

TOWN OF EASTHAM -- ZONING BY-LAWS¹
REVISIONS THROUGH MAY 1, 2006

TABLE OF CONTENTS

SECTION	PAGE
ZONING BY-LAWS	
I. Purpose	2
II. Zoning Districts	2
III. Definitions	3
IV. Flood Plain Zoning	18
V. Uses	23
VI. Non-conforming Uses	28
VII. Accessory Uses	30
VIII. Prohibited Uses	32
IX. Intensity Regulations	34
X. Parking Requirements	38
XI. Landscaping Requirements	40
XII. Administration	41
XIII. Site Plan Approval - Special Permit	41
XIV. Site Plan Approval - Residential	47
XV. Review	49
XVI. Validity	50
XVII. Procedure for the Demolition of Historically or Architecturally Significant Building	50
XVIII. SIGN CODE	54
I. Permits	54
II. Regulations	55
III. Prohibitions	58
IV. Sign Regulations, Seashore District F	59
V. Administration	59
VI. Validity	59
XIX. Open Space Residential Site Development.	60
Appendix – Zoning District Boundaries	64
SUB-DIVISION REGULATIONS	72

¹Entire Zoning By-law revised and accepted at Special Town Meeting, April 19, 1988, Article 1

TOWN OF EASTHAM ZONING BY-LAWS

Section I - Purpose

The purpose of this By-law is to promote the health, safety and general welfare of the inhabitants of the Town of Eastham by dividing the Town into districts with a view towards conserving the best qualities of the Town as they now exist.

Section II - Zoning Districts

A. The Town of Eastham is hereby divided into the following zoning districts:

DISTRICT A -- A residential area of one (1) and two (2) family dwellings.

DISTRICT B -- An area for marina-related uses to accommodate the boating and fishing needs of the town residents and guests.

DISTRICT C -- An area to serve the industrial needs of the community.

DISTRICT D -- A retail sales and/or service area.

DISTRICT E -- An area of limited commercial development that is compatible with the residential character of the neighborhood.

SEASHORE DISTRICT F -- An area of one (1) family dwellings located within the boundaries of the Cape Cod National Seashore Park to further the preservation and development of the Cape Cod National Seashore in accordance with the purposes of the Act of Congress of August 7, 1961 (75 Stat. 284, 291); to prohibit commercial and industrial uses therein, to preserve and increase the amenities of the Town; and to conserve natural conditions, wildlife and open spaces for the education, recreation and general welfare of the public.

WATER RESOURCES PROTECTION DISTRICT G¹ -- An open space area or residential area of one or two family dwellings; the Water Resource Protection District is designed to protect the public health by preventing contamination of the ground and surface water resources providing a portion of the potential public water supply for the Town of Eastham.

WELLFIELD PROTECTION DISTRICT H² -- An open space area designed to protect the public health by preventing the contamination of the ground and surface water resources in a test wellfield area demonstrated to be capable of providing a portion of the potential public water supply for the Town of Eastham.

¹Accepted at Annual Town Meeting, May 3, 1989, Article 48

²Accepted at Annual Town Meeting, May 3, 1989, Article 49

All shown on a map entitled "ZONING MAP OF THE TOWN OF EASTHAM, MASSACHUSETTS dated July 24, 2001" which is on file with the Town Clerk and which has been duly adopted as the official zoning map for the Town.

B. DISTRICT BOUNDARIES

1. Zoning Boundary Lines: Zoning districts shall extend to the full territorial limits of the Town of Eastham and shall extend into adjoining water bodies and include the lands thereunder.
2. The district boundaries shall be as shown on the Zoning Map. The scale of the map and the figures entered thereon are to serve as guides.
3. Where the boundary line divides any lot existing at the time such line is adopted, which has street frontage in the less restricted area, a use authorized on the less restricted portion of such lot may be extended into the more restricted portion for a distance of not more than thirty (30) feet.
4. Where a street divides two (2) zoning districts, the districts shall be deemed to abut each other.

Section III - Definitions

For the purpose of this By-Law the following terms shall have the following meanings:

ADULT USES — Any of the following uses, as defined in MGL Chapter 40A, Section 9A: Adult Bookstore, Adult Motion Picture Theater, Adult Paraphernalia Store, Adult Video Store, Establishments Which Display Live Nudity¹.

ALTERATION² -- As applied to a building or structure, means any modification, extension, reconstruction, renovation or rearrangements in the structural parts (horizontally or vertically) or in the exit facilities, or the moving from one location or position to another.³

AMUSEMENT -- Any type of indoor or outdoor amusement requiring the review and/or the issuance of a license by the Board of Selectmen, or sporting activities regardless of whether or not admission is charged.

AMUSEMENT PARK -- A premise or any part thereof used to provide one or more mechanical devices, rides, games or other like attractions to the public for hire or compensation of any kind, whether for fee or by admission or in connection with another service for which a fee is charged.

AMUSEMENT, OUTDOOR -- A drive-in theater, golf driving range or facility other than a regulation golf course of not less than nine (9) holes or any other commercial entertainment or recreation carried on in whole or in part outdoors. Outdoor amusement shall not include a

¹Accepted at Annual Town Meeting June 29, 1999, Article 23

²Accepted at Annual Town Meeting, May 2, 1994, Article 20

³Accepted at Special Town Meeting, July 24, 2001, Article 9

swimming pool, private or public, where no charge is made or where such is operated in connection with a hotel, motel, camp or club.

AMUSEMENT, INDOOR -- Any cinema, theater, auditorium, indoor sports area, health club, bowling alley, or any other commercial entertainment or recreation carried on indoors.

ANIMAL HOSPITAL -- A building used primarily for the medical and surgical care of animals. Said building may include related facilities such as a laboratory and crematorium.

APARTMENT -- A part of a building consisting of a room, suite, or collection of rooms intended, designed or used as a residence, separate from other residences on the same property.

APARTMENT BUILDING¹ -- A building containing three (3) or more apartments with kitchen facilities, under a common roof, each independent of the other, which conforms to the setback requirements of the District in which it is located.

AREA, NET SITE -- The total area within the property lines excluding external streets, wetlands and areas committed by easements for other uses.

ATHLETIC CLUB -- A town, state, federally or privately owned facility or facilities used for the purposes of indoor or outdoor recreation for any public or private group. Principal facilities shall be a swimming pool or pools and/or tennis courts or similar courts. Accessory facilities generally associated with a swimming pool (s) and/or tennis court (s) are to be included in this definition.

BASEMENT -- That portion of a building which is partly below and partly above grade, and having at least one-half (½) its height above grade.

BED AND BREAKFAST -- A one-family, owner-occupied business located in a dwelling in which no more than two (2) bedrooms are offered for rent for the primary purpose of furnishing overnight lodging, and a morning meal to the overnight guests only.

BOATHOUSE, PRIVATE -- A facility for private individual use and not for hire for the storage of boats and related marine equipment.

BOATHOUSE, PUBLIC -- A facility for the construction, repair, storage, rental, or servicing of boats for hire or compensation, and for the sale of boats or marine equipment.

BUILDABLE UPLAND -- Land which is not swamp, pond, bog, dry bog, fresh or salt marsh, areas of exposed groundwater, stream, and/or which is not subject to flooding from high tides.

BUILDING -- A structure forming a shelter for persons, animals, property or an activity and having a roof. Where appropriate in the context, the word "building" shall include the principal and accessory buildings.

BUILDING, ACCESSORY -- A supplemental building or a portion of a main building, the use of which is incidental to that of the main or principal building, and which is located on the same

¹Accepted at Special Town Meeting, October 21, 1996, Article 12

lot therewith.

BUILDING, DETACHED -- A building designed or intended for one or more purposes, not connected to any other building on the same lot.

BUILDING, FRONT LINE OF -- The line of that face of the building nearest the public or private way. This face shall include sun parlors, enclosed projections from the main body of the building, covered porches whether enclosed or unenclosed, decks, but not including uncovered steps.

BUILDING HEIGHT -- The vertical distance, not to exceed thirty (30) feet, between the highest point of the roof and the average elevation of the naturally existing mean grade prior to any excavation, leveling, grading, or filling at the building foundation, exclusive of chimneys, air shafts, ventilators, vents or similar items which may be of the height required for proper operation or use. Building height applies to all buildings and/or structures.

BUILDING PERMIT -- A document of authorization to construct, repair, alter, demolish, enlarge or change any building and/or structure.

BUILDING, PRINCIPAL -- A building in which is conducted the main or principal use of the lot on which said building is situated.

BULK STORAGE, OPEN -- Exposed outside storage of sand, lumber, coal or other bulk materials or supplies.

BULK STORAGE, TANKS -- Exposed outside storage tanks, silos or similar structures for the storage of oil, gas, fuels or other liquids or materials, with the exception of those located upon a farm and employed for farm purposes.

BUSINESS BAND RADIO ANTENNAS¹ -- An antenna used for radio communications for licensed business radios.

BUSINESS OFFICE -- A building or part thereof devoted to the administration of a business or commercial enterprise which involves clerical, accounting and other administrative procedures but which excludes the receipt, processing and sale of merchandise; or a building or part thereof devoted to the professional office of a physician, lawyer, engineer, architect, real estate or insurance agent, or business activities of licensed professionals.

BUSINESS, PERSONAL SERVICE -- Any building or part thereof used for the purpose of rendering a service upon the premises to the public where the sale of a product is not involved.

BUSINESS, SERVICE -- Any building or part thereof used for or from which the sale, installation, repair and servicing, or the sale and/or installation, of component parts, of home appliances and installation is conducted. Service business shall include: plumbing and electrical shops, radio and television sales and repair, service contractors, and supply yards or outdoor storage relative to the conduct of these businesses. It shall not include the sale or service of motor vehicles, trucks or boats.

¹Accepted at Special Town Meeting, October 21, 1996, Article 16

CABIN -- An existing¹ structure containing not less than 150 square feet of floor area, nor more than 499 square feet of floor area, exclusive of porches, sundecks, patios, raised terraces or similar items, and containing sleeping, living and toilet facilities but not including any kitchen or cooking facilities.

CAMP -- An area of land consisting of at least four (4) acres, exclusive of wetlands, upon which is located, or upon which it is intended to locate, the facilities required to operate upon a seasonal basis the continuing supervised recreational, health, educational religious or athletic program, or a combination thereof.

CAMPER -- A small, portable vehicle used for living purposes whether standing on wheels, attached to a mobile body or on rigid supports.

CAMP GROUND -- A parcel of land used or intended to be used, let or rented for occupancy by or of tents or moveable or temporary overnight dwelling facilities of any kind, exclusive of camps as defined by this section.

CATERING KITCHEN² - An establishment wherein the principal use or accessory use to a retail use involves preparation of food and/or beverages for groups by advance order for transport and consumption off premises.

CELLAR -- That portion of a building which is partly or completely below grade, having at least one-half (½) of its height below grade.

CLUB or LODGE -- The premises or buildings of a nonprofit organization primarily servicing members and their guests for recreational, athletic or civic purposes, but not including any vending stands, merchandising or commercial activities except as required generally for the membership and purposes of such club. This shall not include clubs or organizations whose chief activity is a service customarily carried on as a business.

COMMUNICATIONS TOWER³ -- a guyed monopole, or self supported tower, constructed as a free standing structure or in association with a building, or other permanent structure or equipment, containing one or more antennas intended for transmitting or receiving television, AM/FM radio, digital, microwave, cellular, telephone, or similar forms of electronic communication.

CONDOMINIUM -- The land, the building or buildings, all other improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, which have been submitted to the provisions of M.G.L. c. 183A.

CONDOMINIUM UNIT -- A part of a condominium including one (1) or more rooms, with appurtenant areas such as balconies, terraces and storage lockers, if any are stipulated in the condominium master deed as being owned by the unit owner, occupying one (1) or more floors or a part or parts thereof, including the enclosed space therein, intended for any type of use, and

¹Accepted at Annual Town Meeting, May 3, 1989, Article 41

²Accepted at Special Town Meeting, July 24, 2001, Article 4

³Accepted at Special Town Meeting, October 21, 1996, Article 14

with a direct exit to a street or way or to a common area leading to a street or way.

CONTRACTOR'S YARD -- Premises used by a building contractor or subcontractor principally for storage of equipment and supplies, fabrication of subassemblies or parking of wheeled equipment.

CONVENIENCE STORE — A retail establishment accessory to a principal use offering for sale prepackaged food products, fresh produce, household items, newspapers, tobacco products, lottery items, or sundries, for use and/or consumption off premises¹.

COTTAGE -- An existing² structure containing not less than 500 square feet of floor area on at least one (1) floor, exclusive of sundecks, patios, and raised terraces, and containing at least one (1) bedroom, a living room, a kitchen, a bath or toilet room or any reasonable similar combination of rooms, designed for temporary, transient, seasonal living.

COTTAGE COLONY -- A group of two (2) or more detached cottages located on the same lot, each cottage containing one (1) dwelling unit only, designed for temporary transient seasonal living.

COVERAGE -- The percentage of the lot area covered by the area of a building or buildings and/or structures.

DEMOLITION³ -- The act or process of wrecking, destroying or removing, temporarily or permanently, 50 percent or more of any existing structure.

DWELLING- A building containing living quarters for one (1) family, having not less than 500 square feet of floor area on at least one floor, exclusive of porches, sundecks, patios, raised terraces or similar items, and containing a kitchen, a bathroom containing a toilet, a lavatory, a tub and/or shower, a living room, and a bedroom or any reasonably similar combination of rooms.⁴

DWELLING, DUPLEX -- A building containing living quarters for not more than two (2) families, having not less than 1,000 square feet of floor area under a common or connected series of roofs and containing in each dwelling all the requirements for a one- family dwelling.

FAMILY -- An individual or two (2) or more persons related by blood or marriage, or a group of not more than four (4) persons not so related, living together as a single housekeeping unit.

FARM, COMMERCIAL -- Any parcel of land containing at least five (5) acres of land which is used for gain in the raising of agricultural products, livestock, poultry and dairy products. It includes necessary farm structures within the prescribed limits and the storage of equipment

¹Accepted at Annual Town Meeting, June 29, 1999, Article 26

²Accepted at Annual Town Meeting, May 3, 1989, Article 42

³Accepted at Annual Town Meeting, May 4, 1992, Article 39

⁴Accepted at Annual Town Meeting, May 1, 2006, Article 26

used. It excludes the raising of fur-bearing animals, hogs, livery and dog kennels.

FARM STAND¹ -- A structure from which 100 percent of the products displayed and offered for sale are produced upon the premises or are legally gathered from the sea or seashore.

FARMERS PORCH² -- Covered deck which on the front elevation is no greater than 10 feet in depth and one-story high.

FITNESS CENTER -- see ATHLETIC CLUB

FILLING STATION -- Any area of land, including structures thereon, that is primarily used or designed to be used for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles and which may include facilities used or designed to be used for polishing, greasing, washing, spraying or otherwise cleaning or servicing such motor vehicles. Such use shall not include body work or the painting of vehicles or other than minor repair work.

FLOOR AREA, BUILDING -- The sum of the gross horizontal area of the several floors of a building, excluding cellar and basement floor areas not devoted to residential use, and excluding the area of roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls³.

FLOOR AREA, HABITABLE -- The sum of the gross horizontal area of the floors of a dwelling used or intended to be used for living, sleeping, cooking or eating purposes, excluding cellar, attic and basement floor area not devoted to residential use⁴.

FLOOR AREA RATIO -- The ratio of the total gross floor area of a building or buildings on one (1) lot to the total area of the lot.

FUNERAL HOME -- A dwelling or other structure used by a professional licensed mortician for burial preparation and funeral services.

GARAGE, PRIVATE -- A building designed for the storage of motor vehicles.

GARAGE, PUBLIC -- Any building which is not a private garage and which is used for the servicing and repair of automobiles and trucks, and the retail sale of fuels for motor vehicles.

GIFT, CRAFT SHOP / ART GALLERY -- A building or portion thereof used for the inside display and retail sale of crafts, art work, sculpture and items primarily designed as gifts and keepsakes as distinguished from the retail sale of food, clothing, hardware, furniture and items more commonly associated with or essential to the maintenance of home, person and property.

GUEST HOUSE, PRIVATE -- A detached or semi-detached building located upon the same lot

¹Accepted at Special Town Meeting, October 21, 1996, Article 12

²Accepted at Annual Town Meeting May 5, 2003, Article 23

³Accepted at Annual Town Meeting, May 1, 2006, Article 26

⁴Accepted at Annual Town Meeting, May 1, 2006, Article 26

with one family dwelling containing not more than 250 square feet and not containing cooking facilities: the use of said building being limited to the entertainment of relatives and friends without fee or other costs.

HAZARDOUS OR TOXIC MATERIAL/WASTE -- see TOXIC OR HAZARDOUS MATERIAL/WASTE¹.

HOME OCCUPATION² -- An occupation or profession which is conducted in a residential zone and which:

- A. Is carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit, and
- B. Is carried on by member of the family residing in the dwelling unit for residential purposes, and
- C. Is secondary to the use of the dwelling unit for residential purposes, and
- D. Conforms to the following additional conditions:
 1. No more than one (1) non-family member shall be employed in the home occupation;
 2. The floor area used by the home occupation shall not exceed thirty percent (30%) of the total livable floor area of the principal building;
 3. There shall be no exterior display, no exterior sign, except as permitted under the Sign Code, no exterior indication of the home occupation or variation from the residential character of the principal building;
 4. No offensive noise (as defined in the Eastham Noise By-Law), offense due to hours of operation, vibration, smoke, dust, gas, odors, heat or glare beyond a reasonable judgment shall be produced;
 5. No equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises;
 6. No outside storage of materials and equipment shall be permitted unless concealed from view of neighbors and street by a concealing fence enclosing said materials and equipment;
 7. All parking shall be off-street, and long-term parking (more than six (6) hours) shall be limited to two (2) vehicles, excluding the resident's

¹Accepted at Annual Town Meeting, May 3, 1989, Article 48

²Accepted at Annual Town Meeting, May 7, 1990, Article 62

vehicle(s);

8. Any merchandise offered for retail sale must be manufactured or assembled on the premises;
9. The occupation of repairing gas, gasoline or diesel engines is specifically excluded; and
10. The physical presence of non-family member employees or the public shall be limited to the hours between 7:30 AM and 10:00 PM.
- 11¹. Except by Special Permit, there shall be no food preparation on premises.

HOTEL -- see INN

IMPERVIOUS SURFACE² -- Any surface which does not allow precipitation to percolate through that surface towards the groundwater.

INDUSTRY, HEAVY -- The production, assembly, processing, finishing or manufacture of any object or material which results in or would result in noise, dust, odor, vibration, gases, or any objectionable feature that can or could be detected at any time off the premises upon which located.

INDUSTRY, LIGHT -- Fabrication, assembly, processing, finishing work or packaging in such a manner that noise, dust, odor, vibration, or similar objectionable features are confined to the premises and are in no way objectionable to abutting property.

INN -- A building, together with its accessory buildings, used or arranged or designed to be used to provide living accommodations including sleeping quarters, and meals which are prepared and served from a central kitchen/dining facility operated under a victualer license. The definition here given shall also include that for a hotel.

JUNK -- Any article or material or collection thereof which is worn out, cast off or discarded and which is ready for destruction or has been collected or stored for salvage or conversion. Any article or material which, unaltered or unchanged and without further reconditioning can be used for its original purpose as readily as when new, shall not be considered as junk.

JUNK YARD -- The use of any area of any lot, outside a building, for the storage, keeping, resale or abandonment of junk, or scrap or discarded materials, or the dismantling, demolition or abandonment of automobiles or other vehicles or machinery or parts thereof.

LINE, STREET -- The dividing line between the street right of way and the lot.

¹Accepted at Special Town Meeting October 21, 1996, Article 12

²Accepted at Annual Town Meeting, May 3, 1989, Article 48

LODGE BUILDING -- A structure occupied by a non-profit social or civic organization.

LOT -- A closed plot of land having a definite area and perimeter¹.

LOT AREA -- The horizontal area of a lot exclusive of any area under water, or within a road layout.

LOT AREA REQUIREMENTS² -- The calculation of the minimum lot area shall include only contiguous upland and shall exclude all wetland or land under any stream, creek, or other water body, therefore such upland area shall contain the minimum required area for buildable lots in the district.

LOT LINES -- The lines bounding a lot as defined herein.

MOTEL -- A structure containing not more than 4,000 square feet on one floor, exclusive of porches, sun decks, patios, raised terraces or similar items, divided into units containing living, sleeping and toilet facilities only. No individual kitchen or cooking facilities in units shall be permitted.

Structures shall be one story in height except where the terrain will allow the rear wall to be two stories in height. Rear wall is defined as the wall farthest from the road or roads off which the structure is located and parallel to said road or roads.

When more than one motel structure is erected on one lot, each structure shall be not less than fifty (50) feet from any other structure on the lot. No structure shall be erected nearer than fifty (50) feet from the lot side lines nor nearer than twenty-five (25) feet from the lot rear line.

MOTOR VEHICLE SALES -- A premises used for the display and for the sale of new or used motor vehicles, as that term is defined under the Massachusetts General Laws.

NON-CONFORMING USE -- A building, structure, or land lawfully occupied by a use that did not conform to the by-laws of the district in which it is situated at the time of the adoption of applicable Zoning By-Laws and of any amendments thereto.

NURSING or CONVALESCENT HOME -- Any state licensed dwelling or building with sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire.

NURSERY SCHOOL -- A school designed to provide daytime care or instruction for two (2) or more children from two (2) to six (6) years of age, inclusive, and operated on a regular basis.

¹Accepted at Annual Town Meeting, May 1, 2006, Article 26

²Accepted at Special Town Meeting October 21, 1996, Article 12

OCEAN BEACH¹ – a municipal facility designed to provide access to the ocean for swimming, sunbathing, fishing, surfing, windsurfing and walking, including stairs, landings, parking areas and other associated structures necessary for operation.

OCCUPANCY PERMIT -- A permit issued by the Building Inspector authorizing the occupancy and the use of the land and/or structures and buildings.

OPEN SPACE² -- An unoccupied space, open to the sky, free of all structures, parking, pavement and other impervious surfaces; consisting of lands used for agricultural or forest uses; and any land area that would, if preserved and continued in its present use:

1. Conserve and enhance natural or scenic resources;
2. Protect air or streams or water supply;
3. Promote conservation of soils, wetlands, beaches or tidal marshes, and
4. Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space.

OUTSIDE DISPLAY -- Goods displayed in conjunction with business or retail trade, by permit from the Special Permit Granting Authority.

PAN HANDLE LOT³ -- A pan handle lot is a closed plot of land having a definite area and perimeter connected to a way by a strip of land no less than 40 feet in width for its entire length and having less than fifty (50) feet of frontage.

PARKING SPACE -- The area required for parking one (1) automobile.

PARKING, PUBLIC -- An area used for the purpose of parking vehicles, whether or not a fee is required.

PARKING, PRIVATE -- Space for parking accessory to principal use, not to include parking for fee or parking of more than one (1) commercial vehicle except on farms.

PASSIVE RECREATION⁴ -- Forms of recreation such as nature study, walking, hiking, and horseback riding; and fishing and hunting as permitted by law.

PET KENNEL -- A building, structure or area used for the boarding, grooming, and breeding of domestic animals.

PET STORE -- A building or structure used for the sale of domestic pets and related supplies.

¹Accepted at Annual Town Meeting, May 5, 2003, Article 27

²Accepted at Annual Town Meeting, May 3, 1989, Article 28

³Accepted at Special Town Meeting, October 21, 1996, Article 26

⁴Accepted at Annual Town Meeting, May 3, 1989, Article 49

PORCH, OPEN DECK -- A porch that has no walls or windows other than that of the main building to which it is attached.

PROCESS WASTEWATER¹ -- Includes all wastewaters other than sanitary wastewater.

QUARRY, SAND PIT, GRAVEL PIT, TOP SOIL STRIPPING -- An area of land or part thereof used for the purpose of extracting stone, sand, gravel or top soil.

RECHARGE AREA² -- The area, encompassing land and water surface, through which precipitation enters the groundwater body and from which groundwater flows naturally or is drawn by pumping into a water supply well.

REMOVAL OF BUILDING -- Removal by demolition or relocation, either in whole or in part

RESORT AND CONFERENCE CENTER -- A structure or series of structures, divided into separate units, the purpose of which is to provide living, sleeping and toilet facilities; conference, seminar, or meeting facilities and/or recreation or entertainment services and facilities, including but not limited to golfing, tennis, dining, or other amenities intended to solicit the use of the property as a resort or conference center.

RESTAURANT³ -- An establishment where food and drink are prepared, served and consumed primarily within the principal building or at outside seating on a deck or patio. Food may be prepared for consumption off the premises provided such take-out service is accessory to the restaurant use. This definition, with its provision for accessory take-out service, shall not be construed to allow any "Restaurant, Drive In" or "Restaurant, Fast Food" as defined in this section.

RESTAURANT, DRIVE-IN⁴ -- Premises where meals and/or other items of nourishment and/or refreshments are offered for sale, and where any portion of these are consumed or intended to be consumed in the open, off-premises, or within cars parked upon the premises.

RESTAURANT, FAST FOOD⁵ -- An establishment for the sale of on-or-off premises prepared food or drink packaged for takeout, whether for consumption on the premises or not, unless such sales are wholly incidental to a conventional restaurant or other use defined in this section, and including establishments providing in-car service or window service or service at two (2) or more take-away stations within the town.

RETAIL SALES¹ -- Any business, excluding restaurants, drive-in restaurants and fast food

¹Accepted at Annual Town Meeting, May 3, 1989, Article 48

²Accepted at Annual Town Meeting, May 3, 1989, Article 48

³Accepted at Special Town Meeting, July 24, 2001, Article 1

⁴Accepted at Annual Town Meeting, July 24, 2001, Article 3

⁵Accepted at Annual Town Meeting July 24, 2001, Article 3

¹Accepted at Special Town Meeting October 21, 1996, Article 12

restaurants, engaged in the selling of goods or merchandise to the general public and rendering services incidental to the sale of such goods.

RETAIL SERVICES² -- Any business providing services including but not limited to hair stylists, barber shops, banks, funeral homes and offices where the sale of goods is secondary and incidental to the services provided.

RIDING ACADEMY -- Any business where horses and/or ponies are kept for riding, driving or stabling for compensation, or incidental to the operation of any club, association or similar establishment.

ROADSIDE STAND -- A structure from which 100% of the products displayed and offered for sale are produced upon the premises or are legally gathered from the sea or seashore.

SANITARY SEWAGE -- see SANITARY WASTEWATER³.

SANITARY WASTEWATER⁴ -- Any water carrying putrescible waste resulting from the discharge of water closets (toilets), laundry tubs, washing machines, sinks, showers, dishwashers, or any other source.

SEASONAL -- This term shall refer to a period of time commencing each calendar year on the first day of April and terminating the last day of November of each calendar year.

SERVICE TRADE⁵ -- An occupation or business which provides service to customers primarily in or on the customers' homes or premises, including but not limited to such trades as carpentry, masonry, plumbing and heating, electrical installation and repair, well drilling, and lawn maintenance. Such service trades may be operated out of the provider's residence subject to the following restrictions:

- A. The business is secondary to the use of the dwelling unit for residential purposes;
- B. No more than two (2) employees may report to the provider's residence;
- C. No outdoor storage of service-related materials or equipment is permitted on the provider's premises unless concealed from view of neighbors and street by a concealing fence enclosing said materials and equipment;
- D. No more than two (2) motor vehicles (as that term is defined by the Massachusetts General Laws, Chapter 90, Section 1, but containing no more than six (6) wheels) which are used in the service trade may be kept on the provider's premises;
- E. Deliveries may be made to the provider's premises no more frequently than an

²Accepted at Special Town Meeting, October 21, 1996, Article 13

³Accepted at Annual Town Meeting May 3, 1989, Article 48

⁴Accepted at Annual Town Meeting, May 3, 1989, Article 48

⁵Accepted at Annual Town Meeting, May 7, 1990, Article 63

average of five (5) times a week;

- F. There shall be no exterior sign or other display except as permitted under the Sign Code for a residential district, and no exterior indication of the service trade which detracts from or is in conflict with the residential character of the principal building and area;
- G. The buildings or premises occupied shall not be rendered objectionable or detrimental to the residential character of the neighborhood due to the exterior appearance, emission of odor, gas, smoke, dust, noise, electrical disturbances, or in any other way. In the case of electrical disturbances, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises;
- H. The floor area used shall not exceed thirty percent (30%) of the total livable floor space in the principal building; and
- I. All parking shall be off-street, and long term parking (more than six (6) hours) shall be limited to two (2) vehicles, excluding the resident's vehicles.

SEWAGE -- see SANITARY WASTEWATER¹

SITE COVERAGE² – The sum of the gross horizontal area of the floors of a dwelling used or intended to be used for living, sleeping, cooking or eating purposes, excluding cellar, attic, farmers porch and basement floor area not devoted to residential use, plus the square footage of any roofed permanent accessory structure or garage and screened porch or covered deck.

SITE COVERAGE RATIO – The ratio of the total gross area of Site Coverage on one (1) lot to the Lot Area Requirement³.

SPECIAL PERMIT GRANTING AUTHORITY -- Shall be the Board of Appeals or another authorized board as allowed under Chapter 808 of the Acts of 1975, Massachusetts General Laws, as amended.

STABLE, PRIVATE -- A building in which animals are kept for private use and not for hire, remuneration, or sale.

STABLE, PUBLIC -- A building in which two (2) or more horses and/or ponies are kept for remuneration, breeding, raising or for hire or sale.

STORY -- That portion of building contained between any floor and the floor or roof above it.

STREET GRADE -- The officially established grade of the center line of the street on which a

¹Accepted at Annual Town Meeting, May 3, 1989, Article 48

²Amendment Accepted at Annual Town Meeting, May 5, 2003, Article 23

³Accepted at Annual Town Meeting, May 1, 2006, Article 26

lot fronts. If there is no officially established grade, the existing average grade between lot lines shall be taken as the street grade.

STRUCTURE/BUILDING -- Anything constructed or erected, the use of which requires location on the ground or attachment to something located on the ground.

STUDIO, PRIVATE; also ARTIST STUDIO -- a building or part of a building generally limited to a one (1) room working space so designed as to accommodate an occupation relative to production of various forms of art, such as painting, sculpture, photography. Such a unit may be included within “home occupation” as defined in this By-Law only when such unit clearly meets ALL requirements of the “home occupation” definition.

SWIMMING POOL -- Any body of water or receptacle for water, enclosed or unenclosed, having a depth at any point greater than two (2) feet, used or intended to be used for swimming or bathing, and constructed, installed or maintained in or above ground. Any such pool shall conform to applicable state requirements.

TEMPORARY STRUCTURE/BUILDING -- One to be used for less than six (6) months.

TENNIS COURT -- An area used or intended to be used for tennis and tennis related activities, and constructed, installed or maintained on or above the ground. A tennis court shall be considered a structure for the purposes of this By-Law.

TOXIC OR HAZARDOUS MATERIAL/WASTE¹ -- Any substance presently or subsequently designated by any federal, state or local agency or mixture of such physical, chemical, or infectious characteristics as to pose a significant or actual potential hazard to water supplies if such substance or mixture were discharged into lands or waters of this Town. Toxic or hazardous materials include but are not limited to: organic chemicals, petroleum products, heavy metals, radioactive substances, infectious substances, acids, alkalies, pesticides, herbicides, fungicides, rodenticides, paints, varnishes, solvents, thinners, substances listed in the Regulations, 310 CMR 30.131-136, or substances which have one or more of the characteristics listed below:

1. Ignitable -- easily catches fire, flash point less than 140 degrees Fahrenheit;
2. Corrosive -- very acidic or alkaline, pH less than 2 or greater than 12.5;
3. Reactive -- explosive, produces toxic gases when mixed with water or acid;
4. Toxic -- poisonous, may injure or kill.

Wastes generated by, but not limited to the following activities are presumed to be toxic or hazardous, unless and except to the extent that anyone engaging in such activity can demonstrate to the contrary to the satisfaction of the Eastham Board of Health:

1. Airplane, boat and motor vehicle service and repair;

¹Accepted at Annual Town Meeting, May 3, 1989, Article 48

2. Chemical and bacteriological laboratory;
3. Cabinet making;
4. Dry cleaning, Laundromat;
5. Electronic circuit assembly;
6. Metal plating, finishing and polishing;
7. Motor and machinery service and assembly;
8. Painting, furniture stripping;
9. Pesticide, herbicide, fungicide, rodenticide and/or nitrate fertilizer application;
10. Photograph processing;
11. Printing;
12. Wood finishing or refinishing.

TRAILER HOME/MOBILE HOME -- A unit which at any time was a portable or mobile vehicle and was designed to be portable and used for living purposes whether standing on wheels or at a later date transferred to rigid supports.

TRAILER PARK -- A tract of land occupied by or designed or intended for the occupancy of trailer homes or any similar vehicle.

TRANSPORT TERMINAL -- Yard or structure for the storage and/or servicing of two (2) or more commercial vehicles and the storage of materials in transit.

USE -- The specific purpose for which land or a structure or building is designed, arranged, intended, or for which it is or may be occupied or maintained. The term "permitted use" or its equivalent shall not be deemed to include any non-conforming use.

VETERINARIAN -- see ANIMAL HOSPITAL.

WAREHOUSING -- Storage of goods within a building or yard for distribution but not for retail sale on the premises.

WELLFIELD¹ – An area of undeveloped or sparsely developed land of sufficient size to accommodate one or more municipal water supply wells pursuant to statute, by-law or other legal authority.

YARD -- An unoccupied space on the ground open to the sky, on the same lot with a building.

¹Accepted at Annual Town Meeting, May 3, 1989, Article 49

SECTION IV -- FLOOD PLAIN ZONING²

See definitions of flood plain zone designations in ARTICLE V of this SECTION.

- A. The installation of underground systems for the storage of petroleum products (including but not limited to oil, gasoline, kerosene, and any hazardous materials) shall be prohibited in the 100 year flood plain (Zones A, AO, AH, A1-30, A99, V and V1-30 on the Flood Insurance Rate Maps 250006-0005, prepared by the National Flood Insurance Program for the Town of Eastham). Storage system shall mean storage tank and all supply lines between storage tank and burner. Underground shall mean under the surface of the earth or under pavement, including cement floors of cellars or basements. Storage systems may be located in basements or cellars provided they are on or above the paved floor of the cellar or basement.
- B. Any new construction, alteration of structures or other development which is removed from the A or V zones by subsequent flood insurance map amendments shall only have to meet the requirements of its new zone designation.
- C. All subdivision proposals and other proposed new developments greater than fifty (50) lots or five (5) acres whichever is the lesser shall include in such proposals base flood elevation data.
- D. Subdivision proposals and proposals for other developments, including their utilities and drainage, are located and designed to be consistent with the need to minimize flood damage.

ARTICLE I -- STATEMENT OF PURPOSE, EXISTING REGULATIONS

SECTION A. -- STATEMENT OF PURPOSE

The purposes of the Floodplain District are to:

- 1. Ensure public safety through reducing the threats to life and personal injury.
- 2. Eliminate new hazards to emergency response officials.
- 3. Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding.
- 4. Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding.
- 5. Eliminate costs associated with the response and cleanup of flooding conditions.
- 6. Reduce damage to public and private property resulting from flooding waters.

²Accepted at Annual Town Meeting, May 3, 1993, Article 28, sections reorganized, Annual Town Meeting, June 29, 1999, Article 27

7. Facilitate accurate insurance ratings and promote the awareness of flood insurance.

SECTION B. -- EXISTING REGULATIONS

All development in the district including structural and non-structural activities whether permitted by right or by special permit must be in compliance with the following:

- 780 CMR 3107.0, of the Massachusetts Building Code which addresses floodplain and coastal high hazard areas.
- 310 CMR 10.0, Wetlands Protection Regulations, Department of Environmental Protection (DEP).
- 302 CMR 6.00, Inland Wetlands Restriction, DEP
- 302 CMR 4.00, Coastal Wetlands Restriction, DEP
- 310 CMR 15, Title 5, Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP
- Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

ARTICLE II. -- FLOODPLAIN DISTRICT BOUNDARIES AND BASE FLOOD ELEVATION DATA

SECTION A. -- FLOODPLAIN DISTRICT BOUNDARIES AND BASE FLOOD ELEVATION DATA

The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas designated on the Town of Eastham Flood Insurance Rate Map (FIRM) issued by FEMA (successor to the U.S. Department of Housing and Urban Development, HUD) for the administration of the NFIP dated July 2, 1992 as Zone A, AE, AH, A1-30, A99, V, V1-30, VE, and if available, the FEMA Flood Boundary and Floodway Map dated July 2, 1992, both maps which indicate the 100-year regulatory floodplain. The boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Flood Insurance study booklet dated July 3, 1986. The FIRM (and Flood Boundary and Floodway Map if available) and Flood Insurance Study booklet are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Official and Conservation Commission.

ARTICLE III -- USE REGULATIONS

Flood Plain District I is established as an overlay district to all other districts. All development, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the requirements of the Massachusetts State Building Code pertaining to construction in floodplains (currently Section 2102). Additionally any required federal permits must be

obtained prior to the issuance of a development permit in the Flood Plain District as follows:

1. Within Zones AH and AO on the FIRM, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.
2. Prohibit man-made alteration of sand dunes and salt marshes within Zones V1-30, VE, and V which would increase potential flood damage.
3. Provide that all new construction within Zones V1-30, VE and V be located landward of the reach of mean high tide.
4. Existing contour intervals of site and elevations of existing structures must be included on plan proposal.
5. There shall be established a “routing procedure” which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, Department of Public Works, Building Inspector, Board of Appeals and Fire Department for comments which will be considered by the appropriate permitting board prior to issuing applicable permits.
6. The Building Inspector shall (a) review all proposed development within the flood district to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution and Control Act Amendments of 1972, U.S.C. 1334, and (b) obtain and maintain records of elevation and floodproofing levels for new construction or substantial alteration within the flood district.

ARTICLE IV. -- PERMITTED USES

The following uses of low flood damage potential and causing no obstructions to flood flows are encouraged provided they are permitted in the underlying district and comply with other requirements:

1. Agricultural uses such as farming, grazing, truck farming, horticulture, etc.
2. Forestry and nursery uses.
3. Outdoor recreational uses, including fishing, boating, play areas, etc.
4. Conservation of water, plants, wildlife.
5. Wildlife management areas, foot, bicycle, and/or horse paths.
6. Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.
7. Buildings lawfully existing prior to the adoption of these provisions.

ARTICLE V. -- DEFINITIONS

ALTERATION -- As applied to a building or structure, a change, modification, renovation or rearrangement in the structural parts or in the exit facilities or an enlargement whether by extending on a side or by increasing in height, or the moving from one location or position to another.

AREA OF SPECIAL FLOOD HAZARD -- is the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, A1-30, AE, A99, VO, V1-30, VE, or V.

BASE FLOOD -- means the flood having a one percent chance of being equaled or exceeded in any given year.

COASTAL HIGH HAZARD AREA -- means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a FIRM as Zone V, V1-30, VE.

DEVELOPMENT -- means any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

DISTRICT -- means floodplain district.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

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

FLOOD INSURANCE RATE MAP (FIRM) -- means an official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY -- means an examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

FLOODWAY -- means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

LOWEST FLOOR -- means the lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, PROVIDED that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of NFIP Regulations 60.3.

MANUFACTURED HOME -- means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term “manufactured home” also includes park trailers, travel trailers, or other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term “manufactured home” does not include park trailers, travel trailers, and other similar vehicles.

MANUFACTURED HOME PARK OR SUBDIVISION -- means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

NEW CONSTRUCTION -- means, for floodplain management purposes, structures for which the ‘start of construction’ commenced on or after the effective date of a floodplain management regulation adopted by a community. For the purpose of determining insurance rates, NEW CONSTRUCTION means structures for which the ‘start of construction’ commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later.

ONE-HUNDRED-YEAR FLOOD - see BASE FLOOD.

REGULATORY FLOODWAY - see FLOODWAY.

SPECIAL FLOOD HAZARD AREA -- is the land in a community’s flood plain subject to a one percent or greater change of flooding in any given year. The area may be designated on the FIRM as Zone A, AO, A1-30, AE, A99, AH, V1-30, VE.

STRUCTURE -- means, for flood plain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. For insurance coverage purposes, STRUCTURE means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on foundation. For the latter purpose, the term includes a building while in the course of construction, alteration, or repair, does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

SUBSTANTIAL IMPROVEMENT -- means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of a building commences, whether or not that alteration affects the external dimensions of the structure.

ZONE A -- means the 100-year flood plain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local or other data.

ZONE A1-30 and ZONE AE – means the 100-year flood plain where the base flood elevation has been determined.

ZONE AH and ZONE AO – means the 100-year flood plain with the flood depths of 1 to 3 feet.

ZONE A99 -- means areas to be protected from the 100-year flood by federal flood protection system under construction. Base flood elevations have not been determined.

ZONE V -- means special flood hazard area along a coast subject to inundation by the 100-year flood with the additional hazards associated with storm waves. Base flood elevations have not been determined.

ZONE V1-30 and ZONE VE (for new and revised maps) -- means a special flood hazard area along a coast subject to inundation by the 100-year flood with additional hazards due to velocity (wave action). Base flood elevations have been determined.

SECTION V -- USES

In each zoning district, premises and buildings may be used for the following purposes only:

ALL DISTRICTS -- Commercial Communications Towers are allowed only on Town owned land¹.

Special permits may be granted for any use not specifically permitted but which is consistent with the intent of the zoning district characteristics as expressed in Section 3 of this By-Law.

DISTRICT A -- One family dwellings and duplex dwellings; accessory buildings and shelters for the uses of the resident occupants of such dwellings for garaging their own motor vehicles, stock and equipment;

- the storage of campers or trailers on the resident occupant's property by permit of the Selectmen;
- home occupations, service trades, and bed and breakfast, as defined in Section II of this By-law;
- agricultural farming, gardening, and greenhouses for the resident occupants' use;
- the keeping of non-commercial livestock, animals and poultry, excluding piggeries and the raising of mink or fox, on parcels of less than five acres, by residents or owner occupants, provided such use is not injurious, noxious or offensive to the neighborhood. No building shall be used to house animals, livestock or poultry without a special permit from the special permit granting authority.
- and agricultural, horticultural and floricultural uses on parcels of five (5) acres or more providing said use is the primary use and that all buildings and structures, except fences of less than five (5) feet in height, shall not be less than thirty (30) feet from the sidelines of any lot nor less than one hundred (100) feet from the sideline of any street or highway.
- those uses listed as allowed in District E, except for hotels, on those parcels abutting Route 6 to the east or west bounded by Assessors' Map2, Parcel 62 and Map 5, Parcel 124 that were in lawful commercial use before April 18, 1988 and are operating as a

¹Accepted at Special Town Meeting, October 21, 1996, Article 15

commercial use as of May 1, 2006¹.

DISTRICT B -- Docks; wharves; party boat businesses; renting of row boats, motor boats, sail boats and fishing gear; boat building, storage and repair; sale of fish, fish bait, and fishing gear. No residences shall be allowed.

DISTRICT C -- Manufacturing, assembling, processing, packaging, warehousing², storage and shipping of non-hazardous or non-toxic goods and materials; plumbing, electrical, carpentry or similar service and repair facilities; concrete batching plants; manufacturing of house framing, furniture and like products; repair shops for automobiles, trucks and marine equipment; contractors' yards; boat building, repairs and storage; rental of automobiles, trucks and trailers; wholesale bakeries; auction houses, kennels³. Except as otherwise noted⁴ sales, retail or wholesale, shall be permitted so long as they are strictly incidental to the primary use and provided that a designated sales area, separate from the operational area, is maintained in order to provide for the protection and safety of customers. No residences shall be allowed.

Business band radio antennas are allowed in this district subject to the building height restrictions of these By-Laws⁵.

Any light industry or heavy industry not specifically permitted above may be permitted by a grant of a Special Permit from the Zoning Board of Appeals. Upon application for a Special Permit to the Zoning Board of Appeals, the Board shall conduct a public hearing on said application within sixty-five (65) days after the filing of the application pursuant to Massachusetts General Laws, Chapter 40A, Section 9. A decision by the Zoning Board of Appeals based upon an application for a Special Permit shall be based upon an evaluation of all the evidence presented at the public hearing by the Petitioner and interested parties as it relates to the fulfillment of the spirit and intent of this By-law without substantial detriment to the public good or any neighborhood affected. Such permits may also impose conditions, safeguards, and limitations on the applied for use which are necessary to the fulfillment of the intent of this By-law without causing substantial detriment to the public good or to any neighborhood affected⁶.

Adult uses as defined in Section II of this by-law may only be permitted by a grant of a special permit by the Zoning Board of Appeals⁷.

DISTRICT D -- Antique shops, craft and gift shops, hair styling and barber shops, offices, art galleries, banks, animal hospitals, kennels, funeral homes, nurseries and florists, fitness centers, lodges, retail stores and shops. Residential apartments are allowed above businesses of a

¹Accepted at Annual Town Meeting, May 1, 2006, Article 39

²Accepted at Special Town Meeting, October 21, 1996, Article 19

³Accepted at Special Town Meeting, October 21, 1996, Article 20

⁴Accepted at Annual Town Meeting, June 29, 1999, Article 23

⁵Accepted at Special Town Meeting, October 21, 1996, Article 17

⁶Accepted at Annual Town Meeting, May 3, 1998, Article 29

⁷Accepted at Annual Town Meeting, June 29, 1999, Article 23

permitted nature provided such residences occupy no more than 50% of the structure¹.

In any Convenience Store, as defined in Section II - Definitions, no food preparation or heating will take place on the premises except the preparation of hot beverages. All food is to be sold in sealed packages, with the exception of fresh produce².

DISTRICT E -- Banks, professional offices, real estate offices, gift and craft shops, antique shops, furniture repair shops, and residences. Residential apartments are allowed above business of a permitted nature provided such residences occupy no more than 50% of the structure².

SEASHORE DISTRICT F -- Permitted Uses:

1. Conservation of land, water wildlife, vegetation, and other natural features and values.
2. Facilities deemed by the Secretary of the Interior to be necessary for the administration and public use and enjoyment of the Cape Cod National Seashore or deemed to be necessary by the Town of Eastham.
3. Recreation, including but not limited to, hunting, fishing, swimming and boating.
4. Gardening and traditional agricultural uses of cleared land, but excluding such objectionable uses as a piggery or the commercial raising of livestock, fur-bearing animals and poultry, or other uses injurious, noxious or offensive to the neighborhood.
5. Traditional commercial fishing activities, the opening of shellfish, and storage and use of fishing equipment.
6. Uses of existing dwellings as residences and accessory uses customarily incidental to the principal residential use on the same premises, provided such uses are not detrimental to a residential neighborhood and do not alter the essential character of the dwelling as a residence. Residential uses of dwellings may include the renting of rooms and furnishing of board by residents of the premises to overnight guests, if such uses do not alter the essential character of the dwellings as residences.
7. Customary home occupations as defined in the Town of Eastham Zoning By-Law, but this shall not include the use of accessory structures as stores or for the display of goods to the passing public.
8. Moving, alteration, enlargement, maintenance, or repairs of existing one-family residential dwellings or the erection of customary structures which will be accessory to the existing principal residential use provided that such improvements to existing dwellings and the erection of accessory structures will not increase the habitable space by

¹Accepted at Special Town Meeting October 21, 1996, Article 21

²Accepted at Special Town Meeting October 21, 1996, Article 21

more than fifty percent (50%) of the habitable space existing on September 1, 1959, nor the accessory space by more than 50% of the total habitable space, will afford not less than a fifty (50) foot setback from all streets measured at right angle with the line of the streets and a twenty-five (25) foot distance from abutters' property lines, and further do not alter the essential character of the dwellings as a residence.

9. Religious and educational use.
10. Municipal use and public facilities.
11. Detached, one-family dwellings and accessory structures, provided that no lot may be used for their construction which has a frontage of less than 150 feet, and an area of less than three (3) acres, and no dwelling or building may be located in such a manner as to provide less than a 50-foot setback from all streets measured at a right angle with the street line and a 25-foot distance from abutters' property lines.

Except as provided above, there shall be in the Seashore District F:

1. No burning of cover unless determined by the Fire Chief to be necessary for the welfare and safety of the Town and such burning shall be in accordance with the requirements of M.G.L., C.48, Section 13.
2. No filling of land, dumping, or removal of soil, loam, sand, or gravel in excess of five (5) cubic yards.
3. No cutting of timber except: (a) by an owner for the purpose of reasonably controlling brush or trees; (b) maintenance cutting in pastures; and (c) cutting for clearance or maintenance on rights of way including those pertaining to public utilities or public highways.
4. No buildings or structures.
5. No commercial or industrial venture or activities.
6. No drainage, damming or relocation of any water course except by a publicly authorized agency for the purpose of pest control.
7. No continuous storage of materials or equipment.

Applicants for variances or exceptions shall be promptly notified by the Board of Appeals that the Secretary of the Interior is authorized to withdraw the suspension of his authority to acquire, by condemnation, property which is made the subject of a variance or exception that, in his opinion, fails to conform or is in any manner opposed to or inconsistent with the purposes of the Cape Cod National Seashore. The Secretary of the Interior shall be given notice by the Board of Appeals, of all applications or petitions made for variances or exceptions to the By-Laws for the Seashore District and he shall be provided notice by the Building Inspector of all applications for building permits involving the Seashore District within seven (7) days of receipt of the applications or petitions. The Secretary may be consulted at any time by zoning authorities or by the owner of 'improved property' regarding the effect of a proposed variance or exception upon the status of

the affected property with regard to the suspension of the suspension of the Secretary's authority to condemn. The Secretary, within sixty (60) days of the receipt of a request for such determination, or as soon thereafter as is reasonably possible, shall advise the owner or zoning authorities whether or not the intended use will subject the property to acquisition by condemnation.

Subsequently, to meet the requirements of the Act of Congress on August 7, 1961, the Secretary shall be given notice by the appropriate board of any variance, or exception, or building permit, granted or denied for the area within the Seashore District.

Approved by the Secretary of the Interior subject to an amendment to Article VIII which will specify a fifty (50) foot setback.

DISTRICT G¹ -- Water Resource Protection District

1. One family dwellings and duplex dwellings, accessory buildings and shelters for the uses of the resident occupants of such dwellings for garaging their own motor vehicles and equipment; the keeping of stock and the storage of campers or trailers on the resident occupants' property by permit of the Selectmen.
2. The above ground storage, for domestic residential use only, of the following:
 - a. Fuel oil, not to exceed 300 gallons (nominal 275 gallons);
 - b. Diesel fuel and/or gasoline, not to exceed two (2) ten (10) gallon tanks;
 - c. Compressed gas tanks, not to exceed one 500 gallon tank.
3. The domestic use of pesticides, herbicides, fungicides, rodenticides, and/or nitrate fertilizers on single or duplex residential parcels is allowed provided that:
 - a. The products before mentioned shall be acquired in commonly available retail package amounts only;
 - b. The products before mentioned shall be used and stored according to guidelines printed on or in the retail package by the product manufacturer;
 - c. The area of use and/or application of the products before mentioned on lawns, gardens, foundation plantings, and so forth, shall not exceed a total of ten thousand (10,000) square feet per residential parcel.

DISTRICT H¹ -- Wellfield Protection District:

1. Construction, operation and maintenance of municipal water supply wells.

¹Accepted at Annual Town Meeting, May 3, 1989, Article 48

¹Accepted at Annual Town Meeting, May 3, 1989, Article 49

2. Protection of soil, water, plants and wildlife and other natural features and values.
3. Passive recreation.
- 4². Ocean Beach subject to Site Plan – Special Permit

SECTION VI -- NON-CONFORMING USES

- A. Any lawful building, or any lawful use of a building or premises, or part thereof, existing or lawfully begun at the time the Zoning By-Law was originally adopted in the area in which such building or use is located, may be continued, subject to the provisions of this section.
- B³. Discontinuance of any non-conforming use for a period of two (2) years shall extinguish any rights as a non-conforming use. Change of use from a non-conforming to a conforming use shall be considered abandonment of the non-conforming use and shall immediately extinguish any right to the non-conforming use.
- C⁴. A non-conforming single or two family residential structure may be altered if the Inspector of Buildings determines that the alteration will not increase the existing non-conforming nature of the structure. In making such determination, the Inspector of Buildings, after identifying the particular respect or respects in which the structure does not presently conform to the By-Law, shall consider whether the proposed alteration will either intensify any existing nonconformities or result in additional nonconformities.

If the Inspector of Buildings determines that a proposed alteration to a single or two family residential structure will increase the existing non-conforming nature of the structure, the applicant may seek a new determination from the Zoning Board of Appeals. If the Board of Appeals determines that the alteration will increase the non-conforming nature of the structure, no such alteration may occur unless the Zoning Board of Appeals issues a special permit for the alteration after finding that the alteration will not be substantially more detrimental to the neighborhood than the existing nonconformity and will not be detrimental to the public welfare.

The following types of alterations do not result in an increase in non-conformancy¹:

- 1. Alteration to a non-conforming structure where the alteration will comply with all applicable sections of the Zoning By-law in effect at the time of the application.**

²Accepted at Annual Town Meeting May 5, 2003, Article 23

³Accepted at Special Town Meeting July 24, 2001, Article 7

⁴Accepted at Annual Town Meeting, May 2, 1994, Article 18

¹Accepted at Special Town Meeting, July 24, 2001, Article 8

2. Alteration to a non-conforming structure on a lot which when created contained at least the minimum square footage required within the zoning district in which the lot is located, where the alteration will comply with all applicable sections of the Zoning By-law in effect at the time of the application, including but not limited to yard setback, lot coverage and height requirements.

D². Other non-conforming uses and buildings or structures may be altered, extended or enlarged by a Special Permit from the Special Permit Granting Authority upon a determination that such change, extension or alteration is not more detrimental than the existing non-conforming use, building or structure is to the neighborhood and that it will not be detrimental to the public welfare.³

Special Permits are granted when the Special Permit Granting Authority determines that the structure or use involved will not be detrimental to the established or future character of the neighborhood and the Town and when it has been found that the structure or use involved will be in harmony with the general purpose and intent of the Zoning By-law and zoning District. It shall be the responsibility of the applicant for any Special Permit to demonstrate, to the satisfaction of the Special Permit Granting Authority, that criteria, including, but not limited to, the following are met:

1. Adequacy of the site, in terms of size, for the proposed structure or use;
2. Suitability of the site for the proposed structure or use with regard to the purpose and intent of the zoning district;
3. Adequacy of traffic flow management within the site as well as in relation to adjoining streets and properties so as to minimize unsafe and harmful impacts;
4. Compatibility of the proposed structure or use with surrounding land uses so as to minimize harmful impact or conflict with existing desirable neighborhood character, including views, vistas and other aesthetic values;
5. Adequacy of the method of sewage disposal, source of potable water and site drainage;
6. Protection and maintenance of groundwater quality and recharge volume and the water quality of coastal and fresh surface water bodies;
7. Adequacy of provision of utilities and other necessary or desirable public services;
8. Adequacy of control of artificial light, noise, litter, odor or other sources of nuisance or inconvenience to adjoining properties, public ways and the neighborhood;

²Accepted at Annual Town Meeting, May 2, 1994, Article 18

³Accepted at Special Town Meeting, July 24, 2001, Article 9

9. Protection from degradation and alteration of the natural environment, including, but not limited to, slopes and other topographical features, vegetation, wetlands, and wildlife habitat;
 - 10.¹ For alteration, extension, or enlargement of a commercial structure or use, including any structure or group of structures on one lot containing a total of three or more dwelling units, the applicant must, in addition,
 - a) Obtain a finding and certification from the Eastham Board of Health that the septic system and the water supply system for said premises complies with Eastham's current health code requirements and/or as set forth in Title 5 of the Massachusetts Sanitary Code or any amendments thereto as it relates to new construction, and
 - b) Obtain Site Plan Approval Special Permit under Section XIII of the Zoning Bylaw from the Planning Board.
- E. Any non-conforming building or structure which has been damaged by fire or other cause to any extent, may be repaired or rebuilt to its original dimensions, provided the owner shall apply for a building permit and start operations for restoring or rebuilding of said premises within twelve (12) months after such catastrophe and further that said reconstruction comply with all other applicable State laws and regulations and that such construction is continued through to completion as continuously and expeditiously as is reasonable.
- F. Regardless of common ownership, any lot lawfully laid out by plan or deed duly recorded in the Barnstable County Registry of Deeds prior to the day of Zoning Change regarding minimum lot size, dated April 19, 1988, which is not protected by the Eastham Zoning By-law, Section IX, and which contains at least twenty thousand (20,000) square feet for a one family dwelling and at least thirty thousand (30,000) square feet for a two family dwelling shall be exempt from said Zoning Change enacted April 19, 1988.

SECTION VII – ACCESSORY USES

- A. Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with the principal use, may be permitted upon the issuance of a Special Permit provided the granting authority finds that the proposed accessory use does not substantially derogate from the public good.
- B. Bed and Breakfasts, as defined in this By-Law, may serve a morning meal to overnight guests.
- C.¹ Affordable² Dwelling Units: For the purpose of promoting the development of affordable

¹Accepted Annual Town Meeting, May 1, 2006, Article 28

¹Accepted at Special Town Meeting July 24, 2001, Article 17

²Amendment accepted at Annual Town Meeting May 1, 2006, Article 29

rental housing in Eastham for year-round residents, one accessory dwelling unit per lot may be allowed by Special Permit from the Board of Appeals³ subject to the standards and conditions listed below:

1. Accessory dwelling units shall not be allowed on lots with less than 20,000 square feet of contiguous upland.
2. The owner of the property must occupy as a primary residence either the principal or accessory dwelling. For the purpose of this section, the “owner” shall be one or more individuals residing in a dwelling who hold legal or beneficial title and for whom the dwelling is the primary residence confirmed by listing on the annual town census.
3. Accessory units created under this by-law shall be deed restricted to remain affordable, as defined by the guidelines in number 8, below. No accessory apartment shall be occupied until a recorded copy of said deed restriction is provided to the Building Inspector.
4. Accessory units shall not be larger than 800 square feet or fifty (50) percent of the site coverage (as defined herein) of the principal dwelling, whichever is smaller.
5. No more than twelve (12) accessory dwelling units may be approved in any calendar year. Completed applications shall be reviewed in the order in which they are received.
6. Site Requirements:
 - a. Accessory dwelling units may be within or attached to a principal dwelling, garage or as a detached unit.
 - b. Accessory dwelling units shall be designed so as to be compatible with existing site and neighborhood conditions.
 - c. Septic systems are required to meet the then current Title 5 standards and shall be reviewed and approved by the Health Agent.
7. No accessory unit shall be separated by ownership from the principal dwelling.
8. All occupants of the rental dwelling unit shall upon initial application and annually thereafter, submit necessary documentation to confirm their eligibility for the dwelling unit. Specifically, all dwelling units must be rented to those meeting the guidelines for a low or moderate income family. For the purpose of this section, low income families shall have an income less than eighty (80) percent of the Town of Eastham median family income, and moderate income families shall have an income between eighty (80) and one hundred twenty (120) percent of the Town of Eastham median family income, as determined by the United States Department of Housing and Urban Development (HUD) Published Income Guidelines, and as

³Amendment accepted at Annual Town Meeting May 5, 2003, Article 24

may from time to time be amended.

9. Maximum rents shall be established in accordance with HUD Published Fair Market Rental Guidelines. Property owners are required as part of the Special Permit application to submit information on the rents to be charged. Each year thereafter, they shall submit information on annual rents charged. Forms for this purpose shall be provided. Rents may be adjusted annually in accordance with amendments to the Fair Market Rental Guidelines.
10. Failure to comply with any provision of this by-law may result in fines established in Section XII, paragraph F. of the Eastham Zoning By-laws.

The Zoning Board of Appeals shall hold a public hearing in accordance with the procedures set forth in Section 9 of Massachusetts General Law, Chapter 40A and shall make a decision within 90 days of the close of the public hearing.

SECTION VIII -- PROHIBITED USES

The following uses shall be prohibited in the Town of Eastham in Districts A, B, C, D, E, F, G¹ and H²:

- A. On-shore commercial facilities to service or support or accommodate off-shore exploration or drilling for fossil fuels, including oil and gas storage tanks, pipelines, warehouses, or dockside or heliports, airports, airstrips and all air support facilities whose purpose or intention or principal business is to accommodate, or service, or support the on-shore use of the Town of Eastham for off-shore exploration, drilling and transportation of fossil fuels including but not limited to oil and gas.
- B. Temporary Structures
 1. Residential: Use of the following structures or units for human habitation except on issuance of a temporary permit by the Building Inspector under conditions hereafter specified: tents, house trailers, campers, Quonset huts, portable or semi-portable buildings, or similar structures whether equipped with wheels or not; houseboats or equivalents on fresh water. The Building Inspector may issue a permit for the temporary use of any of the prohibited items for use during the period of construction of a dwelling or cottage. This permit shall not be valid for over six months and shall not be renewable. All applicable regulations as to setback from lot lines must be complied with when locating any of these items. Sanitary facilities must receive approval from the Board of Health. All such items must be located on the lot on which construction is being done and must be removed prior to the granting of a Certificate of Occupancy for the permanent structure.
 - 2¹. Commercial: Use of the following structures or units for existing commercial uses except on issuance of a temporary permit by the Building Inspector under conditions hereafter specified: trailers, portable or semi-portable buildings, or similar structures

¹Amendment accepted at Annual Town Meeting, May 3, 1989, Article 48

²Amendment accepted at Annual Town Meeting, May 3, 1989, Article 49

¹Accepted at Annual Town Meeting, May 5, 1998, Article 32

whether equipped with wheels or not. The Building Inspector may issue a permit for the temporary use of any of the prohibited items for use during the period of reconstruction or alteration of an existing commercial use. This permit shall be valid for a maximum of twelve (12) months and shall not be renewable. All applicable regulations as to setbacks from lot lines and parking requirements must be complied with when locating these items. In the case of pre-existing non-conforming buildings, the location of the temporary structure shall be no more non-conforming than the existing structure. Sanitary facilities must be designed in accordance with State and local regulations and approved by the Board of Health. All such items must be located on the lot on which construction is being done and must be removed prior to the granting of a Certificate of Occupancy for the permanent structure.

- C. Junkyards.
- D. Gambling establishments (except those permitted by the State or Special Permit Granting Authority).
- E². Hotels, Motels, Inns, and Resort and Conference Centers.
- F³ Restaurant, Drive In; Restaurant, Fast Food
- F. Camps or campgrounds.
- G⁴. The following additional uses are prohibited in District G:
 - 1. Commercial/industrial/business uses are prohibited in District G, including but not limited to: sanitary landfills; junkyards; septage or sewage treatment facilities, except those for single or duplex family residential use; car washes; gasoline stations; airplane, boat or motor vehicle repair shops; road salt stockpiles; dry-cleaning establishments; laundromats; photo processing establishments; metal plating or finishing shops; chemical laboratories; painting shops; wood finishing, refinishing or stripping shops; and any other use which involves the manufacture, storage, use, transportation or disposal of toxic and/or hazardous materials/waste and the storage of fuel oil, diesel oil and/or gasoline, for whatever use, except as allowed in Section V of this By-law.
 - 2. Any use which creates impervious surfaces, including, but not limited to, building foot prints, paved drives, etc., which total more than ten percent (10%) of the lot area.
 - 3. Underground storage tanks.

- H¹. The following additional uses are prohibited in District H:

²Accepted at Special Town Meeting, October 25, 1988, Article 44

³Accepted at Special Town Meeting July 24, 2001, Article 3

⁴Accepted at Annual Town Meeting, May 3, 1989, Article 48

¹Accepted at Annual Town Meeting, May 3, 1989, Article 49

1. Commercial/industrial/business uses, including but not limited to: sanitary landfills; septage or sewage treatment facilities, except those for single or duplex family residential use; car washes; gasoline stations; airplane, boat or motor vehicle repair shops; road salt stockpiles; dry cleaning establishments; metal plating or finishing shops; chemical laboratories; painting shops; wood finishing, refinishing or stripping shops; junk and salvage yards; and any other use which involves the manufacture, storage, use, transportation or disposal of toxic and/or hazardous materials/waste, and the storage of fuel oil, compressed gas, diesel fuel and/or gasoline, for whatever use, except as allowed in Section V of this by-law
2. The creation of impervious surfaces, including but not limited to building foot prints, paved drives, etc.
3. The removal of natural vegetation except as required for forest management or the creation of pathways for passive recreation.
4. Underground storage tanks.
5. The use or storage of toxic/hazardous material/waste for whatever purpose.

The following uses shall be prohibited in Districts A, B, F, G² and H in the Town of Eastham: the operation of any business for the transporting, hauling, or storage or containerization of hazardous materials or wastes, refuse, septage, or fuels; or the keeping of any vehicle for those uses.

SECTION IX -- INTENSITY REGULATIONS

A. LOT SIZE

1. In District A and E, no single family dwelling shall be built on a lot with an area of less than 40,000 square feet nor any two (2) family dwelling on a lot with an area of less than 80,000 square feet. Any lot lawfully laid out by plan or deed, duly recorded in the Barnstable Registry of Deeds prior to April 19, 1988, or shown on a subdivision of land approved by the Planning Board prior to April 19, 1988 which is not protected by the Eastham Zoning By-Law, Section IX shall contain at least 20,000 square feet for a one (1) family dwelling and 30,000 square feet for a two (2) family dwelling, except for any lot lawfully laid out by plan or deed, duly recorded in the Barnstable Registry of Deeds between May 7, 1987 and April 18, 1988 or any subdivision of land approved by the Planning Board between May 7, 1987 and April 18, 1988 shall contain at least 30,000 square feet for a one (1) family dwelling and 45,000 square feet for a two (2) family dwelling³.
- 2¹ In Districts A and E, a year-round two-family dwelling may be allowed on a lot containing 40,000 square feet or more after consideration under Site Plan Review - Residential Section XIV of the Eastham Zoning By Laws, and further subject to the standards and conditions listed below:

²Amendment accepted at Annual Town Meeting, May 3, 1989, Article 48

³Amendment accepted at Annual Town Meeting, May 5, 1998, Article 30

¹Accepted at Special Town Meeting July 24, 2001, Article 18

- a. Two-family dwellings allowed under this by-law shall be deed restricted requiring both units to remain affordable, as defined by the guidelines in paragraph c., below, unless one unit is owner occupied. Said owner being the a named individual on the Assessor's record. No unit shall be occupied until a recorded copy of said deed restriction is provided to the Building Inspector.
 - b. All occupants of the rental dwelling unit shall upon initial application and annually thereafter, submit necessary documentation to confirm their eligibility for the dwelling unit. Specifically, all dwelling units must be rented to those meeting the guidelines for a low or moderate income family. For the purpose of this section, low income families shall have an income less than eighty (80) percent of the Town of Eastham median family income, and moderate income families shall have an income between eighty (80) and one hundred twenty (120) percent of the Town of Eastham median family income, as determined by the United States Department of Housing and Urban Development (HUD) Published Income Guidelines, and as may from time to time be amended.
 - c. Maximum rents shall be established in accordance with HUD Published Fair Market Rental Guidelines, and will be adjusted as necessary as such guidelines may be amended.
 - d. Septic systems are required to meet the then current Title 5 standards and shall be reviewed and approved by the Health Agent.
3. In Districts B, C, D, and E, no business structure shall be built on a lot with an area of less than 40,000 square feet.
 - 4². All lots in Districts A, B, C, D, and E shall have frontage of at least 50 feet on an accepted public way, a way shown on a plan approved or endorsed in accordance with the subdivision control regulations or a way in existence when the subdivision control law became effective 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 land use. Panhandle lots shall have frontage of at least 40 feet on an accepted public way or private way as described above.
 5. In the Seashore District F, no dwelling shall be built upon a lot with an area of less than three (3) acres. All lots in the Seashore District F shall have frontage of at least 150 feet and all dwellings and buildings shall be located to provide at least a 50 foot setback from all streets measured at a right angle with the street line and a 25 foot distance from abutters' property lines.

²Accepted at Annual Town Meeting, May 5, 1998, Article 33

- 6¹. In District G, no single family dwelling shall be built on a lot with an area of less than three (3) acres, nor any two family dwelling on a lot with an area of less than six (6) acres. Setback requirements shall conform to Section IX. B. 1 of this By-law. Additionally, the total residential building floor area shall not exceed five thousand (5,000) square feet, and the total floor area for all accessory buildings shall not exceed two thousand (2,000) square feet. All new lots within District G shall have frontage of at least one hundred fifty (150) feet on an accepted public way or private way, which meets current Planning Board requirements for road layouts².
- 7.³ In order to comply with the minimum lot size requirement, a lot must be a closed plot of land having a definite area and perimeter, and having a shape number not exceeding a value of 22. A lot may have a shape number greater than 22 provided that the lot has within it a plot 100% of which is buildable upland, containing at least the minimum lot area required for the district in which the lot is located and having a shape number not exceeding 22, within which the site intended for building is located. The shape number shall be calculated by dividing the square of the perimeter of the lot or plot by the square foot area of same. Except as otherwise provided in Sections IX A. 3. and IX A. 4. each lot shall have a minimum of fifty (50) feet of frontage on an approved street or way.

For the purpose of this Zoning By-Law change, all lots approved since May 1, 1989 which meet the shape number required above, are deemed to be in compliance of the By-Law.

8. Section IX⁴ requirements shall not apply to lots established prior to the adoption of this By-law provided such lots met all requirements of the Zoning By-Law in force at the time of adoption of this By-law. Furthermore, these requirements shall not apply to lots in single ownership at the time of adoption of the Zoning By-Law by the Town of Eastham at the annual Town Meeting held on February 16, 1952 provided these lots are identified by deeds of record in the Barnstable County Registry of Deeds and that any structures to be placed on such lots can comply with all requirements of the Massachusetts State Building Code and to the Regulations for Disposal of Sewage as adopted by the Board of Health on April 18, 1955, or any amendments thereto.

B. SETBACK REQUIREMENTS:

1. The building lines for structures for human habitation shall not be nearer to the nearest boundary of any way than fifty (50) feet, nor nearer to the interior side and rear lot lines than thirty (30) feet; and if on land of single ownership, they shall not

¹Accepted at Annual Town Meeting May 3, 1989, Article 48

²Accepted at Annual Town Meeting, May 4, 1992, Article 44

³Accepted at Annual Town Meeting, May 6, 1996, Article 17

⁴Amendment accepted at Annual Town Meeting, May 4, 1992, Article 41

be nearer to each other than fifty (50) feet. The building lines of detached buildings which are necessary to structures for human habitation shall not be nearer to the nearest boundary of any way than fifty (50) feet, nor nearer to the interior side and rear lot lines than thirty (30) feet. ¹Additionally, detached buildings shall not be closer than eight (8) feet to any other structure on the lot.

- 2². In Districts B, D, and E, all new construction, including residential, commercial, or other, shall be set back a minimum of 100 feet from all ways. Side and rear setbacks shall not be less than twenty-five (25) feet.
- 3³. In District C, all new construction shall be set back a minimum of fifty (50) feet from all ways. Side and rear setbacks shall not be less than twelve (12) feet.
- 4⁴. Pursuant to Massachusetts General Laws, Chapter 40A, Section 6, those pre-existing, non-conforming commercial structures in District A which seek to be altered, renovated, amended, modified, or expanded shall conform to the setback requirements of Section IX. B. 2 of this By-law.
5. Section IX⁵ requirements shall not apply to any lot for single or two family residential use which, at the time of the adoption of this By-law, was lawfully in existence by way of recording or endorsement. Such lot must conform with the setback requirements then in existence at the time of the creation of the lot. For lots subdivided before April 19, 1988, the building lines for structures for human habitation shall not be nearer to the nearest boundary of any way than thirty (30) feet, nor nearer to the interior side or rear lot line than twenty-five (25) feet.⁶
- 6⁷. Setback requirements for detached accessory buildings not used for any human habitation, located on lots subdivided **prior** to April 19, 1988 shall be 12' for side and rear lot lines, and 30' for any lot line that abuts a street or a way shown on a approved plan of subdivision or in existence prior to the acceptance of the subdivision control law, and further any such accessory building shall be 8' from the main building or other accessory buildings.
- 7¹. Setback requirements for detached accessory building not used for human habitation on lots subdivided **after** April 19, 1988 shall be 30' for side and rear lot lines, and 50' for any lot line that abuts a street or way shown on a

¹Amendment accepted at Annual Town Meeting May 3, 1989, Article 44

²Accepted at Annual Town Meeting, May 3, 1989, Article 45

³Accepted at Annual Town Meeting, May 1, 2006, Article 41

⁴Accepted at Annual Town Meeting, May 3, 1989, Article 46

⁵Amendment accepted at Annual Town Meeting, May 4, 1992, Article 42

⁶Amendment accepted at Annual Town Meeting, May 5, 1998, Article 30

⁷Accepted at Annual Town Meeting, May 1, 2006, Article 30

¹Accepted at Annual Town Meeting, May 1, 2006, Article 30

approved plan of subdivision or in existence prior to the acceptance of the subdivision control law, and further any such accessory building shall be 8' from the main building or other accessory buildings.

C². In any given subdivision, there can be no more than one (1) pan handle lot for every six (6) standard lots. A pan handle lot cannot be adjacent to or abut another pan handle lot.

D³. RESIDENTIAL LOT INTENSITY⁴

Site Plan Approval under Section XIV of this Zoning By-law shall be required for any addition, expansion or construction on a residential lot that meets the following requirements:

1. Any lot under 20,000 square feet where a proposed addition or expansion of an existing dwelling exceeds 2.5% of the lot area and/or the site coverage ratio including the addition exceeds 15% and where the site coverage ratio for a new dwelling or the addition of an accessory building causes the site coverage ratio to exceed 15% of the lot area.
2. Any lot containing 20,000 square feet or more, where the site coverage exceeds 3,000 square feet.
3. Any lot containing 40,000 square feet or more with a deed restricted two-family dwelling proposed in accordance with Section IX, paragraph A., number 2 or these By-laws.

SECTION X -- PARKING REQUIREMENTS

A. Off-street parking shall be provided to service all parking demand created by new construction, whether through new structures or additions to pre-existing structures, or through change of use creating higher parking demand. An area of 300 square feet of appropriate dimensions for the parking of a motor vehicle, including maneuvering area, and aisles, shall be considered as one (1) off-street parking space.

B. TABLE OF REQUIREMENTS -- The following minimums must be met unless these are reduced on Special Permit from the Special Permit Granting Authority, upon determination that special circumstances render a lesser provision adequate for all parking needs:

1. Hotel, Motel, Inn, Guest House, Bed and Breakfast, or Resort and Conference Center: one (1) space per guest unit.
2. Offices, Stores: one (1) space per 150 square feet floor area accessible to the

²Accepted at Special Town Meeting, October 21, 1996, Article 27

³Accepted at Special Town Meeting July 24, 2001, Article 15

⁴Amendment accepted at Annual Town Meeting, May 1, 2006, Article 31

public¹.

3. Restaurants: one (1) space per four (4) seats.
4. Coffee Shops: one (1) space per two (2) seats.
5. Industrial: one (1) space per 1¼ employees per shift, with no on-street parking permitted.
6. Bank: one (1) space per employee and one (1) space per 150 sq. ft. of public area.
7. All other uses: five (5) spaces or one (1) space per 350 sq. ft., whichever is greater².

C. SURFACING: Required parking areas shall be paved with bituminous concrete according to current Town of Eastham Subdivision Regulations³, unless service at one (1) or two (2) family dwelling, or unless authorized to be paved with an alternative surface on Special Permit by the Special Permit Granting Authority. Such authorization may be granted by the Special Permit Granting Authority upon its determination that drainage, erosion, siltation, dust, and appearance will be satisfactorily controlled. Where an alternative to bituminous concrete is authorized on Special Permit, the following shall be complied with:

1. Access drives shall be paved with bituminous concrete (unless the Special Permit Granting Authority shall grant a Special Permit for alternative surfacing), or other pavement authorized by the Planning Board for at least twenty (20) feet from the edge of the paved street unless the street itself is not paved.
2. Grading and materials selection shall assure that surface materials will not be carried into the street, and that drainage is positively provided for on-site.
3. If there are six (6) or more parking spaces, there shall be provisions for identifying individual spaces through use of segmented bumper strips or other similar permanent means.

D. EGRESS -- Parcels with six (6) or more parking spaces shall not have more than two (2) driveway openings onto any street unless each opening is separated from all others on or off the parcel by more than 200 feet measured from center to center. No driveway opening shall exceed 30 feet in width at the property line. Parking areas with six (6) or more parking areas shall be so designed and located that their use does not require backing onto a public way.

E. OFF-STREET QUEUES -- Establishments having drive-in facilities which from time to time

¹Accepted at Special Town Meeting, July 24, 2001, Article 5

²Accepted at Special Town Meeting, July 24, 2001, Article 5

³Accepted at Special Town Meeting July 24, 2001, Article 6

have queues of vehicles awaiting service shall have comparably sufficient on-site space for such queues without requiring cars to stand on any public way or across any public sidewalk.

- F. **LOADING** -- Off street loading facilities and space must be provided to service all needs, and so sized and arranged that no trucks need back onto or off a public way, or be parked on a public way while loading, unloading, or waiting to do so.
- G. **PARKING AND LOADING AREA SETBACKS** -- The required distance between off-street parking and loading areas and any street line shall be five percent (5%) of lot depth from the street, but no such requirement shall be greater than 50 feet nor less than 15 feet. Off-street parking servicing non-residential districts shall not be allowed within 30 feet of a residential district.
- H. **HANDICAPPED ACCESS** -- All such parking shall comply with all State and Federal statutes or regulations having Handicapped Access for Parking as its subject matter.

SECTION XI -- LANDSCAPING REQUIREMENTS

In Districts B, C, D, and E, excluding one (1) and two (2) family dwellings, the following landscaping standards shall be in effect:

- A. **BUILDINGS** -- Along the front of the building parallel to the road, there shall be planting for a minimum width of four (4) feet with curbing and/or sidewalk (minimum width four feet) adjacent to parking and driveways. Planting may be in the form of planters or sunken planting beds, shrubs, or ground cover. Outdoor dining areas shall have suitable shrubs or suitable vegetative barrier to create a hedge at least 36" high between these areas and all roads. The outdoor dining areas shall conform to the required setback of buildings from all roads.
- B. **ROAD BOUNDARIES** -- Shrubbery and/or grass shall be planted and maintained to a minimum width of twenty (20) feet parallel with road except in the areas required for entrance and exit. Shrubs shall not exceed 18" in height, and shall be planted a maximum of six (6) feet apart. Shrubbery shall be located in such a manner so as to not obstruct vision of any entering or exiting vehicle.
- C. **PARKING LOTS** -- Customer parking lots intended for the use of twenty (20) vehicles shall have areas of shrubbery, trees and/or grass containing a minimum of 400 square feet for each twenty (20) vehicles or fraction thereof. These areas are to be suitably dispersed throughout the parking area, and are in addition to the requirements of Section XI. B. above.
- D. **ABUTTING PROPERTY** -- There shall be suitable screening from adjacent residential property.

SECTION XII -- ADMINISTRATION

- A. **BOARD OF APPEALS** -- There shall be a Board of Appeals consisting of five (5) members, and two (2) alternates, all to be appointed by the Board of Selectmen, with the powers as provided in Massachusetts General Laws, Chapter 40A, Section 12, which shall act on all matters within its jurisdiction under this By-law in the manner prescribed in said Chapter 40A of Massachusetts General Laws.
- B. **SPECIAL PERMITS** -- Special Permits shall only be issued after a public hearing;

which shall be held within 65 days after the filing of a special permit application with the Town Clerk, or special permit granting authority as may be required under Chapter 808 of the Acts of 1975, as amended. The Planning Board shall be the Special Permit Granting Authority for Site Plan Approval¹.

- C. Construction or operations under a building or special permit shall conform to any subsequent amendment or the ordinance or by-laws unless 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 to completion as continuously and expeditiously as is reasonable.
- D. All special permits and variances shall lapse one (1) year from date of issue unless construction or operation under said permit has commenced. If a matter is under court appeal, a special permit or variance shall be deemed issued on the date that a final court determination enters in the case.
- E. This By-law shall be enforced by the Building Inspector. The Building Inspector may resort to the Courts for injunctions or other appropriate remedies.
- F. The penalty for violation of any provision hereof shall be a fine of not more than \$500.00 for each offense. Each violation and each day of violation shall constitute a separate offense, punishable by fine.

SECTION XIII - SITE PLAN APPROVAL - SPECIAL PERMIT²

SITE PLAN APPROVAL IS REQUIRED FOR ANY ADDITION, EXPANSION OR CONSTRUCTION OF COMMERCIAL STRUCTURES³.

A. PURPOSE OF SITE PLAN APPROVAL - SPECIAL PERMIT

The purpose of Site Plan Approval - Special Permit is to further the intent of the Zoning By-Laws of the Town of Eastham by reviewing the proposed uses and structures to ensure that new development and/or redevelopment which may have significant impacts upon abutting land, the Town, or any neighborhood, are designed in a manner which complies with the zoning By-Laws and addresses other community needs such as the protection of abutting landowners from unnecessary noise, glare or other inconvenience and provides for adequate parking and traffic management and sound waste disposal, drainage and other environmental protection.

B. PROJECTS REQUIRING SITE PLAN SPECIAL PERMITS:

- 1. No special permit, variance or building permit shall be issued for any of the following uses unless a Site Plan Special Permit has been granted by the Planning Board:
 - A. The construction or exterior alteration of any commercial, retail and/or mixed use structure;

¹Accepted at Special Town Meeting, October 21, 1996, Article 29

²Accepted at Special Town Meeting, October 21, 1996, Article 28

³Accepted at Annual Town Meeting, May 1, 2006, Article 32

- B. The change, alteration or expansion of use of any commercial, retail and/or mixed use structure;
- C. The change, in whole or in part, of any residential use to a non-residential use, or of any non-residential use to a residential use;
- D. Change of an existing use or structure which constitutes a more intensive use of land, which includes any use which
 - 1. Changes any pattern of pedestrian or vehicular movement within the site or in relation to adjacent properties or streets including access by emergency vehicles, or creates more pedestrian or vehicular traffic than the existing use,
 - 2. Requires or will add more parking spaces,
 - 3. Uses a greater portion of the lot,
 - 4. Requires a special permit in the district where the existing use is permitted as a matter of right.

C. APPLICATION:

- 1. Each application for Site Plan Special Permit shall be filed by the petitioner with the Town Clerk, and ten (10) copies of said application, including the date and time of filing certified by the Town Clerk, shall be filed with the Planning Board.
- 2. Each application shall be accompanied by the required fee:
 - A. The fee schedule is listed in the Planning Board Regulations.
 - B. In addition, the applicant will bear the costs of any outside planning or engineering consultant requested by the Planning Board.

D. WAIVERS¹:

The intent of site plan approval is to insure that any development which may have significant impacts upon the abutting land is reviewed for the purpose of assuring compliance with the Zoning By-law as well as to minimize negative effects on abutters and the community at large. When in the opinion of the Planning Board, the alteration or reconstruction of a structure does not substantially change the relationship of the structure to the site and to abutting properties and structures, the Planning Board may determine, without a public hearing, that submission of a site plan for special permit approval is not required. Upon application on a form approved by the Planning Board, such a determination may be made by an affirmative vote of a majority of the Planning Board present, and in no event less than four members, and all abutters must be notified

¹Amendment accepted at Annual Town Meeting, May 5, 1998, Article 34

by certified mail, return receipt requested, at least seven days prior to the meeting at which such vote is to be taken. The involved structure shall be as shown on a site plan previously approved under this section or on a plan showing sufficient information as determined by the Planning Board to allow the Planning Board to make a decision. Such plan, with all proposed changes shown thereon, shall be included with the application for waiver. Notice of final action shall be sent to the Inspector of Buildings, Town Clerk and to the applicant.

Should an application be denied a waiver of Site Plan Approval requirements, a new application for a special permit must be filed.

E. PROCEDURES FOR SITE PLAN REVIEW:

1. The Planning Board may request additional information or data it judges to be necessary to render its decision.
2. The Planning Board will transmit one copy of the Site Plan Special Permit application for review, comments and recommendations to other Town Boards including but not limited to:
 - A. Inspector of Buildings
 - B. Board of Health
 - C. Board of Selectmen
 - D. Conservation Commission
 - E. Police Department
 - F. Fire Department
 - G. Department of Public Works
 - H. Historical Commission

All recommendations to the Planning Board must be in writing. Failure of Boards to make recommendations prior to the date of the scheduled hearing shall be deemed to be acceptance of the plan.

3. The Planning Board shall hold a public hearing within 65 days of the receipt of the application, and after due consideration of the evidence and recommendations of other Town Board, shall take final action within 90 days from the date the hearing closes.

F. REQUIRED SITE PLAN CONTENTS:

1. All site plans shall be prepared by a Registered Professional Land Surveyor and Registered Professional Civil Engineer.
2. All site plans shall be on standard 11" x 17" sheets, and each sheet shall be prepared at a defined scale suitable for the content of the topic covered on the sheet and shall include the following:
 - A. The location and boundaries of the lot, adjacent street/ways and a list showing names and addresses of direct abutters and abutters to the abutters within 300 feet,

- B. Existing and proposed topography showing 2 foot contours showing “benchmark” used and significant land features, natural and man made, including, but not limited to, the location of wetlands, streams, bodies of water, drainage swales and areas subject to flooding,
- C. Existing and proposed structures, including dimensions and all elevations,
- D. The existing and proposed location of loading areas, driveways, walkways, access and egress points, and the location and number of parking spaces.
- E. The location and description of all proposed on site wells, water supply systems, storm drainage systems, utilities, sites for enclosed refuse containers and location and capacity of septic systems,
- F. Proposed landscape plan showing the location and description of screening, fencing, plantings, significant trees and finished grade contours,
- G. The location and description of existing signs (a photograph will do) and the location and a sketch of proposed signs,
- H. The location and description of existing and proposed open space or recreation areas,
- I. A lighting plan showing existing and proposed exterior lighting, including building and ground lighting.
- J. A plan for the control of erosion if applicable, and
- K. A traffic study if required by the Planning Board.

G. SITE PLAN REVIEW CRITERIA:

The following criteria shall be considered by the Planning Board in its review of a site plan:

1. GENERAL

- A. Compliance with all requirements of the Zoning By-Laws of the Town of Eastham.
- B. Integration into the existing terrain and surrounding landscape, and protection of abutting properties and community amenities. Building sites shall, to the extent feasible:
 - 1. Avoid use of wetlands, steep slopes, flood plains and hilltops;
 - 2. Minimize obstruction of scenic views from publicly accessible locations;
 - 3. Preserve unique natural and/or historical features;
 - 4. Minimize tree, vegetation and soil removal and grade changes;

5. Maximize open space retention; and
6. Screen objectionable features from neighboring properties and roadways.

2. ENVIRONMENTAL

- A. Protection of unique or significant environmental, historic or scenic features.
- B. Ability of existing and proposed septic and water supply systems to serve the proposed use of the site.
- C. All drainage shall be handled on site based on a calculated 25 year storm and designed so that run-off shall not be increased, groundwater recharge is maximized, pollution impacts are minimized and neighboring properties will not be adversely affected.

3. DESIGN

- A. Building sites shall avoid, to the extent feasible, impact on steep slopes, flood plains, scenic views and wetlands.
- B. Architectural style shall be in harmony with the prevailing character and scale of buildings in the neighborhood and the Town through the use of appropriate building materials, screening, breaks in roof and wall lines and other design techniques. Variation in detail, form and siting shall be utilized to provide visual interest and to avoid monotony. Proposed buildings shall relate harmoniously to each other with adequate light, air circulation and separation between buildings.
- C. Exposed storage areas, machinery, service areas, truck loading areas, utility buildings and structures and other relatively unsightly uses shall be screened to protect neighbors from objectionable features.
- D. Electric power, telephone, cable TV and other such utilities shall be installed underground unless specifically waived.

4. TRAFFIC

- A. The site plan shall maximize the convenience and safety of vehicular and pedestrian movement within the site and in relationship to adjacent ways. Curb cuts are to be at an absolute minimum and joint access driveways between adjoining properties shall be encouraged.
- B. If a traffic plan is required by the Planning Board, the plan shall describe estimated average daily and peak hour vehicle trips to be generated by the site. The plan shall describe traffic flow patterns for both vehicles and pedestrians, and provide for adequate access to and from the site and adequate circulation within the site. In describing the number of vehicle trips, the plan may use the following documentation but the Planning Board will place heavy emphasis on the impact of seasonal traffic situations as related to the Town of Eastham in considering this requirement:

1. Institute of Traffic Engineers (ITE) - Trip Generation Report (latest edition) with estimates for seasonal increases.
2. Actual traffic surveys at similar complexes in a similar seasonal area.

H. ENFORCEMENT:

1. Any special permit with site plan approval issued under this section shall lapse within two years if a substantial completion of the requirements of the Site Plan has not taken place. Such permit may be extended for reasonable cause.
2. The Developer must file the approved Site Plan Special Permit with the Registry of Deeds and furnish Book & Page Number to the Building Inspector prior to receiving a building permit.
3. Violations of the approved site plan shall be subject to the provisions of Section XII, F. of the Zoning By-Laws.

I. FINAL ACTION -- The Planning Board's final action shall consist of either:

1. A written denial of the application stating the reasons for such denial; or
2. The issuance of a Site Plan Special Permit subject to any conditions, modifications, and restrictions as the Planning Board may deem necessary.

J. The Planning Board may periodically amend or add rules and regulations relating to the procedures and administration of this section.

SECTION XIV - SITE PLAN APPROVAL - RESIDENTIAL¹

A. PURPOSE OF SITE PLAN APPROVAL - Residential

The purpose of Site Plan Approval for residential properties is for the rational protection of the legitimate interest of the adjoining property owners; to encourage construction that is reasonably sensitive to the scale, size and massing of buildings; to afford continued public visual access to ponds, rivers, marshes, the ocean and the bay; and to protect environmental needs and concerns of the Town.

B. APPLICATION

Each application for Site Plan approval - residential shall be filed with the Planning Board along with ten (10) copies and the required fee.

C. REQUIRED SITE PLAN CONTENT:

¹Accepted at Special Town Meeting July 24, 2001, Article 16

All site plans submitted under this section shall be in accordance with SECTION XIII (F) 1,2 A-F of this by-law. The Planning Board shall have the right upon good cause to waive all or part of any of the above site plan content requirements².

D. PROCEDURES:

The Planning Board encourages prospective Site Plan Approval -- Residential applicants to schedule a preliminary meeting with the Board prior to the filing of an application.¹

The Planning Board shall transmit one copy of the Site Plan - Residential application for review, comments and recommendation to other Town boards, including but not limited to:

Inspector of Buildings	Police Department
Conservation Commission	Board of Health
Fire Department	Historical Commission
Board of Selectmen	Department of Public Works

The Planning Board shall hold a public hearing including notice to all abutters, within sixty five (65) days of receipt of the completed submission and shall make a decision within ninety (90) days of the opening of the public hearing.

E. STANDARDS AND CRITERIA

The Planning Board shall approve a site plan in the form submitted or with such reasonable conditions relating to the standards and criteria delineated in this section.

1. The landscape shall be preserved in its natural state insofar as practical. The Board shall encourage the applicant to avoid grade changes and the removal of native vegetation and soil.
2. The proposed development shall relate harmoniously to the terrain and to the use, scale and proportions of existing and proposed buildings in the neighborhood.
3. Proposed development shall be in harmony with the prevailing character height and scale of other buildings in the neighborhood and the Town through the use of appropriate scale, massing building materials, screening, lighting and other architectural techniques.
4. Proposed building sites shall avoid impact on steep slopes, flood plains, hilltops, dunes, scenic views and wetlands.
5. The protection of unique or significant environmental resources including protection and maintenance of groundwater quality and recharge volume and the water quality of coastal and fresh surface water bodies.

²Amendment accepted at Annual Town Meeting May 5, 2003, Article 22

¹Amendment accepted at Annual Town Meeting May 5, 2003, Article 22

6. The site plan shall maximize the convenience and safety of vehicular and pedestrian movement within the site and in relationship to adjacent ways.

F. FINAL ACTION¹

The Planning Board's final action shall consist of either written approval of the Site Plan subject to any condition, modifications or restrictions as the Board may impose or a written denial stating the reason for such denial.

The Planning Board shall send by certified mail a copy of the Site Plan approval, approval with conditions or denial to the applicant within 14 days of the written decision and a copy shall be filed with the Town Clerk and Building Inspector.

G. APPEAL²

Any person aggrieved by the denial, approval with conditions, or approval by the Planning Board may appeal the action to the Zoning Board of Appeals withi 10 days of filing the decision with the Town Clerk.

The Zoning Board of Appeals shall hear and decide appeals from decisions of the Planning Board under Section XIV of these by-laws in accordance with M.G.L. C. 40A, Sec 8.

H. ENFORCEMENT³

1. No building permit or certificate of occupancy shall be issued for any building or structure for which a site plan is required by this by-law until such time as a plan has been approved by the Planning Board.
2. Any decision approving a Site Plan - Residential under this section shall lapse within two years if substantial completion of the approval has not taken place. The Planning Board for reasonable cause may extend such approval.

SECTION XV -- REVIEW

Any applicant aggrieved by a decision of the Board of Appeals denying either the application for a Special Permit or a variance on the grounds that such denial constitutes a permanent or temporary taking by eminent domain without just compensation and violates the Fifth Amendment of the Constitution of the United States as applied through the Fourteenth Amendment, shall be required to resubmit to the Board an application for a Special Permit or variance specifying in detail the specific use for which the Special Permit or Variance is sought. The Board shall take evidence at a hearing or hearings necessary to determine whether the denial does constitute such a taking, applying the most recent legal standards, and shall render a written decision stating its reasons for its decisions. Said

¹Amendment accepted at annual Town Meeting May 5, 2003, Article 22

²Accepted at Annual Town Meeting May 5, 2003, Article 22

³Amendment accepted at Annual Town Meeting May 5, 2003, Article 22

written decision shall be rendered within one hundred and twenty (120) days from the date that all hearings are closed.

SECTION XVI-- VALIDITY

- A. VALIDITY -- The invalidity of any sentence, provision, or section of this By-law shall not be construed to invalidate any other part thereof.
- B. AMENDMENTS -- This By-law may be altered, repealed, or amended in accordance with the law.

SECTION XVII PROCEDURE FOR THE DEMOLITION OF HISTORICALLY OR ARCHITECTURALLY SIGNIFICANT BUILDINGS¹

Section 1 INTENT AND PURPOSE

This By-Law is enacted for the purpose of preserving and protecting significant buildings within the Town of Eastham which reflect distinctive features of the architectural, historical, and cultural heritage of the Town and to encourage owners of such buildings to seek out persons who might be willing to purchase, preserve, rehabilitate or restore such buildings rather than demolish them. To achieve these purposes the Eastham Historical Commission (the "Commission") is empowered to advise the Building Inspector with respect to the issuance of permits for the demolition of significant buildings. The issuance of demolition permits for significant buildings is regulated as provided for in this By-Law.

Section 2 DEFINITIONS

- 2.1 Building - A structure forming a shelter for persons, animals, property or an activity and having a roof. Where appropriate in the context, the word "building" shall include the principal and accessory buildings as defined in Section II of the Town of Eastham Zoning By-Laws.
- 2.2 Demolition - The act of process of pulling down, destroying, removing or razing a structure, or any portion of a building that results in a change in the footprint, or commencing the work of any such act with the intention of completing the same.
- 2.3 Significant Building - Any building or portion thereof, which is not within a regional or local historic district subject to regulation under the provisions of Massachusetts General Law 40C or special act of Legislature, but which is included in the historical survey of the Town of Eastham and on file with the Massachusetts Historical Commission, or
 - a. Is in whole or part seventy-five or more years old, and
 - b. Is listed in, or is within an area listed in the National Register of Historic Places, or the State Register of Historic Places, or is the subject of a pending application for listing in

¹Accepted at Annual Town Meeting, May 5, 1997, Article 36

said Registers, or has previously been determined to be eligible for listing in the National Register of Historic Places, or

- c. Has been previously determined by vote of the Commission to be:
 - 1. Historically or architecturally significant in terms of period, style, method of building construction, or association with a famous architect or builder, or
 - 2. Is importantly associated with one or more historic persons or events, or the broad architectural, political, economic or social history of the Town or Commonwealth, provided that the owner of such a building and the Building Inspector have been notified, in hand or by certified mail within ten (10) days of such Commission vote.

2.4 Preferably-preserved Significant Building - any significant building which the Commission determines is in the public interest to be preserved or rehabilitated rather than demolished.

2.5 Commission - Eastham Historical Commission

2.6 Building Inspector - the person occupying the office of Inspector of Buildings or otherwise authorized to issue demolition permits.

SECTION 3 PROCEDURES

3.1 No permit for the demolition of a “significant” building as defined in Section 2.3 herein shall be issued other than in conformity with the provisions of this By-Law as well as in conformity with provisions of other laws applicable to the demolition of buildings and the issuance of permits generally.

A. Any person who intends to file an application for a permit to demolish a “significant” building shall first file a “Notice of Intent to Demolish a Significant Building” with the Building Inspector. In addition the applicant shall complete the review process set forth in this Section.

B. The Notice of Intent shall include the following:

- 1. Name of applicant with address, telephone number and stated interest in the property.
- 2. Owner name, address and telephone number if different.
- 3. A map showing location of the building or structure to be demolished on the property and with reference to neighboring properties:
- 4. A description of the building or structure, or part thereof, to be demolished including photographs;

5. A statement of the reason for the proposed demolition and data supporting said reason, including where applicable, data sufficient to establish any economic justification for demolition.

- 3.2 The Commission shall hold a public hearing on each such Notice of Intent within 45 days after the date it is filed with the Inspector of Buildings. The Commission shall give public notice thereof by publishing notice of the time, place and purpose of the hearing in a local newspaper twice with the first notice being at least fourteen (14) days before said hearing. A copy of said notice shall be mailed to the applicant, to the owners of all abutting property as they appear on the most recent tax list, to the Inspector of Buildings, Planning Board, Conservation Commission and to such other persons as the Commission shall deem entitled to notice. Commission meeting shall be posted and held in accordance with applicable state law, known as the “open meeting law”. The required forty-eight (48) hour notice of a public meeting shall be filed with the Town Clerk and posted in Town Hall.
- 3.3 If, after such hearing, the Commission determines that the demolition of the “significant” building would not be detrimental to the historical or architectural heritage or resources of the Town, the Commission shall so notify the applicant and the Building Inspector within ten (10) days of such determination. Upon receipt of such notification, or upon failure by the Commission to make any determination within forty-five (45) days of the day the “Notice of Intent” was filed with the Inspector of Buildings, the Inspector of Buildings may, subject to the requirements of the State Building Code and any other applicable laws, rules and regulations, issue the demolition permit.
- 3.4 If after such a hearing, the Commission determines that the demolition of the significant building would be detrimental to the historical or architectural heritage or resources of the Town, such building shall be considered a “preferably preserved significant building”.
- 3.5 Upon determination by the Commission that the “significant building” which is the subject of the Notice of Intent To Demolish is a “preferably preserved significant building”, the Commission shall so advise the Applicant and the Inspector of Buildings, and no demolition permit may be issued until 180 days after the date of the Commission’s determination. Notwithstanding the preceding sentence, the Building Inspector may issue a demolition permit for a “preferably preserved significant building” at any time after receipt of written advice from the Commission to the effect that the Commission is satisfied that bona fide and reasonable efforts have been made to locate a purchaser willing to preserve, rehabilitate and restore the subject building, and that such efforts have been unsuccessful.
- 3.6 No permit for erection of a new structure on the site of an existing “significant building” as defined in Section 2.3 may be issued prior to issuance of a permit for demolition of such existing building.
- 3.7 No permit for demolition of a building determined to be a “preferably preserved significant building” under Section 3.4 shall be granted until plans for use or development or the site after demolition have been filed with the Inspector of Buildings and found to comply with all laws pertaining to the issuance of a building permit, or if for a parking lot, a certificate of occupancy, for that site. All approvals necessary for the issuance of such a building permit or certificate of occupancy including without limitation any necessary zoning variances or special

permit, must be granted and all appeals from the granting of such approvals must be concluded, prior to the issuance of a demolition permit under this subsection.

SECTION 4 EMERGENCY DEMOLITION

- 4.1 Nothing in this By-Law shall restrict the Inspector of Buildings from ordering the demolition of any “significant building” in the event it is determined that the condition of the building or structure poses a serious and imminent threat to public health and safety and there is no reasonable alternative to immediate demolition.
- 4.2 Whenever the Inspector of Buildings issues an emergency demolition permit under this Section he shall prepare a written report with attached photographic evidence describing the condition of said building or structure and the basis of the decision to issue an emergency demolition permit and provide a copy thereof to the Commission.

SECTION 5 ENFORCEMENT AND REMEDIES

- 5.1 Any person(s) who demolishes a building or structure identified in Section 2.3 without first obtaining, and complying fully with, the provisions of a demolition permit shall be subject to a fine of five hundred dollars (\$500.00), each day of non-compliance a separate offense, as provided in Section XII F of the Town of Eastham Zoning By-Laws.
- 5.2 The Commission and the Inspector of Buildings are each authorized to institute any and all proceedings in law or equity as they deem necessary and appropriate to obtain compliance with the requirements of this By-Law, or to prevent violation thereof.
- 5.3 No building permit shall be issued with respect to any premises upon which a “significant building” has been voluntarily demolished in violation of this By-Law for a period of two (2) years after the date of the completion of such demolition. As used herein “premises” includes the parcel of land upon which the demolished “significant building” was located.
- 5.4 Upon a determination by the Commission that a building is a “preferably preserved significant building”, the owner shall be responsible for properly securing the building, if vacant, to the satisfaction of the Inspector of Buildings. Should the owner fail to secure said building, the loss of it through fire or other causes shall be considered voluntary demolition for the purposes of Section 5.3.

SECTION 6 SEVERABILITY

- 6.1 If any section, paragraph or part of this By-Law be for any reason declared invalid or unconstitutional by any court, every other section, paragraph and part shall continue in full force and effect.

SECTION 7 HISTORIC DISTRICT ACT

- 7.1 If any provisions of this By-Law conflict with Massachusetts General Laws, Chapter 40C, the Historic District Act, that Act shall prevail.

SECTION XVIII - TOWN OF EASTHAM – SIGN CODE¹

SECTION I -- PERMITS

- A. **PERMIT REQUIRED** - In all districts, a permit issued by the Inspector of Buildings, is required for the erection of any sign, as defined in Section II, Regulations.
1. Name signs identifying the resident occupant of a dwelling or the name of the dwelling, or the name of a private way shall not require a permit or registration and shall not exceed two (2) square feet.
 2. Business franchises shall be allowed signs by Special Permit by the Zoning Board of Appeals.
- B. **APPLICATION FOR PERMIT** - Application for a permit for a permanent sign shall be accompanied by a sketch and/or photograph showing the material, design and size, type of lettering, colors and illumination, along with a plot plan showing all roads, ways, driveways, parking areas and buildings in the area where the sign shall be erected. The exact location for the sign shall be indicated on the plot plan. The fee for this permit shall be \$20.00 per sign.
- C. **APPROVAL OF PERMIT** - Upon receipt of an application for a sign, the Building Inspector shall review the application and then may issue a permit in accordance with this By-law. Application for a permit for a sign must be acted upon within thirty (30) days from receipt of the application.

SECTION II - REGULATIONS

- A. **PERMANENT SIGN** - Permanent signs shall mean all advertising devices or insignia, whether lettered or not, free-standing or attached to a structure, designed to promote a business, the sale of a product or a service. Signs must be supported by a frame or post erected for that purpose, and such support structures shall be included in the overall size of the sign. Free-standing sign area shall include any and all accessory or supplementary signs such as ‘open’, ‘closed’, ‘vacancy’, ‘no vacancy’, credit card names, and endorsement names.
- Permanent signs identifying a home occupation shall be limited to not more than one double-faced sign. All signs shall pertain to the resident occupant’s business or profession and must be on the resident occupant’s property.
- B. **WINDOW SIGNS** -- signs visible from a public way that are located in, on and immediately behind windows, including, but not limited to product advertising signs. Beginning May 1, 2001, window signs will be considered signage and count against the total square footage permitted within a given district.

¹ Town of Eastham Sign Code replaced in its entirety , accepted at Special Town Meeting, Article 11, July 24, 2001

- C. **BUSINESS UNIT** -- A separately owned and operated business.
- D. **STREET SIGNS** -- Street name signs shall be placed in a position that is clearly visible from the intersecting street and in a position that will not interfere with traffic. A similar sign to identify such ways as private may accompany a street name sign.
- E. **LADDER SIGNS** -- Ladder signs at street intersections listing names of residents of the street are allowed provided a permit is granted by the Building Inspector under the procedures in Section I. Such signs must be supported by a frame or post. Regardless of the number of names on the sign, the sign shall be considered as one sign for purposes of fees. Ladder signs shall comply with the size regulations for the zoning district in which the sign is erected.
- F. **NON - COMMERCIAL TEMPORARY SIGNS AND BANNERS** -- Non commercial temporary signs and banners advertising coming public events of a civic, philanthropic, educational, charitable or religious nature, or events of a profit making nature that use a temporary site for a maximum of a three (3) day period in any one calendar year, are allowed with the provisions:
1. The organization or individual must register with the Building Department.
 2. The organization or individual must have written permission of the owner of the land on which the sign or banner is to be placed. If it is Town-owned land, permission must be obtained from the Board of Selectmen.
 3. Signs and banners are restricted to six (6) square feet each side excluding the supporting frame for ground-mounted signs with overall height not to exceed five (5) feet, and three (3) feet by twenty (20) feet for hanging banners.
 4. Signs and banners shall not be placed upon sidewalks or in a position so as to obscure the visibility of vehicular or pedestrian traffic.
 5. Signs and banners shall not be displayed earlier than fourteen (14) days prior to the event and shall be removed twenty-four (24) hours after the event has occurred, except this time period for removal may be extended to forty-eight (48) hours if the day following an event is Sunday or a holiday.
 6. No more than four (4) such signs and/or banners advertising the identical specific public event shall be allowed throughout the Town.
 7. No more than two (2) temporary signs and/or banners shall be allowed per site.
- G. **COMMERCIAL TEMPORARY SIGNS AND BANNERS** - Temporary signs and banners for commercial events are allowed with the provisions:
1. The business owner must register with the Building Department.
 2. The business owner must have written permission of the owner of the land on which the sign or banner is to be placed.

3. Signs and banners are restricted to six (6) square feet each side excluding the frame for ground mounted signs with overall height not to exceed five (5) feet.
4. Signs and banners shall not be placed upon a sidewalk or in a position so as to obscure the visibility of vehicular or pedestrian traffic.
5. Signs or banners shall not be displayed earlier than four (4) days prior to the event and shall be removed twenty-four (24) hours after the event has occurred, except this time period for removal may be extended to forty-eight (48) hours if the day following an event is Sunday or a Holiday.
6. No more than two (2) signs or banners advertising the same event shall be allowed throughout the Town.
7. Each Commercial Business shall be allowed no more than seven (7) events per year and each event shall be limited to four (4) days.

H. REAL ESTATE SIGNS -- The following conditions shall apply:

1. Sign must only be displayed on individual lot for sale.
2. All real estate signs, including “Sold” signs, shall be removed within forty-eight (48) hours after conveyance.
3. Not more than one (1) real estate sign per house or lot which is for sale.
4. Only free-standing signs shall be permitted.
5. “Open house ” signs shall be placed within five hundred (500) feet of the lot for sale and shall be removed at the end of each day of the open house.
6. No fees are required.

I. All signs must conform to the dimensions allowed in the particular zone in which the sign is located, as indicated.

TYPE OF SIGN

ALLOWED IN DISTRICTS

Signs not greater than 100 square feet including post, with no free-standing sign having a vertical dimension greater than 10 feet

B, C

Not more than two (2) freestanding signs at least 300' apart.

D

Business on two (2) or more roads, one sign on each road.

D

Multiple businesses in one building, one sign

for each business unit on building	B,C,D,E
Free-standing signs, single or multiple businesses --each sign not more than 60 square feet one side, total 120 square feet, including post.	D
If free-standing sign exists, sign on building or buildings not to exceed 24 square feet per business.	B, C, D, E
If no free-standing sign exists, sign on building or buildings not to exceed 50 square feet per business.	B, C, D, E
Single sign, free-standing -- 12 square feet per side, total 24 square feet.	E
Ladder sign, residential -- name on one side only, off-premise, maximum 3' wide x 8' high.	A, D, F, G
Ladder sign, business -- name on one side only, off-premise, maximum 4' wide x 10' high.	C, D
Home occupation sign, must be erected on owner's property, 2 square feet per side, total 4 square feet.	A, D, E, F
Existing sign size permitted	A
Permit and fee regulations apply	A, B, C, D, E, F, G
J. Off-premise signs will be allowed provided permission is granted by the off-premise property owner. Off-premise signs shall be ladder-type for two or more businesses. Businesses with frontage on Route 6 will not be permitted to have off-premise signs.	
K. Signs on Town-owned property will only be allowed by permission of the Board of Selectmen.	
L. EXCEPTIONS -- Nothing in this Code shall modify or in any way control the existing rights of the Secretary of the Interior to erect signs on federally owned property specified in Section IV. The right of the Town and State to erect signs on public property for traffic control, identification signs for facilities, signs for grant funded and special projects, posting of regulations, and similar notices and/or signs shall not be affected by this Code.	

SECTION III — PROHIBITIONS

The following signs shall not be permitted:

1. Portable or moveable signs, other than temporary signs as defined herein.

2. Any sign affixed to a tree or other natural feature.
3. Illuminated signs having a glare distracting to drivers or adjacent property owners or any exposed neon or gas-filled signs or illumination that will conflict with the ability to see traffic lights or cause any hazardous condition.
4. Flashing, rotating or oscillating lighting, whether primary or supplementary.
5. Promotional streamers, posters, pennants and similar devices.
6. Contractor's and builders' signs after conveyance or completion of work.

SECTION IV -- SIGN REGULATIONS, SEASHORE DISTRICT F

The display of not more than one single-faced or one double-faced sign on property of a residential occupant which shall pertain to the occupancy, sale or rental of such property as herein authorized. Such signs shall not exceed two (2) square feet in area and shall not apply to facilities deemed by the Secretary of the Interior to be necessary on federally owned property for administration and public use and enjoyment of the Cape Cod National Seashore of the Town of Eastham on Town-owned land.

SECTION V -- ADMINISTRATION

- A. **WAIVER** -- An applicant shall have the right of appeal to the Special Permit Granting Authority for a Waiver to grant relief from any section of this Code. The Special Permit Granting Authority may consider in their deliberations as a basis for granting of waivers favorable recommendations from the Planning Board and the Building Inspector.
- B. **APPEAL**-- An applicant shall have the right of appeal to the Special Permit Granting Authority the refusal by the Building Inspector to issue a permit for a sign.
- C. **ENFORCEMENT** -- This Sign Code By-law shall be enforced by the Building Inspector.
- D. **PENALTY** -- Any permanent sign erected without the issuance of a permit shall constitute a violation of this Code. Penalty for such violation shall be as follows: 1st offense: Warning, 2nd offense: \$50.00, 3rd offense and all subsequent offenses:

\$100.00 by non-criminal ticket. Each violation and each day of violation shall constitute a separate offense, punishable by fine as aforesaid.

SECTION VI -- VALIDITY

- A. **VALIDITY** -- The invalidity of any sentence, provision or section of this Sign Code shall not be construed to invalidate any other part thereof.
- B. **AMENDMENTS** -- This By-law may be altered, repealed, or amended in accordance with the law.

SECTION XIX – (OSRSD) OPEN SPACE RESIDENTIAL SUBDIVISION DEVELOPMENT

I. PURPOSE

The purpose of the Open Space Residential Subdivision Development Bylaw (OSRSD) is to offer an alternative development design by special permit for subdivisions, to promote the permanent preservation of open space, wildlife habitat and other natural resources, including the aquifer, ground water recharge areas and wetlands, in a manner that is consistent with the Eastham Local Comprehensive Plan and to minimize sprawl and promote development that conforms to existing topography and natural features more efficiently than conventional subdivisions.

II. DEFINITIONS

Potentially Developable Area: Buildable upland which does not contain critical habitat as defined by the Commonwealth of Massachusetts Department of Environmental Protection.

Primary Conservation Areas: Areas comprised of only the most severely constrained lands, where development is typically restricted under current codes and laws (such as wetlands, floodplains, and slopes exceeding 25 percent).

Secondary Conservation Areas: Areas included are all other locally noteworthy or significant features of the natural or cultural landscape—such as mature woodlands, wildlife habitats and

travel corridors, prime farmland, groundwater recharge areas, greenways and trails, river and stream corridors, historic sites and buildings, and scenic viewsheds.

III. ELIGIBILITY

- A. **Minimum Site Size.** To be eligible for consideration as an OSRSD, the tract shall contain a minimum of four (4) acres of buildable uplands producing not less than five (5) lots.
- B. **Zoning Classification.** Only those tracts located in District A shall be eligible for consideration as an OSRSD.
- C. **Contiguous Parcels.** To be eligible for consideration as an OSRSD, the tract shall consist of a parcel or set of contiguous parcels held in common ownership.

IV. SPECIAL PERMIT REQUIRED

The Planning Board may authorize an OSRSD pursuant to a special permit. Such special permit shall be acted upon in accordance with the provisions of this bylaw.

V. DESIGN PROCESS

At the time of the application for an OSRSD in conformance with G.L. 40A Section VI, the applicant is required to demonstrate to the Planning Board that the following Design Process was performed by a certified Landscape Architect and a registered Land Surveyor and considered in determining the layout of proposed street, house lots, and open space:

- A. **Identifying Conservation Areas.** Identify Primary Conservation Areas such as wetlands, waterfront areas and flood plains which may be regulated by state or federal law. Identify Secondary Conservation Areas including but not limited to unprotected elements of the natural landscape such as steep slopes, mature woodlands, meadows, wildlife habitats and cultural features such as historic sites or scenic views. Identify and delineate the Potentially Developable Area (this area shall consist of only buildable uplands) to coincide with boundaries of the Primary and Secondary Conservation Areas.
- B. **Locating House Sites.** Locate the approximate sites of individual houses within the Potentially Developable Area and include the delineation of private yards and shared amenities, so as to reflect an integrated community, with emphasis on consistence with the character of the town. The number of homes should be maximized.
- C. **Aligning the Streets and Trails.** Align streets in order to access the house lots. Additionally, new trails should be laid out in order to facilitate connectivity with existing trails.

VI. PROCEDURE

- A. Pre-Application. The applicant is encouraged but not required to request a pre-application review at a regularly scheduled meeting of the Planning Board. Upon request, the Planning Board shall notify applicable departments such as the Board of Health and Conservation Commission. The pre-application process is used to minimize the applicant's costs of engineering and other technical assistants and to establish a timetable for submittal.
- B. Review. Upon receipt of the preliminary plans, the Planning Board shall forward copies to the Board of Health, Open Space Committee, Conservation Commission, Board of Highway Surveyors, Department of Public Works and Fire Chief. Within thirty-five (35) days of receiving the plans, these agencies and officers shall submit any recommendations to the Planning Board. Failure to respond will indicate no opposition to the plan.
- C. Decision Criteria. The Planning Board shall approve an OSRSD if the proposed plan complies with the following criteria and
 1. The open space, wildlife habitat and other natural resources including aquifers, ground water recharge areas and wetlands are permanently preserved in a manner that is consistent with the Eastham Local Comprehensive Plan.
 2. Houses, septic systems and paved areas are significantly set back from any wetland and/or coastal bank to avoid any adverse impacts.
 3. All streets will provide efficient vehicular access to each house and limit adverse impacts on the preserved areas.
 4. The landscape is to be preserved in its natural state insofar as practical. The Board shall encourage the applicant to avoid grade changes, removal of native vegetation and soil, and will promote working within the constraints of the existing topography.
 5. The open space will act as a buffer between streets and other paved surfaces to reduce impacts on water and scenic views.

VII. DESIGN STANDARDS

- A. Housing Type: Single or multi-family dwellings shall be allowed.
- B. Lot Area: Each lot shall contain a minimum of 20,000 square feet of buildable upland for each single family dwelling and 40,000 square feet of buildable upland for each duplex dwelling.

- C. Setbacks: Minimum residential building setbacks shall be twenty-five (25) feet from the front, side and rear lot lines, except that the front set backs from pre existing street shall be thirty (30) feet.
- D. Improvements: Access, drainage, utilities and road grading shall meet functional standards equivalent to those of the Eastham Subdivision Rules and Regulations. For OSRSD's with the potential for up to four (4) single family dwellings, applicants may seek Rural Road Standards (Section 4.4.10 of the Eastham Subdivision Rules and Regulations) where the Planning Board finds it in the best interest of the town i.e. reducing runoff into environmentally sensitive areas. No runoff is allowed on public roads from private lots. If that determination is made, the Planning Board will make written findings illustrating the reason for the waiver. All other applicable sections of the Eastham E and Subdivision Rules and Regulations shall apply.
- E. Density: The number of dwellings shall not exceed one single family dwelling per 20,000 square feet of buildable upland and one duplex dwelling per 40,000 square feet of buildable upland. Density bonuses will be allocated at the discretion of the Planning Board and only when the applicant proposes to preserve more than thirty five percent (35 percent) of the buildable upland as open space.
- F. Wastewater Treatment: For the purposes of wastewater treatment, the area set aside as open space may be allocated to each of the building lots in the subdivision, proportional to the total number of building lots, provided a shared or clustered septic system is proposed.
- G. Open Space: Land set aside as open space shall consist of potentially developable area equal to or greater than thirty-five (35) percent of the parcel's buildable upland. This area shall be set aside to be maintained as open space in perpetuity and shall not include land set aside for roads and/or parking uses. Open space shall be planned as continuous areas wherever possible, including buffers around wetlands or boundaries of the parcel. Connectivity with existing open space or recreational opportunities is a priority.
- H. Management of Open Space: Designated open space shall be conveyed to one of the following:
 - 1. The Town of Eastham, to be used as a park or open space upon acceptance by the Board of Selectmen and at the Town Meeting;
 - 2. A non profit corporation, the principal purpose of which is conservation of open space;
 - 3. A corporation or trust owned or to be owned by the owners of the lots or residential units within the development and shall be passed on to new owners and will never be developed.

In cases where the designated open space is not conveyed to the town, a conservation restriction enforceable by the town shall be recorded providing that such land be kept in an open or natural state in perpetuity. A management plan shall be submitted describing how the open space will be maintained in accordance with good conservation practices. Also, the management plan shall also authorize the town to enter into and perform maintenance on the open space where the management program has failed, in which case, the owners of the lots will be held responsible for the cost of the maintenance.

- I. Dwellings: All dwellings and accessory buildings erected under the provisions of this section shall conform to all other provisions of this bylaw not addressed in this section.

APPENDIX -- ZONING DISTRICT BOUNDARIES

DISTRICT A:

All land not covered by any other district.

DISTRICT B:

All Town-owned land in the Rock Harbor area, bounded on the north by Dyer Prince Road and the south lot line of B54, Lot 34; on the east and south by Rock Harbor; and on the west by Cape Cod Bay.

DISTRICT C¹:

Bounded on the north by the southerly lot line of Lots B41-1Y and BRC, the southerly and easterly lot lines of Lot B41-1B-4, and the southerly side line of Brackett Road; on the east by the westerly side line of the Cape Cod Rail Trail/former Penn Central Railroad right-of-way; on the south by the southerly lot line of Lot B41-6B & T; and on the west by the westerly lot line of Lots 41-6B and T, B41-6C, B41-1S, B41-1T, B41-U, B41-1AA, B41-1V-2, and from the northwest corner of Lot B41-1V-2 to the southwest corner of Lot B41-1Y and the point of beginning.

DISTRICT D:

EAST PORTION: Excluding land in District C above, bounded on the north by the north lot line of B32-4c, B32-5A and B32-6; on the east by the Cape Cod Rail Trail/former Penn Central

¹Accepted at Annual Town Meeting, May 4, 1992, Article 45

Railroad right-of-way; on the south by Orchard Road; and on the west by Route 6.

WEST PORTION: Bounded on the north by the north lot line of B35, Lot NV29; on the east by Route 6; on the south by the south lot line of B41, Lot FS-1; and on the west by Massasoit Road, Oak Road, and the west lot lines of B35, Lots B35-12D, B35-12B, and B35-NV29; ¹and Lots EGB-B, EGB-C, EGB-1, EGB-2, EGB-3, and B40 4-1.

DISTRICT E:

EAST PORTION: Bounded on the north by the Cape Cod National Seashore; on the east by the Cape Cod National Seashore; on the south by the south lot line of B6, Lots RWE4 and B6-73D; and on the west by Route 6.

WEST PORTION: Consists of the lots B7-15C, B7-14D, VRD-7, VRD-6, B7-14A, B7-14B, B7-12B, and B7-13.

DISTRICT F:

The Seashore District, bounded on the east by the Atlantic Ocean and Town Cove; on the north by the Wellfleet Town Line at its intersection with the right-of-way line of a power transmission line; thence southeasterly for a distance of approximately 5,200 feet to a point due north of the intersection of the easterly right-of-way line of Nauset Road with the northerly right-of-way line of Cable Road; thence due south to the intersection of the said easterly right-of-way line of Nauset Road and the said northerly right-of-way line of Cable Road; thence in a general southerly direction crossing Cable Road and along said easterly right-of-way line of Nauset Road to a point 500 feet north of the northerly right-of-way line of Doane Road and its intersection with Nauset Road; thence west to a point 500 feet west of the westerly right-of-way line of Nauset Road; thence southerly and westerly 500 feet from and parallel to the said right-of-way line of Nauset Road to the easterly right-of-way line of Salt Pond Road; thence southerly along the easterly right-of-way line of said Salt Pond Road to its intersection with the southerly right-of-way line of Nauset Road; thence westerly along the southerly right-of-way line of Nauset Road to its intersection with the easterly right-of-way line of Route 6; thence southerly along the easterly right-of-way line of said Route 6 a distance of about four-tenths of a mile to the northerly boundary of the Eastham Town Hall property; thence easterly to a point one-tenth of a mile from Route 6; thence turning and running in a generally southerly direction paralleling the general alignment of Route 6 and generally distant therefrom one-tenth of a mile to a small stream approximately one-tenth of a mile beyond Governor Pence Road extended; thence southeasterly along said stream to the Orleans Town Line.

DISTRICT G¹:

The Water Resource Protection District, bounded on the north by the Wellfleet Town Line; on the east by the westerly boundary of the Cape Cod National Seashore; on the southeast by the westerly property line of Lot B28-84; on the south by the southerly property lines of Lots B28-18 and B28-17; on the southwest by the easterly sideline of Nauset Road (a public way); on the west by the easterly sideline of the Commonwealth of Massachusetts parcel B1-3 (Cape Cod Rail

¹Amendment accepted at Annual Town Meeting May 3, 1989, Article 47

¹Accepted at Annual Town Meeting May 3, 1989, Article 48, Amended at Annual Town Meeting May 4, 1992, Article 46

Trail/former Penn Central Railroad right-of-way), back to the point of beginning.

Boundaries as indicated on Eastham's Assessor's Map, revised January 1, 1991, sheets 2,3,5 and 6 as prepared by Nickerson & Berger, Registered Land Surveyors and Professional Engineers of Orleans, Massachusetts.

DISTRICT H²:

The Wellfield Protection District, beginning at a point on the easterly sideline of Nauset Road (a public way) at the intersection of the northwesterly boundary line of parcel 33 E 6387 and the northerly boundary line of parcel 34 E 6438 to the westerly sideline of Ocean View Drive (a public way); thence commencing at the easterly sideline of Ocean View Drive and continuing easterly along the northerly boundary line of parcel 34 E 6438 to the mean high water line of the Atlantic Ocean; thence southerly along said mean high water line of the Atlantic Ocean to its intersection with the southerly boundary line of parcel 34 E 8643; thence westerly along said southerly boundary line of parcel 34 E 8643 to the easterly sideline of Ocean View Drive; thence northerly along this easterly sideline of Ocean View Drive up to the intersection with the southerly sideline of Atlantic Avenue (a paper road); thence commencing at the westerly sideline of Ocean View Drive and continuing westerly along the southerly sideline of Atlantic Avenue and including parcel 34 E 6436 onward to the northwesterly corner of parcel 34 E 6424; thence southerly along the westerly boundary line of parcel 34 E 6424 to the intersection with the northerly boundary line of parcel 33 E 6322; thence westerly along said northerly boundary line of parcel 33 E 6322 to the easterly boundary line of parcel 33 E 6301; thence northerly along said easterly boundary line of parcel 33 E 6301 to the southerly sideline of Atlantic Avenue (a paper road); thence westerly along said southerly sideline of Atlantic Avenue to the easterly sideline of Nauset Road; thence northerly along said easterly sideline of Nauset Road to the point of beginning.

Boundaries are indicated on Eastham's Assessor's Map, revised January 1, 1991, sheets 9 and 24 as prepared by Nickerson and Berger, Registered Land Surveyors and Professional Engineers of Orleans, Massachusetts.

²Accepted at Annual Town Meeting, May 3, 1989, Article 48, Amended at Annual Town Meeting, May 4, 1992, Article 47

1. Accepted at Special Town Meeting April 19, 1988
Article 1 - Total By-Law Revision
Approved by Attorney General July 28, 1988

2. Amendments accepted at Special Town Meeting October 25, 1988
Article 43 - Section VIII - Prohibited Uses
Article 44 - Section VIII - Prohibited Uses
Article 45 - Section IX,B - District C - New Construction
Article 46 - Section IX,B - Public Event Signs
Article 48 - Sign Code - Section G - Line 1 - Political Signs
Article 49 - Sign Code,- Section 11,C - Approval of Permit
Article 50 - Sign Code - Section IV - Permanent Signs
Approved by Attorney General January 30, 1989

3. Amendments accepted at Annual Town Meeting May 3, 1989
Article 41 - Section II - Definitions - Cabin
Article 42 - Section II - Definitions - Cottage
Article 43 - Section IX,4 - Lot Size
Article 44 - Section IX B,1 - Setback Requirements
Article 45 - Section IX,B,2 - Setback Requirements
Article 46 - Section IX,B,4 - Setback Requirements
Article 48 - By-Law & Sign Code - Establishing New District "D" Wellfield Protection
Article 49 - By-Law & Sign Code - Establishing New District "H" Wellfield Protection

Approved by Attorney General August 24, 1989

4. Amendments accepted at Annual Town Meeting May 7, 1990
Article 62 - Section II - Definitions - Home Occupation
Article 63 - Section II - Definitions - Service Trade
Approved by Attorney General November 26, 1990

5. Amendments accepted at Annual Town Meeting May 4, 1992
Article 39 - Section II - Definitions - Demolition
Article 40 - Section VI,C - Non-conforming Uses
Article 41 - Section IX - Intensity Regulations - A. Lot Size, 6
Article 42 - Section IX - Intensity Regulations - B, Setback Regulation, 5
Article 43 - Section IX - Intensity Regulations - A, Lot Size 5
Article 44 - Section IX - Intensity Regulations - A, Lot Size 4
Article 45 - Appendix - Zoning District Boundaries - District "C"
Article 46 - Appendix - Zoning District Boundaries - District "G"
Article 47 - Appendix - Zoning District Boundaries - District "H"
Article 48 - Section II - Definitions - Cottage Colony
Article 49 - Section II - Definitions - Cottage
Approved by Attorney General September 9, 1992

6. Amendments accepted at Annual Town Meeting May 3, 1993
Article 28 - Section IV - Flood Plain Zoning
Article 29 - Section V - District "C"
Article 30 - Sign Code - Section 1 - Definitions/General
Article 31 - Sign Code - Section 1 - Definitions/General
Approved by Attorney General August 18, 1993

7. Amendments accepted at Annual Town Meeting May 2, 1994
Article 18 - Section VI - Non-conforming Uses
Article 19 - Sign Code - Section 1 - Definitions/General
Article 20 - Section II - Definitions - Alteration
Approved by Attorney General August 17, 1994

8. Amendments accepted at Annual Town Meeting May 1, 1995
Article 22 - Sign Code - Section 1 - Definitions/General
Approved by the Attorney General May 31, 1995

9. Amendments accepted at Annual Town Meeting May 6, 1996
 - Article 17 - Section IX - Intensity Regulations
 - Article 25 - Section II - Definitions - Restaurant/Fast Food
 - Article 27 - Section II - Definitions - Restaurant/Drive-In

10. Amendments accepted at Special Town Meeting October 21, 1996
 - Article 12 - Section II - Definitions - Apartment House/Home Occupation/Lot Area Requirements/Roadside Stand
 - Article 13 - Section II - Definitions - Business Retail/Retail Sales and Services
 - Article 14 - Section II - Definitions - Communication Tower
 - Article 15 - Section V - Uses - Communication Towers
 - Article 16 - Section II - Definitions - Business Band Radio Antennas
 - Article 17 - Section V - Uses - Business Band Radio Antennas
 - Article 19 - Section V - Uses - District C
 - Article 20 - Section V - Uses - District C
 - Article 21 - Section V - Uses - District D/District E
 - Article 22 - Section V - Uses - All Districts
 - Article 26 - Section II - Definitions - Pan Handle Lot
 - Article 27 - Section IX - Intensity Regulations - Pan Handle Lot
 - Article 28 - Section XIII - Site Plan Approval - Special Permit
 - Article 29 - Section XII - Administration - Planning Board - Special Permit

Approved by Attorney General March, 1997

11. Amendments accepted at Annual Town Meeting May 5, 1997
 - Article 31 - Section I - Definitions/General - will expire May 1, 1998
 - Article 36 - Section XVI - Procedure for the Demolition of Historically or Architecturally Significant Buildings

Approved by Attorney General August 5, 1997.

12. Amendment accepted at Annual Town Meeting May 5, 1998
 - Article 31 - Sign Code Section I Definitions/General
 - Article 32 - Section IX Intensity Regulations - Lot Size
 - Article 33 - Section VIII Prohibited Uses - Temporary Structures
 - Article 34 - Section IX Intensity Regulation - Lot Size
 - Article 35 - Section XIII Site Plan Review - Waivers

Approved by Attorney General November 18, 1998

13. Amendment accepted at Annual Town Meeting, June 29, 1999
 - Article 23 - Section II Definitions - Adult Uses, Section V Uses
 - Article 24 - Section VIII Prohibited Uses - Adult Uses
 - Article 25 - Section VIII Prohibited Uses - Adult Uses
 - Article 26 - Section II Definitions - Convenience Store
 - Article 27 - Section IV Flood Plain Zoning

14. Amendment accepted at Special Town Meeting June 29, 1999
 - Article 3 - Section II Definitions - Restaurant, Drive-In; Restaurant, Fast Food

15. Amendment accepted at Special Town Meeting, July 24, 2001
 - Article 1 - Section II, Definitions, Restaurant
 - Article 3 - Section II, Definitions - Restaurant, Drive-In, Restaurant, Fast Food - Section VII, Prohibited Uses - F.
 - Article 4 - Section II - Definitions - Catering Kitchen
 - Article 5 - Section X, B., Parking Requirements - add 6 and 7
 - Article 6 - Section X, Parking Requirements, C. Surfacing
 - Article 7 - Section VI, Non-conforming Uses, Section B
 - Article 8 - Section VI, Paragraph C
 - Article 9 - Section II, Definitions - Alteration - Section VI, Non-conforming Uses
 - Article 10 - Section VI, Paragraph D - add Special Permit Section
 - Article 11 - Section XVII - Sign Code, delete existing and replace entirely

16. Amendment accepted at Annual Town Meeting May 5, 2003

Article 22 - Section XIV Site Plan Approval - Residential
Article 23 - Section III Definitions - Farmers Porch
Article 23 - Section III Definitions - Site Coverage
Article 23 - Section V Uses - District H - Wellfield Protection District - 4.
Article 24 - Section VII Accessory Uses
Article 27 - Section III Definitions - Ocean Beach

17. Amendment accepted at Annual Town Meeting, May 1, 2006
 - Article 26 - Section III Definitions
 - Article 28 - Section VI-D Non Conforming Uses
 - Article 29 - Section VII Accessory Uses
 - Article 30 - Section IX Intensity - Setbacks
 - Article 31 - Section IX Intensity - Lot Intensity
 - Article 32 - Section XIII Site Plan Commercial
 - Article 35 - Section XIX Open Space Residential Plans
 - Article 39 - Section V Uses District A
 - Article 41 - Section IX Intensity - Setbacks

SUBDIVISION REGULATIONS

TABLE OF CONTENTS

SECTION I: GENERAL PROVISIONS 72

- 1.1 Authority 72
- 1.2 Purpose 72
- 1.3 Applicability 72
- 1.4 Amendment 72
- 1.5 Waivers of strict compliance with Subdivision Rules and Regulations 72
- 1.6 Definitions 73
 - Access Road 73
 - Applicant 73
 - Board 73
 - Engineer 73
 - Frontage 73
 - Land Surveyor 73
 - Layout 73
 - Lot 73
 - Owner 73
 - Plan
 - A. Approval Not Required (ANR): 73
 - B. Definitive: 74
 - C. Preliminary 74
 - Planning Board Agent 74
 - Roadway 74
 - Subdivision 74
 - Subdivision Control Law 74
 - Town 74
 - Wetland 74

SECTION II: SUBMISSION AND APPROVAL OF PLANS 74

- 2.1 Submission of plans 74
- 2.2 Plans believed not to require approval 74
 - 2.2.1 Contents of filing for Approval Not Required(ANR) Plans 74
 - 2.2.2 Filing procedure 75
 - 2.2.3 Endorsement of Approval Not Required Plans 75
 - 2.2.4 Determination of adequacy of ways 75
- 2.3 Preliminary Plans 76
 - 2.3.2 Contents of filing for Preliminary Plans 76
 - 2.3.3 Filing procedure 77
 - 2.3.4 Notification of Abutters 77
 - 2.3.5 Approval or disapproval of Preliminary Plans 77
 - 2.3.6 Protection from subsequent changes in Subdivision Rules & Regulations 77
- 2.4 Definitive Plans 77
 - 2.4.2 Contents of filing for Definitive Plans 77
 - 2.4.3 Filing procedure 79
 - 2.4.4 Approval/Disapproval and Endorsement of Definitive Plans 80
 - 2.4.4.1 Review by the Board of Health 80
 - 2.4.4.2 Public Hearing 80
 - 2.4.4.3 Certificate of Approval and Statement of Conditions 80
 - 2.4.4.4 Two Year Deadline 80
 - 2.4.4.5 Modification, Amendment or Rescission of Definitive Plans 80
 - 2.4.4.6 Performance guarantee 80
 - 2.4.4.7 Release from surety or covenant 81
 - 2.4.4.8 Maintenance Agreement 81

SECTION III: DESIGN STANDARDS 81

3.1	General	81
3.2	Conformance with zoning	81
3.3	Protection and enhancement of natural landscape	81
3.3.1	Treatment of natural features	81
3.3.2	Views	81
3.3.3	Street design	81
3.4	Traffic convenience and safety	81
3.4.1	Intersections	81
3.4.2	Drainage	81
3.4.3	Dead-end streets	81
3.4.4	Easements for turnarounds on dead-end streets	81
3.4.5	Reserve strips	81
3.4.6	Standards of adequacy	82
3.5	Underground utilities	83
3.6	Open space, parks and playgrounds	83
SECTION IV: REQUIRED IMPROVEMENTS AND ROAD CONSTRUCTION STANDARDS		83
4.1	Road construction	83
4.1.1	Site preparation	83
4.1.2	Layout clearing	83
4.1.3	Erosion control	84
4.1.4	Sub-base	84
4.1.5	Grade	84
4.1.6	Surface material	84
4.1.7	Berms	84
4.1.8	Street signs	84
4.1.9	Vegetation	84
4.1.10	Rural road standards	84
4.2	Drainage installation	84
4.2.1	Catch basins	84
4.2.2	Drainage pipe outlets	84
4.2.3	Drainage treatment	85
4.3	Inspections	85
4.4	Post-Development	85
4.4.1	Clean Up	85
4.4.2	Road construction and drainage shall be completed	85
4.4.3	Upon completion of the construction	85
SECTION V: ROAD ACCEPTANCE STANDARDS		86
5.1	Introduction	86
5.2	Submission of the plan	86
5.3	Suitable access	86
5.4	Occupancy	86
5.5	Inspection	86
5.6	Deeds and documents	87
5.7	Deadlines	87
5.8	Exceptions	87
SECTION VI: ADMINISTRATION		87
6.1	Authority	87
6.2	Severability	87

Town of Eastham

Subdivision Rules and Regulations

SECTION I: GENERAL PROVISIONS

1.1 Authority Under the authority vested in the Planning Board of the Town of Eastham by the Subdivision Control Law of Massachusetts, Massachusetts General Laws (MGL), Chapter 41, Sections 81-K - 81-GG, the Board hereby adopts these amended rules and regulations (hereinafter “Regulations”) governing the subdivision of land in the Town of Eastham. These rules and regulations shall be effective as of June 9, 1999.

1.2 Purpose As provided in MGL Ch. 41, Section 81-M, these regulations are adopted to ensure that the powers of the Planning Board under the Subdivision Control Law shall be exercised with due regard for:

- (1) providing access to all of the lots in a subdivision by ways that will be safe and convenient for travel;
- (2) lessening congestion in such ways and in the adjacent public ways;
- (3) reducing danger to life and limb in the operation of motor vehicles;
- (4) securing safety in case of fire, flood, panic and other emergencies;
- (5) ensuring compliance with the applicable zoning ordinances or by-laws;
- (6) securing adequate provisions for water, sewerage, drainage, underground utility services, fire, police, and other similar municipal equipment, and street lighting and other requirements where necessary in a subdivision;
- (7) coordinating the ways in a subdivision with each other, with public ways in the Town, and with the ways in neighboring subdivisions; and
- (8) supporting the overall goals of the Eastham Local Comprehensive Plan.

1.3 Applicability As provided in MGL Ch. 41, Section 81-O, no person shall make a subdivision of any land in the Town of Eastham unless a definitive plan of such proposed subdivision has first been submitted to the Planning Board for its approval, showing the lots into which such land is to be divided and the ways already existing or that are to be provided for furnishing access to such lots, and the Planning Board has approved such plan in the manner provided in MGL Ch. 41. Re-subdivision of all or part of land covered by an existing plan shall also be governed by these regulations. Under the provisions of the Cape Cod Commission Act (Ch. 716 of the Acts of 1989), certain divisions of land must be reviewed as Developments of Regional Impact by the Cape Cod Commission and will be reviewed for compliance with the Regional Policy Plan and the Eastham Local Comprehensive Plan.

1.4 Amendment These regulations or any portion thereof may be amended from time to time by the Planning Board on its own motion, following notice and a public hearing pursuant to MGL Ch. 41, Section 81-Q.

1.5 Waivers of strict compliance with Subdivision Rules and Regulations

1.5.1 As provided in MGL Ch. 41, Section 81-R, the Planning Board may waive strict compliance with the requirements of these Regulations when, in the judgement of the Board, such action is in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law. In waiving strict compliance, the Board may require such alternative conditions as will serve substantially the same objective as the standards or rules waived. When waivers of construction or design standards for roads proposed for access to or within a subdivision are requested, the Planning Board may consult with the Highway Superintendent, Police Chief and Fire Chief regarding the adequacy of access for automobiles and emergency vehicles prior to granting said waiver.

1.5.2 Any such request(s) for waiver(s) from these Regulations must be submitted by the applicant to the

Planning Board in writing and shall explain how granting the waiver(s) would be in the public interest, and not inconsistent with the intent and purpose of the Subdivision Control Law.

1.6 Definitions

1.6.1 Where the terms below are also defined in MGL Ch. 41 Section 81-L, the definition in said chapter shall govern.

1.6.2 As used in these regulations, the following terms shall have the meaning indicated:

Access Road - A way or ways used for vehicular access to property proposed to be divided by a Definitive subdivision plan, or by an Approval Not Required plan.

Applicant - An owner or his agent or representative, or his assigns.

Board - The Planning Board of the Town of Eastham

Engineer - A person who holds a valid registration as a Professional Civil Engineer in the Commonwealth of Massachusetts.

Frontage - The linear extent of a lot measured along the layout of the way, but not including any portion thereof devoted to a right-of-way or a driveway serving more than one lot or dwelling unit. Frontage must provide vehicular access to the lot from the subdivision road.

Land Surveyor - A person who holds a valid registration as a Land Surveyor in the Commonwealth of Massachusetts.

Layout - The full strip of land designated on a subdivision plan as a way, as distinguished from the roadway.

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

Owner - Holder of the fee simple to a parcel, tract, or lot of land, as shown by the record in the Land Court, Registry of Deeds or Probate for the County of Barnstable.

Plan

A. Approval Not Required (ANR):

1. A plan that shows a division of a tract of land into two or more lots, with each such lot having frontage on:

- a) A public way or a way that the Town Clerk certifies is maintained and used as a public way, or
- b) a way shown on a plan previously approved and endorsed in accordance with the Subdivision Control Law and that has either been constructed in accordance with said approved plan and all of its conditions, or for which there is adequate security in place pursuant to MGL Ch. 41, Section 81-U, or
- c) a way in existence when the Subdivision Control Law became effective in the Town of Eastham (2/16/48)

And with each such way 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. Such frontage shall be of at least such distance as is required by the applicable Eastham Zoning By-law at the time of plan submission; or

2. A plan or other instrument that adds to, takes away from, or changes the size or shape of lots in such a manner as not to leave any lot so affected without frontage of at least such distance as is then required by the zoning by-law at the time of plan submission for erection of a building on such a lot; or

3. A plan that shows the division of a tract of land on which two or more buildings were standing when the Subdivision Control Law went into effect in the Town of Eastham (2/16/48) into separate lots on each of which one of such buildings remains standing.

B. Definitive: a plan of a proposed subdivision or re-subdivision of land submitted pursuant to MGL Chapter 40 Section 81-O and T and drawn in a manner suitable for recording at the Barnstable County Registry of Deeds or the

Massachusetts Land Court that shows the information and design elements as required by these Subdivision Rules and Regulations under Section 2.4.

C. Preliminary: a plan of a proposed subdivision or re-subdivision of land submitted pursuant to MGL Chapter 40 Section 81-S that shows the information and design elements as required by these Regulations under Section 2.3.

Planning Board Agent - Any Town employee or consultant authorized by the Planning Board to review subdivisions and administer these regulations.

Roadway - The portion of a layout that is designed for vehicular travel; the traveled way.

Subdivision - The division of a tract of land into two or more lots, to include re-subdivision, and, when appropriate to the context, shall relate to the process of subdivision or to the land or territory subdivided; provided, however that a plan that meets the requirements of an Approval Not Required Plan, as defined above, shall not constitute a subdivision.

Subdivision Control Law - Sections 81-K through 81-GG inclusive of Chapter 41, Massachusetts General Laws, as hereinafter amended.

Town - The Town of Eastham, unless otherwise specified.

Wetland - As defined by MGL, Ch. 131, and Town of Eastham Wetlands Protection Act

SECTION II: SUBMISSION AND APPROVAL OF PLANS

2.1 Submission of plans No Approval Not Required or Definitive plan shall be accepted for review until all information necessary for review, as described herein, is fully provided, unless accompanied by a specific request for a waiver(s). If any or all of such waivers are denied, the applicant must forthwith amend the application.

2.2 Plans believed not to require approval

2.2.1 Contents of filing for Approval Not Required (ANR) Plans. Any person who believes a plan does not require approval under the Subdivision Control Law may submit such plan to the Planning Board for ANR endorsement that such approval is not required by providing the Board with the following:

a. An original plan on reproducible film and five paper prints of the plan. Said plan shall be prepared in such a manner as to meet the Registry of Deeds and/or Land Court requirements for recording, and shall contain the following information:

(1) The boundaries, area, frontage, dimensions and shape number(s) (as specified in Section IX A6 of the Eastham Zoning By-laws) of the lot or lots for which ANR endorsement is sought.

(2) The date of the plan, scale, north point and assessor's map and parcel number of all land shown on the plan and directly abutting the land shown on the plan.

(3) The name(s) of the owner(s) of record and the applicant, and the name, seal and signature of the land surveyor. This information shall appear in the lower right corner.

(4) Zoning classification (including overlay districts), and the location of any zoning district boundaries that may abut or lie within the locus of the plan.

(5) A locus plan at a scale of at least 1"=2000', containing sufficient information to locate the land, such as streets bounding or near the property.

(6) The name of the way(s) on which the lots front, information as to public or private ownership of the way(s), and the physical condition of the way(s) including actual width, and surface type and condition.

(7) House numbers for new or existing lots. (Numbers for new lots can be obtained from the Assessor's

Office.)

(8) The location of any natural features that affect the use of the frontage for access.

(9) The location of all existing buildings and other structures on the land shown on the plan or within fifty (50) feet of its boundaries.

(10) The location of any wetland on the land shown on the plan or within one hundred (100) feet of its boundaries. The plan shall reflect the average annual high water level of each wetland.

(11) The location of all bounds and easements on the land shown on the plan.

(12) Base flood elevation data, as shown on the Flood Insurance Rate Map, as most recently revised, published by the U.S. Department of Housing and Urban Development.

(13) Proposed drinking water well and septic system locations as well as existing well and septic locations on adjacent property. A separate drawing shall be submitted indicating this information.

(14) The statement "Approval under the Subdivision Control Law Not Required," and sufficient space for the date and the signatures of all Board members.

(15) The statement "Planning Board endorsement of this plan indicates only that the plan is not a subdivision under Section 81-L of Chapter 41 of the General Laws and does not indicate that the lot is buildable or that it meets Zoning, Health, Conservation or General By-law requirements."

b. A completed application for endorsement, executed by the applicant.

c. A filing fee to be submitted when the application for endorsement is submitted

2.2.2 Filing procedure As provided in MGL Ch. 41, Section 81-T, every person submitting a plan to the Planning Board for determination that approval is not required shall give written notice to the Town Clerk by delivery or by registered mail that such a plan has been submitted. Such notice shall state the date of submission accompanied by a copy of the application and a description sufficient for the identification of the land to which the plan relates.

2.2.3 Endorsement of Approval Not Required Plans If the Planning Board determines that the plan does not require approval, it shall forthwith, without a public hearing, endorse on the plan the words "Planning Board approval under Subdivision Control Law not required." If the Board determines that the plan does require approval, it shall, within twenty-one (21) days of the submission of said plan, so inform the applicant and the Town Clerk in writing and return the plan. No plan shall be endorsed as not requiring approval under the Subdivision Control Law unless each building lot, if any, to be created by such plan has adequate access as intended under the Subdivision Control Law, MGL Ch. 41, Sections 81-K through 81-GG.

2.2.4 Determination of adequacy of ways

2.2.4.1 The Planning Board normally will consider that existing ways provide adequate access when the layout, design and construction conform substantially to the standards of the Eastham Subdivision Rules and Regulations.

2.2.4.2 The Planning Board will examine, for adequacy of access, ways within, abutting, and without the plan submitted, which are involved in the proposed access to the lots on that plan.

2.3 Preliminary Plans

2.3.1 A Preliminary Plan shall be submitted for any proposed nonresidential subdivision and may be submitted for any proposed residential subdivision. It is strongly recommended that a preliminary plan be filed in every case. Review and comments on a Preliminary Plan are strictly of an advisory nature.

2.3.2 Contents of filing for Preliminary Plans Any person who wishes to submit a Preliminary Plan for approval may do so by providing the Board with the following:

a. Five (5) copies of the plan showing:

(1) The approximate boundaries, area, frontage, and dimensions of the lot or lots, and of any contiguous lots in common ownership. Shape numbers also should be provided for all proposed

lots, as per Section IX A.5. of the zoning by-laws.

(2) The subdivision name, if any, north point, assessor's map and parcel numbers, date of the plan, scale, legend and the title "Preliminary Plan."

(3) The name and address of the owner of record, the applicant and the engineer or land surveyor. This information shall appear in the lower right corner.

(4) The names of all direct abutters, as determined from the most recent tax list, noted on the plan.

(5) The existing and proposed systems of road drainage and utilities.

(6) Easements, covenants, rights-of-way, and/or restrictions applicable to the area shown on the plan.

(7) The existing and proposed lines of streets, ways, lots, easements and any public or common areas within the subdivision, in a general manner.

(8) The profiles of existing grades and the approximate proposed finished grades of the roadway(s).

(9) The proposed name(s) of the proposed street(s) and a number on each lot on each proposed street.

(10) The topography of the land, using 2' contours, derived from an actual survey.

(11) Zoning classification (including overlay districts) and the location of any zoning district boundaries that lie within or within 50 feet of the subdivision boundaries.

(12) The location of all existing buildings, other structures, and drinking water wells and septic systems on the land to be subdivided or within fifty (50) feet of its boundaries.

(13) The location of any wetlands on the land to be subdivided or within one hundred (100) feet of its boundaries. The plan shall show the average annual high water level of each wetland.

(14) The location of all bounds, fences, walls and trees of twelve inch diameter or greater.

(15) Base flood elevation data, as shown on the Flood Insurance Rate Map, as most recently revised, published by the U.S. Department of Housing and Urban Development.

(16) For all ways involved in access for the proposed subdivision, whether within, abutting or without the subdivision back to public ways, the approximate location of the roadway within the layout, physical condition of the roadway including actual width, surface type, depth of surface materials, condition, sight distance, grade and width of right-of-way. For proposed and existing residential subdivision roads used for access that do not meet the standard of section 3.4.6 for more than 10 dwellings, an analysis of the total number of homes that could use the road for access is required.

(17) A notation on the plan indicating every waiver to these regulations which may be requested.

b. A completed application, executed by the applicant.

c. A filing fee payable when the application for Preliminary Plan approval is submitted.

2.3.3 Filing procedure As provided in MGL Ch. 41, Section 81-S, in the case of a subdivision showing lots in a residential zoning district, any person, before submitting a Definitive Plan for approval, may submit to the Planning Board and the Board of Health a Preliminary Plan, and shall give written notice to the Town Clerk by delivery or by registered mail, that such plan has been submitted.

In the case of a nonresidential subdivision, prior to submitting a Definitive Plan, any person shall submit to the Planning Board and the Board of Health a Preliminary Plan, and shall give written notice to the Town Clerk by delivery or by registered mail, that such plan has been submitted.

2.3.4 Notification of Abutters All abutters and abutters to abutters within 300 feet must be notified by certified mail, return receipt requested, at least 7 days prior to the meeting at which such Preliminary Plan will be presented.

2.3.5 Approval or disapproval of Preliminary Plans Within forty-five (45) days after the submission of a Preliminary Plan, the Planning Board shall notify by certified mail the applicant, and Town Clerk, either that the plan has been approved as submitted, or that the plan has been approved with modifications suggested by the Planning Board and agreed to by the person submitting the plan, or that the plan has been disapproved. In the case of disapproval, the Planning Board shall state in detail its reasons therefor. The Planning Board shall notify the Town Clerk of its approval or disapproval, as the case may be. Except as is otherwise provided, the provisions of the subdivision control law relating to a plan shall not be applicable to a Preliminary Plan, and no Register of Deeds is authorized to record a Preliminary Plan.

2.3.6 Protection from subsequent changes in Subdivision Rules and Regulations When a Preliminary Plan referred to in Section 81-S has been submitted to the Planning Board, and written notice of the submission of such plans has been given to the Town Clerk, such Preliminary Plan and the Definitive Plan evolved therefrom shall be governed by the rules and regulations relative to subdivision control in effect at the time of submission of the Preliminary Plan, provided that the Definitive Plan is duly submitted within seven (7) months from the date on which the Preliminary Plan was submitted.

2.4 Definitive Plans

2.4.1 A Definitive Plan shall conform with the requirements of the Registry of Deeds and Land Court. A Definitive Plan shall be prepared by a Registered Land Surveyor, Civil Engineer or Sanitary Engineer, as appropriate.

2.4.2 Contents of filing for Definitive Plans A Definitive Plan submitted to the Planning Board for approval shall include the following:

a. An original plan on reproducible film and five paper prints of the plan. Said plan shall meet the Registry of Deeds and/or Land Court requirements for recording, and shall contain the following information:

- (1) The boundaries, area, frontage, and dimensions of the lot or lots, and of any contiguous lots in common ownership. Shape numbers should also be provided for all proposed lots, as per Section IX A.5. of the zoning by-laws.
- (2) A locus plan at a scale of at least 1"=2000', containing sufficient information to locate the land, such as streets bounding or near the property.
- (3) The subdivision name, if any, north point, assessor's map and parcel numbers, date of the plan, scale, legend and the title "Definitive Plan".
- (4) The name and address of the owner(s) of record, the applicant and engineer, or land surveyor. This information shall appear in the lower right corner.
- (5) The names of all direct abutters, as determined from the most recent tax list, noted on the plan.
- (6) The existing and proposed systems of road drainage and utilities.
- (7) The square footage and percentage of contiguous upland and wetland on each lot.
- (8) Easements, covenants, rights-of-way, and/or restrictions applicable to the area shown on the plan.
- (9) The existing and proposed lines of streets, ways, lots, easements, and any public or common areas within the subdivision.
- (10) The existing and proposed lines of any easements for utilities, access or other purposes. The location, ownership and expiration of any conservation restrictions or

easements.

- (11) Profiles of existing grades and the proposed finished grades of the roadway.
- (12) Proposed names of all new streets and a number on each lot on each proposed street. The Planning Board reserves the right to reject street names that conflict with names of existing Town streets.
- (13) House numbers for new lots. (House numbers can be obtained from the Assessor's Office).
- (14) The topography of lots, using 2 (two) foot contours, derived from an actual survey.
- (15) Zoning classification (including overlay districts) and the location of any zoning district boundaries that lie within or within 50 feet of the subdivision boundaries.
- (16) The location of all existing buildings, other structures, and drinking water wells and septic systems on the land to be subdivided or within fifty (50) feet of its boundaries.
- (17) The location of any wetlands on the land shown on the plan or within one hundred (100) feet of its boundaries. The plan shall show the average annual high water level of each wetland.
- (18) The location of all bounds, fences, walls and trees twelve inches caliper or greater.
- (19) Base flood elevation data, as shown on the Flood Insurance Rate Map, as most recently revised, published by the U.S. Department of Housing and Urban Development.
- (20) Sufficient data to determine the location, direction, and length of every street and way, lot line and boundary line and to establish and reproduce these lines on the ground, to be noted in accordance with requirements of the Registry of Deeds or Land Court.
- (21) For all ways involved in access for the proposed subdivision, whether within, abutting or without the subdivision back to public ways, the location of the roadway within the layout, physical condition of the roadway including actual width, surface type, depth of surface materials, condition, sight distance, grade and width of right-of-way. For proposed and existing residential subdivision roads used for access that do not meet the standard of Section 3.4.6 for more than 10 dwellings, an analysis of the total number of homes that could use the road for access is required.
- (22) Lengths and radii of all curves in lot lines and street lines.
- (23) The location of all permanent bounds, properly identified as to whether existing or proposed, and bounds at all points of curvature and changes in direction of street side lines. Said bounds shall be at least five by five (5x5) inches in cross section and thirty-two (32) inches in length. New bounds will contain ferrous reinforcing rods.
- (24) A notation on the plan indicating every waiver to these Regulations which may be requested.
- (25) Suitable space shall be provided on the plan to record the action of the Board and the signatures of the Board members.
- (26) To insure compliance with all applicable requirements of Section IV, Required Improvements and Road Construction Standards, all plans shall have the following note lettered adjacent to the records of Board approval as a condition of approval: "No lots may be conveyed and no building permits shall be issued by the Town of Eastham until all applicable requirements of Section IV, Required Improvements and Road Construction Standards have been met."

b. For proposed roads, three copies of profiles, drawn by an Engineer, showing the following:

- (1) a horizontal scale of one(1) inch to forty (40) feet.
- (2) a vertical scale of one (1) inch to four (4) feet.
- (3) existing center-line elevations every fifty (50) feet.
- (4) proposed center-line grades and elevations, with elevations at every fifty-foot station.
- (5) rates of gradient.
- (6) spot elevations at each intersecting street or driveway
- (7) drainage calculations for a 25 year storm

c. A completed application, executed by the applicant.

d. A filing fee submitted with the application.

e. A development schedule for the completion of specific phases of the development may be required by the Planning Board before approval of a Definitive Plan. Failure to meet such schedule may be cause for the Planning Board to rescind its approval and require a new public hearing before resumption of work.

2.4.3 Filing procedure As provided in MGL Ch. 41, Section 81-T and U, every person submitting a Definitive Plan to the Planning Board for approval shall give written notice to the Town Clerk by delivery or by registered mail that such plan has been submitted. Such notice shall describe sufficiently for identification the land to which the plan relates, and shall state the date when such plan was submitted and the name and address of the owner of such land. The applicant also shall file a copy of said plan with the Board of Health. The Planning Board shall circulate copies of the proposed plans to the Board of Health, Conservation Commission, Building Inspector, Police Chief, Fire Chief, Highways Superintendent, Board of Selectmen and Open Space Committee for their review and comment.

2.4.4 Approval/Disapproval and Endorsement of Definitive Plans

2.4.4.1 Review by the Board of Health The Board of Health shall, within forty-five (45) days after the filing with it of a Definitive Plan, report to the Planning Board, in writing, with a copy to the applicant, its approval or disapproval of said plan. In case of disapproval, it shall make specific findings as to which, if any, areas shown on such plan cannot be used for a building site without injury to the public health, and the reasons therefore in such report, and shall make recommendations for the adjustments thereof. The Planning Board shall not take action on the Definitive Plan until said report of the Board of Health has been received or forty-five (45) days has elapsed without such report having been received. Failure of the Board of Health to report shall be deemed approval by such Board.

2.4.4.2 Public Hearing Before approval, modification and approval, or disapproval of the Definitive Plan, a Public Hearing shall be held by the Planning Board. Notice of time and place and subject matter of such hearing shall be given by the Board in each of two (2) successive weeks by advertisement in a newspaper of general circulation in the Town of Eastham, the first publication being not less than fourteen (14) days before the day of such hearing, and by mailing a copy of said advertisement to the applicant and to all owners of land shown on such plan as appearing on the most recent tax list, in accordance with MGL Ch. 41, Section 81-T.

2.4.4.3 Certificate of Approval and Statement of Conditions After the hearing required above and after the report of said Board of Health or lapse of forty-five (45) days without such report, the Planning Board shall approve, or, if such plan does not comply with the Subdivision Control Law or the recommendation of the Board of Health or the Rules and Regulations of the Planning Board, modify and approve or shall disapprove such plan. The Planning Board shall file a certificate of its action with the Town Clerk, and send notice of such action by registered mail, postage prepaid, to the applicant at his address stated on the application.

Approval, if granted, shall be endorsed after security is in place on the original Definitive Plan by the signatures of a majority of the Board, but not until the statutory twenty-day appeal period has elapsed, following the filing of the certificate of the action of the Board with the Town Clerk, and said Clerk has notified the Board that no appeal has been filed. Approval of the Definitive Plan does not constitute the laying out or acceptance by the town of streets within a subdivision and shall so state on the Definitive Plan. Notice of such action, or of an agreed extension of the time for such action, must be provided by the Planning Board to the Town Clerk within ninety (90) days following the date of submission of the plan if it follows action on a Preliminary Plan or one hundred thirty-five (135) days following the date of submission in cases where no Preliminary Plan was submitted.

2.4.4.4 Two Year Deadline In all cases, approval is granted for a two year period from the date of such approval, and if road construction is not completed in its entirety in that time and approved by the Board, the applicant must petition the Board for action on the undeveloped portion. The Board may grant an extension of this two year deadline if a petition for such extension is received prior to the expiration of the two year period. Upon expiration of the two year period (plus extension, if any), the Board shall conduct a public hearing on the petition for action on the undeveloped portion and may require modification or amendment to the original approved plan to reflect current conditions and design standards.

2.4.4.5 Modification, Amendment or Rescission of Definitive Plans In accordance with MGL Ch. 41, Section 81-W, the Planning Board on its own motion or on the petition of any interested person, shall have the power to modify, amend or rescind its approval of a plan of a subdivision or to require a change in a plan as a condition of its retaining the status of an approved plan.

2.4.4.6 Performance guarantee Before endorsement of its approval of a Definitive Plan, the Planning Board shall require that the construction of ways and the installation of municipal services be secured by one of the methods, or combination of methods described below. Should the applicant desire the release of one or more of the lots in the subdivision prior to the completion of construction of ways and installation of municipal services, the Planning Board may request the posting of a bond or deposit, as described below:

a. Bond By a proper bond, sufficient in the opinion of the Planning Board to secure performance of the construction of ways and the installation of municipal services required for lots in the subdivision shown on the plan. The Planning Board may require that the applicant specify the time within which such construction shall be completed.

b. Deposit By a deposit of money or negotiable securities sufficient in the opinion of the Planning Board to secure performance of the construction of the way(s) and the installation of municipal services required for lots in the subdivision shown on the plan. The Planning Board may require that the applicant specify the time within which such construction shall be completed.

c. Covenant By a covenant, executed and duly recorded by the owner of record, running with the land, whereby such ways and services shall be provided to serve any lot before such lot may be built upon or conveyed, other than by mortgage deed; provided, that a mortgagee who acquired title to the mortgaged premises by foreclosure or otherwise and any succeeding owner of such premises or part thereof may sell any such lot, subject to that portion of the covenant which provides that no lot shall be built upon until such ways and services have been provided to serve each lot; and provided further, that nothing herein shall be deemed to prohibit a conveyance by a single deed, subject to such covenant, of either the entire parcel of land shown on the subdivision plan or of all lots not previously released by the Planning Board. A deed of any part of the subdivision in violation hereof shall be voidable by the grantee prior to the release of the covenant but not later than three years from the date of such deed, as per MGL Ch 41, Section 81-U (3).

d. Mortgage Agreement By delivery to the Planning Board of an agreement executed after the recording of a first mortgage covering the premises shown on the plan or a portion thereof given as security for advances to be made to the applicant by the lender, which agreement shall be executed by the applicant and the lender and shall provide for

the retention by the lender of funds sufficient in the opinion of the Planning Board and otherwise due the applicant to secure the construction of ways and the installation of municipal services. Said agreement shall also provide for a schedule of disbursements which may be made to the applicant upon completion of various stages of the work, and shall further provide that in the event the work is not completed within the time set forth by the applicant, any funds remaining undisbursed shall be available for completion.

2.4.4.7 Release from surety or covenant Following full or partial completion of the improvements described under Section 3 of these regulations, security may be either fully or partially released by the Planning Board as provided in MGL Ch. 41, Section 81-U. Partial release shall be granted only if the completed portion provides for traffic circulation and utility installation pending completion of the remaining portion. The Planning Board will require a recommendation from the Highway Superintendent prior to authorizing any release. The Planning Board at its discretion may approve partial covenant release, but not more than 1/3 or 33% of the lots may be released prior to full covenant release. A fee of \$25.00 shall be required for each covenant release request.

2.4.4.8 Maintenance Agreement In the case of subdivisions using existing or proposed sub-standard roads that do not meet criteria for eleven or more units, a Maintenance Agreement shall be required prior to endorsement of a Definitive Plan. The Planning Board may require Maintenance Agreements for any subdivision roads. These Maintenance agreements shall provide for periodic trimming of trees and brush to maintain a 14' x 14' minimum clearance for emergency vehicles, grading, filling potholes or eroded areas, and other work which must be performed on a regular basis to maintain the road surface.

SECTION III: DESIGN STANDARDS

3.1 General The design of proposed roads and lots should be developed so as to protect the natural landscape, control erosion, and protect and enhance natural features of the land.

3.2 Conformance with zoning The size, shape, width, frontage and use of all lots shown on a subdivision plan, and the buildings constructed thereon, shall comply with applicable zoning requirements.

3.3 Protection and enhancement of natural landscape Proposed roads and lot configuration shall be designed with the goals of reducing, to the extent reasonably possible, the volume of cut and fill; reducing flood damage; reducing the area over which existing vegetation will be disturbed; reducing the number of mature trees removed; and reducing the extent of waterways altered or relocated.

3.3.1 Treatment of natural features Due regard shall be shown for all natural features, such as large trees, watercourses, wetlands, scenic points, historic spots and similar community assets, which, if preserved, will add attractiveness and value to the subdivision.

3.3.2 Views Legal and physical protection of views visible from public ways and waterways should be provided wherever possible.

3.3.3 Street design To provide a more attractive appearance, curvilinear street patterns will be used wherever feasible.

3.4 Traffic convenience and safety The number of driveways exiting onto existing streets should be minimized. Road design should discourage through traffic on residential streets wherever possible.

3.4.1 Intersections Rights-of-way for proposed roads shall be laid out so as to intersect as nearly as possible at right angles. No right-of-way shall intersect any other right-of-way at less than sixty (60) degrees. Property lines at right-of-way intersections shall be cut back to provide a curb radius on the roadway of not less than twenty (20) feet, except where the angle of the intersection varies more than ten (10) degrees from a right angle, in which case the radius of the curve connecting the acute angle may be less and the

opposite radius must be correspondingly greater.

3.4.2 Drainage Before any roadway improvements are undertaken, due consideration shall be given to, and adequate provision made for, the disposal of surface or standing water from or in the subdivision according to specification in Section 4.2. Runoff shall not be permitted to drain onto existing town roads, or onto private roads unless the applicant can provide evidence of legal rights to use the drainage systems therein, but in all case such drainage shall be disposed of by leaching systems.

3.4.3 Dead-end streets In cases where dead-end streets are used, the length of such dead-end street should not exceed six-hundred (600) feet, and the dead-end street shall be provided with a turnaround having a property line diameter of at least ninety (90) feet. Length of the road will be measured along the center line where it intersects the access way to the center of the cul-de-sac.

3.4.4 Easements for turnarounds on dead-end streets Any easement obtained for turnaround purposes at the end of a temporary dead-end street shall terminate upon construction of an extension. A twelve-foot easement may be required at the end of a cul-de-sac to provide for continuation of pedestrian traffic and/or utilities to the next street.

3.4.5 Reserve strips Reserve strips prohibiting access to streets or adjoining property shall be permitted, except where, in the opinion of the Board, such strips shall not be in the public interest.

3.4.6 Standards of adequacy Streets within a subdivision shall be considered to provide adequate access if and only if complying with the standards in the table below. Proposed access to a subdivision will be considered adequate if there is assurance that such access also will be in compliance with the standards below. The basis for the different standards provided is the different volume of traffic that will be produced by the total number of existing dwellings plus the proposed lots in the submitted plan. In the tradition of the town's many unpaved roads with their rustic quality that add to the town's character, a rural road alternative for roads that serve no more than four dwellings is available.

Although unpaved roads may be accepted as access for no more than four units under these regulations, they will not be considered for acceptance as town roads unless reconstructed.

Total Number of Dwellings	Right-of-Way Width	Surface Type	Radius Curve*	Surface Width	Sight Distance	Maximum Grade
1-4	33'	Hardening base with T-base and stone	160'	14'	100'	8%
5-10	40'	Bituminous Concrete	220'	18'**	150'	8%
More than 10	40'	Bituminous Concrete	290'	20'**	200'	6%

* Measured at center line of pavement
 ** Measurement does not include berms

3.5 Underground utilities For any Definitive Plan showing property which could potentially be

developed with two or more new dwellings or commercial structures, all electrical, telephone, cable television and other utility lines shall be placed underground.

3.6 Open space, parks and playgrounds The Planning Board may require that areas for open space, parks and/or playgrounds be set aside in accordance with the intents of the Open Space Plan, Local Comprehensive Plan, and MGL Ch. 41, Sections 81-Q and 81-U, as amended. Such areas shall be of reasonable size, but generally not less than five percent (5%) depending upon the location and quality of the land being set aside. No building may be erected or placed on such an area for a period of three (3) years without the approval of the Board.

SECTION IV: REQUIRED IMPROVEMENTS AND ROAD CONSTRUCTION STANDARDS

4.1 Road construction To further guide the Planning Board in its requirements or recommendations relative to construction of ways and streets shown on subdivision plans and before any way or street is approved or recommended by the Board as a proposed layout it shall meet the following requirements.

4.1.1 Site preparation There shall be no clear cutting, filling and other site preparation work done prior to the endorsement of a Definitive Plan. The Planning Board reserves the right to disapprove any such work and to order restoration of the site, prior to the approval of any plan for such land.

4.1.2 Layout clearing The roadway shall be cleared of trees and brush for the width of paved or hardened surface and shoulders only. Suitable trees should be preserved, but must be at least nine (9) feet off the traveled surface. Topsoil is to be removed from the area showing hardening in the typical cross section. All unsuitable material, such as peat, roots, stumps, boulders and clay, is to be removed and replaced with appropriate fill as specified on the plan and approved by the Planning Board. The placing of roots, stumps, brush or similar materials in roadway fills is prohibited. Particular attention shall be given to those areas, especially in cuts, where the nature of the soil may cause frost heaving or stability problems.

4.1.3 Erosion control Fill slopes shall not be steeper than two to one (2:1) and shall be loamed or covered with topsoil and seeded. Cut slopes shall not be steeper than three to one (3:1) and shall be loamed or covered with topsoil and seeded.

4.1.4 Sub-base Clay or loam hardening shall be placed to a depth of at least six (6) inches plus processed stone or t-base to a depth of four (4) inches for the full length of the roadway and the full width as shown in the cross section. The sub-grade shall be suitably rolled and compacted before placing the hardening.

4.1.5 Grade Finished center-line profile grade shall not be less than five-tenths percent (0.5%). The roadway is to be constructed in true cross section, with a crown of one-fourth (1/4) inch of pitch per foot from the center line.

4.1.6 Surface material Where applicable, the surface of paved roads shall be bituminous concrete Type I-1. Bituminous concrete shall be placed in two (2) layers as follows: base or binder course of two (2) inches, with material and construction methods approved by the Highway Department; wearing course of one (1) inch; for a total of three (3) inches of mix. Turn-arounds on dead end streets shall have a minimum paved radius of thirty-five (35) feet. The paved surface generally shall be on the centerline of the way. Shoulders shall be provided on each side of the road to a minimum width of four (4) feet, excluding berms. Shoulders shall be hardened, top-soiled and seeded with perennial grass. All disturbed areas shall be seeded.

4.1.7 Berms Berms shall be required on all paved roads, both sides, where the grade is 1.5% or greater. Bituminous concrete berms, one (1) foot minimum width on rolled asphalt base or binder course, shall be installed on each side of the road and slope towards the street at a rate of 1½ to 2½ inches per foot.

4.1.8 Street signs Street signs which conform to the requirements of the Highway

Department or any other applicable town bylaws shall be installed by the developer. Stop signs shall be installed by the developer wherever a proposed private road or existing private road used for access to the subdivision intersects with a public or town road. A street sign must display the exact name of the street as it appears on the approved subdivision plan.

4.1.9 Vegetation Every effort will be made to preserve existing trees of over 12 (twelve) inches in diameter outside the travel surface of any proposed or existing roads and on proposed building lots. The Planning Board may require the applicant to provide and plant suitable shade trees as a buffer along existing or proposed roads, or abutting already developed properties. Shrubs or ground cover may be required where stabilization is needed, for instance, on banks along roadways, or as a buffer. All unvegetated areas within the road layout but outside the traveled surface shall be surfaced with not less than four (4) inches of quality topsoil, seeded and rolled. The Planning Board may require plantings within the center of cul-de-sacs or turnarounds.

4.1.10 Rural road standards For subdivisions with the potential for up to four (4) dwellings, a paved surface will not be required, however, the base shall be improved so as to adequately support the expected volume of traffic and provide adequate drainage, as well as meet the sight distance and grade standards indicated above. As outlined in Section 2.4.4.8 above, a Maintenance Agreement also shall be required for all unpaved roads proposed to serve additional dwellings.

4.2 Drainage installation Road drainage, including lines and structures, shall be constructed to meet storm characteristics acceptable to current engineering standards, based on calculations for a 25-year storm. Road drainage structures shall be placed not over two hundred (200) feet apart on continuous grades of five percent (5%) or more and not over four hundred (400) feet apart on continuous grades of less than five percent (5%) or as determined by the Planning Board or its representative. Catch basins, leaching basins or leaching fields shall be adequate for conditions encountered. Structures shall be precast units. Grates and frames shall be of Massachusetts standard grate type and shall conform to Massachusetts Department of Public Works specifications.

4.2.1 Catch basins shall be of solid construction, precast concrete, with sump, overflow and grate, located in the road to receive surface water. Leaching basins shall be of precast concrete, located off the road, and connected to catch basins with concrete, asphalt-coated, corrugated aluminum or steel pipe -- 10" minimum diameter. All leaching basins shall have a two (2) foot minimum width of 1 ½" stone around the circumference and for the full depth of the leaching portion of the basin. Covers shall be precast concrete with stone markers set at grade to locate same. No portion of the drainage system shall be back-filled until an on-site inspection has been made by the Highway Superintendent and the developer's engineer.

4.2.2 Drainage pipe outlets All pipe used in drainage installations shall be reinforced concrete or asphalt-coated corrugated metal or aluminum-corrugated metal, correctly bedded in a trench to a true line and grade, said trench to be suitably filled and compacted. The minimum size of pipe permitted is ten (10) inches, with increased diameter governed by location within the particular system. Suitable headers, with aprons to prevent scour, are required at the discharge end of pipes. Manholes shall be provided at changes of grade and at feeder entrances to mains.

4.2.3 Drainage treatment For any Definitive Plan, vegetated basins also may be incorporated into the overall drainage plan for pre-treatment of road runoff.

4.3 Inspections The subdivider or his representative shall inform the Planning Board, and the Highway Surveyors at least twenty-four (24) hours and not more than forty-eight (48) hours (excluding Saturdays, Sundays and Holidays) prior to the commencement of any phase of road construction, for on-site inspection and subsequent endorsement (or non-endorsement). The engineer shall be present at each inspection and shall certify at the time of inspection that the phase of construction being inspected has been completed according to the plans approved by the Planning Board. Inspections shall be made when the:

- a. Centerline is staked;
- b. Sub-grade, hardening and drainage is in place;
- c. Binder course is in place;
- d. Finished road surface and berms are in place; and
- e. Slopes and shoulders are loamed and graded; street signs and bounds are installed.

4.4 Post-Development

4.4.1 Clean Up Prior to the release of a performance guarantee, the applicant shall clean up any debris resulting from road construction, installation of utilities, or other site work.

4.4.2 Road construction and drainage shall be completed under Design Standards in force at the time the work is to be performed.

4.4.3 Upon completion of the construction of ways and installation of services in accordance with the Rules and Regulation of the Board and prior to the full release of the performance guarantee, the applicant shall submit "as-built" drawings of all streets, utilities and drainage systems to the Board and a written statement in duplicate to the Town Clerk, stating that all requirements of the Definitive Plan have been met. The as-built plan shall contain the following information: road profile with elevations and spot elevations, and an engineer's Certificate of Completion.

SECTION V: ROAD ACCEPTANCE STANDARDS

5.1 Introduction Property owners wishing the Town to accept their private way as a public way must submit their request by petition to the Selectmen and shall comply with all requirements listed below before said petition can be acted upon at any Annual Town Meeting, which may accept or reject said petition by a majority vote:

5.2 Submission of the plan

5.2.1 A plan of the way, (a minimum of six (6) copies) drawn by a registered engineer or land surveyor at the petitioner's expense, shall accompany the petition. The plan shall include the following information:

1. Name of the road,
2. Areas to be accepted,
3. Names, addresses & lot numbers (either on a separate plan or legend on a sub-division plan) of all owners and abutters,
4. Complete construction details including: including: locations and dimensions of drainage basins and leaching tanks, typical cross sectional drawing of road width showing thickness' and types of sub-base, base course, top course, width of paved surface, berms and right of way.
5. Drainage, easements and catchment areas if any.
6. Dates of start and finish of road construction and name of contractor.
7. Any other details necessary to fully describe the road.

5.2.2 If a subdivision plan, approved by the Planning Board and recorded with the Barnstable County Registry of Deeds or the Land Court, is on file with the Assessor's office, and if said plan shows all information requested in Section 5.2.1 above, an "as built" plan, revised to the date of petition, may be submitted in lieu of a plan drawn expressly for submission with the petition.

5.3 Suitable access Any private way submitted by petition for acceptance by the Town as a public way shall intersect or connect with an existing public way.

5.4 Occupancy

5.4.1 Based on Assessor's records, a minimum of 51% of the lots fronting on the private way shall contain completed dwellings with a certificate of occupancy.

5.4.2 All dwellings shall be affixed with street numbers as assigned by the Town. Said numbers are to be affixed to or displayed in a prominent position on the street side of buildings.

5.5 Inspection

5.5.1 Following the submission of an acceptable plan of the way, and the determination by the Selectmen that the minimum occupancy and suitable access requirements have been met, they shall direct that inspections of the way shall be made to determine if the road is acceptable under the Design Standards contained in the Planning Board's Rules and Regulations in effect at the time the petition is made for roadway acceptance. Inspections shall be made by the following parties:

1. Planning Board members,
2. Highway Superintendent, and
3. The Board of Highway Surveyors.

5.5.2 The petitioners shall ensure that all catch basins are cleaned prior to inspections by the Town between March 1st and March 15th. A certificate, from the cleaning contractor, shall be required indicating the date of the cleaning and the number of basins cleaned.

5.5.3 The road shall pass all inspections before it can be accepted by the Town as a public way.

5.6 Deeds and documents

5.6.1 One hundred percent (100%) of the road ownership shall agree with the Assessor's records.

5.6.2 No road still under covenant or security to the Planning Board shall be accepted as a public way.

5.6.3 If the fee in the way is held by the petitioners, all deeds must be assembled and converted to a single deed. Title reference from each owner abutting the road shall be filed with the petition and plan together with a statement that the list of abutting owners has been verified from the most recent Assessor's atlas.

5.6.4 A fee covering the cost of recording the deed at the Barnstable County Registry of Deeds or the Land Court shall accompany the deed.

5.7 Deadlines

5.7.1 A suitable plan together with a request for the required inspection shall be submitted to the Board of Selectmen no later than November 1st of the year prior to the Annual Town Meeting to which the petition shall be presented.

5.7.2 All inspections shall be completed no later than March 15th.

5.7.3 If the road passes inspections, all deeds and documents, together with the required fee for the recording of the deed and the formal petition to accept the way, shall be submitted to the Board of Selectmen no later than the closing of the warrant for the Annual Town Meeting (date will be published.)

5.7.4 If all of the above conditions are met, the Selectmen shall include the petition in the warrant

5.7.5 All changes in ownership must be included on the final deed and/or documents to

correspond to the respective Order of Taking. If Town Meeting action is favorable, these documents shall be recorded at the Barnstable County Registry of Deeds or Land Court by the Eastham Town Clerk.

5.8 Exceptions This Road Acceptance Policy may be waived, in whole or in part, or modified by the Board of Highway Surveyors as they deem appropriate, or as the laws of the Commonwealth require.

SECTION VI: ADMINISTRATION

6.1 Authority The Planning Board shall be the administrative agency of these rules and shall have all the powers assigned to it by MGL Ch. 41 Sections 81-K to 81-GG. The Planning Board may assign as its agents appropriate town agencies or officials.

6.2 Severability The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision hereof.

Approved as amended, Eastham Planning Board, June 9, 1988; November 2, 1989; April 12, 1990; September 17, 1992; February 12, 1993, June 9, 1999, July 24, 2001.