) Sketch Plan Conference. This step may occur before the application for a zoning permit if it can be reasonably assumed that site plan review would be required, in order to inform the applicant of the site plan review process and to explain the standards for approval, before substantial time and effort are invested in the preparation of plans. The Code Enforcement Officer should determine at this stage whether the proposal is a major project or a minor project.

(b) Submission of Application Materials. Application for site plan review shall be made to the Code Enforcement Officer. If the project is deemed to be a major project the application will be forwarded to the Planning Board for site plan review.

9.5.8. Public Notice

Upon receipt of a complete application for site plan review, a public notice of the proposed development, the form of which shall be approved by the Code Enforcement Officer, shall be posted at the project site for a minimum of five (5) business days. This notice must remain in place at least until a decision to approve or disapprove the Site Plan Review application is made. The notice shall specify the type and size of the development project; the time and place of the

public hearing should the development project be subject to one; and to whom and by when any public comments are to be communicated. The notice must be placed at or near the property line in the front yard so that it will be plainly visible from the street, and, in cases where a property has frontage on more than one street, an additional sign must be placed at or near the property line on any additional street frontage so that the sign will be plainly visible from the street on which it has such additional frontage.

9.5.9. Referral

The Planning Board may refer any site plan review projects under its consideration for review by and input from the Code Enforcement Officer, the Fire Department, the Department of Public Works and any other Town officials or non-Town consultants deemed appropriate by the Planning Board. These may include, but shall not be limited to, local and county officials and representatives of county, state, and federal agencies, including the Upper Delaware Council, Sullivan County Soil and Water District, the State Department of Transportation, and the State Department of Environmental Conservation. Any comments from these reviewers shall be summarized and forwarded to the Board to aid its decision on the proposal. Additional consultation where fees are involved shall require approval by the Town Board and any such fees shall be borne by the applicant.

9.5.10. Site Plan Review Procedure

Following certification by the Code Enforcement Officer that the application for site plan review is complete, the Planning Board shall schedule consideration of the application at the next scheduled meeting that occurs at least ten (10) days following such receipt. The Planning Board may establish its procedures and requirements, within the framework provided by this Law, for conducting site plan review.

9.5.11. Public Hearing

Prior to rendering any decision on a site plan review application, the Planning Board shall first hold a public hearing on the proposed development project. This may begin concurrently with any required public hearing for the purpose of environmental review of the same project and may continue after any such environmental review public hearing is closed. Public hearings are not required of minor projects, unless the project is referred to the Planning Board for site plan review. The public hearing shall be advertised in the official newspaper at least five (5) business days before the date of the meeting and the applicant and adjoining property owners shall be notified by mail at least ten (10) business days before the date of the meeting.

9.5.12. Decision on Site Plan Review

(a) *Timing.* Within sixty two (62) days of the completion of a public hearing on an application for site plan review and upon completion of the required environmental review, the Planning Board shall render one of the following decisions: (i) Unconditional Approval; (ii) Conditional Approval;

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(iii) Recommendation for revisions and resubmission; (iv) Denial.

(b) *Form of Decision.* The decision indicating the Planning Board's decision was reached shall be conveyed in the form of a written statement to the applicant. A copy of the decision shall be filed with the office of the Town Clerk within five (5) business days of the decision by the Planning Board.

(c) *Imposition of Conditions.* The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related and incidental to a proposed site plan. Upon its approval of said site plan review, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the Town.

(d) *Reason for Denial.* If the site plan review is denied, the Planning Board's statement shall state the reason(s) for such decision.

(e) *Recommendations for Revisions, Resubmission.* The Planning Board's statement may include recommendations of desirable modifications to be incorporated in a revised proposal, and conformance with specified modifications shall be considered a condition of approval. In such a case, the Planning Board may recommend to the applicant to revise and resubmit their proposal after it has been revised or redesigned. The Planning Board may grant to the developer a continuance of the review process and/or adjourn the conclusion of the public hearing. If more than one hundred eighty (180) days has elapsed since the time of the Planning Board's decision, the Planning Board shall require a resubmission of the proposal.

(f) *Payment of Fees.* Upon approval of the final proposal and payment by the applicant of all fees and reimbursable costs due to the Town, the Planning Board shall endorse its approval by signature or stamp on a copy of the final site plan and related supporting documents, and shall forward it to the Code Enforcement Officer.

(g) *Effect of Denial.* Upon denial of a site plan, the Planning Board shall so inform the Code Enforcement Officer and the Code Enforcement Officer shall not issue a zoning or building permit or certificate of occupancy to the applicant.

(h) *Submission to Other Parties.* Copies of the resolution of the decision shall be submitted to the Town Board, the Board of Appeals, and the Code Enforcement Officer, within five (5) business days of the date of decision.

(i) *Effect of No Decision.* If no decision is made within the sixty two (62) day period following the conclusion of the public hearing, the proposal shall be considered approved, as submitted, unless the applicant has consented to a further continuation of the review process.

9.5.13. Proposed Changes to Approved Site Plan

Proposed changes (whether before or after construction) to approved site plans must be submitted to the Code Enforcement Officer for review to determine whether the effect of the proposed changes warrants reconsideration of the project's approval status. The Code Enforcement Officer shall make one of the following findings: (a) the proposed changes do not affect the approval status of the site plan review; (b) the changes are significant and shall require a reopening of the site plan review; or (c) the proposed changes are likely to have such an extensive or significant effect on the project that a new site plan review application is required.

9.5.14. Final, Detailed Site Plan

After receiving approval, with or without conditions, from the Planning Board on a site plan review, the applicant shall submit a final, detailed site plan to the Code Enforcement Officer for verification before a zoning and/or building permit or certificate of occupancy will be issued. If more than one hundred eighty (180) days has elapsed since the time of the Planning Board's decision on the site plan review, the Planning Board shall require a resubmission of the site plan for review.

9.5.15. Conformance to Approved Plan

A final site plan shall conform to the approved proposal. It shall incorporate any conditions or modifications that may have been made by the Planning Board in its review. Compliance shall be clearly indicated by the applicant on the appropriate submission. The following additional information must accompany a final site plan: (a) record of application for and approvals of all necessary permits from federal, state and county officials; (b) any changes or additions in sizing and final material specification of all required improvements; and (c) An estimated project construction schedule.

9.5.16. Revocation of Approval

A site plan review approval may be revoked by the Planning Board, after a public hearing and upon written notice in person or by mail to the applicant if work has not materially commenced within twenty four (24) months of the date the approval was granted.

9.5.17. Extension of Deadlines

All deadlines for decisions on a site plan review application may be extended upon mutual agreement by the Planning Board and the applicant.

LUMBERLAND ZONING LAW

10.0 EXPLICITLY PROHIBITED USES

10.1. Findings of Fact

The Town Board has heretofore made certain findings, determinations, and declarations relative to the matters set forth in this Article 10.0, and a copy of the text of such findings, determinations, and declarations is set forth at Section C. of Appendix A attached hereto.

10.2. Purposes and Intent

The Purposes and Legislative Intent underlying the Town Board's passage of this Article 10.0 are set forth at Section D. of Appendix A attached hereto.

10.3. Authority for Adoption

The Town Board adopts this Article 9.0 pursuant to the authority described at Section E. of Appendix A attached hereto.

10.4. Explicitly Prohibited Uses

The following uses and activities are expressly and explicitly prohibited in each and every zoning district within the Town, and no building or structure shall be created, altered or erected, and no body of water, land or building thereon shall be used, for any of such uses or activities:

- (a) High-Density Industrial Cattle, Swine, or Fowl Production.
- (b) Industrial Use, except for approved Light-Impact Industrial Use;
- (c) Junkyard.
- (d) Land Application Facility.
- (e) Large Scale Water Use.
- (f) Mining, Except For approved Lesser Scope Mineral Extraction.
- (g) Natural Gas And/Or Petroleum Exploration Activities.
- (h) Natural Gas And/Or Petroleum Extraction Activities.
- (i) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility.
- (j) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump.

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(k) Natural Gas Compression Facility.

(l) Natural Gas Processing Facility.

(m) Non-Regulated Pipelines.

(n) Wind Energy Facilities, except for approved Small Wind Energy Facilities.

(o) Underground Injection.

(p) Underground Natural Gas Storage.

Any condition caused or permitted to exist in violation of this Section 10.4 is a threat to public health, safety and welfare, and is hereby declared and deemed to be a nuisance. Collectively the above expressly prohibited uses may be referred to in this Law as "Explicitly Prohibited Uses," any one of the above expressly prohibited uses may be referred to in this Law as an "Explicitly Prohibited Use," and any combination of more than one such use may also be referred to as "Explicitly Prohibited Uses."

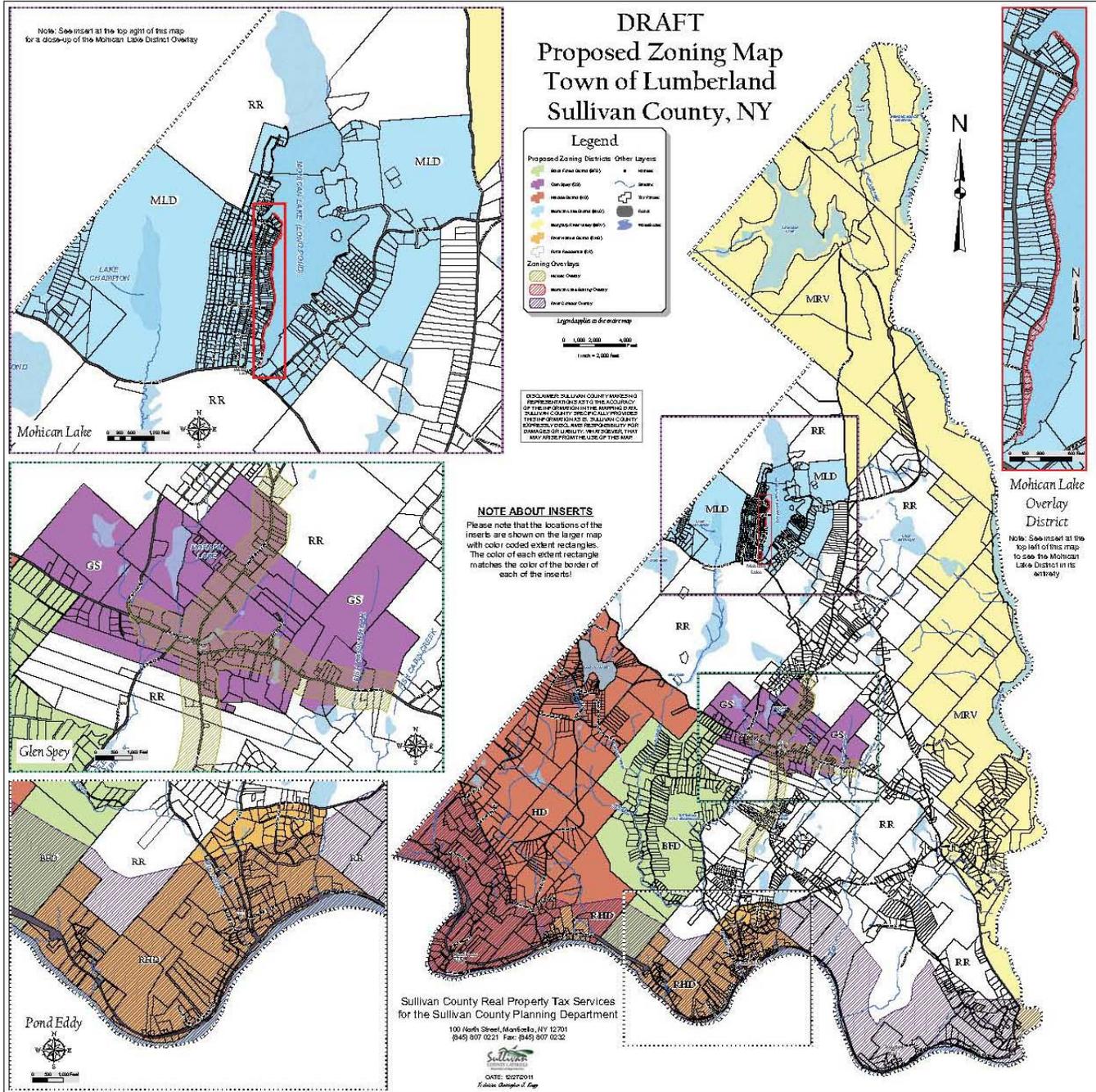
10.5. Prohibition Against Natural Gas And/Or Petroleum Extraction, Exploration or Production Wastes

The Town of Lumberland hereby exercises its authority and right under NYS ECL § 27-0711 to adopt a local law that is consistent with the Environmental Conservation Law Article 27, such consistency demonstrated by the fact that this Local Law complies "with at least the minimum applicable requirements" set forth in such statute, and the rules and regulations promulgated pursuant to said Article 27.

It shall be unlawful for any person to produce, store, inject, discard, discharge, dispose release, or maintain, or to suffer, cause or permit to be produced, stored, injected, discarded, discharged, disposed, released, or maintained , anywhere within the Town, any Natural Gas And/Or Petroleum Extraction, Exploration or Production Wastes.

LUMBERLAND ZONING LAW

11.0 ZONING MAP



12.0 SCHEDULE OF USES AND BULK REGULATIONS (USE TABLE)

These requirements are the baseline for development of a site.

District Intent

This is a general description of the characteristics of the district the zoning promotes.

Development Standards

These are the generally applicable dimensional regulations and requirements. These requirements are subject to any applicable overlay district requirement (See Article 3.0) and any other supplementary regulations (see Article 6.0) and by Article 10, which explicitly prohibits certain uses.

For calculating **setbacks**, **lot clearing** and **lot coverage**, lot sizes may be rounded down to the nearest value listed.

Use	Use Type	Area	Lot Width (feet)
The land uses allowable in the district	This describes if the use is permitted principle, special use, accessory, accessory special use.	These are the minimum lot sizes for the use listed. In the case of one or two family residential, the minimum lot size pertains to subdivision. One and two family residential is allowed on pre-existing lots smaller than the minimum as long as it meets the setback requirements and the New York State Department of Health standards .	This is the minimum lot width required.

LUMBERLAND ZONING LAW

RIVER HAMLET DISTRICT

District intent:

To complement the river management district by centralizing river related commercial activity

Development Standards

Maximum Height - 35 feet

Side Yard Setbacks - 25 feet for a 1 acre or smaller lot, 30 feet for a lot larger than 1 acre but smaller than 3 acres, and 35 feet for a 3 acre or larger lot.

Front Yard Setback - 50 feet from the edge of the Right of Way. If there is no Right of Way, then 75 feet from the center of the road.

Rear Yard Setback - 50 feet

Steep Slopes - Development is not allowed on slopes steeper than 15%.

<p>Maximum lot coverage - 75% for lots smaller than or equal to 1 acre 65% for lots that are 1.1 acres to 1.5 acres 55% for lots that are 1.6 acres to 2 acres 40% for lots that are 2.1 acres to 2.5 acres 30% for lots that are 2.6 acres to 3 acres 20% for lots larger than 3 acres.</p>	<p>Maximum lot clearing - 90% for lots smaller than or equal to 1 acre 80% for lots that are 1.1 acres to 1.5 acres 70% for lots that are 1.6 acres to 2 acres 60% for lots that are 2.1 acres to 2.5 acres 50% for lots that are 2.6 acres to 3 acres 40% for lots larger than 3 acres.</p>
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Use	Use Type	Area	Lot Width (feet)
1&2 family dwelling units	P	3 acres	150
wildlife management	P	1 acre	100
outdoor recreation	P	1 acre	100
public facilities	P	1 acre	100
public parks and recreational facilities	P	1 acre	100
recreational facilities	P	1 acre	100
forest management	P	3 acres	150
educational institutions	SU	1 acre	100
religious institutions	SU	1 acre	100
offices, business and professional	SU	3 acres	150
multi-family dwelling units	SU	3 acres	150
commercial recreation	SU	1 acre	100
retail establishment	SU	1 acre	100
service establishments	SU	1 acre	100
restaurant	SU	1 acre	100

LUMBERLAND ZONING LAW

River Hamlet District Continued

Use	Use Type	Area	Lot Width (feet)
drive through restaurant	SU	1 acre	100
drinking establishments	SU	1 acre	100
hotels	SU	3 acres	150
motels	SU	3 acres	150
public utility facility	SU	1 acre	100
motor vehicle service stations	SU	1 acre	100
auto sales	SU	1 acre	100
outdoor recreation, motorized	SU	10 acres	200
clubs	SU	1 acre	100
conservation subdivisions	SU	3 acre lot density for yield plan	
bed and breakfasts	SU	1 acre	100
stables, commercial	SU	10 acres	200
animal husbandry	SU	1 acre	100
home based businesses	SU/A	N/A	
home based occupations	A	N/A	
private garages	A	N/A	
farm stands	A	N/A	
swimming pools	A	N/A	
stables, private	A	N/A	
carports	A	N/A	
care cottages	A	N/A	
accessory apartments	A	N/A	
accessory building	A	N/A	

P= Principal permitted use;

SU=Special use;

A=Accessory use;

SU/A=Special accessory use

LUMBERLAND ZONING LAW

RURAL RESIDENTIAL DISTRICT

District intent:

To protect the rural character of the less densely developed areas of the Town. Conservation subdivisions are preferred for subdivisions of 5 lots or more.

Development Standards

Maximum Height - 35 feet

Side Yard Setbacks - 25 feet for a lot smaller than 3 acres and 35 feet for a lot 3 to 9 acres and 75 feet for a lot larger than 9 acres.

Front Yard Setback -50 feet from the edge of the Right of Way. If there is no Right of Way, then 75 feet from the center of the road.

Rear Yard Setback - 50 feet

Maximum lot coverage - 15%

Maximum lot clearing - 30%

Steep Slopes - Development is not allowed on slopes steeper than 15%.

Use	Use Type	Area	Lot Width (feet)
1&2 family dwelling units	P	5 acres	200
agriculture	P	5 acres	200
animal husbandry	P	5 acres	200
forest management	P	5 acres	200
wildlife management	P	5 acres	200
outdoor recreation	P	5 acres	200
public facilities	P	1 acre	100
public utility facility	P	5 acres	200
public parks and recreational facilities	P	1 acre	100
recreational facilities	P	5 acres	200
multi-family dwelling units	SU	5 acres for the first 2 units and 2 1/2 acres for each additional unit	200
kennels	SU	5 acres	200
commercial recreation	SU	5 acres	200
educational institutions	SU	5 acres	200

LUMBERLAND ZONING LAW

Rural Residential District Continued

Use	Use Type	Area	Lot Width (feet)
religious institutions	SU	5 acres	200
adult-oriented businesses	SU	5 acres	200
lesser scope mineral extraction	SU	10 acres	200
light industrial uses	SU	5 acres	200
hotels	SU	5 acres	200
motels	SU	5 acres	200
bed and breakfasts	SU	5 acres	200
campgrounds	SU	20 acres	200
cemeteries	SU	5 acres	200
clubs	SU	5 acres	200
stables, commercial	SU	10 acres	200
children's camps	SU	5 acres	200
conservation subdivisions	SU	5 acre lot density for yield plan	
home based occupations	SU/A	N/A	
home based businesses	A	N/A	
private garages	A	N/A	
farm stands	A	N/A	
swimming pools	A	N/A	
care cottages	A	N/A	
carports	A	N/A	
stables, private	A	N/A	
accessory building	A	N/A	

P= Principal permitted use;

SU=Special use;

A=Accessory use;

SU/A=Special accessory use

LUMBERLAND ZONING LAW

HILLSIDE DISTRICT

District intent:

To provide an area in Town for generally low density residential development and complementary uses while preserving open space and community character. Conservation Subdivisions are preferred.

Development Standards

Maximum Height - 35 feet

Side Yard Setbacks - 50 feet

Front Yard Setback - 50 feet from the edge of the Right of Way. If there is no Right of Way, then 75 feet from the center of the road.

Rear Yard Setback - 50 feet

Maximum lot coverage - 15%

Maximum lot clearing - 30%

Steep Slopes - Development is not allowed on slopes steeper than 15%.

Use	Use Type	Area	Lot Width (feet)
1&2 family dwelling units	P	5 acres	200
forest management	P	5 acres	200
wildlife management	P	5 acres	200
outdoor recreation	P	5 acres	200
public facilities	P	5 acres	200
public parks	P	5 acres	200
recreational facilities	P	5 acres	200
conservation subdivisions	SU	5 acre lot density calculation for yield plan	
educational institutions	SU	5 acres	200
religious institutions	SU	5 acres	200
commercial recreation	SU	5 acres	200
hotels	SU	5 acres	200
motels	SU	5 acres	200
public utility facility	SU	5 acres	200
clubs	SU	5 acres	200
offices, business and professional	SU	5 acres	200
bed and breakfasts	SU	5 acres	200

LUMBERLAND ZONING LAW

Hillside District Continued

Use	Use Type	Area	Lot Width (feet)
stables, commercial	SU	10 acres	200
lesser scope mineral extraction	SU	10 acres	200
agriculture	SU	5 acres	200
animal husbandry	SU	5 acres	200
home based businesses	SU/A	N/A	
home based occupations	A	N/A	
private garages	A	N/A	
farm stands	A	N/A	
swimming pools	A	N/A	
stables, private	A	N/A	
carports	A	N/A	
care cottages	A	N/A	
accessory apartments	A	N/A	
accessory building	A	N/A	

P= Principal permitted use;

SU=Special use;

A=Accessory use;

SU/A=Special accessory use

LUMBERLAND ZONING LAW

GLEN SPEY DISTRICT

District intent:

To create a town center feel. Mixed uses are allowable with a special use permit.

Development Standards

Maximum Height - 35 feet

Side Yard Setbacks - 25 feet for a lot smaller than 3 acres and 35 feet for a lot 3 to 9 acres and 75 feet for a lot larger than 9 acres.

Front Yard Setback -50 feet from the edge of the Right of Way. If there is no Right of Way, then 75 feet from the center of the road.

Rear Yard Setback - 50 feet

<p>Maximum lot coverage - 75% for lots smaller than or equal to 1 acre 65% for lots that are 1.1 acres to 1.5 acres 55% for lots that are 1.6 acres to 2 acres 40% for lots that are 2.1 acres to 2.5 acres 30% for lots that are 2.6 acres to 3 acres 20% for lots larger than 3 acres.</p>	<p>Maximum lot clearing - 90% for lots smaller than or equal to 1 acre 80% for lots that are 1.1 acres to 1.5 acres 70% for lots that are 1.6 acres to 2 acres 60% for lots that are 2.1 acres to 2.5 acres 50% for lots that are 2.6 acres to 3 acres 40% for lots larger than 3 acres.</p>
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Use	Use Type	Area	Lot Width (feet)
1&2 family dwelling units	P	3 acres	150
forest management	P	50 acres	200
wildlife management	P	10 acres	200
offices, business and professional	P	1 acre	100
outdoor recreation	P	10 acres	200
public facilities	P	1 acre	100
public utility facility	P	1 acre	100
public parks and recreational facilities	P	1 acre	100
recreational facilities	P	1 acre	100
educational institutions	SU	10 acres	200
religious institutions	SU	1 acre	100
multi-family dwelling units	SU	3 acres for the first 2 units and 1/2 acre more for each additional unit	
conservation subdivision	SU	3 acre lot density calculation for the yield plan.	

LUMBERLAND ZONING LAW

Glen Spey District Continued

Use	Use Type	Area	Lot Width (feet)
manufactured home parks	SU	20 acre minimum site with a maximum density of 1 unit per 1.5	
commercial recreation	SU	1 acre	100
service establishments	SU	1 acre	100
retail establishment	SU	1 acre	100
restaurant	SU	1 acre	100
drinking establishments	SU	1 acre	100
hotels	SU	3 acres	150
motels	SU	3 acres	150
motor vehicle service stations	SU	1 acre	100
clubs	SU	1 acre	100
bed and breakfasts	SU	1 acre	100
stables, commercial	SU	10 acres	200
funeral homes	SU	1 acre	100
child daycare facilities	SU	1 acre	100
agriculture	SU	10 acres	200
animal husbandry	SU	10 acres	200
home based businesses	SU/A	N/A	
home based occupations	A	N/A	
private garages	A	N/A	
farm stands	A	N/A	
swimming pools	A	N/A	
care cottages	A	N/A	
carports	A	N/A	
stables, private	A	N/A	
accessory building	A	N/A	

P= Principal permitted use;

SU=Special use;

A=Accessory use;

SU/A=Special accessory use

LUMBERLAND ZONING LAW

MOHICAN LAKE DISTRICT

District intent:

to accommodate the existing dense settlement while allowing compatible growth.

Development Standards

Maximum Height - 35 feet

Side Yard Setbacks - 35 feet

Front Yard Setback -50 feet from the edge of the Right of Way. If there is no Right of Way, then 75 feet from the center of the road.

Rear Yard Setback - 50 feet

Maximum lot coverage - 20%

Maximum lot clearing - 50%

Steep Slopes - Development is not allowed on slopes steeper than 15%.

Use	Use Type	Area	Lot Width (feet)
1&2 family dwelling units	P	2 acres	150
forest management	P	2 acres	150
wildlife management	P	2 acres	150
outdoor recreation	P	2 acres	150
public facilities	P	2 acres	150
public utility facility	P	2 acres	150
public parks and recreational facilities	P	2 acres	150
recreational facilities	P	2 acres	150
restaurant	SU	2 acres	150
drinking establishments	SU	2 acres	150
religious institutions	SU	2 acres	150
bed and breakfasts	SU	2 acres	150
clubs	SU	2 acres	150
children's camps	SU	2 acres	150
conservation subdivisions	SU	2 acres	150
commercial recreation	SU	2 acres	150
offices, business and professional	SU	2 acres	150

LUMBERLAND ZONING LAW

Mohican Lake District Continued

Use	Use Type	Area	Lot Width (feet)
home based businesses	SU/A	N/A	
home based occupations	A	N/A	
private garages	A	N/A	
swimming pools	A	N/A	
stables, private	A	N/A	
farm stands	A	N/A	
carports	A	N/A	
accessory building	A	N/A	

P= Principal permitted use;

SU=Special use;

A=Accessory use;

SU/A=Special accessory use

LUMBERLAND ZONING LAW

MONGAUP RIVER VALLEY DISTRICT

District intent:

To maintain the pristine quality of this area. Conservation subdivisions are preferred for subdivisions of 5 lots or more.

Development Standards

Maximum Height - 35 feet

Side Yard Setbacks - 25 feet for a lot smaller than 3 acres and 35 feet for a lot 3 to 9 acres and 75 feet for a lot larger than 9 acres.

Front Yard Setback -50 feet from the edge of the Right of Way. If there is no Right of Way, then 75 feet from the center of the road.

Rear Yard Setback - 50 feet

Steep Slopes - Development is not allowed on slopes steeper than 15%.

Maximum lot coverage -

- 75% for lots smaller than or equal to **1 acre**
- 65% for lots that are **1.1 acres** to **1.5 acres**
- 55% for lots that are **1.6 acres** to **2 acres**
- 40% for lots that are **2.1** acres to **2.5** acres
- 30% for lots that are **2.6** acres to **3** acres
- 20% for lots larger than **3** acres.

Maximum lot clearing -

- 90% for lots smaller than or equal to **1 acre**
- 80% for lots that are **1.1 acres** to **1.5 acres**
- 70% for lots that are **1.6 acres** to **2 acres**
- 60% for lots that are **2.1** acres to **2.5** acres
- 50% for lots that are **2.6** acres to **3** acres
- 40% for lots larger than **3** acres.

LUMBERLAND ZONING LAW

Mongaup River Valley District Continued

Use	Use Type	Area	Lot Width (feet)
1&2 family dwelling units	P	5 acres	200
forest management	P	5 acres	200
wildlife management	P	5 acres	200
outdoor recreation	P	5 acres	200
public facilities	P	1 acre	100
public utility facility	P	1 acre	100
public parks and recreational facilities	P	1 acre	100
recreational facilities	P	1 acre	100
lesser scope mineral extraction	SU	10 acres	200
clubs	SU	10 acres	200
children's camps	SU	5 acres	200
stables, commercial	SU	10 acres	200
conservation subdivisions	SU	5 acre lot density calculation for yield plan	
bed and breakfasts	SU	5 acres	200
home based businesses	SU/A	N/A	
home based occupations	A	N/A	
private garages	A	N/A	
stables, private	A	N/A	
farm stands	A	N/A	
swimming pools	A	N/A	
care cottages	A	N/A	
carports	A	N/A	
accessory building	A	N/A	

P= Principal permitted use;

SU=Special use;

A=Accessory use;

SU/A=Special accessory use

LUMBERLAND ZONING LAW

BLACK FOREST DISTRICT

District intent:

To accommodate the community's established regulations and deed restrictions. Nothing herein shall in any way be construed to impose any additional obligation on the Town to enforce the provisions of the community's established regulations and deed restrictions. To the extent that any purported proscribed conduct is alleged to be a distinct violation of this Chapter, however, the Town may enforce the provisions of this Chapter according to Section 7 of this Chapter, supra.

Development Standards

Maximum Height - 35 feet

Side Yard Setbacks - 25 feet for a lot smaller than 3 acres and 35 feet for a lot 3 to 9 acres and 75 feet for a lot larger than 9 acres.

Front Yard Setback -50 feet from the edge of the Right of Way. If there is no Right of Way, then 75 feet from the center of the road.

Rear Yard Setback - 50 feet

Steep Slopes - Development is not allowed on slopes steeper than 15%.

Maximum lot coverage -	Maximum lot clearing -
75% for lots smaller than or equal to 1 acre	90% for lots smaller than or equal to 1 acre
65% for lots that are 1.1 acres to 1.5 acres	80% for lots that are 1.1 acres to 1.5 acres
55% for lots that are 1.6 acres to 2 acres	70% for lots that are 1.6 acres to 2 acres
40% for lots that are 2.1 acres to 2.5 acres	60% for lots that are 2.1 acres to 2.5 acres
30% for lots that are 2.6 acres to 3 acres	50% for lots that are 2.6 acres to 3 acres
20% for lots larger than 3 acres .	40% for lots larger than 3 acres .

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Black Forest District Continued

Use	Use Type	Area	Lot Width (feet)
1&2 family dwelling units	P	5 acres	200
public facilities	SU	2 acres	150
lesser scope mineral extraction	SU	10 acres	200
private garages	A	N/A	
care cottages	A	N/A	
carports	A	N/A	
accessory building	A	N/A	

P= Principal permitted use;

SU=Special use;

A=Accessory use;

SU/A=Special accessory use

LUMBERLAND ZONING LAW

13.0 FEE SCHEDULE

The fee schedule will be made available in the same locations as the Zoning Law.

14.0 INVASIVE AND NATIVE PLANT LISTS

14.1 Invasive Plants

The Town of Lumberland prohibits the planting of invasive plants, and will not approve a site plan that includes invasive plants in the landscape plan. Invasive plants diminish the abundance of native plants by competing with them. They can block navigation and lead to flooding, interfere with crop production and can be harmful to humans and wildlife. They can tolerate a wide variety of conditions, have a fast growth rate, are easily dispersed by animals and humans, have profuse and persistent seed and produce chemicals that suppress the growth of other plants.

The following is a partial list (common names) of **Invasive Plants** that will not be approved on a site plan, and if possible eradicated when found in the wild:

Autumn Olive – (*Elaeagnus Umbellata*)
Bishops Weed, Goutweed – (*Aegopodium Podagraria*)
Black Swallow-Wort – (*Cynanchum Louiseae*)
Buckthorn – (*Rhamus Cathartica*)
Burning Bush – (*Euonymus Alata*)
Bush Honeysuckles – (*Lonicera Spp.*)
Butterfly Bush – (*Buddleia Davidii*)
Chinese Wisteria – (*Wisteria Sinensis*)
Common Broom – (*Cytisus Scoparius*)
Common Reed – (*Phragmites Australis*)
Common Yarrow – (*Achillea Millefolium L.*)
Crown-Vetch – (*Coronilla Varia L.*)
Dame’s Rocket – (*Hesperis Matronalis*)
English Ivy – (*Hedera Helix*)
Eurasian Watermilfoil – (*Myrophyllum Spicatum*)
Garlic Mustard – (*Alliaria Petiolata*)
Giant Hogweed/Cow Parsnip – (*Heracleum Mantegazziamum*)
Japanese Barberry – (*Berberis Thunbergii*)
Japanese Honeysuckle – (*Lonicera Japonica*)
Japanese Knotweed – (*Fallopia Japonica*)
Japanese Spirea – (*Spiraea Japonica L. f.*)
Japanese Stiltgrass – (*Microstegium Vimineum*)
Japanese Wisteria – (*Wisteria Floribunda*)
Mile a Minute Weed – (*Polygonum Perfoliatum*)
Multiflora Rose – (*Rosa Multiflora*)
Norway Maple – (*Acer Platanoides L.*)
Orange Daylily – (*Hemerocallis Fulva L.*)
Oriental Bittersweet – (*Celastrus Orbiculatus*)
Purple Loosetrife – (*Lythrum Salicaria*)
Queen Anne’s Lace – (*Daucus Carota*)

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Russian Olive – (*Elaeagnus Angustifolia* L.)

Water Chestnut – (*Trapa Natans*)

Yellow Flag Iris – (*Iris Pseudacorus* L.)

14.2 Native Plants

To the extent possible, the Town would like to encourage the use of native plants in the landscaping . To facilitate this, the following is a list of recommended native plants:

Andrew's Bottle Garden (Gentiana Andrewsii)
Big leaf Aster – (*Aster Macrophyllus*)
Black Cohosh – (*Cimicifuga Racemosa*)
Black-Eyed Susan – (*Rudbeckia Hirta*)
Blue Cohosh – (*Caulophyllum Thalictroides*)
Blue-Eyed Grass (Sisyrinchium Angustifolium)
Blue Flag Iris – (*Iris Versicolor*)
Blue Vervain – (*Verbena Hastata*)
Blue Wood Aster – (*Aster Cordifolius*)
Bluestar – (*Amsonia Tabernaemontana*)
Boneset – (*Eupatorium Perfoliatum*)
Bunchberry – (*Cornus Canadensis*)
Canadian Burnet – (*Sanguisorba Canadensis*)
Cardinal Flower – (*Lobelia Cardinalis*)
Cranesbill or Wild Geranium – (*Geranium Maculatum*)
Culver's Root – (*Veronicastrum Virginicum*)
Dog's Tooth Daisy – (*Helenium Autumnale*)
Fire Pink – (*Silene Virginica*)
Fireweed – (*Epilobium Angustifolium*)
Foam Flower – (*Tiarella Cordifolia*)
Foxglove Beardtongue – (*Pensemon Digitalis*)
Goldenseal Canadensis – (*Hydrastis*)
Golden Alexanders – (*Zizia Aurea*)
Great Blue Lobelia – (*Lobelia Siphilitica*)
Green-Eyed Coneflower (Rudbeckia Lacinata)
Harebell – (*Campanula Rotundifolia*)
Jack-in-the-Pulpit – (*Arisaema Triphyllum*)
Marsh Marigold (Caltha Palustris)
Mayapple – (*Podophyllum Peltatum*)
Meadow Rue – (*Thalictrum Diocum*)
Monkey Flower (Mimulus Ringens)
Mountain Mint – (*Pycnanthemum Muticum*)
Narrow-leaf Cattail – (*Typha Latifolia*)
New England Aster – (*Aster Novae-Angliae*)
New York Aster – (*Aster Novi-Belgii*)

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New York Ironweed – (*Vernonia noveboracensis*)
Nodding Lady's Tresses – (*Spiranthes cernua*)
Obedient Plant – (*Physostegia virginiana*)
Orange Butterflyweed – (*Asclepias tuberosa*)
Ox-eye Sunflower – (*Heliopsis helianthoides*)
Partridgeberry – (*Mitchella repens*)
Purple Angelica – (*Angelica atropurpurea*)
Purple Butterflyweed – (*Asclepias incarnata*)
Purple Joe-Pye - mixed varieties – (*Eupatorium maculatum*, *fistulosum*, *purpureum*)
Purple-Stemmed Aster – (*Aster puniceus*)
Purple Trillium – (*Trillium erectum*)
Rue Anemone – (*Anemonella thalictroides*)
Showy Goldenrod – (*Solidago speciosa*)
Solomon's Seal – (*Polygonatum biflorum*)
Spikenard – (*Aralia racemosa*)
Spring Beauty – (*Claytonia caroliniana*)
Star-Flowered False Solomon Seal – (*Smilacina stellata*)
Stiff Aster – (*Aster linarifolius*)
Sundial Lupine – (*Lupinus perennis*)
Three-Tooth Cinquefoil – (*Potentilla tridentata*)
Turtlehead – (*Chelone glabra*)
Twinflower – (*Linnaea borealis*)
White Trillium – (*Trillium grandiflorum*)
White Wood Aster – (*Aster divaricatus*)
Wild Bee Balm – (*Monarda fistulosa*)
Wild Bleeding Heart – (*Dicentra eximia*)
Wild Columbine – (*Aquilegia canadensis*)
Wild Ginger – (*Asarum canadense*)
Wild Pink – (*Silene caroliniana*)
Wild Senna – (*Senna hebecarpa*)
Wild Stonecrop – (*Sedum ternatum*)
Wild Strawberry – (*Fragaria virginiana*)
Wintergreen – (*Gaultheria procumbens*)
Wood Anemone – (*Anemone canadensis*)
Woodland Sunflower – (*Helianthus divaricatus*)
Wreath Goldenrod – (*Solidago caesia*)

APPENDIX A

ATTACHED TO AND FORMING A PART OF
TOWN OF LUMBERLAND (NY) LOCAL LAW NO. ____ of the YEAR 2011,
being:

**A local law to amend and supplement Local Law No. 1 of 2009,
(as heretofore amended),**

by:

A local law to supersede and replace: (i) the Town of Lumberland Zoning Law dated August 19, 1998 (Local Law No. 4 of 1998), (ii) the Town of Lumberland Campground Law (Local Law No. 2 of 2002), (iii) the Town of Lumberland Manufactured Home Law dated July 22, 1998 (Local Law No. 2 of 1998), and (iv) the Town of Lumberland Planning Board Alternate Member Voting [Law] dated August 8, 2007 (Local Law No. 2 of 2007), as any of the foregoing may have heretofore been amended or supplemented,

Lumberland Local Law No. ____ of 2011, the Local Law to which this **Appendix A** is attached, is herein sometimes referred to as "the Local Law," "this Local Law," or "this Law."

This **Appendix A** is a part of the Local Law to which it is attached for all purposes.

Section A. Findings of Fact Regarding Section 6.1. T

The Town Board is familiar with the issues raised by adult-oriented businesses throughout the country. Based on evidence and studies concerning the impacts or secondary effects of adult-oriented businesses on the surrounding community, as presented in judicial decisions such as, but not limited to, *City of Erie v. Pap's A.M. d/b/a "Kandyland,"* 529 U.S. 277 (2000); *Barnes v. Glen Theater, Inc.,* 501 U.S. 560 (1991); *City of Renton v. Playtime Theaters, Inc.,* 475 U.S. 41 (1986); *Young v. American Mini Theaters, Inc.,* 427 U.S. 50 (1976); *Stringfellow's of New York, Ltd. v. City of New York,* 671 N.Y.S.2d 406 (1998); *City of New York v. Stringfellow's of New York,* 725 N.Y. 2d 617 (2001); *Town of Islip v. Caviglia,* 73 N.Y. 2d 544 (1989); and *Grunberg v. Town of East Hartford,* 736 F. Supp. 430 (D. Conn. 1989), *aff'd.* 901 F.2d 297 (2d Cir. 1990) (affirming judgment on basis of District Court opinion), and on studies conducted by other communities, including without limitation New York City, New York (1994); Seattle, Washington (1993); Seattle, Washington (1989); Village of Scotia, New York (1999); Town and Village of Ellicottville, New York (1998); Town of Islip, New York (1980); and Indianapolis, Indiana (1984), and from publications such as "Report to the American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses," produced by Peter Hecht, Ph.D. of the Environmental Research Group, and "Adult Uses and the First Amendment: Zoning and Non-Zoning Controls on the Use of Land for Adult Businesses," by Steve McMillen of Pace University Law School, and also on the findings from the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (1989, State of Minnesota), the Town Board finds that:

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1. Adult---oriented businesses are unavoidably associated with unlawful, unhealthy and detrimental activities ancillary to the constitutionally protected speech activities of such businesses.
2. Employees of adult---oriented businesses engage in or may be requested to engage in sexual behavior as a result of the type of business by which they are employed.
3. People present in the vicinity of an adult---oriented business are often assumed by third parties to be engaged in, or amenable to, the types of unlawful, unhealthy and detrimental activities ancillary to such businesses. As a result, such persons are subjected to unwanted advances or attention by persons frequenting such adult---oriented business.
4. People who choose not to frequent adult---oriented businesses tend to avoid areas in which such businesses locate. As a result, areas in which adult---oriented businesses locate often become "dead zones," i.e., areas in which owners of non---adult---oriented businesses tend to choose not to locate in the first instance, or choose to migrate away from, because of diminished pedestrian traffic due to the presence of adult---oriented businesses.
5. Because non---adult---oriented businesses tend not to locate near, or migrate away from, adult --- oriented businesses, the presence of one such business tends to attract other adult---oriented businesses into the dead zone, thereby increasing the pace and intensity of the unlawful, unhealthy and detrimental activities unavoidably associated with such businesses and contributing to the blighting of the area surrounding such businesses. The smaller the municipality, the larger the effects of a dead zone because the zone encompasses a larger percentage of the community's businesses than a similar zone would in a larger municipality.
6. Sexual acts, occur at adult---oriented businesses, especially those which provide enclosed rooms, booths or other cubicles for viewing of films, videos or live sex shows, thereby creating unhealthy and unsanitary conditions within the premises of such businesses.
7. The constitutionally protected speech activities presented at adult---oriented businesses often encourage sexual activities, thereby creating unhealthy and unsanitary conditions.
8. Some patrons frequent adult---oriented businesses for the purpose of engaging in specified sexual activities within the premises of such businesses, thereby creating unhealthy and unsanitary conditions within the premises of such businesses.
9. Communicable diseases may be spread by specified sexual activities, including but not limited to transmission of the human immunodeficiency virus (HIV) and the contraction of the acquired immunodeficiency syndrome (AIDS), Hepatitis B and venereal diseases. Venereal diseases, HIV, AIDS and Hepatitis B, as well as other communicable diseases spread by specified sexual activities, are serious health concerns to local communities.
10. Sanitary conditions in some adult---oriented businesses are unhealthy, in part, because the activities

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Conducted there are unhealthy, and, in part, Because of the unregulated nature of the activities engaged in by some patrons of such businesses and the failure of some business owners and operators to self--regulate those activities and maintain the business premises.

11. Numerous studies and reports have determined that various bodily fluids are found in certain areas of adult--oriented businesses, particularly where persons view, in enclosed rooms, booths or other cubicles, adult materials or entertainments characterized by an emphasis on nudity or specified sexual activities or specified anatomical areas.

12. Prohibiting the viewing, in enclosed rooms, booths or other cubicles, of adult materials or entertainments characterized by an emphasis on nudity or specified sexual activities or specified anatomical areas is the least restrictive means available of effectuating the legitimate and content --neutral legislative goal of preventing adult--oriented businesses from being operated and used in a unhealthy, unsafe and unsanitary manner facilitating the transmission of communicable diseases or otherwise degrading the public welfare, health, comfort and safety. Further, such a prohibition imposes a relatively minor imposition on the operating prerogatives of the owners of adult --oriented businesses compared to other means such as: mandating adult--oriented businesses inspect such cubicles and directing the frequency and form of such inspections, requiring adult--oriented businesses to hire employees whose duties are dedicated to monitoring such cubicles, and conducting increased numbers of police and public health and safety inspections of such businesses.

13. Adult--oriented businesses have operational characteristics which should be reasonably regulated in order to protect the substantial governmental concerns raised by the various findings herein while permitting patrons and owners of such businesses to engage in constitutionally protected speech activities.

14. The presence of adult--oriented businesses is associated with declining property values.

15. The presence of adult--oriented businesses is associated with increased crime rates against both property and persons.

16. Children and teenagers are more likely to be exposed to graphic sexual images because of the presence of adult--oriented businesses.

Section B. Purposes and Intent Regarding Section 6.1.

The Purposes and Legislative Intent underlying the Town Board's passage of Section 6.1 of this Local Law are as follows: (a) to control the documented adverse secondary effects that are ancillary to adult--oriented businesses, including attraction of transients; parking and traffic problems; increased crimes against persons and property; loss of business for surrounding non--adult--oriented businesses; (b) to maintain property values; (c) to prevent crime; (d) to safeguard the commercial viability of currently existing non--adult--oriented businesses; (e) to restrict minors' inadvertent exposure to graphic sexual images; (f) to preserve and protect public hygiene, health

and sanitation; and (g) to maintain the general welfare, health, comfort and safety of Town residents, visitors, and businesses. The Town's intent in regulating adult-oriented businesses is not to restrict constitutionally protected speech activities but rather to provide constitutionally sufficient alternate avenues for persons to engage in such activities in a manner consistent with the constitutions of the United States and New York State while addressing the unlawful, unhealthy and detrimental activities typically ancillary to such speech and ameliorating these secondary effects on the peace, good order, commercial viability and safety of Town residents and non-adult-oriented businesses.

Section C. Findings of Fact Regarding Article 10.0.

The Town Board determines and finds that:

1. Lumberland is part of the scenic Upper Delaware River region. Lumberland takes great pride in and assigns great value to its rural residential character, and historic and scenic and other natural resources. The hydrological features in Lumberland are abundant and interconnected. They include rivers, streams, aquifers, lakes, reservoirs, and wetlands. The purity of the drinking water that flows from the wells through the faucets all over the Town is dependent on the purity of these water bodies, and the ability to adequately recharge the groundwater.
2. Maintaining the quality of water resources within the Town is critical to protecting the natural environment of the Town, the general health and welfare of Town residents, and the local economy.
3. Preservation of the Town's irreplaceable historic and recreation sites, high-quality scenic and other natural assets, air quality and water quality, and priceless and unique character, is of significant value to the inhabitants of the Town and to the tourists who visit here.
4. The Town's rich natural and visual environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the recreation, scenic and other natural resources of the Town is important for both a healthy environment and vibrant economy. Aesthetic issues are real and evoke strong reactions from people. They deeply affect the way people feel about a place.
5. Allowing the activities prohibited by Sections 10.4 and 10.5 of the Local Law would impair the existing character of the Town, because by their very nature such activities have the potential to produce a combination of negative impacts upon the environment and people living in or in proximity to the communities in which they are located. Such negative impacts may include, without limitation, traffic, noise, vibrations, fumes, damage to roadways, degradation of water quality, degradation of air quality, decreased availability of affordable housing, damage to and loss of agricultural lands and soils, damage to and loss of open space, natural areas, and scenic views, decreased recreational opportunities, and damage to the tourism industry.
6. If one or more of the activities prohibited by Sections 10.4 and 10.5 of the Local Law are conducted within

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the Town, traffic generated thereby could be hazardous or inconvenient to the inhabitants of the Town and could be dangerous to pedestrians (especially children), cyclists, and motorists, and could result in traffic congestion that could delay emergency response times for medical emergencies, fires and accidents. Roads are a critical public resource and constitute a major investment of the public's money. The Town is not in a position to bear the high costs associated with the road use impacts that accompany many of the activities prohibited by Sections 10.4 and 10.5 of the Local Law. Accidents involving heavy trucks have greater potential for death than those involving smaller vehicles. Increased truck traffic increases air pollution and noise levels, and decreases the quality of life and property values for those living nearby.

7. Allowing one or more of the activities prohibited by Sections 10.4 and 10.5 of the Local Law to be conducted within the Town could negatively impact the recreational and tourism industries within the Town, and could impair the Town's ability to attract additional recreation---based and tourism---related businesses.

8. If one or more of the activities prohibited by Sections 10.4 and 10.5 of the Local Law Are conducted within the Town, the air pollution, dust and odors generated thereby (whether on-site or by truck traffic to and from the proposed site of such activities) could be hazardous or inconvenient to the inhabitants of the Town. Air pollution is a known hazard to the public health.

9. Allowing one or more of the activities prohibited by Sections 10.4 and 10.5 of the Local Law to be conducted within the Town could negatively impact the quality of water resources within the Town. Water pollution is hazardous to the public health. If a domestic water source is contaminated, remediation is time and cost intensive, and may not restore the water resource to a quality acceptable for domestic use.

10. If one or more of the activities prohibited by Sections 10.4 and 10.5 of the Local Law are conducted within the Town, noise, vibrations, and light pollution typically caused by such activities could be hazardous or inconvenient to the inhabitants of the Town. Noise, traffic congestion, nighttime lighting, and vibrations can have negative effects on human health and wildlife.

11. The creation, generation, keeping, storage or disposal of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as that term is defined at Section 2.2 of the Local Law) within the Town could have a negative impact on the public health, safety and welfare of the inhabitants of the Town.

12. The high costs associated with the disposal of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as that term is defined at Section 2.2 of the Local Law) have in other localities resulted, and could in our Town result, in persons seeking to avoid such costs by depositing such material along roadways, in vacant lots, on business sites, in the private dumpsters of others, or in other unauthorized places. Such activities could pose a hazard to the public health, safety, and welfare of the inhabitants of the Town.

13. The explicit proscription of the activities prohibited By Sections 10.4 and 10.5 of the Local Law

is a legitimate goal of land use laws. There is no question that exclusion of specified industrial uses is a legitimate goal of such laws:

As the United States Supreme Court stated in *Town of Belle Terre v. Borass*, 416 U.S. 1 (1974):

the concept of public welfare is broad and inclusive.... The values that it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the [local] legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well--balanced as well as carefully patrolled. 416 U.S. at 6.

And see also *Matter of Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y. 2d 668 1996), where the Court of Appeals, New York State's highest court, evaluated a claim that a town's prohibition of mining throughout the town was in effect unconstitutional 'exclusionary zoning,' and held As follows:

*We have never held, however, that the ... ['exclusionary zoning'] test, which is intended prevent a municipality from improperly using the zoning power to keep people out, also applies to prevent the exclusion of industrial uses. **A municipality is not obliged to permit the exploitation of any and all natural resources within the town as a permitted use if limiting that use is a reasonable exercise of its police power to prevent damage To the rights of others and to promote the interests of the community as a whole.** 87 N.Y. 2d at 683, 684. (emphasis added.)*

Section D. Purposes and Intent Regarding Article 10.0.

1. Purposes. Article 10.0 of this Local Law is enacted so as to take proactive steps to protect and preserve the quality of the Town's air and water and scenic, recreational, and historic resources, and other assets, and To protect and promote the health, safety, and welfare of the Town and its present and future residents. Without limiting the generality of the foregoing, this Local Law is intended and is declared by the Town Board to:

(a) promote the purposes of planning and land use regulation by, among other things, preserving the roads, and fire, police, and other emergency response services in the Town;

(b) promote the health, safety and welfare of the Town, its present and future inhabitants, by protecting them from the adverse public nuisance and/or land use impacts and effects that could result if the activities prohibited by Sections 10.4 and 10.5 of this Local Law were allowed to be conducted within the Town;

(c) protect the Town's priceless and unique character, the preservation of which is of significant value to the inhabitants of the Town and the tourists who visit here, by protecting it from the adverse public nuisance and/or land use impacts and effects that could result if The activities prohibited by Sections 10.4 and 10.5 of this Local Law were allowed to be conducted within the Town; and

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(d) protect the Town's irreplaceable historic, water quality, air quality, scenic and other natural resources, by protecting them from the adverse public nuisance and/or land use impacts and effects that could result if the activities prohibited by Sections 10.4 and 10.5 of this Local Law were allowed to be conducted within the Town.

2. Declaration of Intent.

(a) Exercise of Police Power. Article 10.0 of this Local Law is a police power, public nuisance and land use law, designed to establish and provide for general land use regulation, environmental protection, public safety, prevention of increased traffic congestion, protection of rural and agricultural resources, preservation of the character of the Town, protection of air quality, protection of water resources quality, prevention of noise and disturbance, protection against diminished property values, and protection of the public from nuisance and/or land use effects and impacts, resulting from the activities prohibited by Sections 10.4 and 10.5 of this Local Law.

(b) Prohibition Against Specified Solid Wastes. Article 10.0 of this Local Law also intends to regulate, in a manner consistent with law, including without limitation, NY ECL §27---0711, and conducive to the health and welfare of the citizens of the Town, the dumping, discharging, injection and disposal of materials herein defined as Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as That term is defined at Section 2.2 of the Local Law) on lands and in bodies of water within the Town.

(c) Protection of Private Drinking Water Supplies. Article 10.0 of this Local Law is intended to protect drinking water supplies and is intended to supplement and enhance and is not intended to impinge upon the Safe Drinking Water Act and the Underground Injection Control programs administered by the Environmental Protection Agency.

(d) Matters of Local Concern. Article 10.0 of this Local Law is intended to and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town Board to address matters of statewide concern.

(e) Negative Externalities. Article 10.0 of this Local Law is intended and is hereby declared to impose conditions and restrictions on the use of property that are directly related to and incidental to the use of that property, and such conditions and restrictions are Aimed at minimizing or precluding the adverse impact on the Town that could result from an inappropriate use of the property that could otherwise adversely affect the comfort, peace, enjoyment, health and safety of the surrounding land.

(f) Land Use Control. Article 10.0 of this Local Law is intended to act as and is hereby declared to exercise the permissive "incidental control" of a police power law that is concerned with the broad area of land use planning and the physical use of land and property within the Town, including the physical externalities associated with certain land uses, such as negative impacts on roadways and traffic congestion and other deleterious impacts on a community. This Law Is not intended to

regulate the operational processes of any business. This Local Law is a law of general applicability and is intended to promote the interests of the community as a whole.

Section E. Authority Regarding Article 10.0.

Article 10.0 of this Local Law is intended to be consistent with And is adopted pursuant to the authority granted to the Town Board of the Town of Lumberland under the New York State Constitution, and the Laws of the State of New York, including but not limited to the following authorities: New York State Constitution Article IX, Section 2(c)(ii)(6), (10); Municipal Home Rule Law §10(1)(i); Municipal Home Rule Law §10(1)(ii)(a)(6), (11), (12), and (14); Municipal Home Rule Law §10(1)(ii)(d)(3); Municipal Home Rule Law §10(2); Municipal Home Rule Law §10(3); Municipal Home Rule Law §10(4)(a), And (b); Statute Of Local Governments §10(1), (6), and (7); Town Law §64 (17---a), (20---b), And (23); Town Law § 130(5), (6), (7), (8), (11), (14), (15), and (23); Town Law §135; Town Law Article 16 (Zoning & Planning) inclusive; Environmental Conservation Law §17---1101, §27---0711; and New York State Law, Public Health Law § 228 (2), and (3).

END