

Town of Fremont New Hampshire



Zoning Ordinances



Revised March 14, 2023

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**A ZONING ORDINANCE
FOR THE TOWN OF FREMONT, N H**

NOTE:

1. At the Town Meeting in 1947 the Town of Fremont, N.H. adopted Land Subdivision Control. A copy of regulations pertaining to subdivision of land may be obtained from the Fremont Planning Board.
2. Building permit applications may be obtained from the Fremont Building Inspector and should be submitted to same.

Fremont Zoning Ordinance as Adopted March 11, 1947, was subsequently amended on the following dates:

March 9, 1971	March 5, 1974	March 4, 1975
March 13, 1979	March 12, 1985	March 10, 1987
March 8, 1988	March 10, 1992	March 9, 1993
March 8, 1994	March 14, 1995	March 10, 1998
March 9, 1999	March 14, 2000	March 13, 2001
March 12, 2002	March 11, 2003	March 9, 2004
March 8, 2005	March 14, 2006	March 13, 2007
March 11, 2008	March 13, 2012	March 12, 2013
March 12, 2014	March 10, 2015	March 14, 2017
March 13, 2018	March 12, 2019	March 10, 2020
March 9, 2021	March 8, 2022	March 14, 2023

To promote the health, safety, convenience and general welfare of the Town of FREMONT, to secure efficiency and economy in the process of developing the town and keeping it an attractive place in which to live and do business, the following ordinance is hereby enacted by the voters of said town in annual meeting convened, in accordance with authority conferred by Chapter 51, Sections 50 to 71 and by Chapter 53, Sections 14 and 15 of the Revised Laws of New Hampshire, 1942.

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ARTICLE 1 - PURPOSE

To promote the health, safety, convenience and general welfare of the Town of Fremont, to secure efficiency and economy in the process of developing the town and keeping it an attractive place in which to live and do business, the following ordinance is hereby enacted by the voters of said Town in annual meeting convened, in accordance with authority conferred by Chapter 51, Sections 50 to 71 and by Chapter 53, Sections 14 and 15 of the Revised Laws of New Hampshire, 1942.

ARTICLE 2 – APPLICABILITY

The following articles shall apply to the entire Town of Fremont.

ARTICLE 3 – CONTINUED USE

Nothing in this ordinance shall be construed to prevent the continuance of any existing use of land or building.

ARTICLE 4 - ADOPTION AND AMMENDMENTS

Section 401 – Amendments

These ordinances may be amended by a majority vote of any legal Town Meeting when such amendment is published in the Warrant calling for the meeting and when such amendment has received a public hearing which has been advertised and given a legal ten (10) days notice to conform to present RSA 675.

Section 402 – Effective Date

This ordinance shall take effect upon its passage.

Section 403 – Definitions

In the interpretation and enforcement of this Ordinance, all words other than those defined specifically below shall have the meanings implied by their context in the Ordinance or their ordinarily accepted meanings. For those words defined within other sections of the Zoning Ordinance, the term definition shall apply only to the section within which the term is located.

- A. Accessory Use: A use customarily incidental and subordinate to the principal use and located on the same lot as the principal use.
- B. Accessory Structure or Accessory Building: A structure or building customarily incidental and subordinate to the principal structure and located on the same lot as the principal use.
- C. Agriculture: Any farming activity that involves the cultivation of plants or the raising of livestock – including animals or poultry as defined in RSA 21:34-a.

- D. Agritourism – As defined under RSA 21:34-a as attracting visitors to a farm to attend events and activities that are accessory uses to the primary farm operation, including, but not limited to, eating a meal, making overnight stays, enjoyment of the farm environment, education about farm operations, or active involvement in the activity of the farm.
- E. Camper trailer/ Motor Home/ Trailer coach: Any vehicle used or intended to -be used for living and/or sleeping purposes which is or may be equipped with wheel or wheels or similar devices for the purpose of transporting the unit.
- F. Building: Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, foods, or materials of any kind.
- G. Duplex: A building designed and/or used exclusively for residential purposes and containing two principal dwelling units separated by a common party wall. The common party wall shall be within interior residential space, including garage space, and shall separate the interior residential space of the two principal dwelling units.
- H. Dwelling Unit: Any completed structure or portion thereof designed or used exclusively for residential purposes.
- I. Dwelling Unit, Single-Family: A detached building designed for or occupied exclusively by one family.
- J. Home Occupation: Any business, occupation or activity conducted for gain within a residential building, or an accessory building thereto, which is incidental or secondary to the use of such building for dwelling purposes and which does not change the essential residential character of the building.
- K. Impervious Surface: A modified surface, that cannot effectively absorb or infiltrate water including roofs, decks, patios, paved gravel or crushed stone driveways and parking areas and walkways unless designed to absorb or infiltrate water.
- L. Junk Yard: Two or more uninspected motor vehicles no longer intended or in condition for legal use on the public highways and/or any machinery, scrap metal or other worn, cast off, or discarded articles of materials ready for destruction or collected or stored for salvage or conversion to some use.
- M. Light Manufacturing: The processing and fabrication of certain materials and products where no process involved will produce noise, vibration, air pollution, fire hazard or noxious emission which will disturb or endanger neighboring properties. Light manufacturing includes, but is not limited to, the production of the following goods: home appliances; electronic instruments; office machines; precision instruments; electronic devices; time pieces; jewelry; optical goods; musical instruments; novelties; wood products; printed material; lithographic plates; type composition; machine tools; dies and gauges; ceramics apparel; lightweight nonferrous metal castings; film processing; light sheet metal products; plastic goods; pharmaceutical goods; and food products.

- N. Lot: A certain contiguous tract or parcel of land for which there is a deed recorded at the Rockingham County Registry of Deeds.
- O. Lot Coverage: All impervious and pervious paved surfaces on a given lot including: paved, bricked or gravel areas, buildings or other structures, decks and patios, and recreational facilities such as tennis courts, in-ground pools or similar amenities.
- P. Lot of Record: Any lot which, individually or as a part of a subdivision, has been recorded in the Office of the Register of Deeds in Rockingham County.
- Q. Manufactured Housing: Any land rented for the location, either permanently or temporarily, of one or more manufactured houses, recreational vehicles, travel trailers, tent campers, or other vehicles intended for a similar purpose.
- R. Motor Vehicle Repair Shop: The use of any building, land area or other premise used principally for the servicing and repair of automobiles, recreational vehicles, or other similarly sized vehicles.
- S. Motor Vehicle Sales: The use of any building, land area or other premise used principally for the display, sale, rental, or lease of new or used automobiles (but may include light trucks or vans, trailers, or recreation vehicles), and including any vehicle preparations, warranty, or repair work conducted as an accessory use. Multi-family Dwellings: All multi-family dwelling units, which are defined as any structures containing more than two (2) dwelling units.
- T. Non-conforming Lot: A lot, which was lawfully created, but which does not meet the minimum dimensional requirements for frontage and/or lot size within the zoning district in which the lot is located.
- U. Non-conforming Structure: A structure designed, converted, or adopted for a use prior to the adoption of provisions prohibiting such use in such location.
- V. Non-conforming Use: Non-conforming use is any use legally existing at the time of enactment of this ordinance or any of its amendments, which does not conform to the provisions of this ordinance.
- W. Structure: Anything constructed or erected, the use of which requires a fixed location on or in the ground or requires an attachment to something having a fixed location on the ground. "Structure" under this definition includes, but is not limited to septic systems, buildings, billboards, carports, porches, swimming pools, tennis courts, and leach fields that are, in whole or in part, constructed above grade; For the purpose of this zoning ordinance sidewalks, driveways, fences, patios, aboveground fuel tanks, and leach fields that are constructed entirely below grade, are not deemed to be structures.

ARTICLE 5 - NON-CONFORMING USES AND STRUCTURES

Section 501 - Reconstruction

Any non-conforming structure may be replaced with a similar structure which has the same building footprint dimensions and meets the setbacks of the previously existing structure. The structure may be rebuilt provided such construction is started within one (1) year. The provisions of the Town of Fremont Building Code, as amended, shall apply to any reconstruction.

Section 502 - Expansion of Non-Conforming Uses

Except as noted below, an expansion of a non-conforming use is prohibited except by variance by the Zoning Board of Adjustment.

A variance is not required if the expansion is a natural expansion which does not change the nature of the use, does not make the property proportionately less adequate, and does not have a substantially different impact on the neighborhood.

Section 503 - Expansion of Non-conforming Structures

Non-conforming structures may be expanded in accordance with the terms of a special exception issued by the Zoning Board of Adjustment, which must find the following factors to exist before issuing such a special exception:

- A. The proposed expansion must intrude no further into any setback area than does the existing structure.
- B. The expansion must have no further adverse impact on the view, light, and air of any abutter.
- C. The expansion must not cause property values to deteriorate.
- D. The expansion must not impede existing rights of access or egress.
- E. That portion of the proposed expansion, which will intrude into the setback must, in no event, exceed the footprint square footage of that portion of the structure which presently intrudes into the setback, regardless of the number of applications made over time under this subsection.
- F. In the event the non-conforming structure contains a commercial use, there must be no adverse impact on access, traffic, parking, lighting or other safety or visibility features of the existing structure.

A special exception under this subsection may be granted only as to expansions into the side, front, and rear setbacks, and is not available for expansions which violate height restrictions of this ordinance.

Section 504 - Discontinuance of Use

In the event that a non-conforming use is voluntarily discontinued for a period of one year, such non-conforming use shall be deemed abandoned and shall not be able to resume without compliance with the zoning ordinance or, alternately, without a variance from the zoning board of adjustment. Voluntary abandonment shall be evidenced by either of the following: discontinuance of the occupancy or nonconforming use for twelve (12) consecutive months with no ongoing attempts to sell or lease the property for its non-conforming use; or, failure to resume the nonconforming use within eighteen (18) months, even though there may be ongoing efforts to sell or lease the property for its non-conforming use.

Section 505 – Continuance of Use

505.1 All non-conforming structures and uses which predate the adoption or amendment of this ordinance may continue in their present use. These uses shall run with the land and may be transferred by sale or lease by present owner to future owners or lessees, subject to the other terms of this Ordinance which limit such non-conforming uses.

505.2 All new uses, changes of uses, expansion of uses or resumption of uses previously discontinued shall not be permitted until the property owner or authorized lessee has first made application to the Town of Fremont Code Enforcement Officer for an administrative decision seeking a determining whether a permit is required for such new, change, expansion or resumption of the non-conforming use or non-conforming structure under the terms of this ordinance. If a permit or other application is required, such use may not proceed until such application has been made a processed as required by town regulations and ordinances.

Section 506 – Junk Yards

No new junk yard or place for the storage of discarded machinery, vehicles or other materials shall be maintained in any part of said TOWN OF FREMONT unless written permit to make exception to this requirement is applied for by an applicant and granted by the Board of Selectmen. The Board of Selectmen before granting a permit shall consider the effect such a junk yard will have upon adjacent property and shall prescribe such conditions as in their judgment will prevent a nuisance or a danger to the health, safety and general welfare of the community.

Section 507 – New Commercial and Industrial Enterprises

New commercial business or industrial enterprises shall be encouraged, provided that such commercial, business, or industrial enterprises will in no way be harmful to the general welfare of the community.

Section 508 - Manufactured Housing

508.1 No new manufactured housing parks or expansions of existing manufactured housing parks shall be permitted.

508.2 Manufactured housing shall be allowed on individual lots under the following conditions:

- A. All permanent manufactured housing shall be placed on a permanent foundation or on foundation piers.
- B. The design and construction of the permanent foundation of permanent foundation piers shall comply with current amended Building Codes at the time of construction.
- C. All manufactured housing to be placed on lots within the Town of Fremont shall be certified as US Department of Housing & Urban Development (HUD) approved.
- D. All manufactured housing shall comply with lot dimensions, setbacks, and other applicable requirements of Article 9 of this ordinance.
- E. All manufactured houses (mobile homes) located on any lot within the Town of Fremont shall be placed, established, used, and/or occupied as a single-family detached dwelling.

508.3 The temporary placement of manufactured housing on conforming lots may be permitted by the Board of Selectmen.

508.4. The Board of Selectmen shall set the conditions and criteria by which the temporary placement of manufactured housing shall be permitted on a conforming lot.

Section 509 - Camper Trailer/Motor Home/Trailer Coach

509.1 Definition of a Camper trailer/ Motor Home/ Trailer coach: Any vehicle used or intended to be used for living and/or sleeping purposes which is or may be equipped with wheel or wheels or similar devices for the purpose of transporting the unit.

509.2 Use of Camper Trailer/Motor Home/Trailer Coach

- A. Camper trailer/ Motor Home/ Trailer Coach may be stored unoccupied at the owner's premises or permanent domicile in any zone in the Town of Fremont for any period of time.
- B. Camper trailer/ Motor Home/ Trailer Coach may be occupied for camping in all zones of the Town of Fremont for up to ninety (90) days of the year providing the Camper trailer/ Motor Home/ Trailer Coach presents no threat to public health and safety.
- C. A Camper trailer/ Motor Home/ Trailer Coach shall not be occupied as a permanent dwelling at any time in the Town of Fremont.

ARTICLE 6 - EXCAVATION AND PRELIMINARY SUBDIVISION REVIEW

Section 601 – Excavation

The excavation and removal of earth, loam, topsoil, gravel, clay or stone for use or sale other than that excavation or removal which is necessary and incidental to the construction or alteration of a building, for which a building permit has been obtained or incidental to property maintenance or improvement where sale of these materials is not involved is

prohibited without a written permit obtained from the PLANNING BOARD. The PLANNING BOARD will regulate all gravel operations in accordance with the EXCAVATION REGULATIONS adopted by the Planning Board and the most current State Regulation (RSA 155E or most current).

Section 602 – Preliminary Subdivision Review

This Ordinance, adopted pursuant to the authority of RSA 674:35. I, authorizes the Fremont Planning Board to require preliminary subdivision design review. The subdivision regulations regarding the requirements of such review to be prepared and adopted by the Planning Board.

ARTICLE 7 - ZONING MAP AND DISTRICTS

Fremont New Hampshire Zoning District Map and Zoning District Ordinance inclusive of an Open Space Preservation Ordinance and Home Occupations.

Section 701 - Establishment of Districts

The Town of Fremont is hereby divided into the following Zoning Districts: Main Street District, Shirkin Road Commercial District, Residential District, Flexible-Use Residential, and existing Districts which include the Fremont Village District, Wetlands and Watershed Protection District and the Aquifer Protection District.

Section 702 – District Locations and Zoning Map

The Flexible-Use Residential, Main Street District, Shirkin Road Commercial District, Residential District, and the Fremont Village District are shown on the Fremont New Hampshire Zoning District Map dated March 2019, kept by the Town Clerk as the official Zoning Map. The areas of the districts include tax map parcels as depicted on the Zoning Map. The Wetlands and Watershed Protection District and the Aquifer Protection District are overlay zoning districts. The lands included thereon are as defined in Article 12, Section 1201, Wetland and Watershed Protection District and in Article 12, Section 1203, the Aquifer Protection District.

Section 703 - Interpretation of District Bounds

The location of district boundary lines shown upon the Zoning Map shall be determined as follows:

- A. Where a boundary is shown as following a street or utility, the boundary shall be the center line thereof unless otherwise indicated.
- B. Where a boundary is shown as following a watercourse, the boundary shall coincide with the center line thereof as said center line existed at the date of the Zoning Map.
- C. Where a boundary apparently follows a property line, it shall be interpreted as such. Such property line shall be interpreted as one existing at the time of enactment of this

Ordinance. If any boundary as surveyed shall be different than as shown on the Zoning map, such surveyed boundary shall control.

Section 704 - Flexible Use Residential District

704.1 The intent of the Flexible-Use Residential District is to provide for residential development on individual lots, or agricultural use, which can be accommodated on the land without major alterations of the natural terrain, vegetation, watercourses or surface, and commercial development along connector (non-subdivision) streets.

704.2 By Conditional Use Permit, the Planning Board may allow commercial operations on lots with frontage on specific roads identified on the Fremont, NH, Zoning District Map.

704.3 Conditional Use Permit Requirements: Pursuant to RSA 674:21, the Planning Board is hereby authorized to grant a Conditional Use Permit in the Flexible Use Residential District for commercial operations provided that the following conditions as listed below are met:

- A. The total maximum square footage of all commercial structures on a single parcel is no greater than ten thousand (10,000) Square Feet.
- B. The entire commercial operation shall be located within 500 feet of the lot frontage within the Flexible Use Residential District. The Planning Board may on a case-by-case basis allow commercial operations to be located further than 500 feet from the lot frontage if the impacts of the use on abutting properties are demonstrated to be sufficiently minimized. Impacts include, but are not limited to, noise, odor, visual impacts, traffic, or safety.
- C. The commercial operation shall not result in a change in the essential characteristics of the area or abutting properties on account of the location or scale of buildings, other structures, parking areas, access ways, or the storage or operation of associated equipment or vehicles.
- D. The proposed use complies with all other applicable sections of the Zoning Ordinance.
- E. The permit is in the public interest.
- F. There will be no greater diminution of neighboring property values than would be created under any permitted use in the Flexible Use Residential District.
- G. That there are no existing violations of the Fremont zoning ordinance on the subject property.
- H. That the character of the area shall not be adversely affected in the context of:
 - 1. Architecture
 - 2. Transportation
 - 3. Scale of coverage
 - 4. Scale of building size
 - 5. Consistency of uses

- I. That granting the permit will not result in undue municipal expense
- J. That the proposed use will be developed in a manner compatible with the spirit and intent of the ordinance.
- K. That the capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted.
- L. That the general welfare of the Town will be protected.
- M. That the following impacts have been mitigated to the extent practical:
 - 1. Noise
 - 2. Light
 - 3. Transportation
 - 4. Visual effects
 - 5. Odor
- N. Landscaped or other appropriate buffers of sufficient opacity and materials shall be required if deemed reasonably necessary for the welfare of neighboring properties or the Town.

704.4 Within the Flexible Use Residential District the Planning Board may grant a Conditional Use Permit for an Open Space Preservation Development, anywhere in the district, as per Article 13, Section 1302 of this Ordinance.

Section 705 - Main Street District

705.1 The intent of the Main Street District is to permit general commercial uses in areas on streets with high traffic volumes and to buffer abutting residential neighborhoods from disturbance and disruption. The maximum square footage of an individual commercial use in the Main Street District is twenty-five thousand (25,000) Square Feet.

705.2 Certain commercial operations may only be allowed by a Conditional Use Permit issued from the Planning Board. See the Table of Uses for a list of the uses that require a Conditional Use Permit.

705.3 Conditional Use Permit Requirements: Pursuant to RSA 674:21, the Planning Board is hereby authorized to grant a Conditional Use Permit in the Main Street District provided that the following conditions are found to exist:

- A. The permit is in the public interest.
- B. There will be no greater diminution of neighboring property values than would be created under any permitted use.
- C. That there are no existing violations of the Fremont zoning ordinance on the subject property.

- D. That the character of the area shall not be adversely affected in the context of:
 - 1. Architecture
 - 2. Transportation
 - 3. Scale of coverage
 - 4. Scale of building size
 - 5. Consistency of uses
- E. That granting the permit will not result in undue municipal expense
- F. That the proposed use will be developed in a manner compatible with the spirit and intent of the ordinance.
- G. That the capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted.
- H. That the general welfare of the Town will be protected.
- I. That the following impacts have been mitigated to the extent practical:
 - 1. Noise
 - 2. Light
 - 3. Transportation
 - 4. Visual effects
 - 5. Odor
- J. Landscaped or other appropriate buffers of sufficient opacity and materials shall be required if deemed reasonably necessary for the welfare of neighboring properties or the Town.

Section 706 - Shirkin Road Commercial District

706.1 The intent of the Shirkin Road Commercial District is to provide areas for corporate business parks, research and development, light-manufacturing, processing, assembly, wholesaling, and transportation-oriented activities and related services such as trucking and warehousing providing that such uses are determined not to be injurious or hazardous to the public health, safety, and/or welfare. Furthermore, the intent of the district is to reserve suitable land for the location of new industry and to enhance economic development and employment.

706.2 Certain commercial and industrial operations may only be allowed by a Conditional Use Permit issued from the Planning Board. See the Table of Uses for a list of the uses that require a Conditional Use Permit.

706.3 Conditional Use Permit Requirements: Pursuant to RSA 674:21, the Planning Board is hereby authorized to grant a Conditional Use Permit in the Shirkin Road District provided that the following conditions are found to exist:

- A. The permit is in the public interest.
- B. There will be no greater diminution of neighboring property values than would be created under any permitted use.
- C. That there are no existing violations of the Fremont zoning ordinance on the subject property.
- D. That the character of the area shall not be adversely affected in the context of:
 - 1. Architecture
 - 2. Transportation
 - 3. Scale of coverage
 - 4. Scale of building size
- E. Consistency of uses
- F. That granting the permit will not result in undue municipal expense
- G. That the proposed use will be developed in a manner compatible with the spirit and intent of the ordinance.
- H. That the capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted.
- I. That the general welfare of the Town will be protected.
- J. That the following impacts have been mitigated to the extent practical:
 - 1. Noise
 - 2. Light
 - 3. Transportation
 - 4. Visual effects
 - 5. Odor
- K. Landscaped or other appropriate buffers of sufficient opacity and materials shall be required if deemed reasonably necessary for the welfare of neighboring properties or the Town.

Section 707 - Residential District

707.1 The intent of the Residential District is to provide areas for residential uses of single-family and duplexes that allow for sufficient area to provide necessary water needs and sewage disposal from on-site systems. Multi-family dwellings are also allowed with approved Conditional Use Permit, in areas where the neighborhood character of surrounding residential properties is maintained. This district includes areas where agriculture, agritourism and other open land uses are appropriate and natural conditions make the land unsuitable for intense development.

707.2 Conditional Use Permit Requirements: Pursuant to RSA 674:21, the Planning Board is hereby authorized to grant a Conditional Use Permit in the Residential District provided that the following conditions as listed below are met:

- A. The proposal meets the additional setback and frontage requirements under Article 9 – Lot requirements.
- B. The multi-family dwellings shall not result in a change in the essential characteristics of the area or abutting properties.
- C. The proposed use complies with all other applicable sections of the Zoning Ordinance.
- D. The permit is in the public interest.
- E. There will be no greater diminution of neighboring property values than would be created under any permitted use in the Residential District.
- F. That there are no existing violations of the Fremont zoning ordinance on the subject property.
- G. That the character of the area shall not be adversely affected in the context of:
 - 1. Architecture
 - 2. Transportation
 - 3. Scale of coverage
 - 4. Scale of building size
 - 5. Consistency of uses
- H. That granting the permit will not result in undue municipal expense
- I. That the proposed use will be developed in a manner compatible with the spirit and intent of the ordinance.
- J. That the capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted.
- K. That the general welfare of the Town will be protected.
- L. That the following impacts have been mitigated to the extent practical:
 - 1. Noise
 - 2. Light
 - 3. Transportation
 - 4. Visual effects
 - 5. Odor
- M. Landscaped or other appropriate buffers of sufficient opacity and materials shall be required if deemed reasonably necessary for the welfare of neighboring properties or the Town.

Section 708 - Table of Uses

The types of uses designated as “Permitted Uses”, “Conditional Use” and “Prohibited” in the following table are necessarily broad and general in many cases. The Planning Board will consider specific applications and whether the proposed use(s) meets the general definition or the definition as listed Section 403 into one or more of the uses listed below.

Uses listed in the following table as “Prohibited” are considered inconsistent with the goals for development in one or more districts within Fremont as expressed in the Master Plan, beyond the capacity of the Town’s infrastructure or incompatible with abutting properties and resources. Any use not listed or not found to meet the definition of the “Permitted” and “Conditional Use” uses listed below shall be considered “Prohibited”. “Prohibited” may only be allowed after receiving a variance from the Zoning Board of Adjustment as described in Section 1702.

Districts: SH = Shirkin Road Commercial District. MS = Main Street District. FUR = Flexible Use Residential District. R= Residential District. P= Permitted, CU= Conditional Use Required, X = Prohibited

Use Categories	Zoning Districts			
	SH	MS	FUR	R
Adult Day Care Facilities	CU	CU	CU	X
Agriculture	P	P	P	P
Agritourism	P	P	P	P
Animals Hospitals and Kennels	P	P	CU	X
Assembly/ Function Halls	P	P	CU	X
Assisted Living Facilities	CU	CU	CU	CU
Bed & Breakfasts	P	P	CU	CU
Campground	X	X	CU	X
Child Day Care Facilities (6 or more children)	CU	CU	CU	X
Duplex	X	P	P	P
Government Buildings	P	P	P	P
Hospitals and Medical Facilities	CU	CU	CU	X
Hotels, and Motels	P	P	CU	X
Indoor Recreational Facilities	P	P	CU	X
Industrial Uses	P	X	X	X
Light Manufacturing	P	P	CU	X
Motor Fuel-dispensing Facilities	X	X	X	X
Motor Vehicle Repair Shop	P	P	X	X
Motor Vehicle Sales	P	P	X	X
Multi-family Dwellings	X	CU	P	CU
Nursing Homes	CU	CU	CU	CU
Outdoor Recreational Facilities	P	P	CU	CU

Use Categories	Zoning Districts			
	SH	MS	FUR	R
Outdoor Shooting Range	X	X	X	X
Professional Services	P	P	CU	X
Residential Board and Care Facilities	CU	CU	CU	CU
Residential/Assisted Living (more than 5 but not more than 16)	X	CU	CU	CU
Restaurants and Bars	P	P	CU	X
Retail, Service and Office Uses	P	P	CU	X
Schools and Educational Institutions	P	P	CU	CU
Single Family Residential	X	P	P	P

ARTICLE 8 - CONDITIONAL USE PERMIT

Pursuant to RSA 674:21, the Planning Board is hereby authorized to grant a Conditional Use Permit to allow for a conditional use in accordance with the restrictions and requirements of Articles 7. A Conditional Use Permit may not establish a use specifically prohibited by this Ordinance.

Section 801 – Purpose

A conditional use permit application shall be administered by the Planning Board to ensure that conditional use opportunities do not adversely impact neighboring properties, and are consistent with the health, safety, and welfare of the public.

Section 802 - Application Procedure

Applications for conditional use permits shall be made in accordance with the procedures set forth in the Site Plan Review Regulations of the Planning Board. Applications shall comply with all requirements of the Site Plan Review Regulations and Subdivision Regulations, as applicable.

Section 803 - Approval of Applications

A conditional use permit shall be issued only if an applicant complies with all of the requirements of this ordinance. The Planning Board may condition its approval of the developments on reasonable conditions necessary to accomplish the objectives of this section or of the Fremont Master Plan, Zoning Ordinance, or any other federal, state, town resolution, regulation, or law, including a reduction in allowed density, or reasonable increase in required frontage, setbacks, or any other requirement if necessary to accomplish said objectives.

Section 804 – General

The conditional use development provisions of this ordinance provide applicants with an alternative development approach intended to promote flexibility and innovation in land

planning. These regulations that have been established are intended to be a minimum consideration of allowable impacts. Each tract of land possesses different, unique development characteristics and limitations, and the use allowed on any particular tract will be a function of innovative land planning and building design interacting with the special characteristics and limitations of the site.

Section 805 – Standards for Approval

All conditions as listed in Article 7 must be met for the granting of a Conditional Use Permit.

Section 806 – Permit Expiration

Any Conditional Use Permit shall expire if: (1) substantial construction shall not have begun within one (1) year of the date of issuance of such permit; or, (2) if the use is discontinued for any reason for more than two (2) years. In such cases, a new application for a Conditional Use Permit must be completed and approved

Section 807 – Existing Uses

The provisions of Article 7 and Article 8 shall not apply to any lawfully existing use. The term “lawfully existing” shall mean any lawful pre-existing non-conforming use which predated the adoption of the Site Plan regulations or which has received Town of Fremont Planning Board Site Plan Review approval under the Site Plan Regulations.

All other existing non-conforming uses not lawfully existing as defined above, shall be required to make application for relief, permit or approval as shall be required, within one (1) year from the date of the adoption of this Ordinance.

ARTICLE 9 – LOT REQUIREMENTS

Section 901 – New and Expansion of Existing Structures

Any new structure or expansion of existing structure intended for any use shall be set back from the street property line at least fifty (50) feet. In the case of multiple family dwelling structures, the setback shall be increased by an additional five (5) feet per family dwelling unit (Example: 50 feet + ({# of dwelling units} X 5 feet) = front lot line setback). And that any such structure shall be set back from the side and rear lot lines by at least thirty (30) feet except in the case of multiple family dwelling structures, this set back shall be increased by an additional ten (10) feet per family dwelling unit. (Example: 30 feet + ({# of dwelling units} X 10 feet) = side and rear lot line setback). (See also Article 12, Section 1201.6.D)

Section 902 – Frontage

Every building lot shall have a minimum contiguous lot frontage on Federal, State and Town highways of two hundred (200) feet provided that where lots are located on exterior side of a curving street the minimum road frontage shall be no less than one hundred (100) contiguous feet, provided that the average width of the lot measured across its center shall

be two hundred (200) feet. Building lots on which multiple family dwellings are located shall have an additional frontage of twenty (20) feet per family unit when less than five (5) family units and forty (40) feet per family unit when five (5) or more family units are considered. No lot line shall be less than one hundred (100) feet and each lot shall have no less than four (4) lot lines.

Section 903 – Lot Size

- A. All lots created after 1986 shall be a minimum of two (2) acres (87,120 square feet) in area, except for lots serving two (2) or more dwelling as outlined in Section 903.B below.
- B. Any new or legally existing lot serving two (2) or more dwellings shall be a minimum of two (2) acres (87,120 square feet) in area and shall be increased by twelve thousand (12,000) square feet per dwelling unit when less than five (5) units and by twenty thousand (20,000) square feet per dwelling when five (5) or more dwelling units.

Number of Dwelling Units	Minimum Lot Size (square feet)	Acres
1	87,120	2.00
2	87,120	2.00
3	111,120	2.55
4	123,120	2.83
5	167,120	3.84
6	187,120	4.30
7	207,120	4.75
8 or more	227,120 sq. feet, plus 20,000 sq. feet for each additional dwelling unit.	5.21 plus 20,000 sq. feet for each additional dwelling unit.
See also Article 12, Section 1201.6.C. for additional lot sizing requirements.		

- C. Lots with two (2) or more legal dwellings units that do not meet the lot requirements under Section 903.B may continue in their present use. Any new uses, changes in use, expansion, or resumption of the use are subject to the requirements of Article 5.
- D. No lot shall have more than one (1) occupied structure thereon regardless of the number of dwelling units. (See also Article 12, Sections 1203.6 A and H.)

Section 904 - Impervious Surface Coverage Limitation

The maximum percentage of each building lot which may be occupied by buildings, off street parking areas, driveways, septic systems and associated leaching fields shall be thirty (30%) percent.

Section 905 – Buildable Area Requirement

At least one (1) acre of contiguous land of every lot, laid out for residential use (after the adoption of this amendment) shall be buildable land with soils dry enough to permit for installation (and use of facilities for disposal) of sanitary waste(s) disposal facilities and shall not have slopes exceeding twenty percent (20%). Wetlands as described in this zoning ordinance are excluded as buildable land. To facilitate determination of the existence of sufficient buildable land, reference should be made to USDA soils maps where indications are given of soil types, ledge conditions, slopes, (Height of) water table, and permeability of soils or by individual lot testing (of area in question). (See *also Article 12, Section 1201.6*)

Section 906 – Test Pits

During excavation of test pits and/or percolation tests there will be a certified soil scientist or other approved official present that will certify all results with his seal and/or signature.

Section 907 - Sanitary Disposal Systems

All sanitary disposal systems (septic tanks, Leach fields, etc.) shall have no portion within thirty (30) feet of any lot line, or within one hundred (100) feet of any wetland or water supply. (See *also Article 12, Sections 1201.6.A, D and F.*)

Section 908 – Existing Lots

A lot is subject to lot size and frontage requirements at the time the lot was lawfully created by deed or recorded plan at the Rockingham County Registry of Deeds.

The lot size requirement by date lot was created:

1971-1986 - 1 Acre

1987-Present - 2 Acres

The road frontage requirement by date lot was created:

1947-1970 - 100'

1971-1986 - 150'

1987-Present - 200'

The structure setback requirement by date lot was created:

1971-1986 - 30' front and 20' sides

1987-Present - 50' front and 30' sides

For installation of water supply and septic systems, lots existing prior to March 5, 1974 shall be exempt from this Article provided that they meet the specifications of the New Hampshire Department of Environmental Services, Water Division, Subsurface Bureau and/or its successor.

Section 909 – Multi-Family Dwellings

All multi-family dwelling units, which are defined as any structures containing more than two (2) dwelling units, whether or not such development includes a subdivision or re-subdivision of the site shall require review and approval for site plans for the development or change or expansion of use of tracts by the Planning Board. The Town Clerk or other appropriate recording official shall file with the register of deeds, a certificate of notice

showing that the Planning Board has been so authorized, giving the date of such authorization. (See also Article 11, Section 1109.)

ARTICLE 10 – FREMONT VILLAGE DISTRICT ORDINANCE

Section 1001 – Purpose

To preserve the area around Route 107 between Black Rocks Village and the Fremont Library as the traditional and actual Town Center. This area is bordered by Map 3 Lot 22, Map 3 Lot 149, Map 2 Lot 163, and Map 2 Lot 35. The purpose of this ordinance is to establish special conditions which when satisfied would allow, through design guidelines, mixed uses of retail, professional offices, and residential in the Town Center. The Planning Board is hereby empowered and authorized to administer this ordinance in conjunction with the Board of Selectmen and Building Official(s) of the Town of Fremont.

Section 1002 - Permitted Uses

Subject to Site Plan approval as provided in the Fremont Site Plan Regulations: Small retail shops, with a footprint not larger than ten thousand (10,000) square feet for a single structure, eating and drinking establishments where consumption is primarily intended to be on the premises, light manufacturing with no outside material storage, professional offices, schools, banks, bakeries, civic, public, institutional facilities, medical offices, clinics, single and townhouse residential uses and personal services, such as, hairdressers. Nearly all of the Village District is within the Aquifer Protection District; therefore, uses that are prohibited within the Aquifer Protection District are also prohibited within the Village District, where these two areas overlap.

Section 1003 – Village District Requirements

1003.1 There shall be a minimum seventy-five (75') feet natural buffer, of vegetation supplemented by evergreen trees and landscaped berms, where the non-residential uses within the Village District abuts residential uses outside the District.

1003.2 Existing buildings, with historical significance, as recommended within the Fremont Master Plan in conjunction with recommendations from the Fremont Historical Society, shall be preserved and reused for permitted uses.

1003.3 Buildings shall be designed and sited to maintain views and vistas.

1003.4 Non-conforming lots within the Village District cannot be made smaller.

1003.5 Development standards shall be prescribed in the Planning Board Site Plan Review Regulations.

ARTICLE 11 – DWELLING UNITS, ACCESSORY DWELLING UNITS AND HOME OCCUPATION

Section 1101 – Dwelling Unit Requirements

1101.1 All dwellings and structures shall meet the requirements in the New Hampshire State Building Code.

1101.2 Each dwelling or mobile home shall have a minimum ground floor area of at least six hundred (600) square feet inside measurement for each family unit, provided further that minimum floor area shall be one hundred fifty (150) square feet per occupant.

1101.3 Occupied buildings and structures shall not exceed two and one-half (2 1/2) stories or thirty-five (35) feet in height.

1101.4 Sewage: All building lots with occupied dwellings and buildings in private and public use shall be equipped with a state approved septic disposal system.
(See also Article XI Section E-6)

1101.5 The roof of every building hereafter erected or recovered in part or in whole shall be covered with fire-resisting materials, except that this section shall not be construed to prohibit the use of wood shingles in repairing any roof now covered with wood shingles.

1101.6 All multiple unit dwellings shall conform to and shall not exceed the following limitations:

Number of Family Units	Number of Bedrooms/Family Unit
5 or more	Two
3 - 4	Three
2	Four

1101.7 The construction of a small detached accessory building (one hundred (100) SQUARE FEET OR LESS) together with minor alterations and repairs and general upkeep of existing buildings shall not require a building permit.

1101.8 All existing structures if converted into multiple family dwelling units shall meet all requirements specified in the current zoning ordinances.

1101.9 All driveway construction, reconstruction, resurfacing, or paving where it accesses a Town right of way must have an issued permit prior to work beginning. Work completed without permit may be required to be altered or reconstructed so as to meet town Driveway Specifications.

Section 1102 –Accessory Dwelling Units

1102.1 One (1) accessory dwelling unit is allowed within, or as an addition to, single family dwellings. An accessory dwelling unit is defined per RSA 674:71 as a residential living unit that is within or attached to a single-family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies.

1102.2 Requirements

- A. The owner of the single-family dwelling to which the accessory dwelling unit is being created must occupy one of the dwelling units as the owner's principal place of residence.
- B. The living area of the accessory dwelling unit shall be a maximum of one half the living unit or eight hundred (800) square feet, whichever is greater. The accessory dwelling unit must have less bedrooms than the principal unit.
- C. The owner shall provide evidence to the Building Official that septic facilities are adequate to service the accessory dwelling unit. Such evidence shall be in the form of certification by State of N.H. licensed septic system designer.
- D. The accessory dwelling unit shall be designed such that the appearance of the building remains that of the single-family dwelling. Any new entrances shall be located on the side or rear of the building. There shall be at least one independent means of egress to the outside or to a common space.
- E. The principal dwelling unit and accessory dwelling unit must share common water, septic, electric facilities, and an interior door be provided between the principal dwelling unit and accessory dwelling unit.
- F. Detached accessory dwelling units are prohibited.
- G. Off-street parking must be available for a minimum of four automobiles. In no case shall an accessory dwelling unit be permitted to have a separate driveway or separate garage to accommodate its occupant(s).
- H. All Fremont Zoning Ordinances shall be applicable.
- I. Occupancy Permits shall be required.

Section 1103 – Home Occupation

1103.1 The standards of this Section dealing with home occupations are designed to protect and maintain the residential character of Fremont while permitting certain limited commercial activities which are traditionally carried out in a home. Home occupations that meet all the requirements of this ordinance are exempt from site plan review.

1103.2 Definition: Home occupation is defined as any business, occupation or activity conducted for gain within a residential building, or an accessory building thereto, which is incidental or secondary to the use of such building for dwelling purposes and which does not change the essential residential character of the building. This regulation applies to all zoning districts.

1103.3 Standards:

- A. The home occupation shall be conducted solely by the member(s) of the immediate family that reside(s) in the dwelling unit except that two (2) additional non-residents may also be employed.
- B. Signs - See Article 16.
- C. No equipment or process shall be used in a home occupation which creates noise, vibration, glare, fumes, odors or electrical interference detectible to normal senses off the lot if the occupation is conducted in a single family or accessory building; or outside the dwelling unit or accessory building if the occupation is conducted on a lot containing a duplex or multi family unit.
- D. All home occupations shall be conducted entirely within an enclosed building.
- E. No materials or equipment associated with the home occupation shall be stored outside the building.
- F. The following businesses, occupations or activities are specifically prohibited:
 - 1. Motor vehicle and accessory sales or rental, repair and/or painting, including trailer rental or sales.
 - 2. Medical or dental clinic.
 - 3. Restaurant.
 - 4. Commercial kennel as defined under RSA 466:4, III and veterinary clinic.
 - 5. Funeral home as defined in RSA 325:1, IX.
 - 6. Day care nursery as defined in RSA 170-E:2, IV(d).
 - 7. Repair shops or service establishments, except the repairs of electrical appliances, typewriters, cameras, or other similar small items.
- G. The home occupation shall not require the delivery of materials to and from the premises by commercial vehicles over twenty-six thousand (26,000) lbs. GVWR more than one time per week. The intent is to permit delivery vehicles such as United Parcel Service vehicles but to exclude tractor-trailers and other large, heavy commercial vehicles.
- H. The home occupation should not require the need for the on-site, overnight parking of commercial vehicles over twenty-six thousand (26,000) lbs. GVWR. If on-site parking of one (1) commercial vehicle with three (3) axles or more, is necessary, it shall be garaged or screened.

ARTICLE 12 – WATER RESOURCE PROTECTION

Section 1201 – Wetlands and Watershed Protection District

1201.1 Authorities and Purpose

- A. Establishment of this ordinance with the authority vested in the Fremont Planning Board by the voters of the Town of Fremont, N.H. on March 11, 1947 and the authority

vested in the Conservation Commission by the voters of the Town of Fremont, N.H. on RSA 36-A:1-6.

- B. Purpose: In the interest of public health, convenience, safety, and welfare, the regulation of the District are intended to guide the use of areas of lands draining into wetlands, rivers, brooks, ponds or water supply areas; to control building and land uses which would contribute to pollution of surface and ground water by sewage; to prevent the destruction of watershed areas and wetlands which provide flood protection, recharge of ground water supply, and augmentation of stream flow during dry periods; to prevent unnecessary or excessive expenses to the Town to provide and maintain essential services and utilities which arise because of inharmonious use of watershed areas and wetlands; to encourage those uses that can be appropriately and safely located in this district.

1201.2 Administration

- A. Administration of the provisions of this ordinance shall be coordinated with the Fremont Conservation Commission through the designated commission member represented on the Fremont Planning Board. Responsibilities of said member shall be consistent with RSA 36:0 and RSA 36-A: 2-3.
- B. To the extent possible the Watershed Protection District shall, through the Planning Board, maintain close coordination with surrounding watershed districts and regional watershed authorities.

1201.3 Definitions

- A. Wetlands: Wetlands means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adopted for life in saturated soil conditions.
- B. Watershed Protection Area: Watershed Protection Area shall mean an area of land surrounding designated wetlands for the purpose of controlling building and land uses which would contribute to the pollution of surface and ground water, and preventing the destruction of watershed areas and wetlands which would provide flood protection. Land areas designated as Watershed Protection Areas shall comply with the provisions of Section 1201.5.
 - 1. Watershed Protection Area: - Permanent flowage; (rivers, brooks, streams and ponds) shall include all lands within one hundred fifty (150) feet of the mean annual high of the Exeter River, Piscassic River, Loon Pond, Red Brook, and Brown Brook and other streams to be named.
 - 2. Watershed Protection Area: - intermittent flowage; Any brook, stream, or pond having flowing or standing water for six (6) months of the year shall include all lands within one hundred (100) feet of the center line of said brook or stream and one hundred (100) feet from the mean annual high of said pond.

3. Watershed Protection Area: Wetlands: shall include that land area within one hundred (100) feet of any designated wetland. In addition, the protection area shall include "poorly drained" and "very poorly drained" soils and a one hundred (100) foot buffer around these soils.
4. Sections 1 – 3 above shall be considered minimum buffer areas for watershed protection. In certain cases the Board may require increased watershed boundaries when considering, but not limited to, the following: when areas abutting watershed protection areas have excessive inclines of twelve (12) percent or greater, importance of watershed to water supply, importance of watershed to wildlife habitat. If the Board makes a determination that increased watershed protection is necessary, the Board may require the watershed protection area to be increased by up to and not to exceed one hundred (100) feet.

C. Prime Wetlands: Shall mean any areas falling within the jurisdictional definitions of RSA 482-A:3 and RSA 482-A:4 that possess one or more of the values set forth in RSA 482-A:1 and that, because of their size, unspoiled character, fragile condition or other relevant factors, make them of substantial significance. Such maps or designations, or both, shall be in such form and to such scale, and shall be based upon such criteria, as are established by the commissioner through rules adopted pursuant to RSA 541-A.

1201.4 Test Procedures (Subdivisions Regulation): Soil testing procedures shall be subject to the prior review, approval, and onsite inspection by the Planning Board or its designate. Such procedures shall be conducted by, and at the expense of, the landowner/subdivider. A complete record of the tests shall be submitted to the Selectmen and placed on file with the Planning Board.

1201.5 Uses Permitted: Any of the following uses that do not result in the erection of any dwelling or building in public or private use or alter the surface configuration of the land may be permitted in this district consistent with State and Federal wetland regulations:

- A. Forestry, tree farming, within the limits of RSA 224:44a.
- B. Agriculture, including grazing, farming, truck gardening, and harvesting of crops, except that mink farms and piggeries shall not be included in this district.
- C. Drainage ways, streams, creeks, or other paths of normal run-off water.
- D. Water impoundments and well supplies.
- E. Wildlife refuge.
- F. Open space as may be permitted by subdivision regulations and other sections of this ordinance.

1201.6 Special Provisions

- A. No waste disposal system may be located closer than one hundred (100) feet to any wetland.

- B. No waste disposal system may be located within a watershed protection area.
- C. Wetlands shall not be used to satisfy the minimum lot area and setback requirements but may be included in the total lot area.
- D. Watershed protection areas may be included in the minimum lot size requirements. All dwellings, structures, or parking areas shall have no portion within the Watershed Protection Area and/or no portion closer to Wetlands than those limits defined under Article IV as setback requirements.

1201.7 Prime Wetlands: In accordance with RSA 482-A: 15 the wetland system commonly known as “Spruce Swamp” and other designated wetland systems described in documents and maps filed by the Planning Board and Conservation Commission with the Town Clerk and the State of New Hampshire Department of Environmental Services, are hereby designated as a prime wetlands.

1201.8 Special Exceptions: The Board of Adjustment, after proper public notice and public hearing, may grant special exceptions for the following uses within the district, the application for such uses having been referred by the Planning Board for site plan review, the Conservation Commission, the Health Officer and Building Inspector and reported upon by all four (4) prior to the public hearing or thirty (30) days have elapsed following such referral without receipt of such reports.

Recreation, including golf courses, parks (but not an amusement park) boating, fishing, landings, picnic areas and any non-commercial open-air recreation use, provided there are adequate provision for disposal of waste products and for parking.

Dredging, filling, drainage (in compliance with the RSA 485-A:17) or otherwise altering the surface configuration of the land; streets, roads and other access ways and utility rights if essential to the productive use of land if so located and constructed as to minimize any detrimental impact of such uses upon the wetland and watershed protection areas.
Exception: No Special Exception is required for temporary disturbance such as installation of a well with associated water lines.

Proper evidence to this effect shall be submitted in writing to the Board of Adjustment and shall be accompanied by the findings of a review by the Rockingham County Soil Conservation Service District of the environment effects of such proposed use upon the wetland and watershed protection area in question.

Section 1202 – Floodplain Development Ordinance

Purpose - Certain areas of the Town of Fremont, New Hampshire are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968. Therefore, the Town of Fremont, New Hampshire has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as detailed in this Floodplain Management Ordinance.

This Ordinance, adopted pursuant to the authority of RSA 674:16, shall be known as the Town of Fremont Floodplain Development Ordinance. The regulations in this ordinance shall overlay and supplement the regulations in the Town of Fremont Zoning Ordinance and shall be considered part of the Zoning Ordinance for purposes of administration and appeals under state law. If any provision of this ordinance differs or appears to conflict with any provision of the Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

The following regulations in this ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for Rockingham County" together with the associated Flood Insurance Rate map of the town dated May 17, 2005 which are declared to be a part of this ordinance and are hereby incorporated by reference.

1202.1 Definition of Terms

The following definitions shall apply only to this Floodplain Development Ordinance, and shall not be affected by, the provisions of any other ordinance of the Town of Fremont.

"Base Flood" means the flood having a one percent (1%) possibility of being equaled or exceeded in any given year.

"Base Flood Elevation" means the water surface elevation having a one-percent chance of being equaled or exceeded in any given year.

"Basement" means any area of a building having its floor subgrade on all sides.

"Building" - see "structure".

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operation or storage of equipment or materials.

"FEMA" means the Federal Emergency Management Agency.

"Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.
2. The unusual and rapid accumulation or runoff of surface waters from any source.

"Flood Insurance Rate Map" (FIRM) means an official map incorporated with this ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Fremont.

"Flood Insurance Study" means an examination, evaluation, and determination of flood hazards and if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood-related erosion hazards.

"Floodplain" or "Flood-prone area" means any land area susceptible to being inundated by water from any source (see definition of "Flooding").

"Flood proofing" means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

"Floodway" - see "Regulatory Floodway".

"Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading/ unloading of cargo or passengers, and ship building/repair facilities but does not include long-term storage or related manufacturing facilities.

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic Structure" means any structure that is:

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

"Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). 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 an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

"Manufactured Home" means a structure, transportable in one (1) 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" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than one hundred and eighty (180) consecutive days. This includes manufactured homes located in a manufactured home park or subdivision.

"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.

"Mean sea level" means the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on a communities Flood Insurance Rate Map are referenced.

"New construction" means, for the purposes of determining insurance rates, 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, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

"Recreational Vehicle" means a vehicle which is (i) built on a single chassis, (ii) four hundred (400) square feet or less when measured at the largest horizontal projection, (iii) designed to be self-propelled or permanently towable by a light duty truck, and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel or seasonal use.

"Regulatory 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 more than a designated height.

"Special flood hazard area" means the land in the floodplain within the Town of Fremont subject to a one percent (1%) or greater possibility of flooding in any given year. The area is designated on the FIRM as Zones A and AE.

"Start of Construction" includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within one hundred and eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

"Structure" means for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

"Substantial Improvement" means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent (50%) of the market value of the structure. The market value of the structure should equal:

- A. The appraised value prior to the start of the initial repair or improvement, or
- B. In the case of damage, the value of the structure prior to the damage occurring.

For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

“Violation” means the failure of a structure or other development to be fully compliant with the community’s flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

1202.2 General Requirements

- A. All proposed development in any special flood hazard area shall require a permit. The Building Inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in a special flood hazard area, all new construction or substantial improvements shall:
 - 1. Be designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,
 - 2. Be constructed with materials resistant to flood damage,
 - 3. Be constructed by methods and practices that minimize flood damages,
 - 4. Be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- B. Where new or replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area the applicant shall provide the Building Inspector with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.
- C. For all new or substantially improved structures located in special flood hazard areas, the applicant shall furnish the following information to the Building Inspector:
 - 1. The as-built elevation (in relation to mean sea level) of the lowest floor (including basement) and include whether or not such structures contain a basement.

2. If the structure has been floodproofed, the as-built elevation (in relation to mean sea level) to which the structure was floodproofed.
3. Any certification of floodproofing.

The Building Inspector shall maintain for public inspection, and shall furnish such information upon request.

- D. The Building Inspector shall not grant a building permit until the applicant certifies 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 Control Act Amendments of 1972, 33 U. S. C. 1334.
- E. In riverine situations, prior to the alteration or relocation of a watercourse the applicant for such authorization shall:
 1. Notify the Wetlands Bureau of the New Hampshire Department of Environmental Services and submit copies of such notification to the Conservation Commission, in addition to the copies required by the RSA 482-A:3.
 2. The applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Conservation Commission, including notice of all scheduled hearings before the Wetlands Bureau (and notice of local wetlands hearings)
 3. The applicant shall submit to the Building Inspector, certification provided by a registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.
- F. Along watercourses with a designated Regulatory Floodway no encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the community during the base flood discharge.
- G. The Building Inspector shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development located in Zone A meet the following floodway requirement:

“No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge.”
- H. In special flood hazard areas the Building Inspector shall determine the 100-year base flood elevation in the following order of precedence according to the data available:
 1. In Zone AE, refer to the elevation data provided in the community’s Flood Insurance Study and accompanying FIRM.
 2. In Zone A, the Building Inspector shall obtain, review, and reasonably utilize any base flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site approvals). In Zone A where a base flood elevation is not

available or not known, the base flood elevation shall be at least 2 feet above the highest adjacent grade.

- I. The Building Inspector's base flood elevation determination will be used as criteria for requiring in special flood hazard areas that:
 1. All new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the base flood elevation.
 2. That all new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the base flood elevation; or together with attendant utility and sanitary facilities, shall:
 - a. Be floodproofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water,
 - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy, and
 - c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of construction are in accordance with accepted standards of practice for meeting the provisions of this section.
 3. All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation; and be securely anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
 4. All recreational vehicles placed on sites within Zones A and AE shall either:
 - a. Be on the site for fewer than one hundred and eighty (180) consecutive days
 - b. Be fully licensed and ready for highway use (on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or
 - c. Meet all standards of Section 1202.2 (l)(c) for manufactured homes.
 5. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:
 - a. The enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage,
 - b. The area is not a basement, and
 - c. Shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one (1) foot above grade.

Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

1202.3 Variances and Appeals

- A. Any order, requirement, decision, or determination of the Building Inspector made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
- B. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I (b), the applicant shall have the burden of showing in addition to the usual variance standards under state law:
 - 1. That the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.
 - 2. That if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.
 - 3. That the variance is the minimum necessary, considering the flood hazard, to afford relief.
- C. The Zoning Board of Adjustment shall notify the applicant in writing that: (i) the issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty-five (25) dollars for one hundred (100) dollars of insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.
- D. The community shall (i) maintain a record of all variance actions, including their justification for their issuance, and (ii) report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

Section 1203 – Aquifer Protection District

1203.1 Pursuant to RSA 674:16-21, the Town of Fremont adopts an Aquifer Protection District and accompanying regulations in order to protect, preserve and maintain potential groundwater supplies and related groundwater recharge areas within a known aquifer identified by the Town. The objectives of the aquifer protection district are:

- A. To protect the public health and general welfare of the citizens of the Town of Fremont.
- B. To prevent development and land use practices that would contaminate or reduce the recharge of the identified aquifer.
- C. To promote future growth and development of the Town, in accordance with the Master Plan, by insuring the future availability of public and private water supplies.
- D. To encourage uses that can appropriately and safely be located in the aquifer recharge areas.

1203.2 General: The provision of the Aquifer Protection District shall be administered by the Planning Board. All development proposals, other than single or two-family residential construction not involving the subdivision of land, shall be subject to subdivision and/or site plan review and approval in accordance with Planning Board rules and regulations. Such review and approval shall precede the issuance of any building permit by the Town.

1203.3 Enforcement: The Board of Selectmen shall be responsible for the enforcement of the provisions and conditions of the Aquifer Protection District.

1203.4 Definitions: The following definitions shall apply only to this Aquifer Protection District and shall not be affected by, the provisions of any other ordinance of the Town of Fremont.

Aquifer: For the purpose of this Ordinance, aquifer means a geologic formation, group of formations, or part of a formation of rock, sand, or gravel that is capable of yielding quantities of groundwater usable for municipal or private water supplies.

Dwelling Unit: A building or that portion of a building consisting of one (1) or more rooms designed for living and sleeping purposes, including kitchen and sanitary facilities, and intended for occupancy by not more than one family or household.

Gasoline station: means that portion of a property where petroleum products are received by tank vessel, pipeline, tank car, or tank vehicle and distributed for the purposes of retail sale of gasoline.

Groundwater: All the water below the land surface in the zone of saturation or in rock fractures capable of yielding water to a well.

Groundwater Recharge: The infiltration of precipitation through surface soil materials into groundwater. Recharge may also occur from surface waters, including lakes, streams, and wetlands.

Impervious: not readily permitting the infiltration of water.

Impervious surface: a surface through which regulated substances cannot pass when spilled. Impervious surfaces include concrete unless unsealed cracks or holes are present. Earthen; wooden, or gravel surfaces; or other surfaces which could react with or dissolve when in contact with the substances stored on them are not considered impervious surfaces.

Junkyard: an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automotive recycling yard. The word does not include any motor vehicle dealers registered with the director of motor vehicles under RSA 261:104 and controlled under RSA 236:126.

Leachable Wastes: Waste materials, including solid wastes, sludge and agricultural wastes that are capable of releasing contaminants to the surrounding environment.

Mining of Land: The removal of geologic materials such as topsoil, sand and gravel, metallic ores, or bedrock to be crushed or used as building stone.

Non-Conforming Use: Any lawful use of buildings, structures, premises, land or parts thereof existing as of the effective date of this Ordinance, or amendment thereto, and not in conformance with the provisions of this Ordinance, shall be considered to be a non-conforming use.

Non-Municipal Well: Any well not owned and operated by the Town of Fremont or its agent.

Outdoor storage: storage of materials where they are not protected from the elements by a roof, walls, and a floor with an impervious surface.

Public water system: a system for the provision to the public of piped water for human consumption as defined by RSA 485:1-a.

Recharge Area: The land surface area from which groundwater recharge occurs.

Regulated substance: petroleum, petroleum products, regulated contaminants for which an ambient groundwater quality standard has been established under RSA 485-C:6, and substances listed under 40 CFR 302, excluding substances used in the treatment of drinking water or waste water at department approved facilities.

Sanitary protective radius: The area around a public water supply well which must be maintained in its natural state as required by Env-Dw 301 or 302 (for community water systems); Env-Dw 405.14 and 406.12 (for other public water systems).

Seasonal high water table: The depth from the mineral soil surface to the upper most soil horizon that contains 2 percent or more distinct or prominent redoximorphic features that increase in percentage with increasing depth (as determined by a licensed Hydrogeologist, Soils Scientist, Wetlands Scientist, Civil or Environmental Engineer or other qualified professional approved by the Planning Board). Alternately, the shallowest depth measured from ground surface to free water that stands in an unlined or screened borehole for at least a period of seven consecutive days.

Secondary containment: a structure such as a berm or dike with an impervious surface which is adequate to hold at least 110 percent of the volume of the largest regulated-substances container that will be stored there.

Septage: Liquid or solid waste generated by septic disposal systems. Septic waste containing wash water, gray waters, human feces, excrement, dregs, sediment, grease, oils, and any other waste generated in a domestic septic disposal system.

Sludge: Residual materials produced by the sewage treatment process.

Solid Waste: Any discarded or abandoned material including refuse, putrescible material, septage, or sludge, as defined by New Hampshire Solid Waste Rules He-P 1901.03. Solid waste includes solid, liquid, semi-solid, or contained gaseous waste material resulting from

residential, industrial, commercial, mining, and agricultural operations and from community activities.

Stratified-drift aquifer: A geologic formation of predominantly well-sorted sediment deposited by or in bodies of glacial meltwater, including gravel, sand, silt, or clay, which contains sufficient saturated permeable material to yield significant quantities of water to wells.

Structure: Anything constructed or erected, except a boundary wall or fence, the use of which requires location on the ground or attachment to something on the ground. For the purposes of this Ordinance, buildings are structures.

Toxic or Hazardous Materials: Any substance or mixture of such physical, chemical, or infectious characteristics as to pose a significant, actual or potential hazard to water supplies, or other hazard to human health, if such substance or mixture were discharged to land or waters of this Town. Toxic or hazardous materials include, without limitation, volatile organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and include products such as pesticides, herbicides, solvents and thinners, and such other substances as defined in New Hampshire Water Supply and Pollution Control Rules, Section Env-Dw 902 in New Hampshire Solid Waste Rules Env-Sw 103.12), and in the Code of Federal Regulations 40 CFR 261.

Wellhead protection area: The surface and subsurface area surrounding a water well or wellfield supplying a community public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield.

1203.5 District Boundaries

- A. **Location:** The Aquifer Protection District is defined as the area shown on the map entitled Fremont New Hampshire – Surface Water Resources, Aquifer Protection, Flood Zone and Zoning District Map: March 2013 and any updates located in the Planning Office. The Aquifer Protection District is a zoning overlay district which imposes additional requirements and restrictions to those of the current ordinances. In all cases, the more restrictive requirement(s) shall apply.
- B. **Recharge Areas:** For the purpose of this Ordinance, the primary recharge area for the identified aquifer is considered to be co-terminus with the Aquifer and the High Potential to Yield Groundwater areas. No secondary recharge area has been identified at the time of enactment.
- C. **Appeals:** Where the bounds of the identified aquifer or recharge area, as delineated, are in doubt or in dispute, any landowner aggrieved by such delineation may appeal the boundary location to the Planning Board. Upon receipt of such appeal, the Planning Board shall suspend further action on development plans related to the area under appeal and shall engage, at the landowner's expense, a qualified hydrogeologist to prepare a report determining the proper location and extent of the aquifer and recharge area relative to the property in question. The aquifer delineation shall be modified by such determination subject to review and approval by the Planning Board.

1203.6 Performance Standards

The following Performance Standards apply to all uses in the Aquifer Protection District unless exempt under Section 1203.8.I:

- A. For any new or expanded uses that will render impervious more than 15 percent or more than 2,500 square feet of any lot, whichever is greater, a stormwater management plan shall be prepared which the Planning Board determines is consistent with New Hampshire Stormwater Manual Volumes 1-3, December 2008, NH Department of Environmental Services.
- B. Conditional uses as defined under Section 1203.8.F shall develop stormwater management and pollution prevention plans and include information consistent with Developing Your Stormwater Pollution Prevention Plan: A Guide for Industrial Operators (US EPA, Feb 2009) The plan shall demonstrate that the use will:
 - 1. Meet minimum stormwater discharge setbacks between water supply wells and constructed stormwater practices as found within the Innovative Land Use Planning Techniques: A Handbook for Sustainable Development, Section 2.1 Permanent (Post Construction) Stormwater Management,(NHDES, 2008 or later edition)
 - 2. Minimize, through a source control plan that identifies pollution prevention measures, the release of regulated substances into stormwater;
 - 3. Stipulate that expansion or redevelopment activities shall require an amended stormwater plan and may not infiltrate stormwater through areas containing contaminated soils without completing a Phase I Assessment in conformance with ASTM E 1527-05, also referred to as All Appropriate Inquiry (AAI);
 - 4. Maintain a minimum of four feet vertical separation between the bottom of a stormwater practice that infiltrates or filters stormwater and the average seasonal high-water table as determined by a licensed hydrogeologist, soil scientist, engineer or other qualified professional as determined by the Planning Board.
- C. Animal manures, fertilizers, and compost must be stored in accordance with Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets, and Food, (June 2011) and any subsequent revisions; NH Department of Agriculture, Markets and Food (DAMF) may be consulted to help determine whether a particular facility is in compliance with the agriculture BMPs. NH DAMF may order property owners to develop a nutrient management plan when state BMPs related to manure or fertilizers are not followed and RSA 431:35 authorizes local health authorities and NHDES to enforce the plan.
- D. All regulated substances stored in containers with a capacity of five gallons or more must be stored in product-tight containers on an impervious surface designed and maintained to prevent flow to exposed soils, floor drains, and outside drains;
- E. Facilities where regulated substances are stored must be secured against unauthorized entry by means of a door and/or gate that is locked when authorized personnel are not present and must be inspected weekly by the facility owner;
- F. Outdoor storage areas for regulated substances, associated material or waste must be protected from exposure to precipitation and must be located at least 100 feet from

surface water or storm drains, at least 75 feet from private wells, and outside the sanitary protective radius of wells used by public water systems;

- G. Secondary containment must be provided for outdoor storage of regulated substances in regulated containers and the containment structure must include a cover to minimize accumulation of water in the containment area and contact between precipitation and storage container(s);
- H. Containers in which regulated substances are stored must be clearly and visibly labeled and must be kept closed and sealed when material is not being transferred from one container to another;
- I. Prior to any land disturbing activities, all inactive wells on the property, not in use or properly maintained at the time the plan is submitted, shall be considered abandoned and must be sealed in accordance with We 604 of the New Hampshire Water Well Board Rules.
- J. Blasting activities shall be planned and conducted to minimize groundwater contamination. Excavation activities should be planned and conducted to minimize adverse impacts to hydrology and the dewatering of nearby drinking water supply wells
- K. All transfers of petroleum from delivery trucks and storage containers over five gallons in capacity shall be conducted over an impervious surface having a positive limiting barrier at its perimeter.

1203.7 Spill Prevention, Control and Countermeasure (SPCC) Plan

Conditional uses, as described under Section 1203.8.F, using regulated substances shall submit a spill control and countermeasure (SPCC) plan to the Health Office who shall determine whether the plan will prevent, contain, and minimize releases from ordinary or catastrophic events such as spills, floods or fires that may cause large releases of regulated substances. It shall include:

- A. A description of the physical layout and a facility diagram, including all surrounding surface waters and wellhead protection areas.
- B. Contact list and phone numbers for the current facility response coordinator(s), cleanup contractors, and all appropriate federal, state, and local agencies who must be contacted in case of a release to the environment.
- C. A list of all regulated substances in use and locations of use and storage;
- D. A prediction of the direction, rate of flow, and total quantity of regulated substance that could be released where experience indicates a potential for equipment failure.
- E. A description of containment and/or diversionary structures or equipment to prevent regulated substances from infiltrating into the ground. A list of positions within the facility that require training to respond to spills of regulated substances.

- F. Prevention protocols that are to be followed after an event to limit future large releases of any regulated substance.

1203.8 Use Regulations

A. Minimum Lot Size:

1. Minimum lot size within the Aquifer Protection District shall be three (3) acres **(130,680 square feet)**. Lots containing up to four (4) units shall contain an additional eighteen thousand (18,000) square feet per unit. Lots containing five (5) or more units shall contain an additional thirty thousand (30,000) square feet per unit.

Number of Dwelling Units	Minimum Lot Size (square feet)	Acres
1	130,680	3.00
2	148,680	3.41
3	166,680	3.83
4	184,680	4.24
5	250,680	5.75
6	280,680	6.44
7	310,680	7.13
8 or more	340,680 sq. feet, plus 30,000 sq. feet for each additional dwelling unit.	7.82 plus 30,000 sq. feet for each additional dwelling unit.
See also Article 12, Section 1201.6.C. for additional lot sizing requirements.		

2. No lot shall have more than one (1) occupied structure thereon regardless of the number of dwelling units.
- B. Hydrogeologic Study: For development proposals within the Aquifer Protection District, a hydrogeologic study shall be performed, by an engineer registered in the State of New Hampshire or a registered hydrologist. This study shall evaluate the development's impacts to groundwater within both the parcel to be developed and the surrounding land. The groundwater quality beyond the property lines of said site shall not be degraded by polluting substances such as nitrates, phosphates, bacteria, etc. Larger lots may be required based on the findings of said study.

This information will be required for proposed subdivisions of four (4) lots or greater. For subdivisions of three (3) lots or less the Planning Board will determine, on a case-by-case basis, the need for a hydrogeologic study. Particularly sensitive sites may include areas that have septic systems in close proximity to wells, or may contain excessively drained soils or steep slopes.

- C. Maximum Lot Coverage: Within the Aquifer Protection District, no more than fifteen percent (15%) of a single lot, or more than 2,500 square feet of impervious surface may be rendered impervious to groundwater infiltration.
- D. Prohibited Uses: The following uses are prohibited in the Aquifer Protection District except where permitted to continue as a non-conforming use:

1. Disposal of solid waste including brush or stumps.
2. Storage and disposal of hazardous waste.
3. Disposal of liquid, septage or leachable wastes except that from one or two-family residential subsurface disposal systems, or as otherwise permitted as a conditional use.
4. Subsurface storage of petroleum and other refined petroleum products except for propane and natural gas.
5. The development or operation of gasoline stations.
6. Industrial uses which discharge contact type process waters on-site. Non-contact cooling water is permitted.
7. Outdoor unenclosed storage or use of road salt or other de-icing chemicals.
8. Dumping of snow containing de-icing chemicals brought from outside the district.
9. The development or operation of a junkyard
10. All on site handling, disposal, storage, processing, or recycling of hazardous or toxic materials.

E. Permitted Uses: The following activities may be permitted provided they are conducted in accordance with the purposes and intent of this Ordinance:

1. Land development, per the Fremont Zoning Ordinance, except as prohibited in Article 12, Section 1203.8.D.
2. Activities designed for conservation of soil, water, plants, and wildlife.
3. Outdoor recreation, nature study, boating, fishing, and hunting where otherwise legally permitted.
4. Normal operation and maintenance of existing water bodies and dams, splash boards and other water control, supply, and conservation devices.
5. Foot, bicycle, and/or horse paths and bridges.
6. Maintenance, repair of any existing structure, provided there is no increase in impermeable surface above the limit established in Article 12, Section 1203.6.C.
7. Farming, gardening, nursery, forestry, harvesting and grazing, provided that fertilizers, herbicides, pesticides, manure and other leachables are used in accordance with the NH Department Agriculture, Markets, and Food best management practices and will not cause groundwater contamination and are stored under shelter.

F. Conditional Use Permit

1. The following uses are permitted with a Conditional Use Permit (in compliance with Town Zoning Ordinance):
 - a. Industrial and commercial uses not otherwise prohibited in Article 12, Section 1203.8.D
 - b. Multi-family residential development. (Minimum lot size to be determined by using Article 9 and substituting three (3) acres instead of two (2) acres).
 - c. Sand and gravel excavation and other mining provided that such excavation or mining is not carried out within eight (8) vertical feet of the seasonal high water table and that periodic inspections are made by the Planning Board or its agent to determine compliance.
 - d. Storage, handling, and use of regulated substances in quantities exceeding 55 gallons or 660 pounds dry weight at any one time, provided that an adequate spill prevention, control and countermeasure (SPCC) plan, in accordance with

Section 1203.7, is approved by the Health Officer, Fire Chief, Code Enforcement Officer or other Town designated agent.

- e. Any use that will render impervious more than 15 percent or 2,500 square feet of any lot, whichever is greater.
 2. The Planning Board may grant a Conditional Use Permit for those uses listed above only after written findings of fact are made that all of the following are true:
 - a. The proposed use will not detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants;
 - b. The proposed use will not cause a significant reduction in the long-term volume of water contained in the aquifer or in the storage capacity of the aquifer;
 - c. The proposed use will discharge no waste water on site other than that typically discharged by domestic waste water disposal systems and will not involve on-site storage or disposal of toxic or hazardous wastes as herein defined;
 - d. The proposed use complies with all other applicable sections of this Section 1203.
 3. The Planning Board may require that the applicant provide data or reports prepared by a professional engineer or hydrologist to assess any potential damage to the aquifer that may result from the proposed use. The Planning Board shall engage such professional assistance as it requires to adequately evaluate such reports and to evaluate, in general, the proposed use in light of the above criteria. Costs incurred shall be the responsibility of the applicant.
 4. In granting such approval the Planning Board must first determine that the proposed use is not a prohibited use (as listed in Section 1203.8.D of this Ordinance) and will be in compliance with the Performance Standards in Section 1203.6 as well as all applicable local, state and federal requirements. The Planning Board may, at its discretion, require a performance guarantee or bond, in an amount and with surety conditions satisfactory to the Board, to be posted to ensure completion of construction of any facilities required for compliance with the Performance Standards.
- G. Design and Operations Guidelines. Where applicable the following design and operation guidelines shall be observed within the Aquifer Protection District:
1. Safeguards. Provision shall be made to protect against toxic or hazardous materials discharge or loss resulting from corrosion, accidental damage, spillage, or vandalism through measures such as: spill control provisions in the vicinity of chemical or fuel delivery points; secured storage areas for toxic or hazardous materials; and indoor storage provisions for corrodible or dissolvable materials. For operations which allow the evaporation of toxic or hazardous materials into the interiors of any structures, a closed vapor recovery system shall be provided for each such structure to prevent discharge of contaminated condensate into the groundwater.
 2. Location. Where the premises are partially outside of the Aquifer Protection Overlay Zone, potential pollution sources such as on-site waste disposal systems shall be located outside the Zone to the extent feasible.
 3. Drainage. All runoff from impervious surfaces shall be recharged on the site and diverted toward areas covered with vegetation for surface infiltration to the extent possible. Dry wells shall be used only where other methods are not feasible, and

shall be preceded by oil, grease, and sediment traps to facilitate removal of contaminants.

H. Non-Conforming Uses

1. Existing non-conforming uses may continue without expanding or changing to another non-conforming use, but must be in compliance with all applicable state and federal requirements, including Env-Wq 401, Best Management Practices Rules.

I. Exemptions The following uses are exempt from the specified provisions of this ordinance as long as they are in compliance with all applicable local, state, and federal requirements:

1. Any private residence is exempt from all Performance Standards provided it does not have a home occupation using regulated substance in greater than or equal to five (5) gallon storage containers.
2. Any business or facility where regulated substances are stored in containers with a capacity of less than five gallons is exempt from Section 1203.6, Performance Standards, sections E through H;
3. Storage of heating fuels for on-site use or fuels for emergency electric generation, provided that storage tanks are indoors on a concrete floor or have corrosion control, leak detection, and secondary containment in place, is exempt from Performance Standard E;
4. Storage of motor fuel in tanks attached to vehicles and fitted with permanent fuel lines to enable the fuel to be used by that vehicle is exempt from Performance Standards E through H;
5. Storage and use of office supplies is exempt from Performance Standards E through H;
6. Temporary storage of construction materials on a site where they are to be used is exempt from Performance Standards E through H if incorporated within the site development project within six months of their deposit on the site;
7. The sale, transportation, and use of pesticides as defined in RSA 430:29 XXVI are exempt from all provisions of this ordinance;
8. Household hazardous waste collection projects regulated under NH Code of Administrative Rules Env-Hw 401.03(b)(1) and 501.01(b) are exempt from Performance Standards E through H;
9. Underground storage tank systems and aboveground storage tank systems that are in compliance with applicable state rules are exempt from inspections under Section 1203.8.J of this ordinance.

J. Maintenance and Inspections

1. For uses requiring Planning Board approval for any reason, a narrative description of maintenance requirements for structures required to comply with Performance Standards shall be recorded so as to run with the land on which such structures are located, at the Registry of Deeds for Rockingham County. The description so prepared shall comply with the requirements of RSA 478:4-a.
2. Inspections may be required to verify compliance with Performance Standards. Such inspections shall be performed by the Code Enforcement Officer at reasonable times with prior notice to the landowner.
3. All properties in the Aquifer Protection District known to the Code Enforcement Officer as using or storing regulated substances in containers with a capacity of five

gallons or more, except for facilities where all regulated substances storage is exempt from this Ordinance under Section 1203.8. I, shall be subject to inspections under this Article.

4. The Board of Selectmen may require a fee for compliance inspections. The fee shall be paid by the property owner. A fee schedule shall be established by the Board of Selectmen as provided for in RSA 41-9:a.

Section 1204 - Septic System Design and Installation

In addition to meeting all local and state septic system siting requirements, all new on-lot wastewater disposal systems installed in the District shall be designed by a Sanitary Engineer licensed in New Hampshire. These systems shall be installed under the supervision of said engineer. The Planning Board or its agent shall inspect the installation of each new system prior to covering, and shall certify that the system has been installed as designed.

Septic systems are to be constructed in accordance with the most recent edition of the "The State of New Hampshire Subdivision and Individual Sewage Disposal System Design Rules" as published by the New Hampshire Water Supply and Pollution Control Division.

However, the following more stringent requirements shall apply to all septic system construction:

- A. *There will be no filling of wetlands allowed to provide the minimum distance of septic to wetlands. (Ws 1007.04)*
- B. *The seasonal high water table will be at least two (2) feet below the original ground surface during all seasons of the year (instead of six (6) inches). (Ws 1015.01(a)).*
- C. *There will be at least three (3) feet of natural permeable soil (instead of two (2) feet) above any impermeable subsoil. (Ws 1015.01(b)).*
- D. *There will be at least four (4) feet of natural soil (instead of three (3) feet) above bedrock. (Ws 1015.01(b)).*
- E. *Standards for fill material: Fill material consisting of organic soils or other organic materials such as tree stumps, sawdust, wood chips and bark, even with a soil matrix shall not be used. The in-place fill should have less than fifteen (15%) percent organic soil by volume. The in-place fill should not contain more than twenty-five (25%) percent by volume of cobbles six (6) inch in diameter). The in-place fill should not have more than fifteen percent (15%) by weight of clay size (.002 mm and smaller) particles. The fill should be essentially homogeneous. If bedding planes and other discontinuities are present, detailed analysis is necessary.*

ARTICLE 13 – OPEN SPACE ORDINANCES

Section 1301 – Elderly Open Space

1301.1 Purpose: The standards in this section have been established for the purpose of encouraging the construction of elderly housing developments (or the conversion of existing structures into elderly housing facilities), which are designed and constructed to meet the unique needs of elderly citizens, while ensuring compliance with local planning standards, land use policies, good building design, and the requirements for the health,

safety and general welfare of the inhabitants of Fremont. Such developments shall not include assisted living and/or extended care facilities.

This Ordinance has also been developed to incorporate open space development components for elderly housing projects. The Town of Fremont understands the importance of maintaining open space as a way of preserving rural character, protecting wildlife habitat, and preserving important natural resource areas. In an effort to achieve these goals, this ordinance encourages the placement of elderly housing units in relatively compact areas within the development site in order to leave large undeveloped areas free of negative development impacts.

The Town of Fremont recognizes that one aspect of elderly housing development is that the housing built will continue to be put to this use in perpetuity, consistent with restrictive covenants and consistent with the provisions of state and federal law that permit housing units to be restricted by age.

This Ordinance is also developed to allow mixed-use development to occur within the project. The standards herein allow service and retail facilities to be developed in conjunction with the creation of elderly housing. These mixed uses are allowed and encouraged because of their inherent connection to the needs of elderly residents and because such uses expand the feeling of community within the elderly development. This Ordinance is adopted pursuant to the provisions of RSA 674:21 (Innovative Land Use Controls), and the Planning Board is hereby empowered and authorized to administer this Ordinance in conjunction with the Selectmen and building officials of the Town of Fremont.

Pursuant to RSA 674:17, IV, any dimensional or procedural incentive under this elderly open space ordinance is deemed applicable to a development of workforce housing as defined in RSA 674:58, IV. Any proposed workforce housing development shall comply with the provisions of the Fremont zoning ordinance, site plan and subdivision regulations with respect to environmental protection, water supply, sanitary disposal, traffic safety and fire and life safety protection.

1301.2 General Standards: All elderly housing developments shall conform to the following standards:

- A. Elderly housing developments shall be permitted as an overlay district thereby allowed anywhere throughout the Town of Fremont. All elderly housing developments shall occur on a parcel that is a minimum of twenty (20) acres in size and shall have at least fifty (50) feet of frontage on a Class V road or higher.
- B. The total number of elderly housing units approved by the Board under this ordinance in the Town of Fremont shall not exceed fifteen (15) percent of the total dwelling units in the Town of Fremont. (Explanatory note: for example, the 2000 US Census details 1,201 dwelling units in the Town of Fremont therefore allowing one hundred and eighty (180) elderly units total). The number of dwelling units in the Town of Fremont shall be based on the NH Office of Strategic Initiatives (OSI) most recent estimates.
- C. The maximum number of bedrooms allowed on a site is three (3) per acre of upland, and shall be calculated as follows:

1. Subtract very poorly and poorly drained soils, alluvial soils, and soils with slopes greater than twenty-five (25%) percent from the total parcel acreage.
2. Subtract ten (10%) percent of the remaining land for roads and utilities.
3. Multiply the resultant acreage by three (3) bedrooms to get the maximum number of bedrooms allowed on the site.

The allowed number of units may be grouped or dispersed over the non-open space areas in any fashion within the limits imposed by this ordinance and existing septic system siting requirements.

If the development is located within the Aquifer Protection District the number of bedrooms allowed per acre of upland is two (2).

- D. Dwelling units shall be specifically designed to provide housing for elderly residents fifty-five (55) years old or older. Units shall have a maximum of two (2) bedrooms, may not exceed thirty-five (35) feet in height, and may be either one (1) or two (2) stories. Buildings shall be separated by a minimum space of thirty-five (35) feet. This spatial relationship may be required to be larger if Planning Board review finds that this standard results in inadequate light and air between structures. No building shall exceed more than six (6) individual units per structure. No individual unit shall exceed fifteen hundred (1,500) square feet of living space, and no single-family building shall exceed fifteen hundred (1,500) square feet in living space.
- E. Adequate on site space shall be provided for off-street parking for two (2) vehicles per dwelling unit.
- F. Building massing and style shall be distinctly residential in character, drawing on historical design elements that are consistent with rural New England architecture and which feature characteristics such as pitched roofs, clapboard or shingle siding, raised panel exterior doors and divided light windows. All such elderly housing developments shall be designed and constructed to compliment and harmonize with the surrounding areas, particularly with regard to the size and scale of the development and its prominence and visibility to the community generally and to surrounding neighborhoods in particular.
- G. Except as provided for by this Elderly Housing ordinance, all such elderly housing developments shall comply in all respects with the Town of Fremont's Zoning Ordinance, Site Plan Review Regulations and/or Subdivision Regulations.
- H. Dwelling units may be owner-occupied or rented. However, all permanent residents of all elderly housing units shall be at least fifty-five (55) years of age.
- I. The design and site layout of all such elderly housing developments shall compliment and harmonize with the rural character of the Town of Fremont, shall maximize the privacy of dwelling units and preserve the natural character of the land.
- J. All such elderly housing developments shall make provision for pedestrian access (including amenities such as benches, street and path lighting, sidewalks, and

crosswalks) within the development and, to the extent possible, to off-site community facilities.

- K. Each development shall incorporate the construction of a common/community facility to be used for homeowners' association meetings or general community activities. This facility can be incorporated into one of the housing structures or it can be a stand-alone building. For developments of less than twenty (20) dwelling units this community facility is encouraged but not required.
- L. All such elderly housing developments shall be landscaped to enhance their compatibility with surrounding areas, with emphasis given to the utilization of natural features wherever possible. The Planning Board may require a plan developed by a landscape architect be prepared for each development.
- M. The perimeter of the areas of housing or mixed-use development within the site shall be treated with a landscaped buffer zone of a minimum of twenty-five (25) feet which may consist in whole or in part of existing natural grown vegetation.
- N. The Planning Board shall require that all roads within the development -- whether owned privately or not -- be built according to Town standards.
- O. The Planning Board retains the right to approve the specific road and structure layouts for the purpose of the health, safety, and welfare of the town as well as for efficiency and aesthetic variety and quality of design.
- P. The applicant shall demonstrate that all units have been designed to meet the needs and accessibility requirements of the elderly as reflected in the HUD's Fair Housing Accessibility Guidelines.
- Q. All units shall be built in accordance with applicable federal, state, and local building codes.

1301.3 Common Land/Open Space: In every elderly housing development, common land/open space shall be set aside and covenanted to be maintained permanently as open space. The required amount of open space for all elderly housing developments shall be calculated as follows:

- A. No less than thirty-three (33%) percent of the gross upland area of the development shall be allocated to open space. Upland area is defined as all soils with slopes less than twenty-five (25 %) percent, and excludes poorly and very poorly drained soils, alluvial soils (subject to flooding), and water bodies. The Planning Board will review each proposal with an eye toward ensuring that the proposed common areas are contiguous, disapproving proposals that carve the open space into small segments that do not achieve the goals defined in the Purpose Section above. It is recommended that sixty (60%) to eighty (80%) percent of the common areas should be contiguous.

In calculating common/open space area the following shall not be included: public right-of-way, alluvial, very poorly and poorly drained soils, soils with slopes over twenty-five (25%) percent, and parking lots.

Use of Common Land: Such common land shall be restricted to open space recreational uses such as parks, swimming pools, tennis courts, golf courses, the common meeting facility (found in Section 1301.2.K), or conservation. While the setbacks, front, rear, and side, are considered part of the common land, none of the above uses shall be allowed within these areas, nor any other uses that would disturb the natural vegetation within these areas. Ninety (90%) percent of the common/open space shall remain undisturbed. These restrictions of the use of the common land (including the landscaped buffered area) shall be stated in the covenants running with the land.

- B. Access to open space/common land. Such common land shall have suitable access via a trail, within the development.
- C. Protection of Common Land. Open space, common areas, common facilities, private roadways, and other features within the elderly housing development shall be protected by covenants running with the land and shall be conveyed by the property owners to a homeowners association so as to guarantee the following:
 - 1. The continued use of land for the intended purposes.
 - 2. Continuity of proper maintenance for those portions of the development requiring maintenance.
 - 3. The availability of funds required for such maintenance.
 - 4. Recovery for loss sustained as a result of casualty, condemnation or otherwise.
 - 5. Creation of a homeowner's association or tenancy-in-common or similar form of ownership, with automatic membership and obligation of the residents of the elderly housing development upon conveyance of title or lease to single dwelling units. Home Owner's Association, tenancy-in-common, or similar form of ownership shall include lien provisions and shall be subject to review and approval by the Planning Board.

1301.4 It shall be the responsibility of the developer/builder of each such elderly housing development to establish a Home Owner's Association and to prepare and adopt appropriate Articles and By-Laws which are to be submitted in advance to the Planning Board and Town Counsel for their review and approval. In preparing the Articles and By-Laws, particular consideration shall be given to accommodating the unique needs of the elderly citizens and to ensuring that residents of such developments are guaranteed adequate and appropriate services. The creation of the Home Owner's Association and the Articles and By-Laws shall be at the sole expense of the developer/builder and the costs of the review by the Planning Board and Town Counsel shall also be born by the developer/builder. Any association formed for the purpose of elderly housing must have stipulated in their By-Laws and Declaration of Covenants that the Association will at all times be in compliance with current Fremont Ordinances governing elderly housing.

The Applicant/Owner shall incorporate a written enforcement mechanism satisfactory to the Planning Board and its legal counsel whereby on an annual basis, a written age based census of the existing Occupants shall be provided to the Board of Selectmen. Upon any change in ownership or tenancy, the age of any new Occupants shall be given to the Board of Selectmen within thirty (30) days of tenancy/ownership changes.

1301.5 Mixed Use Component: Each elderly housing development is encouraged to incorporate retail and /or service facilities. All proposals must comply with the Site Plan Review Regulations of the Town of Fremont as well as building design criteria found in this Ordinance.

1301.6 The Planning Board shall maintain and exercise the authority to approve or disapprove all proposed elderly housing developments. The Planning Board shall act reasonably in exercising such discretionary authority but shall take into consideration such factors, for example, as: the health, safety and general welfare of the citizens of Fremont; the aesthetic impact on immediately surrounding areas; whether the design is adequate to meet the unique needs of elderly residents; whether the Articles and By-Laws operate to serve the unique needs of elderly residents; the burdens created by additional demands on Town services; and whether the proposed development complies with the requirements of this Elderly Housing Ordinance, as well as, with the requirement of Fremont's Zoning Ordinance and Subdivision and Site Plan Regulations.

1301.7 Residency restrictions for residential projects approved under the Elderly Housing Ordinance shall be accomplished by restrictions recorded in deeds, Condominium Declarations, and/or other documents recorded at the Rockingham County Registry of Deeds. All deeds and covenants shall be subject to review by Town Counsel at the sole expense of the developer/builder, and shall be approved by the Planning Board. Covenants shall expressly provide that they may be specifically enforced by the Town, whether by injunctive relief or otherwise. Covenants shall be signed by the Planning Board, and shall contain language specifying that Board approval is required for any subsequent changes to the covenants. Covenants shall expressly provide that they shall not be amended or modified, nor waivers granted there under, without the prior written approval of the Planning Board.

1301.8 The following terms shall have the following meanings for the purpose of interpreting these Elderly Housing Regulations:

A. Elderly Housing Development: Housing contained in a development intended for occupancy by people fifty-five (55) years of age and older, and which features predominantly small single family units, apartments and/or condominiums.

B. Bedroom: a room with an interior door and a closet.

1301.9 This ordinance shall be reviewed annually by the Planning Board to ascertain whether the balance between the number of standard residential dwelling units and elderly housing units continues to reflect the stated goals of the Fremont Master Plan and the community's long-term planning intentions.

Section 1302 - Open Space Preservation Development

1302.1 General Concept: An Open Space Preservation Development (hereinafter OSPD) shall mean a residential development in which the buildings and accessory uses are located more closely together with reduced lot sizes, into one or more groups. All land not included in the building lots or street rights-of-way shall be dedicated as permanently-preserved open space. The overall housing density shall not exceed that which could be

built under a conventional development plan, unless otherwise permitted as provided below. All OSPD's shall be serviced by water and sewage disposal systems in compliance with local and State regulations.

1302.2 Purposes. The purposes of OSPD are to:

- A. Maintain and preserve the rural character of the Town of Fremont by allowing an alternative residential development option which preserves areas of open space, provides for visual buffers from existing roads and residential.
- B. Development, and permits agricultural or conservation opportunities on parcels of open space.
- C. Preserve large, contiguous parcels of open space throughout the town and as described in the Fremont Master Plan. Preserve this undeveloped land in its existing natural state in order to protect valuable land and water resources for conservation, forestry, agriculture, aquifer recharge, watershed protection, wildlife habitat, outdoor recreation, scenic and historic values, beyond the extent provided by existing regulations.
- D. Provide for a diversity of housing types, opportunities, and styles which add recreational and aesthetic amenities to new neighborhoods.
- E. Enable economical and efficient street, utility, and public facility installation, construction and maintenance, and more efficient provision of municipal services.
- F. Provide for connected corridors of open land throughout town for preservation of habitat, environmental resources, and public enjoyment, where feasible.
- G. Protect scenic vistas and undeveloped expanses along the Town's roadways, including open space vistas from within the proposed development.

1302.3 Permitted Uses:

- A. Single-family detached dwellings on parcels greater than six (6) acres.
- B. On parcels greater than twelve (12) acres, duplex units or multi-family attached dwellings not exceeding four (4) dwellings per building shall be permitted. At least seventy (70) percent of the proposed units within a development must consist of single-family detached dwellings. Additionally, units shall be interspersed in such a way to prevent a concentration of any one housing type in any portion of the OSPD.
- C. Accessory uses, including residential additions, garages, sheds, fences, and pools.
- D. Open space uses are limited to non-commercial parks, conservation and recreation areas, and agriculture and forestry.
- E. For a list of prohibited uses within OSPD see Table of Uses in this Ordinance.

1302.4 Authority: Pursuant to NH RSA 674:21, the Planning Board (Board) is hereby given the authority to grant a Conditional Use Permit in accordance with the criteria of this section. The Board shall be authorized to deny an application that does not meet the express purposes and intent of this Section. Approvals may be granted with or without conditions.

1302.5 Conditional Use Permit: The Planning Board may approve a Conditional Use Permit for an OSPD upon finding that it complies with the purposes and standards of this Section and is superior in design to a conventional subdivision with regard to protection of natural features and scenic resources of the site. The Board may attach reasonable conditions to the approval in order to secure the intents and purposes of this Section.

Standards for approval: The Board shall consider the following criteria in making its decision. All standards below must be met or impacts mitigated to the satisfaction of the Board prior to the granting of a Conditional Use Permit.

- A. The permit is in compliance with this Ordinance and is in the public interest and will protect the general welfare of existing and future citizens.
- B. The character of the area shall not be adversely affected. This determination, to be made by the Planning Board, shall be made by considering the following aspects of the surrounding area.
 - 1. Consistency of architecture, except for single-family detached development, determined through analysis of the following:
 - a. Roof pitches
 - b. Siding types
 - c. Architectural styles of residential structures
 - d. Proportional aspects of facades, building locations on lots;
 - 2. Transportation, determined through analysis of the following:
 - a. Access for safety vehicles onto the site, within the site, and to individual houses;
 - b. Capacity of nearby and affected intersections, and transportation corridors;
 - c. Cost for municipality to maintain roadways;
 - d. Layout, width, and construction of roadways on the site;
 - e. Proposed streets have been aligned to provide vehicular access to each house in a reasonable and economical manner. Lots and streets have been laid out to avoid or minimize adverse impacts on open space areas and to provide views of, and access to the open space from the lots.
 - 3. Protection of natural resources, determined through analysis of the following:
 - a. Environmentally sensitive areas, including but not limited to, wetlands, floodplains, shoreland buffers, wildlife corridors, and significant groundwater resources;
 - b. Maintenance of viewsheds and other visually appealing aspects of the site;
 - 4. Protection of cultural resources, determined through analysis of the following:
 - a. Existing or potential trail ways for pedestrian travel;
 - b. Historic buildings or significant historical landscapes;
 - c. Existing or potential agricultural uses of the site.
- C. Granting the permit will not result in municipal expenses which would exceed that of a conventional subdivision.

- D. The proposed development will be constructed in a manner compatible with the spirit and intent of the Fremont Master Plan and Zoning Ordinance.
- E. The capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted. Mitigation of these impacts by the developer can be considered in granting a conditional use permit.
- F. That the Open Space preserved as part of the development complies with purpose and intent of this Section and the specific requirements of Section 10.9.

1302.6 General Provisions: The Open Space Preservation development provisions of this Ordinance provides applicants with an alternative development approach intended to promote flexibility and innovation in land planning. Within this context, the ordinances that are established are intended to be a minimum consideration of allowable impacts.

1302.7 Review and Approval Process.

- A. Evaluation and approval of an OSPD shall be by the Board in accordance with the purposes, standards and guidelines set forth in this Section and the Fremont Subdivision Regulations.
- B. Pre-Application Meetings: Prior to the submission of any final plans, applicants are required to prepare conceptual plans under both conventional and OSPD regulations, review these plans with the Board at a regularly-scheduled meeting. The conceptual design process for an OSPD should start with a delineation of the most valuable natural resources and open space attributes of the site. Potential house locations, lot lines, road alignments and drainage facilities should then be configured so as to accomplish the protection and preservation of these resources and attributes. Full details on pre-application meeting can be found in the Fremont Subdivision Regulations.

1302.8 Density Standards.

- A. Maximum Permitted Lots: The number of lots or homes must be equal to or less than the number allowed for a conventional subdivision, unless otherwise provided below. No increased density will be allowed unless in accordance with this Section.

A Yield Plan shall be prepared in accordance with the conventional subdivision Regulations to determine the total number of lots or homes allowed. The Yield Plan must contain adequate information for the Board to accurately determine the number of homes that could be constructed using conventional subdivision standards. Any land area used in the calculation of allowed homes or lots in an approved OSPD shall not thereafter be eligible as contributing land area in any subsequent development proposal.

- B. Unbuildable Lots: For the purposes of determining the number of lots allowable under this Section, there shall be excluded from the number of lots shown on such conventional subdivision layout all lots which the Board finds are not reasonably buildable, whether by reason of excessive development or site preparation costs due to

remote proposed location, poorly-drained soils or steep slopes; sanitary disposal, drainage or water supply requirements; limited or unusually-configured buildable area, the permitting requirements of the State or a combination of the above. In consideration of the foregoing, the Board may consider recommendations of the Town Engineer, Conservation Commission, or any appropriate state agencies.

- C. Density Bonus - The Board may award the development a density bonus not to exceed fifteen (15%) percent of the number of lots achievable under a conventional yield plan to developments on parcels of twenty (20) acres or more.
- D. Open Space Bonus. If the proposed development meets or exceeds any of the following criteria, a density bonus shall be awarded in the amount of five (5%) percent, unless otherwise noted. The maximum bonus awarded any application under this Ordinance shall be fifteen (15%) percent.
- E. Public Access Bonus - Where the public is granted access to the open space, the development may be awarded a density bonus of five (5%) percent. The nature of public access required to satisfy this bonus is pedestrian traffic. The instrument granting access, acceptable to the Planning Board, may reasonably restrict the use of motorized vehicles.
- F. Existing roadway buffer. Where the development has more than two hundred and fifty (250) feet of frontage on existing public roadways, and a two hundred and fifty (250) foot undisturbed buffer is provided, this bonus may be applied.
- G. Open fields. If the development protects existing open fields that are visible from public roadways and greater than five (5) acres in size, a bonus of five (5%) percent shall be granted. The development must provide for the protection of these resources in perpetuity.

1302.9 Open Space Standards

- A. General: All land not utilized for road rights-of-way or building lots shall be dedicated as permanently-preserved open space.
- B. Minimum Required Open Space: At least fifty (50%) percent of the upland portion of the site must be reserved in perpetuity as common open space. At least fifty (50%) percent of the open space must consist of soils with slopes less than fifteen (15%) percent. Open space dedicated in excess of the minimum required area may contain any percentage of wetland soils or steep slopes.
- C. Purposes: Open space shall be used solely for non-commercial recreation, conservation, agriculture or forestry purposes by residents and/or the public. Where appropriate, multiple use of open space is encouraged. At least half (1/2) of the required open space may be required by the Planning Board to be left in a natural state. The proposed use of the open space shall be specified in the application. If several uses are proposed, the plans shall specify what uses will occur, and where they shall be located on site. The Planning Board shall have the authority to approve or disapprove particular uses proposed for the open space.

- D. Open Space Layout: Open space shall be arranged to protect valuable natural and cultural environments such as stream valleys, wetland buffers, unfragmented forestland and significant trees, wildlife habitat, open fields, scenic views, trails, and archeological sites and to avoid development in hazardous areas such as floodplains and steep slopes.

Open space shall be designed in larger blocks of land, preferably as part of an integrated open space network, laid out to be contiguous with open space areas of similar character (whether permanently-preserved or not) on adjacent parcels. Where feasible, these parcels shall be linked by trails. Contiguous open space shall generally be more than three (3) acres in area, at least two hundred (200) feet in width, and shall have a length-to-width ratio of no greater than four-to-one, except where intended to buffer linear features such as watercourses and wetlands, or designed as trail links. Fragmentation, or the creation of long, thin strips of open space, shall be avoided. Where open space directly adjoins private lots, it shall be demarcated with logical, straightforward boundaries such as existing rock walls, tree lines, topographic breaks, a roadway or path, or post-and-rail fencing.

- E. Protection, Ownership and Management: All common open space shall be permanently protected by covenants and restrictions in perpetuity and approved by the Conservation Commission. Restrictions shall provide for periodic inspection of the open space by the Town. A management plan may be required by the Planning Board which describes how existing woods, fields, meadows or other natural areas shall be maintained in accordance with good conservation practices, as recommended in the manual Identifying and Protecting New Hampshire's Significant Wildlife Habitat, NH Fish & Game and UNH Cooperative Extension. The Planning Board may require further legal review of any documents submitted, the cost of which shall be borne by the applicant. Open Space shall be conveyed by the applicant to:

1. A homeowners association or other legal entity under New Hampshire State Statutes. The developer is responsible for the maintenance of the open space and other facilities to be held in common until such time as the homeowners association is capable of assuming such responsibility. Thereafter, the members of the association shall share the cost of maintaining the open space. The Planning Board shall require the applicant to provide documentation that the homeowner's association is an automatic (mandatory) association that has been established prior to the conveyance of any lots within the subdivision; or
2. To a non-profit organization, the principal purpose of which is the conservation of open space; or
3. Subject to approval of the Planning Board and Board of Selectmen, may be dedicated to the Town of Fremont with a trust clause insuring that it be maintained as open space.

- F. Maintenance of Open Space: In any case where open space is not conveyed to the Town, the Town shall be granted an easement over such land sufficient to ensure its perpetual maintenance as conservation or recreation land. Such easement shall provide that in the event the trust or other owner fails to maintain the open space in reasonable condition, the Town may, after notice to the lot owners and public hearing, enter upon such land to maintain it in order to prevent or abate a nuisance. The cost of

such maintenance by the Town shall be assessed against the properties within the development and/or to the owner of the open space. The Town may file a lien against the lot or lots to ensure payment of such maintenance expenses.

- G. Identification of Open Space and Access: The Planning Board may require placement of surveyed bounds sufficient to identify the location of the open space and other reasonable markers to denote the location of access points to the open space and/or trails.
- H. Excess Open Space: The Board may allow open space in excess of the minimum requirements to be unrestricted by a conservation easement provided that use of the open space is limited by deed covenant to non-commercial parks, conservation and recreation areas or commercial agriculture and forestry.
- I. Recreation Lands: Where appropriate to the topography and natural features of the site, the Planning Board may require that at least two (2) acres of the open space shall be of a shape, slope, location and condition to provide an informal field for active recreation for the residents of the subdivision.
- J. External Buffer: A minimum buffer of undisturbed vegetation at least fifty (50) feet in width from the outer perimeter of the land subject to the application shall be maintained; where no vegetation exists, the Board may require tree planting to create a visual buffer. This fifty (50) foot buffer shall be maintained in a naturally vegetated state to screen and buffer the development and may account for up to twenty-five (25%) percent of the minimum required open space.

1302.10 Standards for Building Lots and Site Design

- A. Lot Shape and Size: House lots and building envelopes should generally be square or rectangular in shape and contain adequate upland area to accommodate average-sized houses and typical amenities such as garages, pools and sheds, including reasonable areas for expansion of these buildings. The minimum lot size shall be no less than three quarters ($\frac{3}{4}$) of an acre or thirty-two thousand six hundred and seventy (32,670) square feet per dwelling unit.
- B. At least one half ($\frac{1}{2}$) of an acre or twenty one thousand seven hundred and eighty (21,780) square feet of contiguous land of every lot laid out (after the adoption of this amendment) for residential use shall be buildable land with soils dry enough to permit for installation and use of facilities for disposal of sanitary waste(s) disposal facilities and shall not have slopes exceeding twenty percent (20%).
- C. Frontage: The minimum lot frontage shall be one hundred (100) feet. In the case of duplexes and multi-family structures, the setback shall be increased by ten (10) per family dwelling unit. In no case shall there be less than one hundred (100) feet of lot width at the building line. (see table below)
- D. Yards: For all dwelling units, the minimum front yard setback shall be twenty (20) feet; the minimum side yard setback shall be fifteen (15) feet; and the minimum rear yard setback shall be thirty (30) feet. In the case of duplexes and multi-family structures, the

setback shall be increased by five (5) per family dwelling unit. All garages, sheds and pools must also meet these setbacks. (see table)

	Single Family, Detached	Duplex	3- Family	4-family
Frontage	100'	120'	130'	140'
Front Setback	20'	30'	35'	40'
Side Setback	15'	25'	30'	35'
Rear Setback	30'	40'	45'	50'

1302.11 Other Standards: The layout and configuration of lots, homes, streets, and open space is subject to the approval of the Planning Board. The layout must demonstrate preservation of open land in furtherance of the stated purposes of this Section, without detracting from the character of the neighborhood and without seriously diminishing the value of surrounding property.

- A. Development Location: Residences should be grouped in locations so that scenic views and vistas will remain unblocked, particularly as seen from public roads; prime agricultural soils, wildlife habitat and shoreline areas will be protected; stone walls, historic sites and their environs will be preserved; and significant natural features such as, but not limited to, vernal pools, prime wetlands, aquifers, older-growth trees, unique geologic formations and ridgelines will be protected. Wherever possible, structures should be located within any wooded upland on the parcel, or along the far edges of open fields and so that silhouettes of structures will be below the ridgeline or hilltop or, if the site is wooded, the building silhouettes will be lower than the existing canopy height. New structures should be screened from view from public roads with a buffer of existing trees or new plantings.
- B. The maximum number of house lots compatible with good design shall abut the open space and all house lots shall have reasonable physical and visual access to the open space through internal roads, sidewalks or paths.
- C. Development along existing scenic roads and the creation of new driveway openings on existing roadways shall be minimized or avoided altogether.
- D. Pedestrian Access/Circulation: Open space shall be laid out in conjunction with existing and proposed streets, sidewalks, and lots so that the greatest degree of internal pedestrian circulation and access from the lots to both on-site and off-site open space is achieved. Access to the open space must be clear and direct, and arranged in a manner that does not conflict with the actual or apparent use of private lots.
- E. Landscaping: Landscaping of common areas (such as community greens, cul-de-sac islands, and along both sides of new streets) may be required by the Planning Board. The minimum caliper of trees along roadways shall be three (3) inches measured at a

point six (6) inches above the root ball, and spaced every one hundred (100) feet along the road right-of-way. Species shall be deciduous shade trees and shall be salt tolerant.

- F. All utilities servicing the Open Space Preservation Development shall be placed underground.

ARTICLE 14 – PERSONAL WIRELESS SERVICES FACILITIES

Section 1401 - Authority

This ordinance is adopted by the Town of Fremont at the 2002 Town Meeting, in accordance with the authority as granted in New Hampshire Revised Statutes Annotated 674:16 and 674:21, procedurally under the guidance of 675:1, II and in accordance with RSA 12-K.

Section 1402 – Purpose and Goals

This Ordinance is enacted in order to effectuate the following goals and standards in permitting the siting of Personal Wireless Services Facilities (PWSF) in accordance with federal and state law:

- A. To facilitate the review and approval of personal wireless services facilities by the Town's Planning Board in keeping with the Town's existing ordinances and established development patterns, including the size and spacing of structures and open spaces. This ordinance is intended to be applied in conjunction with other ordinances and regulations adopted by the Town, including historic district ordinances, site plan review regulations and other local ordinances designed to encourage appropriate land use, environmental protection, and provision of adequate infrastructure development.
- B. Preserve the authority of Fremont to regulate and to provide for reasonable opportunity for the siting of PWSF.
- C. Reduce adverse impacts such facilities may create, including, but not limited to; impacts on aesthetics, environmentally sensitive areas, historically significant locations, flight corridors, health and safety by injurious accidents to person and property, and prosperity through protection of property values. To minimize the visual and environmental impacts of personal wireless services facilities by avoiding the deployment of PWSF's that service substantially the same service area.
- D. Require, where technically feasible, co-location and minimal impact siting options through an assessment of technology, current locational options, future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the Town.
- E. Permit the construction of new PWSF only where all other reasonable opportunities for co-location have been exhausted.
- F. Require the configuration of PWSF in a way that minimizes the adverse visual impact of the facilities and antennas.

- G. Require cooperation and co-location, to the highest extent possible, between competitors in order to reduce cumulative negative impacts upon the Town of Fremont.
- H. Provide constant maintenance and safety inspections for any and all facilities.
- I. Provide for the removal of abandoned facilities that are no longer inspected for safety concerns and code compliance. Provide a mechanism for the Town of Fremont to remove these abandoned towers to protect the citizens from imminent harm and danger.
- J. Provide for the removal or upgrade of facilities that are technologically outdated.
- K. The regulation of personal wireless services facilities is consistent with the purpose of the Fremont Master Plan to further the conservation and preservation of developed, natural and undeveloped areas, wildlife, flora and habitats for endangered species; the preservation and protection of the natural resources of Fremont; balanced economic growth; the provision of adequate capital facilities; the coordination of the provision of adequate capital facilities with the achievement of other goals; and the preservation of historical, cultural, archaeological, architectural and recreational values.

Section 1403 - Applicability

1403.1 Public Property. Antennas or towers located on property owned, leased, or otherwise controlled by the Town may be exempt from the requirements of this ordinance. This partial exemption shall be available if a license or lease authorizing such antenna or tower has been approved by the governing body and the governing body elects subject to state law and local ordinance, to seek the partial exemption from this Ordinance and provided that the facility will be at least partially available for public purpose.

1403.2 Amateur Radio; and/or Receive-Only Antennas. This ordinance shall not govern any tower, or the installation of any antenna that is under seventy (70) feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennas. This ordinance adopts the provisions and limitations as referenced in RSA 674:16, IV.

Modification of existing amateur radio facilities for commercial use shall require full town review in accordance with this ordinance.

1403.3 Essential Services & Public Utilities. PWSF shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in the Town's ordinances and regulations. Siting for PWSF is a use of land, and is addressed by this ordinance.

Section 1404 - Definitions

- A. "Above Ground Level (AGL)" A measurement of height from the natural grade of a site to the highest point of a structure.

- B. "Alternative tower structure" Innovative siting techniques that shall mean man-made trees, clock towers, steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.
- C. "Antenna" The surface from which wireless radio signals are sent and received by a personal wireless service facility.
- D. "Average tree canopy height" Means the average height found by inventorying the height above ground level of all trees over a specified height within a specified radius.
- E. "Carrier" Means a person that provides personal wireless services.
- F. "Co-location" The use of a single mount on the ground by more than one carrier (vertical co-location) and/or several mounts on an existing building or structure by more than one (1) carrier.
- G. "Elevation" The measurement of height above sea level.
- H. "Environmental Assessment (EA)" An EA is the document required by the Federal Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a personal wireless service facility is placed in certain designated areas.
- I. "Equipment shelter" Means an enclosed structure, cabinet, shed vault, or box near the base of a mount within which are housed equipment for PWSFs, such as batteries and electrical equipment.
- J. "FAA" An acronym that shall mean the Federal Aviation Administration.
- K. "FCC" An acronym that shall mean the Federal Communications Commission.
- L. "Fall Zone" The area on the ground within a prescribed radius from the base of a personal wireless service facility. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.
- M. "Functionally Equivalent Services" Cellular, Personal Communication Services (PCS), Enhanced Specialized Mobile Radio, Specialized Mobile Radio and Paging.
- N. "Guyed Tower" A monopole or lattice tower that is tied to the ground or other surface by diagonal cables.
- O. "Height" Shall mean, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is an antenna.
- P. "Lattice Tower" A type of mount that is self-supporting with multiple legs and cross-bracing of structural steel.
- Q. "Licensed Carrier" A company authorized by the FCC to construct and operate a commercial mobile radio services system.

- R. "Monopole" The type of mount that is self-supporting with a single shaft of wood, steel or concrete and a platform (or racks) for panel antennas arrayed at the top.
- S. "Mount" Means the structure or surface upon which antennas are mounted and include roof-mounted, side-mounted, ground-mounted, and structure-mounted types.
- T. "Omnidirectional (whip) antenna" A thin rod that beams and receives a signal in all directions.
- U. "Panel Antenna" A flat surface antenna usually developed in multiples.
- V. "Personal Wireless Service Facility" or "PWSF" or "facility" means any "PWSF" as defined in the federal Telecommunications Act of 1996, 47 U.S.C. section 332(c)(7)(C)(ii), including facilities used or to be used by a licensed provider of personal wireless services.
- W. "Personal Wireless Services" Means any wireless telecommunications services, and commercial mobile services including cellular telephone services, personal communications services, and mobile and radio paging services as defined in the federal Telecommunications Act of 1996, 47 U.S.C. section 332 (c)(7)(C)(i).
- X. "Planning Board or Board" Shall mean the Town of Fremont Planning Board and the regulator of this ordinance.
- Y. "Preexisting towers and antennas" Shall mean any tower or antenna lawfully constructed or permitted prior to the adoption of this ordinance. Shall also mean any tower or antenna lawfully constructed in accordance with this ordinance that predates an application currently before the Board.
- Z. "Radio frequency radiation" Means the emissions from personal wireless service facilities.
- AA. "Security Barrier" A locked, impenetrable wall or fence that completely seals an area from unauthorized entry or trespass.
- BB. "Separation" The distance between one carrier's array of antennas and another carrier's array.
- CC. "Stealth Application" Means, for a PWSF, designed to look like a structure which may commonly be found in the area surrounding a proposed PWSF such as, but not limited to, flagpoles, light poles, traffic lights, or artificial tree poles. Also means, for a personal wireless service facility one that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure. (Stealth application is often referred to as "camouflaged" technology.)
- DD. "Telecommunications Facilities" Shall mean any structure, antenna, tower, or other device which provides commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), and

personal communications service (PCS), and common carrier wireless exchange access services.

EE. "Tower" Shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like.

Section 1405 – Conditional Use Permits

1405.1 All proposals considered for development under the Personal Wireless Facilities Ordinance shall obtain a Conditional Use Permit from the Planning Board. The conditional use permit shall clearly set forth all conditions of approval and shall clearly list all plans, drawings and other submittals that are part of the approved use. Everything shown or otherwise indicated on a plan or submittal that is listed on the conditional use permit shall be considered to be a condition of approval. Construction shall not deviate from the stated conditions without approval of the modification by the Planning Board.

1405.2 All applicable standards in this ordinance must be met and/or impacts mitigated to the satisfaction of the Planning Board prior to the granting of a Conditional Use Permit.

1405.3 Decisions. Possible decisions rendered by the Planning Board, include Approval, Approval with Conditions, or Denial. All decisions shall be rendered in writing, and a Denial shall be in writing and based upon substantial evidence contained in the written record.

Section 1406 – Siting Standards

1406.1 Use Regulations A personal wireless service facility shall require a conditional use permit in all cases and may be permitted as follows:

- A. A personal wireless service facility may locate on any existing guyed tower, lattice tower, monopole, electric utility transmission tower, fire tower, water tower, cupola, or steeple.
- B. Such facilities may locate by Conditional Use Permit in all zoning districts within the Town.
- C. A personal wireless service facility involving construction of one or more ground or building (roof or side) mounts shall require a Conditional Use Permit and may locate in all zoning districts within the Town
- D. A personal wireless service facility that exceeds the height restrictions may be permitted by Conditional Use Permit in a designated Wireless Service Overlay District
- E. Principal or Secondary Use: An applicant who successfully obtains permission to site under this ordinance as a second and permitted use may construct PWSF in addition to the existing permitted use. PWSF may be considered either principal or secondary

uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a tower or antenna complies with local development regulations, including but not limited to setback requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lots. PWSF that are constructed in accordance with the provisions of this ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure. Nor shall such facilities be deemed to be an "accessory use".

1406.2 Location: Applicants seeking approval for personal wireless services facilities shall comply with the following:

- A. If feasible, personal wireless services facilities shall be located on existing structures, including but not limited to buildings, water towers, existing telecommunications facilities, utility poles and towers, and related facilities, provided that such installation preserves the character and integrity of those structures. In particular, applicants are urged to consider use of existing telephone and electric utility structures as sites for one or more personal wireless service facilities. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate.
- B. The applicant proposing to build a new tower shall submit an agreement with the Town that maximizes allowance of co-location upon the new structure. Such statement shall become a condition to any approval. This statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs (prevailing rates) to other telecommunications providers. Failure to provide such an agreement is evidence that the applicant's proposed facility will not integrate with the overall telecommunications facility planning of the Fremont, and grounds for a Denial.
- C. The applicant shall submit the engineering information detailing the size and coverage required for the facility location. The Planning Board may have this and any other information reviewed by a consultant for verification of any claims made by the applicant regarding technological limitations and feasibility for alternative locations. Cost for this review shall be borne by the applicant in accordance with 676:4 I (g).
- D. If the applicant demonstrates that it is not feasible to locate on an existing structure, personal wireless services facilities shall be designed so as to be camouflaged to the greatest extent possible, including but not limited to: use of compatible building materials and colors, screening, landscaping and placement within trees.
- E. The applicant shall submit documentation of the legal right to install and use the proposed facility mount at the time of application for a building permit and/or conditional use permit.

1406.3 Co-location

- A. Licensed carriers shall share personal wireless services facilities and sites where feasible and appropriate, thereby reducing the number of personal wireless services facilities that are stand-alone facilities. All applicants for a Conditional Use Permit for a

personal wireless service facility shall demonstrate a good faith effort to co-locate with other carriers. Such good faith effort includes:

1. A survey of all existing structures that may be feasible sites for co-locating personal wireless services facilities;
 2. Contact with all the other licensed carriers for commercial mobile radio services operating in the County; and
 3. Sharing information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location.
- B. In the event that co-location is found to be not feasible, a written statement of the reasons for the infeasibility shall be submitted to the Town. The Town may retain a technical expert in the field of RF engineering to verify co-location at the site is not feasible or is feasible given the design configuration most accommodating to co-location. The cost for such a technical expert will be at the expense of the applicant. The Town may deny a Conditional Use Permit to an applicant that has not demonstrated that co-location is not feasible.
- C. If the applicant does intend to co-locate or to permit co-location, the Town shall request drawings and studies which show the ultimate appearance and operation of the personal wireless service facility at full build-out.
- D. If the Planning Board approves co-location for a personal wireless service facility site, the Conditional Use Permit shall indicate how many facilities of what type shall be permitted on that site. Facilities specified in the Conditional Use Permit approval shall require no further zoning approval. However, the addition of any facilities not specified in the approved Conditional use permit shall require a new Conditional Use Permit.

1406.4 Height Requirements:

- A. Height, General: Regardless of the type of mount, personal wireless services facilities shall be no higher than ten (10) feet above the average height of buildings or trees within three hundred (300) feet of the proposed facility. In addition, the height of a personal wireless service facility shall not exceed by more than ten (10) feet the height limits of the zoning district in which the facility is proposed to be located, unless the facility is completely camouflaged such as within a flagpole, steeple, chimney, or similar structure. Personal wireless services facilities may locate on a building that is legally non-conforming with respect to height, provided that the facilities do not project above the existing building height.
- B. Height, Ground-Mounted Facilities: Ground-mounted personal wireless services facilities shall not project higher than ten (10) feet above the average building height or, if there are no buildings within three hundred (300) feet, these facilities shall not project higher than ten (10) feet above the average tree canopy height, measured from average ground level (AGL). If there are no buildings within three hundred (300) feet of the proposed site of the facility, all ground-mounted personal wireless services facilities shall be surrounded by dense tree growth to screen views of the facility in all directions. These trees may be existing on the subject property or planted on site.

- C. Height, Side- and Roof-Mounted Facilities: Side- and roof-mounted personal wireless services facilities shall not project more than ten (10) feet above the height of an existing building nor project more than ten (10) feet above the height limit of the zoning district within which the facility is located. Personal wireless services facilities may locate on a building that is legally non-conforming with respect to height, provided that the facilities do not project above the existing building height.
- D. Height, Existing Structures: New antennas located on any of the following structures existing on the effective date of this ordinance shall be exempt from the height restrictions of this ordinance provided that there is no increase in height of the existing structure as a result of the installation of a personal wireless service facility: water towers, guyed towers, lattice towers, fire towers and monopoles.
- E. Height, Existing Structures, (Utility): New antennas located on any of the following existing structures shall be exempt from the height restrictions of this ordinance provided that there is no more than a twenty (20) foot increase in the height of the existing structure as a result of the installation of a personal wireless service facility: electric transmission and distribution towers, telephone poles and similar existing utility structures. This exemption shall not apply in historic districts.
- F. Height, Wireless Facility Overlay Districts: Where the town establishes Wireless Facility Overlay Districts (as designated on the town zoning map), personal wireless services facilities of up to one hundred and fifty (150) feet in height may be permitted by Conditional Use Permit. Monopoles are the preferred type of mount for such taller structures. Such structures shall comply with all setback and Conditional Use Permit regulations set forth in this Ordinance.

1406.5 Setbacks:

- A. All personal wireless services facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located.
- B. In order to ensure public safety, the minimum distance from the base of any ground-mounted personal wireless service facility to any property line, road, habitable dwelling, business or institutional use, or public recreational area shall be the height of the facility/mount, including any antennas or other appurtenances. This setback is considered a "fall zone".
- C. In the event that an existing structure is proposed as a mount for a personal wireless service facility, a fall zone shall not be required, but the setback provisions of the zoning district shall apply. In the case of pre-existing non-conforming structures, personal wireless services facilities and their equipment shelters shall not increase any non-conformities.
- D. Towers over ninety (90) feet in height shall not be located within one-quarter (1/4) mile of any existing tower that is over ninety (90) feet in height.
- E. In reviewing a Conditional Use Permit application for a personal wireless service facility, the Planning Board may reduce the required fall zone and/or setback distance

of the zoning district, if it finds that a substantially better design will result from such reduction. In making such a finding, the Planning Board shall consider both the visual and safety impacts of the proposed use.

Section 1407 – Design Standards

Visibility/Camouflage: Personal wireless services facilities shall be camouflaged as follows:

1407.1 Camouflage by Existing Buildings or Structures:

- A. When a personal wireless service facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal the facility within or behind existing architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front facade in order to limit their impact on the building's silhouette.
- B. Personal wireless services facilities which are side mounted shall blend with the existing building's architecture and shall be painted or shielded with material which is consistent with the design features and materials of the building.

1407.2 Camouflage by Vegetation: If personal wireless services facilities are not camouflaged from public viewing areas by existing buildings or structures, they shall be surrounded by buffers of dense tree growth and understory vegetation in all directions to create an effective year-round visual buffer. Ground-mounted personal wireless services facilities shall provide a vegetated buffer of sufficient height and depth to effectively screen the facility. Trees and vegetation may be existing on the subject property or installed as part of the proposed facility or a combination of both. The Planning Board shall determine the types of trees and plant materials and depth of the needed buffer based on site conditions.

1407.3 Color:

- A. Personal wireless services facilities which are side-mounted on buildings shall be painted or constructed of materials to match the color of the building material directly attached thereto.
- B. To the extent that any personal wireless services facilities extend above the height of the vegetation immediately surrounding it, they shall be painted in a color determined best to blend in with the natural surroundings and/or background.

1407.4 Equipment Shelters:

- A. Equipment shelters shall be located in underground vaults; or
- B. Equipment shelters shall be designed consistent with architectural styles and materials per the town's site plan review regulations.
- C. Equipment shelters shall be camouflaged behind an effective year-round landscape buffer, equal to the height of the proposed building, and/or wooden fence. The Planning

Board shall determine the style of fencing and/or landscape buffer that is compatible with the neighborhood.

1407.5 Lighting and Signage:

- A. Personal wireless services facilities shall be lighted only if required by the Federal Aviation Administration (FAA). Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties. There shall be total cutoff of all light at the property lines of the parcel to be developed.
- B. Signs shall be limited to those needed to identify the property and the owner and warn of any danger. All signs shall comply with the requirements of the Town's sign regulations.
- C. All ground mounted personal wireless services facilities shall be surrounded by a security barrier.

1407.6 Historic Buildings and Districts:

- A. Any personal wireless services facilities located on or within an historic structure, as designated by the town, shall not alter the character-defining features, distinctive construction methods, or original historic materials of the building.
- B. Any alteration made to an historic structure to accommodate a personal wireless service facility shall be fully reversible.
- C. Personal wireless services facilities within an historic district shall be concealed within or behind existing architectural features or shall be located so that they are not visible from public roads and viewing areas within the district.

1407.7 Scenic Landscapes and Vistas: Any personal wireless service facility that is located within three hundred (300) feet of a scenic vista, scenic landscape or scenic road, as designated by the town shall not exceed the height of vegetation at the proposed location. If the facility is located farther than three hundred (300) feet from the scenic vista, scenic landscape or scenic road, the height regulations described elsewhere in this ordinance will apply.

1407.8 Environmental Standards:

- A. Personal wireless services facilities shall not be located in wetlands. Locating of wireless facilities in wetland buffer areas shall be avoided whenever possible and disturbance to wetland buffer areas shall be minimized.
- B. No hazardous waste shall be discharged on the site of any personal wireless service facility. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least one hundred and ten (110%) percent of the volume of the hazardous materials stored or used on the site.

- C. Ground-mounted equipment for personal wireless services facilities shall not generate noise in excess of fifty (50) db at the property line.
- D. Roof-mounted or side-mounted equipment for personal wireless services facilities shall not generate noise in excess of fifty (50) db at ground level at the base of the building closest to the antenna.
- E. Back-up power generation equipment may exceed the required decibel levels if necessary, to maintain power to the PWSF during temporary power outages.

1407.9 Safety Standards:

- A. All equipment proposed for a personal wireless service facility shall be authorized per the FCC Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation (FCC Guidelines)
- B. Towers shall be enclosed by security fencing not less than six (6) feet in height and shall also be equipped with an appropriate anti-climbing device.
- C. To ensure the structural integrity of towers and antennas, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes. If, upon inspection, the Town concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within thirty (30) days, such action shall constitute an abandonment and grounds for the removal of the tower or antenna as abandoned, in accordance with §XII at the owners expense through execution of the posted security.

1407.10 Modifications A modification of a personal wireless service facility may be considered equivalent to an application for a new personal wireless service facility and will require a Conditional Use Permit when the following events apply:

- A. The applicant and/or co-applicant wants to alter the terms of the Conditional Use Permit by changing the personal wireless service facility in one or more of the following ways:
 1. Change in the number of facilities permitted on the site.
 2. Change in technology used for the personal wireless service facility.
 3. The applicant and/or co-applicant wants to add any equipment or additional height not specified in the original design filing.

1407.11 Reconstruction or Replacement of Existing Towers and Monopoles

Guyed towers, lattice towers, utility towers and monopoles in existence at the time of adoption of this Ordinance may be reconstructed, altered, extended or replaced on the same site by Conditional Use Permit, provided that the Planning Board finds that such reconstruction, alteration, extension or replacement will not be substantially more detrimental to the neighborhood and/or the Town than the existing structure. In making such a determination, the Planning Board shall consider whether the proposed reconstruction, alteration, extension, or replacement will create public benefits such as

opportunities for co-location, improvements in public safety, and/or reduction in visual and environmental impacts. No reconstruction, alteration, extension, or replacement shall exceed the height of the existing facility by more than twenty (20) feet.

Section 1408 – State Requirements (RSA 12-K)

All wireless carriers or their appointed agents doing business, or seeking to do business, in the Town of Fremont shall:

- A. Be allowed to construct new ground-mounted PWSF, provided that these PWSF comply with municipal regulations for maximum height or maximum allowed height above the average tree canopy height, subject to any exceptions, waivers, or variances allowed or granted by the Town.
- B. Comply with all applicable state and municipal land use regulations.
- C. Comply with all federal, state, and municipal statutes, rules and regulations, including federal radio frequency radiation emission regulations and the National Environmental Policy Act of 1969, as amended.
- D. Provide information at the time of application to construct an externally visible PWSF to the town of Fremont and to the NH Office of State Planning, as follows:
 - 1. A copy of their license from the Federal Communications Commission (FCC) proving that they are eligible to deploy their systems in this geographical area and that this deployment falls under the jurisdiction of the federal Telecommunications Act of 1996; or a copy of their contract with a person with such a license, and a copy of that license.
 - 2. Detailed maps showing all of the current externally visible tower and monopole PWSF locations in the state within a twenty (20) mile radius of the proposed externally visible PWSF, both active and inactive.
 - 3. Site descriptions for each of the above locations showing the antenna height and diameter and showing all externally visible structures.
 - 4. A description of why less visually intrusive alternatives for this facility were not proposed.
- E. A wireless carrier seeking approval to deploy a wireless communication facility shall be required to pay reasonable fees, including regional notification costs, imposed by the municipality in accordance with RSA 676:4, I (g).
- F. Regional Notification: Any municipality or state authority or agency which receives an application to construct a PWSF which may be visible from any other New Hampshire municipality within a twenty (20) mile radius shall provide written notification of such application and pending action to such other municipality within the twenty (20) mile radius. The applicant shall be responsible for determining the towns within the twenty (20)-mile radius for purposes of notification and shall provide the Planning Board with a list of these towns along with their mailing addresses.

This notification shall include sending a letter to the governing body of the municipality within the twenty (20) mile radius detailing the pending action on the application and shall also include publishing a notice in a newspaper customarily used for legal notices

by such municipality within the twenty (20) mile radius, stating the specifics of the application, the pending action, and the date of the next public hearing on the application. Such notice shall be published not less than ten (10) days nor more than twenty-one (21) days prior to the public hearing date.

Municipalities within the twenty (20) mile radius and their residents shall be allowed to comment at any public hearing related to the application. Regional notification and comments from other municipalities or their residents shall not be construed to imply legal standing to challenge any decision.

Section 1409 - Federal Requirements

- A. All towers must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna as abandoned, in accordance with §XII, at the owners expense through the execution of the posted security.
- B. The applicant shall submit written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Board prior to the beginning of the federal thirty (30) day comment period, and the Town process, shall become part of the application requirements.

Section 1410 - Waivers

1410.1 General: Where the Planning Board finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with this ordinance or the purposes herein may be served to a greater extent by an alternative proposal, it may approve waivers to the ordinance. The purpose of granting waivers under provisions of this ordinance shall be to ensure that an applicant is not unduly burdened as opposed to merely inconvenienced by said ordinance. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that *all* of the following apply:

- A. The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.
- B. The waiver will not, in any manner, vary the provisions of the Fremont Zoning Ordinance (other than the terms of this ordinance), Fremont Master Plan, or Official Maps.

- C. Such waiver(s) will substantially secure the objectives, standards, and requirements of the ordinance.
- D. A particular and identifiable hardship exists, or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship shall include, but not be limited to:
 - 1. Topography and other site features
 - 2. Availability of alternative site locations
 - 3. Geographic location of property
 - 4. Size/magnitude of project being evaluated and availability of co-location.

1410.2 Conditions In approving waivers, the Board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.

1410.3 Procedures A petition for any such waiver shall be submitted in writing by the applicant. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant.

Section 1411 – Appeals Under This Section

A party aggrieved by a decision under this ordinance may appeal such decision to the New Hampshire Superior Court as provided by RSA 676:5, III and RSA 677:15, as amended.

Section 1412 – Bonding, Security, and Insurance

Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned towers in the event that the tower is abandoned and the tower owner is incapable and unwilling to remove the tower in accordance with §XIII, all security will be required to be maintained by the Town for the life of the tower. Bonding and surety shall be consistent with the provision in the Subdivision or Site Plan Review Regulations. Furthermore, the Planning Board shall require the submission of proof of adequate insurance covering accident or damage.

Section 1413 – Removal of Abandon Antennas and Towers

Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said tower provides proof of quarterly inspections. The owner shall remove the abandoned structure within ninety (90) days of receipt of a declaration of abandonment from the Town notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within ninety (90) days, the Town may execute the security and have the tower removed. If there are two (2) or more users of a single tower, this provision shall not become effective until all users cease using the tower.

Section 1414 - Severability

The invalidity of any provision of any section of this Ordinance shall not affect the validity of any other provision, of this Ordinance, nor of the Zoning Ordinance as a whole.

ARTICLE 15 – IMPACT FEES FOR PUBLIC CAPITAL FACILITIES ORDINANCE

Section 1501 Authority and Applicability

1501.1 This Section is authorized by New Hampshire RSA 674:21 as an innovative land use control. The administration of this Section shall be the responsibility of the Planning Board. This Section, as well as regulations and studies adopted by the Planning Board consistent with and in furtherance of this Section, shall govern the assessment of impact fees imposed upon new development in order to meet the needs occasioned by that development for the construction or improvement of capital facilities owned or operated by the Town of Fremont or the Fremont School District.

1501.2 The public facilities for which impact fees may be assessed in Fremont may include water treatment and distribution facilities; waste water treatment and disposal facilities; sanitary sewer; stormwater, drainage and flood control facilities; public road systems and rights-of-way; municipal office facilities; public school facilities; the proportional share of capital facilities of a cooperative or regional school district of which Fremont becomes a member; public safety facilities; solid waste collection, transfer, recycling, processing and disposal facilities; public library facilities; and public recreation facilities not including public open space.

1501.3 Prior to assessing an impact fee for one or more of the public facilities enumerated above, the Planning Board shall have adopted such studies or methodologies and related fee schedules that provide for a process or method of calculating the proportionate share of capital improvement costs that are attributable to new development. Such calculations shall reasonably reflect the capital cost associated with the increased demand placed on capital facility capacity by new development.

1501.4 The following regulations shall govern the assessment of impact fees for public capital facilities in order to accommodate increased demand on the capacity of these facilities due to new development.

Section 1502 - Findings

The Town of Fremont hereby finds that:

- A. The Town of Fremont is responsible for and committed to the provision of public facilities and services and standards determined by the Town to be necessary to support development in a manner which protects and promotes the public health, safety and welfare.
- B. Capital facilities have been and will be provided by the Town.

- C. The Town's legislative body has authorized the Planning Board to prepare and amend a Capital Improvements Program per NH RSA 674:5-8, and the Planning Board has prepared and adopted said program.
- D. An impact fee ordinance for capital facilities is consistent with the goals and objectives of the Master Plan and the Capital Improvements Program of the Town of Fremont.
- E. New development in Fremont will create the need for the construction, equipping, or expansion of public capital facilities in order to provide adequate facilities and services for its residents, businesses, and other needs occasioned by the development of land.
- F. Impact fees may be used to assess an equitable share of the growth-related cost of public facility capacity to new development in proportion to the facility demands created by that development.
- G. In the absence of impact fees, anticipated residential and non-residential growth and associated capital improvement costs could necessitate an excessive expenditure of public funds in order to maintain adequate facility standards and to promote and protect the public health, safety, and welfare.
- H. Impact fees assessed pursuant to this Section will not exceed the costs of:
 - 1. Providing additional public capital facilities necessitated by new development in Fremont; and/or
 - 2. Compensating the Town of Fremont or the Fremont School District for facility capacity that it provides in anticipation of new development in Fremont.

Section 1503 - Definitions

1503.1 The applicant for the issuance of a permit that would create new development as defined in this section.

1503.2 New Development. An activity that results in:

- A. Subdivision, site development, building construction or other land use that results in an increase in demand for capital improvement facilities as identified in the Planning Board's impact fee schedules; or,
- B. The conversion of an existing use to another use if such change creates a net increase in the demand on public capital facilities that are the subject of impact fee assessment methodologies adopted by the Planning Board.

New development shall not include the replacement of an existing mobile home, or the reconstruction of a structure that has been destroyed by fire or natural disaster where there is no change in its size, density or type of use, and where there is no net increase in demand on the capital facilities of the Town of Fremont.

Section 1504 – Computation of Impact Fee

1504.1 The amount of each impact fee shall be assessed in accordance with written procedures or methodologies adopted and amended by the Planning Board for the purpose of capital facility impact fee assessment in Fremont. These methodologies shall set forth the assumptions and formulas comprising the basis for impact fee assessment and shall include documentation of the procedures and calculations used to establish impact fee schedules. The amount of any impact fee shall be computed based on the municipal capital improvement cost of providing adequate facility capacity to serve new development. Such documentation shall be available for public inspection at the Planning offices of the Town of Fremont.

1504.2 In the case of new development created by the conversion or modification of an existing use, the impact fee assessed shall be computed based upon the net increase in the impact fee assessment for the new use as compared to the impact fee that was, or would have been, assessed for the previous use in existence on or after the effective date of this Section.

Section 1505 – Assessment of Impact Fees

1505.1 Impact fees shall be assessed on new development to compensate the Town of Fremont for the proportional share of the public capital facility costs generated by that development.

1505.2 Any person who seeks a permit for new development, including permits for new or modified service connections to the public water system or public wastewater disposal system that would increase the demand on the capacity of those systems, is hereby required to pay the public capital facility impact fees authorized under this Section in the manner set forth herein, except where all or part of the fees are waived in accordance with the criteria for waivers established in this Section.

1505.3 The Public School Impact Fee shall be imposed on all new development, except for accessory dwelling units and residential units that are lawfully restricted to occupancy by senior citizens age fifty-five (55) or over. The fees shall be collected by the Town at or prior to issuance of a certificate of occupancy at the rates per unit according to structure type (4 types) as detailed in the related fee schedule.

Section 1506 - Waivers

The Planning Board may grant full or partial waivers of impact fees where the Board finds that one (1) or more of the following criteria are met with respect to the particular capital facilities for which impact fees are normally assessed.

- A. The Planning Board may agree to waive all or part of an impact fee assessment and accept in lieu of a cash payment, a proposed contribution of real property or facility improvements of equivalent value and utility to the public. Prior to acting on a request for a waiver of impact fees under this provision that would involve a contribution of real property or the construction of capital facilities, the Planning Board shall submit a copy of the waiver request to the Board of Selectmen for its review and consent prior to its acceptance of the proposed contribution. The value of contributions or improvements

shall be credited only toward facilities of like kind and may not be credited to other categories of impact fee assessment. Full or partial waivers may not be based on the value of exactions for on-site or off-site improvements required by the Planning Board as a result of subdivision or site plan review, and which would be required of the developer regardless of the impact fee assessments authorized by this Section.

- B. The Planning Board may waive an impact fee assessment for a particular capital facility where it finds that the subject property has previously been assessed for its proportionate share of public capital facility impacts, or has contributed payments or constructed capital facility capacity improvements equivalent in value to the dollar amount of the fee(s) waived.
- C. The Planning Board may waive an impact fee assessment where it finds that, due to conditions specific to a development agreement, or other written conditions or lawful restrictions applicable to the subject property, the development will not increase the demand on the capacity of the capital facility or system for which the impact fee is being assessed.
- D. A fee payer may request a full or partial waiver of the amount of the impact fee for a particular development based on the results of an independent study of the demand on capital facility capacity and related costs attributable to that development. In support of such request, the fee payer shall prepare and submit to the Planning Board an independent fee calculation or other relevant study and supporting documentation of the capital facility impact of the proposed development. The independent calculation or study shall set forth the specific reasons for departing from the methodologies and schedules adopted by the Town. The Planning Board shall review such study and render its decision. All costs incurred by the Town for the review of such study, including consultant and counsel fees, shall be paid by the fee payer.
- E. A person may request a full or partial waiver of impact fees, other than those that expressly protect public health standards, for construction within a plat or site plan approved by the Planning Board prior to the effective date of this Section (November 27, 2001 – Date of Ordinance posting). Prior to granting such a waiver, the Board must find that the proposed construction is entitled to the four (4) year exemption provided by RSA 674:39, pursuant to that statute.

Section 1507 – Payment of Impact Fee

1507.1 No permit shall be issued for new development as defined in this Section until the impact fee has been assessed by the Building Inspector. The fee payer shall either agree to pay the impact fee prior to issuance of a building permit or shall post a performance guarantee acceptable to the Planning Board with the Planning Board prior to the issuance of any building permit to ensure payment of all fees. The Building Inspector shall not issue a Certificate of Occupancy for the development on which the fee is assessed until the impact fee has been paid in full or has been waived by the Planning Board. In the interim between assessment and collection, the Planning Board may authorize another mutually acceptable schedule for payment or require the deposit of an irrevocable letter of credit or other acceptable performance and payment guarantee with the Town of Fremont.

1507.2 Where off-site capital improvements have been constructed, or where such improvements will be constructed simultaneously with new development, and where the Town has appropriated necessary funds to cover such portions of the work for which it will be responsible, the Building Inspector may collect the impact fee for such capital facilities at the time a building permit or a permit to connect to the public water or public wastewater system, is issued.

Section 1508 – Appeals Under This Section

A party aggrieved by a decision under this Section may appeal such decision to the Superior Court as provided by RSA 676:5, III and RSA 677:15, as amended.

Section 1509 – Administration of Funds Collected

1509.1 All funds collected shall be properly identified and promptly transferred for deposit into separate impact fee accounts for each type of public capital facility for which impact fees are assessed. Each impact fee account shall be a non-lapsing special revenue fund account and under no circumstances shall such revenues accrue in the General Fund. The Town Treasurer shall have custody of all accounts.

1509.2 The Treasurer shall record all fees paid, by date of payment and the name of the person making payment, and shall maintain an updated record of the current ownership and tax map reference number of properties for which fees have been paid under this Section for each permit so affected for a period of at least ten (10) years from the date of receipt of the impact fee payment associated with the issuance of each permit.

1509.3 Impact fees collected may be spent from time to time by order of the Board of Selectmen and shall be used solely for the reimbursement of the Town or the Fremont School District in the case of school impact fees, for the cost of the public capital improvements for which they were collected, or to recoup the cost of capital improvements made by the Town or the Fremont School District in anticipation of the needs for which the impact fee was collected.

1509.4 In the event that bonds or similar debt instruments have been or will be issued by the Town of Fremont or the Fremont School District for the funding of capacity-related improvements, impact fees from the appropriate related capital facility impact fee accounts may be applied to pay debt service on such bonds or similar debt instruments.

1509.5 At the end of each month, the Treasurer shall make a report giving a particular account of all impact fee transactions during that month. At the end of each fiscal year, the Treasurer shall make a report to the Board of Selectmen and Planning Board, giving a particular account of all impact fee transactions during the year.

Section 1510 – Use of Funds

1510.1 Funds withdrawn from the capital facility impact fee accounts shall be used solely for the purpose of acquiring, constructing, equipping, or making improvements to public capital facilities to increase their capacity, or to recoup the cost of such capacity improvements.

1510.2 Impact fee monies, including any accrued interest, that are not assigned in any fiscal period shall be retained within the same public capital facilities impact fee account until the next fiscal period except where a refund is due.

1510.3 Funds may be used to provide refunds consistent with the provisions of this Section.

Section 1511 – Refund of Fees Paid

The current owner of record of property for which an impact fee has been paid shall be entitled to a refund of that fee, plus accrued interest where:

- A. The impact fee has not been encumbered or legally bound to be spent for the purpose for which it was collected within a period of six (6) years from the date of the full and final payment of the fee; or
- B. The calculation of an impact fee has been predicated upon some portion of capital improvement costs being borne by the municipality, and the legislative body has failed to appropriate the municipality's share of the capital improvements with six (6) years of complete and final payment of the impact fee assessed.
- C. The Board of Selectmen shall provide all owners of record who are due a refund written notice of the amount due, including accrued interest, if any, and shall promptly cause said refund to be made.

Section 1512 - Additional Assessments

Payment of the impact fee under this Section does not restrict the Town or the Planning Board from requiring other payments from the feepayer, including such payments relating to the cost of the extension of water and sewer mains or the construction of roads or streets or other infrastructure and public capital facilities specifically benefiting the development as required by the subdivision or site plan review regulations, or as otherwise authorized by law.

Section 1513 - Scattered or Premature Development

Nothing in this Section shall be construed so as to limit the existing authority of the Fremont Planning Board to deny new proposed development which is scattered or premature, requires an excessive expenditure of public funds, or otherwise violates the Town of Fremont Zoning Ordinance, or the Fremont Planning Board Site Plan Review Regulations or Subdivision Regulations, or which may otherwise be lawfully denied.

Section 1514 – Review and Change in Method of Assessment

The methodologies adopted by the Planning Board for impact fee assessment, and the associated fee schedules, shall be reviewed periodically and amended as necessary by the Planning Board. Such review shall take place not more than five (5) years from the initial adoption of this Section, nor more frequently than annually, except as required to

correct errors or inconsistencies in the assessment formula. Failure to conduct a periodic review of the methodology shall not, in and of itself, invalidate any fee imposed. Any proposal for changes in the impact fee assessment methodology or the associated fee schedule shall be submitted to the Board of Selectmen for its review and comment prior to final consideration of the proposed changes by the Planning Board. The review by the Planning Board and Board of Selectmen may result in recommended changes or adjustments to the methodology and related fees based on the most recent data as may be available. No change in the methodology or in the impact fee schedules shall be adopted by the Planning Board until it shall have been the subject of a Public Hearing noticed in accordance with RSA 675:7.

ARTICLE 16 – SIGNS

1600.1 – Purpose

This ordinance regulates all new or materially altered signs in the Town of Fremont.

- A. The primary purpose of a sign is to convey information.
- B. The primary purpose of this ordinance is to ensure motorist and pedestrian safety while allowing property owners to convey information to the public.

1600.2 – Definitions

- A. Sign: Any material conveying information which is attached to the exterior of a structure, a pole, or some object such as a rope or wire between structures, poles, or the ground shall be considered a sign and subject to the provisions of this ordinance.
- B. Commercial: Any lot in Main Street District, Shirkin Road Commercial District, Residential District, Fremont Village District, and commercial operations in the Flexible Use Residential District with a Conditional Use Permit laid out as per Article 7, Section 704.2 of this Ordinance.

1600.3 – Signs Authorized Without A Permit

- A. Small Signs: Signs less than three (3) square feet do not require a permit.
- B. Temporary Signs: Signs that would be allowed with a permit but remain in place for no longer than seven (7) days during any ninety (90) day period.
- C. Flags fifteen (15) square feet or smaller.

1600.4 – Prohibited Signs

- A. Signs in the Right-of-Way: No signs shall be allowed in the Town or State Right-of-Way.
- B. Highly Reflective and Fluorescent Signs. Signs made wholly or partially of highly reflective materials and/or fluorescent or day-glow painted signs.

- C. It shall be unlawful to affix, attach, or display any advertisement upon any object of nature, utility pole, telephone booth, or highway sign.
- D. Animated, moving, flashing, intensely lighted signs and signs that emit audible sound, noise, or visible matter.
- E. Visual Story Signs that convey a sequence of messages.

1600.5 – Additional Sign Regulations

- A. Setbacks. All signs must be set back at least ten (10) feet from all property lines. A sign must not impair a motorist's visibility of oncoming traffic.
- B. Illumination. All external light sources shall be dark sky compliant. Internally lit signs are allowed.
- C. Size and Quantity.
 - 1. Residential use. One (1) on-site, twelve (12) square foot sign (attached or freestanding) is permitted. The freestanding sign and supporting structure may not exceed six (6) feet in height.
 - 2. Commercial (single business). One (1) on-site, thirty (30) square foot sign (attached or freestanding) is permitted. The freestanding sign and supporting structure may not exceed ten (10) feet in height.
 - 3. Commercial (multiple businesses). One (1) twelve (12) square foot, attached sign per business and one (1) freestanding sign per lot are permitted. The freestanding sign and supporting structure may not exceed twenty-five (25) feet in height or one hundred fifty (150) square feet in total area (measured from the ground to the top of the sign).
 - 4. Mixed Use. One (1) on-site thirty (30) square foot sign (attached or freestanding) is permitted. The freestanding sign and supporting structure may not exceed ten (10) feet in height.

ARTICLE 17 – ADMINISTRATION

Section 1701 – Building Inspector and Building Permits

1701.1 The Board of Selectmen or designee shall constitute a Board of Building Inspectors and shall be the Administrative Officers of this Ordinance.

1701.2 It shall be unlawful for any person to commence work for erection or alteration of any building or structure until a permit has been duly granted for such erection or alteration by the Selectmen or designee and the said Selectmen or designee shall base their approval or rejection of proposed plans upon the effect such operations are likely to have upon the value and/or use of other property in the vicinity and/or the Town, and upon the provisions of the Ordinance.

1701.3 The Board of Selectmen or designee shall require that the application for building permit include a plot plan and contain all necessary information to enable them to ascertain whether the proposed buildings or structures and their intended use comply with the provisions of this ordinance.

1701.4 No building permit shall be issued until the Board of Selectmen or designee has certified that the proposed building or structure and its intended use comply with the provisions of this Ordinance.

Section 1702 – Zoning Board of Adjustment

1702.1 The Board of Selectmen shall appoint a Board of Adjustment.

1702.2 Board of Adjustment: Such local legislative body shall provide for the appointment of a Board of Adjustment and in regulations and restrictions adopted pursuant to the authority hereof shall provide that the said Board may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.

1702.3 Members of Board, Term, Vacancies: The Board of Adjustment shall consist of five (5) members. On the date of the expiration of the terms of the present members of any Board of Adjustment the appointing authority shall appoint one (1) member for a term of one (1) year, one (1) member for a term of two (2) years, one (1) member for a term of three (3) years, one (1) member for a term of four (4) years and one (1) member for a term of five (5) years. Said members shall be removable by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term.

1702.4 Meetings of the Board, etc.: The Board shall adopt rules in accordance with the provisions of the ordinances. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. Such Chairman, or in his absence the acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

1702.5 Appeals to Board: Appeals to the Board of Adjustment may be taken by any person aggrieved of by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the Board a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the records upon which the action appealed from was taken.

1702.6 Effect of Appeal: An appeal stays all proceedings under the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after notice of appeal shall have been filed with him that by reason of facts stated in the

certificate a stay would, in his opinion, cause imminent peril to life or property, in such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by the Superior Court on notice to the officer from whom the appeal is taken and cause shown.

1702.7 Appeals to Board: Notice of Hearing: The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as notice to the parties in interest and decide the same within a reasonable time. Upon hearing any party may appear in person or by agent or attorney.

1702.8 Powers of Board: The Board of Adjustment shall have the following powers:
A. any variation in such ordinance.

1702.9 Disqualification of Board Member: No member of the Board of Adjustment shall sit upon the hearing of any question which the board is to decide in a judicial capacity who would be disqualified from any cause, except exemption from service and knowledge of the facts involved gained in the performance of his official duties, to act as a juror upon the trial of the same matter in any action at law. If a member shall be disqualified or unable to act in any particular case pending before the board the appointing authority, upon application of the board, shall appoint a member to act in his place upon said case.

1702.10 Appeals to Court: Any person aggrieved by any decision of the Board of Adjustment, or any decision of the legislative body of such municipality in regard to its plan of zoning, or any taxpayer, or any officer, department, board, or bureau of the municipality, may apply to the Superior Court, within thirty days after the action complained of has been recorded, by a sworn petition, setting forth that such decision is illegal or unreasonable, in whole or in part, specifying the grounds upon which the same is claimed to be illegal or unreasonable.

1702.11 Appeals to Court - Procedure: The court shall direct the record in the matter appealed from to be laid before it, hear the evidence and make such order approving, modifying or setting aside the decision appealed from as justice may require, and may make a new order as a substitute for the order of the board. The filing of the petition shall not stay proceedings upon the decision appealed from, but the court may, on application, notice to the board and on cause shown, grant a restraining order.

1702.12 Appeals to Court - Certifying Record: An order of court to send up the record may be complied with by filing either the original papers or duly certified copies thereof, or of such portions thereof as the order may specify, together with a certified statement of such other facts as show the grounds of the action appealed from.

1702.13 Appeals to Court - Hearing, etc.: The court may take evidence or appoint a referee to take such evidence as it may direct and report the same with his findings of fact and conclusions of law.

1702.14 Appeals to Court - Costs: Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

1702.15 Speedy Hearing: All proceedings under this subdivision shall be entitled to a speedy hearing.

1702.16 Remedies for Violations: In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or any building structure, or land in violation hereof or of any ordinance or other regulation made under authority conferred hereby. The proper local authorities of the municipality, in addition to other remedies may institute any appropriate action or proceedings to prevent such unlawful action to restrain, correct, or abate such violation, to prevent the occupancy of the buildings, structure or land, or any illegal act or use in or about such premises.

1702.17 Conflicting Provisions: Whenever the regulations made under the authority hereof differ from those prescribed by any statute, ordinance, or other regulation, that provision which imposes the greater restriction or higher standard shall govern.

1702.18 - Expiration of Special Exception and Variance

As authorized by State of NH RSA 674.33.I-a, variances or special exceptions granted on or after August 19, 2013 shall be valid only if exercised within two (2) years of the date of final approval. The Board of Adjustment, at the Applicant's request, may grant a single, twelve (12) month extension. No variance or special exception shall expire within six (6) months of the resolution of a planning board application filed in reliance upon the variance or special exception. Variances before August 19, 2013 shall be null and void unless exercised by April 1, 2024.

Section 1703 – Violations of Ordinances

1703.1 Upon any well-founded information that this ordinance is being violated the Selectmen shall, on their own initiative, take immediate steps to enforce the provisions of this ordinance by seeking an injunction in the Superior Court or by any other appropriate legal action.

1703.2 The terms and conditions of this ordinance shall apply to any building or structure which may be moved into town in total or in part already constructed.

1703.3 Whoever violates any of the provisions of the regulations of this Ordinance shall be subject to NH RSA 676:17.