

TOWN OF SHELBURNE

ZONING BYLAW

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Note: The Table of Contents is not an official part of the Shelburne Zoning Bylaw.

SECTION 1.0 - INTRODUCTION

1.1 PURPOSE OF BY-LAW

The Shelburne Zoning Bylaws are enacted pursuant to Chapter 40A of the General Laws and the Home Rule Amendment to the Massachusetts Constitution, to promote the health, safety, convenience and general welfare of the inhabitants of the Town of Shelburne, to protect the value of land and buildings, to conserve natural resources, to preserve the Town's cultural heritage, rural character and open farmland, and to facilitate residential, commercial and industrial development in a responsible manner.

1.2 EXISTING USES OF BUILDINGS AND LAND NOT AFFECTED

This by-law shall not apply to any lawful existing buildings or structures nor to the existing use of any buildings or structures, nor to any land or premises, or part thereof, to the extent of the use, existing at the time this by-law is adopted, although such building or structure, land or premises, or part thereof, does not conform to the regulations of the district in which it is located. (See Section 10.)

1.3 EXISTING PERMITS

This Bylaw shall not apply to any lawful permit issued, or any building or structure lawfully begun before the first public notice of the Public Hearing on this bylaw, provided however, that construction work under such permit is commenced within (6) months after it is issued, and the work, whether under such permit or otherwise lawfully begun, proceeds in good faith continuously to completion so far as is reasonably practical under the existing circumstances.

1.4 SEVERABILITY

The provisions of this Bylaw are severable. If any provision is held to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision.

SECTION 2.0 – DEFINITIONS

In this by-law the following terms shall have the following meaning unless a contrary meaning is required by the context or is specifically prescribed:

- 2.1 Accessory Apartment:** an additional dwelling unit consisting of no more than four rooms and no more than 800 square feet of living area in a pre-existing single-family home. An Accessory Apartment may also be located in an accessory structure such as a garage or barn provided there is no expansion of square footage of the accessory structure. The Accessory Apartment shall be occupied by no more than two people. The owner of the property shall permanently occupy the principal or accessory residence. Adequate off-street parking shall be provided and parking shall be to the side or rear of the principal structure to the maximum extent possible.
- 2.2 Accessory Use or Structure:** any use or building that is incidental and accessory to the use of the principal building or structure.
- 2.3 Agricultural Manufacturing:** processing or manufacturing of raw materials produced locally to create value-added agricultural products such as cheese or herbal products.

- 2.4 Artisan Studio:** the working space of a practitioner of a handicraft or art requiring special skills, such as handweaving, pottery-making, glassblowing, leatherworking, fine art painting, or sculpting.
- 2.5 Bed & Breakfast:** nightly accommodations for transients within an owner-occupied house, not to exceed five bedrooms rented to guests where breakfast is included. The building must be inspected by the appropriate fire district Chief or his designee and must comply with applicable State Building Codes and Board of Fire Prevention regulations and State Board of Health regulations.
- 2.6 Business Office:** the workplace of computer software, insurance or other business professionals which may include space for appropriate support staff (e.g. administrative assistants, etc).
- 2.7 Campers:** a portable dwelling, eligible to be registered and insured for highway use, designed for travel, recreational, and vacation uses but not for permanent residence. Includes equipment commonly called travel trailers, pick-up coaches or campers, motorized campers, and tent trailers, but not mobile homes.
- 2.8 Dwelling:** any building designed for residential use that contains kitchen and sanitary facilities.
- 2.9 Dwelling Unit:** living quarters for a single family, plus not more than two (2) boarders or lodgers, having independent cooking, living, sanitary and sleeping facilities in the unit. Also see Section 11.0 Parking Requirements.
- 2.10 Dwelling, Multiple-Family** a principal building designed for or converted for occupancy by three to nine (9) families living in separate dwelling units separated by vertical walls or horizontal floors. Historic Industrial or Commercial Structures converted for Multiple-Family Residential Use may have more than nine dwelling units. Also see Section 11.0 Parking Requirements.
- 2.11 Dwelling, Two Family:** A dwelling containing two (2) dwelling units, separated by vertical walls or horizontal floors, designed for occupancy by two (2) families. Also see Section 11.0 Parking Requirements.
- 2.12 Family:** any number of individuals legally related by adoption, blood or marriage, or not more than four (4) persons not so related, living and cooking together in a single dwelling unit.
- 2.13 Food Service, Drive Through:** Any restaurant or food establishment which offers clients the opportunity to purchase food, meals and /or beverages by driving up to a window and obtaining the food, meals and or beverages without leaving the vehicle or entering the food establishment.
- 2.14 Food Service, Other:** Any restaurant or food establishment where customers sit down at tables or counters to eat meals and drink beverages; such establishments may include as an ancillary services the opportunity to purchase meals to take away from the premises for consumption off site.
- 2.15 Frontage:** that boundary from which primary access to the lot is gained. Access shall be gained only from a public way or way accepted under the Town of Shelburne Subdivision Regulations. The portion of a lot fronting on a discontinued road, or a road which is not continuously constructed to a point beyond the border of the subject lot, does not constitute frontage for purposes of Approval-Not-Required (ANR)Plans.
- 2.16 Historic:** Any building 50 years or older in age.
- 2.17 Home Based Business/Home Occupancy:** The use of a room or rooms in a dwelling for customary home

occupations by resident occupants of the household so as to comply with Section 7.0 of these Bylaws.

- 2.18 Hotel:** a building containing rooms without cooking facilities used or designed to be used for overnight lodging by transient guests. A restaurant for lodgers and the public may be provided.
- 2.19 Inn:** A structure used or designed for overnight lodging for transient guests, and which may also provide a restaurant to lodgers and the public. A guest(s) may not stay at an Inn for more than 90 days in any six-month period.
- 2.20 Lodging House:** Buildings in which separate sleeping rooms are rented providing sleeping accommodations for persons on either a transient or a permanent basis, with or without meals, but which may have separate cooking facilities for individual occupants.
- 2.21 Lot:** A continuous parcel of land in one (1) ownership with legally defined boundaries.
- 2.22 Mixed Use:** Any combination of Retail Stores, Business Offices, Professional Offices, Restaurant(s), Artisan Studios and / or Residential Units.
- 2.23 Mobile Home:** a dwelling unit built on a chassis containing complete electrical, plumbing and sanitary facilities and designed without necessity of a permanent foundation.
- 2.24 Mobile Home Park:** See Section 12.
- 2.25 Motel:** an assemblage of attached, semi-detached, or detached dwelling units having separate outside entrances, parking space convenient to each unit and providing lodging for transient clientele.
- 2.26 Motor Vehicle Sales:** the use of premises for the display or sale of new or used motor vehicles, as that term is defined under the Massachusetts General Laws.
- 2.27 Municipal or Non-Profit Trail:** Any trail, walkway or pathway open to the general public and intended for non-motorized, except mobility assisting devices used by handicapped persons, recreational use. Such trails shall have barriers at the start and finish, and shall be designed to avoid private lands and return users to public ways. The Trail shall have appropriate signage indicating the beginning and ending of the Trail and directing users away from private lands near the Trail.
- 2.28 Parking Lot:** Any lot where the principal activity, usage or revenue source comes from the parking or storage of motor vehicles not owned by the lot owner.
- 2.29 Parking Space:** An area, not less than 10 feet by 20 feet, which has unimpeded access and egress to a street or traveled way.
- 2.30 Principal Use/Principal Structure:** The primary purpose for which land or a building is designed, arranged, maintained or occupied.
- 2.31 Professional Office:** The workplace of physicians, lawyers, engineers, or other licensed professionals which may include space for appropriate support staff (e.g. administrative assistants, nurses, etc).
- 2.32 Solar Panel Systems for Premises Use:** Any system of solar panels, whether located on the building or the ground, designed primarily to generate heat or electricity for the principal home or business located on the lot; such systems may generate a limited amount of excess electricity for resale to an electrical utility

provided the system is designed principally to supply the electrical needs of the home or business on the lot.

- 2.33 Special Permit Granting Authority:** Under this bylaw the Special Permit Granting Authority (SPGA) shall be the Zoning Board of Appeals except as otherwise expressly stated in the bylaw.
- 2.34 Street Line:** The dividing line between the street right of way and the lot as determined by deeds and plans recorded at the Registry of Deeds. Where no line is thus legally established, then a line parallel with and twenty-five feet from the centerline of the traveled way.
- 2.35 Structure:** a combination of materials assembled at a fixed location to give support or shelter; such as a building, framework, reviewing stand, platform, bin, sign, recreational tramway, flagpole or mast for radio antenna, or swimming pool or tank having a capacity in excess of four thousand (4,000) gallons. The word “structure” shall be construed, where the context requires, as though followed by the words “or part or parts thereof.”
- 2.36 Wireless Communication Facility:** Any wireless communication facility which may include a communication tower and/or communications services as further describer and regulated in Section 16.
- 2.37 Wireless Communications Tower:** a structure for the provision of wireless communications services, including but not limited to freestanding or ground mounted structure with antenna(s) or other devices, if any, together with any guy wire and accessory structures.
- 2.38 Wireless Communications Services:** services which facilitate the transmission of writing, signs, signals, pictures, and sounds of all kinds without the aid of wire, cable, or other like connection between the points of origin and reception of such transmission, in order to facilitate the following services: cellular telephone service, personal communications service (PCS), paging service, and/or enhanced specialized mobile radio service.
- 2.39 Wind Turbine Systems for Premises Uses:** Any system of turbines, whether located on the building or the ground, designed primarily to generate heat or electricity for the principal home or business located on the lot; such systems may generate a limited amount of excess electricity for resale to an electrical utility provided the system is designed principally to supply the electrical needs of the home or business on the lot.
- 2.40 Commercial Electric Generating Facilities:** A commercial electric generating facility but specifically excluding a facility generating from coal, nuclear power, and wind turbine systems, except Wind Turbine Systems for Premises Use, as defined in Section 2.39.

SECTION 3.0 - ESTABLISHMENT OF DISTRICTS

3.1 For the purposes of this by-law, the Town of Shelburne is hereby divided into the following types of districts:

- 3.1.1** Rural Residential/ Agricultural (RA),
- 3.1.2** Village Residential (VR),
- 3.1.3** Village Commercial (VC),
- 3.1.4** Commercial (C),
- 3.1.5** Industrial (I).

3.2 LOCATION OF DISTRICTS

- 3.2.1** The boundaries of each of the said “districts” are hereby established as shown, defined and bounded on a map entitled “Zoning Map of the Town of Shelburne.” The zoning map, with all explanatory matter thereon, is hereby made a part of this by-law.
- 3.2.2** Where the boundary lines are shown upon said map within the street lines of public and private ways the centerline of such ways shall be the boundary lines.
- 3.2.3** Where the boundary lines are shown upon said map approximately on the location of a property, lot or boundary line and the exact location of the property, lot or boundary line is not indicated by means of dimensions shown in figures then the property or lot line shall be the boundary line.
- 3.2.4** Boundary lines located outside of such street lines and shown approximately parallel thereto, shall be regarded as parallel to street lines and dimensions shown in figures placed upon said map between such boundary lines from such street lines shall govern such distance being measured at right angles to such street lines unless otherwise indicated
- 3.2.5** Boundary lines shown as a specific distance from a road or street shall be measured from the edge of the right of way for that road or street.
- 3.2.5** 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 map, or by the scale of said map.

SECTION 4.0 USES PERMITTED BY RIGHT OR SPECIAL PERMIT, OR PROHIBITED

No building or structure shall be erected or land used except as permitted by this Bylaw.

4.1 LIMITS ON STRUCTURES AND USES

No more than one principal structure or use is allowed on a lot.

4.1.1 Exception: If the lot is located in the Village Commercial, Commercial, or Industrial District; all the dimensional requirements of Section 5 are met; and the applicant has been issued a Special Permit from the Zoning Board of Appeals, permitting more than one principal structure or use.

4.1.2 Exception: If the use is regulated by Section 16 or Section 18 of this Bylaw regardless of the zoning district location; all the dimensional requirements of Section 5 are met; and the applicant has been issued a Special Permit from the Zoning Board of Appeals permitting more than one principal structure or use.

4.2 TABLE OF USE CODES:

The following Table of Use Regulations sets forth for each District the uses permitted by right, the uses permitted by special permit and the uses prohibited. The following codes shall apply:

- 4.2.1** Y = Yes, the use is permitted by right in that zoning district; however user still must comply with the dimension schedule (section 5.2), all other relevant sections of these and other town

bylaws (e.g. parking), Provisions of M.G.L. 40 A, and other regulating authorities such as the Board of Health, Conservation Commission, Fire Chief, Building Inspector, etc.

- 4.2.2 N = No, the use is explicitly prohibited in that zoning district.
- 4.2.3 SP = The use is allowed in that zoning district only if a Special Permit has been granted by the SPGA; however, even if receiving a Special Permit, user still must comply with the dimension schedule (section 5.2), all other relevant sections of these and other town bylaws (e.g.. parking), Provisions of M. G. L. 40 A, and other regulating authorities such as the Board of Health, Conservation Commission, Fire Chief, Building Inspector, etc.
- 4.2.4 OSD = Yes, the use is permitted by right in that zoning district; however, the use must comply with the provisions of Section 19, Open Space Development, and the Shelburne Subdivision Regulations including Section 2.8.
- 4.2.5 RA = Rural Residential/Agricultural District
- 4.2.6 VR = Village Residential District
- 4.2.7 VC = Village Commercial District
- 4.2.8 C = Commercial District
- 4.2.9 I = Industrial District

4.3 TABLE OF USE REGULATIONS:

(Shadings are provided only for ease of reading and have no other significance. Entries in the last column, entitled “See:” direct reader to M.G.L. or town bylaw sections which may provide additional helpful information.)

<u>Residential Uses</u>	<u>RA</u>	<u>VR</u>	<u>VC</u>	<u>C</u>	<u>I</u>	<u>See</u>
Single-Family Dwelling	Y	Y	Y	Y	SP	
Two-Family Dwelling	Y	Y	Y	Y	SP	
Multi-Family Dwelling	SP	SP	SP	SP	N	
Accessory Apartment	Y	Y	Y	Y	SP	
Temporary Mobile Home	Y	SP	SP	Y	Y	Sect 12
Mobile Home	N	N	N	N	N	Sect 12
Mobile Home Parks	SP	SP	SP	SP	SP	Sect 12
Conversion - Single Family Home to a Two-Family Home	Y	Y	Y	Y	SP	
Conversion - Single or Two Family to Multi-Family Dwelling	SP	SP	SP	SP	SP	
Conversion - Industrial or Commercial to Single or Two-family use	Y	Y	Y	Y	SP	
Conversion - Industrial or Commercial to Multi-family use	SP	SP	SP	SP	SP	
Apartment on Upper Floors off Commercial or Industrial Structure	N	SP	SP	SP	SP	
Open Space Development	OSD	OSD	OSD	OSD	OSD	Sect. 19
<u>Agricultural & Recreational Uses</u>	<u>RA</u>	<u>VR</u>	<u>VC</u>	<u>C</u>	<u>I</u>	<u>See</u>

Forestry	Y	Y	Y	Y	Y	
Farming on a lot 5 acres or greater	Y	Y	Y	Y	Y	
Pig Farming on a lot less than 5 acres	SP	N	N	N	N	
Other Livestock Farming on a lot less than 5 acres	Y	SP	SP	SP	SP	
Non Livestock Farming on a lot less than 5 acres	Y	Y	Y	Y	Y	
Commercial Greenhouse on a lot 5 acres or greater	Y	Y	Y	Y	Y	
Commercial Greenhouse on a lot 2 to 5 acres	Y	SP	SP	Y	SP	
Commercial Greenhouse on a lot less than 2 acres	Y	SP	SP	Y	SP	
Agricultural Manufacturing with 5,000 square feet or less of enclosed floor area*	SP	SP	SP	SP	Y	MGL 40A
Wildlife Preserve or Other Conservation Uses not listed elsewhere	Y	SP	SP	Y	Y	
Municipal or Non-Profit Trail	SP	SP	SP	SP	SP	
Other Recreational Facility	SP	SP	SP	SP	SP	

Community Services

	<u>RA</u>	<u>VR</u>	<u>VC</u>	<u>C</u>	<u>I</u>	<u>See</u>
Public Service Corporation Facility not exempted from zoning regulation	N	SP	SP	SP	SP	MGL 40A
Wireless Communication Facility	SP	SP	SP	SP	SP	Sect 16
Educational Uses exempted from zoning regulation	Y	Y	Y	Y	Y	MGL 40A
Other educational uses not exempted from zoning regulation	SP	SP	SP	SP	SP	MGL 40A
Church, other Religious Use	Y	Y	Y	Y	Y	
Cemetery	SP	SP	N	SP	N	
Family Day Care Home for six or fewer children or adults	Y	Y	Y	Y	SP	
Family Day Care Home for more than six children or adults	SP	SP	SP	SP	SP	
Child Care Facility exempted from zoning regulations	Y	Y	Y	Y	Y	MGL 40A
Nursing Home	SP	SP	SP	SP	N	
Hospital, Medical Clinic	SP	SP	SP	SP	N	
Parking Lot (Public or Private)	SP	SP	SP	SP	SP	
Municipal Uses not covered elsewhere	SP	SP	SP	SP	SP	

Commercial/Business Uses

	<u>RA</u>	<u>VR</u>	<u>VC</u>	<u>C</u>	<u>I</u>	<u>See</u>
Business, Professional Offices with 3,000 sq ft or less enclosed floor space	SP	SP	Y	Y	Y	
Business, Professional with more than 3,000 sq. ft. enclosed floor space	N	SP	SP	SP	SP	

Bed and Breakfast	SP	SP	SP	SP	SP	
Banks	N	N	Y	Y	Y	
Standalone Automated Teller Machines	N	N	SP	SP	SP	
Unattended Vending Machines	N	N	SP	SP	SP	
Conversion of Historic Industrial or Historic Commercial Structure to Mixed Uses	SP	SP	Y	Y	Y	
Food Service, drive through	N	N	N	SP	N	
Food Service, other	SP	SP	Y	Y	SP	
Motor Vehicle Sales	N	N	SP	SP	SP	
Car Wash	N	N	N	SP	SP	
Laundry, Laundromat	N	N	SP	SP	SP	
Theaters	SP	N	SP	SP	SP	
Motels, Hotels, Lodging House	N	N	SP	SP	N	
Inns	SP	SP	SP	SP	N	
Building Materials, Sales & Storage	N	N	SP	SP	Y	
Home Based Business	SP	SP	Y	Y	Y	Sec 7.4.1
Funeral Home	SP	SP	SP	SP	N	
Equipment Rentals	N	N	SP	Y	Y	
Kennel or Animal Shelters*	SP	N	SP	SP	SP	MGL40A
Commercial Recreation - Health, Exercise Club, Dance, Yoga Studio, etc.	SP	SP	Y	Y	SP	
Retail Store Building 2,500 sq. ft. or less of enclosed floor area	SP	SP	Y	Y	Y	
Retail Store Building 2,500 sq. ft. up to 5,000 sq. ft. floor area	N	N	SP	Y	SP	
Retail Store Building greater than 5,000 sq. ft. enclosed floor area	N	N	SP	SP	SP	
Veterinarians	SP	SP	SP	Y	Y	
Farm Stand allowed by Ch. 40A, Sec. 3	Y	Y	Y	Y	Y	MGL 40A
Motor Vehicle Service or Repair	N	N	SP	SP	SP	
<u>Industrial Uses</u>	<u>RA</u>	<u>VR</u>	<u>VC</u>	<u>C</u>	<u>I</u>	<u>See</u>
Manufacturing with 5,000 sq ft or less enclosed floor area	N	N	SP	SP	Y	
Manufacturing with greater than 5,000 sq ft of enclosed floor area	N	N	N	SP	SP	
Processing	N	N	SP	SP	SP	
Laboratories	N	N	SP	SP	SP	
Freight or Transportation Facilities	N	N	SP	SP	SP	

Gasoline Station	N	N	SP	SP	SP	
Welding or Metal Fabrication	N	N	SP	SP	SP	
Quarrying, Gravel, Mining & Earth Removal	SP	SP	SP	SP	SP	Sect. 13.1
Sawmill* - see MGL 40A Sect. 3	SP	N	N	N	SP	Sect. 13.2
Junk yard, automobile dismantling or used parts yards, dumps, and landfills	N	N	N	N	SP	
Bulk Storage, Warehousing, or Storage Units	SP	N	N	SP	SP	

<u>Energy Generation Uses</u>	<u>RA</u>	<u>VR</u>	<u>VC</u>	<u>C</u>	<u>I</u>	<u>See</u>
Premises-Use Wind Energy Systems	SP	SP	SP	SP	SP	Sect. 17
Solar panel systems for premises-use	Y	Y	Y	Y	Y	
Commercial electric generating facilities	SP	SP	SP	SP	SP	
Coal fired electric generating facilities	N	N	N	N	N	
Nuclear powered electric generating facilities	N	N	N	N	N	
Wind powered electric generating systems not covered in Section 17	N	N	N	N	N	
Large-Scale Ground-Mounted Solar-Electric Generating Installation (<i>LSSI</i>)	SP	N	N	SP	SP	Sect. 18

Footnotes to Table of Use Regulations:

*Except as land designated as Chapter 40a Section 3, as allowed by right.

SECTION 5.0 – LOT COVERAGE AND SET BACKS

5.1 DIMENSIONAL REQUIREMENTS: A structure shall be erected or used, or a lot shall be changed in size or shape, only in conformity with the following schedule.

5.2 DIMENSIONAL SCHEDULE ^{e,f}

	<u>RA</u>	<u>VR</u>	<u>VC</u>	<u>C</u>	<u>I</u>
Minimum Lot Area (sq ft)	86,000	20,000 (a)	20,000	86,000	86,000
Minimum Lot Frontage (ft)	250	100 (a)	100	250	250
Front Yard Setback (ft)	25	20 (b)	20 (b)	30	50
Side Yard Setback (ft) (c)	20	10	10	30	30
Rear Yard Setback (ft)	20	20	20	30	30
Maximum Height of Buildings (ft) (d)	35	35	35	35	35

Footnotes to Dimensional Schedule:

- (a) If public water or public sewer is not available increase the lot size to 40,000 square feet and lot frontage to 150 feet;
- (b) However, the front yard dimension may be determined by the setback of existing structures on adjacent parcels where those setback are less than the minimum front yard dimension required by this bylaw;
- (c) New driveways must be set back to meet the Side Yard requirement for each district unless a variance is granted by the Zoning Board of Appeals (ZBA);
- (d) The ZBA may grant a Special Permit for structures higher than 35 feet where the ZBA determines that said higher structure is compatible with the surrounding structures and does not unreasonably interfere with existing structures.
- (e) Setbacks and height restrictions for a PUWES are described in Section 17.5.2.
- (f) Setbacks and height restrictions for a *LSSI* are described in Section 18.5.1.

5.3 GENERAL REGULATIONS

5.3.1 Projecting eaves and uncovered steps shall not be taken as coming within the meaning of this section.

5.3.2 No lot on which is located any buildings used for any purpose in any district shall be changed or reduced in area or shape so that it does not conform to the provisions of this by-law; provided however that this regulation shall not apply in case of a lot, a portion of which is taken for a public use.

5.3.3 Providing further, that in a residential district a corner lot shall provide unobstructed visibility at intersections. No sign, fence, wall, tree, hedge or other vegetation and no building or other structure shall be more than two and one half feet above the established street grade within the area formed by the intersecting street lines and a straight line joining said street lines at a point which is twenty-five feet distant from the point of intersection measured along said street lines.

SECTION 6.0 – SPECIAL PERMITS

- 6.1 Purpose:** The Special Permit process is intended to ensure that proposals are consistent with the purpose and intent of this Bylaw. The Special Permit process incorporates a detailed review of specific uses and structures which may have a significant impact upon traffic, municipal services, cultural resources, the environment, energy conservation, tax revenues and the character of the Town.
- 6.2 Rules and Regulations:** Pursuant to Section 9 of Chapter 40A of the Massachusetts General Laws, the SPGA shall adopt rules relative to the issuance of Special Permits. The SPGA’s Rules and Regulations may relate to the size, form, content and style of the plans, fees, and procedures for submission and approval of such Special Permits, and shall not be inconsistent with the General Laws and provisions of this Bylaw. The SPGA shall from time to time amend these rules. Copies of the rules shall be on file and available for review at the office of the Town Clerk. Copies of Special Permit Applications and related documents shall be submitted to the Board of Health, the Planning Board, and the Conservation Commission, who shall have 35 days within which to comment.
- 6.3 Lapse of Special Permit:** If substantial use or construction under a Special Permit, in the sole judgment of the SPGA, has not commenced within two years of the date of issuance of the Special Permit, that permit shall be considered to have lapsed. If an existing use requiring a Special Permit is discontinued or abandoned for a period of more than two years in the sole judgment of the SPGA, then the Special Permit shall lapse.
- 6.4 Scientific Research & Development:** Uses, whether or not on the same parcel as activities permitted as a matter of right or accessory to activities permitted as a matter of right, which are necessary in connection with scientific research or scientific development or related production,

may be permitted upon the issuance of a special permit provided the SPGA finds that the proposed accessory use does not substantially derogate from the public good.

- 6.5 Limitations:** The SPGA may impose conditions, safeguards and limitations on both time and use as it may deem reasonably appropriate to protect the neighborhood.
- 6.6 Criteria:** Special Permits shall be granted by the SPGA, unless otherwise specified herein, only upon its written determination that the benefits to the town and the neighborhood outweigh the adverse effect of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site. In addition to any specific factors that may be set forth in the By-Law, the determination shall include consideration of each of the following:
- 6.6.1** Social, economic, or community needs which are served by the proposal;
 - 6.6.2** Adequacy of vehicular and pedestrian traffic safety on and off the site, and adequacy of parking and loading;
 - 6.6.3** Adequacy of utilities and other public services;
 - 6.6.4** Potential fiscal impact, including impact on town services, tax base, and employment, and
 - 6.6.5** Surface and ground water run-off.
- 6.7 Public Hearing:** After the opportunity for review by other boards has taken place, the SPGA shall hold a Public Hearing under this section, in conformity with the provisions of M.G.L., Ch. 40A Section 9. Abutters shall be notified by mail of the Public Hearing. The decision of the SPGA, and any extension, modification or renewal thereof, shall be made within 90 days following the closing of the public hearing, and the written record of the decision shall be filed with the Town Clerk within 14 days of the final vote or sooner as required to meet the 90 day maximum time frame. A copy of the decision shall be mailed to the Applicant and parties in interest pursuant to M.G.L. 40A, Section 11 by the Town Clerk and to any person attending the Public Hearing which requests it. Each such notice shall specify that appeals if any shall be made pursuant to M.G.L. Chapter 40 A, section 17 and shall be filed within 20 days after the date of filing of the notice in the office of the town clerk.

SECTION 7.0 – HOME-BASED BUSINESS

- 7.1** A business or profession (“home-based business”) may be allowed as an accessory use of a dwelling and may be permitted as described in this section. Examples of home-based businesses include, but are not necessarily limited to: artist studio such as a craftsperson, potter, photographer, sculptor, painter or musician; computer programmer or technician; cake decorator or caterer; licensed real estate, insurance or financial broker or agent; dressmaker, tailor, or seamstress; professional office of a doctor, dentist, lawyer, architect, engineer, cleric, or accountant; office and incidental storage of an artisan, electrical, plumbing, heating, painting, landscaping, or carpentry contractor.
- 7.2** Uses explicitly prohibited by Section 4 of this Bylaw are not eligible home-based businesses in the District(s) where prohibited.
- 7.3** The Building Inspector may grant approval for home-based businesses in Village Commercial (VC), Commercial (C), and Industrial (I) Districts in conformity with this Bylaw.
- 7.3.1 Exception:** If Section 4 of this Bylaw requires that a Special permit be Granted by the

SPGA for the proposed type of use, the applicant must apply for a Special permit.

7.4 A home-based business to be operated within the Rural Residential/Agricultural (RA) or Village Residential (VR) Districts shall require a Special Permit from the Zoning Board of Appeals.

7.4.1 Exception: Where a home-based business complies with all criteria of Section 7.5, the Building Inspector may grant approval for such use without requiring a Special Permit.

7.4.2 In order to issue a Special permit, the SPGA must receive adequate information from the applicant to allow the SPGA to review the criteria in Section 7.5, all other Special Permit criteria, and make a determination that the use will not negatively impact the residential character of the neighborhood. The home-based business should exhibit most, if not all, of the criteria outlined in Section 7.5. The SPGA may require that outside storage and off-street parking be screened from neighboring properties and the public way by a fence or an evergreen hedge of sufficient depth or height to provide screening.

7.4.3 The SPGA may impose reasonable conditions, safeguards, and limitations on both time and use, as it may deem reasonably appropriate to protect the neighborhood.

7.5 The Building Inspector may grant approval for home-based businesses in the Rural/Residential Agricultural (RA) or Village Residential (VR) Districts, provided that the Building Inspector has received adequate information from the applicant to make a determination that all of the following criteria are satisfied:

7.5.1 Such use shall be clearly secondary and incidental to the residential use, and the home-based business shall be carried on within the principal building or an accessory building on the lot or an adjoining lot in common ownership. No more than 50% of the gross floor area of the residence shall be used for the purposes of the home-based business. If the home-based business is located in an accessory building, the gross floor area devoted to the home-based business shall not exceed 50% of the gross floor area of the dwelling or 2,000 square feet, whichever is less.

7.5.2 The home-based business shall be principally owned and operated by a resident of the dwelling and not more than two non-residents shall be regularly employed on the premises.

7.5.3 No external change shall be made to the dwelling, or to other buildings on the lot, that alters their residential appearance.

7.5.4 Except for signs permitted in the Sign Regulations of this Bylaw, there shall be no exterior display or other exterior indication of the home-based business or other variation from the residential character of the premises. No outside storage shall be allowed.

- 7.5.5** Traffic shall not exceed volumes expected in a residential neighborhood, for purposes of this Bylaw; this shall be defined as approximately 15 trips per day, which is approximately 150% of the average weekday trip rate for single-family homes from the “Institute for Traffic Engineers Trip Generation Manual.”
- 7.5.6** Adequate off-street parking shall be provided. Parking areas shall not be within twenty (20) feet of a street line or within the required side or rear yard setback dimension and shall be adequately screened from neighboring residential uses by a fence or an evergreen hedge of sufficient depth or height to provide screening. Parking areas for the home-based business shall not have more than four spaces and shall not be greater than 1,200 square feet in size.
- 7.5.7** No home-based business shall create an unreasonable level of noise, light, air or water pollution, and must comply with the environmental Controls of this Bylaw.
- 7.5.8** No home-based business shall pose an unreasonable hazard to abutters, vehicles, or pedestrians.

SECTION 8.0 - FLOOD PLAIN DISTRICT

8.1 FLOODPLAIN DISTRICT BOUNDARIES

- 8.1.1** The Flood Plain District is herein established as an overlay district. The Flood Plain District includes all special flood hazard areas designated as Zone A and A13 on the Shelburne Flood Insurance Rate Maps (FIRM) and the Flood Boundary and Floodway Map, dated July 2, 1980, on file with the Town Clerk, Planning Board, and Building Inspector. These maps, as well as the accompanying Shelburne Flood Insurance Study, are incorporated herein by reference.

8.2 USE REGULATIONS

- 8.2.1** The underlying permitted uses are allowed providing all development in the district, including structural and non-structural activities are in compliance with the following:
 - 8.2.1.1** Chapter 131, Section 40 of the Massachusetts General Laws;
 - 8.2.1.2** Section of the Massachusetts State Building Code which addresses flood plain areas (currently 780 CMR 3107.0, “Flood Resistant Construction”);
 - 8.2.1.3** Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
 - 8.2.1.4** Inland Wetlands Restriction, DEP (currently 302 CMR 6.00);
 - 8.2.1.5** Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5)
- 8.2.2** Any variance 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.
- 8.2.3** The applicant shall transmit one copy of the development plan to the Board of Selectmen, Conservation Commission, Board of Health, Building Inspector, Zoning Board of Appeals, and

Planning Board for comments, which will be considered by the Zoning Board of Appeals prior to issuing permits.

8.3 ENCROACHMENTS

In the floodway, designated on the Flood Boundary and Floodway Map, the following provisions shall apply:

- 8.3.1** All encroachments including fill, new construction, substantial improvements to existing structures and other development (“development” for the purposes of this by-law, means “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”) are prohibited unless certification, by a registered professional engineer or architect, is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the One Hundred (100) Year Flood. The best available Federal, State, local, or other floodway data shall be used to determine the limits of the 100-year flood boundary.
- 8.3.2** Any encroachment meeting the above standard shall comply with flood plain requirements of the State Building Code.

8.4 DEVELOPMENT STANDARDS FOR THE FLOOD PLAIN DISTRICT

- 8.4.1** All subdivision proposals, and other proposed new developments shall be reviewed *by* the Planning Board to determine whether such proposals will be reasonably safe from flooding. If any part of the subdivision proposal, or other new development, is located within the Flood Plain District established under the Zoning By-law, it shall be reviewed to assure that:
 - 8.4.1.1** the proposal is designed consistent with the need to minimize flood damage and;
 - 8.4.1.2** all public utilities and facilities such as sewer, gas, electrical and water systems shall be located and constructed to minimize or eliminate flood damage, and;
 - 8.4.1.3** adequate drainage systems shall be provided to reduce exposure to flood hazards, and;
 - 8.4.1.4** base flood elevation (the level of the One Hundred (100) Year Flood) data shall be provided for proposals greater than fifty (50) lots or five (5) acres, whichever is the lesser, for that portion within the Flood Plain District. Base Flood is defined as the flood having one percent chance of being equaled or exceeded in any given year.

8.5 HEALTH REGULATION PERTAINING TO THE FLOOD PLAIN DISTRICT

- 8.5.1** The Board of Health, in reviewing all proposed water and sewer facilities to be located in the Flood Plain District established under the zoning by-law, shall require that:
 - 8.5.1.1** new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system, and;
 - 8.5.1.2** new and replacement sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
 - 8.5.1.3** Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

8.6 FLOOD PLAIN DISTRICT REGULATIONS

8.6.1 DEVELOPMENT REGULATIONS FOR TEMPORARY MOBILE HOMES

8.6.1.1 Within Zone A 1-30 all mobile homes shall provide that:

- 8.6.1.1.1 stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level, and;
- 8.6.1.1.2 adequate surface drainage and access for a hauler are provided, and;
- 8.6.1.1.3 In the instance of elevation on pilings, lots are large enough to permit steps, piling foundations are placed in stable soil no more than ten (10) feet apart and reinforcement is provided for piers more than six (6) feet above ground level.
- 8.6.1.1.4 The placement of mobile homes is prohibited in the floodway.

8.7 NOTIFICATION OF WATERCOURSE ALTERATION

8.7.1 In a riverine situation notify the following of any alteration or relocation of a watercourse:

- 8.7.1.1 adjacent communities;
- 8.7.1.2 NFIP State Coordinator (Address: Massachusetts Office of Water Resources, 100 Cambridge Street, Boston, MA, 02202)
- 8.7.1.3 NFIP Program Specialist (Address: FEMA Region I, Rm. 462, J.W. McCormack Post Office & Courthouse, Boston, MA, 02109)
- 8.7.1.4 The definition of riverine is: relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

SECTION 9.0 - SIGN REGULATIONS

Preamble - The intention of this *Sign* Bylaw is to establish rules governing *Signs* in the Town of Shelburne which direct local residents and visitors to local and regional businesses, services, and activities, and otherwise provide information. The goal is to allow *Signs* which are consistent with, and serve to maintain, the rural, agricultural, “small-town,” and regional-gateway character of the Town.

9.1. Commonwealth of Massachusetts Department of Transportation Approval

The placement and form of any *Sign* located in the right-of-way of the state highways in Town are covered by Commonwealth of Massachusetts Department of Transportation regulations and must comply with such regulations. See MGL Chapter 85, Section 2D and the MassDOT-Highway Division’s Tourist Oriented Directional Signing (TOD) General Information and Application and the Massachusetts Agricultural Directional Signage Program of the Mass Department of Agricultural Resources) for more details. The Town of Shelburne does not regulate *Signs* located in the state highway right-of-way.

9.2. Definitions

9.2.1 ***Agricultural Business Establishment***: For the purposes of this Section 9, a *Commercial Enterprise* that sells agricultural products, produced by the owner of the enterprise and which are made from agricultural products grown or raised in the Town of Shelburne.

9.2.2 **Agricultural Sign:** A *Sign* that advertises the sale of agricultural products by the producer of such products which are grown or raised in the Town of Shelburne.

9.2.3 **Commercial Enterprise:** For purposes of this Section 9, an enterprise, profit or non-profit, engaged in business of the purchase and/or sale of goods or services, the production of goods, and/or charitable activities.

9.2.4 **Commercial Sign:** A *Sign* which advertises the sale of products or the provision of services by a commercial enterprise.

9.2.5 **Freestanding Sign:** A *Sign* that is not attached to a building but to a self-supporting fixed structure which is permanently attached to the ground. A *Freestanding Sign* may only be one- or two-sided.

9.2.6 **Off Premises Sign:** A *Sign* that directs attention to a *Commercial Enterprise* which is not carried on, or offered on, the property where the *Sign* is located.

9.2.7 **Portable Sign:** A *Sign* (a) that does not require a zoning permit, (b) is not permanently attached to the ground or a building or not designed to be permanently attached to the ground or to a building, and (c) does not meet the definition of a *Temporary Sign*. *Signs* attached to vehicles, trailers, or other movable objects regularly located for display are also *Portable Signs*.

9.2.8 **Sign:** Any device, structure, fixture, banner, flag, or placard that is visible from a public right-of-way or surrounding properties for the purpose of directing attention to a *Commercial Enterprise* or otherwise communicating a message.

9.2.9 **Special Event:** An activity or series of activities sponsored and/or conducted by governmental, charitable, community or commercial group, or non-profit, tax-exempt entity, which include the gathering of individuals, whether on public or private property, for a common purpose for a period of one hour or longer. *Special Events* include, but are not limited to, concerts, fairs, carnivals, circuses, parades, flea markets, marathons, walkathons, festivals, races, bicycle events, celebrations or any other gathering or events of a similar nature.

9.2.10 **Temporary Sign:** A *Sign* that is related to some activity which will happen within twenty-one (21) days or is currently happening. *Signs* attached to or projecting from the outside of a building or from *Freestanding Signs* that are regularly or occasionally replaced or substituted are not *Temporary Signs*.

9.2.11 **Trailblazing Sign:** *Signs* installed under the MassDOT Highway Division guidelines directing tourists to attractions. These *Signs* should display the distance to the attraction in addition to directional information. See MGL Chapter 85, Section 2D and the MassDOT-Highway Division's Tourist Oriented Directional Signing (TOD) General Information and Application

9.3. Signs Permitted as of Right by this Bylaw

9.3.1 The following *Signs* are permitted as of right by this Bylaw:

9.3.1.1 A *Temporary Sign* political in nature erected on private property which meets all of the following conditions: (a) no more than six (6) square feet in area on a side, (b) located at least five (5) feet from the front property line, (c) no more than five (5) feet above ground level, (d) not-illuminated, and (e) in place no more than thirty days prior and fourteen (14) days after the relevant election, Town Meeting, or other vote or decision.

9.3.1.2 A *Temporary Sign* erected on a lot by a contractor which meets all of the following conditions: (a) no more than six (6) square feet in area on a side, (b) located at least five (5) feet from the front property line, (c) no more than five (5) feet above ground level, (d) not-illuminated, (e) in place while the contractor is actually performing work on that lot, and (f) in place no more than fourteen days prior to the start and fourteen (14) days after completion of the project.

9.3.1.3 A *Temporary Sign* erected by a real estate agent or rental agent advertising sale or rental of the premises on the lot upon which the *Sign* is located which meets all of the following conditions: (a) no more than six (6) square feet, (b) located at least five (5) feet from the front property line, (c) no more than five (5) feet above ground level, (d) not-illuminated, and (e) in place no more than fourteen (14) days after the rental or sale of the premises.

9.3.1.4 A *Temporary Sign* advertising a *Special Event* being conducted within the Town of Shelburne which meets all of the following conditions: (a) no more than twenty-one (21) square feet in area on a side, (b) located at least five (5) feet from the front property line, (c) no more than five (5) feet above ground level, (d) not-illuminated, (e) located on private property, (f) one of no more than 5 such *Signs* in the Town of Shelburne sited as reasonably necessary to direct participants to the event location, and (g) in place no more than twenty-one (21) days prior and fourteen (14) days after the *Special Event* being advertised.

9.3.1.5 A *Temporary Sign* advertising a *Special Event* being conducted within the Towns of Ashfield, Buckland, Charlemont, Colrain, Conway, Hawley, Heath, or Rowe, which meets all of the following conditions: (a) no more than twenty-one (21) square feet in area on a side, (b) located at least five (5) feet from the front property line, (c) no more than five (5) feet above ground level, (d) not-illuminated, (e) located on private property on a road leading to the town in which the event is being conducted, (f) one of no more than two (2) such *Signs* per numbered state route located in the Town of Shelburne which are separated by at least .5 miles of distance, (g) the only such *sign* on a lot, and (h) in place no more than twenty-one (21) days prior and fourteen (14) days after the *Special Event* being advertised.

9.3.1.6 A *Temporary Sign* in the form of a banner strung across Bridge Street in the Village Commercial Zone advertising a *Special Event* being conducted within the Town of Shelburne, which meets all of the following conditions: (a) no more than two and a half (2 ½) feet wide and twenty-five (25) feet long, (b) approved for installation by a vote of the Board of Selectmen, or by a non-profit organization designated by the Board of Selectmen to make such determinations, (c) not-illuminated, (d) installed in a manner and location which has been approved by the Board of Selectmen, and (e) in place no more than twenty-one (21) days prior and fourteen (14) days after the *Special Event* being advertised.

9.3.1.7 Legal notices, identification, informational, warning, or directional *Signs* created or required by governmental bodies and road *Signs* identifying the name of private roads.

9.3.1.8 A plaque, tablet, or inscription indicating the name of a building, date of erection, or other commemorative information, which meets all of the following conditions: (a) no more than thirty (30) square feet in area, (b) an integral part of the building structure or attached flat to the face of the building, and (c) not directly illuminated.

9.3.1.9 The flags of the United States of America, Military Memorial, Commonwealth of Massachusetts, and/or the Town of Shelburne. Non-commercial flags that are not illuminated.

9.3.1.10 A *Sign* on residential property indicating the address and/or the name of the person(s) or family residing in the premises and/or pertaining to an accessory use (other than a home-based business) permitted under the Town of Shelburne Zoning Bylaw which meets all of the following conditions: (a) no more than two (2) square feet in area on one side, (b) located at least five (5) feet from the front property line, (c) no more than five (5) feet above ground level, (d) not-illuminated, and (d) the only such *Sign* on the lot.

9.3.1.11 A *Sign* pertaining to a home-based business operating on the premises which business is permitted under the Town of Shelburne Zoning Bylaw which meets all of the following conditions: (a) no more than twelve (12) square feet in area on a side, (b) located at least five (5) feet from the front property line, (c) no more than eight (8) feet above ground level, (d) not-illuminated, and (e) the only such *Sign* on the lot.

9.3.1.12 A *Sign* advertising the name of the business or organization which maintains the landscaping on a Town-owned or Commonwealth of Massachusetts-owned public space for free or for a reduced fee which *Sign* meets all of the following conditions: (a) no more than one (1) square foot in area on a side, (c) no more than two (2) feet above ground level, and (d) not-illuminated.

9.4. General Regulations

9.4.1 *Temporary Signs*, *Signs* on residential property, and plaques, tablets, or inscriptions on buildings in which do not meet the requirements set forth in Section 9.3, above, are not permitted.

9.4.2 *Signs* that are permitted and regulated by this Bylaw are *Freestanding Signs* or *Signs* painted on, or attached to, a building or *Portable Signs* permitted by Section 9.5, below.

9.4.3 *Signs* attached to a building shall not extend above a flat roof or the elevation of the front wall by more than two (2) feet.


9.4.4 The total area of *Commercial Signs* in the Village Commercial (VC) district, regardless of type (Freestanding, painted, attached to a building, portable, or flags), on a lot shall not cover more than 10% of first floor business store frontage area on the street toward which the *Signs* are oriented.

9.4.5 The total area of *Commercial Signs* outside the Village Commercial (VC) district, regardless of type (Freestanding, painted, attached to a building, or flags), on a lot shall not be more than

one (1) square foot per linear foot of lot frontage on the street toward which the *Signs* are oriented and the surface area of each *Sign* shall not aggregate more than ten percent (10%) of the area of the wall area on which it is displayed.

9.4.6 No individual *Sign* shall exceed eighteen (18) feet in height above ground level.

9.4.7 The area of *Signs* shall be determined by calculating the area of the actual square footage of the *sign* frame, or the smallest enclosing rectangle which includes the *Sign*'s wording and any other

design elements, whichever is greater. Example: 

9.4.8 *Signs* attached to or projecting from the outside of a building or from a *Freestanding Sign* that are regularly or occasionally replaced or substituted are included in the maximum allowable area for *Signs* on a lot.

9.4.9 *Signs* painted on or placed on a window are included in the maximum allowable area for *Signs* on a lot.

9.4.10 No *Signs* may be located in the public right-of-way, except as allowed by subsection 9.3.1.7, 9.3.1.12, above or subsection 9.5.1, below.

9.4.11 If a *Sign* is illuminated, the source of light shall be either from within the *Sign* or shall be white light exterior to the *Sign* and shielded so as to prevent direct glare from the light source onto any public street or onto any adjacent property. Neon *Signs* shall not exceed 6 square feet and only one neon *Sign* is allowed per lot.

9.4.12 *Signs* in residential districts may not be illuminated except for *Signs* identifying a place open to the public, such as a church, lodging establishment or nursing home.

9.4.13 *Signs* that may be confused with traffic control *Signs* or signals because of their size, location, movement, content, coloring, or manner of illumination are not permitted.

9.4.14 No *Sign*, except time and temperature indicators, flags, or barber poles, or flags described in Section 9.7.3, below, may flash, blink, scroll, or move.

9.4.15 No *Sign* may generate music or an audible message.

9.4.16 Not more than one (1) *Freestanding Sign* may be erected on any lot except:

9.4.16.1 If required under the terms of a special permit issued by the SPGA for the purpose of traffic safety, a second *Freestanding Sign* may be erected on one lot if oriented to, and intended to be read from the Mohawk Trail.

9.4.16.2 A second *Freestanding Sign* may be erected on one lot if said lot has at least 100 feet of road frontage on each of two (2) public ways, and where one *Sign* is oriented to and intended to be read from one of the public ways, and the second from the other public way

9.4.17 The General Regulations set forth in this Section 9.4 shall apply to (a) a historic site marker or plaque, (b) a gravestone, and (c) a *Sign* directing and guiding traffic, pedestrians, and/or parking on the premises where the *Sign* is located if it bears no advertising matter (including business name or products), is no more than two (2) square feet in area on a side and is not illuminated.

9.5. *Portable Signs*

Portable Signs are not permitted, except those which are consistent with the following:

9.5.1 A *business establishment* located in the Village Commercial (VC) district may have one *Portable Sign* which shall be placed on the sidewalk in front of the business establishment if it is located on a public way, or if the establishment is not located directly on a public way, at a location on the nearest public way.

9.5.2 Any *Commercial Enterprise* located in the Town of Shelburne outside the Village Commercial (VC) district may have one *Portable Sign* which shall be placed on the lot where the business establishment is located.

9.5.3 One (1) *Portable Sign* placed near the Bridge Street end of the Iron Bridge - which *Sign* generally directs potential customers to Buckland businesses.

9.5.4 An *Agricultural Business Establishment* that is located in the Town of Shelburne but not on the Mohawk Trail may place one (1) an off-premises *Portable Sign* which is also an *Agricultural Sign* in a location on private property on the Mohawk Trail at the closest intersection to the *Agricultural Business Establishment* during its sales season with the written permission of the landowner on which the *Sign* is placed.

9.5.5 A farmers market located in the Town of Shelburne may, during its season of operations, have a *Portable Sign* which shall be placed on the lot where the market is located and up to five (5) off-premises *Portable Signs* as reasonably required to direct potential customers to the market.

9.5.6 *Portable Signs* permitted by this Section 9.5 shall be located so as to not unreasonably impede pedestrian or vehicular traffic.

9.5.7 *Portable Signs* in the Village Commercial (VC) district shall be displayed only during hours of business operation.

9.5.8 The area of *Portable Signs* shall not exceed twelve (12) square feet on a side.

9.6. *Non-Portable Commercial Signs*

9.6.1 One *Commercial Sign* in the form of a flag is permitted provided said flag does not exceed fifteen (15) square feet in surface area and is displayed on a permanent flag pole.

9.6.2 A *Freestanding Sign* may have more than one *Commercial Sign* on it with a maximum area of sixty-four (64) square feet of area on a side.

9.6.3 Except as otherwise provided in Section 9.4, above, and Section 9.7, below, all *Commercial Signs* must pertain to the sale of products, the provision of accommodations or services, or to activities conducted, on the premises where the *Sign* is located.

9.7. Off-Premises *Commercial Signs*

9.7.1 *Commercial Signs* that are not *Portable Signs* and which pertain to the sale of products, the provision of accommodations or other services, or activities conducted, not on the premises where the *Sign* is located are permitted only in accordance with this Section 9.7.

9.7.2 *Trailblazing Signs* accompanying and related to Commonwealth of Massachusetts Department of Transportation Tourist Oriented Directional Signs (“TOD” *Signs*) may be permitted by the Zoning Board of Appeals provided that a public hearing is held by the Board giving property owners who may be aggrieved by the placement of such *Signs* the right to object. *Trailblazing Signs* shall conform to the following regulations:

9.7.2.1 A *Sign* assembly shall consist of no more than three (3) *Sign* panels mounted on a support post, with not more than one (1) *Sign* panel per applicant.

9.7.2.2 Not more than one (1) *Sign* assembly allowed for an intersection or other decision-making point. No straight ahead application shall be allowed.

9.7.2.3 A *Sign* panel shall be eight (8) inches high by twenty-four (24) inches wide. It shall have a “TOD” blue background, a white border, a white legend, a directional arrow, and may include mileage.

9.7.2.4 Applicants shall be responsible for the full costs for fabricating and supplying the *Sign* panel(s), and shall also be responsible to the Town of Shelburne for the cost of vandal-proof fasteners and support posts.

9.7.2.5 The Town of Shelburne highway department shall be reimbursed by the applicant, for the cost of installing the *Sign* supports, attaching the *Sign* panels to the supports and for maintaining the *Sign* assembly.

9.7.2.6 Any *Sign* panels destroyed by accident, vandalism or wear shall be replaced at the expense of the applicant.

9.7.2.7 The location of an existing traffic control device, or the need for a new device, shall take precedence over the location of a *Trailblazing Sign*, either existing or proposed location of a *Trailblazing Sign*, either existing or proposed.

9.7.3 A municipal directory of businesses and/or points of interest may be created and installed with the permission of the Board of Selectmen. A directory of businesses may be permitted or required of a developer of commercial real estate by the Zoning Board of Appeals as a condition of a Special Permit. A directory of residences may be permitted or required of a developer of a residential subdivision by the Planning Board. Such directories must be appropriate to their location and comply with all other regulations applicable to the zoning district in which they are located.

9.7.4 The Board of Selectmen may authorize the placement of one or more *Commercial Signs* located on the Mohawk Trail easterly of the Village of Shelburne Falls directing visitors to the Village.

9.8. Pre-Existing Signs

A *Sign* that would otherwise be regulated by this Bylaw and that legally existed under the Town of Shelburne *Sign* Bylaw in effect prior to the approval of this Bylaw by Town Meeting shall be deemed a pre-existing, non-conforming, permitted *Sign*.

9.9. Enforcement

9.9.1 The Building Inspector shall be the enforcement officer for this *Sign* Bylaw.

9.9.2 All *Signs* that are regulated by this Bylaw shall require a *Sign* zoning permit issued by the Building Inspector prior to being installed. The Building Inspector shall issue a *Sign* zoning permit if the Building Inspector determines that the proposed *Sign* meets the standards set forth in this Bylaw. No *Sign* shall be erected which does not conform to the issued *Sign* zoning permit.

9.9.3 The Building Inspector is authorized to order the repair or removal of any *Sign* and its supporting structures which in his/her judgment is dangerous, in disrepair, has been abandoned, or is erected, installed, or maintained contrary to this Bylaw.

SECTION 10.0 NON-CONFORMING USES

10.1 GENERAL REGULATIONS

10.1.1 The lawful use of any structure or land existing at the time of the enactment or subsequent amendment of this by-law may be continued even though such structure or use does not conform with this by-law.

10.1.2 ALTERATION: no non-conforming use shall be changed, moved or extended and no non-conforming building or structure shall be constructed or substantially altered or enlarged except where alteration, reconstruction, extension or structural change to a single or two family residential structure does not increase the non-conforming nature of said structure or except pre-existing non-conforming structures or uses may be extended or altered provided that no such extension or alteration shall be permitted unless there is a finding by the Zoning Board of Appeals that such change, extension or alteration shall not be substantially more detrimental than the existing non-conforming use to the neighborhood. This section shall not apply to billboards, signs and other advertising devices subject to the provisions of Sections 29 through 33 inclusive of Chapter 93 of the Massachusetts General Laws.

- 10.1.3 RESTORATION:** In the event that a non-conforming building is destroyed by fire or other cause, the same may be reconstructed or repaired on the same location for the same or less non-conforming use provided the new building may be equal in appearance and character to the original structure.
- 10.1.4 LIMITATION ON RESTORATION:** In the event that any non-conforming building is damaged by fire, explosion or other cause, restoration work must be undertaken within two years of the date damage is inflicted unless, upon application to the Zoning Board of Appeals, it can be shown that restoration within the time limit is impossible in which case extension of time may be granted.
- 10.1.5 CHANGES:** once changed to a conforming use, no structure or land shall be permitted to revert to a non-conforming use.
- 10.1.6 ABANDONMENT:** a non-conforming use or structure, which has been abandoned or not used for more than two years shall not be re-established and any future use shall conform with this by-law.

SECTION 11.0 PARKING REQUIREMENTS

- 11.1** All parking demand created by new structures or uses, additions to existing structures or uses and change of use in existing structures shall be accommodated on the premises entirely off street. Normally this will require two (2) parking spaces per dwelling unit plus one (1) parking space per motel guest unit plus one (1) space per employee plus one (1) space per one hundred fifty (150) square feet of retail floor space. The ZBA may waive or modify this requirement, in part or in its entirety, if it is determined that to do so is in the public interest and does not substantially derogate from the intent or purpose of this by-law.
- 11.2** No off-street parking area shall be maintained within ten (10) feet of a street line. For parking areas of six (6) cars or more the following shall apply:
- 11.2.1** their use shall not require backing onto a public way;
 - 11.2.2** there shall not be more than one (1) entrance and one (1) exit from such lots per three hundred (300) feet of street frontage or fraction thereof. If necessary to meet this requirement, user shall arrange for shared egress;
 - 11.2.3** such lots shall be screened from any abutting residential use by densely planted shrubs;
 - 11.2.4** egress likely to be used more than five hundred (500) times per day (serving more than one hundred fifty (150) dwelling units or two hundred (200) employees or one hundred (100) restaurant seats or two (2) gas pumps) shall provide three hundred (300) feet visibility in each travel direction on a minor or collector street, six hundred (600) feet visibility on an arterial street. Minor streets shall include, but not limited to, Water Street, Severance Street, Church Street, Barnard Road and Anderson Road. Arterial streets shall include, but not limited to, Main Street, Bridge Street, Bardwells Ferry Road, South Maple Street and Little Mohawk Road.

SECTION 12.0 MOBILE HOMES AND CAMPERS

- 12.1 GENERAL REGULATIONS:** No person shall park, store or occupy a camper or mobile home for living or business purposes in the Town of Shelburne except:

- 12.1.1** in a garage or other accessory building or in the rear half of a lot owned or occupied by the owner of the camper or mobile home but, it must be located at least twenty-five (25) feet from the rear and side lot lines and its use for living and/or business purposes is prohibited
- 12.1.2** as a temporary office incidental to construction or development of the premises on which the camper or mobile home is located
- 12.1.3** as a temporary residence on or near the site of a permanent residence which has been destroyed by fire or other natural holocaust. The owner or occupier of the residence which has been destroyed by fire or other natural holocaust may place a mobile home on the site and reside in such a home for a period of twelve (12) months. No zoning bylaws shall prohibit this, and any such mobile home shall be subject to the provisions of the State Sanitary Code.
- 12.1.4** The owner of land may permit occupancy of such land by a non-paying guest using a camper for living purposes for a period not to exceed two (2) weeks in any calendar year. If the non-paying guest proposes to stay longer than two weeks a permit must be obtained from the Select Board.
- 12.1.5** A mobile home may be occupied as a permanent residence only if within a Mobile Home Park. Mobile Home Parks shall be allowed only by a special permit from the Zoning Board of Appeals and following approval by the Board of Health. The Zoning Board of Appeals shall grant a special permit for a Mobile Home Park only if it finds:
- 12.1.5.1** that the park has access, both to the park and within the park, adequate to serve the number of rental spaces proposed
 - 12.1.5.2** that utilities, including water supply, disposal of sewage effluent and electricity are adequately provided for with a utilities layout meeting the board's approval
 - 12.1.5.3** that the site design of the park makes the most effective use, reasonably possible, of the site topography and existing landscaping so as to preserve existing trees, natural features, preserve vistas and river views from public ways and minimize intrusion into the character of existing development.
- 12.1.6** The Zoning Board of Appeals shall seek the recommendation of the Planning Board concerning any or all of these issues. Normally, these requirements will mean that mobile home parks will only be allowed when the following are complied with:
- 12.1.6.1** Access: if the density of the proposed mobile home park exceeds four (4) rental spaces per acre of total park area then the park must have direct access to a major street;
 - 12.1.6.2** Utilities and/soils: unless in an area already serviced by public sewer and water systems, such parks shall not be allowed on soils rated as having "severe" limitations for septic tank sewage effluent disposal as determined by the U.S.D.A. Soil Conservation Soil Survey of Franklin County completed in 1967;
 - 12.1.6.3** Proximity to Existing Development: mobile home parks shall not be allowed on a parcel which is within eight hundred (800) feet of three (3) or more existing dwellings;
 - 12.1.6.4** In all cases, a mobile home park shall meet the following requirements:
 - 12.1.6.4.1** The minimum lot area of a mobile home park shall be ten acres but not less than six thousand (6,000) square feet times the number of rental spaces.

- 12.1.6.4.2** Each rental space shall have a minimum area of five thousand (5,000) square feet and shall be serviced with electricity, water and sanitary sewage suitable for permanent connection.
- 12.1.6.4.3** No mobile home shall be placed within one hundred (100) feet of a street or other lot line unless dense vegetation or topography provide effective screening in which case, a fifty (50) foot separation may be allowed. No mobile home shall be allowed closer to another mobile home or structure than twenty-five (25) feet measured from its end or forty-five (45) feet measured laterally.
- 12.1.6.4.4** The provisions of this bylaw shall not be retroactive to apply to a camper or mobile home now located in the Town of Shelburne but shall apply to any future construction or occupancy of said camper or mobile home.

SECTION 13.0 SPECIAL REGULATIONS

13.1 Earth Removal: the removal of more than fifty cubic yards of sod, loam, and gravel, mineral aggregates or rock from any premises within any twelve month period, except incidental to construction of a building for which a building permit is in force or incidental to routine farming operations, shall be allowed only by special permit from the Zoning Board of Appeals. Such special permit shall require restoration of removal areas through regrading, replacement of topsoil and planting, and, shall not allow removal to create hazards or destroy future utility of the land.

13.2 Sawmills and Logging:

13.2.1 Operation of a sawmill on any premises shall be allowed only by special permit in the Rural Residential/Agricultural or Industrial Districts from the Zoning Board of Appeals.

13.2.2 All forestry operations shall comply with the regulations of Mass General Law, Chapter 132 which include obtaining an approved cutting plan for harvesting more than 25 thousand board feet and following Best Management Forestry Practices such as properly building and maintaining skid trails, truck roads and stream crossing, reducing slash, and limiting cutting in wetland buffer zones and forestry equipment operations near wetlands, vernal pools and endangered species habitat.

13.2.3 Any forestry operations within 100 feet of wetlands, vernal pools or endangered species' habitat not done under an approved cutting plan shall receive the approval of the Conservation Committee.

13.3 Unsightly Condition: Accumulated or scattered junk, junk cars, trash, debris or scrap materials shall be adequately screened by the occupant or owner away from the view of public lands and ways in all cases; and, similarly, screened from the lands of any adjacent property owners upon their request for such relief to the selectmen.

SECTION 14.0 ENVIRONMENTAL CONTROLS

14.1 Disturbances: No use shall be allowed if it will cause undue sound, noise, vibration, odor or flashing perceptible without instruments more than two hundred (200) feet from the boundaries of the originating premises except for warning devices for construction work, maintenance, seasonal or intermittent agricultural use or other special circumstances.

- 14.2** Pollution: No sewage effluent leaching field shall be located within one hundred (100) feet of the normal bank of any Year-round stream or of any pond. All requirements of the sanitary code of the Department of Public Health and all Regulations of the Department of Environmental Protection shall be complied with prior to the issuance of any permits. Satisfying health requirements may, in some cases, require land area in excess of the minimum requirements of Section 6.0.
- 14.3** Screening: Open storage and loading of service areas shall be screened from any adjacent residence or public way by plantings. Junk, unregistered motor vehicles, trash or debris shall be confined out of sight.
- 14.4** Hazard: No use shall be allowed which would create hazard due to explosion, fire or other causes. Potentially hazardous conditions shall be fenced, covered or otherwise rendered safe.
- 14.5** Flooding: The peak flood channel of any year-round stream or river shall not be reduced by filling.

SECTION 15.0 ADMINISTRATION

- 15.1 ENFORCEMENT**: This by-law shall be enforced by the building inspector. No building shall be built or altered and no use of land shall be begun or changed without a permit having been issued by the building inspector. Any person violating the provisions of this by-law may be fined not more than three hundred dollars (\$300) for each offense. Each day that said violation continues shall constitute a separate offense. In the event that there is not a building inspector, the Board of Selectmen shall act as the enforcing body.

15.2 ZONING BOARD OF APPEALS

- 15.2.1** There is hereby established a Zoning Board of Appeals of five members and three alternate members to be appointed by the Selectmen as provided in Massachusetts General Laws Chapter 40A. The Zoning Board of Appeals shall act on all matters within its jurisdiction under this by-law in the manner prescribed in Massachusetts General Laws Chapter 40A. The Zoning Board of Appeals shall have the following powers:

- 15.2.1.1 Appeals**: To hear and decide an appeal made or filed by any person aggrieved by reason of his/her inability to obtain a permit from any administrative official under the provision of the Massachusetts General Laws Chapter 40A.

15.2.1.1.1 Each appeal application, when submitted, shall be accompanied by a certified check or money order in accordance with the Regulations and fee schedule of the Zoning Board of Appeals.

15.2.1.1.2 Fees for the ZBA appeals are not refundable.

15.2.1.1.3 Appeal fee does not include advertising costs for hearings. All advertising costs shall be borne by the applicant(s).

- 15.2.1.2 Variances**: To authorize, upon appeal or upon petition, a variance from the dimensional terms of this by-law where owing to conditions especially affecting such parcel or such building, but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this by-law would involve substantial hardship, financial or otherwise, to the appellant and where desirable relief may be granted without substantial detriment to the public good and without nullifying, or substantially derogating from, the intent or purpose of this by-law, but not otherwise.

SECTION 16.0 Shelburne, Massachusetts Telecommunications By-law

16.1 PURPOSE: The purpose of this Telecommunications Bylaw is to:

- A. preserve the character and appearance of the Town while simultaneously allowing adequate wireless communication services to be developed,
- B. minimize any adverse impacts,
- C. provide standards and requirements for regulation, placement, construction, modification, and removal of *Commercial Radio Service (CRS) Facilities* including Personal Wireless Service facilities,
- D. minimize the total number and *height* of freestanding *CRS facilities* throughout the community, and
- E. provide incentive for collocation by means of using existing structures.

16.2 DEFINITIONS:

Architectural and Engineering Plans - plans certified by a State of Massachusetts licensed engineer, created to show the design of a *CRS facility*, and consisting of the materials described in Subsection 16.9.

Balloon Test – The raising of a balloon (or placement of a “crank up” tower, crane or temporary structure) equal to the height of the proposed *CRS tower* for a period of 4 hours on a pre-determined date prior to the hearing for a special permit application. If a balloon is used the diameter shall be equal to the largest antenna/dish proposed for the *CRS tower* or the width of the tower, whichever is larger. Said date will be established, including an alternative date due to inclement weather, at the time of the pre-application meeting with the ZBA. The applicant will be responsible for placing a notice 1 week prior to the test on site (size, location, and type of notice will be determined by the ZBA). The applicant will also be responsible for placing a public notice in at least one local publication and notifying abutters via US Mail at least 1 week prior to the test. Failure to notify or place the appropriate notices will result in a continuance of the public hearing of the special permit application until this requirement is met.

Building, roof, or wall-mounted *CRS facility* - a *CRS facility* where antennas are mounted either on the roof or face(s) of a legally existing building or structure other than one which is accessory to a telecommunications facility.

Collocation - the act of placing antennas at a *CRS facility*.

Commercial Radio Service Overlay District (CRSOD) - an area designated by the Town on the Zoning Map as a desired location for a *CRS facility*.

Commercial Radio Service (CRS) facility - a facility consisting of a radio frequency antenna configuration, support structure, *equipment storage shelters*, and accessory equipment required for the reception, switching and/or transmission of wireless telecommunications including, but not limited to, paging, enhanced specialized mobile radio, personal communications services, cellular telephone, and similar technologies.

Commercial Radio Service (CRS) tower - a support structure including monopoles, self-supporting towers, or guyed towers used to attach antennas for the purpose of operating a *CRS facility*.

Equipment Storage Shelter - a structure used to house CRS equipment. These shelters are not intended for human habitation.

Guyed tower - a tower supported by guy wires.

Height - shall mean, when referring to a *CRS tower*, the distance measured from the mean ground level to the highest point on the structure, including antennae.

Monopole - a self-supporting structure composed of a single spire or column used to support telecommunications equipment.

Municipal Facility - any structure or land owned by the Town of Shelburne used for municipal purposes. This includes, but is not limited to; office space, garages, storage yards, parks, playgrounds, roads, or other Town-owned property.

Wireless antenna - a device for transmitting and receiving electromagnetic waves. This includes panel antennas, whip antennas, and microwave dishes.

Telecommunications – this term includes commercial mobile radio services, personal communications services (PCS), wireless telecommunications, conventional cellular telephone, WiFi/WiMAX, and related technologies

Zoning Board of Appeals (ZBA) – Town Board authorized to administer this Subsection of the Bylaw and serve as the Special Permit Granting Authority as applicable.

16.3 GENERAL REQUIREMENTS:

1. A Commercial Radio Service Overlay District (*CRSOD*) shall be established in the Town of Shelburne as shown on the map entitled Official Zoning Map for the Town of Shelburne.
2. The requirements established in this Section shall supersede all other requirements for *CRS facilities* in the Town of Shelburne Zoning Bylaw and/or Subdivision Control Plan.
3. Where an Application may be required under Subsection 16.9, the applicant is strongly encouraged to meet with the Town of Shelburne Zoning Board of Appeals (ZBA) at a pre-application conference to discuss the project, process, waivers, and submittal requirements.
4. One and/or all of the parties involved as an applicant for this permit, must have a current FCC license.
5. A copy of the FCC license of the applicant(s) must be provided upon submittal of the application.
6. All *CRS facilities* are subject to and must comply with Subsections 16.7, 16.8, 16.10 and 16.12 of this bylaw.
7. An Environmental Assessment must be provided to the town of Shelburne prior to the issuance of a building permit if the CRS facility location is in a defined environmentally sensitive area as defined by current NEPA standards.

8. Access to the site shall be by a roadway which is passable in all seasons and which the applicant has a legal right to use. Roadway must have a minimum width of 10' (ten feet). A gravel road is permitted.
9. Traffic associated with the *CRS facility* shall not adversely affect abutting ways.
10. All new *CRS facilities* shall be at least a distance of 500 feet from any residential structure.
11. All new *CRS facilities* shall be at least a distance of 1500 feet from the property line of any school.
12. Existing on-site vegetation shall be preserved to the maximum extent practicable.
13. The equipment storage shelter and all accessory equipment shall be screened from abutting properties to the greatest extent possible.
14. Night lighting of the *CRS tower* shall be prohibited unless required by the Federal Aviation Administration (FAA).
15. Any lighting required by the FAA shall be shielded to prevent an undue burden on abutting property owners. All other lighting associated with the facility shall not be visible beyond the property line.
16. A minimum 6' high chain link fence will be required around the *CRS facility*.
17. No *CRS facility* owner or lessee or employee thereof shall act to exclude or attempt to exclude any other CRS provider from the same location.
18. A *CRS facility* owner or lessee or employee thereof shall cooperate in good faith to achieve collocation of antennae with other CRS providers.
19. Non reflective painting of any or all equipment is recommended in all installations, and may be required to help the *CRS facility* blend in with its surroundings.
20. All structures and fixed equipment associated with a *CRS facility*, with the exception of fencing, shall meet the setback requirements as set forth in the applicable Zoning District, or be twenty (20) feet from any property boundary, whichever is greater.
21. All *CRS towers* must be engineered to fall at a pre-determined height, enabling the entire structure to collapse and be contained within the lot area of the lot on which it is located.
22. To protect the character, appearance and property values of property, concealment shall be the goal of the applicant and "stealth" or concealment technology is recommended, and may be required outside the *CRSOD*.
23. A stated benefit of wireless telecommunications is the availability of said service to the public on a reliable and consistent basis, even in weather-related emergencies. Therefore, it is the expectation that all new or upgraded *CRS facilities* will be provided with automatic backup power on site capable of powering the *CRS facility* for a period of not less than one hundred twenty (120) hours, unless the facility is shown to be located in an environmentally sensitive area and the installation is not feasible.

16.4 FACILITIES WITHIN THE *CRSOD*:

All *CRS facilities* within the *CRSOD* shall abide by the general regulations set forth in Subsection 16.3 of this bylaw and the regulations set forth in this subsection.

A. FACILITIES PERMITTED WITHIN THE *CRSOD*:

1. Within the *CRSOD* the following activities are permitted following review and approval of *Architectural and Engineering Plans* by the Zoning Board of Appeals (prepared in accordance with Subsection 16.9.A.1-8 of this bylaw):
 - a. The collocation of a new *CRS facility* or the addition of antennae or structures at an existing *CRS facility*.
 - b. The replacement of any *CRS tower* with another of the same *height*.
2. Within the *CRSOD* the following activities are permitted following review and approval of the Building Inspector (*Architectural and Engineering Plans* may be required, prepared in accordance with Subsection 16.9.A.1-8 of this bylaw):
 - a. Regular maintenance of the *CRS facility*.
 - b. Replacement of antennae, equipment storage shelters, and accessory equipment with like-kind materials used for the same purpose as those being replaced.

B. FACILITIES REQUIRING A SPECIAL PERMIT WITHIN THE *CRSOD*:

1. Within the *CRSOD* a Special Permit shall be required, in addition to the review and approval of Architectural and Engineering Plans, for the following activities:
 - a. The creation of a new *CRS facility* when collocation on an existing structure within the same *CRSOD* is not an option because of limited structural and/or vertical space on existing structures or limits of network design. Any new *CRS facility* must structurally allow for reasonable current or future collocation.
 - b. The *height* extension of a *CRS facility* to a maximum *height* of 195 feet including all antennas, lightning rods, and any other attachments. Such an extension is subject to Subsection 16.4.C.2 and 3 of this bylaw.

C. DIMENSIONAL REQUIREMENTS WITHIN THE *CRSOD*:

1. The maximum *height* of any *CRS tower* shall be 150 feet, including all antennas, lightning rods, and all other attachments.
2. The *height* may be increased to 195 feet, including all antennas, lightning rods, and all other attachments only upon a written request for a waiver as per Subsection 16.10 of this by-law. Such request must be from the applicant at the time of submittal of the application to the ZBA. The applicant must demonstrate the technological necessity for the additional *height* above 150 feet.
3. Any new *CRS facility* must structurally allow for reasonable collocation space for a minimum of two additional licensed CRS providers now or in the future.
4. No minimum lot frontage shall be required for any new *CRS facility* located within the *CRSOD*, but access must be via a legal, deeded right of way.

16.5. FACILITIES OUTSIDE THE *CRSOD*:

All *CRS facilities* outside the *CRSOD* shall abide by the general regulations set forth in Subsection 16.3 of this bylaw and the regulations set forth in this subsection.

A. GENERAL REQUIREMENTS OUTSIDE THE *CRSOD*:

1. The applicant must provide substantial proof that locating within the *CRSOD* is not technologically feasible or that collocation on existing structures is not technologically possible. Such proof shall be in the form of a technical report, including coverage plots of radio signal propagation for the *CRS facility*. The report shall include all information requested by the ZBA at the pre-application meeting, including but not limited to a written narrative explaining the rationale for the proposed location and *height* with respect to the *CRS* network design, if applicable.
2. For new *CRS towers* outside the *CRSOD* the applicant shall conduct a *balloon test* at the location of the new *CRS tower*.

B. FACILITIES PERMITTED OUTSIDE THE *CRSOD*:

1. Outside the *CRSOD*, the following activities are permitted following the review and approval of *Architectural and Engineering Plans* by the Zoning Board of Appeals (such plans shall be prepared in accordance with Subsections 16.5.A and 16.9.A.1-8 of this bylaw):
 - a. The *collocation* of antennae on an existing *CRS tower* that does not exceed 10 feet above tree line or 100 feet above the ground, whichever is less, and/or the addition of one or more accessory structures at an existing *CRS facility*;
 - b. The replacement of any *CRS tower* with another of the same *height*; or
 - c. The installation of building, roof or wall-mounted *CRS facilities* subject to Subsection 16.3 and Subsection 4.1 of this bylaw provided that: No equipment, antennae, or structures associated with the *CRS facility* shall exceed 10 feet above the height of the building or 100 feet above the ground, whichever is less; AND all antennas and accessory equipment shall be fully screened to be harmonious and architecturally compatible with the building, including but not limited to painting equipment to match the building .
2. Outside the *CRSOD* the following activities are permitted following review and approval of the Building Inspector (*Architectural and Engineering Plans* may be required, prepared in accordance with Subsection 16.9.A.1-8 of this bylaw):
 - a. Regular maintenance of the *CRS facility*.
 - b. Replacement of antennae, equipment storage shelters, and accessory equipment with similar materials used for the same purpose as those being replaced.

C. FACILITIES REQUIRING A SPECIAL PERMIT OUTSIDE THE *CRSOD*:

Outside the *CRSOD*, a special permit shall be required for all new *CRS facilities*, except as set forth in Subsections 16.5.B and 16.6 of this bylaw.

D. DIMENSIONAL REQUIREMENTS OUTSIDE THE *CRSOD*:

1. The maximum *height* for a new *CRS facility* shall be 10 feet above tree line not to exceed 100 feet, whichever is less, including all antennas, lightning rods, and all other attachments.
2. The *height* of a new or existing *CRS facility* may be 20 feet above tree line not to exceed 100 feet, whichever is less, including all antennas, lightning rods, and all other attachments only upon a written request for a waiver as per Subsection 16.10 of this by-law. Such request must be from the applicant at the time of submittal of the application to the ZBA. The applicant must demonstrate the technological necessity for the additional *height*.
3. Minimum lot frontage shall be required for any new *CRS facility* located outside the *CRSOD*.

16.6 EXEMPTIONS:

The following types of wireless communication towers are exempt from the Telecommunication Bylaw:

- A. Towers used in accordance with the terms of any radio services license issued by the Federal Communication Commission (FCC) for any amateur, personal, or private use, provided that the tower is not used commercially in any manner, and is less than 100 feet.
- B. Satellite dishes and antennas for residential use.
- C. Any *CRS facility* or related facility in existence before the adoption of this bylaw, until such time as that facility is altered.
- D. Police, fire, medical and related emergency dispatch services operated by Federal, State, or municipal entities.

16.7 CRS SIGNS:

All *CRS facilities* must comply with any or all current applicable Town of Shelburne bylaws for signs. No other signs are permitted other than those meeting the following criteria:

1. All *CRS facilities* must display minimally one sign that displays the following information:
 - a. Identification of the facility – address
 - b. Facility Owner(s) and contact Phone Numbers
 - c. A 24 hour Emergency Contact Telephone Number
 - d. Operator(s) of the facility and contact Phone Numbers
 - e. FCC License #'s of Operator(s), Tenant(s), Owner(s)
2. No trespassing sign

3. Any signs required by the FCC, FAA or any regulatory agency having authority
4. No Sign(s) shall be used for advertising
5. Sign(s) must be visible within 25 feet of the facility and/or from the facility access

16.8 NON USE:

All unused towers or parts thereof or accessory facilities and structures which have not been used continuously for one year shall be dismantled and removed at the owner's expense.

16.9 APPLICATION REQUIREMENTS:

A complete application to the ZBA is required, except for work described in Subsections 16.4.A.2 or 16.5.B.2. A building permit application is always required. Any application for a *CRS facility* shall contain the following:

A. ARCHITECTURAL AND ENGINEERING PLANS:

1. A title sheet with the following:
 - a. A title labeling the company, type of proposal (i.e. collocation to an existing *CRS facility*), and location.
 - b. A vicinity map showing all major roadways within 2000'
 - c. A sheet index describing all parties involved in the project.
 - d. A project summary block labeling the applicant, facility address, owner, deed reference, facility parcel number, and current zoning district.
2. A general plan sheet showing the complete plan view of the proposal at a preferred scale of 1"= 20' or a scale appropriate to accurately portray the proposed facility. All setback lines, property lines, easement lines, and utility lines shall be shown.
3. A project area plan of the facility area that shows the detail of the facility area at a preferred scale of 1"= 5' or a scale appropriate to accurately portray the proposed facility.
4. Elevation plans showing the complete proposal at a scale appropriate to accurately portray the proposed facility.
5. Photo simulations from a highly visible location showing before and after. The location will be predetermined by the pre-application meeting with the ZBA.
6. A view-shed map showing the affected areas within a 500' radius of the location.
7. Photos of relevant equipment associated with the facility, including but not limited to buildings, antennas, and other equipment outlined in the pre-application meeting.

8. An 8 ½” x 11” copy of a USGS quad map with a site arrow showing the location of the proposed facility.

9. Documentation of the applicant’s radio frequency testing and mitigation measures to show the CRS facility will comply with the requirements of the Federal Communications Commission.

10. Any other drawings deemed necessary at the pre-application meeting.

B. WRITTEN PROJECT DESCRIPTION:

1. A description of the company and the type of service they are bringing to the community.

2. A written description of the proposed project and the methodology for choosing the proposed facility location and type of facility. The description shall include specific design features used to minimize the impacts of a *CRS facility* within the proposed environment. This description shall such things as include building dimensions, antenna dimensions, and any information that was required by the ZBA at the time of the pre-application meeting.

C. COMPLETED “APPLICATION FOR SPECIAL PERMIT, VARIANCE OR OTHER ZONING RELIEF” FORM, INCLUDING REQUIRED PROJECT DOCUMENTS WHERE A SPECIAL PERMIT OR VARIANCE IS REQUESTED

16.10 WAIVERS:

The ZBA may waive strict compliance with the requirements set forth in this Section of the Bylaw when in its judgment the application for said waiver meets all of the following criteria 1) in the public interest, 2) not inconsistent with the intent of the Zoning Bylaw, and 3) is justified due to unusual circumstances relating to the lot, land, structures or the network. Any waiver request must be made in writing at the time of application with supporting documentation. Said waiver would be granted only after consultation with the Planning Board and the Board of Selectmen.

16.11 REVOCATION:

The ZBA may revoke a Special Permit if the Building Inspector or Zoning Enforcement Officer finds a violation of the permit. The Building Inspector or Zoning Enforcement Officer must notify permittee of evidence in writing within 14 days of permit violation. The permittee must correct violation and provide evidence to the Building Inspector or Zoning Enforcement Officer within 30 days. If the permittee believes that no such violation exists, it may petition the ZBA during the 30 day cure period. If the permittee does not provide evidence to the Building Inspector or Zoning Enforcement Officer that it has corrected the violation or if it has petitioned the ZBA that no violation exists a revocation hearing shall be conducted by the ZBA upon 30 day written notice to the permittee. The permittee shall have the right to legal counsel and present such evidence appropriate and/or relevant at the time of the hearing to show that no violation exists. At the conclusion of the revocation hearing, the ZBA will notify permittee and all relevant parties of its decision in writing within 14 days of said hearing.

16.12 PERFORMANCE GUARANTEES AND FEES:

A. Applicant shall pay or reimburse the town for all expenses incurred by the ZBA in reviewing the application and installation of the applicant’s facility. Expenses may include, without limitation, engineering, planning,

technical, or legal services. In the event the Zoning Board of Appeals determines that circumstances necessitate such expert review, all reasonable expenses shall be paid for by the applicant. The Zoning Board of Appeals shall notify the applicant in writing of the estimated costs of the review. The applicant shall be responsible for the cost of all review fees and the fees shall be paid to the Town within ten (10) days of receipt of notification. The Town Treasurer shall hold in a separate account all review fees. The Board may request additional funds if needed to cover the cost of an outside review in the same manner as above. Failure by the applicant to make timely payments shall be adequate reason to deny the application.

B. A maintenance bond shall be posted for the access road(s) valid for the duration of the permit in an amount approved by the ZBA.

C. Prior to issuance of a Building Permit for a *CRS facility*, the applicant is required to post with the Town Treasurer a bond or other form of financial security for an amount up to \$50,000.00, as set forth by the ZBA. The bond will be to cover demolition in the event that the Building Inspector condemns the tower or parts thereof or accessory facilities and structures or deems it unused continuously for more than a year. The Building Inspector shall give the applicant 90 days written notice in advance of any demolition action.

D. *CRS facilities* shall be insured by the owner(s) against damage to persons or property. The owner(s) shall provide a Certificate of Insurance to the Town of Shelburne on an annual basis.

16.13 SPECIAL PERMIT REVIEW:

Special permits issued under this by-law shall be subject to a safety and compliance review every five years by a registered engineer. Written results of review shall be given to ZBA. As a result of review, additional conditions may be added if deemed necessary by the ZBA. Said review should be initiated by and shall be paid for by the owner of the tower.

16.14 DESCRIPTION OF SPECIAL COMMERCIAL RADIO SERVICE OVERLAY DISTRICT FOR TELECOMMUNICATIONS:

Beginning at the northwest corner of Lot #18 and running southerly in a straight line along the west line of Lots #18 and #17 and thence in a straight line projection to the Deerfield Town line; then easterly along the Deerfield Town line to a point fifty (50) feet east of the southeast corner of Lot #25; then northerly in a straight line to a point fifty (50) feet east of the northeast corner of Lot #18; then westerly along the north line of Lot #18 to the point of beginning. This includes Lots #15, 16, 17 and 18 in their entirety, a westerly portion of Lot #14 and an easterly portion of Lot #25.

SECTION 17 PREMISES-USE WIND ENERGY SYSTEM BYLAW

17.1 PURPOSE

The purpose of this Bylaw is to provide criteria to help the Town of Shelburne evaluate and provide standards for the placement, design, construction, monitoring, and removal of premises-use wind energy systems (PUWES). The criteria will be utilized by Building Inspectors charged with issuing building permits, by the Zoning Board of Appeals charged with issuing Special Permits, and by the Board of Health and Building Inspector as the authorities charged with enforcement of these standards.

17.2 APPLICABILITY

This section applies to PUWES with no greater than 30 kW of rated nameplate capacity proposed to be constructed after the effective date of this section.

17.3 DEFINITIONS

Ambient air space – The unconfined space occupied by the atmosphere, including the air outside facilities or structures.

Building Inspector - The inspector of buildings, building commissioner or local inspector, or representative of the Franklin County Cooperative Inspection Program, designated by the Town of Shelburne and charged with the enforcement of the zoning bylaw.

Building Permit - A building permit is a required approval of a project issued by the Town’s designated Building Inspector which is consistent with all applicable building codes and meets the criteria set forth under the local zoning bylaws.

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.

Noise - Sound of sufficient intensity and/or duration to be damaging, irritating or injurious.

Rated 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.

Special Permit Granting Authority - The Special Permit Granting Authority (SPGA) shall be the Zoning Board of Appeals, by this section for the issuance of Special Permits to construct and operate PUWES.

Wind Monitoring or Meteorological Tower - A temporary tower equipped with devices to measure wind speeds and direction, consistent with the height of the proposed structure, used to determine how much wind power is available for power generation on site.

Wind Turbine - A device that converts kinetic wind energy into rotational energy that drives an electrical generator.

17.4 GENERAL REQUIREMENTS

The requirements established in this bylaw shall supersede all other requirements for PUWES in the existing Town of Shelburne Zoning Bylaw and/or Subdivision Control Regulations.

17.4.1 Building Inspector Issued Permit - No PUWES shall be erected, constructed, installed or modified as provided in this section without obtaining a building permit from Shelburne’s designated Building Inspector and a special permit from the SPGA. All PUWES shall be constructed and operated in a manner that avoids disturbances as outlined at Section 14.0 of the zoning bylaw.

17.4.2 Premises-Use Wind Energy System (PUWES) – Any system of turbines, whether located on the building or the ground, designed primarily to generate heat or electricity for the principal home or business located on the lot, such systems may generate a limited amount of excess electricity for resale to an electrical utility provided the system is designed principally to supply the electrical needs of the home or business on that or any adjoining lots in common ownership. This system includes all equipment, machinery and structures utilized in connection with

the conversion of wind to electricity. This includes, but is not limited to, storage, electrical collection and supply equipment, transformers, service and access roads, and one or more wind turbines, with a total cumulative nameplate capacity of 10 kW for residential and 30 kW for agricultural/business use. The rated nameplate capacity of the wind turbine shall be restricted to the smallest unit available to cover the intended premises-use. A PUWES may be mounted on the ground or on an existing roof.

17.4.3 Rooftop Wind Energy Systems - PUWES sited on top of, attached to and extending above the ridge line of, an existing structure shall comply with all applicable provisions of the latest version of the Uniform Building Code, Section 5.2 and all applicable standards in Sections 17.5, 17.6, and 17.7 of this bylaw.

17.4.4 Pre-Application Conference - For all PUWES, the applicant is strongly encouraged to meet with the SPGA at a pre-application conference to discuss the project, process, waivers, and submittal requirements.

17.4.5 Compliance with Laws, Bylaws and Regulations - The construction and operation of all such proposed PUWES shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications and FAA aviation requirements.

17.4.6 Utility Notification - No PUWES shall be installed until evidence has been given to the SPGA that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement

17.4.7 Proof of Liability Insurance - The applicant for a Building Permit for a PUWES shall be required to provide evidence to the Building Inspector of liability insurance in an amount and for duration sufficient to cover loss or damage to persons and structures occasioned by the failure of the facility until the system is dismantled

17.4.8 Site Control - At the time of its application for a Building Permit, the applicant shall submit documentation of actual or prospective control of the project site sufficient to allow for installation and use of the proposed facility. Documentation shall also include proof of control over setback areas and access roads, if required. Control shall mean the legal authority to prevent the use or construction of any structure for human habitation within the setback areas.

17.4.9 Temporary Meteorological Towers (Met Towers) - Met towers shall be permitted under the same building permit standards as a PUWES, except that the requirements apply to a temporary structure. A permit for a temporary met tower shall be valid for a maximum of 3 years after which an extension may be granted. Wind monitoring shall be permitted in all zoning districts subject to issuance of a building permit for a temporary structure and subject to reasonable regulations concerning the bulk and height of structures and determining yard-size, lot area, setbacks, open space and building coverage requirements.

17.4.10 Certification – A premises-use wind turbine must be an approved turbine on the list certified by the Premises-use wind Certification Council or other certification agency as approved by the State of Massachusetts.

17.5 GENERAL SITING STANDARDS

17.5.1 Height - The height of a PUWES shall be no greater than 120 feet above ground level to the tip of the blade. Rooftop Wind Energy Facilities shall comply with existing building codes, and Section 5.2.

17.5.2 Setbacks – Ground mounted PUWES shall be set back a distance equal to 1.5 times the total height of the wind turbine from the project property boundary, overhead utility lines, and public roads or rights of way and 3.0 times the total height of the wind turbine from any inhabited structures not owned by the project owner.

17.5.3 Noise -The noise impact of any PUWES, including rooftop wind turbines, shall not cause ambient noise levels to exceed 33 dB(A). Where the ambient noise level is 28 dB(A) or less, the noise level impact of any PUWES shall not cause noise levels to increase more than 5 dB(A) over ambient at the project property boundary.

17.5.4 Shadow Flicker – PUWES shall be sited in a manner that does not result in any shadow flicker impact on occupied buildings not owned by the project owner.

17.6 DESIGN STANDARDS

17.6.1 Appearance, Color and Finish - The wind generator and tower shall remain painted or finished with the non-reflective color unless otherwise approved in the special permit.

17.6.2 Lighting - Wind turbines shall be lighted only if required by the Federal Aviation Administration. Lighting of other parts of the PUWES, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties.

17.6.3 Signage - Signs shall be restricted to reasonable identification of the manufacturer or operator of the PUWES and shall defer to the requirements of the Town sign regulations in Section 9.

17.6.4 Appurtenant Structures - All appurtenant structures to PUWES shall comply with the dimensional requirements of the underlying zoning district, including but not limited to setbacks and height.

17.7 SAFETY AND ENVIRONMENTAL STANDARDS

17.7.1 Unauthorized Access - Wind turbines or other structures part of a PUWES shall be designed to prevent unauthorized access. For instance, the tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of 10 feet above the ground.

17.7.2 Land Clearing and Soil Erosion - Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the PUWES and as otherwise prescribed by applicable laws, regulations, and bylaws.

17.8 MONITORING AND MAINTENANCE

17.8.1 System Conditions - The applicant shall maintain the PUWES in working condition and in good repair. Maintenance shall include, but not be limited to, painting, structural repairs, and security measures. Compliance with this condition shall be enforced by the Building Inspector.

17.9 ABANDONMENT OR DECOMMISSIONING

17.9.1 Abandonment or Decommissioning-Removal Requirements – amend the third sentence to read as follows: “Upon a Notice of Abandonment issued by the Building Inspector, the PUWES owner will have 30 days to provide sufficient evidence that the system has not been abandoned. If the Building Inspector finally determines the system has been abandoned, the Town shall have the power to seek a court warrant granting the town the authority to enter the owner’s property and remove the system at the owner’s expense.

17.10 PERMIT PROCESS, REQUIREMENTS & ENFORCEMENT

17.10.1 Application Requirements - Each application for a Special Permit shall be filed by the applicant with the Town Clerk pursuant to Section 9 of Chapter 40A of the Massachusetts General Laws and in accordance with the Shelburne SPGA rules and procedures.

The applicant shall provide the SPGA with copies of the application, plans and documents as specified in the Shelburne SPGA rules and procedures. All plans and maps shall be prepared, stamped and signed by a professional engineer licensed to practice in Massachusetts. Included in the application shall be:

A. Completed Application Form

B. Site Plans

1. A title sheet with the following:
 - a. A title labeling the applicant, type of proposal, and location of proposed facility.
 - b. A vicinity map showing all major roadways within 2,000' of the project site.
 - c. A sheet index.
 - d. A project summary block labeling the applicant, applicant's representative if applicable, facility address, owner, deed reference, facility parcel number, and current zoning district.
2. A general plan sheet showing the complete plan view of the proposal at a preferred scale of 1" = 20' or a scale appropriate to accurately portray the proposed facility. All setback lines, property lines, easement lines, and utility lines shall be shown. Location, dimensions, and types of existing major structures on the property and location of proposed wind turbine and associated equipment shall be depicted.
3. Representations, dimensioned and to scale, of the proposed premises-use wind energy system including, but not limited to, tower foundations, guy anchors, cable locations, associated equipment or structures, fencing, electrical distribution infrastructure, and areas of clearing.
4. Elevation plans showing the complete proposal at a scale appropriate to accurately portray the proposed facility.
5. Existing areas of tree cover, including average height of trees, on the site parcel and adjacent parcels within 300 feet.
6. Wind system specifications, including manufacturer and model, rotor diameter, tower height, tower type (freestanding or guyed).
7. Tower foundation blueprints or drawings signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts.
8. Tower blueprint or drawing signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts.

C. Photos of relevant equipment associated with the facility, including but not limited to buildings, antennas, and other equipment outlined in the pre-application meeting.

D. Visualizations. The SPGA shall select between three and six sight lines, including from the nearest building with a view of the wind facility, for pre- and post-construction view representations. Sites for the view representations shall be selected from populated areas or public ways within a 2-mile radius of the wind facility and shall be depicted on a key map showing the location and perspective from which the visualization was generated. View representations shall have the following characteristics:

1. View representations shall be in color and shall include actual pre-construction photographs and accurate post-construction simulations of the height and breadth of the wind facility (e.g. superimpositions of the wind facility onto photographs of existing views).
2. All view representations shall include existing, or proposed, buildings or tree coverage.
3. The applicant shall provide a description of the technical procedures followed in producing the visualization (distances, angles, lens, etc.).

E. Noise Study. The applicant shall submit the results of a noise analysis, establishing an ambient baseline, to the SPGA. The noise analysis shall be conducted in accordance with industry standards and certified by a qualified independent acoustical engineer.

F. Shadow and Flicker Analysis. The applicant shall conduct a shadow and flicker analysis and submit its findings to the SPGA. The applicant has the burden of proving that no shadow flicker on off-site inhabited buildings will occur. (See section 17.5.4.)

G. Any other studies, drawings or materials deemed necessary by the SPGA.

17.10.2 Procedure – Upon receipt of a complete application for a Special Permit for a PUWES, the SPGA shall review and take action upon the application and hold a public hearing in accordance with Section 9 of Chapter 40A of the Massachusetts General Laws.

17.10.3 Special Permit Approval Criteria – After notice and public hearing, and after due consideration of the evidence submitted, the SPGA may grant a Special Permit, as allowed under Section 6.6, provided that it finds that the proposed PUWES does not derogate from the purposes and intent of this Section and the Zoning Bylaw.

17.10.4 Independent Consultants - Upon submission of an application for a Special Permit, the SPGA will be authorized to hire outside consultants at the expense of the applicant, pursuant to Section 53G of Chapter 44 of the Massachusetts General Laws.

17.10.5 Expiration - A building permit issued pursuant to this bylaw shall expire if:

- A. The PUWES is not installed and functioning within 24-months from the date the permit is issued; or,
- B. The PUWES is abandoned as defined in Section 17.9.

17.10.6 Violations - It is unlawful for any person to construct, install, or operate a PUWES that is not in compliance with this bylaw or with any condition contained in a Building Permit or Special Permit issued pursuant to this bylaw. PUWES installed prior to the adoption of this bylaw are exempt.

17.10.7 Administration and Enforcement – This bylaw shall be administered and enforced by the Building Inspector or other official as designated. The Building Inspector may enter any property for which a building permit has been issued under this bylaw to conduct an inspection to determine whether the conditions stated in the permit have been met.

17.10.7.1 Non-compliance - If there is a question of compliance with a special permit, the Building Inspector has the authority to issue a cease and desist order and shall require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the PUWES should they occur and until such time as the Building Inspector has determined compliance. The Building Inspector shall request submittal of a mitigation plan outlining measures to address unforeseen adverse impacts

17.10.7.2 Noise or Shadow Flicker Complaint - The Shelburne Board of Health is hereby authorized to enforce Section 17.5.3 and 17.5.4 of this bylaw.

- A. Upon receipt of a noise or shadow flicker complaint, the Board of Health will make a determination as to whether a complaint warrants a study to determine compliance with 17.5.3 and 17.5.4.
- B. The Board of Health will notify the Building Inspector and may hire an independent consultant, at the cost of the owner, to conduct a noise study or shadow flicker analysis.
- C. If it is determined there is a violation of 17.5.3 or 17.5.4, the Board of Health shall report this to the Building Inspector and the SPGA.
- D. Upon receipt of a report of a violation of 17.5.3 or 17.5.4 from the Shelburne Board of Health or Building Inspector, the SPGA will review the conditions of the project's special permit and propose mitigation measures to ensure compliance with 17.5.3 or 17.5.4

17.10.7.3 Noise Study - If required by the SPGA, the noise study shall contain sufficient information for the SPGA to determine that the PUWES noise level shall not exceed 33 dB(A), or in locations where the ambient noise level is 28 dB(A) or less the noise impact from the PUWES shall not be greater than a 5 dB(A) increase, at any property boundary and the nearest inhabited residence.

- A. In completing the noise analysis, the acoustical engineer shall consider the unique topography of the surrounding area, prevailing wind direction and atmospheric conditions, such as high wind shear or thermal inversion that may affect the propagation of sound emitted from the PUWES. The noise analysis shall also include an analysis and discussion of the anticipated impacts of low frequency noise emitted from the PUWES.
- B. Noise Equipment Standards - All sound level measurement equipment must comply with the following standards:
 - 1. Sound level meters used must be ANSI Type 1. ANSI Type 2 meters are not acceptable. Equipment meeting similar applicable ISO or IEC standards is also acceptable.
 - 2. Consultants must provide the model and make of the sound level meter for the final report.
 - 3. The sound level meter must have been field-calibrated using an ANSI Type 1 calibrator that has accuracy traceable to the National Institute of Standards and Technology (NIST).
 - 4. The sound level meter must have been calibrated by a certified laboratory no more than 24 months prior to the date the acoustic study was conducted.

17.10.8 Penalties - Any person who fails to comply with any provision of this bylaw or a permit issued pursuant to this bylaw shall be subject to enforcement and penalties as allowed by applicable law.

17.11 MODIFICATIONS

All minor modifications (excluding routine repairs and maintenance) to a PUWES made after issuance of a Special Permit, shall require approval by the Building Inspector. Minor modifications do not include increases to the physical size or capacity of the PUWES. All major modifications, such as increases to the physical size or capacity of the system, shall require a special permit issued by the SPGA.

17.12 WAIVER OF COMPLIANCE

Waivers may be granted from any of the Special Permit application requirements at 17.10.1. Requests for a waiver shall be discussed at the pre-application conference and submitted to the SPGA in a separate letter accompanying the application. The waiver request shall be noticed publicly in the public hearing notice to consider the application. The reasons for granting a waiver shall be stated in the SPGA's decision. In granting such modification or waiver, the SPGA may impose conditions it deems necessary to protect the public interest.

SECTION 18 LARGE-SCALE GROUND-MOUNTED SOLAR-ELECTRIC GENERATING INSTALLATIONS - *LSSI*

18.1 PURPOSE: The purpose of this bylaw is to facilitate the creation of new *LSSIs* (see Section 18.3. Definitions) by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on environmental, scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations.

18.2 APPLICABILITY

Section 18 applies to all *LSSIs* in the Town of Shelburne. .

18.2.1. *LSSIs* shall require a Special Permit in accordance with Section 6 of the Zoning Bylaws of the Town of Shelburne. The ZBA is the Special Permit Granting Authority for this Section.

18.2.2 *LSSIs* covering more than ten (10) acres are not allowed anywhere in Town.

18.2.3 This section also pertains to physical modifications that materially alter the type, configuration, or size of *LSSIs* or related equipment.

18.3 DEFINITIONS

Large-Scale Ground-Mounted Solar-Electric Generating Installation - A solar electric system that is structurally mounted on the ground, is not roof-mounted, and covers at least one acre but not more than ten (10) acres of land.

LSSI – for the purposes of this Bylaw, Large-Scale Ground-Mounted Solar Electric Generating Installation will be abbreviated to *LSSI*.

18.4 GENERAL REQUIREMENTS FOR ALL *LSSIs*

The following requirements are common to all *LSSIs*. The requirements established in this bylaw shall supersede all other requirements which may impact the development of *LSSIs* in the existing Town of Shelburne Zoning Bylaw and/or Subdivision Control Plan.

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

18.4.2 Building Permit and Building Inspection - No *LSSIs* shall be constructed, installed or modified as provided in this section without first obtaining a building permit and paying any required fees. All such solar energy systems shall be constructed and operated in a manner that avoids disturbances as outlined in Section 14.0 of the Shelburne Zoning Bylaw.

18.4.3 Special Permit – An applicant for a proposed *LSSI* must seek a Special Permit from the Special Permit Granting Authority (SPGA) as described in 18.10. The Special Permit may provide for a waiver from the prescribed bylaw requirements subject to Subsection 18.15

18.4.4 Pre-Application Conference – For all *LSSIs*, the applicant is strongly encouraged to meet with the Town of Shelburne Special Permit Granting Authority to conduct a pre-application conference to discuss the project, process, waivers, and submittal requirements and proposed management practices for siting, construction, screening, reducing the visual contrast, operation, and maintenance of the *LSSI*.

18.4.5 Utility Notification – No *LSSI* intended to be connected to the grid, shall be installed until evidence has been given to the Town of Shelburne SPGA that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar electric installation owner or operator's intent to install an interconnected facility.

18.4.6 Proof of Liability Insurance – The applicant for a Building Permit for a *LSSI* shall be required to provide evidence of liability insurance to the Building Inspector in an amount and for duration sufficient to cover loss or damage to persons and structures occasioned by the failure of the facility until the system is dismantled.

18.4.7 Site Control – At the time of its application for a Building Permit, the applicant shall submit documentation of actual or prospective control of the project site sufficient to allow for installation and use of the proposed facility. Documentation shall also include proof of control over setback areas and access roads, if required. Control shall mean the legal authority to prevent the use or construction of any structures for human habitation within the setback areas.

18.4.8 Operation and Maintenance Plan - The project proponent shall submit a plan for the operation and maintenance of the *LSSI*, which shall include measures for maintaining safe access to the installation, storm water and vegetation controls, as well as general procedures for operational maintenance of the installation.

18.4.9 Landscape Plan - The project proponent shall submit a Landscape Plan detailing all proposed changes to the landscape of the site including vegetation removal and screening of structures. The Landscape Plan shall show the type and location of vegetation to be removed and vegetation proposed to screen the installation including appurtenant structures from public ways and adjacent properties as deemed appropriate by the SPGA. To the greatest extent feasible, the vegetative screen shall be composed of the existing vegetation and native trees and shrubs.

18.4.10 Grading Plan – The project proponent shall submit a Grading Plan detailing all proposed grading, soil erosion and run-off control, and temporary or permanent access roads.

18.5 GENERAL SITING STANDARDS

18.5.1 Setbacks - For *LSSIs*, front, side and rear setbacks and setbacks from property lines shall be as follows:

- A. Front yard: the front yard depth shall not be less than 50 feet.
- B. Side yard: each side yard shall have a depth of at least 50 feet for *LSSIs* no larger than 5 acres, 100 feet for *LSSIs* over 5 acres.
- C. Rear yard: the rear yard depth shall not be less than 50 feet for *LSSIs* no larger than 5 acres, 100 feet for *LSSIs* over 5 acres.

18.5.2 Appurtenant Structures - All appurtenant structures to *LSSIs* shall be subject to regulations concerning the bulk and height of structures, lot area and setbacks as specified in Section 18.5.1., 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 the rural character of other structures in the area. Structures should be screened from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

18.5.3 Height of Structures - The height of any structure associated with a *LSSI* shall not exceed 35 feet.

18.6 DESIGN AND PERFORMANCE STANDARDS

18.6.1 Lighting - Lighting of solar electric installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Lighting of the solar electric installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution. In addition, such fixtures shall be “dark sky” compliant and meet International Dark Sky FSA certification requirements. The owner/operator shall be responsible for maintenance of lighting systems.

18.6.2 Signage - Signs on *LSSIs* shall comply with Shelburne’s sign regulations, Section 9. One (1) sign consistent with Section 9 shall be required to identify the owner and provide a 24-hour emergency contact phone number. Solar electric installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar electric installation.

18.6.3 Utility Connections - Reasonable efforts, as determined by the SPGA, shall be made to place all utility connections from the solar electric installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

18.6.4 Roads - Access roads shall be constructed to minimize grading, stormwater/run-off control, removal of stone walls or trees and to minimize impacts to environmental, wetlands, or historic resources. (See Scenic Road restrictions – M.G.L. Chapter 40 Section 15C).

18.6.5 Control of Vegetation – Except in the case of invasive plants listed by the Massachusetts Invasive Plant Advisory Group, herbicides may not be used to control vegetation at the *LSSI*. Mowing, grazing, or the use of pervious pavers or geotextile materials underneath the solar array, are possible alternatives. Aforementioned invasive plant species must be controlled using best management practices and effective methods least detrimental to the environment.

18.6.6 Hazardous Materials - Hazardous materials stored, used, or generated on site shall not exceed the amount for a Very Small Quantity Generator of Hazardous Waste as defined by the Massachusetts Department of Environmental Protection (DEP) pursuant to DEP regulations 310 CMR 30.000 and shall meet all requirements of the DEP including storage of hazardous materials in a building with an impervious floor that is not adjacent to any floor drains to prevent discharge to the outdoor environment. If hazardous materials are utilized within the solar electric equipment then impervious containment areas capable of controlling any release to the environment and to prevent potential contamination of groundwater are required. A list of any hazardous materials located on the site and a plan to prevent their release shall be provided to the Fire Chief at the time of application and on an annual basis.

18.6.7 Noise - Noise generated by *LSSIs* and associated equipment and machinery shall conform at a minimum to applicable state and local noise regulations, including the DEP's Division of Air Quality noise regulations, 310 CMR 7.10. In addition, for the purposes of this bylaw, a source of sound will be considered in violation of this bylaw if the source:

- A. increases the broadband sound level by more than 5 db(A) above the pre-construction ambient noise level;
- B. produces a "pure tone" condition, when an octave band center frequency sound pressure level exceeds the two (2) adjacent center frequency sound pressure levels by three (3) decibels or more; or
- C. results in sound or noise levels greater than 33 dBA.

Said criteria are measured both at the property line and at the nearest inhabited residence. In addition, the said criteria shall be measured at any property line that is subject to sound elevations higher than ambient sound as a result of higher or lower topography in the opinion of the acoustical engineer paid for by the applicant and approved by the SPGA. "Ambient" is defined as the background A-weighted sound level that is exceeded 90% of the time measured during the quietest part of the day or night. All testing required by this bylaw shall be done by a licensed professional acoustical engineer chosen by the SPGA and paid for by the applicant. All testing shall be done in accordance with the professional standards of the appropriate accrediting agencies.

18.6.8 Visual Impacts - The *LSSI* shall be designed to minimize visual impacts including preserving natural vegetation to the maximum extent practicable, using vegetative buffers (not fences) to provide an effective visual barrier from any public roads and to visually screen abutting residential properties, whether developed or not. Landscaping shall be maintained by the owner/operator of the *LSSI*. Siting shall be such that the view of the *LSSI* from other areas of Town shall be as minimal as possible, in the sole judgment of the SPGA.

18.7 SAFETY AND ENVIRONMENTAL STANDARDS

18.7.1 Emergency Services - The *LSSIs* owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local Fire Chief. The owner or operator shall cooperate with local emergency services to develop an emergency response plan. All means of shutting down the solar electric installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

18.7.2 Land Clearing, Soil Erosion and Farmland Impacts - To the maximum extent feasible, the facility should be located to minimize impacts to agricultural land and should be compatible with continued agricultural use. The facility shall be designed to minimize impacts to environmentally sensitive land. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the *LSSI* or otherwise prescribed by applicable laws, regulations, and bylaws. The design shall minimize the use of concrete

and other impervious materials to the maximum extent possible. Locating *LSSIs* on grades in excess of 10% should be avoided to the maximum extent feasible.

18.7.3 Habitat Impacts – To the maximum extent feasible, *LSSIs* should not be located on Permanently Protected Open Space, Chapter 61 lands, Priority Habitat and BioMap 2 Critical Natural Landscape Core Habitat mapped by the Natural Heritage and Endangered Species Program (NHESP) and “Important Wildlife Habitat” mapped by the DEP.

18.7.4 Wetlands Impacts - The facilities, including the *LSSI* and access roads, shall meet the wetland buffer and river protection standards set forth by the Massachusetts Wetland Protection Act Regulations (310 CMR 10.0), and any additional local wetlands protection bylaws.

18.8 MONITORING, MAINTENANCE AND REPORTING

18.8.1 Solar Electric Generating Installation Conditions - The *LSSI* owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Management Director. The owner or operator shall be responsible for the cost of maintaining the *LSSI* and any access road(s).

18.8.2 Modifications – All modifications (excluding routine repairs and maintenance) to an installation after issuance of Building Permit and Special Permit, shall require approval by the Building Inspector and SPGA.

18.8.3 Annual Reporting - The owner or operator of the *LSSI* shall submit an Annual Report that certifies continued compliance with the requirements of the special permit and report the amount of electricity generated by the facility. The Annual Report shall be submitted to the Selectboard and SPGA no later than 90 days after the end of the calendar year.

18.9 ABANDONMENT, DECOMMISSIONING, FINANCIAL SURETY & INDEMNIFICATION

18.9.1 Removal Requirements - Any *LSSI* which has reached the end of its useful life or has been abandoned consistent with Section 18.9.3. of this bylaw, shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the SPGA by certified mail of the proposed date of discontinued operations and plans for removal.

18.9.2 Decommissioning - Decommissioning shall consist of:

- A. Physical removal of all *LSSIs*, structures, equipment, security barriers and transmission lines from the site.
- B. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- C. Stabilization or re-vegetation of the site as necessary to minimize erosion. The SPGA may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

18.9.3 Abandonment - Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the *LSSI* shall be considered abandoned when it fails to operate for more than one year without the written consent of the SPGA. If the owner or operator of the *LSSI* fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Town retains the right, after the receipt of an appropriate court order, to enter and remove an abandoned,

hazardous or decommissioned *LSSI*. As a condition of Special Permit approval, the applicant and landowner shall agree to allow entry to remove an abandoned or decommissioned installation. The Town's cost for the removal will be charged to the property owner in accordance with the provisions of M.G.L. 139, Section 3A as a tax lien on the property.

18.9.4 Financial Surety - Proponents of *LSSIs* shall provide a form of surety, either through an escrow account, bond or other form of surety approved by the SPGA to cover the cost of removal in the event the town must remove the installation and stabilization or re-vegetation of the landscape, in an amount and form determined to be reasonable by the SPGA, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein. Such surety will not be required for municipal or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, stabilization, and re-vegetation, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

18.9.5 Indemnification - The owner/operator shall indemnify and hold harmless the Town of Shelburne and/or any of its citizens from any and all liabilities, losses and/or damages, including reasonable attorney fees, resulting from the failure of the owner/operator to comply with the terms of this by-law and/or negligence in the operations and maintenance of any structures built in accordance with it. Any surety provided for in this by-law shall be available for the aforementioned indemnification. The current owner is obligated to maintain the surety in its original amount. The developer and/or any subsequent owner shall adhere to the reporting requirements for the indemnification funds as stipulated by the SPGA at the time of the application for a Special Permit. Reporting requirements shall include, but are not limited to, an annual reporting of fund balances and compliance with the type of investments allowed by the SPGA.

18.10 SPECIAL PERMIT PROCESS, REQUIREMENTS & ENFORCEMENT

18.10.1 Building Permit and Building Inspection - No *LSSIs* shall be constructed, installed or modified as provided in this section without first obtaining a building permit and paying any required fees.

18.10.2 Application Requirements - Each application for a Special Permit shall be filed by the applicant with the Town Clerk pursuant to Section 9 of Chapter 40A of the Massachusetts General Laws and in accordance with the "Town of Shelburne: Special Permit or Variance or other Zoning Relief. Overview and Instruction for Filing." A complete Special Permit application to the SPGA is required. All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts. Any application for a *LSSI* shall contain the following:

18.10.2. A. Completed Application Form

18.10.2. B. Required Documents - The project proponent shall provide the following documents in addition to or in coordination with those required Special Permit Review under Section 6 of this bylaw.

1. Architectural, Engineering, and Site Plans showing:
 - a. A title sheet with the following:
 - b. A title labeling the company, type of proposal and location.
 - c. A locus map showing all major roadways within 2000' feet
 - d. A map showing other existing or proposed *LSSIs* within 1,000 feet.
 - e. A sheet index describing all parties involved in the project.
 - f. A project summary block labeling the applicant, facility address, owner, deed reference, facility parcel number, and current zoning district.

- g. Property lines, map and lot from the Assessor's records, and physical features, including roads and topography, for the project site;
- h. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening, vegetation or structures including their height;
- i. Locations of wetlands, Priority Habitat Areas and Biomap 2 Critical Natural Core Habitat defined by the Natural Heritage & Endangered Species Program (NHESP), "Important Habitat Areas" defined by the DEP, and Permanently Protected Open Space, on or within 100 feet of the property boundary.
- j. Locations of floodplains or inundation areas for moderate or high hazard dams;
- k. Locations of local or National Historic Districts;
- l. A list of any hazardous materials proposed to be located on the site in excess of household quantities and a plan to prevent their release to the environment as appropriate;
- m. Blueprints or drawings of the solar electric installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
- n. One or three line electrical diagrams detailing the solar electric installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
- o. Documentation of the major system components to be used, including the electric generating components, transmission systems, mounting system, inverter, etc.;
- p. Name, address, and contact information for proposed system installer;
- q. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
- r. The name, contact information and signature of any agents representing the project proponent;
- s. Documentation of actual or prospective access and control of the project site;
- t. Provision of water including that needed for fire protection; and
- u. Locations of woodland areas with trees 6" caliper or larger and showing which portions of the woodlands will remain in place and those areas where woodlands will be removed.

2. An operation and maintenance plan (see Section 18.4.8);

3. Landscape plan (see Section 18.4.9) and Grading Plan (see Section 18.4.10);

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

5. Proof of liability insurance (See Section 18.4.6);

6. Description of financial surety (see Section 18.9.4);

7. Sight line representation. A sight line representation shall be drawn from that portion of any public road within one (1) mile that would have the clearest view of the proposed facility, and the closest facade of each residential building (viewpoint) within one (1) mile of the highest point (visible point) of the solar electric generating installation. Each sight line shall be depicted in profile, drawn at a scale appropriate to represent the sightline. The profiles shall show all intervening trees and buildings;

8. Existing (before condition) and proposed (after condition) photographs. Each sight line shall be illustrated by one four-inch by six-inch color photograph of what can currently be seen from any public road within one (1) mile. Each of the existing condition photographs shall have the proposed solar electric generating installation superimposed on it to show what will be seen from public roads if the solar electric generating installation is built; and

9. Documentation provided by a licensed professional acoustical engineer, approved by the SPGA and paid for by the applicant, of projected noise levels to be generated by the *LSSI*.

10. Pesticide Use Plan (see Section 18.6.5.).

18.10.2. C. Any other drawings, photographs or materials deemed necessary by the SPGA at a strongly encouraged pre-application meeting to discuss the project, process, waivers, and submittal requirements.

18.10.3 Procedure – Upon receipt of a complete application for a Special Permit for a *LSSI*, the SPGA shall review and take action upon the application in compliance with M.G.L. Chapter 40A.

18.10.4 Special Permit Approval Criteria – After notice and public hearing and after due consideration of the evidence submitted, the SPGA may grant a Special Permit provided that it finds that:

- A. The proposed *LSSI* complies with the purposes and intent of this Section and the Zoning Bylaw.
- B. The application information submitted is sufficient for the SPGA to consider approval of the Special Permit request.
- C. Documentation regarding potential environmental, community, and public safety impacts provide sufficient assurance that the project will not result in substantial adverse effects.

18.10.5 Independent Consultants – Upon submission of an application for a special permit, the SPGA will be authorized to hire outside consultants at the expense of the applicant, pursuant to section 53G of Chapter 44 of the Massachusetts General Laws.

18.10.6 Expiration – A permit issued pursuant to this bylaw shall expire if:

- A. The *LSSI* is not installed and functioning within 24-months from the date the permit is issued; the SPGA can extend the permit based upon evidence of progress and due diligence, or
- B. The *LSSI* is abandoned.

18.11 VIOLATIONS

It is unlawful for any person to construct, install, or operate a *LSSI* that is not in compliance with this bylaw or with any condition contained in a Building Permit, or Special Permit issued pursuant to this bylaw. Such systems installed prior to the adoption of this bylaw are exempt.

18.12 ADMINISTRATION AND ENFORCEMENT

This bylaw shall be administered and enforced by the Building Inspector or other official as designated. The Building Inspector may enter any property for which a building permit and special permit has been issued under this bylaw to conduct an inspection to determine whether the conditions stated in the permit have been met. If the permit holder is found not to be in compliance, the Building Inspector may require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the *LSSI* should they occur. The Building Inspector may request submittal of a mitigation plan outlining measures to address unforeseen adverse impacts. The *LSSI* shall cease to operate if found to not be in compliance with the requirements of the special permit, until such time as the Building Inspector has determined compliance.

18.13 PENALTIES

Any person who fails to comply with any provision of this bylaw or a permit issued pursuant to this bylaw shall be subject to enforcement and penalties as allowed by applicable law.

18.14 WAIVER OF COMPLIANCE

The ZBA may waive strict compliance with the requirements set forth in this Section of the Bylaw when in its judgment the application for said waiver meets all of the following criteria 1) in the public interest, 2) not inconsistent with the intent of Section 18 of the Zoning Bylaw, and 3) is justified due to unusual circumstances relating to the lot, land, or the *LSSI*. Any waiver request must be made in writing at the time of application with supporting documentation.

18.15 SEVERABILITY

The provisions of this bylaw are severable, and the invalidity of any section, subdivision, paragraph, or other part of this ordinance shall not affect the validity or effectiveness of the remainder of the bylaw.

SECTION 19.0 OPEN SPACE DEVELOPMENT

19.1 GENERAL PROVISIONS

19.1.1 Definitions

19.1.1.1 An “**Open Space Development**” (“OSD”) shall mean an optional alternative residential land development which is developed through an "Open Space Design" process. An OSD may be created as a subdivision of land or on lots for which subdivision approval is not required.

19.1.1.2 “**Open Space Design**” shall mean a process for the development of land that: (a) calculates the amount of development allowed up-front by formula; (b) requires a Conservation Analysis to identify the significant natural, cultural, and historic features of the land; (c) concentrates development, through design flexibility and reduced dimensional requirements, in order to preserve those features; and (d) permanently preserves a significant percentage of the land in a natural, scenic or open condition or in agricultural, farming or forest use.

19.1.1.3 “**Conservation Analysis**” identifies the significant natural, cultural, and historic features of the land by the Planning Board in consultation with other Town Boards such as the Board of Health, Conservation Commission, and Open Space Committee; the analysis leads to a designation of the acreage to be included in the conservation areas and which acreage is identified as Potentially Developable Land. (See Section 2.8.2 of the Shelburne Subdivision Regulations.)

19.1.1.4 “**Low Impact Development**” is a comprehensive land planning and engineering design approach with a goal of maintaining and enhancing the pre-development hydrologic regime of urban and developing watersheds. (See Section 2.4.C.15 and Appendix E of the Shelburne Subdivision Regulations.)

19.1.1.5 A “**Lot**” is a subdivision of land upon which a building may be constructed.

19.1.1.6 A “Parcel” is a piece of land which is the subject of a subdivision plan.

19.1.2 Purpose

19.1.2.1 The purpose of an OSD is to:

- a) encourage the permanent preservation of open space for conservation, agriculture, forestry, wildlife habitat, other natural or cultural resources (including, but not limited to, aquifers, water bodies, wetlands, and historical and archaeological resources) and passive recreational use which maintains the land in an undeveloped condition.;
- b) encourage a less sprawling form of development that preserves open land and preserves the natural features of the site;
- c) promote the efficient provision of municipal services and protect existing and potential water supplies;
- d) maintain the rural character of the Town;
- e) promote the siting of buildings that is sensitive to existing natural and historic features;
- f) protect public health by siting septic systems on the most suitable soils;
- g) protect the value of real property;
- h) encourage the development of senior housing units and affordable housing units in the Town.
- i) further the goals and policies of the Town of Shelburne Master and Open Space and Recreation Plans;
- j) provide for the by-right formation of OSD subdivisions or ANR lots;
- k) enable landowners to realize equity from development of a small percentage of their land while current uses continue on the majority of the property;
- l) expedite the permitting of projects;
- m) facilitate the construction and maintenance of housing, streets, utilities, and public services in a more economical and efficient manner;
- n) reduce energy consumption and greenhouse gas emissions;
- o) minimize the total amount of disturbance on the site; and
- p) promote the incorporation of Low Impact Development.

19.2 PROCEDURES

19.2.1 General. An OSD is one way to subdivide land. An applicant files an application for an OSD subdivision approval in the same manner as the applicant would for a traditional style subdivision. The Planning Board shall evaluate a proposed OSD in accordance with this OSD Bylaw, other applicable provisions of the Town of Shelburne Zoning Bylaw, the Planning Board's general Subdivision Regulations Sections 1-2.7 (which apply to all subdivisions of land), and its OSD-specific subdivision regulations contained in Section 2.8 of the Subdivision Regulations (which apply only to OSDs). The Planning Board shall have the authority to adopt rules and regulations applicable to OSD as a part of its Subdivision Regulations.

19.2.2 OSDs on ANR Lots. An applicant who wishes to create an OSD on lots for which subdivision approval is not required shall file a formal request that the Planning Board evaluate the proposed project as an OSD. See Section 19.2.1, above.

19.2.3 Criteria for Approval. Approval of an OSD shall be granted as of right if the Planning Board determines that the requirements of Section 19.2.1, above, have been complied with.

19.3 GENERAL REQUIREMENTS

19.3.1 The minimum area of a parcel of land which may be used for an OSD subdivision shall be six (6) acres. The parcel (or parcels) shall be held in single ownership or control at the time of application. Adjoining parcels must be adjacent to each other or only separated by a public way.

19.3.2 The maximum number of "dwelling units" (as this term is defined in the Town of Shelburne Zoning Bylaw Section 2.9, except for "congregate housing") which shall be permitted in the proposed OSD shall be determined in accordance with Section 19.4.

19.3.3 Single family homes, two-family homes, multi-family structures with up to four dwelling units, and, for senior housing only, dwelling units designed as some form of congregate housing for 6-12 seniors may be located in an OSD. Each such congregate housing unit shall be considered one dwelling unit for purposes of this OSD Bylaw.

19.3.4 Dimensional Requirements for Lots within an OSD. Lot size and shape, dwelling unit placement, and other dimensional requirements within an Open Space Development are subject to the following limitations:

19.3.4.1 Area. There shall be no required minimum lot size for zoning purposes. This provision does not affect the ability of the Board of Health to regulate the location of wells and septic systems for water supply protection and the disposal of wastewater.

19.3.4.2 Frontage. There shall be no numerical requirement for road frontage.

19.3.4.3 Setbacks. The minimum setback for any building from a lot line shall be 10 feet. In no event shall principal structures on a lot (whether single-family, two-family, multi-family, or any other principal use) be closer than 20 feet to each other.

19.3.5 Each lot must have legally and practically adequate vehicular access to a public way or a way approved under the Subdivision Regulations.

19.3.6 Each dwelling unit, other than congregate housing, shall be served by at least two off-street parking spaces. Each congregate housing unit will have sufficient parking for staff and visitors.

19.3.7 Each building shall be located on a separate lot which shall be of a size and shape so as to have minimal impacts upon the natural terrain and other resources of the land.

19.3.8 All residential structures and accessory uses within the OSD shall be set back from the boundaries of the OSD by a buffer strip of at least seventy-five (75) feet in width to be kept in a natural, landscaped or managed condition.

19.3.9 There shall be an adequate, safe, and convenient arrangement of pedestrian circulation, facilities, roadways, driveways, and parking. There shall be no parking in the buffer strip or in areas not otherwise designated for parking.

19.3.10 Design of roads, utilities, and drainage shall be governed by the standards contained in the Planning Board's general Subdivision Regulations but the Board may vary those standards to meet the particular needs of the OSD and natural features.

19.3.11 A minimum of at least fifty percent 50% of the total OSD parcel shall be set aside as Protected Open Space.

19.3.12 Septic systems shall be placed in the OSD to maximize the distance between systems and well or water supplies. All systems must comply with Title 5 of the State Environmental Code.

19.3.13 Units shall be located and arranged to advance the resource conservation objectives of the Town's master and open space and recreation plans and to protect: views from roads and other publicly accessible points; farmland; wildlife habitat; large intact forest areas; hilltops; ponds; aquifers, steep slopes; and other sensitive environmental resources.

19.3.14 Industry accepted monumentation of a type consistent with the use of the Protected Open Space shall clearly delineate the boundaries of the Protected Open Space in a manner that facilitates monitoring and enforcement.

19.3.15 There shall be no amendments or changes to an approved OSD without review and approval from the Planning Board.

19.3.16 No lot within an approved OSD may be further subdivided so as to increase the number of lots or dwelling units, and a notation to this effect shall be shown on the OSD Definitive Plan or the ANR Plan, as applicable.

19.4 DWELLING UNIT DENSITY

19.4.1 Initial Dwelling Unit Density Calculation. The maximum initial number of dwelling units permitted in an OSD shall be calculated by a formula based upon the “net acreage” of the parcel. This formula takes into account site-specific development limitations that make some land less suitable for development than other land. This calculation involves two steps, calculating the “net acreage” and then dividing by the allowed density.

19.4.1.1 Net Acreage Calculation. (Note: The factors listed below in this subsection are applicable to net acreage calculation purposes only and do not create or imply any regulatory constraints on development siting that are not contained in other applicable provisions of law, including this OSD Bylaw and the other provisions of the Town of Shelburne Zoning Bylaw.) To determine net acreage, subtract the following from the total (gross) acreage of the parcel:

- a) 50% of the acreage of land with slopes of 15% or greater;
- b) The total acreage of land subject to conservation easements or restrictions or other characteristics prohibiting development, such as: lakes, ponds, vernal pools, 100-year floodplains (as most recently delineated by FEMA), Zone I and A around public water supplies, and all wetlands as defined in Chapter 131, Section 40 of the General Laws and any state or local regulations adopted there under, as delineated by an accredited wetlands specialist and approved by the Conservation Commission; and
- c) Ten percent of the remaining parcel acreage after the areas of (a) and (b) are removed, to account for subdivision roads and infrastructure.

19.4.1.2 Dwelling Unit Calculation. The maximum initial number of allowable residential dwelling units on the parcel shall be determined by dividing the net acreage determined under subsection 19.4.1.1, above, by the required acreage for a dwelling unit in the district under Section 5.2 of the Town of Shelburne Zoning Bylaw. Fractional units of less than .5 shall be rounded down and fractional units of .5 or more shall be rounded up.

19.4.1.3 Parcels Located in More than One Zoning District. For parcels located in more than one zoning district, the maximum initial allowable number of dwelling unit for each zoning district shall be computed separately first. These totals shall be added together and then rounded as above. The allowable number of maximum bonus dwelling units for the entire OSD shall be calculated based upon this combined total number of dwelling units. The permitted location of the dwelling units and Protected Open Space shall be wherever the Planning Board determines best fits the characteristics of the land, based upon the Conservation Analysis and Findings described in Section 2.8 of the Subdivision Regulations, without reference to zoning districts.

19.4.2 Bonus Dwelling Unit Incentives

19.4.2.1 General. An applicant may increase the number of dwelling units beyond that otherwise allowed by Section 19.4.1 in accordance with the provisions of this Section 19.4.2. The

additional number of dwelling units permitted under this Section 19.4.2 shall be known as the OSD’s “density bonus.”

19.4.2.2 The density bonus for an OSD shall not, in the aggregate, exceed 25% of the dwelling units allowable pursuant to Section 19.4.1. When determining the final total number of bonus dwelling units, fractions of less than .5 shall be rounded down to the nearest integer and .5 or more shall be rounded up.

19.4.2.3 Bonus Density Incentives.

Design Feature	Bonus
OSD protects 60% of the parcel	10%
OSD protects 65% or more of the parcel	5% for each additional 5% protected
OSD protects 10-20 contiguous acres	5%
OSD protects 20 or more contiguous acres	10%
OSD protects land contiguous to an already protected area outside the OSD parcel so as to increase the practical area of working agricultural land, forest, or wildlife habitat in the already protected area by 25%	5%
OSD permanently provides the public with recreational access to its Protected Open Space	5%
OSD contains a congregate senior housing unit designed for 6-12 seniors	5%
OSD contains “separate senior housing dwelling units”	5% for every two such dwelling units
OSD contains dwelling units which can be counted towards Shelburne’s Subsidized Housing Inventory as determined by Mass. Dept. of Housing & Community Development.	5% for every two such dwelling units

19.4.2.4 “Separate senior housing dwelling units are those which are: (1) permanently restricted to residents who are 55 years of age or older; (2) contain 2 or fewer bedrooms in each dwelling unit; and (3) are handicapped accessible.

19.4.2.5 Dwelling Units which meet the requirements of more than one bonus density category may not be counted more than once in determining bonus units.

19.5 PROTECTED OPEN SPACE

19.5.1 The Protected Open Space in an OSD shall be set aside for passive recreation, conservation, forestry, and/or agricultural uses which preserve the land essentially in its undeveloped condition. Structures or buildings accessory to recreation, conservation, or agricultural uses may be erected but shall not exceed 2% coverage of such Protected Open Space or 10,000 square feet, whichever is less.

19.5.2 Protected Open Space shall be contiguous to the greatest extent practicable. Where noncontiguous pockets of Protected Open Space are preferable to protect conservation areas, applicants shall attempt to connect these resource areas to the greatest extent practicable through the use of trails and/or vegetated corridors. Protected Open Space will still be considered contiguous if it is separated by a roadway or an accessory amenity (such as a barn, paved pathway or trail, or shed for the storage of recreational equipment).

19.5.3 Further subdivision of Protected Open Space or its use for other than the above listed uses, shall be prohibited; provided, however, that the Protected Open Space may be utilized, to the extent allowable in a Conservation Restriction approved by the Massachusetts Executive Office of Energy and Environmental Affairs, for common water supply wells and associated infrastructure, common subsurface leaching fields and other underground components of wastewater systems, and rain gardens, constructed wetlands, and other decentralized stormwater management systems consistent with Low Impact Development (LID) and are consistent with the purposes of this OSD Bylaw. Treated stormwater may be discharged into the Protected Open Space. To ensure that the requirements of this Section are met, a Conservation Restriction in accordance with M.G.L. Chapter 184 Section 31 shall be imposed on the Protected Open Space and recorded in the Franklin County Registry of Deeds by the applicant at the time the approved Definitive Plan or final ANR Plan is submitted to the Registry of Deeds for recording. The applicant shall notify the Planning Board in writing within ten (10) days after the Conservation Restriction and the Definitive Plan, as approved and endorsed, have been recorded at the Franklin County Registry of Deeds and, in the case of registered land, with the recorder of the Land Court, of such recording, noting book, page number and date of recording. The purpose of the Conservation Restriction will be to clearly identify the uses and restrictions which apply to the Protected Open Space in the OSD.

19.5.4 Such Protected Open Space shall be:

19.5.4.1 conveyed to a corporation or trust formed for the Homeowners Association for the owners of dwelling units within the OSD; OR

19.5.4.2 conveyed to a non-profit conservation land trust or a suitable State Agency, the principal purpose of which is the conservation or preservation of open space; OR

19.5.4.3 conveyed to the Town of Shelburne, at no cost, and be accepted by it for passive recreation or open space use. Such conveyance shall be at the option of the Town and shall require the approval of the voters at a Town Meeting; OR

19.5.4.4. retained by one or more private individuals, a corporation, limited liability company, or trust owned by private individuals.

19.5.5 Conservation Restriction: The Conservation Restriction required by Section 19.5.3 shall provide in perpetuity (a) for maintenance of the Protected Open Space in a manner which will ensure its function and appearance (e.g. as farmland or forest), cleanliness, and the proper maintenance of drainage, utilities and the like located on the Protected Open Space; (b) that if the owner of the Protected Open Space fails to maintain it in reasonable order and condition in accordance with the Development Plan and the Conservation Restriction, then the Town or the holder of the Conservation Restriction may, after notice to the owner and after obtaining an appropriate court order, enter upon such land and maintain it in order to preserve the taxable values of the properties within the development, enforce the Conservation Restriction, and/or prevent the Protected Open Space from becoming a public nuisance; and (c) that the costs of such maintenance by the Town or the holder of the Conservation Restriction shall be assessed against the owner of the Open Land and shall be paid by the owner of the Open Land within thirty (30) days after the receipt of a statement therefor.

19.5.5.1 If the Protected Open Space is to be conveyed to the dwelling unit owners within the OSD, ownership and maintenance of such Protected Open Space shall be permanently assured through a corporation or trust owned or to be owned collectively by the owners of the ~~lots~~ dwelling units within the OSD. If such a corporation or trust is utilized, title to the Protected Open Space shall pass with conveyances of the dwelling units in perpetuity. Each owner shall be subject to a charge for a share of the maintenance and periodic inspection expenses which binds all owners to maintain the Protected Open Space in a manner consistent with the agricultural, recreational, or conservation restriction. Such Homeowners Association documents shall be submitted with the subdivision application and shall be subject to approval by the Planning Board and Town Counsel.

19.5.5.2 The developer shall remain in control of, and shall be responsible for, maintenance of the Protected Open Space until the Protected Open Space is conveyed to one of the entities identified in Section 19.5.4. In the case where the conveyance is to a corporation or trust to be owned by the owners of the dwelling units within the OSD, the developer shall remain in control of and shall be responsible for maintenance of the Protected Open Space until a majority (51%) of the dwelling units are conveyed to permanent third party owners.

SECTION 20 AMENDMENTS

20.1 This by-law may be amended from time to time at an annual or special town meeting in accordance with the provisions of the Massachusetts General Laws 40A, Section 5.