

TOWN OF CONWAY, MA

# PROTECTIVE ZONING BYLAWS

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Of the Town of Conway, Massachusetts

Final

6/4/2022

The purpose of this Bylaw is to promote the general welfare of the Town of Conway, to protect the health and safety of its inhabitants, to encourage the most appropriate use of land within the Town, to increase the amenities of the Town, to reduce the hazard from fire by regulating the location and use of buildings and the area of open spaces about them, to minimize congestion and overcrowding of land, and to protect and conserve the value of land and buildings including the conservation of natural resources and the prevention of pollution of the environment.

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The Cover page, this Table of Contents, and any Appendix is for reference purposes only, and not a legal part of Conway’s Protective Zoning Bylaw.



# Town of Conway, Massachusetts

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## **Protective Bylaws of the Town of Conway, Massachusetts**

*As adopted at a special town meeting on 19 November 1979 and amended (with approval of the Attorney General of the Commonwealth of Massachusetts) at town meetings held on 8 December 1980, 16 November 1981, 21 December 1981, 8 April 1985, 14 April 1986, 11 March 1993, 23 October 2000, 12 April 2004, 11 April 2005, 12 April 2010, 17 October 2011, 11 May 2015, 9 May 2016, 8 May 2017, 30 October 2017, 14 May 2018, 20 Jun 2020, and 5 Jun 2021*

### **ARTICLE 1: PURPOSE**

The purpose of this Bylaw is to promote the general welfare of the Town of Conway, to protect the health and safety of its inhabitants, to encourage the most appropriate use of land within the Town, to increase the amenities of the Town, to reduce the hazard from fire by regulating the location and use of buildings and the area of open spaces about them, to minimize congestion and overcrowding of land, and to protect and conserve the value of land and buildings including the conservation of natural resources and the prevention of pollution of the environment.

For the purpose of this Bylaw, the Town of Conway, under the authority granted by the Zoning Enabling Act, General Laws, Chapter 40A, does hereby make this Bylaw to be hereafter known and designated as the ZONING BYLAW OF THE TOWN OF CONWAY.

### **ARTICLE 2: DISTRICT AND USE REGULATIONS** (*Amended 14 April 1986; Amended 11 May 2015), and Amended 5 Jun 2021*)

For the purposes of the Bylaw, the Town of Conway is hereby divided into the following types of districts:

- a) Rural Residential/ Agricultural District
- b) Light Industrial District
- c) Floodplain District
- d) Solar Overlay District

The boundaries of each of the said districts are hereby established as shown, defined and bounded on a map entitled "Official Zoning Map of Conway" dated February 22, 2021. The Zoning Map, with all explanatory matter thereon, is hereby made a part of this Bylaw.

- a) Where the boundary lines are shown upon said map within the street lines of public and private ways, the centerline of such ways shall be the boundary lines.
- b) Where the boundary lines are shown upon said map approximately on the location of a property, lot, or boundary line, and the exact location of the property, lot or boundary line is not indicated by means of dimensions shown in figures, then the property or lot line shall be the boundary line.
- c) Boundary lines located outside of such street lines and shown approximately parallel thereto, shall be regarded as parallel to street lines, and dimensions shown in figures placed upon said map between such boundary lines from such street lines shall govern; such distance being measured at right angles to such street lines unless otherwise indicated.
- d) In all cases which are not covered by other provisions of this section, the location of boundary lines shall be determined by the distance in feet, if given, from other lines upon said map, the use of indication as shown on said map, or by the scale of said map.
- e) The Flood Plain District is herein established as an overlay district. The underlying permitted uses are allowed provided that they meet the requirements of Article 7 of these Zoning Bylaws as well as those of the Massachusetts State Building Code dealing with construction in flood plains.

**SECTION 22: Permitted Uses – Rural/Residential and Agricultural District**

Any otherwise lawful activity meeting all requirements of this Bylaw shall be permitted except the following:

**22.1: Restricted Uses**

- (a) No use or combination of uses of buildings or premises is permitted except by Special Permit which during ordinary use allows more than 15 persons upon that premises simultaneously, except that for a commercial establishment up to 50 customers shall be permitted on the premises at any one time during ordinary business hours.
- (b) Moreover, no use of any premises is permitted that would cause unreasonable traffic, noise, light, odor, electromagnetic radiation or pollution levels incompatible with the character of the neighborhood. Uses as stated under 23.1 are also prohibited.. However, Section 22.1 shall not apply to any educational, religious, agricultural, horticultural, floricultural, or other uses exempted by statute. Section 22.1 shall not be construed to restrict the use of any premises for occasional large gatherings of people for social or other non-commercial purposes. *(Amended 12 April 2004)*

**22.2: Multi-Family Dwellings *(Added December 1980)***

One or two dwelling units within a single structure are permitted. *(Amended 12 April 2004)* Multi-Family dwellings are prohibited, *(Amended 16 November 1981)* except as permitted in Section 22.3. *(Amended 12 April 2004)*

**22.3 Accessory Apartments *(Added 12 April 2004)***

(a) Purpose

- 1. For the purpose of providing an additional small dwelling unit to rent, enabling owners of two-family dwellings that are larger than required for their present needs, particularly elderly homeowners, to share space and the burdens of home ownership, the Planning Board may grant a Special Permit in accordance with the following requirements;

(b) Conditions and Requirements

- 1. Not more than one (1) accessory apartment shall be located within any existing two-family residential structure. (Note: one-family residences, by right, can be made into two-family units [see Article 5] and then have an accessory apartment added.) This means that the total dwelling units allowed per structure is three;
- 2. The accessory apartment shall be located within the existing residential structure (hereafter referred to as the primary residence);
- 3. The external appearance of the existing structure shall not be significantly altered from the original and shall maintain the character of the neighborhood. Any stairways, access, or egress alterations serving the accessory apartment shall be enclosed, screened, or located so that visibility from public ways is minimized;
- 4. Such Special Permit, when granted, shall be recorded at the Registry of Deeds and issued to the owner/occupant of the primary residence and be in force for as long the owner/occupant owns and occupies the building. The Special Permit shall lapse upon transfer of said property or when the owner no longer occupies the property. If the Special Permit lapses, the new owner may apply for a new special permit within 6 months of taking ownership of the property. The owner of the building shall occupy one of the dwelling units, except that the owner/occupant can be absent for up to 6 (six) months per calendar year;
- 5. For the purposes of this by-law, the “owner” shall be defined as one or more individuals residing in a dwelling, who hold title and for whom the dwelling is the primary residence for voting and tax purposes. Said owner may designate a legal relative as a “life tenant” who may occupy the house in the owner’s stead. Certification by affidavit shall be provided by the owner;

6. The accessory apartment shall meet the standards of the State Building Code and State Environmental Code, 780CMR 6<sup>th</sup> edition MA Building Code, chapter 36 3603.41, Title V. Prior to issuing a Special Permit the owner of the property or his or her agent must submit an approved building permit, with floor plans, elevations, or other drawings sufficient to demonstrate compliance with the conditions and requirements of the Special Permit. Prior to occupancy of the accessory apartment the owner must obtain and submit a copy of the Certificate of Occupancy issued by the building inspection department;

(c) Parking

1. Refer to Section 34: Off Street Parking for parking requirements.

(d) Violations and Enforcement

This by-law shall be enforced by the Planning Board and shall be consistent with MGL Chapter 40A Section 7.

## **22.4: Street Naming & Building Numbering Bylaw** *(Added 17 October 2011)*

### **Purpose**

The general purpose of this Bylaw is to set a standard for the clear identification of Public Ways and Common Driveways and the numbering of buildings in Town for the following purposes:

1. To aid and enhance the response of all public safety services, particularly for the Emergency Management Systems within Town and the response of other Emergency Services to 911 Emergency phone calls in Conway;
2. To aid in delivery of the United States Postal Service and other delivery services to locations in Town and;
3. To clearly identify properties for municipal purposes.

### **Building Numbering Requirements**

The general policies and requirements for numbering buildings will apply regardless of the legal ownership or status of the road in question and are as follows:

Building numbers are assigned solely by the Highway Superintendent or his designee to all structures that qualify under the definitions stated herein:

1. All free-standing buildings used for residential, commercial, industrial or municipal purposes shall have a building number. Accessory outbuildings that provide storage or occasional, non-regular, infrequent use generally do not need a number.
2. A building with more than one residential unit or a property with a residential unit and other qualifying unit(s) – dwelling or business – will require only one building number with letters, i.e., A, B, etc., assigned to distinguish the individual units.

A request for a building number shall be submitted to the Highway Superintendent or his designee as the first requirement of a building permit application and the assigned number must appear on all permit documents. A building permit shall not be issued for any building that requires a number, based on its use, until a building number has been assigned.

Camps, cabins and cottages fall under this Bylaw if they are to be seasonal or year round residences or are rented as a housing or commercial unit.

### **Obtaining a New Building Number**

When a qualifying building is constructed or converted to another purpose in Town, it shall be the duty of the owner to request on the proper form the correct number assignment from the Highway Superintendent or his designee prior to the issuance of any structural or use permits or any changes in the structure. The Highway Superintendent or his designee shall meet with the property owner to fix the location of the permanent driveway for the purpose of determining the official number.

Request forms are available at the Town Office or on the Town website, [www.townofconway.com](http://www.townofconway.com), under “Forms and Downloads.”



### **Placement of Building Numbers**

Owners must affix building numbers to those structures for which a number has been designated by the Town. No building number, other than the one so designated by the Town, shall be affixed to or allowed to remain on any building requiring a number. Other markers, such as historical information like "Built 1795," must be placed or styled in a way that will not conflict or easily be confused with the building number. The requirements for affixing building numbers are as follows:

1. Emergency response personnel must be able to see building numbers from their vehicles from the street, day or night.
2. However, if a building is not within 50 feet of and clearly visible from the center of the road, the building number shall be placed on a post, mailbox or other obvious place within fifteen (15) feet and on the same side of the Public Way at the end of the driveway access to said building.
3. All building numbers should be 4-6 feet above ground level so as to be seen in both directions of vehicular traffic and must be placed so as to be visible at all times above piled, plowed or accumulated snow, shrubberies or other obstructions. Building numbers on a mailbox are considered compliant with this Bylaw only if the mailbox is on the same side of the street as the building requiring a number and within 15 (fifteen) feet of the edge of its driveway.
4. A building that has more than one dwelling unit (including multi-family and accessory "in-law" apartments) shall have one street number with a letter assigned to the individual dwelling units, based on the principle of the unit's main entrance nearest to the beginning of the Public Way designated as A, the next distant as B, etc.

### **Size, Color of Street Number**

Building numbers shall be of permanent weatherproof material, at least four (4) inches tall, and clearly visible against a contrasting background from the Public Way. Numbers must be in numerical, not word, form and shall be clearly visible under all conditions at all times of the year. Reflective numerals are recommended as being more easily visible for emergency personnel with flash or spot lights at night in an otherwise unlighted yard.

Brass, gold-colored or silver-colored numerals on a natural wood background must be sufficiently contrasting for good visibility under this Bylaw. Numbers carved into natural stone or wood should be painted to provide adequate contrast with their background. It shall be the duty of the property owner to maintain and display the building numbers in accordance with this section.

### **House Names**

The commonly-known name of a building (i.e. a business sign or house name, "Post Office," "The Orchard") is not adequate identification for Emergency Management System purposes. The assigned building number for every qualifying building must be clearly displayed, as defined in this Bylaw.

### **Private and Shared Driveways**

A driveway to a single residence from a Public Way is to be numbered along the Public Way and is not eligible for a different name unless future additional development on that driveway is planned or a reasonable expectation. In that case, the owner may request a name for the driveway and building numbers will be issued on that driveway in accordance with this Bylaw.

Driveways in regular use prior to the date of the acceptance of this Bylaw are not required to change to a named driveway until additional buildings are erected that need a number under this Bylaw. At that time, a request must be presented to the Planning Board for a driveway name and all of the numbered buildings on that driveway will be renumbered by the Highway Superintendent or his designee in accordance with the numbering system used elsewhere in this Bylaw.

### **Numbering on Shared and Common Driveways**

Qualifying buildings on a named or Common Driveway will be assigned a building number consistent with this Bylaw and will use only the approved name of the shared or Common Driveway.

Qualifying buildings on an unnamed Shared Driveway shall be numbered from the road which provides access to the Shared Driveway.

### **Shared and Common Driveway Names**

The Planning Board will assign a permanent name to a qualifying private way. The Planning Board shall solicit and consider name suggestions from the property owner(s) on the driveway, but may refuse them and choose another name. At the property owner's/developer's expense, the assigned name will be recorded with the Town Clerk within 30 days of the name's assignment by the Planning Board. The new name shall be the property's physical address.

At the expense of the property owners along the named private way, the Town will provide the sign. The town will install the sign within 30 days of the name assignment; it will be placed at the intersection of the Public Way and named driveway.

### **Street Name Changes**

Street name changes will be made at the sole discretion of the Planning Board. Written notice shall be sent to all affected property owners, explaining the need for the change, and they will be invited to contribute suggestions for a new name. On acceptance by the Planning Board of the new name, all affected property owners shall be notified in writing by certified mail confirming the new street name and their new number, and they shall have sixty (60) days in which to change the numbers, if needed, on their buildings. All official Town records will be changed within 60 days of the Planning Board's final acceptance action and the name change and acceptance.

### **Enforcement**

No Occupancy Permit for a newly erected structure shall be issued by the Building Inspector until the number and name of the way has been displayed as specified in this Bylaw.

In the event that a sign becomes inadequate, it shall be replaced by the current owner of the property.

### **Appeal**

Any person aggrieved by the enforcement of this Bylaw, or by the refusal of the enforcing authorities to enforce any provision of this Bylaw, may file an appeal with the Zoning Board of Appeals within 30 calendar days of the date of such enforcement action or refusal. All appeals shall be handled in a manner consistent with the standard rules of the Board of Appeals.

### **Glossary**

Driveway – that area of land which provides access to a building (or buildings) from a public or private way

Common Driveway – a privately-maintained driveway over private property that serves more than two residences and has been given a separate name with the designation “Drive.” It must meet the building requirements in the Zoning Bylaw.

Shared Driveway - a privately-maintained driveway over private property that serves two residences and may have been given a separate name with the designation “Drive.”

## **SECTION 23: Permitted Uses – Light Industrial District**

Any use permitted in the Rural/Residential and Agricultural District and the following:

### **23.1: Light Industrial Use**

Any use which involves the fabrication, assembly, finishing, packaging or processing of products, but excluding the following uses which shall not be permitted: Asphalt manufacturing or refining, coal storage, creosote, distillation of coal, wood or bones, explosive or fireworks manufacturing, fat rendering, fertilizer or potash manufacturing or refining, glue or size manufacturing or process involving recovery from fish or animal offal, gypsum, cement plaster or plaster of paris manufacturing, incineration, junk or salvage yard or junk or salvage storage, petroleum refining, tar distillation, tar roofing manufacturing, ammonia, chlorine or bleaching power manufacturing, celluloid manufacture, iron, steel or other metal manufacturing, leather processing, paint manufacture, paper manufacture, poisonous gases (except welding gases), rubber manufacture, soap manufacture, drop forge shop, settling gas, cyanide compound or oxygen manufacture, fumigation plants, match manufacture, tire recapping or retreading or other use commonly considered hazardous or noxious.

### **23.2: Commercial Use**

Any use which involves sales at retail or wholesale goods and merchandise.

### **23.3: Restrictions on Light Industrial and Commercial Uses**

- (a) No light industrial or commercial use is permitted which causes continuous noise or vibrations that are normally perceptible above street noise without instrumentation at any point more than 100-feet from the premises, or which results in flashing lights being visible at any point more than 100 feet from the premises.
- (b) No light industrial or commercial use is permitted unless cinders, dust, fumes, gases, odors, and electromagnetic radiation are effectively confined to the premises.

### **23.4: Additional Requirements**

- (a) Site plan review and approval by the Planning Board is required for expansion within this zone.
- (b) All buildings be visually screened from abutting residential property through the appropriate use of plantings, fencing, or other suitable screening means.

## **SECTION 24: Radioactive Waste Disposal** *(Added 16 November 1981)*

No land within any use district in the Town of Conway may be used for the collection, treatment, storage, burial, incineration, or disposal of radioactive waste, including but not limited to wastes classified as low-level radioactive waste. *(Amended (1) 21 December 1981: Amended (2) 14 April 1986)*

## **ARTICLE 3: GENERAL REGULATIONS**

### **SECTION 31: Presently Existing Uses, Structures, and Lots**

#### **31.1: Continuation and Restoration**

Any use of structure, whether conforming to this Bylaw or not, may be continued if that use or structure was lawfully existing at the time it became nonconforming, and may be restored if destroyed by fire or other accidental or natural cause or demolished, but if discontinued or abandoned for more than 24 months, subsequent use shall comply with this Bylaw. *(Amended 16 November 1981)*

#### **31.2: Alteration**

Legally nonconforming structures may be altered if without extension or change of use. Nonconforming structures or nonconforming uses of structures or land may be extended or changed to another nonconforming use only if granted a Special Permit by the Planning Board.

#### **31.3: Nonconforming Lots**

Any recorded or registered lot not meeting the frontage or area requirements of this Bylaw, if having an area of 5,000 square feet or more and at least 50 feet of frontage on a public way, if owned separately from an adjoining land at the time of recording, and if it conformed at that time to the then existing requirements, may be built upon for any otherwise permitted use even though not meeting frontage and area requirements.

### **SECTION 32: Environmental Controls**

#### **32.1 Screening**

Any reasonably large accumulation of junk, trash, or debris shall be confined out of sight by plantings or other screenings.

#### **32.2 Hazard**

No use shall be allowed which would create unreasonable hazard due to explosion, fire, or other causes. Potentially hazardous conditions shall be fenced, covered or otherwise rendered safe.

### **32.3: Water Discharge**

No building or driveway shall be constructed so as to allow water, snow, ice, or waste material to be deposited upon or discharged upon a public way or upon a neighboring property other than along natural water channels at a speed and volume similar to that which occurred prior to construction. (*Amended 11 April 2005*)

### **32.4: Stripping Land of Soil and Loam**

No person, firm, or corporation shall strip, sever, remove, or convey away any soil, loam, clay, sand or gravel from any land in the Town of Conway not in public use, unless and until such stripping, severance, removal, or conveyance away is first authorized by a Special Permit issued by the Planning Board, except for the continued operation of an existing sand or gravel pit. No special permit is required in conjunction with the construction of a building and/or septic system provided the contours of the land are not altered by a depth or height in excess of six (6) feet and that no change is made to the natural flow of storm water. No such permit shall be issued until an application therefore has been filed with the Board. Said Board shall then hold a public meeting on the application and notice of the filing in relation thereto. (*Amended 11 April 2005*)

### **32.5: Unregistered Motor Vehicles** (*Amended and renumbered 9 May 2016*)

The keeping of more than one unregistered motor vehicle, of any kind, on any premises, assembled or disassembled, shall not be permitted, with the following exceptions:

**32.5-1:** Said motor vehicles are stored within an enclosed building and in keeping with State Fire laws and Regulations.

**32.5-2:** A special permit is granted by the Planning Board. Such a Special Permit may be granted after a duly called public hearing to which all abutters to the premises have received notice, and if the Planning Board finds that such keeping: (1) is in harmony with the general purpose and intent of this Bylaw; (2) will not adversely affect the neighborhood; and (3) will not be a nuisance.

**32.5-3:** All such special permits granted shall specifically limit the number of unregistered motor vehicles to be kept on the premises by the permit holder, shall not run with the land, and shall be limited to a reasonable length of time.

**32.5-4:** This article shall not apply to motor vehicles which are designed and used for farming purposes or to contractor's equipment, nor shall this article apply to land owners or tenants who store motor vehicles out of sight of abutters and public ways.

**32.5-5** Applicants seeking to be licensed by the Selectboard to do business under Massachusetts General Laws Chapter 140, Section 58, Classes 1 – 3 and intending to keep more than one unregistered motor vehicle on the premises and not in an enclosed building must obtain a Special Permit prior to issuance of said license. (*Added 9 May 2016*)

## **SECTION 33: Signs**

### **33.1: On-Premises Signs**

Any business premises may have one on-premises sign with two surfaces in opposite directions devoted exclusively to the premises on which the sign is located of not more than fifteen (15) square feet.

### **33.2 Off-Premises Signs**

Off-premises signs (signs with content not relative to the premises they are on) are allowed only to provide directions to premises. Off-premises signs shall not be more than three (3) square feet in size except by Special Permit from the Planning Board based upon the Board's determination that the sign will serve the informational needs of the motoring public, will not obscure the legibility of existing

signs on other premises, will chiefly identify the local business rather than standard product brand names, employs minimum wording to improve legibility, and is consistent with a rustic rural character in which case a sign can be up to fifteen (15) square feet.

### **33.3: Lighting of Signs**

- a) No sign shall flash or display movement.
- b) Signs may be illuminated only during the normal business hours.

## **SECTION 34: Off Street Parking**

### **34.1: Number of Spaces**

All premises shall provide off street parking sufficient for all persons who commonly use the premises.

### **34.2: Additional Requirements**

No off street parking area shall be maintained within ten feet of a street line. For Parking areas of 10 cars or more, the following shall apply:

- (a) The use of the area shall not require backing out onto a public way.
- (b) There shall be not more than one entrance and one exit from such lots per 300 feet of street frontage or fraction thereof. If necessary to meet this requirement, users shall arrange for shared egress.
- (c) Such lots shall be screened from any abutting residential use by densely planted shrubs.

### **34.3: Loading Requirements**

Any facility such as a car-wash or drive-in facility which from time to time has lines of vehicles waiting admission shall have sufficient on-site space for such lines without requiring cars to stand on any public way or cross any public sidewalk.

## **ARTICLE 4: DIMENSIONAL REQUIREMENTS**

### **SECTION 41: Lot Area and Clearances**

#### **41.1: Lot Area**

No building shall be erected or mobile home placed on a lot unless the lot:

- (a) complies with state and local sanitary codes;
- (b) has a minimum of 200 feet of frontage on a public way that currently provides suitable access for fire, police, and emergency vehicles. *(Amended 12 April 2004)*
- (c) and has a minimum area of one acre or complies with the requirements for back lots in 41.1 (c) or as may be exempted under Section 6 of MGL Chapter 40A. *(Amended 11 March 1993)*.
- (d) Back Lots – an individual lot need not have the required amount of street frontage provided that all of the following requirements are met:
  - (1) The area of the lot is a minimum of four acres;
  - (2) The lot includes a strip of land, easement, or right of way at least 20 feet in width by which it is connected with a public way. Legal proof of such connection SHALL be required from the landowner as part of a request for a building permit; *(Amended 11 April 2005)*
  - (3) The width of the lot where the principal building is to be built is a minimum of 200 feet.

No more than one residential building *(Amended 12 April 2004)* is allowed per building lot. *(Amended 11 March 1993)* This provision shall not restrict the number of outbuildings related to a dwelling which can be placed on a lot.

Driveway access to the residential building of a lot as defined under sections (b) and (c) may or may not enter through the determined frontage of said lot. Safe access shall be the first priority. *(Amended 12 April 2004)*

**41.2: Clearances (Setbacks)** *(Revised 8 May 2017)*

No primary building or structure shall be located within 25 feet of any boundary or within 50 feet of a public way. However, if a primary building or structure already exists on an adjacent lot on the same street and is less than 50 feet from a public way, a new primary building or structure may be located at a distance that is the same or greater from the public way.

For accessory use buildings and structures, the clearances are one-half (½) the distances specified for a primary building or structure.

**41.2.1 Exceptions to dimensional clearances requirements for accessory buildings or structures** *(Added 8 May 2017)*

a) The Zoning Board of Appeals may reduce, by Special Permit, the dimensional clearance requirements for front, rear, and side yards related to accessory building or structure setbacks provided that the Zoning Board of Appeals makes a determination that the proposed building or structure is consistent in scale or setback with the structures in abutting parcels and the immediate neighborhood. The Zoning Board of Appeals shall make the following determinations before granting an exception:

1. The Zoning Board of Appeals shall specifically determine that the reduced dimensional clearance requirement for a front, side or rear yard will have no adverse effect on adjacent properties or historic structures.
2. The Zoning Board of Appeals shall specifically determine that the reduced dimensional clearance requirement for a front, side or rear yard will not be a detriment to the public good and will not substantially undermine the intent of the Conway Zoning Bylaws.

b) The applicant shall file, with the application for a Special Permit, a detailed plan drawn to scale of the property that shows the lot lines and dimensions of the property, the clearance setbacks as they currently exist for front, side or rear yards, the proposed location of the structure, and any proposed reduction to the clearance requirements. In addition, the diagram shall include all utility accesses and shall be signed under pains and penalties of perjury. The applicant shall provide an explanation as to why they are requesting a reduction in setbacks from the clearance requirements of the Zoning Bylaws. The Zoning Board of Appeals may grant any setback reduction where the boundary or lot line from which setback relief is requested has been established, by survey or other recognized documentation from which the ZBA can readily determine the location of the lot lines.

**41.3: Agricultural Buildings**

Any number of agricultural buildings may be placed or erected on a lot.

**41.4 Driveways** *(Added 12 April 2004)*

All driveways shall be designed according to requirements listed below. Driveways serving three or more lots have additional requirements (see Common Driveways, Section 41.5).

- (a) at its intersection with the traveled surface of a public way, at least the first 20 feet in length constructed with a minimum curb cut of 20 feet, a maximum slope of *8 percent*, and driveway should have crown or slope to direct water away from the public way, and a culvert where applicable.
- (b) A line-of-sight of sufficient distance to permit safe entering onto the travel portion of public way, calculated per AASHTO (American Association of State Highway and Transportation Officials) and MUTCO (Manual on Uniform Traffic Control Devices) as supplied by the Highway Superintendent, and available at the Town Office.
- (c) The approval and signature of the Highway Superintendent on the building permit application, indicating that the driveway meets the above standards before a building permit can be issued.

#### **41.5: Common Driveways** (Section 41.5 COMMON DRIVEWAY BYLAW added 11 March 1993)

The purposes of this Bylaw are to provide for the safety, welfare, and convenience of town residents and to encourage appropriate land use.

##### **41.5-1: Definitions and Exceptions**

A common driveway is a driveway which begins at a public way and provides access to more than one building lot. Common driveways providing access to two building lots are permitted by right and are not subject to this Bylaw. Common driveways, which are to be constructed, extended or utilized to provide access to three or more building lots are required to conform to the Common Driveway Bylaw.

The Common Driveway Bylaw shall not apply when both the common driveways and the building lots to which they provide access existed prior to March 11, 1993. The common driveway bylaw shall not apply to common driveways shown on a plan recorded at the Franklin County Registry of Deeds prior to March 11, 1993. The specific right to use a discontinued road as a common driveway is not intended or implied by any portion of this bylaw.

##### **41.5-2: Design and Performance Requirements**

A common driveway shall have:

- (a) A minimum right-of-way width of 30 feet and a maximum gradient of 12%. For short sections, at steeper gradients, variances may be granted the Zoning Board of Appeals. This paragraph shall not apply to rights-of-way existing prior to March 11, 1993;
- (b) A stable sub-base of at least 18 inches of gravel, a minimum wear surface of crushed stone or trap rock applied to a minimum depth of 4 inches, a minimum width of 12 feet, a minimum centerline radius of 75 feet and a minimum of 3 feet of total shoulder;
- (c) If the driveway is a dead-end, a “hammerhead” or other turnaround adequate for a 30 foot vehicle;
- (d) A curb cut of at least 20 feet in width, with a minimum radius of four feet, and an approach area of at least 20 feet in length from the edge of traveled surface of the public way with a slope of not more than 4% grade. This paragraph shall not apply to rights-of-way existing prior to March 11, 1993;
- (e) A “pullout” every 500 feet for a 30 foot vehicle;
- (f) Such storm drains, swales, culverts and drainage retention areas as are necessary to permit the unimpeded flow of all natural water courses, to insure drainage of the driveway, to prevent washout and erosion and to intercept all storm water drainage created by the construction of the common driveway adequate to meet a 25 year frequency storm. All Wetlands Protection Act requirements must be met;
- (g) A line-of-sight of sufficient distance to permit safe entering onto the travel portion of public way, calculated per AASHTO (American Association of State Highway and Transportation Officials) and MUTCO (Manual on Uniform Traffic Control Devices) as supplied by the Highway Superintendent, and available at the Town Office. (*Amended 12 April 2004*)
- (h) A proposed name for the common driveway(s), subject to Planning Board approval.

##### **41.5-3: Maintenance**

Maintenance of such a driveway shall be assured through a covenant, landowner’s association or similar legal agreement, approved by the Planning Board and binding upon those served by the driveway, which shall require the landowners to maintain the driveway to the standards of this Bylaw at their mutual, exclusive expense. Such covenant or association agreement shall further state, as a condition of Planning Board approval, that the driveway in question is not a private road or public road and that it is intended to remain in perpetuity as a common private driveway. A statement to this effect shall be shown on all design plans submitted to the Planning Board and included in the language used to convey lots served by the common driveway.

##### **41.5-4: Compliance**

No building permit shall be issued for any lot(s) to be served by a common driveway providing access to three or more building lots until an as-built plan, prepared by a Registered Massachusetts Civil Engineer, Landscape Architect, Architect, and/or Land Surveyor, and demonstrating compliance with 41.4 for the lot(s) for which building permits are sought, has been submitted to and approved by the Planning Board or its agent. All as-built plans shall show a statement certifying that the common driveway meets the requirements of the common driveway bylaw. A turnaround meeting the requirements of **41.5-2(c)** shall be provided at a temporary terminus of any common driveway providing access to three or more building lots.

**ARTICLE 5: DEFINITIONS** *(Revised 8 May 2017)*

In this Bylaw, the following terms shall have the following meanings, unless a contrary meaning is required by the context or is specifically prescribed:

**ACCESSORY USE** - Any building or structure whose use is incidental and accessory to the use of the principal building or structure. *(Added 8 May 2017)*

**BUILDING** – A combination of any materials, whether portable or fixed, having a roof and/or exterior walls built to form a structure for the shelter, support, or enclosure of person, animals, chattels, or property of any kind.

**BUILDING (PRINCIPAL)** - A building in which is conducted the principal use of the lot on which it is situated. *(Added 8 May 2017)*

**BUILDING LOT** – Any lot which complies with the frontage and dimensional requirements of 41.1[b] or the area and access requirements of either 41.1[c] or 41.4. *(Added 11 March 1993)*

**CLEARANCES** – The horizontal distance measured perpendicular from a property line to the closest point on the ground below any projecting vertical portion of a structure or building (i.e. drip line). *(Added 8 May 2017)*

**COMMON DRIVEWAY** – A driveway which begins at a public way and provides access to more than one building lot. *(Added 11 March 1993)*

**DRIVEWAY** – That area of land which provides access to a building lot from a public way. *(Added 11 March 1993)*

**DWELLING, MULTI-FAMILY** – A permanent or temporary building containing more than two dwelling units.

**DWELLING, ONE OR TWO FAMILY** - A permanent or temporary building containing either one or two dwelling units. *(Amended 11 March 1993)*

**DWELLING UNIT** – One or more living or sleeping rooms constituting a separate housekeeping establishment and containing independent cooking and sleeping facilities arranged for the use of one or more individuals or a family living together as one housekeeping unit.

**LOT** – A parcel of land laid out by metes, bounds or boundary lines in the last recorded deed or plan in the Franklin County Registry of Deeds.

**PUBLIC WAY** – A state highway, a county road or a road which has been accepted by the Town of Conway as a town road.

**STRUCTURE** – That which is built or constructed, excepting ornamental structures and fencing less than 6 feet tall. *(Added 8 May 2017)*

**STRUCTURE (PRINCIPAL)** – A structure in which is conducted the principal use of the lot on which it is situated. *(Added 8 May 2017)*

**YARD** - A required open space, unobstructed by structure(s) more than 3 feet high, other than fences or other customary yard accessories. *(Added 8 May 2017)*



## **ARTICLE 6: ADMINISTRATION**

### **SECTION 61: Enforcement**

This Bylaw shall be enforced by the building inspector who shall be appointed by the Selectboard. Any person violating any of the provisions of this Bylaw may be fined not more than \$50 for each offense. Each day that such violation continues shall constitute a separate offense. *(Amended 5 Jun 2021)*

### **SECTION 62: Zoning Board of Appeals**

There is hereby established a Zoning Board of Appeals of three members and two associate members, to be appointed by the Selectboard, which Board of Appeals shall act on all matters within its jurisdiction under this Bylaw and Chapter 40A of the General Laws in the manner prescribed by the said law and by this Bylaw. *(Amended 5 Jun 2021)*

### **SECTION 63: Special Permit Guidelines**

Application for Special Permits shall be accompanied by a written report detailing the effects of the development in relation to the criteria of Section 63. In granting a Special Permit the Planning Board has the power to impose any conditions, safeguards, and/or limitations on time or use of premises.

- a) Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a special permit provided the granting authority finds that the proposed accessory use does not substantially derogate from the public good.
- b) **Filing Procedure for Special Permits.** Special Permits shall be granted, denied, or issued with conditions by the Planning Board according to the provisions of Chapter 40A of the Massachusetts General Laws. An applicant for a Special Permit shall file a completed application with the Town Clerk. The application shall include nine (9) copies each of the Special Permit application and a plan of the site. The Town Clerk shall acknowledge receipt of the application by signing and dating the application. The Town Clerk shall transmit copies of the application to the Planning Board, Conservation Commission, the Zoning Board of Appeals, the Board of Health, the Historical Commission, the Highway Superintendent, the Fire Chief, the Energy Committee, and the Building Inspector. Town Boards and municipal officials shall have **30 days** from the date the completed application is received by the Town Clerk to report to the Planning Board their findings and recommendations. The date of receipt by the Town Clerk on behalf of the Planning Board, shall be the date of submission of the Special Permit application.

*(Amended 11 May 2015)*

- c) All other special permits otherwise in compliance with the provisions of this Bylaw and of Chapter 40A, shall be issued only upon written determination by the Planning Board that there be no significant adverse effects (to the neighborhood and/or town) in any of the following categories:
  - (a) **Traffic Flow and Safety:** for example, to what degree will the service level of abutting streets be reduced because of added traffic volume? Will hazardous egress conditions result? Is traffic generation in relation to street frontage unusually high or low relative to nearby uses? Have such efforts been made as spacing egresses more widely than required, or sharing of egresses? Is the town capable of servicing the premises considering existing roads and town equipment?
  - (b) **Adequacy of Utilities and other Public Services:** for example, will pressures on the highway department, school system, or other public services mount more rapidly than the town is reasonably able to relieve these pressures?
  - (c) **Qualities of the Natural Environment:** for example, what will the consequences for wildlife, vegetation, hydrology, water quality, and air quality be? Does the proposal take into account the effects of large topographic change, tree removal, or increased storm water flow from the site?

- (d) **Impact on Other Properties:** for example, will the use or value of abutting or otherwise related properties be affected? What will be consequences for other property of sound, light, odor, traffic, and other disturbances?
- (e) **Community Health:** for example, will the development tend to increase unemployment, decrease public revenues, destroy neighborhoods, or otherwise on balance take more from the town than it returns?

**63.1: Time to Begin Construction**

Construction must begin within one year after a Special Permit or building permit is issued, except for good cause. *(Amended 8 April 1985)*

**63.2: Time to Use Special Permit**

A Special Permit shall lapse within two years, including such time as may be required to pursue or wait the determination of an appeal from the grant of the permit, if a substantial use of the permit has not begun within that two years, except for good cause. *(Amended 8 April 1985)*

**63.3: Subsequent Amendments**

A Special Permit or building permit shall conform to any subsequent amendments to this Bylaw unless the use or construction has commenced, within six (6) months, and if construction is involved, unless such construction is continued through to completion at reasonable speed.

**SECTION 64: Site Plan Review** *(Added 11 May 2015)*

- a) **Purpose.** The purpose of Site Plan Review is to ensure that new development is designed in a manner which reasonably protects the environmental and scenic qualities of the neighborhood and the Town.
- b) **Site Plan Review Process.** The Site Plan Review process will be conducted by the Planning Board.
- c) **Applicability.** Site Plan Review shall be required for Large-scale Ground-Mounted Solar Facilities (Article 9), Light Industrial expansion, and other Non-Residential Uses.
- d) **Procedures.** An applicant for Site Plan Review shall file a completed application with the Town Clerk. The Town Clerk shall acknowledge receipt of the plans by signing and dating the application form. The application submitted to the Town Clerk shall include nine (9) copies each of an application form and any narrative documents as outlined in the submittal requirements. Upon receipt of the application, the Town Clerk shall transmit copies of the application to the Planning Board, Zoning Board of Appeals, Conservation Commission, Board of Health, the Highway Superintendent, Historical Commission, Energy Committee, the Fire Chief and the Police Chief. These Town Boards and municipal officials shall have 45 days from the date the completed application is received by the Town Clerk to report to the Planning Board their findings and recommendations, and they can attend the public hearing(s). No building permits for projects requiring Site Plan Review shall be issued until the Planning Board has approved the Site Plan or unless the required time period for taking action on a Site Plan has lapsed without action from the Planning Board. The applicant is also responsible for obtaining all applicable permits or approvals that may be required for the development from other Town Boards or municipal officials.
- e) **Public Hearing.** The Planning Board shall hold a public hearing within 65 days after the filing of a completed application and shall take final action on an application for Site Plan Review within 90 days of the close of the public hearing. Notice and posting of the public hearing shall comply with the provisions of M.G.L. Chapter 40A, Section 11, regarding notice for public hearings.
- f) **Required Contents of a Site Plan.** All Site Plans shall be prepared by a registered architect, registered land surveyor, registered landscape architect, or registered professional engineer. A locus map at a scale of 1" = 100 feet shall be provided showing parcels and roads within 300 feet of the property line. The Site Plans shall be on standard sheets of 24 inches by 36 inches and prepared at a scale of 1"=40 feet or finer. The Site Plan and accompanying narrative shall contain the following:
  - 1. Name of project, boundaries, locus map(s) showing site's location in Town, date, north arrow and scale of plan;

2. Name(s), address(es), and phone number(s) of the owner(s) of the land, the developer (if applicable), and/or their designee;
3. Name, title, address, and phone number of person(s) who prepared the plan;
4. Names and addresses of all owners of record of abutting lots and those within 300 feet of the property line;
5. All existing lot lines, easements and rights of way;
6. Location and use of buildings and structures within 300 feet of the site;
7. Location and use of all existing and proposed buildings and structures, including approximate height and floor area;
8. Location and size in acres of wetlands on the site reviewed and approved by the Conway Conservation Commission;
9. The location and a description of all proposed sewage disposal systems, sewer connections, water supplies, storm drainage systems, utilities and other waste-disposal methods;
10. Location and date of all registered "perc" tests on the site;
11. Location of all proposed new lot lines;
12. Existing and proposed topography at a two-foot contour interval for the proposed grading and landscape plan;
13. Location of existing public ways and proposed private ways on the site;
14. Location and size of proposed parking and loading areas, driveways, walkways, access and egress points;
15. The location and a description of proposed open space or recreation areas;
16. The location of existing farmland and agricultural soils classified as prime farmland or soils of state and local importance;
17. Size and location of existing and proposed sign(s);
18. Surface drainage strategy that prevents increased drainage off-site or pollution;
19. Existing vegetation that will be left undisturbed and proposed landscape features, including the location and a description of screening, fencing and plantings using non-invasive species;
20. Design features which will integrate the proposed development into the existing landscape, maintain neighborhood character, and screen objectionable features from neighbors and roadways;
21. Estimated average daily and peak-hour vehicle trips to be generated by the site and traffic flow patterns for both vehicles and pedestrians, showing adequate access to and from the site and adequate circulation within the site; and
22. Other reasonable information the Planning Board may request in order to make a decision.

g) **Decision.** The Planning Board's action shall consist of either:

1. Approval of the Site Plan based upon the determination that the proposed project is in compliance and consistent with the criteria set forth in this Bylaw;
2. Approval of the Site Plan subject to conditions, modifications, and restrictions as the Planning Board may deem necessary; or
3. Denial of the Site Plan based upon specific findings such as a determination that there was insufficient information submitted with the proposal to adequately review it or that the project is inconsistent with the requirements of these Zoning Bylaws.

The decision of the Planning Board shall be filed with the Town Clerk within 90 days of the close of the Public Hearing. The written record of the Planning Board's decision including any approved Site Plan shall be filed with the Town Clerk within 14 days of the final vote or sooner to meet the 90 day maximum time frame. A copy of any approved Site Plan and the decision of the Planning Board shall be sent by the Town Clerk to the Building Inspector and the applicant. The Site Plan shall be recorded at the Registry of Deeds by the applicant with confirmation of such recording sent to the Town Clerk.

h) **Administration, Waivers and Appeals.** The Planning Board may adopt and from time to time amend regulations for the submission and approval of Site Plans. The Planning Board may waive any of the requirements for Site Plan Review submittals and approval if the simplicity or scale of the project warrants such action. The Planning Board may also request any additional information it should need to render a decision. For large or complex projects, the Planning Board shall have the right to retain a registered professional engineer, planner, designer or other professional to advise the Board regarding any or all aspects of the Site Plan. The applicant shall be responsible for the costs of such advice. Appeals of the decision by the Planning Board on the Site Plan may be submitted to the Zoning Board of Appeals.

- i) **Compliance with Other Bylaws.** The Site Plan shall comply with any zoning bylaws for parking, loading, dimensions, environmental controls and all other provisions of the Zoning Bylaw. Before approval of a Site Plan, the Planning Board may request that the applicant make modifications in the proposed design of the project to ensure that the above criteria are met.
- j) **Review Criteria.** The Planning Board's evaluation of the proposed Site Plan shall include, as appropriate, the following:
  - 1. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls;
  - 2. Adequacy and arrangement of pedestrian traffic access and circulation, pedestrian walkways, control of intersections with vehicular traffic and overall pedestrian safety and convenience;
  - 3. Location, arrangement, appearance and sufficiency of off-street parking and loading;
  - 4. Location, arrangement, size, design and general site compatibility of structures, buildings, lighting and signs in relation to the terrain and to the use, scale, and proportions of existing and proposed buildings in the vicinity;
  - 5. Location of structures and buildings to provide a solar and wind orientation or other construction methods that encourage energy conservation;
  - 6. Adequacy of stormwater and drainage facilities;
  - 7. Adequacy of landscaping and other screening to minimize the visual impact of the development from public ways or abutting properties; and
  - 8. Protection of farmland and forestry resources.

**SECTION 65: Amendment**

This Bylaw may be amended from time to time at an Annual or Special Town Meeting in accordance with the provisions of Section 6 of Chapter 40A.

**SECTION 66: Validity**

The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof.

**SECTION 67: Applicability**

Where the application of this Bylaw imposes greater restriction than those imposed by other regulations, permits, restrictions, easements, covenants or agreements, the provisions of this Bylaw shall control.

**ARTICLE 7: FLOOD PLAIN DISTRICT *(Replaced 04 June 2022)***

**7.1: Purpose**

The purpose of the Floodplain Overlay District is to:

- a) Reduce damage to public and private property resulting from flooding waters
- b) Ensure public safety through reducing the threats to life and personal injury
- c) Eliminate new hazards to emergency response officials
- d) Prevent water quality contamination and pollution due to flooding.
- e) Avoid the loss of utility services, which if damaged by flooding would disrupt or shutdown the utility network and impact regions of the community beyond the site of flooding.
- f) Eliminate costs associated with the response and cleanup of flooding conditions

**7.2: Floodplain District**

The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas designated on the Town of Conway's Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency for the administration of the National Flood Insurance Program, dated June 4, 1980 and on the Flood Boundary & Floodway Map dated June 4, 1980. These maps indicate the 1%-chance regulatory floodplain. The exact boundaries of the District shall be defined by the 1%-chance base flood elevations shown on the FIRM and further defined by the Flood Insurance Study (FIS) report dated December 4, 1979. The effective

FIRM, FBFM, and FIS report are incorporated herein by reference and are on file with the Town Clerk and the Floodplain Administrator.

### **7.3: General information**

The floodplain management regulations found in this Floodplain Overlay District section shall take precedence over any less restrictive conflicting local laws, ordinances or codes. The degree of flood protection required by this bylaw is considered reasonable but does not imply total flood protection. If any section, provision or portion of this bylaw is deemed to be unconstitutional or invalid by a court, the remainder of the ordinance shall be effective.

### **7.4: Designation of Community Floodplain Administrator**

The Town of Conway hereby designates the position of the Town Administrator to be the official floodplain administrator for the Town.

The duties of the Floodplain Administrator include but are not limited to:

- a) Applying the regulations for development in the floodplain overlay district
- b) Ensuring that permits are applied for when development of any kind is proposed in the floodplain overlay district
- c) Oversight of the permit process and/or permit application review for development in the floodplain overlay district
- d) Coordinating with other local departments such as Building Inspector, Highway Department, Planning Board, Zoning Board of Appeals, and Conservation Commission. e) Notifying adjacent communities prior to alteration of a watercourse
- f) Dealing with compliance issues and enforcement actions such as activities to correct violations of the bylaw, and working with the appropriate local staff to coordinate such efforts
- g) Maintaining records of floodplain development, and keeping FEMA current and historic maps available for public inspection
- h) If the Town/City acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the Town/City will, within 6 months, notify FEMA of these changes by submitting the technical or scientific data that supports the change(s.) Notification shall be submitted to:

FEMA Region I Risk Analysis Branch Chief  
99 High St., 6th floor, Boston, MA 02110 And copy of

notification to:

Massachusetts NFIP State Coordinator  
MA Dept. of Conservation & Recreation, 251 Causeway Street, Boston, MA 02114

### **7.5: State Variances to Building Code Floodplain Standards**

The Conway Floodplain Administrator will request from the State Building Code Appeals Board a written and/or audible copy of the portion of any state hearing related to a variance granted for a property in the town of Conway, and will maintain this record in the community's files.

The Conway Floodplain Administrator shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering that property, in writing over the signature of a community official that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with the record of all variance actions for the referenced development in the Flood Plain District.

**7.6: Variances from the Conway Zoning Bylaw related to community compliance with the National Flood Insurance Program (NFIP)**

An application for a variance from the requirements of the Floodplain Overlay District, requested from the Zoning Board of Appeals, must meet all the requirements set out by State law and the Zoning Bylaw Article 7. In addition to those requirements, a variance may only be granted if: 1) Good and sufficient cause and exceptional non-financial hardship exist; 2) the variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and 3) the variance is the minimum action necessary to afford relief.

**7.7: Permits required for all proposed development in the Floodplain District**

The Town of Conway requires a building permit for all proposed construction or other development in the floodplain overlay district, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties. In addition to any Building Permit issued, the Conservation Commission must review and permit any proposed development in the Floodplain District. There is no subdivision control law in the town of Conway, Special Town Meeting, Article 4, October 17, 2011.

**7.8: Other necessary permits.**

The town’s permit review process includes the requirement that the proponent obtain all local, state and other permits that will be necessary in order to carry out the proposed development in the floodplain overlay district. The proponent must acquire all necessary permits, and must submit a list demonstrating that all necessary permits have been acquired.

**7.9: Unnumbered A Zones**

In A Zones, in the absence of FEMA BFE data and floodway data, the Building Inspector will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring new construction, substantial improvements, or other development in Zone A as the basis for elevating residential structures to or above base flood level, for floodproofing or elevating nonresidential structures to or above base flood level, and for prohibiting encroachments in floodways.

**7.10: Floodway encroachment**

In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the Town of Conway’s Flood Boundary & Floodway Map, encroachments are prohibited, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

**7.11: Watercourse alterations or relocations in riverine areas**

In a riverine situation, the Conway Floodplain Administrator shall notify the following of any alteration or relocation of a watercourse:

- Adjacent Communities, especially upstream and downstream

- Bordering States, if affected
- NFIP State Coordinator

Massachusetts Department of Conservation and Recreation

251 Causeway Street, 8th floor  
Boston, MA 02114

- NFIP Program Specialist

Federal Emergency Management Agency, Region I

99 High Street, 6th Floor  
Boston, MA 02110

### **7.12: AO and AH zones drainage requirements**

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

### **7.13: Recreational vehicles**

In A1-30, AH, AE Zones, all recreational vehicles to be placed on a site must be elevated and anchored in accordance with the zone’s regulations for foundation and elevation requirements or be on the site for less than 180 consecutive days or be fully licensed and highway ready.

### **7.14: Local Enforcement**

Local Enforcement. The Floodplain Administrator will be responsible for issuing a notice of non-compliance to the property owner for any non-compliant floodplain development in the Floodplain Overlay District. Such notice will identify the non-compliant development and will contain instructions regarding the actions that the property owner must take in order to come into compliance. Such actions may include, but are not limited to, removal of the structures or paving that might increase flooding or adversely impact flood risks to other properties. Any person violating the Floodplain Overlay District Bylaw shall be subject to a penalty of \$300.00 for each offense. Each day that such violation continues shall constitute a separate offense.

### **7.15: Definitions not found in the State Building Code.**

Note: National Flood Insurance Program (NFIP) definitions are found in Title 44 of the Code of Federal Regulations, section 59.1. The definitions below refer to their source; if the definition is from the MA building code, it is from the 9th Edition, which meets the minimum standards of the NFIP.

In order for the bylaw or ordinance to be clearly understood, it is necessary to define technical terms or key words. An understanding of these terms is a prerequisite to effective administration of the floodplain management bylaw or ordinance. Per FEMA Region I, these additional definitions must be included in local bylaws or ordinances.

DEVELOPMENT means any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. [US Code of Federal Regulations, Title 44, Part 59]

FLOOD BOUNDARY AND FLOODWAY MAP means an official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500-year floods and the 100-year floodway. (For maps done in 1987 and later, the floodway designation is included on the FIRM.)

FLOOD HAZARD BOUNDARY MAP (FHBM) An official map of a community issued by the Federal Insurance Administrator, where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or E. [US Code of Federal Regulations, Title 44, Part 59]

FLOODWAY. The channel of the river, creek or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. [Base Code, Chapter 2, Section 202]

FUNCTIONALLY DEPENDENT USE means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. [US Code of Federal Regulations, Title 44, Part 59] Also [Referenced Standard ASCE 24-14]

HIGHEST ADJACENT GRADE means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. [US Code of Federal Regulations, Title 44, Part 59]

HISTORIC STRUCTURE means any structure that is:

- a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - a. By an approved state program as determined by the Secretary of the Interior or
  - b. Directly by the Secretary of the Interior in states without approved programs.

[US Code of Federal Regulations, Title 44, Part 59]

NEW CONSTRUCTION. Structures for which the start of construction commenced on or after the effective date of the first floodplain management code, regulation, ordinance, or standard adopted by the authority having jurisdiction, including any subsequent improvements to such structures. New construction includes work determined to be substantial improvement. [Referenced Standard ASCE 24-14]

RECREATIONAL VEHICLE means a vehicle which is:

- a) Built on a single chassis;
- b) 400 square feet or less when measured at the largest horizontal projection; c) Designed to be self-propelled or permanently towable by a light duty truck; and d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

[US Code of Federal Regulations, Title 44, Part 59]

REGULATORY FLOODWAY - see FLOODWAY.

SPECIAL FLOOD HAZARD AREA. The land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE or V1-30. [Base Code, Chapter 2, Section 202]



**START OF CONSTRUCTION.** The date of issuance of a building permit for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns. For the purposes of establishing the Start of Construction, permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual “start of construction” means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Base Code, 2015 International Building Code, Chapter 2, Section 202]

**STRUCTURE** means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. [US Code of Federal Regulations, Title 44, Part 59]

**SUBSTANTIAL REPAIR OF A FOUNDATION.** When work to repair or replace a foundation results in the repair or replacement of a portion of the foundation with a perimeter along the base of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in linear feet, or repair or replacement of 50% of the piles, columns or piers of a pile, column or pier supported foundation, the building official shall determine it to be substantial repair of a foundation. Applications determined by the building official to constitute substantial repair of a foundation shall require all existing portions of the entire building or structure to meet the requirements of 780 CMR. [As amended by MA in 9th Edition BC]

**VARIANCE** means a grant of relief by a community from the terms of a flood plain management regulation. [US Code of Federal Regulations, Title 44, Part 59]

**VIOLATION** means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §60.3(b) (5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59]

## **ARTICLE 8: WIRELESS COMMUNICATION FACILITIES** *(added 23 October 2000)*

Purpose. The purpose of this Wireless Communications Facilities Bylaw is to protect the scenic, historic and natural resources of the Town of Conway while accommodating the wireless telecommunications needs of town residents and businesses. *(Amended 11 April 2005)*

This **Bylaw** does not apply to satellite dishes and antennas for residential use. *(Amended 11 April 2005)*

The Conway Planning Board shall issue Special Permit to duly licensed wireless carriers, as defined in the Telecommunications Act of 1996, 47 U.S.C. §332(c)(7)(ii), in Conway, providing the following:

Applicants shall:

- (a) Recognize the Conway Planning Board as the sole permit authority, for the town of Conway.
- (b) Demonstrate that existing facilities cannot accommodate applicant’s needs.
- (c) Be responsible for the cost of designing the entire wireless communication infrastructure for the entire Town of Conway.
- (d) Contact all other wireless carriers, currently licensed in Massachusetts, and demonstrate having made sufficient provisions for their shared and cooperative use of facilities.
- (e) Demonstrate that proposed new facilities will:
  - (1) maximize use for all currently licensed carriers,

- (2) protect the town's esthetic concerns by addressing color or camouflage, backdrop to protect ridge line, preservation of on site vegetation, and illumination, to minimize visual impact, (*Amended 11 April 2005*)
- (3) use existing structures where possible. (i.e., high tension tower, inside steeples, disguised on water towers, on public buildings), and where free-standing antenna are proposed, that only monopoles shall be used.
- (4) yield to the Conway Planning Board concerns of monopole height and number of monopoles. New towers shall be the minimum height necessary to comply with the purpose of this Bylaw, and not exceed 120 feet. (*Amended 11 April 2005*)
- (5) comply with existing building codes and the Conway Protective Bylaws.
- (f) Meet requests by the Town for access and antenna space to serve the needs of the Town's emergency service providers. (*Amended 11 April 2005*)
- (g) Comply with requirements set forth by the Planning Board to demonstrate the visibility of any proposed new tower(s), e.g., by a balloon or mast raised at the location of the proposed Wireless Communication Facility. (*Amended 11 April 2005*)
- (h) Not post any advertising on proposed facilities.
- (i) Pay for the cost of the Planning Board's communications consultants and attorneys to evaluate the application and provide any information requested by these agents.
- (j) Post bond sufficient to cover the cost of seizing and dismantling the proposed facilities, if not in continuous active use, for said purpose, for a period of six months and recognize the Conway Planning Board's authority to order such.
- (k) Provide, if applicable, a written statement that the proposed facility complies with, or is exempt from, applicable regulations administered by the Federal Aviation Administration (FAA), Federal Communications Commission (FCC), Massachusetts Aeronautics Commission and the Massachusetts Department of Public Health.
- (l) Provide annual certification demonstrating continuing compliance with the standards of the Federal Communications Commission, Federal Aviation Administration, the Massachusetts Department of Public Health and the National Standards Institute and required maintenance shall be filed with the Building Inspector by the Special Permit Holder.
- (m) Severability – if any portion of this Bylaw is determined to be invalid, it shall not render the rest of the bylaw invalid.

*Original adopted 23 October 2000; Approved by Attorney General 26 February 2001  
Amended 11 April 2005*

## **ARTICLE 9.0: Solar Facilities Bylaw**

*(Added as Section 22.5 "As-of-Right Siting" – Special Town Meeting 17 October 2011;  
Renamed and amended – annual Town Meeting – 11 May 2015) (amended 5 June 2021)*

### **(a) Purpose**

The purpose of this bylaw is to provide for the construction and operation of solar energy facilities and to provide 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.

### **(b) Definitions**

**As-of-Right Siting:** As-of-Right Siting shall mean that development may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval. As-of-right development may be subject to Site Plan Review to determine conformance with local zoning ordinances or bylaws. Projects cannot be prohibited but can be reasonably regulated by the inspector of buildings, building commissioner or local inspector.

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

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

**Intermediate Scale Solar Facilities:** Solar array that is greater than 25 kw but less than 250 kW DC in capacity.

**Residential/Small Commercial:** Any roof-mounted installation on an existing structure or any ground-mounted installation less than or equal to 25 kW DC in capacity.

**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 Ground Mounted Solar Photovoltaic Installations are referred to in this Article 9 as Large Scale Solar Facilities or LSSF.

**On-Site Solar Photovoltaic Installation:** A solar photovoltaic installation that is constructed at a location where other uses of the underlying property occur, including but not limited to dual use or Agrovoltatics, parking lots, etc.

**Prime Forest Land:** Prime forest land is land that has been classified as Prime 1 and/or Prime 2 by the Natural Resources Conservation Service, a division of the USDA, as shown on the Massachusetts GIS website.

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

**Solar Overlay District:** The Solar Electric Overlay District(s) as designated by the Town of Conway are shown on the Official Zoning Map dated February 22, 2021, in accordance with Massachusetts General Laws Chapter 40A. This map is hereby made a part of this Zoning Bylaw and is on file in the Office of the Conway Town Clerk. Large-scale solar installations are allowed as-of right in this district with site plan review.

**Solar Photovoltaic Array:** an arrangement of solar photovoltaic panels measured by the perimeter of the area in which the solar panels are located.

**Special Permit Granting Authority:** The Planning Board of the Town of Conway.

**Undisturbed Land:** Real property that has not been altered from its natural state by grading, dredging, filling, removal of trees and vegetation or other activities that have disturbed or altered the topography or soil on the property. Agricultural or land under an active forest management plan are considered undisturbed land.

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

### ***SECTION 9.1 General Requirements (added 5 Jun 2021)***

#### **(a) General Requirements for all Solar Power Generation Installations**

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

### **1. Compliance with Laws, Ordinances and Regulations**

The construction and operation of all 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 solar photovoltaic facilities, including the LSSF and access roads, shall meet the wetland buffer and river protection standards set forth by the Massachusetts Wetland Protection Act Regulations (310 CMR 10.0), and any additional local wetlands protection bylaws. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State Building Code.

### **2. Building Permit and Building Inspection**

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

### **3. Fees**

The application for a building permit for a solar photovoltaic installation must be accompanied by the fee required for a building permit.

### **(b) Specific Requirements for Solar Photovoltaic Installations**

#### **1. As-of-Right (building permit) – Roof or ground mounted less than 25KW DC (residential/small commercial)**

The following solar photovoltaic installations, as defined herein, are allowed as of right with issuance of a valid building permit from the building inspector in all zoning districts: Any roof-mounted installation on an existing structure or any ground-mounted installation less than or equal to 25 kW DC in capacity.

#### **2. As-of-Right with Site Plan Review-**

The following solar photovoltaic installations, as defined herein, are allowed as of right with site plan approval in all zoning districts:

a. Any ground-mounted installation greater than 25 kW DC over an existing parking surface, pedestrian walkway, or other paved area in a manner that maintains the function of the area beneath the canopy.

b. Any other ground- or roof-mounted installation greater than 25 kW DC (up to 1.25 Acres of panel coverage) but less than 250 kW DC in capacity.

c. Any solar installation located in the Solar Overlay District (required by Green Community Act)

3. **Special Permit**: Any solar photovoltaic installation 250 kW DC or above not specified in (d)(1) or (d)(2) above requires a special permit in all zoning districts from the Special Permit Granting Authority. For all special permit applications, site plan approval as described below is required, but shall not require a second public hearing, per bylaw or ordinance addressing site plan approval. The provisions set forth in Section 9.3 shall apply to the construction, operation, and/or repair of large scale ground-mounted solar photovoltaic installations.

Large Scale Solar Facilities located in the Solar Overlay District are exempt from the requirements of Section 9.3.

### **(c) Not Permitted**

No commercial solar photovoltaic installation may be permitted as follows:

1. Any solar photovoltaic installation of greater than 20 (twenty) acres of previously undisturbed land in solar array area.
2. Any solar photovoltaic installation requiring forest clearing greater than 10 (ten) acres of prime forested land.
3. Any solar photovoltaic installation on slopes of 15% or greater as averaged over 50 (fifty) horizontal feet. The Planning Board may consider waiving this up to 18% based on site-specific parameters. No cutting or filling may be done to reduce natural slopes.

**(d) Severability**

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby.

**SECTION 9.2** *(added 5 Jun 2021)*

***Intermediate Scale Solar Facilities Greater than 25 kW but less than 250 kW DC in Capacity***

**(a) Site Plan Review**

Ground-mounted large scale solar photovoltaic installations shall undergo Site Plan Review (see Section 64) by the Planning Board (in addition to a Special Permit where required) prior to construction, installation or modification as provided in this section.

**1. General**

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

**2. Required Documents**

Pursuant to the Site Plan Review process, the project proponent shall provide the following documents in coordination with or in addition to those required by Section 64:

- (a) An existing condition site plan showing:
  - i. Property lines and physical features, including topography and roads, characteristics of existing vegetation, wetlands, streams, and ledge for the project site; ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures, driveways, snow storage, and storm water management systems; including total acreage of disturbed area, total vegetation cleared, not including mowed fields. Blueprints or drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures.
  - iv. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
  - v. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
  - vi. Name, address, and contact information for proposed system installer;
  - vii. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any; and
  - viii. The name, contact information and signature of any agents representing the project proponent.

- (b) Documentation of actual or prospective access and control of the project site (*see Section 9.3(b)*);
- (c) An operation and maintenance plan (see Section 9.3(c));
- (d) Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);
- (e) Proof of liability insurance;
- (f) Description of financial surety that satisfies Section 9.3(o)(3);
- (g) Pre-construction photos from the right-of-way and nearest abutters.
- (h) Visualization of post-construction solar development, including perspectives from right-of-way(s), nearest abutting properties or residential structures, and tree coverage. The Special Permit Granting Authority may require additional visualizations to be submitted for review;
- and (i) A written statement from a qualified Acoustic Engineer that no continuous noise or vibrations normally perceptible above street noise without instrumentation will be able to be heard at any point more than 100 feet from the perimeter of the solar array.

The Planning Board may waive submittal of the Required Documents as it deems appropriate.

**SECTION 9.3:** (*added 5 Jun 2021*)

***Large Scale Solar Facilities Greater than 250 kW DC***

**(a) Large Scale Solar Facilities**

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

**1. Applicability**

This section applies to Large-Scale Ground-mounted Solar Photovoltaic Installations (Large Scale Solar Facilities or “LSSF”) 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.

**2. Special Permit Granting Authority & Site Plan Review**

The Planning Board shall be the Special Permit Granting Authority (SPGA) under this section in accordance with M.G.L. 40A, Section 9. Special Permits issued by the Planning Board shall require a positive vote by a supermajority vote of Planning Board Members. Any proposed Large Scale Solar Facility requires a Special Permit and Site Plan Review approval as specified in Section 9.2. The Planning Board may, in any particular case, waive strict compliance with the requirements set forth in section 9.3 where such action is in the public interest and not inconsistent with the intent and purpose of this Article. In addition to the Special Permit requirements found in Section 63 and the Site Plan Review requirements found in Section 64 of these bylaws, the Planning Board is empowered hereunder to review and approve Special Permit applications for Large Scale Solar Facilities and impose requirements for construction and maintenance of such facilities. The purpose of these requirements is to avoid site development which may result in negative environmental, neighborhood, or public safety impacts.

**(b) Site Control**

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

**(c) Operation & Maintenance Plan & Landscape Plan**

The project proponent shall submit a plan for the operation and maintenance of the LSSF, 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.

The project proponent shall submit a Landscape Plan detailing all proposed changes to the landscape of the site including: vegetation removal, temporary or permanent access roads, grading, exterior lighting and screening of structures. The Landscape Plan shall show the type and location of vegetation proposed to screen the installation (including appurtenant structures) from public ways and adjacent properties. The depth of the screen shall be 30 feet and will be composed of native trees and shrubs staggered for height and density that shall be properly maintained. The owner/operator shall not remove any naturally occurring vegetation such as trees and shrubs unless it adversely affects the performance and operation of the solar installation. Existing root structures and topsoil shall be maintained to the maximum extent possible. Where removal of naturally occurring vegetation such as trees and shrubs is planned, the owner of the LSSF must demonstrate that the removal of this vegetation is necessary and that its presence adversely affects the performance and operation of the solar installation. This prohibition does not include brush or small shrubs that would normally be removed by mowing the area around or under the solar array during ordinary maintenance of the LSSF. (d) **Utility Notification**

No LSSF shall be constructed until evidence has been given to the Planning Board that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar photovoltaic installation owner or operator’s intent to install an interconnected customer- owned generator. Off-grid systems shall be exempt from this requirement.

**(e) Dimension and Density Requirements**

**1. Setbacks**

For large -scale ground-mounted solar photovoltaic installations, front, side and rear setbacks from property lines to the solar array shall be a minimum of 100 feet.

Abutting towns: The LSSF shall be set back one hundred (100) feet from neighboring town lines, unless approval for a smaller setback is given by those towns;

Proximity to other LSSFs: New LSSFs shall be at least one mile from existing LSSFs. The distance between two LSSF installations shall be measured in a straight line from the perimeter of the existing solar array to the nearest perimeter of the proposed solar array. The Planning Board may waive this requirement if it determines that a closer array location would not adversely impact scenic, natural, or historic resources.

**2. Size**

The size of the LSSF shall not exceed 20 (twenty) acres of solar array area, except that where the Special Permit Granting Authority determines it appropriate, the maximum size of the facility may be increased by an additional 2 1/2 (two and one half) acres if the Facility is sited on glacial till and sandy soil that is not heavily forested.

**(f) Appurtenant Structures**

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

**(g) Consultation with Other Departments and Entities.**

No building permit shall be issued and no application for such permits shall be accepted for construction, exterior alteration, relocation, or change in use unless a site plan has been endorsed by the Planning Board, after consultation with other boards, including but not limited to the following: Building Inspector, Board of Health, Select Board, Historical Commission, Conservation Commission, Highway Department or DPW, Public Water Suppliers, Fire Department and Police Department. The Planning Board may waive any or all requirements of site plan review for external enlargements of less than 10% of the existing occupied area.

**(h) Design Standards**

**1. Lighting**

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

**2. Signage**

Signs on large-scale ground-mounted solar photovoltaic installations shall comply with the Town's sign bylaw. 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. Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.

**3. Utility Connections**

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

**4. Project Visibility.**

The LSSF shall be designed to minimize its visibility, including preserving natural vegetation to the maximum extent possible, blending in equipment with the surroundings, adding vegetative buffers to provide an effective visual barrier from adjacent roads and driveways, and to screen abutting dwellings. Large Scale Solar Facilities shall be effectively screened year-round from all abutting properties. Except for vehicular and pedestrian passageways and permitted signs, setback areas shall be modified only for additional screening. Where existing vegetation in the setbacks is insufficient to achieve year-round screening, additional screening shall be provided including, but not limited to, planting of dense vegetative screening, opaque fencing, berms, natural ground elevations, land contouring, and/or placement of the solar panels and appurtenant structures on the site, all depending on site specific conditions.

Tree cutting within the required setback area shall not be permitted if it would reduce to any degree the effectiveness of the year-round screening. The Planning Board may require a Landscape Easement to restrict the ability of the owner/operator of the LSSF from removing any trees within the Landscape Easement Area other than those that are dead or dying and/or present a hazard to persons and/or property.

If additional plantings are required for screening, a planting plan shall be submitted:



- i. Showing the types, sizes and locations of material to be used which shall be subject to the approval of the Planning Board.
- ii. Plantings shall be 4-6 (four to six)) feet in height at planting and staggered so as to fill the setback area and minimize the view of the arrays year round.
- iii. Plantings shall incorporate a diversity of plant species native to New England for any screens and vegetative erosion controls. Use of exotic plants, as identified by the most recent version of the “Massachusetts Prohibited Plant List” maintained by the Massachusetts Department of Agricultural Resources, is prohibited.
- iv. At least 75% of the plantings shall consist of evergreens and shall be evenly spaced throughout the area of the setback area.
- v. Planting of the vegetative screening shall be completed prior to connection of the installation. Plants shall be maintained and replaced if unhealthy by the owner/operator of the installation for the life of the facility.

#### **5. Animal and Plant Management.**

The open area of the site shall be seeded with a pollinator mix and maintained as bird and insect habitat to the maximum extent possible. Mowing may only be done to retain a natural functioning of the landscape. Plants shall be maintained and replaced as necessary by the owner of the LSSF for the life of the LSSF. The plan for vegetation control, and if applicable, animal control, shall be included in the Operation & Maintenance Plan. This requirement may be waived for underlying dual use or Agrovoltaics.

Herbicides, rodenticides, or any other pesticides may not be used to control vegetation or animals at a LSSF, except where herbicide use has been approved by the Planning Board for control of invasive species. In a dual-use LSSF, the agricultural operator, but not the LSSF operator, is exempt from this restriction.

#### **6. Location**

To the maximum extent feasible, the facility should be located to minimize impacts to existing agricultural land and should be compatible with continued agricultural use. The facility shall be designed to minimize impacts to environmentally sensitive land. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the LSSF or otherwise prescribed by applicable laws, regulations, and bylaws. The design shall minimize the use of concrete and other impervious materials to the maximum extent possible.

- i. **Habitat Impacts**–To the maximum extent feasible, LSSFs should not be located on Permanently Protected Open Space, Chapter 61 lands, Priority Habitat and BioMap 2 Critical Natural Landscape Core Habitat mapped by the Natural Heritage and Endangered Species Program (NHESP) and “Important Wildlife Habitat” mapped by the DEP.
- ii. **Wetlands Impacts**-The facilities, including the LSSF and access roads, shall meet the wetland buffer and river protection standards set forth by the Massachusetts Wetland Protection Act Regulations (310 CMR 10.0), and any additional local wetlands protection bylaws. The Planning Board may require the applicant to prepare MA DEP WPA Form 4a Abbreviated Notice of Resource Area Delineation (ANRAD) that includes a wetland evaluation and map of the site. The ANRAD, if required, shall also be submitted to the Conservation Commission.

#### **7. Noise**

To minimize the impact of any continuous noise or vibrations, all point source noise generators must be located centrally within the solar array at a minimum of 150 feet from the property lines of any adjacent properties. Any other sources of noise shall be minimized to the greatest extent possible.

### **8. Height**

The height of the Photovoltaic array – as part of a LSSF – shall not exceed twelve (12) feet above finish grade unless a higher array is necessary for dual purpose agricultural use. Other structures associated with the Facility shall conform to the relevant sections of the Conway Zoning Bylaws.

#### **(i) Stormwater Management.**

The Operations & Management Plan must include a Stormwater Management Plan. This plan must be submitted with the stamp and signature of a Registered Professional Engineer (PE) who is licensed in the Commonwealth of Massachusetts. The Stormwater Management Plan shall fully describe the project in drawings, narrative, and calculations. It shall include:

1. The site's existing and proposed topography;
2. All areas of the site designated as open space;
3. A description and delineation of existing stormwater conveyances, impoundments, environmental resources on or adjacent to the site into which stormwater flows;
4. A delineation of 100-year flood plains, if applicable;
5. Estimated seasonal high groundwater elevation in areas to be used for stormwater retention, detention, or infiltration;
6. Existing and proposed vegetation and ground surfaces with runoff coefficients for each;
7. A drainage area map showing pre- and post-construction water shed boundaries, drainage area and stormwater flow paths, including municipal drainage system flows, at a scale that enables verification of supporting calculations;
8. A recharge analysis that calculates pre- and post-construction annual groundwater recharge rates on the parcel;
- 9i. A description and drawings of all components of the proposed stormwater management system;
10. Soils information from test pits performed at the location of proposed Stormwater Management facilities, including soil descriptions, depth to seasonal high groundwater and depth to bedrock.

#### **(j). Safety and Environmental Standards**

##### **1. Emergency Services**

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

##### **2. Land Clearing, Soil Erosion and Habitat Impacts**

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

##### **3. Glare**

The design of the LSSF shall prevent reflected solar radiation or glare from becoming a public nuisance or hazard to adjacent buildings, roadways, or properties. Designs may include, but not

be limited to, deliberate placement and arrangement on the site, anti-reflective materials, solar glare modeling, and screening in addition to required landscaping.

**(k). Monitoring and Maintenance**

**1. Solar Photovoltaic Installation Conditions**

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

**2. Modifications**

All material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the Planning Board. At its discretion, the Planning Board may require a Site Plan Review and/or new Special Permit, depending upon the extent of the proposed modification.

**(l) Construction Plan and Monitoring.**

The Planning Board may require a construction plan that specifies the hours during which each type of construction activity will take place and the length of time that each specific construction activity is expected to take, including but not limited to the hours and days when construction activity may occur. The Planning Board may require a third-party inspector, selected by and acting under the direction of the Building Commissioner or Planning Board, to be employed to monitor compliance with all approvals and conditions during the LSSF's construction at the applicant's expense.

**(m) Annual Reporting.**

The owner or operator of a LSSF shall submit an annual report demonstrating and certifying compliance with the Operation and Maintenance Plan, the requirements of this guide, and approvals granted hereunder, including but not limited to continued management and maintenance of vegetation, compliance with the approved plans and any permit conditions, continuation of liability insurance, and adequacy of road access. The annual report shall also provide information on the maintenance completed during the course of the year and the amount of electricity generated by the facility. The report shall be submitted to the Selectboard, Planning Board, Fire Chief, Building Commissioner, Board of Health, Public Water Suppliers, and Conservation Commission (if a wetlands permit was issued) no later than 45 days after the end of the calendar year.

**(n) Transfer of Ownership**

In the event that the LSSF is sold, all municipal permits, conditions, and associated documentation shall be provided in both digital and hard copy format to the new owner, including all relevant documents requested by the Planning Board. The Planning Board must be provided with updated contact information for the new owner, including name, address, telephone number, and e-mail address. Authorities Having Jurisdiction, including local emergency personnel, must be provided with updated emergency contact information, including an emergency contact number that is staffed 24 hours a day. The new owner must abide by all conditions as detailed in the final permit. Any proposed changes to the project shall require approval as described in the Modifications section of this bylaw Section 9.3(k)(2)

**(o) Abandonment or Decommissioning**

**1. Removal Requirements**

Any LSSF that has reached the end of its useful life or has been abandoned consistent with Section 9.3(o)(2). of this bylaw shall be removed. The owner or operator shall physically

remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- i. Physical removal of all large- scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site.
- ii. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- iii Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
- iv. Any site that was deforested for the LSSF shall be restored to encourage native plant growth, including the planting of seedlings, if necessary, to establish growth. The cost of plant replacement shall be incorporated into the financial surety stipulated in Section 9.3(o)(3).

## **2. Abandonment**

Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the LSSF shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board. If the owner or operator of the LSSF 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**

Prior to commencing operation, proponents of a LSSF 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 acceptable by the Planning Board, 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 municipally- or state-owned facilities. 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. The financial surety shall be maintained by the developer for the lifespan of the facility, with annual certification notices from the surety company or bank for surety bonds submitted to the Planning Board.

### **ARTICLE 10: AGE RESTRICTED HOUSING COMMUNITY (ARHC) BYLAW** *(Added 8 May 2017)*

A master-planned development of land as a unified residential community, constructed expressly for use and residence by persons who have achieved a minimum age of fifty-five (55) years, in accordance with M.G.L. Chapter 151B, Section 4, Subsection 6, and also incorporating the preservation of natural open space areas as an integral element of the development. An Age Restricted Housing Community shall be permitted only within the Rural Residential/Agricultural Overlay District of Conway and only upon the granting of a special permit by the Planning Board.

#### **10.1 PURPOSE**

The purposes of the Age Restricted Housing Community bylaw are:

- a. To increase the variety of well designed, market rate and affordable housing choices for citizens who are 55 years of age and older
- b. To provide for building at a higher density than would normally be allowed, and allow greater flexibility in site planning and the preservation of open space and historic resources within the ARHC development; and

- c. To provide for the review of all such proposals prior to construction, to ensure compliance with the above intent and objectives and to assure that the proposal will not result in or contribute to incompatible use of the land, pollution of the soil or groundwater, traffic congestion or inappropriate site development.

## **10.2 APPLICABILITY**

The Planning Board (hereafter in this Section called the Board), acting as Special Permit Granting Authority, may grant a Special Permit for construction of a Age Restricted Housing Community (ARHC) and accessory structures, in the Rural Residential/Agricultural Overlay District as defined below:

### **10.2-1 Age Restricted Housing Community Overlay District Delineation:**

The age restricted housing community overlay district shall be defined as the areas of town serviced by a public way and zoned Rural Residential/Agricultural.

### **10.2-2 Uses in the ARHC Overlay District:**

Non-residential uses may be permitted in the ARHC development upon the issuance of a Special Permit by the Planning Board, provided that such use shall be consistent with those uses allowed by right and by Special Permit in Conway and the gross square footage of the proposed use does not exceed five percent (5 %) of the gross building square footage of the ARHC.

### **10.2-3 Age Qualification:**

An ARHC shall constitute housing intended for persons of age fifty-five or over in accordance with M.G.L. chapter 151B, section 4, sub-section 6. One hundred percent (100 %) of the dwelling units in an Age Restricted Housing Community shall each be occupied by at least one person fifty-five (55) years of age or older except in the event of the death of the qualifying occupant of a dwelling unit, or foreclosure or other involuntary transfer of a dwelling unit, a two (2) year exemption shall be allowed to facilitate the transfer of the dwelling unit to another eligible household.

### **10.2-4 Applicant Qualifications:**

The applicant for a Special Permit for an ARHC shall be the owner of the land proposed for such development or be authorized in writing by the owner to apply for and be issued such Special Permit.

### **10.2-5 Maximum Number of ARHC Dwelling Units in the Town of Conway:**

The maximum number of permitted housing units within all permitted ARHC developments in the Town of Conway shall be limited to a number equivalent to five percent (5 %) of the existing residential units (excluding ARHC units) located in the Town of Conway. For the purpose of this Bylaw, the number of residential units shall be as established by the Board of Assessors as of January 1 of each calendar year.

### **10.2-6 Affordability Requirement:**

A proposal shall, at a minimum, set aside fifteen percent (15%), with a minimum of one (1) unit per development, of the total number of dwelling units provided on the site as affordable Age Restricted housing. For the purposes of this Section, affordable Age Restricted housing shall be defined as dwelling units that are rented or sold to, and occupied by, households earning up to eighty percent (80%) of the Median Area Household Income, as such median is defined by the United States Department of Housing and Urban Development (HUD). Affordable Age Restricted rental units shall be "rent restricted", as such term is defined in the Federal Low-Income Housing Tax Credit Program, Internal Revenue Code Section 42(g)(2), such that rents, including utilities, are set at no more than thirty (30) percent of the income limit. Affordable Age Restricted units shall be dispersed throughout the ARHC and shall be externally indistinguishable from the market rate units. The property owner shall seek the services of a third party entity such as a local community development corporation to manage the assignment of affordable age restricted units.

### **10.2-7 Permanent Age Restriction:**

Each dwelling unit within an ARHC shall be subject to a permanent age restriction, described in a deed, deed rider or lease, and the organizational documents for the ARHC shall be recorded with the Franklin County

Registry of Deeds or run with the land for a minimum period of ninety-nine (99) years and shall be enforceable by any or all of the owners of the ARHC or by the Town.

### **10.3 DIMENSIONAL REGULATIONS AND DEVELOPMENT REQUIREMENTS**

Except as noted below, an ARHC shall comply with all applicable dimensional regulations and development requirements listed in Section 22, 23, 32, 33, and 41 of the Protective Bylaws of Conway.

- a. **Lot Area:** At the time of granting a special permit by the Planning Board, the property under consideration for an ARHC shall be located on one or more contiguous parcels, whether or not separated by a public or private way, having an area of at least three (3) acres.
- b. **Lot Frontage:** An ARHC shall have a minimum frontage of not less than one hundred (100) feet.
- c. **Setbacks:** There shall be no minimum standards for internal lot line setbacks within the ARHC; however the distribution of buildings and lots within the ARHC shall be distributed in a manner designed to enhance the primary and secondary resources as defined in Section 10.6-2 and 10.6-3. There shall be a minimum of thirty (30) feet between the edge of the access drive and any abutting property line.
- d. **Lot Width:** The lot or combination of lots upon which an ARHC is located shall maintain a minimum width of open land between the limits of work of the ARHC and any adjacent property of forty (40) feet, except for access to the development.
- e. **Open Space:** A goal that of fifty percent (50 %) of an ARHC lot be maintained as open space as defined in Section 10.5.
- f. **Number of Dwelling Units:** The maximum number of dwelling units allowed in an ARHC is twenty (20). The minimum number of dwelling units allowed in an ARHC is seven (7).
- g. **Distribution of Dwelling Unit Types:** In an ARHC development, the distribution of dwelling unit types shall be at the discretion of the applicant, except for the following standards:
  1. A goal that at least fifty percent (50 %) of the units constructed be single-family or two-family dwellings.
- h. **Parking:** Parking for motor vehicles shall be provided as follows:
  - o One and one-half (1-1/2) spaces per dwelling unit.
  - o Guest parking - One (1) space per six (6) dwelling units.
  - o Common Facility parking - Additional parking spaces shall be provided at shared or common facilities (swimming pool, clubhouse, etc.) within the ARHC provided that no common facility lot shall contain more than twelve (12) spaces.
  - o All driveways must meet the performance standards for driveways or common driveways as set forth in the Conway Zoning Bylaw, Sections 41.4 and/or 41.5 as applicable.

#### **10.3-1 Driveways and Lot Access:**

All proposed private driveways shall comply with Sections 22.4 Street naming and Building numbering, and/or 41.4 Driveways and/or 41.5 Common Driveways as set forth in the Protective Bylaws of the Town of Conway.

The construction and maintenance of roads, driveways, alleyways, and parking areas in an ARHC is the sole responsibility of the project applicant or an association of dwelling unit owners.

#### **10.3-2 Natural and Neighborhood Features:**

The plan for an ARHC shall be designed to maximize the preservation of natural and neighborhood features. To the extent possible, existing vegetation should be retained where such growth provides a benefit to the natural environment. In developed areas, the design of the ARHC shall also consider human designed landscapes by extending existing street tree plantings and by providing landscapes and landscape amenities that reinforce the physical layout of the neighborhood.

### **10.3-3 Pedestrian Facilities:**

The plan for an ARHC shall incorporate pedestrian systems that allow for the convenient and safe movement of those who choose to walk for leisure or as a means of transportation.

Connections to the Town's existing sidewalk network shall be made by the applicant where possible.

### **10.3-4 Landscaping and Screening:**

All service areas and equipment, rubbish and recycling containers, service outbuildings, and any other accessory facilities identified by the Planning Board, shall be adequately screened from the view of public ways and adjacent properties using vegetative plantings, fencing, berms, or a combination of these techniques.

### **10.3-5 Lighting:**

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

### **10.3-6 Accessory Buildings and Structures:**

In an ARHC, accessory buildings and structures may be permitted, including, storage and maintenance structures, garages, and other customary accessory structures. Accessory buildings and structures shall be shown on the Site Plan.

### **10.3-7 Other Facilities:**

All facilities for utility services, drainage, lighting and signage shall be in accordance with requirements established by the Planning Board, consistent with applicable provisions of the Protective Bylaws of Conway.

### **10.3-8 Project Maintenance:**

In an ARHC there shall be an organization of the owner(s) of the residential dwelling units, either a Condominium, Homeowners, Management, or Non-profit Association, which shall be responsible for the maintenance and repair of internal roads and driveways, snow plowing, landscape maintenance, trash removal, utility services and maintenance and repair of other common elements and facilities serving the residents. The Town of Conway shall assume no responsibility for these facilities unless specifically noted under separate agreement.

### **10.3-9 Water Supply and Wastewater Disposal:**

In every development the water supply and wastewater disposal shall comply with the regulations of the Conway Board of Health and applicable Massachusetts Department of Environmental Protection regulations.

## **10.4 BUILDING AND DWELLING UNIT REQUIREMENTS**

The following requirements shall apply to all buildings and dwelling units in an Age Restricted Housing Community:

### **10.4-1 Dwelling Unit Types:**

Dwelling Unit types allowed in an approved ARHC are:

- Single-Family Detached
- Duplex or Two-Family Dwelling
- Triplex or Three-Family Dwelling
- Quadplex or Four-Family Dwelling

### **10.4-2 Maximum Number of Bedrooms:**

No individual dwelling unit shall contain more than two (2) bedrooms.

**10.4-3 Maximum Height:**

No building shall exceed thirty-five (35) feet in height.

**10.4-4 Architectural Appearance:**

All buildings shall be compatible with the character, scale and context of the surrounding neighborhood. When an ARHC is located in a Historic district the applicant shall present and respond to review comments by the Conway Historical Commission.

**10.5 OPEN SPACE AND BUFFER AREA REQUIREMENTS**

No development, including primary or accessory structures, parking, or stormwater management shall take place within the required open space areas. Appropriately designed subsurface wastewater disposal may be located within the open space area at the discretion of the Planning Board.

**10.5-1 In ARHC development the following requirements for open space shall apply:**

- a. The open space shall be planned as single, contiguous areas whenever possible. Long thin strips or narrow areas of open space (less than 100 feet wide) shall occur only when necessary for access, as vegetated buffers along wetlands or the perimeter of the site, or as connections between open space areas.
- b. Open space areas shall be designed to protect or enhance the primary and secondary resources as defined in Sections 10.6-2 & 10.6-3.
- c. Where the proposed development abuts or includes a stream, river, body of water or wetland, these areas and the buffer to such areas shall be incorporated into the open space.
- d. Where a proposed development abuts land held for conservation purposes, the development shall be configured to minimize adverse impacts to the abutting conservation land. Trail connections should be provided where appropriate.
- e. No more than fifty percent (50 %) of the common open space shall be situated within wetlands or the Conway Flood plain Overlay District.
- f. The open space shall be owned in common by the owners of the dwelling units in the ARHC, or by an organization or entity owned and controlled by such dwelling unit owners. An enforceable restriction shall be recorded on all open space parcels providing that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking, roadway or active recreation.

**10.6 APPLICATION PROCEDURES**

**The Planning Board shall by regulation establish a fee schedule for each application.**

The procedure for issuance of a special permit for an Age Restricted Housing Community shall be as follows:

**10.6-1 Preliminary Plan:**

Applicants shall submit preliminary plans and materials for a joint review by the Zoning Board of Appeals and the Planning Board prior to formal application for special permit. The applicant may submit a Sketch Plan to assist the Boards in making a determination regarding maximum number of dwelling units to be permitted on the tract of land proposed for an AHRC. The sketch plan shall include a proposed development plan as follows:

- a. A proposed development plan drawn to scale shall clearly indicate the primary and secondary resource areas as defined below. From these two resource areas, the final plan shall clearly indicate the building placement, lots and driveway layout of the proposed AHRC.

**10.6-2 Primary Resource Areas:**

Primary resource areas should show the following:



- a. The location of all wetlands and floodplains as determined by a licensed hydrologist, and/or qualified licensed professional.
- b. The location of all significant woodlands, tree lines, or open fields or meadows, rocky outcroppings of ledge or bedrock, public water supply areas, watershed divides, aquifer recharge areas, drainage ways, wildlife habitat and corridor areas and areas of slopes greater than 10 % grade.
- c. The location of soil test pits with supporting documentation on test results.

**10.6-3 Secondary Resource Areas:**

Secondary resource areas should show the following:

- a. The location and description of all significant scenic views, fences and stone walls, roads and trails, recreational areas, historic structures and archeological sites.
- b. A statement of the proposed use and ownership of the open space as permitted by this bylaw.

**10.6-4 Maximum Housing Density of Proposed Development Plan:**

If the proposed area of common open space exceeds sixty percent (60 %) of the site, the permitted maximum housing density allowed under the ARHC special permit shall be the number of units permitted on conventional lots as determined by the board times 115 percent. If the proposed area of common open space exceeds seventy percent (70 %) of the site, the permitted maximum housing density allowed under the ARHC special permit shall be the number of units permitted on conventional lots as determined by the Planning Board times 130 percent.

**10.6-5 Conclusion of the Preliminary Plan Process:**

Upon the conclusion of the preliminary plan process, the Planning Board shall approve, approve with modifications or disapprove said preliminary plan and in the case of disapproval, the Planning Board shall state in detail the reasons for its disapproval.

**10.7 SPECIAL PERMIT w/ PLAN**

A Special Permit for an ARHC may be submitted after a preliminary plan application and determination of housing density has been made by the Planning Board. The purpose of the Special Permit Review is to further the purposes of this Bylaw and to ensure that new development of ARHC residential structures are designed in a manner that reasonably protects visual and environmental qualities and property values of the Town, and assures safe vehicular access, safe pedestrian movement, and appropriate drainage of surface water.

**10.7-1 Special Permit Application**

- a. Each application for an ARHC Special Permit shall be submitted to the Planning Board by the current owner of record or his written designee(s), accompanied by nine (9) copies of the Site Plan.
- b. The Planning Board shall by regulation establish a fee schedule for each such application.
- c. Deleted [Section 10.7-1 (c) was not approved by the Attorney General.]
- d. The Special Permit application process shall be conducted in accordance with SECTION 63: Special Permit Guidelines of these bylaws. Additional guidance may be found in SECTION 64 (f): Required contents of a site plan, and is included hereto by reference.

**10.7-2 Technical Consultants**

If after receiving an ARHC Special Permit application the Planning Board determines that it requires technical advice unavailable from municipal employees and departments to review the application, it may employ outside consultants. The Planning Board may, by majority vote, require that the applicant pay a reasonable review fee for the employment of outside consultants chosen by the Planning Board alone.

- a. A review fee may be imposed only if:
  - o The work of the consultant consists of review of studies prepared on behalf of the applicant, and

not of independent studies on behalf of the Planning Board,

- o The board finds that an adequate review cannot be performed by Town board members or employees,
- o The work is in connection with the applicant's specific project, and
- o All written results and reports are made part of the record before the Planning Board.

b. Before a fee is imposed:

- o The applicant shall be given five business days notice and opportunity to submit written comments relative to the invitation for bids or request for proposals,
- o The applicant shall be given five business days notice and opportunity to comment on all bids or proposals prior to the selection of the consultant and the award of a contract,
- o The applicant shall be given five business days notice and the opportunity to file an appeal of the selection of the outside consultant with the Selectboard, Grounds for said appeal are limited to written claims, with written documentation, that the consultant selected has a conflict of interest or does not possess the minimum required qualification in accordance with MGL Ch., 44, Section 53G.

#### **10.7-6 Finding**

- a. Before a finding on an ARHC Special Permit, the Planning Board may request the applicant to make modifications in the proposed design of the project to ensure that the Special Permit criteria are met.
- b. After a public hearing, the Planning Board may waive, for good cause shown, any or all requirements of ARHC Special Permit where such action is in the public interest and not inconsistent with the purpose and intent of this Bylaw.
- c. The Planning Board's finding shall consist of:
  - o A written denial of the application, stating that the plan fails to provide adequate information for the Planning Board to make a determination of whether the development satisfies decisional criteria set forth in this section.
  - o A finding that the project will constitute a suitable development subject to any conditions, modifications, and restrictions the Planning Board may deem necessary or appropriate.
  - o A finding that the proposed project does not constitute a suitable development in that it does not meet the criteria set forth in this and referenced sections of the Protective Zoning Bylaws of Conway.

#### **10.8 DEFINITIONS**

**CONDOMINIUM** - A legal form of ownership of real property, usually individual ownership of a dwelling unit in a multi-unit development where some rights are held in common by the residents of that development.

**HOMEOWNERS ASSOCIATION** - A private non-profit organization (corporation, association, or other legal entity) established by the developer to manage, maintain, support, and finance the common area and facilities and open space of an Age Restricted Housing Community Development, and to enforce certain covenants and restrictions.

**OPEN SPACE** - Undeveloped land set aside for common or individual ownership as a result of a Retirement Community Development, with conservation easements and other deeded restrictions to ensure that the land will remain permanently open and undeveloped. A condition of Age Restricted Housing Community Development approval is that open space may not be further subdivided.

**AGE RESTRICTED** - An individual who is 55 years of age or older.

**AGE RESTRICTED HOUSING COMMUNITY-** A master-planned development of land as a unified, self-contained, residential community, constructed expressly for use and residence by persons who have achieved a minimum age requirement for residency of fifty five (55) years or older, in accordance with M.G.L. Chapter 151B, Section 4, Subsection 6, and also incorporating the preservation of natural open space areas as an integral element of the development. An Age Restricted Housing Community shall be permitted only within the Rural Residential/Agricultural Overlay District of Conway and only upon the granting of a special permit by the Planning Board.

## **ARTICLE 11: ADULT USE RECREATIONAL MARIJUANA ESTABLISHMENTS AND MEDICAL USE OF MARIJUANA**

*(amended 24 Sep 2018 and 20 Jun 2020)*

### **11.1 Purpose and Intent**

It is the purpose of this article to promote public health, safety and general welfare, and to support the availability of recreational and medical marijuana in accordance with State law and regulations (935 CMR 500.000 et.seq.) and (935 CMR 501.000 et.seq.). To mitigate potential impacts to adjacent areas and the environment this bylaw will regulate the locations and site development to promote safe attractive business areas, prevent crime, maintain property values, protect and preserve the quality of residential neighborhoods and to protect the safety of children and young people in the vicinity of schools, public parks and other areas where children regularly congregate.

### **11.2 Special Permit Granting Authority & Site Plan Review**

The Planning Board shall be the Special Permit Granting Authority (SPGA) under this section in accordance with M.G.L. Chapter 40A, Sections 9 and 9A. Special permits issued by the Planning Board shall require a positive vote by a supermajority vote of Planning Board Members. Any proposed Marijuana Establishment requires a Special Permit and Site Plan Review approval. The Planning Board may in any particular case, where such action is in the public interest and not inconsistent with the intent and purpose of this Article, waive strict compliance with the requirements set forth in sections 11.4 and 11.5.

### **11.3 Definitions**

**Craft Marijuana Cultivator Cooperative** - a marijuana cultivator comprised of residents of the Commonwealth organized as a limited liability company or limited liability partnership under the laws of the Commonwealth, or an appropriate business structure as determined by the Cannabis Control Commission, that is licensed to cultivate, obtain, manufacture, process, package and brand marijuana and marijuana products for delivery to marijuana establishments but not to consumers.

**Host Community Agreement** – A marijuana establishment seeking to operate in Conway shall execute an agreement with the host community setting forth the conditions for having a marijuana establishment located within the host community. Such Host Community Agreement shall include, but not be limited to, all stipulations of responsibilities between Conway and the marijuana establishment. A Host Community Agreement between a marijuana establishment and a host community will include a community impact fee for the host community. The community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment and shall not amount to more than 3 per cent of the gross sales

of the marijuana establishment or a greater amount if allowed by the State. Such Host Community Agreement shall be effective for 5 years and can be renewed for successive 5 year periods at the option of the Town. Any cost to Conway imposed by the operation of a marijuana establishment shall be documented and considered a public record.

**Independent Testing Laboratory** - a laboratory that is licensed by the State Cannabis Control Commission and is: (i) accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Cooperation mutual recognition arrangement or that is otherwise approved by the Commission; (ii) independent financially from any medical marijuana treatment center or any licensee or marijuana establishment for which it conducts a test; and (iii) qualified to test marijuana in compliance with regulations promulgated by the Cannabis Control Commission.

**Licensee** - a person or entity licensed by the State Cannabis Control Commission to operate a marijuana establishment.

**Marijuana Cultivator** - an entity licensed to cultivate, process and package marijuana, to deliver marijuana to marijuana establishments and to transfer marijuana to other marijuana establishments, but not to consumers.

**Marijuana Establishment** – a marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of marijuana-related business licensed by the Commonwealth of Massachusetts except a medical marijuana treatment center.

**Marijuana Product Manufacturer** – an entity licensed to obtain, manufacture, process and package marijuana and marijuana products, to deliver marijuana and marijuana products to marijuana establishments and to transfer marijuana and marijuana products to other marijuana establishments, but not to consumers.

**Marijuana Products** – products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

**Marijuana Research Facility** – an entity licensed to engage in research projects by the State Cannabis Control Commission.

**Marijuana Retailer** – an entity licensed to purchase and transport marijuana and marijuana products from marijuana establishments and to sell or otherwise transfer marijuana and marijuana products to marijuana establishments and to consumers.

**Medical Marijuana Treatment Center (MTC)** - a marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of marijuana-related business licensed by the Commonwealth of Massachusetts under 935 CMR 501.000. Similar to a Marijuana establishment for adult use marijuana, except only allowed to supply products for Medical use of Marijuana in accordance with 935 CMR 501.000. (amended 20 Jun 2020)

For purposes of this bylaw section, "Marijuana Establishments" shall include "Medical Marijuana Treatment Centers" unless otherwise indicated.

#### **11.4 Requirements Regarding the Allowed Locations for Marijuana Establishments**

- A. See Sections 22 and 23 of these bylaws for locations for permitted Marijuana Establishments.
- B. Marijuana Establishments shall not be located within 500 feet of any existing public, parochial, or private school, kindergarten, State-approved day care center or other locations where children regularly congregate. This setback shall include the grounds on which said public, parochial, or private school, kindergarten or State-approved day care center is located on. The distance between any Marijuana Establishment and any public, parochial, or private school, kindergarten, State-approved day care center, or other location where children regularly congregate shall be measured in a straight line, without regard to intervening structures, from the closest property line of any existing public, parochial, or private school, kindergarten, or State-approved day care center or other places where children regularly congregate to the building, outdoor cultivation area, or parking area of the Marijuana Establishment, whichever is closest.
- C. Marijuana Establishments shall not be located within 500 feet from any existing public recreation area or park measured in a straight line, without regard to intervening structures, from the closest property line of the recreation area to the building, outdoor cultivation area, or parking area of the Marijuana Establishment, whichever is closest.
- D. Marijuana Establishments, excluding Marijuana Retailers, shall not be located within 200 feet from any existing residential use not located on the same lot with the marijuana establishment. The distance between a residential use and a Marijuana Establishment shall be measured in a straight line, without regard to intervening structures, from the closest property line of the residential property to the building, outdoor cultivation area, or parking area of the Marijuana Establishment, whichever is closest.

#### **11.5 Site Development, Permitting Standards & Application**

Pursuant to Chapter 40A Section 9A the following site improvements and amenities are required to protect public safety and neighboring property values, in addition to the Special Permit requirements found in Section 63 and the Site Plan Review requirements found in Section 64 of these bylaws. The Planning Board is empowered hereunder to review and approve Special Permit applications for Marijuana Establishments and impose requirements for: buffering; odor control; noise; outdoor lighting; parking; access to the site from public roads; hazardous materials; and landscaping and buildings. The purpose of these requirements is to avoid site development which may result in negative environmental, neighborhood, or public safety impacts.

- A. Dimensional Requirements: All outdoor cultivation areas, buildings, or structures containing a Marijuana Establishment shall meet the setback requirements of this Section 11 and all other dimensional requirements of the appropriate district as specified in these bylaws. For any property proposed to contain a Marijuana Establishment, the applicant for a Special Permit for such use shall demonstrate that

the entire property shall comply with these requirements and controls following the establishment of such use thereon. Unless otherwise specified for all outdoor cultivation areas, a minimum setback (clearance) from any property line of 50 feet shall be required. (amended 20 Jun 2020)

- B. **Parking and Loading Requirements:** On-site parking and loading shall be provided in accordance with the requirements of Section 34 of these bylaws. For any property proposed to contain a Marijuana Establishment Business, the applicant for a Special Permit for such use shall demonstrate that the entire property shall comply with these requirements and controls following the establishment of such use thereon.
- C. **Site Screening:** Rear and side property lines shall be screened from any neighboring residential, educational, childcare or recreational uses or properties. Screening shall be by fencing that is 3-1/2 feet tall within 20 feet of the street and 6 feet tall elsewhere on the property and/or a 10 foot wide vegetated planting of hardy evergreens and deciduous trees and shrubs no more than six (6) feet on center and no less than five (5) feet in height or other appropriate screening approved by the granting authorities.
- D. **Lighting & Security:** Energy efficient site lighting shall be maintained at a minimum lumen to ensure adequate visibility on the property to ensure public safety. Light standards may not exceed twenty (20) feet in height and shall be shielded from abutting properties and shall incorporate full cut off fixtures to reduce light pollution. Additional security features, such as security cameras covering external areas with the capability to function with minimal lighting at night, shall be installed and maintained. Internal lighting in greenhouses shall be fully screened from abutters after sunset.
- E. **Noise & Odors:** No objectionable noise, or objectionable marijuana odors, or other objectionable odors detectable at the property line of the Marijuana Establishment shall be allowed, except outdoor marijuana cultivators shall be allowed to mitigate marijuana odors through siting, use of low-odor seed varieties, and other odor-reduction methods as practicable. For odor mitigation plans, applicants for permits for Marijuana Establishments at Tiers 5-11 shall provide, at their own expense, written documentation with supporting research. Documentation must be provided by qualified professionals approved by the Planning Board. Minimum qualifications shall consist either of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field with expertise in the areas. (amended 20 Jun 2020)
- F. **Complaints of objectionable noise or odors exceeding four incidents within a two-week period shall be investigated by the town. Complainants may seek relief from the Board of Health, from the ZBA for violations of the Special Permit, or by mediation from the Agricultural Commission or Selectboard. (amended 20 Jun2020)**
- G. **Hazardous Materials:** Submission of a complete list of all inorganic and organic chemicals, pesticides, fertilizers, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use. Depending on the quantities proposed to be used or stored on site, the Planning Board may request that a Hazardous Materials Management Plan be prepared to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism.

The plan should include spill containment and clean-up procedures, and provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces. Permitting priority will be granted to organic cultivation.

- H. Driveways: Driveways shall comply with Section 34 of these bylaws.
- I. Signs: All signs for a Marijuana Establishment must meet the requirements of Section 33 of this bylaw and the State Regulations (935 CMR 500.000 et. seq.) including the requirement that, no advertising signs shall be located within twenty feet of a public or private way and must be set back a minimum of twenty (20) feet from all property lines.
- J. Buildings and Structures: Appearance of buildings or structures for Marijuana Establishments shall be consistent with the appearance of other buildings or structures in Conway, not employing unusual color or building designs that would attract attention to the premises. In the Rural Residential and Agricultural Zoning District new buildings or structures for Marijuana Cultivators including Craft Marijuana Cultivators shall resemble local agricultural buildings, such as barns or greenhouses. Marijuana Establishment Buildings or structures shall not exceed 10,000 square feet in total on any parcel in the Rural Residential and Agricultural Zoning District.
- K. Cultivation: Marijuana products are required to be grown indoors in buildings, greenhouses, barns or other structures or outdoors in a manner that minimizes public nuisances including odors, noise, and lighting to neighboring properties.
- L. Energy Efficiency: Marijuana establishments are required to prepare an energy efficiency plan. The use of renewable energy sources such as solar should be considered.
- M. Water Efficiency: Marijuana Establishments are required to prepare a plan for water management and efficiency. Applicant shall provide expected water usage amounts for cultivation or processing and will address whether such amounts will impact nearby public or private drinking water supplies or other water resources in the area. Applicants for permits for Marijuana Establishments at Tiers 5-11 shall provide, at their own expense, written documentation with supporting research. Documentation must be provided by qualified professionals approved by the Planning Board. Minimum qualifications shall consist either of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field with expertise in the areas. (amended 20 Jun 2020)
- N. Marketing: Marijuana Establishments shall not be allowed to disseminate or offer to disseminate marijuana marketing materials to minors or suffer minors to view displays or linger on the premises. No free samples may be provided by Marijuana Establishments to consumers.
- O. Applications: The applicant requesting permission to operate any Marijuana Establishment must file their application with the Special Permit Granting Authority and the Town Clerk. Such application shall contain the information required by Section 63 Special Permit and any rules and regulations established by the Special Permit Granting Authority and the State Cannabis Control Commission. The application shall also include:

1. Name and Address of the legal owner and Licensee of the Marijuana Establishment;
  2. Name and Address of all persons having lawful, equity or security interests in the Marijuana Establishment;
  3. Name and Address of the Manager of the Licensed Marijuana Establishment;
  4. The number of proposed employees; and
  5. Proposed security precautions.
- P. Site Plan Review: No Marijuana Establishment shall be established prior to submission and approval of a site plan by the Planning Board, pursuant to Section 64. The site plan shall, at the minimum, depict all existing and proposed buildings, parking spaces, driveways, service areas, and other open uses. The site plan shall show the distances between the proposed Marijuana Establishment and all existing uses within 1,000 feet of the property lines of the proposed Marijuana Establishment.
- Q. Change in License or Owner: The Owner and Licensee of any Marijuana Establishment issued a Special Permit under this bylaw shall report, in writing, within 10 business days any change in the name of the legal owner of the Marijuana Establishment or any expiration or suspension of a license to the Building Inspector and Planning Board. Any failure to meet this requirement of this Bylaw will result in the immediate issuance of a cease and desist order by the Building Inspector ordering that all activities conducted under the Special Permit cease immediately.
- R. Change of Ownership: A Special Permit issued under this Article shall lapse upon any transfer of ownership or legal interest of more than 10% or change in contractual interest in the subject premises or property. The Special Permit may be renewed thereafter only in accordance with this Article 11 and Section 63 (Special Permit) and Section 64 (Site Plan Review) of these bylaws.
- S. Host Community Agreement: Applicant shall submit the proposed Host Community Agreement that is required between a Marijuana Establishment and the Town it is operating in at the time they submit their Application.

### **11.6 Expiration**

A Special Permit to operate a Marijuana Establishment shall expire after a period of five calendar years from its date of issuance but shall be renewable for successive five-year periods thereafter, provided that a written request for such renewal is made to the Special Permit Granting Authority at least 60 calendar days prior to said expiration and that no objection to said renewal is made and sustained related to compliance with the conditions of the Special Permit as well as public safety factors applied at the time the Special Permit renewal is requested. In addition, a Host Community Agreement satisfactory to Conway shall be provided if requested by the Town.



## **11.7 Severability**

The invalidity of any provision or any Section of this Article shall not invalidate any other provision or Section thereof.

## **Article 12: Large Scale Industrial & Commercial Facilities Zoning Bylaw** *(added 14 May 2018)*

### **12.1: Purpose**

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

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

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

### **12.2: Definitions**

Large Scale Industrial and Commercial Facility (LSICF) -- A large-scale industrial or commercial facility is defined as any industrial or commercial facility, including any associated facilities, which requires the mandatory preparation of an Environmental Impact Report (EIR) pursuant to the Massachusetts Environmental Policy Act (MEPA), specifically review thresholds sections 11.03(1)(a), and 11.03(3)(a) thru (9)(a). A LSICF shall also include: (1) any facility or use that creates 10 or more acres of impervious surface and (2) a facility or use which alters 50 or more acres of land, unless the project is consistent with an approved agricultural use plan or a forest cutting plan in accordance with State law.

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

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

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

### **12.3: Applicability**

- a. This article applies to all LSICF and ASEFs that will be permitted or constructed after the effective date of the article. This bylaw shall not apply to the maintenance, construction, or improvement of a local road or to any residential use. This bylaw article shall not apply to Wireless Communications Facilities (see Zoning Article 8)
- b. All existing LSICF and ASEFs constructed prior to the adoption of this article shall not be required to meet the requirements of this article, provided that any modification to an existing LSICF or ASEF that occurs after the effective date of this article and which materially alters the size, type, location, or operation of the LSICF or ASEF shall require compliance with this Bylaw, as determined by the Planning Board.
- c. If any part or provision of this Bylaw or the application thereof to any person or business is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the remainder of this Bylaw, or the application thereof to other persons, businesses or circumstances unless by operation of law.
- d. An applicant for a proposed LSICF must seek a Special Permit from the Special Permit Granting Authority which is the Conway Planning Board. The Planning Board shall conduct a Special Permit process in accordance with Conway’s Zoning Bylaws upon receipt of a completed Application and will determine if the proposed LSICF and ASEFs will meet the requirements of this Bylaw. The Planning Board may request additional information needed to determine compliance with this bylaw. The Applicant may not proceed with the construction or operation of the LSICF or ASEFs until a Special Permit has been granted by the Planning Board based on their determination that all the requirements of the Bylaw will be met.
- e. If a project has been determined to be exempt from local zoning due to Federal pre-emption, the LSICF or the ASEF shall still require a Certificate of Compliance that the project meets the requirements of this bylaw to the maximum extent feasible.
- f. No LSICF or ASEF shall be constructed, installed or modified without also obtaining a building permit and paying any required fees.

### **12.4: Compliance with Bylaw**

- a. No LSICF or ASEFs shall be constructed or operated within the Town unless such facilities can meet all the requirements of this Bylaw. The Planning Board will make this determination based upon the application and any independent studies the Planning Board may require. In order to determine compliance, the Planning Board may require independent noise or engineering studies, air and water quality testing, or other tests or studies to be paid for by the Applicant in accordance with this Bylaw.
- b. The application for a LSICF and ASEFs shall be accompanied by a fee as established by resolution of the Planning Board consistent with State law.

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

### **12.5: Pre-Application Conferences**

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

### **12.6: Application**

The Applicant shall provide to the Planning Board all of the following materials with eight (8) copies and an electronic version:

- a. A narrative describing an overview of the project, including the number of acres to be involved and the location, number and description of the planned facilities, including staging and storage areas and other locations needed during the construction, operation or maintenance of the LSICF and ASEFs.
- b. GIS mapping, in paper and digital versions, at an appropriate scale of the proposed location of the LSICF and ASEFs for the purpose of identifying properties that may be impacted by noise, earth removal or other related disturbances and to inform the Fire Chief, Police Chief, Emergency Management Director, Highway Superintendent and other emergency responders. Included in this map shall be an area within the development site for the location and parking of vehicles and equipment used in the transportation of personnel and/or development and use of the site. Such location shall be configured to allow the normal flow of traffic on public roads to be undisturbed.
- c. The contact information of the Applicant and if different, the organization and individuals responsible for the construction, operation and maintenance of the LSICF and ASEFs shall be

provided to the Planning Board and all emergency responders. Such information shall include a phone number where such individual or individuals can be contacted 24 hours per day, 365 days a year. Annually, or upon any change of relevant circumstances, the Applicant shall update such information and provide it to the Planning Board, Select Board and all emergency providers.

- d. A certification or evidence satisfactory to the Town that, prior to the commencement of any activity related to the LSICF or ASEFs, the Applicant shall have accepted and complied with any applicable bonding or permitting requirements. Bonding shall be required to ensure repair by the Applicant of any damage to municipal property including but not limited to roads, culverts, bridges, water or sewer facilities, cemeteries, and buildings caused by the construction, operation or maintenance of the LSICF and ASEFs.
- e. A description of and commitment to maintain safeguards that shall be taken by the Applicant and its agents to ensure that the Town's roads and property utilized by the Applicant shall remain free of dirt, mud and debris resulting from construction, operation or maintenance activities and the Applicant's assurance that such roads or property will be promptly repaired, swept or cleaned if damage, dirt, mud or debris occur as a result of Applicant's usage, with guaranties that meet the requirements of §13.0 of this article.
- f. Verification that a copy of the Applicant's "Operation's Preparedness, Prevention and Contingency Plan" for public health and safety has been provided to the Planning Board and all emergency responders, including a statement that the Applicant/Owner, upon changes occurring to the Operation's Preparedness, Prevention and Contingency Plan, will provide to the Town and all emergency responders a revised copy marked with the revision date.
- g. Assurance that, at least 30 days prior to the commencement of any construction activities, the Applicant shall provide an appropriate site orientation and training course of the Operation's Preparedness, Prevention and Contingency Plan for all emergency responders. The cost and expense of the orientation and training shall be the sole responsibility of the Applicant. The Applicant or Owner shall be required to hold at least one site orientation and training course every six months under this section unless such requirement is waived by the Planning Board and Select Board in their sole discretion.
- h. A copy of the documents submitted to the Massachusetts Department of Environmental Protection (MassDEP) and a Community and Environmental Impact Analysis meeting the requirements set forth in §7.0 of this article.
- i. A copy of all permits and plans from the appropriate Federal, State, and/or local regulatory agencies or authorities issued in accordance with applicable laws, environmental requirements and regulations for the proposed use.
- j. A traffic impact study and roadway maintenance and repair agreement meeting the requirements set forth in §10.0 of this Bylaw.
- k. Assurance that before the commencement of any construction, operation, maintenance or emergency activities, information shall be provided to residents and businesses per the requirements in §9.0 of this Bylaw.
- l. Certification that private freshwater well testing will be completed in compliance with §11.0 of this article.

- m. Submission of a Water Withdrawal Plan identifying the source of the water, how many gallons will be used and withdrawn each day, the origination of the water, proposed truck routes, and all permits issued by the Commonwealth or any other governmental body. The site(s) for the treatment and disposal of the water shall also be identified.
- n. Submission of a Hazardous Materials Management Plan that includes a complete list of chemicals, pesticides, herbicides, fertilizers, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use. For those activities using or storing such hazardous materials, a Hazardous Materials Management Plan shall be prepared and filed with the Fire Chief, Police Chief, Emergency Management Director and the Board of Health. The Plan shall include: provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and clean-up procedures; provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces; evidence of compliance with the Massachusetts Hazardous Waste Management Act 310 CMR 30, including obtaining an EPA identification number from the Massachusetts Department of Environmental Protection; and proposed down-gradient location(s) for groundwater monitoring well(s), should the Planning Board or Board of Health deem the activity a potential groundwater threat.
- o. Submission of a Stormwater Management, Erosion and Restoration Plan to the Planning Board and Conservation Commission that addresses any pre-construction, construction, operation or maintenance activities. The clearing of natural vegetation shall be limited to that which is necessary for the construction, operation, and maintenance of the LSICF and ASEFs. Revegetation shall be provided for restoration areas required for construction but not necessary for ongoing maintenance or operations. Only native species typically found in the facility's environment may be used for restoration. Stormwater management shall meet all MADEP requirements and shall follow MADEP's Best Management Practices.

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

### **12.7: Community and Environmental Impact Analysis & Health Impact Assessment**

- a. A Community and Environmental Impact Analysis Statement shall be submitted to the Planning Board to determine compliance with the requirements of this Bylaw and shall be drafted by a qualified environmental engineering consultant hired by the Applicant. The purpose of the statement is to determine the impact of the project on the environment of the existing site and the resultant changes the proposal will have on the site and surrounding area. This information will assist the Town to determine if the LSICF and ASEFs can meet the requirements of this Bylaw. The Town can also request a "peer review" of the Community and Environmental Impact Analysis by a qualified environmental engineering firm that the Planning Board selects at the

Applicant's expense (see Section 8.0). At a minimum, the statement shall provide the following information:

- i.** A description of the proposed development, its purpose, a schedule of construction and length of operation. This information and technical data must be sufficient to allow a thorough assessment of the proposed LSICF and ASEFs impacts on municipal services, environmental resources and public health and safety during construction and operation.
- ii.** A comprehensive description of baseline environmental and infrastructure conditions including but not limited to ambient noise levels, air and water quality, stormwater and drainage patterns, and water and sewer infrastructure before any activities associated with the development occur.
- iii.** A description of the environmental impacts of the proposed development both during and after complete build out of the proposed development. This description should focus on the environmental resources most likely to be affected by the development proposal and on the broader regional aspects of the environment impacts, including ecological inter-relationships. These impacts shall be defined as direct or indirect changes in the existing environment and as either beneficial or detrimental. Whenever possible, these impacts should be quantified. This discussion should include the impact not only upon the natural environment but upon land use as well.
- iv.** Provide a separate analysis of all potential hazard impacts and hazard areas that could be caused by man-made accidents and natural hazards (flooding, hurricanes, earthquakes, tornadoes, snow/ice storms) and their probabilities and risks, with supporting statistics developed by an analysis of similar LSICF and ASEF's in comparable locations.
- v.** A discussion of measures which are required by Federal, State or local regulations to protect or mitigate impacts upon the environment, including any associated research or monitoring. Include sufficient documentation and supporting material to demonstrate that the proposed measures will function as expected.
- vi.** A discussion of the unavoidable adverse impacts described in Subsections 7.b. and 7.c. — both the short-term impacts (i.e., those occurring during build out of the LSICF and ASEF's), the long-term impacts, and the cumulative impacts to the environment. Particular attention should be paid to the LSICF and ASEF's relationship to trends of other LSICF or ASEF's developments (i.e., cumulative noise or air quality degradation posed by other industrial or commercial development).
- vii.** Hydrologic analysis and information, including, but not limited to, a description, inventory, analysis and evaluation of the existing groundwater conditions and mapping of surficial geology. This analysis must be focused in terms of both surface water and groundwater quality and quantity; a discussion of likely and possible changes to these resources; and a discussion of measures to reduce or mitigate the identified impacts. Potential impacts on residents and businesses served by private wells located within 750 feet of the proposed LSICF and ASEFs (see Section §11.0) should be included in the analysis.
- viii.** Odor, vapors or particulate matter produced by the LSICF and ASEF's shall not exceed Federal or State air quality standards. Applicant shall identify all hazardous pollutants that will be emitted that affect air quality that are regulated by MassDEP or the EPA. For all air

pollutants generated, Applicant shall hire a qualified consultant to perform air quality testing in accordance with Section 11.c.

- b. The express standards and conditions referenced herein shall be addressed by the Applicant and submitted with the Application. An escrow account for the review by professional consultants pursuant to M.G.L. Chapter 44, Sec. 53G shall be established by the Applicant in the initial amount of \$100,000 or such other amount as the Planning Board may determine. The escrow account shall be maintained following final approval of the Application to provide for inspections in accordance with §8.0 herein.
- c. The Applicant shall conduct a Health Impact Assessment (HIA) of the proposed project as part of the Community Impact Analysis. An HIA is a systematic process that uses an array of data sources and analytic methods and considers input from stakeholders to determine the potential effects of the project on the health of a population and the distribution of those effects within the population. The HIA shall provide recommendations on mitigating, monitoring and managing those effects.

### **12.8: Professional Consultants**

The Town may employ a professional consultant or consultants to conduct peer reviews of the proposal or to perform and/or review the testing and monitoring results in accordance with M.G.L. Chapter 44, Sec. 53G, at the expense of the Applicant.

- a. The function of the peer review consultant(s) shall be to advise, counsel, represent and/or aid the Town in ensuring compliance with this Bylaw, any other applicable municipal codes on such matters relating to the construction or operations of LSICF and ASEFs, and with State law and regulations applicable to the project. The Consultant shall identify best practices for the design and development of the project.
- b. During the construction, operation, maintenance, decommissioning or reclamation activities associated with the LSICF and ASEFs, the Town shall require the services of an on-site inspector with proven background and experience in the type of LSICF and ASEFs proposed to be constructed, whose role will include but not be limited to the following:
  - i. Review of all applications for construction or operation of the LSICF and ASEF.
  - ii. Inspection of the site of the LSICF or ASEFs during key phases of construction.
  - iii. Inspection of LSICF or ASEFs upon receipt of a written complaint and request for an inspection by the property owner.
  - iv. Communication with appropriate municipal personnel if the inspector believes the Applicant, Operator or contractor is violating a municipal code addressed in this Bylaw or another bylaw of the Town or any other State or Federal law or regulation.
  - v. Authority to request and receive any records, logs, reports relating to the status or condition of the LSICF and ASEFs needed to determine compliance with this Bylaw.
  - vi. In the event a professional peer review consultant is employed for the purpose of advising, counseling or representing the Planning Board relative to ensuring compliance with this Bylaw, the cost for such services of the professional consultant shall be assessed

against and paid for by the Applicant or Owner of the LSICF or ASEF in addition to any other consulting fees or charges assessed pursuant to this Bylaw.

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

### **12.9: Information Provided to Municipal Officials and Residents**

Prior to the commencement of any construction activities of the LSICF and ASEFs, but no later than ninety (90) days prior, the Operator shall provide the following information to the Select Board, Planning Board, Board of Health, Fire Chief, Emergency Management Director and Highway Superintendent. For natural gas transmission lines and associated venting, metering and compressor stations, the potential impact area appropriate for the diameter and maximum allowable operating pressure for the proposed pipeline will be determined and GIS mapping of the impacted areas will be provided to the Town and residents in those zones as well as information on what to do or not do in the event of an emergency.<sup>1</sup>

- a. A GIS map of the location of the LSICF and ASEFs and a copy of the plans prepared by a professional engineer or land surveyor licensed in the Commonwealth of Massachusetts showing the proposed location of all construction activity including equipment and structures and all permanent improvements for the LSICF or ASEFs including any post-construction surface disturbance in relation to natural resources and public or private property in the surrounding area. Following the construction of the LSICF and ASEFs, “as-built” drawings based on surveys completed by a professional surveyor and stamped by a Professional Engineer shall be provided to the Select Board, Fire Chief, Police Chief, Emergency Management Director and Highway Superintendent. Both large scale paper copies and digital versions shall be provided at an appropriate scale.
- b. A detailed description of the planned operations at the LSICF and ASEFs.
- c. The contact information for the construction manager and/or Operator of the LSICF and ASEFs.
- d. The availability of the construction manager and/or Operator to hold a meeting with residents and municipal officials to allow for questions and answers. The meeting(s) shall be held at least three months prior to the start of construction and monthly thereafter until completion of construction.
- e. Applicant will identify any aspect of construction or operations of the LSICF or ASEFs that will cause a disturbance such as noise, vibration, pollution, erosion, etc. Applicant will certify that it will provide notice of any planned blasting, venting of gas or release of other hazardous materials at least 2 weeks in advance. Any venting of gas or release of other hazardous materials, erosion, or other disturbance created as a result of an emergency shall be reported to the Planning Board, Select Board and Board of Health within 24 hours of the event.

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<sup>1</sup> A Model for Sizing High Consequence Areas Associated with Natural Gas Pipelines by Gas Research Institute and C-FER Technologies, 2000



In addition, each resident, business or other non-residential use within 1,000 feet of any construction or staging area and any resident identified to be in a hazard zone (e.g. explosion, fire, etc.) shall be provided with information about the hazards and what to do in the event of an emergency. Residents within 1,000 feet of any construction or staging area and any resident identified to be in a hazard zone will be notified by the Applicant of public meetings scheduled to answer questions.

#### **12.10: Road Use and Construction Site Access**

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

- a. A map showing the planned vehicular access route to the development, indicating all private access roads, all state, county and local roads, bridges and other transportation infrastructure that may be used, and the type, weight, number of trucks, and delivery schedule necessary to support each phase of the development.
- b. A list of all trucking contractors or employees of the Applicant who will travel to and from the development site with evidence of required registrations, licenses and insurance coverage.
- c. The proposed routes must be designed to ensure adequate capacity for existing and projected traffic volumes, allow for efficient movement of traffic, including appropriate turning radii and transition grade, and minimize hazards to users of public roads as well as adjacent property and human activity.
- d. To the maximum extent feasible, vehicle access to any construction or staging area proposed in the vehicular access plan should be an arterial or collector road.
- e. Use of local roads for construction vehicle access serving primarily residential neighborhoods requires written permission from the Select Board (see 12.a.i.) and MassDOT and must be in compliance with M.G.L. Chapter 85, Section 2.
- f. The Planning Board in consultation with the Select Board and Highway Superintendent reserves the right to designate alternate routes in the event the Applicant's proposed routes are deemed inadequate, unsafe or overly disruptive to normal vehicular traffic by a Massachusetts registered professional engineer working on behalf of the Town.
- g. In accordance with M.G.L. Chapter 90, Section 17C, the Select Board may reduce speed limits on local roads that may present public safety hazards for trucks hauling construction materials.
- h. The Applicant and Operator of the LSICF and ASEF's shall execute a roadway maintenance and repair agreement with the Town and post a bond in a form acceptable to the Planning Board, Select Board and its Town Counsel prior to beginning any work on the LSICF or ASEFs (see §13.0 of this Bylaw).
- i. The roadway maintenance and repair agreement shall require the Applicant and Operator to conduct an inventory, analysis and evaluation of existing conditions on Town roads, culverts and bridges along the proposed transportation route, including photography, video and core boring.

The roadway maintenance and repair agreement will identify the responsibilities of the Applicant and Operator to prepare, maintain or repair Town roads, culverts or bridges before, during and immediately after construction and during operation of the LSICF and ASEF. The Applicant and Operator shall take all necessary corrective action and measures as directed by the Planning Board or Select Board pursuant to the agreement.

- j. Beginning with its intersection with a public road, any access road for the LSICF or ASEFs shall be improved in accordance with Planning Board, Select Board or Conservation Commission requirements to prevent water pollution and soil erosion or damage to roads. No water, sediment or debris shall be carried off-site onto any public or private property. If any substantial amount of mud, dirt or other debris is carried onto public property from the development site of the LSICF or ASEFs, the Operator shall immediately stop work, clean the mud, dirt or debris and implement a remedial plan as directed by the Planning Board, Conservation Commission or Select Board to manage stormwater and prevent runoff of mud, dirt or other debris onto public property including roads, wetlands and surface waters. Operator will be responsible for the clean-up of any sediment or debris carried onto private property if clean-up is requested by the private property owner and permission for access is given.
- k. All-weather access roads suitable to handle emergency equipment shall be provided and maintained in accordance with the directions of the Select Board in consultation with the Fire Chief, Police Chief, Emergency Management Director and the Conservation Commission.
- l. The Operator shall take necessary safeguards to ensure appropriate dust control measures are in place.
- m. All applicable permits or approvals must be obtained, including access or driveway permits, to State, county or local roads, construction permits within State, county or local roads, and permits for overweight or oversize loads. Access directly to State roads may require MassDOT highway occupancy permits for overweight vehicles. The Applicant shall provide to the Planning Board and Select Board a copy of State permits and all other applicable permits or approvals.
- n. A suitable off-road area within the development site for vehicles to stand while gaining access to and from the LSICF and ASEF development site shall be provided so that the normal flow of traffic on public or private roads is undisturbed. Ingress and egress points to the development site from any public road shall be located and improved in order to meet the requirements of the 2006 MassDOT Project Development and Design Guide<sup>2</sup> as amended. Private roads, easements, and driveways may not be used for access to the LSICF and ASEF development site unless written permission from the property owner(s) is obtained and a copy of such permission is provided to the Planning Board and Select Board prior to the issuance of the Special Permit.
- o. The Operator shall take all necessary precautions to ensure the safety of persons in areas established for road crossing and/or adjacent to roadways (for example, persons waiting for public or school transportation). Where necessary and permitted, during periods of anticipated heavy or frequent truck traffic associated with the development, the Operator will provide flagmen in accordance with 701 CMR Section 7.0 to ensure the public safety and shall include adequate signs and/or other warning measures for truck traffic and vehicular traffic.

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<sup>2</sup><https://www.massdot.state.ma.us/highway/DoingBusinessWithUs/ManualsPublicationsForms/ProjectDevelopmentDesignGuide.aspx>

## **12.11: Water, Noise & Air Testing & Monitoring**

- a. **Water.** The Applicant and Operator of a LSICF and/or ASEFs shall provide the Planning Board, Select Board, and Board of Health with the results of a pre-construction and post-construction water analysis and flow rate for each existing public freshwater well within 750 feet<sup>3</sup> of the LSICF and/or ASEFs, and for each private freshwater well within 750 feet of the LSICF and/or ASEFs provided that written permission is given by the property owner. If surficial geology warrants a greater testing area, the Planning Board or Board of Health can direct the Applicant and Operator to conduct testing for additional wells within the larger area provided that written permission is given by the property owner. The tests shall conform to the following requirements and all costs to conduct the testing, including any restoration of the property, and the testing results will be provided to the property owner free of charge:
- i. Water samples must be collected and analyzed utilizing proper sampling and laboratory protocol from an independent MassDEP certified water testing laboratory.
  - ii. Well samples shall be analyzed and flow rates (gpm) determined prior to any construction activity to document baseline water quality data and flow rates of the well, especially before any planned blasting.
  - iii. If permission is granted in writing by the property owner, a post-construction sample analysis shall be submitted for water quality testing by the Operator within three months after construction is completed for wells within 750 feet. Wells within 750 feet of the facility or associated structures shall be tested on an annual basis throughout the life of the facility with the results provided to the property owner with a copy to the Planning Board and Board of Health. If surficial geology warrants a greater testing area, the Planning Board or Board of Health can direct the Applicant and Operator to conduct testing for additional wells within the larger area on an annual basis provided that written permission is given by the property owner.
  - iv. Parameters to be tested for include, but are not limited to, methane, chloride, sodium, TDS, pH, arsenic, barium and strontium, radon, a subgroup of the volatile organic chemicals (VOCs) called BTEX (benzene, toluene, etc.), and residuals from any blasting or directional drilling operations conducted during the construction phase.
  - v. If the results of the pre-construction and post-construction sample analyses indicate that well water contamination, as defined by MA DEP or EPA standards, has occurred or flow rates have been reduced, the owner of the well should file a complaint against the Owner/Operator with the regional MassDEP office with a copy to the Town Board of Health. The Owner/Operator shall be required to conduct clean-up activities or repair or replace the well affected. After clean-up activities are conducted, the well shall be tested monthly for the contaminants listed in 11.a.iv. for a 24-month period to ensure that the clean-up has been properly completed. The well(s) shall be tested annually thereafter with the permission of the property owner.

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<sup>3</sup> MADEP Interim Wellhead Protection Area default radius for non-community sources for non-transient wells (NTNC).

- vi. LSICFs or ASEFs that do not use any hazardous materials for their operations may request a waiver of water quality testing after the post-construction analysis has been completed if post-construction testing results find no decline in water quality or production rates in comparison to the base line water quality data. Such waiver must be approved by both the Planning Board and Board of Health.
- b. **Noise.** The Applicant and Operator shall test and monitor the noise resulting from the LSICF and ASEFs:
- i. Prior to the construction or operation of a LSICF and ASEFs, the Applicant shall identify ambient noise levels at the property line of each residential and business structure located closest to the proposed facility within a ¼ mile radius and at public buildings, schools, medical, emergency or other public High On-site Population locations closest to the proposed facility within a ¼ mile radius. For linear facilities such as pipelines, ambient noise level shall be measured at a minimum every ½ mile along the proposed route 300 feet away from the edge of the proposed easement and at each residence and business located within ¼ mile of the proposed easement. Any testing proposed to be completed on private property requires the written permission of the property owner. “Ambient” noise is defined as the background A-weighted sound level that is exceeded 90% of the time and the background C-weighted sound level that is exceeded 90% of the time measured during a 2 hour time period during the quietest part of the day or night (day 7:00 a.m. to 7:00 p.m.; night 7:00 p.m. to 7:00 a.m.). All testing required by this Bylaw shall be done by a qualified licensed professional acoustical engineer paid for by the Applicant. All testing shall be done in accordance with the professional standards of the appropriate accrediting agencies and the sound level meter used in conducting any evaluation shall meet the American National Standard Institute's standard for sound meters or an instrument and associated recording and analyzing equipment. The Planning Board may have the results of the noise testing “peer reviewed” in accordance with §8.0 of this Bylaw.
  - ii. The Applicant shall provide to the Planning Board and Board of Health documentation of the established ambient noise levels prior to starting construction of a LSICF or ASEF.
  - iii. Complaints received by the Town shall be addressed by the Applicant and Operator of the LSICF or ASEF within 24 hours following receipt of notification by continuously monitoring for a period of 48 hours at the nearest property line to the complainant's residential or public building or 100 feet from the complainant's public building, school, medical, emergency or other High On-site Population public location or facilities, whichever is closer. Any testing proposed to be completed on private property requires the written permission of the property owner. The Applicant and Operator shall report the findings to the Planning Board and Board of Health and shall mitigate the problem to the allowable level of noise if the noise level exceeds the allowable standard (see Section 12. i.).
- c. **Air.** For all air pollutants generated, Applicant shall hire a qualified consultant to perform air quality testing to be conducted on a daily, weekly or more frequent basis at any LSICF or ASEF emission location including Compressor Stations, Metering Stations or Venting Stations located in the Town during the operation of the facility to protect public health and safety. Ambient air quality monitoring station(s) should be installed at least a year prior to the construction and operation of the LSICF or ASEF’s in order to establish baseline conditions. Air quality reports should be provided to the Town and if requested by the State, to State officials on a monthly basis at a minimum.

## **12.12: Design, Installation & Reclamation**

### **a. Access.**

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

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

- i.** Permanent structures associated with the LSICF and ASEFs shall comply with the height regulations for the zoning district in which the LSICF or ASEF is located.
  - ii.** There shall be an exemption to the height restrictions contained in this section for the temporary placement of construction equipment necessary for the construction of a LSICF or ASEFs. The duration of such exemption shall not exceed the actual time period of construction or re-construction of the LSICF or ASEF.
    - (a)** The time period of such exemption shall not exceed six months.
    - (b)** The Operator shall give the Planning Board and Select Board prior written notice of at least 30 days before the beginning date for its exercise of the exemption.
- c. Setbacks.** Surface land uses affiliated with the LSICF or ASEF and all supporting equipment and structures shall be setback a minimum of seven hundred and fifty (750) feet from residential buildings and all commercial, industrial and institutional uses or a minimum of five hundred (500) feet from the nearest lot line, whichever is greater. Setbacks in areas of “High On-site Populations” shall be increased to ¼ mile (1,320 feet). The Planning Board shall determine whether setbacks should be increased beyond ¼ mile if the area that could be impacted in the event of an accident at the LSICF or ASEF is greater than ¼ mile. High On-site Populations<sup>4</sup> are defined in the footnote below. Applicants that cannot comply with the setback requirements can request a waiver from the Planning Board to reduce the setback distance but must notify in writing any property owner(s) within the setback area that would be impacted by the requested reduction.
- d. Screening and fencing.** The Applicant shall provide a plan prepared by a registered Landscape Architect licensed in Massachusetts showing landscaping proposed to be installed to screen and buffer surface land uses affiliated with the LSICF and ASEFs. The landscape plan shall incorporate the use of native vegetation, including evergreens, shrubbery and trees, which shall be of sufficient density to screen the facility. Security gates and/or fencing as appropriate to ensure public safety shall be installed after consultation with the Planning Board, Select Board, Fire Chief, Police Chief and Emergency Management Director with openings no less than 12 feet wide. Any fence installed

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<sup>4</sup> High on-site populations are defined as the following: retirement housing; assisted living facilities; congregate living facilities; convalescent services; parks, churches, detention facilities; day care services (commercial); hospitals; medical offices exceeding 5,000 sq. ft. of gross floor area; and educational facilities (public or private) that pose a public safety concern due to the characteristics of the occupants, development, or site that would make evacuation difficult in the event of an emergency.

shall be surrounded by native vegetation to provide screening. Existing vegetation in proximity to LSICF and ASEFs shall be preserved to the greatest extent possible. Emergency responders shall be given means to access all LSICF and ASEFs in case of an emergency. Warning signs shall be placed on the security gates or fencing associated with the LSICF or ASEFs, providing notice of the potential dangers and the contact information in case of an emergency.

- e. **Lighting.** To minimize night time light pollution, no LSICF and ASEFs shall be artificially lighted except as required for emergency night time access or by the FAA. Beacon light permitted only if required by the FAA with evidence of this FAA requirement submitted with the application. Any other lights shall be full-cutoff down lighting and shall be shielded so as to prevent intrusion upon roads and nearby properties.
- f. **Shadow & Flicker.** Wind Energy Facilities shall be located in areas that do not result in any shadowing or flickering on off-site inhabited buildings. The applicant has the burden of proving that any shadowing or flickering on off-site inhabited buildings will not occur.
- g. **Odor.** No LSICF and ASEFs shall produce odors detectable beyond its property boundaries.
- h. **Noise.** The Applicant and Operator shall minimize, to the extent possible, noise resulting from the LSICF and ASEFs and will conduct testing and monitoring as outlined in Section 11.b.:
  - i. The noise generated during the LSICF or ASEF operations shall comply with the provisions of the Massachusetts Department of Environmental Protection's, Division of Air Quality Noise Regulations (310 CMR 7.10), as amended, or the provisions of this Bylaw, whichever is more restrictive.
  - ii. A source of sound will be considered in violation of this Bylaw if the source:
    - (a) increases the broadband sound level by more than 5 dB(A) above ambient pre-construction noise levels during construction activities and subsequent operations or increases the broadband sound level by more than 5 dB(C) above the pre-construction ambient noise level during construction activities and subsequent operations; or
    - (b) produces a "pure tone" condition, when an octave band center frequency sound pressure level exceeds the two (2) adjacent center frequency sound pressure levels by three (3) decibels or more; or
    - (c) results in sound or noise levels at any time greater than 35 dB(A) during the day or 30 dB(A) at night (typical range 30-40 dB(A) for rural or quiet residential areas); or
    - (d) for low frequency sounds or noise with octave center frequencies at or below 125 Hz, results in a maximum noise level outside the property boundary greater than 40 dB(C)
  - iii. Exemption from the standards established in this subsection may be granted by the Planning Board during the construction stages of a LSICF or ASEF development for cause shown and upon written agreement between the Applicant and the Planning Board. However, any such exceedances of the noise standards shall not be allowed between 7:00 p.m. and 7:00 a.m.
  - iv. LSICF and ASEFs shall be constructed and operated to mitigate sound levels and shall install devices or use other equipment to mitigate sound levels to ensure that the noise level standards at residential or public buildings, medical, emergency or High On-site Population locations are not exceeded.

- i. **Hours of operation.** Except for emergency operations, hours of construction activities or operation at a LSICF or ASEFs are limited to Monday through Friday, 7:00 a.m. to 7:00 p.m. and not permitted on weekends or legal holidays. Truck traffic related to the construction or operations of the LSICF or ASEFs shall be allowed only during these hours of operation. Exemption from the standards established in this subsection may be granted by the Planning Board for cause shown and upon written agreement between the Applicant and the Town.
  
- j. **Reclamation/restoration of all disturbed areas.**
  - i. Reclamation shall be initiated as soon as weather and ground conditions permit after construction or re-construction of a LSICF or ASEFs, and reclamation shall be completed no more than six months after this point.
  - ii. Reclamation shall be carried out on all disturbed areas and achieve the following objectives:
    - (a) Final soil profiles shall be designed to equal or reduce soil erosion potentials over stable pre-operation conditions, and final land forms shall be stable;
    - (b) Preexisting visual character of site shall be restored or enhanced through planting of local or adaptive vegetation. Invasive species shall not be considered acceptable; and
    - (c) Disturbance of soil cover shall be minimized.
  
- k. **Prohibitions.**
  - i. No LSICF or ASEF shall be allowed to be constructed or operated in the floodway (*see diagram*) designated as such in the Flood Insurance Study (FIS) and shown on the Federal Emergency Management Agency (FEMA) FIRM maps dated 7/2/80 or any successor maps issued by FEMA.
  - ii. Construction or operation of a LSICF or ASEFs outside of the floodway but in the one-hundred-year floodplain is discouraged but may be permitted by the Planning Board in its discretion if the following provisions are met:
    - (a) The Applicant must provide conclusive documentation that no other location is more appropriate for location of the LSICF or ASEF other than a location within the floodplain.
    - (b) An adequate emergency evacuation plan shall have been produced by the Applicant and filed with the Town.
    - (c) No storage of chemicals shall be permitted within the floodplain. An exemption from this requirement may be granted by the Planning Board, in consultation with the Board of Health, if the Applicant and Operator can show that such storage will not potentially cause any harm to property, persons or the environment in the case of a one-hundred-year flood, and further provides security to the Town ensuring the Applicant's and Operator's ability to remedy any damage or injury that may occur.
    - (d) Only necessary and needed structures will be permitted within the floodplain.
    - (e) All structures within the floodplain shall be designed to withstand a one-hundred year storm event.
    - (f) An engineer registered in Massachusetts and qualified to present such documentation that the LSICF or ASEF will not cause additional flooding on adjacent, upstream and/or downstream properties shall provide such documentation to the Town.

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

### **12.13: Performance Bond, Insurance and Indemnity**

- a. Performance Bond or Escrow Account. The Applicant shall submit to the Town a Performance Bond from a surety authorized to do business in the State to cover any damage to public property that occurs as a result of the construction of the LSICF and any ASEF's in an amount and for a term (e.g. construction period plus 2-3 years) determined by a professional engineer and acceptable to the Town. In addition, the Applicant shall provide a bond or establish an escrow account that will ensure that all testing and maintenance provisions required during the life of the LSICF or ASEF facility are completed in accordance with this bylaw and any agreement with the Planning Board related to the LSICF and/or ASEF.

The bonds shall provide, but not be limited to, the following condition: there shall be recoverable by the Town, jointly and severally from the principal and surety, any and all damages, loss or costs suffered by the Town in connection with the Applicant's geophysical operations within the Town. The rights reserved to the Town with respect to the bond are in addition to all other rights of the Town, and no action, proceeding or exercise of a right with respect to such bond shall affect any other rights of the Town.

- b. Insurance. Prior to conducting any operations hereunder, the Applicant, Operator and its contractors shall furnish certificates of insurance to the Planning Board showing the Town as an additional insured with respect to operations conducted within the Town and showing liability insurance covering commercial, personal injury, and general liability in amounts not less than \$1,000,000 per person, \$10,000,000 per occurrence, and \$10,000,000 property damage. The Applicant and Operator shall also provide certificates of insurance to the Planning Board and Select Board showing the Town as an additional insured under general liability umbrella insurance with a minimum amount of \$10,000,000.
- c. Indemnity. The Applicant shall protect, indemnify, defend and hold the Town, its officers, employees, agents and representatives harmless from and against all claims, demands and causes of action of every kind and character for injury to, or death of, any person or persons, damages, liabilities, losses and/or expenses, occurring or in any way incidental to, arising out of, or in connection with the Applicant or its contractors', agents', or representatives' construction or operation of the LSICF or ASEF, including attorneys' fees and any other costs and expenses incurred by the Town in defending against any such claims, demands and causes of action. Within 30 days of receipt of same, the Applicant and/or Operator shall notify the Town in writing, of each claim for injuries to or death of persons, or damages or losses to property occurring or in any way incidental to, arising out of, or in connection with the Applicant's or its contractors', agents', or representatives' operations conducted or associated with the LSICF or ASEFs. At the Town's discretion, the Town may conduct an independent investigation, monitor, and review the processing of any such claim, to ensure that such claim is handled as required herein.
- d. Notwithstanding anything contained herein to the contrary, construction and/or operation of the LSICF or ASEF is not allowed until a copy of all Bonds, Insurance Certificates, Agreements or Studies required by this Bylaw have been completed and provided to the Planning Board, Select Board and Town Counsel. The Performance Bond and the Certificates of Insurance must also be filed with the Town Clerk.



## **12.14: Removal Requirements and Abandonment**

- a. Any LSICF or ASEF which has reached the end of its useful life or has been abandoned consistent with Section 14.0 of this bylaw shall be removed. The Owner and/or Operator shall physically remove the installation no more than 180 days after the date of discontinued operations. The Owner or Operator shall notify the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:
  - i. Physical removal of all LSICF or ASEF structures, equipment, security barriers and transmission lines from the site.
  - ii. Disposal of all solid and hazardous waste in accordance with local, State, and Federal waste disposal regulations.
  - iii. Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the Owner or Operator to leave landscaping or designated below-grade foundations or structures in order to minimize erosion and disruption to vegetation.
  - iv. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the LSICF or ASEF shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board and Select Board. If the owner or Operator of the LSICF or ASEF fails to remove the installation in accordance with the requirements of this section within 180 days of abandonment or the proposed date of decommissioning, the Town retains the right, after the receipt of an appropriate court order, to enter and remove an abandoned, hazardous or decommissioned LSICF or ASEF. The Applicant and Operator shall agree to allow entry to remove an abandoned or decommissioned installation. The Town's cost for the removal may be charged to the property owner in accordance with the provisions of M.G.L. 139.
  - v. The Owner/Operator of a LSICF or ASEF shall provide a form of surety, either through an escrow account, bond or other form of surety approved by the Planning Board and Select Board in consultation with Town Counsel to cover the cost of removal in the event the Town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board and Select Board, in consultation with a Professional Engineer and Town Counsel, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the Applicant and the Town. Such surety will not be required for municipal or State-owned facilities. The Applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

## **12.15: Violations and Penalties**

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

**A certified copy of these Protective Zoning Bylaws is available from the Conway Town Clerk during normal Business hours.**