ZONING BY-LAWS OF THE TOWN OF MONTEREY
Adopted by Town Meeting on May 6, 2017

SECTION 1.0 PURPOSE AND AUTHORITY

1.1 PURPOSE. These regulations are enacted to promote the general welfare of the Town of Monterey, to protect the health and safety of its inhabitants, to encourage the most appropriate use of land throughout the town, to preserve the cultural, historical and agricultural heritage of the community, to increase the amenities of the town, and to reduce the hazard from fire by regulating the location and use of buildings and the area of open space around them, all as authorized by, but not limited to, the provisions of the Zoning Act, G.L. c. 40A, as amended, and Section 2A of 1975 Mass. Acts 808.

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

1.3 SCOPE. For these purposes, the construction, repair, alteration, reconstruction, height, number of stories, and size of buildings and structures, the number of dwellings on one lot, the size and width of lots, the percentage of lot area that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land in the Town are regulated as hereinafter provided.

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

1.4.1 Applicability; Nonconformities. Except as herein after provided, this By-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building permit or special permit issued before the first publication of notice of the public hearing on this By-law or any amendments thereto, but shall apply to any change or substantial extension of such use, to a building permit or special permit issued after the first notice or said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use in a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or a structural change to a single or two family residential structure does not increase the nonconforming nature of said structure.

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

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

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

SECTION 2.0 DISTRICTS

2.1 DISTRICTS

2.1.1 Establishment. For the purposes of this By-law, the Town of Monterey is hereby divided into the following districts:

1. Agricultural-Residential District (AR)
2. Lake Shore District (LS)
3. Business District (B)

2.2 SPECIAL OR OVERLAY DISTRICTS

2.2.1 Wireless Telecommunications Overlay District (WTOD)

1. This District includes the property located in the Agricultural-Residential District, the Lakeshore District and the Business District.
2. The Wireless Telecommunications Overlay District is an overlay district mapped over other districts. It modifies and, where there is inconsistency supersedes the regulations of such other districts. Except as so modified or superseded the regulations of the underlying district remain in effect.

2.2.2 Solar Photovoltaic Overlay District (SPOD)

1. This District includes the property located in the Agricultural-Residential District, the Lakeshore District and the Business District.
2. The Solar Photovoltiac Overlay District is an overlay district mapped over other districts. It modifies and, where there is inconsistency supersedes the regulations of such other districts. Except as so modified or superseded the regulations of the underlying district remain in effect.

[RESERVED]

2.3 MAP

2.3.1 Map. Said Districts are located and bounded as shown on a map entitled "Zoning Map of Monterey, Massachusetts", on file with the Town Clerk. The Zoning Map, with all explanatory matter thereon, is hereby made a part of this By-law.

2.4 DESCRIPTION OF DISTRICTS

2.4.1 Lake Shore District: This district shall consist of all land located within 260 feet of the mean high water level line of Lake Buel or Lake Garfield.

2.4.2 Business District: This district shall consist of all the land bordering on Main Road known as Route 23 to a distance of 150 feet from the right-of-way lines of the highway between the following boundaries: the easterly boundary of the district shall be the right-of-way on the westerly side of New Marlborough Road and extending across to the easterly boundary of the

Old Firehouse Property on said Main Road. The westerly boundary of the district shall be the westerly boundary of land now or formerly of Donald L. Amstead formerly known as the golf course property and extending across at a 90-degree angle to said Main Road. **(See Zoning Map of Monterey Massachusetts on file with the Town Clerk.)**

2.4.3 Agricultural-Residential District: This district shall consist of all the area of the town not described under Sections 2.4.2 and 2.4.3.

SECTION 3.0 USE REGULATIONS

3.1 PRINCIPAL USES.

3.1.1 General. No dwelling, structure or land or any part thereof shall be used for any purpose unless authorized:

1. As a use by right in the specified district in this section of the By-law;

2. Under a special permit or variance granted by the Board of Appeals;

3. Under applicable law at the time such use began, and provided such use has continued until the present time;

4. By state or federal law.

3.1.2 Key. In the Use Table the following symbols are employed:

Y	Yes; an allowed or permitted use
N	No; a prohibited use
BA	Use available by special permit from the Board of Appeals

3.1.3 Table of Use Regulations.

Y	-	Permitted as of right
N	-	Prohibited
BA	-	Special Permit/Board of Appeals

PRINCIPAL USE	**AR**	**LS**	**B**
A. Residential Uses			
Single family dwelling	Y	Y	Y
Multifamily dwelling (Three/3 or more)	BA	N	BA
Trailer or mobile home park	N	N	N
Temporary trailer as set forth in Section 7.5	BA	BA	BA
Bed and Breakfast	BA	BA	BA

B. Exempt and Institutional Uses	**AR**	**LS**	**B**
Use of land or structures for religious purposes	Y	Y	Y
Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation	Y	Y	Y
Child care center (In compliance with Massachusetts General Laws Chapter 40A, Section 9C.)	Y	Y	Y
Any municipal recreational use	Y	Y	Y
Municipal and public services buildings and structures	BA	BA	Y
Public market	Y	N	Y
Essential services	BA	N	BA
C. Agricultural and Related Uses	**AR**	**LS**	**B**
Commercial agriculture exempt pursuant to G.L. c. 40A, s. 3	Y	Y	Y
Commercial agriculture not exempt pursuant to G.L. c. 40A, s. 3	Y	Y	Y
Farm stand, exempt pursuant to G.L. c. 40A, s. 3	Y	Y	Y
Farm stand, local goods	Y	N	Y
Farm stand, non-local goods	BA	N	Y
Commercial piggery, fur farm, slaughterhouse	N	N	N
Commercial greenhouse	BA	N	Y

D. Recreational Uses	**AR**	**LS**	**B**
Golf course (but not including a golf driving range or "miniature" golf course)	BA	N	N
Boat or canoe livery	BA	BA	N
Riding academy or stable	BA	BA	BA
Camp and/or Recreational Facility, seasonal or year round	BA	Y	N
Summer camp	BA	BA	N
Nonprofit recreational use	BA	BA	Y
Commercial ski area	BA	N	N
Health or exercise club	N	N	Y
Private club, lodge, or other non-profit social, cultural, civic or recreational use	BA	BA	Y
E. Restaurant Uses	**AR**	**LS**	**B**
Restaurant or similar place for the service of food or beverages only to persons inside a completely enclosed building, with or without regular mechanical or live entertainment	BA	N	Y
Fast food establishment	N	N	N
Temporary food service or sale * Permit required from the Board of Selectmen	Y*	Y*	Y*

F. Commercial and Office Uses	**AR**	**LS**	**B**
Enclosed animal or veterinary hospital	BA	N	BA
Funeral parlor or undertaking establishment	N	N	Y
Business or professional office or agency, bank or other financial institution	N	N	Y
Office of a doctor or dentist not a resident of the premises, or a group of such offices	N	N	Y
Other business or professional office	N	N	Y
Educational use, nonexempt	N	N	Y
Hotel or motel	N	N	Y
General or personal service establishment	N	N	Y
Trade shop	N	N	Y
Printing or publishing establishment	N	N	Y
Studio business	Y	Y	Y
G. Retail Uses	**AR**	**LS**	**B**
Store for the sale of goods at retail	N	N	Y
Antique, craft or gift shop	BA	N	Y
Salesroom for boats, trailers, trucks, farm implements, or machinery, with no repair services	N	N	N
H. Motor Vehicle Related Uses	**AR**	**LS**	**B**
Salesroom for motor vehicles with no repair services except in a garage	N	N	N
Motor vehicle repair garage	N	N	BA
Motor vehicle fuel facility	N	N	BA
Car wash	N	N	BA
Vehicle salvage or junkyard	N	N	N

I. Light Manufacturing, Manufacturing and Related Uses	**AR**	**LS**	**B**
Scientific or research laboratory	N	N	BA
Manufacturing	N	N	BA
Warehouse or distribution plant	N	N	BA
Light manufacturing	N	N	BA
Icehouse	BA	N	Y
Sawmill	BA	N	Y
Junkyard	N	N	N
Hazardous waste facility	N	N	N
Radioactive waste facility	N	N	N
J. Accessory Uses	**AR**	**LS**	**B**
Accessory use or structure incidental to a permitted main use	Y	Y	Y
Home occupation, non-intensive	Y	BA	Y
Home occupation, intensive	BA	N	BA
Family child care home, small	Y	Y	Y
Family child day home, large	BA	BA	BA
Adult day care	BA	BA	BA
Accessory scientific uses	BA	BA	BA
Renting of rooms and furnishing of board by an owner in his residence provided no independent kitchen facilities are maintained	Y	BA	Y
Drive-in or drive-through facilities	N	N	BA
Airstrip or helipad	N	N	N
Private airstrip or helipad	BA	BA	BA

K. Telecommunications and Utilities	**AR**	**LS**	**B**
Personal Wireless Services	BA	BA	BA
Small-scale/Residential Solar Photovoltaic Installation	Y	Y	Y
Large-scale Ground-mounted Solar Photovoltaic Installation	BA	BA	BA
Utility-scale Industrial Ground-mounted Solar Photovoltaic Installation	BA	BA	BA

3.2 ACCESSORY USES

3.2.1 General. An accessory use located on the same lot with, and customarily incidental to, any of uses set forth in the Table of Uses as allowed or allowed by special permit shall be permitted.

3.2.2 Customary or Professional Home Occupation. The use of a room or rooms within a residence, or use of an accessory building of six hundred square feet or less in area, is permitted for a customary or professional home occupation, with no more than two employees per residence as of right, with more by special permit, and provided there is no external evidence of business other than a permitted sign and required off-street parking, and further provided that no offensive noise, fumes, smoke, dust, odors, glare or injurious electromagnetic fields shall be created. The display and sale of products produced on the premises is permitted. Traffic generated shall not exceed that normal to a residential neighborhood. The required off-street parking shall be provided for employees and clientele.

SECTION 4.0 DIMENSIONAL REGULATIONS

4.1 GENERAL REQUIREMENTS

4.1.1 Measurement. All distances in this By-aw shall be measured horizontally and all heights shall be measured vertically.

4.1.2 Number of dwellings per building lot. As a use by right, no building lot (two acres and 200 feet of road frontage) may contain more than one primary dwelling unit (PDU) and one

secondary dwelling unit (SDU). Nonconforming lots may apply for a secondary dwelling unit through a special permit from the Zoning Board of Appeals.

4.1.3 No Reductions below Table of Minimums. No existing lot shall be reduced in size or changed in shape so as to result in violation of the requirements set forth in the Table of Dimensional Requirements.

4.1.4 Lot Area Required. A lot of land having less than the minimum requirements set forth in the Table of Minimums may not be used for any building or structure, unless exempted by law.

4.1.5 Parcels in Two Districts. Any lot lying partly in two districts must have the minimum lot dimensions applicable to the district in which lies the largest part of its land. If the parts are exactly equal and if one of the equal parts lies in the Business District, the minimum lot dimensions of the Business District shall apply, and if one of the equal parts lies in the Lake Shore District, the minimum lot dimension of the Lake Shore District shall apply. No new lots with exactly equal parts in two districts shall be created by division or subdivision after the adoption of this By-law. In all other respects, lands and structures must be in compliance with the laws and regulations applicable to the district in which they lie.

4.1.6 Access by an Approved Way. A way approved by the Planning Board in accordance with the Subdivision Control Law may provide frontage and access only for lots which are contained within the approved subdivision.

4.2 DIMENSIONAL REQUIREMENTS

4.2.1 Table of Dimensional Requirements. No structure shall be erected on a lot that does not meet the following dimensional requirements.

TABLE OF DIMENSIONAL REQUIREMENTS

DISTRICT	Area (acres)	Frontage (ft.)	Front Setback (ft.)	Side Setback (ft.)	Rear Setback (ft.)	Max. Building Height (ft.)	Max. Land Coverage (%)
A-R	2	200	25	25	25	35	20
B	0.25*	100	15	15	15	35	30
LS: Ave. Slope Less than 12%:	2	200	25	25	25	35	20
12%-15%:	4	300	25	25	25	35	20
Over 15%:	6	400	25	25	25	35	20

* 0.50 with single family dwelling on same lot.
** **Lots in the Lakeshore District existing prior to May 3, 1986 (and not having been changed since) shall have setback requirements of 15 feet front, side, and rear**

4.2.2 Notes to Table of Dimensional Requirements.

1. Nonconforming lots on record and lots shown on a plan endorsed by the Planning Board under the Subdivision Control Law are exempt from the provisions of this By-law to the extent of, and as provided in, Section 6, Chapter 40A of the General Laws.

2. The stated setbacks notwithstanding, no structure except fences, steps and docks may be erected in the Lake Shore District less than forty (40) feet from the mean high water line.

3. Height to be measured in accordance with the State Building Code. The height regulations of buildings and structures shall not apply to agricultural buildings and structures, churches, spires, chimneys, antennae, or other appurtenances usually required to be placed above roof level and not intended for human occupancy.

4. Frontage to be measured in a straight line between the two side lot lines.

4.3 SPECIAL REGULATIONS

4.3.1 Business District Minimums. A building or structure erected or converted for business use in the business district, which includes one (1), single-family dwelling unit within the structure shall have no less than one-half (1/2) acre of land.

4.3.2 Minimum Setbacks for Accessory Buildings. Accessory buildings and structures including but not limited to garages, maintenance sheds, tennis courts, swimming pools shall be subject to regulations under minimum setback dimensions.

4.3.3 Secondary Dwelling Units

Purpose and intent
1). To provide homeowners with a means of obtaining rental income, companionship, security, and services.

2). Add moderately priced rental units to the housing stock to meet the needs of smaller households and make housing units available to moderate income households who might otherwise have difficulty finding housing;

3). To provide housing units for persons with disabilities;

4). To protect stability, property values, and the residential character of a neighborhood.

Regardless of the district in which they are located, Secondary Dwelling Units are only permitted on lots of at least 2 acres that have a minimum of 200 feet of road frontage.

Definitions

Gross Floor Area: The sum of the floor area of the spaces within the residential conditioned building space measured to the exterior surfaces of the outside walls, including basements, mezzanines and intermediate floor levels. Exemptions include non-enclosed areas, balconies, porch roof overhangs and any non-enclosed areas whether covered by a roof or not. Attached utility structures such as a garage or carport would be exempt from the gross square footage.

Primary Dwelling Unit: The Primary Dwelling Unit of which the SDU is a part, or, if detached, the single family dwelling on the lot on which the SDU is located.

Secondary Dwelling Unit: A Secondary Dwelling Unit (SDU) is a self-contained housing unit that is either part of a single-family dwelling, or may be detached, and is located on the same lot and complies with the provisions of this bylaw.

Procedure and Requirements

1). The Building Commissioner may issue as a matter of right a Building Permit authorizing the construction of an SDU if the following conditions are met:

(a) Only one SDU may be created on a lot.

(b) The lot is a minimum of 2 acres and has a minimum of 200 feet of road frontage.

(c) The Secondary Dwelling Unit must be within 100 feet of the Primary Dwelling Unit.

(d) The gross floor area of an SDU (including any additions) shall not be greater than 800 square feet.

(e) Only one dwelling unit at a time, either Secondary or Primary, on the lot shall be rented.

(f) A minimum of two off-street parking spaces per dwelling unit must be provided for a minimum of four parking spaces to serve the primary dwelling unit and the SDU.

(g) A home occupation may be allowed in the primary dwelling unit and/or the SDU. Additional parking is required as per Section 6.0 General Regulations, Parking.

SECTION 5.0 NONCONFORMING USES AND STRUCTURES

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

5.1.2 Maintenance; Repair and Reconstruction of Unsafe Structure Nothing in this Section shall be deemed to restrict the normal maintenance and repair on nonconforming structures or prevent reconstruction to a safe condition of any structure or part thereof declared to be unsafe by the Inspector of Buildings or the Board of Health.

5.1.3 Nonconforming Uses. The Board of Appeals may award a special permit to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Board of Appeals:

1. Change or substantial extension of the use;

2. Change from one nonconforming use to another equally or less detrimental, nonconforming use.

5.1.4 Nonconforming Structures. Except with respect to one or two family dwellings (as provided in Section 5.1.6, below), the Zoning Board of Appeals may authorize by special permit any extension, alteration, construction or reconstruction of an existing nonconforming structure, or alteration to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent, provided that such extension, alteration, construction or reconstruction:

1. Shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use;

2. Would not significantly increase the incidence of air, steam, or water pollution, odor, glare, electrical interference, noises, traffic, or night operation according to the findings of the Zoning Board of Appeals after consideration of any recommendations from the Planning Board, the Conservation Commission and the Board of Health.

3. Would result in a structure no more than 25% greater in total habitable square footage

than the structure as it was at the time it first became nonconforming. Total habitable square footage shall not include an unenclosed deck, unfinished basement, or unfinished attic.

4. Shall be subject to reasonable conditions, safeguards or limitations as imposed by the Zoning Board of Appeals so as to lessen any possible adverse impact on adjacent properties and the general neighborhood; and

5. Shall comply with all other applicable provisions of this By-law.

5.1.5 Variance Required. Except with respect one and two family dwellings (as provided in Section 5.1.6, below), the reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity, shall require the issuance of a variance, including the extension of an exterior wall at or along the same nonconforming distance within a required yard.

5.1.6 Nonconforming Single and Two Family Residential Structures.

1. As of Right - Single Family Structures. The Inspector of Buildings may authorize a building permit as a matter of right for any extension, alteration or reconstruction of an existing nonconforming single family dwelling provided:

a. Such change, as well as the existing structure, shall meet all setback requirements in effect at the time of application;

b. Such change would not increase the height of the existing structure with reference to the existing structure's highest point; and

c. Such permit application does not involve a lot containing a multi-family dwelling nor more than one dwelling

2. By Special Permit – Single and Two Family Structures. In cases where a building permit is not authorized as a matter of right, above, the Zoning Board of Appeals may authorize by special permit any extension, alteration or reconstruction of an existing nonconforming single or two family dwelling provided the Zoning Board of Appeals finds that such change would not increase the nonconforming nature of the structure, lot, and/or use.

3. All Others. In all other cases, a special permit may be granted pursuant to Section 5.1.4.

5.1.7 Abandonment or Non-Use. A nonconforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to

all of the provisions of this By-law; provided, however, that by special permit the Board of Appeals may reestablish a nonconforming use or structure otherwise abandoned or not used.

5.1.8 Reconstruction after Fire or Other Catastrophe. Any nonconforming structure may be rebuilt or re-established within two (2) years if damaged or destroyed by fire or other catastrophe provided the rebuilt or reestablished structure shall not be in greater nonconformity with the provisions of this By-law, and provided a building permit is obtained. If more than two (2) years pass from the time of damage, a special permit shall be obtained before said structure or use may be rebuilt or reestablished. Such rebuilt or reestablished structure may be enlarged or changed in use only in accordance with the provisions of this Section 5.0.

5.1.9 Reversion to Nonconformity. No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.

SECTION 6.0 GENERAL REGULATIONS

6.1 PARKING STANDARDS

6.1.1 Parking Space Area. The area of parking space must be a minimum of nine (9) feet by twenty (20) feet.

6.1.2 Number of Parking Spaces. The minimum number of parking spaces provided shall be as set forth below:

TABLE OF PARKING REQUIREMENTS

PRINCIPAL USE	NUMBER OF PARKING SPACES
Single family dwelling	2
Multi-family dwelling	2 per dwelling unit
Rooming house	2, plus one per each rental unit
Motel, resort	2, plus 1.5 per each rental unit, plus 1.5 for each 20 square feet of floor area available for meetings or functions
Office in residence	4
Retail business or consumer service establishment	1 per each 250 square feet of gross floor area
Restaurant, theater	1 per every 3 seats
Educational or religious use	1 per every 3 participants based on maximum capacity of building
General office, laboratory	1 per each 250 square feet of gross floor area
Warehouse, other commercial or industrial buildings	1 per each 500 square feet of gross floor area

6.1.3 Special Permit. Relief from these parking standards may be granted via special permit by the Planning Board.

6.2 SIGNS

6.2.1 Administration. Permits for commercial on-site and commercial off-site signs shall be issued by the Planning Board, which will also establish appropriate fees. Enforcement of this By-law shall be by the Inspector of Buildings.

6.2.2 Area. A sign may have two faces in opposite directions and constitute one sign. The area requirement shall be determined from the measurements of one side only.

6.2.3 Illumination. No sign shall have illumination by neon or blinking type of light, be of noisemaking variety, nor have moving parts.

6.2.4 Location. No part of sign shall be closer than ten (10) feet from the traveled way, or the preexisting building set-back distance.

6.2.5 Commercial On-Site Signs Requiring Permits. Signs erected prior to this By-law are exempted from the size requirements until altered in any substantial way. A permit is required for documentation.

1. **Business District**: Sign shall not exceed ten (10) square feet.

2. **Agricultural Residential District**: The permitted sign referred to in Section 3.2.2 (Customary Home Occupation) shall not exceed two (2) square feet except for Agricultural signs which shall not exceed four (4) square feet.

3. **Lake Shore District**: The permitted sign referred to in Section 3.2.1 (Customary Home Occupation) shall not exceed two (2) square feet.

6.2.6 Commercial Off-Site Signs. Two or more such signs at one intersection are to be stacked and placed at a location to be determined by the Highway Superintendent.

1. Directional: One sign allowed at intersecting way nearest business site. Sign shall not exceed eight by thirty-six (8" x 36") inches.

2. Secondary Directional: Signs shall not exceed six by thirty (6" x 30") inches. Up to one sign allowed at each of two secondary intersection locations.

6.2.7 Signs Not Requiring Permits.

1. Temporary signs: No temporary sign shall exceed four (4) square feet in total area or industry standard.

2. Contractor's sign on project premises only during construction process.

3. Real Estate for Sale or Lease on premises, to be removed within fourteen (14) days after closing date.

4. Signs announcing public events sponsored by civic or social organizations to be displayed for not more than thirty (30) days prior to the event. The Select Board may grant size waivers for these temporary signs.

5. Seasonal Agricultural signs at premises and/or directional locations.

6. Residential identification signs.

7. Number signs required for 911.

8. Municipal information signs.

9. Property posting signs (no trespassing, etc.).

6.2.8 Special Permit. The Planning Board, by the grant of a special permit, may allow more signs or larger signs than otherwise permitted by this Section.

SECTION 7.0 SPECIAL REGULATIONS

7.1 COMMON DRIVEWAYS

7.1.1 Purpose. The purpose of this Section is to encourage the use of common driveways in the Agricultural-Residential District and the Lake Shore District in order to:

1. minimize the frequency of curb cuts along town ways;

2. provide for the safest possible locations for curb cuts;

3. avoid or minimize the need for alterations of wetlands, tree lines, and stone walls;

4. minimize the amount of impervious surfaces created by driveways providing access to dwellings; and

5. provide standards for safe driveways that are adequate for access by emergency vehicles and delivery vehicles such as home heating oil.

7.1.2 Preexisting Common Driveway. Any common driveway in existence prior to the date of this Section shall not be subject to these regulations.

7.1.3 As of Right. A common driveway providing access to two lots shall be allowed by right, subject to site plan review by the Planning Board..

7.1.4 Access to Five or More Lots. A private way accessing five (5) or more lots shall be considered a subdivision road and must be approved under the Subdivision Control Regulations, and site plan review by the Planning Board.

7.1.5 Access and Location. A common driveway shall be connected to a public way, or a suitable private way, at one and only one point. No common driveway shall be allowed within one hundred (100) feet of the intersection of public ways. A common driveway shall provide access to the lots from the way on which the lots accessed have their frontage.

7.1.6 Limitations.

1. Approval of a common driveway does not constitute acceptance of said common driveway as an approved town road. Common driveways do not constitute road frontage, and each lot served by a common driveway must meet all the requirements of this By-law. Issuance of a permit to construct a common driveway does not entitle an applicant to a building permit.

2. A common driveway approval does not preclude the necessity for an applicant to apply for and obtain a curb cut from the Director of Operations and to comply with all curb cut regulations.

3. Application for and approval of a common driveway does not preclude the need to obtain any and all other necessary permits and approvals from the Conservation Commission for wetlands and/or the Scenic Mountains Act, Curb Cut Approval from the Director of Operations, and any other necessary permits and approvals.

7.1.7 Easement Agreement. Each lot served by the common driveway shall have permanent access to the common driveway pursuant to an Easement Agreement that runs with the land.

1. Any deeds or ownership of lots served by a common driveway shall require that the owners of said lots be members of a maintenance association, whose purpose is to provide for maintenance of the common driveway, which shall include, but not be limited to, snow plowing, road maintenance, maintaining drainage structures and other components of the driveway necessary to provide safe and adequate access to the lots. This maintenance association must be created by a Maintenance Association Agreement.

2. The Easement Agreement, Maintenance Association Agreement, and Form A plan showing the common driveway that has been endorsed by the Planning Board, shall be recorded with the Southern Berkshire Registry of Deeds or Land Court where appropriate. The Form A Plan shall provide space for two endorsements, one for the Form A endorsement "Approval Not Required," and the second for the Planning Board's approval of the common driveway.

7.1.8 Application. All applications for a common driveway shall be accompanied by the following in lieu of the requirements of Section 9.4.3. The applicant shall file three copies of the application documents with the Planning Board. In addition, the applicant shall file one copy with the Town Clerk, Conservation Commission, Fire Department, Building Commissioner, and Director of Operations for review and comment.

1. An application form completed by the applicant.

2. There shall be an application fee as determined by the Monterey Planning Board.

3. Engineered plans showing the location of the proposed common driveway, along with design details of the proposed way, including grades, width and drainage.

4. A proposed Maintenance Association Agreement and a proposed Easement Agreement.

5. A copy of the proposed lot plan showing the lots to be served by the common driveway and including the metes and bounds of the common driveway easement.

7.1.9 Design and Construction Standards. The common driveway must meet the following design and construction criteria. The Planning Board may impose additional conditions depending on the topography and other site conditions.

1. Common driveways shall be located to take into consideration the intersection with the frontage road, sight distance conditions, topography, and minimizing impacts on wetlands, tree lines, stone walls, and stream crossings.

2. The traveled portion of the private way shall be a minimum of twelve (12) feet of wear surface plus a two (2) foot wide shoulder on each side of the roadbed.

3. The final surface of the roadbed shall have a minimum of eight (8) inches of gravel over a suitable sub grade.

4. The length of a common driveway shall not exceed 1000 feet.

5. Construct turnouts to allow emergency vehicles to pass at intervals of no more than 400 feet. Turnouts shall be at least 35 feet long plus tapers at each end, and create a traveled width of at least 18 feet wide. A branching driveway with adequate width and geometry may serve as an acceptable alternative to a turnout.

6. No driveway shall exceed an average grade of 10% nor have a maximum grade at any point exceeding 12%.

7. The common driveway shall have a minimum centerline radius of at least 40 feet.

8. A sign with the house numbers of the lots served by the common driveway shall be installed at the intersection with the frontage road in accordance with State and Town laws.

9. The Director of Operations shall be the Planning Board's agent for review of the Common Driveway during construction. The common driveway shall be constructed sufficiently to provide access to a building lot before the issuance of a building permit for a structure on said lot.

10. At its option, the Planning Board may require that the applicant provide a covenant or other financial performance guarantee to assure completion of the common driveway prior to the issuance of a certificate of occupancy. The performance guarantee shall be in a form acceptable to Town Counsel.

11. The work shall conform to the approved plans and any special conditions in the Planning Board's permit. Any proposed change to the approved plans or permit conditions shall require the applicant to inquire of the Planning Board in writing whether the change is significant enough to require the filing of a new Permit Application. Upon completion of the work, the applicant shall submit a Request for Certificate of Completion to the Director of Operations.

12. Upon satisfactory completion of construction, the Director of Operations shall issue a Certificate of Completion that said Common Driveway has been constructed in accordance with approved plans and permit conditions. No Certificate of Occupancy for a building on the lot served by the Common Driveway shall be issued until the Director of Operations has issued said Certificate of Completion. The Director of Operations may halt any construction not done in accordance with the approved plans.

7.1.10 Decision. When deciding whether or not to approve plans for a common driveway, the Planning Board shall consider the following. The Planning Board in making its findings, shall consider comments and reviews by the Town of Monterey Director of Operations, the Fire Department, and the Conservation Commission.

1. The safety of the common driveway as designed for normal use.

2. The safety of the intersection with the Town way. See Regulations for Access to Public Ways.

3. The adequacy of the legal requirements for maintenance and access.

4. The adequacy of the common driveway to provide access for emergency vehicles.

5. Compliance with the purposes of the Common Driveway By-law.

7.1.11 Waiver. The Planning Board may waive strict compliance with the design or construction criteria upon a clear showing that the waiver will not adversely affect public safety or derogate from the intent and purpose of this Section.

7.1.12 Constructive Grant. If the Planning Board fails to act on a completed application for approval of a common driveway within 45 days it shall be deemed to have been approved.

7.2 STREAM AND POND PROTECTION

7.2.1 General. The following minimum-distance setback requirements shall apply to any new construction, installation, or development as described herein.

7.2.2 Limitations. No on-lot subsurface sewage effluent leaching system such as a cesspool, drywell, leaching field or a drainage system for the waste water from showers, sinks, etc. shall be installed or contracted within 150 feet of the mean high-water line of the bodies of water indicated on a map entitled "Monterey Streams and Ponds" prepared by the Berkshire County Regional Planning Commission for the Monterey Planning Board in March 1990. Said map has been adopted as part of this By-law and is permanently on file at the Town Office.

7.2.3 Recorded Lots. In the case of a lot duly recorded prior to October 19, 1990, the Board of Health may authorize construction or installation of such disposal system at a reduced distance but not below the minimum set in the State Environmental Code, Title V, if the Board determines the compliance with the requirements of this section would cause unreasonable difficulty.

7.2.4 Special Permit. No dwelling, parking area larger than 600 square feet, or impervious-surfaced parking or recreational area larger than 300 square feet shall be constructed within 75 feet of the mean high-water line of any natural or man-made water bodies described in section 7.2.2, except under a special permit from the Board of Appeals, if the Board finds that compliance with the requirements of this section would cause unreasonable difficulty.

7.3 MULTI-FAMILY DWELLING

7.3.1 General. A multi-family dwelling shall require a special permit from the Board of Appeals as set forth in the Table of Use Regulations. A multi-family dwelling shall also be subject to the following requirements.

7.3.2 Planning Board Review. The site plan, construction plans and elevations and shall be approved in writing by the Planning Board, the Board of Health, the Conservation Commission, and the Inspector of Buildings in respect to their respective fields of responsibility.

7.3.3 Dwelling Unit Limitation. The multi-family dwelling shall contain no more than six (6) dwelling units in one building. Plans shall contain provisions for adequate water supply, sewage disposal facilities, and roadways designed in accordance with the Subdivision Control Law.

7.3.4 Lot Area and Frontage. Lots shall contain a minimum of two (2) acres for the first dwelling unit and three (3) acres for each additional unit and two hundred (200) feet of frontage for the first unit and one hundred (100) feet of frontage for each additional unit. Land lying within the Lake Shore District may not be included as qualifying acreage for multi-family dwellings.

7.3.5 Setbacks. Dwelling units, parking areas, and playing grounds shall be set back not less than one hundred (100) feet from all lot lines.

7.3.6 Conversion of Single Family Dwelling. The conversion of a single-family dwelling into a multi-family dwelling of two units, without meeting the requirements as to lot area and frontage and as to setbacks may be permitted by the Board of Appeals by special permit, provided that:

1. The single-family dwelling has not been enlarged within seven (7) years of the proposed conversion;

2. The lot area has not been reduced with a resulting acreage smaller than the minimum acreage in required above within seven (7) years of the proposed conversion;

3. Any fire escapes or outside stairways leading to a second story shall be located on any wall not facing a road and shall not occupy any part of the rear or side setback under Section 4.0; and

4. Subsequent additions or expansions are subject to an amended permit.

5. Conversion of an existing single family residence into a mutli-family dwelling must conform to all other requirements of this Section.

7.4 NON-MUNICIPAL EDUCATIONAL OR RELIGIOUS USE

7.4.1 General. Any non-municipal educational use or any religious use is subject to site plan review by the Planning Board, and the following regulations.

7.4.2 Dimensional Requirements.

1. Maximum building height: Two and one-half (2.5) stories and thirty-five (35) feet.

2. Maximum building coverage: Four (4) percent of the land area.

3. Setback: Two hundred foot (200') buffer surrounding the property to be kept undeveloped except for entrance and exit roadways, driveways and walkways, measured from the boundary of any abutter, but excluding roadlines where both sides of the road are owned by the same non-municipal educational or religious institution.

7.4.3 Access. Principal access roads and principal parking areas subject to frequent day or night use shall be approved by the Planning Board to meet subdivision requirements for safety and health of the community. Principal roads shall be at least eighteen (18) feet wide and shall not exceed a seven-and-one-half (7.5) percent grade.

7.4.4 Parking.

1. Parking areas shall be subject to Section 6.1.

2. Parking areas shall be within three hundred (300) feet of the building to be served.

7.5 TRAILER

7.5.1 General. After a public hearing, the Board of Appeals may grant a special permit for the temporary use of a trailer or mobile home provided that adequate provision is made for water, sewage disposal and other dwelling requirements of the State Sanitary Code, and provided the applicant proposed to use such trailer or mobile home as temporary living quarters while a new home is under construction. Such permit shall expire no later than twelve (12) months from date of its issue.

7.6 BED AND BREAKFAST ESTABLISHMENTS

7.6.1 General. A bed and breakfast shall be allowed as set forth in the Table of Use Regulations. The following requirements shall also apply:

1. Parking must be off street, on premises, with one (1) space per room rented and one (1) per owner.

2. No other uses except for customary home occupation shall be permitted on the property.

3. No additions or external modifications may be made to the property for lodging use.

4. A certificate of occupancy required and premises shall be subject to annual inspection.

7.7 PERSONAL WIRELESS SERVICES

7.7.1 Purpose. The purpose this Section is to:

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

2. Protect the scenic, historic, environmental, and natural or man-made resources of the community.

3. Provide standards and requirements for regulation, placement, construction, monitoring, design, modification and removal of Personal Wireless Service Facilities and Repeaters.

4. Provide a procedural basis for action within a reasonable period of time for requests for authorization to place, construct, operate or modify Personal Wireless Service Facilities and Repeaters.

5. Preserve property values.

6. Locate Towers so that they do not have negative impacts, such as, but not limited to, visual blight, attractive nuisance, noise (as per Mass DEP noise regulation 310 CMR 7.10) and falling objects, on the general safety, welfare and quality of life of the community.

7. Require owners of Personal Wireless Service Facilities, Towers and Repeaters to configure them so as to minimize and mitigate the adverse visual impact of the Facilities, Towers, and Repeaters.

8. Require the clustering and camouflaging of Personal Wireless Service Facilities.

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

7.7.3 Exempted Wireless Telecommunications Uses. This Section specifically exempts the following wireless telecommunications facilities:

1. Police, fire, ambulance and other emergency dispatch;

2. Citizens band radio. Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the FCC, are exempt, provided that (1) the tower is not used or licensed for any commercial purpose; and (2) the tower shall be removed upon loss or termination of said FCC license.

3. No Personal Wireless Service Facility or Repeater shall be considered exempt from this Section for any reason whether or not said Facility or Repeater is proposed to share a Tower or other structure with such exempt uses.

7.7.4 Provision of Independent Consultants. Upon submission of an application for any special permit under this Section, the applicant shall pay a review fee determined by the SPGA, consisting of reasonable costs to be incurred by the SPGA for the employment of independent consultants. The independent consultant may be hired in accordance with G.L. c. 44, § 53G.

These consultants shall each be qualified professionals with a record of service to municipalities in one of the following fields: a) telecommunications engineering, b) structural engineering, c) monitoring of electromagnetic fields, and, if determined necessary by the SPGA, d) other relevant fields of experience as determined by the SPGA.

1. The SPGA shall select the independent consultant(s) after consultation with the Select Board, the Planning Board, the Board of Health, and the Conservation Commission, each of which may propose a list of qualified candidates.

7.7.5 Prohibition of Teleports. There shall be no Teleport(s) within the Town of Monterey.

7.7.6 Application Requirements. No Personal Wireless Service Facility, Tower, or Repeater shall be erected, constructed, or installed or undergo Major Modification without first obtaining a special permit from the SPGA in accordance with the requirements set forth herein. One or both of two kinds of special permits are required; a) A Facility/Tower Special Permit (henceforth F/TSP) for new Facility/Tower construction (or Major Modification Of An Existing Facility); b) A Repeater Special Permit (henceforth RSP) for Repeater(s) to be mounted on an existing, or newly permitted, Tower or structure (or Major Modification Of An Existing Repeater). If Applicant is applying for both Permits, they shall be submitted and examined concurrently.

1. For Personal Wireless Service Facilities or Towers a F/TSP is required. Applicant must submit all information required in §7.7.7 and 7.7.8.

2. For all Repeaters proposed for installation, an RSP is required. An RSP may be applied for by an Applicant who is currently applying for a F/TSP under this Section, or by an applicant who has previously received a F/TSP under this Section or by an entity which is providing Personal Wireless Services to the Town of Monterey from a base station outside the Town. Applicant must submit all information required in §7.7.9.

7.7.7. Adequate Coverage, Adequate Capacity, and Justification of Need for F/TSP. Applicant shall provide written documentation of any Facility Site(s) in Monterey, and any sites in abutting towns located within eight miles of any boundary of the Town of Monterey, in which it has a legal or equitable interest, whether by ownership, leasehold or otherwise. For each such Facility Site, it shall demonstrate with written documentation that this Facility Site is not already providing, or does not have the potential by adjusting the Site, to provide Adequate Coverage and/or Adequate Capacity to the Town of Monterey. The documentation shall include, for each Facility Site listed;

1. The exact Tower location (in Longitude and Latitude, to degrees, minutes, seconds);

2. Ground elevation above mean sea level at the Tower location;

3. Height of Tower or structure;

4. Type, manufacturer and model number of Antennas;

5. Antenna gain;

6. Height of Antennas on Tower or structure;

7. Output frequency;

8. Number of channels;

9. Power input; and

10. Maximum power output per channel.

Potential adjustments to these existing Facility Sites, including changes in Antenna type, orientation, gain, height or power output shall be specified. Radial Plots from each of these Facility Sites, as they exist, and with adjustments as above, shall be provided as part of the Application.

Applicant shall demonstrate with written documentation that they have examined all existing Facility Sites located in Monterey and in any sites in abutting towns located within eight miles of any boundary of the Town of Monterey, in which Applicant has no legal or equitable interest, whether by ownership, leasehold or otherwise. For each such Facility Site, it shall demonstrate with written documentation that this Facility Site is not already providing, or does not have the potential by adjusting the Site, to provide Adequate Coverage and/or Adequate Capacity to the Town of Monterey. The documentation shall include, for each Facility Site listed;

1. The exact Tower location (in Longitude and Latitude, to degrees, minutes, seconds);

2. Ground elevation above mean sea level at the Tower location;

3. Height of Tower or structure;

4. Type, manufacturer and model number of proposed Antennas;

5. Proposed Antenna gain;

6. Height of proposed Antennas on Tower or structure;

7. Proposed output frequency;

8. Proposed number of channels;

9. Proposed power input; and

10. Proposed maximum power output per channel.

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

Applicant shall demonstrate with written documentation that they have analyzed the feasibility of Repeaters in conjunction with all existing Facility Sites listed in compliance with § 7.7.7 to provide Adequate Coverage and/or Adequate Capacity to the Town of Monterey. Radial Plots of all Repeaters considered for use in conjunction with these Facility Sites shall be provided as part of the Application.

7.7.8 Required Documentation for F/TSP. The Applicant shall include reports prepared by one or more professional engineers, which shall demonstrate that the Personal Wireless Service Facility and Tower comply with all applicable standards of the Federal and State governments. Specifically:

1. Copies of all submittals and showings pertaining to: FCC licensing; Environmental Impact Statements; FAA Notice of Construction or Alteration; Aeronautical Studies; and, all data, assumptions and calculations relating to service coverage and power levels regardless of whether categorical exemption from Routine Environmental Evaluation under the FCC rules is claimed.

2. Copies of all information submitted in compliance with requirements of Massachusetts Department of Public Health, 105 CMR 122 nonionizing radiation limits for: the general public from non-occupational exposure to electromagnetic fields, employees from occupational exposure to electro-magnetic fields, and exposure to microwave ovens., or any revisions thereof as the Department of Public Health may, by written notice, create.

3. The exact legal name, address or principal place of business and phone number of the Applicant. If any Applicant is not a natural person, it shall also give the state under which it was created or organized.

4. The name, title, address and phone number of the person to whom correspondence or communications in regard to the application are to be sent. Notice, orders and other papers may be served upon the person so named, and such service shall be deemed to be service upon the Applicant.

5. Name, address, phone number, and written consent to apply for this permit, of the owner of the property on which the proposed Personal Wireless Service Facility and/or

Tower shall be located, or of the owner(s) of the Tower or structure on which the proposed Personal Wireless Service Facility shall be located.

6. Required Plans and engineering plans, prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts. (Note: survey plans shall also be stamped and signed by a Professional Land Surveyor registered in Massachusetts.) Plans shall be on 24" x 36" sheets, on as many sheets as necessary, and at scales which are no smaller (i.e. no less precise) than listed below. Each plan sheet shall have a title block indicating the project title, sheet title, sheet number, date, revision dates, scale(s), and original seal and signature of the P.E. and other professionals who prepared the plan.

Applicant shall, as part of its application, provide the SPGA with the following plans and maps:

1. Proposed Site Plans: Proposed Facility Site layout, grading and utilities at a scale no smaller than 1" = 40' (1:480 or metric equivalent 1:500) showing the entire vicinity within a 400' radius of the Tower site with topography drawn with a minimum of 2' (0.6 meter) contour interval.

2. Proposed Tower location and any appurtenances, if any, and any accessory building (Communication Equipment Shelter or other). Indicate property boundaries of the Facility Site and setback distances to the base(s) of the Tower and to the nearest corners of each of the appurtenant structures to those boundaries, and dimensions of all proposed improvements.

3. Limits of areas where vegetation is to be cleared or altered, and justification for any such clearing or alteration.

4. Plans of proposed access driveway or roadway and parking area at the Facility Site. Include grading, drainage, travelled width. Include a cross section of the access drive indicating the width, depth of gravel, paving or surface materials.

5. Proposed Tower and Appurtenances.

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

b. Two cross sections through proposed Tower drawn at right angles to each other, and showing the ground profile to at least 100 feet beyond the limit of clearing. Indicate proposed spot elevations at the base of the proposed Tower. Dimension the proposed height of tower above average grade at Tower Base. Indicate the maximum allowable structural height of the Tower after addition of any modular sections. Show all proposed antennas, including their location on the Tower.

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

d. Detail proposed exterior finish and camouflage of the Tower.

e. Indicate relative height of the Tower to the tops of surrounding trees as they presently exist.

6. Proposed Communications Equipment Shelter:

a. Floor Plans, elevations and cross sections at a scale of no smaller than 1/4" = 1' (1:48) of any proposed appurtenant structure.

b. Representative elevation views, indicating the roof, facades, doors and other exterior appearance and materials.

7. Proposed Equipment Plan:

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

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

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

d. Antenna type(s), manufacturer(s), model number(s).

e. For each Antenna, the Antenna gain and Antenna radiation pattern.

f. Number of channels per Antenna, projected and maximum.

g. Power input to the Antenna(s).

h. Power output, in normal use and at maximum output for each Antenna and all Antennas as an aggregate.

i. Output frequency of the Transmitter(s).

8. Balloon Test. Within 35 days of submitting an Application, Applicant shall arrange to fly, or raise upon a temporary mast, a three foot diameter brightly colored balloon at the maximum height and at the location of the proposed Tower. The dates, (including a second date, in case of poor visibility on the initial date), times and location of this balloon test shall be advertised, by the Applicant, 14 and 7 days in advance of the first scheduled test date in a newspaper with a general circulation in the Town of Monterey. The Applicant shall inform the SPGA and the Planning Board, in writing, of the dates and times of the test, at least 14 days in advance. The balloon shall be flown for at least four consecutive hours sometime between 9:00 am and 5:00 pm of the dates chosen.

7.7.9 Required Documentation for RSP. The use of Repeaters to assure Adequate Coverage, or to fill holes within areas of otherwise Adequate Coverage, while minimizing the number of required Towers is permitted and encouraged. An Applicant who has received, and is in compliance with a current F/TSP under this Article, or an entity which is providing Personal Wireless Services to the Town of Monterey from a base station outside the Town, may apply for a RSP. Applicants shall provide the following information:

1. The exact location (in Longitude and Latitude, to degrees, minutes, seconds), as well as by street address or Pole number (if applicable);

2. Ground elevation;

3. Type, manufacturer and model number of proposed Repeater;

4. Height of proposed Repeater above ground;

5. Proposed output frequency;

6. Proposed number of channels;

7. Proposed power input;

8. Proposed maximum power output per channel;, and

9. Radial Plots from any proposed Repeater(s), configured as documented above, shall be provided as part of the Application.

10. Name, address, phone number, and written consent to apply for this permit, of the owner of the property on which the proposed Repeater shall be located, and of the owner(s) of the Tower or structure on which the proposed Repeater shall be located.

11. Proposed Repeater Site layout, grading and utilities at a scale no smaller than 1" = 40' (1:480 or metric equivalent 1:500) showing the entire vicinity within a 300' radius of

the Repeater site with topography drawn with a minimum of 2' (0.6 meter) contour interval.

12. Proposed Repeater location and any appurtenances, if any, and any accessory building (Communication Equipment Shelter or other). Indicate property boundaries of abutters within 300' of the Repeater, and dimensions of all proposed improvements.

13. Limits of areas where vegetation is to be cleared or altered, and justification for any such clearing or alteration.

14. Plans of any proposed access driveway or roadway and parking area at the Repeater site. Include grading, drainage, travelled width. Include a cross section of the access drive indicating the width, depth of gravel, paving or surface materials.

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

1. Wherever feasible, a Personal Wireless Service Facility shall be located on existing Towers with the objective of minimizing the proliferation of new towers.

2. Tower(s) shall minimize, to the extent feasible, adverse visual impacts on the environment. The SPGA may impose reasonable conditions to ensure this result, including, but not limited to, requiring the use of camouflage, painting, lighting standards and screening.

3. A vegetated buffer strip of undisturbed trees of at least 100' in depth (or less if determined by the SPGA to be sufficient), shall be retained as close to the Tower as possible, but in all cases there shall be no clearing at a distance in excess of 25 feet in radius from the base of the Tower except where the access drive is located.

4. Access shall be provided to the Tower or Facility or Repeater Site by a roadway which respects the natural terrain, does not appear as a scar on the landscape and is approved by the SPGA and the Chiefs of all emergency services in the Town to assure emergency access at all times. Consideration shall be given to design which minimizes erosion, construction on unstable soils and on steep slopes.

5. Fencing: The area around the Tower and Communication Equipment Shelter(s) shall be completely fenced for security within an area no greater than 25 feet in radius from the

base of the tower, and to a height of six feet, and gated. Use of razor wire is not permitted.

6. Signs: All signs shall conform to the sign requirements of § 6.2. There shall be no signs, except the following. A sign indicating the name of the Personal Wireless Service Facility's owner(s) and a 24 hour emergency telephone number shall be posted adjacent to the entry gate. In addition, No Trespassing or other warning signs may be posted on the fence.

7. Communication Equipment Shelters and Accessory Buildings shall be designed to be architecturally similar and compatible with each other, and shall be no more than 12 feet high. The buildings shall be used only for the housing of equipment related to this particular site. Whenever possible, the buildings shall be joined or clustered so as to appear as one building.

8. New Towers shall be the lesser of (a)199 feet or (b) the minimum height determined by the independent consultant(s) to provide the applicant Adequate Coverage from the Personal Wireless Service Facility(s) proposed for use on the Tower.

9. The minimum distance from the base of the Tower, to be measured from the vertical center line of the monopole, to any property line or road right-of-way shall be at least one and one-half (1.5) times the height of the Tower to ensure an adequate fall zone.

10. The Tower shall be located a minimum distance of three (3) times the height of the Tower from school buildings, playgrounds and athletic fields. Towers shall be located at least six hundred (600') feet from any residential structure to minimize impact on residential uses.

7.7.11 Tower Design. All Tower(s) shall be a monopole design and shall be constructed to resemble or mimic a native coniferous species of tree to minimize the adverse visual impact unless otherwise required by the SPGA.

1. Tower(s) must be placed to minimize visual impacts. Applicants shall place Towers on the side slope of terrain, so that, as much as possible, the top of the Tower does not protrude over the ridge line, as seen from public ways.

2. To the extent feasible, all network interconnections to and from the telecommunications site and all power to the site shall be installed underground. At the initial construction of the access road to the site, sufficient conduit shall be laid to accommodate the maximum possible number of Personal Wireless Service Providers licensed to provide services to the Town of Monterey and surrounding areas.

3. There shall be a minimum of one parking space per Personal Wireless Service Facility for use in connection with the maintenance of the site and shall not be used for the storage of vehicles and equipment.

4. If primary coverage (greater than 50%) from proposed Personal Wireless Service Facility is outside Monterey, then the permit may be denied unless the Applicant demonstrates to the satisfaction of the SPGA that the Applicant is unable to locate within the Town which is primarily receiving service from the proposed Facility.

5. Unless required by law, no night lighting of Towers, or the Personal Wireless Service Facility, is permitted, except for manually operated emergency lights for use only when operating personnel are on site.

6. No Tower or Personal Wireless Service Facility that would be classified as a hazard to air navigation, as defined by the Federal Aviation regulations (Title 14 CFR) is permitted.

7.7.12 Siting Criteria for Towers & Personal Wireless Service Facilities. No Tower or Personal Wireless Service Facility with the exception of Repeaters shall be located within any of the following prohibited areas. All distances are to be measured from the nearest property line of the Facility Site.

1. Massachusetts or federally regulated wetland or Massachusetts Certified Vernal Pool;

2. The habitat of any State-listed Rare or Endangered Wildlife or Rare Plant Species;

3. Within 100' horizontally from any Massachusetts regulated wetland;

4. Within 200' horizontally of the Outer Riparian Zone of any river or perennial stream;

5. Within 500' horizontally from any Historic District or property listed or eligible to be listed on the state or federal Register of Historic Places; or

6. Within 500' horizontally from any known archaeological site.

7.7.13 General Requirements for RSP(s). No Repeater shall be located closer than 50' to an existing Dwelling Unit, nor less than 25' above ground.

1. The SPGA may require the use of screening, painting or camouflage to reduce the visual impacts of Repeaters.

2. Repeaters shall be located so as to have the least possible impact on the views of the residents of the Town of Monterey.

3. All building mounted Repeaters shall be designed and located so to appear as an integral part of the existing architecture of the building.

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

1. Applicants for any Special Permit(s) under this Article shall grant permission for the Town's Independent Consultant(s), to conduct any necessary site visit(s).

7.7.15 Approval Criteria. In acting on the Special Permit Application, the SPGA shall proceed in accordance with the procedures and timelines established for Special Permits as mandated by G.L. c.40A, §9. In addition to the findings required by this By-law in Section 9.4, the SPGA shall, in consultation with the Independent Consultant(s), make all of the applicable findings before granting the Special Permit, as follows:

1. That Applicant is not able to use Existing Towers/Facility Sites in or around the Town of Monterey, either with or without the use of Repeaters, to provide Adequate Coverage and/or Adequate Capacity to the Town of Monterey; and

2. That proposed Personal Wireless Service Facility/Tower or Repeater will not have an undue adverse impact on historic resources, scenic views, residential property values, natural or man-made resources; and

3. That the Applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the Towers and Facilities; and

4. That the proposal shall comply with FCC 96-326 and any and all other applicable FCC regulations, regarding emissions of electromagnetic radiation and that the required Monitoring program is in place and shall be paid for by the Applicant.

Any decision by the SPGA to deny an Application for a Special Permit under this Article shall be in conformance with SEC. 332 [47 U.S.C. 332] (7)(B)(ii),(iii) of the Act, in that it shall be in writing and supported by substantial evidence contained in a written record.

7.7.16 Monitoring and Evaluation of Compliance.

1. Initial Monitoring: It shall be a condition of any Special Permit granted under this Section that, in order to determine the Tower and Facility's or Repeater's radio frequency emissions and their compliance with FCC regulations, the Applicant shall, after the granting of a Special Permit and within 30 days of the date that Applicant's Personal Wireless Service Facility(s) or Repeater(s) begin(s) transmission, pay for an Independent Consultant, hired by the Town, to Monitor the levels of EMF radiation, around the

proposed Facility and/or Repeater Site(s). The Independent Consultant shall use the Monitoring Protocol. A report of the Monitoring results shall be prepared by the Independent Consultant and submitted to the SPGA, the Select Board, the Planning Board, the Board of Health, the Building Inspector and the Town Clerk.

2. Ongoing Monitoring: It shall be a condition of any Special Permit granted under this Section that, in order to determine ongoing compliance with FCC regulations, after transmission begins, the owner(s) of any Personal Wireless Service Facility(s) or Repeater(s) located on any Facility or Repeater Site shall pay for an Independent Consultant, hired by the Town, to conduct testing and Monitoring of EMF radiation emitted from said Site, and to report results of said Monitoring, as follows:

a. There shall be random Monitoring of emissions, no more than twice yearly, by the Independent Consultant using actual field measurement of radiation, utilizing the Monitoring Protocol. This Monitoring shall measure levels of EMF radiation from the Facility Site's primary Antennas as well as from Repeater Site(s) (if any). A report of the Monitoring results shall be prepared by the Independent Consultant and submitted to the SPGA, the Select Board, the Planning Board, the Board of Health, the Building Inspector and the Town Clerk.

b. Any Major Modification of Existing Facility, or the activation of any additional permitted channels, shall be cause for new Monitoring in accordance with this Section.

c. Excessive Emissions: Should the Monitoring of a Facility or Repeater Site reveal that the Site exceeds the FCC 96-326 standard, or any other applicable FCC standard, then the owner(s) of all Facilities utilizing that Site shall be so notified. The owner(s)shall submit to the SPGA and the Building Inspector a plan for the reduction of emissions to a level that complies with the FCC 96-326 standard and any and all other applicable FCC regulations within 10 business days of notification of non-compliance. That plan shall reduce emissions to the applicable FCC standard within 15 days of initial notification of non-compliance. Failure to accomplish this reduction of emission within 15 business days of initial notification of non-compliance shall be a violation of the Special Permit and subject to penalties and fines, of $300.00 per violation, as specified in G.L. c.40, §21D. Every day of ongoing non-compliance shall be considered a new violation. Such fines shall be payable by the owner(s) of the Personal Wireless Service Facilities with Antennas on the Facility Site, until compliance is achieved.

d. Structural Inspection: It shall be a condition of the Special Permit that, Tower owner(s) shall pay for an Independent Consultant (a licensed professional structural engineer), hired by the Town, to conduct inspections of the Tower's structural integrity and safety. Towers shall be inspected every five years. A

report of the inspection results shall be prepared by the Independent Consultant and submitted to the SPGA, Select Board, the Planning Board, the Board of Health, the Building Inspector, and the Town Clerk. Any Major Modification of Existing Facility which includes changes to Tower dimensions or antenna numbers or type shall require new structural inspection.

e. Unsafe Structure: Should the inspection of any Tower reveal any structural defect(s) which, in the opinion of the Independent Consultant render(s) that Tower unsafe, the following actions must be taken. Within 10 business days of notification of unsafe structure, the owner(s) of the Tower shall submit a plan to remediate the structural defect(s). This plan shall be initiated within 10 days of the submission of the remediation plan, and completed as soon as reasonably possible. Failure to accomplish this remediation of structural defect(s) within 10 business days of initial notification shall be a violation of the Special Permit and subject to penalties and fines, of $300.00 per violation, as specified in G.L. c.40, §21D. Every day of ongoing non-compliance shall be considered a new violation. Such fines shall be payable by the owner(s) of the Tower, until compliance is achieved.

7.7.17 Removal Requirements. Any Personal Wireless Service Facility or Repeater which ceases to operate for a period of one year shall be removed. Cease to operate is defined as not performing the normal functions associated with the Personal Wireless Service Facility or Repeater and its equipment on a continuous and ongoing basis for a period of one year. At the time of removal, the Facility or Repeater Site shall be remediated such that all Personal Wireless Service Facility or Repeater improvements which have ceased to operate are removed. If all Facilities on a Tower have ceased to operate, the Tower shall also be removed, and the Facility or Repeater Site, including any access road(s) which lead to that Facility or Repeater Site from the main access road, shall be revegetated. If all Facility or Repeater Sites have ceased to operate, the owner of the last Personal Wireless Service Facility or Repeater to leave the site shall revegetate the access road in its entirety. Existing trees shall only be removed with the written permission of the SPGA, and only if the SPGA determines such removal of trees to be necessary to complete the required removal of Personal Wireless Service Facility(s) or Repeater(s).

7.7.18 Performance Guarantees. Applicant shall, as a condition of the Special Permit:

1. Post an initial bond in a reasonable amount determined and approved by the SPGA. This bond shall be in force to cover the costs of the remediation of any damage to the landscape which occurs during the clearing of the Site; and to cover the cost of the removal of the Tower or Facility or Repeater from the Site, and remediation of the landscape, should the Facility or Repeater cease to operate.

2. Post a maintenance bond for the access road(s), site(s) and tower(s) in amounts approved by the SPGA.

7.7.19 Fees and Insurance. Towers, Personal Wireless Service Facilities and Repeaters shall be insured by the owner(s) against damage to persons or property. The owner(s) shall provide a Certificate of Insurance to the Select Board's Office on an annual basis in which the Town of Monterey shall be an additional named insured, in an amount specified by the SPGA. The insurer must notify the Select Board, by certified mail, of any impending cancellation or of any change whatsoever in policy coverages.

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

7.8. Solar Photovoltaic Systems

7.8.1 Purpose
The purpose of this section is to facilitate the creation of new Large-Scale Ground-Mounted Solar Photovoltaic Systems (LGSPS) and Utility-Scale Industrial Ground-Mounted Solar Photovoltaic Systems (UGSPS) by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public health, welfare, safety, minimize impacts on environmental, scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations. This bylaw is intended to be consistent with Massachusetts General Law c.40A §3 in that it does not prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect public health, safety or welfare.

7.8.2 Definitions
Large-Scale Ground-Mounted Solar Photovoltaic System (LGSPS):
A solar system that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity greater than 30 kW and less than one megawatt or occupies more than 1/8 acre of land. **A LGSPS requires both Site Plan Review and a Special Permit.**
On-Site Solar Installation:
A solar installation that is constructed at a location where other uses of the underlying property occur.
Rated Nameplate Capacity:
The maximum rated output of electric power production of the Electric system in Alternating Current (AC) or Direct Current (DC).
Site Plan Review:
Review by the Planning Board to determine conformance with Section 9.5 of the zoning bylaw.
Small-scale Solar Photovoltaic System (SSPS): A solar photovoltaic system that may be either

ground or roof mounted, on less than 1/8 acre, with a maximum generating capacity of 30 kW. *Requires a Building Permit. Does not require Site Plan Review or a Special Permit*

Solar Photovoltaic System:

A device, structure, or structural design feature, a substantial purpose of which is to provide for the collection, storage and distribution of solar energy for space heating or cooling, generation of electricity, or water heating. This includes appurtenant equipment for the collection, storage and distribution of electricity to buildings or to the electric grid.

Utility-Scale Ground-Mounted Solar Photovoltaic System (UGSPS):

A solar photovoltaic system that is structurally mounted on the ground and has a minimum nameplate capacity of one megawatt or more regardless of the amount of land occupied. *Requires both Site Plan Review and a Special Permit.*

7.8.3 Applicability

a. The provisions set forth in this section shall apply to the construction, operation, repair, and / or removal of LGSPS and UGSPS. Any installation qualifying as a LGSPS or UGSPS shall require both a Special Permit and Site Plan Review in accordance with Sections 9.4 and 9.5 of the zoning bylaw. The special permit granting authority is the Board of Appeals. This Section also applies to physical modifications that materially alter the type, configuration or size of these installations or related equipment. In the event of such modifications, a modified Special Permit and new Site Plan Review shall be required. Not withstanding the provisions of this bylaw, any other system of technology utilizing solar energy to generate power shall be subject to the terms of this bylaw.

7.8.4 Plans

1. Plans

All plans, blueprints, drawings, and maps shall be prepared-as provided in Section 9.5.4. of the zoning bylaw.

2. Required Documents

Applicant shall provide the following documents in addition to or in coordination with those required by Sections 9.4 and 9.5. of the zoning bylaw.

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

b. Blueprints or drawings of the solar 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.

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

d. Documentation of the major system components to be used, including the electric generating components, transmission systems, mounting system, inverter, etc.

e. Name, address, and contact information for proposed system installer.

f. Name, address, contact information and signature of the project applicant, as well as all co-

applicants or property owners, if any.
g. The name, address, contact information and signature of any agents representing the project applicant.
h. Fire protection measures.
i. Certified list of abutters.
j. Documentation showing actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar installation.
k. Operation and Maintenance Plan. Applicant shall submit a plan for the operation and maintenance of the LGSPS and the UGSPS, which shall include measures for maintaining safe access to the installation, storm water management (consistent with DEP's Storm Water Regulations and the Town of Monterey's Storm Water Regulations) and vegetation controls, as well as general procedures for operational maintenance of the installation.
l. Zoning. 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).

3.Fee/Consultant. Upon submission of an application for site plan approval under this Section, the applicant shall pay a review fee determined by the Board of Appeals consisting of reasonable costs to be incurred by the Board of Appeals for the employment of independent consultants. The independent consultants may be hired in accordance with G.L. c. 44, §53G. The consultants shall be: a). a qualified professionals with a record of service to municipalities in with respect to LGSPS or UGSPS and, b). if determined necessary by the Board of Appeals, other relevant fields of experience. The Board of Appeals shall select the independent consultant(s) after consultation with the Select Board, the Planning Board, the Board of Health, and the Conservation Commission, each of which may propose a list of qualified candidates.

4. Bond. Applicant shall, as a condition of both the Special Permit and Site Plan Approval and the requirements set forth in this bylaw: Post a bond (issued by a surety satisfactory to the Board of Appeals in a reasonable amount determined and approved by the Board of Appeals. This bond shall be in force to cover the costs of the remediation of any damage to the landscape which occurs during the clearing of the site; and to cover the cost of the removal of the installation (both above and below ground) from the site, and restoration of the landscape, should the facility cease to operate. Such a bond (or replacements thereof) shall be maintained during the period the facility is operated.

7.8.5 Cessation of Use. A LGSPS or a UGSPS that ceases to operate for a period of one year shall be removed by the owner at their cost and expense. Cease to operate is defined as not performing the normal functions associated with the LGSPS or UGSPS and its equipment on a continuous and ongoing basis for a period of one year. At the time of removal, the site shall be remediated such that all improvements that have ceased to operate are removed, and the main access road shall be re-vegetated. Existing trees shall only be removed with the written permission of the Planning Board, and only if the Planning Board determines such removal of trees to be necessary to complete the required removal of the LGSPS or UGSPS.

7.8.6 Utility Notification
No LGSPS or UGSPS 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 installation owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

7.8.7 Compliance
1. Compliance with Laws, Ordinances and Regulations
The construction and operation of all LGSPS and UGSPS shall be consistent with all applicable local, state and federal requirements, including but not limited to the Wetlands Protection Act, the Scenic Mountains Act, and all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar installation shall be constructed in accordance with the State Building Code.
2. Building Permit and Building Inspection
No LGSPS or UGSPS shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

7.8.8 Dimensional Requirements
1. Setbacks
Notwithstanding the provisions of Section 4.2.1. of the zoning bylaw, for LGSPS front, side and rear setbacks shall be as follows.
a. Front yard: The front yard depth shall be at least 75 feet.
b. Side yard. Each side yard shall be a depth of at least 75 feet.
c. Rear yard. The rear yard depth shall be at least 75 feet.
Notwithstanding the provisions of Section 4.2.1. of the zoning bylaw, for UGSPS front, side and rear setbacks shall be as follows.
a. Front yard: The front yard depth shall be at least 150 feet.
b. Side yard. Each side yard shall be a depth of at least 150 feet.
c. Rear yard. The rear yard depth shall be at least 150 feet.
2. Screening
Every project shall be subject to reasonable requirements that it be visually screened from abutting properties through any one or combination of the following; location, distance, plantings, existing vegetation and fencing.
3. Siting Criteria
No LGSPS or UGSPS shall be located within any of the following prohibited areas and, if provided, not closer than the distance indicated. All distances are to be measured from the nearest property line on which the facility it located.

1. The habitat of any State-listed Rare or Endangered Wildlife or Rare Plant Species;
2. Within 500' horizontally from any Historic District or property listed or eligible to be listed on the state or federal Register of Historic Places; or
3. Within 500' horizontally from any known archaeological site.

7.8.9 Design and Performance Standards

1. Lighting

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

2. Signage

Signs on LGSPS and UGSPS shall comply with Section 6.2 of the Zoning Bylaws. 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.

3. Utility Connections

Reasonable efforts shall be made to place all utility connections from the LGSPS and UGSPS underground (if feasible), depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider.

4. Roads

Access roads shall be constructed to minimize grading, removal of stonewalls or street trees and minimize impacts to environmental or historic resources.

5. Hazardous Materials

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

7.8.10 Safety and Environmental Standards

1. Emergency Services

The LGSPS and UGSPS owner or operator shall provide a copy of the project summary, and electrical schematic, to the local Fire Department, Building Commissioner, and Director of Operations. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan including the training of any municipal first responders. All means of shutting down the LGSPS and UGSPS 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 LGSPS and UGSPS or otherwise prescribed by applicable laws, regulations, and bylaws.

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

7.8.12 Annual Reporting
The owner or operator of the installation shall submit an Annual Report demonstrating and certifying compliance with the Operation and Maintenance Plan and the requirements of the zoning bylaw and their approved site plan including control of vegetation, noise standards, 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 Board of Selectmen, Planning Board, Fire Department, Director of Operations, Building Commissioner, Board of Health and Conservation Commission (if Wetlands Permit was issued) no later than forty-five (45) days after the end of the calendar year. Failure to provide such an annual report, within said forty-five (45) days, shall be a violation of the Special Permit and subject to penalties and fines of $100 per day commencing at the expiration of said forty-five (45) day period until the annual has been provided as specified in G.L. c.40-21 D.

7.8.13 Change of owner/operator
In the event of a change of the owner or operator of the LGSP or UGSP, written notice thereof shall be provided to the Board of Selectmen, Planning Board, Fire Department, Director of Operations, Building Commissioner, Board of Health and Conservation Commission (if a Wetlands Permit was issued) with ten days of such change.

SECTION 8.0 SPECIAL DISTRICTS

[RESERVED]

SECTION 9.0 ADMINISTRATION AND PROCEDURES

9.1 ENFORCEMENT

9.1.1 General. This By-law, and any conditions set forth in a site plan, variance, or special permit, shall be administered and enforced by the Inspector of Buildings under the supervision of the Select Board.

9.1.2 Building Permit. The Inspector of Buildings shall grant a building permit when plans and specifications conform with the provisions of this By-law, the Subdivision Control Law, and the State Building and Sanitary Codes or with the decision of the Board of Appeals or of the courts.

1. Applications for buildings or structures located within one hundred (100) feet of wetlands are subject to the review of the Conservation Commission.

2. A building permit from the Inspector of Buildings shall be required before starting to: construct, reconstruct, alter, remove, repair, or demolish a building or structure; or change the type of occupancy or use of a building or structure; or install or alter any equipment for which provision is made or installation of which is regulated by the Massachusetts Building Code.

3. Such permit shall state that the structure, premises and the proposed use thereof comply with the provisions of the By-law.

9.1.3 Work Exempt from Permit. Except for activities which may require a permit pursuant to other laws, by-laws and rules, a building permit is not required for the following activities, as set forth in the State Building Code, as may be amended from time to time:

1. One story detached accessory structure used as tool or storage sheds, playhouses and similar uses, but not garages, provided the floor area does not exceed 200 square feet.

2. Fences not over six (6) feet high.

3. Retaining walls that are not over four (4) feet in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge, or that retain over four feet of unbalanced fill.

4. Sidewalks and driveways.

5. Painting, papering, tiling, carpeting, cabinets, counter tops, and similar finish work.

6. Prefabricated swimming pools that are less than 24 inches deep.

7. Swings and other playground equipment.

8. Window awnings supported by an exterior wall which do not project more than 54 inces from the exterior wall and do not require additional support.

9. Decks not exceeding 200 square feet in area, that are not more than 30 inches above grade at any point, are not attached to a dwelling and do not serve the exit door required by the State Building Code.

9.1.4 Occupancy Permit. The Inspector of Buildings shall be notified in writing by the owner fourteen (14) days before a building shall be used or a dwelling occupied. Upon notification, the Inspector of Buildings shall inspect the building for compliance with building permit and regulations and issue an occupancy permit within the specified fourteen (14) day period; or instruct the owner which deficiencies must be corrected.

9.1.5 Penalty. Anyone violating any of the provisions of this By-law may be fined not more than three hundred dollars ($300) for each offense. Each day that such violation continues may constitute may constitute a separate offense.

9.1.6 Noncriminal Disposition. In addition to the procedures for enforcement as described above, the provisions of this By-law may also be enforced by the Inspector of Buildings and the police, by non-criminal complaint pursuant to the provisions of G.L. c. 40, s. 21D. Each day on which a violation exists may be deemed to be a separate. The penalty for violation of any provisions of this By-law shall be $25.00 for the first offense; $50.00 for the second offense; $100.00 for the third offense; and $200.00 for the fourth and each subsequent offense.

9.2 BOARD OF APPEALS

9.2.1 Establishment. There is hereby established a Board of Appeals of five (5) elected members and two (2) associate members to be appointed by the Select Board as provided in Chapter 40A of the General Laws.

9.2.2 Powers and Duties. The powers of the Board of Appeals shall include the following:

1. Appeals. To hear and decide appeals and review any order, requirement, decision or determination made by the Select Board or other officer charged with the enforcement of this By-law. Such appeals may be taken to the Board of Appeals by any officer of a board of the Town, or by any person aggrieved by such order, requirements, decision or determination, following the procedure established under Chapter 40A of the General Laws as amended.

2. Special Permits. To grant special permits as provided in this By-law and in Chapter

40A of the General Laws in accordance with Section 9.4. Upon receipt of a request for permit, the Board of Appeals shall notify the Planning Board, Conservation Commission, and the Board of Health of the request, and said boards shall respond to the Board of Appeals within thirty (30) days thereafter by written reports of their findings in respect of their specific fields of responsibilities. If deemed necessary, said boards shall make on-site plan reviews and inspections.

3. Variances. To hear and decide requests for a variance from the terms of the By-law where the Board of Appeals specifically finds that, owing to circumstances relating to the soil conditions, shape, or topography of such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the By-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this By-law. The Board may authorize a use or activity variance. Upon receipt of a request for a variance, the Board of Appeals shall notify the Conservation Commission, Planning Board, and the Board of Health of the request, and said boards shall respond to the Board of Appeals within thirty (30) days thereafter by written reports of their findings in respect of their specific fields of responsibilities. If deemed necessary, said boards shall make on-site plan reviews and inspections.

4. Comprehensive Permit. To hear and decide an application for a comprehensive permit pursuant to G.L. c. 40B.

9.2.3 Regulations. The Board of Appeals may adopt rules and regulations for the administration of its powers.

9.2.4 Fees. The Board of Appeals may adopt reasonable administrative fees and technical review fees for petitions for special permits, variances, administrative appeals, and applications for comprehensive permits.

9.3 PLANNING BOARD

9.3.1 Establishment. The Planning Board shall consist of the seven elected members and one associate member.

9.3.2 Powers. The Planning Board shall have the following powers:

1. To hear and decide applications for special permits as provided in this By-law, subject to any general or specific rules therein contained and subject to any appropriate conditions and safeguards imposed by the Board.

2. To perform other functions as set forth in G.L. c. 40, 40A, and 41.

9.3.3 Rules and Regulations. The Planning Board shall adopt rules and regulations not inconsistent with the provisions of this By-law for conduct of its business and otherwise carrying out the purposes of said Chapter 40A, and shall file a copy of such rules in the office of the Town Clerk.

9.3.4 Fees. The Planning Board may adopt reasonable administrative fees and technical review fees for applications for special permits and site plan approval.

9.4 SPECIAL PERMITS

9.4.1 Special Permit Granting Authority. The Board of Appeals, Planning Board, and the Board of Selectmen shall be the Special Permit Granting Authority (SPGA) as specified in the various sections of this By-law and shall hear and decide applications for special permits.

9.4.2 Criteria. Special permits shall be granted by the SPGA, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this By-Law, the determination shall include consideration of each of the following:

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and
6. Potential fiscal impact, including impact on town services, tax base, and employment.

9.4.3 Application. The SPGA may adopt additional rules relative to the issuance of special permits and shall file a copy with the Town Clerk. The rules shall prescribe a size, form, contents, style, and number of copies of plans and specifications and the procedure for submission and approval of such permits.

9.4.4 Conditions. The SPGA may impose additional conditions and limitations as it may deem necessary.

9.4.5 Regulations. The special permit granting authority may adopt rules and regulations for the administration of this section.

9.4.6 Fees. The special permit granting authority may adopt reasonable administrative fees and technical review fees for applications for special permits.

9.4.7 Lapse. Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 24 months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof) with the Town Clerk.

9.5 SITE PLAN REVIEW

Applicability. The following types of activities and uses require site plan review by the Planning Board:

1. Construction, exterior alteration or exterior expansion of, or change of use within, an institutional, commercial, industrial, non-municipal educational or religious use, or residential structure with three or more dwelling units;

2. Construction or expansion of a parking lot for a municipal, institutional, commercial, industrial, non-municipal educational or religious use, or residential structure with three or more dwelling units;

3. Common driveway pursuant to Section 7.1;

4. Large scale ground mounted solar photovoltaic facility.

9.5.2 Approval Required. An application for a building permit to perform work as set forth in Section 9.5.1 shall be accompanied by an approved Site Plan. Prior to the commencement of any such activity, the project proponent shall obtain site plan approval from the Planning Board.

9.5.3 Procedures. Applicants for site plan approval shall submit ten (10) copies of the site plan to the Board for review. The Board shall provide a copy of the application to the Fire Department, Inspector of Buildings, Board of Selectmen, Department of Public works, Conservation Commission, Board of Health, and Police Chief for their advisory review and comments. Failure of such board or official to respond within thirty-five days of submittal shall be deemed a lack of opposition thereto. The Planning Board shall review and act upon the site plan, with such conditions as may be deemed appropriate, within ninety (90) days of its receipt, and notify the applicant of its decision. The decision of the Board shall be upon a majority of those present and shall be in writing. No building permit shall be issued by the Building Inspector without the written approval of the site plan by the Planning Board, or unless 90 days lapse from the date of the submittal of the site plan without action by the Board.

1. The applicant may request, and the Board may grant by majority vote, an extension of the time limits set forth herein.

2. No deviation from an approved site plan shall be permitted without modification thereof.

9.5.4 Preparation of Plans. Applicants are invited to submit a pre-application sketch of the proposed project to the Board and to schedule a comment period at a regular meeting of the board. Site Plans shall be submitted on 24 inch by 36 inch sheets. Plans shall be prepared by a Registered Professional Engineer, Registered Land Surveyor, Architect, or Landscape Architect, as appropriate. Dimensions and scales shall be adequate to determine that all requirements are met and to make a complete analysis and evaluation of the proposal. All plans shall have a minimum scale of 1"=20'.

9.5.5 Contents of Plan. Unless specifically waived by the Board, the contents of the site plan are as follows:

1. Five (5) separate plans prepared at a scale of one (1) inch equals twenty (20) feet or such other scale as may be approved by the Board. The plans are as follows:

a. Site layout, which shall contain the boundaries of the lot(s) in the proposed development, proposed structures, drives, parking, fences, walls, walks, outdoor lighting, loading facilities, and areas for snow storage after plowing. The first sheet in this plan shall be a locus plan, at a scale of one (1) inch equals one hundred (100) feet, showing the entire project and its relation to existing areas, buildings and roads for a distance of one thousand (1,000) feet from the project boundaries or such other distance as may be approved or required by the Board.

b. Topography and drainage plan, which shall contain the existing and proposed final topography at two-foot intervals and plans for handling stormwater drainage.

c. Utility and landscaping plan, which shall include all facilities for refuse and sewerage disposal or storage of all wastes, the location of all hydrants, fire alarm and firefighting facilities on and adjacent to the site, all proposed recreational facilities and open space areas, and all wetlands including floodplain areas.

d. Architectural plan, which shall include the ground floor plan and architectural elevations of all proposed buildings and a color rendering.

e. Landscaping plan, showing the limits of work, existing tree lines, and all proposed landscape features and improvements including screening, planting areas with size and type of stock for each shrub or tree, and including proposed erosion control measures.

2. The site plan shall be accompanied by a written statement indicating the estimated time required to complete the proposed project and any and all phases thereof. There shall be submitted a written estimate, showing in detail the costs of all site improvements planned.

3. A written summary of the contemplated projects shall be submitted with the site plan indicating, where appropriate, the number of dwelling units to be built and the acreage in residential use, the evidence of compliance with parking and off-street loading

requirements, the forms of ownership contemplated for the property and a summary of the provisions of any ownership or maintenance thereof, identification of all land that will become common or public land, and any other evidence necessary to indicate compliance with this By-law.

4. The site plan shall be accompanied by drainage calculations by a registered professional engineer. Storm drainage design must conform to Town's subdivision regulations.

5. The Board may require narrative assessments of the on-site and off-site impacts of the proposed use and structures.

6. Certification that the proposal is fully compliant with the provisions, if applicable, of the Americans with Disabilities Act and the Massachusetts Architectural Access Board.

9.5.6 Waiver of Technical Compliance. The Board may, upon written request of the applicant, waive any of the technical requirements of this Section where the project involves relatively simple development plans or constitutes a minor site plan.

9.5.7 Approval. Site Plan approval shall be granted upon determination by the Board that the plan meets the following objectives. The Board may impose reasonable conditions at the expense of the applicant, including performance guarantees, to promote these objectives. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Board`s Subdivision Rules and Regulations. New building construction or other site alteration shall be designed in the Site Plan, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, so as to:

1. Minimize the volume of cut and fill, the number of removed trees 6" at 4' caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of storm water flow increase from the site, soil erosion, and threat of air and water pollution;

2. Maximize pedestrian and vehicular safety both on the site and egressing from it;

3. Minimize obstruction of scenic views from publicly accessible locations;

4. Minimize visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned;

5. Minimize glare from headlights and lighting intrusion;

6. Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places.

7. Minimize contamination of groundwater from on-site waste-water disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances;

8. Ensure compliance with the provisions of this By-law, including parking and signage.

9.5.8 Lapse. Site plan approval shall lapse after one year from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Board upon the written request of the applicant.

9.5.9 Regulations. The Board may adopt reasonable regulations for the administration of site plan review, including administrative and technical review fees.

9.5.10 Appeal. Any decision of the Board pursuant to this Section shall be appealed in accordance with G.L. c. 40A, s. 17 to a court of competent jurisdiction.

SECTION 10.0 DEFINITIONS

In this By-law, the following terms and constructions shall apply unless a contrary meaning is required by the context or is specifically prescribed in the text of this By-law. Words used in the present tense include the future. The singular includes the plural and the plural includes the singular. The word "shall" is mandatory and "may" is permissive or discretionary. The word "and" includes "or" unless the contrary is evident from the text. The word "includes" or "including" shall not limit a term to specified examples, but is intended to extend its meaning to all other instances, circumstances, or items of like character or kind. The word "lot" includes "plot"; the word "used" or "occupied" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied". The words "building," "structure," "lot," or "parcel," shall be construed as being followed by the words "or any portion thereof." The word "person" includes a firm, association, organization, partnership, company, or corporation, as well as an individual. Terms and words not defined herein but defined in the Commonwealth of Massachusetts state building code shall have the meaning given therein unless a contrary intention is clearly evident in this By-law.

Agriculture, exempt: The use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, except that all such activities may be limited to parcels of 5 acres or more in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture or to parcels 2 acres or more if the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least $1,000 per acre based on gross sales dollars in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture. For such purposes, land divided by a public or private way or a waterway shall be construed as 1 parcel.

Agricultural use, nonexempt: Agricultural use of property not exempted by G.L. c. 40A, s. 3.

Animal clinic or hospital: A place where animals or pets are given medical or surgical treatment and the boarding of animals is limited to short term care incidental to the clinic or hospital use.

Bed and Breakfast: See Section 7.6.

Building: A roofed or walled structure used or intended for supporting or sheltering any use or occupancy.

Business or professional office: A building or part thereof, for the transaction of business or the provision of services exclusive of the receipt, sale, storage, or processing of merchandise.

Camp and/or Recreational Facility, Seasonal or Year Round: A land use in operation either seasonally or year around, for guests and staff, which provides for organized athletic and/or recreational activities, meetings, functions, events, and including common kitchen and dining facilities, and sleeping quarters in dormitories or separate cabins. One single family dwelling may be provided for the purpose of administration or owners' residence.

Camp, summer: A land use, in operation only between Memorial Day and Labor Day, which for campers and staff provides: organized recreational activities, common kitchen and dining facilities, and sleeping quarters in dormitories or separate cabins. One single-family dwelling may be provided for the purpose of administration or owners' residence.

Child Care Facility: A day care center or school age child care program, as those terms are defined in G.L. c. 15D, s. 1A.

Club or lodge, private: Buildings, structures and premises used by a nonprofit social or civic organization, or by an organization catering exclusively to members and their guests for social, civic, recreational, or athletic purposes which are not conducted primarily for gain and provided there are no vending stands, merchandising, or commercial activities except as may be required generally for the membership and purposes of such organization.

Common Driveway: A private way shall be considered a common driveway when said road is used to provide access to two, three or four lots. A common driveway will begin where it accesses public ways or suitable private ways, and ends at the property line of the last lot being accessed.

Customary Home and Professional Occupations: Resident occupants working at an occupation involving use of space in the home and carried forth in the home, including but not limited to accountant, architect, artisan, artist, bookkeeper, carpenter, caterer, dentist, doctor, dress-maker, electrician, home-cooking, house painter, lawyer, plumber, potter, photographer, the giving of private music and dance lessons, a one-chair beauty parlor, real estate agent, telephone, computer-related, and mailing services. Customary home occupation does not include gift shop, antique shop or art gallery or similar retail establishments.

> ***Non-intensive:*** The use of a room or rooms within a residence, or use of an accessory building of six hundred square feet or less in area, for a customary or professional home occupation as defined, with no more than two employees per residence, and provided there is no external evidence of business other than a permitted sign and required off-street parking, and further provided that no offensive noise, fumes, smoke, dust, odors, glare or injurious electromagnetic fields shall be created.
>
> ***Intensive:*** Customary Home Occupation, as defined above, where an accessory building in excess of six hundred feet is proposed.

Dwelling: Dwelling – Any building that contains either one or two dwelling units used, intended, or designed, to be built used, rented, leased, let, or hired out to be occupied or that are occupied for living purposes.

Dwelling, Single Family: A single unit providing complete independent living facilities for one of more persons, including permanent provision for living, sleeping, eating, cooking, and sanitation.

Dwelling, Multi-Family: A residential building containing three (3) or more dwelling units with a maximum of six (6) dwelling units allowed.

Educational use, nonexempt: Educational facilities not exempted from regulation by G.L. c. 40A, s. 3.

Essential services: Services provided by a public service corporation or by governmental agencies through erection, construction, alteration, or maintenance of gas, electrical, steam, or water transmission or distribution systems and collection, communication, supply, or disposal systems whether underground or overhand, but not including wireless communications facilities. Facilities necessary for the provision of essential services include poles, wires, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment in connection therewith.

Family: An individual or any number of individuals related by blood, marriage or other legal arrangement, such as adoption, guardianship, foster care, or up to six (6) unrelated individuals living in a single dwelling unit.

Family day care home: Any private residence operating a facility as defined in G.L. c. 15D, s. 1A.

Farm stand, exempt: Facilities for the sale of produce, wine and dairy products, provided that either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 per cent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 25 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another.

Farm stand, nonexempt: a farm stand not exempt by G.L. c. 40A, s. 3.

> ***Local goods:*** the display and sale of natural products, the majority of which are raised in the Town.
>
> ***Non-Local goods:*** the display and sale of natural products, the majority of which are not raised in the Town.

Frontage: The boundary of a lot which lies along a road.

Funeral home: Facility for the conducting of funerals and related activities such as embalming.

General service establishment: Shop for lawn mower or small appliance repair, upholstery or furniture repair, bicycle repair person, printer, blacksmith, builder, carpenter, caterer, electrician, lawn mower service person, mason, painter, plumber or roofer.

Hazardous Waste Disposal: The collection, treatment, storage, burial, incineration or disposal of hazardous waste as defined in Chapter 21C Section 2. Of the Massachusetts General Laws except by provision of the Board of Health for collection, temporary storage and removal.

Home occupation, intensive: The use of a room or rooms within a residence, or use of an accessory building, of more than six hundred square feet in area.

Home occupation, non-intensive: The use of a room or rooms within a residence, or use of an accessory building, of six hundred square feet or less in area, with no more than two employees per residence as of right, provided there is no external evidence of business other than a permitted sign and required off-street parking.

Home studio: The shop of a potter, sculptor, artist, furniture maker, jeweler, basket weaver, or other artisan located in the home as an accessory use.

Junkyard or vehicle salvage yard: The use of any area or any lot, whether inside or outside of a building, for the storage, keeping, or abandonment of junk, scrap or discarded materials, or the dismantling, demolition, or abandonment of automobiles, other vehicles, machinery, or parts thereof.

Kennel, commercial: A commercial establishment in which more than three (3) dogs or domesticated animals are housed, groomed, bred, boarded, trained or sold.

Light manufacturing: Fabrication, assembly, processing, finishing work or packaging.

Lot: An area of land in one ownership with definite boundaries, used or available for use as the site of one or more buildings.

Manufacturing: A use engaged in the basic processing and manufacturing of materials, or the manufacture from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products.

Motor vehicle body repair: An establishment, garage or work area enclosed within a building where repairs are made or caused to be made to motor vehicle bodies, including fenders, bumpers and similar components of motor vehicle bodies, but does not include the storage vehicles for the cannibalization of parts.

Motor vehicle general repairs: Premises for the servicing and repair of autos, but not to include fuel sales.

Motor vehicle fuel facility: Premises for the supplying of fuel, oil, lubrication, washing, or minor repair services, but not to include body work, painting, or major repairs.

Municipal use: Any Town of Monterey use of land in accordance with the general laws governing municipal powers and functions including participation in regional uses.

Personal service establishment: A facility providing personal services such as hair salon, barber shop, tanning beds, dry cleaning, print shop, photography studio, and the like.

Personal Watercraft: Personal Watercraft is defined as a small vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to

be operated by persons sitting, standing or kneeling on the vessel. The term includes but is not limited to a jet-ski, wet bike or surf-jet, so-called.

Public Market: A market or market place as defined in G.L. c. 40, s. 10.

Radioactive Waste Disposal: The collection, treatment, storage, burial, incineration or disposal of radioactive waste, including but not limited to wastes classified as low-level radioactive waste.

Repair: Any maintenance which affects structure, egress, fire protection systems, fire ratings, energy conservation provisions, plumbing, sanitary, gas, electrical or other utilities.

Repair, ordinary: Any maintenance which does not affect structure, egress, fire protection systems, fire ratings, energy conservation provisions, plumbing, sanitary, gas, electrical or other utilities.

Resident Occupant: Person listed by a Monterey street and house number.

Restaurant: A building, or portion thereof, containing tables and/or booths for at least two-thirds (2/3) of its legal capacity, which is designed, intended and used for the indoor sales and consumption of food prepared on the premises, except that food may be consumed outdoors in landscaped terraces, designed for dining purposes, which are adjuncts to the main indoor restaurant facility. The term "restaurant" shall not include "fast food establishments."

Restaurant, fast-food: An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready to consume state for consumption either within the restaurant building or off premises and usually requires ordering food at a counter.

Retail: A facility selling goods but not specifically listed in the Table of Use Regulations.

Road: (a) A public way or way which the Clerk of the Town certifies is maintained and used as a public way, or ((b)) a way shown on a plan theretofore approved and endorsed in accordance with the Subdivision Control Law, or (c) a way in existence when the Subdivision Control Law became effective (January 27, 1966) in the town in which the land lies, having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting hereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

Roadline: The right-of-way-line of a road as established by public authority (stone walls, line trees, deeds, surveys, other of official documents, etc.), or as shown on a plan approved or endorsed by the Planning Board under the Subdivision Control Law, or if none of the above apply, a line parallel to the center line of traveled way and 25 feet therefrom.

Setback: The area of the lot extending inward from a lot line (or, in the case of front setback, the road line), for the distance specified in the zoning regulations in which no buildings or structures may be placed. **With respect to the restriction of structures in lot setback areas, driveways, walkways, stairs, freestanding masonry wall or fences and walls used to retain soil topography shall not be deemed as structures.":**

Rear: An area extending inward from the rear lot line between the side lot lines.

Side: An area extending along a side lot line from the front line to the rear line.

Sign: Any structure or device used for visual communication that may comprise any letter, word, symbol, drawing, picture, design or article that calls attention to or indicates any premises, person, or activity, whatever the nature of material and manner of composition or construction, shall be considered a sign and is to be regulated by Section 6.2.

Structure: Any construction, erection, assemblage or other combination of materials upon the land with or without pilings, footings or a foundation for attachment to the land, including but not limited to swimming pools, recreational courts, decks, platforms including tent platforms, piers, free-standing antennae and satellite dishes. For the purpose of this By-law, fences are not considered structures.

Studio business: Shop of a potter, sculptor, artist, furniture maker, jeweler, basket weaver, or other artisan as a principal use.

Traveled Way: Portion of a road which is used and maintained for vehicular traffic.

Wireless Telecommunications Overlay District: The following definitions shall apply in Section 8.1:

> ***Act:*** The Telecommunications Act of 1996.
>
> ***Adequate Capacity:*** Capacity is considered to be "adequate" if the Grade of Service is p.05 or better for a worst case day in a preceding month, based on the Erlang B Tables, prior to the date of Application; or as measured using direct traffic measurement of the Personal Wireless Service Facility in question for existing Facilities requesting Major Modification, and where the call blocking is due to frequency contention at the antenna(s).
>
> ***Adequate Coverage:*** Coverage is considered to be "adequate" within that area surrounding a Base Station where the predicted or measured median field strength of the transmitted signal for at least 75% of the covered area is greater than -95 dbm. It is acceptable for there to be holes within the area of Adequate Coverage where the signal is less than -95 dbm, as long as the signal regains its strength to greater than -95 dbm further away from the Base Station. For the limited purpose of determining whether the use of a Repeater is necessary or desirable, there shall be deemed not to be Adequate Coverage within said holes. The outer boundary of the area of Adequate Coverage, however, is that location past which the signal does not regain a strength of greater than -95 dbm.
>
> ***Antenna:*** A device which is attached to a Tower, or other structure for transmitting and receiving electromagnetic waves.

Base Station: The primary sending and receiving site in a wireless telecommunications network.

Channel: The segment of the radiation spectrum from an Antenna which carries one signal. An Antenna may radiate on many Channels simultaneously.

Clustering: The location of Towers in as close proximity to one another as technically feasible upon any Facility Site.

Communication Equipment Shelter: A structure located at a Base Station designed principally to enclose equipment used in connection with Personal Wireless Service transmissions.

DBM: Unit of measure of the power level of an electromagnetic signal expressed in decibels referenced to 1 milliwatt.

EMF: Electromagnetic Frequency Radiation.

Facility Site: The location within a Wireless Telecommunications Overlay District owned or leased by one or more Personal Wireless Service Providers and upon which one or more Personal Wireless Service Facility(s), including fencing and required landscaping are located.

Facility Tower/Special Permit (FT/SP): The Special Permit required to be obtained in order to install any Tower or Personal Wireless Service Facility or for any Major Modification Of An Existing Facility within the Wireless Telecommunications Overlay District.

FCC: Federal Communications Commission. The Government agency responsible for regulating telecommunications in the United States.

FCC 96-326: A Report and Order which sets new national standards for emissions of Radio-Frequency emissions from FCC-regulated transmitters. This Report And Order is now contained within Title 47 Regulations, Section 1, §1.1307.

GHZ: Gigahertz: One billion hertz.

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

HERTZ: One hertz is the frequency of an electric or magnetic field which reverses polarity once each second, or one cycle per second.

Major Modification of an Existing Facility: Any change, or proposed change in power input or output, number of Antennas, change in Antenna type or model, repositioning of Antenna(s), change in number of Channels per Antenna above the maximum number approved under an existing Special Permit. Also any increase, or proposed increase in dimensions of an existing and permitted Tower or other structure designed to support

Personal Wireless Service transmission, receiving and/or relaying antennas and/or equipment.

Major Modification of an Existing Repeater: Any removal of or change in location of any Repeater(s) from the Repeater Site(s) for which a Repeater Special Permit has been received.

MHZ: Megahertz: One million hertz.

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

Monitoring Protocol: The testing protocol, initially the Cobbs Protocol, which is to be used to monitor the emissions from existing and new Personal Wireless Service Facilities and Repeaters upon adoption of this Article. The SPGA may, as the technology changes, require, by written regulation, the use of other testing protocols. A copy of the Monitoring Protocol shall be on file with the Select Board and the Town Clerk.

Monopole: A single self-supporting telescoping vertical pole with below grade foundations.

Personal Wireless Services: Commercial Mobile Services, unlicensed wireless services, fixed wireless broadband services and common carrier wireless exchange access services. These services include: cellular services, personal communications services (PCS), Specialized Mobile Radio Services, fixed wireless internet and Paging Services.

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

Personal Wireless Service Provider: An entity, licensed by the FCC to provide Personal Wireless Services to individuals or institutions.

Radiation Propagation Studies or Radial Plots: Computer generated estimates of the radiation emanating from Antennas or Repeaters sited on a specific Tower or structure. The height above mean sea level, power input and output, frequency output, type of antenna, antenna gain, topography of the site and its surroundings are all taken into account to create these simulations. They are the primary tool for determining whether a site will provide Adequate Coverage for the Personal Wireless Service Facility proposed for that Site.

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

Repeater Site: The location within the Town of Monterey leased by one or more Personal Wireless Service Providers and upon which one or more Repeater(s) and required camouflage or screening are located.

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

Special Permit Granting Authority (SPGA): The Zoning Board of Appeals shall be the SPGA for this Article.

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

Tower: A lattice structure or framework, or Monopole that is designed to support Personal Wireless Service transmission, receiving and/or relaying antennas and/or equipment.

Wireless Communications Facility: Any and all materials, equipment, storage structures, towers and antennas, other than customer premises equipment, used by a telecommunications carrier to provide telecommunications services.