

**ZONING BY-LAWS**  
**TOWN OF WINDSOR, MASSACHUSETTS**  
**APRIL 1965**  
**REVISED NOVEMBER 26, 1973**  
**REVISED MAY 31, 1978**  
**REVISED MAY 4, 1987**  
**REVISED APRIL 22, 1991 (SEC 1-18 TOTALLY REVISED)**  
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A True Copy Attest:

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Madeline W. Scully  
Assistant Town Clerk

### **SECTION 1 PURPOSES**

The purposes of this Zoning By-Law are to promote the health, safety, convenience and general welfare of the inhabitants of the Town of Windsor; to protect and conserve the value of property within the town; to preserve and increase the beauty and amenities of the Town; to conserve, insofar as possible, natural conditions, and to secure safety from fire, congestion or confusion, by encouraging the most appropriate uses of land within the Town, in accord with provisions of Chapter 40A of the General Laws of the Commonwealth of Massachusetts.

### **SECTION 2 DISTRICTS**

2.1 For the purposes of this Bylaw, a residential-agricultural zoning district in the Town is hereby established with other uses permitted as set forth in Section 2.2.

2.2 Commercial, industrial and other uses and structures may be permitted by special permit issued by the Zoning Board of Appeals, pursuant to Section 6 and 14 of this By-Law and Massachusetts General Laws, c. 40A, Section 9.

### **SECTION 3 CONTINUANCE OF EXISTING USES**

3.1 Any building, structure or use of building, structure or premises existing at the time this By-Law is adopted may be continued, maintained and repaired.

3.2 Any building, structure or use of building, structure or premises existing at the time this By-Law is adopted may be, upon issuance of a building permit, enlarged, provided such enlargement does not unreasonably depart from the purposes of this By-Law.

3.3 the use of a building, structure or premises existing at the time this By-law is adopted may be changed to any use which is essentially of the same character as the existing use or to a use which does not unreasonably depart from the purposes of this By-law.

3.4 Any building, structure or premises may be altered, repaired or modified upon order of any governmental authority having appropriate jurisdiction in order to restore or maintain the same in a safe and lawful condition.

3.5 Any building or structure may be rebuilt if damaged or destroyed.

3.6 Non-conforming lots of record, or shown on a plan endorsed by the planning board are exempt from the provisions of this By-Law to the extent and as provided in General Laws, c. 40A, Section 6.

3.7 A lot on which there existed at the time of the adoption of this By-Law two or more buildings used for dwellings may be divided into as many lots as there are such buildings thereon, provided the lot is divided in such a manner that all resulting lots shall conform as nearly as possible to the area and frontage requirements of this By-Law.

#### **SECTION 4 USE REGULATIONS**

No buildings, structures or premises shall be used and no buildings, structure or parts thereof shall be erected, constructed, moved, extended, enlarged or materially altered, except as provided by this By-Law.

#### **SECTION 5 PERMITTED USES**

The following uses are permitted under this By-Law:

5.1 Single family residences and usual accessory structures.

5.2 Agricultural uses and structures (including livestock, horticulture, floriculture and silviculture) and including the seasonal sale at wholesale and retail of agricultural products on premise, a portion of which shall be produced on this premise and the sale of Christmas trees.

5.3 Customary home occupations, professions, crafts or arts such as, but not limited to, resident professional insurance agents and offices of physicians, architects, attorneys, therapists and counsellors, realtors, hair stylists' shops, tailor shops, artists' and sculptors' studios and other residential business uses and employing no more than one person outside the household and provided there is adequate off-street parking. There shall be permitted one sign not exceeding four square feet in surface area per side.

5.4 Religious or educational uses on land owned or leased by the Commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a non-profit educational corporation, provided such structure or use otherwise complies with the dimensional requirements of this By-law.

## **SECTION 6 USES REQUIRING A SPECIAL PERMIT**

6.1 The following uses are permitted only upon issuance of a Special Permit by the Zoning Board of Appeals in accordance with M.G.L. c. 40A, section 9, upon findings showing consideration of the following criteria: that the proposed use:

- a) Is in compliance with all provisions and requirements of this By-law, and in harmony with its general intent and purpose;
- b) Is desirable to the public convenience or welfare at the proposed location;
- c) Will not be detrimental to adjacent uses or to the established or future character of the neighborhood;
- d) Will not create undue traffic congestion, or unduly impair pedestrian safety and that adequate off-street parking is provided on site; and
- e) Will not adversely alter drainage patterns or rates of flow on adjacent properties or pose any risk of hazard to the public health, safety or general welfare on adjacent properties or elsewhere in the Town.

6.2 Special permits may be issued subject to such conditions, safeguards or limitations as the Zoning Board of Appeals may impose for the protection of neighboring uses or otherwise serving the purposes of this By-law. Such conditions, safeguards or limitations may include, but are not limited to, the following:

- a. front, side and rear yards greater than the minimum required by this By-law; screening buffers or planting strips, fences or walls as specified by the Zoning Board of Appeals;
- b. limitations upon the size, number of occupants, method and time of operation, time duration of the permit, or extent of facilities;
- c. regulation of number and location of driveways, or other traffic features; and off-street parking or loading, or other special features beyond the minimum required by this By-Law.

Any conditions, safeguards or limitations shall be imposed in writing and shall be made a part of the building permit.

6.3 Special Permit Uses

- a. gravel, sod, loam, stone or earth removal, processing or storage except such removal and excavation as may be required to construct a permitted structure;
- b. commercial saw mills;
- c. pallet shops;
- d. any retail sales operations or store;
- e. construction contractor's office storage area or machinery yard;
- f. motel, hotel, inn or boarding house, or bed and breakfast;
- g. structure with more than one dwelling unit; any structure of more than 2 ½ stories of 35 feet; excepting silos, steeples;
- h. commercial dog kennel;
- i. airfields, airports, landing strips;
- j. mobile home, as regulated in section 9 of this By-law;
- k. nursing or convalescent home;
- l. veterinary hospital;
- m. ski tow;
- n. private proprietary schools;
- o. auto repair shop;
- p. light industrial uses;
- q. auto salvage yards; and
- r. a solid waste disposal facility to serve Northern Berkshire Solid waste Management District only, provided it is designed, constructed and operated in accordance with all applicable statutes, regulations and guidelines.
- s. Large Scale Industrial and Commercial Facilities

**SECTION 7 PROHIBITED USES**

7.1 The following uses are prohibited in the town:

7.2 junk Yards, Heavy industrial uses that produce noxious or offensive gas, smoke, sewage, refuse, noise, vibration, extreme danger of fire or explosion or excessive vehicle traffic, and do not met existing state codes and standards.

7.3 pipelines 6" or larger for water, gas, oil, steam, sewage, drainage, and similar use laid above existing established grade.

7.4 signs that make noise, flash, or move. Signs painted directed to exterior surface of a building. The total square footage of all signs on each business shall not exceed 60 square feet. Each individual sign shall not be larger than 30 square feet.

7.5 collection, treatment, storage, burial, incineration or disposal of radioactive waste within the boundaries of the Town of Windsor. Such waste shall include, but not be limited to wastes classified as low-level radioactive waste.

7.6 landfills, except as permitted by section 6.3 (r)

## **SECTION 8 INTENSITY REGULATIONS**

8.1 Any building used for dwelling and commercial purposes, and any building or structure housing a principal permitted use, shall be so located on a lot as to meet the following requirements:

8.2 The lot area shall not be less than 3 acres.

8.3 Frontage for any lot shall not be less than 250 feet on a public way or a way approved under the provisions of the Subdivision Control Law.

8.4 Minimum front setback shall be 35 feet, side yard 50 feet, and rear yard 50 feet. Front setback is to be measured from the street line where a plan of the way is on file with the Registry of Deeds or in the absence of such plan or in the absence of physical evidence showing the established layout of the way, from a line 25 feet from the parallel with the center line at the travelled way.

8.5 No lot, nor the building or structure thereon, shall be changed in size as to violate lot area, frontage or yard requirements of this section.

8.6 An accessory building or structure shall be situated no closer to a lot line and street line than the minimum distance required for a principal building.

8.7 A building with more than one dwelling unit shall be located on a lot of sufficient size so as to provide a minimum 3 acres of land for each dwelling unit.

## **SECTION 9 MOBILE STRUCTURES, HOMES AND TRAILERS**

9.1 No mobile home shall be parked placed or installed within the limit of the town, except as provided by Chapter 40A, section 3 or with a special permit issued by the Board of Appeals pursuant to Chapter 40A of the General Laws and only upon the following conditions:

9.2 Such permits shall not exceed six months, and may be renewed by the Board of Appeals after a public hearing and issuance of a special permit for additional intervals of up to six months each.

9.3 The Board of Health has approved the sanitary sewer disposal system.

9.4 The Board of Appeals has reasonable assurance from the owner of the land and mobile home that the contemplated use will be terminated upon the happening of some event, as for example, completion or construction of a house or other construction.

9.5 Travel trailers registered for travel on the public way may be parked on property of another within the limits of the Town for period not to exceed 60 days in one calendar year. Said travel trailer, if occupied, must have self-contained sewage storage capacity or adequate sanitary facilities provided.

9.6 A resident of the Town of Windsor may store a travel trailer whether or not registered in his name on his premises when not in use.

## **SECTION 10 ADMINISTRATION**

10.1 The provisions of this By-law and any amendments thereto shall be enforced by the Board of Selectmen through the Inspector of Buildings. The Board of Selectmen shall appoint the Inspector of Buildings, who may be member of the Board of Selectmen, for a period of one year or until a successor is appointed.

The inspector of Buildings shall approve no application for permits required under this By-Law for building or structure of any kind for which plans and specifications and intended use are not in all ways in conformity with this By-Law. He shall have full authority to prosecute in any court or proper jurisdiction, any action, suit or proceedings for the enforcement of this By-Law.

10-2 No building site preparation or building site work, except a percolation test in accordance with 310 CMR 15.00 (State Sanitary Code), shall be undertaken on any lot until the inspector of buildings has determined whether a Request for Determination under 310 CMR 10.00 (Wetlands Regulations) should be filed for the area of the proposed work. No construction on a building or structure shall be commenced, or building or structure moved, altered or changed until a building permit for the proposed construction, moving, alteration or change shall be properly applied for and granted except that permits shall not be required for repair or alteration which does not alter the exterior shape or dimensions of a building and which does not change the use of a building.

10.3 No building permit shall be granted for the construction, alteration or relocation of any building or structure or for a new or altered use of land in violation of this By-Law. Whenever any building permit is refused the reason therefor shall be clearly stated in writing.

10.4 An application for a building permit shall be made by the landowner or his agent in the name(s) of the landowner in writing, on a form approved by the Board of Selectmen and shall be accompanied by three copies of a site plan, drawn to approximate scale with dimensions

shown, showing abutters from the most recent assessor's maps, the size and shape of the lot, the names of the landowners of record, and the location of existing streets and buildings or structures, the location and size of the septic tank and drainage field, and of the proposed buildings, structures or additions thereto. Complete buildings and site plans shall be required for commercial developments, buildings and structures, the cost of which will exceed \$20,000 except buildings and structures designed for a single dwelling unit or for accessory use with a single dwelling unit. The Inspector of Buildings shall send one copy of the plot plan to the Town Assessor.

10.5 A building permit shall become void unless construction, alteration or relocation is commenced within six months of date of issue and completed within three years of the date of issue, unless such time shall have been extended by the Inspector of Buildings in writing. A condition of such extension of the three year period may be by payment of an additional fee where the Inspector of Buildings is of the opinion that additional onsite inspections will be required by the Inspector of Buildings or other Town Officials.

10.6 A record of applications herein referred to, and the action taken thereon shall be kept on file in the Town offices.

10.7 the Inspector of Buildings shall issue the building permit only after he has viewed the premises and determined the contemplated use, change, construction or alteration would not be in violation of the Windsor By-laws. After issuance of the building permit, the Inspector of Buildings may make inspections while the work is in progress to ascertain that there is no violation of the said By-laws as a result of any change or deviation from that for which their permit was originally granted, and occupancy by the owner, his agents, servants, tenants, leases or assigns, the Inspector of Buildings may make a final inspection to determine if the completed construction alterations or change in use conforms to the permit and is not in violation of the said By-laws.

10.8 The fee required for a building permit and fee for the extension of time within the construction is to be completed under the terms of the building permit shall be that established by the Selectmen.

10.9 Any person, officer, official or board aggrieved by reason of his inability to obtain a permit, or by any order or decision of The Inspector of buildings shall file his written appeal with the Town Clerk of Windsor together with an appeal fee as established by the Board of Selectmen not later than 30 days after the order or decision causing the aggrievance or the refusal to issue such permit.

## **SECTION 11 OCCUPANCY PERMITS**

11.1 No building or structure hereafter erected, altered or relocated shall be used, and no change shall be made of any buildings or structure or of any premises and not water shall be impounded behind any dam designed to impound more than three million gallons of water unless an occupancy permit has been granted by the Inspector of Buildings to the owner or occupancy of such premises, buildings or structure. Such permit shall not be granted unless the proposed use of the land or building complies in all respects with this By-Law, and no use shall be made of such land or building or structure except the use or uses authorized by such occupancy permit.

## **SECTION 12 VIOLATIONS AND PENALTY**

12.1 Violation shall be determined by the Inspector of Buildings by an investigation of the fact and inspection of the premises after which he shall give notice thereof in writing to the owner or his duly authorized agent and to the occupancy of the premises, and shall order that any use of any premises contrary to the provisions of this By-Law shall immediately cease. Each day of violation after written notice, will be considered a separate offense punishable by a maximum fine of \$20 per day. If, after such notice, the premises continue to be used in a manner contrary to the provisions of this By-law or if any such owner or occupancy shall fail to obey any lawful order of the Inspector of Buildings in respect to any violation or use contrary to the provisions of this By-law, the Inspector of Buildings shall institute appropriate legal proceedings to enforce the provisions of this By-law or to restrain by injunction any violation thereof, or both.

12.20 If the officer or board charged with enforcement of zoning ordinances or by-laws is requested in writing to enforce such ordinances or by-laws against any person allegedly in violation of the same and such officer or board declines to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act and the reasons therefor, with fourteen days of receipt of such request.

## **SECTION 13 BOARD OF APPEALS**

13.1 There shall be a Board of Appeals of five (5) members and two (2) associate members who shall be residents of the Town. The Selectmen shall appoint members and associate members as provided in Chapter 40A of the General Laws. The Board of Appeals shall act on all matters within its jurisdiction under this By-law as provided in Chapter 40A of the General Laws, and shall be subject always to the rule that it should give due consideration to promoting the public health, safety, convenience, and general welfare to the Town and conserving property values, and that it shall permit no building or use injurious, noxious,

offensive or detrimental to a neighborhood, and that it shall prescribe appropriate safeguards and conditions in each case, and in general that it shall act consistently with the purposes set out in section 1 of this By-Law.

Annually the Board shall elect a chairman from its number, and a clerk. The Chairman of the Board or acting Chairman may designate an Associate member to sit on the Board in case of absence, inability to act, or conflict of interest on the part of any member including the Chairman, or in the event of a vacancy on the Board, until said vacancy is filled.

13.2 the Board of Appeals shall adopt rules, not inconsistent with the provisions of Chapter 40A of the General Laws or the zoning by-laws of the Town of Windsor for the conduct of the Board's business and for the purposes of Chapter 40A and shall file a copy of the same with the Town Clerk.

#### **SECTION 14 SPECIAL PERMITS**

14.1 An application for a special permit shall be made by the landowner or his agent in the name(s) of the land owner, in writing, on a form approved by the Board of Appeals. The application must be filed with the Board of Appeals and a copy with The Town Clerk and The Inspector of Buildings. The effective date of filing shall be the date the application is filed with the Town Clerk.

14.2 The Inspector of Buildings shall review all applications for a special permit and shall report to the Board of Appeals within 30 days after the effective date of filing of an application. The Board of Appeals may submit an application for a special permit so other municipal boards or commissions for review and comment. If such other boards and commissions do not comment in writing to the Board of Appeals within 30 days after such submission their approval of said application shall be deemed granted.

14.3 Special permits shall be issued only after a public hearing, notice of which shall be given in accordance with General Laws, c. 40A, section 11, which hearing shall be conducted in accordance with General Laws, c. 40A section 9.

14.4 The Board of Appeals shall require a site plan or sketch be submitted with any request for a permit under Section 6.0 in a form acceptable the Board of Appeals.

The plan shall indicate all property boundaries, use and ownership of adjacent land and location of buildings thereon within 200 feet of the property lines, driveways, driveway openings, parking and loading spaces, service areas, scope of operations, and all facilities for screening, surfacing, lighting, signs, sewage, refuse disposal and other waste disposal, drainage, dust, erosion control and landscaping.

The Board of Appeals may modify any requirement of this section and may, if the plan complies with the purposes and specifications of this by-law, approve the same with or without conditions or if it does not comply with the purposes and specifications of this by-law, the plan can be disapproved or approved with conditions which will bring about compliance.

14.5 Construction or operations under a special permit shall conform to any subsequent amendment of the Windsor Zoning By-Laws unless the use or construction is commenced within a period of not less than six (6) months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and as expeditiously as reasonable.

A special permit shall lapse two (2) years from the date the permit is granted if the rights authorized in the permit are not exercised.

14.6 Uses, whether or not on the same parcel as activities permitted by right, accessory to such activities, which are necessary in connection with scientific research, or scientific development or related production, may be permitted by special permit provided the Board of Appeals finds that the proposed accessory use does not substantially derogate from the public good.

## **SECTION 15 VARIANCES**

15.1 The Board of Appeals shall have the power to authorize upon appeal, or upon petition in cases where a particular use is not otherwise permitted, with respect to a particular parcel of land or to an existing building thereon, a variance from the terms of this By-law where, owing to circumstances relating to the soil conditions, shape or topography of such land or structures, but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw, but not otherwise. The Board may authorize a use or activity variance. In exercising the powers of this paragraph, the Board may impose limitations both of time and of use and a continuation of the use permitted may be conditioned upon compliance with regulations to be made and amended from time to time thereafter.

15.2 An applicant or petitioner filing for a variance shall at the time of his filing and application with the Board of Appeals submit in triplicate a copy of the plot plan together with a sketch of the building or structure or use proposed drawn to scale on a topographical map and showing all relevant data regarding the proposed use, e.g., all existing and proposed buildings, structures, parking areas, driveway openings, driveways, landscape feature (walks,

planted areas, trees, etc.), and drainage provisions. The Board of Appeals shall transmit one copy to the Windsor Planning Board with a copy of the notice of hearing. The Planning Board shall forward its recommendations to the Board of Appeals no later than the date of the hearing on the applicant's petition.

### **SECTION 16 AMENDMENT**

16.1 This By-Law may from time to time be amended as provided by Massachusetts General Laws, Chapter 40A as amended.

### **SECTION 17 VALIDITY**

17.1 Where this by-law imposes a greater restriction upon the use, of a structure or the use of premises than is imposed by other by-laws, the provisions of this by-law shall control. The invalidity of any section or provision of this by-law shall not invalidate any other section or provision thereof.

### **SECTION 18 DEFINITIONS**

18.1 For the purpose of this By-Law, the terms and words are defined as follows:

18.2 Accessory Building - a building or structure which is customarily incidental to and located on the same lot with the building to which it is an accessory and which does not alter the character of the premises.

\*18.3 Accessory Dwelling Unit - An Accessory Dwelling Unit is a self-contained housing unit that is incorporated within, attached to, or detached from, a Single-Family Dwelling (not within an Accessory Building, except with a Special Permit ) that is clearly a subordinate part of, or incidental to, the Single-Family Dwelling and complies with each of the criteria and requirements in Section 24 of this Bylaw.

\*18.4 Accessory Dwelling Unit, Attached - An accessory unit dwelling having any portion of one or more walls in common or within five feet of an adjacent building.

\*18.5 Accessory Dwelling Unit, Detached - An accessory unit dwelling having a five feet or more of open space on all sides and located on the same Lot as the Single-Family Dwelling.

18.6 Accessory Use - A use of a building, structure or land which is customarily incident to and located on the same lot with the use or building to which it is accessory and which does not alter the character of the premises when located not impair the neighborhood.

18.7 Acting Chairman - Member of the Board of Appeals, who in the absence of the Chairman is elected as Chairman for a hearing on a particular matter by the members of the Board of Appeals in attendance.

18.8 An Independent Structure – Means having a roof, supported by columns or walls, resting on its own foundations, and designed for the shelter, housing or enclosure of persons, animals, chattels or property of any kind.

18.9 Auto Salvage Yard - A business comprising the collection, dismantling, recycling and sale of motor vehicles and automotive-parts and the timely removal of unsalvageable and unusable remnants.

18.10 Building, Front of - The wall of a building moat nearly parallel with the front of the lot on which it is situated.

18.11 Building Lot - A building lot is that area of land described in an application for a building permit or an application to the Board-Of Appeals for a permit or a variance or otherwise defined as the area on which a building or structure is to be constructed or a certain use is to be carried on. A building lot shall not include any part of a public way or a private way which is relied upon to qualify the lot as to frontage or area under water more than six months per year.

18.12 Commercial - Business enterprise which manufactures, harvests, sells items, or services, or processes a product.

18.13 Construction Contractor - One who uses and stores heavy equipment and machinery on his premises.

18.14 Dwelling - A building or portion thereof designed exclusively for residential occupancy, including single family, two family and multiple family structures, but not including motels,

hotels, boarding houses, or mobile homes whether or not placed on or affixed to a foundation or structures solely for the transient or overnight occupancy.

\*18.15 Dwelling, Single-Family - A building designed or used exclusively as a residence and including only one Dwelling Unit.

\*18.16 Dwelling Unit - One or more rooms designed, occupied or intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities provided within the Dwelling Unit for the exclusive use of a single family maintaining a household. This definition does not include a Mobile Home, however mounted.

18.17 Established Grade - The grade of the area surrounding the area of construction.

18.18 Family - One or more persons occupying a single dwelling unit provided that if there be more than five persons, the majority must be related by blood marriage, or adoption, but further provided that domestic-servants employed on the premises may be housed on the premises without being counted as a family or families.

18.19 Hotel, Motel, Lodging or Inn - A building or portion thereof, or a group of buildings on a single lot, intended to be used for the temporary occupancy of three or more persons who are lodged, with or without meals.

18.20 Junk Yards - The collection, accumulation and storage of scrap or discarded materials including, without limitation, -one or more junked or inoperable motor-vehicles or parts thereof unless permitted pursuant to Section.6.3. (q).

18.21 Lot - One or more continuous parcels of land under a single ownership designated by the owner at the time of filing an application for a building permit as a tract to be used, developed or built upon as a unit.

18.22 Lot Line - The line dividing two lots.

18.23 Lot Frontage - The uninterrupted distance between side lot lines at the street line.

18.24 Mobile Home - A movable or portable completely enclosed structure built on a chassis designed for occupancy as a dwelling without necessity of a permanent foundation.\

\*18.25 Primary Residence - A Single-Family Dwelling occupied by the owner as a principal residence within the meaning of G.L. c. 188 (homestead).

18.26 Set Back Lines - A line parallel to a lot line at a distance equal to the minimum yard requirement.

18.27 Sign - Any structure, part of a structure or device used for the purpose of visual communication which identifies or calls attention to any premises, person, product, activity, business or use on a lot.

18.28 Street - A public way or private way either shown on a plan approved in accordance with the Subdivision Control Law or otherwise qualifying a lot or frontage on a street under the Subdivision Control Law.

18.29 Street Line - Boundary line, as established at Registry of Deeds, or public street and the adjoining property.

18.30 Structure - Anything constructed or erected, including but not limited to underground pipelines and dams at a fixed location to give support, provide Shelter or satisfy other purposes.

18.31 Travel Trailers - A movable structure designed and intended for temporary living or recreation.

The May 7, 2018 amendments to this by-law were approved by the Massachusetts Attorney General's Office on August 2, 2018

## **Section 19: Personal Wireless Service Facilities and Repeaters**

19. Purposes:

19.1. The purpose of the Town of Windsor Personal Wireless Service Facilities, Towers and Repeaters Bylaw are to:

19.1.1. Preserve the character and appearance of the Town while simultaneously allowing Adequate Personal Wireless Services to be developed.

- 19.1.2. Protect the scenic, historic, environmental, and natural or man-made resources of the community
- 19.1.3. Provide standards and requirements for regulation, placement, construction, monitoring, design, modification and removal of Personal Wireless Service Facilities and Repeaters.
- 19.1.4. Provide a procedural basis for action within a reasonable period of time for requests for authorization to place, construct, operate or modify Personal Wireless Service Facilities and Repeaters,.
- 19.1.5. Preserve property values, locate Towers so as to minimize negative impacts on the general safety, welfare and quality of life in the community, such as, but not limited to, visual blight, attractive nuisance, noise and falling objects.
- 19.1.6. Require owners of the Personal Wireless Service Facilities, Towers, and Repeaters to configure them so as to minimize and mitigate the adverse visual impact of the Facilities, Towers and Repeaters, including clustering, co-locating, and camouflaging where appropriate.

19.2. Consistency with Federal Law:

These regulations are intended to be consistent with The Telecommunications Act of 1996 - in that, a) They do not prohibit or have the effect of prohibiting the provision of the Personal Wireless Services, b) They are not intended to be used to unreasonably discriminate among providers of functionally equivalent Services, c) They do not regulate Personal Wireless Services on the basis of the environmental effects of radio frequency emissions to the extent that the regulated Services and Facilities comply with the FCC's regulations concerning such emissions.

19.3. Definitions

FACILITY SITE - A property, or any part thereof, which is owned or leased by one or more Personal Wireless Service Providers and upon which one or more Personal Wireless Service Facilities and required landscaping are located.

FACILITY/TOWER SPECIAL PERMIT (F/TSP) - The Special Permit required to be obtained in order to install any Tower or Personal Wireless Service Facility or for any Major Modification of an existing Facility

FCC - Federal Communications Commission. The federal agency responsible for regulating telecommunications in the United States

FCC 96-326 - A Report and Order which sets new national standards for emissions of Radio-Frequency emission from FCC - regulated transmitters. This Report and Order now contained with title 47 Regulations, Section 1 & 1.1307.

GRADE OF SERVICE - A measure of the percentage of calls, which are able to connect to the Base Station, during the busiest hour of the day. Grade of Service is expressed as a number, such as p.05 - which means that 95% of callers will connect on their first try. Lower number (p.04) indicates a better Grade of Service.

MAJOR MODIFICATION OF AN EXISTING FACILITY - Any change or proposed change in power input or output, number of Antenna, change in Antenna type or model, repositioning of Antenna(s), change in number of Channels per Antenna above the maximum number approved under the existing Special Permit. Also any increase, or proposed increase in dimensions of an existing and permitted Tower or other structure designed to support Personal Wireless Service transmission, receiving and/or relaying antennas and/or equipment.

MONITORING - The measurement, by the use of instruments in the field, of the radiation from a Site as a whole, or from individual Personal Wireless Service Facilities, Towers, Antennas or Repeaters.

MAJOR MODIFICATION OF AN EXISTING REPEATER - Any removal of or change in location of any Repeater(s) from the Repeater Site(s) for which a Repeater Special Permit has been received.

MONITORING PROTOCOL - The testing protocol, initially the Cobbs Protocol, which is to be used to monitor the emissions from existing and new Personal Wireless Service Facilities and Repeaters upon the adoption of the Article. The Special Permit Granting Authority (ZBA) may, as the technology changes, require, by written regulation, the use of other testing protocols. A copy of the Monitoring Protocol shall be on file with the Town Clerk.

MONOPOLE - A single self-supporting vertical pole with below grade foundations.

PERSONAL WIRELESS SERVICES - Commercial Mobile Services, unlicensed wireless service, and common carrier wireless exchange access services. These services include cellular services, personal communication services (PCS), Specialized Mobile Radio Services, and Paging Services.

PERSONAL WIRELESS SERVICE FACILITY - All equipment (excluding and Repeaters) with which a Personal Wireless Service Provider broadcasts and receives the radio-frequency waves which carry their services and all locations of said equipment or any part thereof. This Facility may be sited on one or more Towers or structure(s) owned and permitted by another owner or entity.

PERSONAL WIRELESS SERVICE PROVIDER - An entity, licensed by the FCC to provide Personal Wireless Services to individuals or institutions.

REPEATER - A small receiver/relay transmitter of not more than 20 watts output designed to provide service to areas which are not able to receive Adequate Coverage directly from the Base Station.

REPEATER SITE - The location within the Town of Windsor leased by one or more Personal Wireless Service Providers and upon which one or more Repeater(s) and require camouflage or screening is located.

REPEATER SPECIAL PERMIT (RSP) - The Special Permit required to be obtained in order to install any Repeater, or for Major Modification Of An Existing Repeater within the Town of Windsor.

TELEPORT - A multi-user commercial facility utilizing satellite dishes of greater than 2.0 meters in diameter designed to uplink to communications satellites for transmission of data.

TOWER - A monopoles, lattice, or other structure that is designed to support Personal Wireless Services transmission, receiving and/or relaying antennas and/or equipment.

#### 19.4. Scope

- 19.4.1. This Article specifically exempts the following wireless telecommunications facilities: police, fire, ambulance and other emergency dispatch; citizen band radio

Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the FCC, are exempt, provided that (1) the tower is not used for commercial purpose; and (2) the tower shall be removed upon loss or termination of said FCC license. No Personal Wireless Service Facility or Repeater shall be considered exempt from this Article for any reasons, whether or not said Facility or Repeater is proposed to share a Tower or other structure with such exempt uses.

- 19.4.2. There shall be no Teleport(s) or microwave reflector dish Antenna(s) within the Town of Windsor

- 19.4.3. Communication relay structure, TV broadcast systems, radio broadcast systems and other similar systems are not permitted under this telecommunications tower bylaw.

#### 19.5. Requirement of Special Permit

- 19.5.1. No Personal Wireless Service Facility, Tower or Repeater shall be erected, constructed, or installed or undergo Major Modification without first obtaining a Special Permit from the ZBA in accordance with the requirements set forth herein. One or both of two kinds of Special Permits are required a) A Facility/Tower Special Permit (herewith F/TSP) for new facility/Tower constructions (or Major Modification Of An Existing Facility); b) A Repeater Special Permit (here forth RSP) for Repeater(s) to be mounted on an existing, or newly permitted Tower or structure (or Major Modification Of An Existing Repeater)
- 19.5.2. All Applications to construct a tower must provide space on top of the tower for fire, police, and any and all emergency services to install communication equipment at fair market value. Additionally, space shall be provided within the base station for a shelter for communications equipment suitable to such services, at fair market value. Access to the station shall be provided to fire, police and emergency services to maintain their equipment through the use of a “key safe” installed at the primary point of entry into the Base Station.
- 19.6. Application Requirements
  - 19.6.1. For Personal Wireless Service Facilities or Towers a F/TSP is required. Applications must submit all information in 19.6.2. For all Repeaters proposed for installation, a RSP is required. A RSP may be applied for by an Applicant who is currently applying for a F/TSP under this Article, or by an Applicant who has previously received a F/TSP under this Article, or by an entity that is providing Personal Wireless Services to the Town of Windsor from a base station outside the Town. Applicant must submit all information required in 19.6.3. If Applicant is applying for both Permits, they shall be submitted and examined concurrently.
  - 19.6.2. Application Requirements for Facilities or Towers.
    - 19.6.2.1. General - The application shall include the following information:
      - 19.6.2.1.1. The exact legal name address or principal place of business and phone number for the Applicant. If any Applicant is not a natural person, it shall also give the state under which it was created or organized.
      - 19.6.2.1.2. The name, title, address and phone numbers of the person to whom correspondence or communications in

regard to the application are to be sent. Notice orders and other papers may be served upon the person so named, and such service shall be deemed to be service upon the Applicant.

- 19.6.2.1.3. Name, address, phone number and written consent to apply for this permit. From the owner of the property that the proposed Personal Wireless Service Facility and/or Tower shall be located, and the owner(s) of the tower or structure on which the proposed Personal Wireless Service Facility shall be located.
- 19.6.2.2. Engineering Requirements - Reports prepared by one or more professional engineers, licensed to practice in the State of Massachusetts that shall include the following:
  - 19.6.2.2.1. Copies of all submittals and showing pertaining to: FCC Licensing; Environmental Impact Statements; Federal Aviation Administration Notice of Construction or Alteration; Aeronautical Studies; and all data, assumption and calculations relating to service coverage and power levels regardless of whether categorical exemption from Routine Environmental Evaluation under the FCC rules is claimed.
  - 19.6.2.2.2. Copies of all information submitted in compliance with requirements of Massachusetts Department of Public Health, 105 CMR 122 fixed facilities that generate electromagnetic fields in the frequency range of 300 kHz to 100 GHz and microwave ovens. Or any revisions thereof as the Department of Public Health may, by written notice, create.
- 19.6.2.3. Adequate Coverage, Adequate Capacity and Justification of Need for F/TSP.
  - 19.6.2.3.1. Applicant shall provide written documentation of all Facility Site(s) in Windsor, and any sites in abutting towns located within five miles of any boundary of the Town of Windsor, in which it has a legal or equitable interest, whether by ownership, leasehold or otherwise. For each such Facility

Site, it shall demonstrate with written documentation that this Facility Site is not already providing or does not have the potential by adjusting the Site, to provide Adequate Coverage and/or Adequate Capacity to the Town of Windsor. The documentation shall include, for each Facility Site listed:

- 19.6.2.3.1.1. The exact Tower location (in Longitude and Latitude, to degrees, minutes, seconds), ground elevation above sea level at the Tower location, height of Tower or structure, and height of proposed antennas on tower or structure.
  - 19.6.2.3.1.2. Type, manufacturer and model number of antennas and antenna gain.
  - 19.6.2.3.1.3. Output frequency, number of channels, power input, and maximum Power output per channel.
  - 19.6.2.3.1.4. Potential adjustments to these existing Facility Sites, including changes in Antenna type, orientation, gain, height or power output shall be specified
  - 19.6.2.3.1.5. Radial Plots form each of these Facility Sites, as they exist, and with adjustments as above, shall be provided as part of the Application.
- 19.6.2.3.2. Applicant shall demonstrate with written documentation that they have examined all existing Facility Sites located in Windsor and any sites in abutting towns located within five miles of any boundary of the Town of Windsor in which the Applicant has no legal or equitable interest. Whether by ownership, leasehold, or otherwise to determine whether those existing Facility Sites can be used to provide Adequate Coverage and/or Adequate Capacity to the Town of Windsor. The documentation shall include, for each existing Facility Site examined:
- 19.6.2.3.2.1. The exact Tower location (in Longitude and Latitude, to degrees, minutes, seconds), ground elevation above sea level at the Tower location,

height of Tower or structure, and height of proposed antennas on tower or structure.

19.6.2.3.2.2. Type, manufacturer and model number of antennas and antenna gain.

19.6.2.3.2.3. Output frequency, number of channels, power input, and maximum Power output per channel.

Radial Plots form each of these existing Facility Sites, configured as documented above, shall be provided as part of the Application.

19.6.2.3.3. Applicants shall demonstrate with written documentation that the fee, costs, or contractual provisions required by the owner(s) in order to share an existing wireless communication structure or to adapt an existing structure for use are unreasonable. Unreasonable cost would be equal to twice the cost of building a new structure.

19.6.2.3.4. Applicant shall demonstrate with written documentation that it has analyzed the feasibility of Repeaters in conjunction with all existing Facility Sites listed in compliance with 19.6.2.3.1 and 19.6.2.3.2 (above) to provide Adequate Coverage and/or Adequate Capacity to the Town of Windsor. Radial Plots of all Repeaters considered for use in conjunction with these Facility Sites shall be provided as part of the Application.

19.6.2.3.5. Applicant shall provide documentation for the FAA that the proposed facility is exempt from applicable regulations administered by the FAA.

19.6.2.4. The following engineering plans, prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts. (Note: survey plans shall also be stamped and signed by a Professional Land Surveyor registered in Massachusetts.) Plans shall be on 24" X 36" sheets, on as many sheets as necessary, and at scales which are no smaller (i.e. no

less precise) than listed below and in 19.6.2.4.1. Each plan sheet shall have a title block indicating a project title, sheet title, sheet numbers, date, revision dates, scale(s), and original seal and signature of the P.E. and other professionals who prepared the plan.

- 19.6.2.4.1. Proposed Site Plans: Proposed Facility Site layout, grading and utilities at a scale no smaller than 1" = 40' (1:480 or metric equivalent 1:500) showing the entire vicinity within 400' radius of the Tower site with topography drawn with a maximum of 2' (0.6 meter) contour interval and including:
  - 19.6.2.4.1.1. Proposed Tower location and appurtenances, if any, and any accessory building (Communication Equipment Shelter or other). Indicate property boundaries and setback distances to the base(s) of the Tower and to the nearest corners of each of the appurtenant structures to those boundaries, and dimensions of all proposed improvements. The site plan shall include the location of all abutting properties within 1500' of the tower property and names of current owners of each.
  - 19.6.2.4.1.2. Limits of areas where vegetation is to be cleared or altered and justification for any such clearing or alteration.
  - 19.6.2.4.1.3. Plans for proposed access driveway or roadway and parking area at the Facility Site. Including grading, drainage and traveled width. Include a cross section of the access drive indicating the width depth of gravel and paving or surface materials.
- 19.6.2.4.2. Proposed Tower and Appurtenances:
  - 19.6.2.4.2.1. Plans, elevations, sections and details at appropriate scales but no smaller than 1" = 10'.
  - 19.6.2.4.2.2. Two cross sections through proposed Tower drawn at right angles to each other and showing the

ground profile to at least 200 feet beyond the limit of the clearing. Indicate proposed spot elevations at the base of the proposed Tower. Indicate the proposed height of tower above average grade at Tower Base. Indicate the maximum allowable structural height of the tower after addition of any modular section. Show all proposed antennas, including their location on the tower.

19.6.2.4.2.3. Details of typical Tower foundation, including cross-sections and details. Show all ground attachments, specifications for anchor bolts and other anchoring hardware.

19.6.2.4.2.4. Detail proposed exterior finish and camouflage of the tower.

19.6.2.4.2.5. Indicate height of the Tower relative to the tops of the surrounding trees as they currently exist.

19.6.2.4.3. Proposed Communications Equipment Shelter:

19.6.2.4.3.1. Floor plans, elevations and cross sections at a scale no less than  $\frac{1}{4}'' = 1'$  (1:48) of any proposed appurtenant structure.

19.6.2.4.3.2. Representative elevation views, indicating the roof, facades, doors and other exterior appearances and materials.

19.6.2.4.4. Proposed Equipment Plan:

19.6.2.4.4.1. Plans, elevations, sections and details at appropriate scales but no smaller than  $1'' = 10'$ .

19.6.2.4.4.2. Number of Antennas and Repeaters (if any), as well as the exact locations of all Repeaters (if any) located on a map as well as by Degrees, minutes and seconds of Latitude and Longitude.

19.6.2.4.4.3. Mounting locations on Tower or structure, including height above ground.

19.6.2.4.4.4. Antenna type(s), manufacture(s) and model number(s).

- 19.6.2.4.4.5. For each Antenna, the Antenna gain and Antenna radiation pattern.
- 19.6.2.4.4.6. Number of channels per Antenna, projected and maximum.
- 19.6.2.4.4.7. Power input to the Antenna(s).
- 19.6.2.4.4.8. Power output, in normal use and at maximum output for each Antenna and all Antennas as an aggregate.
- 19.6.2.4.4.9. Output frequency of the Transmitter(s).
- 19.6.2.5. Details of proposed method of financial surety as required in Section 19.13.
- 19.6.2.6. A written, irrevocable commitment valid for the duration of the existence of the Tower, to rent or lease Available Space for co-location on the Tower at fair-market prices and terms, without discrimination to other Personal Wireless Service Providers.
- 19.6.2.7. Within thirty days after filing an application for any new tower, or extension in height thereto, the applicant shall arrange to fly a three foot diameter brightly colored balloon at the proposed site, at the maximum height and location of the proposed installation, for four hours on two consecutive weekend days at different times between the hours of 9 AM and 5 PM. The balloon shall be of a red color that can be seen from every direction for a distance of at least one mile. Applicant shall be responsible for posting the date and location of the balloon(s) as a legal advertisement at least 14 days, but not more than 21 days before the flights in at least two different issues of a newspaper with a general circulation in the Town of Windsor.
- 19.6.2.8. Written documentation from a provider of landline indicating adequate landline capacity for the proposed installation.
- 19.6.3. Application Requirements for RSP

The use of Repeaters to assure Adequate Coverage or to fill holes within areas of otherwise Adequate Coverage, while minimizing the number of required Towers is permitted and encouraged. An applicant who has received, and is in compliance with a current F/TSP under this

Article, or an entity which is providing Personal Wireless Services to the Town of Windsor from a base station outside the Town, May apply for a RSP, Applicants for RSP shall provide the following information:

- 19.6.3.1. Exact location (in Longitude and Latitude, to degrees, minutes seconds) as well as by street address or pole number (if applicable);
- 19.6.3.2. Ground elevations:
- 19.6.3.3. type, manufacturer and model number of proposed Repeater:
- 19.6.3.4. height of proposed Repeater above ground:
- 19.6.3.5. proposed output frequency:
- 19.6.3.6. proposed number of channels:
- 19.6.3.7. proposed power input:
- 19.6.3.8. proposed maximum power output per channel:
- 19.6.3.9. Radial Plots from any proposed Repeater(s), configured as documented above shall be provided as part of the Application:
- 19.6.3.10. Photo or drawing of proposed Repeater:
- 19.6.3.11. Name, address, phone number, and written consent to apply for this permit, of the owner of the property on which the proposed Repeater shall be located, and of the owner(s) of the Tower or structure on which the proposed Repeater shall be located:
- 19.6.3.12. Proposed Repeater Site layout, grading and utilities at a scale no smaller than 1" = 40' (1:480 or metric equivalent 1:500) showing the entire vicinity within a 1500' radius of the Repeater site with typography drawn with a minimum of 2" (0.6 meter) contour interval:
- 19.6.3.13. Proposed Repeater location and appurtenances, if any, and any accessory building (Communication Equipment Shelter or other). The site plan shall include the location of all abutting properties within 1500' of the tower property and names of current owners of each:
- 19.6.3.14. Limits of areas where vegetation is to be cleared or altered, and justification for any such clearing or alteration;

- 19.6.3.15. Plans of any proposed access driveway or roadway and parking area at the Repeater site. Include grading, drainage and traveled width. Include a cross section of the access drive indicating the width, depth of gravel and paving or surface materials.
- 19.6.3.16. Written documentation from a provider of landlines indicating adequate landline capacity for the proposed installation.

19.7. General Requirements of Issuance of F/TSP(s):

- 19.7.1. Provision of Service - no new facility or tower shall be permitted unless the Board finds that the Applicant cannot provide Adequate Coverage and Adequate Capacity from existing Facility Sites, either controlled by Applicant or on which Applicant could reasonably co-locate.

A Special Permit shall not be granted for a Tower to be built on speculation. If Applicant is not, itself, simultaneously installing a Personal Wireless Service Facility on the Tower, it shall provide a copy of its existing lease/contract with a Personal Wireless Service Provider. Said Provider shall provide all necessary data to comply with the terms of this Article, as part of Applicant's application for a F/TSP, or the Special Permit shall not be granted.

If primary coverage (greater than 50%) from proposed Personal Wireless Service facility were outside Windsor, then the permit may be denied.

Repeaters shall be required in areas deemed not to have Adequate Coverage within the Coverage Areas.

19.7.2. Environmental Conditions:

- 19.7.2.1. In general, Towers and Personal Wireless Service Facilities shall be located so as to provide adequate coverage and Adequate Capacity with the least number of Towers and Antennas, which is technically and economically feasible.

- 19.7.2.2. In furtherance of the above, the following locations are ranked in order of preference:
- a) the use of Repeaters to provide Adequate Coverage without requiring new Tower(s)
  - b) Shared use of existing Personal Wireless Service Facilities
  - c) The use of land distant from higher-density residential properties, where visual impact is minimized.
- 19.7.2.3. Those Towers that are necessary shall minimize, to the extent feasible, adverse visual impacts on the environment. The ZBA may impose reasonable conditions to ensure this result, including but not limited to, the right to determine the type of construction of a tower (either monopole or lattice), requiring the use of camouflage, painting, lighting, standards and screening or the mimicking of a tree or other appropriate object. Towers shall be sited off ridgelines, and where their visual impact is least detrimental to highly rated scenic areas. (See, for example, Massachusetts Landscape Inventory, MGL ch.131, sec. 39A: conducted by Massachusetts Dept. of Environmental Management, 1982.)
- 19.7.2.4. A vegetated buffer strip of undisturbed trees of at least 200' in depth (or less if determined by the ZBA to be sufficient). Shall be retained as close to the Tower as possible, but in all cases, there shall be no clearing at a distance in excess of 25 feet square from the base of the Tower except where the access drive is located. The access drive shall be winding and well landscaped. The base of the facility shall not be visible from any public roadway. If a Tower is proposed for an area without mature forest growth, it shall be camouflaged as determined by the ZBA. This may include the requirement to plant a sufficient number of mature trees to adequately screen the base of the Tower and equipment shelters.
- 19.7.2.5. No Tower or Personal Wireless Service Facility with the exception of Repeaters shall be located within any of the following prohibited areas:
- 19.7.2.5.1. Massachusetts or federally - regulated wetland:

- 19.7.2.5.2. A Massachusetts Certified Vernal Pool:
- 19.7.2.5.3. The habitat of any State-listed Rare or Endangered Wildlife or Rare Plant Species:
- 19.7.2.5.4. Within 100 feet horizontally from any Massachusetts regulated wetland:
- 19.7.2.5.5. Within 200 feet horizontally of the Outer Riparian Zone of any river or perennial stream, as defined in the Wetlands Protection Act and Regulations:
- 19.7.2.5.6. Within 500 feet horizontally from any Historic District or property listed or eligible to be listed on the state or federal Register of Historic Places, or site determined by the Massachusetts Historical Commission to be eligible for such listing:
- 19.7.2.5.7. Where the Facility would be visible from a Historic Site:
- 19.7.2.6. In addition to the above, Towers and Personal Wireless Service Facilities shall be located so as to minimize the following potential impacts:
  - 19.7.2.6.1. Diminution of residential property values: Siting shall be in areas of al low population density as possible
  - 19.7.2.6.2. Unsafe structural conditions and attractive nuisance
  - 19.7.2.6.3. Excessive electromagnetic radiation: In case the Tower or Personal Wireless Service Facility is found in excess of the FCC guidelines

19.7.3. Physical Plant

- 19.7.3.1. Fencing: The area around the Tower and Communication Equipment Shelter(s) shall be completely fenced for security within an area no greater than 25 feet square from the base of the Tower, and to a height of six fee, and gated. Use of razor wire is not permitted. Fencing shall be compatible with the scenic character of the Town and of abutting properties and shall be approved by the ZBA.
- 19.7.3.2. Signs: There shall be no signs except the following. A sign no greater than two (2) square feet indicating the name of the Personal Wireless Service Facility’s owner(s) and a 24-hour emergency telephone number shall be posted adjacent to the

entry gate. In addition, "No Trespassing," or other warning signs, may be posted on the fence. All signs are subject to approval by the ZBA.

- 19.7.3.3. Communication Equipment Shelters and Accessory Buildings shall be designed to be architecturally similar and compatible with each other and with residential buildings on "The Street" in Windsor, and shall be no more than 12 feet high or more than 500 square feet. The building shall be used only for housing of equipment related to this particular site.
- 19.7.3.4. The minimum distance from the base of the wireless communication structure to any property line or road or right-of-way shall be at least 2.0 times the height of the structure plus any attached wireless communication devices, to ensure an adequate fall zone.
- 19.7.3.5. New Towers shall not exceed the minimum height necessary as determined by the ZBA to provide Adequate Coverage from the Personal Wireless Service Facility(ies) proposed for use on the Tower, and shall in no event exceed 160 feet, or any lesser height which according to FAA regulations would require placement of warning lights for aircraft.
- 19.7.3.6. Towers shall be located at least two times their maximum structural height from any structure, excluding equipment shelter(s) to provide an adequate fall zone.
- 19.7.3.7. To the extent feasible, all network interconnections to and from the telecommunications site and all power to the site shall be installed underground. At the initial construction of the access road to the site, sufficient conduit shall be laid to accommodate the maximum possible number of Personal Wireless Service Providers likely to utilize the site to provide services to the Town of Windsor and the surrounding areas.
- 19.7.3.8. Unless required by the Federal Aviation Administration, no night lighting of Towers, or the Personal Wireless Service Facility, is permitted, except for manually operated emergency lights for use only when operating personnel are on site.

- 19.7.3.9. No Tower or Personal Wireless Service Facility that would be classified as a hazard to air navigation, as defined by the Federal Aviation regulations (Title 14 CFR) is permitted.
  - 19.7.3.10. Tower(s) must be of a type, which will maximize potential sharing. Applicant must demonstrate the future utility of such structure for expansion of service to Applicant and to other future Applicants.
  - 19.7.3.11. Commercial advertising shall not be allowed on any Antenna, Tower, or Accessory Building or Communication Equipment Shelter.
  - 19.7.3.12. All towers shall be self-supporting. There shall be no guide wires.
  - 19.7.3.13. All Network inter-connections shall be via landline. Applicant shall demonstrate availability of adequate landline capacity as part of their application.
  - 19.7.3.14. Ground-mounted equipment for personal wireless service facilities shall not generate noise in excess of 50db at property line.
  - 19.7.3.15. Roof-mounted or side mounted equipment for personal wireless service facilities shall not generate noise in excess of 50 db at ground level at the base of the building closest to the antenna.
- 19.8. General Requirements for Repeater Special Permits:
- 19.8.1. No Repeater shall be located closer than 100 feet to an existing Dwelling Unit or less than 25 feet above ground.
  - 19.8.2. The ZBA may require the use of screening, painting, or camouflage to reduce the visual impact of Repeaters.
  - 19.8.3. Repeaters shall be located so as to have the least impact on the views of the residents of the Town of Windsor.
- 19.9. Evaluation by Independent Consultants
- 19.9.1. Upon Submission of an Application for any Special Permit under this Article, the Applicant shall pay a review fee determined by the ZBA, and submit an affidavit stating that the Applicant will pay all costs incurred in excess of this review fee. The fee plus additional costs shall consist of all reasonable costs to be incurred by the ZBA for the employment of independent consultants. The ZBA shall select the Independent Consultant(s) to assist in the review of the Application. These

Consultants shall each be qualified professionals with a record of service to municipalities in one of the following fields, as appropriate: 1) telecommunications engineering, 2) structural engineering, 3) monitoring of electromagnetic fields, and 4) other relevant fields of experience as determined by the ZBA.

19.9.2. Upon submission of a complete Application for any Special Permit(s) under this Article, the ZBA shall provide its Independent Consultant(s) with the full Application(s) for their analysis and review.

19.9.3. Applicants for any Special Permit(s) under this Article shall grant permission for the Town's Independent Consultant(s), to conduct any necessary site visit(s), or obtain permission from the owner(s) of the proposed site(s) for any site visit(s).

19.10. Approval Criteria:

19.10.1. In acting on any Special Permit Application, the ZBA shall proceed in accordance with the procedures and time lines established for Special Permits in state law, this by-law and other applicable law.

19.10.2. In addition to the findings required by the Zoning Bylaw for special permits generally, the ZBA shall make the following findings before granting the Special Permit:

19.10.2.1. Applicant is not already provide Adequate Coverage and/or Adequate Capacity within the coverage area.

19.10.2.2. An applicant already providing service in the Town of Windsor must be in full compliance with the terms of their existing F/TSP(s) or RSP(s).

19.10.2.3. Applicant has agreed to rent or lease Available Space on the Tower, under the terms of a fair-market lease, without discrimination to other Personal Wireless Service Providers.

19.10.2.4. Applicant is not able to use Existing Tower/Facility Sites in or around the Town of Windsor, either with or without the use of Repeaters, to provide Adequate Coverage and/or Adequate Capacity within the Coverage Area.

19.10.2.5. Proposed Personal Wireless Service Facility/Tower or Repeater will not be likely to have an undue adverse impact on historic resources, scenic views, residential property values, natural or man-made resources.

- 19.10.2.6. Applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the towers and Facilities.
- 19.10.2.7. Emergency access to the site via the planned drive or roadway is adequate; the ZBA shall request and consider input from the Chiefs(or the designees) of Fire, Police and other Emergency services regarding this issue.
- 19.10.2.8. The proposal shall comply with FCC 96-326 and any and all other applicable FCC regulations, regarding emission of electromagnetic radiation and that the required Monitoring program is in place and shall be paid for by the Applicant.
- 19.10.2.9. The General Requirements (Section 19.7 and/or 19.8) have been met.
- 19.10.2.10. No access road can be within 100 feet of any property line.
- 19.10.3. Any decision by the ZBA to deny an Application for a Special Permit under this Article shall be in conformance with Sec.332 [47 U.S.C 332] (7)(B)(ii)(iii) of the Act. In that it shall be in writing and supposed by substantial evidence contained in the written record.
- 19.11. Monitoring and Evaluation of Compliance:
  - 19.11.1. Initial Monitoring: It shall be a condition of any Special Permit granted under this Bylaw that, in order to determine the Tower and Facility's or Repeater's radio frequency emissions and their compliance with FCC regulations, the Applicant shall, after the granting of a Special Permit and within 30 days of the date that the Applicant's Personal Wireless Service Facility(ies) or Repeater(s) being(s) transmission, pay for an Independent Consultant, hired by the Town, to Monitor the levels of EMF radiation, around the proposed Facility and/or Repeater site(s). The Independent Consultant shall use the Monitoring Protocol. A report of the Monitoring results shall be prepared by the Independent Consultant and submitted to the Planning Board, Board of Selectmen, the Board of Health, the Zoning Board of Appeals, and the Town Clerk.
  - 19.11.2. Ongoing Monitoring: It shall be a condition of any Special Permit granted under this Bylaw that In order to determine ongoing compliance with FCC regulation, after transmission begins the owner(s) of any Personal Wireless Service Facility(s) or Repeater(s) located on any Facility or

Repeater Site Shall pay for an Independent Consultant hired by the Town to conduct annual testing and Monitoring of EMF radiation emitted from said Site, and to report results of said Monitoring as follows:

- 19.11.2.1. There shall be annual Monitoring of emissions by the Independent Consultant using actual field measurement of radiation, utilizing the Monitoring Protocol. This Monitoring shall measure levels of EMF radiation from the Facility Site's primary Antennas as well as from Repeater Site(s) (if any). A report of the Monitoring results shall be prepared by the Independent Consultant and submitted to the Planning Board, the Board of Selectmen, the Board of Health, The Zoning Board of Appeals and the Town Clerk.
- 19.11.2.2. Any Major Modification of Existing Facility, or the Activation of any additional permitted channels, or the re-activation of any facility which has been idle for six months shall be cause for new Initial Monitoring in accordance with 19.11.1.
- 19.11.2.3. Excessive Emissions: Should the Monitoring of the Facility or Repeater Site reveal that the Site exceeds the FCC 96-326 standard, or any other applicable FCC standard, then the owner(s) of all Facilities utilizing the Site shall be so notified. The owner(s) shall submit to the ZBA, Board of Selectmen, Board of Health and the Town Clerk a plan for the reduction of emissions to a level that complies with the FCC 96-326 standard and any and all other applicable FCC regulations within 10 business days of notification of noncompliance. That plan shall reduce emissions to the applicable FCC standard within 15 days of initial notification of non-compliance. Failure to accomplish this reduction of emission within 15 days of initial notification of non-compliance shall be a violation of the Special Permit and subject to penalties and fines. Such fines shall be payable by the owner(s) of the Personal Wireless Service Facilities with Antennas on the Facility Site until compliance is achieved.
- 19.11.2.4. Structural Inspection: It shall be a condition of the Special Permit that Tower owner(s) shall pay for an Independent Consultant (a licensed professional structural engineer), hired by the Town, to

conduct inspections of the Tower's structural integrity and safety. Towers shall be inspected every five years. The Independent Consultant shall prepare a report of the inspection results.

The Consultant's report shall be submitted to the Board of Selectmen, the Planning Board, the Board of Health, the Building Inspector, the Zoning Board Of Appeals, and the Town Clerk. Any Major Modification of Existing Facility that includes changes to Tower dimensions or antenna numbers or type shall require new structural inspection.

- 19.11.2.5. Unsafe Structure: Should the inspection of any tower reveal any structural defect(s) which, in the opinion of the Independent Consultant render(s) that Tower unsafe, the following actions must be taken. Within 10 business days of notice of unsafe structure, the owner(s) of the Tower shall submit a plan to remediate the structural defect(s). This plan shall be initiated within 10 days of the submission of the remediation plan and completed as soon as reasonably possible. Failure to accomplish this remediation of structural defect(s) within 10 business days of initial notification shall be a violation of the Special Permit and subject to penalties and fines as a zoning violation. Such fines shall be payable by the owner(s) of the Tower and the leased property, until compliance is achieved.

## 19.12. Removal Requirements

Any Personal Wireless Service Facility or Repeater that ceases to operate for a period of one year shall be removed. Cease to operate is defined as not performing the normal functions associated with the Personal Wireless Facility or Repeater and its equipment on a continuous and ongoing basis for a period of one year. At the time of removal, the Facility or Repeater Site shall be remedied such that all Personal Wireless Service Facility or Repeater improvements, which have ceased to operate, are removed. If all Facilities on a Tower have ceased to operate, the Tower shall also be removed, and the

Facility or Repeater Site, including any access road(s) which lead to that Facility or Repeater Site from the main access road, shall be revegetated. Existing trees shall only be removed with the written permission of the ZBA, and only if the ZBA determines such removal of trees to be necessary to complete the required removal of Personal Wireless Service Facility(s) or Repeater(s). Police, fire and emergency services are specifically exempted from the above requirements.

19.13. Performance Guarantees:

19.13.1. Applicant shall, as a condition of the Special Permit:

19.13.1.1. Post a term insurance bond in a reasonable amount determined and approved by the ZBA. This bond shall be in force to cover the costs of the remediation of any damage to the landscape that occurs during the clearing of the Site. Also to cover the cost of the removal of the Tower or Facility or Repeater from the site, and remediation of the landscape, should the Facility or Repeater cease to operate.

19.13.1.2. Post a maintenance bond for the access road(s), site(s) and Tower(s) in amounts approved by the ZBA.

19.14. Fees and Insurance:

19.14.1. Towers, Personal Wireless Service Facilities and Repeaters shall be insured by the owner(s) against damage to person or property. The owner(s) shall provide a Certificate of Insurance to the ZBA and the Selectmen's Office on an annual basis. For Towers, Facilities and Repeaters located on property owned by the Town of Windsor the Town of Windsor shall be an additional named insured.

19.14.2. A schedule of fees for Personal Wireless Service Facility, Tower, or Repeater permitting and renewal, any Monitoring of emissions and inspection of structures and any other fees shall be established by the ZBA pursuant to M.G.L c.40A, 9. This schedule may be amended from time to time.

19.15. Permit Expiration and Renewal

19.15.1. Any Special Permit granted under this section shall lapse if the Applicant fails to begin construction on the Facility or Tower or Repeater within an eighteen-month period of said grant.

19.15.2. All Special Permits granted under this section shall be granted for five years. The ZBA shall upon application filed prior to the expiration of any five year period renew said Special Permit for an additional five year period. If the ZBA determine that the Tower and/or Facility and/or Repeater so permitted shall have been and shall remain in compliance with all terms and conditions of this Bylaw, and of any conditions placed upon the original Special Permit at the time of granting.

19.16. Severability Clause:

This invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision hereof.

### **Windsor Wind Facility Bylaw Adopted June 20, 2005**

#### 20.1 Definitions **for Wind Facilities**

(a) WIND FACILITY – All equipment, machinery and structures when intended to be used in connection with commercial win-generated energy production, including related transmission, distribution, collection, storage or supply systems whether underground, on the surface or overhead, and other equipment or byproducts in connection therewith and the sale of the energy produced thereby, including but not limited to, wind turbine (rotor, electrical alternator/generator and tower), anemometers (wind measuring equipment), transformers, substation, power lines, control and maintenance facilities, site access and service roads, For purposes of the definition, the term “commercial” shall mean those facilities which have less than fifty percent (50%) of their electrical output used on site.

(b) WIND TURBINE – Equipment used in wind-generated energy production. Wind turbines capture the kinetic energy of the wind and convert it into electricity. Primary components are the rotor (blade assembly), electrical alternator/generator, and tower.

#### 20.2 **Purposes.**

The purposes of this Wind Facility Bylaw it to:

- (a) Preserve the character and appearance of the town while simultaneously allowing alternative energy technologies to be developed.
- (b) Protect the scenic, historic, environmental and natural or man-made resources of the community.

- (c) Provide standards and requirements for design, construction, regulation, placement, monitoring, modification and removal of Wind Facilities.
- (d) Provide a procedural basis for action within a reasonable period of time from the request for authorization to place, construct, operate or modify Wind Facilities.
- (e) Preserve property values.
- (f) Locate Wind Facilities so that they do not have negative impacts on the general safety, welfare and quality of life in the community such as, but not limited to, attractive nuisance, noise and falling objects.
- (g) Require owners of Wind Facilities to configure them so as to minimize and mitigate the potential adverse impact of the Wind Facilities.

20.3 **Special Permit Required.** No Wind Facility or part thereof (or major modification to any of the foregoing), shall be erected, constructed or installed without first obtaining a special permit from the Board of Appeals. For purposes of this subsection, "major modification" shall be defined as any change that would alter the criteria on which the original permit was granted such as modification of wind turbine height, size or number of blades, noise levels or visual impact.

20.4 Application: The applicant shall provide the Board of Appeals with the following:

- A Five copies of duly executed application form.
- b. Five copies of the following plans and maps prepared, stamped and signed by the structural engineer and land surveyor each licensed to practice in Massachusetts:
  1. Location Map: copy of a portion of the most recent USGC Quadrangle Map, at a scale of 1:25,000 showing location of the proposed facility, and the area within at least two miles from the proposed Wind Facility
  2. Vicinity map at a scale not less than one inch equals 200 ft (1:2,400) with contour intervals no greater than 10 feet showing the entire vicinity within a two thousand foot radius of the Wind Facility site, and including the topography, public and private roads, buildings and structures, bodies of water, landscape features, historic sites. Indicate the property lines of the proposed Wind Facility site parcel and of all abutters within 300 feet of the site parcel (from Assessors' maps or available surveys). Indicate any access easement or right-of-way needed for access from a public way to the Wind Facility, and the names of all abutters or property owners along the access easement or who have deeded rights to the easement.
  3. Existing conditions plan: a recent survey of the site at a scale no smaller than one inch equals 40 feet (1:480) with topography drawn with a minimum of five-foot contour intervals, showing existing utilities, property lines, stone walls or fence lines, wooded areas, individual trees with diameters greater than 12 inches within a three hundred foot radius from the base of the proposed Wind Facility (labeled with their current heights) and existing buildings or structures within a one thousand foot radius from the base of the proposed Wind Facility. Show the boundary of any wetlands, floodplains, watercourses, and River Protection Areas within 200 feet from the Wind Facility or any related facilities or access ways or appurtenances and identify the presence of any rare species habitat, migration pathway and avian flyways. The survey plan must have been completed, on the ground, by a professional land surveyor within five years prior to the application date, unless there has been substantial change since such date in which case, a more recent survey showing such changes shall be provided.
  4. Site plans showing proposed Wind Facility site layout, grading and utilities at the same scale as the existing conditions plan, including:

(i) Proposed Wind Facility location, and any appurtenant structures, and equipment, including without limitation, power lines and transformers. Indicate property boundaries and distances to the base(s) of the wind turbine(s) and to the nearest corners of each of the appurtenant structures and equipment to those boundaries and dimensions of all proposed improvements. Indicate distances from the base(s) of the wind turbines and the nearest corners of each of the appurtenant improvements to all buildings, roads, skiing facilities, trails (walking/snowmobile), public and private airports and airstrips and area used by migratory mammals and birds within a one-thousand-foot radius from the base of each wind turbine.

(ii) Indicate proposed spot elevations at the base of the proposed wind turbine and the base of any guy wires, and the corners of all appurtenant structures. Guy wires are to be employed only on temporary structures.

(iii) Proposed utilities, including distance from source of power, sizes of service available and required, locations of any proposed utility or communication lines, and whether underground or above ground.

(iv) Limits of area where vegetation is to be cleared or altered and justification for any such clearing or alteration.

(v) Detailed plans for drainage of surface and/or subsurface water, plans to control erosion and sedimentation both during construction and as a permanent measure plan must demonstrate compliance with the Massachusetts Stormway Policy.

(vi) Plans indicating locations and specifics of proposed screening, landscaping, ground cover, fencing, exterior lighting or signs.

(vii) Plans of proposed access driveway or roadway and parking area at the Wind Facility whether temporary or permanent; including grading, drainage, and traveled width. Include a cross section of the access drive indicating the width, depth of gravel, paving or surface material.

5. Detail Plans for Proposed Wind Facility:

(i) Plans, elevations, section and details at appropriate scales but no smaller than one inch equals 10 feet. Applicant shall also provide representative elevation views, indicating the roof, facades, doors and other exterior appearance and materials.

(ii) Two cross sections through the proposed wind turbine drawn at right angles to each other and showing the ground profile to at least 100 feet beyond the limit of clearing and showing any guy wires or supports. Dimension the proposed height of wind turbine above average grade at wind turbine base.

(iii) Detail of proposed exterior finish of the wind turbine and any above-ground appurtenant structures.

(iv) Indicate relative height of the wind turbine to the tops of surrounding trees as they presently exist, and the height to which they are expected to grow in 10 years.

6. Proposed pad-mounted transformers, operations control facility and maintenance facility: Floor plans, elevations and cross sections at a scale of no smaller than  $\frac{1}{4}$  inch = 1 foot (1:48) of any proposed appurtenant structure.

(c) Applicant shall submit computer generated modeling or other form of documentation acceptable to the Board of Appeals to show the following:

(1) Pre-construction simulated view:

(i) A minimum of six view lines in zero to two mile radius from the site, shown beginning at true North and continuing clockwise at 45 degree intervals.

(ii) A plan map of a circle of two miles radius of the Wind Facility site on which any visibility of the proposed wind turbines from a public way shall be indicated.

(iii) Applicant shall utilize the USGS Quadrangle map (Windsor is depicted in 4 maps) at a scale of 1:25,000, and submit profile drawings on a horizontal scale of 1 inch = 400 feet, with a vertical scale of 1 inch = 40 feet.

(iv) Trees shall be shown at existing heights and at projected heights in ten (10) years.

(2) Post-construction simulated views. Applicant shall provide projected post construction simulated views of the Wind Facility from up to six (6) view lines with locations as determined by the Board of Appeals (ZBA) in consultation with the planning Board, in a one (1) to three (3) mile radius of the project site.

(d) Balloon Test. Within 35 days of submitting an application, applicant shall arrange to fly, or raise upon a temporary mast, at least three-foot diameter, nine and one half foot long brightly colored balloons at the maximum blade tip height of the proposed Wind Facility and at each end of the array of the Wind Facility and one in the middle. The dates (including a second date, in case of poor visibility on the initial date in the reasonable opinion of the Board of Appeals), times and location of this balloon test shall be advertised, by the applicant, at seven and fourteen days in advance of the first test date (and the second date, if applicable) in a newspaper with a general circulation in the Town of Windsor. The applicant shall inform the Board of Appeals, in writing, of the dates and times of the test, at least fourteen days in advance. The balloon shall be flown for at least four consecutive hours sometime between 9:00am and 5:00 pm of the dates chosen.

(e) A regrading and revegetation program for temporary roads and construction sites required in connection with development of the Wind Facility by no longer required after project completion.

(f) An avian and bat risk assessment evaluating the potential impact of the proposed facility on avian life including, without limitation, resident and migratory bird habitats and migratory paths in and adjacent to the Wind Facility site.

(g) Wildlife risk assessment evaluating the potential impact of the proposed facility on resident and migratory paths in and adjacent to the Wind Facility site.

(h) An operation and maintenance plan for maintenance of access road/driveway, storm-water controls, and measures to minimize impact of invasive plant species.

## 20.5 **Independent Consultants.**

(a) Upon submission of a complete application for a special permit under this article, the Board of Appeals may, in its discretion, hire independent consultants whose services shall be paid for by the applicant(s).

(b) Applicants for any special permit under this Section shall provide written permission from the owner(s) of the proposed property(s) or Wind Facility site(s) for the town's independent consultant(s) to conduct any necessary site visit(s).

## 20.6 **General Requirements for Special Permit**

In acting on the Special Permit Application, the Board of Appeals shall make the following findings and impose appropriate conditions to assure the following:

(a) Height:

(1) The height of any wind turbine as measured from average grade shall be less than two hundred (200) feet and have a minimum blade clearance from the ground immediately below each wind turbine of twenty (2) feet.

(2) Height calculation. For purposes of calculating the overall height of a wind turbine, the total height shall be measured from average grade to the uppermost extension of any blade or the maximum height reached by any part of the wind turbine.

(b) Setbacks:

(1) Setbacks from adjacent parcels. A minimum setback for each Wind Facility shall be maintained equal to two (2) times the overall wind turbine height, or three hundred (300) feet, whichever is greater, from all boundaries of the site on which the Wind Facility is located.

(2) Setbacks for residences. Notwithstanding the provisions of subsection (1) above, a minimum setback for each wind turbine of at least six hundred (600) feet shall be maintained from any building occupied by humans whether on site or on adjacent parcels.

(c) All electrical wires associated with the Wind Facility shall be located underground between the wind turbine and the project substation.

(d) If the Wind Facility site is in a wooded area, a vegetated buffer strip of undisturbed trees shall be retained for at least fifty (50) feet in width around the entire perimeter of the Wind Facility site except where the access drive is located. Applicant shall obtain a financial surety in form and amounts reasonable acceptable to the Board of Appeals to cover the cost of the remediation and revegetation of any damage to the landscape that occurs during the clearing of the site.

(e) Fencing and signs: The area around each wind turbine and any appurtenant structure (other than an access road) shall be completely fenced for security to a height of six (6) feet and gated. Use of razor wire is not permitted. One (1) sign no greater than one (1) square foot indicating the name of the Wind Facility owner(s) and a 24-hour emergency telephone number shall be posted adjacent to the entry gate. Signs warning of high voltage electricity shall be posted on stationary portions of each wind turbine, transformers and the operations control facility. In addition, "No Trespassing" or other warning signs may be posted on the fence.

(f) All appurtenant structures shall be designed to be architecturally similar and compatible with each other, and shall be no more than 35 feet high. The structures shall be used only for the housing of equipment related to this particular site. As a condition to granting a special permit, the Board of Appeals may require the structures to be joined or clustered so as to appear as one building.

(g) Wind turbine finish. Wind turbines shall be of a non-reflective, unobtrusive color with a nonreflective finish.

(h) Commercial advertising shall not be allowed on any part of the Wind Facility.

(i) Unless required by the Federal Aviation Administration (FAA), no lighting of wind turbines, or any appurtenant building(s), is permitted, except for manually operated emergency lights for use only when operating personnel are on site. Applicant shall provide the Board of Appeals with an official determination by the FAA as to its lighting requirements and/or markings prior to approval of the special permit by the Board of Appeals.

(j) No wind turbine that would be classified as a hazard to air navigation, as defined by the Federal Aviation regulations (Title 14 CFR) may be permitted.

(k) Guidelines for appropriate siting:

(1) Wind facilities shall be located so as to minimize the following potential impacts:

(i) Visual Aesthetic: Wind facilities shall, when possible, be sited off ridge lines, and where their visual impact is least detrimental to highly rated scenic areas.

(ii) Diminution of residential property values.

(iii) Safety hazards resulting from structural failure, "blade throw", falling ice or attractive nuisance.

(iv) Safety hazard from excessive electromagnetic radiation in the event the Wind Facility is found to exceed the established guidelines.

(2) The following locations are ranked in order of preference:

(i) The use of land which has already been developed for another similar purpose is preferred, such as path of high-power electric lines

(ii) The use of municipal lands which comply with other requirements of this Section, and where visual impact can be minimized and mitigated, shall be encouraged.

(iii) The use of land, distant from higher density residential properties, and where visual impact can be minimized shall be encouraged.

(iv) Location can be accessed from existing developed roads in order to avoid creation of new roads and disruption of vegetation.

(l) The Board of Appeals shall request input from the Chiefs (or their designees) of Fire, Police and other Emergency services regarding the adequacy for emergency access of the planned drive or roadway to the site.

(m) The project operator shall be required to keep a monthly log of all dead birds and bats found within five hundred (500) feet of a Wind Facility and make such log available to the Board of Appeals upon request.

(n) The Board of Appeals may impose such conditions as it deems reasonable necessary to minimize or mitigate detrimental effects to the environment, including, but not limited to glare caused by construction and/or operation of the Wind Facility.

(o) Construction of on-site roads for the installation and operation of a Wind Facility shall be minimized. Temporary roads used for initial installation shall be regraded and revegetated to a natural condition upon completion of construction.

(p) The applicant must prove to the satisfaction of the Board of Appeals of that the proposal is beneficial and complies with requirements of this bylaw.

(q) The proposal shall comply with FCC Ref 96-326 regarding emissions of electromagnetic radiation and that the required monitoring program is in place and shall be paid for by the applicant.

(r) Monitoring and evaluation of compliance. Excessive emissions: Should the monitoring of a Wind Facility site reveal that the site exceeds the FCC 96-326 standard with respect to EMI radiation or violates noise levels, then the owner shall be notified and is required to bring the Wind Facility into compliance with the regulations.

(s) If review under the Massachusetts Environmental Policy Act (MEPA) is required, the Board of Appeals will not issue the special permit until the MEPA review process is complete.

## 20.7 Operational Noise.

(a) Prior to the issuance of a building permit, the wind turbine manufacturer shall provide sufficient data and documentation to establish that the wind turbine will not produce noise levels in excess of those set forth below, when measured at the property line and at the nearest inhabited residence (in Decibels ) – dBA:

Ambient	Operating
45	55.0
50	56.2

55	61.0
60	61.2
65	65.4

Ambient is defined as the average night time background sound level when the Wind Facility is not in operation.

(b) (1) Pre-testing. After the granting of a special permit and before the applicant's Wind Facility begins operation, the applicant shall pay for an independent consultant, hired by the town, to monitor the background levels of Electrical magnetic Interference (EMI) radiation and operational noise around the facility site. A report of the monitoring results shall be prepared by the independent consultant and submitted to the Inspector of Buildings.

(2) After the Wind Facility has been approved and installed, the applicant shall pay for an independent consultant, designated by the Board of Appeals, to complete sound measurements to determine ambient and operating decibel levels. The sound level shall be measured on a sound level meter using the A-weighting network.

(3) Upon complaint of an abutter, ambient and maximum permitted decibel measurements shall be performed by a consultant designated by the Board of Appeals. The consultant shall submit recorded sound measurements to the Board of Appeals for review and evaluation. A fee for the service shall be established by the Board of Appeals. The fee shall be paid for by the complainant unless maximum permitted decibel readings have been exceeded, in which case the Wind Facility owner shall pay the fee.

(4) If maximum readings are exceeded the installation shall be considered a public nuisance. The violation shall be corrected within ninety (90) days from the date of the notification, and if the noise violation cannot be remedied the turbine shall be removed or relocated.

**20.8 Removal Requirements:** Any Wind Facility which has reached the end of its useful life or has been abandoned shall be removed. Abandoned is defined as the failure to operate the facility on a continuous and ongoing basis for a period of one (1) year. At the time of removal, The Wind Facility site shall be reclaimed. All wind turbines and appurtenant structures shall also be removed and the Wind Facility site shall be revegetated. Existing trees shall only be removed if necessary to complete the required removal. Applicant, upon obtaining a special permit, shall deliver to the Board of Appeals a financial surety, in form and amounts reasonably acceptable to the Board of Appeals, to cover the cost of removal and disposal of the Wind Facility and remediation of the landscape in accordance with this subsection. Such financial surety shall be renewed and update as necessary throughout the life of the Wind Facility so as to continue to cover the removal, disposal and remediation costs as set forth above. The foregoing notwithstanding, the applicant shall be entitled to apply for the special permit to leave the foundation of the Wind Facility intact in order to minimize disruption to existing vegetation and minimize erosion problems.

**20.9 Maintenance of Access** The project proponent shall be liable for the cost of maintaining the access road (unless accepted as a public way), the project sites and the facility, and for restoration of any damage occurring during construction of as a result of operation of the facility.

**20.10 Severability Clause:** The invalidity of any section or provision of this Section shall not invalidate any other section or provision hereof.

20.11 **Additional Concerns:** There is at present time, 2004, concern relative to low frequency noise as well as low frequency vibrations produced by wind turbines. There have been no standards established nor recommendations made as to limits in these areas. The project operator shall comply with regulations subsequently adopted by the state or federal government with regard to low frequency noise and/or vibration produced by Wind Facilities within 90 days of adoption of such regulations/policies.

## **Section 21 - As-of-Right Zoning Bylaw: Allowing Use of Large-Scale Ground-Mounted Solar Photovoltaic Installations**

Prepared by:

Department of Energy Resources

Massachusetts Executive Office of Environmental Affairs

December 2014

**Adopted at the May 4, 2015, Annual Town Meeting, by warrant article 18**

### **21.1.0 Purpose**

The purpose of this bylaw is to promote the creation of new large-scale ground-mounted solar photovoltaic installations by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations. The provisions set forth in this section shall apply to the construction, operation, and/or repair of large-scale ground-mounted solar photovoltaic installations.

### **21.1.1 Applicability**

This section applies to large-scale ground-mounted solar photovoltaic installations proposed to be constructed after the effective date of this section. This section also

pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equity.

### **21.2.0 Definitions**

**As-of-Right Siting:** As-of-Right Siting shall mean that development may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval. As-of-right development may be subject to site plan review to determine conformance with local zoning ordinances or bylaws. Projects cannot be prohibited but can be reasonably regulated by the inspector of buildings, building commissioner or local inspector, or if there is none in a town, the board of selectmen, or person or board designated by local ordinance or bylaw.

**Building Inspector:** The inspector of buildings, building commissioner, or local inspector, or person or board designated by local ordinance or bylaw charged with the enforcement of the zoning ordinance.

**Building Permit:** A construction permit issued by an authorized building inspector; the building permit evidences that the project is consistent with the state and federal building codes as well as local zoning bylaws, including those governing ground-mounted large-scale solar photovoltaic installations.

**Designated Location:** The location designated by the Windsor Select Board, in accordance with Massachusetts General Laws Chapter 40A, section 5, where ground – mounted large scale solar photovoltaic installations may be sited as-of right. Said location, is lot # \_\_\_\_105\_\_\_\_ on map \_\_\_\_11\_\_\_\_ pursuant to Massachusetts General Laws Chapter 40A Section 4. This map is hereby made a part of this Zoning Bylaw and is on file in the Office of the Town Clerk.

**Large-Scale Ground-Mounted Solar Photovoltaic Installation:** A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity of 250 kW DC.

**On-Site Solar Photovoltaic Installation:** A solar photovoltaic installation that is constructed at a location where other uses of the underlying property occur.

**Rated Nameplate Capacity:** The maximum rated output of electric power production of the Photovoltaic system in Direct Current (DC).

**Site Plan Review:** review by the Site Plan Review Authority to determine conformance with local zoning ordinances or bylaws.

**Site Plan Review Authority:** For purposes of this bylaw, Site Plan Review Authority refers to the body of local government designated as such by the municipality

**Solar Photovoltaic Array:** an arrangement of solar photovoltaic panels.

**Zoning Enforcement Authority:** The person or board charged with enforcing the zoning ordinances or bylaws.

### **21.3.0 General Requirements for all Large Scale Solar Power Generation Installations**

The following requirements are common to all solar photovoltaic installations to be sited in designated locations.

#### **21.3.1 Compliance with Laws, Ordinances and Regulations**

The construction and operation of all large scale solar photovoltaic installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State Building Code.

#### **21.3.2 Building Permit and Building Inspection**

No large scale solar photovoltaic installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

#### **21.3.3 Fees**

The application for a building permit for a large scale solar photovoltaic installation must

be accompanied by the fee required for a building permit.

### **21.3.4 Site Plan Review**

Ground-mounted large scale solar photovoltaic installations with 250 kW or larger of rated nameplate capacity shall undergo site plan review by the Site Plan Review Authority prior to construction, installation or modification as provided in this section.

#### **21.3.4.1 General**

All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts.

#### **21.3.4.2 Required Documents**

Pursuant to the site plan review process, the project proponent shall provide the following documents:

(a) A site plan showing:

- i. Property lines and physical features, including roads, for the project site;
- ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
- iii. Blueprints or drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures
- iv. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent

devices;

v. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;

vi. Name, address, and contact information for proposed system installer;

vii. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;

viii. The name, contact information and signature of any agents representing the project proponent; and

(b) Documentation of actual or prospective access and control of the project site (see also Section 3.5);

(c) An operation and maintenance plan (see also Section 3.6);

(d) Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);

(e) Proof of liability insurance; and

(f) A public outreach plan, including a project development timeline, which indicates how the project proponent will meet the required site plan review notification procedures and otherwise inform abutters and the community

The Site Plan Review Authority may waive documentary requirements as it deems appropriate.

### **21.3.5 Site Control**

The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation.

### **21.3.6 Operation & Maintenance Plan**

The project proponent shall submit a plan for the operation and maintenance of the large-scale ground-mounted solar photovoltaic installation, which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.

### **21.3.7 Utility Notification**

No large-scale ground-mounted solar photovoltaic installation shall be constructed until evidence has been given to the Site Plan Review Authority that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar photovoltaic installation owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

### **21.3.8 Dimension and Density Requirements**

#### **21.3.8.1 Setbacks**

For large-scale ground-mounted solar photovoltaic installations, front, side and rear setbacks shall be as follows:

**(a) Front yard:** The front yard depth shall be at least 10 feet; provided, however, that where the lot abuts a Conservation-Recreation or Residential district, the front yard shall not be less than 50 feet.

**(b) Side yard.** Each side yard shall have a depth at least 15 feet; provided, however, that where the lot abuts a Conservation-Recreation or Residential district, the side yard shall not be less than 50 feet.

**(c) Rear yard.** The rear yard depth shall be at least 25 feet; provided, however, that where the lot abuts a Conservation-Recreation or Residential district, the rear yard shall not

be less than 50 feet.

### **3.8.2 Appurtenant Structures**

All appurtenant structures to large-scale ground-mounted solar photovoltaic installations shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

## **21.3.9 Design Standards**

### **21.3.9.1 Lighting**

Lighting of solar photovoltaic installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar photovoltaic installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

### **21.3.9.2 Signage**

Signs on large- scale ground-mounted solar photovoltaic installations shall comply with a municipality's sign bylaw. A sign consistent with a municipality's sign bylaw shall be required to identify the owner and provide a 24-hour emergency contact

phone number. Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.

### **21.3.9.3 Utility Connections**

Reasonable efforts, as determined by the Site Plan Review Authority, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

### **21.3.10 Safety and Environmental Standards**

#### **21.3.10.1 Emergency Services**

The large scale solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

#### **21.3.10.2 Land Clearing, Soil Erosion and Habitat Impacts**

Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the large – scale ground-mounted solar photovoltaic installation or otherwise prescribed by applicable laws, regulations, and bylaws.

## **21.3.11 Monitoring and Maintenance**

### **21.3.11.1 Solar Photovoltaic Installation Conditions**

The large - scale ground-mounted solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted as a public way.

### **21.3.11.2 Modifications**

All material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the Site Plan Review Authority.

## **21.3.12 Abandonment or Decommissioning**

### **21.3.12.1 Removal Requirements**

Any large- scale ground-mounted solar photovoltaic installation which has reached the end of its useful life or has been abandoned consistent with Section 3.12.2 of this bylaw shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Site Plan Review Authority by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

(a) Physical removal of all large- scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site.

(b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.

(c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Site Plan Review Authority may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

**A True Copy**

**ATTEST:** \_\_\_\_\_

**Madeline W. Scully**

**Town Clerk**

**May 4, 2015**

### **22.01. Purpose and Applicability**

The purpose of this By-law is to promote the creation of new large-scale and medium-scale ground-mounted solar photovoltaic installations by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations. This Section 22 applies to solar photovoltaic systems not located on Lot 105, Map 11. Solar photovoltaic systems located in Lot 105, Map 11 are subject to the provisions of Section 21 of these Zoning Bylaws.

The provisions set forth in this Section 22 shall apply to the construction, operation, modification, and/or repair of **Large-Scale Ground-Mounted Solar Photovoltaic Installations [LSGMSPIs]** with a total photovoltaic module (panel) area of more than 40,000 square feet and/or occupying two [2] or more acres, proposed to be constructed after the effective date of this section.

**Medium-Scale Ground-Mounted Solar Photovoltaic Installation [MSGMSPI]:** with more than 2,000 but less than 40,000 square feet of panel surface area and occupying up to two [2] acres. Together LSGMSPI and MSGMSPI are referenced in this Section 22 as GMSPI.

All proposed LSGMSPIs require a Special Permit and Site Plan Review in accordance with this By-law. All proposed MSGMSPI require only Site Plan Review.

### **22.02 Definitions**

**A. Appurtenant Structures:** All structures, belonging to and normally associated with the use of which is appurtenant to a GMSPI, including, but not limited to, equipment shelters, storage facilities, transformers, and substations.

**B. Building Permit:** A construction permit issued by the Building Inspector; the building permit evidences that the project is compliant with the state and federal building codes as well as this By-law.

**C. Large-Scale Ground-Mounted Solar Photovoltaic Installation [LSGMSPi]:** A solar photovoltaic system that is structurally mounted on the ground and is not building-mounted, and has a total photovoltaic module (panel) area of more than 2,000 but less than 40,000 square feet and/or occupying less than two [2] or more acres, and proposed to be constructed after the effective date of this section.

**D. Medium-Scale Ground-Mounted Solar Photovoltaic Installation [MSGMSPI]:** A solar photovoltaic system that is structurally mounted on the ground and is not building-mounted, and has a total photovoltaic module (panel) area of more than 40,000 square feet and/or

occupying two [2] or more acres (whether or not separated by a roadway), and proposed to be constructed after the effective date of this section.

**E. Site Plan Review:** Review by the Windsor Zoning Board of Appeals in accordance with Section 22.06 below.

**F. Solar Photovoltaic Array:** An arrangement of solar photovoltaic panels.

**G. Special Permit:** Issued in compliance with this Section and Section 14 of the Zoning Bylaws by the Zoning Board of Appeals.

### **22.03 General Requirements for all GMSPIs**

The following requirements are common to all GMSPIs to be sited in the Town of Windsor.

**A. Compliance with Laws, Ordinances and Regulations.** The construction and operation of all LSGMSPIs shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the Massachusetts State Building Code.

**B. Building Permit.** No LSGMSPI shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

**C. Siting Criteria.**

(1) GMSPIs shall be located so as to minimize the potential impacts on the following:

- a. Visual/aesthetic: GMSPIs shall, when possible, be sited off ridgelines to locations where their visual impact, including glare or reflection, is least detrimental to valuable historic and scenic areas, and established residential areas;
- b. General health, safety, and welfare of residents;
- c. Diminution of residential property values; and
- d. Safety, as in cases of attractive nuisance.

(2) The following siting criteria for GMSPIs are ranked in order of preference:

- a. The use of municipal land and industrial-zoned lands, which comply with other requirements of this section and where visual impact can be minimized and mitigated, shall be encouraged.
- b. The use of land distant from higher density residential properties and where visual impact can be minimized and mitigated shall be encouraged.
- c. Use of land, other than that which results in significant loss of land and natural resources, including farm and forest land.

### **22.04 Special Requirements for LSGMSPI**

**A. Percentage Cover Limitations.** No LSGMSPI greater than 7.5 acres in size shall be permitted which would cover more than 30% of the area of the tax parcel on which it is proposed to be built.

B. All LSGMSPI shall apply for and obtain a Special Permit from the Zoning Board of Appeals in compliance with Section 14 of the Zoning Bylaws. Site Plan Review for LSGMSPI shall be conducted by the Zoning Board of Appeals.

### **22.05 Fees**

The application for a building permit for a MSGMSPI must be accompanied by the application fees required for a building permit and Site Plan Review. The application for a building permit for a LSGMSPI must be accompanied by the application fee for a building permit, Site Plan Review, and a Special Permit.

### **22.06 Site Plan Review for All GMSPI**

A. GMSPIs shall undergo Site Plan Review by the Zoning Board of Appeals in accordance with this Section prior to construction, installation, or modification. The Site Plan Review process shall take into consideration the ranked order of siting preferences listed in Paragraph 22.03 C.2.

(1) General - All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts.

(2) Required Documents - Pursuant to the Site Plan Review process, the project proponent shall provide the following documents:

(a) A site plan showing:

- i. Property lines and physical features, including roads, for the project site;
- ii. Landscaping Plan. For large-scale projects, the Applicant shall submit a landscaping plan as part of site plan approval. The landscaping plan shall detail the following:
  - a. All proposed changes to the landscape of the site, including temporary and permanent roads and/or driveways, grading, area of vegetative clearing, all proposed vegetative planting and screening, and/or fencing.
  - b. Planting design shall include details of the types and size of plant materials. Landscaping shall be designed in an environmentally sensitive manner with non-invasive drought tolerant native plants, so as to reduce irrigation needs and
  - c. All landscaping and required buffer areas shall be properly maintained. Landscape plants shall be monitored for at least two growing seasons.
- iii. Locations of wetlands and Priority Habitat Areas defined by the Natural Heritage & Endangered Species Program (NHESP);
- iv. Locations of Floodplains or inundation areas for moderate or high hazard dams;
- v. Locations of Priority Heritage landscapes and local or National Historic

districts;

vi. A list of hazardous materials proposed to be located on the site in excess of household quantities and a plan to prevent their release to the environment as appropriate;

vii. Blueprints or drawings of the solar photovoltaic installation signed and stamped by both a Professional Engineer and a Professional Surveyor, each licensed to practice in the Commonwealth of Massachusetts, showing the boundary lines, the proposed layout of the system, and any potential shading from nearby structures.

viii. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;

ix. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;

x. Name, address, and contact information for proposed system installer;

xi. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;

xii. The name, contact information and signature of any agents representing the project proponent;

**(b) Site Control.** The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation.

**(c) Operation & Maintenance Plan.** The project proponent shall submit a plan for the operation and maintenance of the GMSPI, which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.

**(d) Utility Notification.** No GMSPI shall be constructed until evidence has been given to the Zoning Board of Appeals that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar photovoltaic installation owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

**(e) Zoning District Designation.** The project proponent shall submit a zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose).

**(f) Proof of Liability Insurance.** The project proponent shall submit to the Zoning Board of Appeals proof of liability insurance for the project.

**(g) Financial Surety.** The project proponent shall submit a description of financial surety that satisfies Section 22.08. The Zoning Board of Appeals may waive documentary requirements as it deems appropriate.

(3) Setback and Height Requirements - All GMSPIs, including Appurtenant Structures and parking areas, setbacks shall be at least fifty [50] feet from any property boundary. The height of a GMSPI or any Appurtenant Structure, shall not exceed twenty [20] feet.

(4) Appurtenant Structures - All such Appurtenant Structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

(5) Design and Performance Standards

**(a) Lighting.** Lighting of solar photovoltaic installations shall be consistent with local, state and federal law. There shall be no lighting of any parts of the installation other than as mandated under such laws. Appurtenant structures that may require illumination, shall be limited to that required for safety and intrusion purposes and shall be directed downward and shall incorporate full cut-off fixtures and triggered by motion sensors.

**(b) Landscaping/Buffer Requirements.** Appropriate landscaping and vegetative buffer shall be installed adequate to visually screen the solar energy system from the boundary of any abutting residential properties that would have a direct view of the proposed installation. The landscaped buffer must be sufficiently dense to block the view of the project from all dwellings abutting the property. The applicant shall submit a Landscape Plan as required in Subsection 21.06(2) ("Required Documents") as part of the special permit and/or site plan approval application. The Zoning Board of Appeals may waive the landscaping and buffer requirements applying to the project site where it deems advisable.

**(c) Signage.** A sign consistent with the By-law shall be required to identify the owner of GMSPIs and provide a 24-hour emergency contact phone number. No signage is otherwise permitted.

**(d) Utility Connections.** Reasonable efforts, as determined by the Zoning Board of Appeals, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

**(e) Roads.** Access roads shall be constructed to minimize grading, removal of stone walls or street trees, and minimize impacts to environmental or historical resources.

**(f) Control of Vegetation.** Herbicides may not be used to control vegetation at the solar electric installation. Mowing or the use of pervious pavers or geotextile materials underneath the solar array are possible alternatives.

**(g) Hazardous Materials.** Hazardous materials stored, used, or generated on site shall not exceed the amount for a Very Small Quantity Generator of Hazardous Waste as defined by the DEP pursuant to MassDEP regulations 310 CMR 30.000 and shall meet all requirements of the DEP including storage of hazardous materials in a building with an impervious floor that is not adjacent to any floor drains to prevent discharge to the outside environment. If hazardous materials are utilized within the solar electric equipment, then impervious containment areas capable of controlling any release to the environment and to prevent potential contamination of groundwater are required.

**(h) Noise.** Sound or noise levels may not exceed 50 dB at the boundary of the property.

**(6) Safety and Environmental Standards**

**(a) Emergency Services.** The GMSPI owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Windsor Fire Chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

**(b) Land Clearing, Soil Erosion and Habitat Impacts.** Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the GMSPI or otherwise prescribed by applicable laws, regulations, and this By-law.

**22.07 Monitoring and Maintenance**

A. Solar Photovoltaic Installation Conditions. The applicant for Site Plan Review shall propose that either the GMSPI owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the solar electric installation and any access road(s), unless accepted as a public way. At the time of approval of the Site Plan Review, the permit/approval granting board shall specify one party, either the owner or operator, who shall have the responsibility for compliance with this Section.

B. Modifications. All material modifications to a GMSPI made after issuance of the required building permit shall require approval by the Zoning Board of Appeals.

**22.08 Abandonment or Decommissioning**

A. Removal Requirements. Any GMSPI which has reached the end of its useful life or has been abandoned as set forth below shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The

owner or operator shall notify the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- (a) Physical removal of all GMSPI structures, equipment, security barriers and transmission lines from the site.
- (b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- (c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Zoning Board of Appeals may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

B. Abandonment. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the GMSPI shall be considered abandoned when it fails to operate for more than one year without the written consent of the Zoning Board of Appeals. If the owner or operator of the GMSPI fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Town retains the right, after the receipt of an appropriate court order, to enter and remove an abandoned, hazardous, or decommissioned GMSPI. As a condition of Site Plan approval, an applicant shall agree to allow entry to remove an abandoned or decommissioned installation. The costs for the removal will be charged to the property owner in accordance with the provisions of M.G.L. 139, Section 3A as a tax lien on the property.

### **22.09 Financial Surety**

Applicants for GMSPIs shall provide a form of surety, either through escrow account, bond, or other form of surety approved by the Zoning Board of Appeals, to cover the cost of removal in the event the town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Zoning Board of Appeals, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project Applicant. Such surety will not be required for municipally- or state-owned facilities. The Applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

## **Section 23. Marijuana Establishments and Medical Marijuana Treatment Centers**

Consistent with G.L. c. 94G, Section 3(a)(2), all types of “Marijuana Establishments” as those terms are defined in G.L. c. 94G, §1, 935 CMR 500 and 935 CMR 501, including, marijuana cultivators, craft marijuana cooperatives, marijuana product manufacturers, marijuana retailers, independent testing laboratories, marijuana research facilities, marijuana

transporters or any other type of licensed marijuana-related businesses shall be prohibited within the Town of Windsor.

Approved August 19, 2024 STM

Approved by the Massachusetts Attorney General February 5, 2025 (AG amended by removing Medical Marijuana Treatment Centers language).

Posted all public places February 11, 2025

by Attorney General December 16, 2019

## **Section 24 ADU Bylaw per new state laws: Approved by AG December 23, 2025**

### 24.01 Purpose

The intent of permitting Accessory Dwelling Units (ADUs) is to:

1. Provide homeowners with a means of obtaining income, companionship, security and services, and thereby enabling them to stay more comfortably in homes and neighborhoods they might be forced to leave.
2. Protect stability, property values, and the single-family residential character of a neighborhood, or other housing challenges.
3. Provide housing units for seniors, lower income persons and persons with disabilities.
4. Increase access to housing.

24.02 General: An ADU is permitted, subject to site plan approval where an ADU is proposed in a legally pre-existing nonconforming structure. The alternation or expansion of a pre-existing nonconforming structure or Lot, can receive an approval or an approval with conditions.

### 24.03 Site Plan Approval:

Any new ADU is subject to an as of right site plan review and approval based upon the requirements set forth below. (24.04) The Building Inspector/ Zoning Board of Appeals will conduct the site plan review. An approved site plan for an ADU is required prior to the issuance

of the building permit by the Building Inspector. Abutters within 300 feet of the applicant's property must be notified in writing by certified mail that the ADU is being proposed and that the Building Inspector will be conducting a site plan review at a given place, time and date. Said notice will be mailed not later than ten days prior to the site plan review meeting. The applicant will provide proof of mailing to the Building Inspector. The Building Inspector will give its approval prior to the issuance of a building permit.

#### 24.04 Requirements:

1. Configuration: An ADU may be located either within, attached to, or detached from the principal structure. Not more than one ADU can be created that is incorporated within, attached to, or detached from, one principal dwelling built on one Building Lot.
2. An ADU must be a complete, separate housekeeping unit, including its own kitchen and bath, that functions as a separate dwelling unit from the original dwelling unit.
3. An ADU, whether attached or detached, must have two means of egress.
4. Maximum unit size: The gross floor area, calculated from interior faces of exterior walls, of an existing structure, an addition, or new detached structure, converted to, or constructed for the purpose of creating an ADU cannot exceed 50 percent of the gross floor area of the Principal Dwelling, not including, attic or garage, and/or detached accessory buildings or 900 square feet, whichever is less.
5. Unit size: There is no minimum unit size except that dictated by the Building Inspector and Board of Health to obtain a Certificate of Occupancy.
6. The construction of an ADU must be in conformity with the State Building Code, and Title V of the State Sanitary Code and all other applicable regulations.
7. An off-street parking space must be provided for use by the occupants of the ADU.

8. Any fire escapes and outside stairways leading to a second floor must be located on the rear or side of the building, and, where practicable, not be located on any building wall facing a street.
9. In order to encourage the developing of housing units for disabled and handicapped individuals and persons of limited mobility, the Building Inspector may allow reasonable deviation from the stated conditions where necessary to install features that facilitate access and mobility for disabled persons.
10. Prior to issuance of a permit, information and plans equivalent to that which would ordinarily be required by the Building Inspector must be submitted.
11. The zoning approval and any notarized letters provided as part of the permitting process must be recorded in the County Registry of Deeds or Land Court, as appropriate, in the chain of title to the property, with documentation of the recording provided to the Building Inspector, prior to the occupancy of the ADU.

#### 24.05 Conversion of an Accessory Structure:

1. An accessory garage structure or other outbuilding may be converted to accommodate an ADU provided that the structure complies with the established setback standards for a principal structure, as prescribed in the underlying applicable building codes and all other applicable standards, unless otherwise exempt. Conversion of such accessory structure must not result in the elimination of the requirement of one legal onsite parking space to serve the Single-Family Residence.

#### 24.06 Building Inspector:

1. It is the duty of the Building Inspector to administer and enforce the provisions of this Bylaw.
2. No building can be constructed or changed in use or configuration, until the Building Inspector has issued a building permit and site plan approval is granted No building permit

will be issued until a sewage disposal works permit, when applicable, has first been obtained from the Board of Health and the proposed building and location thereof conform with the Town's laws and bylaws. Any new building or structure must conform to all adopted state and Town laws, bylaws, codes and regulations. No ADU can be occupied until a certificate of occupancy has been issued by the Building Inspector.

- 3. The Building Inspector will refuse to issue any permit, which would result in a violation of any provision of this bylaw or in a violation of the requirements or terms of any special permit or variance granted by the Zoning Board of Appeals.
  
- 4. The Building Inspector will issue a cease-and-desist order on any work in progress or on the use of any premises, either of which are in violation of the provisions of this Bylaw.
  
- 5. Construction or use according to a building permit or special permit must conform to any subsequent amendment of this Bylaw unless the construction or use is begun within a period of not more than twelve months after the issuance of a permit granted before the effective date of the amendment. To qualify for this exemption, construction must be completed in a continuous and expeditious manner.

Approved at May 5, 2025 ATM

Attorney General Approved December 23, 2025

**TOWN OF WINDSOR**  
**ZONING BYLAW FOR LARGE SCALE INDUSTRIAL & COMMERCIAL**  
**FACILITIES**

**§ 25 Large Scale Industrial & Commercial Facilities Zoning Bylaw**

**25.1.0 Purpose**

The purpose of this Bylaw is to provide for the public health, welfare, and safety of the

residents of the Town of Windsor (the “Town”) through implementation of a zoning bylaw and performance standards for environmental and land use impacts associated with the construction or operation of large scale industrial and commercial facilities proposed to be located in the Town. This bylaw is adopted pursuant to the authority granted to towns in accordance with M.G.L. Chapter 40A. Large scale industrial or commercial facilities are also subject to all other requirements of the Town’s Zoning Bylaws and Subdivision Regulations to the maximum extent permitted by law. Specifically, the purpose of this Bylaw is to:

- a. Reduce adverse environmental and public health impacts from the construction and operations of large scale industrial and commercial facilities;
- b. Minimize noise, earth removal and related disturbance impacts to surrounding residential properties, businesses, and municipal and institutional facilities;
- c. Preserve the pre-existing character of neighborhoods, especially in rural areas and on agricultural lands adjacent to large scale industrial and commercial facilities;
- d. Avoid exposing residents and public and private property to risk of injury or damage;
- e. Minimize accidental damage to facilities due to man-made events or natural forces such as severe weather events; and
- f. Ensure the construction and operations are in compliance with local, State and Federal requirements.

Application and study requirements required by this Bylaw are in addition to and should be coordinated with any other requirements of Windsor’s Zoning Bylaws or

Subdivision regulations.

## **25.2.0 Definitions**

Large Scale Industrial and Commercial Facility (LSICF) -- A large-scale industrial or commercial facility is defined as any industrial or commercial facility, including any associated facilities, which requires the mandatory preparation of an Environmental Impact Report (EIR) pursuant to the Massachusetts Environmental Policy Act (MEPA). A LSICF shall also include: (1) any facility or use that creates 10 or more acres of impervious surface or (2) a facility or use which alters 50 or more acres of land, unless the project is consistent with an approved agricultural use plan or a forest cutting plan in accordance with State law.

Appurtenant Structure, Equipment or Facilities (ASEF) – Any structure, equipment, or other facilities (e.g. parking, contractor’s yards, staging areas) associated with the construction, operation or maintenance of the LSICF.

Applicant - Owner and/or Operator of the LSICF and/or ASEF.

High On-site Populations (HOP)- retirement housing; assisted living facilities; congregate living facilities; convalescent services; parks, churches, detention facilities; day care services (commercial); hospitals; medical offices exceeding 5,000 sq. ft. of gross floor area; and educational facilities (public or private) that pose a public safety concern due to the characteristics of the occupants, development, or site that would make evacuation difficult in the event of an emergency.

Special Permit and Certificate Granting Authority – The Zoning Board of Appeals (ZBA) shall be responsible for granting a Special Permit and issuing a Certificate of Compliance to construct and/or operate a LSICF and/or ASEF if it determines that such facility is in compliance with this Bylaw.

### **25.3.0 Applicability**

- a. This article applies to all LSICF or ASEF that will be permitted or constructed after the effective date of the article. This bylaw shall not apply to the maintenance, construction, or improvement of a local road or to any residential use. This bylaw shall not apply to Telecommunication Facilities.
- b. All existing LSICF or ASEF constructed prior to the adoption of this article shall not be required to meet the requirements of this article, provided that any modification to an existing LSICF or ASEF that occurs after the effective date of this

article and which materially alters the size, type, location, or operation of the LSICF or ASEF shall require compliance with this Bylaw, as determined by the ZBA.

c. If any part or provision of this Bylaw or the application thereof to any person or business is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the remainder of this Bylaw, or the application thereof to other persons, businesses, or circumstances unless by operation of law.

d. An applicant for a proposed LSICF must seek a Special Permit from the Special Permit Granting Authority which is the Windsor ZBA. The ZBA shall conduct a Special Permit process in accordance with Windsor's Zoning Bylaws upon receipt of a completed Application and will determine if the proposed LSICF and ASEFs will meet the requirements of this Bylaw. The ZBA may request additional information needed to determine compliance with this bylaw. The Applicant may not proceed with the construction or operation of the LSICF or ASEF until a Special Permit has been granted by the ZBA based on their determination that all the requirements of the Bylaw will be met.

e. If a project has been determined to be exempt from local zoning due to Federal pre-emption, the LSICF or the ASEF shall still require a Certificate of Compliance that the project meets the requirements of this bylaw to the maximum extent feasible.

f. No LSICF or ASEF shall be constructed, installed, or modified without also obtaining a building permit and paying any required fees.

#### **25.4.0 Compliance with Bylaw**

a. No LSICF or ASEF shall be constructed or operated within the Town unless such facilities can meet all the requirements of this Bylaw. The ZBA will make this determination based upon the application and any independent studies the ZBA may require. In order to determine compliance, the ZBA may require independent noise or engineering studies, air and water quality testing, or other tests or studies to be paid for by the Applicant in accordance with this Bylaw.

b. The application for a LSICF or ASEF shall be accompanied by a fee as

established by resolution of the ZBA consistent with State law.

- c. Any modification to an existing LSICF or ASEF that materially alters its size, type, location, or operation shall require a new Application and must meet all requirements of this Bylaw. Like-kind replacements shall not require a new Application if so, determined by the ZBA.
- d. If the ZBA finds the Applicant in conformance with this bylaw, the ZBA may issue a Special Permit. Such Special Permit shall expire three (3) years from the date of issuance if construction has not begun.
- e. When construction is completed and the requirements of this Bylaw and the conditions of the Special Permit have been met, then the ZBA will issue a Certificate of Compliance for Operation for the LSICF or ASEF which shall have a term of two years. If the Applicant wishes to continue the operation of the LSICF or ASEF beyond the two (2) year term it must request a renewal of the Certificate and demonstrate that the requirements of this bylaw and the conditions of the Special Permit continue to be met.
- f. If no Special Permit is required due to Federal preemption, a renewal of the Certificate of Compliance shall still be needed.

#### **25.5.0 Pre-Application Conferences**

- a. The Applicant (“Owner/Operator”) is strongly encouraged to meet with the Chair of the ZBA and other town officials as requested by the Chair of the ZBA of the Town to determine the requirements of and the procedural steps and requirements of the Application. The intent of this process is for the Applicant to obtain necessary information and guidance before entering into any commitments or incurring substantial expenses with regard to the site and Application.
- b. The pre-application conference is intended for the benefit of the Applicant in order to address the required submittals and is advisory only and shall not bind the Town of Windsor.

## 25.6.0 Application

The Applicant shall provide to the ZBA all of the following materials with eight (8) copies and an electronic version unless waived in advance by vote of the ZBA:

- a. A narrative describing an overview of the project, including the number of acres to be involved and the location, number and description of the planned facilities, including staging and storage areas and other locations needed during the construction, operation or maintenance of the LSICF or ASEF.
- b. GIS mapping, in paper and digital versions, at an appropriate scale of the proposed location of the LSICF or ASEF for the purpose of identifying properties that may be impacted by noise, earth removal or other related disturbances and to inform the Fire Chief, Police Chief, Emergency Management Director, Highway Superintendent and other emergency responders. Included in this map shall be an area within the development site for the location and parking of vehicles and equipment used in the transportation of personnel and/or development and use of the site. Such location shall be configured to allow the normal flow of traffic on public roads to be undisturbed.
- c. The contact information of the Applicant, and if different, the organization and individuals responsible for the construction, operation and maintenance of the LSICF or ASEF shall be provided to the ZBA and all emergency responders. Such information shall include a phone number where such individual or individuals can be contacted 24 hours per day, 365 days a year. Annually, or upon any change of relevant circumstances, the Applicant shall update such information and provide it to the ZBA, Select Board and all emergency providers.
- d. A certification or evidence satisfactory to the Town that, prior to the commencement of any activity related to the LSICF or ASEF, the Applicant shall have accepted and complied with any applicable bonding or permitting requirements. Bonding shall be required to ensure repair by the Applicant of any damage to municipal property including but not limited to roads, culverts, bridges, water or sewer facilities, cemeteries, and buildings caused by the construction, operation or maintenance of the LSICF or ASEF.

- e. A description of and commitment to maintain safeguards that shall be taken by the Applicant and its agents to ensure that the Town's roads and property utilized by the Applicant shall remain free of dirt, mud and debris resulting from construction, operation or maintenance activities and the Applicant's assurance that such roads or property will be promptly repaired, swept or cleaned if damage, dirt, mud or debris occur as a result of Applicant's usage, with guarantees that meet the requirements of §25.14.0 of this article.
  
- f. Verification that a copy of the Applicant's "Operation's Preparedness, Prevention and Contingency Plan" for public health and safety has been provided to the ZBA and all emergency responders, including a statement that the Applicant/Owner, upon changes occurring to the Operation's Preparedness, Prevention and Contingency Plan, will provide to the Town and all emergency responders a revised copy marked with the revision date.
  
- g. Assurance that, at least 30 days prior to the commencement of any construction activities, the Applicant shall provide an appropriate site orientation and training course of the Operation's Preparedness, Prevention and Contingency Plan for all emergency responders. The cost and expense of the orientation and training shall be the sole responsibility of the Applicant. The Applicant or Owner shall be required to hold at least one site orientation and training course every six months under this section unless such requirement is waived by the ZBA and Select Board at their sole discretion.
  
- h. A copy of the documents submitted to the Massachusetts Department of Environmental Protection (MassDEP) and a Community and Environmental Impact Analysis meeting the requirements set forth in §25.7.0 of this Bylaw.
  
- i. A copy of all permits and plans from the appropriate Federal, State, and/or local regulatory agencies or authorities issued in accordance with applicable laws, environmental requirements and regulations for the proposed use.
  
- j. A traffic impact study and roadway maintenance and repair agreement meeting the requirements set forth in §25.11.0 of this Bylaw.

k. Assurance that before the commencement of any construction, operation, maintenance or emergency activities, information shall be provided to residents and businesses per the requirements in §25.10.0 of this Bylaw.

l. Certification that private freshwater well testing will be completed in compliance with §25.12.0 of this article.

m. Submission of a Water Withdrawal Plan identifying the source of the water, how many gallons will be used and withdrawn each day, the origination of the water, proposed truck routes, and all permits issued by the Commonwealth or any other governmental body. The site(s) for the treatment and disposal of the water shall also be identified.

n. Submission of a Hazardous Materials Management Plan that includes a complete list of chemicals, pesticides, herbicides, fertilizers, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use. For those activities using or storing such hazardous materials, a Hazardous Materials Management Plan shall be prepared and filed with the Fire Chief, Police Chief, Emergency Management Director and the Board of Health. The Plan shall include: provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and clean-up procedures; provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces; evidence of compliance with the Massachusetts Hazardous Waste Management Act 310 CMR 30, including obtaining an EPA identification number from the MassDEP; and proposed down-gradient location(s) for groundwater monitoring well(s), should the ZBA or Board of Health deem the activity a potential groundwater threat.

o. Submission of a Stormwater Management, Erosion and Restoration Plan to the ZBA and Conservation Commission that addresses any pre-construction, construction, operation or maintenance activities. The clearing of natural vegetation shall be limited to that which is necessary for the construction, operation, and maintenance of the LSICF and ASEFs. Revegetation shall be provided for restoration areas required for

construction but not necessary for ongoing maintenance or operations. Only native species typically found in the facility's environment may be used for restoration. Stormwater management shall meet all MassDEP requirements and shall follow MassDEP's Best Management Practices.

All Application materials shall be submitted by the applicant to the ZBA with copies sent to the Select Board, Conservation Commission, Board of Health, Zoning Board of Appeals, Fire Chief, Police Chief, Emergency Management Director and Highway Superintendent. Such boards and municipal officials shall have 45 days to identify concerns or deficiencies or to provide recommendations to the ZBA with respect to the LSICF or ASEFs. The ZBA shall hold a Public Hearing to provide interested parties with the opportunity to comment in accordance with the requirements of the Special Permit process. If the ZBA determines that no Special Permit is required due to federal preemption, the ZBA will hold a Public Meeting will be held at least 30 days before the issuance or denial of the Certificate of Compliance.

### **25.7.0 Community and Environmental Impact Analysis & Health Impact Assessment**

a. A Community and Environmental Impact Analysis Statement shall be submitted to the ZBA to determine compliance with the requirements of this Bylaw and shall be drafted by a qualified environmental engineering consultant hired by the Applicant. The purpose of the statement is to determine the impact of the project on the environment of the existing site and the resultant changes the proposal will have on the site and surrounding area. This information will assist the Town to determine if the LSICF or ASEF can meet the requirements of this Bylaw. The Town can also request a "peer review "of the Community and Environmental Impact Analysis by a qualified environmental engineering firm that the ZBA selects at the Applicant's expense (see Section 8.0). At a minimum, the statement shall provide the following information:

- I. A description of the proposed development, its purpose, a schedule of construction and length of operation. This information and technical data must be sufficient to allow a

- thorough assessment of the proposed LSICF or ASEF impacts on municipal services, environmental resources and public health and safety during construction and operation.
- II. A comprehensive description of baseline environmental and infrastructure conditions including but not limited to ambient noise levels, air and water quality, stormwater and drainage patterns, and water and sewer infrastructure before any activities associated with the development occur.
  - III. A description of the environmental impacts of the proposed development both during and after complete build out of the proposed development. This description should focus on the environmental resources most likely to be affected by the development proposal and on the broader regional aspects of the environment impacts, including ecological inter-relationships. These impacts shall be defined as direct or indirect changes in the existing environment and as either beneficial or detrimental. Whenever possible, these impacts should be quantified. This discussion should include the impact not only upon the natural environment but also upon land use as well.
  - IV. Provide a separate analysis of all potential hazard impacts and hazard areas that could be caused by man-made accidents and natural hazards (flooding, hurricanes, earthquakes, tornadoes, snow/ice storms) and their probabilities and risks, with supporting statistics developed by an analysis of similar LSICFs or ASEFs in comparable locations.
  - V. A discussion of measures which are required by Federal, State or local regulations to protect or mitigate impacts upon the environment, including any associated research or monitoring. Include sufficient documentation and supporting material to demonstrate that the proposed measures will function as expected.
  - VI. A discussion of the unavoidable adverse impacts described in Subsections 25.7.0.b. and 25.7.0.c. — both the short-term impacts (i.e., those occurring during build out of the LSICF or ASEF), the long-term impacts, and the cumulative impacts to the environment. Particular attention should be paid to the LSICF or ASEF's relationship to trends of other LSICF or ASEF developments (i.e., cumulative noise or air quality degradation from existing regional industrial or commercial development).

- VII. Hydrologic analysis and information, including, but not limited to, a description, inventory, analysis and evaluation of the existing groundwater conditions and mapping of surficial geology. This analysis must be focused in terms of both surface water and groundwater quality and quantity; a discussion of likely and possible changes to these resources; and a discussion of measures to reduce or mitigate the identified impacts. Potential impacts on residents and businesses served by private wells located within 1500 feet of the proposed LSICF or ASEF (see Section 25.11.0) should be included in the analysis.
- VIII. Odor, vapors or particulate matter produced by the LSICF or ASEF shall not exceed Federal or State air quality standards. Applicant shall identify all hazardous pollutants that will be emitted that affect air quality that are regulated by MassDEP or the EPA. For all air pollutants generated, Applicant shall hire a qualified consultant to perform air quality testing in accordance with Section 25.12.0.c.

b. The express standards and conditions referenced herein shall be addressed by the Applicant and submitted with the Application. An escrow account for the review by professional consultants pursuant to M.G.L. Chapter 44, Sec. 53G shall be established by the Applicant in the initial amount of \$100,000 or such other amount as the ZBA may determine. The escrow account shall be maintained following final approval of the Application based on the anticipated fees of consultants who will be retained by the ZBA and including such other reasonable expenses as the ZBA determines with a minimum initial amount of \$100,000. The escrow account shall be maintained following final approval of the Application to provide for inspections in accordance with §25.8.0 herein.

c. The Applicant shall conduct a Health Impact Assessment of the proposed project as part of the Community Impact Analysis. An HIA is a systematic process that uses an array of data sources and analytic methods and considers input from stakeholders to determine the potential effects of the project on the health of a population and the distribution of those effects within the population. The HIA shall provide recommendations on mitigating, monitoring, and managing those effects.

## 25.8.0 Hiring of Professional Consultants

As provided by M.G.L. Ch. 44 §53G, the Windsor ZBA may impose reasonable fees for the employment of outside consultants, engaged by the ZBA, for specific expert services when in the opinion of the ZBA the services are necessary for the ZBA to come to a final decision on an application submitted to the ZBA pursuant to the requirements of this bylaw. The ZBA may also impose fees for other consultant services for the review of the plans, surveys or inspections. Expenses for advertising, notices, inspections, monitoring and testing, and professional review will be borne by the Applicant.

a. The function of the professional consultant(s) shall be to advise, counsel, represent and/or aid the ZBA in ensuring compliance with this Bylaw, any other applicable municipal codes on such matters relating to the construction or operations of LSICFs or ASEFs, and with State law and regulations applicable to the project. The Consultant shall identify best practices for the design and development of the project.

b. During the construction, operation, maintenance, decommissioning or reclamation activities associated with the LSICF or ASEF, the Town shall require the services of an on-site inspector with proven background and experience in the type of LSICF or ASEF proposed to be constructed, whose role will include but not be limited to the following:

- I. Review of all applications for construction or operation of the LSICF or ASEF.
- II. Inspection of the site of the LSICF or ASEF during key phases of construction.
- III. Inspection of LSICF or ASEF upon receipt of a written complaint and request for an inspection by the property owner.
- IV. Communication with appropriate municipal personnel if the inspector believes the Applicant, Operator or contractor is violating a municipal code addressed in this Bylaw or another bylaw of the Town or any other State or Federal law or regulation.
- V. Authority to request and receive any records, logs, reports relating to the status or condition of the LSICF or ASEF needed to determine compliance with this Bylaw.

VI. In the event a professional consultant is employed for the purpose of advising, counseling or representing the ZBA relative to ensuring compliance with this Bylaw, the cost for such services of the professional consultant shall be assessed against and paid for by the Applicant or Owner of the LSICF or ASEF in addition to any other consulting fees or charges assessed pursuant to this Bylaw.

c. A consultant(s) shall be hired to perform and/or review the testing and monitoring results collected pursuant to Section 11 and will prepare a report summarizing those results and identifying any concerns. Such reports shall be submitted to the Select Board, ZBA and Board of Health, and as appropriate MassDEP.

d. Special Account. Funds received pursuant to this Section 8. shall be deposited with the Town Treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the ZBA without further appropriation as provided in M.G.L. Ch. 44 §53G. Expenditures from this account shall be made only in connection with a specific project or projects for which a consultant fee has been collected from the Applicant and only in connection with the ZBA carrying out its responsibilities under the law. Expenditures of accrued interest may also be made for these purposes. Any excess amount in the account attributable to a specific project, including any accrued interest, at the completion of said project shall be repaid to the Applicant or to the Applicant's successor in interest and a final report of said account shall be made available to the Applicant or to the Applicant's successor in interest.

e. Reporting Requirements. The Town Accountant shall submit annually a report of said special account to the Select Board and Town Administrator for their review. The report shall be published in the Town annual report. The Town Accountant shall submit annually a copy of this report to the director or the bureau of accounts.

f. Consultant Services. In hiring outside consultants, the ZBA may engage professional engineers, planners, landscape architects, wildlife scientists, lawyers, designers, or other appropriate professionals able to assist the ZBA

and to ensure compliance with all relevant laws, ordinances, bylaws and regulations. Specific consultant services may include but are not limited to analysis of applications, title searches, mapping of lot and/or municipal boundaries and/or right of way, and environmental or land use law. Services may also include on-site monitoring during construction, or other services related to the project deemed necessary by the ZBA. The consultant shall be chosen by, and report only to, the ZBA and/or its administrator. Consultants retained shall have an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field.

g. Appeals of Choice of Consultant. Applicants may appeal the selection of the consultant to the Select Board. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications. The required time limits for action upon an application by the ZBA shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Select Board within one month following the filing of the appeal, the selection made by the ZBA shall stand. Such an administrative appeal shall not preclude further judicial review if otherwise permitted by law, on grounds provided for in this section.

### **25.9.0 Incorporation of Bylaw Provisions into Special Permits/Compliance Certificates**

Any special permit issued to a LSICF and ASEF shall be deemed to incorporate and to require compliance with all of the provisions in Section 25.10 through 25.15 unless any such requirement is specifically waived by the ZBA and such waiver is incorporated in writing into the special permit or certificate of compliance.

### **25.10.0 Information Provided to Municipal Officials and Residents**

Prior to the commencement of any construction activities of the LSICF or ASEF, but no later than ninety (90) days prior, the Operator shall provide the following information to

the Select Board, ZBA, Board of Health, Fire Chief, Emergency Management Director and Highway Superintendent. For natural gas transmission lines and associated venting, metering and compressor stations, the potential impact area appropriate for the diameter and maximum allowable operating pressure for the proposed pipeline will be determined and GIS mapping of the impacted areas will be provided to the Town and residents in those zones as well as information on what to do or not do in the event of an emergency.

- a. A GIS map of the location of the LSICF or ASEF and a copy of the plans prepared by a professional engineer or land surveyor licensed in the Commonwealth of Massachusetts showing the proposed location of all construction activity including equipment and structures and all permanent improvements for the LSICF or ASEF including any post- construction surface disturbance in relation to natural resources and public or private property in the surrounding area. Following the construction of the LSICF or ASEF, “as-built” drawings based on surveys completed by a professional surveyor and stamped by a Professional Engineer shall be provided to the Select Board, Fire Chief, Police Chief, Emergency Management Director and Highway Superintendent. Both large scale paper copies and digital versions shall be provided at an appropriate scale.
- b. A detailed description of the planned operations at the LSICF or ASEF.
- c. The contact information for the construction manager and/or Operator of the LSICF or ASEF.
- d. The availability of the construction manager and/or Operator to hold a meeting with residents and municipal officials to allow for questions and answers. The meeting(s) shall be held at least three months prior to the start of construction and monthly thereafter until completion of construction.
- e. Applicant will identify any aspect of construction or operations of the LSICF or ASEF that will cause a disturbance such as noise, vibration, pollution, erosion, or other disturbances. Applicant will certify that it will provide notice of any planned blasting, venting of gas or release of other hazardous materials at least 2 weeks in advance. Any venting of gas or release of other hazardous materials, erosion, or

other disturbance created as a result of an emergency shall be reported to the ZBA, Select Board and Board of Health within 24 hours of the event.

In addition, each resident, business or other non-residential use within 1,500 feet of any construction or staging area and any resident identified to be in a hazard zone (e.g. explosion, fire,) shall be provided with information about the hazards and what to do in the event of an emergency. Residents within 1,500 feet of any construction or staging area and any resident identified to be in a hazard zone will be notified by the Applicant of public meetings scheduled to answer questions.

### **25.11.0 Road Use and Construction Site Access**

The Operator shall provide a traffic impact study or description of the plan for transportation and delivery of equipment, machinery, water, chemical materials, water products and other items that may be utilized or produced in the siting, construction, completion, alteration or operation of the LSICF or ASEF and maintenance after construction is completed. Such description shall include the following:

- a. A map showing the planned vehicular access route to the development, indicating all private access roads, all state, county and local roads, bridges and other transportation infrastructure that may be used, and the type, weight, number of trucks, and delivery schedule necessary to support each phase of the development.
- b. A list of all trucking contractors or employees of the Applicant who will travel to and from the development site, with evidence of required registrations, licenses and insurance coverage.
- c. The proposed routes must be designed to ensure adequate capacity for existing and projected traffic volumes, allow for efficient movement of traffic, including appropriate turning radii and transition grade, and minimize hazards to users of public roads as well as adjacent property and human activity.
- d. To the maximum extent feasible, vehicle access to any construction or staging area proposed in the vehicular access plan should be an arterial or collector road.

- e. Use of local roads for construction vehicle access serving primarily residential neighborhoods requires written permission from the Select Board (see 25.13.0.a.1.) and MassDOT and must be in compliance with M.G.L. Chapter 85, Section 2.
- f. The ZBA in consultation with the Select Board and Highway Superintendent reserves the right to designate alternate routes in the event the Applicant's proposed routes are deemed inadequate, unsafe or overly disruptive to normal vehicular traffic by a Massachusetts registered professional engineer working on behalf of the Town.
- g. In accordance with M.G.L. Chapter 90, Section 17C, the Select Board may reduce speed limits on local roads that may present public safety hazards for trucks hauling construction materials.
- h. The Applicant and Operator of the LSICF or ASEF shall execute a roadway maintenance and repair agreement with the Town and post a bond in a form acceptable to the ZBA, Select Board, Highway Superintendent and its Town Counsel prior to beginning any work on the LSICF or ASEFs (see §25.14.0 of this Bylaw).
- i. The roadway maintenance and repair agreement shall require the Applicant and Operator to conduct an inventory, analysis and evaluation of existing conditions on Town roads, culverts and bridges along the proposed transportation route, including photography, video and core boring. The roadway maintenance and repair agreement will identify the responsibilities of the Applicant and Operator to prepare, maintain or repair Town roads, culverts or bridges before, during and immediately after construction and during operation of the LSICF or ASEF. The Applicant and Operator shall take all necessary corrective action and measures as directed by the Highway Superintendent, ZBA or Select Board pursuant to the agreement.
- j. Beginning with its intersection with a public road, any access road for the LSICF or

ASEF shall be improved in accordance with ZBA, Select Board or Conservation Commission requirements to prevent water pollution and soil erosion or damage to roads. No water, sediment or debris shall be carried off-site onto any public or private property. If any substantial amount of mud, dirt or other debris is carried onto public property from the development site of the LSICF or ASEF, the Operator shall immediately stop work, clean the mud, dirt or debris and implement a remedial plan as directed by the ZBA, Conservation Commission, Highway Superintendent or Select Board to manage stormwater and prevent runoff of mud, dirt or other debris onto public property including roads, wetlands and surface waters. Operator will be responsible for the clean-

up of any sediment or debris carried onto private property if clean-up is requested by the private property owner and permission for access is given.

- k. All-weather access roads suitable to handle emergency equipment may be provided and maintained in accordance with the directions of the Select Board in consultation with the Highway Superintendent, Fire Chief, Police Chief, Emergency Management Director and the Conservation Commission.
- l. The Operator shall take necessary safeguards to ensure appropriate dust control measures approved by the Highway Superintendent are in place.
- m. All applicable permits or approvals must be obtained, including access or driveway permits, to State, county or local roads, construction permits within State, county or local roads, and permits for overweight or oversize loads. Access directly to State roads may require MassDOT highway occupancy permits for overweight vehicles. The Applicant shall provide to the ZBA and Select Board a copy of State permits and all other applicable permits or approvals.
- n. A suitable off-road area within the development site for vehicles to stand while gaining access to and from the LSICF or ASEF development site shall be provided so that the normal flow of traffic on public or private roads is undisturbed. Ingress and egress points to the development site from any public road shall be located and improved in order to meet the requirements of the 2006 MassDOT Project Development and Design Guide as amended. Private roads, easements, and

driveways may not be used for access to the LSICF or ASEF development site unless written permission from the property owner is obtained and a copy of such permission is provided to the ZBA and Select Board prior to the issuance of the Special Permit.

- o. The Operator shall take all necessary precautions to ensure the safety of persons in areas established for road crossing and/or adjacent to roadways (for example, persons waiting for public or school transportation). Where necessary and permitted, during periods of anticipated heavy or frequent truck traffic associated with the development, the Operator will provide flagmen in accordance with 701 CMR Section 7.0 to ensure the public safety and shall include adequate signs and/or other warning measures for truck traffic and vehicular traffic.

#### **25.12.0 Water, Noise & Air Testing & Monitoring**

a. Water. The Applicant and Operator of a LSICF or ASEF shall provide the Planning Board, ZBA, Select Board, and Board of Health with the results of a pre- construction and post- construction water analysis and flow rate for each existing public freshwater well within 1,500 feet of the LSICF or ASEF, and for each private freshwater well within 1,500 feet of the LSICF or ASEF provided that written permission is given by the property owner. If surficial geology warrants a greater testing area, the ZBA or Board of Health can direct the Applicant and Operator to conduct testing for additional wells within the larger area provided that written permission is given by the property owner. The tests shall conform to the following requirements and all costs to conduct the testing, including any restoration of the property, and the testing results will be provided to the property owner free of charge:

- I. Water samples must be collected and analyzed utilizing proper sampling and laboratory protocol from an independent MassDEP certified water testing laboratory.
- II. Well samples shall be analyzed, and flow rates (gpm) determined prior to any construction activity to document baseline water quality data and flow rates of the well, especially before any planned blasting.
- III. If permission is granted in writing by the property owner, a post- construction sample analysis shall be submitted for water quality testing

by the Operator within three months after construction is completed for wells within 1,500 feet. Wells within 1,500 feet of the facility or associated structures shall be tested on an annual basis throughout the life of the facility with the results provided to the property owner with a copy to the ZBA and Board of Health. If surficial geology warrants a greater testing area, the ZBA or Board of Health can direct the Applicant and Operator to conduct testing for additional wells within the larger area on an annual basis provided that written permission is given by the property owner.

- IV. Parameters to be tested for include, but are not limited to, methane, chloride, sodium, TDS, pH, arsenic, barium and strontium, radon, and a subgroup of the volatile organic chemicals (VOCs) called BTEX (benzene, toluene, etc.).
- V. If the results of the pre-construction and post-construction sample analyses indicate that well water contamination, as defined by MA DEP or EPA standards, has occurred or flow rates have been reduced, the owner of the well should file a complaint against the Owner/Operator with the regional MassDEP office with a copy to the Town Board of Health. The Owner/ Operator shall be required to conduct clean-up activities or repair or replace the well affected. After clean-up activities are conducted, the well shall be tested monthly for the contaminants listed in §25.12.0.a.IV for a 24-month period to ensure that the clean-up has been properly completed. The well(s) shall be tested annually thereafter with the permission of the property owner.
- VI. A LSICF or ASEF that does not use any hazardous materials for their operations may request a waiver of water quality testing after the post-construction analysis has been completed if post-construction testing results find no decline in water quality or production rates in comparison to the base line water quality data. Such waiver must be approved by both the ZBA and Board of Health.

b. Noise. The Applicant and Operator shall test and monitor the noise resulting from the LSICF or ASEF in accord with the following provisions, which shall be incorporated into any special permit issued for the LSCIF and ASEF:

- I. Prior to the construction or operation of LSICF or ASEF, the Applicant shall

identify ambient noise levels at the property line of each residential and business structure located closest to the proposed facility within a 1/4 mile radius and at public buildings, schools, medical, emergency or other public High On-site Population (HOP) locations closest to the proposed facility within a 1/4 mile radius. For linear facilities such as pipelines, ambient noise level shall be measured at a minimum every 1/2 mile along the proposed route 300 feet away from the edge of the proposed easement and at each residence and business located within 1/4 mile of the proposed easement. Any testing proposed to be completed on private property requires the written permission of the property owner. "Ambient" noise is defined as the background A-weighted sound level that is exceeded 90% of the time and the background C-weighted sound level that is exceeded 90% of the time measured during a 2 hour time period during the quietest part of the day or night (day 7:00 a.m. to 7:00 p.m.; night 7:00 p.m. to 7:00 a.m.). All testing required by this Bylaw shall be done by a qualified licensed professional acoustical engineer paid for by the Applicant. All testing shall be done in accordance with the professional standards of the appropriate accrediting agencies and the sound level meter used in conducting any evaluation shall meet the American National Standard Institute's standard for sound meters or an instrument and associated recording and analyzing equipment. The ZBA may have the results of the noise testing "peer reviewed" in accordance with §25.8.0 of this Bylaw.

- II. The Applicant shall provide to the Planning Board, ZBA and Board of Health documentation of the established ambient noise levels prior to starting construction of a LSICF or ASEF.
- III. After issuance of the special permit complaints received by the Town shall be addressed by the Applicant and Operator of the LSICF or ASEF within 24 hours following receipt of notification by continuously monitoring for a period of 48 hours at the nearest property line to the complainant's residential or public building or 100 feet from the complainant's public building, school, medical, emergency or other HOP public location or facilities, whichever is closer. Any testing proposed to be completed on private property requires the written permission of the property owner. The Applicant and Operator shall report the findings to the Planning Board, ZBA

and Board of Health and shall mitigate the problem to the allowable level of noise if the noise level exceeds the allowable standard (see Section 25.12.0.b.1.).

c. Air. For all air pollutants generated, Applicant shall hire a qualified consultant to perform air quality testing to be conducted as the ZBA may determine and incorporate into on a special permit, including testing daily, weekly or more frequent basis at any LSICF or ASEF emission location including Compressor Stations, Metering Stations or Venting Stations located in the Town during the operation of the facility to protect public health and safety. Ambient air quality monitoring station(s) shall be installed at least a year prior to the construction and operation of the LSICF or ASEF in order to establish baseline conditions. Air quality reports should be provided to the Town and if requested by the State, to State officials on a monthly basis at a minimum.

### **25.13.0 Design, Installation & Reclamation**

#### **a. Access.**

- I. To the maximum extent feasible and in accordance with State law, construction vehicle access to the LSICF or ASEFs shall be from an arterial or collector road. Unless permission is granted by the Select Board, no LSICF or ASEF construction or operations site shall have access solely through a local road.
- II. Accepted professional standards pertaining to minimum traffic sight distances for all access points shall be adhered to.

#### **b. Structure height.**

- I. Permanent structures associated with the LSICF or ASEF shall not exceed 45 feet in height.
- II. There shall be an exemption to the height restrictions contained in this section for the temporary placement of construction equipment necessary for the construction of a LSICF or ASEF. The duration of such exemption shall not exceed the actual time period of construction or re-construction of the LSICF or ASEF.
  - (a) The time period of such exemption shall not exceed six months.

(b) The Operator shall give the ZBA and Select Board prior written notice of at least 30 days before the beginning date for its exercise of the exemption.

c. Setbacks. Surface land uses affiliated with the LSICF or ASEF and all supporting equipment and structures shall be setback a minimum of seven hundred and fifty (750) feet from residential buildings and all commercial, industrial and institutional uses or a minimum of five hundred (500) feet from the nearest lot line, whichever is greater. Setbacks in areas of HOPs shall be increased to 1/4 mile (1,320 feet). The ZBA shall determine whether setbacks should be increased beyond 1/4 mile if the area that could be impacted in the event of an accident at the LSICF or ASEF is greater than 1/4 mile. Applicants that cannot comply with the setback requirements can request a waiver from the ZBA to reduce the setback distance but must notify in writing any property owner(s) within the setback area that would be impacted by the requested reduction.

d. Screening and fencing. The Applicant shall provide a plan prepared by a registered Landscape Architect licensed in Massachusetts showing landscaping proposed to be installed to screen and buffer surface land uses affiliated with the LSICF or ASEF. The landscape plan shall incorporate the use of native vegetation, including evergreens, shrubbery and trees, which shall be of sufficient density to screen the facility. Security gates or fencing as appropriate to ensure public safety shall be installed after consultation with the ZBA, Select Board, Fire Chief, Police Chief and Emergency Management Director with openings no less than 12 feet wide. Any fence installed shall be surrounded by native vegetation to provide screening. Existing vegetation in proximity to LSICF or ASEFs shall be preserved to the greatest extent possible. Emergency responders shall be given means to access all LSICF or ASEFs in case of an emergency. Warning signs shall be placed on the security gates or fencing associated with the LSICF or ASEF, providing notice of the potential dangers and the contact information in case of an emergency.

e. Lighting. To minimize nighttime light pollution, no LSICF or ASEFs shall be artificially lighted except as required for emergency night time access or by the FAA. Beacon light permitted only if required by the FAA with evidence of this FAA requirement submitted with the application. Any other lights shall be full-cutoff down lighting and shall be shielded so as to prevent intrusion upon roads and nearby properties.

f. Shadow and Flicker. Wind Energy Facilities shall be located in areas that do not result in any shadowing or flickering on off-site inhabited buildings. The applicant has the burden of proving that any shadowing or flickering on off-site inhabited buildings will not occur.

g. Odor. No LSICF or ASEF shall produce odors detectable beyond its property boundaries.

h. Noise. The Applicant and Operator shall minimize, to the extent possible, noise resulting from the LSICF or ASEF and will conduct testing and monitoring as outlined in Section 25.12.b.1:

- I. The noise generated during the LSICF or ASEF operations shall comply with the provisions of the MassDEP's, Division of Air Quality Noise Regulations (310 CMR 7.10), as amended, or the provisions of this Bylaw, whichever is more restrictive.
- II. A source of sound will be considered in violation of this Bylaw if the source:
  - (a) increases the broadband sound level by more than 5 dB(A) above ambient pre- construction noise levels during construction activities and subsequent operations or increases the broadband sound level by more than 5 dB(C) above the pre- construction ambient noise level during construction activities and subsequent operations; or
  - (b) produces a "pure tone" condition, when an octave band center frequency sound pressure level exceeds the two (2) adjacent center frequency sound pressure levels by three (3) decibels or more; or
  - (c) results in sound or noise levels at any time greater than 35 dB(A) during the day or 30 dB(A) at night (typical range 30-40 dB(A) for rural or quiet residential areas); or
  - (d) for low frequency sounds or noise with octave center frequencies at or below 125 Hz, results in a maximum noise level outside the property boundary greater than 40 dB(C).
- III. Exemption from the standards established in this subsection may be granted by the ZBA during the construction stages of a LSICF or ASEF

development for cause shown and upon written agreement between the Applicant and the ZBA. However, any such exceedances of the noise standards shall not be allowed between 7:00 p.m. and 7:00 a.m.

- IV. LSICF or ASEFs shall be constructed and operated to mitigate sound levels and shall install devices or use other equipment to mitigate sound levels to ensure that the noise level standards at residential or public buildings, medical, emergency or HOP locations are not exceeded.

i. Hours of operation. Except for emergency operations, hours of construction activities at a LSICF or ASEFs are limited to Monday through Friday, 7:00 a.m. to 7:00 p.m. and not permitted on weekends or legal holidays. Truck traffic related to the construction of the LSICF or ASEF shall be allowed only during these hours of operation. Exemption from the standards established in this subsection may be granted by the ZBA for cause shown and upon written agreement between the Applicant and the Town. The ZBA shall specify hours of operation in the Special Permit.

j. Reclamation/restoration of all disturbed areas.

- I. Reclamation shall be initiated as soon as weather and ground conditions permit after construction or re-construction of the LSICF or ASEF, and reclamation shall be completed no more than six months after this point.
- II. Reclamation shall be carried out on all disturbed areas and achieve the following objectives:
  - (a) Final soil profiles shall be designed to equal or reduce soil erosion potentials over stable pre-operation conditions, and final landforms shall be stable;
  - (b) Preexisting visual character of site shall be restored or enhanced through planting of local or adaptive vegetation. Invasive species shall not be considered acceptable; and
  - (c) Disturbance of soil cover shall be minimized.

k. Prohibitions.

- I. No LSICF or ASEF shall be allowed to be constructed or operated in a

floodway designated as such in the Flood Insurance Study (FIS) and shown on the Federal Emergency Management Agency (FEMA) FIRM maps dated 7/2/80 or any successor maps issued by FEMA.

- II. Construction or operation of a LSICF or ASEF outside of a floodway but in the one-hundred-year floodplain is discouraged but may be permitted by the ZBA in its discretion if the following provisions are met:

(a) The Applicant must provide conclusive documentation that no other location is more appropriate for location of the LSICF or ASEF other than a location within the floodplain.

(b) An adequate emergency evacuation plan shall have been produced by the Applicant and filed with the Town.

(c) No storage of chemicals shall be permitted within a floodplain. An exemption from this requirement may be granted by the ZBA, in consultation with the Board of Health, if the Applicant and Operator can show that such storage will not potentially cause any harm to property, persons or the environment in the case of a one-hundred-year flood, and further provides security to the Town ensuring the Applicant's and Operator's ability to remedy any damage or injury that may occur.

(d) Only necessary and needed structures will be permitted within the floodplain.

(e) All structures within the floodplain shall be designed to withstand a one-hundred-year storm event.

(f) An engineer registered in Massachusetts and qualified to present such documentation that the LSICF or ASEF will not cause additional flooding on adjacent, upstream and/or downstream properties shall provide such documentation to the Town.

(g) The Applicant has received approval from the Conservation Commission if required.

#### **25.14.0 Performance Bond, Insurance and Indemnity**

- a. Performance Bond or Escrow Account. The Applicant shall submit to the

Town a Performance Bond from a surety authorized to do business in the State to cover any damage to public property that occurs as a result of the construction of the LSICF or any ASEF in an amount and for a term (e.g. construction period plus 2-3 years) determined by a professional engineer and acceptable to the Town. In addition, the Applicant shall provide a bond or establish an escrow account that will ensure that all testing and maintenance provisions required during the life of the LSCIF or ASEF facility are completed in accordance with this bylaw and any agreement with the ZBA related to the LSCIF or ASEF. The bonds shall provide, but not be

limited to, the following condition: there shall be recoverable by the Town, jointly and severally from the principal and surety, any and all damages, loss or costs suffered by the Town in connection with the Applicant's geophysical operations within the Town. The rights reserved to the Town with respect to the bond are in addition to all other rights of the Town, and no action, proceeding or exercise of a right with respect to such bond shall affect any other rights of the Town.

b. Insurance. Prior to conducting any operations hereunder, the Applicant, Operator and its contractors shall furnish certificates of insurance to the ZBA showing the Town as an additional insured with respect to operations conducted within the Town and showing liability insurance covering commercial, personal injury, and general liability in amounts not less than \$1,000,000 per person, \$10,000,000 per occurrence, and \$10,000,000 property damage. The Applicant and Operator shall also provide certificates of insurance to the ZBA and Select Board showing the Town as an additional insured under general liability umbrella insurance with a minimum amount of \$10,000,000.

c. Indemnity. The Applicant shall enter into an agreement to protect, indemnify, defend and hold the Town, its officers, employees, agents and representatives harmless from and against all claims, demands and causes of action of every kind and character for injury to, or death of, any person or persons, damages, liabilities, losses and/or expenses, occurring or in any way incidental to, arising out of, or in connection with the Applicant or its contractors', agents', or representatives' construction or operation of the LSICF or ASEF, including attorneys' fees and any other costs and expenses

incurred by the Town in defending against any such claims, demands and causes of action. The indemnification agreement shall be subject to approval by Town Counsel. Within 30 days of receipt of same, the Applicant and/or Operator shall notify the Town in writing, of each claim for injuries to or death of persons, or damages or losses to property occurring or in any way incidental to, arising out of, or in connection with the Applicant's or its contractors', agents', or representatives' operations conducted or associated with the LSICF or ASEF. At the Town's discretion, the Town may conduct an independent investigation, monitor, and review the processing of any such claim, to ensure that such claim is handled as required herein.

d. Notwithstanding anything contained herein to the contrary, construction and/or operation of the LSICF or ASEF is not allowed until a copy of all Bonds, Insurance Certificates, Agreements or Studies required by this Bylaw have been completed and provided to the ZBA, Select Board and Town Counsel. The Performance Bond and the Certificates of Insurance must also be filed with the Town Clerk.

### **25.15.0 Removal Requirements and Abandonment**

a. Any LSICF or ASEF which has reached the end of its useful life or has been abandoned shall be removed. The Owner and/or Operator shall physically remove the installation no more than 180 days after the date of discontinued operations. The Owner or Operator shall notify the ZBA by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- I. Physical removal of all LSICF or ASEF structures, equipment, security barriers and transmission lines from the site.
- II. Disposal of all solid and hazardous waste in accordance with local, State, and Federal waste disposal regulations.
- III. Stabilization or re-vegetation of the site as necessary to minimize erosion. The ZBA may allow the Owner and/or Operator to leave in place existing landscaping or designated below-grade foundations or structures, in order to minimize

erosion and disruption to vegetation.

- IV. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the LSICF or ASEF shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board, ZBA and Select Board. If the Owner and/or Operator of the LSICF or ASEF fails to remove the installation in accordance with the requirements of this section within 180 days of abandonment or the proposed date of decommissioning, the Town retains the right, after the receipt of an appropriate court order, to enter and remove an abandoned, hazardous or decommissioned LSICF or ASEF. The Owner and/or Operator shall agree to allow entry to remove an abandoned or decommissioned installation. The Town's cost for the removal will be charged to the owner/operator in accordance with the provisions of M.G.L. 139.
- V. The Owner and/or Operator of LSICF or ASEF shall provide a form of surety, either through an escrow account, bond or other form of surety approved by the Planning Board, ZBA and Select Board in consultation with Town Counsel to cover the cost of removal in the event the Town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board, ZBA and Select Board, in consultation with a Professional Engineer and Town Counsel, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the Applicant and the Town. Such surety will not be required for municipal or State- owned facilities. The Applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

## **25.16.0 Violations and Penalties**

Any Owner and/or Operator or other person who violates or permits a violation of this Bylaw shall pay to the Town a fine of \$300 per violation plus, to the extent permitted by law, all court costs, including, but not limited to, attorney's fees, incurred by the Town on account of such violation. Each day a violation exists shall constitute a separate offense. Further, the appropriate officers or agents of the Town are hereby authorized to issue a cease and desist notice and/or to seek equitable relief, including injunction, to enforce compliance herewith.

Enacted January 29, 2020

Approved by Attorney General April 9, 2020