

# ZONING BYLAW

Established January 30, 1967

TOWN OF EGREMONT

COMMONWEALTH OF MASSACHUSETTS

As amended May 5, 2015

Official Bylaw Documents are on file with the Egremont Town Clerk

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	<b>EGREMONT ZONING MAP</b>	

# **1. TITLE, AUTHORITY, AND PURPOSE**

## **1.1. Title**

**1.1.1.** This Bylaw shall be known as the "Zoning Bylaw of the Town of Egremont, Massachusetts," hereinafter referred to as "this Bylaw."

## **1.2. Authority**

**1.2.1.** This Bylaw is adopted in accordance with the provisions of Chapter 40A of the General Laws of the Commonwealth of Massachusetts as amended.

## **1.3. Purpose**

**1.3.1.** The purpose of this Bylaw is to achieve greater implementation of the powers granted to the municipalities under Article 89 of the Amendments to the Constitution of the Commonwealth in the general interests of public health, safety and welfare, including but not limited to the following objectives:

- 1.3.1.1.** To prevent overcrowding of land; to secure safety from fire, flood, panic and other dangers; to conserve health; to lessen congestion in the streets; and to permit housing for persons of all income levels;
- 1.3.1.2.** To facilitate the adequate provision of transportation, water supply, drainage, sewerage, schools, parks, open space and other public requirements;
- 1.3.1.3.** To conserve the value of land and buildings including the conservation of natural resources and the prevention of blight and pollution of the environment;
- 1.3.1.4.** To preserve and increase amenities by the promulgation of regulations designed to:
  - a.** Protect the Town's areas of scenic beauty, its brooks, ponds, wetlands and water resources, and other significant environmental features;
  - b.** Minimize the adverse effects of development on natural resources and municipal facilities;
  - c.** Employ cooperatively the various measures taken by the Town's agencies, under diverse legislative authority, including the State Environmental Code, Wetlands Protection Act, Subdivision Control Legislation, and the State Building Code, for the preservation of the Town's existing rural character, open spaces,

low density of population, and in the interests of the Town's orderly growth at deliberate pace.

## 1.4. Applicability

1.4.1. This Bylaw, or any amendment thereto, shall take effect on the date on which such adoption or amendment is voted by the Town Meeting.

1.4.2. Upon the effective date of this Bylaw, it shall supersede the protective Bylaw and all amendments to it previously in effect.

## 1.5. Amendment

This Bylaw may be amended from time to time in an annual or Special Town Meeting in accordance with Chapter 40A, of the General Laws.

## 1.6. Separability

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

## 2. DEFINITIONS

For the purpose of this Bylaw, the following words and terms as used herein shall have the meanings or limitations of meaning hereunder defined, explained or assigned.

**ACCESSORY USE OR STRUCTURE:** A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

**ADULT ENTERTAINMENT USE:** Any use defined as an Adult Entertainment Use in Section 5.4 of this Bylaw.

**DWELLING, ONE FAMILY:** A detached residential building containing one (1) dwelling unit and occupied by one (1) family only, but not including mobile homes whether placed on a foundation or not.

**DWELLING, TWO FAMILY:** A detached residential building containing two (2) dwelling units, designed for occupancy by not more than two (2) families.

**DWELLING, MULTI-FAMILY:** A residential building designed for or occupied by three (3) or more families, with the number of families in residence not exceeding the number of dwelling units provided.

**FAMILY:** One (1) or more individuals related by blood, marriage or adoption, or not more than five (5) individuals who are not so related, living in a single dwelling unit on a regular residential basis.

**FRONTAGE:** The continuous distance along the street line, which provides direct access to the lot.

**HOME OCCUPATION:** A business conducted within a dwelling by a resident thereof as a use accessory thereto, involving no undue traffic or noise. For the purpose of this Bylaw, home occupation does not include gift shop, antique shop, art gallery or similar retail establishment.

**LARGE-SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATION (LGSPI):** An installation consisting of solar photovoltaic panels that are mounted on the ground and have a minimal nameplate capacity (or output of electric power production) of 250 kW DC.

**LOT:** A clearly defined parcel of land of at least sufficient size to meet minimum requirements for area, frontage, yards and other open spaces under this Bylaw.

**LOT FRONTAGE:** See FRONTAGE.

**MOBILE HOME:** A vehicular portable completely enclosed structure built on a permanent chassis, designed as dwelling unit to be transported after fabrication on its own wheels. For the purpose of this Bylaw, the term "mobile home" includes trailers incorporating the characteristics of mobile homes as herein defined.

**MUNICIPAL USE:** Any use of land in accordance with the General Laws governing municipal powers and functions including participation in regional uses.

**SITE PLAN:** A plan indicating, but not limited to the following: the location of all existing and proposed buildings, structures, access roads, driveways, parking areas and all proposed site improvements.

**SPECIAL PERMIT GRANTING AUTHORITY:** Either (1) the Board of Selectmen, or (2) the Zoning Board of Appeals, or (3) the Planning Board, whichever is empowered by these Bylaws to grant a special permit for a particular use or purpose, shall for that use or purpose be deemed the Special Permit Granting Authority.

**STREET:** A public way or a way which the clerk of the town certifies is maintained and used as a public way, a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, or a way in existence when the subdivision control law became effective 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 thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

**ZONING BOARD OF APPEALS:** The Board as provided in §6.3.

### **3. ESTABLISHMENT OF DISTRICTS**

#### **3.1. Types of Districts**

**3.1.1.** The Town of Egremont has the following districts:

**3.1.1.1. The GENERAL DISTRICT**

**3.1.1.2. The JUG END RESIDENTIAL DISTRICT**

**3.1.1.3. Overlay Districts**

- a. The FLOOD PLAIN OVERLAY DISTRICT**
- b. The WIRELESS TELECOMMUNICATIONS OVERLAY DISTRICT**
- c. The ADULT ENTERTAINMENT OVERLAY DISTRICT**
- d. The MEDICAL MARIJUANA OVERLAY DISTRICT**
- e. The LARGE-SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATION (LGSPI) OVERLAY DISTRICT**

#### **3.2. Location of Districts**

##### **3.2.1. General District**

The entire town except for the Jug End Residential District.

### **3.2.2. The Jug End Residential District**

Includes the land shown on Plate 7A of the Board of Assessor's Property Valuation Maps of the Town of Egremont dated 1980-81 as parcel #0278 including one thousand (1000) acres more or less.

### **3.2.3. Flood Plain Overlay District**

The Flood Plain District is herein established as an overlay district. The Flood Plain District includes all special flood hazard areas designated as Zone A, A1-30 on the Egremont Flood Insurance Rate Maps (FIRM), and the Flood Boundary and Floodway Maps, dated June 15, 1982, on file with the Town Clerk, Planning Board and Inspector of Buildings. These maps as well as the accompanying Egremont Flood Insurance Study are incorporated herein by reference.

### **3.2.4. Wireless Telecommunications Overlay District**

The locations and boundaries of the Wireless Telecommunications Overlay district (WTOD) are hereby established in Section 5.2.2.

### **3.2.5. Adult Entertainment Overlay District**

The Adult Entertainment Overlay District (herein AEOD) is hereby established as an Overlay District including the entire Town of Egremont.

### **3.2.6 Medical Marijuana Overlay District**

The Medical Marijuana Overlay District (herein MMOD) is hereby established as an Overlay District including the entire Town of Egremont.

### **3.2.7 Large-scale Ground-mounted Solar Photovoltaic Installation Overlay District**

The location and boundaries of the Large-scale Ground-mounted Solar Photovoltaic Installation (LGSPI) Overlay District are hereby established in Section 5.6.2 of this bylaw.

## **4. REGULATION OF DISTRICTS**

### **4.1. General District**

#### **4.1.1. Use Regulations for the General District**

##### **4.1.1.1. Applicability**

Except as provided by law or in this Bylaw, no building or structure shall be erected, and no building, structure or land or part thereof shall be used for any purpose or in any manner other than one or more of the uses

hereinafter set forth as permitted by right or as permissible by special permit and so authorized by special permit in accordance with the provisions of this Bylaw.

**4.1.1.2. Uses and Structures Permitted in the General District by Right**

- a.** One (1) family dwelling.
- b.** Conversion of a one (1) family dwelling into a two (2) family dwelling.
- c.** Two (2) family dwelling.
- d.** Use of land and structures for agriculture, horticulture, viticulture or floriculture.
- e.** Religious or education use 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.
- f.** Municipal or governmental use including parks, playgrounds or other recreational facilities owned or operated by a town agency.
- g.** Accessory uses and structures customarily incidental to a principal permitted use on the same premises, including but not limited to the following:
  - i.** The use of a room or rooms in a dwelling or an existing accessory building by a resident occupant for practice of his or her occupation or craft, provided that any external evidence of any business is not detrimental to the rural type environment of the area.
  - ii.** Rental of not more than four (4) rooms for residential purposes in a dwelling by a resident family provided no separate kitchen facilities are maintained.
  - iii.** The display and sale by a resident of the premises at a roadside stand or otherwise, of natural products the major portion of which are produced on the premises.
  - iv.** Display of sign or signs as regulated in §4.3.2 of this Bylaw.
  - v.** Mobile home or travel trailer, as regulated in §4.3.4 of this Bylaw.

- vi. The removal of earth materials, including stripping of topsoil when incidental to or required in connection with any of the following operations:
  - a) The erection of a building or structure on the lot for which a building permit has properly been issued and the construction of a private drive.
  - b) Any accessory use incidental to a permitted use, including cultivation, planting, drainage of land, or landscaping.
  - c) The construction of a private street in a subdivision approved under the Subdivision Control Law.
  - d) Municipal or governmental construction or operation.

**4.1.1.3. Uses and Structures Permitted in the General District by Special Permit**

- a. Uses and land structures which may be authorized by the Planning Board by special permit in accordance with provisions of this Bylaw.
  - i. Multi-family dwelling, subject to the special requirements specified in §4.1.2.3.
  - ii. Retail business or consumer service establishment, subject to the special requirements specified in §4.1.2.1.
  - iii. Accessory buildings exceeding the maximums set for height in §4.1.2.1 of this Bylaw.
- b. Structures for providing wired or wireless internet service or other wired telecommunications services other than those provided for in Section 5.2 and 5.3 of this Bylaw may be allowed by Special Permit from the Board of Selectman as follows:
  - i. Up to 180 square feet in floor area of an existing structure may be used to house this equipment. Any such structure shall be treated as an accessory building for purposes of Sections 4.1.2.1 and 4.1.2.2.a of this Bylaw provided that all other uses in the structure are accessory uses.
  - ii. Any new building to house such equipment shall have a footprint no greater than 180 square feet and be no more than 14 feet in height and shall be treated as an accessory building as in Section 4.1.1.3.b.i above.

iii. Poles supporting equipment for services under this section 4.1.1.3.b may not also be used for services under Section 5.2 and 5.3 unless approved under those sections. Poles shall be subject to side and rear setback requirements for accessory buildings.

c. Uses and structures for wireless telecommunications services in the WTOD may be allowed by the Planning Board by special permit in accordance with the provisions of Section 5.3 of this Bylaw.

**4.1.2. Intensity Regulations for the General District**

**4.1.2.1. Table of Intensity Regulations**

**a. General**

Any building or structure used for dwelling purposes or housing a principal permitted use, shall be so located on a lot as to meet the requirements of this Section except as specifically otherwise provided in this Bylaw.

**b. Table of Intensity Regulations**

Use	Minimum Lot Area	Minimum Frontage in Feet	Minimum Yard in Feet			Maximum Height in Feet <sup>2</sup>
			Front <sup>1</sup>	Side	Rear	
One Family	1 Acre	150	40	25	25	35
Existing One Family Converted to Two Family	1 Acre	150	40	25	25	35
Two Family	2 Acres	150	40	25	25	35
Multi-Family	2½ Acres <sup>3</sup>	150	75	50	50	35
All Other Principal Uses <sup>4</sup>	1 Acre	150	40	25	25	35
Private Garages, Sheds and Such Other Accessory Building	ô	ô	40	25	25	35

1) Measured from the right-of-way line where a plan of the way is on file with the Registry of Deeds, or in the absence of such plan, the front set-back shall be a minimum of sixty-five (65) feet from the center line of the travel way.

2) The height restrictions do not apply to agricultural buildings or structures, spires, chimneys, antennae or other appurtenances usually placed above roof level and not intended for human occupancy.

3) For the first three (3) dwelling units plus one half (1/2) acre of usable land for each additional dwelling unit.

4) Except as provided in §4.1.2.3.b.ii.

**4.1.2.2. General Intensity Regulations for the General District**

- a. No more than one (1) dwelling or principal building shall be located on a lot.
- b. No lot, or any building or structure thereon, shall be changed in size so as to violate area, frontage, setback, yard or any other requirements of this Bylaw.
- c. A private street approved by the Planning Board under the Subdivision Control Law may provide frontage only for the lots which are contained within the approved subdivision.
- d. Land which in its entirety is more than two hundred and fifty (250) feet from any approved street and which consists of one acre or more may be reached by a corridor or right-of-way of not less than fifty (50) feet wide, restricted to one (1) single family dwelling. Nothing herein to change the requirements otherwise contained in this Bylaw relative to construction on such land, except that the 150 foot frontage requirement of §4.1.2.1 shall not apply and the front setback of §4.1.2.1 shall be measured from the lot line closest to the street.
  - i. No corridor or right of way referred to in §4.1.2.2.d hereof shall be linked at any point with any other corridor or right of way leading to a different parcel or otherwise so used as to circumvent the purposes of the Subdivision Control Laws of the state.
  - ii. This §4.1.2.2.d shall apply only to a parcel of land which existed as of the adoption of the first zoning bylaw in Egremont.

**4.1.2.3. Special Intensity Regulations for the General District**

- a. Multi-family dwelling special requirements
  - i. The lot shall be sufficient in size so as to provide suitable off-street parking with adequate disposal of storm water, able in the judgment of the Selectmen to accommodate parked vehicles for maximum use of the proposed facilities.
  - ii. No multi-family dwelling shall contain more than six (6) dwelling units or exceed two and one half (2 1/2) stories in height.
  - iii. Only one (1) multi-family dwelling shall be placed on the lot.

- b.** Retail business and consumer service establishment special requirements
  - i.** The lot shall be sufficient in size so as to provide suitable off-street parking area with adequate disposal of storm water, able to accommodate in the judgment of the Selectmen parked vehicles for maximum use of the proposed facility.
  - ii.** No commercial building, structure, parking areas or driveway providing access to or from a public way for such use, shall be located within fifty (50) feet of any side or rear property line, except in cases where strict compliance with this requirement may cause unnecessary hardship.

## **4.2. Jug End Residential District**

### **4.2.1. Purpose**

- 4.2.1.1.** The Jug End Residential District is created for the purpose of increasing residential amenities, municipal economy and environmental protection in the Town by conserving open space, scenic areas, views, waterbodies, water quality and other natural or community assets: preventing development on extreme topography; promoting of street and utility layouts; lessening storm runoff, erosion and sedimentation normally associated with more conventional types of residential development; retaining drainage courses and wetlands; and in general promoting the health, safety, convenience and welfare of residential area and the Town as a whole; and advancing the purpose the Protective Bylaw of the Town of Egremont.

### **4.2.2. Applicability**

- 4.2.2.1.** Where there is conflict with other sections of this Bylaw, the provisions of this §4.2 shall apply to the Jug End Residential District.
- 4.2.2.2.** In connection with granting a Special Permit in the Jug End Residential District, the Planning Board may modify dimensional requirements contained herein where necessary to protect the environment, health, safety and general welfare providing it does not increase the number of dwelling units permitted on the site under §4.2.5.1.
- 4.2.2.3.** The word "contour" used in this §4.2. refers to the contour lines on the Egremont and Bash Bish Falls Quadrangle maps of the United States Department of the Interior Geological Service, 1973 and 1958 respectively.

**4.2.3. Permitted Uses (Only the following uses are permitted by right in the Jug End Residential District):**

**4.2.3.1.** Single family dwelling on a site of three (3) acres or more below the eleven hundred (1100) foot contour, or ten (10) acres or more between the eleven hundred (1100) and the twelve hundred (1200) foot contour, provided that:

- a.** The lot conforms to all other intensity regulations for one-family dwellings elsewhere in the Town.
- b.** The site is buildable land as defined in §4.2.5.1., Area, Number of Lots and Setbacks.
- c.** No building shall be allowed on slopes greater than fifteen percent (15%).
- d.** Along each stream and wetland as defined by Massachusetts 310 CMR 10.0 there shall be a buffer left in its natural state extending one hundred (100) feet horizontally from the seasonal high water mark and extending at least fifty (50) feet horizontally from the top of the gorge, if any.

**4.2.3.2. Agriculture, horticulture, viticulture, grazing of animals.**

**4.2.3.3. Conservation and open space.**

**4.2.3.4. Accessory uses, including private garages, sheds, swimming pools and corrals.**

**4.2.4. Uses Permitted on a Special Permit Granted by the Planning Board: (Only the following uses are permitted by Special Permit in the Jug End Residential District):**

**4.2.4.1. The following uses are permitted on a Special Permit granted by the Planning Board subject to provisions of this Section, and §§4.2.2, 4.2.5, and 4.2.6.**

- a.** Single-family homes and multi-family structures containing two (2), three (3) or four (4) dwelling units, provided that the lots between the eleven hundred (1100) contour and the twelve hundred (1200) contour shall be used only for single family homes, subject to §4.2.5, Conditions for Use on a Special Permit.
- b.** Open recreation uses as further described in §4.2.5.4, Open Space and Common Facilities.
- c.** A garage or maintenance shed provided that:

- i. The garage or shed does not exceed twenty-five hundred (2500) square feet of floor area for equipment used for maintenance of the common area, such as mowers and plows.
- ii. Such shed or garage shall not be visible from Jug End Road or adjacent properties.

**4.2.5. Conditions, All of Which Must Be Met, for Uses on a Special Permit**

**4.2.5.1. Area, Number of Lots, and Setbacks**

- a. The area of the tract shown on the plan shall be at least one thousand (1000) acres all contained in the Jug End Residential District, and shall be at least equal in area to the land area required by this Bylaw for the total number of units contemplated in the development.
- b. The number of the dwelling units allowed on a Special Permit shall be computed as the number of buildable acres multiplied by 0.7 up to a maximum of one hundred (100) units.
- c. Buildable land shall mean contiguous land in parcels of three (3) acres or more below the eleven hundred (1100) foot contour or ten (10) acres or more between the eleven hundred (1100) foot contour and the twelve hundred (1200) foot contour line, which has a slope of fifteen (15) percent or less, which is not in wetlands as defined in 310 CMR 10.0. the Wetlands Protection Act, and which is not land designated as a 21E site under Massachusetts General Laws Chapter 21E (The Massachusetts Oil and Hazardous Material Release Prevention and Response Act).
- d. The building lots shown on any plan for which approval is granted under this Section shall meet the following requirements:
  - i. The size of each such lot shall be determined on the following basis:

<b>Housing Type</b>	<b>Average Lot Size</b>	<b>Minimum Lot Size</b>	<b>% Which May Be Less Than Average</b>
Single family below 1100 foot contour	43,560 square feet	25,000 square feet	40
Single family between the 1100 foot and 1200 foot contour	∅	43,560 square feet	∅
	Maximum lot size shall be three (3) acres		
Multi-family	43,560 square feet*	30,000 square feet*	30



- c. Between each group of structures serviced by one (1) road and between each different type of housing there shall be a buffer of one hundred (100) feet.
- d. Along each stream and wetland as defined by Massachusetts 310 CMR 10.0. there shall be a buffer left in its natural state extending one hundred (100) feet horizontally from the seasonal high water mark and extending at least fifty (50) feet horizontally from the top of the gorge, if any.
- e. There shall be a natural buffer strip, which shall be part of the common area, between each group of structures and which buffer strip shall be approved by the Planning Board with the Definitive Plan.

**4.2.5.3. Impervious Surface**

- a. No more than ten (10) percent of the buildable land (as defined in §4.2.5.1(c) shall be of an impervious surface.
- b. There shall be a minimum and a maximum street length and width, which, in the opinion of the Planning Board, is practical.

**4.2.5.4. Open Space and Common Facilities**

- a. All land shown on a plan for which approval is granted under this Section which is not included in building lots, streets, or easements shall be permanent open space.
- b. The permanent open space shall include:
  - i. All land above the twelve hundred (1200) foot contour.
  - ii. All land in required buffers.
  - iii. Land used in common for passive recreation.
  - iv. Such other land as is approved with the plan.
- c. The permanent open space shall be suitable as to location, size, shape and condition for active or passive outdoor recreation and equal to at least fifty (50) percent of the gross area shown upon the sketch plan.
  - i. A minimum of three (3) acres plus one (1) acre of such open space per twenty-five (25) dwelling units shall be of land suitable for, and which can be used for active outdoor recreation, including ball fields, playground, swimming

pool, tennis courts, and trails, which facilities are to be limited to use by residents of the District, and also a golf course, with membership limited to residents of the Town and use limited to members and their guests.

- ii.** The maximum acreage devoted to active recreation shall be limited to forty (40) acres plus any acreage in a golf course.
- iii.** The remaining area may be used for passive recreation, nature appreciation, and, if suitable, for common leaching area.
- iv.** In connection with active recreation there can be cabanas, tool sheds, and similar accessory structures, but not including restaurants, bars, cocktail lounges or function rooms open to the general public, provided that accessory uses and structures shall be limited to:
  - a)** A pro shop, equipment storage and repair area, and retail sale of sporting goods related to active recreation in the District, with a total area not to exceed six hundred (600) square feet.
  - b)** Storage within an enclosed structure of equipment used in connection with the golf course.
- v.** A common stable on the property can be used for boarding and grooming horses owned by residents of the District provided that there is at least one (1) acre of grazing land for each horse stabled and further provided that all horses in the District stabled elsewhere on the property shall have an acre of grazing land, which is not part of the common area.
- vi.** All developed recreation areas, except for trails, shall be below the eleven hundred (1100) foot contour.
- d.** The manner of the ownership of such permanent open space or of various parcels thereof shall be determined by the applicant and shall be submitted for the Planning Board approval. Provision shall be made by agreement, duly executed in a form suitable for recording by the owner or owners of such permanent open space, that in the event that approval is granted under this Section such permanent open space shall be:
  - i.** Owned by the Town, or a non-profit organization the principal purpose of which is the conservation of open space, or a corporation or Trust owned or to be owned in



(60) percent or less than twenty (20) percent of the total number of dwelling units.

- b.** In the event the yield as set forth in §4.2.5.1. is less than one hundred (100) units, there may be additional units up to ten (10) percent of the total units calculated in §4.2.5.1. in accordance with the following table, with the total number of units for the entire District not to exceed one hundred (100):

<b>Item</b>	<b>Number of Additional Units Allowed</b>	<b>Conditions</b>
Conveyance to the Egremont Housing Authority	Two (2) units for each unit so conveyed	There shall be no exterior or structural difference, or difference in floor area in these units from those of the prevailing style in the District

**4.2.5.6. Access**

- a.** Each building shall have access from a street contained within the development and not from an existing public way.

**4.2.5.7. Utilities**

- a.** All utilities shall be installed underground at the time of the initial construction.

**4.2.5.8. Additional Specifications**

- a.** No construction shall take place above the twelve hundred (1200) foot contour. Construction above the eleven hundred (1100) foot contour may be approved by the Planning Board only at the time of the Definitive Plan approval and provided that the applicant demonstrates to the Board's satisfaction that:
  - i.** The proposed construction shall have no adverse effects on the following:
    - a)** Erosion control
    - b)** Drainage
    - c)** Wildlife and wildlife habitat
    - d)** Flora and fauna

- e) View lines
- f) Water quality
- ii. The road and driveway grades are safe and adequate.
- iii. The construction is necessary in order to minimize the adverse effects of the development on the environment.
- iv. The visibility of buildings from adjacent properties and other sites in Town shall be minimized.
- b. Other provisions of this Bylaw notwithstanding, no structure contained within the permanent open space shall exceed a height of fifteen (15) feet.

#### **4.2.5.9. Basic Required Improvements**

- a. The applicant shall design, install and maintain all improvements in accordance with the requirements and procedures, including performance guarantee, as required by the Rules and Regulations Governing the Subdivision of Land in effect at the time of submission of the application for a Special Permit, hereinafter referred to as the Rules and Regulations Governing the Subdivision of Land.
- b. All elements of the development shall be installed in a sequence acceptable to the Planning Board submitted in writing as part of the application. Phases shall include complete building lot groups.
- c. The specifications of the Rules and Regulations Governing the Subdivision of Land and of this Section shall govern the installation of all roadways, walkways, utilities, and other improvements in the development.

#### **4.2.6. Procedure**

##### **4.2.6.1. Application**

- a. Any person may submit to the Planning Board an application for approval of a Special Permit for a plan of land containing one thousand (1000) acres or more in the Jug End Residential District in accordance with the provisions of this Section, the Rules and Regulations of the Planning Board for the Conduct of Planning Board Functions, Meetings and Hearings and the Rules and Regulations Governing the Subdivision of Land in effect at the time of submission of the application for a Special Permit,

provided that the plan includes all land in the District which is to be developed showing all proposed structures and uses.

- b.** In addition to all other requirements, the submission shall include the following:
  - i.** A properly completed application which shall include:
    - a)** The location of the proposed development.
    - b)** The size of the site in acres.
    - c)** The number of the proposed building lots and the size of each in square feet.
    - d)** The location, acreage and proposed use of the permanent open space.
    - e)** A statement on the disposition or manner of ownership of the proposed open space.
    - f)** The use and ownership of adjacent land and the location and use of any buildings within five hundred (500) feet of the boundary of the property.
  - ii.** A preapplication sketch plan of the entire proposed development properly drawn and conforming to the requirements of the Rules and Regulations Governing the Subdivision of Land for a Preliminary Plan with the following additions:
    - a)** Designation of the lots which are to be used as building lots and the lot or lots to remain as permanent open space.
    - b)** For each building lot, four (4) site lines showing yard setbacks as otherwise required by this Bylaw within which the entire dwelling, included attached garage, and all accessory structures, if any, must lie.
  - iii.** A sketch showing natural features to be altered shall be filed.
  - iv.** A sketch shall be filed showing the views and view lines to be retained from each lot.
  - v.** A Site Plan of the entire site at the same scale as the preapplication sketch submitted in §4.2.6.1.b.ii. above

showing the number, size and location of lots which could be developed as a conventional single family development together with the location and size of streets required to supply access and frontage to the lots shown.

- vi. A Definitive Plan prepared in accordance with the Rules and Regulations Governing the Subdivision of Land.
  - vii. An overlay to the plans required in paragraph 5 and 6 above showing all land above the eleven hundred (1100) foot contour, and all land with a slope of fifteen (15) percent or more, and all land that is in wetlands as defined in 310 CMR 10.0.
- c. In connection with an application hereunder, the Planning Board shall note the following determinations as a minimum:
- i. That the application form referred to herein is properly completed.
  - ii. That the plans referred to herein are properly completed.

#### **4.2.6.2. Hearings and Review**

- a. The hearings and review required for a Definitive Plan and for a Special Permit may be conducted simultaneously.

#### **4.2.6.3. Approval**

- a. The Planning Board, acting as the Special Permit Granting Authority, may approve or deny such application for a Special Permit after conducting a public hearing thereon in accordance with Chapter 40A and Chapter 41 of the General Laws. The Board, where necessary for preserving the public health, safety and welfare, may impose further restrictions upon the tract, or parts thereof, as a condition to granting approval hereunder. The Board may also require that the applicant supply it with such further information or studies as it deems necessary to make a decision under this Section.
- b. The Board may approve a Special Permit if it finds after such hearing that:
  - i. The plan promotes the more efficient use of the land in harmony with its natural features, water courses, scenic points, historic spots, and similar community assets, and with the general intent of the Zoning Bylaw than would convention single family developments.



### **4.3. Regulations Applying to All Districts**

#### **4.3.1. Nonconforming Uses and Structures**

##### **4.3.1.1. Applicability**

The provisions of this Bylaw shall not apply to structures or uses lawfully in existence or lawfully begun at the time of the adoption of this Bylaw as provided in Section 6, Chapter 40A G.L.).

##### **4.3.1.2. Exemptions**

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

##### **4.3.1.3. Abandonment or Non-Use**

A nonconforming use of land or structure which has been abandoned or not used for a period of two (2) years or more shall not be re-established, except by special permit from the Zoning Board of Appeals, and any future use of such premises shall conform with this Bylaw.

##### **4.3.1.4. Reconstruction after Catastrophe or Demolition**

Any preexisting nonconforming structures or uses destroyed by fire or other catastrophe may be rebuilt or re-established if completed within two (2) years of the fire or catastrophe.

##### **4.3.1.5. Reversion to Nonconformity**

Preexisting nonconforming structures or uses may be extended, altered or changed to another nonconforming use by special permit from the Zoning Board of Appeals provided that the Board finds that such change, extension or alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming use. In addition, any alteration, reconstruction, extension, or structural change to a one-family or two-family building or structure that complies with the three minimum yard in feet requirement and with the maximum height in feet requirement set forth in §4.1.2.1 shall be permitted by right, whether or not the lot on which such alteration, reconstruction, extension or structural change is being made meets the minimum lot area and minimum frontage in feet requirements of §4.1.2.1.

#### **4.3.2. Signs**

#### **4.3.2.1. Permit Required**

No sign or advertising device shall be erected or placed in public view within Town limits without a permit from the Board of Selectmen, except for descriptive residential signs or signs pertaining to the use, sale or rental of a dwelling provided that:

- a. The sign is placed on property by a resident owner.
- b. Each such sign does not exceed two (2) square feet in area.

#### **4.3.2.2. Types of Permitted Signs**

The only uses for which permits shall be granted by the Board are as follows:

- a. Direction signs to commercial, manufacturing, agricultural, recreational, educational or religious establishments within the Town provided that such signs shall not exceed five (5) square feet in the area.
- b. One (1) sign, not exceeding six (6) square feet in area, for a permitted accessory use on the same premises.
- c. On other than residential premises, signs shall be limited to the name of the firm or goods or services available, saleable, or produced on the premises.
  - i. There shall not be more than two (2) signs or advertising per business, excepting those which are attached to and are part of the architectural design of a building or structure including a gas pump.
  - ii. The total area of all signs and/or advertising devices shall not exceed twenty (20) square feet per business nor shall any sign or device project above the eaves or parapet wall of any building to which it is affixed.

#### **4.3.2.3. Temporary Signs**

Non-conforming signs for special occasions not permitted in subsections 4.3.2.2.c.i and 4.3.2.2.c.ii above may be allowed upon application to the Board of Selectmen for a permit not to extend beyond a three (3) month period and upon such terms and conditions as the Board shall stipulate.

#### **4.3.2.4. Preexisting Nonconforming Signs**

Any nonconforming sign in use at the time of adoption of this Bylaw may be continued and, if damaged or destroyed by fire or other unavoidable cause, may be restored to its former condition.

#### **4.3.2.5. Prohibited Signs**

In no case shall permits be granted for the following:

- a.** Signs or other advertising devices illuminated by other than shaded or indirect white incandescent lights.
- b.** Signs, banners, or other advertising devices which move, flash or reflect or which are designed to attract the eye by intermittent or repeated motion or illumination.
- c.** Signs or lights, which because of their placement or direction and intensity of illumination, constitute a hazard to traffic.

#### **4.3.2.6. Sign Removal**

Any sign which has been abandoned or advertises any product, business or activity which is no longer sold or carried on, must be removed within thirty (30) days by the owner of the premises after notice to that effect from the Board of Selectmen.

### **4.3.3. Junk Material**

#### **4.3.3.1. Purpose**

In addition to the purposes of this Bylaw, this section is intended to maintain a spirit of pride within all citizens of the Town of Egremont.

#### **4.3.3.2. Regulation**

- a.** Properties shall be kept in such a manner so as not to intrude upon the respect which others may have for their community, whether they are owners, or tenants or visitors.
- b.** Junk should not be allowed to accumulate where it would be visible or create an issue in the Town.
- c.** If a person desires to accumulate materials that have value for parts or for restoration, those materials should be stored in an inconspicuous part of their property or screened with a structure at least six (6) feet in height or with a living evergreen hedge at least four (4) feet in height at the time it is planted.

#### **4.3.3.3. Exemption**

The above provision does not apply to persons licensed by Chapter 140, Section 57 of the General Laws.

#### **4.3.4. Travel Trailers and Mobile Homes**

##### **4.3.4.1. General**

There shall be no other trailer parks or trailer camps established in the Town of Egremont other than those in actual operation and existence at the time of adopting the Bylaw.

##### **4.3.4.2. Temporary Special Permit**

A travel trailer or mobile home may be permitted by special permit from the Board of Selectmen only for temporary living quarters for the owner of the premises on which it is located for one (1) year provided such owner is in the process of constructing a dwelling for his own occupancy and further provided that such travel trailer or mobile home, and the dwelling being constructed, are in conformity with the sanitary code of the Commonwealth. Such permit may be extended if the work on the dwelling is proceeding in good faith.

##### **4.3.4.3. Preexisting Nonconforming Trailers**

- a. A travel trailer or mobile home, located and occupied prior to the adoption of this Bylaw, may continue to be used provided a certificate from the Board of Health is submitted to the Board of Selectmen stating compliance with the Sanitary Code of the Commonwealth.
- b. Such travel trailer or mobile home may be replaced by another on the same premises and under the same conditions.
- c. Nothing in this section, however, shall apply to unused and unoccupied trailers or mobile homes for which a motor vehicle registration is, or has been, in effect within the past twelve (12) months when the trailer or mobile home is parked on the premises of a dwelling and owned by an occupant of the dwelling.

#### **4.3.5. Earth Removal Regulations**

##### **4.3.5.1. Special Permit Required**

Removal of earth material for commercial purposes including loam, sand, gravel, or stone, may be authorized with a special permit from the Board of Selectmen subject to the following requirements.

##### **4.3.5.2. Application**

An application for a special permit under this section must be accompanied by a plan prepared by a registered land surveyor or professional engineer, which shall show all structures, property lines, vegetative cover, presence of natural waterways, wet areas, flood plains, groundwater, recharge areas, and topographic lines at five (5) foot intervals or less carried one hundred (100) feet beyond the limits of the proposed excavation.

**4.3.5.3. Buffer**

No excavation, processing, loading or other operations, structures or facilities shall be closer than fifty (50) feet of any property line, except if otherwise authorized by special permit.

**4.3.5.4. Rehabilitation**

No permit shall be issued under this section until a plan for rehabilitation of the land, showing existing and proposed final contours, and the time schedule for completing the operation and restoring the land for its ultimate reuse, has been submitted to and approved by the Board of Selectmen.

**4.3.5.5. Exemption**

The Board of Selectmen is authorized to exempt earth removal operations consisting of less than one hundred (100) cubic yards within a twelve (12) month period from any or all of the conditions and requirements of this Section.

**4.3.6. Common Driveways**

**4.3.6.1. Purpose**

Any abutting property owner(s) desiring to gain access to a way by means of a common driveway that serves no more than four dwellings may do so in accordance with the provisions of a permit issued by the Planning Board.

**4.3.6.2. Requirements**

- a. A common driveway shall provide access to no more than four dwellings.
- b. Frontage on a common driveway may not be used to satisfy zoning frontage requirements. Each lot accessed by a common driveway must be accessible from a way acceptable to the Planning Board. A common driveway must originate on approved frontage and in accordance with all provisions of Egremont General Bylaw 17.

- c. Design requirements for common driveways shall in the opinion of the Planning Board ensure adequate safety and access for emergency vehicles. Common driveways shall be constructed to have proper drainage to minimize erosion and comply with applicable state erosion control requirements and guidelines for best management practices. All common driveways shall include the following: a minimum traveled width of fourteen feet; a maximum grade of 10 percent; and a minimum 25 foot setback from the side line between the lot of origin and a lot not served by the common driveway.
- d. Emergency numbers assigned to all dwellings accessed by the common driveway will be sited at both the entry on to the common driveway at the way and at the entrance to each dwelling.
- e. No common driveway shall be linked at any point with any other common driveway, way, or street of any kind.
- f. The application for a common driveway must be accompanied by a declaration of covenants, easements and restrictions for the use and maintenance of said common driveway satisfactory to the Town and permit granting authority.
- g. The sale of lots and erection of buildings are prohibited until such time as the common driveway has been constructed in accordance with the approved plan and the permit granting authority has received written verification that all covenants, easements and restrictions have been recorded in the Southern Berkshire Registry of Deeds.

## **5. SPECIAL DISTRICTS**

### **5.1. Flood Plain Overlay District**

#### **5.1.1. Uses Allowed**

The underlying permitted uses are allowed provided that they meet development regulations of §5.1.2 as well as those of the Massachusetts State Building Code dealing with construction in floodplains.

#### **5.1.2. Development Regulations**

- 5.1.2.1. Within Zone A, where the base flood elevation is not provided on the FIRM, the applicant shall obtain any existing base flood elevation data and it shall be reviewed by the Inspector of Buildings for its reasonable utilization toward meeting the elevation or floodproofing requirements, as appropriate, of the State Building Code.

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

- a.** All encroachments, including fill, new construction, substantial improvements to existing structures, and other development are prohibited unless certification by a registered professional engineer or architect is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the 100-year flood.
- b.** Any encroachment meeting the above standard shall comply with the floodplain requirements of the State Building Code.

**5.1.3. Flood Plain District Regulations for Mobile Homes in Flood Plains**

**5.1.3.1. Within Zone A 1-30, all mobile homes shall provide that;**

- a.** Adequate surface drainage and access for a hauler are provided.

**5.1.3.2.** The placement of mobile homes, except in an existing mobile home park or mobile home subdivisions, are prohibited in the floodway (or coastal high hazard area or V-zone).

**5.1.4. Subdivision Standards for the Flood Plain District**

**5.1.4.1. All subdivision proposals and other proposed new development shall be reviewed to determine whether such proposals will be reasonably safe from flooding. If any part of a subdivision proposal or other new development is located within the Flood Plain District established under the Zoning Bylaw it shall be reviewed to ensure that:**

- a.** The proposal is designed consistent with the need to minimize flood damage, and
- b.** All public utilities and facilities, such as sewer, gas, electrical and water systems shall be located to minimize or eliminate flood damage, and
- c.** Adequate drainage systems shall be provided to reduce exposure to flood hazards, and
- d.** Base flood elevation (the level of the one hundred (100) year flood) data shall be provided for proposals greater than fifty (50) lots or five (5) acres, whichever is the lesser for that portion within the Flood Plain District.

**5.2. Wireless Telecommunications Overlay District (WTOD)**

### **5.2.1. Purpose**

The Wireless Telecommunications Overlay District (WTOD) is intended to protect the scenic, historic, natural, and other resources of the Town of Egremont, while allowing adequate personal wireless services to be developed.

### **5.2.2. Description**

The WTOD includes the Town of Egremont.

### **5.2.3. Relation to Other Districts**

The WTOD 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 districts remain in effect.

### **5.2.4. Applicability**

Any use of lands within the WTOD for purposes of placement, construction, modification, or removal of personal wireless service facilities and towers shall be subject to the requirements of §§5.3 to 5.3.18 inclusive of this bylaw.

## **5.3. Personal Wireless Service Facilities and Towers**

### **5.3.1. Purposes**

The purposes of this personal wireless service facilities and towers bylaw are to:

- 5.3.1.1.** Preserve the character and appearance of the town while simultaneously allowing adequate personal wireless services to be developed.
- 5.3.1.2.** Protect the scenic, historic, environmental, and natural or man-made resources of the community.
- 5.3.1.3.** Provide standards and requirements for regulation, placement, construction, evaluation, design, modification, and removal of personal wireless service facilities and towers.
- 5.3.1.4.** 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 towers.
- 5.3.1.5.** Preserve property values.
- 5.3.1.6.** Locate towers so that they do not have negative impacts, such as, but not limited to, visual blight, attractive nuisance, noise, and falling objects, on the general safety, welfare, land use compatibility, and quality of life of the community.

- 5.3.1.7. Require owners of personal wireless service facilities and towers to configure them so as to minimize and mitigate the adverse visual impact of the facilities and towers.
- 5.3.1.8. Require the clustering, sharing, and camouflaging of personal wireless service facilities and towers.

### 5.3.2. Consistency with Federal Law

These regulations are intended to be consistent with the Telecommunications Act of 1996 in that:

- 5.3.2.1. They do not prohibit or have the effect of prohibiting the provision of personal wireless services.
- 5.3.2.2. They are not intended to be used to unreasonably discriminate among providers of functionally equivalent services.
- 5.3.2.3. 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.

### 5.3.3. Definitions

**ACT:** The Telecommunications Act of 1996.

**ADEQUATE CAPACITY:** Capacity is considered to be "adequate" if the grade of service is 0.05 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 (by radial plot) or measured (by actual field measurements) median field strength of the transmitted signal for at least 75% of the covered area is equal to or greater than -90 dBm. It is acceptable for there to be holes within the area of adequate coverage where the signal is less than -90 dBm, as long as the signal regains its strength to equal to or greater than -90 dBm farther 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 equal to or greater than -90 dBm.

**ANTENNA:** A device that is attached to a tower, or other structure, for transmitting and receiving electromagnetic waves.

**AVAILABLE SPACE:** The space on a tower or structure to which antennas of a personal wireless service provider are both structurally able and electromagnetically able to be attached.

**BASE STATION:** The primary sending and receiving site in a wireless telecommunications network.

**CHANNEL:** The segment of the radiation spectrum from an antenna that carries one signal. An antenna may radiate on many channels simultaneously.

**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.

**ELECTROMAGNETICALLY ABLE:** The determination that the new signal from and to the proposed new antennas will not significantly interfere with the existing signals from and to other facilities located on the same tower or structure as determined by a qualified professional telecommunications engineer. The use of available technologies to alleviate such interference shall be considered when making this determination.

**EME CERTIFICATION:** A certificate by a qualified radio frequency engineer that a facility will be designed, and at all times operated, in full compliance with the current FCC guidelines for human exposure to radio frequency electromagnetic fields, including both occupational and general population EME limits.

**EME:** Electromagnetic Exposure. EME occurs whenever and wherever a person is subjected to electromagnetic fields other than those originating from physiological processes in the body and other natural phenomena. It reflects both intensity and duration of exposure.

**EMF:** Electromagnetic Field. A term used to indicate the presence of electromagnetic energy at a given location.

**EVALUATION:** The calculation of radio frequency radiation levels from individual personal wireless service facilities, towers, antennas, or repeaters utilizing the FCC's OET Bulletin 65, the National Council on Radiation Protection and Measurements Reports 86 and 119, or other applicable standards approved by the FCC and used in accordance with FCC requirements and instructions.

**EVALUATION PROTOCOL:** The testing protocol, initially IEEE Std C95.3-1991, IEEE Recommended Practice for the Measurement of Potentially Hazardous Electromagnetic Fields of RF and Microwave, which is to be used to evaluate the emissions from existing and new personal wireless service facilities and repeaters upon adoption of § 5.3. The SPGA may, as the technology changes, require, by written regulation, the use of other testing protocols.

**FACILITY SITE:** The location or potential site within a Wireless Telecommunications Overlay District leased by one or more personal wireless service providers and upon which one or more personal wireless service facility(s) and required landscaping are located.

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

**FCC 96-326:** A Report and Order that sets 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.

**FIXED WIRELESS INTERNET SERVICES:** Services as described in Title 47, Code of Federal Regulations, Section 1.4000.

**GRADE OF SERVICE:** A measure of the percentage of calls that 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 such as p.04 indicates a better grade of service.

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

**INITIAL FACILITY:** The first facility placed upon a tower or structure for which an initial special permit is required.

**INITIAL SPECIAL PERMIT:** The special permit required to be obtained in order to install any tower or the first facility on any tower or for any major modification of an existing facility within the Wireless Telecommunications Overlay District within the Town of Egremont.

**MAJOR MODIFICATION OF AN EXISTING FACILITY:** Any increase or proposed increase in the vertical dimension of an existing and permitted tower or other structure designed to support personal wireless service transmission, receiving and relaying antennas, and equipment.

**MONOPOLE:** A single self-supporting vertical pole with below-grade foundations.

**PERSONAL WIRELESS SERVICES:** Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services. These services include: cellular services, personal communications services (PCS), specialized mobile radio services, and paging services.

**PERSONAL WIRELESS SERVICE FACILITY (or FACILITY):** All equipment (excluding any repeaters) with which a personal wireless service provider broadcasts and receives the radio frequency waves that 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 (or PROVIDER):** An entity licensed by the FCC to provide personal wireless services to individuals or institutions.

**PERSONAL WIRELESS TOWER (or TOWER):** A lattice structure or framework, or Monopole that is designed to support personal wireless service transmission, receiving, and relaying antennas and equipment.

**PROPAGATION STUDIES OR RADIAL PLOTS:** Computer-generated estimates of the coverage provided by 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, and other factors are taken into account to create these simulations. They are a primary tool for determining whether a site will provide adequate coverage for the personal wireless service facility proposed for that site.

**REPEATER:** A small bidirectional amplifier and receiver/relay transmitter of not more than 20 watts output designed to extend service from a base station to areas that are not able to receive adequate coverage directly from a base station.

**SPECIAL PERMIT GRANTING AUTHORITY (SPGA):** The Planning Board shall be the SPGA for §5.3 of this bylaw.

**STRUCTURALLY ABLE:** The determination that a tower or structure is capable of carrying the load imposed by the proposed new antennas under all reasonably predictable conditions as determined by professional structural engineering analysis.

**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.

**WIRELESS TELECOMMUNICATIONS OVERLAY DISTRICT (WTOD):** Specific area(s) determined by engineering analysis to contain sites where adequate service may be provided to the Town of Egremont, which, at the same time, have the potential of reducing or mitigating negative impacts in accordance with §5.3.1 of this bylaw. The Overlay District is defined in §5.2 of this bylaw.

#### **5.3.4. Exempted Wireless Telecommunications Uses**

The following wireless telecommunications facilities are specifically exempt from §5.3: police, fire, ambulance, and other emergency dispatch; local business dispatch; citizens band radio; and fixed wireless internet services. 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. No facility or repeater shall be considered exempt from §5.3 for any reason whether or not said facility or repeater is proposed to share a tower or other structure with such exempt uses.

#### **5.3.5. Provision of Independent Consultants**

**5.3.5.1.** Upon submission of an application for any special permit or building permit under §5.3, or when evaluations of facilities are being done under §5.3.13, or when a special permit is up for review under §5.3.17, the SPGA may hire independent consultants whose services shall be paid for by the applicant. The applicant shall pay a review fee determined by the SPGA, in accordance with Chapter 593 of the Acts of 1989, consisting of reasonable costs to be incurred by the SPGA for the employment of independent consultants. Each consultant shall be a qualified professional with a record of service to municipalities in one of the following fields: (a) telecommunications engineering, (b) structural engineering, (c) evaluation of electromagnetic fields, and, if determined necessary by the SPGA, (d) other relevant fields of experience as determined by the SPGA.

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

### **5.3.6. Prohibition of Teleports**

There shall be no teleport(s) within the Town of Egremont.

### **5.3.7. Wireless Telecommunications Overlay Districts**

- 5.3.7.1. Towers and facilities shall be located only within Wireless Telecommunications Overlay District(s) within the Town of Egremont. Repeaters may be located within these District(s), but are also allowed in the rest of the town, provided they meet the requirements of §5.3.10.17.
- 5.3.7.2. Access shall be provided to the tower or facility or repeater site by a roadway that 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 ensure emergency access at all times. Consideration shall be given to design that minimizes erosion, construction on unstable soils and on steep slopes, and impacts on wetlands as defined in M.G.L. Chapter 131 §40 and in the Regulations (310.CMR).

### **5.3.8. Application Requirements for a Personal Wireless Tower or Structure and the Initial Personal Wireless Service Facility Located upon That Personal Wireless Tower or Structure, and Located within the WTOD**

- 5.3.8.1. No tower or structure shall be erected, be constructed, undergo major modification, or be installed, nor shall the initial facility be mounted upon any such tower or structure without first obtaining a special permit from the special permit granting authority. Applications for special permits, where required, shall be submitted in accordance with the procedures and time lines established for special permits in §6.2, except that notice shall also be sent by regular mail to all additional parties listed in §5.3.8.2.j.iii of the bylaw. An initial special permit is required of the first facility to be mounted on the personal wireless tower or structure so that the town can have the opportunity to assess the impacts of the new facility in accordance with the purposes of this bylaw. So long as there exists any tower with available space for additional antennas that can serve the portion(s) of the Town of Egremont sought to be served by an applicant, no application for an initial special permit for a new tower will be accepted, and no new tower will be allowed to be constructed, unless the applicant can show to the satisfaction of the SPGA, and its consultants (as provided for under §5.3.5), that adequate coverage cannot be obtained from any existing tower(s), and that the coverage being sought conforms with the signal strength levels set forth in the definition of adequate

coverage in §5.3.3. The following additional information must also be submitted.

**5.3.8.2. Required documentation.**

- a.** Copies of all submittals and showings pertaining to: FCC licensing; all relevant environmental impact studies and 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.
- b.** 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.
- c.** 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.
- d.** Name, address, phone number, and written consent to apply for this permit, of the owner of the property on which the proposed tower shall be located, or of the owner(s) of the tower or structure on which the proposed facility shall be located.
- e.** Details of proposed method of financial surety and insurance as required in §§5.3.15 and 5.3.16.
- f.** Any applicant for a permit or a special permit under this bylaw shall provide a written commitment that if the applicant receives a permit or special permit under this bylaw, that applicant shall abide by the requirements of §§5.3.13, 5.3.14, 5.3.15, 5.3.16, and 5.3.17 herein as they may apply.
- g.** Applicant shall provide a written, irrevocable commitment valid for the duration of the existence of the personal wireless tower or structure, to rent or lease available space for collocation on the tower or structure at fair-market prices and terms, without discrimination to other personal wireless service providers.
- h.** If an applicant for an initial special permit for a tower or structure is not simultaneously applying for an initial special permit for a facility on that tower or structure, it shall provide a copy of its existing lease/contract with a provider showing that the provider is

legally obligated to locate its facility on the tower or structure in question. A special permit under this section shall not be granted for a tower to be built on speculation (without a contract or lease with a provider).

- i.** Required plans and engineering plans, prepared, stamped, and signed by a professional engineer licensed to practice in Massachusetts. (Note: survey plans should 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 that are no smaller (i.e., no less precise) than listed below, and shall show the following information: 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 professional engineer and other professionals who prepared the plan.
- j.** The applicant shall provide the following plans and maps:

  - i.** Location map: Copy of a portion of the most recent U.S.G.S. Quadrangle map, at a scale of 1:25,000, and showing the area within at least two miles from the proposed tower site. Indicate tower or structure location and the exact latitude and longitude (degrees, minutes, and seconds).
  - ii.** Vicinity map: At a scale of no less than one inch equals 100 feet (1:1200) with contour intervals no greater than 10 feet (three meters) showing the entire vicinity within a 1,000 foot radius of the tower or structure site, and including the topography, public and private roads and driveways, buildings and structures, bodies of water, wetlands, landscape features, historic sites, and habitats for endangered species.
  - iii.** Property owners map: Indicate the property lines of the proposed parcel where the tower will be located and, from assessors records, provide the names and addresses of all property owners within 300 feet of that property and 1000 feet of the proposed tower site on such property. Names of any renters/lessors of properties within the same distances, as listed on the most recent Egremont street list on file with the Town Clerk, shall also be included on the list of property owners. Indicate any access easement or right of way needed for access from a public way to the tower and the names and addresses of all property owners along the access easement or who have deeded rights to the easement.

- iv. Proposed site plans: Proposed facility site layout, grading and utilities at a scale of not less than one inch equals 20 feet and with topography drawn with a minimum of two-foot contour intervals.
  - a) Proposed tower or structure location and any appurtenances, including supports and guy wires, if any, and any accessory building (communication equipment shelter or other). Indicate property boundaries 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.
  - b) Proposed utilities, including distance from source of power, sizes of service available and required, locations of any proposed utility or communication lines, and whether underground or above ground.
  - c) Limits of areas where vegetation is to be cleared or altered, and justification for any such clearing or alteration.
  - d) Locations of any wetlands within 100' horizontally, and locations of rivers and streams within 200' horizontally, of any area where site work is proposed, and the location and description of any direct or indirect wetlands alteration proposed.
  - e) Detailed plans for drainage of any surface and subsurface water and plans to control erosion and sedimentation both during construction and as a permanent measure.
  - f) Plans indicating locations and specifics of proposed screening, landscaping, ground cover, fencing, and any exterior lighting or signs.
  - g) Plans of proposed access driveway or roadway and parking area at the tower site. Include grading, drainage, and traveled width. Include a cross section of the access drive indicating the width, depth of gravel, and paving or surface materials. Include a road profile of the proposed access driveway or road.
- v. Proposed tower or structure and appurtenances at a scale of not less than one inch equals 10 feet.

- a) An elevation of the proposed tower or structure and any guy wires or supports. Show all proposed antennas, including their location on the tower or structure.
- b) Detail of the proposed exterior finish of the tower or structure.
- c) A professional engineer's written description of the proposed tower's structure or of the structure proposed for the mounting of personal wireless facilities and its capacity to support additional antennas or other communications facilities at different heights and the ability of the tower or structure to be shortened or added to in the future to adapt to changing communications conditions or demands.

**vi. Proposed antennas.**

- a) Plans, elevations, sections, and details at appropriate scales but not less than one-quarter inch equals one foot (1:48).
- b) Number of antennas and repeaters, as well as the exact locations of antenna(s) and 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) Beam tilt (electronic and physical antenna downtilt).
- 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).

**vii. Proposed communication equipment shelter.**

- a) Floor plans, elevations, and cross sections at a scale of no smaller than one-quarter inch equals one foot (1:48) of any proposed appurtenant structure
- b) Representative elevation views, indicating the roof, facades, doors, and other exterior appearance and materials.

**viii. Sight lines.**

- a) A plan map of a circle of two milesøradius of the facility site on which any visibility of the proposed tower from a public way shall be indicated. The locations from which the photographic simulation or profile drawing required below were taken shall also be indicated upon this plan.
  - b) If the proposed tower or structure is visible from a public way, then the applicant shall submit either a photo simulation of the proposed tower or structure from one or more locations along the public way, or a profile drawing that shall utilize the U.S.G.S. Quadrangle map, at a scale of 1:25,000, and submit profile drawings on a horizontal scale of one inch equals 400 feet with a vertical scale of one inch equals 40 feet. Trees shall be shown at existing heights and at projected heights in 10 years.
- k.** Balloon test: Within 35 days of submitting an application, applicant shall arrange to fly, or raise upon a temporary mast, a four-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 at 7 and 14 days in advance of the first test date in a newspaper with a general circulation in the Town of Egremont. The applicant shall inform the SPGA in writing of the dates and times of the test, at least 14 days in advance. The balloon shall be flown for at least eight consecutive daylight hours for no less than five days within a fourteen-day period within the dates chosen. Visibility and weather conditions must be adequate for interested citizens to be able to clearly see the balloon test, or further tests may be required by the SPGA.
- l.** Any applicant for a permit or a special permit under this bylaw shall provide a set of radial plot maps from each location in the WTOD showing the projected coverage from each location. The purpose of this provision is to identify any potential gaps in

wireless service and to assist the town in planning for future wireless communication coverage.

### **5.3.9. Application Requirements for Subsequent Personal Wireless Service Facilities upon a Previously Permitted Personal Wireless Tower or Structure**

Where a tower or structure has received a special permit under this section and at least one provider (which has obtained a special permit under this section) is providing personal wireless services from the tower or structure, and the facility remains in full compliance with the terms and conditions of this bylaw, then any other provider of personal wireless services (secondary provider) may place a facility at that site without obtaining a special permit. The secondary provider shall provide the information required in §§5.3.9.1 and 5.3.9.2 immediately below to the SPGA and Building Inspector in order to obtain a building permit to allow the mounting of its equipment at the site. The secondary provider must agree in writing to comply with the conditions set forth in the sections of this bylaw referenced in §5.3.9.2 immediately below, and acknowledge in writing that they have read and understood the provisions of §5.3.17.2, below. The secondary provider must sign an agreement holding the Town of Egremont harmless, should the special permit for the tower on which they wish to locate be revoked due to noncompliance, all as set forth in §5.3.17.2, below. The town may require the secondary provider to pay for the town to hire an independent consultant as set forth in §5.3.5. The SPGA shall have thirty (30) days from the date of hiring of an independent consultant, or from receipt of all required information, whichever is later, to review that information and provide comments and concerns to the building inspector.

**5.3.9.1.** All information set forth in §§5.3.8.2.a, b, c, d, e, f, i, j(vi), j(vii), and l.

**5.3.9.2.** The secondary provider shall comply with the terms of §§5.3.13, 5.3.14, 5.3.15, 5.3.16, and 5.3.17, where applicable.

### **5.3.10. General Requirements**

**5.3.10.1.** A special permit shall not be granted for a tower to be built on speculation. If the applicant is not simultaneously installing a facility on the tower, it shall provide a copy of its existing lease/contract with a provider. Said provider shall provide all necessary data to comply with the terms of §5.3 as a part of applicant's application or the special permit shall not be granted.

**5.3.10.2.** Applicant shall provide a written, irrevocable commitment valid for the duration of the existence of the tower, to rent or lease available space for co-location on the tower at fair-market prices and terms, without discrimination to other personal wireless service providers.

**5.3.10.3.** Tower Finish: The SPGA shall have the right to determine the type of construction of the tower(s) (either monopole or lattice), with monopole preferred wherever feasible.

- 5.3.10.4.** 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. If the tower or structure or tower site is in a wooded area, a vegetated buffer strip of undisturbed trees shall be retained for at least 50 feet in depth around the entire perimeter except where the access drive is located. Applicant may, at the discretion of the SPGA, be required to obtain a financial surety to cover the cost of the remediation of any damage to the landscape that occurs during the clearing of the site.
- 5.3.10.5.** 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.
- 5.3.10.6.** Signs: There shall be no signs, except the following required signs: A sign no greater than two square feet indicating the name of the facility's owner(s) and a 24-hour emergency telephone number shall be posted adjacent to the entry gate. At least one "No Trespassing" sign and one sign indicating "DANGER" with letters at least 6" high shall be posted on the fence.
- 5.3.10.7.** Communication equipment shelters shall be designed to be architecturally similar and compatible with each other, and shall be no more than 15 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.
- 5.3.10.8.** New towers shall be the minimum height determined by the independent consultant(s) to provide the applicant adequate coverage from the facility(s) proposed for use on the tower. Any new tower located within the same parcel in the WTOD shall be located as close to any existing tower as possible.
- 5.3.10.9.** Towers shall be located at least one and one half times their maximum structural height away from the outer boundary of any parcel of land where the tower is situated, and all related structures shall comply with all setbacks for accessory buildings in §4.1.2.1.b of this bylaw.
- 5.3.10.10.** Tower(s) and antennas 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. All such requirements including, but not limited to, camouflaging, painting, lighting standards, and screening, shall be maintained by the special permit holder such that the visual effect continues to be minimized to the same extent or greater as that required by the special permit at the initial installation. The SPGA may require tower(s) to resemble or mimic a native coniferous species of tree to minimize their adverse visual impact.

All camouflaged (õstealthõ) wireless installations including, but not limited to, õfake treesõ that emit EMF shall be posted with warning signs for the public.

- 5.3.10.11.** Tower(s) and antennas must be placed to minimize visual impacts, as determined by the SPGA. Whenever possible, towers shall be placed on the side of a hill rather than the crest, to minimize visual impacts.
- 5.3.10.12.** All network interconnections to and from the telecommunications site and all power to the site shall, where feasible, be installed underground. At the initial construction of the access road to the site, if cable is to be laid underground, sufficient conduit shall be laid to accommodate the maximum possible number of providers who may be licensed to provide services to the Town of Egremont and surrounding areas. The SPGA shall consult with the applicant and the SPGA's independent consultant(s) to determine whether the installation of underground utilities is feasible.
- 5.3.10.13.** If primary coverage (greater than 50%) from a proposed facility is outside Egremont, then the permit may be denied unless the applicant demonstrates to the satisfaction of the SPGA that the applicant is unable to locate legally within the town that is primarily receiving service from the proposed facility.
- 5.3.10.14.** Night lighting of towers or facilities is allowed as required by Federal and state authorities. Manually operated emergency lights are allowed when operating personnel are on site.
- 5.3.10.15.** No tower or facility that would be classified as an obstruction or hazard to air navigation, or that would require hazard lighting or painting as defined by the Federal Aviation Administration regulations (Title 14 CFR) is permitted.
- 5.3.10.16.** No tower or facility, with the exception of repeaters on existing roadside public utility poles, shall be located within any of the following prohibited areas:
  - a.** Massachusetts or federally regulated wetland;
  - b.** A Massachusetts certified vernal pool;
  - c.** The habitat of any state-listed rare or endangered wildlife or rare plant species;
  - d.** Within 100' horizontally from any Massachusetts regulated wetland;
  - e.** Within 200' horizontally of the outer riparian zone of any river or perennial stream.

- 5.3.10.17.** The use of repeaters to ensure 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, either at the time of original application for a special permit under §5.3.8, or who has received an initial special permit under §5.3.8, or who has applied for or obtained a building permit under §5.3.9 may, with at least 30 days written notice to the Planning Board, Board of Selectmen, Board of Health, Conservation Commission, Building Inspector, and Town Clerk, install one or more repeaters by right, provided the applicant receives a building permit from the Building Inspector. Repeaters that are located on utility poles are limited to one (1) per pole. Where feasible, panel antennas shall be used rather than omnidirectional antennas and shall be oriented such that the main beam of the panel antenna faces the street. A building permit shall not be issued until the Planning Board, after a public meeting, has reviewed the submitted plans. The Planning Board shall post written notice of the public meeting date at least 14 days in advance. Applicants shall detail the number, location, power output, and coverage of any proposed repeaters in their systems and provide engineering data to justify their use. Applicant must also comply with §5.3.13 as it applies. No repeater shall be located closer than 50 feet to an existing dwelling unit, or less than 25 feet or more than 50 feet above ground.
- 5.3.10.18.** The SPGA under the requirements of §5.3.10.17 may require the use of screening, painting, or camouflage to reduce the visual impacts of repeaters. Repeaters shall be located so as to have the least possible impact on the views of the residents of the Town of Egremont.
- 5.3.10.19.** No tower shall be located closer than 500 feet from any dwelling unit outside the parcel of land where the tower is located, provided the dwelling unit was in existence at the time of the initial complete application for special permit under Section 5.3.8 of this bylaw.
- 5.3.10.20.** Towers or structures must be of a type that will maximize potential sharing. Applicant must demonstrate the future utility of such tower or structure for expansion of service for applicant and other future applicants.
- 5.3.10.21.** Commercial advertising shall not be allowed on any antenna, tower, or accessory building or communication equipment shelter.
- 5.3.10.22. Parameters of appropriate siting within the WTOD:**
- a.** The following locations are strongly encouraged:
    - i.** Shared use of existing towers.
    - ii.** Clustering of towers: Applications for towers adjacent to existing towers and within the same parcel of the WTOD,

shall be encouraged provided that any existing tower(s) is/are fully utilized.

- iii. Use of municipal lands.
  - iv. Use of repeaters either within or outside the WTOD to provide adequate coverage without requiring new tower(s).
- b. Each tower or structure or facility shall be located within the WTOD so as to provide adequate coverage and adequate capacity with the least number of towers and antennas that is technically and economically feasible.

### **5.3.11. Evaluation by Independent Consultants**

- 5.3.11.1. Upon submission of a complete application for any special permit(s) under §5.3, the SPGA shall provide its independent consultant(s) with the full application(s) for their analysis and review.
- 5.3.11.2. Applicants for any special permit(s) under §5.3 shall grant permission for the town's independent consultant(s), to conduct any necessary site visit(s). Access to site shall not be unreasonably delayed.
- 5.3.11.3. The applicant(s) shall pay the reasonable expenses of the town's consultant(s).

### **5.3.12. Approval Criteria**

- 5.3.12.1. In acting on any special permit application, the SPGA shall proceed in accordance with the procedures and time lines established for special permits in §6.2 of the bylaw.
- 5.3.12.2. In addition to the findings required by the bylaw in §6.2.4 the SPGA shall, in consultation with the independent consultant(s), make all of the applicable findings before granting the special permit, as follows:
  - a. That applicant is proposing to locate its facility or tower (other than repeaters) within a Wireless Telecommunications Overlay District.
  - b. That applicant is not able to use existing towers/facility sites in or around the Town of Egremont, either with or without the use of repeaters, to provide adequate coverage and adequate capacity to the Town of Egremont.
  - c. That the proposed facility or tower will not have an undue adverse impact on historic resources, scenic views, residential property values, land use compatibility, or natural or man-made resources.

- d. That the applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the towers and facilities.
- e. That the proposal shall comply with FCC 96-326 and any and all other applicable FCC regulations regarding emissions of electromagnetic radiation and that any required evaluation and certification program is in place and shall be paid for by the applicant.
- f. That the applicant has agreed to rent or lease available space on the tower or structure, under the terms of a fair-market lease, without discrimination to other providers.

**5.3.12.3.** The SPGA may waive the requirements of this Section 5.3 if to do so will allow a facility that, in the opinion of the SPGA, will serve the wireless telecommunications needs of the Town while still meeting the purposes and intent of Section 5.3.

**5.3.12.4.** Any decision by the SPGA to deny an application for a special permit under §5.3 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.

**5.3.12.5.** Each applicant for a special permit or building permit under this bylaw shall provide the town clerk with a map on the scale required in §5.3.8.2.j.i showing the location of all Personal Wireless Service Facilities and repeaters in the town, to be updated whenever a new Personal Wireless Service Facility or repeater is installed or removed in the town.

### **5.3.13. Evaluation of Compliance and Inspection of Personal Wireless Service Facilities**

**5.3.13.1.** EME certification and evaluation: It shall be a condition of any special permit or building permit granted under this bylaw that, in order to determine initial compliance with FCC regulations, the owner(s) of any facility(s) or repeater(s) located on any facility or repeater site shall, prior to the construction of any tower or installation of any equipment (including but not limited to antennas) upon any tower or structure, conduct an evaluation, as defined in §5.3.3, of the radio frequency radiation that is being emitted from said site and an evaluation of the radio frequency radiation that will be emitted from said site after the installation of their equipment, and report the results to the special permit granting authority. In order to determine ongoing compliance with FCC regulations, additional evaluation and testing, including use of the evaluation protocol defined in §5.3.3, may be required following reasonable notice by the town.

EME certification is required:

- a. Prior to the issuance of a special permit as provided in §5.3.8.1 or a building permit under §5.3.9.
- b. Prior to any major modification of an existing facility.
- c. Once every third year after initial activation or major modification of the facility.

The owner of any Personal Wireless Service Facility and repeater(s) in Egremont shall submit a copy of all EME evaluations to the town clerk.

- 5.3.13.2. Excessive Emissions:** Should the EME certification process and/or evaluation of a facility or repeater site reveal that the site exceeds the FCC 96-326 standard, or any other applicable FCC standard, then the persons identified in §5.3.8.2.c (the "contact person") for each provider with a facility located on that site shall be so notified. The providers 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 noncompliance. That plan shall reduce emissions to the applicable FCC standard within 10 days of initial notification of noncompliance. Failure to accomplish this reduction of emission within 15 business days of initial notification of noncompliance shall be a violation of the special permit and be subject to a cessation order and to penalties and fines in the amount of \$[300].00 per day. Such fines shall be payable by the providers with facilities and antennas at the facility site, until compliance is achieved.
- 5.3.13.3. 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), chosen and hired by the town, to conduct inspections of the tower's structural integrity and safety. Towers shall be inspected every four and one half years. A report of the inspection results shall be prepared by the independent consultant and submitted to the SPGA, the Board of Selectmen, the Board of Health, the Building Inspector, and the Town Clerk. Any major modification of existing facility shall require new structural inspection.
- 5.3.13.4. Unsafe Structure:** Should the inspection of any tower reveal any structural defect(s) that, in the opinion of the Independent Consultant render(s) that tower unsafe, then 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 business 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 30 business days of initial notification shall be a violation of the special permit and subject to penalties and fines in the amount of \$[300].00 per day. Such fines shall be payable by the owner(s) of the tower until compliance is achieved.

#### **5.3.14. Removal Requirements**

Any facility or repeater that 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 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 facility or repeater improvements that 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) built by the applicant that 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 facility or repeater to leave the site shall revegetate the access road in its entirety. Existing trees shall be removed only 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 facility(s) or repeater(s).

#### **5.3.15. Performance Guarantees**

Applicant shall, as a condition of the special permit, and of a building permit under §5.3.9:

- 5.3.15.1.** Post an initial cash 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 that occurs during the clearing of the site, if applicable, and 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.
- 5.3.15.2.** Post a maintenance bond for the access road(s), facility(s), and tower(s) in amounts approved by the SPGA.

#### **5.3.16. Fees and Insurance**

- 5.3.16.1.** Towers, 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 Selectmen's office on an annual basis. The Town of Egremont shall be an additional named insured. Limits for coverage shall be specified by the SPGA as a condition of the special permit.
- 5.3.16.2.** A schedule of fees for facility, tower, and repeater permitting and renewal, any evaluation of emissions and inspection of structures, and any other fees shall be established by the SPGA pursuant to M.G.L. c. 40A, §9, and placed on file with the Town Clerk. This schedule may be amended from time to time.

#### **5.3.17. Permit Expiration and Renewal**

- 5.3.17.1.** In accordance with §6.2.6 of the bylaw, any special permit granted under this section shall lapse if the applicant fails to begin construction in a substantial fashion on the facility or tower within a one-year period of said grant.
- 5.3.17.2.** Prior to the expiration of a five-year period, measured from the date of submission of the Notice of Decision to the Town Clerk by the SPGA, the owner of the tower, on its own behalf, and on behalf of all entities with facilities mounted on that tower, shall submit to the SPGA the reports required under §5.3.13.1.c (evaluation of emissions) and §5.3.13.3 (structural inspection). The SPGA shall have the right, at its sole and reasonable discretion, to revoke said special permit, if the SPGA determines after review of those reports and of any evidence presented to it, that the tower and facility so permitted has not been in substantial compliance with all terms and conditions of this bylaw and of any conditions placed upon the original special permit at the time of granting. The SPGA may hire consultants in accordance with §5.3.5 to assist in determining whether the facility in question is or is not in substantial compliance. The SPGA shall provide the owner of the tower and any entity with a facility on that tower the opportunity to remedy the noncompliance in accordance with §5.3.13.2 and §5.3.13.4, prior to taking any action to revoke the special permit for the tower. Should a tower's special permit be revoked under this section, any other entity using that tower under the provisions of §5.3.9 shall cease and desist from further use of said tower until such time as the noncompliance has been corrected.

#### **5.3.18. Severability Clause**

In accordance with §1.6 of the bylaw, the invalidity of any section or provision of this bylaw shall not invalidate any other section or provision hereof.

### **5.4. Adult Entertainment Overlay District Uses**

#### **5.4.1. Authority to Regulate**

This Section is enacted pursuant to MGL c. 40A §9A and pursuant to the town's authority under the Home Rule Amendment to the Massachusetts Constitution to serve the compelling town interest of regulating the location of and preventing the clustering and concentration of Adult Entertainment Uses as defined in MGL c. 40A §9A and designated herein.

#### **5.4.2. Purpose and Intent**

The purpose and intent of this section is to address and mitigate the secondary effects of the Adult Entertainment Uses referenced herein. Secondary effects have been shown to include increased crime, adverse impacts on public health, adverse impacts on the business climate of the Town, adverse impacts on the property values of residential and commercial properties and the property tax base of the Town, and

adverse impacts on the quality of life in the Town. All of said secondary impacts are adverse to the health, safety, and general welfare of the Town of Egremont and its inhabitants.

#### **5.4.3. Consistency with State and Federal Law**

The provisions of this section are not intended to impose a limitation or restriction on the content of any communicative matter or materials, including sexually oriented matter or materials. The provisions of this Section are not intended to restrict or deny access by adults to Adult Entertainment Uses or to sexually oriented matter or material protected by the Constitution of the United States of America or by the Commonwealth of Massachusetts, nor to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute or exhibit such matter or materials. Neither is it the purpose or intent of this Section to legalize the sale, rental, distribution or exhibition of obscene or other illegal matter or materials.

#### **5.4.4. Relation to Other Districts**

The AEOD 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 districts remain in effect.

#### **5.4.5. Applicability**

Any use of lands within the AEOD for an Adult Entertainment Use shall be subject to the requirements of Section 5.4.

#### **5.4.6. Definitions**

**ADULT ENTERTAINMENT USE:** The following establishments and uses shall be considered an Adult Entertainment Use under this Bylaw:

**ADULT BOOKSTORE:** An establishment or use having as a substantial or significant portion of its stock in trade, books, magazines, and other matter that are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272 §31.

**ADULT PARAPHERNALIA STORE:** An establishment or use having as a substantial or significant portion of its stock devices, objects, tools, or toys that are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in MGL c. 272 §31.

**ADULT THEATER:** An enclosed building used for presenting entertainment, whether live or through electronic or other media, distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272 §31.

**ADULT VIDEO STORE:** An establishment or use having as a substantial or significant portion of its stock in trade, videos, movies, or other film material that are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272 §31.

**ESTABLISHMENTS DISPLAYING LIVE NUDITY:** Any establishment or use that provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in MGL c. 272 §31.

**MIXED ADULT ENTERTAINMENT USE:** Any combination of the establishments or uses defined as Adult Entertainment Uses amounting to a substantial or significant portion of the property's use. Any mixed Adult Entertainment Use wherein any part of its participation or viewing is intended to take place on the premises shall be considered an on-premises adult entertainment use.

**OFF-PREMISES ADULT ENTERTAINMENT USE:** Any Adult Entertainment Use for which the entertainment offered is intended to be removed from the premises and used elsewhere.

**ON-PREMISES ADULT ENTERTAINMENT USES:** Any Adult Entertainment Use for which the entertainment offered is intended to take place on the premises. Any combination of uses wherein any part of the entertainment is intended to take place on the premises shall be considered an on-premises Adult Entertainment Use. In the absence of clarity as to whether the use is intended to be on the premises or off the premises, the presumption shall be that on-premises use is intended.

**PROPERTY USE ENVELOPE:** The outline of the area determined by a line drawn around all structures, driveways, parking areas, and any other area actively related to the Adult Entertainment Use.

## **5.4.7. Regulation of Adult Entertainment Uses**

**5.4.7.1.** Location: Adult Entertainment Uses, as defined in these Bylaws, shall be permitted only in the Adult Entertainment Overlay District (AEOD) upon the issuance of a Special Permit from the Planning Board in accordance with the provisions of Section 6.2 of this Bylaw.

**5.4.7.2.** Application Requirements: In addition to all application requirements of the Planning Board for Public Hearings, the application for a Special Permit for an Adult Entertainment Use shall include the following information:

- a.** A full description of the intended nature of the business, including what type of Adult Entertainment Use is intended and whether application is made for an On-Premises or Off-Premises Use.
- b.** Name and address of the legal owner of the proposed establishment; name and address of all persons having a lawful ownership, equity or security interest in the proposed establishment;
- c.** Name and address of the manager of the proposed establishment;
- d.** A sworn statement that neither the applicant, owner, nor any person having a lawful ownership, equity or security interest in the proposed establishment or the manager of the establishment has been convicted of violating the provisions of MGL c.119 §63 or MGL c. 272 §§2,3,4,4A,6,7,8,12,13 and 28 and MGL c. 265 §§13B, 13F, 13H, 22, 22A, 23, 24 and 24B, including but not limited to crimes of indecency, assault and battery, crimes against women and/or children, crimes of sexual exploitation, and felony possession of narcotics;
- e.** Proposed provisions for security;
- f.** Number of employees and independent contractors;
- g.** Proposed physical layout of the exterior and interior of the proposed establishment;
- h.** A site plan showing, in addition to all other requirements for Special Permits, the Property Use Envelope, all existing and

proposed building(s), parking spaces, driveways, service areas, landscaping and open uses, the distance between the proposed Adult Entertainment Use and any other Adult Entertainment Use, and the distance between the proposed Property Use Envelope and the boundary of the property line of each of the uses set forth in Section 5.4.7.5.a.

**5.4.7.3.** Change in Ownership: Any change in the lawful ownership, equity or security interest in the proposed or approved establishment and of the manager thereof shall be provided to the Planning Board in writing within sixty days of such change and shall include a sworn statement that no one now listed as having a lawful ownership, equity or security interest in the proposed or approved establishment or the management thereof has been convicted of violating the provisions of any of the statutes enumerated in Section 5.4.7.2.d herein.

**5.4.7.4.** No Adult Entertainment Use Special Permit shall be issued to any person convicted of violating the provisions of any of the statutes enumerated in Section 5.4.7.2.d herein.

**5.4.7.5. Dimensional Requirements**

- a.** No part of the Property Use Envelope of an Off-Premises Adult Entertainment Use shall be closer than 200 feet, and no part of the Property Use Envelope of an On-Premises Adult Entertainment Use shall be closer than 400 feet, to the boundary of any parcel used for residential use or any religious facility, school, day care, library, playground or park, any establishment licensed under MGL c. 138 §12, or any youth facility. The area where the driveway intersects with the roadway is exempt from this requirement at the frontline but not the sidelines of the property.
- b.** No Adult Entertainment Use shall be located within 1500 feet of any other Adult Entertainment Use, measured by a straight line from the nearest property line of the premise on which the proposed Adult Entertainment Use is to be located to the nearest property line of such other Adult Entertainment Use.
- c.** No Adult Entertainment Use shall have a gross floor area exceeding 5500 square feet.

**5.4.7.6. General Requirements**

- a.** Not more than one structure for an Adult Entertainment Use shall be located on any one lot.

- b. No Adult Entertainment Use shall be allowed within a building containing other retail, consumer or residential uses or be used as an accessory use or accessory structure as defined in these Bylaws.
- c. No Adult Entertainment Use shall be allowed within a shopping center, shopping plaza, or mall.
- d. All building openings, entries, and windows shall be screened in such a manner as to prevent visual access by the public to the interior of the building housing an Adult Entertainment Use.
- e. No Adult Entertainment Use shall be allowed to display for advertisement or other purpose any signs, placards, or other like materials to the general public on the exterior of the building or on the interior where the same may be seen through glass or other like transparent materials of any sexually explicit figures or words as defined in MGL c. 272 §31.
- f. No Adult Entertainment use shall be allowed to disseminate or offer to disseminate adult matter or paraphernalia to minors or allow minors to view displays or linger on the premises.
- g. No Adult Entertainment Use shall have any flashing lights visible from outside the building housing the Adult Entertainment Use. In addition, the maximum permitted sound level shall be 55 decibels (dB(A)) during the hours of 7 a.m. to 7 p.m. and 50 decibels (dB(A)) during the hours of 7 p.m. to 7 a.m. as measured at any point beyond the boundary line of the lot where the use is located. Noise resulting from temporary construction activities occurring between the hours of 7 a.m. and 5 p.m. shall be exempt from these noise requirements.
- h. All Adult Entertainment Use signage shall conform to requirements specified in Section 4.3 of this Bylaw with the additional requirements that no sign shall contain any sexually explicit figures or words.

**5.4.7.7. Conditions**

The Planning Board may impose reasonable conditions, safeguards, and limitations as it deems appropriate for the protection of public health, safety and welfare, and character of the community.

**5.4.7.8. Expiration of Permit**

Any Adult Entertainment Use special permit granted shall expire after a period of 2 calendar years from its date of issuance and shall be automatically renewable for successive 2 year periods thereafter, provided

that a written request for such renewal is made to the Planning Board at least 90 days prior to the expiration of the then-existing two year period. Said request shall be noticed as specified for a special permit in MGL Chapter 40A, Section 9 and in Section 6.2 of this Bylaw and the Egremont Planning Board Rules and Regulations on file with the Town Clerk. Said notice shall state that the renewal request will be granted unless a written objection from any individual or entity that raises valid and substantiated secondary-effect concerns considered by this Bylaw is received by certified mail, return receipt requested, by the Planning Board at least 30 days prior to the expiration of the then-existing permit. In the event of such an objection, a public hearing on the renewal shall be held in accordance with MGL Chapter 40A, Section 9. The existing Special Permit shall remain in effect until the conclusion of the public hearing and decision of the Planning Board in granting or denying the Special Permit renewal. In granting any such renewal, the Planning Board may impose additional conditions, including, without limitation, time limits to correct violations, hours of operations and additional screening. Failure to meet all conditions within a specified period of time shall result in non-renewal of the Special Permit.

#### **5.4.7.9. Revocation of Special Permit**

The Planning Board may after giving the holder of this Special Permit ten (10) days written notice of any violation of this Special Permit by certified mail, receipt requested, and sent to said holder's last known address, after a Public Hearing called to modify or revoke said permit, modify or revoke the same. Modification or revocation of this Special Permit shall require a vote of at least four (4) members of the five-member board.

#### **5.4.7.10. Severability**

The provisions of this Section are severable and, in the event that any provision of this Section is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.

### **5.5. MEDICAL MARIJUANA OVERLAY DISTRICT**

#### **5.5.1. Establishment**

The Medical Marijuana Overlay District (herein MMOD) is hereby established as an Overlay District including the entire Town of Egremont.

Within the MMOD, all requirements of the underlying district(s) remain in effect, except where these regulations provide an alternative to such requirements. Land within the MMOD may be used either for (1) a Registered Marijuana Dispensary (RMDD), in which case the requirements set forth in this section shall apply; or (2) a use allowed in the underlying district, in which case the requirements of the

underlying district shall apply. If provisions of the MMOD conflict with the requirements of the underlying district, the requirements of the MMOD shall control.

### **5.5.2. Purpose**

**5.5.2.1.** The purpose of this section is to provide for the placement of a Registered Marijuana Dispensary in accordance with the Humanitarian Medical Use of Marijuana Act, G.L. c. 94C, App. §1-1, et seq., and with 105 CMR 725.000 et seq. in locations suitable for RMDs and to provide patients with safe access to medical marijuana products, while minimizing adverse impact of RMDs on adjacent properties, residences, schools, playgrounds and other locations where minors congregate by regulating the siting, design, placement, security, and removal of RMDs.

This section establishes suitable locations for RMDs by establishing specific standards regulating their siting, design, placement, security, and removal.

### **5.5.3. Applicability**

**5.5.3.1.** No Registered Marijuana Dispensary shall be established in the Town of Egremont except in compliance with the provisions of this §5.5.

**5.5.3.2.** Nothing in this §5.5 shall be construed to supersede federal and state laws governing the sale and distribution of marijuana or marijuana products.

### **5.5.4. Definitions**

**5.5.4.1.** Where not expressly defined in the Zoning Bylaws, terms used in the MMOD Bylaw shall be interpreted as defined in the Humanitarian Medical Use of Marijuana Act, G.L. c94C, App. §1-1, et seq. and the Department of Public Health Regulations promulgated thereunder, 105 CMR 725.000, et seq., and otherwise by their plain language.

**5.5.4.2.** Registered Marijuana Dispensary (RMD) means a not-for-profit entity registered under 105 CMR 725.100, that acquires, cultivates, possesses, processes (including development of related products such as edible marijuana-infused products [ōMIPsō], tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers.

**a. Registered Marijuana Dispensary Center (RMDC):** An RMD that acquires, possesses, sells, dispenses, delivers or administers marijuana, products containing marijuana, related supplies or educational materials to registered patients or their personal care

givers. RMDC refers to a site which dispenses marijuana to eligible, certified individuals but which does not cultivate or process marijuana.

### **5.5.5. Location**

**5.5.5.1.** An RMD may be permitted in Egremont only within the MMOD and pursuant to a Special Permit.

#### **5.5.5.2.**

- a.** An RMD may not be located within 1,000 feet of, and an RMDC may not be located within 500 feet of, the following:
  - i.** School, including a public or private preschool, elementary, vocational, or secondary school or a public or private college, junior college, or university;
  - ii.** Licensed child care facility;
  - iii.** Library;
  - iv.** Playground, public athletic field or similar public recreational facility;
  - v.** Public park;
  - vi.** Youth center;
  - vii.** Public swimming pool;
  - viii.** House of worship;
  - ix.** Facility in which minors commonly congregate;
  - x.** Drug or alcohol rehabilitation facility;
  - xi.** Correctional facility, half-way house, or similar facility;
  - xii.** Any other RMD.
- b.** An RMD may not be located
  - i.** Within 500 feet of any residence or other non-commercial use;
  - ii.** Inside a building containing residential units, including transient housing such as motels and dormitories;
  - iii.** Inside a movable or mobile structure such as a van or truck.

**5.5.5.3.** The distance under this section is measured in a straight line from the nearest point of the property line of the protected uses identified in §5.5.5.2 to the nearest point of the proposed RMD structure(s), including containment or security fences.

### **5.5.6. General Requirements**

- 5.5.6.1.** No use shall be allowed in the MMOD which creates a nuisance to abutters or to the surrounding area, or which creates any hazard, including but not limited to fire, explosion, fumes, gas, smoke, odor, obnoxious dust, vapor, offensive noise or vibration, flashes, glare, objectionable effluent, or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area.
- 5.5.6.2.** No RMD shall have a gross floor area in excess of 2,500 square feet. An RMD may be located in a building that exceeds 2,500 square feet of floor area, provided that the gross floor area of the RMD shall not exceed 2,500 square feet.
  - a.** No RMDC shall have a gross floor area in excess of 1,000 square feet. An RMDC may be located in a building that exceeds 1,000 square feet of floor area, provided that the gross floor area of the RMDC shall not exceed 1,000 square feet.
- 5.5.6.3.** The hours of operation shall be specified in the Special Permit, but in no event shall said hours be between 9:00 PM and 8:00 AM.
- 5.5.6.4.** Signage shall be limited to one wall sign not to exceed ten square feet in area, and one identifying sign not to exceed two square feet in area; such signs shall not be directly illuminated.
- 5.5.6.5.** The RMD shall provide the Special Permit Granting Authority and Egremont Police Department the name, phone number and email address of an on-site community relations staff person to whom one can provide notice if there are operating problems.

### **5.5.7. Procedure**

- 5.5.7.1.** The Planning Board shall be the Special Permit Granting Authority (SPGA) for a RMD special permit.
- 5.5.7.2.** Any application for the Special Permit shall include the following:
  - a.** A copy of its registration as an RMD from the Massachusetts Department of Public Health (öDPHö); a copy of all licenses and permits issued by the Commonwealth of Massachusetts and any of its agencies; evidence of the applicantø right to use the site, such as deed, lease, purchase and sale agreement or other legally binding document.
  - b.** A detailed floor plan of the proposed premises that identifies the square footage available and describes the functional areas, including areas for preparation of all products, including MIPs;

- c. Detailed site plans that show the following information:
  - i. Compliance with the requirements for lot size, frontage, yards and heights and footprints of buildings, distance in linear feet from the nearest point of the proposed RMD structure to the nearest point of the property line of the protected uses identified in §5.5.5.2 a and b and all other provisions of this Bylaw;
  - ii. Convenience and safety of vehicular and pedestrian movement on the site and the location of driveway openings in relation to street traffic;
  - iii. Convenience and safety of vehicular and pedestrian movement off the site, if vehicular and pedestrian traffic off-site can reasonably be expected to be substantially affected by on-site changes;
  - iv. Adequacy of the arrangement and the number of parking and loading spaces in relation to the proposed use, including designated parking for home delivery vehicle(s) as applicable;
  - v. Design and appearance of proposed buildings, structures, freestanding signs, screening and landscaping; and
  - vi. Adequacy of water supply, surface and subsurface drainage and light.
- d. A description of the security measures, including employee security policies approved by DPH for the RMD;
- e. A copy of the emergency procedures approved by DPH for the RMD;
- f. A copy of the policies and procedures for patient and personal caregiver home-delivery approved by DPH for the RMD;
- g. A copy of the policies and procedures for the transfer, acquisition, or sale of marijuana between RMDs approved by DPH;
- h. A copy of proposed waste disposal procedures; and
- i. A description of any waivers from DPH regulations issued for the RMD.
- j. Sufficient copies of the above application to meet the requirements of §5.5.7.3 and §5.5.7.4, as determined by the SPGA.

**5.5.7.3. Evaluation by Independent Consultants**

- a. Upon submission of a complete application for any special permit under §5.5, if deemed necessary by the SPGA, the SPGA may

choose an independent consultant, and the applicant shall provide its independent consultant(s) with the full application for their analysis and review.

- b.** Applicant(s) for any special permit under §5.5 shall grant permission for the town's independent consultant(s) to conduct any necessary site visit(s). Access to the site shall be granted and shall not unreasonably be delayed.
- c.** The applicant(s) shall pay the reasonable expenses costs of the town's independent consultant(s).

#### **5.5.7.4. Evaluation by Town Boards**

The SPGA shall refer copies of the application to the Board of Selectmen, Building Department, Fire Department, Police Department, Board of Health, Conservation Commission, Board of Assessors, and the Road Superintendent. These boards/departments shall review the application and shall submit their written recommendations. Failure to make recommendations within 35 days of referral of the application shall be deemed lack of opposition.

#### **5.5.7.5. SPGA Action**

After notice and public hearing and consideration of application materials, consultant reviews, public comments, and the recommendations of other town boards and departments, the SPGA may act upon such a permit.

### **5.5.8. Special Permit Conditions**

#### **5.5.8.1.**

The SPGA shall impose conditions reasonably appropriate to improve site design, traffic flow and public safety; protect water quality, air quality and environmental resources; preserve the character of the surrounding area; and otherwise serve the purpose of this section. The SPGA's actions shall be based upon the considerations and procedures of this Bylaw and the degree to which the proposed development addresses the purposes of the MMOD and appropriately addresses the site-specific attributes or site-specific concerns. In addition to any specific conditions applicable to the applicant's RMD, the SPGA shall include the following conditions in any special permit granted under this Bylaw:

- a.** Hours of operation, including dispatch of home deliveries;
- b.** The special permit holder shall file a copy of any Incident Report required under 105 CMR 725.110(F) with the Chief of Police,

Building Inspector and the SPGA within 24 hours of creation of such report. Such reports may be redacted as necessary to comply with any applicable state or federal laws and regulations.

- c.** The special permit holder shall file a copy of any summary cease and desist order, quarantine order, summary suspension order, order limiting sales, notice of a hearing, or final action issued by DPH or the Division of Administrative Law Appeals, as applicable, regarding the RMD with the Chief of Police, Building Inspector, and SPGA within 24 hours of receipt by the RMD.
- d.** The special permit holder shall provide to the Building Inspector and Chief of Police the name, telephone number and electronic mail address of a contact person in the event that such person needs to be contacted after regular business hours to address an urgent issue. Such contact information shall be kept updated by the permit holder.
- e.** The special permit shall expire within two years of its issuance. If the permit holder wishes to renew the special permit, an application to renew the special permit must be submitted at least 120 days prior to the expiration of the special permit.
- f.** The special permit shall be limited to the current applicant and shall lapse if the permit holder ceases operating the RMD.
- g.** The special permit shall lapse upon the expiration or termination of the applicant's registration by DPH.
- h.** The special permit holder shall notify the Chief of Police, the Board of Health, the Building Inspector, and the SPGA in writing a) prior to the expiration or termination of the permit holder's registration with DPH, or b) at least 48 hours before cessation of operation, whichever is earlier.

#### **5.5.8.2. Exemption**

An RMD that demonstrates it is protected pursuant to the agricultural exemption under G.L. c.40A §3 shall adhere to the maximum requirements herein as allowed under said exemption.

#### **5.5.9. Discontinuance of Use**

- 5.5.9.1.** An RMD shall be required to remove all product prior to surrendering its state-issued licenses or permits or within forty-eight (48) hours of ceasing operations, whichever is earlier. All security measures required by the Humanitarian Medical Use of Marijuana Act, G.L. c. 94C, App. §1-1, et

seq., and with 105 CMR725.000 et seq., and by the special permit shall remain in effect until all product is removed.

- 5.5.9.2.** The board shall require the applicant to post a bond prior to operating the RMD to cover costs for the removal of the RMD in the event the Town must remove the facility. The value of the bond shall be based upon the ability to completely remove all the items noted in 5.5.9.1 and properly clean the facility at prevailing wages. The value of the bond shall be developed based upon the applicant providing the SPGA with three (3) written bids to meet the noted requirements. An incentive factor of 1.5 shall be applied to all bonds to ensure compliance and adequate funds for the town to remove the facility at the prevailing wages.

#### **5.5.10. Violation**

Any violation of these bylaws or the Humanitarian Medical Use of Marijuana Act, G.L. c. 94C, App. §1-1, et seq., and with 105 CMR725.000 et seq. shall be grounds for revocation or non-renewal of a special permit issued under this section.

#### **5.5.11. Severability**

The provisions of this Bylaw are severable. If any provision, paragraph, sentence, or clause of this Bylaw or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Bylaw.

### **5.6. Large-scale Ground-mounted Solar Photovoltaic Installation (LGSPI) Overlay District**

#### **5.6.1. Purpose and Intent**

The purpose and intent of Section 5.6 is to promote the creation of a large-scale ground-mounted solar photovoltaic installation (LGSPI) by providing standards for the placement, design, construction, operation, monitoring, modification, and removal that address public safety and minimize impacts on residential neighborhoods and scenic, natural, and historical resources, and to provide adequate financial assurance for the eventual decommissioning of such installations.

#### **5.6.2. Description**

The Large-scale Ground-mounted Solar Photovoltaic Installation (LGSPI) Overlay District shall consist solely of Parcel 0004 on Egremont Assessors Map 9, owned by the Town of Egremont, and located at 171 Egremont Plain Road.

#### **5.6.3. Relationship to Other Districts**

The LGSPI Overlay District modifies and, where there is inconsistency, supersedes the regulations of the underlying zoning district. Except as so modified or superseded, the regulations of the underlying districts remain in effect. Nothing in Section 5.6 should be construed to alter the Egremont Zoning Bylaw as to installation of solar photovoltaic systems as either principal uses (by special permit) or accessory uses in areas outside of the LGSPI Overlay District.

#### **5.6.4. Applicability**

Construction and use of an LGSPI may be authorized by Site Plan Review in the LGSPI Overlay District, subject to the requirements set forth in Sections 5.6.5 through 5.6.7. Site Plan Review shall mean that development of an LGSPI must conform to local zoning bylaws but may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval other than as provided in this Section 5.6. The Site Plan Review Authority in the LGSPI Overlay District is the Egremont Planning Board. Site plan approval must be obtained from the Site Plan Review Authority before a Building Permit is issued for any LGSPI.

#### **5.6.5. Site Plan Review**

Site Plan Review establishes criteria for the layout, scale, appearance, safety, and environmental impacts of a commercial LGSPI development in the LGSPI Overlay District in Egremont. Site Plan Review in Section 5.6 focuses on drainage, roadway construction, signage, screening, lighting, and other aspects of the proposal. The purpose of Site Plan Review is to regulate LGSPI use, not to prohibit it. The Site Plan Review Authority may not unconditionally deny the application but may impose reasonable conditions on it.

**5.6.5.1.** The LGSPI shall undergo Site Plan Review by the Egremont Planning Board prior to construction, installation, or modification as provided in this section.

**5.6.5.2.** In reviewing the Site Plan, the Site Plan Review Authority shall give due consideration to promoting the public health, safety, convenience, and welfare, and it shall encourage the most appropriate use of land. Environmental features of the site and surrounding areas shall be protected, and, specifically, surrounding areas shall be protected from the proposed use by provision of adequate surface water drainage.

**5.6.5.3.** Pursuant to the Site Plan Review process, the project proponent shall provide documents as follows:

- a.** All plans and maps shall be prepared, stamped, and signed by a professional engineer licensed to practice in Massachusetts.

- b.** A site plan shall be submitted to the Site Plan Review Authority showing:
  - i.** The parcel of land at the project site on a copy of the appropriate Egremont Assessors map.
  - ii.** Property lines and physical features, including roads, lot area, setbacks, open space, parking, and structure coverage for the project site.
  - iii.** Plans for the LGSPI and appurtenant structures, showing the proposed layout of the system, lighting, signage, utility connections, and transformers.
  - iv.** Proposed changes to the landscape of the site, including grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
  - v.** Drainage plan showing how stormwater runoff will be managed on site for all areas where there is clearing of vegetation or a change in grade or soils, to comply with best management practices for stormwater management and to minimize erosion.
  - vi.** One- or three-line electrical diagram detailing the LGSPI, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices.
  - vii.** Plans for access to the project site.
- c.** Documentation by means of manufacturers' specifications of the major system components to be used, including, but not limited to, the photovoltaic panels, mounting system, and inverters.
- d.** Name, contact information, and license verification for proposed system installers.
- e.** Name, contact information, and signature of the project proponents, and of any agents representing the project proponents.
- f.** An operation and maintenance plan.
- g.** Liability Insurance: The owner or operator of an LGSPI shall provide the Town with a certificate of insurance showing that the property has a minimum of one million dollars in liability coverage, and that the Town of Egremont is an additional named

insured thereon. Such a certificate shall be supplied annually when the policy is renewed.

- h.** Financial Surety: The proponent shall provide a form of surety, through an escrow account, a bond, or otherwise, in a form satisfactory to the Site Plan Review Authority, to cover the cost of removal and remediation in the event that the town must remove the installation and remediate the landscape. The plan shall include a fully inclusive estimate of the cost of discontinuance, prepared by a qualified engineer, and including a mechanism for calculating increased costs resulting from inflation.
- i.** The Site Plan Review Authority may hire an independent engineering firm to review the proponent's plan, at the proponent's expense, to assess the technical aspects of the plan and to determine if the estimated cost of removal and remediation is reasonable.
- j.** The Site Plan Review Authority shall determine the number of copies of all documents to be submitted for review.

**5.6.5.4.** Specific provisions of Section 5.6.5.3 may be waived by the Site Plan Review Authority upon a determination that a waiver would not be inconsistent with the purpose and intent of Section 5.6, as set forth in Section 5.6.1.

## **5.6.6. Use Regulations**

Large-scale ground-mounted solar photovoltaic installations shall conform to the following provisions:

- 5.6.6.1.** An LGSPI may be erected in the LGSPI Overlay District upon the issuance of a building permit by the Building Inspector, after Site Plan Review by the Site Plan Review Authority.
- 5.6.6.2.** An LGSPI, including security fences surrounding the installation, shall be set back from the property line by a distance of fifty (50) feet.
- 5.6.6.3.** The height of any or all structures comprising the LGSPI shall not exceed fifteen (15) feet above the preexisting natural grade underlying each particular structure. The height of any or all structures may be increased to twenty (20) feet above the preexisting natural grade upon the proponent's demonstration of a reasonable necessity during Site Plan Review.
- 5.6.6.4.** The visual impact of the LGSPI, including all accessory structures and appurtenances, shall be mitigated. All accessory structures and

appurtenances shall be architecturally compatible with each other. Whenever reasonable, structures shall be shielded from view, and they shall be joined and clustered to avoid adverse visual impacts. Landscaping, natural features, and fencing may be used to mitigate such visual impacts.

- 5.6.6.5.** Lighting shall not be permitted at a LGSPI unless required by the State Building Code. Where used, lighting shall be directed downward, and full cutoff fixtures shall be used.
- 5.6.6.6.** Reasonable efforts, as determined by the Site Plan Review Authority, shall be made to place all utility connections from the LGSPI underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.
- 5.6.6.7.** Clearing of natural vegetation shall be limited to the minimum necessary, as determined by the Site Plan Review Authority, for the construction, operation, and maintenance of the LGSPI, except as otherwise prescribed by applicable laws, regulations, and bylaws.
- 5.6.6.8.** The owner or operator of the LGSPI shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, continued compliance with landscaping and screening requirements, and integrity of security measures. The owner or operator shall be responsible for the maintenance of any access roads serving the installation.

#### **5.6.7. Discontinuance**

An LGSPI shall be deemed to have been discontinued if it has been out of service for a continuous 12-month period. Upon receipt of a Notice of Discontinuance from the Building Inspector, the owner shall have the right to respond to the Notice within 30 days of receipt. The Building Inspector shall withdraw the Notice of Discontinuance and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates to the satisfaction of the Building Inspector that the LGSPI has not been discontinued. If the LGSPI installation is determined to be discontinued, the owner shall remove the installation, including all structures, equipment, security barriers, and transmission lines, and shall stabilize or re-vegetate the site as necessary to minimize erosion, at the owner's sole expense, within three months of receipt of the Notice of Discontinuance. Failure to remove the installation and stabilize the site within said time period may subject the owner to enforcement

under Section 7 of this bylaw and allow the town to use the financial surety provided in Section 5.6.5.3.h to remediate the site.

## **6. ADMINISTRATION**

### **6.1. Permits and Licenses**

#### **6.1.1. Compliance Required**

No permit shall be issued by the Inspector of Buildings unless the application for a permit indicates compliance with this Bylaw, the State Sanitary Code and the Board of Health regulations, the Planning Board's Subdivision Control Regulations, and the Wetland Protection Act, if applicable.

#### **6.1.2. Application**

No permit or license shall be granted for a new use of a building structure or land which use would be in violation of this Bylaw.

**6.1.2.1.** All applications for permits shall be accompanied by plans and specifications in triplicate, drawn to scale, showing the actual shape and dimensions of the lot to be built upon, the exact sizes and locations on the lot of the buildings and accessory buildings then existing and the lot lines within which the proposed buildings or structure shall be erected or altered, the existing or intended use of each building or part of a building, and the number of housekeeping units the building is designed to accommodate, if any.

**6.1.2.2.** One set of such plans and specifications shall be made when approved a part of the building permit issued to the applicant.

**6.1.2.3.** A copy of such permit shall be sent to the Planning Board and a copy kept with the records maintained by the Inspector of Buildings.

#### **6.1.3. Construction in Accordance with Permit**

Construction or operation under a building or special permit shall conform to any subsequent amendment of this Bylaw unless the permit is issued before the first publication of the required notice of public hearing by the Planning Board on such amendment, and the use or construction is commenced within a period of not more than six (6) months after the issuance of the permit, and in cases involving construction, unless such construction is continued through the completion as continuously and expeditiously as is reasonable.

### **6.2. Special Permits**

#### **6.2.1. Special Permit Granting Authority**

- 6.2.1.1. Any Board designated as special permit granting authority in this Bylaw may hear and decide applications for special permits upon which such Board is specifically authorized to act under this Bylaw in accordance with the provisions of Section 9, Chapter 40A of the General Laws.
- 6.2.1.2. One associate member of the Planning Board shall be elected at the Town's Annual Election beginning in 2006 for a term of two years, and every two years thereafter, to sit on the Planning Board for the purpose of acting on special permit applications in the case of absence, inability to act or conflict of interest on the part of any member of the Planning Board or in the event of a vacancy on the Planning Board.

## **6.2.2. Review by Other Boards and Agencies**

- 6.2.2.1. The special permit granting authority shall within ten (10) days after receipt of an application for special permit transmit a copy thereof for review to the Board of Health, the Planning Board, the Board of Selectmen, the Conservation Commission, and any other municipal board or agency at the discretion of the Special Permit Granting Authority.
- 6.2.2.2. Any board or agency to which such applications are referred for review shall make such recommendations as they deem appropriate in writing, provided, however, the failure to make recommendations within thirty-five (35) days of receipt by such board or agency of the application for review shall be deemed lack of opposition thereto.

## **6.2.3. Procedures**

### **6.2.3.1. Required Hearing and Notice**

- a. Special permits may only be issued following public hearings held within sixty-five (65) days after filing of an application with the special permit granting authority.
- b. Notice of public hearing shall be given by publication in a newspaper of general circulation in the Town once in each of two (2) successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing, and by posting such notice in a conspicuous place in the Town Hall for a period of not less than fourteen (14) days before the day of such hearing, and by mailing it to 'parties in interest' as provided in Section 11, Chapter 40A (G.L.) which includes the petitioner, abutters, owners of land directly opposite on any public or private street or way and owners of land within three hundred (300) feet of the property line, all as they appear on the most recent applicable tax list, the Planning Board, and the Planning Board of every abutting municipality.

### **6.2.3.2. Decisions by Special Permit Granting Authority**

Special Permit Granting Authority shall act within ninety (90) days following the date of public hearing. Failure to take final action upon an application for special permit within said ninety (90) days shall be deemed to be a grant of the permit applied for.

### **6.2.4. Criteria**

Before granting a special permit for any use requiring such permit under a provision of this Bylaw, the special permit granting authority shall find that the proposed use:

- 6.2.4.1.** Is in compliance with all other provisions and requirements of the Bylaw, and in harmony with its general intent and purpose.
- 6.2.4.2.** Is essential or desirable to the public convenience or welfare at the proposed location.
- 6.2.4.3.** Will not be detrimental to adjacent uses or to the established or planned future character of the neighborhood.
- 6.2.4.4.** Will not create undue traffic congestion, or unduly impair pedestrian safety.
- 6.2.4.5.** Will not overload any public water, drainage or sewer system or any other municipal facility to such an extent that the proposed use or any existing use in the immediate area or in any other area of the Town will be unduly subjected to the hazards affecting public health, safety or general welfare.

### **6.2.5. Conditions**

Special permits may be issued subject to such conditions, safeguards or limitations as the Special Permit Granting Authority may impose for the protection of neighboring uses or otherwise serving the purpose of this Bylaw.

### **6.2.6. Lapse**

A special permit shall lapse in one (1) year unless a substantial use or construction has begun under the permit by such date and, in cases involving construction, the work is carried through to completion as continuously and expeditiously as is reasonable.

## **6.3. Zoning Board of Appeals**

### **6.3.1. Membership**

- 6.3.1.1. There shall be a Zoning Board of Appeals consisting of three (3) members and two (2) associate members to be appointed by the Board of Selectmen as provided in Section 12, Chapter 40A of the General Laws.
- 6.3.1.2. The Board shall act within its statutory powers as provided in Section 14, Chapter 40A (G.L.) and on matters within its jurisdiction under this Bylaw in a manner prescribed in Section 15, Chapter 40A (G.L.).
- 6.3.1.3. The Zoning Board of Appeals shall act also as the Board of Appeals under the Subdivision Control Law as provided in Chapter 41, Section 81-Z of the General Laws.

## **6.3.2. Powers**

### **6.3.2.1. Appeals**

- a. The Board is authorized to hear and decide an appeal as provided in Section 8, Chapter 40A (G.L.), taken by a person aggrieved by reason of his (her) inability to obtain a permit or enforcement action from any administrative officer under the provision of Chapter 40A (G.L.), by the Berkshire County Regional Planning Commission, or by any person including an officer or Board of the Town or of an abutting town, aggrieved by an order or decision of the Inspector of Buildings, or other administrative official, in violation of any provision of Chapter 40A (G.L.) or of this Bylaw.
- b. Any such appeal must be taken within thirty (30) days from the date of the order of decision which is being appealed by filing a Notice of Appeal with the Town Clerk, as provided in Section 15, Chapter 40A (G.L.).

### **6.3.2.2. Variances**

- a. The Board may authorize upon appeal or upon petition with respect to a particular land or structure a variance from the terms of this Bylaw where the Board specifically finds that owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structure, but not affecting generally the zoning district in which it is located, literal enforcement of the provisions of this Bylaw 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 Bylaw.
- b. If the rights authorized by a variance are not exercised within a year of the date of grant of such variance they shall lapse, and may

be reestablished only after notice and a new hearing as provided in §6.2.3.1 herein.

### **6.3.3. Decisions by the Zoning Board of Appeals**

**6.3.3.1.** The decision of the Board shall be made within one hundred (100) days after the date of the filing of an appeal, application or petition with the Town Clerk except in regard to special permits, as provided in §6.2.3.2 herein.

**6.3.3.2.** Failure by the board to act within said one hundred (100) days shall be deemed to be the grant of the relief, application or petition sought.

## **7. ENFORCEMENT**

### **7.1. Enforcement Authority**

This Bylaw shall be enforced by the Board of Selectmen through the Inspector of Buildings appointed by the Board under the State Building Code.

### **7.2. Violation**

**7.2.1.** Whoever shall violate any provisions of this Bylaw or fail to comply with any of its requirements shall upon conviction thereof be fined not more than one hundred (100) dollars for each offense.

**7.2.2.** Each day such violation continues shall constitute a separate offense.



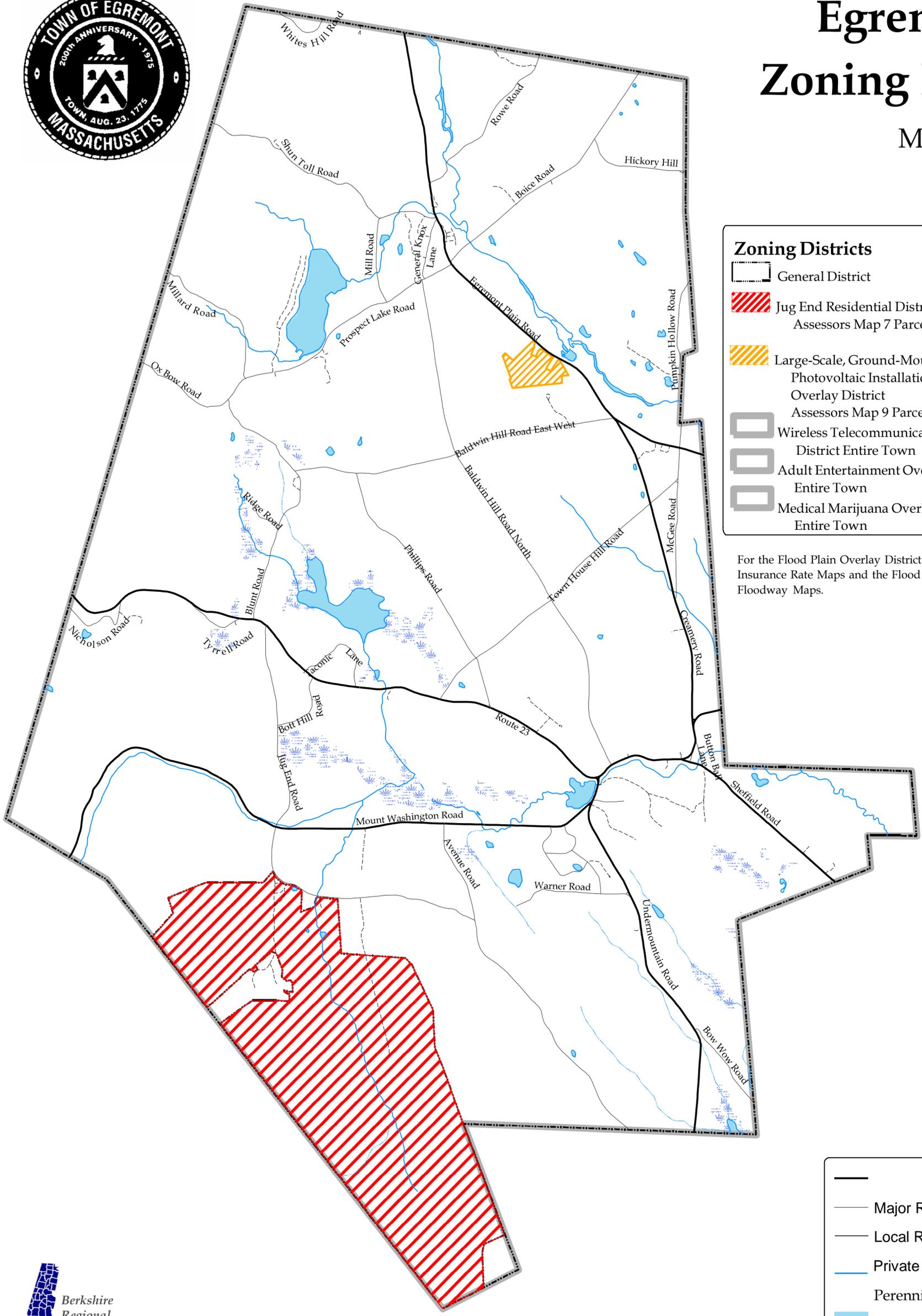
# Egremont Zoning Map

May 2015

**Zoning Districts**

-  General District
-  Jug End Residential District  
Assessors Map 7 Parcel 278
-  Large-Scale, Ground-Mounted, Solar Photovoltaic Installation (LGSPI) Overlay District  
Assessors Map 9 Parcel 0004
-  Wireless Telecommunications Overlay District Entire Town
-  Adult Entertainment Overlay District Entire Town
-  Medical Marijuana Overlay District Entire Town

For the Flood Plain Overlay District see the Flood Insurance Rate Maps and the Flood Boundary and Floodway Maps.



-  Major Road
-  Local Road
-  Private Road
-  Perennial Stream
-  Intermittent Stream
-  Lake / Pond
-  Marsh / Wetland

