TOWN OF WEST TISBURY

ZONING BYLAW

As Amended November 5, 2013

Price: $20.00

AMENDMENTS TO THE ZONING BYLAW

ADOPTION DATE	DESCRIPTION
12/2/71	Voters adopt Zoning Bylaw
1/26/72	Attorney General approves Zoning Bylaw
3/1/72	ZONING BYLAW goes into effect
2/20/73	Establish Planning Board, vote to obtain maps
2/5/74	Reclassify airport form A/R to Industrial
2/5/74	A/R use regulations; amend soil removal section
2/5/74	Amend A/R restricted uses re. tents
2/5/74	Amend height restrictions on windmills, silos
4/30/74	Add Cluster Zoning
6/24/75	Reclassify Zoning Districts
6/24/75	Amend permitted uses in Business District
6/24/75	Amend permitted uses in Light Industrial District
6/24/75	Amend Special Permits to include seasonal camps
6/24/75	3-ACRE ZONING, AMENDED SETBACKS IN A/R2 (POND)
10/26/76	Resolution (not bylaw) to restrict tents
10/26/76	OVERLAY DISTRICT; Coastal, Roads, Special Places
10/26/76	Establish Plan Review Board
10/26/76	Add Rate of Development section
10/26/76	Amend Scenic Roads Section (to add Dr. Fischer Road)
11/1/77	Amend Intensity regs – Special Permits for setbacks
6/27/78	Amend Board of Appeals duties per MGL Ch. 808
5/20/80	Amend Special Permits – accessory uses
5/19/81	Amend definition for structures (swimming pools)
5/18/82	Move landfill from A/R to Light Industrial District
5/18/82	Amend height restriction – windmills
11/30/82	Amend height restriction – windmills
11/30/82	Amend location of districts
5/17/83	Clarify description of zoning districts
5/17/83	Amend Rate of Development – unused building rights
8/21/84	Amend Use Regulations – limiting subordinate dwellings
8/21/84	Delete “guesthouse” from accessory permitted uses
8/21/84	Amend subordinate dwellings, lot size
8/21/84	Delete definition of guesthouse
7/30/85	Add Flood Plain Zone and related definitions
7/30/85	Amend districts to include A/R3
7/30/85	3-ACRE MINIMUM LOTS, 50-FT SETBACKS IN A/R3
12/10/85	Amend rate of development – one dwelling per lot per year
12/10/85	Amend Business District setbacks
12/10/85	Add Administration; boundary monuments
12/10/85	Amend Business District permitted uses, etc.
4/22/86	Amend districts – relabel light industrial to business
4/22/86	3-ACRE MINIMUM LOT, 50 FT SETBACKS ADOPTED TOWN-WIDE
4/22/86	Add A/R District 1B, permitting subordinate dwellings for 5 YEARS ONLY
4/22/86	Amend Business District use regs – two-family dwellings
4/22/86	Amend Board of Appeals admin. Process
4/22/86	Amend special permit granting authority to ZBA
4/22/86	Add building trade to business district specially permitted uses

4/22/86 Add word “Limited” to Retail & Wholesale Business District
4/22/86 Amend Roads District to exclude Business District
4/22/86 Amend Admin: Plan Review Board
9/9/86 Amend use regs for specially permitted uses
5/19/87 Amend rate of development – 20% or 8 max. per year
5/19/87 ADD 110 FT. FRONTAGE REQUIREMENTS. Add to definitions
12/1/87 Add to Definitions: accessory building, height, nursery
12/1/87 Add parking requirements in A/R districts
12/1/87 Amend Plan Review Board powers and duties
12/1/87 Revise intensity regulations – lot sizes, setbacks
12/1/87 Further define home occupations
3/22/89 Add Definition: bedroom
3/22/89 Amend intensity – calculating lot size
3/22/89 Delete Cluster Development, add FLEXIBLE RESIDENTIAL DEV. SECTION
3/22/89 Add Affordable Housing section to Flexible section
3/22/89 Add to Special Places District; Hilltop Places
5/26/89 Add SIGNAGE SECTION
5/19/90 Allow Planning Board to accept easements
5/19/90 Renumber Zoning Bylaw for clarification
5/19/90 Amend intensity – calculating lot size
5/19/90 Amend Rate of Development
5/19/90 Add “…and studio” – add Studio to Definitions
5/19/90 Amend subordinate dwellings
5/19/90 Add Associate Member to Planning Board
5/19/90 Amend permitted uses to include renting of rooms
2/22/91 Amend SPECIAL WAYS protection
5/21/91 Amend Rate of Development to except affordable housing
5/21/91 Add ACCESSORY APARTMENTS
5/21/91 Define minimum setbacks; define access separation
5/21/91 Add sentence to Roads District re: 1000-ft access
5/21/91 Amend wording to remove stone walls
5/21/91 Amend wording re. Administration
5/21/91 Add Planning Board as special permit granting authority
5/18/93 Amend Business District lighting, define direct access
11/16/93 Amend Plan Review Board duties
11/16/93 Amend business District access roads
5/17/94 Amend Business District – add commercial garages
5/17/94 Add Definition for commercial garage
5/16/95 Relax height restrictions on barns, public buildings
5/16/95 Define wooded terrain
5/21/96 Add GREENLANDS water resource protection district
10/1/96 Add Greenlands definitions; amend Flood Plain Zone
5/20/97 Accessory building on substandard lots
11/18/97 ALL HOME OCCUPATIONS now by special permit
11/18/97 Additions allowed on substandard lots by right
11/18/97 Clarification of bylaw allowing accessory buildings on substandard lots
9/22/98 Temporary moratorium: wireless communication facilities
2/16/99 Amend definition of “public utility”
2/16/99 Amend height restrictions
2/16/99 Add new section, “Wireless Communications Facilities,” related definitions
4/11/00 Adopt two-year residential building cap
5/24/00 Replace existing zoning bylaw with comprehensive revision. Amendments included but not limited to: 4.5 acres required for guesthouses on newly created lots; creation of Affordable Housing

Committee; change names of zoning districts; create Village Residential district; replace Flexible Zoning section with Open Space Planning section.

11/15/00	Clarification re. boundary monuments
11/15/00	Exclude detached bedrooms.
11/15/00	Renumber sections for clarification
11/15/00	Clarify unenclosed vs. screened porch
11/15/00	Clarifications re. subordinate dwellings
11/15/00	Amend Accessory Apartments section
11/15/00	Amend Multi-Family Housing by Special Permit
11/15/00	Clarify Affordable or Year-Round Housing requirements
11/15/00	Add definition “Guesthouse”
4/10/01	Clarify review and definition of Large Scale Residential developments
4/10/01	Clarify re. second-story apartment in MB District
4/10/01	Amendment re. camping vehicles
4/10/01	Clarify Site Plan Review submission requirements
4/10/01	Clarify restriction on substandard and affordable lots
4/10/01	Clarify non-conforming lots in MB District
3/12/02	Add “Wild and Scenic North Shore District”
4/9/02	Clarify restrictions on affordable lots
4/9/02	Add new definitions of “Household” and “Family”
11/12/02	Add back Associate Member section
4/8/03	Amend to allow tennis courts, swimming pools by Special Permit
4/8/03	Amend occupancy restrictions on apartments
4/8/03	Amend deed restrictions on affordable lots
10/26/04	Add to introduction of Housing section
10/26/04	Amend requirements for Accessory Apts., establish max. rental rates
10/26/04	Remove references to “year-round housing”
10/26/04	Replace “Substandard & Affordable Lots” section with “Homesite Lots” section
10/26/04	Add new definitions for “Affordable Housing Covenant,” “Domicile,” “Eligible Purchaser,” “Homesite Lot”
10/26/04	Amend definitions of “Affordable Housing,” “Affordable Housing Committee”
4/12/05	Remove required postings in affordable apartments
4/12/05	Clarify one dwelling per Homesite Lot
4/12/05	Amend Rate of Development section
1/17/06	Amend swimming pool requirements
1/17/06	Extend amnesty period for pre-existing illegal apartments
1/17/06	Remove reference to “year-round housing”
1/17/06	Amend affordable housing requirement
1/17/06	Amend Homesite Lots section to clarify size of remaining lot, include “eligible lessees”
1/17/06	Amend definition of “Eligible Purchaser”
1/17/06	Amend “Home Occupation by Special Permit”
1/17/06	Amend “Solid Waste Facility” definition
1/17/06	Add definition “Unenclosed Porch”
4/10/07	Amend Multi-Family Housing by Special Permit; add new definition “Art Gallery”
4/4/09	Amend Multi-Family Housing by Special Permit;
4/4/09	Amend Special Ways Zone;
4/4/09	Amend 8.5-4, swimming pools, to minimize noise impacts
4/13/10	Prohibit heliports except in LI2 district; allow Wind Energy Conversion Systems by Special Permit; amend Personal Wireless Service Facilities; amend Flood Plain Zone.
4/12/12	Add new section 8.10 Large-scale Ground-Mounted Solar Photovoltaic Installations, and related definitions.

11/5/13 Amend the zoning bylaw by adding Registered Marijuana Dispensary (RMD) to the Definitions, the Use Table, and the Dimensional Table Sections.

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TOWN OF WEST TISBURY

ZONING BYLAW

As Amended November 5, 2013

ARTICLE I INTRODUCTION AND AUTHORITY

SECTION 1.1 GOALS

This zoning bylaw is adopted in order to achieve the Town's planning goals. These goals include:

- ► Protecting the Town's rural and natural character, including its farms, forests, wetlands, ponds, beaches, hilltops, and other open spaces.
- ► Providing a supply of year-round housing that is affordable to residents of West Tisbury.
- ► Offering opportunities for small businesses in appropriate locations throughout the Town, without changing the attractive rural, agricultural, and residential character of the Town.
- ► Providing a scenic and ecologically healthy environment for both year-round residents and the seasonal residents who help to support the economy and tax base of the Town.

These goals are more fully described in the West Tisbury Master Plan of 1987, as updated by the Community Profile of 1997, and as may be further amended or updated from time to time.

SECTION 1.2 HOW THIS BYLAW WORKS

1.2-1 This bylaw regulates land use by dividing the Town into zoning districts and establishing rules for the use of land in each district. This Article provides a brief overview of how to find information in the bylaw.

1.2-2 The Use Table in Article III tells what uses are allowed in each district. The definitions in Article XIV explain what the different use categories in the table mean. The Dimensional Table and text in Article IV contains lot size, setback, and other requirements relating to how much development is allowed on a lot and where it should be placed. Supplementary regulations in Article VIII contain additional requirements for specific types of uses and structures (such as home occupations, signs, and parking).

1.2-3 Articles V, VI, and VII contain special provisions that apply in certain locations or for certain types of development. Article V contains provisions for "Open Space Development" (sometimes referred to as flexible or cluster development), which is designed to ensure protection of open space when land is subdivided. Article VI covers "overlay" districts, which are designed to protect special resources of the Town from inappropriate development. The one that affects the largest part of the Town is the Roads district, since much of the Town's developed landscape lies along the roads protected by this district. Article VII regulates the rate of development in subdivisions to ensure that they are not developed too rapidly.

1.2-4 Articles IX and X explain the procedures for obtaining various types of permits from the Town, including building or use permits from the Zoning Inspector, Special Permits and variances from the Zoning Board of Appeals, and Site Plan approval from the Planning Board. Article XI contains rules for "grandfathering" buildings and uses that were legal under previous regulations but do not conform to this bylaw.

SECTION 1.3 EFFECT OF THIS BYLAW

Land shall be used and structures shall be located, constructed and used only as allowed in this bylaw.

SECTION 1.4 LEGAL AUTHORITY

This bylaw is enacted to promote the health, safety and general welfare of the inhabitants of the Town of West Tisbury as authorized by Chapter 40A of the Massachusetts General Laws (known as the "Zoning Act") and by the Massachusetts Home Rule Amendment (Massachusetts Constitution, Amendment 89). It is enacted for the purposes enumerated in the Zoning Act as well as those additional purposes contained in the Town's Master Plan which are within the Town's home rule powers to implement.

ARTICLE II ESTABLISHMENT OF DISTRICTS

SECTION 2.1 LAND USE DISTRICTS

2.1-1 For the purpose of this bylaw, the Town of West Tisbury is divided into the following districts:

Rural	RU
Village Residential	VR
Mixed Use Business	MB
Light Industrial	LI

2.1-2 These land use districts are located and bounded on a map entitled "Zoning Map of West Tisbury, Massachusetts," dated May 24, 2000, and on file in the office of the Town Clerk. The Zoning Map, with all the explanatory matter thereon, is hereby made a part of this bylaw. A reduction of this map is attached to copies of this bylaw for informational purposes only, and is not part of the bylaw.

SECTION 2.2 OVERLAY AND OTHER DISTRICTS

2.2-1 In addition to the land use districts, this bylaw also establishes overlay districts, which add additional requirements to protect identified natural and cultural resources. These districts are described in Article VI. In addition, land lying within the West Tisbury Historic District is subject independently to regulation pursuant to the West Tisbury Historic District Bylaw. A map of the Historic District may be distributed with this bylaw for informational purposes only.

SECTION 2.3 PURPOSES OF LAND USE DISTRICTS

2.3-1 RU: The purpose of the Rural District is to maintain the Town's historic pattern of rural settlement, characterized by large expanses of open space and unspoiled views from the road, a scattering of residences and small businesses, and clustered development surrounded by open space.

2.3-2 VR: The purpose of the Village Residential District is to enable the historic village center of West Tisbury and surrounding residential neighborhoods to maintain their existing character and settlement pattern.

2.3-3 MB: The purpose of the Mixed Use Business District is to create an area for larger scale businesses that do not fit into the RU or VR Districts, designed in a way that fits into the character of West Tisbury.

2.3-4 LI: The purpose of the Light Industrial District is to allow locations for uses that might negatively affect residential areas, such as the airport, landfill, and light industrial uses that are best segregated from other land uses.

ARTICLE III ZONING DISTRICTS: USE REGULATIONS

SECTION 3.1 ALLOWABLE USES

This bylaw is intended to protect the character of West Tisbury's existing landscape and historic settlements, while allowing flexibility of land use and new development that is in keeping with the Town's rural character.

3.1-1 Use Table

The Use Table that follows indicates allowable uses in the districts shown. See Article XIV for definitions of the use categories. Uses that are not listed below are prohibited, unless the Zoning Board of Appeals determines that a proposed use is so similar in character and impact to listed uses as to justify inclusion within a given use category. The meaning of the symbols is as follows:

P Designates a use permitted by right. Usually requires a building permit and/ or a certificate of occupancy from the Zoning Inspector. It may require approval of new construction by the Historic District Commission if the land is in a historic district, or a Special Permit from the Zoning Board of Appeals or Site Plan Review by the Planning Board if it is in an overlay district.

PR Designates a use permitted by right subject only to Site Plan Review by the Planning Board **unless otherwise designated** (see Article IX), provided that the proposed use contains no more than 1,500 square feet of floor area in the RU and VR Districts, and 3,000 square feet in the MB and LI Districts. If the use involves structures with more floor area, a Special Permit must be obtained from the Zoning Board of Appeals (see Section 9.2).

S Designates a use allowed by Special Permit, granted by the Zoning Board of Appeals unless otherwise indicated (see Section 9.2).

-- Designates a prohibited use.

The column entitled "Section Reference" refers to sections of the bylaw that contain additional provisions affecting the listed use category.

USE TABLE

USE CATEGORY	USE DISTRICTS▪				SECTION
	RU	**VR**	**MB**	**LI**	
RESIDENTIAL USES					
Single-family Dwelling	P*	P*	P	--	4.4
Two-family Dwelling†	P	P	P	--	4.4
Multi-family Dwelling (conversion)†‡	S	S	PR	--	4.4
Multi-family Dwelling (new)†‡	S	S	PR	-	4.4-3
Accessory Apartment‡	S	S	S	--	4.4-3
Subordinate Dwelling	P	P	P	--	4.4-1(B)
Upper-floor Apts. in Mixed-use Building‡	--	--	PR	S	4.4-2
Assisted Living Facility†	S	S	S	–	
Employee Dormitory†‡	S	S	S	S	4.4-5
Large-scale Residential Development Δ	S	S	S	–	
Open Space Development	P	P	--	--	Art. V.
Swimming Pools	S	S	S	S	8.5-4
Tennis Courts	S	S	S	S	
Heliports ▲	--	--	--	--	
Wind Energy Conversion Systems	S	S	S	S	8.9
COMMUNITY USES					
Cemetery	S	S	S	S	
Educational/Charitable/Religious •	PR	PR	PR	PR	8.5-3
Health Care Facility	S	S	S	S	
Membership Club	S	S	S	S	
Municipal Facility (not listed elsewhere)	PR	PR	PR	PR	
Airport	--	--	--	S	
Solid Waste Facility	--	--	--	S	
Preservation of Natural Areas	P	P	P	P	
Bus Shelter	P	P	P	P	
Heliports ▲	--	--	--	--	
Wind Energy Conversion Systems	S	S	S	S	8.9

▪ *Within overlay districts, additional Special Permit and Site Plan Review requirements may apply. Within the West Tisbury Historic District, the West Tisbury Historic District Bylaw also applies.*

† *Subject to density controls in Section 4.4. Applicability of Special Permit requirement may depend upon density.*

‡ *May be subject to occupancy restrictions (see Section 4.4-4).*

* *Site Plan Review required if floor area exceeds 3,000 square feet for principal residences or 2,500 square feet for accessory structure, including barns or stables (unless exempted as agricultural structures), riding arenas, or other recreational facilities.*

• *Subject to limitations on municipal regulations in G.L. Chapter 40A, Section 3. Site Plan Review applies where legally permissible.*

Δ *The Planning Board is the Special Permit Granting Authority for Large-scale Residential Developments.*

▲ *Allowed within District LI2 (Martha's Vineyard Airport). This does not preclude bona fide emergency helicopter landings in any Use District.*

USE TABLE, continued

USE CATEGORY	USE DISTRICTS				SECTION
	RU♣	**VR**	**MB**	**LI**	
BUSINESS USES					
Adult Uses	--	--	--	S	8.5-6
Agriculture, Fishing, Forestry •	P	P	P	P	
Automobile Service Station	--	--	S	S	
Craft Workshop	PR	PR	PR	PR	
Child Care Facility •	PR	PR	PR	S	8.5-3
Home Occupation	S	S	S	S	8.5-1
Junkyard	--	--	--	S	8.5-8
Kennel	S	--	S	PR	
Large-Scale Ground-Mounted Solar Photovoltaic Installations • •	--	--	--	PR	8.10
Light Industry	--	--	--	S☼	
Lodging Facility	--	--	PR	PR	
Office	--	--	PR	PR	
Public Utility Facility (excluding wireless communication facilities)	PR	PR	PR	PR	
Recreational Business					
Registered Marijuana Dispensary	--	--	S	S	
Renting of 3 or fewer rooms □	P	P	P	--	
Renting of 4 or more rooms □	S	S	S	--	8.5-7
Restaurant	--	--	PR	S	
Retail Business (not listed elsewhere)	S♦	--	PR	S♠	
Riding Stable	PR	PR	S	S	
Service Business (not listed elsewhere)	S	--	PR	PR	
Soil Mining	S	--	--	S	8.5-5
Storage of Heavy Equipment	S	--	--	PR	
Veterinary Clinic	S	--	S	S	
Warehouse	--	--	--	PR	
Wholesale Business	S	--	S	PR	
Wireless Communication Facilities	S	S	S	S	8.8
Heliports ▲	--	--	--	--	

□■ *Within overlay districts, additional Special Permit and Site Plan Review requirements may apply. Within the West Tisbury Historic District, the West Tisbury Historic District Bylaw also applies.*

♣ *See Section 8.5-2 for regulation of non-residential uses in the RU and VR Districts.*

☼ *No light industrial use shall have direct access onto the Edgartown Road.*

• *Subject to limitations on municipal regulations in G.L. Chapter 40A, Section 3.*

□ *In owner-occupied dwelling with or without meals provided, excluding detached bedrooms.*

♦ *Only in connection with agricultural use, including sale of produce and related products customarily sold by farms and nurseries.*

♠ *Only in connection with products manufactured or warehoused on the premises.*

▲ *Allowed within District LI2 (Martha's Vineyard Airport). This does not preclude bona fide emergency helicopter landings in any Use District.*

• • *By Site Plan Review by the Zoning Board of Appeals*

▲ SECTION 3.2 PROHIBITED USES IN ALL DISTRICTS

3.2-1 Any building or structure or any use of any building, structure or premises which is injurious, obnoxious, offensive, dangerous or a nuisance to the community or to the neighborhood through noise vibration, odors, fumes, smoke, gases, dust, harmful fluids or substances, danger of fire or explosion or other objectionable feature detrimental to the community or neighborhood health, safety, convenience, or welfare.

3.2-2 Keeping of more than one motor vehicle which is, and for the immediately preceding thirty-day period has been, disabled, dismantled, or inoperative, or unregistered, unless such vehicle is enclosed within a building or is in an approved junkyard.

3.2-3 In addition, the following uses are specifically prohibited: golf courses, driving ranges, and fast-food restaurants.

SECTION 3.3 ACCESSORY USES

In addition to the principal uses permitted in a district, accessory uses which are subordinate and customarily incidental to such permitted uses shall be allowed on the same terms as the principal use (i.e. by right, with Site Plan Review, and/or by Special Permit), except that Site Plan Review shall be required for residential accessory structures that exceed 2,500 square feet, including barns or stables (unless exempted as agricultural structures), riding arenas, or other recreational facilities. Common driveways shall be considered customary accessory uses, allowed with Site Plan approval unless the principal use involves the review of a Site Plan or subdivision plan showing the common driveway in connection with a Special Permit or subdivision approval.

SECTION 3.4 MIXED USE

The Town of West Tisbury encourages the mixing of uses where such mixing does not create land use conflicts. Accordingly, all Special Permit and/or Site Plan Reviews for a single project shall, where practical, be consolidated into one proceeding.

SECTION 3.5 CHANGE OF USE

See Section 9.3-1.

ARTICLE IV ZONING DISTRICTS: DIMENSIONAL AND DENSITY REGULATIONS

SECTION 4.1 PURPOSE

The purpose of dimensional and density regulations is to establish lot size, setback, and related requirements to maintain the rural and historic character of West Tisbury and to encourage development that protects open space.

SECTION 4.2 DIMENSIONAL TABLE

4.2-1 The following Dimensional Table is adopted as part of this bylaw. Except as provided in Sections 4.2-2 through 4.5 below, development in the Town of West Tisbury shall conform to the requirements of the Dimensional Table. Different dimensional standards apply to Open Space Developments, which are described in Article V below.

DIMENSIONAL TABLE

	DISTRICT			
	RU	**VR**	**MB**	**LI**
Minimum lot size*	3 ac.	3 ac.	40,000 sf	1 ac.
Minimum road frontage‡				
Private road	100	50	100	100
Public road	200	75	100	100
Minimum front yard setback■				
Private road†	50	25	25	20
Public road†	50	40	35	20
Minimum side yard setback■□	50	20	30♣	20
Minimum rear yard setback■□	50	20	20♦	20♦
Maximum floor area for non-residential structure♠	2,000 sf	1,000 sf	3,500 sf	N/A
Maximum height •	30	30	35	35
Maximum Cultivation Area¤			1000sf	1000sf

ALL DIMENSIONS IN FEET UNLESS OTHERWISE INDICATED.

* *See Section 4.2-2(A) to determine land counted toward minimum lot size requirements. See Article V for lot size and density calculations for Open Space Development.*

‡ *For rear lots, see Subsection 4.3-3(C).*

■ *For accessory structure setbacks, see Subsection 4.2-2(D).*

† *Front yard setbacks may be adjusted to prevailing setbacks in the immediate neighborhood on all roads; a maximum setback may be established to maintain the "street wall" in the VR District.*

♣ *May be 0 for party-wall buildings.*

♦ *100-foot setback with wooded buffer required if lot in LI abuts RU District; 40-foot setback required if lot in MB abuts RU District.*

• *For height exceptions, see Section 4.3-2.*

♠ *Excluding agricultural structures and municipally-owned structures and subject to any applicable limitations in G.L. Chapter 40A, Section 3. May be increased pursuant to Section 4.4-2.*

¤ *Maximum cultivation area for medical marijuana not to exceed 1000 square feet.*

4.2-2 Interpretation of Dimensional Requirements

A. Requirements for Lot Area Calculations
For lots endorsed by the Planning Board after March 22, 1989, the following standards shall apply in calculating minimum lot area:

1. In the RU District, the minimum lot area must include in one contiguous parcel a minimum of one hundred thousand square feet of land which is not under any body of water (including watercourses) or wetland as defined in G.L. Section 40, Chapter 131;

2. In other districts, no land which is wetland as defined in G.L. Section 40, Chapter 131 shall be included in the determination of the lot area required for zoning compliance;

3. For lots in all zoning districts, no part of a public or private way may be included in the lot area required for zoning compliance.

B. Corner Lots and Through Lots
Wherever a side or rear yard is adjacent to a street, the front setback shall also apply to such side or rear yard. Corner lots shall be deemed to have two front yards, two side yards, and no rear yard.

C. Projections into Setbacks

1. The following projections into required setback areas shall be permitted:

   a. Steps and stairs: four feet into side or rear setbacks.

   b. Awnings or movable canopies: six feet into any required setback.

   c. Cornices, eaves, and other similar architectural features: 1.5 feet into any required setback.

2. Carports and garages
An attached open carport or enclosed garage shall be considered a part of the building in determining compliance with setback requirements.

3. Porch
An open ground floor porch or patio may project eight feet into a required front setback.

D. Setbacks for Accessory Structures and Uses

1. Any detached garage, studio, barn, stable, tennis court, swimming pool, or any accessory structure attached to the principal building shall comply with the minimum setback requirements of this bylaw for principal buildings. One detached accessory structure or use may encroach into required setback areas provided that it:

   a. Is not used for human habitation;

   b. Has a footprint no larger than 120 square feet;

   c. Does not exceed 16 feet in height;

d. Is set back at least the height of the structure, but not less than 10 feet, from side or rear lot lines.

e. Is not located closer to the street than the front yard setback required for a principal building, except for fences, gates, mailboxes, newspaper receptacles, signs, and sand storage bins, as well as ornamental structures such as entry pillars and statues.

2. For corner lots, the setback from all streets shall be the same for accessory structures as for principal buildings.

3. Any swimming pool, tennis court, or other accessory structure or use with a footprint greater than 600 square feet shall, if in front of the principal building, be set back at least twice the minimum front setback distance.

4. Non-habitable detached or attached accessory structures which do not meet the setback requirements of this Subsection 4.2-2(D) may be allowed by Special Permit from the Zoning Board of Appeals, provided that the Board finds such structures to be in harmony with the residential development in the zoning district and not detrimental to the neighborhood.

E. Detached Bedrooms
Detached bedrooms, with or without toilet facilities, shall be considered part of the dwelling unit with which they are associated, and may be rented only to the same household that occupies that dwelling unit. Such bedrooms may not be rented to boarders or to paying guests of a lodging facility or any other establishment (including owner-occupied dwellings) providing sleeping accommodations for transient guests.

SECTION 4.3 EXCEPTIONS TO DIMENSIONAL AND DENSITY REQUIREMENTS

The following exceptions to dimensional requirements are permitted in order to encourage the protection of open space and the provision of needed housing affordable to year-round residents of West Tisbury.

4.3-1 Lot size, setback, frontage, and floor area ratio requirements in Section 4.2-1 shall not apply in Open Space Developments. See Article V.

4.3-2 Height Exceptions

A. Otherwise applicable height limitations shall not apply to television receiving antennas, chimneys, and non-habitable roof-mounted structures such as spires and cupolas, which are customarily associated with residential, agricultural, religious, or municipal uses.

B. Height limitations shall not apply to any free-standing flagpole or to any structure erected on a pole for nesting or feeding of birds.

C. Barns and silos may exceed applicable height limits, provided that they comply with all other provisions of this bylaw, and provided that for every one foot by which such structures exceed the height limit, the minimum setback requirements are increased by one foot.

D. Barns higher than thirty feet as of March 31, 1972, may be converted to residential uses.

E. Wind Energy Conversion Systems (WECS) may exceed height limitations via Special Permit per Section 8.9.

4.3-3 Exceptions to Lot Frontage Requirements

A. The frontage requirements for lots on the arc of a curve at the end of a cul-de-sac of a radius of one hundred twenty feet or less may be reduced to sixty feet on a private road.

B. In accordance with Section 81R of Chapter 41 (G.L.), the Planning Board may approve a definitive subdivision plan which creates lots which have less than the minimum frontage, if reduced frontages are likely to result in less disruption of the topographic feature of the land at full development of the subdivision, will not result in a hazardous concentration of egress points, and will not be inconsistent with the intent and purpose of the Subdivision Control Law. This provision shall not result in the creation of more lots than would be permitted if all lots conformed to the minimum frontage requirements.

C. Within the RU District, the frontage of a rear lot (a lot in which most of the buildable land is set back from the road and road access is obtained by a narrow strip of land running to the road) may be reduced for an individual lot in a subdivision or on a plan endorsed "approval not required" to a minimum of twenty-five feet (this width shall not be reduced at any depth within the lot), provided that:

   1. Each lot with reduced frontage contains at least six acres.
   2. No more than two such rear lots may adjoin along the street line.
   3. The principal building shall be set back at least 150 feet from the road.
   4. Notice of the reduction of frontage and increase in minimum lot size of any lot under this Subsection 4.3-3(C) shall be recorded or registered as an encumbrance upon the record title for such lot concurrently with the recording or registration of the plan which created such lot and prior to conveyance or building upon such lot.

SECTION 4.4 HOUSING

The Town of West Tisbury values being a diverse community that accommodates residents of varying income levels. As the cost of land and housing increases on Martha's Vineyard, many local residents are being priced out of the market for homes. The Town of West Tisbury desires to maintain and encourage housing that is affordable to the entire range of its residents, without encouraging excessive growth that detracts from the Town's quality of life. Further, the town desires to create and maintain a pool of housing that remains affordable in perpetuity for future generations of West Tisbury residents. Therefore, the Town establishes this section to allow the creation of apartments, multi-family dwellings, and accessory dwellings to help meet the Town's housing needs, as well as the construction of individual residences on lots that do not satisfy minimum lot size requirements which will remain in the affordable housing pool in perpetuity; and to require affordable, year-round housing in all larger developments. This section also enables families that own large parcels of land to use those parcels as family compounds containing several dwelling units without subdividing their land into building lots. In this bylaw, wherever occupancy is restricted to residents of West Tisbury, such restriction shall mean that the Affordable Housing Committee, the Planning Board, and owners of rental units shall allow occupancy by any resident of Martha's Vineyard, but shall, to the extent practical, give first preference to residents of West Tisbury.

4.4-1 Dwelling Unit Densities Permitted by Right

The following densities of residential structures are permitted by right in all districts.

A. The number of dwelling units on a parcel allowed by right is determined by dividing the total acreage of buildable land (as defined in the bylaw) by the minimum lot size in the district. This applies to all parcels

in the Town with the exception of lots created in an open space subdivision (see Article V). Any proposal involving more than two dwelling units shall be subject to Site Plan Review by the Planning Board, unless it is being reviewed as a subdivision. The Planning Board shall apply the criteria, standards, and requirements in Article V, Open Space Development, in reviewing such an application. In no case shall the number of dwelling units permitted by right on a parcel exceed the number that would have been permitted if the lot had been proposed for division as either an "Approval Not Required" land division or a subdivision under the Rules and Regulations for the Subdivision of Land, including consideration of the adequacy of the road or roads providing access to the parcel.

B. One single-family dwelling (without an accessory apartment) plus one subordinate dwelling not exceeding 800 square feet, shall be permitted on lots that meet the requirements of (1.) or (2.) below. Unenclosed porches shall be considered non-habitable space and shall not count toward the calculation of subordinate dwelling floor area. In addition, a screened porch of 15% or less of the floor area of the subordinate dwelling shall not count toward the 800 sq. ft. maximum.

   1. Lots in existence on the effective date of this bylaw (May 24, 2000) that comply with the minimum lot size in the district, unless a subordinate dwelling has been prohibited by the terms of a subdivision approval.

   2. Lots created after the effective date of this bylaw, provided that they are at least 1.5 times the minimum lot size for the district.

Either the principal dwelling or subordinate dwelling may be constructed first, provided that the total floor area of one of the dwellings does not exceed 800 square feet.

The setback requirements for a structure which contains or is a subordinate dwelling shall be the same as for principal dwellings.

Subordinate dwellings to be constructed on lots which have at least double the minimum area requirements of the relative zoning district will be exempt from the 800 sq. ft. floor area restrictions.

C. In the RU District, a lot may contain one or more seasonal camps in addition to a subordinate dwelling only if the lot contains at least three additional acres for each such seasonal camp. No lot shall contain more than three seasonal camps.

4.4-2 Second-story Apartments in the MB District

Second story apartments over non-residential uses are permitted in the MB District either by right subject to Site Plan Review, or by Special Permit, depending on the structure's overall proposed floor area (see Section 3.1-1).

Second story apartments shall not be counted toward the 3,500 sq. ft. maximum floor area for non-residential structures in the MB District, (as specified in the Dimensional Table, p. 9). For every one-bedroom or two-bedroom apartment constructed, the maximum permitted floor area for the ground floor non-residential use may be increased by 900 square feet per apartment, (including an interior stair to access the apartment(s)), up to a maximum of 5,300 square feet. The maximum floor area of the entire building (including apartments) shall not be more than 7,000 sq. ft. Such apartments shall be subject to the occupancy restrictions described in Section 4.4-4, provided that if any apartment is occupied by seasonal employees, such employees must be employed on the same premises. If two apartments are constructed, at least one shall be restricted as affordable housing. The minimum floor area of such apartments shall be as follows:

A. One-bedroom apartment: 600 square feet

B. Two-bedroom apartment: 800 square feet

4.4-3 Dwelling Unit Densities Allowed by Special Permit

A. Accessory Apartments

In order to help provide affordable year-round rental housing within the context of West Tisbury's predominantly single-family home character, and to provide an opportunity for supplemental income to senior citizens and other homeowners domiciled in West Tisbury, who might otherwise find it difficult to remain in their homes due to increasing energy and maintenance costs and/or concerns about security and health, one apartment may be allowed by Special Permit from the ZBA as an accessory use to an owner-occupied single-family dwelling, on any sized lot, subject to the following conditions:

1. The lot, dwelling and apartment shall be in single ownership and the owner must occupy either the principal or accessory unit. The owner must be domiciled year-round in West Tisbury. At no time are both the principal and accessory units to be rented.
2. The maximum rental rates of accessory apartments shall be established annually by the Affordable Housing Committee and set forth in the Affordable Housing Committee Implementation Guidelines.
3. Any unit which is rented is subject to the occupancy restrictions in Section 4.4-4.
4. Attached accessory apartments shall occupy a maximum of 800 square feet and a minimum of 300 square feet. The outward appearance of a residence containing an attached accessory apartment shall conform to that of a single-family residence with only one main entrance on the front or street side of the structure. Additional entrances shall be designed to ensure compatibility with the goal of retaining the appearance of a single-family residence.
5. Detached accessory apartments shall occupy a maximum of 500 square feet and a minimum of 300 square feet within an otherwise non-habitable structure such as a garage or barn.
6. Any lot with a residence and an accessory apartment shall contain at least ten thousand square feet of buildable land per bedroom.
7. A lot may contain either an accessory apartment or a subordinate dwelling (guest house), unless its area is twice the minimum lot size in that district, in which case it may have both.
8. A lot may contain either an accessory apartment or a detached bedroom, unless its area is twice the minimum lot size in that district, in which case it may have both.

B. Multi-Family Housing by Special Permit

At the sole discretion of the Planning Board as Special Permit granting authority, upon a finding that the proposed dwelling units are consistent with the Town of West Tisbury Master Plan and provide needed housing for Town residents, a Special Permit may be granted allowing any combination of residences or apartments where the density exceeds the standards in Subsection 4.4-1(A), provided that the following criteria are met: if two dwelling units are proposed, both shall be restricted as affordable housing as defined in this bylaw; if three dwelling units are proposed, at least two shall be restricted as affordable housing; if four or more dwelling units are proposed, then at least 75% of the units shall be restricted as affordable housing and subject to the terms and limitations of a covenant imposed by the Affordable Housing Committee or a Martha's Vineyard Affordable Housing Needs Covenant granted to the Dukes County Regional Housing Authority pursuant to the provisions of St. 2004, C.445, at the sole discretion of the Affordable Housing Committee, and that the total number of dwelling units in any single building may not exceed four.

For any dwelling units approved under this Section 4.4-3B, the lot shall contain at least ten thousand square feet of buildable land per bedroom, unless an enhanced septic treatment system is used and approved by the Board of Health.

4.4-4 Occupancy Restrictions on Apartments

In order to reserve available housing for those most in need of it (year-round residents of West Tisbury and Martha's Vineyard and seasonal employees of local businesses), the following occupancy restrictions apply to the rental of apartments allowed under the provisions of Sections 4.4-2 and 4.4-3 above.

A. The dwelling units described above may be rented only to the following occupants:

1. Persons domiciled on Martha's Vineyard year-round and eligible to rent affordable housing as defined in this bylaw, as demonstrated by income, residency, and other documentation required by the Affordable Housing Committee.

2. In owner-occupied buildings and/or properties only (including mixed use buildings and properties), persons employed full-time on Martha's Vineyard during the summer season, as demonstrated by a letter from an employer, current pay stubs, or other proof of employment.

3. Persons who intend to qualify under Subsections 1 or 2 above and who sign an affidavit stating that intention and submit proof of compliance within 30 days of occupancy of the dwelling unit.

B. To prove compliance with the above requirements, the owner of regulated apartments shall file the following with the Zoning Inspector:

1. Prior to the issuance of an occupancy permit for the apartment and within thirty days of any change in ownership of the premises, an affidavit attesting to the owner's understanding of the occupancy restrictions of this Section 4.4-4 and intention to comply with these requirements.

2. On or before January 31 of each year, the names of lessees of the apartments claiming to be year-round domiciliaries of Martha's Vineyard, together with copies of their year-round leases and their driver's licenses. Any such lease shall clearly state that year-round occupancy of the apartment is a condition of the lease.

3. On or before July 15 of each year, the names of lessees of apartments claiming to be seasonal employees, together with the proof required for such employment status. Such lessees shall be furnished a statement by the owner that clearly states that occupancy of the apartment is contingent upon their employment on Martha's Vineyard.

4. Failure to comply with the requirements of this Section 4.4-4 (B) shall constitute a violation of this bylaw, subjecting the violator to all applicable fines and penalties as provided in Subsection 10.23 (A). A lessee who fails to comply with the provisions of this Section shall be considered to be in violation of this bylaw. Failure to comply with the provisions of this section shall also be grounds for revocation of the certificate of occupancy for the dwelling unit, unless the owner makes a good faith attempt to evict tenants who do not comply with the conditions of this Section.

5. Such income verification documentation as may be required by the Affordable Housing Committee.

C. This Section 4.4-4 shall apply to all apartments created after the effective date of this provision (May 24, 2000) and to all apartments created previously that were not in compliance with applicable restrictions on occupancy in existence when they were created. All other pre-existing apartments shall come into compliance with this Section 4.4-4 on or before January 1, 2005. Apartments created in violation of applicable zoning bylaws at the time of their creation shall be granted amnesty from penalties for such zoning violations, provided that:

1. They were created prior to June 1, 1999;

2. They comply with applicable state building code provisions; and

3. They are registered with the Zoning Inspector prior to January 1, 2010.

4.4-5 Employee Dormitories

Single-family and two-family dwellings and mixed-use buildings may be used as employee dormitories for up to eight seasonal residents who satisfy the requirements of Section 4.4-4(A) (2), provided that such dwellings are either owner-occupied or managed by a resident manager employed by one or more of the businesses which employ the residents, that adequate provision is made to monitor and enforce restrictions on noise, parking, and other conditions that may be imposed through the Special Permit process, and that the Board of Health approves of such use of the premises.

4.4-6 Affordable Housing Requirement

In any subdivision containing three or more lots developed over any five year period, at least 20% of the lots shall qualify as affordable housing as defined in this bylaw, and shall be subject to the terms and limitations of a covenant imposed by the Affordable Housing Committee or a Martha's Vineyard Affordable Housing Needs Covenant granted to the Dukes County Regional Housing Authority pursuant to the provisions of St. 2004, C.445, at the sole discretion of the Affordable Housing Committee. Fractional units of less than .5 shall be rounded down and .5 or more shall be rounded up. By Special Permit, the Planning Board may exempt from this requirement lots created for the use of family members, if it finds that suitable resale restrictions are in place.

4.4-7 Homesite Lots

The Town establishes this section to allow the construction of individual residences on lots that do not satisfy minimum lot size requirements, provided that:

- the lot is approved by the Planning Board as a Homesite Lot;
- the lot's purchase price is established by the Affordable Housing Committee;
- the lot shall be owned or leased by an Eligible Purchaser or Eligible Lessee, as defined herein, who meets the qualification of the Affordable Housing Committee guidelines in effect at the time of filing of the necessary Special Permit application;
- the owner of the lot is granted a special permit from the Zoning Board of Appeals to build a single-family dwelling for owner occupancy as prescribed in this bylaw;
- and the owner of the lot grants an Affordable Housing Covenant burdening said lot to the Town of West Tisbury, in the form utilized by the Town of West Tisbury at the time of filing the special permit application, and records said covenant in the Dukes County Registry of Deeds at the time the special permit is granted, or, at the sole discretion of the Affordable Housing Committee, grants a Martha's Vineyard Affordable Housing Covenant to the Dukes County Regional Housing Authority pursuant to the provisions of St. 2004, C.445.

A Homesite Lot must otherwise meet the requirement of all applicable building and zoning laws and all applicable land use, environmental, wetlands, health or other federal, state or local laws, bylaws, rules and regulations, in effect at the time of filing the special permit application and at the time the special permit is granted.

A. Creation of Homesite Lots:

Provided that the proposed Homesite Lot or Lots conform to all conditions in the definition of Homesite Lot, Homesite Lots may be created by:

1. The Town from land owned by or donated to the municipality;
2. a property owner from a lot created by a Planning Board approved subdivision of a larger lot containing more than the minimum acreage required by Article IV of this zoning bylaw, provided that the remaining lot meets minimum lot size requirements as set forth in Article IV. If more than one Homesite Lot is created, the remaining lot shall be at least the minimum acreage required by Article IV of this zoning bylaw multiplied by the total number of Homesite Lots;
3. a property owner of existing lot which does not satisfy minimum lot size requirements of the zoning bylaw and is not protected as a non-conforming lot.

B. Distribution of Homesite Lots:

1. Homesite Lots created by the Town shall be awarded by lottery, limited to Eligible Purchasers or Eligible Lessees as defined herein. Such lottery shall be held at a public meeting of the Board of Selectmen.
2. Homesite Lots created by a property owner shall be limited to Eligible Purchasers or Eligible Lessees as defined herein. Selection of the Eligible Purchaser or Eligible Lessees shall, at the option of the property owner, be made by the property owner or by lottery to be held at a public meeting of the Board of Selectmen.
3. Homesite Lots may be sold or donated to a non-profit organization, which organization may hold the lot for resale or lease without profit. Any such sale or lease may only be made to an Eligible Purchaser or Eligible Lessee selected by lottery to be held at a public meeting of the Board of Selectmen.

C. Initial Conditions for Homesite Lots:

1. Size of a Homesite Lot: A newly created Homesite Lot (created under Section 4.4-7A 1. and 2. above) may be less than three (3) acres in size but not less than one (1) acre and must have the approval of the Planning Board as a Homesite Lot. A Homesite Lot on an existing lot which does not satisfy minimum lot size requirements of the zoning bylaw and is not protected as a non-conforming lot (Section 4.4-7A 3., above) shall contain at least 10,000 square feet of buildable land area per bedroom and satisfy other applicable Board of Health requirements.
2. Cost of a Homesite Lot: The maximum purchase price or lease amount of Homesite Lots (improved or unimproved) shall be established annually by the Affordable Housing Committee and set forth in the Affordable Housing Committee Implementation Guidelines.
3. Recipient of a Homesite Lot: a Homesite Lot may only be created for a recipient who is an Eligible Purchaser or Eligible Lessees qualified under the Affordable Housing Committee Implementation Guidelines.
4. Special Permit from Zoning Board of Appeals: The ZBA may approve a Special Permit for a substandard lot to be buildable as a Homesite Lot provided that the following standards and criteria are met:

    a. The proposed lot has been approved as a potential Homesite Lot by the Planning Board;
    b. The purchase price of the Homesite Lot has been established and posted;
    c. The proposed Homesite Lot satisfies all Town zoning and conservation requirements in effect at the time of application, with the exception of lot size;
    d. The proposed Homesite Lot is fully compliant with the Town Board of Health rules and regulations in effect at the time of application;
    e. The proposed Homesite Lot is available for purchase or lease only to an Eligible Purchaser or Eligible Lessee as defined herein, and approved by the Affordable Housing Committee. Such eligibility shall be certified in writing by the Affordable Housing Committee;

f. The proposed Homesite Lot shall be subject to terms and limitations in accordance with the perpetual Affordable Housing Covenant approved by the Affordable Housing Committee in effect at the time of filing the special permit application, or, at the sole discretion of the Affordable Housing Committee, the proposed Homesite Lot shall be subject to the terms and limitations of a Martha's Vineyard Affordable Housing Needs Covenant granted to the Dukes County Regional Housing Authority pursuant to the provisions of St. 2004, C.445; and

g. The proposed Homesite Lot may be subject to additional conditions imposed by the Zoning Board of Appeals to assure that the provisions of the Zoning Bylaw are met.

D. Use, Resale and Transfer of Homesite Lots;

The use, resale and transfer of each Homesite Lot created pursuant to this section of the bylaws shall be governed by a) the Affordable Housing Covenant or the Martha's Vineyard Affordable Housing Needs Covenant recorded at the time the special permit is granted, b) the West Tisbury Affordable Housing Committee Guidelines in effect and as revised from time to time at the discretion of said Committee, and c) in the case of a Martha's Vineyard Affordable Housing Needs Covenant, the rules and regulations of the Dukes County Regional Housing Authority pertaining to said covenants under the authority of St. 2004, C.445. The Affordable Housing Covenant and the Guidelines shall be enforceable by the Town of West Tisbury, or its designee, and shall limit, in part, the following:

1. The initial cost of the land;
2. The time within which to secure a building permit;
3. The use of the property to one dwelling, which shall be the owner's/lessee's primary residence;
4. The maximum allowable rental time per year;
5. The rental guidelines and exceptions, if any;
6. The resale value to an affordable formula; and
7. The resale or transfer to Eligible Purchasers/Lessees and heirs, or family members for whom the property is their primary residence as further defined in the Affordable Housing Covenant.

ARTICLE V OPEN SPACE DEVELOPMENT

SECTION 5.1 PURPOSE AND APPLICABILITY

The purpose of this Section is to preserve the open space resources of West Tisbury as identified in the Master Plan and Open Space and Recreation Plan, to foster compact development patterns using flexible regulations for density and lot dimensions, and to promote and encourage affordable housing for year-round residents. The Town wishes to encourage the use of Open Space Development as an alternative to conventional development, because Open Space Development results in the preservation of contiguous open space and important environmental resources, while allowing more design flexibility than conventional development. Open Space Development reduces development impacts on farmland, forests, wildlife habitats, large tracts of contiguous open space, environmentally sensitive areas, steep slopes, bluffs, hilltops, and historically significant areas. To encourage this type of development, Open Space Development is allowed by right, subject only to the requirements of the Rules and Regulations Governing the Subdivision of Land. In order to encourage small subdivisions to follow Open Space Development principles, there is no minimum parcel size or number of lots required for an Open Space Development.

SECTION 5.2 ALLOWABLE DENSITY

The allowable density for residential units is calculated by a formula based upon the net acreage of the property. This calculation involves two steps:

5.2-1 To determine net acreage, subtract from the total (gross) acreage of the site the total acreage of all floodplains, watercourses (including ponds), land in the shore zone of the Coastal District, and wetlands as defined in Chapter 131, Section 40 of the General Laws as determined by an accredited wetlands specialist.

5.2-2 To determine the number of allowable residential units on the site, divide the net acreage by the minimum lot size in the applicable zoning district. Fractional units of less than .5 shall be rounded down and .5 or more shall be rounded up.

5.2-3 The density determined in Section 5.2-2 above may be increased through density bonuses designed to advance important goals of the Town's Master Plan. Density bonuses are given at the discretion of the Planning Board based upon the expected public benefit. They are calculated by first determining the allowable density under Section 5.2-2 and then multiplying that number by 100% plus the percentages that follow:

A. If the applicant allows public access to the property and the Planning Board finds that such public access provides a significant recreational benefit to the Town (such as beach access or access to an important natural area): a maximum of 50%.

B. If the applicant permanently restricts ownership and occupancy of 20% or more of the total residences as affordable housing as defined in this bylaw (whether or not required to do so by Section 4.4-6): a maximum of 50%.

C. If the applicant preserves at least 60% of the parcel as working farmland (including the creation and preservation of new working farmland): a maximum of 25%.

D. If the applicant preserves as permanent open space more than 60% of the parcel: a maximum 10% density bonus per additional 5% of the parcel preserved as open space.

5.2-4 The density bonuses in 5.2-3 above may be combined to result in a total density bonus not exceeding 100%. In Open Space Developments where density bonuses have been granted, the Planning Board shall have the discretion to prohibit subordinate dwellings.

SECTION 5.3 TYPES OF RESIDENTIAL DEVELOPMENT

The allowable residential units may be developed as single-family, two-family, or multi-family residences, provided that applicable Special Permit requirements for the land use district are satisfied and that the number of dwelling units does not exceed the allowable density in Section 5.2 above. The subdivision approval and Special Permit/Site Plan requirements shall be fulfilled concurrently in one proceeding to the extent practical. Subordinate dwellings and accessory apartments shall be permitted in Open Space Developments if allowed by Section 4.4.

SECTION 5.4 DIMENSIONAL REQUIREMENTS

5.4-1 Minimum Lot Sizes in Open Space Developments

The limiting factor on lot size in Open Space Developments is the need for adequate water supply and sewage disposal. Therefore, the minimum lot size shall be as required by the Board of Health for disposal of sewage and the protection of water supply.

5.4-2 Setbacks and Road Frontage

Minimum setbacks and road frontage for lots within an Open Space Development shall be the same as for the Village Residential District, except that if common water and/or sewer services are provided, these dimensions may be reduced by the Planning Board in the course of subdivision approval.

5.4-3 Minimum Preserved Open Space

Open Space Developments shall preserve a minimum of 60% of the land as open space. At least 50% of the land set aside as preserved open space shall be buildable land, and the remainder of the land preserved as open space may include wetlands, steep slopes, shore zone, and other unbuildable land.

5.4-4 Arrangement of Lots

A. Lots shall be located and arranged in a manner that protects views of the ocean, other scenic areas, farmland, wildlife habitat, large intact forest areas, hilltops, ponds, steep slopes, and other sensitive environmental resources and land of conservation value, while facilitating pedestrian and bicycle circulation.

B. Lot layout, land alterations, and placement of structures shall follow applicable portions of Looking at the Vineyard, published by the Vineyard Open Land Foundation, as well as any additional design guidelines for Open Space Development which may be adopted by the Planning Board.

SECTION 5.5 PERMANENT OPEN SPACE

Open space set aside in an Open Space Development or as a condition of any Special Permit or Site Plan approval (see Article IX) shall be permanently preserved as required by this Section 5.5. The Planning Board may not require such open space land to be accessible to the public, unless a density bonus is allowed under Subsection 5.2-3(A). Land set aside as permanent open space may, but need not be, a separate parcel. Such land may be included as a portion of one or more large parcels on which dwellings and other structures are permitted, provided that a restriction is placed on such land pursuant to Section 5.5-2 below, and provided

that the Planning Board, Zoning Board of Appeals, or Martha's Vineyard Commission, as appropriate, approves such configuration of the open space as part of its approval. Any development permitted in connection with the setting aside of open space land shall not compromise the conservation value of such open space land.

5.5-1 Conservation Value of Open Space

A. The open space protected pursuant to this Section must have "conservation value," which may include historic, ecological, agricultural, water resource, scenic or other natural resource value. Examples of lands with conservation value include shore zone land, land providing views of the ocean and ponds, agricultural land, wetlands, and water bodies. Land in the Special Overlay Districts and land identified as worthy of preservation in the Town's Open Space and Recreation Plan shall be deemed to be land of conservation value. If such land is protected as permanent open space, it shall be shown on the recorded plan and shall generally form contiguous blocks of one or more of the following:

1. Open meadows and farmland, especially if visible from public roads.

2. Areas of trees and other vegetation that screen existing or proposed development from the road.

3. Land of scenic, historic, or environmental resource value such as dunes, bluffs, beaches, hilltops, ponds, archaeological sites, wildlife habitat, floodplain, aquifer recharge, and wetlands.

4. Land that has potential to be part of a recreational open space system for the Town, including beaches, beach access roads or trails, and other identified trail corridors.

5. Other land identified in the Town's Open Space and Recreation Plan.

B. Whenever a reviewing board approves a plan with protected open space, it shall make written findings identifying the specific conservation values protected and the reasons for protecting such land.

5.5-2 Permanent Preservation of Open Space Land

All land required to be set aside as open space in connection with any Open Space Development shall be so noted on any approved plans and shall be protected by a permanent restriction in the title to the land of the type described in G.L. Section 31, Chapter 184, to be held by the Town of West Tisbury, the Commonwealth of Massachusetts, or a non-profit conservation organization qualified to hold tax-deductible conservation easements under Section 170(h) of the Internal Revenue Code. The restriction shall specify the permitted uses of the restricted land, which may include accessory uses such as utilities, driveways, and roads servicing the development, as well as the primary open space uses that protect and maintain the land's conservation value. The restriction may permit, but the Planning Board may not require that the restriction permit, public access or access by residents of the development to the protected open space land.

A. Ownership of Open Space Land

1. Protected open space land may be owned in common by a homeowner's association (HOA), dedicated to Town, County, or State governments, transferred to a non-profit organization acceptable to the Planning Board, held in private ownership, or held in such other form of ownership as the Planning Board finds appropriate to manage the open space land and protect its conservation value.

2. If the land is owned in common by an HOA, such HOA shall be established in accordance with the following:

    a. The HOA must be created before final approval of the development, and must comply with all applicable provisions of state law.

b. Membership must be mandatory for each lot owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance, and maintenance of common open space, private roads, and other common facilities.
c. The HOA must be responsible for liability insurance, property taxes, and the maintenance of recreational and other facilities and private roads.
d. Property owners must pay their pro rata share of the costs in Subsection c above, and the assessment levied by the HOA must be able to become a lien on the property.
e. The HOA must be able to adjust the assessment to meet changed needs.
f. The applicant shall make a conditional offer of dedication to the Town, binding upon the HOA, for all open space to be conveyed to the HOA. Such offer may be accepted by the Town, at the discretion of the Board of Selectmen, upon the failure of the HOA to take title to the open space from the applicant or other current owner, upon dissolution of the association at any future time, or upon failure of the HOA to fulfill its maintenance obligations hereunder or to pay its real property taxes.
g. Ownership shall be structured in such a manner that real property taxing authorities may satisfy property tax claims against the open space lands by proceeding against individual owners in the HOA and the dwelling units they each own.
h. Town Counsel shall find that the HOA documents presented satisfy the conditions in Subsections a through g above, and such other conditions as the Planning Board shall deem necessary.

B. Maintenance Standards

1. Ongoing maintenance standards shall be established as a condition of development approval to ensure that the open space land is not used for storage or dumping of refuse, junk, or other offensive or hazardous materials. Such standards shall be enforceable by the Town against any owner of open space land, including an HOA.

2. If the Board of Selectmen finds that the provisions of Subsection 1 above are being violated to the extent that the condition of the land constitutes a public nuisance, it may, upon 30 days written notice to the owner, enter the premises for necessary maintenance, and the cost of such maintenance by the Town shall be assessed ratably against the landowner or, in the case of an HOA, the owners of properties within the development, and shall, if unpaid, become a property tax lien on such property or properties.

ARTICLE VI SPECIAL OVERLAY DISTRICTS

Special Overlay Districts are districts with separate regulations which are superimposed on the designated zoning districts. Where there is a conflict between the Zoning Bylaw and the Special Overlay Districts' regulations and restrictions, the more limiting requirements shall prevail. These regulations apply to all land, all development, and all uses within the overlay district unless specifically exempted within this section. Land upon which there are suitable conservation restrictions in effect and in perpetuity which meet with the standards set up by the Martha's Vineyard Commission to assure the lasting protection of the land and water necessary to carry out the purposes of the Act (Chapter 637 and its guidelines) shall, if found to meet or exceed these standards, be exempt from regulations pursuant to the guidelines once the conservation restriction is approved by the Martha's Vineyard Commission.

SECTION 6.1 COASTAL DISTRICT

Designated Area of Critical Planning concern under Chapter 637 of the Acts of 1974, administered by the Planning Board.

6.1-1 Purpose

To prevent flood damage, maintain water quality, assure adequate water supply, prevent pollution, promote wildlife habitats, assure the maintenance of cultural and historic sites and values, prevent damage to structures, land and water as a result of erosion, promote economic development of fisheries and related industries and maintain and enhance the overall economy of the Island.

6.1-2 Definition

The Coastal District includes the land, streams and wetlands of the Town which lie below ten-foot elevation above sea level or within five hundred feet of mean high water of a coastal water body exceeding ten acres in size or the ocean and all land within one hundred feet of streams and wetlands draining into coastal great ponds (measurement from the thread of the stream or the edge of wetland vegetation), as shown on a map entitled West Tisbury Districts of Critical Planning Concern dated October 1976.

6.1-3 Establishment of Zones within the Coastal District

Shore Zone: Consisting of land from mean low water to one hundred feet inland of the inland edge of any beach or marsh grasses and one hundred feet inland of the crest of any bluff exceeding a height of fifteen feet. Where there is no beachgrass, marshgrass, or bluffs, measurement shall be from the inland edge of the beach. The height of a bluff shall be measured from mean high water. "Beach" shall be defined as that area of land adjoining any pond, lake, stream, creek, ocean, sea or water which is subject to tidal action. "Bluff" shall be defined as land adjacent to a beach or coastal wetland which shows the effects of wave erosion or other down-slope erosion causing it to be steeper than the otherwise natural slope of the land.

Inland Zone: Consisting of all land in the Coastal District, except the Shore Zone.

6.1-4 Shore Zone

A. Uses Permitted
   Only those uses permitted in the respective zoning districts which are consistent with the fragile nature of the area, such as outdoor recreation, conservation, agricultural purposes.

B. Uses Requiring Special Permit
Minor non-residential structures and uses and additions to existing residential structures, provided that no additional plumbing facilities and no increase to the on-site sanitary disposal facilities shall result from said uses and/or structures.

C. Uses Prohibited
All uses which involve dredging, filling or alteration of any wetland or beach except for minimal dredging, filling or alterations for a structure or use permitted by Special Permit.

6.1-5 Inland Zone

A. Uses Permitted
Detached single family dwelling, non-habitable minor accessory structures normally used for personal, family and household purposes; and those permitted in the Shore Zone, provided that such development is set back a minimum of one hundred feet from any streams or wetlands draining into coastal ponds and conforms to the regulations and restrictions set forth in Section 6.1-6.

B. Uses Requiring Special Permit
All uses eligible for consideration for Special Permit in the respective zoning district except for within one hundred feet of any streams or wetlands draining into a coastal great pond in which case only non-habitable minor accessory structures and additions to existing residential structures may be considered for Special Permit. Alterations of a bank or stream such as for the construction of dams, bridges, or water wheels (priority to be given to such alterations for agricultural or conservation uses.)

6.1-6 Regulations and Restrictions

The regulations and restrictions of the respective zoning district shall apply subject to the following:

A. Height of Structures

1. Wooded Landscapes
In order to minimize visibility of structures, the maximum height of structures (as measured vertically from mean natural grade to the highest point of the structure) shall be the lesser of the height of surrounding trees, or twenty-four feet for a pitched roof and thirteen feet for a flat or shed roof (which is a roof or pitch one in four or less). The objective of this Subsection is to ensure that structures do not rise above the tree canopy and break the skyline when observed from a public road or water body.

2. Open Landscapes
In open landscapes (consisting of moors, plains, bluffs, and other areas without trees), the maximum height shall be eighteen feet for a pitched roof and thirteen feet for a flat or shed roof (which is a roof or pitch one in four or less).

3. Variation by Special Permit
By special permit the heights may be permitted to vary up to the maximum allowed in the respective zoning district provided that such proposed height modifications are consistent with the landscape and the character of the area.

B. Any development shall be prohibited from within one hundred feet of any streams or wetlands draining into a coastal pond except as provided in Subsection 6.1-5(B).

C. Construction of hard-surfaced roads with impervious surface, or any parking lot for six or more vehicles, or any road providing vehicular access to a beach shall be a Development of Regional Impact.

D. All utility installations must be underground unless excepted by Special Permit.

E. No road or way for vehicular use may be constructed exceeding a width of ten feet except by Special Permit, which may allow for a greater width.

F. Development proposed or occurring within five hundred feet of any area of major public investment such as a beach, wildlife preserve, etc., must be compatible with the area and the enjoyment of the area.

G. Any development, other than for historical preservation, shall be prohibited within forty feet of a special place of historic value as listed on the Special Places Register of the Martha's Vineyard Commission.

6.1-7 Administration

Special Permits as called for within the Coastal District shall be issued by the Zoning Board of Appeals with Site Plan Review by the Planning Board, as described in Section 9.2.

SECTION 6.2 ROADS DISTRICT

Designated Area of Critical Planning Concern under Chapter 637 of the Acts of 1974, and administered by the Planning Board.

6.2-1 Purpose

To allow for safe access and travel along the roads and to protect the visual character, diversity of landscape and historic features of the journey along the roads. To protect historic places and retain special ways open primarily for uses such as walking and horseback riding. This Section 6.2 adds additional protections for some of the same roads designated as "Scenic Roads" by Special Town Meeting, February 5, 1974, as amended by vote of Special Town Meeting, October 27, 1976.

6.2-2 Establishment of Zones in the Roads District

Major Roads Zone: consisting of the area lying within two hundred feet of the right of way of the designated Major Roads unless the area is in the MB Zoning District.

Special Ways Zone: consisting of the area lying within twenty feet of the centerline of the designated Special Ways as shown on map entitled "West Tisbury Districts of Critical Planning Concern" dated October 1976 and on a map entitled "West Tisbury Special Ways" dated January 1991 and on a map entitled "West Tisbury Special Ways Added 2009" dated December 2008.

6.2-3 Major Roads Zone

A. Designated Major Roads

- State Road and South Road: State Road as it traverses West Tisbury from the Tisbury town line southerly to the intersection of State and Edgartown Roads; and the area in West Tisbury lying south of the bridge crossing the Tiasquam River and west of South Road. The portion of State Road which traverses the Mixed Use Business (MB) District is excluded from the Major Roads Zone.
- Middle Road
- Music Street
- Scotchman's Bridge Lane
- Panhandle Road
- Old County Road, excluding the State Forest
- Lamberts Cove Road from State Road to the Town line
- Christiantown Road from Indian Hill Road to Firetower Road

- Indian Hill Road
- South Indian Hill Road
- North Road
- New Lane and Tiah's Cove Road to where the road first intersects with the western bound of Map 36 Lot 9 of the Assessors Maps dated November 1974
- Edgartown Road from the intersection of State Road to the Edgartown town line, excluding the State Forest.

B. Uses Permitted
Any residential, recreational, agricultural or open space use permitted in the respective zoning districts subject to the regulations and restrictions of Subsection 6.2-3(D) and Section 6.2-5.

C. Uses Requiring Special Permit
Any uses permitted by Special Permit in the respective zoning district, subject to the regulations and restrictions of Subsection 6.2-3(D) and Section 6.2-5.

D. Regulations

1. Height of Structures
Maximum height of structures as measured vertically from mean natural grade to the highest point on the roof shall be twenty-four feet for a pitched roof and thirteen feet for a flat or shed roof.

2. By Special Permit the heights may be permitted to vary up to the maximum allowed in the respective zoning district, provided that such proposed height modification is consistent with the landscape and the character of the area.

6.2-4 Special Ways Zone

A. Designated Special Ways

References in this section to the West Tisbury Assessors Maps are to the maps dated January 1, 1990 unless otherwise noted.

- *Old Holmes Hole Road:* Beginning at the Massachusetts State Highway at West Tisbury Assessors Map 10, Lot 195, and running Southwest, ending at Old County Road South of Assessors Map 21, Lot 18.
- *Old Courthouse Road:* Beginning at the Northern portion of Assessors Map 25, Lot 1, and running along its Western bound to Old County Road.
- *Tiah's Cove Road:* Beginning where it intersects the Western bound of Assessors Map 36, Lot 9, continuing North-Northeast on the Eastern side of Assessors Map 36, Lots 7 and 8, and Map 30, Lot 1.1, intersecting with Scrubby Neck Road/Watcha Path.
- *Scrubby Neck Road and Watcha Path:* Beginning at the Edgartown Road at Assessors Map 31, Lot 102.12, running Southeast [see relocation by Planning Board action in 1998], then overlaying with the access road of the Thomas Thatcher subdivision, running across the Southern point of Assessors Map 31, Lot 104.2 heading Southeast through Map 31, Lots 106.3 and 106.4 [see relocation by Planning Board action in 1994], continuing Southeast through Map 30, Lot 5.2 and turning East along the Southern bound of Map 30, Lot 2.32, continuing East through the Magid subdivision parallel to the access road when the road runs East to West and the Northern portion of Map 30, Lot 10.2 and the Southern portion of Map 30, Lot 2.85, crossing Deep Bottom Road, turning southeast over the northern portion of Map 36, Lots 17.2 and 17.11, continuing along the northern bound of Map 36, Lots 23 and 28, and shown as a 40-foot laid-out way north of Map 38, Lot 1, continuing east then

turning northeast at the southern bound of Map 37, Lot 56, and continuing to the Edgartown town line.

- *Roger's Path and Burying Ground Road:* Beginning approximately sixty feet on South Indian Hill Road from the intersection of Christiantown Road and Indian Hill Road and running South to connect with the Burying Ground Road and ending at the Massachusetts State Highway West of Map 22, Lots 40.1 and 9.
- *Stoney Hill Path* a.k.a. *Head of the Pond Road*: Beginning at its intersection with Old Holmes Hole Road at the Southern bound of Map 10. Lot 19.1 running northeasterly across Old County Road and continuing until it merges with Stoney Hill Road at the southeastern most corner of Map 10. Lot 199.9 (2008 maps).

B. Uses Permitted

Any residential, recreational, agricultural or open space use permitted in the respective zoning districts, subject to the regulations and restrictions of Subsection 6.2-4(D) and Section 6.2-5, provided that the development does not result in direct vehicular access to the Special Way.

C. Uses Requiring Special Permit from the Planning Board:

Criteria for granting a special permit shall include whether the development will create conflicts with present or future use of the Special Way.

1. Any uses permitted by Special Permit in the respective zoning district, subject to the regulations and restrictions of Sections 6.2-4(D) and 6.2-5.
2. Alteration of a Special Way to exceed a width of twelve feet, if first approved by the Martha's Vineyard Commission.
3. Where direct vehicular access is not allowed on the Special Way, vehicles may cross such a way by a proposed dirt, paved, or otherwise improved roadway at or nearly at right angles but may not travel along the way for any distance to gain access to a development. Consideration of such proposed crossings shall include deliberation of appropriate means to draw attention to the crossing for people's safety, including the surface composition of the crossing.
4. Other development, uses or structures for which the imposition of regulations would otherwise deprive a landowner of all other reasonable uses, or may be demonstrated by a landowner to be unreasonable.

D. Regulations

1. Any development, other than for historical preservation, shall be prohibited within forty feet of a Special Place of historic value as listed on the Special Places Register of the Martha's Vineyard Commission.
2. Development and use within a Special Way Zone shall not block or prevent non-motorized means of travel such as walking, horseback riding and bicycling along a Special Way.
3. There shall be no alteration of the width or surface materials of a Special Way. This provision is not intended to prevent the routine maintenance and repair of existing segments of Special Ways consistent with these Special Way regulations.

4. There shall be no removal of existing vegetation within a Special Way Zone other than to keep the Special Way clear of debris and overgrown vegetation, except as permitted as part of a Special Permit issued under 6.2-4.C. or where the width of a Special Way Zone extends beyond a pre-existing fence or beyond where a fence may be allowed under 6.2-4.D.6.

5. No fences, walls, structures, excavations, fill or obstructions shall be made, erected, placed or constructed within the Special Way Zone, except for gates, bars or stiles designed to allow passage for non-vehicular travel or for vehicular travel where vehicular rights-of-way exist.

6. Notwithstanding 6.2-4.D.5 above, areas where the Special Way Zone encompasses building lots that are less than one acre in area may have fences erected on those lots within the Special Way Zone provided the fences are at least 50% transparent, such as a split-rail or picket fence, and meet the minimum setbacks from the Special Way centerline set out in the table below:

Fence Setbacks for Parcels Less Than One (1) Acre
Fences must be at least 50% transparent

Fence Height	*Setback from centerline*
Under 4 feet	5 feet, or 1 foot outside the top edge of the physical Embankment alongside the Special Way, whichever is greater.
4 to 6 feet	10 feet

7. No Special Way shall be paved with impervious materials, except for segments that may be approved as crossings of a Special Way under 6.2-4.C.3.

8. Special Ways may be relocated with approval of the Planning Board for the purpose of aligning ways with property lines and preserving the continuity of a designated Special Way. However, the Planning Board does not have the legal jurisdiction to grant or extinguish public or private rights-of-way by such action.

6.2-5 General Regulations and Restrictions

A. Any additional access to a public road shall require a written approval of the Planning Board and must be at least one thousand feet, measured on the same side of the road, from any other vehicular access, except that if this requirement would prevent at least one access to a public road from each lot held in separate ownership from the lots contiguous thereto as of October 23, 1975, each such lot shall be allowed a single access which shall be located as far as practicable from all other such ways located on either side of the road. No land shall hereafter be divided or sold if any buildable lot or lots would not be entitled to a way to provide vehicular access to a public road. The Planning Board may issue a Special Permit which reduces the 1,000 foot access separation requirement if the Board makes a finding that such reduction is in harmony with the purpose of the Roads District and provides a significant public benefit with regard to public safety, aesthetic, or environmental considerations.

B. No stone wall shall be moved, removed or otherwise altered except for repair, except by Special Permit.

6.2-6 Administration

Unless authority is specifically assigned to the Planning Board, Special Permits as called for within the Road District shall be issued by the Zoning Board of Appeals pursuant to Section 9.2.

SECTION 6.3 SPECIAL PLACES DISTRICT

Designated Areas of Critical Planning Concern under Chapter 637 of the Acts of 1974, administered by the Planning Board.

6.3-1 Purpose

To physically protect the place or resource, to protect visual or other access; to buffer these places with a greenbelt which is natural or landscaped; to protect the quality of the ponds and wildlife habitats; to keep development in the District from competing for prominence as seen from the public roads, places, or water bodies; and generally to assure that any development in the immediate vicinity is compatible and does not cause or is not adversely affected by erosion.

6.3-2 Establishment of Zones in the Special Places District

Inland Pond Zone: Consisting of the land and waters lying within one hundred feet of the extreme high water mark of the ponds which exceed four acres in size and which are not within the Coastal District.

Hilltop Zone: As specified for each designated hilltop.

Historic and Cultural Zone: As specified in each designated historic and cultural place as shown on a map entitled West Tisbury Districts of Critical Planning Concern dated October 1976.

6.3-3 Designated Special Places within the Zones

A. Inland Ponds

- Seth's Pond
- Duarte Pond
- Old House Pond

B. Hilltop Places

- Firetower Hill including the land lying within a five-hundred-foot radius circle around the peak of the hill upon which the State fire observation tower is situated, and the land within two hundred feet of the centerline of the access road leading from Christiantown Road to the State fire observation tower:
- Indian Hill including the land within a five-hundred-foot radius from the United States Coastal and Geodetic Survey (USC&GS) marker around the peak of Indian Hill, meaning that hill lying near the terminus of Christiantown Road and marked "Indian Hill" on the USC&GS map, and the land lying more than two-hundred-fifty-foot elevation above mean sea level on the hill located near the terminus of Indian Hill Road, commonly called Indian Hill.
- Wascosim's Rock Special Place District including all lands within the boundary described as follows: beginning at a point on the Town boundary five hundred (500) feet south of Wascosim's Rock, following the five-hundred-foot radius from the Rock easterly and northerly until the radius intersects the one-hundred-thirty (130) foot elevation contour, then following the one-hundredthirty-foot elevation contour northerly and westerly to the Town boundary.

C. Historic and Cultural Places

- For Christiantown, all land lying within five hundred feet of the land owned by Dukes County containing the Mayhew Chapel and the Indian burial grounds.

6.3-4 Uses Permitted

A. Land may be used, cleared or cultivated for conservation purposes and for outdoor recreation including the erection of livestock fences and other such structures not requiring a building permit.

B. Within the Wascosim's Rock Special Place District uses are permitted which do not require a structure, sanitary disposal facility, road or fence. Such uses may include outdoor recreation, conservation, agriculture and management activities approved by the Conservation Commission.

6.3-5 Uses Requiring Special Permit

Any use or structure which is permitted in the respective zoning district including the erection, installation or placement of any structure requiring a building permit, or road, or way, subject to the following:

A. In the Inland Pond and Historic and Cultural Zones Any use or structure permitted or allowed by Special Permit in the respective zoning districts may be allowed by Special Permit, provided there is no other location on the lot on which the use or structure may be located and that no on-site sanitary disposal facility be installed or placed in the Inland Pond Zone.

B. Within the Firetower Hill and Indian Hill Special Places Structures, additions or alterations to an existing structure may be allowed but must not result in the highest point of the addition, alteration or structure's breaking the skyline (except for non-residential windmills and the fire tower) as observed from a public road or public place legally in existence as of April 1, 1976, or from a water body.

C. Within the Wascosim's Rock Special Place District

   1. Special permits may be granted if the development does not substantially affect the views of the ridge line and horizon from the surrounding valleys. The Zoning Board of Appeals shall consider the recommendations of the Planning Board as well as factors such as height, roof expanse, colors, materials, angles, massing, and architectural detail of the development proposal to ensure compatibility with the surrounding landscape character;

   2. The Zoning Board of Appeals shall also consider whether proposed development will comply with any District of Critical Planning Concern management plan adopted by the Conservation Commission;

   3. Special consideration shall be given to development proposals which include provisions for permanently dedicated non-vehicular public access to Wascosim's Rock ridge;

   4. Special Permits shall not be granted for developments sited above the one-hundred-forty-five-foot elevation contour with the exception of fences for agricultural or conservation purposes which do not impair views to or from the ridge top.

6.3-6 Administration

Special Permits as called for within the Special Places District shall be issued by the Zoning Board of Appeals.

SECTION 6.4 THE DOCTOR FISHER MILL DISTRICT

Designated Area of Critical Planning Concern under Chapter 637 of the Acts of 1974, administered by the Planning Board.

6.4-1 Purpose

To protect the mill and the area around it including the dam and waterways as a unique historic resource.

6.4-2 Definition
The Doctor Fisher Mill District includes the area lying within one hundred fifty feet of the Doctor Fisher Mill, which is situated in West Tisbury, east of North Road, approximately 1/5 mile from the intersection of North Road and State Road.

6.4-3 Uses Permitted
Any use which preserves, enhances or restores the mill, dam and its waterways in a manner consistent with the cultural and historic value.

6.4-4 Uses Requiring a Special Permit
Any use requiring alteration or repair of the mill, dam or its water courses provided such alteration or repair meets the approval of the Town's Conservation Commission and Selectmen and is consistent with the restoration or maintenance of the mill and its dam or water courses.

6.4-5 Prohibited Uses
Any destruction or removal of any part of the mill, dam or its waterways other than what is specifically called for in a Special Permit.

6.4-6 Administration
Special Permits as called for within the Doctor Fisher Mill District shall be issued by the Zoning Board of Appeals, and shall require additional approvals by the Conservation Commission and Selectmen as provided in Section 6.4-4.

SECTION 6.5 THE DOCTOR FISHER ROAD DISTRICT

Designated Area of Critical Planning Concern under Chapter 637 of the Acts of 1974, administered by the Planning Board.

6.5-1 Purpose
To keep the Doctor Fisher Road open to public use.

6.5-2 Definition
The Doctor Fisher Road District in West Tisbury includes those lands and waters lying within twenty feet of the centerline of the Doctor Fisher Road on four short road sections north of the Martha's Vineyard State Forest and from the northwesternmost bound of the Martha's Vineyard State Forest in a northwesterly direction to where it intersects State Road in the North Tisbury section of West Tisbury. (Thus, the land so described which lies within the Martha's Vineyard State Forest is not affected by this regulation, pursuant to lands owned by the Commonwealth in Section 2 of the Act.)

6.5-3 Uses Permitted
Any use permitted in the respective zoning district provided that the Doctor Fisher Road remains open to public use.

SECTION 6.6 GREENLANDS WATER RESOURCE PROTECTION DISTRICT

6.6-1 Purpose
To protect the groundwater resources of the Greenlands property, and the head of the Martha’s Vineyard Sole Source Aquifer, as an existing and future water supply resource.

6.6-2 Applicability

A. Boundaries

The map entitled Greenlands Water Resource Protection District, Town of West Tisbury, dated March 15, 1996, is on file with the Town Clerk, and delineates the boundaries of the district. A reduction of this map is attached to this bylaw for informational purposes only and is not the official map of the district.

B. Boundary Disputes

If the location of the recharge area for Zone II areas of public supply wells or the Greenlands property itself is challenged by an applicant, the Planning Board shall resolve the boundary dispute. Any application shall be accompanied by adequate documentation. The burden of proof shall be upon the owner(s) of the land in question to show where the bounds should be properly located. At the request of the owner(s), the Planning Board may engage a professional engineer, hydrologist or geologist to determine more accurately where the boundary should lie with respect to the individual parcels of land and may charge the owner(s) for all or part of the cost of this investigation pursuant to Section 9.5 of this bylaw.

C. Exemptions

The following materials, activities and facilities are exempt from the provisions of the Greenlands Protection District:

1. Household waste including garbage, trash and domestic sanitary sewage.
2. Wastes generated from growing agricultural crops or manure returned to the soil as fertilizer and applied at recommended agronomic rates.
3. Manure generated by the equivalent of three (3) or fewer large animals (horses or cows.)
4. Hazardous materials which are or will be displayed for sale at retail establishments, in compliance with labeling requirements
5. Hazardous materials or wastes in normal household volumes for strictly residential use.

6.6-3 Allowable Uses

Any residential, recreational, agricultural, retail or wholesale businesses, light industrial or open space use permitted in the underlying zoning districts (RU, MB), subject to the regulations and restrictions of Sections 6.6-4 and 6.6-5.

6.6-4 Prohibited Uses

The following uses are found to pose significant threats to the quality of the groundwater and are prohibited within the boundaries of the District:

A. Landfills, open dumps, auto recycling, auto junk and salvage yards, landfilling of sludge or septage with the exception of disposal of brush, stumps and demolition debris as currently regulated by the Board of Health.

B. Underground storage tanks for any hazardous waste for commercial or residential purposes.

C. Businesses and industries, not agricultural, that dispose of or process wastewaters on-site unless holding a Groundwater Discharge Permit on the date of the original adoption of these regulations.

D. Trucking terminals, bus terminals, car washes, motor vehicle fuel sales, and commercial fuel storage and sales.

E. Outside storage of commercial fertilizers or manures, unless exempted by Subsection 6.6-2(C) or conducted in a manner that prevents escape of contaminated runoff or leachate.

F. Earth removal to within four (4) feet of the historical high groundwater level, unless the materials removed are replaced within 45 days to achieve a final grading greater than four (4) feet above historical high groundwater level.

G. Storage of liquid petroleum products of any kind, except:

1. For normal household use or for the heating of a structure as further regulated by the Board of Health.
2. Waste oil retention facilities as required by G.L. 21, Section 52a.
3. Storage for emergency generators required by statute, rule, or regulation.

All new or replacement fuel storage systems must be approved for spill containment by the Board of Health prior to issuance of a permit by the Fire Chief. Those systems located in the District will be required to provide approved containment adequate to hold a spill the size of the containers' capacity plus ten (10) percent.

H. Treatment or disposal works for non-sanitary waters subject to 314 CMR 5.00 except:

1. Treatment works approved by the DEP for the treatment of contaminated groundwater.
2. Treatment works which would result in a clearly indicated net improvement in groundwater quality recharging the District as regulated by the Board of Health.

I. Uses of any kind that involve hazardous wastes or hazardous materials in excess of normal household volumes unless granted a Special Permit as described in Subsection 6.6-5(C).

6.6-5 Uses Allowed by Special Permit

A. General Provisions

1. A Special Permit is required for uses listed in Subsections 6.6-5(B) and (C) which are considered to pose a threat to groundwater quality if not properly designed, installed, and maintained.
2. The Planning Board is the Special Permit Granting Authority within the Greenlands District.
3. There are two types of Special Permits for the District. Special Permit #1 applies to uses which do not involve hazardous wastes or materials. In order for the Planning Board to grant a Special Permit #2, the application must first be reviewed by the Board of Health, which may recommend conditions of approval. Board of Health recommendations and conditions shall be binding on the Planning Board.
4. Upon submission of an application for a Special Permit under this Article, the Planning Board reserves the right to hire independent consultant(s), pursuant to Section 9.5 of this bylaw, whose services shall be paid for by the Applicant(s), to evaluate the proposal. Such consultants may include professional engineers, geologists, hydrologists, and/or other specialists.

B. Special Permit #1: Uses Involving No Hazardous Wastes or Materials
The following uses require Special Permit #1:

1. The application of fertilizers for non-domestic or non-agricultural purposes in accordance with state and federal standards.

2. Any use that will render impermeable more than 2,500 square feet or 15 percent of any lot, whichever is greater. To the extent feasible, runoff from impervious surfaces shall be recharged on the site by being diverted to areas covered with vegetation for infiltration. Dry wells and infiltration basins will only be used where other methods are not feasible, and shall include oil, grease and sediment traps to remove contaminants. All recharge areas shall be maintained in full working order by the owner(s).
3. Enlargement or alteration of existing uses that do not conform with this overlay district.

C. Special Permit #2: Uses Involving Hazardous Wastes or Materials
Upon a favorable recommendation by the Board of Health, the Planning Board may grant a Special Permit #2, with appropriate conditions, for:

1. Uses Involving Hazardous Wastes Non-agricultural businesses and industries that generate, use, treat, store, process or dispose of hazardous wastes (subject to G.L. 21C and 310 CMR 30.00). Such permits shall be limited to the following, unless the Board is provided with sufficient documentation to assure that the requirements of Subsections 6.6-5(D), (E), and (G) will be met:

    a. Very Small Quantity Generators as defined in 310 CMR 30.00 which store no more than 100 kilograms (220 pounds) on site at any one time.

    b. Household Hazardous Waste collection centers or events pursuant to 310 CMR 30.390.

    c. Waste Oil Retention Facilities required by G.L. Chapter 21, Section 52a.

2. Uses Involving Hazardous Materials
Uses involving hazardous materials, in compliance with the handling requirements in Subsection 6.6-5(D) below. The owner(s) must provide the board with a complete plan for recycling or disposing of all wastes generated by the use of hazardous materials.

D. Special Requirements for Hazardous Wastes and Hazardous Materials
The above-ground storage of hazardous materials (Appendix A in 105 CMR 670.00 and those listed as toxic or hazardous in G.L. 21E) and hazardous wastes (G.L. Chapter 32C) must be in product tight containers arranged in an orderly manner with wastes stored separately from unused materials, meeting the following general requirements:

1. All materials must be stored on an impervious surface within covered structures which are designed to contain spills of not less than 110% of the volume stored and to prevent flow of any product to exposed soils, floor drains or outside drains. Basement areas may be considered to meet this requirement; storage areas must be clearly marked with signs indicating the dedicated nature of the area;
2. Containers of all non-waste hazardous materials must be labeled with the product name(s) or chemical(s), health hazards associated with the chemical(s) and target organ effects from exposure; and
3. The volume of hazardous wastes stored on-site is limited to 100 kilograms (220 pounds) unless greater volumes are specifically permitted by the Planning Board.

Records and receipts for proper disposal of all hazardous wastes must be kept on site and available for inspection by the Board of Health or its agent.

E. Submission Requirements

The applicant shall file six (6) copies of a site plan prepared by a qualified professional with the Planning Board, accompanied by adequate documentation provided by a professional engineer, professional geologist or hydrologist. The site plan shall include, at a minimum, the following information as appropriate to the section under which a Special Permit is sought:

1. Runoff recharge features and provisions to prevent loss of recharge.
2. Provisions to control soil erosion and sedimentation, soil compaction and to prevent seepage from sewer pipes.
3. Provisions to remove contaminants from runoff generated on the property.
4. The nature and volumes of hazardous materials or wastes including hazardous materials safety data sheets. All provisions to meet the requirements in Subsection 6.6-5(D), including spill retention and cleanup and measures to prevent escape of hazardous materials or wastes as appropriate.

F. Procedures

The Planning Board shall distribute copies of all application materials to the Board of Health and the Conservation Commission, each of which shall review the application and shall submit recommendations and comments to the Planning Board. For Special Permit #2, Board of Health recommendations are binding. Failure of boards to make recommendations within 35 days of distribution of the applications shall be deemed to be lack of opposition. One copy of the application materials shall be retained by the Town Clerk for viewing by the public during office hours.

G. Standards

The Planning Board shall not grant a Special Permit under this section unless the petitioner's application materials include sufficiently detailed, definite, and credible information to support positive findings that the application meets the following standards:

1. The proposed use will not adversely affect the existing or potential quality or quantity of water available in the District.

2. The proposed use will be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site that affect the recharge or flow of groundwater.

6.6-6 Non-conforming Uses

Non-conforming uses which were lawfully existing, begun or in receipt of a Building or Special Permit prior to the first publication of notice of public hearing for this bylaw may be continued. Such non-conforming uses may be extended or altered, as specified in G.L. Chapter 40A, Section 6, provided that there is a finding by the Planning Board that such change does not increase the danger of groundwater pollution from such use.

SECTION 6.7 FLOOD PLAIN ZONE

6.7-1 Purpose

The Town of West Tisbury, recognizing the dangers inherent upon coastal flooding at times of hurricanes or severe storms and as a means of protecting its citizens and their property, hereby establishes a series of Flood

Plain Overlay Districts and Zoning Regulations for construction of structures and for the use of the land within these districts.

6.7-2 Boundaries

The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of West Tisbury designated as Zone AE, AO or VE on the Dukes County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Dukes County FIRM that are wholly or partially within the Town of West Tisbury are panel numbers 25007C0079H, 25007C0083H, 25007C0084H, 25007C0087H, 25007C0089H, 25007C0091H, 25007C0093H, 25007C0094H, 25007C0111H, 25007C0113H, 25007C0181H, 25007C0182H and 25007C0210H, dated July 6, 2010. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Dukes County Flood Insurance Study (FIS) report dated July 6, 2010. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board and Building Officials.

6.7-3 Base Flood Elevation Levels

The coastal area of the Town shall have Base Flood Elevation Levels established as Zones AE, AO and VE.

6.7-4 Flood Plain Permits

Permits for all proposed construction and uses of land within the Flood Plain Districts shall be required for the following:

A. New construction of residential or non-residential structures.

B. Substantial improvement (as defined) of any existing structure.

C. The addition to existing structures of increased water, electric or sewage and septage systems which shall conform to the rules and regulations adopted by the Board of Health.

D. Alterations of the land form (as defined).

6.7-5 Requirements

All Flood Plain Permits granted under Section 6.7-4 shall be subject to the following provisions:

A. Any new construction or substantial improvement to be undertaken within the Flood Plain District shall be in accordance with the Massachusetts State Building Code, or Town bylaws if more restrictive.

B. The lowest floor of any new and substantially improved residential structures shall be elevated to or above the base flood elevation level. In the Coastal District, Subsection 6.1-6(A), height shall be measured from the base flood elevation.

C. In any new residential structure, there shall be no basement, and upon the making of a substantial improvement no new basement shall be installed.

D. The lowest floor of any new and substantially improved non-residential structures shall be elevated to or above the base flood elevation level or be floodproofed (as defined) to this level.

E. All new and replacement utility and water facilities shall be located and constructed to minimize or eliminate flood damage.

F. All new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters. On-site waste disposal systems are to be located to avoid impairment to them or contamination from them during flooding.

G. Approval for any alteration of the land form (as defined) shall be obtained from the Zoning Board of Appeals by Special Permit. No alteration of the land form shall be permitted where there may be the liability of altering the drainage or run-off to the detriment of other landholders of the Town. Before granting a special permit for the alteration of the land form, the Zoning Board of Appeals shall duly consider any recommendations by the Conservation Commission and the Planning Board.

H. In Zones AO, for new construction and substantial improvements it is required that:

1. Residential structures have the lowest floor (including basement) elevated above the crown of the nearest street to or above the depth number specified on Dukes County's Flood Insurance Rate Map.

2. Non-residential structures have the lowest floor (including basement) elevated above the crown of the nearest street to or above the depth number specified on Dukes County's Flood Insurance Rate Map or to be floodproofed (as defined) to or above that level.

6.7-6 Additional Requirements in V (Velocity) Zones

If proposed construction or alteration of the land form is located within a V Zone (as defined), all Flood Plain Permits granted under Section 6.7-4 shall be subject to the following additional requirements:

A. All new construction within the V Zones (as defined) shall be located landward of the reach of mean high tide.

B. All new construction and substantial improvement within the V Zones shall be elevated on adequately anchored pilings or columns so that the lowest floor (excluding the pilings or columns) is elevated to or above the base floor level. A registered professional engineer or architect shall certify that the structure is securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash.

C. All new construction and substantial improvements within the V Zones shall have the space below the lowest floor free of obstructions and shall be constructed with breakaway walls (as defined) intended to collapse under stress without jeopardizing the structural support of the structure so that the impact on the structure by abnormally high tides or wind driven water is minimized. Such temporarily enclosed space shall not be used for human habitation.

D. The use of fill for structural support of buildings within the V Zones is prohibited.

E. Man-made alterations of sand dunes within the V Zones is prohibited.

6.7-7 Special Permits

A. The Zoning Board of Appeals may grant a special permit in the case of:

1. Non-residential structures such as boathouses, boatyards, or structures designed for education and research, the nature of which requires their location within the Flood Plain District.

2. Restoration and reconstruction of structures listed in the National Register of Historic Places or the official State Inventory of Historic Places.

B. Special permits shall only be issued upon a determination by the Zoning Board of Appeals that:

1. Failure to grant the special permit would result in hardship to the applicant,
2. The granting of the special permit will not result in increased flood heights, additional threats to public safety, extraordinary public expense or conflict with existing local bylaws, and,
3. The relief granted is the minimum necessary considering the flood hazard.

C. Followingthegrantingofsuchspecialpermit,theZoningBoardofAppealsshallnotifytheapplicantinwriting that the issuance of a special permit to construct a structure below the base flood level will result in:

1. Increased premium rates for flood insurance, and
2. Increased risks to life and property.

D. The Zoning Board of Appeals shall maintain a record of special permits including the justification for their issuance.

6.7-8 Administration

The Building/Zoning Inspector shall administer this bylaw as follows:

A. Review proposed construction and alteration of the land form (as defined) within Flood Plain Districts to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal, State, or Town bylaw.

B. Obtain and maintain records of the elevation (in relation to Mean Sea Level) of the lowest floor, including basement, of all new or substantially improved structures. In addition, maintain records as to whether or not such structures contain a basement.

C. If a structure has been floodproofed, obtain and maintain records of the elevation (in relation to Mean Sea Level) of the lowest floor and the elevation to which the structure was floodproofed. In addition, maintain records of floodproofing certification which have been prepared by registered professional engineers and architects in relation to the adequacy of floodproofing methods.

SECTION 6.8 WILD AND SCENIC NORTH SHORE DISTRICT

6.8-1 Purpose

To protect the wild and scenic natural beauty of the District from undue visual intrusion; to allow the unimpeded natural processes of littoral drift to occur, providing continuous beach nourishment along the length of the North Shore; to protect wildlife habitats; to prevent obstruction to navigation throughout the District; to protect against storm damage that may be caused or exacerbated by inappropriate development; to allow economic development of fisheries and related industries.

6.8-2 Establishment of Boundaries

The Wild and Scenic North Shore District consists of the waters and the lands under the waters beginning at the corporate bounds of the Towns of Tisbury and West Tisbury, and thence along the Mean Low Water Line of Vineyard Sound in the Town of West Tisbury, in a generally southwesterly direction, to the corporate

bounds of the Towns of West Tisbury and Chilmark, and extending 100 feet seaward from said Mean Low Water Line.

This regulation shall be applied vertically above and below the surface of waters included in the District.

6.8-3 Permitted Uses

Subject to the Rules and Regulations as are from time to time issued by the Board of Selectmen in its capacity as Harbor Master, and pursuant to the authority granted to them under M.G.L. C.90B,91, and 102 and, further subject to the granting of licenses and/or permits required by the Town, State, or federal boards or agencies exercising authority granted to them by law other than M.G.L.c. 40A, uses which are consistent with the fragile nature of the area, such as recreational fishing and boating, and which do not involve the permanent placement of any new fill, structure or other materials, are permitted. Commercial fishing, shellfish and aquaculture activities are permitted, so long as those activities are duly licensed and do not require the placement of any permanent fill or structure. Maintenance of any fill or structure in existence as of the date of adoption of this regulation is permitted. Beach nourishment is permitted.

6.8-4 Uses by Special Permit

The Zoning Board of Appeals may issue a Special Permit for permanent placement of any fill or structure for municipal purposes or for purposes of commercial fishing, shellfishing or aquaculture. Commercial dock permits shall be reviewed annually by the appropriate Town authority. Such structures shall be removed when and if the commercial use is discontinued. Such Special Permit shall be granted only after the Zoning Board of Appeals:

A. Has reviewed and given due consideration to the written recommendation of the Conservation Commission. Upon receipt of the Special Permit application, the Zoning Board of Appeals shall forward a copy of the application to the Conservation Commission for comment. Failure of the Conservation Commission to submit its written recommendation to the Zoning Board of Appeals within 21 days of the initial filing of the Special Permit application shall be deemed a favorable recommendation. The Zoning Board of Appeals may also consider the recommendation of other authorities familiar with the District and its resources.

<u>And</u>

B. Has determined that the proposed use is consistent with the Purpose of this bylaw and with the provisions of the West Tisbury Open Space Plan as from time to time adopted.

6.8-5 Prohibited Uses

All other uses not permitted by right or by Special Permit are prohibited.

ARTICLE VII RATE OF DEVELOPMENT IN SUBDIVISIONS

SECTION 7.1 RATE OF DEVELOPMENT REGULATIONS

7.1-1 Within residential subdivisions, the issuance of building permits for single family dwelling units, whether for principal or subordinate dwellings, shall proceed at a rate no faster than twenty percent of the total number of approved buildable lots per calendar year, except that no such development shall be entitled to more than eight building permits or less than one per calendar year.

7.1-2 If a subdivision is re-divided into two or more separate subdivisions, the aggregate rate of development shall not exceed that established for the original subdivision.

7.1-3 Applications for building permits shall be considered in the order received, but no lot shall be eligible to receive a permit for more than one dwelling in a calendar year.

SECTION 7.2 MODIFICATION OF RATE OF DEVELOPMENT

The rate of development limitations prescribed in Section 7.1 may be waived in part or in whole by the Planning Board in the course of subdivision approval, provided that the Board makes written findings based upon the following considerations:

7.2-1 The development will fulfill one or more of the following planning goals of the Town of West Tisbury.

A. Providing affordable housing for year-round residents.

B. Serving the needs of seasonal employees.

C. Preserving significant open spaces.

D. Providing public access to trails, beaches, and other important natural resources.

7.2-2 The existence of extenuating circumstances affecting the financial viability of the project, provided that the project substantially furthers the goals of the West Tisbury Master Plan.

ARTICLE VIII SUPPLEMENTARY REGULATIONS

SECTION 8.1 EXCAVATION, FILLING, GRADING, AND CLEARING

8.1-1 Excavation, filling, and grading necessary for the construction of a structure for which a Building Permit has been issued shall be permitted, provided that it is in full compliance with applicable wetland regulations, does not adversely affect natural drainage or structural safety of buildings or lands, cause erosion, sedimentation, or contamination of groundwater or surface water, or create any noxious condition or hazard to public health or safety.

8.1-2 In the event that construction of a structure is stopped prior to completion and the Building Permit expires, the premises shall be promptly cleared of any rubbish or building materials, and any open excavation with a depth greater than two feet below existing grade shall either be promptly filled in and the topsoil replaced, or shall be entirely surrounded by a fence at least six feet high that will effectively block access to the area of the excavation.

8.1-3 The Planning Board may, in connection with a Site Plan or Special Permit approval, require an applicant to post a bond or other form of security to guarantee reclamation of areas to be excavated or graded. Such bond or other security shall be for an amount reasonably related to the potential cost of such reclamation, and shall be in a form deemed acceptable by Town Counsel.

8.1-4 For regulation of Soil Mining, see Section 8.5-5 of this bylaw.

8.1-5 No excavation, filling, grading, or clearing in preparation for site development shall be undertaken prior to the grant of any Special Permit, Site Plan, or subdivision approval required for such development.

SECTION 8.2 PARKING

8.2-1 Adequacy

All uses shall provide adequate off-street parking, which shall be determined at the time of Special Permit, Site Plan, or building permit approval. Off-street parking shall be considered adequate if the anticipated parking demand can be accommodated on-site under normal conditions in the summer season. Bicycle racks may be required. The Planning Board may establish specific schedules of parking requirements for specific uses from time to time as it deems necessary. Waivers from requirements for on-site parking may be granted for lots within the VR District where provision of on-site parking is impractical. Waivers may also be granted in any district if the property owner can demonstrate that actual parking demand for the specific use will be less than required and/or that off-site, on-street, or shared parking can meet the need. Where feasible, paving of parking areas shall be minimized and overflow parking on unpaved surfaces shall be encouraged.
An initial list of specific minimum requirements is as follows:

A. Two parking spaces for each dwelling unit.

B. One parking space for every four seats in any public meeting place or restaurant.

C. One parking space for every employee at offices and other places of employment (calculated for peak employment) plus parking for anticipated peak clientele.

8.2-2 Location, Design, and Landscaping

D. Off-street parking areas for non-residential uses and multi-family conversions shall be located behind or to the side of the principal structure to minimize visibility from existing streets. They shall be

designed to prevent backing out onto a public road. For new multi-family dwellings, all parking shall be in the rear.

E. Parking lots with eight spaces or more shall be screened from public view by buildings or vegetation, and shall be landscaped with one shade tree for every eight parking spaces.

F. Rear parking lots shall be connected to adjoining parking lots and side streets, and shall have clearly delineated pedestrian paths leading to buildings and sidewalks.

G. Lighting within parking lots shall comply with the requirements of Section 8.6. Design of poles and luminaires shall be compatible with the style of the architecture and adjoining streetscape treatment.

SECTION 8.3 GENERAL DESIGN REQUIREMENTS FOR SPECIAL PERMITS AND SITE PLAN APPROVAL

8.3-1 Applicability

All new development requiring a Special Permit or Site Plan approval, with the exception of single-family dwellings, shall comply with the following design standards. Where alterations to existing structures and business operations require Special Permit or Site Plan approval, they shall comply with these standards to the extent practical, i.e. full compliance shall not be required if it would impose unnecessary economic hardship or discourage property owners from improving their properties.

8.3-2 Design Goal

The overall design goal for development in the Town of West Tisbury is to maintain and enhance the attractive built environment and landscape character of the Town. This is to be accomplished by continuing historic patterns of development and architectural forms and, where practical, protecting expanses of visually prominent undeveloped open space.

8.3-3 Design Principles

The following principles apply to developments subject to review by the Zoning Board of Appeals or the Planning Board.

A. Building Placement

1. The relationships between buildings and the street shall be parallel or perpendicular rather than oblique or diagonal. Buildings shall have a well-defined front facade with entrances facing the street. Front facades shall be parallel to the street with major roof ridges either parallel or perpendicular to the street. This provision shall not apply to buildings that are screened from public roads.

2. Where feasible, buildings shall be sited to front directly on existing or new streets rather than onto parking lots.

B. Access and Connections

1. Curb cuts shall be minimized through the use of shared driveways and side streets. Interior streets, driveways, or alleys shall connect parcels with one another.

2. Sidewalks shall be required in connection with new construction in the VR and MB Districts. In all districts, bikepaths shall be reserved to the extent recommended in the Open Space and Recreation Plan.

3. Curb cuts and interruptions of the sidewalk shall be no more than sixteen feet wide for commercial or mixed uses and twelve feet wide for residential uses. The continuity of the sidewalk surface material shall be maintained across driveway entrances.

C. Architecture

1. Existing structures listed on the Historical Inventory filed with the Massachusetts Historical Commission and at the Town Hall shall be retained to the extent practical. Alterations to such structures shall be compatible with the architecture of the existing structure. Demolition of a residential structure shall be permitted only in compliance with the demolition delay provisions of Section 10.1-2.
2. Buildings or parts of buildings facing onto public spaces and streets, including canopies for accessory facilities, shall have peaked roofs with a slope of at least 8:12, except that hip roofs with a slope of at least 4:12 and flat roofs that are hidden by a raised cornice shall also be permitted.
3. No building shall have more than fifteen horizontal feet of wall facing the street without a window or door opening.
4. Windows shall be vertically proportioned and balanced on facades, with width to height ratios ranging from 1:2 to 3:5. Horizontal windows may be used just below roof eaves ("eyebrow" windows) and as first-floor display windows.
5. Large buildings (footprint larger than 2,500 square feet) shall be broken up into smaller volumes through additive massing and use of building proportions found in the Town's traditional architecture.

D. Landscaping

Existing mature trees and other significant natural site features shall be preserved to the extent practical. Minimum three-inch-caliper shade trees shall be provided along all interior streets and pedestrian ways at intervals averaging twenty feet on each side. Minimum four-inch-caliper shade trees shall be provided along State Road frontage at intervals averaging twenty feet. Existing trees, lawns, and shrubs shall be preserved to the extent practical. Other landscape requirements shall be tailored to specific site conditions through Site Plan Review.

E. Outdoor Lighting

Outdoor lighting shall comply with the provisions of Section 8.6.

F. Natural Areas

Undeveloped natural areas and open fields that cover a portion of a development parcel shall, to the extent practical and economically feasible, be preserved by conservation restrictions or other means consistent with the Town's Open Space and Recreation Plan. These areas shall be managed to encourage agriculture, maximize recharge of groundwater, protect surface water quality, and protect wildlife habitat.

SECTION 8.4 SIGN REGULATIONS

8.4-1 Purpose

The purpose of sign regulations is to provide for the reasonable control of signs and advertising devices to preserve and enhance the historic appearance and scenic amenities of the Town without unduly restricting the conduct of lawful enterprises. These regulations are intended to protect public safety by allowing signs that clearly identify premises without distracting motorists or obstructing visibility and/or clearance.

8.4-2 General Standards for All Signs in All Districts

A. Illumination

1. Signs shall be illuminated only with steady, white, stationary shielded light sources directed downward solely onto the sign without causing glare.
2. No sign shall be illuminated between the hours of 10:00 P.M. and 7:00 A.M. or when the establishment is closed.

B. Sign Area

Except as provided in Subsections 8.4-3(A)(2) and 8.4-4(C) and (D), or as otherwise noted, no freestanding sign shall be greater than six square feet in area in the MB and LI Districts and four square feet in the RU and VR districts.

C. Location

No sign shall overhang a public way or be erected in such a way as to create a traffic or pedestrian hazard as determined by the Sign Inspector.

D. Maintenance and Safety

All signs and their supporting structures must be properly maintained, repaired and in safe condition. If the Sign Inspector finds that a sign is improperly maintained, he shall issue a written notice to the owner or permit holder informing him of what needs to be done to correct its condition. If defects are not corrected or the sign removed within 30 days of such notice, or further time permitted by the Sign Inspector, the sign owner shall be considered in violation of this bylaw.

8.4-3 Additional Standards for Signs in Mixed-Use Business and Light Industrial Zones

A. Free-standing signs

1. Single Business Premises

   In the MB and LI districts, one free-standing sign is permitted for advertising or identification purposes. The maximum height of such sign shall not exceed 7.5 feet above road level, and the area of the sign shall not exceed six square feet.

2. Multiple Business Premises

   When there are multiple businesses on the premises, there shall be only one (1) free-standing sign; however a group of signs may be clustered together in a composite sign which has an overall integrated and uniform design. The maximum area limitations are six square feet for the sign bearing the name of the principal business or the business center and one square foot for the name of each (additional) business. However, the total area of the composite sign shall not exceed ten square feet, and the maximum height shall not exceed 7.5 feet.

B. Wall Signs

One wall sign per business is allowed except that if a business fronts on two streets a second wall sign shall be allowed so that a sign faces both streets. The vertical dimension of wall signs shall not exceed

two feet, and the total sign area shall not exceed ten square feet. Such signs shall not obscure architectural features of the building or be located on awnings or roofs.

C. Projecting Signs

1. A business may substitute a projecting sign for either a free-standing sign or a wall sign, as long as there are no more than two of these three sign types per building.
2. The maximum area of a projecting sign shall be six square feet, and it shall be located to provide at least seven feet of clearance if it is located over a pedestrian way.

8.4-4 Allowable Signs

The following types of signs shall be permitted by right in all zoning districts, without the necessity of obtaining a sign permit (only one sign described in A. through D. is allowed per premises).

A. One sign per residential premises bearing the name of the occupant of the premises, which may include identification of an on-premise home occupation. Such sign shall not exceed four (4) square feet in area.

B. One sign offering accommodations for guests under the same conditions as a sign for home occupations.

C. One sign for a farmstand or agricultural business. A composite sign design which has interchangeable parts to allow for advertising produce in season is permitted, but the total area of the sign shall not exceed six (6) square feet.

D. A sign accessory to use of premises by a religious or educational institution or governmental authority, if the area of such sign does not exceed six (6) square feet.

E. Signs giving legal notice or warning (e.g. "no trespassing") which do not exceed one square foot in area.

F. Street name signs and other signs for the direction and control of traffic erected by or at the direction of the town, county, or state government.

G. No more than one temporary sign per premises. Such sign shall be limited in area to four square feet, except this area limitation shall not apply to a temporary sign advertising a special event sponsored by a religious, civic or non-profit organization.

H. Window signs, if the total sign area is no greater than four (4) square feet and there is no direct illumination of the signs.

I. Signs not exceeding four (4) square feet in area designating an historical place or point of interest erected by governmental authority or by a duly chartered historical or other charitable organization.

J. Signs for directing of persons or vehicles, indicating ingress and egress, designated parking, or public telephone but containing no advertising and not exceeding three square feet.

K. Political signs of not more than 4 square feet may be displayed on private property with permission of the property owner.

L. Temporary off-premises signs for events licensed by the Board of Selectmen, provided that such signs are not displayed for more than three days and do not exceed six square feet in area unless the Board of Selectmen specifically authorizes a larger size.

8.4-5 Signs Requiring Sign Permits

All signs other than those specified in the preceding section, shall be erected, displayed, altered or enlarged only after receiving a sign permit from the Sign Inspector. Sign Permits are required for all business/com-

mercial signs except for home occupations as provided in Subsection 8.4-4(A), bed and breakfasts, and agricultural businesses.

A. Sign Permit Procedures

a. Sign Inspector
The Sign Inspector shall issue sign permits and enforce the sign regulations of this bylaw. The Zoning Inspector shall serve as the Sign Inspector unless the Board of Selectmen designates another person or board to have such authority.

b. Submission Requirements
At a minimum, all applications for sign permits shall include a scale drawing of the sign specifying the dimensions, materials, illumination, letter sizes, colors, support systems, and location on land or buildings with relevant measurements.

c. Issuance
A permit shall be issued only if the proposed sign complies with all applicable provisions of this bylaw and the State Building Code, Article XIV. The Sign Inspector shall act within thirty (30) days of receipt of such application together with any required fee. Failure to act within thirty (30) days shall be deemed to be an approval of the permit.

d. Fees
A schedule of fees for such permits may be established and amended from time to time by the Board of Selectmen.

8.4-6 Signs Requiring a Special Permit from the Board of Appeals

The following signs require a Special Permit from the Board of Appeals before the Sign Inspector may issue a Sign Permit:

A. Signs of a number, size, location or height that varies from the requirements of Sections 8.4-2 or 8.4-3, if the applicant can show that special circumstances exist due to the extent of frontage, distance of setback, or type of architecture, vegetation or topography, and the ZBA finds that such variation does not detract from the purpose of these sign regulations.

B. Off-premises Signs. In making its decision the Board shall consider the public need for direction to the premises and shall ensure that the design, color, location and size of the sign is in harmony with the general purpose of these sign regulations. Grouping of off-premises signs for individual businesses into a composite sign may be required by the Zoning Board of Appeals. Off-premises signs for businesses shall not exceed 4 square feet in area.

C. The Planning Board shall review all applications for sign Special Permits under its Site Plan Review function described in Section 9.2-1(D).

D. Submission requirements for a sign Special Permit shall be as indicated in Subsection 8.4-5(A)(2).

8.4-7 Prohibited Signs

A. Any sign which is internally illuminated.

B. Any sign which has moving parts or is designed intentionally to move; included in this prohibition are streamers, pennants and similar devices.

C. Any sign posted on a tree or utility pole except for signs giving legal notice or warning and signs posted at the end of a way or driveway naming the residential occupant(s) to which the way provides access.

D. Any sign advertising or identifying an activity or business which is no longer on the premises.

E. Vending machines located outdoors unless they are screened from public view.

F. Any sign advertising the sale or rental of real property bearing the name, address and/or telephone number of the agent through which such sale or rental may be accomplished, unless the agent is the owner of the property.

G. Any sign advertising a business hired to perform work on the property, such as a contractor, builder, painter, or landscaper.

H. Any off-premises sign attached to a mailbox or mounted on a mailbox post.

I. Any roof-mounted sign or business logo.

J. Any sign or logo on an awning or canopy.

8.4-8 Non-conforming Uses and Signs

A. Signs for Non-conforming
Uses Uses which have been allowed by variance or which have continued as valid non-conforming uses may have one sign no greater than six square feet in area in the MB and LI districts, and no greater than 4 square feet in RU and VR districts.

B. Non-conforming Signs
An existing sign which was erected lawfully, but which does not conform to this bylaw may continue to be used. However, if it is enlarged, redesigned or altered in any way, it shall be brought into conformity with this bylaw.

SECTION 8.5 REGULATIONS FOR SPECIFIC USES AND ACCESSORY USES

8.5-1 Home Occupations

A. Home Occupations Permitted by Right
A home occupation shall be permitted by right and no permit shall be required if its impacts are indistinguishable from those of a single-family residence, provided that:

1. It has no non-resident employees.
2. No sign is posted.
3. It generates no additional traffic.
4. It requires no additional parking.
5. It is clearly secondary to the use of the premises for dwelling purposes.
6. No retail sales are conducted.

B. Home Occupations by Special Permit
Home occupations that do not comply with Subsection 8.5-1(A) shall be allowed by Special Permit if, in the opinion of the ZBA, they satisfy the following requirements:

1. The occupation is clearly secondary to the use of the premises for dwelling purposes.

2. There is no exterior change which alters the agricultural or residential appearance of existing structures. Any new structure for the occupation conforms in appearance to the agricultural or residential character of the neighborhood.
3. No items are offered for retail sale unless produced on the premises, except for minor accessories customarily sold with the principal product or service provided.
4. No more than three persons are employed in any occupation or combination of occupations on the premises, unless the Zoning Board of Appeals agrees to reasonable modifications.
5. There shall be no evidence of the occupation through persistent or excessive sound, vibration or odor at the boundaries of the premises.
6. Any exterior storage of materials or equipment shall be screened from off-premises view by vegetation, grade or location, unless the Zoning Board of Appeals agrees to reasonable modifications.
7. Parking for the business or occupation shall be located off-street and screened as in f above, unless the Zoning Board of Appeals agrees to reasonable modifications.
8. Not more than two vehicles requiring registration as taxis, buses, and not more than two vehicles in excess of 10,000 pounds GVW shall be regularly parked on the premises.
9. Traffic generated shall not be more disruptive to the neighborhood than traffic normally resulting from agricultural or residential development considering volume, type and hours, unless the Zoning Board of Appeals agrees that reasonable modifications are justified by the size and location of the lot.
10. Such use shall not cause or contribute to any erosion of land or increase surface water drainage from the lot.
11. The occupation shall not create hazards, unacceptable disturbances, unacceptable injury to the neighborhood, or unsightliness visible from any public way or neighboring property.

C. A certificate of use and occupancy shall be obtained from the Zoning Inspector indicating compliance with these requirements prior to initiation of a home occupation allowed by Special Permit.

8.5-2 Non-Residential Uses in the RU and VR Districts

Non-residential uses allowed in the RU and VR Districts and referenced to this section on the Use Table shall comply with following standards:

A. There shall be no evidence of the use through persistent or excessive sound, vibration or odor at the boundaries of the premises.

B. Buildings housing the use and exterior storage of materials or equipment shall be screened from off-premises view by vegetation, grade or location.

C. Parking for the use shall be located off-street and screened as in Subsection 8.5-2(B) above, unless the Zoning Board of Appeals agrees to reasonable modifications.

D. No more than two vehicles in excess of 10,000 pounds GVW shall be regularly parked on the premises.

E. Traffic generated shall not be more disruptive to the neighborhood than traffic normally resulting from agricultural or residential development considering volume, type and hours, unless the Zoning Board of Appeals agrees that reasonable modifications are justified by the size and location of the lot.

F. The use must not cause or contribute to any erosion of land or increase surface water drainage from the lot.

G. The use shall not create hazards, unacceptable disturbances, unacceptable injury to the neighborhood, or unsightliness visible from any public way or neighboring property.

8.5-3 Educational, Religious, or Child Care Use

Educational uses, religious uses, family day care homes, day care centers, and school age child care programs are permitted by right subject to all applicable provisions of this bylaw and limited Site Plan Review consistent with the restrictions on municipal regulatory authority contained in G.L. Chapter 40A, Section 3.

8.5-4 Swimming Pools

A. Pools, General

1. In-ground swimming pools of any depth and above and on-ground swimming pools, as defined by State Building Code CMR 780 Section 421, shall be enclosed by a fence at least 4 feet in height which meets all the requirements of State Building Code CMR 780 Section 421.
2. Lighting of pools shall comply with the requirements of Section 8.6.
3. Pools must be in compliance with the regulations of State Building Code CMR 780 Section 421.
4. In order to minimize noise impacts on neighbors, associated noise-producing pool equipment shall be located as far as possible from abutting properties, and at least the minimum required setback and shall be installed in a sound insulated enclosure.

B. Pools Permitted by Right

1. An on-ground portable pool may be allowed by a permit from the Zoning and Building Inspector provided that it does not exceed 250 sq. feet in area and 4' in height, or involve structural materials or any type of mechanical pool equipment.
2. All such pools must be in compliance with the regulations and requirements of CMR 780 Section 421.

C. Pools by Special Permit

1. All other on-ground pools and in-ground and above-ground pools, spas and exercise pools meeting the definitions of CMR 780 Section 421 shall require a special permit from the Zoning Board of Appeals.

8.5-5 Soil Mining

In issuing a Special Permit for soil mining, the Zoning Board of Appeals shall impose conditions to:

A. Screen the operation by any reasonable method such as fencing, berming, or planting if the operation is to continue for more than one year.

B. Require that the site be partially reclaimed on an ongoing basis and fully reclaimed within three months after the use has been terminated or abandoned, by:

1. Regrading the land, replacing topsoil, and revegetating sections of the operation as excavation and mining are completed, to minimize erosion. Revegetation should be performed in a manner that effectively holds the soil in place and prevents erosion.
2. Reserving sufficient topsoil during the operation to replace topsoil in the entire area of the operation to a depth of at least three inches after the use has been terminated.
3. Chipping and respreading all trees and brush on the site, unless otherwise permitted by the Zoning Board of Appeals.

C. Setbacks from excavated areas and processing operations shall be as required for the RU District, except that the setback shall be one hundred feet from any public or private road.

D. To ensure compliance with the conditions of the permit, the Zoning Board of Appeals shall require the posting of a cash deposit, surety bond, or other security sufficient to meet the cost of the required reclamation work.

8.5-6 Adult Uses

The Town of West Tisbury finds that adult uses, as defined in Article XIV, may have negative secondary impacts upon the neighborhood and surrounding area where they are located. Such impacts include physical deterioration, disinvestment, and increased crime. Adult uses shall be allowed by Special Permit in the LI District only. In addition to applicable Special Permit and Site Plan criteria, such uses shall satisfy the following additional standards:

A. No adult use shall be located within 500 feet of any single-family, two-family, or multi-family residence, or of any school, day care center, library, religious institution, park or other public recreation area, or recreational business.

B. No adult use shall be located within 500 feet of any other adult use or of any establishment licensed under G.L. Chapter 138, Section 12.

C. No more than one sign, not exceeding four square feet, shall be permitted for an adult use, limited to the name and address of the business.

D. Adult uses shall be set back at least 100 feet from all public rights-of-way and shall be screened from view by a buffer at least 50 feet wide consisting of trees and shrubs.

E. No Special Permit for an adult use shall be granted to any person convicted of violating the provisions of G.L. Chapter 119, Section 63 or G.L. Chapter 272, Section 28.

8.5-7 Renting of Rooms

Renting of four or more rooms and the furnishing of board by an owner resident on the premises shall be subject to the following conditions:

A. There shall be no change to an existing structure which alters its residential appearance, and any new structure built for such use shall conform in exterior appearance and scale to the character of the neighborhood.

B. Parking for guests or renters shall be screened from off-premises view by vegetation, grade or location.

C. Traffic generated shall not be more disruptive to the neighborhood than that normally resulting from agricultural or residential use, considering the volume and hours and location and quality of the access roads.

D. Facilities for guests shall be located and designed to prevent any greater intrusion of noise, light, and/or odor on abutting properties than would normally occur in the neighborhood.

E. The Board of Health shall approve provisions for water, sewerage, and any other matters under its jurisdiction.

F. The use shall not cause or contribute to any erosion of land or increase surface water draining from the lot.

8.5-8 Junkyards

Junkyards shall be screened by any reasonable means deemed necessary by the Zoning Board of Appeals.

SECTION 8.6 OUTDOOR LIGHTING

8.6-1 Purposes

In order to preserve and maintain the rural character of West Tisbury, including the unique quality of the night sky, this Section is intended to:

- Minimize the problems created by improperly designed and installed outdoor lighting;
- Eliminate problems of glare and sky glow;
- Minimize light spillage from indoor sources;
- Minimize artificial light shining from one property to another;
- Decrease artificial light which illuminates the night sky;
- Conserve energy and natural resources and protect flora and fauna;
- Prevent unreasonable interference with astronomical observation; and
- Create standards for outdoor lighting to prevent such lighting from unreasonably interfering with the use and nighttime enjoyment of property in West Tisbury.

8.6-2 Regulations

A. Any outdoor lighting fixture, whether temporary or permanent, shall be so directed, placed, and shielded to prevent glare or spillage of light into the sky or beyond the property line.

B. All outdoor lighting shall be shielded and pointed downward.

C. No lamp shall be mounted higher than the eave line of the structure.

D. Multiple lamps on fixtures shall be permitted. Such lights shall not be combined or grouped in a way that violates the purposes in Section 8.6-1.

8.6-3 Exceptions

The following exceptions to the regulations in Section 8.6-2 are permitted.

A. Lighting of single-family residences at the primary entry door is exempt from these regulations. However, the regulations apply to other lighting of the residence, lighting of detached accessory structures and facilities such as swimming pools, tennis courts, garages, parking areas, and riding stables, as well as to illumination of the landscape.

B. For non-residential uses, these regulations shall be applied in a manner that enables a property owner to satisfy the minimum lighting standards required to obtain property insurance.

C. The following types of outdoor lighting are also exempt from this Section 8.6:

1. Public lighting, including lights used for temporary emergency lighting needed by the Police or Fire Departments or other emergency services.
2. Vehicular and vessel lights.
3. Light fixtures used for temporary recreational events, no longer than six weeks in duration in any calendar year.
4. Traditional and antique lights, or reproductions thereof, provided that such lights do not violate the purposes in Section 8.6-1.

SECTION 8.7 MOBILE HOMES AND CAMPING VEHICLES

8.7-1 No new mobile homes may be installed, except as provided in Section 8.7-2.

8.7-2 A non-conforming mobile home existing as of December 2, 1971, may be replaced by Special Permit if the replacement will not, in the opinion of the Zoning Board of Appeals, be substantially more detrimental to the neighborhood than the original structure.

8.7-3 The Zoning Inspector may allow temporary use, not to exceed one year, of a camping vehicle as an on-premises field office or residence during the construction period of a project (including a single-family residence) with Board of Health approval. An extension of the one-year limitation may be allowed by Special Permit.

8.7-4 One camping vehicle per premises may be permitted under the following additional circumstances only:

A. An unoccupied camping vehicle stored outdoors shall be screened (as defined in Article XIV).

B. The Zoning Inspector may grant a license for the temporary occupancy of a camping vehicle, subject to the following conditions:

1. Such license shall be issued to property owners for use of non-paying guests only and for one unit only per lot in any given period. Such vehicles shall be parked in a manner that minimizes impacts on the neighborhood.
2. Licenses shall be granted for a period of one month and may be renewable up to a total of three months in any one calendar year.
3. Property owners shall fully satisfy the Board of Health that the location and care of such camping vehicles complies with all local and state health requirements.
4. Camping vehicles (excluding slide-in campers) shall remain on wheels, ready to be moved.

SECTION 8.8 PERSONAL WIRELESS SERVICE FACILITIES

Whereas, the Telecommunications Act of 1996, codified as sections of the U.S. Code, Title 47 was adopted on February 8, 1996; and

Whereas, 47 U.S.C. Section 332©(7) establishes the regulatory treatment of mobile services by preservation of local zoning authority; and

Whereas, 47 U.S.C. Section 332©(7)© specifically defines personal wireless services and personal wireless service facilities; and

Whereas, the Federal Communications Commission promulgated on November 18, 2009, a declaratory ruling known as WT Docket No. 08-165 establishing maximum timeframes for exercising local zoning authority; and

Whereas, Section 8.8 of the West Tisbury Zoning Bylaw, heretofore known as “Wireless Communications Facilities” is hereby rescinded and replaced by the following in order to regulate “personal wireless service facilities” as defined herein;

NOW, THEREFORE BE IT ENACTED BY THE TOWN OF WEST TISBURY:

8.8-1 This Bylaw may be cited as the Town of West Tisbury Personal Wireless Service Facilities Bylaw, and is intended to replace Section 8.8 et seq. "Wireless Communications Facilities."

8.8-2 Purpose and Intent.

A. **Purpose and Intent**. The purpose and intent of this Bylaw is to establish standards for the location, siting and design of PWSFs, and to protect the attractiveness, health, safety, general welfare, and property values of the community.

B. Relationship to PWSFs Not Approved Under this Bylaw

1. A PWSF for which a permit has been issued prior to the effective date of this Bylaw shall be deemed a permitted use, subject to the conditions of that permit and the regulations in force until this Bylaw is adopted. The issuance of permit renewals or other new permits for such facilities after this Bylaw is adopted shall be in accordance with the provisions of this Bylaw.

2. Damaged or destroyed facilities may be rebuilt and all such facilities may be replaced by facilities of the same type and height at the same location to the extent that such facilities complied with the Town regulations at the time of original approval.

3. A pre-existing or new ground mount may be extended or rebuilt, including antennas on top, up to 125 feet AGL for the purpose of co-location, provided that:

   a. The ground mount is located at the Martha's Vineyard Airport in the Light Industrial District.

   b. The PWSF as it pre-existed was in compliance with the then existing zoning and building regulations of the Town.

   c. An analysis of the structural integrity of the existing PWSF plus proposed co-location meets the standards of EIA/TIA 222 (Version G).

4. A pre-existing or new ground mount not located at the Martha's Vineyard Airport in the Light Industrial District may be extended or rebuilt, including antennas on top, up to 10 feet above the existing height provided that:

   a. The PWSF as it pre-existed was in compliance with the then existing zoning and building regulations of the Town.

   b. An analysis of the structural integrity of the existing PWSF plus proposed co-location meets the standards of EIA/TIA 222 (Version G)

C. Unpermitted Facilities, Mounts or Equipment.

1. Unpermitted facilities are those with permits, including drawings that no longer describe the existing facility as well as those facilities with no permits at all. A permit is, by definition, complete and valid.

2. No issuance of any permit under this Bylaw shall occur for a request to co-locate, attach, or share an existing PWSF site, mount or facility, when such existing site, mount or facility is found to have one or more unpermitted PWSFs as described in Section 8.8-2.C.1 above.

8.8-3 Timeframes for Approval or Denial.

A. The amount of time required for a decision by the Town on an application for a special permit under this Bylaw shall be known as a timeframe and shall not exceed:

1. 90 calendar days for a co-location from the date an application is found by the Town to be complete.

2. 120 calendar days for any other PWSF from the date an application is found by the Town to be complete.

B. A timeframe does not commence until:

1. A proposal or request is found by the Zoning Board of Appeals to be a complete application.

8.8-4 Permits Required. Each personal wireless service facility (PWSF) must have at least two permits: one building permit and one Special Permit, each of which shall be issued by the Town of West Tisbury in accordance with this Bylaw. The Special Permit and the building permit for a PWSF must be consistent with each other.

8.8-5 Tiered Applications.

ZBA. The ZBA Administrator or his/her designee shall receive all PWSF applications and assign each application to one of the following three "tiers":

1. Tier One. This tier is limited to applications that:

   a. Place PWSFs on new or existing utility poles within public and private rights of way.

   b. Meet the required Location Standard and Safety Standards that apply in this Bylaw. In the event any of the standards in the Bylaw are in conflict for a particular application, one or the other conflicting standard shall be met.

2. Tier Two. This tier is limited to applications that:

   a. Attach a PWSF to an existing structure other than a new utility pole (as described in this Bylaw in Section 8.8-24.KK).

   b. Meet all Location Standards, Design Standards and Safety Standards in this Bylaw. In the event any of the standards in the Bylaw are in conflict for a particular application, one or the other conflicting standard shall be met.

3. Tier Three. All applications that do not qualify as either Tier One or Tier Two status shall be considered Tier Three applications.

B. **Planning Board**. The Planning Board shall receive copies of all complete PWSF applications and may submit a written report in accordance with Town's existing Zoning Bylaws, Section 9.2-1.D.

8.8-6 Application Procedures. Applicants and the ZBA Administrator shall use the following procedures when reviewing PWSF applications, although the ZBA may waive some steps if they are redundant.

A. **Pre-Application Conference**. Applicants shall contact the ZBA Administrator prior to submitting an application for a PWSF.

1. The applicant shall inform the ZBA Administrator of the location of the proposed facility, as well as its scale and design.

2. The ZBA Administrator shall inform the applicant about the application procedures.

3. A pre-application conference between the proposed applicants and the ZBA should be scheduled prior to submission of the application for a PWSF. The purpose of such conference is to foster preliminary discussions regarding planning design and siting of the proposal among the applicants, the ZBA and the town residents.

B. **Application Form**. The applicant shall submit a completed application form and all required items as specified in this Bylaw to the ZBA when applying for PWSFs.

C. Tier One Review.

1. The ZBA shall notify or cause to be notified all property owners within 300 feet of the site of a proposed application. Notice shall be given by first class mail, to the address shown on the property roll of the Town Assessor. The property owners shall be informed that an application has been filed and they have the right to inspect the application and comment thereon for or at the public hearings. The applicants shall have the right to respond to any comments received.

2. The ZBA shall hold a public hearing to review each completed application and take any testimony or additional evidence provided by either the applicant or other persons. The ZBA may reassign the application to a Tier Two or Three if testimony and evidence submitted supports this.

   a. Following review, the ZBA shall either approve or deny the application. Such approval or denial shall be in writing and supported by substantial evidence contained in the written record. Any conditions attached to the approval shall be designed to mitigate any adverse impacts of the proposed PWSF. Such decision shall be in writing and supported by findings of fact based on competent and substantial evidence contained in a written record.

3. Either party, applicant or opposition, may appeal a decision of the ZBA.

4. If the application meets the requirements for a Tier One application in this Bylaw, two permits will be issued to the applicant:

   a. The ZBA shall issue a Special Permit that is a prerequisite for:

   b. A Building Permit, which the Building Inspector shall issue provided the applicant meets all criteria imposed by the State Building Code or other applicable law.

D. Tier Two and Tier Three Review.

1. The ZBA shall notify or cause to be notified all property owners within 500 feet of the property lines of a proposed application. Notice shall be given by first class mail, to the address shown on the property roll of the Town Assessor. The property owners shall be informed that an application has been filed and they have the right to inspect the application and comment thereon for or at the public hearings. The ZBA shall conduct a public hearing and take any testimony or additional evidence provided by either the applicant or other persons.

   a. Following the close of the hearing, the ZBA shall approve the application, deny the application or approve with conditions.

   b. Any conditions attached to the approval shall be designed to mitigate any adverse impacts of the proposed PWSF. Such decision shall be in writing and supported by findings of fact based on competent and substantial evidence contained in a written record.

2. If the application is approved, the Town will issue two permits to the applicant:

   a. The ZBA shall issue a Special Permit, which is a prerequisite for:

   b. The Building Inspector to issue a Building Permit, provided the applicant meets all criteria imposed by the State Building Code or other applicable law.

8.8-7 Co-Locations.

A. **Worst-Case Review**. The ZBA shall review applications for co-locations on the basis of all positions on the mount, i.e., the cumulative, worst-case condition.

   1. When future co-locatees are unknown, the worst-case co-locatee (e.g., number of antennas, size of equipment shelter, etc.) shall be assumed.

   2. The entire structure, including all future known or unknown co-locatees, shall be subject to review for compliance with EIA/TIA 222 (Version G).

B. **Co-locations Previously Approved**. Applications for co-locations on mounts previously approved for co-location in the position applied for, require review of only the equipment to be added above ground and on the ground, including:

   1. New equipment shelters.

   2. New contents of the existing equipment shelter or equipment cabinet.

3. Changes that were initially less stringent or not required for new equipment to be co-located (e.g., the need for a strengthened mount).

C. **Co-locations Not Previously Approved.** Applications for co-locations on mounts not previously approved for co-location in the position applied for require review of the existing mount as well as co-location under the requirements of this Bylaw.

8.8-8 Standards. The approval of PWSFs shall be subject to meeting or exceeding the following standards.

A. Location Standards.

1. The only mandatory location standard shall be that Tier One PWSFs will be permitted only in existing or approved public or private rights-of-way.

2. Opportunity Sites. A PWSF should be located at one of the following Opportunity Sites:

   a. New utility poles in the public or private right-of-way, provided such utility poles are no higher than 50 feet AGL, including antennas.

   b. Churches.

   c. Commercial and industrial buildings

   d. Light Industrial District 2 located on the map entitled "Zoning Map of West Tisbury, Massachusetts".

3. Avoidance Areas. A PWSF shall not be located in the following Avoidance Areas:

   a. Schools, nursery schools, playgrounds or child care centers.

   b. Single family homes.

4. In all instances except for Sections 8.8-8.A.1 and 8.8-8A.3, above, these location standards shall be considered directory but not mandatory. PWSFs may also be permitted in areas that are not Opportunity Sites subject to the following siting, design and safety standards and permitted in Avoidance Areas subject to the following siting, design and safety standards.

5. These standards apply regardless of radio frequency (RF) engineering considerations.

B. Siting Standards. PWSFs should meet the following siting standards. These standards are directory, not mandatory.

1. To the greatest extent possible, PWSFs should be concealed within existing structures or where camouflaged conditions surround them, or on inconspicuous mounts.

2. Placement within trees should be encouraged.

3. Roof-mounted PWSFs should not project more than ten additional feet above the height of a legal building.

4. Side-mounted PWSFs should not project more than forty-two inches from the face of the mounting structure.

C. Design Standards. PWSFs should meet the following design standards.

1. Color. All Tier One or Tier Two PWSFs should be painted or camouflaged to match the host structure color.

2. Size. The silhouette of the PWSF should be reduced to the minimum visual impact.

3. PWSFs within 100 feet of a residential building should either:

   a. Provide underground vaults for equipment shelters, or

   b. Place equipment shelters within enclosed structures approved by the Town.

4. Equipment. The following types of equipment are discouraged except when in the Light Industrial District 2:

   a. Roof-mounted monopoles, lattice towers or guyed towers.

   b. Ground-mounted lattice towers.

   c. Ground-mounted guyed towers.

5. Antennas, including panels, whips, dishes and any array holding several antennas, should be kept as close to the mount as possible.

6. Heights.

   a. Heights of ground mounted PWSFs located in the Light Industrial District 2 should be no higher than 125 feet AGL, including antennas.

   b. All ground-mounted PWSFs not located in the Light Industrial District 2 should be no higher than 80 feet AGL, including antennas. All ground-mounted PWSFs not located in the Light Industrial 2, (including any security barrier), should be surrounded by nearby dense tree growth for a radius of 20 horizontal feet (when trunk centerlines are measured on the ground) from the PWSF in any direction. These trees can be existing on the subject property or installed to meet the 20 foot requirement as part of the proposed PWSF or they can be a combination of both. These ground-mounted PWSFs may project up to 15 feet above the ambient tree height.

   c. Tier One utility poles should be no higher than 50 feet AGL, including antennas.

7. These standards apply regardless of RF engineering considerations.

D. Safety Standards. PWSFs must meet the strictest of the following safety standards.

1. Wind load and ice load design standards shall be those of EIA-TIA 222 (Version G).

2. Safety standards of the Town.

3. Safety standards of the Commonwealth of Massachusetts.

8.8-9 Fall Zone and Setback Requirements.

A. Fall Zone.

1. Light Industrial District 2: No habitable structure or outdoor area where people congregate shall be within a fall zone, which is the height of the Tier Three PWSF plus 10 feet.

2. Districts other than Light Industrial 2: No habitable structure or outdoor area where people congregate shall be within a fall zone, the radius of which is two times the height of a Tier three PWSF, including its mount.

3. In all Districts: No abutting property line may be within the fall zone of a radius equal to the height of a ground-mounted PWSF plus 30 feet, including its mount. Tier One poles are exempt from this provision.

B. Setback.

1. All PWSFs, including mounts and equipment shelters or cabinets, shall comply with the setback requirements on all sides of the lot of the applicable zoning district as set forth in the Town Zoning Bylaw.

2. On parcels with a main building housing a primary use, all components of the PWSF shall be located behind the main building line in the front yard.

3. No portion of any PWSF shall project into a required setback, including the antenna array.

8.8-10 Submittal Requirements. An applicant shall submit the following information as part of an application for a PWSF. Each node of a proposed DAS, whether on an existing pole or a proposed pole, shall have a separate, stand-alone and independent application. The ZBA may waive one or more of the application filing requirements of this section if it finds that such information is not needed for a thorough review of a proposed PWSF.

A. Application Information.

1. Name, address and telephone number of applicant and all co-applicants as well as any agents for the applicant or co-applicants.

2. A carrier must either be an applicant or a co-applicant and no more than one carrier is allowed in one application. If the proposed PWSF is for two or more carriers, each carrier must file its own application as either the applicant or co-applicant.

3. A DAS pole or node shall have at least two PWSF carriers as co-applicants. Additional carriers on a DAS pole are not considered co-locatees unless new equipment will be added to the PWSF for the additional carrier.

4. A copy of the lease with the property owner and/or the structure owner of the proposed PWSF must be submitted, whichever or both that apply. If an existing utility pole is proposed, the pole attachment agreement must be submitted.

5. Original signatures for the applicant and all co-applicants applying for the PWSF must be submitted. If an agent will represent the applicant or co-applicant, original signature authorizing the agent to represent the applicant and/or co-applicant must be submitted.

6. Copies of all submittals pertaining to FCC licensing; environmental impact statements; draft environmental assessments for Tier Three applications (described in Section 8.8-13.A); FAA notice; aeronautical studies; letter of approval from the Massachusetts Department of Public Health; and all data, assumptions and calculations relating to RFR.

7. On a zoning or assessor's map, the locations of all existing and proposed PWSFs for that carrier in the Town and outside the Town within one mile of its corporate limits.

8. Details of proposed method of finance surety as required in Section 8.8-20.J.

9. Required plans and engineering plans, prepared, stamped and signed by a professional engineer licensed to practice in Massachusetts.

B. Location Information.

1. Identify the subject property by including the name of the nearest street or streets, and street address, if any. A right-of-way location must indicate the three closest street addresses.

2. Assessor's lot number of subject property or, in the case of a new utility pole in the public right-of-way, the nearest property. A utility pole in a private right-of-way shall show precise placement relative to the paved travelway or track.

3. Zoning district designation for the subject lot and for all lots within 300 feet of the property lines of the subject lot.

4. A line map or aerial photograph to scale showing the subject property and all properties within 300 feet and the location of all buildings, including accessory structures, on all properties shown.

C. Siting Information.

1. A one inch-equals-forty feet vicinity plan showing the following (not required for a new utility pole in the right-of-way):

    a. Property lines for the subject property and for all properties abutting to the subject property, including those lines furthest from the subject property.

    b. Distances, at grade, from the proposed PWSF to each building on the vicinity plan.

    c. Contours at each foot AMSL (above mean sea level).

    d. Lines representing the sight line showing viewpoint (point from which view is taken) and visible point (point being viewed) from "Sight Lines" in Section 8.8-9.C.2 below.

2. Sight lines and photographs as described below:

   a. Sight line representation. A sight line representation shall be drawn from the closest facade of each residential building (viewpoint) included on the vicinity plan to the highest point (visible point) of the PWSF.

   b. Existing (before condition) photographs. Each sight line shall be illustrated by one four inch-by-six inch, or larger, color photograph of what can currently be seen from the residential building.

   c. Proposed (after condition) photosimulation. Each of the existing condition photographs shall have the proposed PWSF superimposed on it to show what will be seen from residential buildings if the proposed PWSF is built. All photosimulations shall be positioned to show maximum exposure of any proposed service drive, such drive to be represented in its proposed, finished appearance

3. A Site Plan meeting the requirements of Section 9.2 of the existing Town Zoning Bylaw and, in addition showing the following.

   a. The entire subject property, or 300 feet of right-of-way (150 feet to each side of the proposed facility, including property lines and streets (public and private) adjacent to the subject property.

   b. All existing buildings, including accessory structures, either on the lot or for rights-of-way, on lots adjacent to the right-of-way.

   c. All existing vegetation, by mass or individually by diameter (four feet from the ground) of each stand-alone tree or shrub. Tree masses or individual stand-alone trees shall be identified by specie(s).

   d. Proposed security barrier for a ground mount, indicating type and extent as well as point of controlled entry (not required for Tier One utility poles).

   e. All proposed changes to the existing property or right-of-way, including grading, vegetation removal and temporary or permanent streets and driveways.

   f. Representations, dimensioned and to scale, of the proposed mount, antennas, equipment shelters, cable runs, parking areas and any other construction or development attendant to the PWSF, including those portions on abutting properties.

4. Siting elevations, or views at-grade from the north, south, east and west for a 50 foot radius around the proposed PWSF. When a proposed PWSF is set back more than 50 feet from a public or private right-of-way, an elevation shall include any existing public and private streets that serve the subject property. Elevations shall be at either one-quarter inch-equals-one foot or one-eighth inch-equals-one foot scale and show the following:

   a. Antennas, mounts and equipment shelter(s), with total elevation dimensions and AGL of the highest point.

b. Security barrier. If the security barrier will block views of the PWSF, the barrier drawing shall be cut away to show the view behind the barrier.

c. Any and all structures on the subject property.

d. Existing trees and shrubs at current height and proposed trees and shrubs at proposed height at time of installation, with approximate elevations dimensioned.

e. Grade changes, or cuts and fills, to be shown as original grade and new grade line, with two foot contours AMSL.

D. Design Information.

1. Equipment brochures or cut sheets for the proposed PWSF such as manufacturer's specifications or trade journal reprints. These shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.

2. Materials of the proposed PWSF specified by generic type and specific treatment (e.g., anodized aluminum, stained wood, painted fiberglass, etc.). These shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.

3. Dimensions of the PWSF specified for all three directions: height, width and breadth. These shall be provided for the antennas, mounts, equipment shelters and security barrier, if any.

4. Appearance shown by at least two photographic photosimulations of the PWSF within the subject property. The photosimulations shall show the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any, for the total height, width and breadth.

5. Landscape plan including existing trees and shrubs and those proposed to be added, identified by size of specimen at installation and species (not required for a new utility pole in the right-of-way).

6. All Tier Three applications shall submit a foundation plan for any structural mount, including width, depth and materials of the caisson or footing. Notations such as "foundation by others" shall not be acceptable.

E. Narrative Information.

1. Applicant shall submit a notarized statement signed by the applicant(s) stating that all information included in the submittal is materially accurate, true, complete, and verifiable. Inaccurate, untrue, misleading or false information submitted in pursuit of a special permit by the applicant, the provider company or their agents may be grounds for denial of a special permit.

2. Carrier shall identify:

a. Site latitude

b. Site longitude

c. AGL to the radiation center and the top of highest projection (e.g., lightning rod).

3. Tier Two and Tier Three applicants should provide:

a. Two alternatives to the proposed PWSF.

b. Alternatives should comply with criteria in Section 8.8-11.E of this Bylaw for differences between the proposed PWSF and the alternatives.

c. Failure of the applicant to provide two alternatives does not constitute an incomplete application, however:

i. The Town reserves the right to select its own alternatives.

ii. Each alternative selected by the Town will be analyzed in terms of Section 8.8-11.E factors only.

4. The Town reserves the right to select alternative sites for new utility poles in the right-of-way.

5. Applicant to identify construction sequence and route(s) to be used to transport materials and equipment to the site.

F. Geographic Information.

1. Area to be served by the proposed PWSF.

a. Within the Town (not a radio frequency propagation plot).

b. Adjacent to the Town (not a radio frequency propagation plot).

2. Tax map showing adjacent properties and existing land use on these properties.

8.8-11 Alternatives Analysis and Comparison. Each application for a PWSF should also contain at least two alternatives that differ from the PWSF proposed in the application. These requirements do not apply to proposals for new utility poles in the right-of-way.

A. Alternative Sites. A description of alternative sites for the proposed PWSF with the following information:

1. A U.S.G.S. topographic map which identifies the location of alternative sites.

2. An assessor's map of the lots or tracts of the alternative sites showing the acreage and dimensions of each site, the name and location of adjoining or nearest public roads and names of abutting property owners.

3. Any additional information necessary to provide a comparison of the costs and environmental impacts of the alternative sites with that of the proposed site.

B. Differences. The alternatives need not be totally different from the proposed PWSF; however, the alternatives should contain measurable differences, such as:

1. Height. An alternative can be identical to the proposed PWSF except to be for a shorter height.

2. Number. An alternative could be for two or more PWSFs that are shorter than the proposed PWSF.

3. Location. An alternative could be located on a different property than the proposed PWSF.

4. Siting. An alternative could be in a different place on the same property as the proposed PWSF.

5. Design. An alternative could be of the same height, location and siting as the proposed PWSF, but be designed to appear differently, such as a farm silo.

6. Technology. An alternative could be the use of a Distributed Antenna System instead of the proposed PWSF.

C. Submittal Requirements for Alternatives. The materials submitted for each alternative should show only the differences between each of the alternatives and the proposed PWSF.

D. Town of West Tisbury Provision of Alternatives.

1. If the applicant has not submitted two alternatives, the ZBA Administrator or his/her designee shall prepare at least two alternatives.

2. If the applicant has submitted two or more alternatives, the ZBA Administrator or his/her designee shall prepare at least one alternative.

E. Comparison of Proposed PWSF and Alternatives. The ZBA shall compare the proposed PWSF to the alternatives on the basis of the following:

1. Change in community scale, as exhibited in relative height, mass or proportion of the PWSF within its proposed surroundings.

2. New visible elements proposed on a contrasting background.

3. Different colors and textures proposed against a contrasting background.

4. Use of materials that are foreign to the existing built environment.

5. Conservation of opportunities to maintain community scale, not compromising buffering areas and low-lying buildings so as to start a trend away from the existing community scale.

6. Amount and diversity of landscaping and/or natural vegetation.

7. Preservation of view corridors, vistas, and viewsheds.

8. Continuation of existing colors, textures and materials.

F. Ranking of Proposed PWSF and Alternatives. The ZBA Administrator or his/her designee shall rank the proposed PWSF and each alternative based on the criteria listed in Section 8.8-11.E above. The ranking of the proposed PWSF and each alternative shall be submitted to the

ZBA along with each application for review by the ZBA. The ZBA shall consider the alternatives along with the proposed PWSF.

8.8-12 Hazardous Materials Filing Requirements.

A. **Written Description.** The applicant should provide a written description of the type(s) and quantities of any hazardous waste and/or hazardous materials to be used, stored or generated for each wireless carrier proposed to be located on the project site, as well as provide a written description and plans for containment of any hazardous materials/waste.

8.8-13 Environmental Compliance

A. Federal Environmental Assessment Requirements for Tier Three applications.

1. The National Environmental Policy Act (NEPA) applies to all applications for PWSFs. NEPA is administered by the FCC via procedures adopted as Subpart 1, Section 1.1301 et seq. (47 CRF Ch. I). The FCC requires that an environmental assessment (EA) be filed with the FCC prior to beginning operations for any PWSF proposed in certain type of areas or which certain characteristics.

2. At the time of application filing, a draft EA that meets FCC requirements shall be submitted to the Town for each Tier Three PWSF site that requires such an EA to be submitted to the FCC.

B. Radio Frequency Radiation Emissions Requirements.

1. Each application for a PWSF shall be accompanied by a statement by a professional engineer certifying that, as proposed, the PWSF complies with the FCC *Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation* (FCC Guidelines) concerning radio frequency radiation and emissions.

2. The ZBA may require applicants for a Tier One, Two or Three PWSF to submit a report containing the following information on the existing and maximum future projected measurements of RFR from the proposed PWSF, for the following situations:

   a. Existing, or ambient: the measurement of existing RFR.

   b. Existing plus proposed wireless facility: maximum estimate of RFR from the proposed personal wireless facility plus the existing RFR environment.

   c. Existing plus proposed wireless facilities plus cumulative: maximum estimate of RFR from the proposed wireless facility plus the maximum estimate of RFR from the total addition of co-located wireless facilities plus the existing RFR environment.

   d. Certification, signed by a professional engineer, stating that the RFR measurements are accurate and meet the requirements for radio frequency radiation reports in this Bylaw.

C. Monitoring and Evaluation of RF Radiation for Tier One, Tier two and Tier Three PWSFs

1. Pre-testing

After the granting of a Special Permit and before the applicant's PWSF begins commercial
transmission, the applicant shall pay for an independent consultant, hired by the Town, to monitor the background levels of EMF radiation, around the proposed facility site and/or any repeater locations to be utilized. Testing results shall meet FCC and state standards. A report of monitoring results shall be prepared by the independent consultant and submitted to the Board of Health.

2. Post-testing

After transmission begins, the owner(s) of any PWSF located on any facility site shall pay for an independent consultant, hired by the Town, to conduct testing and monitoring of EMF radiation emitted from said site, and to report results as follows:

a. Every two years there shall be routine monitoring of emissions by the independent consultant using actual field measurement of radiation, utilizing FCC and State monitoring protocol. This monitoring shall measure levels of EMF radiation from the facility site's primary antennas as well as from repeaters (if any). Testing will be conducted during the peak use time in August, to give the most accurate indication of impacts on abutters and others. A report of monitoring results shall be prepared by the independent consultant and submitted to the Zoning Board within 30 days of completion of the testing.

b. Any modification of an existing PWSF or the activation of any additional permitted channels or co-location shall require new monitoring. and every time a modification or a co-location is proposed for the PWSF.

3. Excessive Emissions

a. Should the monitoring of a facility site reveal that the site exceeds the Federal Communications Commission (FCC) 96-326 standard, then the owner(s) of all facilities using the site shall be so notified. The owner(s) shall submit to the Board of Health a plan for reduction of emissions to a level that complies with the FCC 96-326 standard within 10 business days of notification of noncompliance. That plan shall reduce emissions to the standard within 15 days of initial notification of non-compliance. Failure to accomplish this reduction of emission within 15 business days of initial notification of non-compliance shall be a violation of the Special Permit and subject to a fine of $300 per day for each offense and/or revocation of the Special Permit and removal of the facility at the owner(s) expense. Such fines shall be payable by the owner(s) of the facilities with antennas on the facility site, until compliance is achieved.

b. If such standards and regulations are changed, then the owners of the towers and antennas shall bring them into compliance with the revised standards within six months of the effective date. Failure to bring towers and antennas into compliance with revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

C. Noise Requirements.

1. In all instances except emergency situations, no equipment shall be operated at a PWSF in excess of 50 dBA at the nearest property line.

2. Noise filing requirements. The ZBA shall require applicants for a Tier Two or Three PWSF to submit a report containing the following information on the existing and maximum future projected measurements of noise from the proposed PWSFs, measured in decibels Ldn (logarithmic scale, accounting for greater sensitivity at night), for the following situations:

   a. Existing, or ambient: the measurements of existing noise.

   b. Existing plus proposed PWSF: maximum estimate of noise from the proposed PWSF plus the existing noise environment.

   c. Existing plus proposed wireless facilities plus cumulative: maximum estimate of noise from the proposed wireless facility plus the maximum estimate of noise from the total addition of co-located wireless facilities plus the existing noise environment.

   d. Certification, signed by an acoustical engineer, stating that noise measurements are accurate and meet the requirements of Section 8.8-13.C of this Bylaw.

3. The ZBA may require as part of conditions of approval for Tier Two or Three applications that a noise report as described in this Section be submitted every two years as well as every time a modification or a co-location is proposed for the PWSF.

8.8-14 Signs/Identification Plaques. No signage shall be permitted on any PWSF other than that required for public safety purposes or by the FCC or FAA, except that each PWSF shall have a weather-proof plaque mounted at eye level by the entry gate of the fence identifying the carrier, frequency and date of approval of zoning permit and direct contact 24 hour emergency phone number. In addition, No Trespassing or other warning signs may be posted on the fence. No sign may exceed 2 square feet.

8.8-15 Screening and Landscaping for Tier Two and Tier Three.

A. **Natural Vegetation**. Existing natural vegetation shall be undisturbed to the greatest extent practicable.

B. **Landscaping**. Landscaping of disturbed areas on the ground of the Tier Three PWSF site and security barriers shall be required.

8.8-16 Access and Parking for Tier Two and Tier Three.

A. **Parking**. Areas sufficient for the temporary off-street parking of at least two vehicles shall be provided for Tier Two and Tier Three PWSFs. The type and configuration of parking may be approved by the ZBA.

B. **Private Access**. A copy shall be provided to the Town ZBA of any street maintenance agreement for any site accessed by private easement.

C. **Tier One PWSFs**. No parking areas are required.

8.8-17 Insurance. PWSFs shall be insured by the owner(s) against damage to persons or property with coverage limits not less than five million dollars. The owner(s) shall provide a certificate of insurance to the Selectmen's office on an annual basis in which the Town shall be an additional

named insured. The ZBA may from time to time require the applicant to increase the limits of such coverage.

8.8-18 Fees

A Special Permit and/or new operating license shall not be issued until all fees due and owing have been paid.

1. Filing Fee

   Every submission for a Special Permit for a Wireless Communication Facility or for a Special Permit for a proposed modification of an existing Wireless Communication Facility shall be accompanied by a Filing Fee of $200 payable by certified check to the Town of West Tisbury.

2. Review Fee

   Every submission for a Special Permit for a Wireless Communication Facility or for a Special Permit for a proposed modification of an existing WCF shall be accompanied by a Review Fee payable by certified check to the Town of West Tisbury. The procedure for Review Fees shall be subject to M.G.L. C.44, Section 53G and project review fee regulations as adopted by the ZBA.

   The initial amount of the review fee shall be $7,500.00 for all new PWSFs and $3,500 for all co-locations and amendments as described in Section 8.8-16, with the ZBA determining any additional funds during the process which may be required to cover the expenses incurred by the ZBA in reviewing the Special Permit application, including without limitation any engineering, planning or technical consulting services necessary for review purposes. Any monies remaining from the fee once Special Permit application review is concluded shall be returned to the applicant(s).

3. Fee Schedule; Payment of Fees

   A schedule of fees for permitting towers, antennas and PWSFs, monitoring of emissions and inspection of structures, and any other fees shall be established by the ZBA. This schedule may be amended from time to time. Failure of the applicant(s) to pay such fees shall result in revocation of the Special Permit.

8.8-19 Provision of Independent Consultants.

A. **Types of Independent Consultants.** These consultants shall each be qualified professionals with a record of service to municipalities in one of the following fields: telecommunications engineering; structural engineering; monitoring of electromagnetic fields; and, if determined necessary by the ZBA, other consultants.

B. **Copy of Application to Independent Consultants.** Upon submission of a complete application for a Special Permit under this Article, the ZBA shall provide its independent consultants with the full application for their analysis and review.

C. **Site Visits.** Applicants for any Special Permit under this Article shall grant permission for the Town's independent consultant(s) to conduct any necessary site visits.

8.8-20 Additional Requirements After Approval or Construction

A. **Easement.** The landowner shall enter into a recordable easement, restriction or similar instrument enforceable by the Town, by which it is agreed that:

1. No cutting of trees or other vegetation shall occur within 200 feet of the facility without prior written approval of the ZBA, and

2. All supplemental landscaping required by the ZBA shall be fully maintained.

B. **Maintenance.** The applicant shall maintain the PWSF. Such maintenance shall include, but shall not be limited to, structural integrity; painting; and landscaping.

C. **Inspection.** The owner or operator of PWSFs shall provide for and conduct an inspection of mounts at least once every five years in conjunction with the review of the zoning permit required in Section 8.8-20.K. A report by a structural engineer on this inspection shall be provided to the Town building Inspector verifying that the structural integrity of the mount meets EIA/TIA 222 (Version G) standards.

D. **Unsafe Structure.** In the event the structure is not maintained or found to be unsafe, the owner(s) of the PWSF shall submit a plan within 10 business days of notification to remediate the defect(s). Failure to accomplish this remediation within 20 days of the initial notification shall be a violation of the Special Permit and subject to a fine of $300 per day for each offense. Such fines shall be payable by the owner(s) of the facilities.

E. **Operation.** All active PWSFs shall be operated continuously except for maintenance. Seasonal operation is not permitted and may result in revocation of permits and removal of facility. Any cessation of operation for more than five contiguous days shall be reported to the Zoning Inspector within five working days.

F. **Abandonment.** If a licensed carrier plans to abandon or discontinue operation of a PWSF, that carrier shall notify the Zoning Inspector by certified U.S. mail of the proposed date. Such notice shall be given no less than 30 days prior to abandonment or discontinuation of operations.

G. **Failure to Operate.** In the event that a carrier fails to give such notice, or if the facility ceases to operate, the PWSF shall be considered abandoned. Ceases to operate is defined as not performing the normal functions associated with the PWSF and its equipment on a continuous and ongoing basis for a period of 90 days.

H. **Removal Upon Abandonment.** Upon abandonment or discontinuation of use, the carrier shall physically remove all structures associated with the PWSF and the site shall be fully restored to its former condition, or to such condition as the Zoning Inspector may require, within 90 days from the date of abandonment or discontinuation of use.

I. **Town Removal.** If a carrier fails to remove a PWSF in accordance with this article, the Town shall have the authority to enter the subject property and physically remove the facility.

J. **Surety.** The applicant(s) shall, as a condition of the Special Permit, provide a financial surety payable to the Town, to cover the cost of removal of the PWSF, the remediation of the landscape, and the abatement of any pollution when the facility ceases to operate. Every

owner/operator of a PWSF shall be required to post and maintain a bond with the Town in the amount of $10,000.00 to cover such costs.

K. **Review of Permit.** Special Permits issued under the terms of this Bylaw shall be reviewed by the Town ZBA every five years from the date of issuance for compliance with this Bylaw and any special terms or conditions of approval. Such permits are subject to suspension or revocation at any time if it is determined that the terms of the permit and any conditions contained therein, or any rules or regulations adopted by the state or federal government concerning the use of such facilities, are being violated.

8.8-21 Severability. Should any portion of this Bylaw be found by a court of competent jurisdiction to be illegal or unconstitutional, then such portion shall be severed and the remaining portions of the Bylaw shall be unaffected thereby.

8.8-22 Effective Date. This Bylaw shall take effect on the day after adoption by Town Meeting.

8.8-23 Definitions. To the extent the following definitions conflict with a definition contained in Section 14.2, the following definitions are applicable to structures or uses permitted under Section 8.8.

A. **Antenna.** A whip (omni directional antenna), panel, (direction antenna), disc (parabolic antenna) or similar device used for transmission and / or reception of radio frequency signals.

B. **Antenna Array.** An antenna array is one or more whips, panels, discs, or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antennas (whips), directional antennas (panels), and parabolic antennas (discs). The antenna array does not include the mount as defined herein.

C. **Applicant**. A person or entity with a proposal, request or an application before the Town for a permit for a PWSF. The applicant must be a carrier, a landowner where the facility will be located or the proposed owner of the facility. A carrier must be either the applicant or the co-applicant on each application. If the proposed PWSF is for two or more carriers, each carrier must file its own application as either the applicant or co-applicant.

D. **Application**. A complete proposal or request for review under this Bylaw. An incomplete proposal or request is not an application by definition.

E. **AGL (above ground level).** The actual height of the PWSF from the ground to the highest part of the mount or the antenna, whichever is higher. Beacons, lightning rods and other appurtenances are included in this calculation.

F. **Camouflage.** A way of painting and mounting a PWSF that requires minimal changes to the host structure in order to accommodate the facility.

G. **Carrier.** A company licensed by the Federal Communications Commission (FCC) to provide personal wireless services. A tower company, a tower management firm or a tower builder is not a carrier. A licensed carrier or Broadband Radio Services or any other Federal Communications Commission (FCC) licensee other than a personal wireless service carrier is not a carrier for purposes of this Bylaw.

H. **Cellular.** A mobile telephone service operating in the 800 MHz spectrum.

I. **Co-applicant**. A person or entity that joins with an applicant in an application before the Town for a permit for a PWSF. The co-applicant can only be a carrier, a landowner where the facility will be located or the proposed owner of the facility. A carrier must be either the applicant or the co-applicant on each application. If the proposed PWSF is for two or more carriers, each carrier must file its own application as either the applicant or co-applicant.

J. **Co-location**. The use of a common support structure or common site by two or more PWSFs or by one carrier for more than one type of frequency, FCC license or branded name. A single carrier mounting on a structure for any other use, such as electrical transmission or distribution, is not co-location.

K. **Commercial Mobile Radio Services (CMRS)**. Per Section 332(d)(1) of the Telecommunications Act of 1996, any of several technologies using radio signals at various frequencies to send and receive voice, data and video. These services include Cellular PCS, paging, Enhanced Specialized Mobile Radio and Specialized Mobile Radio. CMRS must be interconnected to the Public Switched Telephone Network.

L. **Conceal.** To enclose a PWSF within a natural or man-made feature resulting in the facility being either invisible or made part of the feature enclosing it.

M. **Design.** The appearance of PWSFs such as their materials, colors and shape.

N. **Distributed Antenna System (DAS).** A system combining fiber optic or hybrid fiber optic or free optic transport and PWSFs. The part of a DAS, known as a "node," that transmits or receives a personal wireless service carrier's signal is a PWSF and is governed by this Bylaw.

O. **EIA/TIA 222 (Version G).** The American National Standards Institute *(*ANSI*)* standard for a tall structure's resistance to wind load and ice load.

P. **Elevation.** The measurement of height above sea level. Also AMSL, or above mean sea level.

Q. **Enhanced Specialized Mobile Radio (ESMR).** Private land mobile radio with telephone services.

R. **Equipment Cabinet/Equipment Shelter**. An enclosed structure at the base of the mount within which are housed the equipment for the PWSF such as batteries and electrical equipment.

S. **Fall Zone.** The area on the ground within a prescribed radius from the base of a PWSF. The fall zone is the area within which there might be a potential hazard from falling debris or collapsing material.

T. **Height**. The distance measured from ground level to the highest point of a PWSF, including the antenna array. For purposes of measuring height, all antennas or other attachments mounted on a structure shall be included in the measurements to determine overall (i.e. combined) height.

U. **Lattice Tower.** A type of mount that is usually ground-mounted and self-supporting with multiple legs and cross-bracing of structural steel.

V. **Location.** The area where a PWSF is located or proposed to be located.

W. **Modification.** The changing of any portion of a PWSF from its description in a previously approved permit. This includes adding or subtracting frequencies, new FCC licenses and name changes of the carriers. The FCC definitions for "modification" are different than local government rules.

X. **Monopole.** The shape of mount that is self-supporting with a single shaft of wood, steel or concrete and antennas at the top and/or along the shaft.

Y. **Mount.** The structure or surface upon which antennas are mounted, e.g.:

1. Roof-mounted. Mounted on the roof of a building.

2. Side-mounted. Mounted on the side of a building.

3. Ground-mounted. Mounted on the ground.

4. Structure-mounted. Mounted on a structure other than a building.

Z. **Personal Wireless Service Facility (PWSF).** Facility for the provision of personal wireless services, as defined by Section 704 of the Telecommunications Act of 1996, which amended Section 332©(7)(A) of the Communications Act of 1934. A PWSF is any unstaffed facility for the transmission and/or reception of personal wireless services, usually consisting of an antenna array, transmission cables, equipment shelter and a mount. The transmission or reception portion of a Distributed Antenna System including the mount is a PWSF and is governed by this Bylaw.

AA. **Personal Wireless Services.** Any personal wireless service defined in the Federal Telecommunications Act which includes Federal Communications Commission (FCC) licensed commercial wireless communications services including cellular, personal communications services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging as well as unlicensed wireless services, and common carrier wireless exchange access services.

BB. **Radio Frequency Propagation.** The metrics by which the wireless industry measures the acceptability of a PWSF. The metrics by which the Town measures acceptability of a PWSF are contained in this Bylaw.

CC. **Radio Frequency Radiation (RFR).** The emissions from PWSFs that can, in excessive amounts, be harmful to humans. RF emissions are part of the RF signal.

DD. **Security Barrier.** A locked, impenetrable wall, fence or berm that completely seals an area from unauthorized entry or trespass.

EE. **Site.** That portion of a subject property where a PWSF is to be placed. Any acceptable location may have several potential sites within it.

FF. **Siting.** The method and form of placement of PWSFs on a specific area of a subject property. Location is different than siting.

GG. **Specialized Mobile Radio (SMR).** A form of dispatch or two-way communication used by companies that rent space or time from an SMR carrier. Used primarily for data, delivery vans, truckers or taxis within a small, definable geographic area.

HH. **Standards.** Rules or measures by which acceptability is determined. PWSFs are measured by standards measuring visibility or safety. Wireless planning tends to regulate PWSFs on three levels: location (or where the PWSF site can go), siting (or how the PWSF is placed within its setting) and design (or what the PWSF looks like).

II. **Tower.** A term used as a modifier (e.g., tower builder) or when modified (e.g., lattice tower). PWSFs are not towers.

JJ. **Unlicensed Wireless Services.** Commercial mobile services that can operate on public domain frequencies and therefore need no FCC license for their sites. Wi-Fi and garage door openers are examples of unlicensed wireless services.

KK. **Utility Pole.** For purposes of this Bylaw, any public, semi-public or quasi-public vertical element in the Town, such as a distribution pole for electricity, a cable pole, a traffic signal stanchion or a light pole.

LL. **Wireless Communications.** Any form of signaling by wireless, including personal wireless services that require a transmitter, a receiver and a path – sometimes straight, sometimes indirect – between them. Personal wireless services are a small subset of wireless communications and are the only services regulated by this Bylaw.

SECTION 8.9 WIND ENERGY CONVERSION SYSTEMS (WECS)

8.9-1 Purpose

The purpose of this section is to provide for the development and use of wind power as an alternative energy source, while protecting public health, safety and welfare, preserving environmental, historic and scenic resources, and controlling noise levels.

8.9-2 Applicability

Any application that proposes to erect a Wind Energy Conversion System (WECS) shall comply with this section.

8.9-3 Special Permit

No WECS shall be erected, constructed or installed without first obtaining a Special Permit from the Zoning Board of Appeals (ZBA). Modification to an existing WECS shall also require a Special Permit.

8.9-4 Requirements and Procedures

In addition to the requirements and procedures for Special Permits listed in Section 9.2-1, applicants seeking approval for any WECS shall comply with the following:

A. Site Plan and Other Plans: Per Section 9.2-1C, the Special Permit application shall be accompanied by a Site Plan, which will include a general description of landscape and existing vegetation.

In addition, the ZBA may request the following: a plan showing existing vegetation, including average height of trees and any proposed vegetation removal on the subject property or abutting properties; and/or a topographic map of the area within 2,000 feet of the proposed site.

B. Site Visit: The ZBA shall perform a site visit with the applicant prior to the applicant's public hearing.

C. Expanded Notification: Due to potential for significant visual and other impacts, public hearing notices shall be mailed to all property owners within 1,000 feet of the subject property.

D. Written Narrative: The applicant shall provide a description of the proposed WECS including technical, environmental details, and other reasons for the proposed location, height and design.

E. Height Calculation: Overall height of the wind turbine shall be measured from the land in its natural state prior to grading or filling to the highest point reached by any part of the wind turbine.

F. Setbacks: The minimum setback for the wind turbine shall be maintained equal to the overall height, as defined in E. above, from the center of the tower base, plus ten (10) feet from all boundaries of the site on which the WECS is to be located.

No part of the WECS support structure, including guy wire anchors, may extend closer to the property boundaries than the standard structure setbacks for the zoning district in which the property is located.

The ZBA may reduce setback distances for a WECS with the permission of an abutting property owner.

G. Noise: the WECS and associated equipment shall conform with the provisions of the Department of Environmental Protection's Division of Air Quality Noise Regulations (310 CMR 7.10).

H. Noise Violation: A source of sound will be considered to be violating the regulations if it exceeds the standards set forth in Section 8.9-4 G.

Any complaint of excessive noise resulting from the operation of a WECS shall be submitted to the Zoning Inspector, who may then request that the property owner supply ambient and operating decibel measurements at the nearest point from the WECS to the property line of the complainant and/or to the nearest inhabited residence.

If the noise levels are found to have exceeded allowable limits, the Zoning Inspector shall notify the property owner, in writing, of their responsibility to correct the violation. If the noise violation is not remedied within 30 days, the WECS shall remain inactive until the noise violation is remedied, which may include relocation or removal.

I. Prevention of Access: All WECS shall be constructed to prevent unauthorized access and/or climbing.

J. Visual Impact: The applicant shall employ all reasonable means, including landscaping and alternative locations and colors to minimize the visual impact of all WECS components.

K. Compliance with Laws, Ordinances and Regulations: The construction and operation of all such proposed WECS shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications and aviation requirements. The safety of the design and the construction of any wind energy generating facility, including towers and associated equipment and the compatibility of the tower structure with the rotors and other components, shall be certified by the manufacturer and by an engineer licensed by the

Commonwealth of Massachusetts. No WECS shall include lighting, unless required by the Federal Aviation Administration (FAA). The owner/applicant of any WECS shall provide proof of liability insurance for the installation, use and maintenance of the wind energy generating facility.

L. Roads District, Coastal District: No WECS shall be permitted within the Roads District or Shore Zone of the Coastal District, as delineated in Article VI of the zoning bylaw.

M. Security: In conjunction with the special permit approval process the ZBA may require the posting of a bond or other security to assure satisfactory fulfillment of all requirements, in such sum and in accordance with such conditions as the Board may determine necessary. The ZBA need not require security where there is full assurance of compliance. The amount of security required shall not exceed either the estimated costs of the measures proposed, or the estimated cost of restoration of affected lands and property if the work is not performed as required, whichever is greater.

8.9-5 Review Criteria
In addition to the review criteria and General Findings and Specific Findings for Special Permits listed in Section 9.2-2, the ZBA shall also make specific written findings as to whether the proposed WECS is appropriate for the proposed location.

8.9-6 Abandonment
A WECS shall be considered to be abandoned if it has ceased to produce quantifiable amounts of power during a period of 365 days or is designated a safety hazard by the Zoning Inspector. Once a WECS is designated as abandoned, the owner shall physically remove or repair the WECS within 90 days of written notice. "Physically remove" may include, but not be limited to:

- Removal of WECS, any equipment shelters and security barriers from the subject property.
- Proper disposal of the waste materials from the site in accordance with local and State solid waste disposal regulations.
- Restoring the location of the WECS to its natural condition, except that any landscaping and grading shall remain in the after-condition.

SECTION 8.10 LARGE-SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATIONS

8.10-1 Purpose
The purpose of this bylaw is to promote the creation of new large-scale ground-mounted solar photovoltaic installations with 250 kW or larger of rated nameplate capacity by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations.

The provisions set forth in this section shall apply to the construction, operation, and/or repair of large-scale ground-mounted solar photovoltaic installations.

8.10-2 Applicability
This section applies to large-scale ground-mounted solar photovoltaic installations proposed to be constructed after the effective date of this section. This section also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment.

8.10-3 Designated Location
The Light Industrial District is designated by Town Meeting vote, in accordance with the Massachusetts General Laws Chapter 40A, Section 5, as the location where large-scale ground-mounted solar photovoltaic installations may be sited as-of-right, via Site Plan Review by the Zoning Board of Appeals (ZBA). No installations shall be allowed to be constructed within the Critical Habitat shown within the Martha's Vineyard Commission's Island Plan Biodiversity Classification Map, on file with the Town Clerk.

8.10-4 General Requirements for all Large-Scale Ground-Mounted Solar Photovoltaic Installations
The following requirements are common to all large-scale ground-mounted solar photovoltaic installations to be sited in the Light Industrial District:

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

B. Building Permit and Building Inspection: No large-scale ground-mounted solar photovoltaic installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

C. Fees: The application for a building permit for a large-scale ground-mounted solar photovoltaic installation must be accompanied by the fee required for a building permit.

D. Site Plan Review: large-scale ground-mounted solar photovoltaic installations with 250 kW or larger of rated nameplate capacity shall undergo Site Plan Review by the ZBA, as defined in Section 9.1, prior to construction, installation or modification as provided herein.

E. Expedited Permitting: per Section 8.1-5 of the West Tisbury Rules and Regulations Governing the Subdivision of Land, as-of-right large-scale ground mounted solar photovoltaic installations shall be subject to an expedited permitting process. All relevant Town approvals shall be issued within one year of submission of a completed application.

8.10-5 Required Documents
All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts.

Pursuant to the Site Plan Review process, the project proponent shall provide the following documents:

A. A Site Plan showing:
1. Property lines and physical features, including roads, for the project site;
2. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, vegetative or other screening of structures;

B. Blueprints or drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;

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

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

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

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

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

H. Documentation of actual or prospective access and control of the project site (see also Section 8.10-5):

I. An operation and maintenance plan (see also Section 8.10-5N);

J. Proof of liability insurance; and

K. Description of financial surety that satisfies Section 8.10-10C.3).

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

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

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

The ZBA may waive documentary requirements as it deems appropriate.

8.10-6 Dimensional and Density Requirements

A. Setbacks: For large-scale ground-mounted solar photovoltaic installations, setbacks shall be as follows:
- where the proposed site abuts the RU district: 50 feet;
- where the proposed site abuts the LI district: 20 feet.

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

8.10-7 Design Standards

A. Lighting: lighting of large-scale ground-mounted solar photovoltaic installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be shielded down to protect abutting properties, per Zoning Bylaw Section 8.6. Lighting of the solar photovoltaic installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

B. Signage: Signs on large-scale ground-mounted solar photovoltaic installations shall comply with Zoning Bylaw Section 8.4 (Sign Regulations). A sign consistent with the Town's sign bylaw shall be required to identify the owner and provide a 24-hour emergency contact phone number. This sign shall be visibly displayed at the entrance to the installation.

Solar photovoltaic installations shall not be used for displaying any advertising and may be used for the identification of the manufacturer or operator of the solar photovoltaic installation only.

C. Prevention of Access: All large-scale ground-mounted solar photovoltaic installations shall be constructed to prevent unauthorized access and/or climbing.

8.10-8 Utility Connections

Reasonable efforts, as determined by the ZBA, shall be made to place all utility connections from the large-scale ground-mounted solar photovoltaic installations 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.

8.10-9 Safety and Environmental Standards

A. Emergency Services: large-scale ground-mounted solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Town's Fire Chief. The owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

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

8.10-10 Monitoring and Maintenance

A. Solar photovoltaic Installation Conditions: The large-scale ground-mounted solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include,

but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the Fire Chief and other emergency services providers. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted as a public way.

B. Modifications: All material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the ZBA.

C. Abandonment or Decommissioning

1. Removal Requirements: Any large-scale ground-mounted solar photovoltaic installation which has reached the end of its useful life or has been abandoned consistent with 8.10-10C2, below, shall be removed. The owner shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the ZBA by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

a. Physical removal of all large-scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site;
b. Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations;
c. Stabilization or re-vegetation of the site as necessary to minimize erosion. The ZBA may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

2. Abandonment: Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the ZBA. If the owner of the large-scale ground-mounted solar photovoltaic installation 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 may enter the property and physically remove the installation.

3. Financial Surety: Owners of large-scale ground-mounted solar photovoltaic projects shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the Town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the ZBA, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. Such surety will not be required for Town- or State-owned facilities. At the time the building permit is submitted the project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation and potential regulatory changes.

ARTICLE IX SITE PLAN APPROVAL AND SPECIAL PERMITS

The purpose of Site Plan and Special Permit review is to enable the Town of West Tisbury to minimize the impact of proposed uses on their surroundings. Such review is also intended to ensure that development is designed in a way that fulfills the goals of this bylaw and the West Tisbury Master Plan. The Use Table in Section 3.1-1 indicates which uses are subject to Site Plan only or Special Permit review. Section 3.1-1(A) describes how to interpret the symbols on the Use Table.

SECTION 9.1 SITE PLAN REVIEW WHEN NO SPECIAL PERMIT IS REQUIRED

The Planning Board shall perform Site Plan Review unless the bylaw provides that the Zoning Board of Appeals (ZBA) is responsible. References to the Planning Board in this section shall apply to the ZBA when so designated.

9.1-1 Submission Requirements

A. The Planning Board shall prescribe the content of the Site Plan, as well as the number of copies to be submitted.

B. The Site Plan submission shall contain all information necessary to enable the Planning Board to conduct an informed review pursuant to the criteria in Section 9.1-2 below. This may include maps showing Existing Conditions and Proposed Improvements.

   1. At the discretion of the Planning Board, the Existing Conditions Map may include the following: land use districts, overlay districts, topography, wetlands, watercourses, shorelands, beaches, dunes, soils, existing vegetation, farmland, roads, structures, and other relevant site conditions.
   2. At the discretion of the Planning Board, the Proposed Conditions Map may include the following: driveways, parking areas, sidewalks, landscaping, utilities, lighting, drainage, vehicular circulation, signs, and building plans and elevations.
   3. If the land will be developed in more than one phase, the Planning Board may require the applicant to present a master plan for an entire property showing intended future development.

C. An application shall not be considered complete until all information required by Planning Board is submitted.

9.1-2 Review Criteria

The following criteria shall be used by the Planning Board in evaluating the Site Plan and related information submitted as part of the application. To be approved, the proposed use shall:

A. Comply with all applicable provisions and requirements of this bylaw.

B. Avoid significant detrimental visual and environmental impacts on adjacent uses and on any important natural, historic, or scenic features (see Subsection 8.3).

C. Not impair pedestrian safety or otherwise overload existing roads, considering their current width, surfacing, and condition, and not result in a reduction in the level of service at any intersection.

D. Provide appropriate parking pursuant to Section 8.2-2 as well as accessibility for fire, police, and emergency vehicles.

E. Not adversely affect the supply or quality of groundwater or surface water, or degrade any natural resource or ecosystem.

F. Not result in excessive noise, dust, odors, solid waste, glare, electrical interference, or any other nuisances.

G. Not increase adverse impacts of stormwater runoff from the site. Drainage shall recharge ground water to the extent practical, and surface waters flowing off-site shall not adversely affect drainage on adjacent properties or roads.

H. Not cause erosion or sedimentation.

I. Comply with the Design Standards in Section 8.3 and applicable design guidelines adopted by the Planning Board, if any.

9.1-3 Review Procedure

A. The Planning Board shall transmit copies of the Site Plan application to such boards, agencies, committees, and officials as the Planning Board may deem appropriate. These boards, agencies, committees, and officials shall report their findings and recommendations to the Planning Board within 30 days. Failure to respond within 30 days shall be deemed to constitute no objection to the application.

B. The Planning Board may, in its discretion, conduct a public hearing for a use requiring Site Plan Review only. If such a hearing is conducted, the procedures for Special Permit public hearings contained in G.L. Chapter 40A, Section 9, shall apply.

C. The concurring vote of a majority of the membership of the Planning Board shall be required for any decision on a use requiring Site Plan Review only. The Board's written decision shall approve the application as submitted or subject to reasonable conditions or modifications necessary to ensure compliance with the requirements of this bylaw. The application may not be denied unless the Planning Board finds that no conditions or modifications can be imposed that would ensure compliance with these requirements. Conditions or modifications that may be imposed include the following:

    1. Controls on location and type of access to the site.
    2. Requirements to screen buildings and parking areas and provide buffers to protect adjoining property.
    3. Requirements to reduce the traffic impact of the proposed project.
    4. Requirements to minimize impacts on the capacity of infrastructure serving the site.
    5. Requirements to minimize environmental degradation during construction.
    6. Modifications to the proposed size and scale of the project. This shall not apply to single-family residences.
    7. Requirement of a conservation restriction (as described in Section 5.5-2) to protect open space with conservation value (as described in Section 5.5-1).
    8. Other conditions designed to ensure compliance with applicable review criteria, including the installation of on-site and off-site improvements.

D. The Planning Board shall render a decision within 30 days of the public hearing, and shall promptly notify the applicant and the Zoning Inspector of its decision. If the approval is made subject to modifications that require the resubmission of the Site Plan, this time period shall be extended as necessary to enable the applicant to resubmit the Site Plan for further review and to enable the Planning Board a reasonable period of time to review the modifications. An authorized member of the Planning Board shall sign any approved site plan and transmit it to the Zoning Inspector's office within seven days of the decision to approve. If the Planning Board fails to render a decision within 30 days of the submission of a complete application, or within 30 days of the close of the public hearing if one is held, approval shall be

deemed granted following the procedures for constructive approval of Special Permits in Section 9, Chapter 40A, of the General Laws.

E. For the purpose of securing the installation of required site improvements, including landscaping and on-site and off-site improvements, the Planning Board may require a performance bond, deposit of money, letter of credit, or other security in an amount determined by the Board to be sufficient to cover the cost of all or any part of improvements required.

F. The Planning Board may require review costs of a Site Plan review application to be borne by the applicant as provided in Section 9.5.

G. Any Site Plan Approval granted under this bylaw shall expire within two years if construction has not begun.

H. Decisions of the Planning Board regarding Site Plan Approval may be appealed as set forth in G.L., Chapter 40A, Section 17.

SECTION 9.2 SPECIAL PERMITS

The Zoning Board of Appeals (ZBA) shall be the Special Permit Granting Authority (SPGA) unless the bylaw provides that the Planning Board is the SPGA. References to the ZBA in this Section shall apply to the Planning Board when it functions as the SPGA.

9.2-1 Requirements and Procedures

A. Special Permit reviews shall be conducted according to the Rules and Regulations for Special Permits adopted by the Zoning Board of Appeals and the Planning Board to implement this Section 9.2, consistent with G.L. Chapter 40A, Section 9. The Boards may require review costs to be borne by the applicant as provided in Section 9.5.

B. In conducting Special Permit reviews, the ZBA shall ensure compliance with all applicable provisions of this bylaw and other laws and regulations, including the criteria in Section 9.2-2. The ZBA may impose any conditions it deems necessary to ensure such compliance.

C. Any application for a Special Permit shall be accompanied by a Site Plan prepared in accordance with Section 9.1. This requirement may be waived for applications in which:

1. A subdivision plan is submitted that contains the required Site Plan information, or
2. No significant physical alterations to structures or to the site are proposed.

D. Upon submission, the Site Plan shall be referred to the Planning Board for review, unless the Planning Board is the SPGA. The Planning Board shall make a written report to the Zoning Board of Appeals on or before the date of the public hearing on the proposed Special Permit. The Planning Board's failure to report shall be deemed a favorable recommendation.

E. Applications for Special Permits shall also be referred to the Conservation Commission, Board of Health, Zoning Inspector, Road Inspector, Fire Department, and such other agencies and officials as may be designated in the Rules and Regulations, or as may be deemed appropriate by the ZBA.

9.2-2 Review Criteria

A. General Findings The Zoning Board of Appeals may approve a Special Permit application only if it makes written findings that:

1. The proposed use is in harmony with the general purpose and intent of this bylaw.
2. The benefits of the proposed use to the Town outweigh its adverse effects.
3. The proposed use is consistent with the West Tisbury Master Plan.

B. Specific Findings In order to approve a Special Permit, the ZBA shall also make specific written findings that the proposed use, with appropriate conditions:

1. Is consistent with the purposes and requirements of the applicable land use district, overlay districts, and other specific provisions of this bylaw (including Site Plan Review requirements) and of other applicable laws and regulations.
2. Is compatible with surrounding uses and protective of the natural, historic, and scenic resources of the Town.
3. Is accessible to fire, police, and other emergency vehicles.
4. Will not create excessive off-premises noise, dust, odor, or glare.
5. Will not cause traffic congestion, impair pedestrian safety, or overload existing roads, considering their current width, surfacing, and condition.
6. Will not overload any municipal facility or any public or private water, sewage disposal, or drainage system.
7. Will not adversely affect the availability or cost of housing for year-round residents of West Tisbury.
8. Will not cause significant environmental damage due to flooding, wetland loss, habitat or ecosystem disturbance, or damage to valuable trees.
9. Will not cause other adverse environmental effects. Such effects may include:
   a. Pollution of surface water or groundwater;
   b. Salt-water intrusion in public or private domestic water supply wells;
   c. Inadequate water supply to meet the anticipated demand of the proposed activity or use or reduction of water supply to other properties;
   d. Noise and air pollution;
   e. Destruction of wildlife habitats and damage to wetlands or littoral ecology;
   f. Damage to marine fisheries and shellfish;
   g. Construction which unnecessarily damages the visual amenities of the site and which is not in harmony with the landscape type;
   h. Unnecessary decreases in agricultural use or potential productivity of land;
   i. Erosion resulting from or caused by development.

C. Large-scale Structures
If a proposed structure exceeds the floor area thresholds for "PR" approval contained in Section 3.1-1, a

Special Permit shall not be granted unless the ZBA makes a written finding that the use cannot be practically accommodated in smaller buildings. Where practical, the ZBA may require a group of smaller buildings as an alternative to a single large building.

9.2-3 Lapse and Revocation

A. A Special Permit shall lapse if the Special Permit use ceases for more than 24 consecutive months for any reason, if the applicant fails to obtain the necessary building permits or fails to comply with the conditions of the Special Permit within 24 months of its issuance, or if the Special Permit is subject to a time limit which expires without renewal.

B. A Special Permit may be revoked by the ZBA if the permittee violates the conditions of the Special Permit or engages in any construction or alteration not authorized by the Special Permit.

SECTION 9.3 CHANGES TO SITE PLAN APPROVALS AND SPECIAL PERMITS

9.3-1 Change of Use

Change of use is defined in Article XIV.

A. Uses by Right
Any change of use of land or existing structures to a use permitted by right (without Site Plan Review) shall require a use permit from the Zoning Inspector but no approval from any board.

B. Uses by Right Subject to Site Plan Review
Any change of the use of an existing structure to a use permitted by right subject to Site Plan Review only shall require Site Plan Review by the Planning Board if it involves the construction or enlargement of a structure, the clearing, excavation, or grading of more than 500 square feet of land, an increase in water consumption of 10% or more, or the addition of two or more parking spaces.

C. Uses by Special Permit

1. A Special Permit shall be required for any change of use from a use that does not require a Special Permit to a use that does require a Special Permit, including the enlargement of an existing use to a size that would require a Special Permit under Section 3.1-1.

2. Once a Special Permit has been granted, it shall apply to the approved use, as well as to any subsequent use of the property in the same use category (as shown in the Use Table), provided that the new use has no greater impact on adjoining properties, complies with all terms and conditions of the Special Permit, and does not involve new construction, enlargement, exterior alteration of existing structures, increased parking or traffic generation, or significant changed use of outdoor areas. Such change of use shall require only a use permit from the Zoning Inspector. Any change to another use category allowed by Special Permit or any expansion of a Special Permit use shall require the granting of a new Special Permit or a Special Permit amendment.

9.3-2 Rebuilding or Replacement of Structures

The rebuilding or replacement on the same footprint of any structure for a use which requires Site Plan Review and/or a Special Permit shall require Site Plan Review, provided that it is a continuation of the same use.

9.3-3 Amendment

The terms and conditions of any Special Permit or Site Plan approval may be amended in the same manner as required for the issuance of the original approval. Any enlargement, alteration, or construction of accessory structures not previously approved shall require an amendment.

9.3-4 Enforcement of Permit Conditions

A violation of the conditions of a Special Permit or Site Plan approval shall be deemed a violation of this bylaw, and shall be subject to enforcement action as provided in Section 10.2.

SECTION 9.4 PREMISES CONTAINING BYLAW VIOLATION

No approval under this Article IX shall be granted if the premises contain a violation of this bylaw, unless such approval is necessary for the correction of the violation or unless the applicant is a lessee and is not in a position, legally or practically, to correct it.

SECTION 9.5 PROJECT REVIEW FEES

In connection with any application for a Special Permit or Site Plan approval, the Zoning Board of Appeals or Planning Board may require the applicant to pay fees in advance to cover the reasonable costs of reviewing such application. Such costs may include staff costs and/or consultant fees covering planning, engineering, environmental analysis, wetland delineation, legal review, and other professional and technical services required for a proper and thorough review of the application. No permit shall be issued until all costs have been paid. The Town shall deposit such fees into a special account and return unexpended funds to the applicant as provided
in G.L. Chapter 44, Section 53G and any regulations adopted pursuant thereto by the respective boards.

SECTION 9.6 SCIENTIFIC ACCESSORY USES

A Special Permit may be issued for a use accessory to a use permitted by right, whether or not on the same parcel, if such accessory use is necessary in connection with scientific research or development or related production, provided the board granting the Special Permit finds that the proposed accessory use does not substantially derogate from the public good.

ARTICLE X ADMINISTRATION AND ENFORCEMENT

SECTION 10.1 ADMINISTRATION

This bylaw shall be administered by the Zoning Inspector except where otherwise indicated.

10.1-1 Building, Demolition, and Use Permits

A. No use of land, or erection, demolition, or enlargement of a structure shall be undertaken unless a building, demolition, use, or sign permit, as appropriate, has been issued by the Zoning Inspector. A use permit shall be required whenever there is a change of use (as defined in Article XIV) that does not require the issuance of a building permit under state law. Demolition of residential structures shall be permitted only in accordance with Section 10.1-2.

B. An application for a building, demolition, sign, or use permit shall be accompanied by such plans, survey, or other data as may be necessary in the opinion of the Zoning Inspector, to insure full conformance with this bylaw and with the Rules and Regulations Governing the Subdivision of Land, the West Tisbury Historic District Bylaw, the State Sanitary Code, the Wetlands Protection Act (including the Rivers Protection Act, showing the 200-foot "Riverfront Area" regulated thereby), and other applicable laws and regulations. Procedures for issuance of building permits, demolition permits, and certificates of occupancy shall be as prescribed by state law.

C. Boundary monuments shall be set at each change of boundary direction of each lot and shall be shown on the application.

D. The Zoning Inspector shall refer applications, as appropriate, to the Zoning Board of Appeals, Planning Board, Conservation Commission, Historic District Commission, Board of Health, Martha's Vineyard Commission and any other agencies with jurisdiction.

10.1-2 Demolition Delay for Residential Buildings

A. Purpose
The purpose of Section 10.1-2 is to conserve existing residential buildings and provide opportunities for their reuse.

B. Buildings Subject To Demolition Delay
All buildings proposed for demolition which contain residential uses shall be reviewed by the Zoning Inspector to determine whether they can be reused at another location. No demolition permit shall be issued for such buildings, unless:

1. The Zoning Inspector or Building Inspector determines that demolition is necessary to protect public health and safety or that the building cannot be reused due either to its condition or to physical barriers to movement, such as trees or narrow bridges or roadways; or

2. The applicant complies with the demolition delay procedure in Subsection 10.1-2(C).

C. Demolition Delay Procedure

1. An application for a demolition permit shall be made to the Zoning Inspector and signed by the owner of record of the building. The demolition delay periods required by this Section shall run concurrently with any other required reviews.

2. Upon receipt of an application for a demolition permit, the Zoning Inspector shall determine whether the building can be moved and reused and shall notify the applicant within fourteen (14) days after the application filing date.

3. If the Zoning Inspector determines that the building can be reused, the applicant shall place a public notice in a local newspaper, as follows:

> INVITATION FOR LETTERS OF INTEREST REGARDING AVAILABILITY OF HOUSE WHICH MUST BE MOVED FROM CURRENT LOCATION: A house at [street address], intended for demolition, is being made available to any interested parties subject to the owner's conditions. The Zoning Inspector is accepting Letters of Interest for 20 days from the date of this publication. All interested parties should submit a letter of interest to the Zoning Inspector. The house must be moved within 50 days of this publication.

4. A published copy of this notice shall be presented to the Zoning Inspector. Interested parties shall have 20 days from the date of publication of the notice to respond in writing to the Zoning Inspector. If any bona fide letters of interest, as determined by the Zoning Inspector, are received within the 20-day period, no demolition permit shall be issued for another 30 days. If no bona fide letters of interest are received within the first 20-day period, a demolition permit may be issued.

D. Issuance of Building, Use, or Occupancy Permit

1. If a building is subject to the demolition delay procedures of Subsection 10.1-2(C), no building permit shall be issued for the erection of a new building on the same site unless a demolition permit has been granted in compliance with this Section 10.1-2.
2. If a building subject to demolition delay requirements is voluntarily demolished in violation of this Section, no building permit shall be issued for new construction, and no use or occupancy permit shall be issued for any use other than as a park or recreational open space for a period of two years after the date of the demolition. This Subsection (b) applies to the entire parcel of land upon which the demolished building was located and all abutting parcels under common ownership or control.
3. The applicant (or the owner of record, if different from the applicant) shall be responsible for properly securing the building during the time that it is subject to review under this Section. If a building is subject to demolition delay and the applicant fails to secure the building, the loss of the building to fire or other causes shall be considered voluntary demolition for the purposes of this Section if the loss was caused at least in part by the applicant's failure to secure the building.

E. Required Demolition or Repair

Nothing in this Section shall restrict any authority in the general laws for the Zoning Inspector or Building Inspector to:

1. Order the building owner or Town to demolish a building at any time if it is determined that the condition of a building presents an imminent and substantial danger to the public health or safety; or

2. Require the building owner to take reasonable action to repair or protect a building to maintain its structural integrity. Such action may include securing the building and making it safe so that it does not present an imminent and substantial danger to the public.

SECTION 10.2 ENFORCEMENT

The Zoning Inspector shall be responsible for enforcing this bylaw and shall act on requests for enforcement of this bylaw as provided in G.L. Chapter 40A, Section 7.

10.2-1 Inspection

In order to determine compliance with this local law, the Zoning Inspector is authorized, to the extent permitted by law, to enter, inspect, and examine any structure or land.

10.2-2 Notice of Violation

A. Upon finding any new construction, improvements, alterations, or uses to be in violation of this bylaw, the Zoning Inspector shall transmit a written Notice of Violation, in person or by certified mail, to the owner.

B. If a person who has been notified of a violation fails to act to remedy the violation within five days, or fails to proceed expeditiously thereafter to remedy the violation, the Zoning Inspector shall so notify the Board of Selectmen. If the violation concerns a use subject to a Special Permit or approved Site Plan, the Board that granted the Special Permit or Site Plan approval shall also be notified.

10.2-3 Remedies

The Board of Selectmen or Zoning Inspector, if authorized by the Board of Selectmen, may take any lawful action deemed necessary to prevent or remedy a violation. The following remedies are available for a violation of this bylaw:

A. Fines

1. A criminal fine of not more than $100 for a first offense and $300 for each subsequent offense. Each day such violation continues shall constitute a separate offense.
2. A fine imposed through a non-criminal complaint pursuant to G.L. Chapter 40, Section 21D. The fine for any violation disposed of through this procedure shall be $100 for a first offense and $300 for each subsequent offense. Each day such violation continues shall constitute a separate offense.

B. Injunctive Relief
The Town may enjoin a violation by bringing an action in Superior Court pursuant to G.L. Chapter 40A, Section 7.

SECTION 10.3 ZONING BOARD OF APPEALS

10.3-1 Establishment

There is hereby established a Zoning Board of Appeals consisting of five members and two alternates appointed by the Board of Selectmen as provided in the Zoning Act, with the duties and powers set forth in the Zoning Act.

10.3-2 Variances

Upon appeal or petition, the Board may grant a variance from the terms of this bylaw with respect to particular land or structures, provided that the Board finds that literal enforcement of this bylaw would involve substantial hardship, financial or otherwise to the appellant or petitioner, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this bylaw. Such relief may only be granted from the dimensional requirements of this bylaw. This relief may only be granted upon specific findings made by the Board that the claimed hardship is due to circumstances relating to soil conditions, shape, or topography especially affecting the land

or structures, which do not generally affect the zoning district in which the land or structures are located. Procedures for granting of variances are contained in the Zoning Board of Appeals Rules and Regulations. The Board may require review costs to be borne by the applicant as provided in Section 9.5.

SECTION 10.4 PLANNING BOARD

10.4-1 Planning Board Associate Member

In addition to members elected at Town Elections or appointed to fill vacancies in accordance with Ch. 41, Sec. 81A, MGL, the Planning Board and Board of Selectmen by majority vote may appoint one associate member to the Planning Board to serve for a term of five years. The associate member may be designated by the Planning Board Chairman to sit on the Planning Board for the purpose of acting on a special permit application in the case of absence, inability to act, or conflict of interest on the part of any member of the Planning Board or in the event of a vacancy on the Board

ARTICLE XI NON-CONFORMITY OF PRE-EXISTING USES AND STRUCTURES

SECTION 11.1 NON-CONFORMING USES AND STRUCTURES

11.1-1 Continuation

If the use of a structure or land was legal when it started but is now in violation of this bylaw, it may be continued. Such a use or structure may not be expanded except as provided in this Section 11.1.

11.1-2 Effect of Subsequent Amendments

Construction or operations begun under a building permit or Special Permit shall conform to any subsequent amendment of this bylaw unless the use or construction is commenced within a period of not more than six months after the issuance of the permit and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as reasonable. In all other respects, this bylaw and any amendments to it shall apply to existing uses and to uses or structures granted Building Permits or Special Permits to the extent provided in G.L. Chapter 40A, Section 6.

11.1-3 Extension or Alteration

A. The Zoning Board of Appeals (ZBA) may grant a special permit to allow a non-conforming structure or use to be extended or altered, provided that the ZBA finds that the extension or alteration is not substantially more detrimental to the neighborhood than the existing non-conforming structure or use.

B. The Zoning Inspector may issue a building permit for the extension or alteration of a non-conforming residential structure on a lot of at least 60,000 square feet without referring it to the ZBA, provided that the proposed change does not increase the non-conforming nature of the structure.

11.1-4 Uses Requiring a Special Permit or Site Plan Approval

A. Uses begun legally before this bylaw required them to obtain a Special Permit shall be deemed to be non-conforming uses which may be extended or altered by Special Permit as provided in Subsection 11.1-3(A). If such uses apply for and receive a Special Permit, they shall become conforming uses and may expand to the extent allowed by the Special Permit.

B. Uses begun legally before this bylaw required them to obtain only Site Plan approval shall be deemed to be conforming uses, which may be extended or altered by right in conformity with applicable dimensional requirements. If such uses are proposed to be enlarged to a size that would require a Special Permit under this bylaw, such expansion shall require a Special Permit.

11.1-5 Damage or Destruction

A non-conforming structure or use that is damaged or destroyed by fire, hurricane or other catastrophe may be restored or rebuilt, provided that the building or restoration is completed within three years of the damage and that the structure or use is no larger or more extensive than the original structure or use.

11.1-6 Abandonment

A non-conforming use which has been abandoned for a period of three years shall not be permitted to resume.

11.1-7 Conversion to Conforming Use

Once changed to a conforming use, no structure or land shall be permitted to revert to a non-conforming use.

11.1-8 Signs
Signs which were illegal under any prior bylaw and are illegal hereunder shall be considered to be violations of this bylaw. Signs which were legal when constructed but are prohibited by this bylaw shall be allowed to continue as provided in Subsection 8.4-8(B).

SECTION 11.2 NON-CONFORMING LOTS

11.2-1 Non-Conforming Lots Generally
Non-conforming lots shall be governed by the provisions of Section 6 of the Zoning Act, except as provided in Section 4.4 -7, Homesite Lots.

11.2-2 Accessory Structures on Non-Conforming Lots
Non-habitable detached or attached accessory structures which will not meet current setback requirements and/or exceed six hundred and seventy-six (676) square feet in floor area, may be allowed by Special Permit from the Board of Appeals, provided that the Board finds such construction or alteration is in harmony with the residential development in the zoning district and not detrimental to the neighborhood. If such structures meet current setback requirements and do not exceed 676 square feet, they shall be allowed without a Special Permit.

11.2-3 Non-Conforming Lots in the MB District
All uses permitted in the MB District shall be allowable on non-conforming lots, provided that they contain at least 20,000 square feet. The maximum floor area for a non-residential ground-floor use on such a lot shall be 2,000 sq. ft. One second-story apartment shall be allowed, not to exceed 800 sq. ft. The overall floor area of any building on such a lot shall not exceed 3,000 sq. ft.

ARTICLE XII AMENDMENT

This bylaw may be amended at an Annual or Special town meeting in accordance with the provisions of Section 5 of Chapter 40A, General Laws. A separate, conspicuous statement shall be included with property tax bills sent to nonresident property owners, stating that notice of hearings under Section 5 of Chapter 40A shall be sent by mail, postage prepaid, to any such owner who files an annual request with the Town Clerk no later than January first and pays a reasonable fee to be determined by the Town Clerk. In connection with the review of any petition for a zoning amendment, the Planning Board may require its review costs to be borne by the petitioner as provided in Section 9.5.

ARTICLE XIII VALIDITY

SECTION 13.1 EFFECTIVE DATE
This bylaw or any amendment thereto shall take effect on the date of adoption by town meeting.

SECTION 13.2 REPEAL OF PRIOR BYLAW
Upon adoption, this bylaw shall supersede the Zoning Bylaw and all amendments thereto previously in effect, with the exception of amendments adopted after April 7, 2000, the date of the first notice of public hearing for this bylaw.

SECTION 13.3 SEVERABILITY
The invalidity of any section or provision of this bylaw shall not affect the validity of any other section or provision.

ARTICLE XIV DEFINITIONS

SECTION 14.1 GENERAL

Except where specifically defined herein, all words used in this zoning bylaw shall carry their customary meanings as found in a standard dictionary. Words used in the present tense shall include the future. Words used in the singular number include the plural, and words used in the plural number include the singular, unless the context clearly indicates the contrary. The word shall is always mandatory. The word may is permissive. Building or structure includes any part thereof. The word lot includes the word plot or parcel. The word person includes an individual person, a firm, a corporation, a partnership, and any other agency of voluntary action. The word he shall include she or they. The phrase used for includes arranged for, designed for, intended for, maintained for, and occupied for.

SECTION 14.2 DEFINITIONS IN THIS BYLAW

In this zoning bylaw, the following terms shall have the meanings indicated unless a contrary meaning is required by the context or is specifically prescribed:

Accessory Apartment: A dwelling unit occupying the lesser of 800 square feet or 40% of the floor area of an owner-occupied single-family dwelling, or a maximum of 500 square feet within an otherwise non-habitable accessory building such as a garage or barn.

Accessory Non-residential Structure: An accessory structure used in connection with a principal use that is non-residential, including but not limited to storage buildings for merchandise, equipment, vehicles, or refuse, and structures housing mechanical equipment.

Accessory Residential Structure: A habitable or non-habitable accessory structure on a lot principally used for residential purposes, including but not limited to subordinate dwellings, detached bedrooms, studios, garages, storage sheds, garden sheds, gazebos, swimming pools, tennis courts, and other structures used for recreation by the residents of the principal dwelling.

Accessory Structure: A structure detached from and subordinate to a principal building on the same lot and used for purposes customarily incidental to those of the principal building or use.

Accessory Use: A use customarily incidental and subordinate to the principal use or building, and located on the same lot with such principal use or building.

Acre: 43,560 square feet.

Adequate Capacity: Capacity is considered to be “adequate” if the grade of service is p=.05 or better for at least 50% of the days in a preceding month, prior to the date of application, as measured using direct traffic measurement of the personal wireless service facility in question, where the call blocking is due to frequency contention at the antenna(s).

Adequate Coverage: Coverage is considered to be “adequate” within that area surrounding a Base Station where the predicted or measured median field strength of the transmitted signal is greater than -95 dbm. It is acceptable for there to be holes within the area of adequate coverage where the signal is less than -95 dbm, as long as the signal regains its strength to greater than -95 dbm further away from the Base Station. For the limited purpose of determining whether the use of a repeater is necessary or desirable, there shall be deemed not to be adequate coverage within said holes. The outer boundary of the area of adequate coverage, however, is that location past which the signal does not regain a strength of greater than -95 dbm.

Adult Use: Any use defined in G.L. Chapter 40A, Section 9A, or any similar use involving live entertainment, excluding artistic productions offered by charitable organizations.

Affordable Housing: Housing units priced at a level determined by the West Tisbury Affordable Housing Committee to be appropriate for rental or purchase exclusively by persons who will make such housing their primary residence (defined as their actual year-round domicile) and whose annual household income is not more than 140% of the Dukes County median income, as established by the United States Department of Housing and Urban Development. To qualify as affordable housing, the units must be subject to permanent deed restrictions that the West Tisbury Affordable Housing Committee deems adequate to ensure that tenants and future owners will continue to meet income eligibility and residency requirements.

Affordable Housing Committee: The Committee established by the Town of West Tisbury whose duties include administering the affordable and year-round housing provisions of this bylaw.

Affordable Housing Covenant: A Covenant which restricts the use, resale and transfer of a Homesite Lot, which includes but is not limited to a resale value cap based on the value of the property, including improvements thereto, which ensures that in the event of resale the property will remain affordable in perpetuity to other Eligible Purchasers. The Town or its designee shall enforce the Covenant.

Agriculture: The use of land for raising crops or livestock, including dairying, pasturage, apiculture, horticulture, floriculture, viticulture, and animal and poultry husbandry, and related uses of packing, treating and storing produce. Agricultural activities on residential parcels five acres or less shall be deemed to be a residential accessory use.

Alteration: Any change in the size, shape or use of a building or structure.

Alteration of the Land Form: Any man-made change in the existing character of the land including filling, grading, paving, dredging, mining, excavation or drilling operation other than routine excavation or well-drilling, backfilling, grading, and paving incidental to the construction of a residence or other structure for which a building permit has been issued.

Antenna: Any transmitting or receiving device mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communications signals.

Apartment: A dwelling unit located within a portion of a building.

Applicant: Any person, corporation, or other entity applying for a Building Permit, use permit, sign permit, demolition permit, Certificate of Occupancy, Special Permit, Site Plan or subdivision approval,

Approved Containment: An impermeable structure or pre-manufactured container which encloses a fuel storage tank(s) sufficient to retain 110% of the volume of the tank(s) and designed to exclude rainfall and roof run-off from the containment. The basement area of a structure may be considered to provide approved containment provided there are no floor drains, unsealed joints or drainage areas to the environment. Double walled storage tanks, equipped with alarms, may be considered to provide suitable containment.variance, or zoning amendment.

Art Gallery: Art gallery shall mean premises for the preparation, sale, display or barter of paintings, sculpture, glass, pottery, ceramics, jewelry, fibers arts; or original or limited edition graphic arts and photographs created by individual artists on a single piece basis. Art reproductions, books, and other related goods may also be sold

As-of-Right Siting: As-of-right Siting shall mean that development may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval. As-of-right development may be subject to Site Plan Review to determine conformance with the Zoning Bylaw. Projects cannot be prohibited, but can be reasonably regulated by the Zoning Inspector and designated Site Plan Review authority.

Assisted Living Facility: An "assisted living residence" as defined in G.L. Chapter 19D, including any entity which provides room and board and assistance with activities of daily living for three or more adult residents who are not related to the provider, and collects payments or third party reimbursements from or on behalf of the residents.

Automobile Service Station: Land and structures used for retail sale of gasoline, or other fuel for motor vehicles, which may include facilities used for servicing or repairing motor vehicles.

Barn: A structure erected for the storage of farm products, feed, fertilizers, farm machinery, and the sheltering of farm animals.

Base Flood Elevation Level: The level to which coastal waters may rise under the effect of wind, tide, and hurricane surge. Base flood means the flood having a one percent chance of being equaled or exceeded in any given year. Base Flood Elevation Levels are measured in feet above Mean Sea Level.

Bedroom: Any room, other than a kitchen, bathroom, living room, dining room, or unfinished cellar, that can be closed off for privacy and that does not provide access to another room (except a bathroom), including but not limited to a bedroom, study, den, family room, studio, or office.

Bedroom, Detached: A bedroom located in an accessory structure that does not contain a kitchen and may or may not contain sanitation facilities.

Breakaway Walls: Any type of walls, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic, or any other suitable building material which are not part of the structural support of the building and which are so designed as to break away, under abnormally high tides or wave action, without damage to the structural integrity of the building on which they are used or any buildings to which they might be carried by flood waters.

Building Inspector: The town official charged with enforcing state building code requirements (building commissioner).

Buildable Land: That portion of a lot which does not contain wetlands, watercourses, slopes exceeding 30%, flood plain districts, and areas restricted as part of the shore zone of the Coastal District.

Building: A structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or property.

Building Height: The vertical distance from mean natural grade at the corners of the building to the highest point of the roof (including any railings on top of the roof) for flat, shed, or mansard roofs, and to the ridge for gable, hip, and gambrel roofs, such measurement to be based on the elevation of the lot in its existing natural state prior to construction, grading, or filling.

Building, Principal: A building or structure in which the primary use of the lot is conducted.

Camping Vehicle: A motor home, travel or camping trailer, slide-in camper attachment to a pick-up truck, or other motor vehicle, attachment to a vehicle, or trailer intended for temporary residence or office purposes, which can be driven, mounted on a motor vehicle, or pulled behind a vehicle on its own chassis and which is not used as a permanent year-round residence.

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

Change of Use: The initiation of a use that is in a different use category, as listed on the Use Table, from the existing use of the site or structure. A change of ownership, tenancy, or occupancy, or a change from one use to another within the same category, shall not be considered a change of use. See Section 9.3-1.

Charitable Organization: A not-for-profit corporation or association organized for charitable purposes including but not limited to education, social welfare, environmental conservation, scientific research, cultural enrichment, and the arts.

Child Care Facility: An establishment which provides temporary care and custody of children, including a day care center and a school age child care program as defined in G.L. Chapter 28A, Section 9.

Collocation: The use of a single mount on the ground by more than one carrier (vertical collocation) and/or several mounts on an existing building or structure by more than one carrier.

Common Driveway: A driveway serving no more than four lots, owned in common or created by reciprocal easements.

Conformity/Conforming: Complying with the use, density, dimensional, and other standards of this bylaw, or permitted to deviate therefrom by Special Permit, Site Plan approval, or variance.

Conversion: The alteration of an existing structure by creating one or more dwelling units within it without increasing the gross floor area of the structure by more than 15%.

Craft Workshop: A place where artists, artisans, craftsmen, and other skilled tradespeople produce custom-made art or craft products including but not limited to baskets, cabinets, ceramics, clothing, flower arrangements, jewelry, metalwork, musical instruments, paintings, pottery, sculpture, toys, and weaving.

Detached Bedroom: see Bedroom, Detached.

Development: Any building, mining, dredging, filling, excavation, or drilling operation (excluding single-user residential wells); any material change in the use or appearance of any structure or in the land itself; the dividing of land into lots or parcels; alteration of a shore, beach, seacoast, river, stream, lake, pond, or canal, including coastal construction; demolition of a structure; the clearing of land; or the deposit of refuse, solid or liquid waste, or fill on a parcel of land.

Direct Vehicular Access: Use by a motor vehicle of a road or way to enter or exit any development. Domicile: A person's primary, year-round residence.

Driveway: A private way providing vehicular access from a public or private road to a residence or to a commercial or non-commercial establishment.

Dry Wells: Any subsurface structure to which run-off is introduced and passed into the environment. In this definition, it is meant to include leaching catch basins.

Dwelling: A building used as living quarters for one or more families, containing cooking, sleeping, and sanitation facilities.

Dwelling, Multi-family: A dwelling containing separate apartments for three or more families.

Dwelling, Single-family: A detached building designed for the use of one household, occupied by no more than one family.

Dwelling, Two-family: A detached building containing two dwelling units both of which exceed 800 square feet in floor area (a dwelling unit of under 800 square feet is considered an accessory apartment).

Dwelling Unit: A building or portion thereof providing complete housekeeping facilities for one family, with facilities for sleeping, cooking and sanitation.

Electromagnetic Fields (EMF): EMF are fields of radiation produced by all electromagnetic waves, from gamma rays to radio waves. Radio frequency radiation, produced by wireless facilities, is one kind of electromagnetic field.

Eligible Purchaser/Lessee: Any private purchaser or lessee over the age of 18 who meets the Affordable Housing Committee Guidelines in effect at the time of purchase or lease of a Homesite Lot, and whose total household adjusted gross income is not more than 140% of median income for Dukes County as established by the United States Department of Housing and Urban Development.

Employee Dormitory: A dwelling with sleeping accommodations for two or more persons who are employed full-time on Martha's Vineyard during their period of residency in the dwelling.

Equipment Shelter: An enclosed structure, cabinet, shed or box at the base of the mount within which are housed batteries and electrical equipment.

Family: One or more persons related by blood, marriage or adoption.

Fast-Food Restaurant: See Restaurant, Fast-Food.

Fence: A hedge, structure or partition erected for the purpose of enclosing a piece of land or to divide a piece of land into distinct portions or to separate two contiguous properties.

Fertilizers: Any substance containing one or more recognized plant nutrients, used for its plant nutrient content and designed for use or claimed by its manufacturer to have value in promoting plant growth. Commercial fertilizers do not include animal and vegetable manures in a natural or composted form, marl, lime, limestone, wood ashes, or gypsum.

Flood Plain/Flood Plain District: Those areas subject to coastal flooding at the Base Flood Elevation Levels established in Section 6.7-3. The Flood Plain Districts are shown on the FIRM map on file in the Town Hall with the Town Clerk, Planning Board, and building officials.

Flood Plain Permits: All permits required by Section 6.7-4 and shall be in addition to all other permits required by town bylaws, state and federal laws for the construction of a structure or the alteration of the land form.

Floodproofing: Watertight with wall substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effect of buoyancy. A registered professional engineer or architect shall certify that the floodproofing methods are adequate to withstand the flood depths, pressures, velocities, impact, and uplift forces and other factors associated with the base flood.

Floor Area: The gross floor area measured along the perimeter of the outside walls of a building without deductions for hallways, stairs, closets, thickness of walls, columns, or other features, including the combined total gross area of all floors. Basement or attic space used in connection with a principal or accessory use shall be counted in the calculation of floor area unless such space is used exclusively for storage or has a ceiling height of less than 54 inches.

Front: The side of a building or structure parallel to and closest to a road or street. On a corner lot, both sides of a building facing the street shall be considered the front.

Frontage: That boundary of a lot which lies along a street line (not along a common driveway) and which contains at least one physically adequate point of vehicular access into the lot, at a location that provides safe and adequate sight distance.

Garage: A building providing shelter of one or more motor vehicles.

G.L., General Laws: The Massachusetts General Laws.

Glare: Spillover of artificial light beyond the area intended for illumination in a manner which either impairs vision or beams light onto adjoining properties or toward the sky.

Grading: Any excavation, alteration of land contours, grubbing, filling, or stockpiling of earth materials.

Guesthouse: See Subordinate Dwelling.

Hazardous Materials: Product, waste or a combination which, because of its quantity, concentration or physical or chemical, toxic, radioactive or infectious characteristics, may reasonably pose a significant, actual or potential hazard to human health, safety, welfare or the environment when improperly treated, stored, transported, used, disposed of or otherwise managed. Hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious materials, and all substances defined as hazardous under Mass. General Laws (G.L.) Chapter 21C and 21E using the Mass. Oil and Hazardous Substance List (310 CMR 40.000). The definition also includes acids and alkalis, solvents, thinners, and pesticides.

Hazardous Waste: A by-product which, because of its quantity, concentration, or physical or chemical, toxic, radioactive, or infectious characteristics, may reasonably pose a significant, actual, or potential hazard to human health, safety, welfare, or the environment when improperly treated, stored, transported, used, disposed of, or otherwise managed. Hazardous wastes include those listed under G.L. 21C and any hazardous materials as defined above which have been used in a process, modified or mixed in any fashion including cleanup of spills or virgin hazardous materials.

Health Care Facility: A nursing home, medical clinic, or office building for doctors and other medical personnel.

Home Occupation: An occupation, trade, profession, or other business activity engaged in for compensation, conducted as an accessory use wholly or partly in a dwelling unit or accessory structure by a resident thereof.

Homesite Lot: A parcel of land which has the approval of the Planning Board as a Homesite Lot for use as

affordable housing, as further defined in Section 4.4.

Household: One or more persons (not to exceed four unrelated by blood, marriage, or adoption) occupying a dwelling and living as a single housekeeping unit.

Junk: Any worn-out, cast-off, discarded, or neglected article or material which is ready for destruction or has been collected or stored for salvage, sale, or reuse. Junk does not include any article or material which unaltered or unchanged and without further reconditioning can be used for its original purposes as readily as when new, or any article stored for restoration or display as part of a bona fide hobby (such as antique automobiles, antique farm machinery, antique engines, special interest automobiles, etc.).

Junk Car: Any vehicle not operable on the public highway system, unless such vehicle is an antique or special interest automobile stored for restoration and/or display as part of a bona fide hobby.

Junkyard: The use of 400 square feet or more of area on any lot outside a fully enclosed structure for the storage or collection of junk or junk cars.

Kennel: Any establishment including cages, dog runs, and structures wherein more than three dogs which are over two months old are kept for boarding, care, or grooming, for which a fee is charged, and any establishment which sells dogs not raised or trained on the premises.

Landfill: A facility established (in accordance with a valid site assignment) for the purpose of disposing of solid waste into or on the land pursuant to 310 CMR 198.006.

Lamp: The component of an outdoor fixture that produces light.

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

Large-Scale Residential Development: Construction of five or more dwelling units on a single parcel, or division of land with or without subdivision approval into three or more lots, within any five year period, excluding dwelling units or lots approved as part of an Open Space Development. The Planning Board is the Special Permit Granting Authority for Large-scale Residential Developments.

Light Industry: Manufacture, assembly, treatment, processing, or packaging of products in a manner that does not emit objectionable levels of smoke, noise, dust, odor, glare, or vibration beyond the property boundaries.

Lodging Facility: Any hotel, inn, or other establishment, not located within the owner's principal dwelling, providing sleeping accommodations for transient guests, with or without a dining room or restaurant.

Lot: An area of land in one ownership with definite boundaries, used or available for use as the site of one or more buildings.

Lot, Corner: A lot at the junction of and abutting on two or more intersecting roads. Lot, Rear: A lot on which the buildable area is located generally to the rear of other lots having frontage on the same road as such lot, and having access to the road via a strip of land that does not have the minimum road frontage ordinarily required in the land use district.

Major Modification of an Existing Facility: Any change, or proposed change, in power input or output, number of antennas, change in antenna type or model, repositioning of antennas, change in number of channels per antenna above the maximum number approved under an existing Special Permit.

Martha's Vineyard Affordable Housing Needs Covenant: A housing covenant created, administered and enforced by the Dukes County Regional Housing Authority, as agent of the Town of West Tisbury, pursuant to the authority granted by "An act authorizing Martha's Vineyard affordable housing covenants", St. 2004, c. 445 (approved December 30, 2004)(the "Act"). Said covenant created under the Act shall run with the land in perpetuity, and shall be executed by or on behalf of the owner of the land appropriate to: (a) limiting the use of all or part of the land to occupancy by persons or families of middle income in either rental or other housing, (b) restricting the resale price of all or part of the property in order to ensure its affordability by future middle income purchasers, or (c) in any way limiting or restricting the use or enjoyment of all or any portion of the land for the purpose of encouraging or ensuring the creation or retention of the rental and other housing for occupancy by middle income persons and families.

Mean Sea Level: Whenever the Mean Sea Level appears in this bylaw, it shall be the Mean Sea Level Datum of 1929, known as the National Geodetic Vertical Datum.

Medical Marijuana Cultivation Area: Shall refer to the space in a building where plants are cultivated and does not include the area used for processing or dispensing.

Membership Club: Premises used by a not-for-profit organization catering exclusively to members and their guests for social, recreational, athletic, or similar purposes.

Mixed-Use Building: A building containing a combination of residential and non-residential uses.

Mobile Home: A dwelling unit, built on a moveable chassis that remains in place after installation, containing complete electrical, plumbing, and sanitary facilities, designed to be installed on a temporary or a permanent foundation.

Monitoring Protocol: The testing protocol which is to be used to monitor the emissions from existing and new personal wireless service facilities upon adoption of this article. The Board of Health may, as the technology changes, require by written regulation, the use of other testing protocols.

Monopole: The type of mount that is self-supporting with a single shaft of wood, steel or concrete and a platform (or racks) for panel antennas arrayed at the top.

Mount: The structure or surface upon which antennas are mounted, including the following types of mounts:

Roof-mounted – mounted on the roof of a building.

Side-mounted – mounted on the side of a building.

Ground-mounted – mounted on the ground.

Municipal Facility: Any use of land by the Town of West Tisbury in accordance with the general laws governing municipal powers and functions.

Nonconforming Lot: A lot of record which does not comply with the area, shape, frontage, or locational provisions of this bylaw for the district in which it is located.

Nonconforming Structure: A structure which does not satisfy the dimensional requirements of this bylaw for the district in which it is located, but which was not in violation of applicable requirements when constructed.

Nonconforming Use: Any use lawfully existing prior to and at the time of the adoption or amendment of this bylaw or any preceding bylaw, which use is not permitted by or does not conform with the permitted use provisions of this bylaw for the district in which it is located. See Article XI.

Non-residential structure: A structure in which a non-residential use or activity, such as a business, non-profit organization, or municipal use, is conducted.

Non-sanitary Wastewater: Wastewater discharges from industrial and commercial facilities containing wastes from any activity other than collection of sanitary sewage including but not limited to activities specified in the Standard Industrial Classification (SIC) Codes set forth in 310 CMR 15.004(6).

Normal Household Volumes: Those volumes of toxic or hazardous materials normally found in residential units for use in cleaning, painting and maintaining the premises. These are considered to be less than five (5) gallons each of solvents, oil based paints or petroleum products to be used on site and not in the conduct of business. They are also considered to be less than one (1) gallon of undiluted pesticides of each type. Retail cleansers, laundry and polishing products are not meant to be included in this list.

Office: A building or room where the clerical, administrative, or professional work of a business, trade, non-profit organization, profession, or other occupation is conducted, not including manufacturing or trading in merchandise.

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

Open Space: An area of land not developed with structures. (Permanent Open Space is defined and discussed in Section 5.5.)

Open Space Development: A development that results in the permanent preservation of a significant portion of a parcel as open space, in which otherwise required minimum lot sizes and other dimensional requirements do not apply. See Article V.

Outdoor Lighting: The nighttime illumination of an outside area or object by any manmade device that produces light, including lights located indoors which are directed for outdoor illumination.

Outdoor Storage Area: Land used for the keeping of goods, wares, equipment, or supplies outside of a structure.

Private Road: A road providing access to lots that is not owned or maintained by the Town.

Public Road: A road that is owned or maintained by the Town or the Commonwealth of Massachusetts.

Public Utility Facility: An installation used by a public agency or franchised public utility to supply or transmit electric, gas, water, cable television, telephone, or other utility service, excluding electric power plants and gas wells. Included are such facilities as electric substations, high voltage transmission lines, pump stations, water supply wells, water towers, communication towers, and telephone substations. Utility distribution facilities serving customers directly are considered customary accessory uses, not public utility facilities.

Radiofrequency Radiation (RFR): The emissions from personal wireless service facilities.

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

Rear Lot: See Lot, Rear.

Recreational Business: A business which, for compensation, offers recreational services or entertainment, including but not limited to hunting clubs, tennis facilities, boat livery, summer camps, movie theaters, and other places of public or private entertainment for which a fee is charged.

Registered Marijuana Dispensary (RMD): A facility for the cultivation, production, processing, assembling, packaging, retail or wholesale, trade, distribution or dispensing of Marijuana for Medical Use, whether located inside a structure or building or not.

Religious Use: A church, synagogue, or other place of religious worship, as well as a monastery or other place of religious retreat.

Repeater: A small receiver/relay transmitter of not more than 20 watts output designed to provide service to areas which are not able to receive adequate coverage directly from a base station.

Residential Use: A use of land and structures in which people live and sleep overnight on a regular basis.

Restaurant: A facility for the sale of food and drink for immediate consumption (whether or not for consumption on the premises), where staff serve customers at tables.

Restaurant, Fast-Food: An establishment where the principal activity is the service or sale of food items packaged in disposable containers for immediate consumption on or off the premises, and where staff do not serve customers at tables, excluding bakeries, delicatessens, and similar retail food businesses.

Retail Business: An establishment selling or renting goods to the general public for personal and household consumption, including but not limited to an appliance store, bakery, convenience store, drug store, florist, grocer, hardware store, liquor store, newsstand, shoe store, stationery store, video store, and variety store. A convenience store that sells gasoline and auto supplies but does not repair or service vehicles shall be considered a retail business.

Riding Stable: A principal building in which horses are kept for a fee, hire, sale, or instruction in horseback riding.

Screen/Screening: The location of structures in such a manner that they are not visible (as defined herein) from a public road or any other public place during the summer months, and no more than partially visible in winter. Objects or structures may be screened by topography, vegetation, or other structures not required to be screened.

Seasonal Camp: A single family dwelling not exceeding 800 square feet in floor area, lacking central heat and insulation, and which is occupied only between May 1 and Oct 31 in any year.

Security Barrier: A locked, impenetrable wall, fence or berm that completely seals an area from unauthorized entry or trespass.

Septage: The liquid, solid or semisolid contents of privies, chemical toilets, cesspools, holding tanks or other sewage waste receptacles. Septage does not include any material which is hazardous waste pursuant to 310 CMR 30.000.

Service Business: A business or non-profit organization that provides services to the public, either on or off the premises, including but not limited to building, electrical, plumbing, and landscape contracting, arts instruction or studio, auto repair, business and educational services, catering, health club, house cleaning services, locksmith, photocopying, repair and restoration services, tailoring, typing, and word processing. Service business does not include retail business, restaurants, warehouses, or other uses separately listed in the Use Table.

Setback: The area of a lot extending inward from a lot line for the distance specified in this bylaw, in which no building or structures other than fences, mailboxes, and permitted signs may be placed.

Shielded: When referring to an outdoor light fixture, the fixture allows no up-light.

Sign: Any display of lettering, logos, colors or other designs visible to the public from outside a building or from a traveled way, which either conveys a message to the public, or intends to advertise, direct, invite, announce or draw attention to, directly or indirectly, a use conducted, goods, products or facilities available, either on the lot or on any other premises, excluding window displays and merchandise. For the purpose of this bylaw, mail boxes, governmental flags, and street and lot numbers shall not be considered signs.

Sign Area:

(a) Sign measurement shall be based upon the entire area of the sign, with a single continuous perimeter enclosing the extreme limits of the actual sign area.

(b) For a sign consisting of individual letters or symbols attached to a building, wall, or window, the area shall be considered to be that of the smallest rectangle or other shape which encompasses all of the letters or symbols.

(c) The area of the supporting framework shall not be included in the area if such framework is incidental to the display.

(d) In the case of a double-faced sign only one face shall be measured to determine sign area.

Sign, free-standing: A self-supporting sign in a fixed location. Sign, off-premises: A sign advertising the name of the occupant or location of, or the nature of the business conducted or product sold which is not on the same premises as the business.

Sign, political: A sign designed to influence voters in connection with a local, state or national election or referendum. Sign, projecting: A sign which is affixed to a building or other structure and which extends in a perpendicular direction from the surface to which it is affixed.

Sign, temporary: A sign that is used for special announcements such as fresh produce, hours of opening, special sale or event which may be displayed for no more than fifteen (15) days in a three month period.

Sign, wall: Any sign which is incorporated into or affixed parallel to the wall of a building and which extends not more than six inches from the surface of the building.

Sign, window: Any sign affixed to the surface or a window (inside or outside) or displayed behind a window so as to attract attention from the outside.

Silo: A structure erected for the storage of silage.

Single-family Dwelling: See Dwelling, Single-family.

Sludge: The solid, semisolid or liquid residue that results from a process of wastewater or drinking water treatment. Sludge does not include grit, screening or grease and oil which are removed at the headworks of a facility.

Solar Photovoltaic Array: an arrangement of solar photovoltaic panels.

Soil Mining: The extraction and sale of any geologic material, including but not limited to topsoil, sand, gravel and clay, not including activities associated with on-site road and building construction for which a subdivision approval or building permit has been granted.

Solid Waste: Discarded solid material with insufficient liquid content to be free flowing, including but not limited to rubbish, garbage, scrap material, junk, refuse and inert fill material.

Solid Waste Facility: Any facility employed to manage solid waste beyond the initial waste collection process including, but not limited to, transfer stations, baling facilities, barge haul facilities, processing systems, including resource recovery facilities or other facilities for reducing solid waste volume, sanitary landfills, facilities for the disposal of construction and demolition debris, plants and facilities for compacting, composting or pyrolysis of solid wastes, incinerators and other solid waste disposal, reduction or conversion facilities.

Street/Road: (a) a public way or a way which the Town Clerk certifies is maintained and used as a public way; or (b) a way shown on a plan approved and endorsed by the West Tisbury Planning board in accordance with the Massachusetts Subdivision Control Law and which has been improved and constructed in accordance with the requirements of such approval, or (c) a way in legal and physical existence when the Subdivision Control Law became effective in West Tisbury in April, 1973, which had sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon and served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

Structure: A static construction of building materials affixed to the ground, including but not limited to a building, dam, display stand, gasoline pump, installed mobile home or trailer, reviewing stand, shed, sign, swimming pool, tennis court, storage bin, or wall.

Studio: A non-habitable structure or portion of a structure lacking cooking, sleeping, or sanitary facilities, used for hobbies or a home occupation.

Subordinate Dwelling: A dwelling unit no larger than 800 square feet located in an accessory structure on an owner-occupied property.

Substantial Improvements: Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure either (a) before the improvement of repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, substantial improvement commences when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of a structure. The term does not, however, include any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions.

Terminals (both Bus and Trucking): Sites where more than five commercially registered vehicles used in business activity are stored, parked and/or maintained.

Treatment Works: Any and all devices, processes, and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation or reuse of waterborne pollutants, but not including any works receiving hazardous wastes from off the site of the works for the purpose of treatment, storage or disposal.

Town: The Town of West Tisbury.

Unenclosed Porch: A porch which is not enclosed by glass, screens, plastic, or any wall structure.

Up-light: Direct light emitted by an outdoor light fixture above a horizontal plane through the fixture's lowest emitting part.

Use: The purpose for which any premises may be arranged, designed, intended, maintained, or occupied, or any occupation, activity, or operation conducted or intended to be conducted on a premises.

Use, Accessory: A use which is customarily incidental to and subordinate to the principal use of a lot or structure, located on the same lot as the principal use or structure.

Use, Change of: See Change of Use.

Velocity Zones (V Zones): Those coastal areas within a Flood Plain District which may be subject to extreme damage from the velocity of wave action or storm surge. The V Zones are shown on the Town FIRM map on file in the Town Hall with the Town Clerk, Planning Board, and Building Official.

Very Small Quantity Generator: Any public or private entity, other than residential, which produces less than 27 gallons (100 kilograms) a month of hazardous waste or waste oil, but not including any acutely hazardous waste as defined in 310 CMR 30.136.

Veterinary Clinic: A facility for the medical care of animals, including boarding of animals for the sole purpose of medical treatment or recovery from treatment.

Visible/Visibility: Able to be seen by a person of average height and with normal vision on a clear day. (See Screen/Screening.)

Warehouse: A structure or structures in which materials, goods, or equipment are stored in preparation for sale or processing.

Waste Oil Retention Facility: A waste oil collection facility for automobile service stations, retail outlets and marinas which is sheltered and has adequate protection to contain a spill, seepage or discharge of petroleum waste products in accordance with G.L. Chapter 21, Section 52A.

Watercourse: Any stream, pond, lake, drainage channel, or other area of land that is normally or seasonally filled with water.

Wetland: As defined in the Massachusetts Wetlands Act, G.L. Chapter 131, Section 40.

Wholesale Business: A business that sells non-agricultural goods in quantity and does not, except incidentally, sell directly to the ultimate user of the product.

Wind Energy Conversion Systems: All equipment, machinery and structures utilized in the connection with the conversion of wind to other forms of energy whether commercial or residential.

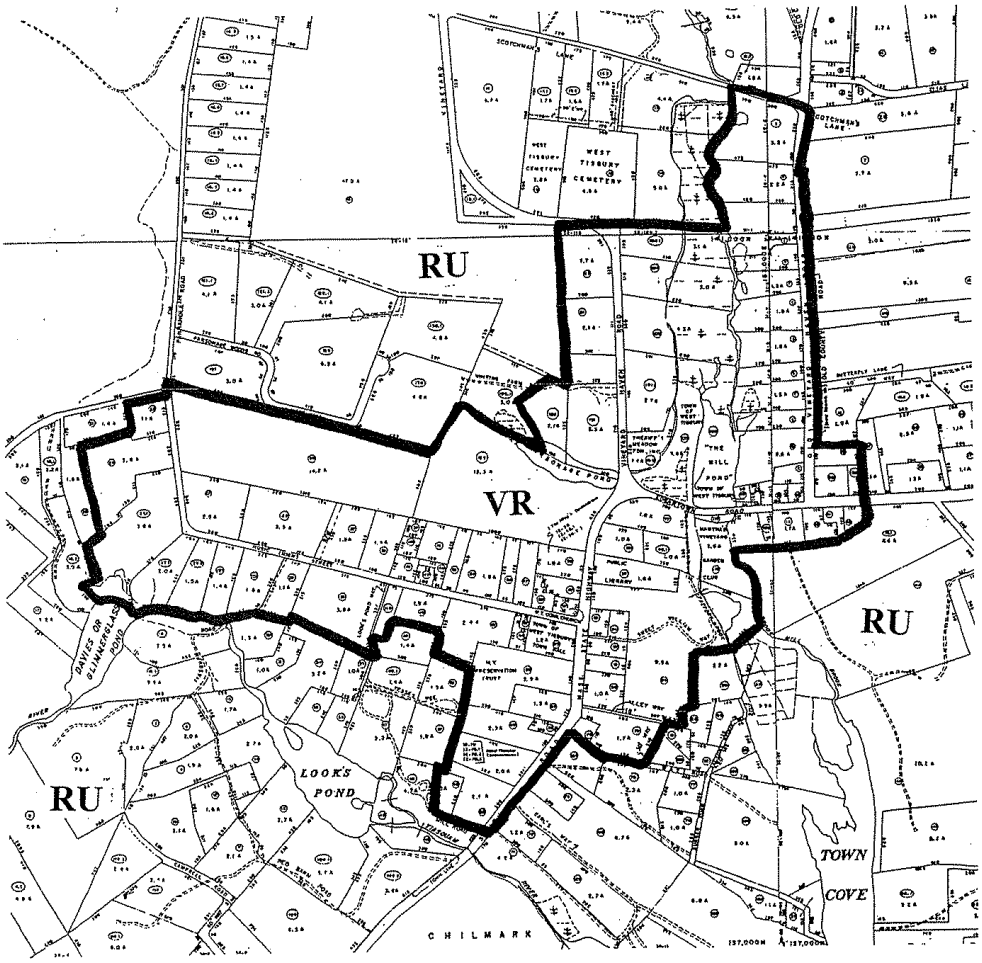
Wireless Communication Facility (WCF): All equipment, including any repeaters, monopoles, and antennas, with which a personal wireless service provider broadcasts and receives the radio frequency waves which carry their services and all locations of said equipment or any part thereof.

Zone II: That area as determined by a DEP approved evaluation to include those areas which are expected to contribute recharge to a Public Supply Well. It is defined based on assumptions of the most severe pumping and recharge conditions that can be realistically anticipated.

Zoning Act: Chapter 40A of the Massachusetts General Laws, as amended.

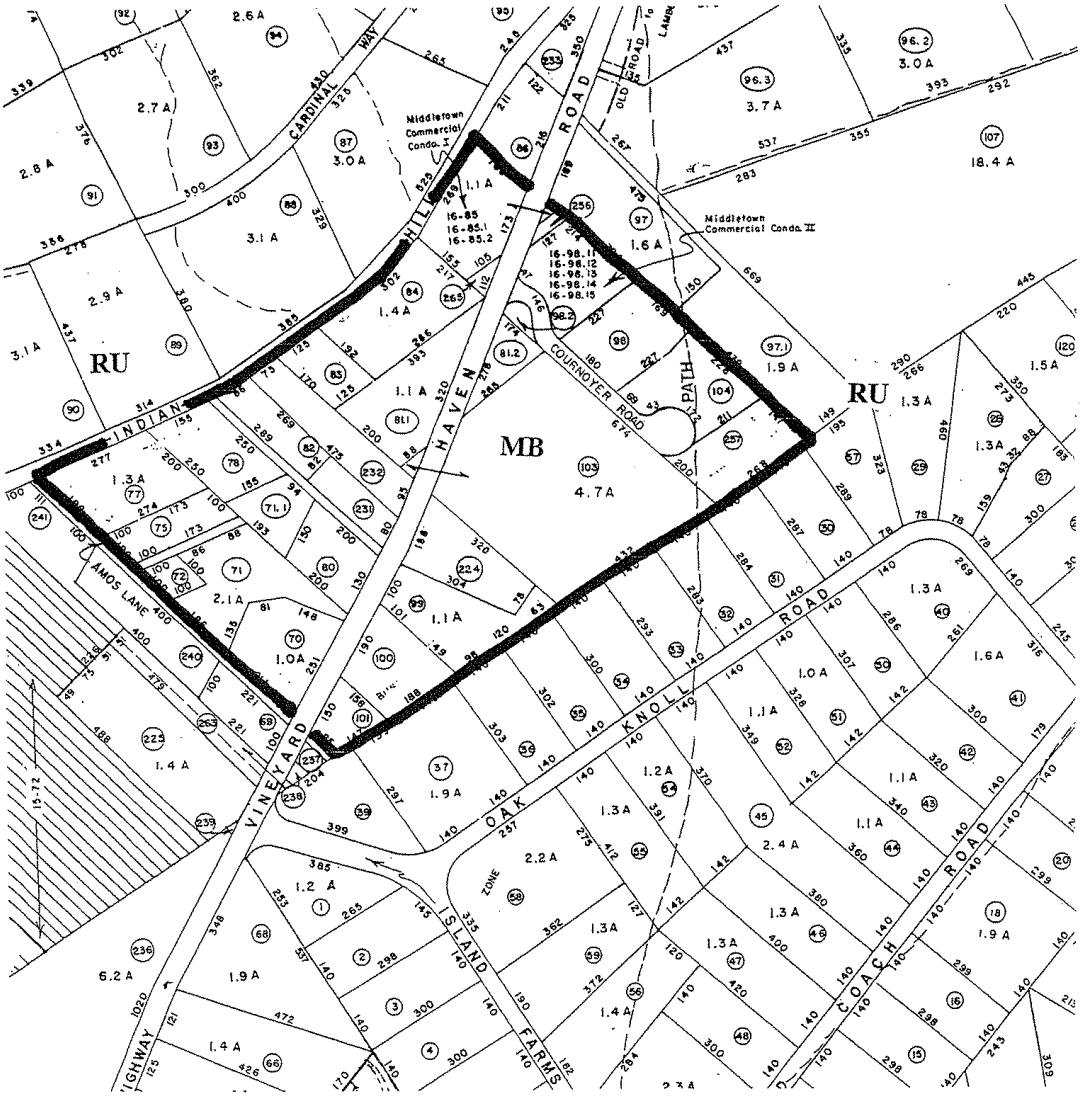
Zoning Inspector: The person appointed by the Board of Selectmen who is charged with the enforcement of the Zoning Bylaw in accordance with G.L. Chapter 40A, Section 7.

VILLAGE RESIDENTIAL (VR) DISTRICT



May 8, 2000

MIXED USE BUSINESS (MB) DISTRICT



May 8, 2000

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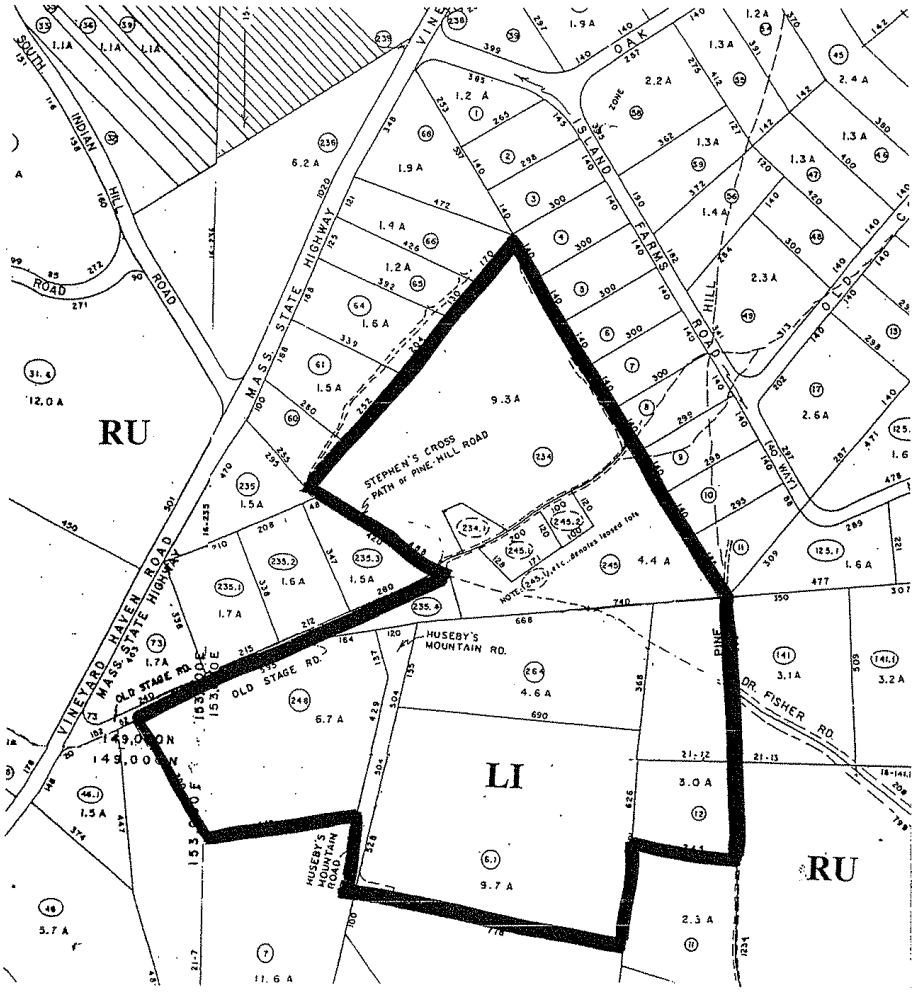

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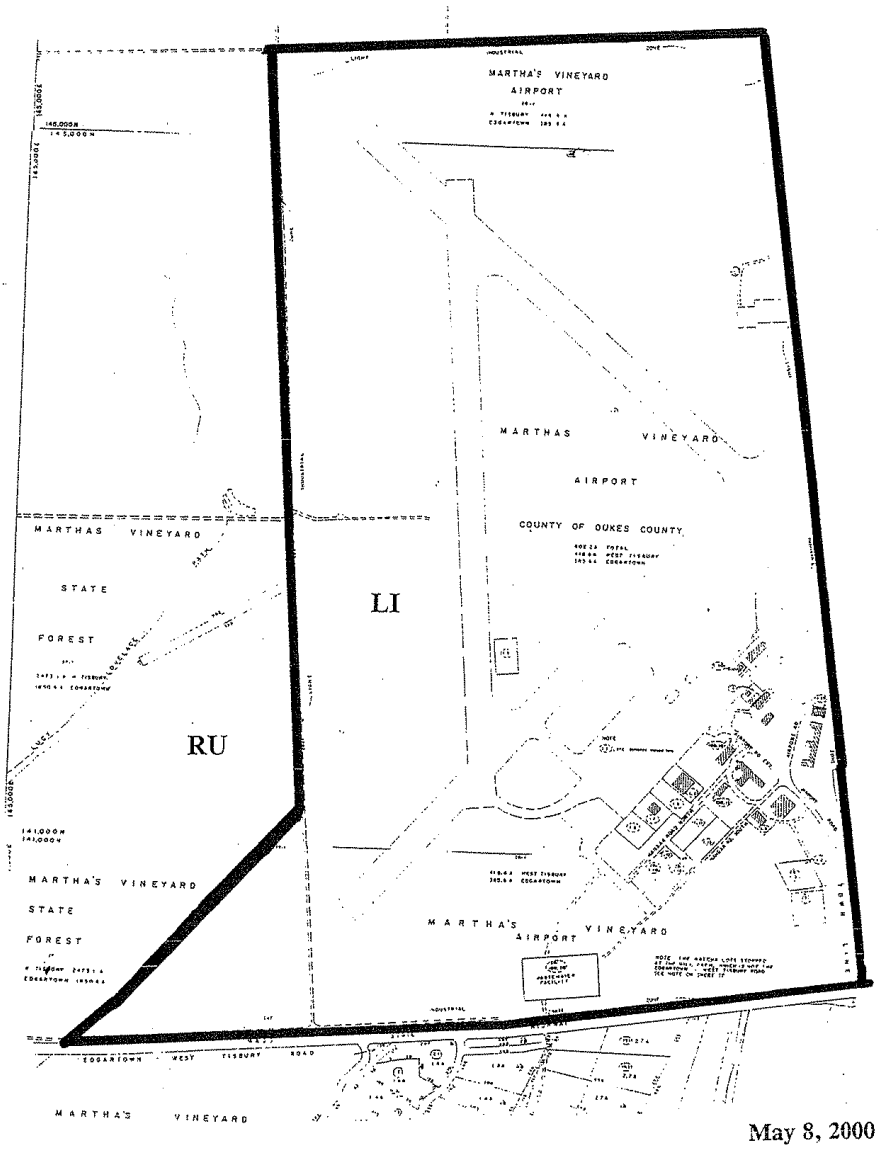

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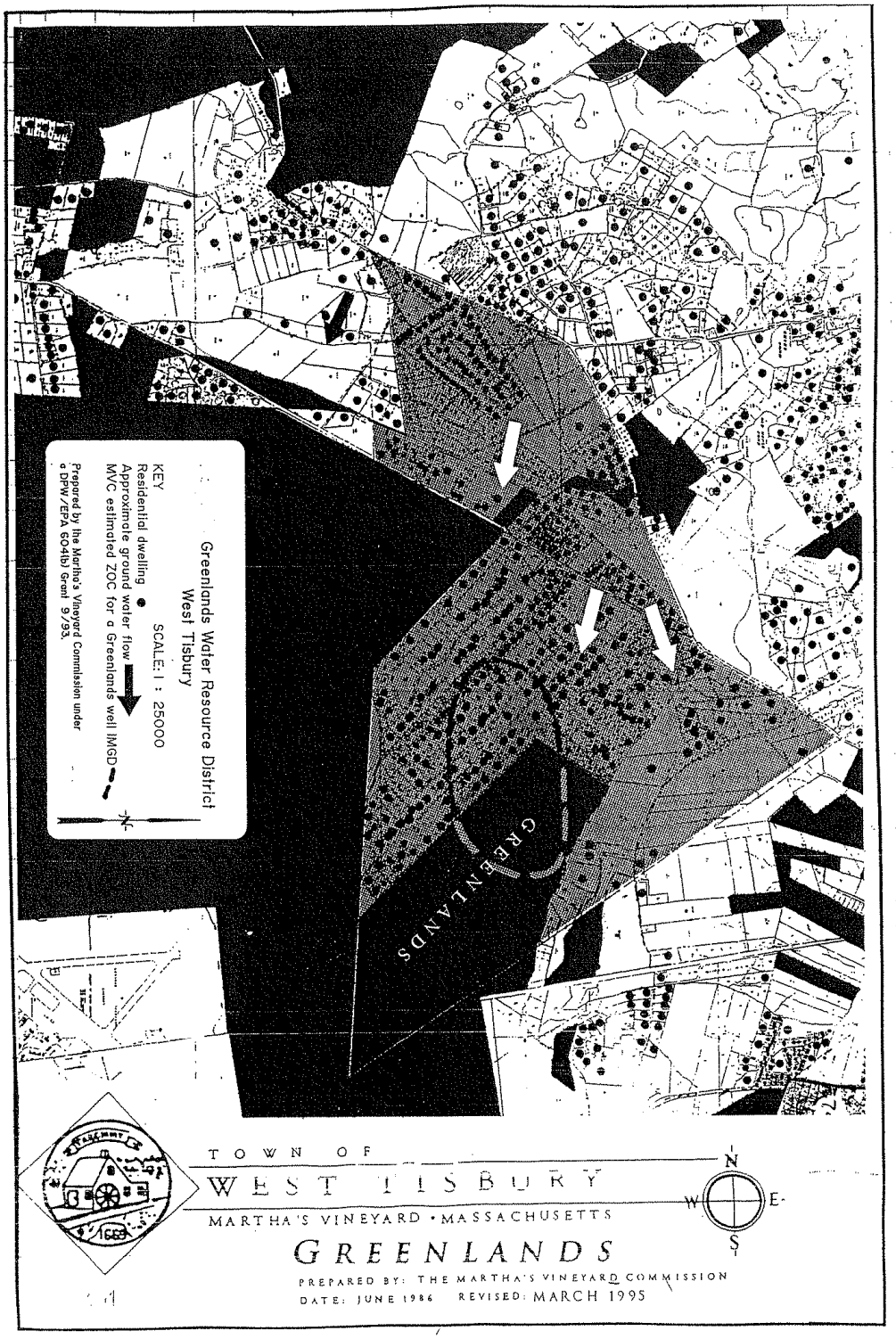
Greenlands Water Resource District
West Tisbury
SCALE: 1 : 25000
KEY
Residential dwelling
Approximate ground water flow
MVC estimated ZOC for a Greenlands well IMGD
Prepared by the Martha's Vineyard Commission under a DPW/EPA 604(b) Grant 9/93.
GREENLANDS
TOWN OF
WEST TISBURY
MARTHA'S VINEYARD • MASSACHUSETTS
GREENLANDS
PREPARED BY: THE MARTHA'S VINEYARD COMMISSION
DATE: JUNE 1986 REVISED: MARCH 1995
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