HAMILTON ZONING BY-LAW

TABLE OF CONTENTS

		Page
SECTION 1.0	**PURPOSE AND AUTHORITY**	**1**
1.1	PURPOSE	1
1.2	AUTHORITY	1
1.3	SCOPE	1
1.4	APPLICABILITY	1
1.4.1	Applicability/Nonconformities	1
1.4.2	Commencement of Construction or Operation	2
1.5	AMENDMENTS	2
1.6	SEPARABILITY	2
1.7	DEFINITIONS	2
SECTION 2.0	**ESTABLISHMENT OF DISTRICTS**	**2**
2.1	CLASSES OF DISTRICTS	2
2.2	ZONING MAP	2
2.3	OVERLAY DISTRICTS (See also Section 9.0)	3
2.4	BOUNDARIES OF DISTRICTS	3
2.4.1	Center Lines	3
2.4.2	Lot Lines	3
2.4.3	Parallel	3
2.4.4	Other	3
2.4.5	Dispute	3
2.5	SPLIT LOTS	3
2.5.1	By Town Boundary	3
2.5.2	By District Boundary	3
SECTION 3.0	**USE REGULATIONS**	**4**
3.1	PRINCIPAL USES	4
3.1.1	Applicability of Use Regulations	4
3.1.2	Table of Use Regulations	4
3.1.3	Key	4
3.1.4	Uses Subject to Other Regulations	7

3.2 ACCESSORY USES 7

3.2.1 Accessory Uses in All Districts 7
3.2.2 Accessory Uses and Structures in the Residence Districts 8
3.2.3 Accessory Uses in the Business District 8

3.3 HOME OCCUPATIONS 8

3.3.1 General 8
3.3.2 Conditions 8

3.4 CONVERSION FOR TEMPORARY ADDITIONAL LIVING AREA 9

3.4.1 Purpose 9
3.4.2 Procedures 9
3.4.3 Renewal 9
3.4.4 Design and Dimensional Standards 10
3.4.5 Other Approvals 10
3.4.6 Special Restrictions 11

3.5 CONVERSION TO TWO-FAMILY DWELLING 11

3.5.1 Purpose 11
3.5.2 Procedures 11
3.5.3 Design and Dimensional Standards 11
3.5.4 Other Approvals 12

3.6 ACCESSORY APARTMENT 12

3.6.1 Purpose 12
3.6.2 Procedures 12
3.6.3 Design and Dimensional Standards 12
3.6.4 Rolling Limit 13
3.6.5 Other Approvals 13
3.6.6 Special Restrictions 13

3.7 ACCESSORY APARTMENTS ON LARGE LOTS 13

3.7.1 Purpose 13
3.7.2 Procedures 13
3.7.3 Design and Dimensional Standards 14
3.7.4 Other Approvals 14
3.7.5 Special Restrictions 14

SECTION 4.0 DIMENSIONAL AND DENSITY REGULATIONS 14

4.1 GENERAL REGULATIONS 14

4.1.1 Applicability 14
4.1.2 Table of Dimensional Regulations 15
4.1.3 Computation of Lot Area 15
4.1.4 Irregular Lots 15
4.1.5 Accessory Buildings 16

4.2 SPECIAL REGULATIONS 16

4.2.1 Exemptions from Height Limits 16
4.2.2 Required Circle in Residential Districts 16
4.2.3 Frontage Exception for Larger Lots 16
4.2.4 Averaging of Setbacks 17
4.2.5 Double Frontage 17
4.2.6 Width 17
4.2.7 Minimum Lot Dimensions When Creating a New Street 17
4.2.8 Watercourse Yards 17
4.2.9 Appurtenant Open Space 17
4.2.10 Corner Clearance 17
4.2.11 Wind Turbine Setbacks (See also Section 7.4) 17

4.3 CONTIGUOUS AREA OF LAND REQUIREMENT

4.3.1 General 17
4.3.2 Interpretation 18
4.3.3 Minimums 18
4.3.4 Proof 18
4.3.5 Location of House 18
4.3.6 Buildable Area 18

SECTION 5.0 NONCONFORMING USES AND STRUCTURES 19

5.1 APPLICABILITY 19

5.2 NONCONFORMING USES 19

5.2.1 Eligible Changes 19

5.3 NONCONFORMING STRUCTURES 19

5.3.1 Eligible Changes 19
5.3.2 Variance Required 19
5.3.3 Nonconforming Single and Two Family Residential Structures 19
5.3.4 Eligible Changes 20

5.4 ABANDONMENT OR NON-USE 20

5.5 RECONSTRUCTION AFTER CATASTROPHE OR DEMOLITION 20

5.5.1 Procedures 20

5.6 REVERSION TO CONFORMITY OR MORE RESTRICTIVE USE 21

5.7 SUBSTANDARD LOTS 21

SECTION 6.0 GENERAL REGULATIONS 21

6.1 OFF-STREET PARKING AND LOADING AREAS 21

6.1.1 Number of Required Parking Spaces 21
6.1.2 Location 21
6.1.3 No Reduction 22
6.1.4 Size 22

6.1.5	Access	22
6.1.6	Shared Parking	22
6.1.7	Surface	22
6.1.8	Lights	22
6.1.9	Site Plan	22
6.1.10	Special Permit	22
6.2	DRIVEWAYS	22
6.2.1	Driveway Plan	22
6.2.2	Standards	22
6.2.3	Hydrant	23
6.2.4	Connection to State Highway	23
6.2.5	Connection with Access Street	23
6.2.6	Common Driveway	23
6.3	SIGNS	24
6.3.1	Permit Required	24
6.3.2	Residence Districts	24
6.3.3	Business District	24
6.3.4	Standards	24
6.4	STANDARDS FOR NONRESIDENTIAL BUILDINGS' CONSTRUCTION, USE AND OPERATION	25
6.4.1.	General	25
SECTION 7.0	**SPECIAL REGULATIONS**	**25**
7.1	ADULT ENTERTAINMENT USES	25
7.1.1	Purpose	25
7.1.2	Special Permit	26
7.1.3	Location	26
7.1.4	Standards	26
7.1.5	Site Plan	27
7.1.6	Imposition of Other Conditions	27
7.1.7	Lapse of Permit	28
7.2	COMMUNICATION TOWERS (CT) AND TELECOMMUNICATION ANTENNA FACILITIES	28
7.2.1	Purpose	28
7.2.2	Permitting	28
7.2.3	Application	28
7.2.4	Required Reports	29
7.2.5	On Site Demonstration	30
7.2.6	Requirements	30
7.2.7	Clearing	32
7.2.8	Design Requirements	32
7.2.9	Approval	33
7.2.10	Construction Deadline	33
7.2.11	Conditions of Completion and Use	33
7.2.12	Lapse	33
7.2.13	Abandonment	33

7.2.14 Performance Guarantee 34
7.2.15 Fees 34
7.2.16 Waivers 34
7.2.17 Term of Special Permit 35
7.2.18 Other Requirements 35

7.3 WIND ENERGY FACILITIES 35

7.3.1 Purpose 35
7.3.2 Applicability 35
7.3.3 Compliance with Laws and Regulations 35
7.3.4 Building Permit 35
7.3.5 Site Plan Review Required in the Commercial Overlay District 35
7.3.6 Special Permit Required Outside the Commercial Overlay District 35
7.3.7 Utility Scale Wind Energy Facilities Submittal Requirements 36
7.3.8 Utility Scale Wind Turbine Standards 37
7.3.9 Decommissioning 41
7.3.10 Small Scale Wind Energy Facilities Submittal Requirements 41
7.3.11 Small Scale Wind Turbine Standards 42
7.3.12 Compliance with Other Regulations 43
7.3.13 Utility Notification 43
7.3.14 Special Permit Approval Criteria 43
7.3.15 As-Built Plan 43
7.3.16 Abandonment 44
7.3.17 Utility Connections 44
7.3.18 Modification 44
7.3.19 Priority 44

SECTION 8.0 SPECIAL RESIDENTIAL REGULATIONS 44

8.1 OPEN SPACE AND FARMLAND PRESERVATION DEVELOPMENT 44

8.1.1 Purpose 44
8.1 2 Applicability 45
8.1.3 Significance of Grant of Special Permit 45
8.1.4 Future Subdivision 45
8.1.5 Planning Board Regulations 45
8.1.6 Permitted Uses 46
8.1.7 Pre-Application Conference 46
8.1.8 OSFPD Special Permit Application Procedures 46
8.1.9 Sources of Data 46
8.1.10 Allowed OSFPD Density 47
8.1.11 OSFPD Concept Plan 47
8.1.12 OSFPD Special Permit Design Process 48
8.1.13 Common Open Space Requirement 49
8.1.14 Ownership of the Common Open Space 49
8.1.15 Dimensional Standards 50
8.1.16 OSFPD Special Permit General Design Standards 50
8.1.17 OSFPD Special Permit Site Specific Design Standards 51
8.1.18 Review Procedures for OSFPD Special Permit 52
8.1.19 Decision of the Planning Board for OSFPD Special Permit 52
8.1.20 Effect of OSFPD Special Permit Approval 53
8.1.21 Public Benefit Incentives 53
8.1.22 Relationship Between the OSFPD Special Permit and OSFPD Definitive Subdivision Plan 54

8.1.23	Relationship Between the OSFPD Special Permit and Cluster Design Plan Approval	54
8.1.24	Cluster Design Plan Submittal Requirements	54
8.1.25	Cluster Design Plan Procedures	54
8.1.26	Cluster Design Plan Decision	55
8.2	SENIOR HOUSING	56
8.2.1	Purpose	56
8.2.2	Eligible Locations	57
8.2.3	Administration	57
8.2.4	Planning Board Rules and Regulations	57
8.2.5	Age Restriction	57
8.2.6	Limitations on Senior Housing Development	57
8.2.7	Permitted Uses	58
8.2.8	Developable Acres	58
8.2.9	Base Senior Housing Density	59
8.2.10	Incentives to Increase Base Senior Housing Density	59
8.2.11	Minimum Distances Between Projects	61
8.2.12	General Compliance	62
8.2.13	General Requirements	63
8.2.14	Exemptions	64
8.2.15	Dimensional Standards	64
8.2.16	Building and Design Standards	64
8.2.17	Lighting	65
8.2.18	Signs	65
8.2.19	Site Access, Roadway Design and Management	65
8.2.20	Stormwater Management and Erosion Control	65
8.2.21	Parking	66
8.2.22	Setbacks and Landscape Buffers	66
8.2.23	Open Space and Natural Resources	66
8.2.24	Use, Shape, Location of Common Open Space	67
8.2.25	Senior Housing Special Permit Application Process	68
8.2.26	Definitive Subdivision Plan	68
8.2.27	Application Process	68
8.2.28	Prohibition	68
8.2.29	Conditions of Approval	68
8.2.30	Employment of Outside Consultants	69
8.2.31	Planning Board Findings	69
8.2.32	Expansion	69
8.2.33	Annual Reporting	69
8.3	INCLUSIONARY HOUSING	70
8.3.1	Purpose	70
8.3.2	Applicability	70
8.3.3	Mandatory Provision of Affordable Housing Units	70
8.3.4	Methods of Providing Affordable Housing Units	70
8.3.5	General Provisions	71
8.3.6	Timing of Construction	72
8.3.7	Certificate of Occupancy	72
8.3.8	Preservation of Affordability; Restrictions on Resale	72

SECTION 9.0 SPECIAL DISTRICT REGULATIONS 72

9.1 GROUNDWATER PROTECTION OVERLAY DISTRICT 72

9.1.1 Purpose 72
9.1.2 Overlay District 73
9.1.3 Location 73
9.1.4 Dimensional Requirements 73
9.1.5 Lot Partially in GPOD 73
9.1.6 Boundary in Doubt 73
9.1.7 Permitted Uses 73
9.1.8 Prohibited Uses 74
9.1.9 Uses and Activities Requiring a Special Permit 75
9.1.10 Special Permit Application 76
9.1.11 Procedures for Issuance of Special Permits 76
9.1.12 Special Permit Criteria 77
9.1.13 Enforcement 77

9.2 FLOOD PLAIN OVERLAY DISTRICT (FPOD) 77

9.2.1 Purpose 77
9.2.2 FPOD Boundaries 78
9.2.3 Base Flood Elevation and Floodway Data 78
9.2.4 Use Regulations 78
9.2.5 Other Requirements 79
9.2.6 Permitted Uses 79
9.2.7 Notification of Watercourse Alteration 80

9.3 CONSERVANCY DISTRICT 80

9.3.1 Purpose 80
9.3.2 Permitted Uses 81
9.3.3 Special Permit 81
9.3.4 Prohibited Uses 82
9.3.5 Reversion 83

9.4 ESTATE OVERLAY DISTRICT (EOD) 83

9.4.1 Purpose 83
9.4.2 Overview 83
9.4.3 Applicability 83
9.4.4 Access Requirements for the EOD 84
9.4.5 Open Space Requirement 84
9.4.6 Open Space Access 84
9.4.7 Review Criteria 85
9.4.8 Advisory Opinions 85
9.4.9 Phasing 85
9.4.10 Pre-Application Conference 85
9.4.11 EOD Special Permit Design Process 85
9.4.12 Certification 86
9.4.13 Special Permit Application 86
9.4.14 Criteria 87
9.4.15 Modifications 87

EOD Part A – Estate House Adaptive Reuse 88
9.4.16 Part A 88
9.4.17 Part A – Permitted Uses 88
9.4.18 Part A – Dimensional Requirements 88
9.4.19 Part A – Special Permit Application 88
9.4.20 Part A – Required Information 89
EOD Part B – New Floor Area Construction 89
9.4.21 Part B 89
9.4.22 Part B – Permitted Uses 89
9.4.23 Part B – Methods of Achieving New Floor Area 90
9.4.24 Part B – Dimensional Requirements 91

9.5 WILLOW STREET OVERLAY DISTRICT (WSOD) 91

9.5.1 Purpose 91
9.5.2 Location 92
9.5.3 Applicability 92
9.5.4 Permitted Uses 92
9.5.5 Administration 92
9.5.6 Planning Board Rules and Regulations 92
9.5.7 Pre-Application Conference 93
9.5.8 Review Procedures for WSOD Special Permit 93
9.5.9 General Requirements 93
9.5.10 Building and Design Standards 94
9.5.11 Criteria 96
9.5.12 Conditions 96
9.5.13 Lapse 96

9.6 COMMERCIAL OVERLAY DISTRICT (COD) 96

9.6.1 Purpose 96
9.6.2 Overlay District 97
9.6.3 Permitted Uses By Right in the COD 97
9.6.4 Uses Permitted by Special Permit in the COD 97
9.6.5 Administration 98
9.6.6 Planning Board Rules and Regulations 98
9.6.7 Pre-Application Conference 98
9.6.8 Review Procedures for COD Special Permit 98
9.6.9 Prohibition 99
9.6.10 General Compliance 99
9.6.11 General Requirements 99
9.6.12 Building and Design Standards 100
9.6.13 Signs 102
9.6.14 Conditions of Approval 102
9.6.15 Findings and Decision of the Planning Board for COD Special Permit 102
9.6.16 Lapse 103

SECTION 10.0 ADMINISTRATION AND ENFORCEMENT 103

10.1 ADMINISTRATION 103

10.1.1 Building Commissioner 103
10.1.2 Building Permit Required 103
10.1.3 Application for Permit 103

10.1.4	Approval of Applications	103
10.1.5	Occupancy Permit	104
10.2	ENFORCEMENT AND PENALTIES	104
10.2.1	Enforcement	104
10.2.2	Appeal	104
10.2.3	Violations and Penalty	104
10.3	ZONING BOARD OF APPEALS	104
10.3.1	Composition of Board	104
10.3.2	Duties	104
10.3.3	Powers	105
10.3.4	Regulations; Fees	105
10.3.5	Public Notice	105
10.4	PLANNING BOARD	105
10.4.1	Establishment	105
10.4.2	Powers	105
10.4.3	Rules and Regulations; Fees	105
10.4.4	Associate Members of the Planning Board	106
10.4.5	Public Notice	106
10.5	SPECIAL PERMITS	106
10.5.1	Special Permit Granting Authority	106
10.5.2	Criteria	106
10.5.3	Application	106
10.5.4	Conditions	107
10.5.5	Regulations	107
10.5.6	Fees	107
10.5.7	Lapse	107
10.6	SITE PLAN REVIEW	107
10.6.1	Purpose	107
10.6.2	Projects Requiring Approval	107
10.6.3	Projects Requiring Abbreviated Site Plan Review	108
10.6.4	Exemptions from Site Plan Review	108
10.6.5	Site Plan Review; Procedures	109
10.6.6	Site Plan Review; Hearing and Decision	109
10.6.7	Abbreviated Site Plan Review; Procedures	110
10.6.8	Abbreviated Site Plan Review; Hearing and Decision	110
10.6.9	Site Plan Review; Contents	110
10.6.10	Site Plan Review; Other Materials	111
10.6.11	Abbreviated Site Plan Review; Plans and Submission Contents	111
10.6.12	Site Plan Standards	112
10.6.13	Final Action	112
10.6.14	Implementation of Site Plans	113
10.6.15	Appeal	113

10.7 SITE PLAN REVIEW FOR RELIGIOUS AND EDUCATIONAL USES AND CERTAIN CHILD CARE CENTERS 113

10.7.1 Purpose 113
10.7.2 Site Plan Review Required 113
10.7.3 Scope of Site Plan Review 113
10.7.4 Required Information 113
10.7.5 Site Plan; Contents 114
10.7.6 Decision 115
10.7.7 Appeal 115

10.8 REQUEST FOR REASONABLE ACCOMMODATION 115

10.8.1 Purpose 115
10.8.2 Request 115
10.8.3 Zoning Board of Appeals 115
10.8.4 Information 116
10.8.5 Zoning Board of Appeals Procedures 116
10.8.6 Decision 116
10.8.7 Appeal 117
10.8.8 File 117
10.8.9 Other Laws 117
10.8.10 Effective Date 117

SECTION 11.0 DEFINITIONS 117

HAMILTON ZONING BY-LAW

SECTION 1.0 PURPOSE AND AUTHORITY

1.1 PURPOSE. The purpose of the Hamilton Zoning By-law ("this By-law") is:

1. To promote the health, safety, morals, convenience and general welfare of the inhabitants of Hamilton;

2. To lessen the danger from fire and congestion, and from the hazards of flood water inundation, to protect and conserve the value of property;

3. To preserve and increase the amenities of the Town;

4. To conserve natural conditions, to promote the educational, cultural and economic welfare of the public through the preservation and protection of Buildings, sites, and districts of historic interest; and

5. To improve and beautify the Town by encouraging the most appropriate uses of land within the Town in accordance with the General or Master Plan, and under the provisions of Chapter 40A of the Massachusetts General Laws, as amended, and Section 2A of 1975 Mass. Acts 808.

1.2 AUTHORITY. This By-law is enacted in accordance with the provisions of the General Laws, Chapter 40A, and any and all amendments thereto, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

1.3 SCOPE. For these purposes, the construction, repair, alteration, reconstruction, height, number of stories, and size of Buildings and Structures, the size and width of Lots, the percentage of Lot area that may be occupied, the size of Yards, the density of population, and the location and use of Buildings, Structures, and land in the Town are regulated as hereinafter provided.

1.4 APPLICABILITY. All Buildings or Structures hereinafter erected, reconstructed, altered, enlarged, or moved, and the use of all premises in the Town, shall be in conformity with the provisions of the By-law. No Building, Structure or land shall be used for any purpose or in any manner other than is expressly permitted within the district in which such Building, Structure or land is located. Where the application of this By-law imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this By-law shall control.

1.4.1 Applicability/Nonconformities. Except as herein after provided, this By-law shall not apply to Buildings, Structures or uses lawfully in existence or lawfully begun, or to a building

permit or special permit issued before the first publication of notice of the public hearing on this By-law or any amendments thereto, but shall apply to any change or substantial extension of such use, to a building permit or special permit issued after the first notice or said public hearing, to any reconstruction, extension or structural change of such Building or Structure and to any alteration of a Building or Structure begun after the first notice of said public hearing to provide for its use in a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or a structural change to a Single Family Dwelling or Two Family Dwelling does not increase the nonconforming nature of said Structure.

1.4.2 Commencement of Construction or Operation. Construction or operations under a building permit or special permit shall conform to any subsequent amendments to this By-law, unless the use or construction is commenced within a period of not more than six months after the issuance of the permit and in any case involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

1.5 AMENDMENTS. This By-law may from time to time be changed by amendment, addition, or repeal by the Town Meeting in the manner provided in G.L. c. 40A, s.5, and any amendments thereto.

1.6 SEPARABILITY. The invalidity of any section or provision of this By-law shall not invalidate any other section or provision herein.

1.7 DEFINITIONS. The first letters of each word in defined terms in this By-law are capitalized. The definitions are found in Section 11 of this By-law. In some cases, definitions are grouped according to the Section in which the term appears.

SECTION 2.0 ESTABLISHMENT OF DISTRICTS

2.1 CLASSES OF DISTRICTS. The Town of Hamilton is hereby divided into the following districts:

Residence District	R-1a
Residence District	R-1b
Residence-Agricultural District	RA
Business District	B
Conservancy District	C

2.2 ZONING MAP. The Zoning Map dated December 28, 1964 filed with the Town Clerk, as amended by the Zoning Map - Conservancy District, dated February 1, 1971, and further amended May 7, 1974, May 14, 1979, May 13, 1985, November 14, 1999 and May 5, 2009 ("Zoning Map") is hereby made a part of this By-law.

2.3 OVERLAY DISTRICTS. The following overlay districts are also established, as set forth in Section 9.0, herein.

Groundwater Protection Overlay District	GPOD
Flood Plain Overlay District	FPOD
Estate Overlay District	EOD
Willow Street Overlay District	WSOD
Commercial Overlay District	COD

2.4 BOUNDARIES OF DISTRICTS.

2.4.1 Center Lines. Where the boundary lines are shown upon said Zoning Map within the Street lines and private ways, the center lines of such ways shall be the boundary lines.

2.4.2 Lot Lines. Where the boundary lines are shown approximately on the location of property or Lot lines, and the exact location of property, Lot or boundary lines is not indicated by means of dimensions shown in figures, then the property or Lot lines existing at the time of the adoption of this By-law shall be the boundary lines.

2.4.3 Parallel. Boundary lines located outside of such Street lines and shown approximately parallel thereto shall be regarded as parallel to such Street lines, and dimensions shown in figures placed upon said Zoning Map between such boundary lines and Street side lines are the distances in feet of such boundary lines from such Street side lines, such distances being measured at right angles to such Street lines unless otherwise indicated.

2.4.4 Other. In all cases which are not covered by other provisions of this Section, the location of boundary lines shall be determined by the distance in feet, if given, from other lines upon said Zoning Map, by the use of identifications as shown on the Zoning Map, or by the scale of the Zoning Map.

2.4.5 Dispute. Whenever any dispute arises on district boundaries as to the exact location of a district boundary line, the location of such line shall be determined by the Building Commissioner, after consultation with the Planning Board.

2.5 SPLIT LOTS.

2.5.1 By Town Boundary. When a Lot is situated in part in the Town and in part in an adjacent municipality, the provisions of this By-law shall be applied to the portion of such Lot in the Town in the same manner as if the entire Lot were situated in the Town.

2.5.2 By District Boundary. Where a district boundary line between a residential and a business district divides any Lot existing at the time such line is adopted, the regulations for the less restricted portions of such Lots shall extend no more than thirty (30) feet into the more restricted portion, provided the Lot has Lot Frontage on a public way in the less restricted district.

SECTION 3.0 USE REGULATIONS

3.1 PRINCIPAL USES.

3.1.1 Applicability of Use Regulations. Except as provided by law or in this By-law, in each district no Building, Structure, or land shall be used or occupied except for the purposes permitted as set forth in the accompanying Table of Use Regulations. Any use not listed shall be construed to be prohibited.

3.1.2 Table of Use Regulations. The Table of Use Regulations is hereby declared to be part of this By-law.

3.1.3 Key. In the following Table of Use Regulations, the uses permitted by right in the district are designated by the letter "Y." Uses designated by the letter "N" are not permitted in the district. Uses that may be permitted by special permit in the district, in accordance with Section 10.5, are designated by identification of the Special Permit Granting Authority ("SPGA") with authority to permit the use in that district, which is either:

ZBA	Zoning Board of Appeals
PB	Planning Board
BOS	Board of Selectmen

TABLE OF USE REGULATIONS

A. RESIDENTIAL	R-1a	R-1b	RA	B
1. One Single Family Dwelling	Y	Y	Y	Y
2. Conversion of a Single Family Dwelling existing at the time of the adoption of the ordinance (1954) into a Two Family Dwelling (see Section 3.5)	ZBA	ZBA	ZBA	ZBA
3. Open Space and Farmland Preservation Development (see Section 8.1)	PB	PB	PB	N
4. Senior Housing (see Section 8.2)	PB	PB	PB	PB
5. Long Term Care Facility	ZBA	ZBA	ZBA	N
6. Garage with more than 4 motor vehicle spaces	ZBA	ZBA	ZBA	ZBA
7. Two or more dwelling units, second floor and above when part of a mixed-use building or development	N	N	N	Y

B. COMMUNITY FACILITIES	R-1a	R-1b	RA	B
1. Use of land or Structures for religious purposes	Y	Y	Y	Y
2. Museums, libraries and parks, playgrounds, conservation areas, water supply areas and other land owned and operated for the public enjoyment or service by a public or semi-public agency	Y	Y	Y	Y
3. Use of land or Structures for educational purposes on land owned or leased by the Commonwealth of Massachusetts or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation	Y	Y	Y	Y
4. Hospital, Medical Clinic, cemetery, and camps of educational and charitable institutions	ZBA	ZBA	ZBA	ZBA
5. Community or private club, not conducted for profit	ZBA	ZBA	ZBA	ZBA
6. Nonprofit civic or fraternal building	N	N	N	Y
7. Child Care Center or School Aged Child Care Program	Y	Y	Y	Y
8. Commercial Recreation, Outdoors	BOS	BOS	BOS	BOS
9. Temporary use for amusements and recreation	BOS	BOS	BOS	BOS
10. Municipal Buildings or facilities	ZBA	ZBA	ZBA	Y
11. Essential Services	N	N	N	Y
C. AGRICULTURAL	**R-1a**	**R-1b**	**RA**	**B**
1. On parcels five (5) acres or more, or two (2) Qualified Acres or more: agriculture, horticulture and floriculture	Y	Y	Y	Y
2. Gardens; riding stables; growing and storing of fruits, berries, vegetables, hay, fodder and ensilage; woodlots; forestry; and greenhouses	Y	Y	Y	Y
3. The raising or keeping of poultry, horses, or cows for other than the use of the occupants of the residence	ZBA	ZBA	ZBA	ZBA

D. COMMERCIAL	R-1a	R-1b	RA	B
1. Adult Entertainment Uses	N	N	N	ZBA
2. Motor Vehicle and/or Boat Sales and/or Leasing Shop	N	N	N	ZBA
3. Business or Professional Office; bank; financial institution	N	N	N	Y
4. Communication Towers and Telecommunication Antenna Facilities (see Section 7.2)	PB	PB	PB	PB
5. Kennel	ZBA	ZBA	ZBA	ZBA
6. Funeral homes	N	N	N	ZBA
7. Garage with more than four automobile/truck spaces	ZBA	ZBA	ZBA	ZBA
8. Motor Vehicle Light Service Station	N	N	N	Y
9. Manufacturing of products sold on the premises at retail, where no more than five operators are employed in such manufacture.	N	N	N	ZBA
10. Rail or bus station or terminal	N	N	N	ZBA
11. Motor Vehicle Repair Shop	N	N	N	ZBA
12. General Service Establishment	N	N	N	Y
13. Personal Service Establishment	N	N	N	Y
14. Restaurant	N	N	N	Y
15. Restaurant, Fast Food	N	N	N	ZBA
16. Retail Store	N	N	N	Y
17. Veterinary Facility or Clinic	N	N	N	ZBA
18. Wind Energy Facility in COD, subject to site plan approval (see Section 7.3)	Y	Y	Y	Y
19. Wind Energy Facility (not in COD) (see Section 7.3)	ZBA	ZBA	ZBA	ZBA
20. Communications Tower and Telecommunication Antenna Facilities (see Section 7.2)	Y	Y	Y	Y
21. Mixed Use, subject to site plan approval	N	N	N	Y
22. Drive-In or Drive-Through Establishment	N	N	N	ZBA
23. For Profit Educational Facility	N	N	N	ZBA

E. ACCESSORY	R-1a	R-1b	RA	B
1. Up to three boarders in a Single Family Dwelling	Y	Y	Y	N
2. Conversion for Temporary Living (see Section 3.4)	ZBA	ZBA	ZBA	ZBA
3. Accessory Apartment (see Section 3.6)	ZBA	ZBA	ZBA	ZBA
4. Accessory Apartment on Large Lot (see Section 3.7)	ZBA	ZBA	ZBA	ZBA
5. Customary home occupation conducted in a Dwelling or Building accessory thereto by a person residing on the premises (see Section 3.3)	Y	Y	Y	Y
6. Accessory Uses or Building on the same Lot with and customarily incidental to a permitted main use on the same premises	Y	Y	Y	Y
7. Uses, whether or not on the same parcel as activities permitted as a matter of right, which are both: (a) accessory to activities permitted as a matter of right, and (b) necessary in connection with scientific research or scientific development or related production (see Section 3.2.1.2)	ZBA	ZBA	ZBA	ZBA
8. Parking area or garage for use of employees, customers or visitors	N	N	N	Y
9. Level Two Electric Charging Station	Y	Y	Y	Y
10. Large Family Child Care Home	ZBA	ZBA	ZBA	ZBA
11. Small Family Child Care Home	Y	Y	Y	Y
12. Adult Social Day Care	ZBA	ZBA	ZBA	ZBA

3.1.4 Uses Subject to Other Regulations. Uses permitted by right or by special permit shall be subject, in addition to use regulations, to all other provisions of this By-law.

3.2 ACCESSORY USES.

3.2.1 Accessory Uses in All Districts. The following Accessory Uses are specifically permitted in all districts as of right or by special permit:

1. *Temporary Construction Trailers and Signs.* The Building Commissioner may grant a temporary occupancy permit for temporary buildings, Signs and trailers during building construction where reasonably required for such construction. Such permit may be issued for an initial period of not more than one year. Permits may be renewed by the Building Commissioner for successive periods of not more than one (1) year each.

2. *Accessory Scientific Uses.* The accessory scientific uses set forth in Section E.7 of the Table of Use Regulation may be permitted upon the issuance of a special permit by the

Zoning Board of Appeals, provided that the Zoning Board of Appeals finds that the proposed use does not substantially derogate from the public good.

3.2.2 Accessory Uses and Structures in the Residence Districts. The following provisions shall apply to Accessory Uses and Structures in the Residence Districts:

1. Accessory Uses on the same Lot with and customarily incidental to a permitted main use on the same premises are allowed, including but not limited to: agricultural activities, private swimming pools, tennis courts, and Private Garages.

2. Activities associated with agriculture, horticulture and floriculture, such as barns, private stables, and shelters, and other farm buildings are allowed as Accessory Uses and/or Structures on Lots not less than eighty thousand (80,000) square feet in area, and including Buildings for keeping animals and poultry, duly licensed by the Board of Health, for occupant's use only, provided that no such barns, private stables, and shelters, and other farm buildings shall be nearer than fifty (50) feet to any Lot line.

3. Tool sheds, garden sheds, storage sheds, or other like Buildings are allowed as Accessory Uses subject to the dimensional requirements in Section 4.0.

4. The following uses are prohibited as Accessory Uses: Kennels; contractor's yard for the storage of building materials or equipment; the storage or keeping of commercial landscaping equipment, materials, supplies, or piles; and commercial auto repair or service.

3.2.3 Accessory Uses in the Business District. In the Business District, any use permitted as a principal use is also permitted as an Accessory Use provided such use is customarily incidental to the main or principal Building or use of the land. Any use authorized as a principal use by special permit may also be authorized as an Accessory Use by special permit provided such use is customarily incidental to the main or principal Building or use of the land.

3.3 HOME OCCUPATIONS.

3.3.1 General. A customary home occupation may be conducted in a Dwelling or Building accessory thereto by a person residing on the premises.

3.3.2 Conditions.

1. Such use must be clearly incidental and secondary to the use of the premises for residential purposes;

2. Not more than two (2) persons other than residents of the premises shall be regularly employed thereon in connection with such use;

3. No offensive noise, vibration, smoke, dust, fumes, odors, heat, glare or unsightliness shall be produced;

4. There shall be no public display of goods or wares and there shall be no signs except as permitted in Section 6.3; and

5. There shall be no exterior storage of material or equipment (including the parking of more than two commercial vehicles) and no other exterior indication of such use or variation from the residential character of the premises.

3.4 CONVERSION FOR TEMPORARY ADDITIONAL LIVING AREA.

3.4.1 Purpose. The purpose of this Section is to provide a way for families to create separate living quarters in their home to accommodate a temporary family, health, or security need by permitting construction of one temporary additional living area in a Single Family Dwelling, or an Accessory Building, subject to the following.

3.4.2 Procedures. A conversion for a temporary additional living area under this Section shall be authorized only by special permit issued by the Board of Appeals under Section 10.5 of this By-law. The Board of Appeals may grant such a special permit provided the following conditions are met:

1. The Board of Health approves all arrangements for sanitary waste, water supply, and drainage.

2. The occupancy permit for the principal Dwelling Unit must have been issued at least two (2) years prior to the application for the special permit.

3. One (1) of the Dwelling Units shall be occupied by the owner of the property, except for bona fide temporary absence.

4. The temporary additional living area must be for use by the owner(s); or a Family member of the owner(s); or a caretaker or a health care provider to the occupant of one (1) of the Dwelling Units; or an Elderly Person; or a mentally or physically handicapped person.

5. There is no other accessory Dwelling Unit on the Lot on which the proposed accessory Dwelling Unit is to be located.

6. The applicant has submitted to the Board of Appeals a plot plan and scaled architectural drawings which comply with Section 3.4.4 below.

3.4.3 Renewal. Renewal of the special permit shall take place every four (4) years from the date of issuance of the special permit and upon change of ownership or tenants. Renewal of the special permit will require an inspection by the Building Commissioner and a written certification by the owner and Building Commissioner, verifying that the terms of the special permit and this By-law are being met. The Building Commissioner shall verify that all means of

access and egress have been maintained, and that there has been no change in the occupancy, design, or dimensional standards under this Section.

3.4.4 Design and Dimensional Standards. A plot plan and scaled architectural drawings of the existing Dwelling Unit, the proposed accessory Dwelling Unit, and any proposed addition shall be submitted, showing location of the Building on the Lot, proposed addition, location of septic system and parking, and compliance with this Section and the following items:

1. The maximum Residential Gross Floor Area of the proposed accessory Dwelling Unit shall not exceed the lesser of one thousand (1,000) square feet or one third (1/3) of the Residential Gross Floor Area of the existing Dwelling Unit and the proposed accessory Dwelling Unit combined, as measured after conversion;

2. Any extension to the Building shall not create more than a twenty-five (25) percent increase in the Residential Gross Floor Area of the existing structure.

3. The maximum number of bedrooms shall be one (1).

4. The maximum number of tenants shall be two (2).

5. The Lot on which the proposed accessory Dwelling Unit is to be located shall contain at least ten thousand (10,000) square feet.

6. The external appearance of the Building in which the accessory Dwelling Unit is located shall not be significantly altered from a Single Family Dwelling Unit.

7. The kitchen facilities shall be of a type readily removable.

8. Adequate provision shall be made for egress to the outside from the accessory Dwelling Unit; any external stairways shall be screened from view, buffered, or located out of sight from any Street.

9. One off Street parking space shall be provided for the new Dwelling Unit, in addition to the required parking for the principal Dwelling Unit. Every effort shall be made to minimize the visibility of the additional parking space by location and screening.

3.4.5 Other Approvals. The applicant shall, in addition to obtaining a special permit, also obtain a building permit, any necessary Conservation Commission approvals, and an occupancy permit prior to the occupancy of the temporary additional living area.

3.4.6 Special Restrictions.

1. The occupancy of the apartment shall be by the apartment tenant(s) for whom it was issued. Upon cessation of occupancy by such tenant(s), the permit shall lapse and be null and void; the Building Commissioner shall be notified of this event and the kitchen facilities shall be removed by the owner.

2. One (1) of the Dwelling Units shall continue to be occupied by the owner of the property, except for bona fide temporary absence.

3.5 CONVERSION TO TWO-FAMILY DWELLING.

3.5.1 Purpose. The purpose of this Section is to provide a way to preserve large older homes in the Town by allowing the conversion of a Single Family Dwelling existing at the time of the first adoption of this By-law (1954) into a Two Family Dwelling, subject to the following.

3.5.2 Procedures. Conversion of such a Single Family Dwelling into a Two Family Dwelling under this Section shall be authorized only by special permit issued by the Board of Appeals under Section 10.5 of this By-law. The Board of Appeals may grant such a special permit provided the following conditions are met:

1. The Board of Health approves all arrangements for sanitary waste, water supply, and drainage.

2. The applicant has submitted to the Board of Appeals a plot plan and scaled architectural drawings which comply with Section 3.5.3 below

3.5.3 Design and Dimensional Standards. A plot plan and scaled architectural drawings of the existing Dwelling Unit and alterations shall be submitted, showing location of the Building on the Lot, proposed alterations, location of septic system and parking, and compliance with the following items:

1. The Lot on which the proposed conversion is to be located shall contain at least twenty thousand (20,000) square feet, and the existing Dwelling Unit shall contain at least four thousand (4,000) square feet;

2. The external appearance of the Building in which the Dwelling Units are located shall not be significantly altered from its previous single family character;

3. Adequate provision has been made for egress to the outside from the additional Dwelling Unit. Any external stairways shall be screened from view, buffered, or located out of sight from any Street; and

4. One off street parking space shall be provided for the new Dwelling Unit, in addition to the required parking for the principal Dwelling Unit. Every effort shall be made to minimize the visibility of the additional parking space by location and screening.

3.5.4 Other Approvals. The applicant shall, in addition to obtaining a special permit, also obtain a building permit, and any necessary Conservation Commission approvals, and an occupancy permit prior to occupancy of the proposed Dwelling Unit.

3.6 ACCESSORY APARTMENT.

3.6.1 Purpose. The purpose of this Section is to provide for a variety of housing choices in Hamilton, without substantially altering the appearance and character of residential neighborhoods or the Town by permitting accessory apartments in Single Family Dwellings without a minimum Lot area requirement, subject to the following.

3.6.2 Procedures. Such an accessory apartment shall be authorized only by special permit issued by the Board of Appeals under Section 10.5 of this By-law. The Board of Appeals may grant such a special permit for an accessory apartment provided the following conditions are met:

1. The Board of Health approves all arrangements for sanitary waste, water supply, and drainage.

2. The applicant has submitted to the Board of Appeals a plot plan and scaled architectural drawings which comply with Section 3.6.3 below.

3. The applicant is an owner-occupant of the premises.

4. The Single Family Dwelling on the Lot is at least ten (10) years old at the time of the accessory apartment special permit application.

3.6.3 Design and Dimensional Standards. A plot plan and scaled architectural drawings of the existing Dwelling Unit, proposed accessory apartment, and proposed addition (if any) shall be submitted, showing location of the Building on the Lot, location of septic system, and parking, and compliance with the following conditions:

1. The accessory apartment shall be located within a Single Family Dwelling or in an Accessory Structure on the same Lot, such as an attached garage or a detached garage or barn, and shall clearly be a subordinate part of the Building.

2. The accessory apartment shall not exceed nine hundred (900) square feet of Residential Gross Floor Area.

3. Not more than one accessory apartment shall be permitted on a Lot.

4. The maximum number of bedrooms shall be one.

5. There shall be at least one additional off-street parking space to serve the accessory apartment.

6. To the maximum extent practical, the accessory apartment shall be designed so that the exterior appearance of the Building remains unchanged.

7. Any Building addition for accessory apartment space shall not exceed fifteen (15) percent of the Residential Gross Floor Area existing in the Single Family Dwelling or accessory structure, as applicable, at the time of the application.

8. Unless otherwise required by the State Building Code, any new exterior stairs needed to provide primary or secondary means of egress for the accessory Dwelling shall not be located on a side of the Building facing the Street.

3.6.4 Rolling Limit. The Board of Appeals shall not issue more than ten (10) accessory apartment special permits under this Section in any twelve (12) month period.

3.6.5 Other Approvals. The applicant shall, in addition to obtaining a special permit, also obtain a building permit, and any necessary Conservation Commission approvals, and an occupancy permit prior to the occupancy of the proposed accessory apartment.

3.6.6 Special Restrictions.

1. The apartment shall not be transferred into separate ownership from the principal Single Family Dwelling, including a condominium form of ownership or otherwise.

2. The applicant shall continue to be the owner of the premises, and shall remain an occupant of either the principal Single Family Dwelling or the accessory apartment, except for bona fide temporary absences.

3.7 ACCESSORY APARTMENTS ON LARGE LOTS.

3.7.1 Purpose. The purpose of this Section is to provide for accessory apartments in a Single Family Dwelling or in an accessory building on Lots greater than ten (10) acres, subject to the following.

3.7.2 Procedures. Such an accessory apartment shall be authorized only by special permit issued by the Board of Appeals under Section 10.5 of this By-law. The Board of Appeals may grant such a special permit provided the following conditions are met:

1. One of the Dwelling Units is occupied by the owner of the property, except for bona fide temporary absence.

2. The principal Dwelling Unit and the proposed accessory apartment are to be held in the same ownership.

3. The Board of Health approves all arrangements for sanitary waste, water supply, and drainage.

4. The applicant has submitted to the Board of Appeals a plot plan and scaled architectural drawings which comply with Section 3.7.3 below

3.7.3 Design and Dimensional Standards. A plot plan and scaled architectural drawings of the existing Dwelling Unit and proposed addition shall be submitted, showing location of all Buildings on the Lot, the proposed addition, location of all septic systems and parking and compliance with the following items:

1. The Lot on which the proposed conversion is to be located is at least ten (10) acres.

2. Any external stairways shall be screened from view, buffered or located out of sight from any Street.

3. One off street parking space shall be provided for the additional Dwelling Unit, in addition to the required parking for the principal Dwelling unit. Every effort shall be made to minimize the visibility of the additional parking space by location and screening.

3.7.4 Other Approvals. The applicant shall, in addition to obtaining a special permit, also obtain a building permit, and any necessary Conservation Commission approvals, and an occupancy permit prior to the occupancy of the proposed accessory apartment.

3.7.5 Special Restrictions.

1. The apartment shall not be transferred into separate ownership from the principal Dwelling, including a condominium form of ownership or otherwise.

2. The lot upon which the principal Dwelling Unit and accessory apartment are located shall not be reduced in size to less than ten (10) acres.

SECTION 4.0 DIMENSIONAL AND DENSITY REGULATIONS

4.1 GENERAL REGULATIONS.

4.1.1 Applicability. The regulations for each district pertaining to minimum lot area, minimum Lot Frontage, minimum lot depth and width, minimum Front Yards, Rear Yards and Side Yards, maximum height of Buildings, maximum number of Stories, and maximum Building coverage shall be as specified in this Section and set forth in the Table of Dimensional Regulations, and subject to the further provisions of this Section.

4.1.2 Table of Dimensional Regulations. The Table of Dimensional Regulations is hereby declared to be a part of this By-law.

TABLE OF DIMENSIONAL REGULATIONS

	R-1a	**R-1b**	**RA**	**B**
Minimum Lot Area per Dwelling Unit (sq. ft.)	20,000	40,000	80,000	ZBA[1]
Minimum Lot Frontage (ft.)	125	175	175	ZBA[2]
Minimum Lot width and depth (ft.) (for Dwellings, see also Sections 4.2.2, 4.2.6 and 4.3)	100 at building	100 at building	100 at building	ZBA[3]
Maximum Building Height (ft.)	35	35	35	35
Maximum number of Stories	3	3	3	3
Maximum Building coverage of Lot (%)	25	25	25	75[4]
Minimum Front Yard (ft.) (See also Section 4.2.4)	25/50[5]	25/50[5]	25/50[5]	25/50[5]
Minimum Side Yard and Rear Yard (ft.)	15	15	15	ZBA[6]

1. For each Dwelling Unit, minimum lot area is twenty thousand (20,000) square feet or as determined by the SPGA. For other uses, to be determined during site plan review.
2. For a Building that contains a Dwelling Unit, 125 feet. For all other uses, to be determined during site plan review.
3. To be determined during site plan review.
4. Or as determined during site plan review.
5. Twenty-five (25) feet from the Street line, or fifty (50) feet from the Street center line, whichever is greater.
6. For a Dwelling Unit, 15 feet. For all other uses, to be determined during site plan review.

4.1.3 Computation of Lot Area. In computing the area of any Lot, no part of a public or private way and no part of a pond or river shall be included. No portion of any Lot that is less than seventy-five (75) feet in width may be counted toward meeting the minimum Lot area required under this Section.

4.1.4 Irregular Lots. In the event of an irregularly shaped Lot and a question as to the identification of the appropriate side Lot lines or front and rear lines for the purposes of computing the minimum Lot width and depth, the matter shall be decided by the Building Commissioner, after consultation with the Planning Board.

4.1.5 Accessory Buildings. Accessory Buildings, including detached garages, shall not be located closer than twenty-five (25) feet from the Street line, nor any closer to any side or rear Lot line than the height of such accessory Building above the ground or twenty (20) feet, whichever is greater; provided, however, that one storage shed not larger than eight (8) feet by twelve (12) feet and not greater than ten (10) feet in height may be located not less than five (5) feet from the rear and side Lot lines. No accessory Building shall be located closer than twenty (20) feet from any Dwelling or main Structure on a Lot unless both Structures conform with regulations relative to fire safety.

4.2 SPECIAL REGULATIONS.

4.2.1 Exemptions from Height Limits. Limitation of height shall not apply to such Structures as churches, belfries, flagpoles, chimneys, radio and television antennae, silos, water tanks and similar non-habitable Structures. See Section 7.3 for height limitations applicable to Wind Energy Facilities.

4.2.2 Required Circle in Residential Districts. To ensure that no residential Lot shall be laid out which is too irregular in shape, (except for those larger Lots with frontage exceptions), a Lot shall be such that a circle can be drawn on a plan between side Lot lines and tangential to the Lot Frontage, with such circle being entirely contained within the Lot's perimeter and having a diameter of ninety (90) percent of the required frontage: one-hundred twelve and a half (112.5) feet in the R-1a District; and one hundred fifty-seven and a half (157.5) feet in the R-1b and R-A Districts.

4.2.3 Frontage Exception for Larger Lots. A Lot in an R-la, R-1b, or R-A District need not have the specified amount of Lot Frontage provided that:

1. The area of the Lot exceeds by at least three (3) acres the minimum area required for such an R-la, R-1b, or R-A District or Groundwater Protection Overlay District.

2. The Lot has a minimum continuous Street frontage of not less than fifty (50) feet and a width of not less than fifty (50) feet at any point between the Street and the site of the Dwelling.

3. The minimum width of Lot measured at the shortest distance between side Lot lines taken through the Dwelling site on said Lot shall be a minimum of one hundred fifty (150) feet.

4. There is not more than one other such Lot with frontage contiguous to the subject Lot.

5. The Lot is not, in the opinion of the Planning Board so located as to block the future extension of a dead end Street.

6. No such Lot on which a Dwelling is located shall be further subdivided, reduced in area, or changed in size or shape.

4.2.4 Averaging of Setbacks. No Building need be set back more than the average setback of the Buildings on either side, a vacant Lot being counted as though occupied by a Building set back fifty (50) feet from the Street center line.

4.2.5 Double Frontage. In case of Lots abutting on more than one (1) Street, the full width of the Front Yard shall be provided from each Street.

4.2.6 Width. No residential Lot shall have a Lot width measured between side Lot lines of less than seventy-five (75) feet at any point in the buildable portion of said Lot. Every residential Lot laid out after the adoption of this amendment shall have a minimum depth of seventy-five (75) feet along eighty (80) percent of the minimum Lot Frontage.

4.2.7 Minimum Lot Dimensions When Creating a New Street. No Lot shall be altered to create a new Street laid out under the Subdivision Control Law unless the center line of the new Street is at least one hundred twenty-five (125) feet from the side line of the Lot, and the Lot as altered maintains the minimum Lot Frontage on the existing Street.

4.2.8 Watercourse Yards. There shall be a Yard or setback between any Building or Structure in any district and a watercourse, stream, swamp or floodway of a width to leave the area subject to flooding free of obstruction.

4.2.9 Appurtenant Open Space. No Yard or other open space required for a Building by this By-law shall, during the life of such Building, be occupied by or counted as open space for another Building.

4.2.10 Corner Clearance. Within an area formed by the side lines of intersecting Streets and a line joining points on such lines fifteen (15) feet distant from their point of intersection, or in case of a rounded corner, from the point of intersection of their tangents, no Structure shall be erected and no foliage maintained between a height of three and one half (3.5) feet and a height of eight (8) feet above the plane through their curb grades.

4.2.11 Wind Turbine Setbacks. Wind Turbine setbacks must comply with all the Yard requirements in the Table of Dimensional Regulations, and also with the regulations for Wind Energy Facilities, Small Scale Wind Energy Facilities, and Utility Scale Wind Energy Facilities set forth in Section 7.3, below.

4.3 CONTIGUOUS AREA OF LAND REQUIREMENT.

4.3.1 General. Every Lot laid out for residential use shall contain a contiguous parcel of land for building which:

1. Is not in the Conservancy District, as shown on the Zoning Map;

2. Is not an area designated as having severe limitations for septic systems or house sites on the Hamilton Soil Survey Maps, U.S. Soil Conservation Service; and

3. Is not a wetland as defined in G.L., c. 131, s. 40.

4.3.2 Interpretation. To facilitate determination of the existence of the required building area, the applicant shall designate that area on each plan submitted under this By-law to the Building Commissioner, together with accompanying evidence to demonstrate compliance. The Building Commissioner in interpreting this provision may seek advice of the Planning Board.

4.3.3 Minimums. The contiguous area of land for building referred to in the preceding paragraph shall meet the following minimums, provided that the Groundwater Protection Overlay District minimum set forth in subsection 4 below shall override the minimum for the underlying zone.

1. Ten thousand (10,000) square feet in the R-la District;

2. Twenty (20,000) square feet in the R-1b District;

3. Forty thousand (40,000) square feet in the R-A District;

4. Eighty thousand (80,000) square feet in the Groundwater Protection Overlay District for Lots which are not Lots qualifying under Section 4.2.3 as reduced frontage lots;

5. One half (0.5) the sum of the minimum Lot size plus three (3) acres for Lots qualifying as reduced frontage Lots; and

6. One hundred five thousand three hundred forty (105,340) square feet in the Groundwater Protection Overlay District for Lots qualifying as reduced frontage Lots.

4.3.4 Proof. If evidence certified by a Registered Professional Engineer, such as test pits, borings, vegetative analysis and other methods acceptable to the Building Commissioner is presented by the applicant to show that the proposed building area does not, in fact, include the characteristics prohibited above, or that the boundaries on a map used to enforce this Section are in error as to said area, the Building Commissioner may accept this alternative evidence as the basis for the determination of compliance with this Section.

4.3.5 Location of House. The proposed Dwelling site must fall within the area claimed as buildable land under this Section.

4.3.6 Buildable Area. No portion of any Lot that is less than seventy-five (75) feet in width may be counted as buildable area.

SECTION 5.0 NONCONFORMING USES AND STRUCTURES

5.1 APPLICABILITY. This By-law shall not apply to Structures or uses lawfully in existence or lawfully begun, or to a Building or special permit issued before the first publication of notice of the public hearing required by G.L. c. 40A, s. 5 at which this By-law, or any relevant part thereof, was adopted. Such prior, lawfully existing nonconforming uses and Structures may continue, provided that no modification of the use or Structure is accomplished, unless authorized hereunder.

5.2 NONCONFORMING USES. The Zoning Board of Appeals may by Finding allow a change to a nonconforming use in accordance with this Section only if it determines that such change shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

5.2.1 Eligible Changes. The following types of changes to nonconforming uses may be considered by the Zoning Board of Appeals:

1. Change or substantial extension of the use.

5.3 NONCONFORMING STRUCTURES. The Zoning Board of Appeals may by Finding allow a change to a nonconforming Structure in accordance with this Section only if it determines that such change shall not be substantially more detrimental than the existing nonconforming Structure to the neighborhood.

5.3.1 Eligible Changes. The following types of changes to nonconforming Structures may be considered by the Zoning Board of Appeals:

1. Reconstruction, extension or structural change; and

2. Alteration to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

5.3.2 Variance Required. Except as provided in Section 5.3.3 and 5.3.4, below, a variance from the Zoning Board of Appeals shall be required for:

1.The change of a nonconforming Structure in such a manner as to increase an existing nonconformity or create a new nonconformity; and

2. The extension of an exterior wall at or along the same nonconforming distance within a required Yard.

5.3.3 Nonconforming Single and Two Family Residential Structures. Nonconforming Single and Two Family Dwelling Structures may be changed only upon a determination by the Building Commissioner that such proposed change does not increase the nonconforming nature of said Structure by more than one hundred (100) percent of the Residential Gross Floor Area.

5.3.4. Eligible Changes. The following circumstances shall not be deemed to increase the nonconforming nature of Nonconforming Single and Two Family Dwelling Structures and the Building Commissioner may issue a building permit:

1. The existing Structure is on a conforming Lot but is nonconforming because it encroaches on a setback and the proposed alteration or extension will not change the setback which fails to conform, and the entire structure meets all other requirements of this By-law including but not limited to height and Lot coverage.

2. The existing Structure is nonconforming solely because it is located on a Lot which is nonconforming as to size and/or Lot Frontage as the result of a zoning change, and the existing Structure and proposed alteration or extension meets all other current requirements of the By-law including but not limited to setbacks, height and Lot coverage.

3. The existing Structure is a residence in a district where residences are permitted, the Structure is situated on a nonconforming Lot or has nonconforming Yards, and the proposed alteration or extension is a reconstruction or repair which does not change the Lot size or Yards which fail to conform. For the purposes of this subsection only, the term "reconstruction" shall not include the voluntary demolition of such Structure and its rebuilding. See Section 5.5.

If the Building Commissioner determines that proposed change exceeds one (1) or more of the criteria set forth above, the Zoning Board of Appeals may, by Finding, allow such change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

5.4 ABANDONMENT OR NON-USE. A nonconforming use or Structure which has been abandoned or not used for a period of two (2) years shall lose its protected status and be subject to all of the provisions of this By-law.

5.5 RECONSTRUCTION AFTER CATASTROPHE OR DEMOLITION. Any nonconforming Structure may be reconstructed after a catastrophe or after voluntary demolition in accordance with the following provisions:

5.5.1 Procedures.

1. Reconstruction of said premises shall commence within two (2) years after such catastrophe or demolition, with the reconstruction completed and the Structure occupied within a reasonable time thereafter.

2. Building(s) reconstructed as of right shall be located on the same footprint as the original nonconforming Structure and shall be only as great in volume or area as the original nonconforming Structure.

3. In the event that the proposed reconstruction would (a) cause the Structure to exceed the volume or area of the original nonconforming Structure, or (b) cause the Structure to be located other than on the original footprint, a special permit shall be required from the Zoning Board of Appeals. In the case of voluntary demolition, the special permit shall be obtained prior to such demolition.

5.6 REVERSION TO CONFORMITY OR MORE RESTRICTIVE USE. No nonconforming use shall, if changed to a conforming use or to a more restrictive use, revert to a nonconforming or less restrictive use.

5.7 SUBSTANDARD LOTS. When a prior lawful nonconforming Structure is located on a Lot which does not meet current dimensional requirements, such Lot shall not be changed, unless the change does not result in exacerbation of an existing nonconformity or a new nonconformity.

SECTION 6.0 GENERAL REGULATIONS

6.1 OFF-STREET PARKING AND LOADING AREAS.

6.1.1 Number of Required Parking Spaces. Off-street parking spaces and loading areas shall be required in at least the ratio specified below for the following uses of land and Buildings:

USE	REQUIRED SPACES
Dwellings	One (1) for each Dwelling Unit
Places of public assembly not including churches:	One (1) for each three seats therein
Schools	One (1) for each classroom therein, plus one (1) for each two (2) employees or staff positions other than teachers; and where an auditorium is provided, one (1) for each three (3) seats therein
Other service establishments and retail businesses	One (1) for each three hundred (300) square feet or fraction thereof of Business Gross Floor Area, excluding basement storage area
Other uses requiring off-street parking and loading space	Space in accordance with anticipated needs as determined by Board of Appeals with the advice of the Planning Board

6.1.2 Location. Required off-street parking and loading spaces shall be located on the same Lot as the Building or use they are intended to serve, or in the case of parking spaces, on other premises within two hundred (200) feet of such Lot.

6.1.3 No Reduction. Required off-street parking and loading spaces shall not hereafter be reduced, nor any loading space counted as or substituted for a parking space.

6.1.4 Size. Required off-street parking spaces shall each be nine (9) feet by eighteen (18) feet for each vehicle suitable for parking together with areas for turning and exclusive of necessary drives and other access ways from the street to the parking area; provided, however, that a Driveway or garage may be considered as the required parking space for a Single Family Dwelling.

6.1.5 Access. Required off-street parking and loading spaces shall all have adequate vehicular access to a Street.

6.1.6 Shared Parking. No part of an off-street parking or loading space required for any Building or use shall be included as a part of an off-street parking area required for another Building or use unless a determination is made by the Board of Appeals to the effect that the period of usage of such structure or uses will not be simultaneous.

6.1.7 Surface. All off-street parking areas and loading areas, other than those provided for Dwellings but including drives and other access ways, shall be treated with bituminous or other surfacing material, and shall be provided where necessary with appropriate bumper and wheel guards.

6.1.8 Lights. Illumination shall be so arranged as to deflect the light away from adjoining Lots and abutting Streets; and screening shall be provided where required by this By-law.

6.1.9 Site Plan. Parking areas and loading areas in the Business District shall be shown on a site plan, as provided in Section 10.6.

6.1.10 Special Permit. The Planning Board may, by special permit, waive any provision of this Section, provided that such waiver shall not result in substantial detriment.

6.2 DRIVEWAYS.

6.2.1 Driveway Plan. Driveway access to a Dwelling or other Building site shall be indicated on a plan submitted to the Building Commissioner at the time of a building permit application. In determining compliance with the following standards, the Building Commissioner shall confer with the Department of Public Works.

6.2.2 Standards. Driveways shall provide both access and turnaround for vehicles including moving vans, ambulance, fire and police vehicles without substantial hardship, financial or otherwise in construction. Reconstruction and/or resurfacing of an existing Driveway, which will result in a significant change of grade in the Driveway shall require approval of the Department of Public Works. All Driveways shall have:

1. Width of at least ten (10) feet but shall be cleared to a width of at least twelve (12) feet;

2. A centerline radius of at least sixty (60) feet in the driveway curves;

3. Maximum grade of ten (10) percent;

4. Flare of five (5) feet at intersection of Driveway with public way; and

5. A leveling-off section.

6.2.3 Hydrant. A hydrant shall be required if a proposed Dwelling or other Building is greater than one thousand (1000) feet as measured along the proposed Driveway from an existing or proposed fire hydrant. In such a case, a town water line and hydrant acceptable to the Department of Public Works shall be installed. Such hydrant shall be not more than one thousand (1000) feet along the Driveway from the Dwelling as measured along the proposed Driveway.

6.2.4 Connection to State Highway. Plans showing special requirements for Driveways connecting with state-maintained ways are available at District or State Offices of the Massachusetts Department of Public Works.

6.2.5 Connection with Access Street. The connection of any access way with a Town Street must be approved by the Department of Public Works in consultation with the Police Department for safety issues. In connection with said approval, the owner shall release the Town from all damages resulting from the flow of water from such way. Said approval shall be in the form of a signed curb cut permit.

6.2.6 Common Driveway. Except by special permit granted by the Planning Board, no more than two lots may share an access Driveway. The Town may require two (2) or more Lots to share a common Driveway when, in the opinion of the Police Department, it is deemed necessary for safety purposes. No building permit shall be granted for any Lot served by a common Driveway until there has been compliance with the following:

1. *Curb Cut Permit.* A curb cut permit has been obtained pursuant to Section 6.2.5 above;

2. *Location.* The common Driveway shall lie entirely within the Lots to which it provides access, and shall comply with all Driveway regulations in this Section.

3. *Easement.* An easement providing for maintenance and snow removal and running with the land in perpetuity has been executed by the owner(s) of the Lots sharing the Driveway and recorded at the Registry of Deeds, and evidence thereof is submitted to the Building Commissioner.

4. *Frontage.* The common Driveway is not being used to satisfy zoning frontage requirements.

6.3 SIGNS.

6.3.1 Permit Required. All signs require building permit approval.

6.3.2 Residence Districts. In every residential district, signs will be permitted as follows:

1. One (1) sign pertaining to the lease, sale or use of a Lot or Building on which such sign is placed not exceeding a total area of six (6) square feet.

2. One (1) sign for identification of professional and home occupations or the occupant, not exceeding a total area of three (3) square feet.

3. For directional purposes, one (1) sign not exceeding a total area of three (3) square feet.

4. Subject to the grant of a special permit by the Planning Board for specified periods not exceeding one (1) year, other and larger signs.

6.3.3 Business District. In the Business District, signs will be permitted as follows:

1. Advertising goods and services available on the premises not exceeding one (1) square foot for every linear foot of store frontage and in no case exceeding a total area of thirty six (36) square feet per lot.

2. For identification of the business, company or agency on a wall or parapet of a main Building not exceeding thirty (30) square feet for each separate business in a Business District.

3. One (1) sign pertaining to the lease or sale of a lot or Building on which such sign is placed not exceeding a total area of six (6) square feet.

4. For the purpose of identifying a business development or shopping center, one (1) free-standing sign with a total of thirty-six (36) square feet of area for each street on which the business development fronts.

6.3.4 Standards.

1. *Projecting Sign Clearance.* A clear space of not less than twelve (12) feet shall be provided below all parts of such signs.

2. *Prohibited.* No sign in any district shall be flashing, internally illuminated, animated or illuminated by other than white light, nor project beyond any Street line or above any Building.

6.4 STANDARDS FOR NONRESIDENTIAL BUILDINGS' CONSTRUCTION, USE AND OPERATION.

6.4.1 General. Nonresidential Buildings and uses permitted in the Table of Uses shall conform to the following minimum standards for construction, use and operation as evidenced by detailed plans submitted to the Building Commissioner for review and certified as to compliance by the architects and/or engineers responsible for such plans. In the event of any reasonable doubt by the Building Commissioner as to compliance with the following minimum standards, he or she shall refer the building permit in such cases to the Zoning Board of Appeals for resolution.

1. *Waste Disposal and Water Service.* Water service, and waste and refuse disposal methods shall comply with pertinent health regulations and shall be in accordance with the approved site plan.

2. *Storage.* Equipment, including company owned or operated vehicles, shall not be stored between the Street line and the front line of structures on the subject Lot, or if there be no Structure within fifty (50) feet of the Street line, and in no case to be visible from the Street.

3. *Screening.* Screening by fences, walls and/or evergreen planting, in accordance with an approved site plan, shall be provided, erected and maintained to shield the business uses of land and Buildings from any adjoining residential property.

SECTION 7.0 SPECIAL REGULATIONS

7.1 ADULT ENTERTAINMENT USES.

7.1.1 Purpose. It has been documented in numerous towns and cities throughout the Commonwealth of Massachusetts and elsewhere in the United States that Adult Entertainment Uses are distinguishable from other business uses and that Adult Entertainment Uses degrade the quality of life in the areas of a community where they are located. Studies have shown secondary impacts such as increased levels of crime and blight resulting from the clustering and concentration of Adult Entertainment Uses. Late night noise and traffic also increase due to the late hours of operation of many of these establishments. This Section is adopted pursuant to G.L. c. 40A, s. 9A with the purpose and intent of regulating and limiting the location of Adult Entertainment Uses (as defined herein) so as to prevent the secondary effects associated with these establishments and to protect the health, safety, and general welfare of the present and future inhabitants of the Town of Hamilton.

1. The provisions of this Section have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative matter or materials, including sexually oriented matter or materials.

2. Similarly, it is not the intent or effect of this Section to restrict or deny access by adults to sexually oriented matter or materials protected by the Constitution of the United

States or of the Commonwealth of Massachusetts, nor restrict nor deny rights that distributors or exhibitors of such matter or materials may have to sell, distribute, or exhibit such matter or materials. Neither is it the intent or effect of this subsection to legalize the distribution of obscene matter or materials.

7.1.2 Special Permit. No Adult Entertainment Use shall be established or operated in the Town unless a special permit has been granted by the Zoning Board of Appeals. An application that meets the standards in Section 7.1.4 shall be granted.

7.1.3 Location. No such use shall be located within the following designated areas. All distances specified below shall be measured by a straight line from the nearest property line of the premises on which the adult entertainment establishment is to be located to the nearest boundary line of a residential zoning district, or to the nearest property line of any residential use, public or private school, church or other religious facility, public park, or recreational area, group day care center, family day care center, library, nursing home, hospital or retail, restaurant, or cabaret use whose principal business falls under G.L. c. 138, s. 12, or any other Adult Entertainment Use as the case may be:

1. Two hundred (200) feet from the nearest boundary of any residential zoning district or from the nearest property line of any residential use;

2. Five hundred (500) feet from the nearest property line of any public or private school;

3. Two hundred (200) feet from the nearest property line of any church or other religious facility;

4. Five hundred (500) feet from the nearest property line of any public park or recreation area and any principal or accessory private recreational facility use, or area where youths commonly gather;

5. Five hundred (500) feet from the nearest property line of any group day care center, family day care center, library, nursing home and hospital;

6. One thousand (1,000) feet from the nearest property line of any other Adult Entertainment Use;

7. Two hundred (200) feet from the nearest property line of any retail, restaurant, or cabaret use whose principal business falls under G.L. c. 138, s. 12; and

An Adult Entertainment Use may not be allowed within a building containing other retail, consumer or residential uses, or within a shopping center, shopping plaza, or mall.

7.1.4 Standards. An Adult Entertainment Use shall comply with the following standards:

1. *Parking.* The Adult Entertainment Use shall comply with all off-street parking requirements contained in Section 6.1.

2. *Signs.* No Adult Entertainment Use may have a freestanding accessory sign or a sign in excess of a height of fifteen (15) feet. Further, no sign shall rotate, be illuminated or contain reflective or fluorescent elements which will sparkle in sunlight. Signs will comply with all requirements contained in Section 6.3.

3. *Flashing Lights.* No Adult Entertainment Use may have any flashing lights visible from outside the establishment.

4. *Displays.* No pictures, publications, videotapes, movies, covers or other advertising items shall be displayed in the windows of or on the building of any adult bookstore, adult cabaret, adult motion picture theater, adult paraphernalia store or adult video store.

5. *Inside Views.* All building openings, entries, and windows for any adult entertainment use shall be located, covered, or screened in such a manner as to prevent a view into the interior of an Adult Entertainment Use Building from any area open to the general public.

6. *Noise.* The Building in which the Adult Entertainment Use will be located shall be designed so that noise from any proposed entertainment is not audible (0 decibels) outside.

7. *Dimensional and Density Regulations.* All standards and conditions set forth in Section 4.0 shall be applicable to the granting of a special permit under this Section.

8. *Prohibition.* No special permit may be granted hereunder to any person convicted of violating the provisions of G.L. c. 119, s. 63, or G.L. c. 272, s. 28.

7.1.5 Site Plan. An Adult Entertainment Use is subject to site plan approval pursuant to Section 10.6. A site plan shall be submitted by the applicant in order that the SPGA may determine that the above standards have been met. The site plan shall meet all the requirements of Section 10.6, and shall show the distances between the proposed Adult Entertainment Use and any residential zoning district, public or private school, church, or other religious facility, public park or recreation area, group day care center, Child Care Center, Family Child Care Center (Small or Large), library, Long Term Care Facility, and hospital, retail, restaurant, or cabaret use whose principal business falls under G.L. c. 138, s. 12, and any other Adult Entertainment Use.

7.1.6 Imposition of Other Conditions. The SPGA may impose in addition to any applicable conditions specified herein, such additional conditions as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purposes of this Section, including but not limited to the following:

1. Front Yards, Side Yards, or Rear Yards greater than the minimum required by Section 4.0;

2. Screening buffers or planting strips, fences or walls;

3. Limitations upon the size, method and time of operations;

4. Time duration of the permit;

5. Regulation of number and location of driveways or other traffic features; and

6. Off-street parking.

7.1.7 Lapse of Permit. Any special permit granted hereunder for an Adult Entertainment Use shall lapse: (a) after one (1) year from its date of issuance, including such time required to pursue or await the determination of an appeal from the grant thereof, (b) if a substantial use thereof has not sooner commenced except for good cause, or (c) in the case of a permit for construction, if construction has not begun by such date except for good cause.

7.2 COMMUNICATION TOWERS (CT) AND TELECOMMUNICATION ANTENNA FACILITIES (TAF).

7.2.1 Purpose. The purpose of this Section is to establish general guidelines for the siting of a communication towers ("CT") and telecommunication antenna facility ("TAF"). The goals of this Section are:

1. To minimize the adverse visual impacts of CTs and TAFs;

2. To avoid damage to adjacent properties;

3. To lessen impact on surrounding properties;

4. To lessen impact on traffic;

5. To encourage the location of towers on municipal land;

6. To minimize the number of towers throughout the community;

7. To require the co-location of new and existing tower and facility sites;

8. To encourage users of towers and facilities to locate them, to the extent possible, in areas where the adverse impact on the community is minimal; and

9. To make available all CT and TAF locations to local municipal agencies.

7.2.2 Permitting. No CT or TAF may be erected without first obtaining a special permit from the Planning Board.

7.2.3 Application. An application for a special permit under this Section shall be filed with the SPGA in compliance with Planning Board Rules and Regulations Governing Special Permits, and applicable provisions of this By-law. A site plan shall be prepared by a Registered

Professional Engineer licensed by the Commonwealth of Massachusetts and shall include the following minimum requirements, in addition to the site plan requirements in Section 10.6:

1. A locus map will be prepared by a Registered Professional Land Surveyor and shall show all abutters, streets, bodies of water, landscape features, historic sites, habitats for endangered species, and rights of way within two hundred (200) feet of the facility, and all structures within five hundred (500) feet of the facility;

2. Tower and/or facility location, including guy wires, if any, and tower height;

3. Topography;

4. Fencing and landscaping;

5. Access and parking;

6. Lighting;

7. Areas to be cleared of vegetation and trees; and

8. Site boundaries.

7.2.4 Required Reports. Reports prepared by one or more qualified professionals shall be submitted with a site plan application that:

1. Describe the tower, the facility, and the technical, economic and other reasons for the tower and facility design, and the need for the tower at the proposed location;

2. Demonstrate that the tower and facility comply with all applicable standards of the Federal and State governments, including, but not limited to, radio frequency emissions, air navigation safety, and environmental impact. The applicant should also demonstrate that the facility and/or tower should also demonstrate compliance with applicable industry standards for structural integrity, such as EIA/TIA Standard 222 in its most current revision;

3. If a tower or other new antenna support structure is proposed, describe the capacity of the structure to accommodate additional communications services including the number and type of communications facilities that it can accommodate and the basis for the calculation of capacity;

4. Demonstrate that the tower and site comply with this Section;

5. Describe the role the proposed facility will play in the applicant's development of its communications network, including demonstrating the need for the proposed height and location by making a technical showing. Such a technical showing will include showing coverage from existing and other proposed facilities in the region, coverage anticipated

from the proposed facility, and coverage from the proposed facility at lower antenna elevations (when relevant);

6. Describe how the applicant's communications needs are expected to evolve over a five (5) to ten (10) year period, with particular emphasis on how it will affect the need for the proposed facility and for additional facilities in the Town;

7. Describe other feasible sites, including existing sites, if any. Demonstrate with a technical evaluation showing that they do not have significantly less impact on the community than the proposed facility and/or demonstrate that the coverage obtained from one or more alternative installations is significantly poorer than that from the proposed facility. The Planning Board may require data for comparing the alternatives with the proposed facility, including coverage maps and/or visibility maps of the proposed facility and the alternatives;

8. Describe the appearance, location, and anticipated use of any generators that support the functions of the tower; and

9. Applicant shall provide evidence that the proposed facility or tower will comply with or is exempt from applicable regulations administered by the Federal Aviation Administration (FAA), Federal Communications Commission (FCC), Massachusetts Aeronautics Commission, the Massachusetts Department of Public Health, and other relevant regulatory agencies. Such evidence may be in the form of official agency documentation, documentation prepared by a qualified professional, or other forms of written evidence satisfactory to the Planning Board. The applicant shall send a subsequently received agency statement, if any, to the Planning Board, or the Planning Board may require verification of agency determinations by the Building Commissioner prior to issuance of a building permit.

7.2.5 On Site Demonstration. When a tower or other new antenna support structure is proposed, this subsection shall apply. Between the date of public notice of the public hearing and the hearing itself, a balloon shall be put in place at the height of the proposed tower or support structure, for not less than three (3) days. The balloon shall be floated at a height equal to the top of the proposed tower or support structure. The applicant may propose alternative means of complying with this requirement. The applicant shall also prepare for the public hearing photosimulations of the tower on that site from key locations as determined by the Planning Board. The Planning Board may require that a visibility map be created by a qualified professional to indicate where and to what degree the proposed structure and/or antennas will be visible from public ways or land. Such map may be used to compare the visibility of the proposed facility with maps of the visibility of existing facilities, of alternative heights of the proposed facility, or of feasible alternative facilities.

7.2.6 Requirements. The tower and its appurtenances shall be located in accordance with all applicable federal and state regulations in effect at the time of construction and further, the operation shall comply with all such regulations of these agencies during the entire period of operation. In addition, the tower and its facilities shall be located within the Town as follows:

1. *New Towers.* New towers shall be considered only upon a determination by the Planning Board that one (1) or more existing structures or approved towers cannot physically accommodate, or cannot provide substantially the same service as, the wireless communication facilities on the proposed tower.

2. *Co-Location.* Towers shall be designed and made available for co-location of as many service providers possible, based on the structure height and appearance in the context of the tower sites. To the extent feasible for their sites, communications accessory Buildings shall have the appearance of a single Building, or otherwise be designed to provide an orderly appearance compatible with the community.

3. *Setback.* The setback from property lines shall be no less than a distance at least equal to the height of the tower. Whenever possible, setbacks behind existing trees and/or Buildings is encouraged to provide visual masking of the tower and facility.

4. *Wetlands.* Setback from designated wetlands and water bodies shall be at least one hundred and fifty (150) feet.

5. *Existing Structures.* Distance from all existing structures shall be at least two hundred (200) feet, excluding existing structures on the lot.

6. *Fencing.* Fencing shall be provided to control access to the base of the tower, and such fencing shall be compatible with the scenic character of the Town and shall not be of barbed wire or razor wire.

7. *Access.* Access shall be provided to a site by a roadway that respects the natural terrain, does not appear as a scar on the landscape, and is approved by the Planning Board and the Fire Chief to assure emergency access at all times.

8. *Design.* Consideration shall be given to design that minimizes erosion, construction on unstable soils, and steep slopes.

9. *Height.* The applicant shall demonstrate to the satisfaction of the Planning Board that the location of the CT and/or TAF is necessary and that the size and height are the minimum necessary for the purpose. The Planning Board shall give consideration to the possible need for additional height to accommodate future co-locators. It may require that a structure be built to, or be designed to be extended to, a future height limit.

10. *Signs.* There shall be no signs, except for announcement signs, applicable warning signs, no trespassing signs and a required sign giving a phone number where the owner can be reached on a twenty-four (24) hour basis. All signs shall conform to the sign requirements of Section 6.3, and shall be subject to conditions of the Site Plan Review and any special permit.

11. *Interconnections.* To the extent feasible all cabled network interconnections and utilities from and to the communications site shall be installed underground.

12. *Visual Impact.* The CT and/or TAF shall minimize adverse visual effect on the environment and the residents of Hamilton. The Planning Board may impose reasonable conditions to ensure this result, including, but not limited to: painting, lighting standards, screening, and camouflage.

7.2.7 **Clearing.** Clearing shall be performed in a manner that will maximize preservation of natural beauty and conservation of natural resources, which will minimize marring, and scarring of the landscape or silting of streams.

1. The time and method of clearing rights-of-way should take into account soil stability, the protection of natural vegetation, the protection of adjacent resources, such as the protection of natural habitat for wildlife, and appropriate measures for the prevention of silt deposition in water courses.

2. Clearing of natural vegetation should be limited to that material which poses a hazard to the CT or TAF.

3. The use of "brush blades" instead of dirt blades on bulldozers is recommended in clearing operations where such use will preserve the cover crop of grass, low growing brush, or other vegetation.

4. Areas should be cleared only when necessary to the operation, maintenance, and construction of the tower.

7.2.8 Design Requirements.

1. Visual impacts of the CT and/or TAF shall be minimized.

2. Concealed or camouflaged facilities shall be provided to the maximum extent technically practicable. To the maximum extent practicable, towers and antenna facilities, if not camouflaged, shall be designed to provide a clean architectural appearance and to minimize any visually cluttered appearance.

3. The applicant shall demonstrate that the proposed CT and/or TAF is the minimum height necessary to accommodate transmitters and receivers.

4. Tower height shall be limited to one hundred ten (110) feet and shall be designed to accommodate the use for which the application is made. However, applications for CTs in excess of one hundred and ten (110) feet may be approved if accompanied by a detailed technical information showing as to the necessity of the additional height (co-location, reduced tower density in community, etc.).

5. All CTs greater than one hundred ten (110) feet in height shall be monopole in type.

6. Night lighting of towers shall be prohibited unless required by the Federal Aviation Administration (FAA). Lighting shall be limited to that needed for emergencies and/or as required by the FAA. To the fullest extent practicable, facilities and towers shall be designed to avoid FAA required marking and/or lighting requirements.

7. Siting shall be such that the view of the tower from other areas of Town shall be as minimal as possible. The Planning Board will pay particular attention to the visibility of the proposed structure from public ways, from historic districts, from popular scenic areas, and from natural views from residential neighborhoods.

8. Access roads shall be designed to visually conceal all CTs.

9. Shared use of towers and facilities is to be encouraged. When sharing a tower is technically not practical, replacement of the tower or the addition of a new tower may be considered. Towers shall be separated on a site so that each tower will not significantly impact the other.

10. The tower and/or facility shall be designed to accommodate the maximum number of users technologically practical.

7.2.9 Approval. A special permit shall be granted by the Planning Board in accordance with the provisions of this Section and Section 10.5.2. Any extension of the tower or antenna support structure, addition of antennas not previously permitted, replacement of antennas with substantially different configuration or appearance, or construction of new or replacement towers or antenna arrays shall be subject to an amendment to the special permit, following the same procedure as for an original grant of a special permit.

7.2.10 Construction Deadline. Construction under a special permit shall be completed within eighteen (18) months of the issuance of the special permit unless otherwise provided for in the special permit, or in a subsequent amendment of the special permit approved by the Planning Board.

7.2.11 Conditions of Completion and Use. The date of completion shall be considered the date that the Building Commissioner issues the certificate of occupancy, or the first day of beneficial use, whichever comes first.

7.2.12 Lapse. The special permit shall lapse after one (1) year from the date of issuance if substantial use or construction as granted by the permit has not commenced, except for good cause. Time required to pursue determination of an appeal shall not be considered part of the one (1) year limitation.

7.2.13 Abandonment. Any tower or facility that is not operated for a continuous period of twelve (12) months occurring any time after the date of completion shall be considered abandoned. The owner of such tower and facility shall remove the same within ninety (90) days after the abandonment period.

7.2.14 Performance Guarantee. Insurance in a reasonable amount determined and approved by the SPGA after consultation at the expense of the applicant with one (1) or more insurance companies shall be in force to cover any liabilities that could arise out of the construction, operation and maintenance of the wireless facility and/or tower. Annual proof of said insurance shall be filed with the Town Clerk.

1. An initial bond shall be posted to cover construction costs, in an amount approved by the Planning Board. The Planning Board may require posting of a bond to cover the cost of annual maintenance and repairs for the access road, site, and towers.

2. Annual certification demonstrating continuing compliance with the standards of the Federal Communications Commission and Massachusetts Department of Public Health for radio frequency emissions regulations, and FAA for air navigation safety regulations, and other regulating agencies, shall be filed with the Building Commissioner by the special permit holder.

3. Failure to post an approved bond and/or provide proof of insurance and/or obtain annual certification shall be grounds for enforcement.

7.2.15 Fees. The Planning Board may retain experts to review an application and the costs shall be borne by the applicant, pursuant to the provisions of G.L. c. 44, s. 53G. In addition, a special fee for approved applications will be assessed by the Town as determined by the Board of Selectmen. The intent of this fee is to offset the costs to the Town to process the application, to assess compliance with the by-laws, and to conduct any other business related to the construction and operation of towers within the Town. This fee will be assessed upon approval of the special permit. Failure to pay the fee in full will render the special permit subject to revocation and non-renewal.

7.2.16 Waivers. The Planning Board may waive strict adherence with this Section if it finds that the safety and well being of the public will not be adversely affected by such waiver. For each waiver granted, the Planning Board shall make a written record indicating that the proposed tower and/or facility meets the purposes of Section 7.2.1.

1. All requests for waivers shall be made in writing on a separate sheet (or sheets) of paper and be attached to the special permit application and be presented at the time of the initial application.

2. Requests for waivers shall indicate the section number and the reason the applicant needs the waiver along with any documentation to support the request.

3. The Planning Board shall grant requests for waivers only upon a majority vote. Each request shall be voted on separately. The applicant shall have the right to withdraw the request at any time prior to the actual vote. Once a request for a waiver is withdrawn it may not be presented again for a period of one (1) year.

4. Requests for more than three (3) waivers will be an indication to the Planning Board that:

a. The site is inadequate for the proposed use; or

b. The site plan is incomplete.

7.2.17 Term of Special Permit. The special permit granted under this Section shall expire within five (5) years of the date of issuance of the special permit. Renewal of the special permit shall follow the process and rules of Abbreviated Site Plan Review procedure as found in Section 10.6 of this By-law. In this case, for CT and TAF, the Planning Board shall administer the Abbreviated Site Plan Review. Each renewal shall be good for five (5) years unless specified otherwise by the Planning Board.

7.2.18 Other Requirements. Where the requirements of this Section 7.2 differ from or conflict with other requirements of this By-law, the requirements established herein shall prevail.

7.3 WIND ENERGY FACILITIES.

7.3.1 Purpose. The purpose of this Section is to provide standards for the placement, design, construction, operation, monitoring, modification and removal of Wind Energy Facilities that address public safety, minimize impacts on scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such facilities.

7.3.2 Applicability. This Section applies to all Wind Energy Facilities proposed to be constructed after the effective date of this Section. This Section also applies to physical modifications to existing Wind Energy Facilities that materially alter the type, configuration, or size of such facilities or related equipment.

7.3.3 Compliance with Laws and Regulations. The construction and operation of all Wind Energy Facilities shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications and aviation requirements.

7.3.4 Building Permit. No Wind Energy Facility shall be erected, constructed, installed or modified as provided in this Section without first obtaining a building permit. The application for a building permit for a Wind Energy Facility must be accompanied by the fee required for a building permit as established by the Building Department.

7.3.5 Site Plan Review Required in the Commercial Overlay District. If the Wind Energy Facility is located or is to be located in the Commercial Overlay District, it shall not be erected, constructed, installed or modified without first undergoing site plan review by the Planning Board using the process in Section 10.6. A special permit is not required.

7.3.6 Special Permit Required Outside the Commercial Overlay District. If the Wind Energy Facility is located or is to be located outside the Commercial Overlay District, it shall not

be erected, constructed, installed or modified without first obtaining a special permit from the Zoning Board of Appeals. A separate site plan review by the Planning Board is not required.

7.3.7 Utility Scale Wind Energy Facilities Submittal Requirements. For both site plan review and the special permit process, the applicant shall submit to the appropriate Board a plan and supporting data, which shall bear the seal and signature of a registered professional engineer licensed to practice in Massachusetts. Submissions shall include a plan showing the information set forth below, except that in connection with a special permit application, the five hundred (500) foot distance noted below for inclusion of details may be reduced to three hundred (300) feet.

1. Property lines of the applicant and abutters within 500 feet;

2. Proposed location of the Wind Turbine;

3. Location and uses (residence, garage, shed, etc.) of the proposed and abutters' Buildings within five hundred (500) feet including distance from the proposed wind turbine to each of the Buildings;

4. Overhead transmission and distribution lines, and any radio or telecommunications towers within five hundred (500) feet of the Wind Turbine;

5. Drainage or utility easements crossing within five hundred (500) feet of proposed power or control lines to or from the Wind Turbine;

6. Location of guy wire anchors, if any;

7. Location of all ways, Driveways or Streets, public or private, temporary or permanent within five hundred (500) feet of the proposed Wind Turbine;

8. Existing areas of tree cover, including average height of trees, on the site parcel and any adjacent parcels within a distance measured from the Wind Turbine foundation, of one and one fifth (1.2) times the height of the Wind Turbine;

9. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting (other than FAA lights), screening vegetation or structures;

10. A dimensional representation of the Wind Turbine mounted on its support structure, including foundation dimensions (both surface and depth), foundation materials, method of attaching tower to foundations, Wind Turbine dimensions including, tower height and rotor diameter, and clearance distances of blades to ground and nearest structure to be prepared by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts;

11. Statement as to whether the proposed Wind Turbine is a tested production model, or an experimental, one-of-a kind or prototype design including manufacturer and model;

12. Wind Turbine design data including manufacturer's specifications and installation/ operation instructions; certification by the manufacturer or a registered engineer that tower design is sufficient to withstand wind load requirements for structures as established by the Massachusetts Building Code;

13. Site-specific wind speed data including the monthly mean wind-speed for a period no less than six months;

14. An operation and maintenance plan for the Wind Turbine and associated buildings, vegetation and roadways;

15. One or three line electrical diagram detailing Wind Turbine, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over-current devices;

16. A location map consisting of a copy of a portion of the most recent USGS Quadrangle Map at a scale of one (1) inch to twenty-five thousand (25,000) square feet (1:25,000) showing the proposed facility site, including turbine site, and the area within at least two miles from the facility;

17. Documentation of actual or prospective access and control of the project site;

18. Proof of liability insurance;

19. Certification of height approval from the Federal Aviation Administration;

20. Statement that evidences the Wind Energy Facility's conformance with the provisions of the Department of Environmental Protection's Division of Air Quality Noise Regulations at 310 CMR 7.10; and

21. Description of financial surety in the form of either an escrow account, bond or otherwise, to cover the cost of removal in the event the Town must remove the facility and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board, but in no event to exceed more than one hundred twenty-five (125) percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the applicant. 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.

7.3.8 Utility Scale Wind Turbine Standards.

1. *Setback.* A Wind Turbine for a Utility Scale Wind Energy Facility may not be sited within: (i) a distance equal to the height of the Wind Turbine from Buildings, critical infrastructure, or private or public ways that are not part of the Wind Energy Facility; (ii)

three times the height of the Wind Turbine from the nearest existing residential or commercial Structure; or (iii) one and one-half (1.5) times the height of the Wind Turbine from the nearest property line. The applicable permit granting authority may reduce the minimum setback distance as appropriate based on site-specific considerations, or written consent of the affected abutter(s), if the project satisfies all other criteria for the granting of a building permit under the provisions of this Section.

2. *Height.* The height of Wind Turbine shall not exceed three hundred twenty-five (325) feet.

3. *Minimum Blade Height.* Minimum blade elevation shall be not less than fifteen (15) feet above the ground at the lowest point of blade arc.

4. *Sound.* The operation of the Wind Energy Facilities shall conform to the provisions of the Department of Environmental Protection's Division of Air Quality Noise Regulations at 310 CMR 7.10.

5. *Signs.* Wind Turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the wind energy facility. Signs on Wind Energy Facilities shall comply with Section 6.3. The following signs are required:

a. At least one (1) sign shall be posted near ground level on the tower structure warning of high voltage and any danger;

b. Signage necessary to identify the owner, including a twenty-four (24) hour emergency contact phone number; and

c. Educational signs providing information about the facility and the benefits of renewable energy.

6. *Posted Information.* In addition, the following information shall be posted on a label on the generator or alternator of the Wind Turbine, and on the Wind Turbine control panel:

a. Maximum power output of system and wind speed at which it is achieved;

b. Nominal voltages and maximum current;

c. Manufacturer's name and address, model number and serial number;

d. Normal and emergency shutdown procedures; and

e. Maximum wind speed the Wind Turbine, in automatic unattended operation, can sustain without damage to structural components, or loss of ability to function normally.

7. *Safety*. The design of the proposed Wind Turbine shall be such that:

a. In the event of loss of utility power, the Wind Turbine shall not back feed a dead power line;

b. In the event of high wind speeds, the Wind Turbine shall brake or feather below survival wind speed;

c. In the event of blade imbalance, the Wind Turbine shall be able to support added blade weight of at least ten (10) percent at the tip of any blade; and

d. The applicant shall provide a copy of the project summary, electrical schematic and site plan to the police and fire departments. Upon request the applicant shall cooperate with local emergency services in developing an emergency response plan. All means of disconnecting the Wind Energy Facility shall be clearly marked. The applicant or facility owner shall identify a responsible person for public inquiries or complaints throughout the life of the project and that responsible person's contact information shall be provided to the Town Manager, Police and Fire Departments;

8. *Flicker*. Wind Energy Facilities shall be sited in a manner that minimizes showing or flicker impacts. The applicant has the burden of proving that this effect does not have significant adverse impact on neighboring or adjacent uses.

9. *Wind Capacity*. The Wind Turbine, inclusive of its supporting structure, shall be designed to withstand a wind speed of at least one hundred twenty (120) miles per hour.

10. *Access*. To prevent unauthorized climbing, tower access shall be restricted by either:

a. A secured fence and locked gate, both at least six (6) feet high, constructed around the perimeter of the base of the supporting structure, provided that such barrier is not required for any Wind Turbine erected on dwelling or other structure which provides no opportunity for climbing for at least six (6) feet; or

b. Removal of climbing apparatus on the support structure to at least ten (10) feet above the ground; or

c. Anti-climbing shrouds over the bottom portion of the structure.

11. *Electrical Equipment*. Electrical equipment shall be locked.

12. *Building Code*. Tower construction shall conform with the Massachusetts State Building Code as applicable.

13. *Guy Wires*. If the tower is to be supported by guy wires, fencing must be provided to prevent grazing animals from rubbing against the wires, as uneven tension on wires can make tower unstable.

14. *Electromagnetic Interference*. Electromagnetic interference with radio frequency communication, traceable to the operation or location of the Wind Turbine, shall be limited in accordance with all applicable sections of the specifications of the Federal Communications Commission.

15. *Appearance; Color and Finish.* Color and appearance shall comply with the safety requirements of the FAA.

16. *Lighting*. Wind Turbines shall be lighted only if required by the FAA. Lighting of other parts of Wind Energy Facilities, such as appurtenant Structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Except as required by the FAA, lighting of Wind Energy Facilities shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

17. *Utility Connections*. Reasonable efforts, as determined by the Planning Board, shall be made to place all utility connections from Wind Energy Facilities 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.

18. *Appurtenant Structures*. All appurtenant structures to Wind Energy Facilities 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 and shall be contained within the turbine tower whenever technically and economically feasible. Whenever reasonable, structures should be shaded from view by vegetation and/or located in an underground vault and joined or clustered to avoid adverse visual impacts.

19. *Land Clearing, Soil Erosion and Habitat Impacts*. Clearing of natural vegetation shall be limited to that which is necessary for the construction operation and maintenance of the wind energy facility or otherwise prescribed by applicable laws, regulations and bylaws.

20. *Monitoring and Maintenance*. The applicant shall maintain the wind energy 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 local emergency services. The facility owner shall be responsible for the cost of maintaining Wind Energy Facilities and any access road(s).

7.3. Decommissioning. Decommissioning shall consist of:

1. Physical removal of all Wind Turbines, structures, equipment, security barriers and transmission lines from the site;

2. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;

3. Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption of vegetation;

4. Decommissioning shall occur after one (1) year of discontinued use without written consent from the permit granting authority. If the applicant fails to remove the facility in accordance with the requirements of this Section within one hundred fifty (150) days of abandonment or proposed date given by the applicant, the Town may enter the property and physically remove the facility at the applicant's cost through the financial surety set by the Town and applicant during site plan review or special permit process, as applicable.

7.3.1 Small Scale Wind Energy Facilities Submittal Requirements. The applicant shall submit a plan and supporting data, which shall bear the seal and signature of a registered professional engineer licensed to practice in Massachusetts. Submissions shall include a plan showing:

1. Property lines of the applicant and abutters within three hundred (300) feet;

2. Proposed location of the Wind Turbine;

3. Location and uses (residence, garage, shed, etc.) of the proposed and abutters' buildings within three hundred (300) feet including distance from the proposed Wind Turbine to each of the buildings;

4. A dimensional representation of the Wind Turbine mounted on its support structure, including foundation dimensions (both surface and depth), foundation materials, method of attaching tower to foundations, Wind Turbine dimensions including, tower height and rotor diameter, and clearance distances of blades to ground and nearest structure to be prepared by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts;

5. Small Scale Wind Energy Facility and Wind Turbines must be approved by a small wind certification program recognized by the American Wind Energy Association;

6. The Wind Turbine's design data including manufacturer's specifications and installation/operation instructions; and

7. Certification by the manufacturer or a registered engineer that tower design is sufficient to withstand wind load requirements for structures as established by the Massachusetts State Building Code.

7.3.1 Small Scale Wind Turbine Standards.

1. *Setback.* A Wind Turbine may not be sited within one and one-half times the height of the Wind Turbine from the nearest property line. A Wind Turbine may not be sited within a distance equal to the height of the Wind Turbine from critical infrastructure, or private or public ways.

2. *Reduction.* Setback distances of the Wind Turbine may be reduced by the SPGA based on site specific criteria and if the project is consistent with special permit granting criteria and only after review of substantial evidence, including but not limited to detailed engineering report or product engineering ce l iification, which demonstrate that safety concerns have been minimized and that setbacks have been complied with to the maximum extent practicable. Setbacks for other than the Wind Turbine shall comply with this By-law.

3. *Property Boundaries.* No part of Small Scale Wind Energy Facilities support Structures, including guy wire anchors, may extend closer to the property boundaries than the standard structure setbacks for the zoning district in which the land is located.

4. *Height.* The height of a Wind Turbine shall be no greater than one hundred fifty (150) feet. The height of a Wind Turbine shall be measured from natural grade to the tip of the rotor blade at its highest point, or blade-tip height.

5. *Noise.* The operation of Small Scale Wind Energy Facilities shall conform to the provisions of the Department of Environmental Protection's, Division of Air Quality Noise Regulations at 310 CMR 7.10.

6. *Restricted Access.* To prevent unauthorized climbing, tower access shall be restricted by either:

a. A secured fence and locked gate, both at least six (6) feet high, constructed around the perimeter of the base of the supporting structure, provided that such barrier is not required for any Wind Turbine erected on a Dwelling or other Structure which provides no opportunity for climbing for at least six (6) feet; or

b. Removal of climbing apparatus on the support structure to at least ten (10) feet above the ground; or

c. Anti-climbing shrouds over the bottom portion of the structure.

7.3.12 Compliance with Other Regulations. All applicants granted permits for Utility Scale and Small Scale Wind Energy Facilities pursuant to Section 7.3 of the By-law, shall comply with the following:

1. Regulations of the Federal Communications Commission (FCC);

2. Massachusetts State Building Code;

3. Regulations of the FAA;

4. National Electric Code; and

5. Regulations of the Federal Energy Regulatory Commission (FERC).

7.3.13 Utility Notification. All Wind Energy Facilities approved under Section 7.3 of the By-law shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator and an interconnection agreement has been approved by the utility. Off-grid systems shall be exempt from this requirement.

7.3.14 Special Permit Approval Criteria. In addition to the criteria set forth in Section 10.5.2, a special permit may be granted for either a Small Scale or a Utility Scale Wind Facility as long as it is located outside of the COD pursuant to Section 7.3 of the By-law and shall meet the following standards:

1. The specific site is an appropriate location for such use including but not limited to consideration of sound, flicker and visual impact;

2. The use will not pose a significant adverse impact to the health and safety of the neighborhood;

3. There will be no serious hazard to persons or vehicles from the use; and

4. Adequate and appropriate infrastructure will be provided for the proper operation of the small scale wind energy conversion system.

7.3.15 As-Built Plan. No facilities approved under Section 7.3 of the By-law shall commence operation until an "As-Built" plan and a certificate of compliance have been submitted to the Planning Board and the Building Commissioner represents that the facility has been constructed substantially in compliance with the site plan approved by the Planning Board or the special permit issued by the Zoning Board of Appeals, as applicable. Said certificate and plan shall be signed and stamped by a registered professional engineer licensed in the Commonwealth of Massachusetts.

7.3.16 Abandonment. Wind Energy Facilities shall be considered to be abandoned if they are inoperable for a period of one year, or considered hazardous by the Building Commissioner. Once Wind Energy Facilities are designated as abandoned or hazardous, the owner shall immediately physically remove the installation, which shall include, but not be limited to:

1. Removal of the facility, any equipment shelters and security barriers from the subject property;

2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations;

3. Restoration of the subject property to its natural condition, except that any landscaping and grading may remain in the post-removal.

7A Wind Energy Facility which has reached the end of its useful life or has been abandoned shall be removed. The owner/operator shall physically remove the facility no more than one hundred fifty (150) days after the date of discontinued operations. The applicant shall notify the permit granting authority by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall comply with Section 7.3.11.

7.3.18 Utility Connections. Reasonable efforts, as determined by the applicable Board, shall be made to place all utility connections from Wind Energy Facilities underground as depending on appropriate soil conditions, shape and topography of the site and any requirements of the utility provider.

7.3.19 Modification. All material modifications to a Wind Energy Facility made after issuance of the required building permit shall require approval by the applicable Board.

20All substantial modifications to Wind Energy Facilities made after issuance of the required building permit shall require site plan approval by the Planning Board or issuance of a special permit by the Zoning Board of Appeals, as applicable.

7.3. Priority. The provisions set forth in this Section shall take priority over all other Sections of this By-law when considering applications related to the construction, operation, and/or repair of land-based Wind Energy Facilities.

SECTION 8.0 SPECIAL RESIDENTIAL REGULATIONS

8.1 OPEN SPACE AND FARMLAND PRESERVATION DEVELOPMENT.

8.1.1 Purpose. The purpose of Open Space and Farmland Preservation Development (OSFPD) is to:

1. Protect permanently open space, agricultural and forestry land, historical and archeological resources, existing and proposed trails, wildlife habitat and corridors, and other natural resources including wetlands and water bodies, in a manner consistent with the goals of the Hamilton Master Plan;

2. Encourage creative, environmentally sensitive design as the preferred form of residential development;

3. Encourage a more efficient form of development that consumes less open land and respects existing topography and natural features better than a conventional or grid subdivision;

4. Provide a variety of housing choices, particularly for older persons;

5. Reduce the anticipated negative fiscal impact on the Town associated with conventional residential development; and

6. Provide a development option to large-parcel landowners who wish to see a continuation of their stewardship of the land.

8.1.2 Applicability. In the R-la, R-lb, or R-A Districts, an applicant may obtain a special permit from the Planning Board for an OSFPD. An OSFPD is encouraged for developments which involve ten (10) or more acres or five (5) or more Dwelling Units but also is available for smaller developments. An OSFPD special permit allows the applicant a greater number of Lots or Dwelling Units on the site than allowed under a conventional subdivision in return for the applicant providing at least 50% of the total land area as permanently protected common open space as well as other benefits, all on terms and conditions further described in this Section 8.

8.1.3 Significance of Grant of Special Permit. Approval of an OSFPD special permit is a preliminary approval only. An applicant wishing to proceed with an OSFPD must then proceed with a definitive subdivision plan and/or a Cluster Design Plan, as described below. Approval of an OSFPD special permit does not indicate approval of the Board of Health, Conservation Commission, or any other entity from which the development requires separate permits or approvals. At any time during the OSFPD approval process the applicant maintains the option of withdrawing from the OSFPD process and proceeding with a conventional subdivision plan.

8.1.4 Future Subdivision. The common open space and all Lots in an OSFPD may not be further subdivided, and a notation to this effect shall be placed on the plan of record, which shall be recorded at the Registry of Deeds.

8.1.5 Planning Board Regulations. The Planning Board shall adopt and from time to time may amend OSFPD Rules and Regulations to implement this Section. Such regulations shall include but will not be limited to submission requirements; plan requirements, such as size, form, number and contents; development standards; site standards; and standards for Building

placement and design. Such rules and regulations are authorized under G.L. c. 40A, s. 9, and shall be adopted after vote by the Planning Board.

8.1.6 Permitted Uses. An OSFPD may include the following uses:

1. Single Family Dwellings.

2. Townhouse Dwellings, not to exceed four Dwelling Units per Building.

3. Multi-family Dwellings, not to exceed six Dwelling Units per Building.

4. Open space and conservation areas.

5. Passive recreation, including trails for walking, hiking, cross country skiing, and horseback riding, and areas for other low-impact activities such as picnicking and wildlife observation.

6. Agricultural, equestrian, and horticultural uses.

7. Accessory recreational uses, such as a tennis court or playground in the developed area.

8.1.7 Pre-Application Conference. The applicant shall request and attend a pre-application review at a regular business meeting of the Planning Board. The Planning Board shall invite the Board of Health, Building Commissioner, Conservation Commission and Open Space Committee, Department of Public Works, Fire Chief, Police Chief, Historic District Commission, Office on Disability, and Zoning Board of Appeals to attend. The primary purpose of the pre-application conference is to identify the site's natural or historically important features, riding or walking trails on the site and abutting parcels, public safety, traffic or infrastructure issues, and areas the Town prefers to see preserved as open space or for agricultural or equestrian uses. The secondary purpose of a pre-application review is to minimize the applicant's cost of engineering and other technical experts, and to commence discussions with the Planning Board at the earliest possible stage of development. Meetings may be held by mutual agreement of the Planning Board and the applicant. At the pre-application review, the applicant may outline the proposed OSFPD, seek preliminary feedback from the Planning Board, and set a timetable for submittal of a formal application. At the expense of the applicant, the Planning Board may engage technical experts to review the informal plans of the applicant and to facilitate submittal of a formal application for an OSFPD special permit.

8.1.8 OSFPD Special Permit Application Procedures. An application for a special permit for an OSFPD shall include a Yield Analysis and an OSFPD Concept Plan. The Planning Board may engage technical experts, at the applicants' expense, as reasonably necessary in connection with its review of the applicant's proposed analysis or plan(s).

8.1.9 Sources of Data. Both the Yield Analysis and the OSFPD Concept Plan may be prepared from existing data, such as deed information, USGS topographical maps, FEMA floodplain

maps, assessor's maps, photographs, soil maps, or Department of Environmental Protection (DEP) Wetlands Conservancy Program maps. The locations of wetlands, streams and forest limits or locations will not be verified during the Concept Plan special permit process until the applicant has delineated the same in the field and has obtained from the Hamilton Conservation Commission a positive determination verifying delineation, or the applicant has been issued an Order of Resource Area Delineation under the procedures outlined in G.L. c. 131 s. 40 and Chapter 17 of the Town of Hamilton By-laws. It is not necessary to verify these constraints for Concept Plan submittals, but the applicant must be aware that these locations should be as accurate as possible in order to avoid significant changes to the Concept Plan in subsequent applications for approval of an OSFPD definitive subdivision plan or Cluster Design Plan.

8.1.10 Allowed OSFPD Density. The Allowed OSFPD Density is the maximum number of Lots (or Dwelling Units) in an OSFPD which shall be one and one fifth (1.2) times the Base Maximum Density, as may be further increased by the Planning Board pursuant to Section 8.1.21 based on additional public benefits being provided by the OSFPD. Computations shall be rounded to the nearest whole number.

8.1.11 OSFPD Concept Plan. The OSFPD Concept Plan shall be prepared by a Registered Professional Landscape Architect, Civil Engineer, or Architect, or by a multi-disciplinary team of which one (1) member must be a Registered Professional Landscape Architect, and shall include the information listed below. The OSFPD Concept Plan shall be produced through the five-step OSFPD special permit design process and shall incorporate the common open space requirement, dimensional standards, and OSFPD special permit design standards all as set forth in this Section.

1. Title Block including the name of the Owner of record, name of applicant, address of the property, and the Assessors' Map and Lot Number; name of the company preparing the plan, address and phone number, signature and stamp of professional(s) preparing the plan, date of plan, scale;

2. The location of the proposed development;

3. The size of the site in acres;

4. An existing conditions inventory and description of conservation areas identified during the OSFPD special permit design process pursuant to this Section;

5. The total number and approximate locations of the proposed Buildings, Dwelling Units and/or Lots, and the approximate size of each in square feet;

6. The acreage and proposed use(s) of permanently protected common open space;

7. A statement on the disposition or manner of ownership of the proposed open space;

8. The areas or approximate delineation of Lots that will be used as building areas, and the areas or approximate delineation of Lots that are to remain as permanently protected common open space;

9. A general description of how drainage will be handled, including a soils statement (soil conservation survey is acceptable) and the general area of the site to be used for stormwater management facilities; and

10. Sufficient detail of proposed built and natural features as described in this Section to enable the Planning Board to make the required determinations.

8.1.12 OSFRD Special Permit Design Process.

1. *Identification of Conservation Areas.* The first step in the design process requires identification of conservation areas on the site, including wetlands, areas located in the Conservancy District, riverfront areas, and floodplains regulated by state, federal, or local law; unprotected natural landscape features such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats and wildlife corridors or connections thereto; cultural features such as historic and archeological sites and scenic views; and recreational features such as established trails used for horseback riding, walking and cross-country skiing. To the maximum extent feasible, conservation areas shall include areas identified by the Planning Board during the pre-application conference.

2. *Identification and Delineation of the Proposed Development Area.* The second step in the design process is to define and delineate the area that will contain buildings, roadways, other site improvements and amenities for residents of the development. To the maximum extent feasible, the proposed development area shall consist of land outside the identified conservation areas.

3. *Location of Dwelling Units.* The third step in the design process is to identify and delineate the approximate location of Dwelling Units in the proposed development area. The number of Dwelling Units should conform to the Allowed OSFPD Density calculated pursuant to Sections 8.1.10 and 8.1.21. The location of Dwelling Units should account for proximity to common open space and other amenities, including community buildings for use by residents of the development. Toward this end, the number of Dwelling Units with direct access to the amenities of the development should be maximized.

4. *Roads and Trails.* The fourth step in the design process is to identify and delineate the approximate location of roads and trails. Roads shall be aligned to access the Dwelling Units. The layout of new trails should anticipate internal and external connections to existing and/or potential future roads, trails and sidewalks.

5. *Lotting.* If applicable, the final step in the design process is to identify the approximate location of Lot lines.

8.1.13 Common Open Space Requirement. To qualify for an OSFPD special permit, a development must provide at least fifty (50) percent of the total land area as permanently protected, usable, common open space that is functional for purposes intended by this Section. The common open space shall have no Structures, parking, private Yards, patios, or gardens that are restricted for the exclusive or principal use by residents of individual Dwelling Units. The following standards apply to the common open space in an OSFPD:

1. *Use, Shape, Location of Common Open Space.* To the maximum extent feasible, the common open space shall be undisturbed, unaltered and left in its natural condition or existing condition. It shall be appropriate in size, shape, dimension, location, and character to assure its use as a conservation area, or where appropriate, a recreational area, and serve as a visual and natural amenity for the development and the Town;

2. *Contiguous.* The common open space shall be Contiguous Open Space and linked as a unit, with links at least seventy-five (75) feet wide, unless waived by the Planning Board;

3. Common open space shall be functional for wildlife habitat, passive recreation, resource preservation, agriculture, or equestrian uses;

4. The location(s) and configuration of the common open space shall be subject to approval by the Planning Board;

5. Each parcel of common open space shall offer adequate access to residents of the OSFPD;

6. Land used for common or shared septic systems may not be counted toward the minimum common open space requirement unless authorized by the Planning Board;

7. Not more than fifty (50) percent of the common open space in an OSFPD shall consist of areas subject to the Wetlands Protection Act, G.L. c. 131, s. 40, for reasons other than being subject to flooding, or land in the Conservancy District.

8. Existing utility easements may not be counted as common open space; and

9. Up to five (5) percent of the minimum required open space may be used for gravel roadways, pavement or structures accessory to the dedicated use or uses of the common open space. Principal or accessory structures and access roads essential to an agricultural use are exempt from this requirement, except for indoor/covered riding rings.

8.1.14 Ownership of the Common Open Space. Any common open space within an OSFPD shall be conveyed to the Town and accepted for park or open space use, and/or shall be conveyed to a nonprofit organization the principal purpose of which is the conservation of open space, and/or shall be conveyed to a corporation or trust owned or to be owned by the owners of Lots or residential units within the plan, as provided by G.L. c. 40A, s. 9. In any case where the common open space is not conveyed to the Town, a restriction enforceable by the Town or the

Conservation Commission shall be recorded providing that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadway.

8.1.15 Dimensional Standards. To maintain harmony with surrounding areas, existing dimensional requirements of this By-law shall apply to any lot located along the perimeter of an OSFPD or abutting any existing residential development. In addition, any OSFPD lot that relies on an existing public way for frontage shall conform to the applicable Lot Frontage and Front Yard setback requirements. For interior lots in an OSFPD, the Planning Board may waive the requirements for minimum lot area, setbacks, building coverage, frontage, number of Dwelling Units per Lot, shared driveways or irregular Lot shape that would normally apply in the zoning district in order to maximize the amount of open space, reduce site disturbance and protect significant farmland or scenic landscapes. The following additional requirements apply within the OSFPD:

1. The minimum distance between clusters of any Townhouse Dwellings shall be fifty (50) feet unless waived by the Planning Board to further the purposes of this Section.

2. At least fifty (50) percent of the required Yard setbacks shall be maintained on interior lots in the OSFPD unless a reduction is authorized by the Planning Board to accommodate "zero lot line" design.

8.1.16 OSFPD Special Permit General Design Standards. The following general design standards shall apply to all OSFPDs and shall govern the development and design process:

1. The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. The grade changes shall be in keeping with the general appearance of the neighboring developed areas. The orientation of individual building sites shall be such as to maintain maximum natural topography and cover. Topography, tree cover, and natural drainage ways shall be treated as fixed determinants of road and lot configuration rather than as malleable elements that can be changed to follow a preferred development scheme;

2. Streets shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks and trees, to minimize cut and fill, and to preserve and enhance views and vistas on or off the subject property;

3. Building designs shall relate harmoniously to the terrain and the use, scale, and architecture of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings;

4. All open space shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties; and

5. The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or any adjacent properties.

8.1.17 OSFPD Special Permit Site Specific Design Standards. The following site specific design standards shall apply to all OSFPDs and shall govern the development and design process:

1. *Mix of Housing Types.* The OSFPD may consist of a combination of Single Family Dwelling, Two Family Dwelling, and other Multifamily Dwelling. Two-bedroom Dwelling Units are encouraged to be designated as restricted to Elderly Persons;

2. *Parking.* Each Dwelling Unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in the computation. All parking areas with greater than four spaces shall be screened from view from the road. Residential structures should be oriented toward the street serving the premises and not the required parking area;

3. *Buffer Areas.* A vegetated buffer area of twenty-five (25) feet minimum shall be provided at the following locations:

a. Perimeter of the property where it abuts residentially zoned and occupied properties;

b. Certain resource areas on or adjacent to the tract such as rock outcrops, ledge, agricultural or recreational fields, and land held for conservation purposes;

c. A landscape plan will be required for buffers to ensure screening from abutting properties. Additions to existing plantings may be required by the Planning Board. The Planning Board may waive the buffer requirement when it determines that a small buffer (or no buffer) will suffice to accomplish the objective set forth herein; and

d. Driveways necessary for access and egress to and from the tract may cross such buffer areas.

4. *Stormwater Runoff and Drainage.* The peak rate of stormwater runoff and drainage design shall comply with the DEP Stormwater Management Policy. All structural surface stormwater management facilities shall be accompanied by a conceptual screening and landscape plan. The Planning Board shall encourage low impact development practices such as the use of "soft" (non-structural) natural stormwater management techniques (such as open swales) and other drainage techniques that do not create impervious surfaces and that enable infiltration where appropriate. Water conservation measures, including but not limited to the use of rainwater retention systems, such as rain barrels and cisterns for water irrigation purposes, are also strongly encouraged;

5. *Common/Shared Driveway.* A common or shared Driveway may serve a maximum of three Dwelling Units unless otherwise approved by the Planning Board, with input from public safety officials; and

6. *On-site Pedestrian and Bicycle Circulation.* Walkways and bicycle paths shall be provided to link residences with parking areas, recreation facilities (including parkland and open space) and adjacent land uses where appropriate.

8.1.18 Review Procedures for OSFPD Special Permit.

1. The applicant shall furnish a copy of the application to the Town Clerk. The applicant shall furnish sufficient copies of the special permit application to the Planning Board to distribute for review to the Board of Health, Board of Selectmen, Building Commissioner, Conservation Commission and Open Space Committee, Department of Public Works, Fire Chief, Police Chief, Historic District Commission, Office on Disability, and Zoning Board of Appeals.

2. Reports from the above-named boards and officials shall be submitted to the Planning Board within thirty-five (35) days of receipt by the reviewing party. In the event that the public hearing by the Planning Board is held prior to the expiration of the thirty-five (35) day period, the Planning Board shall continue the public hearing to permit the formal submission of reports and recommendations within that 35 day period. Public hearing procedures shall comply with the requirements of G.L. c. 40A, s. 9.

3. Planning Board members shall conduct a site visit with the applicant prior to or during the public hearing.

4. An OSFPD special permit may be issued only following a public hearing held within sixty-five (65) days after filing an application with the Planning Board.

5. Once an OSFPD special permit application has been submitted, no tree removal, no utility installation, no ditching, grading or construction of roads, no grading of land or lots, no excavation, except for purposes of soil testing, no dredging or filling and no construction of buildings or structures shall be done on any part of the site until the application (a) has been reviewed and decided as provided by these regulations, or (b) has been withdrawn and the applicant has obtained other permits for such work.

8.1.19 Decision of the Planning Board for OSFPD Special Permit. The Planning Board shall take one of the following actions within ninety (90) days following the date of the public hearing unless extended by written agreement between the Planning Board and the applicant in accordance with G.L. c. 40A, s. 9.

1. The Planning Board may grant an OSFPD special permit with any conditions, safeguards, and limitations, considering each of the following criteria in addition to those in Section 10.5.2:

a. The degree to which the conceptual design and layout of the proposed OSFPD is superior to a conventional development in preserving open space for conservation and recreation, preserving natural features of the land, achieving more efficient provision of streets, utilities and other public services, and providing a high degree of design quality;

b. The degree to which the OSFPD promotes permanent preservation of open space, agricultural land, forestry land, historical and archeological resources, existing and proposed trails, wildlife habitat and corridors, and other natural resources including wetlands and water bodies;

c. The degree to which the OSFPD achieves sustainable design through a more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision; and

d. The degree to which the OSFPD furthers the goals and policies of the Master Plan and the purposes of this Section.

2. The Planning Board may deny an OSFPD special permit upon finding that the application does not comply with the provisions of this Section.

8.1.20 Effect of OSFPD Special Permit Approval. Approval of an OSFPD special permit under this Section shall not be considered approval of any construction. This approval is a preliminary approval, intended to give guidance to the applicant for the development of an OSFPD definitive subdivision plan or a Cluster Design Plan, and to determine whether the applicant's submittal meets the objectives of this Section. Approval of an OSFPD special permit does not indicate approval of the Board of Health, Conservation Commission, or any other entity from which the development requires separate permits or approvals.

8.1.21 Public Benefit Incentives. In approving an OSFPD special permit, the Planning Board may authorize an increase in the number of Dwelling Units beyond 1.2 times the Base Maximum Density. Such increase may be approved only for an OSFPD that provides one (1) or both of the following public benefits:

1. *Additional Common Open Space.* For each additional ten (10) percent of the site (over and above the required fifty (50) percent) set aside as common open space, including preserving and providing public access to existing walking or riding trails or for providing connections to existing trails on abutting parcels, an increase of ten (10) percent of the Base Maximum Density may be approved; provided, however, that the total number of additional units shall not exceed twenty-five (25) of the Base Maximum Density. Computations shall be rounded to the nearest whole number.

2. *Housing for Older Persons.* For every one (1) Dwelling Unit restricted to occupancy by Elderly Persons, the Planning Board may approve an increase of one (1) additional

Dwelling Unit; provided, however, that the total number of additional Dwelling Units approved shall not exceed twenty-five (25) percent of the Base Maximum Density. Computations shall be rounded to the nearest whole number.

3. *Limited Public Access to Common Open Space.* An increase of ten (10) percent of the Base Maximum Density may be approved by the Planning Board for limited public access to the common open space for passive recreation.

In no event shall the Planning Board approve an increase of more than fifty (50) percent of the Base Maximum Density.

8.1.22 Relationship Between the OSFPD Special Permit and OSFPD Definitive Subdivision Plan. An OSFPD that involves a subdivision of land may be submitted to the Planning Board for approval under the Subdivision Control Law following the issuance of an OSFPD special permit. Planning Board approval of an OSFPD special permit shall neither oblige the Planning Board to approve any related definitive plan nor substitute for such approval. The OFSPD definitive subdivision plan shall substantially comply with the OSFPD Concept Plan.

8.1.23 Relationship Between the OSFPD Special Permit and Cluster Design Plan Approval. The issuance of an OSFPD special permit allows the applicant to submit a Cluster Design Plan to the Planning Board for review and approval. A Cluster Design Plan shall be considered neither a subdivision plan under the Subdivision Control Law nor a site plan subject to the provisions of Section 10.6. No Cluster Design Plan may be filed unless an OSFPD special permit has been approved and has not lapsed.

8.1.24 Cluster Design Plan Submittal Requirements. The applicant shall submit an application for Cluster Design Plan approval to the Planning Board, with a copy filed with the Town Clerk. The size, form, number and contents of the Cluster Design Plan application and plan requirements shall be set forth in the Planning Board's OSFPD Rules and Regulations.

1. The Cluster Design Plan shall be designed to conform to the approved OSFPD special permit.

2. Cluster Design Plan application filing fees shall be governed and set by the Planning Board in OSFPD Rules and Regulations, and shall be assessed to the owner and/or the applicant. Separate technical review fees as provided for in state statute may be assessed for engineering, architectural or other review by one or more consultants selected by the Planning Board.

8.1.25 Cluster Design Plan Procedures. Cluster Design Plan approval may be issued by the Planning Board only following a public hearing held within sixty-five (65) days after filing an application with the Planning Board.

1. The applicant shall furnish sufficient copies of a complete Cluster Design Plan application for the Planning Board to distribute to the Board of Health, Board of Selectmen, Building Commissioner, Conservation Commission and Open Space

Committee, Department of Public Works, Fire Chief, Police Chief, Historic District Commission, Office on Disability, and Zoning Board of Appeals.

2. Notice of the time, place and subject matter of the public hearing shall be in accordance with the provisions of G.L. c. 40A, s. 11. Legal notice mailed to abutters shall be sent by the Planning Board by certified mail at the applicant's expense. Reports from other boards and officials shall be submitted to the Planning Board within thirty (30) days of receipt by the reviewing party. In the event that the public hearing by the Planning Board is held prior to the expiration of the thirty (30) day period, the Planning Board shall continue the public hearing to permit the formal submission of reports and recommendations within that thirty (30) day period.

3. The Planning Board shall determine whether the Cluster Design Plan complies with the requirements of Section 8 within sixty-five (65) days of the public hearing. If no action is taken within sixty-five (65) days, the application shall be deemed approved as submitted.

4. Within fifteen (15) days of its vote on the Cluster Design Plan, a copy of the Cluster Design Plan decision shall be filed with the Town Clerk and the Building Commissioner, with a copy being sent by certified mail or hand delivered to the applicant. Any interested party aggrieved by the Cluster Design Plan decision may file an appeal under the provisions of G.L. c. 40A, s. 17.

5. The Building Commissioner shall not approve any building permit application subject to these provisions without receipt of Planning Board approval and expiration of the appeal period, as certified by the Town Clerk.

8.1.26 Cluster Design Plan Decision. The Planning Board shall take one of the following actions within sixty-five (65) days following the date of the public hearing:

1. The Planning Board shall approve a Cluster Design Plan only upon a determination that the plan substantially complies with the OSFPD Special Permit and satisfactorily addresses all of the following criteria:

a. Adequate access to each structure for public safety equipment and personnel;

b. Adequate utility service and drainage, consistent where appropriate with the Hamilton Subdivision Regulations in effect at the time of the submission of the site plan;

c. Adequate capacity on impacted streets to accommodate the proposed project, based on reports received from the Police Department and the Department of Public Works or technical review consultants retained by the Planning Board;

d. Adequate measures to reduce the volume of cut or fill, soil erosion, and visual intrusion of parking areas viewed from public ways or abutting properties;

e. Protection of pedestrian and vehicular safety within the site and egressing from it;

f. Compliance with conceptual landscape, building design, and placement of Buildings;

g. Consistency with the Planning Board's OSFPD Rules and Regulations; and

h. Compliance with all the other requirements of this By-law.

2. The Planning Board may determine that the Cluster Design Plan does not to comply substantially with the OSFPD special permit based on any of the following conditions:

a. An increase in the number of Buildings or Dwelling Units;

b. A significant decrease in the open space acreage;

c. A significant change in the general development pattern which adversely affects natural landscape features and open space preservation;

d. Significant changes to the storm water management facilities; and/or,

e. Significant changes in the wastewater management systems.

3. The Planning Board may conditionally approve a Cluster Design Plan that does not substantially comply with the OSFPD special permit. However, such conditional approval must identify where the plan does not substantially comply with the special permit for the OSFPD Concept Plan and shall require that the special permit be amended to be in compliance with the significant changes identified by the Planning Board.

4. The Planning Board shall also require that the applicant file an application to amend the OSFPD special permit within a specified time period. The public hearing on the application to amend the OSFPD special permit shall be limited to the significant changes identified by the Planning Board in their conditional approval of the Cluster Design Plan. These are the only considerations that the Planning Board may take into account in deciding whether to amend the OSFPD special permit for the Concept Plan.

8.2 SENIOR HOUSING.

8.2.1 Purpose. The purpose of this Section is:

1. To permit the development of moderately priced, affordable, and market rate housing for Elderly Persons, by allowing for a greater variety of Building types at a higher density than would normally be allowed;

2. To allow greater flexibility in land use planning in order to improve site layouts, protect natural features and environmental values and utilize land in harmony with neighboring properties;

3. To encourage the implementation of "Smart Growth" techniques to reduce land consumption and sprawl, provide for open space preservation, expand housing options, and encourage re-use of existing Structures;

4. To allow a type of development which has positive fiscal benefits to the Town; and

5. To protect Hamilton's rural New England character by permitting development of residential housing in clusters and villages, in a manner which is in harmony with Hamilton's historic development patterns and is less demanding on its natural resources.

8.2.2 Eligible Locations. A special permit may be granted for Senior Housing on any Lot(s) in the R- la, R-1b, R- A, or B Districts that meet the requirements of this Section and other applicable provisions of this By-law. Parcels in existence as of May 5, 2008, may not be assembled to create a larger parcel for Senior Housing development.

8.2.3 Administration. The Planning Board shall be the SPGA for this Section. An applicant may file an application with the Planning Board in conformance with this Section and the Planning Board Rules and Regulations.

8.2.4 Planning Board Rules and Regulations. The Planning Board shall adopt and from time to time may amend Senior Housing Special Permit Rules and Regulations to implement this Section. Such regulations shall include but will not be limited to submission requirements, fees, plan requirements (such as size, form, number and contents), development standards, site standards, and standards for Building placement and design. Such rules and regulations are required and authorized under G.L. c. 40A, s. 9, and shall be adopted after vote by the Planning Board.

8.2.5 Age Restriction. Each Dwelling Unit in a Senior Housing development shall be owned and occupied by at least one (1) Elderly Person. All other residents must be over the age of eighteen (18) years of age.

8.2.6 Limitations on Senior Housing Development. The following shall apply:

1. A maximum of one hundred (100) Senior Housing Dwelling Units may be permitted Town-wide under this Section.

2. A maximum of fifty (50) Dwelling Units per project shall be allowed.

3. The maximum number of Dwelling Units permitted in any year shall be fifty (50). For the purpose of this Section, a "year" shall mean a calendar year. Any partial year shall be pro-rated.

4. Dwelling Units shall be counted in the calendar year in which the special permit is granted, not the year in which the application was filed.

5. If fewer than the maximum number of Dwelling Units is permitted in a year, the balance shall be carried forward to the next year. However, the maximum number of Dwelling Units permitted per year shall remain at fifty (50).

6. In the event that substantial use or construction under a special permit issued has not commenced within two (2) years of approval and no extensions have been granted, the number of Dwelling Units shall be added back into the number of unpermitted Dwelling Units, and shall be available to be permitted under this Section.

8.2.7 Permitted Uses. A Senior Housing development may include the following uses:

1. Single Family Dwellings;

2. Two Family Dwellings;

3. Semi-attached Dwellings;

4. Three Family Dwellings;

5. Four Family Dwellings;

6. Townhouse Dwellings;

7. Multi-family Dwellings;

8. Open space and conservation areas;

9. Passive recreation;

10. Agricultural, equestrian, and horticultural uses;

11. Accessory Uses, such as a tennis court, pool, community building, and other amenities, in the developed area, for the benefit of the development;

12. Recreational fields; and

13. In the Business District, a mixture of residential and business uses.

8.2.8 Developable Acres. "Developable Acres" is defined as the area of the tract of land, exclusive of the area of land lying in the Conservancy District and the area in wetlands subject to G.L. c. 131, s. 40, as mapped by the applicant's consultant and approved by the Hamilton Conservation Commission. In addition, land subject to a preexisting Conservation Restriction,

except for land area in a defined "building envelope", shall be excluded from the total acreage. This net land area shall constitute "Developable Acres".

8.2.9 Base Senior Housing Density. The Base Density per Developable Acre for a Senior Housing special permit shall be: four (4) Dwelling Units in the Business District; three (3) Dwelling Units in the RI-a District, two (2) Dwelling Units in the RI-b District, and one (1) Dwelling Unit in the RA District.

8.2.10 Incentives to Increase Base Senior Housing Density. See the following matrix for incentives which may be utilized to increase the Base Senior Housing Density. The final number shall be rounded to the nearest whole number.

	A	B	C	D	E	F	G	H	I	J
			Incentives to Increase Base Senior Housing Density for:							
	Zoning District	Base Senior Housing Density (BSHD) per Dev. Acre	Mix of Smaller Units (50% units under 1300 sq. ft.)	On or Off Site Construction of Inclusionary Housing Obligation (Affordable Housing)	Smart Growth, per Comm. of Mass. DHCD Criteria (PB Rules & Regs)	Additional 25% of Property as Open Space	Voluntary Cap on Appreciation of Units	Subtotal of Base Senior Housing Density Incentives (C+D+E+F+G)	Incremental Density per Developable Acre Rewardable by PB for Trails, Fields, Environmental, energy, water conservation, building green, & other public benefits	Maximum Density per Dev. Acre
1	B	4	25 %	25%	25%	N/A	25%	100%	1.0	6.00
2	R-1a	3	25 %	25%	25%	25%	25%	125%	1.0	4.00
3	R-1b	2	25 %	25%	25%	25%	25%	125%	1.0	4.00
4	RA	1	25 %	25%	25%	50%	25%	150%	2.0	4.00

NOTES ON HOW TO READ THE MATRIX:

The Incentives to Increase Base Senior Housing Density may be selected and utilized by an applicant to increase the Base Senior Housing Density shown in Column B. The percentage shown in Columns C, D, E, F, G, and Column I would, if selected, increase the number of Dwelling Units per Developable Acre in Column B, up to the amount shown in Column J, Maximum Density per Developable Acre.

EXPLANATION OF COLUMNS:

Column A: The existing Zoning Districts in Hamilton.

Column B: The Base Senior Housing Density (BSHD) per Developable Acre. This is the base acreage that one may apply for in a Senior Housing special permit, without utilizing any of the Incentives in Columns C, D, E, F, G, and/or I.

Column C: Encourages the construction of smaller-sized Dwelling Units. For meeting this requirement, an applicant earns twenty-five (25) percent more Dwelling Units than what is shown in Column B.

Column D: Encourages construction of affordable Dwelling Units. Section 8.3, Inclusionary Housing, requires an affordable housing component for projects of ten (10) or more Dwelling Units. This column requires that the housing be constructed on-or off-site, rather than meeting Inclusionary Housing requirements by other authorized methods. For meeting this requirement, an applicant earns twenty-five (25) percent more Dwelling Units than what is shown in Column B.

Column E: Encourages the utilization of "Smart Growth" or "Sustainable Development Principles", some of which are listed in part in Section 8.2.1. See Planning Board Rules and Regulations for Smart Growth Principles issued by Commonwealth of Massachusetts, Office for Commonwealth Development. For meeting this requirement, an applicant earns twenty-five (25) percent more Dwelling Units than what is shown in Column B.

Column F: Encourages the preservation of open space above what is required by this Section. For meeting this requirement, an applicant earns twenty-five (25) percent more Dwelling Units than what is shown in Column B.

Column G: Encourages resale prices which will become more affordable for subsequent purchasers of the Senior Housing Dwelling Units due to a voluntary cap on the allowable rate of appreciation on sales in future years. A deed restriction (to be included in association documents) imposed by the applicant, places a cap on appreciation of the resale price of Dwelling Units. For meeting this requirement, an applicant earns twenty-five (25) percent more Dwelling Units than what is shown in Column B.

Column H: Represents a sub-total of the incentives in Columns C - G.

Column I: Encourages other initiatives which provide a public benefit to the Town such as, but not limited to, preservation and enhancement of trails; creation of playing fields; environmental, energy, water conservation, green building design, and other public benefits. For one (1) or a combination of these initiatives, an applicant may earn one (1) additional Dwelling Unit per Developable Acre in the Business, R1-a, and Rl-b Districts, and up to two (2) additional Dwelling Units per Developable Acre in the RA District.

Column J: Indicates the maximum density per Developable Acre which one may earn by using a variety of the incentives allowed. Incentives shall be allowed at the discretion of the Planning Board. The final number shall be rounded to the nearest whole number.

8.2.11 Minimum Distance Between Projects. In order to mitigate the impact of multiple developments on surrounding neighborhoods, a proposed project must be located at least the distance established in the Minimum Distance Between Projects Table below from any other existing or approved Senior Housing project, any existing or approved project including multi-unit residential buildings under G.L. c. 40B, or any existing or approved project including

multi-unit residential buildings under any other provision or By-law. Excluded from this calculation and this Section are any existing multi-family projects approved prior to January 1, 2003, and apartments under Sections 3.4, 3.6 or 3.7.

The minimum distance between projects shall be calculated using the following Table:

Combined Total Dwelling Units in Proposed Project and in Existing or Approved Projects	**Minimum Distance between Projects**
Up to and including 50 total Dwelling Units	0.33 mile
Exceeds 50 total Dwelling Units	0.66 mile
Exceeds 75 total Dwelling Units	1.0 mile

1. The distance between projects shall be measured from the closest property boundary. Parcels in existence on May 5, 2008 may not be subdivided to avoid application of this provision. A project shall be deemed to be existing or approved if it has been constructed or if a special or comprehensive permit, or a site plan approval, has been granted; or if a special or overlay zoning district which allows multi-family housing has been approved.

2. The determination of the required separation between projects shall be made at the time the special permit is issued under this By-law, in order to assess the most up to date existing project status.

3. If a Chapter 40B housing proposal is filed and approved while an application for Senior Housing special permit has been filed and is under review by the Planning Board, that Senior Housing project shall be exempt from the distance requirement of this Section.

4. Senior Housing proposals in the Business District shall be exempt from the provisions of this Section and developments wholly within the Business District shall not be considered as existing or approved projects for purposes of establishing required project separation in any other district.

8.2.12 General Compliance. A proposal must comply with all other applicable Town By-laws, and the applicable rules, regulations, and requirements of all departments, boards, and commissions, including the special sensitivities of the Historic District and the Groundwater Protection Overlay District.

1. *Extension or Alteration of Pre-Existing Nonconforming Use.* To the extent that such a finding is required, that approval shall be granted before applying for a Senior Housing special permit.

2. *Inclusionary Housing.* There shall be compliance with Section 8.3, Inclusionary Housing. The Town of Hamilton Local Preference Policy shall apply to affordable Dwelling Units created.

3. *Local Preference.* The applicant is encouraged to provide a local preference program for fair market rate Dwelling Units, for an initial limited duration, for the purchase of Dwellings Units by those eligible under the Local Preference Policy.

8.2.13 General Requirements. The following requirements shall apply.

1. *Low Impact Development.* The use of low-impact development techniques is required, where applicable. The applicant shall employ meaningful low impact techniques which will result in less impervious area, direction of roof runoff toward rain gardens and swales, and plantings indigenous to the area. The use of recycled or recaptured rainwater is encouraged. A Low Impact Development Handbook and other references are available from the Planning Board Office.

2. *Minimizing Disturbance.* The applicant is encouraged to maintain as much of the site as possible in its natural state. The applicant is urged to incorporate horticultural and landscape design that reduces the need for supplemental irrigation and chemical fertilization, e.g. minimizing lawn area.

3. *Location of Wastewater Treatment.* All wastewater shall be treated and discharged on-site. Off-site wastewater treatment is not allowed. An exception to this is for parcels located in the Business District, where wastewater treatment may be located off-site.

4. *Paths and Trails.* All existing paths and trails shall be connected, preserved, and increased when possible.

5. *Conversion to Apartments.* Dwelling Units constructed by special permit under this Section shall not be eligible for subsequent conversion to add apartments under Sections 3.4, 3.5, 3.6, or 3.7.

6. *Reuse of Existing Buildings.* Existing Buildings and Dwelling Units may be reused and rehabilitated for the purposes of this Section provided all standards and requirements are met.

7. *Homeowners Association and/or Condominium Documents.* Prior to submitting an application to the Building Commissioner and prior to construction of infrastructure, the applicant shall submit to the Planning Board and receive approval of all homeowner's association and/or condominium documents. The Planning Board or legal counsel shall review and approve the documents to ensure that the intent of this Section and the relevant sections of the decision of the Planning Board are incorporated into the documents.

8.2.14 Exemptions. A proposal for a Senior Housing special permit shall be exempt from Section 10.6, Site Plan Review.

8.2.15 Dimensional Standards. The following dimensional and other standards shall supersede all dimensional standards in the underlying zoning district and shall be applied to any Senior Housing development:

TABLE OF DIMENSIONAL REQUIREMENTS

	A	B	C	D	E	F	G	H	I
	Zoning District	**Under-lying Zoning District Require-ment (s.f.)**	**Minimum Parcel Size (sq.ft.) to be eligible for develop-ment**	**Minimum Parcel Frontage Required (feet) to be eligible for develop-ment**	**Front Setback (feet) from perimeter property line**	**Side & Rear Setbacks (feet) from perimeter property line**	**Vegetated Buffer (feet) around perimeter of parcel**	**Minimum Open Space Required of total acreage**	**Maximum Lot Coverage of entire parcel**
1	**Bus. District**		none	site specific	0	0[1]	0[1]	0	site specific
2	**R-1a**	20,000	80,000	125	25	25[2]	20	0	25%
3	**R-1b**	40,000	80,000	175	25	25[2]	20	15%	25%
4	**RA**	80,000	80,000	175	50	25[2]	20	25%	25%

Note 1. The Planning Board shall require a setback and a vegetated buffer where the parcel abuts a residential zone.

Note 2. Minimum of twenty-five (25) feet or the height of the Building, whichever is greater.

8.2.16 Building and Design Standards. In order to achieve a development that reflects the residential character of the neighborhood in which it is located, the following minimum building and design standards shall be applied to all Structures constructed in a Senior Housing development:

1. Dwelling Units shall not contain more than two (2) bedrooms.

2. Buildings shall be designed to be consistent with the residential character of the Town and shall be complementary in exterior design with each other and, where applicable, with the existing neighborhood in which the development is located.

3. A mixture of small, medium, and large Dwelling Units is encouraged, in order to create a range of selling price levels, and to address the needs of various members of the population.

4. A minimum of twenty-five (25) foot separation between Buildings shall be provided and shall be landscaped.

5. Accessory structures shall comply with all setback requirements and shall be designed with architectural detailing of similar nature to the principal Buildings located thereon.

6. Other Building and Design Standards in applicable Planning Board Rules and Regulations shall apply.

8.2.17 Lighting. All lighting fixtures shall be integrated into the architectural style of the development. All exterior structural and site lighting (not including access road lighting) shall be localized and of full cut-off design, with light which shall be retained on site and shall not create a nuisance to abutting properties and streets. All exterior light sources shall be appropriately shielded from off-premises viewing. Access road lighting shall be designed to prevent nuisance to abutting properties by reason of light and glare.

8.2.18 Signs. The need for an identifying sign is very site dependent. Accordingly, the Planning Board shall determine if a sign is needed based on the size, location, and visibility of a project. If the Planning Board determines that a sign is needed, one (1) sign to identify the property, no greater than three (3) square feet in size, and mounted on posts with total height (including the sign) of not more than four (4) feet above the ground, shall be allowed at the intersection of the project's access road or driveway with the abutting public way. Signage may be illuminated with targeted lighting that minimizes light spill-over, but it shall not be backlit or internally illuminated.

8.2.19 Site Access, Roadway Design and Management. All Structures located within a Senior Housing development shall be accessed by: (a) an existing Driveway or an existing private way, subject to Planning Board determination as to adequacy of the access, and/or (b) by a new Driveway or a new private way. If access to a proposed development is derived from a private way, then the applicant shall submit a legal opinion, acceptable to Town Counsel, establishing the right of access from the private way to the development as proposed.

1. All access roadways and associated infrastructure improvements shall be considered private, under the ownership of the property owner and/or a homeowner's association established pursuant to G.L. c. 183A, and shall not be owned or maintained by the Town of Hamilton.

2. The Planning Board shall pay special attention to the suitability of the location of the site access road relative to abutting properties when evaluating the special permit application.

8.2.20 Stormwater Management and Erosion Control. The peak rate of storm water runoff from a Senior Housing development shall comply with Department of Environmental Protection Stormwater Management Policy, and the provisions of General By-law XXIX, Stormwater Management By-law. General soil erosion of the proposed development site shall be minimized by integrating the development into the existing terrain and by reasonably retaining natural

grades and soil cover. During grading and construction of all improvements, including all Structures and infrastructure improvements, erosion of soil shall be minimized using best management practices.

8.2.21 Parking. All Senior Housing developments shall provide for adequate off-street parking which will protect the health, safety and welfare of the residents and guests. A minimum of two (2) off-street parking spaces shall be provided per Dwelling Unit. Each garage unit shall be counted as a parking space.

1. Visitor parking spaces shall be provided at a rate of one (1) per five (5) required parking spaces, and shall be clearly marked.

2. A minimum of two (2) parking spaces shall be provided for postal delivery accessory structures, if provided.

3. In all parking areas, the use of low impact development techniques is required, as appropriate, in order to reduce impervious area and runoff.

4. No parking spaces or parking lots shall be located within the required minimum Yard setback requirements for principal Structures from access roads and property lines except that the parking of vehicles shall be allowed within Driveway areas providing access to a principal Structure, as long as the Driveway is designed at a proper width for parking.

5. No parking areas, parking lots or access drives shall be located within the minimum twenty five (25) foot separation area between Structures.

8.2.22 Setbacks and Landscape Buffers. Building setbacks shall remain vegetated and undisturbed to the extent possible in order to maintain the existing natural features. The Planning Board may require designated "No Cut Zones" in order to minimize disturbance and impacts to abutting properties. Buffering from the Street and abutting properties in order to minimize visibility is desirable. (see Dimensional Requirements in Table at 8.2.15). A landscaped buffer shall be provided along the perimeter of the property. For said landscaped buffer, natural vegetation shall be supplemented with the planting of evergreen trees and shrubs. A Landscape Plan shall be required.

8.2.23 Open Space and Natural Resources (see Dimensional Requirements in Table at 8.2.15). A Senior Housing development which includes an open space component must provide that land area as permanently protected, usable, common open space that is functional for purposes intended by this Section. The common open space shall have no Structures, parking, private Yards, patios, or gardens that are restricted for the exclusive or principal use by residents of individual Dwelling Units. The following standards apply to the common open space in a Senior Housing development:

1. *Ownership of the Common Open Space.* Any common open space within a Senior Housing development shall be: (1) conveyed to the Town and accepted for park or open space use; and/or (2) shall be conveyed to a non-profit organization, the principal purpose

of which is the conservation of open space; and/or (3) shall be conveyed to a corporation or trust owned or to be owned by the owners of Lots or residential units within the plan, as provided by G.L. c. 40A, s. 9. In any case where the common open space is not conveyed to the Town, a perpetual restriction enforceable by the Town or the Conservation Commission shall be recorded providing that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadway.

8.2.24 Use, Shape, Location of Common Open Space. To the maximum extent feasible, the common open space shall be undisturbed, unaltered and left in its natural condition or existing condition. It shall be appropriate in size, shape, dimension, location, and character to assure its use as a conservation area, or where appropriate, a recreational area, and serve as a visual and natural amenity for the development and the Town.

1. The common open space shall be Contiguous Open Space, to the maximum extent possible.

2. Common open space shall be functional for wildlife habitat, passive recreation, resource preservation, agriculture, or equestrian uses.

3. The location(s) and configuration of the common open space shall be subject to approval by the Planning Board.

4. Each parcel of common open space shall be accessible to residents of the Senior Housing development.

5. Land used for common or shared septic systems and required reserve area may not be counted toward the minimum common open space requirement unless authorized by the Planning Board.

6. Not more than fifty (50) percent of the common open space in a Senior Housing development shall consist of areas subject to the Wetlands Protection Act, G.L. c. 131, s. 40, for reasons other than being subject to flooding, or the Conservancy District as defined by Section 9.3.

7. Existing utility easements may not be counted as common open space.

8. Up to five (5) percent of the minimum required open space may be used for gravel roadways, pavement or structures accessory to the dedicated use or uses of the common open space. Principal or accessory structures and access roads essential to an agricultural use are exempt from this requirement, except for indoor/covered riding rings.

8.2.25 Senior Housing Special Permit Application Process.

1. For applications which do not contain an open space element, the application may be filed with the Planning Board in conformity with applicable Planning Board Rules and Regulations and this Section.

2. If an application contains an open space element, then the requirements of Section 8.1, Open Space and Farmland Preservation Development, Pre-Application Conference and OSFPD Special Permit Design Process, shall apply. Following the conclusion of this procedure, an application may be filed as set forth below.

8.2.26 Definitive Subdivision Plan. In either case, if a Definitive Subdivision is proposed, a Definitive Subdivision Plan shall be filed in conformity with G.L. c. 41, s. 8lK-81GG, and the Town of Hamilton Subdivision Regulations, along with an application for a Senior Housing special permit. To the extent possible, hearings will be held concurrently.

If a Definitive Subdivision is not proposed, an application shall be filed which includes a Senior Housing Design Plan, which shall conform to Planning Board regulations. A Senior Housing Design Plan shall be considered neither a subdivision plan under the Subdivision Control Law nor a site plan subject to the provisions of Section 10.6. Such plan shall comply with applicable Stormwater Management regulations.

8.2.27 Application Process. The applicant shall furnish a copy of the application to the Town Clerk, which shall be time stamped as the official submittal. The applicant shall furnish sufficient copies of the special permit application to the Planning Board to distribute for review to the Board of Health, Board of Selectmen, Building Commissioner, Conservation Commission and Open Space Committee, Department of Public Works, Fire Chief, Police Chief, Historic District Commission, Office on Disability, and Zoning Board of Appeals. The size, quantity, form, and content of plans shall comply with Planning Board Rules and Regulations. Reports from the above-named boards and officials are not mandatory, and if officials wish to comment, reports shall be submitted to the Planning Board within thirty (30) days of receipt by the reviewing party. In the event that the public hearing by the Planning Board is held prior to the expiration of the thirty (30) day period, the Planning Board shall continue the public hearing to permit the formal submission of reports and recommendations within that thirty (30) day period. Planning Board members shall conduct a site visit with the applicant prior to or during the public hearing.

8.2.28 Prohibition. Once a Senior Housing special permit application has been submitted, the following activities are prohibited on any part of the site until the application has been reviewed and decided as provided by this Section: tree removal, utility installation, ditching, grading or construction of roads, grading of land or lots, excavation, except for purposes of soil testing, dredging or filling, and construction of buildings or structures.

8.2.29 Conditions of Approval. The Planning Board may impose conditions, safeguards, requirements, and other standards as part of its approval.

8.2.30 Employment of Outside Consultants. The Planning Board may employ outside consultants, at the applicant's expense, under the terms of G.L. c. 44, s. 53G, and Planning Board Rules and Regulations Governing Special Permits, to assist in its permit decision, including but not limited to plan review, drainage and stormwater analysis, to determine conformance with this Section and other requirements, and for construction, inspection, etc.

8.2.31 Planning Board Findings. In addition to the criteria set forth in Section 10.5.2, the Planning Board must make written findings on the following standards for the proposed use, buildings and structures for a Senior Housing development. The proposed Senior Housing development must:

1. Be compatible with adjacent land uses and with the character of the neighborhood in which it is located;

2. Mitigate impact to abutting land and natural resources by reason of air or water pollution, noise, dust, vibration, or stormwater runoff;

3. Provide safe and convenient access to the site from existing or proposed roads, and to proposed structures thereon, with particular reference to pedestrian and vehicular safety, traffic flow and control, and access in case of fire or emergency;

4. Provide for adequate capacity for public services, facilities, and utilities to service the proposed development such as water pressure and sewer capacity;

5. Provide for visual and noise buffering of the development to minimize impact to abutting properties;

6. Provide for the perpetual preservation and maintenance of open space, trails, and recreation areas; and

7. Demonstrate compliance with the intent of Section 8.1 Open Space and Farmland Preservation Development, Special Permit Design Process, in order to encourage cluster development.

8.2.32 Expansion. Once any Senior Housing development has been permitted under this Section, further expansion shall not be permitted, and no subdivision of the property or change in property lines shall be allowed. A notation to this effect shall be written on the plan.

8.2.33 Annual Reporting. The organization of homeowners established for the management of the development, or if none, the owners individually, shall annually file a written report with the Building Commissioner listing the residents of each occupied Dwelling Unit. The format for the annual report shall be obtained from the Building Commissioner. Said annual report shall include the names and ages of the owners and each person residing in each Dwelling Unit as of January 1st of each year, and any other information necessary to ensure compliance with and enforce any required conditions of special permit. The annual report shall be filed with the Building Commissioner on January 15th of each year.

8.3 INCLUSIONARY HOUSING.

8.3.1 Purpose. The purpose of the Inclusionary Housing By-law is to:

1. Produce high-quality Affordable Housing Units to Low or Moderate Income Households;

2. Encourage more housing choices in Hamilton;

3. Promote geographic distribution of Affordable Housing Units throughout the Town and avoid over-concentration; and

4. Assist the Town in creating units eligible for the Chapter 40B Subsidized Housing Inventory through means other than a comprehensive permit.

8.3.2 Applicability. This Section applies to all developments involving the creation of ten (10) or more Dwelling Units or ten (10) or more Lots for residential use.

Developments may not be segmented to avoid compliance with this Section. Divisions of land that would cumulatively result in an increase by ten (10) or more residential Lots or Dwelling Units above the number existing on any parcel or any contiguous parcels in common ownership in the twenty-four (24) months prior to any application for development under this By-law or the subdivision control law are subject to this Section. For purposes of this Section, a division of land shall mean any division of land subject to G.L. c. 41, s. 81K-81GG.

8.3.3 Mandatory Provision of Affordable Housing Units. In any development subject to this Section, the tenth Dwelling Unit and every seventh unit thereafter shall be an Affordable Housing Unit. Nothing in this Section shall preclude a developer from providing more Affordable Housing Units than are required hereunder.

8.3.4 Methods of Providing Affordable Housing Units. The Planning Board may approve one (1) or more of the following methods, or any combination thereof, for the provision of Affordable Housing Units:

1. The Affordable Housing Units may be constructed or rehabilitated on the locus of the development.

2. The Affordable Housing Units may be constructed or rehabilitated on a locus different from that of the development. The Planning Board may allow a developer of non-rental Dwelling Units to develop, construct or otherwise provide Affordable Housing Units reasonably equivalent to those required by this Section in an off-site location in the Town of Hamilton. All requirements that apply to on-site provision of Affordable Housing Units shall apply to provision of off-site Affordable Housing Units. In addition, the location of the off-site Affordable Housing Units shall be approved by the Planning Board as an integral element of the development review and approval process.

3. A donation of land may be made in lieu of providing Affordable Housing Units. An applicant may offer, and the Planning Board may accept, subject to approval of the Board of Selectmen, donations of land in fee simple, on-or off-site, that the Planning Board determines are suitable for the construction of an equivalent number of Affordable Housing Units. Land donated for this purpose shall be subject to a restriction assuring its use for affordable housing. Prior to accepting land as satisfaction of the requirements of this Section, the Planning Board may require the applicant to submit an appraisal or other data relevant to the determination of suitability for an equivalent number of Affordable Housing Units.

4. An equivalent fee in lieu of units may be made. The Planning Board may allow a developer of non-rental Dwelling Units to make a cash payment to the Town through its Affordable Housing Trust Fund for each Affordable Housing Unit required herein. The cash payment per unit shall be in accordance with the following formula: two times an amount equal to eighty (80) percent of area median income for a Family of four (4) in the metropolitan or non-metropolitan area that includes the Town of Hamilton, as determined annually by the U.S. Department of Housing and Urban Development.

8.3.5 General Provisions. The Planning Board shall be charged with administering this Section and shall promulgate Inclusionary Housing Rules and Regulations, including but not limited to submission requirements and procedures, application and review fees, minimum requirements for a marketing plan, and documentation required by the Town to qualify the Affordable Housing Units for listing on the Chapter 40B Subsidized Housing Inventory.

1. Affordable Housing Units shall be dispersed throughout the Building(s) in a development and shall be comparable to market housing units in terms of location, quality and character, room size, bedroom distribution, and external appearance.

2. The selection of qualified purchasers or qualified renters shall be carried out under a marketing plan approved by the Planning Board and shall comply with Local Initiative Program guidelines. The marketing plan must describe how the applicant will accommodate local preference requirements, if any, established by the Board of Selectmen.

3. Developers may sell Affordable Housing Units to the Town of Hamilton, the Hamilton Housing Authority, or to any non-profit housing development organization that serves the Town of Hamilton, in order that such entity may carry out the steps needed to market the Affordable Housing Units and manage the choice of buyers.

4. Developers shall be responsible for preparing applications and other documentation required by the Department of Housing And Community Development (DHCD) to assure that the Affordable Housing Units are eligible for listing on the Chapter 40B Subsidized Housing Inventory.

8.3.6 Timing of Construction. Unless a different schedule is approved by the Planning Board, Affordable Housing Units shall be provided in proportion to the development of market-rate units, but in no event shall the construction of Affordable Housing Units, the payment of fees in lieu of constructing Affordable Housing Units, or the provision of off-site Affordable Housing Units be delayed beyond the schedule below. Fractions shall be rounded to the nearest whole number.

% Building Permits Issued for Market Rate Units	% Affordable Units (Building Permits, Fees, Off-Site Units, or Land, as Applicable)
Up to 29%	None required
30%	At least 10%
50%	At least 30%
70%	At least 50%
85%	At least 70%
90%	100%

8.3.7 Certificate of Occupancy. A Certificate of Occupancy for an Affordable Housing Unit shall not be issued until the applicant submits evidence to the Building Commissioner that an Affordable Housing Restriction or a regulatory agreement for the project has been approved by the Planning Board.

8.3.8 Preservation of Affordability; Restrictions on Resale. An Affordable Housing Unit created in accordance with this Section shall be subject to an Affordable Housing Restriction or regulatory agreement that contains limitations on use, resale and rents. The Affordable Housing Restriction or regulatory agreement shall meet the requirements of the Town and the Local Initiative Program, and shall be in force for the maximum period allowed by law.

1. The affordable housing restriction or regulatory agreement shall be enforceable under the applicable provisions of G.L. c. 184, as amended.

2. The Planning Board shall require that the applicant comply with the mandatory provision of Affordable Housing Units and accompanying restrictions on affordability, including the execution of the Affordable Housing Restriction or regulatory agreement.

3. All documents necessary to ensure compliance with this Section shall be subject to the review and approval of the Planning Board and, as applicable, Town Counsel. Such documents shall be executed prior to and as a condition of the issuance of any Certificate of Occupancy.

SECTION 9.0 SPECIAL DISTRICT REGULATIONS

9.1 GROUNDWATER PROTECTION OVERLAY DISTRICT (GPOD).

9.1.1 Purpose. The purpose of the Groundwater Protection Overlay District (GPOD) is:

1. To promote the health, safety and general welfare of the Town by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses of Hamilton.

2. To preserve and protect existing and potential sources of drinking water supplies and recharge areas;

3. To conserve the natural resources of the Town; and

4. To prevent temporary and permanent contamination of the environment.

9.1.2 Overlay District. The GPOD is an overlay district and shall be superimposed on the other zoning districts established by this By-law. This overlay district shall apply to all new construction, reconstruction or expansion of existing buildings, and new or expanded uses. . Applicable activities or uses which fall within the Well Head Protection District must additionally comply with the requirements of the GPOD. Uses that are prohibited in the underlying districts shall not be permitted in the GPOD.

9.1.3 Location. The GPOD shall consist of those areas shown on the Hamilton Groundwater Protection Overlay District Map, dated May 1985, amended May 2000 to include the aquifer protection districts of neighboring communities that lie within the Town of Hamilton, amended October 2004, and amended Fall 2015 to incorporate Weston & Sampson's Zone II delineations map dated January 2013. Said map is hereby incorporated into the Zoning By-law by reference, and shall be on file with the Town Clerk.

9.1.4 Dimensional Requirements. Regardless of the minimum Lot size of the underlying zone, there shall be a minimum lot area of eighty thousand (80,000) square feet for a building Lot in the GPOD. See Section 4.0 for Computation of Lot Area.

9.1.5 Lot Partially in the GPOD. Any Lot, which has one-third (1/3) or more of its total area falling in the GPOD, must meet all the requirements of the GPOD.

9.1.6 Boundary in Doubt. If the location of the GPOD boundary in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a special permit application to the Zoning Board of Appeals. Any application for a special permit for this purpose shall be accompanied by adequate documentation. The burden of proof shall be upon the owner(s) of the land to show where the bounds should be located. At the request of the owner(s), the Town may engage a professional engineer, hydrologist, geologist, or soil scientist to determine more accurately the boundaries of the GPOD with respect to individual parcels of land, and may charge the owner(s) for the cost of the investigation.

9.1.7 Permitted Uses. Unless prohibited or restricted by the regulations of the GPOD or other state or local regulations, uses or activities permitted in the underlying district are controlled by the requirements of the underlying district.

9.1.8 Prohibited Uses. The following uses are prohibited within the GPOD:

1. Landfills and open dumps as defined in 310 CMR 19.006;

2. Automobile graveyards and junkyards, as defined in G.L. c. 140B;

3. Landfills receiving only wastewater and/or septage residuals including those approved by the Department of Environmental Protection (DEP) pursuant to G.L. c. 21, ss. 26 through 53; G.L. c. 83, ss. 6 and 7; and regulations promulgated thereunder;

4. Facilities that generate, treat, store or dispose of hazardous waste subject to G.L. c. 21C and 310 CMR 30.00, except the following:

   a. Very small quantity generators as defined under 310 CMR 30.00;

   b. Household hazardous waste collection centers or events operated pursuant to 310 CMR 30.390;

   c. Waste oil retention facilities required by G.L. c. 21, s. 52A;

   d. Water remediation treatment works approved by the Massachusetts Department of Environmental Protection ("DEP") for the treatment of contaminated ground or surface waters;

5. Storage of liquid hazardous materials, as defined in G.L. c. 21E and liquid petroleum products, including petroleum, fuel oil, heating oil bulk stations and terminals pursuant to 310 CMR 22.21(2)(a)(5), unless such storage:

   a. Is the storage of (i) heating oil for consumptive use on the premises where stored, or (ii) motor oil/fuel for noncommercial purposes that is stored in farm or residential tanks of 1100 gallons capacity or less; and

   b. Is in a fuel oil tank installed either within the Building, which it will heat, or above ground outside the Building, with surfaces underlying such tank being impermeable to fuel oil and enclosed by a permanent berm or dike of impermeable construction capable of containing ten (10) percent of the total volume of the tank (in the case of more than one (1) tank, the containment must hold either ten (10) percent of the total possible storage capacity of all containers or one hundred ten (110) percent of the largest container's storage capacity whichever is greater); and

   c. To the extent that such storage involves any supply or return lines carrying fuel oil underground or under the basement floor surface, such lines shall be enclosed in conduit piping impervious to fuel oil to prevent leakage into the soil and in compliance with 527 CMR 4.0 et. seq. and any other applicable state regulations. All leaking tanks existing on the property must be repaired or emptied within

twenty-four (24) hours of leak detection. All State regulations pertaining to fuel tanks are also applicable to tanks governed by this Section.

6. Storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;

7. Storage of deicing chemicals unless such storage, including loading areas, is within a Structure designed to prevent the generation and escape of contaminated runoff or leachate;

8. Storage of animal manure, unless covered or contained in accordance with the specifications of the United States Natural Resources Conservation Services;

9. Earth removal consisting of the removal of soil, loam, sand, gravel or any other earth material (including mining activities) to within four (4) feet of the historical high ground water table as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, except for excavations for building foundations, roads, or utility works;

10. Non-sanitary treatment or disposal works subject to 314 CMR 5.00, except for the following:

a. The replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works;

b. Treatment works approved by the Department of Environmental Protection (DEP) designed for the treatment of contaminated ground or surface water and operating in compliance with 314 CMR 5.05(3) or 5.05(13); or

c. Publicly owned treatment works;

11. Stockpiling and disposal of snow and ice containing deicing chemicals if brought in from outside the GPOD;

12. Storage of commercial fertilizers as defined in G.L. c. 128,s. 64, unless such storage is within a Structure designed to prevent the generation and escape of contaminated runoff or leachate.

9.1.9 Uses and Activities Requiring a Special Permit. The following uses and activities are permitted only upon the issuance of special permit by the Zoning Board of Appeals under such conditions as it may require:

1. Enlargement or alteration of existing uses that do not conform to the GPOD;

2. Activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use, permitted in the underlying

district, except as prohibited herein. Such activities shall require a special permit to prevent contamination of groundwater;

3. Any use that will render impervious more than fifteen (15) percent or twenty five hundred (2,500) square feet of any Lot, whichever is greater. A system for groundwater recharge must be provided which does not degrade groundwater quality. For nonresidential uses, recharge shall be by storm water infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all non-residential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.

9.1.10 Special Permit Application. The applicant shall file eight (8) copies of a site plan and attachments. The site plan shall meet the requirements for site plan review and approval established by Section 10.6. Additional submittals shall include the following information where pertinent:

1. A complete list of chemicals, pesticides, herbicides, fertilizers, fuels and other potentially hazardous material to be used or store on the premises in quantities greater than those associated with normal household use;

2. For those activities using or storing such hazardous materials, a hazardous materials management plan shall be prepared and filed with the Hazardous Materials Coordinator, Fire Chief and Board of Health. The plan shall include:

a. Provisions to protect against the discharge of hazardous material or wastes to the environment due to spillage, accidental damage, corrosion, leakage or vandalism, including spill containment and clean-up procedures;

b. Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces; and

c. Evidence of compliance with the Regulations of the Mass Hazardous Waste Management Act 310 CMR 30, including obtaining an EPA identification number from DEP.

3. Proposed down-gradient location(s) for groundwater monitoring well(s), should the Board deem the activity a potential groundwater threat.

9.1.11 Procedures for Issuance of Special Permits. The SPGA under this By-law shall be the Zoning Board of Appeals. A special permit may be granted if the Zoning Board of Appeals determines, in conjunction with the Board of Health, the Conservation Commission, the Planning Board and the DPW Superintendent that the intent of this Section, as well as its specific criteria are met. The Zoning Board of Appeals shall not grant a special permit under this Section unless the petitioner's application materials include, in the Zoning Board of Appeals' opinion, sufficiently detailed, definite and credible information to support positive findings in relation to

the standards given in this Section. The Zoning Board of Appeals shall document the basis for any departures from the recommendations of the other Town boards or agencies in its decision. Upon receipt of the special permit application, the Zoning Board of Appeals shall transmit one (1) copy to the Board of Health, Conservation Commission, Planning Board and DPW Superintendent for their recommendations. Failure to respond in writing within thirty five (35) days shall indicate approval or no desire to comment by said Board or official. The necessary copies of the application shall be furnished by the applicant.

9.1.12 Special Permit Criteria. The Zoning Board of Appeals may grant the required special permit only upon finding that the proposed use meets the following standards, those specified in Section 10.5 of this By-law, and any regulations or guidelines adopted by the Zoning Board of Appeals. The proposed use must:

1. In no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of water that is available in the GPOD; and

2. Be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.

9.1.13 Enforcement. Written notice of any violations of this Section shall be given by the Building Commissioner to the responsible person as soon as possible after detection of a violation or continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the nature of the violation and may also identify the actions necessary to remove or remedy the violation, measures required for avoiding future violations and schedule of compliance. A copy of such notice shall be submitted to the Zoning Board of Appeals, Board of Health, Conservation Commission, Planning Board and DPW Superintendent and Water Department. The cost of containment, clean-up or other action for compliance shall be borne by the owner and operator of the premises.

9.2 FLOOD PLAIN OVERLAY DISTRICT (FPOD).

9.2.1 Purpose. The purpose of the Floodplain Overlay District (FPOD) is:

1. To ensure public safety through reducing the threats to life and personal injury;

2. To eliminate new hazards to emergency response officials;

3. To prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;

4. To avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;

5. To eliminate costs associated with the response and cleanup of flooding conditions; and

6. To reduce damage to public and private property resulting from flooding waters.

9.2.2 FPOD Boundaries. The FPOD is herein established as an overlay district. The FPOD includes all Areas of Special Flood Hazard within the Town of Hamilton designated as Zones A and AE on the Essex County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Essex County FIRM that are wholly or primarily within the Town of Hamilton are panel numbers 25009C0267F, 25009C0268F, 25009C0269F, 25009C0286F, 25009C0288F, 25009C0289F, 25009C0293F, 25009C0406F, 25009C0407F, 25009C0426F, 25009C0427F, 25009C0429F, 25009C0431F, and 25009C0433F dated July 3, 2012. The exact boundaries of the FPOD may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Essex County Flood Insurance Study (FIS) report dated July 3, 2012. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Board of Selectmen, Planning Board, and Conservation Commission.

9.2.3 Base Flood Elevation and Floodway Data.

1. *Floodway Data.* In Zones A and AE of FIRM, along watercourses that have not had a Regulatory Floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the Base Flood discharge.

2. *Base Flood Elevation Data.* Base Flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones.

9.2.4 Use Regulations. All Development in the district, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with the Massachusetts Wetlands Act (G.L. c. 131, s. 40) and with the following:

1. The section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR 120.G "Flood Resistant Construction and Construction in Coastal Dunes");

2. The Wetlands Protection Regulations promulgated by the Massachusetts Department of Environmental Protection (DEP) (currently 310 CMR 10.00);

3. The Inland Wetlands Restriction Regulations promulgated by DEP (currently 310 CMR 13.00);

4. The Minimum Requirements for the Subsurface Disposal of Sanitary Sewage promulgated by the DEP (currently 310 CMR 15, Title 5); and

5. The Hamilton Board of Health Regulations, Chapter 6. Satisfactory evidence shall consist of any permit issued by the Board of Health for the project and/or a written statement from the Board of Health or its agent that no such permit is necessary for the project.

9.2.5 Other Requirements.

1. Any variances from the provisions and requirements of the above referenced State regulations may only be granted in accordance with the required variance procedures of these State regulations.

2. Within Zones AH and AO of the FIRM, adequate drainage paths must be provided around Structures on slopes to guide floodwaters around and away from proposed Structures.

3. In Zone AE of FIRM, along watercourses within the Town of Hamilton that have a Regulatory Floodway designated on FIRM, encroachments are prohibited in the Regulatory Floodway which would result in any increase in flood levels within the community during the occurrence of the Base Flood discharge.

4. All subdivision proposals must be designed to assure that such proposals minimize flood damage; all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and adequate drainage is provided to reduce exposure to flood hazards.

5. Existing contour intervals of site and elevations of existing structures must be included on the development plan proposal.

6. There shall be established a "routing procedure" which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, Director of Public Works, and Building Commissioner for comments which will be considered by the appropriate permitting board prior to issuing applicable permits.

9.2.6 Permitted Uses. The following uses of low flood damage potential and causing no obstructions to flood flows are permitted provided they are permitted in the underlying district and they do not require structures, fill, or storage of materials or equipment:

1. Agricultural uses such as farming, grazing, truck farming, horticulture, etc.;

2. Forestry and nursery uses;

3. Outdoor recreational uses, including fishing, boating, play areas, etc.;

4. Conservation of water, plants, wildlife;

5. Wildlife management areas, foot, bicycle, and/or horse paths;

6. Temporary nonresidential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises; and

7. Buildings lawfully existing prior to the adoption of these provisions.

9.2.7 Notification of Watercourse Alteration. In a riverine situation, the Conservation Commission shall notify the following of any alteration or relocation of a watercourse:

Adjacent Communities NFIP State Coordinator
Massachusetts Department of Conservation and Recreation
251 Causeway Street, Suite 600-700
Boston, MA 02114-2104

NFIP Program Specialist
Federal Emergency Management Agency, Region I
99 High Street, 6th Floor
Boston, MA 02110

9.3 CONSERVANCY DISTRICT.

9.3.1 Purpose. The Conservancy District is intended for the following purposes:

1. The preservation and maintenance of groundwater quality and quantity;

2. The protection of watershed resources upon which the inhabitants depend for water supply;

3. For the enhancement of water quality by encouraging infiltration and percolation through natural soils;

4. To protect the public health and safety, persons and property against hazards of flood water inundation;

5. For the protection of the community against the costs which may be incurred when unsuitable development occurs in swamps, marshes, along watercourses, or in areas subject to floods;

6. To preserve and increase the amenities of the Town; and

7. To conserve natural conditions, wild life, and open spaces for the education, recreation and general welfare of the public.

9.3.2 Permitted Uses. Only the following uses are permitted in the Conservancy District (Note: Construction or alteration in Conservancy District will usually also require application to the Hamilton Conservation Commission under the Wetlands Protection Act and the Hamilton Wetlands By-law):

1. Conservation of water, plants, wildlife, and ponds;

2. Passive recreation activities which do not require paving, filling, or construction of facilities that may degrade water quality, including but not limited to nature study, walking, pond skating, canoeing, fishing, horseback riding, and hunting where otherwise legally permitted;

3. Agricultural uses, forestry, horticulture and floriculture including grazing of animals and harvesting of crops, provided that use of chemical fertilizers, pesticides or defoliants found by the Board of Health or the Conservation Commission to be inconsistent with the purposes of this Conservancy District may be regulated by said Boards. (Note: See also Board of Health Animal Regulations); and

4. Religious and educational uses on land owned or leased by the Commonwealth of Massachusetts, or its agencies, subdivisions or bodies politic, or by a religious sect or denomination, or by a non-profit educational corporation. (Note: Site Plan Review may be required. See Section 10.6.).

(Note: Construction or alteration in Conservancy District will usually also require application to the Hamilton Conservation Commission under the Wetlands Protection Act and the Hamilton Wetlands By-law.)

9.3.3 Special Permit. Subject to a special permit by the Zoning Board of Appeals under specified conditions as provided for in Section 10.5, and only when the Conservation Commission has reported to the Zoning Board of Appeals that such activities will not have adverse effects relating to water quality or recharge, upstream or downstream flooding and drainage, and water storage capacity in the Conservancy-District, the following uses are permitted:

1. Nonresidential Buildings and Structures, such as boathouses, duckwalks and landings;

2. Stands for sale of produce raised on the premises, provided that any such Building or Structure permitted by the Zoning Board of Appeals shall be designed, placed and constructed to offer minimum obstruction to the flow of water and shall be firmly anchored to prevent floating away and thus threatening other buildings or blocking of openings in restricted sections of the watercourse below (Note: Special permit and site plan review required per Sections 10.5 and 10.6.);

3. Dams, changes in watercourses, or drainage works, only as part of an over-all drainage basin plan;

4. Uses, whether or not on the same parcel as activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production provided the Zoning Board of Appeals finds that the proposed use does not substantially derogate from the public good, and that the proposed use does not include impermeable ground cover in excess of 10% of the total lot area, or any storage of chemical substances which have the potential for degrading groundwater quality. (Site plan review under Section 10.6);

5. Wind Energy Facilities and Utility Scale Wind Energy Facilities, subject to the standards set forth in Section 7.3; and

6. When any land shown on the Zoning Map as being in the Conservancy District is proven to the satisfaction of the Zoning Board of Appeals, after reference of the proof to and report by the Conservation Commission, Planning Board and Board of Health, as being in fact not subject to flooding or not unsuitable because of drainage conditions for residential use, and that neither construction activities nor the use of such land for residence will interfere with the general purposes for which Conservancy Districts have been established, and will not be detrimental to the public health, safety or welfare, the Zoning Board of Appeals may, by grant of a special permit, permit the use of such land for Single Family Dwellings under all the provisions of this By-law applying to the Residence District in which the land lies.

9.3.4 Prohibited Uses. Except as provided, above, the following are prohibited in the Conservancy District:

1. Land filling and dumping of any natural or other materials;

2. Construction of Buildings or Structures;

3. Paving and other impermeable surfaces;

4. Construction of roads and driveways;

5. Permanent storage of materials or equipment;

6. Storage of chemical substances which may degrade water quality;

7. Commercial borrow operations;

8. Construction of dams, drainage systems and changes in watercourses which may speed drainage through or around a natural watershed, thereby reducing opportunities for water quality renovation by percolation or infiltration through soils; and

9. Alteration of terrain which may result in increased discharge of stormwater runoff into the District.

9.3.5 Reversion. If for any reason the restrictions or requirements contained in this Section shall be or become invalid as to any land shown on the Zoning Map as being in the Conservancy District, then such land shall thereafter be subject to the regulation for the district in which the land lies.

9.4 ESTATE OVERLAY DISTRICT (EOD).

9.4.1 Purpose. The purpose of the Estate Overlay District ("EOD") is:

1. To allow for the preservation of the buildings and land of large estate properties while allowing for appropriate development which has a positive net fiscal benefit to the Town and is an alternative to the subdivision of an estate property;

2. To allow for the efficient use of such land in harmony with the natural features of the district while preserving open space for conservation, agricultural, or recreational use, and providing appropriate public access to open space;

3. To protect natural features that are important to the character of the town, including public vistas of fields, lakes, and rivers from town roads as well as the existing non-vehicular connections through trails and pathways; and

4. To protect Hamilton's rural and agricultural New England character and provide for its continued uses by permitting a mix of commercial and residential development in a manner which is in harmony with Hamilton's historic development patterns.

9.4.2 Overview. The Estate Overlay District By-law is a special district overlaying the R-la, R-1b and RA districts. The EOD has two (2) distinct subsections:

1. Part A - An Estate House Adaptive Reuse Permit, which allows for new commercial uses as well as currently allowed and expanded residential uses in existing Estate Houses; and

2. Part B - An Estate House Adaptive Reuse and New Floor Area Construction for Commercial Use Permit, which allows for new commercial and expanded residential uses in the existing Estate House and new construction to create space for commercial use in an addition or in an associated Building.

Both Part A and Part B are allowed by special permit. An applicant must apply for Part A first and choose to file a separate special permit application for Part B after an occupancy permit has been issued for Part A.

9.4.3 Applicability. A property in the EOD is eligible for a Part A special permit if it has a minimum Lot size of fifteen (15) acres, and is eligible for a Part B special permit if it has a minimum Lot size of twenty (20) acres. In calculating the Lot size:

1. Contiguous Lots may be combined provided that:

a. At least one (1) of the Lots contains an Estate House of over five thousand (5,000) Residential Gross Square Feet of living area, built before December 31, 1950;

b. The Lots as combined have the required acreage; and

c. The Lots have been under common ownership prior to July 1, 2010.

3. Lots may be considered combined regardless of whether a private or public road dissects the parcels.

4. Land restricted by conservation easements/restrictions or wetlands will count toward the fifteen (15) acre and twenty (20) acre thresholds.

9.4.4 Access Requirements for the EOD. Access to the Lot must be through existing frontage on a public way or through existing frontage on a private way if all abutters to the entire length of the private way agree in writing to the development proposal.

9.4.5 Open Space Requirement. An EOD project must contain a minimum of forty (40) percent open space. The following options shall be used to meet this requirement:

1. A minimum of forty (40) percent of the parcel must already be or shall be conveyed to the Town and accepted by it for open space use;

2. A minimum of forty (40) percent of the parcel must be made subject to a conservation restriction prepared in accordance with the provision of G.L. c. 184, ss. 31-33, running in favor of either the Town or, upon the approval of the Board of Selectmen with advice from the Planning Board, to a non-profit corporation, the principal purpose of which is the conservation of open space;

3. Land that has already been made subject to a conservation restriction as delineated above shall count toward the forty (40) percent threshold;

4. No more than fifty (50) percent of the required open space shall consist of resource areas subject to the Wetlands Protection Act, G .L. c. 131, s. 40, (excepting the resource area "isolated land subject to flooding") or land within the Conservancy District;

5. Land used for common or shared septic systems may not be counted toward the minimum common open space requirement unless authorized by the Planning Board.

9.4.6 Open Space Access. Unless the applicant can provide a compelling reason to the Planning Board why public access would be infeasible, a portion of the open space shall be available for public access and use, for example, wildlife corridors, water protection, view-sheds, trails or other access which provides a public benefit. The Planning Board shall take into account the size of the parcel, the customary and agricultural uses, and whether or not it can

provide adequate parking and other facilities to allow for public use. If the property size or structure cannot meet public parking requirements, or if public use does not fit with the character of the neighborhood, the Planning Board may restrict public use.

9.4.7 Review Criteria. The Planning Board is the SPGA for the EOD and shall apply the provisions of Section 10.5.2 consistent with the purposes set forth in Section 9.4.1.

9.4.8 Advisory Opinions. Within ten (10) days of the receipt of a special permit application in the EOD, the Planning Board shall transmit copies of the application to the Economic Development Committee, Historical District Commission, Board of Health, Department of Public Works, Conservation Commission, Zoning Board of Appeals, and the Fire and Police Departments for their review and advisory opinions, which shall be submitted within thirty (30) days.

9.4.9 Phasing. Phasing in the EOD, as approved by the Planning Board, shall be permitted either pursuant to phasing described in the initial special permit application or in a subsequent special permit application. The special permit approval shall not be deemed to have lapsed as long as the applicant shall have commenced use of the phasing time frames set forth in the special permit application. The Planning Board shall have the authority to require one or more performance bonds or other similar mechanisms if it determines that such mechanisms are necessary to ensure that the key components or phase of a project are satisfactorily completed.

9.4.10 Pre-Application Conference. The applicant shall request and attend an EOD pre-application review at a regular business meeting of the Planning Board. The Planning Board shall invite the Board of Health, Building Commissioner, Conservation Commission and Open Space Committee, Department of Public Works, Fire Chief, Police Chief, Historic District Commission, Office on Disability, and Zoning Board of Appeals to attend the pre-application conference. The primary purpose of the EOD special permit pre-application conference is to identify the site's natural or historically important features, riding or walking trails on the site and abutting parcels, public safety, traffic or infrastructure issues, and areas the Town prefers to see preserved as open space, for agricultural or equestrian uses. The secondary purpose of a pre-application review is to minimize the applicant's cost of engineering and other technical experts, and to commence discussions with the Planning Board at the earliest possible stage of development. Meetings may be held by mutual agreement of the Planning Board and the applicant. At the pre-application review, the applicant shall outline the proposed Estate Overlay District proposal, seek preliminary feedback from the Planning Board, and set a timetable for submittal of a formal application. At the expense of the applicant, the Planning Board may engage technical experts to review the informal plans of the applicant and to facilitate submittal of a formal application for an Estate Overlay District special permit.

9.4.11 EOD Special Permit Design Process.

1. *Identify Conservation Areas.* The first step in the design process requires identification of conservation areas on the site, including wetlands, areas located in the Hamilton Conservancy District, riverfront areas, and floodplains regulated by state, federal, or local law, unprotected natural landscape features such as steep slopes, mature

woodlands, prime farmland, meadows, wildlife habitats and wildlife corridors or connections thereto, cultural features such as historic and archeological sites and scenic views, and recreational features such as established trails used for horseback riding, walking and cross-country skiing. To the maximum extent feasible, conservation areas shall include areas identified by the Planning Board during the pre-application conference.

2. *Identify and Delineate the Proposed Development Area.* The second step in the design process is to define and delineate the area that will contain buildings, roadways, other site improvements and amenities for the development. To the maximum extent feasible, the proposed development area shall consist of land outside the identified conservation areas.

3. *Locate Dwelling and Commercial Units.* The third step in the design process is to identify and delineate the approximate location of Dwelling Units or commercial units in the existing Estate House or commercial units in the proposed development area. The location, height, density, and architectural treatment of all Buildings proposed for construction, renovation or re-use should be included.

4. *Locate Open Space.* The fourth step in the design process is to identify and delineate the open space to be dedicated along with any potential uses.

5. *Roads and Trails.* The fifth step in the design process is to identify and delineate the approximate location of roads, parking area and trails. Roads shall be aligned to access the Dwelling Units and commercial units. The layout of new trails should anticipate internal and external connections to existing and/or potential future roads, trails and sidewalks.

6. *Utilities.* The type and probable location of the proposed utilities should be included.

9.4.12 Certification. The special permit plan should be accompanied by a certification or letter from the Hamilton Historical District Commission of all Historically, Culturally and/or Architecturally Significant Buildings, landscape features and supporting Structures located on the site if the applicant intends on using this determination as a way to obtain new floor area.

9.4.13 Special Permit Application. All special permit applications for an EOD shall be made and filed with the special permit application form. For an application to be considered complete, it shall provide all information required by the Planning Board's Rules and Regulations Governing Special Permits. The special permit application shall also be accompanied by certification from the Hamilton Historical Commission of all Historically, Culturally and/or Architecturally Significant Buildings (if applying for the bonus square footage for renovation under Part B), a plan of all existing and proposed Buildings, landscape features and supporting Structures located on the site and by nine (9) copies of a site development report. The site development report should include, at minimum, an inventory and analysis of:

1. Natural resource features, wildlife and their habitat;

2. All Buildings and Structures;

3. Pedestrian and vehicular access to the site;

4. Public safety issues;

5. Provision of landscaping/buffering;

6. Protection of wildlife habitats;

7. Provision of utilities;

8. Open space and recreation, including trail development and/or maintenance;

9. Water supply and drainage issues;

10. Layout and density of site development;

11. Preservation and rehabilitation of the exterior features, character and structural integrity of the estate house, and the open space, vistas, stonework, gardens, and other historic features and supporting Structures;

12. Building design and materials, including exterior elevations of existing and proposed buildings and additions;

13. Proposed uses for commercial units;

14. Trails or pathways provided or maintained to connect pedestrian, equestrian, non-motorized-bicycle riders or skiers to sites within the property and to other public trail systems if possible; and

15. To the extent possible, the information provided in the report shall be shown in plans and map form, accompanied by written narrative.

9.4.14 Criteria. In addition to the criteria set forth in Section 10.5.2, the Planning Board shall consider the feasibility of the project given the size, location and scope of the property, proximity to abutters, safety concerns, impact on the property, and whether the proposed use is compatible with the character of the Town of Hamilton and the neighborhood the property is located within.

9.4.15 Modifications. Any new use or change of use will require an amendment of the EOD special permit by the Planning Board.

EOD Part A - Estate House Adaptive Reuse.

9.4.16 Part A. Estate House Adaptive Reuse allows for the estate owner to apply for a special permit from the Planning Board to use the Estate House in accordance with one of the following adaptive reuse criteria. Special permits allow for each application to be considered individually based on their specific location and impact to the existing neighborhood. Throughout this Section, residential units are limited to two (2) bedrooms each. This is designed to achieve the goal of providing alternative housing for groups that do not currently have housing options within the Town. The Planning Board may, in its sole discretion, allow a developer to increase the number of bedrooms to a maximum of three (3), provided the developer can demonstrate a compelling reason why such increase serves the stated goals of the EOD.

9.4.17 Part A - Permitted Uses. The following use or a combination of the following uses may be permitted in the original Estate House under Part A:

1. Any uses listed in the Table of Uses as an allowable use in the zoning district in which the property currently exists, whether by special permit or otherwise;

2. Multi-family condominium, cooperative, and apartment residential Dwelling Units, provided that residential units shall be limited to no more than two (2) bedrooms per unit; or to thre (3) bedrooms if permitted by the Planning Board pursuant to Section 9.4.16 above;

3. For profit function halls, meeting rooms, inns, Bed and Breakfasts, spas, and Restaurants (excluding Fast Food or Drive In or Drive Through Establishments);

4. For Profit Educational Facilities;

5. Business or Professional Office;

6. Child Care Centers, Adult Social Day Care age restricted to Elderly Persons, and Assisted Living Residence; and

7. Museums.

9.4.18 Part A - Dimensional Requirements. A minimum vegetated buffer strip of three hundred (300) feet shall be provided unless the Building is nearer to the abutting property line or at least one hundred (100) feet, provided that the Planning Board may increase the vegetated buffer strip based on factors that shall include, but not be limited to: the size and location of the parcel, the character of the neighborhood and the intended use.

9.4.19 Part A - Special Permit Application. All Part A special permit applications shall include building plans prepared by a registered architect and filed with the special permit application form. For an application to be considered complete, it shall provide all information required by the Hamilton Planning Board Rules and Regulations Governing Special Permits.

9.4.20 Part A - Required Information. The special permit application shall include a plan of the existing Estate House and nine (9) copies of a Site Re-use Report. The Site Re-use Report should include an outline of how the following issues and impacts will be addressed by the re-use:

1. Pedestrian and vehicular access to the site including anticipated changes to vehicular traffic patterns;

2. Public safety issues;

3. Provision of landscaping/buffering;

4. Open space and recreation, including trail development and/or maintenance;

5. Water supply and drainage issues;

6. Proposed uses for commercial units, if any;

7. Conceptual floor plans for units;

8. Trails or pathways will be provided or maintained to connect pedestrian, equestrian, non-motorized-bicycle riders or skiers to sites within the property and to other public trail systems if possible; and

9. To the extent possible, the information provided in the report shall be shown in building and site plans, accompanied by a written narrative describing the proposed adaptive reuse.

EOD Part B - New Floor Area Construction

9.4.21 Part B. New Floor Area construction allows for the estate owner to improve the existing Estate House with expanded residential and commercial uses while increasing floor space by construction of an addition to the original Estate House and/or constructing an associated Building for commercial uses as indicated below. The New Floor Area uses are limited to commercial only. The new uses may be allowed by special permit with the Planning Board acting as the SPGA. Special permits allow for each application to be considered individually based on their specific location and impact to the existing neighborhood.

9.4.22 Part B - Permitted Uses. Along with those uses allowed in Part A, the following single commercial use or a combination of the following commercial uses may be permitted in the New Floor Area under Part B (note that residential use is not permitted in any New Floor Area under Part B):

1. Outdoor recreational facility or center such as cross country skiing, golf, horseback riding, or non-motorized cross country bike riding facility including any on-site trails;

2. Long Term Care Facility providing continuing residential care for seniors or the infirm; and

3. Additional uses which are consistent with the objective and intention of this Section and the character of the neighborhood.

9.4.23 Part B - Methods of Achieving New Floor Area. There are three methods to obtain New Floor Area to construct commercial space on the property in addition to re-use of the original Estate House. The methods are intended to promote development which encourages preservation of both Hamilton's historic buildings and open space.

1. *Historic Rehabilitation of the Original Estate House.* An application that proposes to rehabilitate or renovate Buildings and supporting Structures certified by the Hamilton Historic District Commission as being Historically, Culturally, or Architecturally Significant may increase New Floor Space by three times the amount of square footage contained in all existing Buildings that are rehabilitated or renovated as part of the EOD development. The Planning Board shall refer to the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings for guidance when reviewing the Buildings which have been, or are proposed to be, rehabilitated or renovated.

2. *Non-historic Rehabilitation of Original Estate House.* If the Planning Board determines that the reconstruction or replacement of existing Buildings or supporting Structures that have not been certified by the Hamilton Historic District Commission as being Historically, Culturally or Architecturally Significant are more consistent with the Building's rehabilitation or renovation, then the applicant may increase New Floor Area by the amount of square footage contained in all existing Buildings that are rehabilitated or reconstructed. The renovated or rehabilitated Building or supporting Structure may not be torn down.

3. *Yield Analysis Plan of Developable Land.* For the purpose of this By-law, two thousand (2,000) square feet of New Floor Area may be constructed for each Lot that could be created on the property as shown by a Yield Analysis Plan with a maximum of thirty-thousand (30,000) of additional square feet of New Floor Area obtained from this subsection. The applicant shall provide with the application for special permit a Yield Analysis Plan together with verifiable soil tests indicating the number of buildable lots possible under single family zoning, the State Environmental Code, Title V, the requirements of the Board of Health, the Wetlands Protection Act, and the Hamilton Conservation By-law and Rules and Regulations. Such soil tests shall be conducted as if they were actually percolation tests in accordance with the above-referenced requirements and shall be verified and attested to by a registered professional engineer. Buildable lot calculation can only apply to land that is not under current restriction (excluding G.L. c. 61A or c. 61B).

9.4.24 Part B - Dimensional Requirements. The following dimensional requirements apply in Part B:

1. Newly constructed or renovated buildings in an EOD must be thirty-five (35) feet or lower in height unless the original Estate House is greater than thirty-five (35) feet high in which case, newly constructed or renovated additions or any other new Buildings will be limited to the height of the original Estate House, but in no case greater than four (4) stories;

2. Newly constructed Buildings shall be clustered within one hundred (100) feet of the original Estate House unless the developer has a specific goal consistent with the purposes of this By-law that allows for placement of the newly constructed Buildings outside of this area that achieves the cohesive integration of the new Buildings into the whole;

3. In no event will new construction within the three-hundred (300) foot buffer be permitted any nearer the property line than the greater of at least one hundred (100) feet or the distance from the property line of the current Building; and

4. A vegetated buffer strip with a minimum depth of fifty (50) feet shall be provided between the Buildings of an EOD and any public or private way provided that the Planning Board may increase the vegetated buffer strip based on factors that shall include, but not be limited to the size and location of the parcel, the character of the neighborhood and the intended use. An entry drive, along with a gate house and appropriate signage, may be permitted within the buffer strip.

9.5 WILLOW STREET OVERLAY DISTRICT (WSOD).

9.5.1 Purpose. The general purpose of the Willow St. Overlay District (WSOD) is to encourage planned and orderly development of land within the boundaries of the WSOD. These areas are designated for special land use, planning, environmental, and access considerations that warrant careful control of development under a special permit procedure using appropriate standards. The specific purposes of the WSOD are the following:

1. To support land uses and activities that will promote economic development in Hamilton, thereby generating substantial increases in net tax revenue from new development and business growth as well as additional local jobs;

2. To allow for the phased development of new uses and activities that are appropriate and desirable for the WSOD, based on planning and market oppo1iunities identified in the Hamilton Master Plan;

3. To provide for mitigation of any negative impacts caused by new development, including but not limited to transportation and environmental impacts;

4. To incorporate into the design review and permitting process input from Hamilton's land use boards, nearby residential abutters and citizens; and

5. To improve the aesthetics, vibrancy and quality of life for the neighborhoods that include the downtown business district.

9.5.2 Location. The Willow Street Overlay District shall consist of an area within the Business District, west of the railroad tracks and along Willow Street from Asbury Street, including 203 Willow Street.

9.5.3 Applicability. The WSOD provides for additional uses through a special permit process. All underlying uses remain available to property owners. If a property owner elects to apply for a special permit to develop in accordance with the WSOD, the provisions of this Section shall apply. All underlying zoning district requirements still apply, unless they are superseded by this Section. By filing an application for a special permit under this Section, the owner shall be deemed to accept and agree to the terms and provisions set forth herein.

If the owner elects to proceed under the zoning provisions of the underlying district, the zoning By-laws applicable in the underlying district shall control and the provisions of the Willow Street Overlay District shall not apply.

9.5.4 Permitted Uses. In addition to the uses provided in the underlying zoning district, the following additional uses shall be permitted in the WSOD:

1. Athletic facilities;

2. Accessory infrastructure facilities;

3. Retail or Restaurant;

4. Multi-family residential;

5. Mixed residential and commercial;

6. Business or Professional Office;

7. Ancillary parking and commercial services that serve the primary uses; and

8. Public spaces.

9.5.5 Administration. The Planning Board shall be the SPGA in the WSOD. An applicant may file an application with the Planning Board in conformance with this Section and Planning Board WSOD Rules and Regulations.

9.5.6 Planning Board Rules and Regulations. The Planning Board shall adopt and from time to time may amend Willow Street Overlay District Rules and Regulations to implement this

Section. Such regulations shall include but will not be limited to submission requirements, plan requirements, such as size, form, number and contents; development standards, site standards, and standards for building placement and design. Such rules and regulations are required and/or authorized under G.L. c. 40A, s. 9, and shall be adopted after vote by the Planning Board.

9.5.7 Pre-Application Conference. The applicant shall request and attend a pre-application review at a regular business meeting of the Planning Board. The Planning Board shall invite the Board of Health, Board of Selectmen, Building Commissioner, Department of Public Works, Fire Chief, Police Chief, Zoning Board of Appeals, and Economic Development Committee to attend. The primary purpose of the pre-application conference is to provide an information exchange and feedback regarding how the applicant intends to use the site. The secondary purposes of a pre-application review are to minimize the applicant's cost of engineering and other technical experts, to commence discussions with the Planning Board at the earliest possible stage of development, and to set a timetable for submittal of a formal application. Meetings may be held by mutual agreement of the Planning Board and the applicant.

9.5.8 Review Procedures for WSOD Special Permit. The applicant shall furnish a copy of the application to the Town Clerk. The applicant shall furnish sufficient copies of the special permit application to the Planning Board to distribute for review to the Board of Health, Board of Selectmen, Building Commissioner, Department of Public Works, Fire Chief, Police Chief, Zoning Board of Appeals, and Economic Development Committee. Reports from the above-named boards and officials shall be submitted to the Planning Board within thirty (30) days of receipt by the reviewing party. In the event that the public hearing by the Planning Board is held prior to the expiration of the thirty (30) day period, the Planning Board shall continue the public hearing to permit the formal submission of reports and recommendations within that thirty (30) day period.

1. Planning Board members shall conduct a site visit with the applicant prior to or during the public hearing.

2. Once a WSOD Special Permit application has been submitted, no tree removal, no utility installation, no ditching, grading or construction of roads, no grading of land or lots, no excavation, except for purposes of soil testing, dredging or filling and no construction of Buildings or Structures shall be done on any part of the site until the application has been reviewed and decided as provided by this Section.

9.5.9 General Requirements. A proposal must comply with all other applicable Town By-laws, and the applicable rules, regulations, and requirements of all departments, boards, and commissions.

1. *Low Impact Development.* The use of low-impact development techniques is required, where applicable. The applicant shall employ meaningful low impact techniques which will result in less impervious area, direction of roof runoff toward rain gardens and swales, and plantings not limited to but including those indigenous to the area. The use of recycled or recaptured rainwater is encouraged.

2. *Minimizing Disturbance.* The applicant is urged to incorporate horticultural and landscape design that reduces the need for supplemental irrigation and chemical fertilization, e.g. minimizing lawn area. Streets within the site shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks and trees; and to minimize cut and fill. Buildings shall be designed to relate harmoniously to the terrain.

3. *Location of Wastewater Treatment.* All wastewater shall be treated and discharged on-site. Off-site wastewater treatment may be allowed if a suitable tie in can occur with an available sewer system.

4. *Paths and Trails.* All existing paths and trails shall be connected, preserved, and increased when possible.

5. *Visual Appearance from Offsite.* The orientation of individual Buildings and Structures shall be designed to preserve and enhance views and vistas on or off the subject property.

6. *Inclusionary By-law.* In the case that proposed developments in the WSOD include multi-family units such as apartments or condominiums then the developments must comply with the Section 8.3, Inclusionary Housing, with regard to the residential component of the projects.

7. *Sidewalks.* Sidewalks will be created between the Buildings and the Street wherever possible.

9.5.10 Building and Design Standards. The following standards shall apply:

1. *Setbacks.* The setbacks of the underlying zone shall apply.

   a. Internal Building Separation: the minimum distance between all freestanding Buildings in the WSOD shall be free of any obstruction which would interfere with the passage of a fire-safety vehicle to the complete site; and

   b. The setback for height at the property line shall be no more than fifteen (15) feet high from the property line for a setback distance of at least ten (10) feet.

2. *Height.* Provided the use of the Building is either non residential or Mixed Use, building heights may be increased in the discretion of the Planning Board. Current zoning requires heights not to exceed thirty five (35) feet, except that spires, water tanks, communication towers, chimneys, exhaust stacks, flagpoles, mechanical penthouses and other structures normally built above the roof and not devoted to human occupancy may be erected to such heights as are necessary to accomplish the purpose they are normally intended to serve. In the WSOD, the Planning Board may, in its sole discretion, allow building height for nonresidential or mixed properties to be increased.

3. *Parking.* Within the WSOD District, off-street parking shall be provided sufficient to serve the needs of the various uses, based upon the nature of the use and the number of persons occupying and using the facilities and shall be in compliance with the parking requirements of the underlying business district unless the applicant can prove that mixed-use shared parking between the residential and commercial uses is appropriate.

Parking areas shall: (1) be located so as to serve the uses to which they are related; (2) be designed to serve more than one use or facility; (3) be located and laid out so as to provide turning radii, sight lines, and separation from through traffic, consistent with public safety; (4) be paved or, if approved by the Planning Board, surfaced with other non-dusting material; and, (5) unless otherwise approved by the Planning Board, be striped with spaces of at least eight (8) feet width and nineteen (19) feet length.

4. *Lighting.* All lighting fixtures shall be integrated into the architectural style of the development. All exterior structural and site lighting (not including access road lighting) shall be localized and of full cut-off design, with light which shall be retained on site and shall not create a nuisance to abutting properties and streets. All exterior light sources shall be appropriately shielded from off-premise viewing. Access road lighting shall be designed to prevent nuisance to abutting properties by reason of light and glare.

5. *Signs.* The Business District provisions of Section 6.3 shall apply for all building specific signage (tenants' identification, directory, parking, etc.) within the Willow Street Overlay District, subject to the following:

a. Site signage for developments with multiple structures within the Willow Street Overlay District. Site signage at the main entrance to the entire project for identification of the project is permitted, to be located on free standing structure. Such sign shall not exceed thirty-six (36) square feet in size and shall be mounted a maximum of two (2) feet to the underside of the sign and a maximum of ten (10) feet to the top of the sign measured from the average grade of the locus of the sign;

b. A single project tenant directory sign is permitted, to be located on a free standing structure. Such directory sign shall for each of the WSOD's commercial buildings' main tenants not exceed thirty-six (36) square feet in size and shall be mounted a maximum of two (2) feet to the underside of the sign and a maximum of ten (10) feet to the top of the sign measured from the average grade of the locus of the sign;

c. Site directional signage is allowed provided each such sign may be no larger than three (3) square feet in size. Such signs may be posted not closer than twenty (25) feet on center; and

d. No other additional signs or increases in sign dimensions are allowed except by special permit from the Planning Board.

9.5.11 Criteria. The Planning Board may grant a special permit pursuant to Section 10.5.2, and after considering each of the following additional criteria:

1. The degree to which the conceptual design and layout of the proposed development is projected to attain the purpose of generating positive net tax revenue and local employment;

2. The degree to which the proposed development protects the local neighborhood;

3. The degree to which the proposed development furthers the goals and policies of the Master Plan; and

4. The degree to which the proposed development furthers the purposes of this Section.

9.5.12 Conditions. The Planning Board may impose certain conditions, but shall not be limited to, safeguards, requirements, and other standards to:

1. Mitigate impact to abutting land and natural resources by reason of air or water pollution, noise, dust, vibration, or stormwater runoff;

2. Provide safe and convenient access to the site from existing or proposed roads, and to proposed structures thereon, with particular reference to pedestrian and vehicular safety, traffic flow and control, and access in case of fire or emergency;

3. Provide for adequate capacity for public services, facilities, and utilities to service the proposed development such as water pressure and septic/sewer capacity;

4. Provide for visual and noise buffering of the development to minimize impact to abutting properties; and

5. Provide for the perpetual preservation and maintenance of any open space and recreation areas.

9.5.13 Lapse. A Willow Street Overlay District special permit shall lapse if (a) at least one (1) building permit has not been issued within two (2) years from the date of the approval of the special permit, except for good cause shown, (b) such a building permit has been issued and has expired, or (c) construction has commenced under the special permit but does not proceed continuously to completion.

9.6 COMMERCIAL OVERLAY DISTRICT (COD).

9.6.1 Purpose. The general purpose of the Commercial Overlay District (COD) is to encourage planned and orderly development of land within the boundaries of the COD. These areas are designated for special land use, planning, environmental, and access considerations that warrant careful control of development under a special permit procedure using appropriate standards. The specific purposes of the COD are the following:

1. To support land uses and activities that will promote economic development in Hamilton, thereby generating non-residential tax revenue from new business growth and additional local jobs;

2. To allow for the phased development of new uses and activities that are appropriate and desirable for the COD, based on planning and market opportunities identified in the Hamilton Master Plan, and consistent with the goals and objectives in the Hamilton Open Space Plan;

3. To provide for mitigation of any negative impacts caused by new development, including but not limited to transportation and environmental impacts;

4. To incorporate into the design review and permitting process input from Hamilton's land use boards, nearby residential abutters and citizens; and

5. To incorporate into the design review and permitting process the special provisions necessary to ensure that redevelopment of a former landfill site will not degrade important regional water resources.

9.6.2 Overlay District. The COD is an overlay district overlaying other districts. In the COD, all requirements of the underlying district shall remain in effect except where this Section provides an alternative to such requirements, in which case these regulations shall supersede those of the underlying district(s). In the event that an applicant wishes to develop in accordance with the COD, the rules and regulations of the COD shall apply, and if required, by filing an application for a special permit under this Section, the owner shall be deemed to accept and agree to them. In such event, where the provisions of the COD are silent on a zoning regulation that applies in the underlying district, the requirements of the underlying district shall apply.

If the proponent elects to proceed under the zoning provisions of the underlying district, the zoning By-laws applicable in the underlying district shall control and the provisions of the COD shall not apply.

9.6.3 Permitted Uses By Right in the COD. Wind Energy Facilities shall be permitted by right subject to Site Plan Review under Section 10.6.

9.6.4 Uses Permitted by Special Permit in the COD. The following uses shall be permitted only by grant of a special permit from the Planning Board in the COD:

1. Research and development;

2. Light manufacturing and assembly;

3. Business or Professional Office;

4. Medical Clinic or Medical Office;

5. Life sciences;

6. Biotechnology;

7. Ancillary retail and commercial services that serve the primary uses;

8. Public spaces;

9. Athletic facilities or outdoor commercial recreation;

10. Accessory infrastructure facilities; and

11. Communication Towers and Telecommunications Antenna Facilities. The COD shall supersede Section 7.2.

9.6.5 Administration. The Planning Board shall be the SPGA (Special Permit Granting Authority) and Site Plan Review Authority in the COD. An applicant shall file an application with the Planning Board in conformance with this Section, and the Planning Board's COD Rules and Regulations.

9.6.6 Planning Board Rules and Regulations. The Planning Board shall adopt and from time to time may amend Commercial Overlay District Rules and Regulations to implement this By-law section. Such regulations shall include but will not be limited to submission requirements, plan requirements, such as size, form, number and contents; development standards, site standards, and standards for Building placement and design. Such rules and regulations are authorized under G.L. C. 40A, s. 9, and shall be adopted after vote by the Planning Board.

9.6.7 Pre-Application Conference. The applicant shall request and attend a pre-application review at a regular business meeting of the Planning Board. The Planning Board shall invite the Board of Health, Board of Selectmen, Building Commissioner, Conservation Commission and Open Space Committee, Department of Public Works, Fire Chief, Police Chief, Zoning Board of Appeals, Economic Development Committee, and Landfill Steering Committee to attend. The primary purpose of the pre-application conference is to provide an information exchange and feedback regarding how the applicant intends to use the site. The secondary purposes of a pre-application review are to minimize the applicant's cost of engineering and other technical experts, to commence discussions with the Planning Board at the earliest possible stage of development, and to set a timetable for submittal of a formal application. Meetings may be held by mutual agreement of the Planning Board and the applicant.

9.6.8 Review Procedures for COD Special Permit. The applicant shall furnish a copy of the application to the Town Clerk. The applicant shall furnish sufficient copies of the special permit application to the Planning Board to distribute for review to the Board of Health, Board of Selectmen, Building Commissioner, Conservation Commission, Open Space Committee, Department of Public Works, Fire Chief, Police Chief, Zoning Board of Appeals, Economic Development Committee, and Landfill Steering Committee. Reports from the above-named

boards and officials shall be submitted to the Planning Board within thirty (30) days of receipt by the reviewing party. In the event that the public hearing by the Planning Board is held prior to the expiration of the thirty (30) day period, the Planning Board shall continue the public hearing to permit the formal submission of reports and recommendations within that thirty (30) day period. Planning Board members shall conduct a site visit with the applicant prior to or during the public hearing.

9.6.9 Prohibition. Once a COD Special Permit application has been submitted, no tree removal, no utility installation, no ditching, grading or construction of roads, no grading of land or lots, no excavation, except for purposes of soil testing, dredging or filling and no construction of Buildings or Structures shall be done on any part of the site until the application has been reviewed and decided as provided by these regulations.

9.6.10 General Compliance. A proposal must comply with all other applicable Town By-laws, and the applicable rules, regulations, and requirements of all departments, boards, and commissions.

9.6.11 General Requirements.

1. *Low Impact Development.* The use of low-impact development techniques is required, where applicable. The applicant shall employ meaningful low impact techniques which will result in less impervious area, direction of roof runoff toward rain gardens and swales, and plantings not limited to but including those indigenous to the area. The use of recycled or recaptured rainwater is encouraged.

2. *Minimizing Disturbance.* The applicant is encouraged to maintain as much of the site as possible in its natural state. The applicant is urged to incorporate horticultural and landscape design that reduces the need for supplemental irrigation and chemical fertilization, e.g. minimizing lawn area. Streets within the site shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks and trees; to minimize cut and fill. Buildings shall be designed to relate harmoniously to the terrain.

3. *Location of Wastewater Treatment.* All wastewater shall be treated and discharged on-site. Off-site wastewater treatment may be allowed if a suitable tie in can occur with an available sewer system.

4. *Paths and Trails.* All paths and trails shall be connected, preserved, and increased when possible.

5. *Visual Appearance from Offsite.* The orientation of individual Buildings and Structures shall be designed to preserve and enhance views and vistas on or off the subject property.

9.6.12 Building and Design Standards. The following standards shall apply:

1. *Setbacks.* All structures shall be so located as to be at least twenty-five (25) feet from the perimeter of the COD.

2. *Internal Building Separation.* The minimum distance between all freestanding Buildings in the COD shall be at least twenty (20) feet, free of any obstruction which would interfere with the passage of a fire safety vehicle.

3. *Height.* Buildings located in the COD shall not exceed fifty (50) feet in Building Height, except that spires, water tanks, communication towers, chimneys, exhaust stacks, flagpoles, mechanical penthouses and other structures normally built above the roof and not devoted to human occupancy may be erected to such heights as are necessary to accomplish the purpose they are normally intended to serve. Buildings located in excess of two hundred (200) feet from the lot lines of the COD may at the Planning Board's discretion be up to sixty (60) feet in Building Height, as measured above.

4. *Parking.* Within the COD District off-street parking shall be provided sufficient to serve the needs of the various uses, based upon the nature of the use and the number of persons occupying and using the facilities.

a. With respect to parking for all uses, with particular attention for the office, research, development and manufacturing, medical, life sciences, and biotechnology uses, parking shall be required in amounts that conform with the latest use-specific parking recommendations published by the Institute of Traffic Engineers (ITE).

b. Parking areas shall be located so as to serve the uses to which they are related, and may be designed to serve more than one use or facility; shall be located and laid out so as to provide turning radii, sight lines, and separation from through traffic, consistent with public safety; shall be paved or, if approved by the Planning Board, surfaced with other non-dusting material; and shall, unless otherwise approved by the Planning Board, be striped with spaces of at least nine (9) feet width and nineteen (19) feet length.

5. *Lighting.* All lighting fixtures shall be integrated into the architectural style of the development. All exterior structural and site lighting (not including access road lighting) shall be localized and of full cut-off design, with light which shall be retained on site and shall not create a nuisance to abutting properties and streets. All exterior light sources shall be appropriately shielded from off-premise viewing. Access road lighting shall be designed to prevent nuisance to abutting properties by reason of light and glare.

6. *Water Supply.* The project shall use either the Town of Hamilton and/or the Town of Manchester (if available and acceptable to the Town of Manchester) water supply and shall comply with any inter-town agreements that govern water access rights.

7. *Buffer Areas.* A vegetated buffer area of twenty-five (25) feet minimum may be required at the following locations:

a. Perimeter of the property where it abuts a lot in residential use;

b. Certain resource areas on or adjacent to the tract such as rock outcrops, ledge, agricultural or recreational fields, and land held for conservation purposes;

c. A landscape plan will be required and shall address buffers to ensure screening from abutting properties. Additions to existing plantings may be required by the Planning Board; and

d. The Planning Board may waive the buffer requirement when it determines that a small buffer (or no buffer) will suffice to accomplish the objective set forth herein.

8. *Site Access, Roadway Design and Management.* All Structures located within the Commercial Overlay District development shall be accessed by the project's proposed private access road. No access to or from the site will be permitted to the abutting residential area to the north along Chebacco Road. All access roadways and associated infrastructure improvements shall be private and shall not be owned or maintained by the Town of Hamilton.

9. *Traffic Study.* A traffic study shall be provided by the applicant to ensure public safety on and around Chebacco Road and to address the adequacy of the internal road and parking infrastructure.

10. *Stormwater Management and Erosion Control.* The peak rate of stormwater runoff from the Commercial Overlay District shall comply with Department of Environmental Protection's Stormwater Management Handbook, and the provisions General By-law XXIX, Stormwater Management By-law.

11. *Soil Erosion.* General soil erosion of the proposed development site shall be minimized by integrating the development into the existing terrain and by reasonably retaining natural grades and soil cover. During grading and construction of all improvements, including all Structures and infrastructure improvements, erosion of soil shall be minimized using best management practices.

12. *Open Space and Natural Resources.* A Commercial Overlay District development which includes any open space components must provide that land area as permanently protected, usable, common open space that is functional for purposes intended by this Section. The common open space shall have no Structures, parking, private Yards, patios, or gardens that are restricted for the exclusive or principal use by the tenants or users of the commercial properties.

9.6.13 Signs. The Business District provisions of Section 6.3 shall apply for all Building specific signage (tenant identification, directory, parking, etc.) within the Commercial Overlay District.

1. Site signage at the main entrance to the entire project for identification of the Project is permitted, to be located on free standing Structure. Such sign shall not exceed thirty-six (36) square feet in size and shall be mounted a maximum of two (2) feet to the underside of the sign and a maximum of ten (10) feet to the top of the sign measured from the average grade of the locus of the sign.

2. A single project tenant directory sign is permitted, to be located on a free standing Structure. Such directory sign shall for each of the COD's commercial buildings main tenants not exceed thirty (36) square feet in size and shall be mounted a maximum of two (2) feet to the underside of the sign and a maximum of ten (10) feet to the top of the sign measured from the average grade of the locus of the sign.

3. Site directional signage is allowed provided each such sign may be no larger than three (3) square feet in size; such signs may be posted not closer than twenty (25) feet on center.

4. No other additional signs or increases in sign dimensions are allowed except by special permit from the Planning Board.

9.6.14 Conditions of Approval. The Planning Board may impose conditions, safeguards, requirements, and other standards as part of its approval.

9.6.15 Findings and Decision of the Planning Board for COD Special Permit. The Planning Board may grant a special permit pursuant to Section 10.5.2 and where the proposed development includes satisfactory provisions to:

1. Mitigate impact to abutting land and natural resources by reason of air or water pollution, noise, dust, vibration, or stormwater runoff;

2. Provide safe and convenient access to the site from existing or proposed roads, and to proposed structures thereon, with particular reference to pedestrian and vehicular safety, traffic flow and control, and access in case of fire or emergency;

3. Provide for adequate capacity for public services, facilities, and utilities to service the proposed development such as water pressure and septic/sewer capacity;

4. Provide for visual and noise buffering of the development to minimize impact to abutting properties;

5. Provide for the perpetual preservation and maintenance of any open space and recreation areas;

6. Protect regional water resources;

7. Promote permanent preservation of open space, agricultural land, forestry land, existing and proposed trails, other natural resources including water bodies and wetlands; and

8. Further the goals and policies of the Master Plan and the purposes of this Section.

9.6.16 Lapse. A Commercial Overlay District special permit shall lapse if at least one (1) building permit has not been issued by two (2) years from the date of approval, except for good cause shown, (b) such a building permit has been issued and has expired, or (c) construction has commenced under the special permit but does not proceed continuously to completion.

SECTION 10.0 ADMINISTRATION AND ENFORCEMENT

10.1 ADMINISTRATION.

10.1.1 Building Commissioner. The provisions of this By-law shall be administered and enforced by the Building Commissioner.

10.1.2 Building Permit Required. It shall be unlawful to construct, alter, reconstruct or relocate any Building or Structure or to institute a new or altered use of a Building, Structure or land without first obtaining a building permit from the Building Commissioner. A building permit shall expire one hundred eighty (180) days from its date of issue unless exercised. A special permit and/or site plan approval under Section 10.5 and/or 10.6 may be required for some uses prior to building permit issuance.

10.1.3 Application for Permit. Any application for a permit shall be accompanied by a specific reference to the subject Lot or group of Lots in the same ownership as recorded in the Registry of Deeds, and by copies of a plan of the proposed Lot, drawn to scale, showing the entire recorded ownership, all existing Structures, all abutting Streets, and the exact area and boundaries of the parcel to be assigned to the subject use, and the proposed outline and location of each and every proposed Structure on the subject Lot, and the location and length of any proposed Driveway from the access Street to the building site. There shall also be shown on said plan the existing or proposed sewerage system and all distances necessary to establish full compliance with this By-law, including Building Frontage, areas proposed to be occupied by Buildings or Structures, Yards and sideline distances. The accuracy of said plan and the information thereon shall be certified by the applicant and shall be staked out on the land and left in place until the final inspections are made.

10.1.4 Approval of Applications. The Building Commissioner shall not issue a permit for the construction, alteration, reconstruction or relocation of a Building or Structure if the Building or Structure as constructed, altered, reconstructed or relocated would be in violation of this By-law, or for a new or altered use of a Building, Structure or land if the use would be in violation of this

By-law, unless the applicant has secured a special permit or site plan approval or variance from the Board of Appeals or Planning Board, as designated herein.

10.1.5 Occupancy Permit. No Building erected, altered, or in any way changed as to construction or use, under a permit or otherwise, shall be occupied or used without an occupancy permit, signed by the Building Commissioner, which permit shall not be issued until the Building and its uses, and the uses incident thereto, comply in all respects with this By-law.

10.2 ENFORCEMENT AND PENALTIES.

10.2.1 Enforcement. If the Building Commissioner is requested in writing to enforce this By-law against any person allegedly in violation of this By-law, and the Building Commissioner declines to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefore, within fourteen (14) days of receipt of such request.

10.2.2 Appeal. Any person aggrieved by his inability to obtain a permit or enforcement action from the Building Commissioner and any person, including an officer or board of the Town, aggrieved by an order, decision or failure to act of the Building Commissioner or other official in violation of this By-law or Chapter 40A of the Massachusetts General Laws, may appeal to the Zoning Board of Appeals by filing a notice of appeal with the Town Clerk within thirty (30) days of the date of the action, order, or decision.

10.2.3 Violations and Penalty.

1. Whoever violates any provision of this By-law may be punished by a fine not exceeding three hundred (300) dollars for each offense. Each day or portion thereof that such violation continues shall constitute a separate offense.

2. Pursuant to G.L. c. 40, s. 21D, this By-law may also be enforced by the Building Commissioner by noncriminal complaint. Each day or portion thereof that such violation continues shall constitute a separate offense. The penalty for violation of any provision of this By-law shall be twenty-five (25) dollars for the first offense; fifty (50) dollars for the second offense; one hundred (100) dollars for the third offense; and two hundred (200) dollars for the fourth offense and each subsequent offense.

10.3 ZONING BOARD OF APPEALS

10.3.1 Composition of Board. A Zoning Board of Appeals consisting of three (3) members and two (2) associate members, all citizens of the Town, shall be appointed by the Board of Selectmen, and shall act as the Zoning Board of Appeals under this By-law and under Massachusetts General Laws, Chapter 40A, Section 12.

10.3.2 Duties. The Zoning Board of Appeals shall have all the powers and perform all of the duties conferred or imposed upon it under the applicable provisions of the General Laws of the Commonwealth of Massachusetts, and shall serve as the permit granting authority when so designated.

10.3.3 Powers. The Zoning Board of Appeals shall have the following powers:

1. To hear and decide administrative appeals in accordance with G.L. c. 40A, ss. 8 and 15;

2. To hear and decide applications to alter a nonconforming use or structure.

3. To hear and decide applications for special permits as provided in this By-law.

4. To grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of the applicable zoning ordinance or By-law where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or Structures and especially affecting such land or Structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or this By-law 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 such ordinance or this By-law. The Board of Appeals shall not grant a use variance.

10.3.4 Regulations; Fees. The Board of Appeals shall adopt regulations, including fees, not inconsistent with this By-law as required by G.L. c. 40A, s. 12.

10.3.5 Public Notice. Wherever proceedings under this By-law require the giving of notice by publication in a newspaper, mailing or service by a civil officer, the costs thereof shall be borne by the applicant, and the Board of Appeals shall require estimated costs to be advanced by the applicant.

10.4 PLANNING BOARD.

10.4.1 Establishment. The Planning Board shall consist of seven (7) elected regular members and two (2) associate members, all citizens of the Town.

10.4.2 Powers. The Planning Board shall have the following powers:

1. To hear and decide applications for special permits as provided in this By-law;

2. To hear and decide applications for site plan approval as provided in Section 10.6 of this By-law;

3. To conduct other business as provided for by Massachusetts law and this By-law.

10.4.3 Rules and Regulations; Fees. The Planning Board shall adopt rules and regulations, including fees, for the conduct of business and for the purpose of this By-law and Chapter 40A of the General Laws, and shall file a copy of such rules and fees with the Town Clerk.

10.4.4 Associate Members of the Planning Board. The position of Associate Member of the Planning Board is established for applications where the Planning Board has been designated as the SPGA. Two (2) Associate Members shall be appointed jointly by the Planning Board and the Board of Selectmen. The terms of appointment shall be two (2) years. The Associate Members shall be designated, in order of seniority, to act as provided in G.L. c. 40A, § 9.

10.4.5 Public Notice. Wherever proceedings under this By-law require the giving of notice by publication in a newspaper, mailing or service by a civil officer, the costs thereof shall be borne by the applicant, and the Planning Board shall require estimated costs to be advanced by the applicant.

10.5 SPECIAL PERMITS

10.5.1 Special Permit Granting Authority. The Zoning Board of Appeals, Planning Board, and the Board of Selectmen shall be the SPGA as specified in the various sections of this By-law and shall hear and decide applications for special permits. Those uses requiring a special permit and the SPGA assigned to review the application are set forth in the Table of Use Regulations.

10.5.2 Criteria. Special permits shall be granted by the SPGA, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific requirements and factors that may be set forth in this By-law, the determination shall include consideration of each of the following:

1. Social, economic, or community needs which are served by the proposal;

2. Traffic flow and safety, including parking and loading;

3. Adequacy of utilities and other public services;

4. Neighborhood character and social structures;

5. Impacts on the natural environment; and

6. Potential fiscal impact, including impact on town services, tax base, property values in the same or adjoining districts, and employment taking into account any proposed mitigation.

10.5.3 Application. The SPGA may adopt additional rules relative to the issuance of special permits and shall file a copy with the Town Clerk. The rules shall prescribe a size, form, contents, style, and number of copies of plans and specifications and the procedure for submission and approval of such permits. The application shall be subject to any general or specific rules contained in this By-law and subject to any appropriate conditions, safeguards and limitations imposed by the SPGA. A special permit shall be issued only following public

hearing held within sixty-five (65) days after filing of an application with the Town Clerk, who shall transmit a copy thereof to the SPGA forthwith.

10.5.4 Conditions. The SPGA may impose additional conditions and limitations as it may deem necessary.

10.5.5 Regulations. The SPGA may adopt rules and regulations for the administration of this Section.

10.5.6 Fees. The SPGA may adopt reasonable administrative fees and technical review fees for applications for special permits.

10.5.7 Lapse. Except as otherwise expressly provided in this By-law, special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within twenty-four (24) months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof) with the Town Clerk.

10.6 SITE PLAN REVIEW.

10.6.1 Purpose. Site plan review is intended to allow the Town to review and impose reasonable conditions on development, allowed as of right or by special permit, which by its nature or location has the potential for significant impacts on traffic circulation, public safety, public utilities, the environment and neighborhood character and appearance. The purpose is to provide a mechanism and a process for fitting the proposed development to neighborhood character, scale, and infrastructure, and to reasonably protect the Town and abutting property owners from potential negative impacts. These purposes are to be served by providing for consistent submissions of thorough data for each proposal for Town review; and for consideration by Town boards as specified below, in terms of specific criteria; and for issuance of a site plan decision setting whatever terms and conditions, if any, are necessary to achieve the purposes of site plan review, consistent with Town By-laws and regulations. Provision is made to exempt small modifications and improvements from portions of this Section, and to coordinate site plan review with other required review of special permits and alteration of nonconforming uses and structures.

10.6.2 Projects Requiring Approval. No building permit shall be applied for or issued for any construction or alteration subject to this Section, as specified below, until a site plan has been approved or conditionally approved by the Planning Board as set forth herein. Except as exempted in the By-law, site plan review shall be required for the following construction, alterations, and uses:

1. Any new construction or alteration or expansion of, or conversion to a business, office, industrial, institutional, or multi-family residence Building or Structure in any district;

2. Any alteration or extension of a nonconforming commercial, industrial or institutional structure in a Residential zone;

3. Parking lots over five (5) spaces serving any of the above-listed types of Buildings, schools, hospitals, nursing homes, long term care facility, life care facilities, children's camps, campgrounds, churches, multi-family structures for more than two (2) Families, government buildings and structures, farm stands, and Buildings in commercial, and/or office use;

4. Industrial and scientific research use under Section 3.2;

5. Stables providing boarding and/or services for more than six (6) horses other than those owned by the residents of the Lot on which the stable is located;

6. Greenhouses for commercial production of plants or produce;

7. Interior alterations which increase the commercial, industrial, institutional or multi-family floor area within an existing Building, and/or which change the number of separately leasable or saleable spaces within an existing Building; and

8. Wind Energy Facilities in the Commercial Overlay District.

10.6.3 Projects Requiring Abbreviated Site Plan Review. Proposed additions or alterations to existing Buildings subject to site plan review which would either add new floor area totaling less than ten (10) percent of the current ground floor area of the existing Building, or which are estimated to cost less than ten (10) percent of the current one hundred (100) percent assessed valuation of the Building shall require only abbreviated site plan review as provided below. For purposes of applying this guideline, when ground floor area includes attached residential floor area or attached commercial greenhouses, the area of the residential and/or greenhouse portions shall be deducted before applying the ten (10) percent threshold factors.

10.6.4 Exemptions from Site Plan Review. The following activities shall not require site plan review or abbreviated site plan review:

1. Interior alterations unless the alterations increase the floor area within the building devoted to any of the uses listed in Section 10.6.2 and/or change the number of separately leasable or saleable spaces within the Building. Examples of exempt interior alterations are: paneling, shelving, partitions other than those creating new commercial units, counters, flooring and general interior decoration;

2. Repairs, repainting, residing, reroofing and window replacement unless the activity also increases floor area;

3. Replacement of parts of a partially damaged Building that would normally require site plan review with generally identical portions. Total replacement of such a destroyed Building shall require site plan review;

4. Demolition of a Building or Structure;

5. Change of tenant of commercial building unless there is also new construction triggering site plan review;

6. Customary home occupations;

7. Townhouse or Multifamily housing developed under Sections 8.1 (OSFPD) or 8.2 (Senior Housing);

8. Uses permitted by special permit within the Commercial Overlay District; and

9. Entries B.1, B.3, and B.7 in the Table of Uses shall require site plan review under Section 10.7.

10.6.5 Site Plan Review; Procedures. The applicant shall file twenty-four (24) copies of all site plan review materials as specified below, accompanied by a fee and the documentation required by the Planning Board Instruction Sheet. The application shall be submitted to the Town Clerk. The application will not be considered legally submitted, for purposes of starting the review "clock", until it is complete and all copies are submitted.

1. The Town Clerk shall thereafter forward ten (10) copies to the Planning Board, and one (1) copy each to the Building Commissioner, Department of Public Works, Board of Selectmen, Board of Health, Conservation Commission, Police Department, Fire Department, and Office on Disability for their comments, retaining one copy for the Town Clerk file.

2. An electronic copy of the application, including plans and drawings, shall also be submitted at the time of application, unless waived by the Planning Board.

3. The applicant is encouraged to meet informally with any of the above-listed boards, officials, or departments for their recommendation.

4. The above-listed boards, officials, or departments shall transmit their comments in writing to the Planning Board within thirty-five (35) days from the date of application. Failure to submit comments shall be deemed a lack of opposition to the project.

10.6.6 Site Plan Review; Hearing and Decision. The Planning Board shall open a public hearing within sixty five (65) days of the date of an application. The Planning Board shall provide notice as set forth in G.L. c. 40A, s. 11. The Planning Board shall make its determination within sixty-five (65) days of the closing of the public hearing, unless the applicant specifically grants an extension of the review period in writing. Failure to decide within sixty-five (65) days of the closing of the public hearing shall constitute approval of the site plan by the Planning Board unless the applicant granted an extension of the review period.

1. When proposed new construction or alteration is subject to both site plan review and a Planning Board special permit, the Planning Board shall conduct both processes simultaneously, using the time limits of the special permit process to cover both reviews.

10.6.7 Abbreviated Site Plan Review; Procedures. If the proposed construction and/or change of use is eligible for abbreviated site plan review under Section 10.6.3, the applicant shall file eight (8) copies of the materials required below with the Town Clerk, along with the fee and accompanying documents as required by the Planning Board Instruction Sheet. The application will not be considered legally submitted until it is complete.

1. The Town Clerk shall forward five (5) copies to the Planning Board, and one (1) copy to the Building Commissioner, retaining one copy for the Town Clerk file.

2. The above-listed boards or officials shall transmit their comments in writing to the Planning Board within thirty (30) days from the date of application. Failure to submit comments shall be deemed a lack of opposition to the project.

10.6.8 Abbreviated Site Plan Review; Hearing and Decision. The procedures set forth in Section 10.6.6 shall apply.

10.6.9 Site Plan Review; Contents. Unless waived by the Planning Board, all site plans shall be prepared to scale and be of professional quality. The application shall be prepared by a Registered Architect or Professional Engineer for any proposal that requires such certification under the State Building Code. All site plans shall be standard seventeen (17) inch by twenty-four (24) inch or twenty-four (24) inches by thirty-six (36) inch sheets and shall be prepared at a sufficient scale to show the following required items:

1. Location and boundaries of existing (and proposed) Lot, adjacent Streets or ways, including rights-of way and easements, and the location and owner names of all adjacent properties;

2. Size of the Lot, Lot Frontage and Yards;

3. All existing and proposed Buildings and Structures, including dimensions;

4. Elevation drawings (architectural appearance) of the Building or Building with addition, from each side. For additions/alterations, show only the affected sides;

5. Location and dimensions of all parking and loading areas, Driveways, walkways, access and egress points, specifically as they relate to Street traffic; number of parking spaces, with note comparing total to the requirements of Section 6.1; and indication of facilities for handicapped access per the requirements of the Architectural Access Board;

6. If the project includes any grading and site work, topography of the site at two (2) foot intervals based on USGS data, showing both existing and proposed contours;

7. Location and description of all existing and proposed sewerage disposal and treatment systems, and underground storage tanks, water supply, storm drainage systems, utilities, and refuse disposal dumpsters;

8. Location, height, and type of all external lighting;

9. Location, height, dimensions and appearance of signs;

10. Proposed landscaping including the location and description of existing large trees;

11. Proposed screening, buffers, fencing, plantings, open spaces and recreation areas; and

12. Statement of any other local and/or state permits required for the project.

10.6.10 Site Plan Review; Other Materials. In addition to the site plan, the applicant shall submit the following materials:

1. Completed Site Plan Application form available in Town Clerk's office.

2. Unless waived, all of the information required to demonstrate compliance with the performance standards set forth in Section 6.4.

3. When the Planning Board deems it necessary, it may require the applicant to provide at his expense supplemental data on traffic impact, including estimated daily and peak hour vehicle trips to be generated by the site, estimated number of employees and truck delivery schedule and hours of business.

4. When deemed necessary by the Planning Board, the applicant shall provide at his expense supplemental data and analysis on potential environmental impacts of the proposed project on air quality, surface and groundwater quality, site and neighborhood drainage conditions. The Planning Board may require that such studies be prepared by registered engineers or other appropriately qualified individuals.

5. When deemed necessary by the Planning Board, the applicant shall pay a review fee to cover the reasonable costs of consultants engaged by said Board to assist in review of the proposed site plan, as authorized and limited by G.L. c. 44, s. 53G and the Rules and Regulations of the Planning Board.

10.6.11 Abbreviated Site Plan Review; Plans and Submission Contents. For projects qualifying for abbreviated site plan review under Section 10.6.3, the basic plan standards shall apply, and the plan shall show items 1, 2, 3, 5, and 7 of the plan requirements of Section 10.6.9 and only those elements of the remaining items that will be changed by the proposed construction or alteration. Along with the abbreviated site plan, the applicant shall submit a completed Site Plan Application Form available from the Town Clerk's office.

10.6.12 Site Plan Standards. The following standards shall be considered in the review and evaluation of a site plan or abbreviated site plan:

1. The plan shall show compliance with Zoning By-law requirements for parking, signage, loading, landscaping, performance standards, dimensional requirements, and all other applicable requirements of this By-law;

2. The proposed project should be compatible with existing natural features of the site, and compatible in architecture and scale with the surrounding area;

3. The plan shall provide landscaping and open spaces that enhance the proposed development from within and without, which provide screening and buffers as necessary and which maximize amenity for customers, neighbors, and the general public;

4. The proposed project shall provide for safe and convenient vehicular and pedestrian movement within the site in relation to adjacent ways, and provide for compliance with handicapped access requirements, and provide for access and egress by emergency vehicles;

5. The proposed project shall provide for location and screening of exposed storage areas, machinery, service areas, dumpsters, utility Buildings and Structures and other unsightly uses to maximize amenity for neighborhood. The Planning Board may require landscaping and/or fencing to provide needed buffers;

6. The proposed plan shall be consistent with the capacity of local infrastructure, such as water supply, utilities, drainage and Streets, or shall provide for such improvements as necessary; and

7. The plan shall provide for compliance with Board of Health, Conservation Commission, and other Town and state regulations. Where applicable, the approval may be made conditional upon Board of Health, Conservation Commission, State Department of Public Works or other approvals, which shall be specifically referenced in the decision.

10.6.13 Final Action. With regard to both site plans and abbreviated site plans, the Planning Board conducting the site plan review shall take one (1) of the following final actions:

1. A written approval of the plan, with a determination that the proposal meets the criteria set forth in this By-law; or

2. A written denial of the application stating the reasons for such denial; or

3. A written approval subject to any conditions, modifications, and restrictions as the Planning Board may deem necessary, including phasing of construction and a performance guarantee for any public improvements.

The decision shall be filed with the Town Clerk.

10.6.14 Implementation of Site Plans. Construction under an approved site plan or abbreviated site plan shall begin within one (1) year and be completed within two (2) years of the date of the filing of the decision with the Town Clerk, unless extension is granted by the Planning Board. Otherwise approval shall lapse.

10.6.15 Appeal. The decision of the Planning Board may be appealed to a court of competent jurisdiction as set forth in G.L. c. 40A, s. 17.

10.7 SITE PLAN REVIEW FOR RELIGIOUS AND EDUCATIONAL USES AND CERTAIN CHILD CARE CENTERS.

10.7.1 Purpose. The purpose of this Section is to provide for site plan review of religious and educational uses and child care centers otherwise subject to G.L. c. 40A, s. 3.

10.7.2 Site Plan Review Required. Prior to the issuance of any building permit or certificate of occupancy, the establishment, alteration, change, extension, or reconstruction of uses B.1, B.3, and B.7 as set forth in the Table of Use Regulations shall require site plan approval from the Planning Board pursuant to this Section.

10.7.3 Scope of Site Plan Review. Under this Section, site plan review shall be limited to two (2) inquiries:

1. Whether the use qualifies for protection under G.L. c. 40A, s. 3; and, if so,

2. What reasonable regulations concerning the bulk and height of Structures and determining Yard sizes, lot area, setbacks, open space, parking and building coverage requirements, if any, should be imposed on the use.

10.7.4 Required Information. All applications for site plan review shall be in writing and provide, at a minimum, the following information:

1. Name and address of applicant person or entity;

2. Name and address of property owner;

3. Description of the proposed use and any documents necessary to establish threshold compliance with G.L. c. 40A, s. 3;

4. Reason that relief is requested from otherwise applicable zoning requirements; and

5. If necessary to reach a decision on the application, the Planning Board may request further information from the applicant consistent with G.L. c. 40A, s. 3, specifying in detail the information required.

10.7.5 Site Plan; Contents. In addition, the applicant shall submit a site plan with the following information:

1. Legend depicting all pertinent existing and proposed site features;

2. The date and north arrow shall be shown on the plans;

3. All site plans must be stamped by a Registered Professional Civil Engineer and a Professional Land Surveyor. The land surveyor shall perform an instrument boundary survey and shall certify the accuracy of the locations of the Buildings, setbacks, and all other required dimensions to property lines;

4. Zoning Chart depicting "Required" vs. "Provided" for all applicable zoning criteria including Lot size, Lot Frontage, setbacks, Building Height, Lot coverage, parking spaces, and landscaping requirements;

5. Locus map, at a scale of 1"=600' or suitable scale to accurately locate the site in Town, oriented on the plan in the same way as the large scale plan;

6. The location, width, status (public or private), and name of all streets within 100' of the project;

7. On-site and abutting lot lines. On site lot lines shall be described by bearings and distance. Abutting lot lines shall be shown in a general way;

8. Zoning District lines, including overlay districts if applicable;

9. The location of existing or proposed Building (s) on the Lot shall be shown with total square footage and dimensions of all Buildings;

10. Any streams, brooks, or wetland resource area boundaries within 100' of the property lines;

11. Information on the location, size and type and number of existing and proposed landscape features;

12. Information on the location, size and capacity of existing and proposed on-site and abutting utilities, (water, sewer, drainage, natural gas, electrical cable, etc.) including utilities in abutting side Streets, if applicable;

13. Detailed locations and dimensions of all existing and proposed Buildings and uses on site and on abutting properties, including exterior details relating to the Building footprint.

14. All existing and proposed setbacks from property lines.

15. All minimum, or below minimum, setback distances;

16. Information and details for all site and directional on-site signage shall be submitted;

17. Elevation and facade treatment plans of all proposed structures;

18. Color renderings for new construction;

19. Information on the location, size and type of parking, loading, storage and service areas. A parking calculation schedule noting existing, required and proposed spaces for the entire site shall be provided; and

20. Details and specifications (if applicable) for proposed site amenities, including but not limited to fences, recreation facilities, walls or other barrier materials, and special paving materials.

10.7.6 Decision. The Planning Board may approve, approve with conditions, or deny an application for site plan approval. In making its decision, the Planning Board shall be guided exclusively by G.L. c. 40A, s. 3. The Planning Board shall file a written decision with the Town Clerk within sixty (60) days of receipt of the application. Failure to file a decision within sixty (60) days shall constitute approval of the site plan.

10.7.7 Appeal. Any appeal of the Planning Board's decision shall be made pursuant to G.L. c. 40A, s. 17, to a court of competent jurisdiction.

10.8 REQUEST FOR REASONABLE ACCOMMODATION.

10.8.1 Purpose. Under the requirements of the Federal Housing Act ("FHA"), it is a discriminatory practice to refuse to make "a reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). The same standard applies under the Americans With Disabilities Act ("ADA"), which also addresses nonresidential facilities providing services to persons with disabilities. 42 U.S.C. §12112(b)(5). The purpose of this Section is to facilitate housing and/or services for persons with disabilities and to comply fully with the spirit and the letter of the FHA and, where applicable, the ADA.

10.8.2 Request. Any person eligible under the FHA or any provider of housing to persons eligible under the FHA, or any person eligible to operate a nonresidential facility providing services to persons eligible under the ADA, may request a reasonable accommodation as provided by the FHA and/or the ADA. A request for a reasonable accommodation does not affect a person's or provider's obligations to act in compliance with other applicable laws and regulations not at issue in the requested accommodation.

10.8.3 Zoning Board of Appeals. All requests for reasonable accommodation under the FHA and/or the ADA shall be submitted to the Zoning Board of Appeals.

10.8.4 Information. All requests for a reasonable accommodation under the FHA and/or the ADA shall be in writing and provide, at a minimum, the following information:

1. Name and address of person (s) or entity requesting accommodation;

2. Name and address of property owner;

3. Name and address of dwelling or facility at which accommodation is requested;

4. Description of the requested accommodation and specific regulation or regulations for which accommodation is sought;

5. Reason that the requested accommodation may be necessary for the person or persons with disabilities to use and enjoy the premises; and

6. If the requested accommodation relates to the number of persons allowed to occupy a dwelling, the anticipated number of residents, including facility staff (if any).

If necessary to reach a decision on the request for reasonable accommodation, the Zoning Board of Appeals may request further information from the applicant consistent with the FHA and/or ADA, specifying in detail the information required.

10.8.5 Zoning Board of Appeals Procedures. The Zoning Board of Appeals shall hold a public hearing using the procedures, including notice, set forth in G.L. c. 40A, ss. 11 and 15. The deadlines imposed in G.L. c. 40A, s. 11 or s. 15 may be extended upon the request of the applicant and the approval of the Zoning Board of Appeals. The Zoning Board of Appeals may seek information from other Town agencies in assessing the impact of the requested accommodation on the rules, policies, and procedures of the Town. Upon written notice to the Zoning Board of Appeals, an applicant for a reasonable accommodation may withdraw the request without prejudice. The Zoning Board of Appeals shall consider the following criteria when deciding whether a request for accommodation is reasonable:

1. Whether the requested accommodation would require a fundamental alteration of a legitimate Town policy; and

2. Whether the requested accommodation would impose undue financial or administrative burdens on the Town government.

10.8.6 Decision. After conducting an appropriate inquiry into the request for a reasonable accommodation, the Zoning Board of Appeals may:

1. Grant the request;

2. Grant the request subject to specified conditions; or

3. Deny the request.

The Zoning Board of Appeals shall issue a written final decision on the request in accordance with G.L. c. 40A, s. 15. If the Zoning Board of Appeals fails to render its decision on a request for a reasonable accommodation within the time allotted by G.L. c. 40A, s. 15, the request shall be deemed granted. The Zoning Board of Appeals' decision shall be filed with the Town Clerk and sent to the applicant by certified mail.

10.8.7 Appeal. The Zoning Board of Appeals' decision pursuant to this Section may be appealed to a court of competent jurisdiction in accordance with G.L. c. 40A, s. 17 or otherwise.

10.8.8 File. The Zoning Board of Appeals shall maintain a file of all requests for reasonable accommodation under the FHA and/or the ADA and a file of all decisions made on such requests. The file(s) may be reviewed in the office of the Zoning Board of Appeals upon request during regular business hours.

10.8.9 Other Laws. While a request for a reasonable accommodation is pending, all laws and regulations otherwise applicable to the premises that are the subject of the request shall remain in full force and effect.

10.8.10. Effective Date. The provisions of this Section shall apply only to requests for reasonable accommodation made after adoption of this By-law. Any person who has previously submitted a request for a reasonable accommodation may resubmit the request for processing pursuant to the procedures set forth in this Section.

SECTION 11.0 DEFINITIONS

In this By-law, the following terms shall have the meanings described below:

Accessory Use or Building: A use or building which is subordinate and customarily incidental to and located on the same lot with the principal use or building to which it is accessory, except uses accessory to scientific research, scientific development or related production, as set forth in this By-law, which uses need not be located on the same lot as the principal use.

Adult Entertainment Use: An establishment, a building or portion thereof, or a use of land having a substantial or significant portion of its business activity, stock in trade, or other matter or materials for sale, rental, distribution, or exhibition which is distinguished or characterized by sexual conduct or sexual excitement as defined in G.L. c. 272, s. 31, or a depiction, description or representation thereof, or emphasis thereon, including but not limited to adult bookstores, adult cabarets, adult motion picture theaters, adult paraphernalia stores, and adult video stores as hereafter defined.

> **Adult Bookstore:** An establishment having as a substantial or significant portion of its stock in trade, books, magazines, or other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in G.L. c. 272, s. 31. For the purpose hereof, the words

"substantial or significant" shall mean more than fifteen percent (15%) of the establishment's inventory of stock, or more than fifteen percent (15%) of the establishment's gross floor area.

Adult Cabaret: A night club, bar, restaurant, tavern, dance hall, or similar commercial establishment which features: persons who appear in a state of nudity; or live performances which are characterized by sexual conduct or sexual excitement as defined in G.L. c. 272, s. 31; or films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of sexual conduct or sexual excitement as defined in G.L. c. 272, s. 31.

Adult Motion Picture Theater: An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in G.L. c. 272, s. 31.

Adult Paraphernalia Store: An establishment having as a substantial or significant portion of its stock devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in G.L. c. 272, s. 31. For the purposes hereof, the words "substantial or significant" shall mean more than fifteen percent (15%) of the establishment's inventory of stock or more than fifteen percent (15%) of the establishment's gross floor area.

Adult Video Store: An establishment having a substantial or significant portion of its stock in trade, videos, movies, or other film material which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in G.L. c. 272, s. 31. For the purposes hereof, the words "substantial or significant" shall mean more than fifteen percent (15%) of the establishment's inventory of stock, or more than fifteen percent (15%) of the establishment's gross floor area.

Adult Social Day Care: An accessory use that focuses on social activities, therapeutic recreation, meals, and some health-related services such as medication monitoring and blood pressure checks. May also provide assistance with daily activities such as toileting and walking. but not an adult day health facility or site as regulated by 404 CMR 402.

Boarder: An individual other than a family member occupying a dwelling unit who, for consideration, is furnished sleeping accommodations, meals, and may be provided personal care or other services, but excluding guests at a bed and breakfast.

Building: A structure having a roof or cover and forming a shelter for persons, animals or property.

Building Height: Except as otherwise provided herein, building height shall be measured as the vertical distance from the average elevation of the finished lot grade at the front of the building

to the highest point of the top story in the case of a flat roof, and to the mean height between the plate and the ridge in the case of a pitched roof.

Business or Professional Office: A business establishment, which does not offer a product or merchandise for sale to the public but offers a professional service to the public. However, general or personal service establishments are not to be included in the definition of business offices.

Child Care Center: A child care center as that term is defined in G.L. c. 15D, s. 1A.

Commercial Overlay District: The following definition shall apply in the Commercial Overlay District:

> **Building Height:** The height of a Building shall be the vertical distance measured from the mean finished grade of the ground adjoining the front of the building, as determined by the Building Commissioner, to the top of the structure of the highest occupied floor in the case of a flat roof, to the deck line of a mansard roof, and to the top of the plate of a gable, hip or gambrel roof.

Commercial Recreation, Outdoors: Golf, tennis, swimming, riding, polo, skiing, skating, and all other athletic and recreational activities.

Drive-In or Drive-Through Establishment: A business establishment that includes service that is provided from a drive-up or drive-through window or other similar arrangement that allows the service of a patron while the patron remains in a vehicle, whether parked or live parked. The term shall include eating establishments and service establishments such as banks, dry cleaners, pharmacies, photo shops and the like.

Driveway: Any improved access for regular use by vehicle from the roadway of a street to a dwelling or other main building on a lot, or for use for which site plan approval or a special permit is required. A track or path used primarily by animals, or primarily for access of farm equipment to a field or orchard, or primarily for wood cutting, or for maintenance of a utility line is not a driveway. A driveway includes all of its branches.

Dwelling: A building or part thereof designed, erected and used for continuous and permanent habitation for one family or individual, but not including trailers, however mounted, or commercial accommodations offered for periodic occupancy.

> **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.

> **Dwelling, Single family Detached:** A dwelling that is not attached to any other dwelling by any means and is surrounded by open space or yards on all sides, and that is occupied by not more than one household.

Dwelling, Semi-attached: A building containing two dwelling units that are attached to each other by a common vertical wall, each dwelling unit having open space or yards on three sides and each dwelling unit having direct access to the ground, and each dwelling unit is occupied by not more than one household.

Dwelling, Two-family: A building containing two dwelling units, either side by side or one above the other under a single roof, and each dwelling unit is occupied by not more than one household.

Dwelling, Townhouse: A building containing three or more dwelling units in a row, in which each dwelling unit has its own front and rear access to the ground, no dwelling unit is located over another dwelling unit, each dwelling unit is separated from any other dwelling unit by one or more party walls, and each dwelling unit is occupied by not more than one household.

Dwelling, Three-family: A building containing three dwelling units, each of which has direct access to the outside or to a common hall that leads to the outside.

Dwelling, Four-family: A building containing four dwelling units, each of which has direct access to the outside or to a common hall that leads to the outside.

Dwelling, Multifamily: A building containing five or more dwelling units, except as otherwise defined in this By-law.

Elderly: For the purposes of this By-law, persons who are 55 years of age or older, except as otherwise defined.

Electric Charging Station, Level Two: A facility equipped with a compatible cable such as J-1772, for the recharging of the batteries of motor vehicles.

Essential Services: Services provided by public utility or governmental agencies through erection, construction, alteration, or maintenance of underground or overhead gas, electrical, steam, or water transmission or distribution systems and collection, communication, supply, or disposal systems, excluding power plants or transfer stations. Facilities necessary for the provisions of essential services include poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, and other similar equipment and accessories in connection therewith. Specifically excluded from this definition are buildings necessary for the furnishing of adequate service by such public utility or governmental agencies for the public health, safety and general welfare.

Estate Overlay District: For the purposes of Section 9.4, the following definitions shall apply:

Combined or Aggregated: Parcels combined prior to July 1, 2010 to increase acreage to qualify for the Estate Overlay District By-law.

Commercial Use: A use that is primarily for profit and a nonresidential use, unless used in a hotel, inn or bed and breakfast, or nursing, assisted living or long term care facility that provides residential units for commercial or profitable use. The renting of apartments will not constitute a commercial use.

Common Ownership: Adjacent lots are considered to be in common ownership or within the landowner's legal control or power if one or more is held in an entity such as a limited partnership, trust benefitting the owners or landowner's use of adjoining land, even if the most recent instrument of record prior to July 1, 2010, reveals that the lot was separately owned and a previously recorded plan may reveal that the lot was at one time part of land held in common ownership.

Estate House: A building constructed prior to December 31, 1950, originally used as a single family residential dwelling, containing more than 5,000 square feet of residential floor area. Additions to the original dwelling that were constructed after 1950 will count toward the 5,000 square foot threshold if they were permitted by the Building Department prior to July 1, 2010.

Historically, Culturally or Architecturally Significant: A determination made by the Hamilton Historic District Commission that defines the property as one worth preserving to the level of the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

New Floor Area: The addition of building area calculated in square footage that can be added to the original estate house either as an attached or detached building located on the same property. Bonus square footage can be accumulated through (i) a yield plan, (ii) rehabilitation of the estate house to historic standards, or (iii) renovation of the estate house. Bonus Square Footage space can only be used for commercial purposes.

Nursing Home or Assisted Living for Seniors or the Infirm: A commercial use for the residential care of those who are infirm or elderly.

Rehabilitation: The process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values.

Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings: The Standards for Rehabilitation (codified in 36 CFR 67 for use in the Federal Historic Preservation Tax Incentives program), which address the most prevalent treatment.

Yield Analysis Plan: The Yield Analysis plan is a schematic representation of a conventional subdivision. It shall show the maximum number of lots (or dwelling units) that could be placed upon the site under current zoning for a conventional subdivision plan. That maximum number of lots shall constitute the Base Maximum Density. The

Yield Analysis shall determine Base Maximum Density for the proposed development, given the presence of natural building constraints on the site such as wetlands, floodplains, Conservancy Districts, steep slopes, and zoning requirements. The proponent shall have the burden of proof with regard to the Basic Maximum Density.

Family: Any number of persons living together as a single economic unit and ordinarily using a single cooking facility.

Family Child Care Home, Large: An accessory use as defined in G.L. c. 15D, s. 1A.

Family Child Care Home, Small: An accessory use as defined in G.L. c. 15D, s. 1A.

Finding: For the purposes of Section 5.0, a "finding" shall mean the affirmative vote of three (3) members of the Zoning Board of Appeals.

Floodplain Overlay District: For the purposes of Section 9.2, the following definitions shall apply:

Area of Special Flood Hazard: The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, Al- 30, AE, A99, Vl-30, VE, or V.

Base Flood: The flood having a one percent chance of being equaled or exceeded in any given year.

Coastal High Hazard Area: An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM as Zone V, V l-30, or VE.

Development: Any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

District: The Floodplain Protection Overlay District.

Federal Emergency Management Agency (FEMA): The agency that administers the national Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

Flood Insurance Rate Map (FIRM): An official map of a community on which FEMA has delineated both areas of special flood hazard and the risk premium zones applicable to the community.

Flood Insurance Study: An examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

Lowest Floor: The lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of NFIP Regulations 60.3.

Manufactured Home: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

Manufactured Home Park or Subdivision: A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

New Construction: For floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community. For the purpose of determining insurance rates, new construction means structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later.

One Hundred Year Flood: See Base Flood.

Regulatory Floodway: See Floodway.

Special Flood Hazard Area: An area having special flood and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, Al -30, AE, A99, AH, V, V l-30, VE.

Structure: For floodplain management purposes, a walled and roofed building including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Structure: For insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a

permanent site, as well as a manufactured home on foundation. For the latter purpose, the term includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

Zone A: The 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local, or other data.

Zone Al-30 and Zone AE (for new and revised maps): The 100-year floodplain where the base flood elevation has been determined.

Zone AH and Zone AO: The 100-year floodplain with flood depths of 1 to3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Zone A99: Areas to be protected from the 100-year flood by federal flood protection system under construction. Base flood elevations have not been determined.

Zones B, C and X: Areas identified in the community Flood Insurance Study as areas of moderate or minimal flood hazard. Zone X replaces Zones B and C on new and revised maps.

Zone V: A special flood hazard area along a coast subject to inundation by the 100-year flood with the additional hazards associated with storm waves. Base flood elevations have not been determined.

Zone Vl-30 and Zone VE (for new and revised maps): A special flood hazard area along a coast subject to inundation by the 100-year flood with additional hazards due to velocity (wave action). Base flood elevations have been determined.

For Profit Educational Facility: A facility offering education in fields such as music, dance, martial arts massage therapy, computer technology, the trades, and the like, but not otherwise regulated by G.L. c. 40A, s. 3.

Funeral Home: Facility for the conducting of funerals and related activities such as embalming.

Garage, Private: Covered space for the housing of motor vehicles, no more than two of which belong to others than the occupants of the lot on which such space is located.

General Service Establishment: Shop for lawn mower or small appliance repair, upholstery or furniture repair, bicycle repair person, printer, blacksmith, builder, carpenter, caterer, electrician, lawn mower service person, mason, painter, or plumber.

G.L.: Reference to the General Laws of Massachusetts.

Gross Floor Area, Business: The floor area within the perimeter of the outside walls of the building under consideration, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features.

Gross Floor Area, Residential: The area of a residential structure used for living space, excluding basement and attic area.

Groundwater Protection Overlay District: For the purposes of Section 9.1, the following definitions shall apply:

> **Toxic or Hazardous Material:** Any substance or mixture of physical, chemical or infectious characteristics posing a significant, actual or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water of the Town. Toxic or hazardous material include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids or alkalis, and all substances defined as Toxic or Hazardous under G.L. c. 21C and c. 21E and 310 CMR 30.00, and also include such products as solvents and thinners in quantities greater than normal household use.

Inclusionary Housing: For the purposes of Section 8.7, the following terms shall have the following meanings:

> **Affordable Housing Trust Fund:** A fund account established and operated by the Town for the exclusive purpose of creating or preserving affordable housing opportunities in the Town of Hamilton.
>
> **Affordable Housing Unit:** A dwelling, or a unit in an assisted living facility or congregate residence, that is affordable to and occupied by a low- or moderate-income

household and meets the requirements of the Local Initiative Program for inclusion on the Chapter 40B Subsidized Housing Inventory.

Affordable Housing Restriction: A contract, mortgage agreement, deed restriction, or other legal instrument, acceptable in form and substance to the Town of Hamilton, that effectively restricts occupancy of an affordable housing unit to qualified purchaser or qualified renter, and which provides for administration, monitoring and enforcement of the restriction during the term of affordability. An affordable housing restriction shall run with the land in perpetuity or for the maximum period of time allowed by law, so as to be binding on and enforceable against any person claiming an interest in the property. An affordable housing restriction shall be enforceable under the applicable provisions of G.L. c.184, as amended, and be approved by the Department of Housing and Community Development through the Local Initiative Program.

Local Initiative Program: A program administered by the Massachusetts Department of Housing and Community Development (DHCD) pursuant to 760 CMR 45.00 to develop and implement local housing initiatives that produce low and moderate income housing.

Low Income Household: A household with income at or below 50% of area median income, adjusted for household size, for the metropolitan or non-metropolitan area that includes the Town of Hamilton as determined annually by the United States Department of Housing and Urban Development (HUD).

Maximum Affordable Purchase Price or Rent: A selling price or monthly rent that does not exceed the maximum allowable purchase price or rent guidelines of the Local Initiative Program.

Moderate Income Household: A household with income at or below 80% of area median income, adjusted for household size, for the metropolitan or non-metropolitan area that includes the Town of Hamilton as determined annually by the United States Department of Housing and Urban Development (HUD).

Qualified Purchaser: A low- or moderate-income household that purchases and occupies an affordable housing unit as its principal residence.

Qualified Renter: A low or moderate-income household that rents and occupies an affordable housing unit as a tenant.

Subsidized Housing Inventory: The Department of Housing and Community Development Chapter 40B Subsidized Housing Inventory.

Kennel: An establishment as defined in G.L. c. 140, s. 137A.

Long-Term Care Facility: Any institution whether conducted for charity or profit which is advertised, announced or maintained for the express or implied purpose of providing three or more individuals admitted thereto with long-term resident, nursing, convalescent or rehabilitative care; supervision and care incident to old age for ambulatory persons; or retirement home care for elderly persons. Long-term care facility shall include convalescent or nursing homes, rest homes, infirmaries maintained in towns and charitable homes for the aged, as set forth in 105 CMR 150.001.

Lot: An area of land in one ownership with definite boundaries, used, or available for use, as site for one or more buildings.

> **Lot Frontage:** Shall be measured along the property line of (I) a public way or a way which the Town Clerk certifies is maintained and used as a public way, or (ii) a way not less than fifteen feet (15) from the center line shown on a plan approved and endorsed in accordance with the subdivision control law, which shall thereafter be considered a street for the purpose of this By-law or (iii) a way in existence when the subdivision control law became effective in Hamilton (1955) having in the opinion of the Planning Board, sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic and to provide adequate access for fire, police, and emergency vehicle.
>
> In the case of creating a new street, frontage will be measured along the property line of the existing right of way of the existing road from the side line of the lot up to the point where the curve, based on a 25' radius, begins to separate from the property line to meet the proposed right of way of the new street.

Manufacturing: A use engaged in the basic processing and manufacturing of materials, or the manufacture from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products.

Medical Clinic: A facility as defined in 105 CMR 145.020, including a mobile clinic.

Medical Office: A building designed and used as an office by physicians, dentists, or psychotherapists for the diagnosis and treatment of human patients that does not include overnight care facilities or licensing as a clinic.

Mining: The removal or relocation of geologic materials such as topsoil, sand, gravel, metallic ores or bedrock.

Mixed Use: Two or more uses on a single parcel as a part of a single development plan.

Motor Vehicle Hourly Rental Station: A facility at which, by contract, motor vehicles are made available for rent for a period not longer than 24 hours.

Motor Vehicle Light Service Station: A building or premises used for the dispensing, sales or offering for sale of motor fuels directly to users of motor vehicles. Other sales activities and any repairs shall be activities minor in scope and clearly subordinate to the sale of motor fuels, oils and lubricants. No drive-through facilities are permitted without further zoning relief.

Motor Vehicle Repair: A building or use which is designed or intended to be used for the storage, servicing, repair, maintenance, or cleaning of motor vehicle equipment.

Motor Vehicle Sales: Premises for the sale of used or new motor vehicles, including supplying of fuel, oil, lubrication, washing, or repair services, but not to include body work or painting.

Open Space and Farmland Preservation Development: For the purposes of Section 8.1, the following terms shall have the following meanings:

> **Contiguous Open Space:** Open space suitable, in the opinion of the Planning Board, for the purposes set forth in Section 8.1.1, herein. Such open space may be separated by the road(s) constructed within the Development. Contiguous open space shall not include required yards.

Personal Service Establishment: A facility providing personal services such as hair salon, barber shop, tanning beds, dry cleaning, print shop, photography studio, personal fitness center, and the like.

Qualified Acre: Agricultural land on which the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least $1,000 per acre based on gross sales dollars in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture.

Research Laboratory: Laboratory or research establishments including biotechnology companies, but excluding laboratories categorized as Level 4 by the National Institutes for Health.

Restaurant: A building, or portion thereof, containing tables and/or booths for at least two-thirds (2/3) of its legal capacity, which is designed, intended and used for the indoor sales and consumption of food prepared on the premises, except that food may be consumed outdoors in landscaped terraces, designed for dining purposes, which are adjuncts to the main indoor restaurant facility. The term "restaurant" shall not include "fast food establishments."

Restaurant, fast-food: Establishment for the immediate sale of food or drink prepared on or off premises and served in disposable containers or wrappers for consumption on or off premises unless such sales are wholly incidental to a conventional restaurant or other use such as a grocery or convenience store or food market or other use defined in this chapter. Service is usually cafeteria style or from a serving counter. Such establishment may include inside seating, but

table service is usually not provided or only incidental. All restaurant establishments providing in-car, drive-through service are included in this definition.

Retail: A facility selling new or used goods to an end user but not otherwise specifically listed in the Table of Use Regulations.

School Aged Child Care Program: A school aged child care program as that term is defined in G.L. c. 15D, s. 1A.

Site Plan Review: Review by the Planning Board to approve or approve with conditions those land use activities set forth in Section 10.6.

Story: Shall mean the portion of a building being between the upper surface of any floor and the upper surface of the floor next above, having more than one half of its height above the average elevation of the finished grade adjoining the building, provided that any part of a building between the topmost floor and the roof shall be deemed a half-story.

Street: A public way, a way opened or dedicated to public use or a way plotted and laid out for ultimate public use, whether or not constructed.

> **Street Line:** The sideline of a street or way, as determined by deeds and plans recorded at the Registry of Deeds, or a building line laid out under G.L. c. 82, s. 37. Where no line is thus legally established, then a line parallel with and twenty-five feet distant from the center line of a traveled way.

Structure: Any construction, erection, assemblage or other combination of materials upon the land made in such a manner as to indicate a purpose that it remain in position indefinitely.

Temporary Additional Living Area: See Section 8.1.

Trailer or Mobile Home: Any structure or vehicle designed or adapted for human habitation which is capable of being moved from one place to another, whether by being towed or by being transported.

Truck Terminal: A facility for handling freight with or without maintenance facilities.

Veterinary facility or clinic: A place where animals or pets are given medical or surgical treatment and the boarding of animals is limited to short term care incidental to the use.

Warehouse: A building used primarily for the storage of goods and materials, for distribution, but not for sale on the premises.

Warehouse, Mini or Self Storage: Establishment providing individual storage units for long or short term rental to persons or businesses.

Wholesale: Sale of goods not at retail.

Wind Energy Conversion System: A device for converting wind motion into usable domestic energy.

Wind Energy Facilities: For the purposes of Section 7.5, the following definitions shall apply:

As of Right Siting: Development may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval if the project is located in the designated location (Commercial Overlay District). As of right development will be subject to nondiscretionary site plan review to determine conformance with local zoning by-laws as well as state and federal law. As of right development projects that are consistent with this By-law and with state and federal law cannot be prohibited, but may be subject to reasonable conditions.

Designated Location: The Commercial Overlay District (COD). Said location is shown on the Hamilton Zoning Map, which may be revised from time to time. This map is part of the Zoning By-law and is on file in the Office of the Town Clerk.

Height: The height of a wind turbine measured from natural grade to the tip of the rotor blade at its highest point, or blade-tip height.

Rate Nameplate Capacity: The maximum rated output of electric power production equipment. This output is typically specified by the manufacturer with a "nameplate" on the equipment.

Site Plan Review Authority: When the wind energy facility is located within the Designated Location, the Site Plan Review Authority will be the Planning Board.

Special Permit Granting Authority: When the wind energy facility is located outside the Designated Location, the SPGA shall be the Zoning Board of Appeals.

Small Scale Wind Energy Facility: A wind energy facility with a blade-tip height up to 150 feet as measured from existing average grade.

Utility Scale Wind Energy Facility: A commercial wind energy facility, where the primary use of the facility is electrical generation which may or may not be sold to the wholesale electricity markets and has a blade-tip height over 150 feet as measured from existing average grade.

Wind Energy Facility: All of this equipment, machinery and structures together utilitized to convert wind to electricity. This includes, but is not limited to, transmission,

storage, collection and supply equipment, substations, transformers, service and access roads, and one or more wind turbines.

Wind Monitoring or Meteorological Tower: A temporary tower equipped with devices to measure wind speed and direction, to determine how much electricity a wind energy facility can be expected to generate.

Wind Turbine: A device that converts kinetic wind energy into rotational energy to drive an electrical generator. A wind turbine typically consists or a tower, nacelle body, and a rotor with two or more blades.

Yard: A space open to the sky, located between a building or structure and a lot line, unoccupied except by fences, walls, poles, paving, and other customary yard accessories.

Yard, front: A yard extending the full width of the lot and situated between the street line and the nearest point of the building.

Yard, rear: A yard the full width of the lot and situated between the rear line of the lot and the nearest part of the main building projected to the side line of the lot.

Yard, side: A yard situated between the nearest point of the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a