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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED

SEP 21 2012

~~County~~  
~~City~~ of Fremont  
Town  
~~Village~~

Local Law No. 1 of the year 2012 MISCELLANEOUS & STATE RECORDS

A local law Town of Fremont Road Preservation Law  
(Insert Title)

Be it enacted by the Fremont Town Board of the  
(Name of Legislative Body)

~~County~~  
~~City~~ of Fremont as follows:  
Town  
~~Village~~

SEE COPY OF LOCAL LAW ANNEXED HERETO

(If additional space is needed, attach pages the same size as this sheet, and number each.)

Local Law Filing

**Town of Fremont**

**Local Law No. 1 of the year 2012**

**A local law** entitled "Town of Fremont Road Preservation Law"

Be it enacted by the Town Board of the Town of Fremont as follows:

**Section 1. Title.**

This local law may be cited as the "Town of Fremont Road Preservation Law".

**Section 2. Authority for this Local Law.**

The Town Board of the Town of Fremont enacts this local law under the authority granted by Section 10 of the New York State Municipal Home Rule Law, New York State Constitution Article IX § 2(c)6, Town Law, subsection 1(ii)(a)(6), subdivision 2 of section 23-0303 of the Environmental Conservation Law, Highway Law Section 140, Highway Law section 320, Town Law section 130, and Vehicle and Traffic law section 1660.

**Section 3. Purpose.**

The purpose of this local law is to maintain the safety and general welfare of Town residents and others using Town highways by regulating high impact commercial activities that have the potential to adversely impact roads and property. The intent is to protect the Town roads and property from damage from endeavors that typically require high frequency use of heavy equipment with heavy loads. It is the intent of this law to insure that the Town's roads are not damaged or harmed to the overall detriment of the Town by a few individual users who utilize the roads in a manner that causes extraordinary deterioration to the roads.

Nothing contained in this Chapter shall be deemed to limit the right to farm as set forth in Article 25-AA of the New York State Agricultural and Markets Law.

Nothing contained in this Chapter shall be deemed to unlawfully interfere with Interstate Commerce.

**Section 4. Definitions.**

The following terms shall have the following meaning in this Chapter.

Application: Permits and/or Road Use and Repair Agreement.

Blanket Permit: A permit that covers more than one vehicle or truck; which would be subject to the permitting process. Vehicles or trucks that are owned, used, rented, leased, hired (including

independent contractors) or in any way utilized for a specific project, site or work location shall be considered related vehicles and should be subject of a blanket permit.

**Bond:** A commercial bond to ensure that the condition of the town roads and/or property impacted by Highway Frequency Truck Traffic is left in a good or better condition at the completion of the project as they were at the start of the project.

**Code Enforcement Officer:** The building and code inspector of the Town, Town code enforcement officer, or such other Town official who exercises similar building, code and enforcement powers.

**Escrow:** Money put into the custody of a third party for delivery to a grantee only after the fulfillment of the conditions specified.

**High Frequency Truck Traffic:** A vehicle or related vehicles that have 3 or more axles which traverses/travels over 50 miles or more of Town roads or other town property during any 5 consecutive days. When calculating whether a vehicle or related vehicles meets the definition of High Frequency Traffic, 50 miles and 5 consecutive days shall be used for both individual permits and Blank Permits.

**Highway Superintendent:** The Highway Superintendent of the Town.

**Local Delivery:** Delivery or pickup of merchandise or other property along the Town Roads by High Frequency Truck Traffic.

**Other Town Property:** Any real property (including any improvements therein, thereon or thereunder) or personal property owned by, or leased to, the Town.

**Motor vehicles:** Every vehicle operated or driven upon a public highway which is propelled by any power other than human or animal power, except (a) electrically-driven mobility assistance devices operated or driven by a person with a disability, (b) vehicles which run only upon rails or tracks, (c) snowmobiles, (d) all-terrain vehicles, (e) fire, police vehicles, ambulances, EMT vehicles, and other similar emergency vehicles, (f) farm type tractors, all-terrain type vehicles used exclusively for agricultural purposes or for snow plowing (other than for hire), farm equipment, including self-propelled machines and trucks used exclusively in growing, harvesting, handling or transporting farm produce, and (g) self-propelled caterpillar or crawler type equipment while being operated on the contract site.

**Permit:** Approval of an application for a Road Preservation Permit and /or Execution of the Road Use and Repair Agreement that includes the terms and conditions pursuant to this Local Law.

**Permitee:** Shall mean the holder of a Road Preservation Vehicle Permit or the Developer who enters into the Road Use and Repair Agreement with the Town of Fremont pursuant to this Local Law. This Local Law shall include the holder of a Permit and/or the Developer's contractors, subcontractors, employees and agents.

**Related Vehicles:** More than one vehicle; including those that are owned, used, rented, leased, hired (including independent contractors) or in any way utilized for a specific project, site or

work location. When calculating if related vehicles meet the definition of High Frequency Truck Traffic, the number of axles shall be counted in each vehicle separately; however, the number of miles shall be the combination of all vehicles with 3 or more axles.

Road Use and Repair Agreement (Attachment A): Agreement to be completed by potential Permittee, summarizing the project, project location, start and completion dates, expected maximum gross vehicle weight used for the project, proposed truck routes, and any other items that the Town Board deems necessary.

Town: Town of Fremont, a municipality located in the County of Steuben, State of New York.

Town Board: The Town Board of the Town of Fremont.

Town Clerk: The duly elected Town Clerk of the Town of Fremont.

Town of Fremont Designee: The individual appointed by, and at the Town Boards discretion, to interact and to oversee and to ensure the Permittee's conducts their work as agreed to under the Road Use and Repair Agreement.

Town Road: Any Town highway, road, street, avenue, boulevard, parkway, shoulder guard rail, concourse, driveway, easement, right of way, bridge, culvert, sluice pipe, ditch, dock, tunnel, sidewalk, or any utilities or improvements therein, thereon or thereunder.

Truck: Every motor vehicle designed, used, or maintained primarily for the transportation of property.

Vehicle: Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human or animal power or used exclusively upon stationary rails or tracks.

## **Section 5. Permanent Weight Restriction and Truck Route.**

A. All trucks, tractors commercial vehicles, tractors, tractor-trailer combinations, tractor-semitrailer combinations, tractor trailer-semitrailer combinations, or motor vehicles that are considered High Frequency Truck Traffic are excluded from all Town Roads in the Town of Fremont, except that High Frequency Truck Traffic operated in the Town of Fremont shall be restricted (except as expressly hereinafter permitted) to the following designated "truck route system":

1) The designated "Town of Fremont Truck Route" shall be limited to consist of routes on, over and along any and all State and County owned/maintained roadways lying within the boundaries of the Town of Fremont. No High Frequency Truck Traffic shall use Town Highways or roadways, except as hereinafter permitted and contained in Attachment A.

B. The initial determination that the standards of High Frequency Truck Traffic have been met shall be made by the Town Board. However, if during the application process a Permittee alleges that they do not meet the threshold of High Frequency Truck Traffic, they may present such evidence to the Town Board for a review and determination.

C. There shall be signs installed at all major highways entering Town, indicating that High Frequency Truck Traffic must use the truck route system or local delivery by permit.

#### **Section 6. Requirement that a Vehicle Permit be obtained by High Frequency Truck Traffic.**

Local Delivery by High Frequency Truck Traffic is allowed but only after compliance with this Local Law and entering into the Road Use and Repair Agreement as provided for herein as Attachment A.

When there is High Frequency Truck Traffic that involves more than one vehicle; including those that are owned, used, rented, leased, hired (including independent contractors) or in any way utilized for a specific project, site or work location; the Permittee must enter into the Road Use and Repair Agreement in addition to an Individual or Blanket Permit.

The Permittee for a Blanket Permit or Road Use and Repair Agreement shall be an individual or entity that controls or directs the specific project, site or work location and that application must include all vehicles owned, used, rented, leased, hired (including independent contractors) or in any way utilized.

#### **Section 7. Permit Issuing Authority and Enforcement Authority.**

A. The Town Board is hereby authorized to promulgate an application form requesting a Permit and the Permit to be issued upon review and approval of said application.

B. The Town Clerk is hereby designated as the authority to receive applications for permits to operate or move a vehicle or a combination of vehicles, the weights and frequency of which exceed the limitations provided herein. The Town Clerk must submit a copy of the applications and any approved permit to the Town Code Enforcement Officer and the Highway Superintendent.

C. The Town Board is hereby designed as the authority to approve applications for a Permit to operate, transport, or move High Frequency Truck Traffic, as defined above, on, over or across a designated Town Road or other Town property.

D. This chapter shall be administered and jointly enforced by the Town enforcement officers and the police agencies of Steuben County and NYS or officials authorized by the Town Board of the Town of Fremont. Violations may be reported by verbal or written complaint by at least one person, including the enforcement officer.

1) Town enforcement officers and the police agencies of Steuben County and NYS and any other officials authorized by the Town Board of the Town of Fremont are authorized to enforce any violation of the Chapter.

#### **Section 8. Application and Permit Form.**

At time of initial application and continuing thereafter, the person requesting the permit shall provide the following:

- 1) A proposed road map that the High Frequency Truck Traffic will travel on,
- 2) A video or photographic documentation demonstrating the condition of the proposed road and/or described in the permit,
- 3) Copies of valid New York State Vehicle Registrations for each vehicle and copies of valid New York State Special Hauling Permits, if any, for each vehicle,
- 4) The name of a responsible individual person who would be subject to prosecution and civil penalties pursuant to Section 18. The responsible party must sign or join in signing the permit application and his/her signature must be acknowledged by a notary public. If the applicant is a corporation, limited liability company, partnership, or other entity, the responsible party must be an officer (or director), member (or manger), general partner, or principal of the entity, as the case may be, signing in his/her personal and individual, not representative, capacity.
- 5) Proof of Insurance as required herein,
- 6) Permit fee of \$25.00 per Permit, \$100.00 per Blanket Permit and \$1,000.00 per Road Use and Repair Agreement, per year or portion thereof.
- 7) Any other documents, maps, sketches, and plans, which the Town Board may require and,
- 8) All other requirements of this Chapter, including an escrow account, bond, etc., must be satisfied prior to approval of any permit application.

Information shall be provided with the application on each individual vehicle owned, used, rented, leased, hired (including independent contractors) or in any way utilized for a specific project, site or work location.

Whenever possible, the Permittee must request a Blanket Permit covering all of the vehicles, which such Permittee plans to use on town roads or highways. If such a Blanket Permit is thereafter issued all of the vehicles specifically listed on such Permit shall be deemed to be covered by such Permit.

Additionally, after issuance of the Permit, the Applicant must provide updated information including but not limited to changes in: truck routes, project, site or work location, etc. if in the opinion of the Town Board, the changes are significant, then the Permittee must file a new Permit application; including new relevant fees, bonds, escrows, insurances, etc. Every permit or blank permit shall be carried on the vehicle to which it refers and shall be open to inspection of any authorized enforcement officer, peace officer or police agencies of Steuben County or other officials authorized by the Town Board.

After issuance of the Permit, the Permittee will arrange for video or photographic documentation of condition of roads, shoulders, and all structures (culverts, bridges, etc.) that will be traversed by the permitted traffic on monthly basis and within two weeks after the conclusion of the permitted work. All video or photographic documentation will be submitted to

the Town Board within one week of recording. Failure to submit the required video or photographic documentation will result in immediate revocation of the Work Permit.

### **Section 9. Road Use and Repair Agreement.**

A Permittee, which qualifies as High Frequency Truck Traffic, shall be required by the Town to enter into the Road Use and Repair Agreement in lieu of separate permits for each vehicle(s) or a Blanket Permit. Said Road Use and Repair Agreement shall conform to the minimum requirements of this Local Law, would be executed by the Town and the Permittee and shall include such additional terms as are reasonably required by the Town, including but not limited to insurance, maintenance bond, truck traffic routes, traffic schedules, inspections and road surveys. All of the vehicles specifically listed in the Permit, including those owned by the Developer, its agents and subcontractors, shall be deemed to be covered by such agreement.

### **Section 10. Damage to Town Roads.**

With the exception of normal wear and tear, the Permittee is responsible for all damages, injuries, discharges or spills that occur on or to the Town Roads, other Town property, ditches, curbs, sidewalks or other improvements and to public utilities of the Town in the roadway. It is the Permittee's responsibility to obtain the permission of any railroad companies operating within the Town to schedule traffic across any railroad crossings located on Town Roads as to avoid or minimize delays to rail traffic, and to maintain and repair said railroad crossings, as necessary.

Upon due notice being given to the Permittee and at the Town's option, the Town may allow the Permittee to repair all damages or the Town may arrange the necessary repairs and charge the Permittee for all labor and materials at the prevailing rates. The highway shall be restored and the integrity of the repair maintained for a period of one year from the date of any repairs. Particular attention is called to the necessity of thoroughly compacting the back fill, which will be required by the Town. If the Town requests the Permittee to repair the damages, such repair will be promptly done to the specifications, time line and any and all other requirements of the Town.

### **Section 11. Insurance.**

A. The Permittee shall present to the Town certificates of insurance evidencing the acquisition of liability insurance coverage naming the Town as an additional insured on a noncontributory basis with the minimum limits of coverage for bodily injury equal to \$1,000,000.00 for each person injured, \$3,000,000.00 for aggregate bodily injury resulting from each occurrence, and \$1,000,000.00 property damage. A valid Insurance Certification shall be provided with the Permit application and will be maintained on file with the Town Clerk for the duration of the work covered by the Permit .

B. Said insurance shall be maintained throughout the term of the permit or Road Use and Repair Agreement, at the cost and expense of the Permittee, and the aforementioned certificates shall provide for thirty (30) days' notice to the Town prior to cancellation of coverage.

C. All persons performing work under this permit and whom are required to be covered

by Workmen's Compensation Insurance and Disability Benefits insurance under New York law; shall be covered at the cost and expense of the Permittee.

**Section 12. Maintenance Bond and Letter of Credit.**

For Permits issued and do not qualify as High Frequency Truck Traffic and therefore require the Permittee to enter into the Road Use and Repair Agreement as stated in Section 9., the Permittee shall present to the Town a maintenance bond in a dollar amount per mile as determined by the Town's Highway Superintendent sufficient to cover the actual cost of repair, reconstruction, and/or any other reasonable and necessary action. In determining the dollar amount per mile, the Highway Superintendent shall take into account the type of road (such as gravel, oil and stone, or paved), the width, the existence of culverts, drainage pipes, bridges, or other features, and such other factors as he maintains are appropriate.

The Permittee shall also present to the Town a bank letter of credit in the amount of \$10,000.00 in favor of the Town guaranteeing compliance with the provisions of the permit. The Permittee shall immediately notify the Town of any change, threatened cancellation, actual cancellation, or expending of the maintenance bond or the letter of credit. Prior to the said letter of credit and/or maintenance bond being changed, cancelled or expended, the Permittee shall renew, extend, or replace the same on the same terms and conditions as originally and immediately provide proof thereof to the Town, and upon the Permittee's failure to do so, the Town, at its option may revoke the permit.

By accepting a maintenance bond and or letter of credit, the Town in no way gives up its rights to proceed directly against the Permittee for any damages that the Town incurs. Such Maintenance Bond shall be maintained for a least a period of one year after repairs have been approved by the Town. The highway shall be restored and the integrity of the repair maintained for a period of one year from the date of any repairs.

**Section 13. Indemnity and Save Harmless.**

The Permittee will be required to agree to fully indemnify, defend, save and hold harmless the Town of Fremont and all of its departments, bureaus, divisions, boards, officers and employees from and against any and all claims, costs, damages, expenses, charges, risks, losses, lawsuits, judgments, executions, penalties, fines, assessments or any other liability of any type arising out of, occurring in connection with, or resulting from any type and all activity to be performed by Permittee pursuant to this Permit and/or Road Use and Repair Agreement.

By accepting the Permit, the Permittee shall be deemed to have agreed to all of the defense, indemnity and save harmless provisions of this Local Law and all other provisions of this Local Law.

**Section 14. Extent of Permittee's Liability and Obligations Hereunder.**

The Permittee's obligations hereunder to repair and restore, the Permittee's obligations hereunder to defend, indemnify and hold harmless, and the Permittee's other liability and obligations hereunder shall not be limited by the limits of any applicable insurance coverage, highway permit bond, maintenance bond, letter of credit, comparable bond, escrow account,



cash deposit, or rights of the Town under any New York State or Federal law, rule, regulation or statute, including subdivision 3 of section 23-0303 of the Environmental Conservation law of the State of New York. The Permittee's obligations hereunder to repair and restore, the Permittee's obligation hereunder to defend, indemnify, and hold harmless, and the Permittee's other liability and obligations hereunder shall survive any termination or revocation of the Permit.

#### **Section 15. Stop Work Orders.**

The Highway Superintendent shall have the right and authority to issue stop work orders to those operating in violation of the terms of this permit, or contrary to the Permittee's application or conditions upon which its permit was issued or in violation of this Local Law, in violation of applicable provisions of law.

#### **Section 16. Revocation of Permit.**

Upon the violation of any provisions of this Permit, or violation of any provisions of this Local Law, or violation of applicable provisions of law, or violations of any conditions, the Town Board may suspend any such permit issued hereunder for no more than thirty (30) days, and following a public hearing at which the Permittee shall have the right to appear and be heard, the Town Board may permanently revoke any permit on written notice to the Permittee.

#### **Section 17. Special Conditions and Exclusions.**

A. The permit shall not be assigned or transferred without the written consent of the Town Board. A change of ownership or business identity shall also require Board approval.

B. The Town Clerk shall be given three business days written notice by said Permittee of the date when it intends to begin the activity authorized by the permit, and prompt notice of its completion.

C. The permit shall remain valid only for so long as the Permittee continues to hold a valid New York State hauling Permit or Divisible Load Permit, where necessary.

D. The permit shall not authorize the holder to exceed the maximum gross weight limit authorized for crossing an R-Posted bridge or culvert.

E. Due to the vital nature of the following vehicles in providing public services deemed necessary in preventing emergencies or in safeguarding the public health, safety and welfare, and since overweight vehicles may be required to perform these services, the following vehicles are granted exemptions from the permitting process of this local law:

1) Maintenance, repair and service vehicles owned and operated by municipalities or fire companies on official municipal or firefighting business.

2) Maintenance, repair and service vehicles owned and operated by a utility company or authority and on official utility business.

F. Valid insurance, maintenance bonds and letters of credit shall be maintained as required by herein.

G. Traffic will be maintained in accordance with the Uniform Traffic Control Manual.

H. If any of these conditions are not met, the permit is automatically voided and all work shall cease.

### **Section 18. Violation of Local Law; Penalties Therefore.**

A. Any person who violates any provision of this Local Law shall be deemed guilty of a Misdemeanor and, upon conviction thereof, shall be subject to penalties in a fine of not less than \$2,500.00 and imprisonment up to one year.

B. In addition to those penalties prescribed herein, any person who violates any provision of this chapter shall be liable for a civil penalty in an amount not to exceed \$5,000.00 for each day or part thereof during which such violation continues. The civil penalties provided by this subsection shall be recoverable in an action instituted in the name of the Town.

C. If the violation is of a continuing nature, each twenty-four hour period during which it occurs shall constitute an additional, separate and distinct offense.

D. An action or proceeding may be instituted in the name of the Town, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce any provision of this chapter. In particular, but not by way of limitation, where there is a violation of this chapter, an action or proceeding may be commenced in the name of the Town, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing abatement of the condition in violation of such provisions. The Town may seek restitution for costs incurred by the Town in remedying each violation, including but not limited to reasonable attorney's fees.

E. Remedies not exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or penalty available to address any violation described in this chapter. Any remedy specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section.

F. This section shall apply not only to the responsible person who signed the application for the permit but also all vehicle drivers, corporate officers or directors, limited liability members or managers, partners, and all other employees and other persons who are in violation, as well as the business entity itself.

### **Section 19. Reservation of Town's Rights.**

The Town hereby retains all rights it has now or may have hereafter, pursuant to the provisions of subdivision 3 of section 23-0303 of the Environmental Conservation Law, to request funds (by filing a request therefore with the New York State Commissioner of Environmental Conservation) from the oil and gas fund to reimburse or compensate the Town for costs related to repairing damages to any Town Road, or other Town property.

The Town hereby retains and reserves all rights it has now or may have hereafter,

pursuant to Navigation Law Article 12 to make a claim against the New York Environmental Protection and Spill Compensation Fund to reimburse or compensate the Town for cost related to repairing damages to any Town Road or other Town property.

The Town hereby retains and reserves all other rights it has now or may hereafter, to seek reimbursement or compensation for costs related to repairing damages to any Town Road or other Town property.

#### **Section 20. Escrow.**

The Board may hire any consultant and/or expert necessary to assist the Town Board in reviewing and evaluating the application.

1. The Town requires an applicant to deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Town Board in connection with the review of any application. The initial deposit shall be the sum of \$10,000.00. However, the Town Board may, in its discretion reduce said fee upon good cause shown. These funds shall accompany the filing of an application and the Town shall maintain a separate escrow account for all such funds.

The Town's consultants/experts shall, in accordance with an agreement between the Town and its consultants or experts, bill or invoice the Town not less frequently than monthly for its services in reviewing the application and performing its duties. If at any time during the review process this escrow account has a balance that shall not reasonably cover the cost of the remaining work of the Town's consultants/experts, the Town will require applicant to immediately replenish said escrow account in an amount set by the Town, but not to exceed \$5,000.00. Such additional escrow funds must be deposited with the Town before any further action or consideration is taken on the application. If, at the conclusion of the review process, the cost of such consultant/expert services is more than the amount escrowed pursuant hereto, the applicant shall pay the difference to the Town prior to the issuance of any Special Permit. In the event that the amount held in escrow by the Town is more than the amount of the actual billing or invoicing by the Town's consultants or experts, the difference shall be promptly refunded to the applicant.

2. A request may be made by the applicant to reduce or eliminate the funds needed for the consultant/expert escrow. After a recommendation by the Attorney for the Town, Engineer for the Town and/or any other consultant/expert engaged by the Town pursuant to this chapter, the Town Board shall review the request and make a determination based upon the scope and complexity of the project, the completeness of the application and other information as may be needed by the Town Board or its consultant/expert to complete the necessary review and analysis. Additional escrow funds, as required and requested by the Town, shall be paid by the applicant. The initial amount of the escrow deposit may be established by the Town Board upon receipt of information sufficient to make such a determination.

3. As used in this section, the term "costs and expenses" shall be deemed to include the reasonable fees charged by engineers, consultants and/or experts hired, reasonable administrative costs and expenses incurred by the Town in connection with the permitting process and the repair, restoration and preservation of Town Roads and other Town property, and reasonable legal fees, accountants fees, engineers fees, costs, expenses, disbursements,

expert witness fees, and other sums expended by the Town in pursuing any rights, remedies or claims to which the Town may be entitled under this Local Law or under applicable provisions of law, as against any Permittee, any person who has violated this Local Law, any insurance company, any bonding company, any issuer of a letter of credit, and/or any United States or State of New York agency, board, department, bureau, commission or official.

4. These funds shall accompany the filing of the application, and the Town shall maintain a separate escrow account for all such funds.

5. The Town is hereby authorized to withdraw funds from said escrow account (without prior notice to the Permittee) in order to promptly reimburse the Town for any costs and expenses (as defined herein). The Town must provide a monthly update as to monies expended from the escrow account.

In the event that there is any balance remaining in the escrow account as of the date that the Town Board determines that the Permit has expired and further determines that no damages or injuries have been caused to any Town Road or other Town property (and that no discharges or spills have occurred on any Town Road or other Town property) for which the Town has not been full reimbursed, the Town shall pay to the Permittee the balance remaining in the escrow account.

#### **Section 21. Request for a Waiver.**

All requests for a waiver from the standards set forth in this Local Law shall be made to the Town of Fremont Town Board in writing and shall, contain the grounds on which the applicant relies for requesting the waiver, including all allegations on any facts on which the applicant will rely. Where the Town Board finds that due to the special circumstances of the particular case a waiver of certain requirements is justified, then a waiver may be granted. No waiver shall be granted, however, unless the Town Board finds and records in its minutes that:

(a) granting the waiver would be keeping the intent and spirit of this Local Law and is in the best interests of the community, (b) there are special circumstances involved in the particular case; (c) denying the waiver would result in undue hardship to the applicant, provided that such hardship has not been self-imposed, (d) the waiver is the minimum necessary to accomplish the purpose.

#### **Section 22. SEQRA.**

When applicable, the Town shall at all times comply with applicable provisions of the Environmental Conservation law of the State of New York and applicable provisions of the state environmental quality review regulations (6 NYCRR Part 617) (hereinafter "SEQRA").

#### **Section 23. Severability.**

If any part or provision of this Local Law or the Application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the

validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board of the Town of Fremont hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

**Section 24. Repealer.**

All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed.

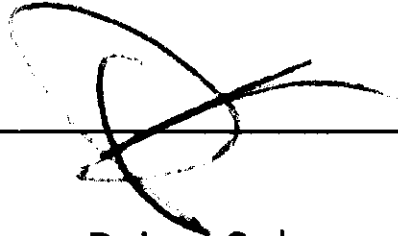
**Section 25. Effective Date.**

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State.

**26. Final adoption by local legislative body only.**

I hereby certify that the local law annexed hereto, designated as Local Law No. 1 of 2012 of the Town of Fremont was duly passed by the Fremont Town Board on 9/11, 2012, in accordance with the applicable provisions of law.

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

  
\_\_\_\_\_

Signature Brian Schu  
Title Attorney for the Town of Fremont

Date: September 14, 2012

**Attachment 1 (Local Law No. 1 of 2012)**

**TOWN OF FREMONT  
Road Use and Repair Agreement**

This Agreement effective the \_\_\_\_ day of \_\_\_\_\_, 2012 is made and entered into by and between **Town of Fremont**, office located at 8217 Cream Hill Road, Arkport, NY 14807; and

( \_\_\_\_\_ ) (**Developer**), a corporation, organized and existing under the laws of, or duly authorized to conduct business in the State of \_\_\_\_\_, having its principal place of business at \_\_\_\_\_.

**Whereas**, the parties hereto desire to provide for the use and repair of Town Roads when subjected to damage or degradation by frequent or repetitive traversing of heavy vehicles employed in respect of transporting heavy construction equipment and hauling construction materials.

**Now Therefore**, in consideration of the premises and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**Terms and Conditions:** Shall be as set forth in Exhibit A and Exhibit B, attached.

**Term of Agreement:** This Agreement shall be for a term commencing on the effective date hereof and ending when the project in respect of which it is entered into is complete, unless sooner terminated or extended as provided in Exhibit A of the Agreement.

**In Witness Whereof**, the parties hereto have executed this agreement as of the latest date written below.

**Town of Fremont**

**By:** \_\_\_\_\_

Name:

Title: Town of Fremont Attorney

**By:** \_\_\_\_\_

Name:

Title: Fremont Town Supervisor

**By:** \_\_\_\_\_

Name:

Title: Town of Fremont Highway Superintendent

**Developer**

**By:** \_\_\_\_\_

Name:

Title: (Must Be An Authorized Signatory of the Developer)

## Exhibit "A"

### Town of Fremont General Terms and Conditions

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the Town of Fremont, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** This contract shall be deemed executed only to the extent of money available to the Town of Fremont for the performance of the terms hereof. In accordance with Section 41 of the State Finance Law, the Town of Fremont shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
2. **NON-ASSIGNABILITY CLAUSE.** This contract may not be assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, of the Town of Fremont.
3. **INSURANCE.** The Contractor shall carry at his expense, from insurers licensed in the State of New York, at least the insurance coverage and limits as set forth in Appendix A "Town of Fremont Standard Insurance Requirements."
4. **INDEMNITY.** The Contractor shall at all times without limitation indemnify the Town of Fremont from all claims, damages or judgments or for the defense or payment thereof, based on any claim, action or cause of action whatsoever, including any action for libel, slander, or personal injury, or any affiliated claims, by reason of any act or failure to properly act on the part of the Contractor and in particular, as may arise from the performance under this contract.
5. **APPROVAL OF SUBCONSULTANTS.** Any additional subconsultants to the Contractor shall be subject to the approval of the Town of Fremont.
6. **COMPLIANCE WITH RULES, REGULATIONS, AND LAWS.** It is mutually agreed that all rules, regulations and laws pertaining hereto shall be deemed to be part of this contract, and anything contained herein that may be in whole or in part inconsistent therewith shall be deemed to be hereby amended and modified to comply with such legislation, rules, regulations and laws, for and during such time the same shall be in effect, but at no other time. If any provision contained herein is found now or during the life of this contract to be null and void, in whole or in part as a matter of law, then said clause or part hereof shall be deemed to be severed and deleted from this contract leaving all other clauses or parts thereof in full force and effect. It is further agreed that there shall be no gap in the coverage or applicability of said remaining clauses or parts thereof. Contractor agrees to comply with the Federal Commercial Drivers License Drug and Alcohol Testing Program requirements set forth in 49 CFR Parts 40 and 382. In acceptance of this Agreement, Contractor covenants and certifies that it will comply in all respects with all Federal, State, County, Town of Fremont or other Municipal Law which pertains hereto regarding work on municipal

contracts, matters of employment, length of hours, workers' compensation and human rights.

**7. CONFLICT OF INTEREST.** Contractor hereby stipulates and certifies that there is no member of the Town of Fremont or other Fremont Town Officer or employee forbidden by law to be interested in the contract directly or indirectly, who will benefit therefrom or who is a party thereto.

**8. LICENSES.** Contractor hereby agrees that it will obtain, at its own expense, all licenses or permits necessary for this work, if any are necessary prior to the commencement of said work.

**9. INDEPENDENT CONTRACTOR STATUS.** Contractor covenants and agrees that it will conduct itself consistent with its status, said status being that of an independent contractor and that itself, its employees or agents will neither hold themselves out as, nor claim to be an officer or employee of the Town of Fremont, for such purposes as, but not limited to, Workers' Compensation coverage, Unemployment Insurance Benefits, Social Security or Retirement membership or credit.

**10. AUDIT.** Contractor shall take such action, if applicable and as necessary and appropriate, to comply with Federal Circular A-128 or Circular A-133 relative to Single Audit of Federal Financial Assistance. In any event, Contractor shall provide the Town of Fremont with appropriate documentation should the Town of Fremont wish to conduct an audit relative to the expenditure of the funds for road repairs pursuant to this agreement.

**11. DISPUTE RESOLUTION.**

**11.1 Controversies and Claims.** Any controversy or Claim arising out of or related to the Contract, or the breach thereof, shall be resolved according to the provisions of this Article. This provision shall apply to all Claims or disputes arising out of or related to the Contract, including by way of illustration, but not limited to an order by the Town of Fremont claimed to change the Contract, Claims for extension of time, Claims for differing sited conditions, and Claims resulting in suspension of work.

**11.2 Dispute Resolution Board (DRB).** Prior to commencing any suit or action, Contractor shall submit a written "Notice of Dispute" (NOD) advising the Town of Fremont of the issues in dispute and the demands of the Contractor within ten (10) working days of the event giving rise to the dispute. Together with the NOD, the Contractor shall submit an as built chart, 'Critical Path Method' scheme or other diagram or chart depicting in graphic form how the operations were or are presumed to be adversely affected. Thereafter, the Town of Fremont shall submit the NOD to a Dispute Resolution Board (DRB) consisting of Zoning Board of Appeals. The DRB shall review the NOD within ten (10) business days.

**11.3 Progress During Resolution Proceedings.** Contractor shall carry on the work and adhere to the progress schedule during all disputes or disagreements with the Town of Fremont. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the Town of Fremont and



Contractor may otherwise agree in writing. Contractor shall make no claim for damages for delay in the performance of this contract occasioned by any act or omission to act of the Town of Fremont or any of its representatives, and agrees that any such claim shall be fully compensated for by extension of time to complete performance of the work as provided herein.

**11.4 Action at Law or Equity.** In the event dispute resolution is not concluded in ninety (90) days, then either party shall be free to initiate an action at law or in equity solely in the Supreme Court of New York, in and for Town of Fremont, with all parties maintaining any and all rights, claims and defenses as may be provided by law. Pending final decision of the Court, the Contractor shall proceed diligently with the performance of Contractor's obligations under the Contract according to the directions of the Town of Fremont's authorized representative.

1. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.
2. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract documents forming this contract, the terms of this Exhibit "A" shall control.
3. **ORDER OF PRESEDENCE.** In the event of conflict between the terms and conditions forming this contract and Local Law 1 of 2012, Fremont Road Use Preservation Law, the terms in the Fremont Road Use Preservation Law shall control.

## Exhibit B

### Road Use Agreement

# ARTICLE I

## DEFINITION OF ROAD STRUCTURAL CLASSES

**Section 1.1 Structural Class 1** - The road structure has been upgraded to an adequate and **high quality base of uniform thickness and material type. The driving surface is either an asphalt concrete pavement or bituminous surface treatment in good to excellent condition.** The Granular Base and the Asphalt Pavement/Bituminous Surface Treatment are less than 10 years old and have 20 to 30 years remaining life. The complete road structure is capable of supporting heavy construction equipment (total estimated 18-KIP Equivalent Single Axles Loads) throughout the duration of the anticipated construction project, without needing major structural improvements prior to the project. However, heavy construction traffic loading will expend some of the useful life of the road pavement structure and shorten the life expectancy of the road, even though visible damage at the end of the project may not be severe. Visible damage could include increased extent of one or more of the following distresses; alligator cracking, edge cracking, longitudinal and transverse cracking, potholes and patches, rutting (especially in the wheel paths), and overall ride roughness.

**Section 1.2 Structural Class 2** - The road structure has been upgraded to an adequate and **high quality base of uniform thickness and material type. The driving surface is either an asphalt concrete pavement or bituminous surface treatment in fair to good condition.** The Granular Base and the Asphalt Pavement/Bituminous Surface Treatment are 10-20 years old, and have 10 to 20 years remaining life. The road is adequate to sustain construction traffic for the project. However, damage to the asphalt pavement/bituminous surface or base will be likely during the project thereby causing a significant decrease in serviceability for the traveling public, rough travel for construction equipment, and potential safety issues and increased difficulties in performing winter maintenance. Visible damage could include increased extent of one or more of the following distresses; alligator cracking, edge cracking, longitudinal and transverse cracking, potholes and patches, rutting (especially in the wheel paths), and overall ride roughness.

**Section 1.3 Structural Class 3** – The road structure has not been upgraded. **The base layer/s is/are of inconsistent structure, poor to marginal quality and less than desired thickness. The asphalt pavement is in fair to good condition** with one or more of the following surface distresses present; alligator cracking, edge cracking, longitudinal and transverse cracking, potholes and patches, rutting (especially in the wheel paths). Ride roughness may range from fair to excellent. The combined layers of the pavement structure continue to provide an acceptable level of service for the traffic using the road. The road is judged to be generally adequate to service the construction traffic and the traveling public throughout the duration of the proposed project. However, by the end of

the project damage to the pavement structural system will likely be visible, and will take the form of increased extent of one or more of the following distresses; alligator cracking, edge cracking, longitudinal and transverse cracking, potholes and patches, rutting (especially in the wheel paths), and increased ride roughness.

**Section 1.4 Structural Class 4** – The road structure has not been upgraded. **The base layer/s is/are of inconsistent structure, poor to marginal quality and less than desired thickness. The asphalt pavement is in poor to fair condition** with a rough deteriorated driving surface. The road is not capable of sustaining the magnitude and the duration of loading commensurate with a designated haul route (total estimated 18-KIP Equivalent Single Axles Loads) for an extended and demanding development project. Use of the road without prior reconstruction may result in significant distresses such as severe alligator cracking, potholes, rutting, and very rough ride-ability within the duration of the construction project. The accelerated deterioration would create excessive demand for pavement repairs (i.e. pothole patching, rut filling etc.). The effectiveness of winter snow and ice maintenance would be greatly diminished (i.e. snow plows would not be able to operate efficiently and safely, snow and ice would be left in deep wheel path ruts after plowing etc.). Consequently the safe passage of the traveling public as well as construction equipment would be seriously compromised.

**Section 1.5 Structural Class 5 - (GRAVEL ROADS)** - The road structure has been upgraded to an **adequate and high quality base of uniform thickness and material type. The driving surface is gravel and in good to excellent condition.** The granular base is less than 5 years old and has 5 – 10 years of life remaining. The complete road structure is capable of supporting heavy construction equipment (total estimated 18-KIP Equivalent Single Axles Loads) throughout the duration of the anticipated construction project, without needing major structural improvements prior to the project. However, heavy construction traffic loading will expend some of the useful life of the road structure and shorten the life expectancy of the road, even though visible damage at the end of the project may not be severe. Visible damage could include increased extent of one or more of the following distresses; potholes, raveling, rutting (especially in the wheel paths), and overall ride roughness.

**Section 1.6 Structural Class 6 – (GRAVEL ROADS)** - The road structure has not been upgraded. **The gravel base is of inconsistent structure, poor to marginal quality and less than desired thickness. The gravel surface is in poor to fair condition** with a rough deteriorated driving surface. The road is not capable of sustaining the magnitude and the duration of loading commensurate with a designated haul route (total estimated 18-KIP Equivalent Single Axles Loads) for an extended and demanding development project. Use of the road without prior reconstruction may result in significant distresses such as severe potholes, excessive raveling, severe rutting, and very rough ride-ability within the duration of the construction project. The accelerated deterioration would create excessive demand for repairs. The effectiveness of winter snow and ice maintenance would be greatly diminished (i.e. snow plows would not be able to operate efficiently and safely). Consequently the safe passage of the traveling public as well as construction equipment would be seriously compromised.

## ARTICLE II DESIGNATION OF HAUL ROUTES

**The Developer(s) shall submit routes (hereto referred to as Designated Haul Routes) for hauling equipment and materials to and from the project.** These routes will be further designated by the Town of Fremont as Structural Class 1, 2, 3, 4, 5 or 6 (as defined in ARTICLE I) with certain requirements stipulated for their use as set forth in sections 2.1, 2.2, and ARTICLE III below. **A list and map of the Designated Haul Routes are identified in Appendix B. Appendix B shall be submitted by the Developer (s), to the Town of Fremont, prior to final signing of the Road Use Agreement.**

**Section 2.1 Class 1, 2, 3 and 5 Roads** – These roads can be used by the Developer(s) of the project without any repairs or improvements to the pavement structure prior to construction. However, geometric improvements (turning radii, etc) and bridge or culvert improvements will still be required as needed.

**Section 2.2 Class 4 and 6 Roads** – The Developer(s) may proceed to use the road at their own risk. However, **the Town of Fremont may deem necessary for the safety of the traveling public, that the Developer(s) shall reconstruct the road before the construction process begins. This determination shall be at the sole discretion of the Town of Fremont.** The Town of Fremont Designee shall monitor the use of the road during the construction project. **If the road becomes dangerous to the traveling public the Town of Fremont shall close the road to all construction traffic. In the case of closure the Developer(s) shall be required to complete reconstruction of the road base and asphalt concrete pavement to include shoulders and necessary improvements of ditches, culverts and other drainage related facilities before construction traffic is allowed to continue.** The Town of Fremont shall determine the full cross section design and material specifications for this reconstruction. The Developer(s) shall hire a qualified contractor of its choice, to be approved by the Town of Fremont, to construct the pavement system (base and asphalt pavement layers) according to the full specifications provided by the municipality. **The Developer(s) shall pay for all associated costs** in accordance with the percentages of costs explained in Article VI below for the costs of the labor, materials, and equipment needed, as well as the costs for design and construction inspection services. The Developer(s) shall provide a full and detailed record of all costs encumbered for the repairs.

**Section 2.3 – Time Requirement for Designation of Haul Routes.** The Haul Routes shall be designated **no later than three months prior** to the commencement of construction activities and prior to the final signing and execution of the Road Use Agreement. The Pre-Use Survey will begin after the signing of the Road Use Agreement

## ARTICLE III

### USE OF DESIGNATED HAUL ROUTES

**Section 3.1 Use of Designated Roads** In connection with the development, construction, operation and maintenance of the Project, the Town of Fremont hereby acknowledges and agrees that (DEVELOPER), its contractors and subcontractors and each of their respective agents, employees, representatives, and permitted assigns (collectively, the “Developer (s)”) shall use the roads and highways located in the Town of Fremont identified on Appendix B hereto (the “Designated Haul Routes”). **These Designated Routes shall be used by all single axle dump trucks, tandem axle or tri-axle trucks, equipment and assembled cranes both to and from the work site. Any other cars and pickups associated with the Developer(s) Project are not limited to the Designated Haul Routes and thus may use any other alternate Town Roads. The Zoning Board of Appeals reserves the right to exclude certain town roads from the Designated Haul Routes if the loads hauled by the Developer do not significantly change that road’s traffic loading.** Appendix B identifies the Designated Haul Routes that will be used for: (1) transportation and delivery of equipment and components and other materials and equipment to be used in connection with the Project;(2) movement of any assembled cranes, the route for which is set forth on Appendix B; and (3) transportation and delivery of local sources of materials, including concrete and gravel.

**Section 3.2 Modifications to Designated Haul Routes**. The Parties acknowledge and agree that certain modifications and improvements to the Designated Haul Routes and related appurtenant structures are necessary to accommodate the use of Designated Haul Routes by the Developer(s) contemplated hereby, including the widening of certain roads and modifications and improvements necessary to accommodate the heavy equipment and materials to be transported on the Designated Haul Routes. The modifications and improvements that shall be made by the Developer are described in detail on Appendix B hereto. The Town of Fremont and the Developer agree that such improvements and modifications shall be made in accordance with the specifications set forth on Appendix B. Notwithstanding anything herein to the contrary, upon the reasonable request of the Developer the Town of Fremont is authorized from time to time to grant consent to deviations from the specifications set forth on Appendix B. Appendix B shall be submitted to the Town of Fremont by the Developer(s) prior to commencement of construction.

**Section 3.3 Limitations of Road Use**. The acknowledgement of use by Developer set forth in Section 3.1 shall be contained in special use permits issued by the Town of Fremont simultaneously herewith and which are subject to the following conditions:

(a) **Restrictions**. All other Town of Fremont roads not selected as Designated Haul Routes (reference Article II) are strictly forbidden for use by the Developer throughout the duration of the Project. **In the event that the Developer would like to amend and add any road to the list of Designated Haul Routes during the project the Town of Fremont shall be informed and Appendix B shall be amended.** All Articles of this agreement shall then be immediately applicable and satisfied prior to the added road being used.

(b) **'One Time Use' of a road that is not a Designated Haul Route** - In the event the Developer determines it is necessary for the Project to use a Town of Fremont road not identified on Appendix B as a Designated Haul Road, then the Developer shall notify the appropriate Town of Fremont Designee, describing in detail such use and the reasons therefore. **If the use is to be 'one time' the Town of Fremont Designee shall make the determination to allow the road use without the road being added to Appendix B as a Designated Haul Route.** If the Developer(s) determines that the road may be used multiple times it shall be added to Appendix B as described in section 3.2 (a) of this Article as a Designated Haul Route.

(c) **Extreme Weather Conditions** -Once construction begins on the Project the Town of Fremont shall be entitled, at any time, to notify the Developer(s) that use of a/the Designated Haul Road/s may result in excessive damage to a/the Designated Haul Road/s due to weather conditions that may pose a serious safety risk to the traveling public. The Developer(s) shall work with such Town of Fremont Designee to develop a plan to mitigate or prevent the safety liabilities of such weather conditions. If the Parties are able to develop a plan to mitigate or prevent such safety liabilities, then the Developer(s) may continue to use such roads provided such mitigation is implemented. If the Parties are unable to develop such a plan, the Developer(s) may propose an alternate route to the Project site for approval by the Town of Fremont (such approval not to be unreasonably withheld).

## **ARTICLE IV**

### **PRE-USE SURVEY OF ROADS & BRIDGES**

**Section 4.1 Construction Traffic Estimation** – The Developer(s) shall engage and pay for the services of a NYS licensed Civil Engineering firm appearing on the current approved NYS LDSA lists, to estimate all of the construction traffic that will use each Designated Haul Route. The type, weight, number of axles, and load on each axle, of each construction vehicle shall be defined and the number of trips for each shall be estimated by the Developer(s) or NYS Licensed Civil Engineering firm. This shall be done for overweight vehicles hauling any components as well as all non-overweight loads carrying aggregate, concrete and any other building supplies and materials over the designated haul roads from any and all suppliers, vendors, contractors etc. involved in the project. Then, the sum total estimated construction traffic shall be converted to a total number of Equivalent 18-Kip Single Axle Loads (ESAL's), according to the AASHTO Pavement Design Guide, over the duration of the project. This shall be done for each Designated Haul Route that the Developer(s) will use for the project. A complete written report of this analysis for each road will be reported to the Town of Fremont at least three months in advance of the work. The Road Use Agreement will be executed only after this data is submitted and the Haul Routes are designated.

**Section 4.2** As soon as practicable after the execution of this Agreement, but in any event, prior to the commencement of the Developer's project, the Developer(s) shall select a third party NYS licensed Civil Engineering firm appearing on the current approved NYS LDSA lists, to conduct the surveys and assessments explained in section 4.4 below. Roads and highways within the boundaries of the Town of Fremont anticipated to be used as Designated Haul Routes plus any roads anticipated to serve on a one time basis or roads which could be added as Designated Haul Routes will be assessed as described below. A representative from the Engineering Firm shall meet with the Town of Fremont Designee and the Steuben County Bridge Engineer prior to data collection to review how the data will be collected and reported. The Town of Fremont Designee and Steuben Count Bridge Engineer shall agree and approve the data collection process and the report formats. **The Pre-use survey shall be done after the signing of the Road Use Agreement, during the three month period before construction begins. Roads will be posted to heavy traffic if the road use agreement is not executed on time, no exceptions.**

**Section 4.3 Structural Class Designation** - The Town of Fremont shall retain exclusive rights to designate the Road Structural Class for the Designated Haul Routes. The Developer(s) agrees to abide by this decision. The Town of Fremont shall make this decision based on the road surface condition, work history, structural condition, and the traffic using the road. Pre-construction road survey requirements are enumerated in section 4.4 (a)-(d) below.

**Section 4.4 Pre-Use Survey** – A full report of the assessments in (a) – (d) below **shall be provided to the Town of Fremont at no cost to the Town of Fremont** prior to the commencement of construction.

**(a) Video Survey of Roads.** Videotape the Designated Haul Roads and Non-Project Roads that could be used as explained above. The full costs of the Video Survey will be borne by the Developer(s). Additional surveys shall only be conducted in the event that either Party deems it necessary to fully capture the physical features and the additional survey costs are borne by the Developer(s).

**(b) Distress Survey.** – Measure and record the extent and severity of surface distresses for each designated haul road. The survey shall include the severity and extent of alligator cracking, longitudinal cracking, transverse cracking, edge cracking/deterioration, potholes and patches

**(c) Rutting and cross slope assessment.** – Wheel rut depth in both outer and inner wheel paths shall be measured with a straight edge. If the lane is crowned in the middle the rut depth can be measured for each wheel path by laying the straight edge from the centerline of the road to center of the lane and from the center of the lane to edge of the road for the inner wheel path and outer wheel path, respectively. Cross slope shall also be measured, using the full lane width straightedge and a “smart level” in percent mode. Again, if there is a crown in the middle of the lane the cross slope shall be measured independently, and recorded as such, for the inner and outer wheel paths. The rut depth and cross slope measurements will be made at a uniform spacing at 15 locations per mile.

**(d) Road Roughness.** – Measure, record, and report the International Roughness Index (IRI) using a profilometer for each designated haul road. A full report of the Roughness assessment shall be provided to the Town of Fremont at no cost to the Town of Fremont prior to the commencement of construction.

**Section 4.5 Inspection of Culverts and Bridges** Within one month after the execution of this agreement, and prior to the commencement of construction, the **Developer(s) shall select a NYS licensed engineering company appearing on the current approved NYS LDSA lists, to inspect the culverts and bridges on the Designated Haul Routes.** The inspection shall be done within that same month following execution of the agreement. Culverts and bridges on any other roads anticipated to serve on a ‘one- time’ basis or roads which could be added as Designated Haul Routes shall also be included. The third party engineer shall take photographs of the culvert and bridges. The full costs of the inspections will be borne by the Developer(s). Based on the inspections the selected engineering firm shall provide a report discussing the status of culverts and bridges that shall require improvements/upgrades prior to their use in the Project. This report shall also present the recommended improvements/upgrades to the structures and shall be submitted to the Town of Fremont for review. The Town of Fremont Highway Committee, which consists of the Board of Fremont and three appointed member, will prepare a final list of improvement/upgrade projects that must be done prior to commencement of the Project. The Town of Fremont reserves the right to require an evaluation of any bridge that will be crossed by an overweight special hauling vehicle. The evaluation shall be done by the qualified NYS licensed engineering firm. **The full cost of the evaluation(s) will be borne by the Developer(s).**



# ARTICLE V

## POST USE ROAD SURVEY PROJECT COMPLETION DATE

**Section 5.1 Post Use Pavement Survey Tasks** – This survey shall be completed within the first two months after said project is completed. The Developer(s) shall engage and pay for the services of a NYS licensed engineering firm appearing on the current approved NYS LDSA lists, to do the post use survey. The Post Use Pavement Survey tasks listed below shall be completed within a two (2) month window following the Project Completion Date, \_\_\_\_\_.

- (a) **Photo & Video Survey of Roads** – Repeat as described in section 4.4 (a) above.
- (b) **Distress Survey** – Repeat as described in Section 4.4 (b) above.
- (c) **Rut Depth and Cross Slope measurements** – Repeat as described in Section 4.4 (c) above.
- (d) **Road Roughness** – as described in Section 4.4 (d) above.

**Section 5.2 Structural Evaluation of Roads** – After analysis of the Post Use Pavement Survey the Town of Fremont shall determine if a repair selection can be made from the survey data or if a structural evaluation will also be needed in order to select the best repair alternative. If the Town of Fremont determines a structural evaluation is also needed the Town of Fremont shall conduct a forensic investigation that could include test pits, pavement cores, and material testing of specimens removed from the test pits. The Developer(s) shall pay for all associated costs including the cost of a third party Structural Engineer, approved by the Town Board of Fremont.

## ARTICLE VI

### DETERMINATION OF FINAL ROAD REPAIRS PAYMENT FOR COST OF REPAIRS

The Town of Fremont shall examine the post use survey data and compare it to the pre-construction survey data. Based on the data, field inspection, and structural evaluation (if necessary) the Town of Fremont shall determine the needed repairs **by the end of the first three (3) months following the completion of the project. The Town of Fremont shall prepare a report of the needed repairs that includes the treatment for each road segment.** The report shall be submitted to the Developer(s) within the first three (3) month period after the Project Completion Date (assuming the Developer(s) submits the Post Use Pavement survey data to the Town of Fremont within the first two months after the completion date as per Article V, section 5.1). Damages shall be repaired in accordance with sections 6.1 through 6.6 of this Article VI.

**Section 6.1 -Class 1 Roads** -Upon completion of the project, **a thin asphalt concrete overlay (less than 2 inches) OR a microsurfacing** shall be done to replace the structural capacity ‘loss’ of the pavement and to reseal cracks, restore road smoothness and correct ride-ability deficiencies that may have been induced. The thickness, materials, and method of construction for this overlay or microsurfacing shall be specified by the Town of Fremont. If asphalt pavement damage is significant a **thick asphalt concrete overlay (greater than 2 inches) or a Cold-in-Place recycle with 1 ½” hot mix top may be required.** However, if the post construction survey indicates significant deep structural damage to the pavement and base has occurred, **the repair could include full pavement rehabilitation (recycling or replacement of asphalt) or full depth reconstruction (asphalt pavement and base layer reconstruction).** Structural Damage to the base will be assessed by the increase in depth and width of wheel ruts and the extent of alligator cracking, potholes and patches. The Town of Fremont shall determine the repair type (to include shoulders if necessary), and material specifications for the repair. The Town of Fremont retains the right to make the final decision regarding the extent and type of road repairs. One hundred percent (**100%**) of the costs of the labor, materials, equipment, design and construction inspection services, shall be paid **by the Developer(s).**

The Developer(s) shall hire a qualified contractor of its choice, to be approved **by the Town of Fremont,** to construct the road repair.

**Section 6.2 Class II Roads** - Upon completion of the project, **a thin asphalt concrete overlay (less than 2 inches) OR a microsurfacing** shall be done to replace the structural capacity ‘loss’ of the pavement and to reseal cracks, restore road smoothness and correct ride-ability deficiencies that may have been induced. The thickness, materials, and method of construction for this overlay or microsurfacing shall be specified by the Town of Fremont. If asphalt pavement damage is significant a **thick asphalt concrete overlay (greater than 2 inches) or a Cold-in-Place recycle with 1 ½” hot mix top may be required.** However, if the post construction survey indicates significant deep structural

damage to the pavement and base has occurred, the repair **could include full pavement rehabilitation (recycling or replacement of asphalt) or full depth reconstruction (asphalt pavement and base layer reconstruction)**. Structural Damage to the base will be assessed by the increase in depth and width of wheel ruts and the extent of alligator cracking, potholes and patches. The Town of Fremont shall determine the repair type (to include shoulders if necessary), and material specifications for the repair. The Town of Fremont retains the right to make the final decision regarding the extent and type of road repairs. One hundred percent **(100%) of the costs** of the labor, materials, equipment, design and construction inspection services, shall be paid **by the Developer(s)**.

The Developer(s) shall hire a qualified contractor to be approved by the Town of Fremont, to do the repairs.

**Section 6.3 Class III Roads** - Upon completion of the project, **a thin asphalt concrete overlay (less than 2 inches) or a microsurfacing** shall be done to replace the structural capacity 'loss' of the pavement and to reseal cracks, restore road smoothness and correct ride-ability deficiencies that may have been induced. The thickness, materials, and method of construction for this overlay or microsurfacing shall be specified by the Town of Fremont. **If asphalt pavement damage is significant a thick asphalt concrete overlay (greater than 2 inches) or a Cold-in-Place recycle with 1 ½" hot mix top may be required.** However, if the post construction survey indicates significant deep structural damage to the pavement and base has occurred, **the repair could include full pavement rehabilitation (recycling or replacement of asphalt) or full depth reconstruction (asphalt pavement and base layer reconstruction)**. Structural Damage to the base will be assessed by the increase in depth and width of wheel ruts and the extent of alligator cracking, potholes and patches. The Town of Fremont shall determine the repair type (to include shoulders if necessary), and material specifications for the repair. The Town of Fremont retains the right to make the final decision regarding the extent and type of road repairs.

**(a) Asphalt Pavement Repair** – If the needed repair is limited to the asphalt pavement only, such as micro surfacing, thick or thin asphalt overlay or a Cold-in-Place recycle with a hot mix over lay **the Developer(s) shall pay** for One hundred percent **(100%) of the costs** of the labor, materials, and equipment needed, as well as the costs for design and construction inspection services.

**(b) Full Depth Repair** - If the needed repair includes replacing the asphalt pavement and the granular base **the Developer(s) shall pay** for one hundred percent **(100%) of the costs** of the labor, materials, equipment, design and construction inspection services.

The Developer(s) shall hire a qualified contractor to be approved by the Town of Fremont, to construct the road repair.

**Section 6.4 Class IV Roads** -If the road was not rebuilt by the Developer(s) prior to or during the Construction project then upon completion of the project the road will be repaired by one of the following methods:

- 1. Full pavement rehabilitation (recycling or replacement of asphalt) or**
  - 2. Full Depth Reconstruction (asphalt pavement and base layer reconstruction).**
- The Town of Fremont retains the right to make the final decision regarding

the extent and type of road repairs.

**(a) Asphalt Pavement Repair** – If the needed repair is limited to a major rehabilitation of the asphalt pavement only, such as a thick asphalt overlay or a Cold-in-Place recycle with a hot mix over lay **the Developer(s) shall pay** for one hundred percent **(100%) of the costs** of the labor, materials, equipment, design and construction inspection services.

**(b) Full Depth Repair** - If the needed repair includes replacing the asphalt pavement and the granular base **the Developer(s) shall pay** one hundred percent **(100%) of the costs** of the labor, materials, equipment, design and construction inspection services.

The Developer(s) shall hire a qualified contractor to be approved by the Town of Fremont, to construct the road repair.

**Section 6.5 Class V Roads** -Upon completion of the project, it may be necessary to **re-grade, reshape and re-compact** the driving surface of the Haul Routes. However if it is determined that a significant portion of the gravel material has been lost then the Developer(s) shall be required to **add gravel material before the final re-grading, reshaping, and re-compacting** of the Haul Road. The Town of Fremont shall determine the repair type, and the material specifications for the repair. The Town of Fremont retains the right to make the final decision regarding the extent and type of repairs. **The Developer(s) shall pay** for one hundred percent **(100%) of the costs** of the labor, materials, and equipment needed, as well as the costs for any design and construction inspection services.

Developer(s) shall hire a qualified contractor to be approved by the Town of Fremont to construct the road repairs.

**Section 6.6 Class VI Roads** – If the road was not rebuilt by the Developer(s) prior to or during the Construction project then upon completion of the project the road will be repaired by one of the following methods.

1. **Partial Base repair (placing of 4” – 6” of crushed type 4 gravel)**
2. **Full Depth Repair of Gravel Road.**

The Town of Fremont retains the right to make final decision regarding the extent and type of road repairs.

(a) Partial Base repair - If the needed repair is limited to a placement of 4” – 6” of gravel material **the Developer(s) shall pay** for one hundred percent **(100%) of the costs** of the labor, materials, equipment, design and construction inspection services.

(b) Full Depth Repair -If the needed repair includes replacing the granular base and any areas that may need undercutting with geo-textile materials **the Developer(s) shall pay** one hundred percent **(100%) of the costs** of the labor, materials, equipment, design and construction inspection services.

The Developer(s) shall hire a qualified contractor to be approved by the Town of Fremont, to construct the road repair.

**Section 6.7 One -Time Use Roads** **In accordance with Article III section 3.2 (b) roads may be used on a one time basis if requested in writing.** The Developer(s) will repair any damage caused by the project to the One-time use roads, and return such roads to the condition such roads were in prior to such damage (as near as is reasonably practicable having due regard for normal wear and tear). Prior to commencement of such repair, the

Town of Fremont Designee and Developer(s) shall meet to review the damage in relation to the Initial Survey or most recent subsequent survey, as applicable. The Developer(s) shall repair (or cause to be repaired) such damage and restore the road to the standard agreed upon, unless the Developer(s) can demonstrate to the reasonable satisfaction of the Town of Fremont Designee that the damage was not caused by the Developer(s). Any repair and restoration shall be promptly performed at such times as the Developer(s) and the Town of Fremont Designee determine, having due regard for safety, the presence of emergency conditions and the costs of such repairs. In the event that the Developer(s) fails to repair such roads within the agreed period, then, unless the Parties mutually agree otherwise, the Town of Fremont may make such repairs and shall invoice the Developer(s) for the costs incurred by the Town of Fremont in connection with the repair. The Developer(s) shall pay such invoiced amounts within ten (10) days following receipt of the invoice.

**Section 6.8 Culverts and Bridges – Improvements/Upgrades to bridges and culverts may be required prior to commencement of the project.** Damage as a result of the Construction Project to a culvert or bridge structure that was not improved or upgraded must be repaired following the project, or sooner if deemed necessary by the Town of Fremont. All modifications or repairs to culverts or bridges shall be designed in accordance with accepted AASHTO and NYSDOT standards by a Professional Engineer licensed to practice in New York State and employed by a Civil Engineering firm appearing on the approved NYS LDSA lists. All damage by the contractor shall be mitigated, either through repair or replacement, by the contractor at his expense to the satisfaction of Town of Fremont.

**Section 6.9 Payment for road repair and inspections done by Town of Fremont forces - All material, labor, inspection and equipment costs for any repair shall be paid by the Developer(s).**

- a) To the extent that any repairs arising out of the operations under this Agreement are handled “in house” by the Town of Fremont, the labor costs will be the burdened rate of pay actually paid to the persons who perform the work, the reference to “burden” referring specifically to benefits associated with Town of Fremont employment. The documentation for those costs will come directly from the Town of Fremont’s payroll services office of the Town of Fremont Treasurer. For any Town of Fremont equipment used for such repair work, the Town of Fremont has a program to determine the “equipment rates” associated with each piece of Town of Fremont equipment, which rates will be the basis for calculating the amount Developer(s) will be required to pay in respect of Town of Fremont Equipment used to accomplish any repairs. Those rates are calculated upon placing such equipment in service and the list of the rates is attached hereto and by this reference incorporated herein. It is understood and acknowledged that the equipment rate list is updated when new equipment is placed in service or equipment removed. Any materials used in these repairs purchased through the Town of Fremont “procurement process”, will be based upon the particular contract consideration and ultimately upon the actual cost to the Town of Fremont, that is the Town of Fremont will pass those contract and ultimately actual costs along to the Developer(s) without any “add-ons”.

- b) The Developer(s) shall pay for any contracted inspection services performed by the Town of Fremont, as well as any cost incurred by the Town of Fremont to hire an Designee and a Consulting Engineer to administer and facilitate the implementation and monitor the adherence to, the Road Use Agreement(s).

## **ARTICLE VII OTHER CONDITIONS**

**Section 7.1 Protection of Traveling Public and Pedestrian Safety Plan** The Developer(s) shall prepare and submit a Protection of Traveling Public and Pedestrian Safety Plan to the Town of Fremont prior to performing any work as part of this Agreement. The Safety Plan shall identify the Developer's designated Safety Officer with 24 hour contact information and address how the Developer(s) will ensure the safety of the traveling public and pedestrians along all designated haul routes. Special consideration in the Plan shall be given to high volume routes including seasonally high volume routes near visitor attractions, bicycle and pedestrian routes, routes through Villages and Hamlets, and routes near schools and colleges. The Developer(s) shall identify means to monitor and control the speeds of their construction vehicles at all times and the scheduling of their routes to avoid peak hour traffic in the morning and afternoon on the way to and from home, work and school.

**Section 7.2 List of Materials and Construction Techniques** Ten (10) days prior to the commencement of any modification or improvement pursuant to this Article VII, the Developer(s) shall deliver to the Town of Fremont a list of all materials to be used and construction techniques to be employed in connection therewith, subject to the approval of the Town of Fremont (not to be unreasonably withheld) and a professional Engineering Consultant, approved by the Town of Fremont and paid by the Developer.

**Section 7.3 Subsequent Modifications or Improvements**. If modifications or improvements are necessary to the Designated Haul Routes and related pertinent structures that were not contemplated when this Agreement was executed, the parties agree to negotiate in good faith and mutually agree to such modification or improvement, together with the materials to be used, the construction techniques to be employed, and the specifications applicable to such work.

**Section 7.4 Compliance with Law** The Developer(s) agrees that all modifications and improvements shall comply with all applicable laws, subject to the obligation of the Town of Fremont set forth in Article XI.

**Section 7.5 Appendix C -Utility Operations**. The Parties acknowledge that the Developer(s) may desire to route certain wires, cables, conduits and/or pipelines (and their associated equipment) related to the Project above or below ground at a location adjacent to, under or across certain Designated Roads, as identified in Appendix C. However, it should not be inferred by the Developer(s) that any utility operations would be allowed/ disallowed in every application involving Town of Fremont right-of-way. Town of Fremont must review each proposed utility system after the appropriate project documentation has been submitted. Reasons for rejecting utility systems in whole or in part may be based on, but not limited to: existing utility congestion, highway maintenance distress, projected road reconstruction and structural proximity.

All road crossings must conform to the Town of Fremont “no open cut policy”. A change to this policy is at the discretion of the Town of Fremont Designee. The Parties further agree that the Developer(s) shall be responsible for obtaining all private land rights as are necessary to permit the Developer(s) to complete any type of installation approved by the Town of Fremont and make the modifications and improvements to the Designated Haul Routes contemplated by this Agreement, including obtaining all necessary land rights from private landowners adjacent to the Designated Haul Routes. The Developer(s) shall submit Appendix B and Appendix C to the Town of Fremont Designee prior to the commencement of construction.

**Section 7.6 Permits.** The Developer(s) shall obtain all necessary governmental permits and approvals that are necessary to permit the Developer(s) to make the modifications and improvements to the Designated Roads contemplated herein, including obtaining all necessary private land rights that may be required in connection with Section 7.5. The Town of Fremont shall not be responsible for obtaining any such private land use rights. The Developer(s) shall be responsible for obtaining all required permits and approvals as follows:

- 1 Town of Fremont Highway Work Permits – For any and all work in the Town of Fremont right-of-way, including utilities.
- 2 Town of Fremont Highway Driveway Access Permits
- 3 NYS Department of Transportation Overweight and Special Hauling Permits
- 4 NYS DEC permits for water crossings, wetlands, storm water phase 2 permits, etc.
- 5 Army Corps of Engineer permits for water crossings, wetlands, etc.

**All the permits listed above must be submitted to the Fremont Town Clerk prior to or on the execution date of the Town of Fremont Road Use and Repair Agreement.**



## ARTICLE VIII INTERIM AND EMERGENCY REPAIRS

The Town of Fremont Designee and Engineering Consultant hired by the Town of Fremont and paid for by the Developer(s) will perform periodic inspections of the specified haul route(s) designated by the Developer(s). **The Town of Fremont Designee will determine if any repairs are required to maintain the safety of the traveling public. The Town of Fremont Designee may deem necessary that the designated haul route(s) be restored to like new conditions before the project is complete.** The Developer(s) will be expected to perform any emergency repairs to the haul roads, including the pavement, drainage structures, or any other highway related appurtenance that is damaged by the project and which the Town of Fremont Designee determines must be repaired. **The Town of Fremont Designee will inform the Developer(s) of required emergency repairs and the repair shall be accomplished within a minimum of twelve (12) hours. If more time is required the Developer(s) shall inform the Town of Fremont Designee of the status of the repair on a daily basis, but at no time shall the road become impassable or become dangerous to the traveling public.** Close communication will be required between the Town of Fremont Designee and the manager of the project. All costs of the repair shall be paid for by the Developer(s). Due to the constantly changing condition of gravel roads the condition of Gravel Haul routes will be monitored closely. All gravel haul routes shall be treated for dust control throughout the construction project. At a minimum two times between the months of May and September, the gravel haul routes shall be treated with Calcium Chloride or a suitable liquid asphalt prime coat. At the discretion of the Town of Fremont Designee, depending on road conditions more dust control treatments may be required. The Town of Fremont Designee will determine when re-grading and dust control treatments are required for gravel roads and shall direct the Developer(s) when to do them.

## **ARTICLE IX**

### **WARRANTIES BY DEVELOPER**

**Section 9.1 Workmanship and Material Warranties.** The following warranty and workmanship requirements apply to all repairs, modifications, and improvements that the Developer(s) (its contractors or subcontractors) shall make prior to or during the course of the Construction project in order to accomplish the construction process. As used herein, “Applicable Warranty Period” means, with respect to any repair, modification, or improvement by the Developer(s) hereunder, the time period that begins on the date repairs, modifications or improvements to Designated Roads are complete and ending on the date that is twelve (12) months after such completion date.

(a) Developer’s engineering responsibility, including the selection of material and equipment suitable for the repair of, and modifications and improvements to, the Designated Haul Routes and One Time Use Roads shall be carried out in accordance with generally accepted engineering practices, and Developer’s construction responsibility shall be carried out in accordance with sound construction practices. The Developer(s) shall require from its construction contractors and subcontractors the same standards for engineering and construction practice. The Developer(s) warrants that it shall perform and complete all repairs, modifications and improvements hereunder in a good and workmanlike manner.

(b) The Developer(s) warrants that all repairs, modifications and improvements hereunder shall be free from defects in material and workmanship. The Developer(s) shall remedy any defects in the repairs, modifications and improvements performed hereunder including repairs, modifications and improvements, workmanship, materials and equipment provided by subcontractors during the “Applicable Warranty Period”. A “defect” means any and all design, engineering, construction, manufacturing, installation, materials, equipment, repairs, modifications or improvements which (1) does not conform to the terms of this Agreement (2) is of improper or inferior workmanship, or (3) is not suitable for use under the applicable climatic and range of operating conditions.

**Section 9.2 Remedies.** During the Applicable Warranty Period, the Town of Fremont shall notify the Developer(s) in writing of any defects in the repairs, modifications or improvements. At no additional cost to the Town of Fremont, the Developer(s) shall proceed promptly to take such action relating to its performance hereunder as is necessary to cause the repairs, modifications and improvements to comply with the warranties specified in this Agreement. The Developer shall be available either at the project or by telephone for the performance of warranty repairs on a seven (7) day a week, twenty-four (24) hours per day basis.

**Section 9.3 Final Waiver of Liens** The Developer(s) warrants that all repairs, modifications, improvements and materials furnished in connection with the performance by Developer(s) Parties under this Agreement shall be free and clear of all liens.

# ARTICLE X

## BONDING

### **Section 10.1 Bonding**

A bond, standby letter of credit, or other form of security acceptable to the Town of Fremont, will be required in an amount to be determined subsequent to the designation of Haul routes. The bond posting dates must be for a period starting no later than the commencement of construction date and ending upon the completion of warranty set forth in Article IX. The security will be in accordance with the following schedule:

- 1 Class 1 Roads - \$ 150,000 / mile
- 2 Class 2 Roads - \$ 185,000 / mile
- 3 Class 3 Roads - \$ 240,000 / mile
- 4 Class 4 Roads - \$ 300,000 / mile
- 5 Class 5 Roads - \$ 95,000 / mile
- 6 Class 6 Roads - \$ 190,000 / mile

**Section 10.2 Multiple Users** In the event that there are multiple users on any Designated Haul Routes;

- a) A list of all developers using the same Designated Haul Routes shall be distributed to each developer by the Town of Fremont Designee.
- b) All interim and emergency repair costs (**ref. Article VIII**), as well as all final road repair costs (**ref. Article VI**), incurred **after** multiple Road Use Agreements are in place, shall be shared by the Developer(s). Any costs incurred **before** multiple Road Use Agreements and in place, shall be borne by the original Developer(s).
- c) Consideration will be given to not requiring a pre-use road and bridge survey (reference Article IV) by subsequent developers; after the first developer has completed its pre-use road and bridge survey.

## **ARTICLE XI DEFAULT AND REMEDIES**

**Section 11.1:** In the event that the Developer(s) fails substantially to perform each and every obligation and undertaking to be performed by it hereunder, and such default shall not be cured within thirty (30) days after notice from the Town of Fremont, then the Town of Fremont shall have the right to terminate this Agreement by giving ten (10) days' notice.

**Section 11.2:** The Town of Fremont reserves the right at any time during the life of this Agreement to terminate the Agreement in its absolute discretion on thirty (30) days' notice in the event that,

- (a) The Developer(s) becomes insolvent; or
- (b) Any voluntary or involuntary petition in bankruptcy or for corporate reorganization or for any similar relief is filed by or against the Developer(s) and, in the case of an involuntary petition, such petition is not dismissed within thirty (30) days after such filing; or
- (c) A liquidation proceeding is commenced by or against the Developer(s), and, in the case of an involuntary proceeding, such proceeding is not dismissed within thirty (30) days after commencement thereof; or
- (d) All or substantially all of the business or assets of the Developer(s) are transferred to a third party (other than a parent or ASSOCIATED COMPANY of the Developer) by agreement, order of court, or otherwise, including, without limitation, by a merger or consolidation.

**Section 11.3:** Upon termination of this Agreement as hereinabove provided or by operation of law or otherwise, all rights and licenses granted and obligations assumed hereunder shall terminate forthwith, except;

1. The obligation to pay amounts accrued or to accrue as of the termination date as provided hereinabove; and
2. The provisions of Article IX hereof for any amounts accrued or to accrue as provided hereinabove; and
3. The provisions undertaken under Article X.

**ARTICLE XII**  
**NOTIFICATION OF ALL ASSOCIATED**  
**MUNICIPALITIES**

**Section 12.1:** The Developer(s) shall notify all other Town of Fremont, Village Municipalities and County that will be impacted by the Developer(s) associated with the Designated Haul Routes according to this Road Use Agreement. The Developer(s) shall enter into a Road Use Agreement where required, with any other Municipality that will be impacted by this agreement.

**Appendix A**  
**TOWN OF FREMONT STANDARD INSURANCE REQUIREMENTS**

**Prior to commencement of work, delivery of services, acquisition of merchandise or equipment** a Certificate of Insurance and a policy endorsement covering items A, B & C must be delivered to the Town of Fremont Department responsible for the agreement, and to the Town of Fremont Risk Manager. A Certificate of Insurance may be used to show coverage only.

ITEMS:

A. Town of Fremont, 8217 Cream Hill Road, Arkport, NY 14807 shall be named as an additional insured (for the purposes of coverage but not the payment of premium).

B. **ACKNOWLEDGEMENT:** The insurance companies providing coverage acknowledge that the named insured is entering into a contract with Town of Fremont in which the named insured agrees to defend, hold harmless, and indemnify the Town of Fremont, its officials, employees and agents against all claims resulting from work performed, material handled and services rendered. The contractual liability coverage evidenced will cover the liability assumed under the Town of Fremont-Contractor agreement. The minimum limits of coverage for bodily injury equal to \$1,000,000.00 for each person injured, \$3,000,000.00 for aggregate bodily injury resulting from each occurrence, and \$1,000,000.00 property damage.

C. Prior to non-renewal, cancellation or a change of converge on this policy, at least thirty (30) days advance written notice shall be given to Town of Fremont Supervisor at Town of Fremont Office, 8217 Cream Hill Road, Arkport, NY 14807

**MINIMUM COVERAGES AND LIMITS ARE** Workers' Compensation Coverage will be required for anyone doing any kind of work for Town of Fremont. This includes self-employed individuals.

Bid specifications, particular contracts, leases or agreements may require increased limits and or additional coverage. If there are questions please contact the Town of Fremont Supervisor.

## **Workers' Compensation/Disability Benefits Requirements**

Permit Applicants,

Sections 57 and 220 Subd. 8 of the Workers' Compensation Law requires the heads of all municipal and state entities to ensure that any business applying for permits, licenses or contracts have appropriate Workers' Compensation and Disability Benefits Insurance coverage. The Steuben County Department of Public Works Utility Permit cannot be validated until proof of New York State Workers' Compensation and Disability Benefits coverage has been submitted and approved. Please note that **ACORD forms are NOT** acceptable proof of New York State Workers' Compensation/Disability Benefits coverage!

### **All Applicants must supply one of the following Workers' Compensation Certificates:**

Form C-105.2 State of New York Workers' Compensation Board, Workers' Compensation Certificate. This form can be obtained by having your insurance company contact the NYS Workers' Compensation Board at [www.web.state.ny.us](http://www.web.state.ny.us) or call the Bureau of compliance at (866) 298-7830.

Form U-26.3 The State Insurance Fund. This form can be obtained by contacting NYSIF at (585) 258-2087.

Form SI-12 The State of New York Workers' Compensation Board Self-Insurer Certification. This form can be obtained by contacting the New York State Self Insurance Office at (518) 402-0247.

Form GSI-105.2 The State of New York Workers' Compensation Board Group Self Insurer. You can obtain this form by contacting the Group Self-Insurance Administrator at (518) 402-0247.

### **All Applicants must supply one of the following Disability Benefits Certificates:**

Form DB-120.1 The State of New York Workers' Compensation Board, Employer's Application for compliance with Disability Benefits Law. This certificate can be obtained by contacting your insurance company.

Form DB-155 The State of New York Workers' Compensation Board Certificate of Disability Benefits Self-Insurance. This certificate can be obtained by contacting The New York State Self-Insurance Office at (518) 402-0247.

Companies that own facilities in the Town of Fremont and are planning on subcontracting the work to be performed are listed as the permit applicant and must

follow the aforementioned guidelines. New York State subcontractors will additionally need to supply New York State Workers' Compensation/Disability Benefits coverage certification. Out-of-State Subcontractors will need to produce Workers' Compensation/Disability coverage that specifically lists coverage by their carrier in New York State! Additionally, Out-of-state employers would need to apply to the NYS workers' Compensation Board if they meet any of the following criteria:

- Permanent NYS Location
- Hire an employee(or subcontractors) in NYS
- Pay over \$50,000 per year to employees while they work in NYS
- Employees (or subcontractors) assigned to work over 90 days in NYS during a calendar year. Disability benefits coverage is required if the business employs individuals in NYS for more than 30 days in a calendar year.

### **Certificate Holder**

Please endorse the certificate holder section of the NYS Workers' Compensation/Disability Benefits Certificates in the following manner:

Town of Fremont  
8217 Cream Hill Road  
Arkport, NY 14807



**Appendix B**  
**IMPROVEMENTS AND MODIFICATION TO DESIGNATED HAUL ROUTES**

**Developer(s) to provide**

**Appendix C**  
**UTILITY OPERATIONS**

**Developer(s) to provide**

**TOWN OF FREMONT  
RENTAL RATES**

DESCRIPTION OF CATEGORIES	OPERATOR RATES (\$/HOUR)	OPERATOR OVERTIME RATES (\$/HOUR)	EQUIPMENT RATES (\$/HOUR)
Car	\$200.00	\$350.00	\$80
Pickups	\$200.00	\$350.00	\$120
Miscellaneous Trucks	\$200.00	\$350.00	\$195
Lowboy	\$200.00	\$350.00	\$130
Grader	\$200.00	\$350.00	\$140
Loader	\$200.00	\$350.00	\$180
Chip Spreader	\$200.00	\$350.00	\$360
Snow Blower	\$200.00	\$350.00	\$275
Sweeper	\$200.00	\$350.00	\$130
Backhoes	\$200.00	\$350.00	\$250
Dozers	\$200.00	\$350.00	\$210
Rollers	\$200.00	\$350.00	\$140
Crushers	\$200.00	\$350.00	\$180
Mower	\$200.00	\$350.00	\$110
Fork lift	\$200.00	\$350.00	\$75

**Note: The list is provided above only conveys rental rates for equipment that the Town of Fremont owns. It does not represent the actual equipment owned by the Town of Fremont that would be available for rent. The rates do not include fuel which will be charged at the actual price. Any other miscellaneous actual costs incurred by the Town of Fremont during the performance of the will also be paid by the Developer.**

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 2012 of the ~~(County)~~~~(City)~~~~(Town)~~~~(Village)~~ of Town of Fremont was duly passed by the Fremont Town Board on September 11, 2012 in accordance with the applicable provisions of law.  
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, and was (approved)(not disapproved)(repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 19\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body)  
(Elective Chief Executive Officer\*)

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, and was (approved)(not disapproved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 19\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body)  
(Elective Chief Executive Officer\*)

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, and was (approved)(not disapproved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 19\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body)  
(Elective Chief Executive Officer\*)

\*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph \_\_\_\_\_, above.

Thomas J. Kilburg  
Clerk of the County legislative body, City, Town or Village Clerk  
or officer designated by local legislative body

(Seal)

Date: September 12, 2012

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK  
COUNTY OF Steuben

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

[Signature]  
Signature

Attorney for the Town

Title

~~County~~  
~~City~~ of Fremont  
Town  
~~Village~~

Date: 9/14/2012

# Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE  
41 STATE STREET, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~XXX~~  
County

~~XXX~~  
Town

~~XXXX~~  
Town

~~XXXX~~  
Town

of Fremont

Local Law No. 1 of the year 2017.

A local law Amending Local Law No. 1 of the Year 2008  
(Insert Title)

Regulating Wind Energy Facilities of the Town of Fremont

Be it enacted by the Town Board of the  
(Name of Legislative Body)

~~COXXX~~  
County

~~COXX~~  
Town

~~COXX~~  
Town

~~COXX~~  
Town

of Fremont as follows:

SEE COPY OF LOCAL LAW ANNEXED HERETO

FILED  
STATE RECORDS

JUN 28 2017

DEPARTMENT OF STATE

(If additional space is needed, attach pages the same size as this sheet, and number each.)

**Local Law Number 1 of 2017**  
**Amending Local Law No. 1 of the year 2008 Regulating Wind Energy Facilities of the**  
**Town of Fremont**

Be it hereby by the Town Board of the Town of Fremont as follows:

§1 – Authority. The Town Board of the Town of Fremont does hereby enact a local law amending Local Law No. 1 of the year 2008 Regulating Wind Energy Facilities of the Town of Fremont pursuant to the authority and provisions of Section 10 of New York State Municipal Home Rule Law.

§2 – Amendments.

1. Section 8.10 Standards for Wind Energy Facilities (A)(13) is hereby amended as follows:

The maximum Total Height of any WECS shall be 500 feet.

2. Section 8.10 Standards for Wind Energy Facilities (A)(14) is hereby amended as follows:

Construction of the WECS shall be limited to the hours of 6 a.m. to 9 p.m. except for certain activities that require cooler temperatures than possible during the day.

3. Section 8.13 Setbacks for Wind Energy Conversion Systems (A-D) are hereby amended as follows:

The statistical sound pressure level generated by a WECS shall not exceed L<sub>10</sub> – 50 dBA measured at the nearest off-site residence.

§3 - Severability.

If any provision of this local law is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the local law shall remain in effect.

§4 - Effective Date.

This local law shall take effect upon filing with the Secretary of State.



(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 2017 of the ~~(County)(City)~~(Town)(Village) of Fremont was duly passed by the Town Board on June 13, 2017, in accordance with the applicable provisions of law.  
(Name of Legislative Body)

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, and was (approved)(not disapproved)(repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 19\_\_\_\_ in accordance with the applicable provisions of law.  
(Name of Legislative Body)  
(Elective Chief Executive Officer\*)

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, and was (approved)(not disapproved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 19\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body)  
(Elective Chief Executive Officer\*)

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, and was (approved)(not disapproved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 19\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body)  
(Elective Chief Executive Officer\*)

\*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph \_\_\_\_\_, above.

Norma J. Kilbury Town Clerk *Norma J. Kilbury*  
Clerk of the County legislative body, City, Town or Village Clerk  
or officer designated by local legislative body

(Seal)

Date: 6/13/2017

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK Steuben  
COUNTY OF \_\_\_\_\_

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

*[Signature]*  
Signature

Attorney for the Town

\_\_\_\_\_  
Title

~~County~~  
~~City~~ of Fremont  
~~Town~~  
~~Village~~

Date: JUNE 21, 2017

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

STATE OF NEW YORK  
DEPARTMENT OF STATE  
**FILED**  
MAY 13 2005

~~County~~  
~~City~~ of Fremont  
Town  
~~Village~~

Local Law No. 1 of the year 2005..

MISCELLANEOUS  
& STATE RECORDS

A local law Town of Fremont Land Use Regulations  
*(Insert Title)*

Be it enacted by the Town Board of the  
*(Name of Legislative Body)*

~~County~~  
~~City~~ of Fremont as follows:  
Town  
~~Village~~

**SECTION 1 GENERAL PROVISIONS**

**1.1 AUTHORITY, ENACTMENT, EFFECTIVE DATE, AND SHORT TITLE**

Pursuant to Article 16 of the Town Law, and Article 2 Section 10 of the Municipal Home Rule Law, of the State of New York:

- (1) The Town of Fremont Land Use Ordinance, adopted March 10, 1993, and as amended, is hereby repealed in its entirety and replaced by the Regulations hereinafter set forth.
- (2) There is hereby established a comprehensive plan of land use regulation for the Town of Fremont, Steuben County, New York, regulating and restricting the location, construction and use of structures and the use of land, and for said purposes dividing the Town into districts, which plan is expressed in the text, maps and schedules enacted hereby.
- (3) This local law and any amendments that may be enacted by the Town Board from time to time, shall take effect upon proper filing in the office of the New York State Secretary of State, duly acknowledged.
- (4) This local law shall be known and may be cited as the Town of Fremont Land Use Regulations.

**1.2 INTERPRETATION**

1.2.1 **PURPOSE** - These regulations are designed to lessen congestion in the streets, secure safety from fire, flood, panic, and other dangers; to promote the health and general welfare; provide adequate light and air, to prevent overcrowding of land; to facilitate provision of transportation, water, sewerage, schools, parks and other public facilities, to encourage the most appropriate use of land; and otherwise carry out the purposes set forth in Article 16 of the Town Law.

1.2.2 **SUPERSESION** - These Regulations supersede, as applied to the Town of Fremont, a provision of Article 16 Section 265 of the Town Law, that an amendment hereof must be duly published prior to taking effect. Instead, these Regulations provide that amendments duly enacted shall be effective upon completion of local law filing procedures.

**1.2.3 MINIMUM REQUIREMENT DECLARED**

- (1) In their interpretation and application, these Regulations are hereby declared to be the minimum necessary and appropriate for the purpose hereof, and are adopted to protect the public health, safety, and general welfare.
- (2) Notwithstanding the foregoing, whenever these Regulations are at variance any other lawfully adopted rule, regulation, or standard, the more restrictive or that imposing the higher standard shall govern.
- (3) These regulations do hereby establish requirements for parcels of land created pursuant to the Town of Fremont Subdivision Regulations, adopted 10-12-94, amended by Local

Law #2 of 1995. Complying with any portion of these Land Use Regulations does not, however, in any way constitute compliance with the requirements of the Subdivision Regulations.

#### **1.2.4 APPLICATION OF REGULATIONS**

- (1) The Regulations established below in Section 6 for each land use district shall apply uniformly to each class or kind of use or structure or land, except as otherwise provided herein.
- (2) Except as otherwise provided herein, no structure shall hereafter be erected and no existing structure shall be moved, structurally altered, rebuilt, added to or enlarged, or used, nor shall any land be used, except in conformity with all of the requirements herein for the district in which it is located.
- (3) No part of any yard or off-road parking or loading space required herein for any premises shall be included as part of any such yard or space similarly required for any other premises.
- (4) No yard or lot existing on the effective date of these Regulations shall be reduced in dimension or area below the minimum requirements set forth herein. Lots and yards created after the effective date of these Regulations shall meet at least the minimum requirements established herein.

#### **1.2.5 OWNER TO BE ACCOUNTABLE**

To timely file an Application required by these Regulations is hereby declared to be a duty equally of the concerned property owner, developer, and contractor; by agreement, one may act for all. Nevertheless, when the Code Enforcement Officer finds a violation of these Regulations, the owner of the premises shall be held accountable therefor and may be subject to enforcement action or proceedings.

#### **1.2.6 COMPLIANCE IS STRICTLY LIMITED**

A Permit or Certificate duly issued pursuant to these Regulations shall be evidence of compliance with the requirements hereof, but shall not imply or be evidence of compliance with any other regulation, standard, or rule of the Town, Steuben County, New York State, the United States, or any agency thereof, that may be applicable to the premises. The latter shall include, without in any way limiting the generality thereof, the Town of Fremont Subdivision Regulations, the New York State Uniform Fire Prevention and Building Code; Flood Damage Prevention (Town of Fremont Local Law No. 1 of 1987); the Town of Fremont Mobile Home Park Ordinance (adopted April 11, 1973); and rules, regulations, and standards for potable water supply and sewage disposal facilities promulgated by the NYS Department of Health and Department of Environmental Conservation. Compliance with any such other regulation, standard, or rule applicable to a development, shall be a separate duty of the owner of the premises affected thereby, or other person responsible for the development.

## 1.3 ENFORCEMENT

### 1.3.1 POLICY

It is hereby declared to be in the interest of the public health, safety, and general welfare, that all reasonable efforts shall be made to prevent or to correct as promptly as possible any condition that violates these Regulations, before the Town takes action to seek punishment of the person responsible for the violation.

### 1.3.2 ADMINISTRATIVE PROCEDURES

- (1) Complaint – Any resident of the Town who believes there is a violation of these Regulations may file a written complaint describing the alleged violation. Such complaint shall be filed with the Code Enforcement Officer, who shall record all such complaints, immediately investigate, and take action thereon as provided herein.
- (2) Notice of Violation – When the Code Enforcement Officer finds a violation, he shall promptly send a written Notice to the person responsible, stating the nature of the violation and any appropriate corrective steps. The Officer also may give such Notice verbally. The Notice shall advise that each week the violation continues shall constitute a separate additional violation of these Regulations, and may be punishable accordingly.
- (3) Permit Violation – When the Code Enforcement Officer finds a violation of a Land Use Permit or Special Permit before a Certificate of Compliance has been issued, his Notice shall advise that such Certificate shall not be issued until the violation has been corrected, and that to begin use of the premises without a Certificate of Compliance is a violation of these Regulations.
- (4) Stop Order – When a violation is maintained after due Notice, beyond what the Code Enforcement Officer considers under the circumstances to be a reasonable period, he shall send an Order by certified mail to the owner of record of the premises. The Order shall direct the immediate discontinuance of all construction, occupancy, or use of buildings, other structures, and land in violation of these Regulations, and if appropriate also shall direct the removal of any illegal building or other structure, illegal addition thereto, or illegal alteration thereof. The Order shall advise that failure to comply may result in the Town bringing civil and/or criminal action or proceedings. Copies shall be filed by the Officer with the Town Clerk and Town Attorney.
- (5) When the Code Enforcement Officer finds that a cited violation has been duly corrected, he shall enter a statement to that effect in his record of the matter, with a copy to the owner of the premises and if appropriate also to the Town Clerk and Town Attorney.
- (6) Appeal – Any person aggrieved by a Notice or Order of the Code Enforcement Officer may appeal for Administrative Review, which shall take preference over any other matter before the Board of Appeals. Until the Board issues its decision, the passage of each week shall not mark a separate violation of these Regulations.

### 1.3.3 REMEDIAL ACTIONS

- (1) Action by Town – When any building or other structure is erected, constructed, reconstructed, altered, converted or maintained, or any building or other structure or land is used or occupied, in violation of these Regulations, the proper authorities of the Town, in addition to other remedies, may institute any appropriate action or proceedings to prevent, restrain, correct or abate such violation. Such action shall be taken promptly whenever the Town Board finds that continued violation is likely to place in imminent peril the public health, safety, or general welfare. The Town Board, by resolution, may authorize the Code Enforcement Officer to institute such action or proceedings.
- (2) Action by Taxpayers – Such action or proceedings, if not initiated by the proper Town authorities within ten (10) days after written request by a resident taxpayer to so proceed, may be initiated by any three taxpayers of the Town, resident in the district wherein such violation exists and severally or jointly aggrieved thereby, in the same manner as such Town authorities are authorized to do.
- (3) Monetary Penalty – The Town or complainants may seek monetary penalties, which shall not exceed the fines provided for in paragraph (4) of Subsection 1.3.4.

### 1.3.4 CRIMINAL PROCEEDINGS

- (1) Procedure – Whenever a violation of these Regulations is continued in a willful manner following service of an Order to cease, the Code Enforcement Officer shall serve an appearance ticket on the responsible party, file an Information with the Town Justice, and notify the Town Supervisor thereof.
- (2) Jurisdiction – A violation of these Regulations is hereby declared to be an offense, triable by the Town Justice or other magistrate without a jury.
- (3) Separate Offenses – Each week's continued violation, prior to the Code Enforcement Officer's filing of the Information with the Town Justice and following the Notice of Violation, shall constitute a separate additional offense except as otherwise provided in paragraph (6) of Subsection 1.3.2, above.
- (4) Penalty
  - (a) A violation of these Regulations is punishable by a fine not exceeding three hundred fifty dollars (\$350.00) or imprisonment for a period not to exceed six (6) months, or both, for conviction of a first offense.
  - (b) Conviction of a second offense, both of which were committed within a period of five (5) years, shall be punishable by a fine not less than three hundred fifty dollars (\$350.00) nor more than seven hundred dollars (\$700.00), or imprisonment for a period not to exceed six (6) months, or both.
  - (c) Conviction for a third or subsequent offense, all of which were committed within a period of five (5) years, shall be punishable by a fine not less than seven hundred dollars (\$700.00) nor more than one thousand dollars (\$1,000.00), or imprisonment for a period not to exceed six (6) months, or both.

## 1.4 JUDICIAL REVIEW

- 1.4.1 Any person or persons, jointly or severally aggrieved by any decision of the Board of Appeals, or any office, department, board or bureau of the Town, may apply to the Supreme Court for review by a proceeding under Article seventy-eight of the Civil Practice Law and Rules. Such proceeding shall be instituted within thirty (30) days after the filing of such a decision in the office of the Town Clerk.
- 1.4.2 Should any section or provision of these Regulations or the application thereof to a particular person or circumstance, be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the whole or of any part thereof, other than the part so decided to be unconstitutional or invalid.

## SECTION II

### MEANING OF TERMS

#### 2.1 CUSTOMARY USAGE

Terms used in these Regulations shall have their customarily recognized meanings, except as stated otherwise in Sections 2.2 and 2.3.

#### 2.2 INTERPRETING CERTAIN TERMS

2.2.1 Certain Terms shall be interpreted as stated below, unless the context clearly indicates otherwise:

- (1) The word "shall" designates a mandatory action or condition, while "may" is permissive.
- (2) The word "person" includes an individual, a firm, group of individuals, association, organization, partnership, trust, company or corporation, local government or agency thereof.
- (3) Masculine pronouns include feminine pronouns. Words used in the present tense include the future tense. Singular words include their plural forms.
- (4) The words "used" or "occupied" include the words "intended", "designed", or "arranged" to be used or occupied.

#### 2.3 DEFINITIONS

The following terms are hereby defined as stated.

**ACCESSORY USE, BUILDING OR STRUCTURE** – A use, building, or other structure on the same lot as, and of a nature customarily and clearly incidental and subordinate to, the principal use or structure.

**ADULT USES** Shall be defined as follows:

Adult Book and/or Video Store: A commercial establishment which has as a substantial or significant portion of its stock in trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising to the sale, rental, or any form of consideration, of any one or more of the following: books, magazines, periodicals, or visual representations which are characterized by the exposure or emphasis of specified sexual activities or specified anatomical areas or instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities which are for sale, rental, or viewing on or off the premises. An establishment may have other principal business purposes that do not involve the offering for sale or rental or viewing of materials depicting or describing specified sexual activities or specified anatomical areas, and still be categorized as an adult book and/or video store so long as one of its principal purposes is offering for sale or rental, or some form of consideration, the specified materials which depict or describe specified anatomical areas or specified sexual activities.



Adult Entertainment Cabaret: A public or private establishment which regularly presents topless and/or bottomless dancers, strippers, waiters, or waitresses, male or female impersonators or exotic dancers, or other similar entertainment, or films, motion pictures, videos, slides or other photographic material, or which utilizes employees, as part of their employment, to regularly expose patrons to specified sexual activities or anatomical areas.

Adult Theater: A theater, concert hall, auditorium, or similar establishment which for any form of consideration regularly features live performances characterized by the exposure of specified sexual activities or specified anatomical areas.

Adult Motion Picture Theater: Any motion picture theater where, for any form of consideration, films, motion picture, video cassettes, slides, or other photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material characterized by the emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

Massage Establishment: Any establishment having a fixed place of business where massages, or any other treatment or manipulation of the human body, are administered for any form of consideration or gratuity, as part of or in connection with specified sexual activities or where any person providing such treatment or services related thereto exposes specified anatomical areas. This definition shall not be construed to include hospital, nursing home, or medical clinic, or office of a physician, surgeon, chiropractor, osteopath, duly licensed physical therapist, or duly licensed massage therapist or barbershop or beauty salon, athletic club, health club, school, spa or similar establishment where massage or similar manipulation of the human body is offered as an incidental accessory service.

Specified Sexual Activities: 1.) Human genitals in a state of sexual stimulation or arousal; or 2.) Acts of human masturbation, sexual intercourse, oral copulation, or sodomy; or 3.) Fondling or other erotic touching of human genitals, pubic region, buttocks, or breasts.

Specified Anatomical Areas: 1.) Less than completely and opaquely clothing covered human genitals, pubic region, buttocks, and female breasts directly and laterally below the top of the areola; and 2.) Human male genitals in a discernible turgid state even if completely and opaquely clothing covered.

**AGRICULTURAL BUILDING OR STRUCTURE** – Customary non-residential farm buildings and other structure; includes barns, silos, storage sheds, corn cribs, grain bins, milk houses, animal pens, and similar structures when used in connection with agriculture.

**AGRICULTURE** – The commercial use of land for customary farming purposes; may include raising farm animals, crops of grains, grasses, and other vegetables or fruits. Accessory uses may include processing, packing, and storing such plant and animal products, and their retail sale at a roadside vegetable stand and to self-service customers who gather such produce in the fields.

**APPLICANT** – A property owner, or his duly authorized representative, who intends to undertake a development subject to these Regulations.

**AUTOMOBILE JUNK YARD** – Premises where two or more unregistered, old or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some or all of the materials therein, for the purpose of disposing of the same, or for any other purpose. (See also **JUNK YARD**)

**BED-AND-BREAKFAST** – See **TOURIST HOME**.

**BOARDING HOUSE** – A single-family dwelling where, for monetary compensation, lodging and meals are offered to non-transient guests; may also be termed a “rooming house” or “lodging house”.

**BUILDING** – Any structure which has a roof supported by columns or walls, used for the shelter or enclosure of persons, animals, or chattel.

**BUILDING HEIGHT** – The number of stories in the building. (See also **STORY**)

**CAMPGROUND** – Premises occupied for monetary compensation by recreational vehicles, tents, and other movable or temporary dwellings, shelters, or sleeping quarters of any kind.

**CONVENIENCE BUSINESS** – Small commercial establishments, catering primarily to residents of nearby areas, providing frequently-needed retail goods and personal services, including but not limited to grocery stores (of less than 5,000 square feet in floor area), drug stores, beauty salons and barber shops, carry-out dry cleaning and laundry pickup stations.

**DEVELOPMENT** – Making use of previously vacant premises, or converting premises from one use to another. (See also **SITE PREPARATION**)

**DRIVE-IN ESTABLISHMENT** – A retail sales or service establishment designed to serve customers while in their automobiles parked on the premises; also may include facilities for serving customers inside the principal building or elsewhere on the premises.

**DWELLING** – A building containing one or more dwelling units.

**DWELLING UNIT** – One or more rooms constituting a separately accessible, independent housekeeping establishment containing cooking, living, sanitary, and sleeping facilities for the use of not more than one family and resident domestic servants.

Following are related terms:

**SINGLE-FAMILY DWELLING** – A building comprising one dwelling unit.

**TWO-FAMILY DWELLING** – A building comprising two dwelling units.

**MULTIPLE-FAMILY DWELLING** – A building comprising three or more dwelling units.

**MOBILE HOME** – A single-family dwelling that (a) is composed of one or more components, each of which was substantially assembled in a manufacturing plant and transported to the home site on its own permanent chassis, and (b) exceeds forty (40) feet in length and ten (10) feet in width, and (c) is designed to be occupied when connected to utilities, with or without a permanent foundation.

**MODULAR HOME** – A single-family or two-family dwelling that is composed of two or more components, each of which was substantially assembled in a manufacturing plant and which when combined on a foundation and connected with necessary utilities, constitute a dwelling meeting the standards set forth in the Residential Code of New York State.

**EAF, FULL** – A “Full Environmental Assessment Form”, as specified in **6 NYCRR Part 617, Section 617.21, Appendix A**; it is part of an Application or Appeal for development likely to have a significant effect on the environment.

**EAF, SHORT** – A “Short Environmental Assessment Form”, as specified in **6 NYCRR Part 617, Section 617.21, Appendix C**; it is part of an Application or Appeal for development no likely to have a significant effect on the environment. (See also, **SEQR**)

**ESSENTIAL SERVICES** – Telephone switching equipment centers, electrical and gas substations, antenna towers for TV cable and cellular telephone systems, gasoline and fuel oil distribution and storage centers, sewage collection and treatment facilities, solid waste transfer facilities, and water supply, filtering, pumping and distribution installations.

**FAMILY** – A person, or persons related by blood, marriage, or adoption, or not more than five persons not so related, residing in one dwelling unit.

**FARM ANIMALS** – Animals raised or maintained for their products or labor, such as dairy cows, beef cattle, poultry, sheep, horses, goats, mules, fish, and mink or other fur-bearers.

**FARMING** – See **AGRICULTURE**.

**GARAGE, PRIVATE** – An accessory building commonly used for the storage of motor vehicles.

**GARAGE SALE** – Sale of, generally, used person or household goods as a temporary use accessory to a dwelling, conducted within or adjacent to a garage, patio or porch. (See also **YARD SALE**)

**HOME OCCUPATION** – An accessory use conducted for monetary gain entirely within a dwelling or accessory building, and which is clearly incidental and secondary to the residential use of the premises.

**JUNK YARD** – Premises used for the collection, storage, disassembly, packing, sorting, salvage, buying, selling or exchange of waste paper, rags, metals, scrap or discarded material or machinery or parts of any sort, but not including used furniture or clothing stores, pawn shops, antique shops, or automobile junk yards.

**KENNEL** – Premises where, for monetary compensation, four (4) or more domestic animals other than farm animals, more than four (4) months of age, are housed, groomed, bred, trained, or offered for sale.

**LOT** – A parcel of land in single ownership, either a single lot of record or a combination of lots of record.

Following are related terms:

**BUILDABLE PORTION OF LOT** – That part of a lot remaining after exclusion of all required yards. (See also **YARD** and related terms)

**CENTER OF LOT** – The mid-point of a line connecting the mid-points of the side lot lines of a lot.

**LOT AREA** – The total area of a lot within its lot lines, as calculated by standard surveying methods.

**LOT FRONTAGE** – The edge of a lot delineated by a road right-of-way line.

**LOT LINE** – A boundary line of a lot, as legally defined by property deed or survey plat duly recorded in the office of the Steuben County Clerk.

**LOT LINE, FRONT** – The lot line that is most nearly coincident with the lot frontage.

**LOT LINE, REAR** – The lot line farthest from the lot frontage.

**LOT LINE, SIDE** – A lot line that extends from the front lot line to the rear lot line.

**LOT OF RECORD** – A lot shown on a survey plat or subdivision plat, or described by a deed, duly filed or recorded in the office of the Steuben County Clerk.

**LOT WIDTH** – The least distance between the side lot lines of a lot, measured through the center of the lot.

**MEMBERSHIP CLUB** – Premises designed for the exclusive use of an organization's members and their guests for social, recreational, and/or athletic purposes, not primarily for gain, and not including food service or other commercial activities except incidentally for the convenience of the membership.

**MOBILE HOME** – See **DWELLING**.

**MOBILE HOME PARK** – A lot designed to accommodate two (2) or more mobile homes used as dwellings, placed in such proximity that they do not comply with the lot area and yard, requirement of **Subsection 7.2.5**.

**MOTEL** – A building or group of buildings, whether detached or in connected units, providing individual sleeping quarters with direct outside access, primarily for use by travelers; may also be termed tourist court, motor lodge, auto court, or similar terms.

**MUNICIPAL PARKS** – Parks and playgrounds established and operated by the Town.

**NON-CONFORMING BUILDING, STRUCTURE, LOT OR USE** – A building, other structure, lot, or use, lawfully existing on the effective date of these Regulations, but not in conformity with one or more of the requirements of these Regulations.

**NURSING HOME** – Premises licensed by the State where, for monetary compensation, persons who are ill, infirm or convalescent, are offered room and board, nursing care, physical therapy, or non-acute medical care as needed, generally for prolonged periods. Is not an acute-care facility such as a hospital.

**OFFICER OR CODE ENFORCEMENT OFFICER** – That person duly appointed by the Town Board to administer and enforce these Regulations, as provided for in Section 3.1.

**PARKING LOT, PRIVATE** – Premises where automobiles, other motor vehicles, and boats may be parked for a fee.

**PROFESSIONAL OFFICES** – Premises where professional services are offered by medical practitioners, attorneys, architects, engineers, photographers, brokers, and others offering business or personal services.

**RECREATION DWELLING** – A recreation vehicle, or a movable or temporary shelter or a structure, used or occupied only occasionally or seasonally chiefly for recreational purposes.

**RECREATION EQUIPMENT, MAJOR** – Includes recreation vehicles and those types of vehicles and related equipment commonly termed boats and boat trailers, snowmobiles and snowmobile trailers, cars and other motor vehicles used in races or demolition derbies, and all-terrain vehicles.

**RECREATION VEHICLE** – Type of vehicle used as temporary living quarters for recreation, camping, or travel, that either has its own motive power or is mounted on or drawn by a motor vehicle; includes travel trailer, camper trailer, truck camper, and motor home.

**REST HOME** – Premises where, for monetary compensation, ambulatory person who are frail or convalescent are offered room and board, and where any incidental personal care provided shall not include the services of medical, nursing, or physical therapy personnel. (See **NURSING HOME**)

**RESTAURANT** – Premises at which food is sold for consumption by customers seated within a building or elsewhere on the premises, but excluding such accessory uses as a snack bar or refreshment stand operated for the convenience of patrons of a public or community swimming pool, playground, playfield or park.

**RESTAURANT, DRIVE-IN** – A drive-in establishment where meals, beverages, or snack foods are offered for sale.

**RETREAT** – Premises usually operated by a religious or not-for-profit organization in a rural setting, offering guests room and board and the benefits of temporary removal from their normal pursuits, for such purposes as study, contemplation or prayer, and fellowship.

**ROAD** – A way for vehicular use by the general public that is the principal means of access to abutting lots; may be designated as a road, highway, street, lane, or other name.

Following are related terms:

**PRIVATE ROAD** – A road owned by either the owners of the abutting lots individually, or an association of such owners, or a single lot owner.

**PUBLIC ROAD** – A road owned by either the Town, County, or the State.

**ROAD RIGHT-OF-WAY LINE** – A line marking the legal limit of the road rights of the general public; may mark an existing or proposed right-of-way. (See also **LOT FRONTAGE**)

**ROADSIDE STAND** – Premises, accessory to a farm or residence, devoted to retail sale of seasonal locally-grown produce and related products, with or without a permanent building.

**SEQR** – The acronym for State Environmental Quality Review; refers herein to those reviews and related procedures as are provided for by **6 NYCRR Part 617**.

**SERVICE STATION** – Premises primarily devoted to retail sale of automotive fuel, oil, grease, batteries, tires, and automobile parts and accessories, and where such may be dispensed and/or installed in customers' vehicles.

**SIGN** – A device containing letters, numbers or symbols affixed to, painted or represented on, or installed on, any part of a building or other structure, or otherwise placed in view of the general public, that is designed to direct public attention to or to convey information about a person, idea, institution, organization, activity, place, object, product, or business; when such a device is placed within a building or on an operable registered motor vehicle, it shall not be deemed to be a sign.

Following are related terms:

**BUSINESS SIGN** – A sign that is designed to advertise a business, industry, profession, commodity, service, or activity that is located, conducted, sold or offered upon the specific premises where such sign is placed; a business sign is an accessory use.

**DIRECTLY ILLUMINATED SIGN** – A sign illuminated by and including electric light bulbs or tubes as an integral part thereof.

**DOUBLE-FACED SIGN** – A sign with two display faces placed essentially back-to-back, so as to be readable separately from opposite directions, provided that the backs of such faces are placed at an angle from each other not greater than sixty (60) degrees.

**FLASHING SIGN** – A directly illuminated sign, the illumination of which fluctuates in intensity while in use.

**FREESTANDING SIGN** – Any sign and sign support structure that is not attached to or part of a building.

**INDIRECTLY ILLUMINATED SIGN** – A sign illuminated by a light source that is external to the sign.

**PORTABLE OR MOBILE SIGN** – A sign designed to be transported from place to place, not permanently affixed to the ground or to a building.

**PROJECTING SIGN** – A sign attached to a building wall and any part of which extends more than eighteen (18) inches from the face of such wall.

**REVOLVING SIGN** – A sign that revolves 360 degrees.

**ROOF SIGN** – A sign painted on, constructed on, or supported by the roof of any building.

**SIGN AREA** – The surface area measurement of that part of a sign installation, designed to carry the message, including all letters, numbers, symbols, logos, pictures, areas of color forming an integral part of the design, and decorative trim; for a double-faced sign, only one display face shall be measured to determine the sign area.

**SIGN INSTALLATION** – The sign and its supporting structural framework.

**WALL SIGN** – A sign, other than a projecting sign, that is painted on or attached to the wall of a building.

**SITE PREPARATION** – Altering premises so as to accommodate development, including for example: cutting and planting trees and other plants; grubbing, grading, filling, and excavation; paving; and, constructing, altering and demolishing buildings and other structures. (See also **DEVELOPMENT**)

**SMALL ANIMAL HOSPITAL** – Premises where for monetary compensation animals may be medically treated or boarded temporarily; may include escape-proof pens and outside runs.

**STABLE, COMMERCIAL** – Premises where for monetary compensation two or more horses not the property of the proprietor are boarded, or on which horses are maintained commercially for hire, exhibition, or sale; may include bridle trails for the customers' use.

**STABLE, PRIVATE** – Premises on which is maintained not more than one horse not the property of the proprietor, and horses of the proprietor not maintained for commercial purposes; is accessory to a farm or dwelling.

**STORY** – That portion of a building between the surface of a floor and the surface of the floor next above it or (if there be no floor above it) the ceiling next above it. The first story is the lowest story of which at least half the floor area is at or above the average level of the adjacent ground.

**STRUCTURE** – Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground; includes buildings, towers, mobile homes, walls, fences, billboards and poster panels.

**TOURIST HOME** – A single-family dwelling in which, for financial compensation, overnight accommodations are offered to transient guests; also may be termed a "bed-and-breakfast".

**TOWN BOARD** – The governing body of the Town of Fremont, including the Town Supervisor and the Town Councilpersons.

**TRAVEL TRAILER** – See **RECREATION VEHICLE**

**VEGETABLE STAND** – See **ROADSIDE STAND**

**VETERINARY HOSPITAL** – See **SMALL ANIMAL HOSPITAL**

**YARD** – Required open area of a lot, unoccupied and unobstructed by any building or portion of a structure from thirty (30) inches above the general ground level of the lot, upward. (See also **LOT** and related terms)

Following are related terms:

**FRONT YARD** – A yard extending from the front lot line to the setback line; corner lots and through lots shall have front yards along both frontages.

**REAR YARD** – A yard extending across the rear of the lot between side yards. In the case of through lots and corner lots, there shall be no rear yards. Rear yard depth is measured perpendicularly from the rear lot line.

**SET-BACK DISTANCE** – The required minimum depth of a front yard, as measured along the side lot lines from the front lot line.

**SET-BACK LINE** – The line marking the inner edge of a required front yard, drawn between points on the side lot lines located at the specified set-back distance.

**SIDE YARD** – A yard extending along a side lot line from the set-back line to the rear lot line or, in the absence of any clearly defined rear lot line, to the point on the lot farthest from the intersection of the lot line involved with the frontage. In the case of through lots and corner lots, yards remaining after the required front yards have been established shall be considered side yards. Side yard depth is measured perpendicularly from the side lot line.

**YARD SALE** – Sale of, generally, used personal or household goods, locally-produced baked goods, preserves or similar domestic products, and/or handicrafts, conducted as a temporary accessory use on any premises; may include tables or benches with or without waterproof covers or umbrellas.



## SECTION III

### TOWN RESPONSIBILITIES

#### 3.1 THE TOWN BOARD

- 3.1.1 **CODE ENFORCEMENT OFFICER** – The Town Board shall appoint a Code Enforcement Officer, who may be a member of the Planning Board, to administer and enforce these Regulations. Such Officer shall so serve at the Town Board's pleasure.
- 3.1.2 **BOARD OF APPEALS** – The Town Board shall appoint five (5) persons not members of the Town Board, to be members of a Board of Appeals and shall designate one to be the Chair. The original term of appointment of each member shall be specified, and shall be as follows: one for a term of one (1) year, one for a term of two (2) years, one for a term of three (3) years, one for a term of four (4) years, and one for a term of five (5) years, except that an appointment to fill a vacancy shall be for the balance of that term. Members may be appointed to successive terms, and the Town Board may remove a member for cause after a public hearing.
- 3.1.3 **AMENDMENTS** – The Town Board after public notice and hearing may amend these Regulations.
- 3.1.4 **EXPENSES** – The Town Board shall set the compensation of the Code Enforcement Officer and the compensation, if any, of the members of the Board of Appeals and the Planning Board, and shall provide such funds as it deems appropriate for their actual and necessary expenses in the performance of their duties.

#### 3.2 THE CODE ENFORCEMENT OFFICER

- 3.2.1 **GENERAL DUTIES** – The Code Enforcement Officer shall administer and enforce these Regulations, and for that purpose shall have such powers as are set forth herein and as may be reasonably implied.
- 3.2.2 **SPECIFIC DUTIES** – The Code Enforcement Officer shall have the following particular powers and duties:
- (1) To receive an Application or Appeal as provided for herein, and duly process the same;
  - (2) To issue Land Use Permits, Special Permits, and Certificates of Compliance, as provided in Sections 4.1, 4.2, and 4.3;
  - (3) Upon finding a violation of these Regulations, to proceed as provided in Section 1.3; and,
  - (4) To attend Town Board, Board of Appeals, and Planning Board meetings as requested, or give a written report identifying permits or certificates issued, appeals received and other actions taken pursuant to these Regulations.

### 3.3 THE BOARD OF APPEALS

- 3.3.1 **RULES** – The Board of Appeals shall make and adopt by resolution such rules of procedure, forms, and other matters as it deems necessary or useful for proper performance of their duties under these Regulations, and shall promptly file copies with the Town Clerk.
- 3.3.2 **OFFICE** – The office of the Town Clerk shall be the office of the Board of Appeals and every rule, order, requirement, decision or determination of the Board shall be filed there promptly.
- 3.3.3 **MEETINGS AND RECORDS:**
- (1) All meetings of the Board of Appeals shall be open to the public, and shall be held at the call of the Chairperson and at such other times as the Board may determine. The concurring vote of a majority of all members of the Board shall be necessary to determine matters on which the Board is required to rule, except as otherwise provided herein.
  - (2) The Board of Appeals shall keep minutes of their proceedings showing the absence, vote or abstention of each member on every question.
- 3.3.4 **EXPENDITURES** – The Board of Appeals may retain such consultants and employ such staff as it shall deem necessary, provided that no expense shall be incurred beyond the amount of any appropriation that shall have been made by the Town Board therefor and is then available for such use.
- 3.3.5 **BOUNDARIES** – The Board of Appeals shall resolve any uncertainty regarding the location of a land use district boundary upon request.
- 3.3.6 **SPECIAL PERMITS** – The Board of Appeals shall review and decide each Application for a Special Permit as provided in Section 4.2.
- 3.3.7 **ADMINISTRATIVE REVIEW** – The Board of Appeals shall review and decide each appeal from an order, requirement, decision, or determination of the Code Enforcement Officer on the ground of error; and, on request, shall interpret any provision of these Regulations, as provided in Section 4.4.
- 3.3.8 **VARIANCE** – The Board of Appeals shall review and decide each Appeal of Variance from the strict application of any requirement of these Regulations, as provided in Section 4.5.

### 3.4 PLANNING BOARD

- 3.4.1 **RULES** – The Planning Board shall make and adopt by resolution such rules of procedure, forms, and other matters as it deems necessary or useful for proper performance of its duties under these Regulations, and shall promptly file copies with the Town Clerk.

- 3.4.2 **OFFICE** – The office of the Town Clerk shall be the office of the Planning Board and every rule, order, requirement, decision or determination of the Board shall be filed there promptly.
- 3.4.3 **MEETINGS AND RECORDS:**
- (1) All meetings of the Planning Board shall be open to the public, and shall be held at the call of the Chairperson and at such other times as the Board may determine. The concurring vote of a majority of all members of the Board shall be necessary to determine matters on which the Board is required to rule, except as otherwise provided herein.
  - (2) The Planning Board shall keep minutes of their proceedings showing the absence, vote or abstention of each member on every question.
- 3.4.4 **EXPENDITURES** – The Planning Board may retain such consultants and employ such staff as it shall deem necessary, provided that no expense shall be incurred beyond the amount of any appropriation that shall have been made by the Town Board therefor and is then available for such use.
- 3.4.5 **SPECIAL PERMITS** - The Planning Board shall review each Application for a Special Permit, and give its recommendation to the Board of Appeals.
- 3.4.6 **AMENDMENTS** - The Planning Board shall submit its recommendation to the Town Board regarding a proposed amendment of these Regulations.
- 3.4.7 **PERIODIC REVIEW** - The Planning Board shall, at least every five (5) years, review these Regulations in their entirety, in order to identify desirable changes thereto, and shall recommend same to the Town Board.

**SECTION IV**  
**PROCEDURES**

**4.1 OBTAINING A LAND USE PERMIT**

**4.1.1 THE LAND USE PERMIT**

- (1) A Land Use Permit designates that the proposed development complies with these Regulations. All work shall be consistent with the Permit. During the course of the work, the Code Enforcement Officer shall inspect the site to ensure compliance with the Permit.
  - (a) No one shall start site preparation or development, or change the current use of an existing site or structure, for a purpose allowable by Land Use Permit, as designated in Section 6.2, without a Land Use Permit.
  - (b) No Land Use Permit shall be issued for a property where there exists a violation of these Regulations, except that one may be issued for the purpose of correction such violation.
- (2) Lapse – When site preparation has not begun within ninety (90) days, or has not been completed within two (2) years, of the date of the Permit, the Permit shall lapse. The Code Enforcement Officer shall so notify the Applicant. The Applicant may request an extension for good cause, which the Officer may allow. The Officer shall maintain a file of all such requests.

**4.1.2 APPLICATION**

- (1) Pre-Application – An applicant may obtain an “Application for a Land Use Permit” from the Town Clerk, and may discuss the proposed development with the Code Enforcement Officer to clarify procedures or other requirements and to identify possible problems to be overcome; no fee shall be charged.
- (2) Submittal – An Application shall be submitted to the Town Clerk with the required supplemental information and fee. The Code Enforcement Officer shall determine when the Application is complete and shall then accept it. The Application shall be part of the Officer’s permanent record.

**4.1.3 REVIEW PROCEDURES**

- (1) Review – An Application shall be reviewed by the Code Enforcement Officer; he shall inspect the site of the proposed development and determine whether the proposal would be in compliance with these Regulations.
- (2) Decision – Within fourteen (14) days after an Application is accepted, the Code Enforcement Officer shall issue or deny the Permit as follows:
  - (a) The Permit shall be denied when the proposal is for a use not allowed in the district or would otherwise not comply with provisions of Sections VI or VII. In

that case, the Code Enforcement Officer shall send the applicant a written statement of the reason for rejection, and shall retain one copy in his file.

- (b) The Permit shall be issued when the proposal is for a use allowed in the district in which the property is located and would comply with all other relevant requirements.

## **4.2 OBTAINING A SPECIAL PERMIT**

### **4.2.1 PURPOSE**

Special Permit uses designated in Section 6.2 are hereby declared to be generally appropriate in the districts in which they are allowed. Nevertheless, their location, design, and site preparation require particular attention in order to prevent or minimize undesirable affects on nearby properties or on the general welfare of the Town. For that reason such uses shall be allowed only in accordance with a Special Permit.

### **4.2.2 APPLICATION**

#### **(1) Special Permit Required**

- (a) No one shall start site preparation or development for a purpose allowable by Special Permit, as designated in Section 6.2, without a Special Permit.
- (b) No Special Permit shall be issued for a property where there exists a violation of these Regulations, except that one may be issued for the purpose of correction such violation.

(2) Pre-Application – An Applicant may obtain an “Application for a Special Permit” from the Town Clerk, and may discuss the proposal with the Code Enforcement Officer to identify requirements and possible problems before the Application is submitted; no fee shall be charged.

(3) Submittal – An Application shall be submitted to the Town Clerk with the required supplemental information and fee. The Code Enforcement Officer shall determine when the information supplied constitutes a complete Special Permit Application, and shall promptly send it to the chairperson of the Board of Appeals. The Application shall be deemed to have been submitted to the Board as provided paragraph (2) (b) or paragraph (3) of Subsection 4.8.3.

### **4.2.3 REVIEW**

- (1) Environmental Quality Review – Promptly after receiving an Application, the Board of Appeals shall undertake environmental quality review (SEQR) in accordance with Section 4.8. After completing SEQR review, the Board shall finish action on the Application.
- (2) Referral to County Planning Agency – When an Application is for a development within five hundred (500) feet from a boundary of the Town, or from a County or State

road or highway, or from a County or State park or other recreation area, the Board of Appeals shall promptly send a copy of the Application to the Steuben County Planning Agency for review. Within thirty (30) days, the County Planning Agency shall recommend approval, disapproval, or approval subject to stated conditions. Failure to report within such period shall be deemed to be approval. If the County Planning Agency recommends disapproval or conditional approval of the proposal, the Board of Appeals shall not act to the contrary except by the concurring vote of a majority plus one of all the members thereof adopting a Resolution fully setting forth their reasons.

(3) Procedure

- (a) An Application shall be given also to the Planning Board for review and recommendation. It shall report its conclusions to the Board of Appeals within thirty (30) days. Without such report, a favorable recommendation shall be assumed.
- (b) The Board of Appeals shall review the application and examine the site of the proposal. The Board of Appeals Review and the Planning Board review may occur concurrently.
- (c) The Board of Appeals shall hold a public hearing on the Application; notice shall be given and the hearing shall be conducted in the same manner as provided in paragraph (3) (a) of Subsection 4.5.2.
- (d) The Board of Appeals shall determine whether the development as proposed meets applicable standards stated in Subsection 4.2.4, and relevant requirements stated in Sections VI and VII.

**4.2.4 STANDARDS**

- (1) To guide its decision the Board of Appeals shall prepare written findings from the record, stating how the proposed development would or would not meet the performance standards stated in paragraphs (2) and (3) below.
- (2) General Standard – A development allowable by Special Permit shall be generally compatible with other properties in the vicinity, in terms of overall appearance and external evidence of normal operation; fences, planting screens or buffer areas, or restricted hours of operation, may be used to help meet this standard.
- (3) Specific Standards – A development allowable by Special Permit shall meet each of the following standards that is applicable to that proposal:
  - (a) Facilities and areas for solid waste handling, parking, exterior lighting and other service functions shall be located and designed so that other properties and passerby will be protected from unsightly conditions, dust and trash, fumes and odors, glare, and noise.
  - (b) Signs shall be visually compatible with their surrounds.
  - (c) Buildings and other structures shall be located and designed so that they will not unreasonably impair other properties' access to sunlight, air, and view.

- (d) The development shall be designed so that storm water will not be channeled harmfully onto adjacent properties, and so that there will be no soil erosion from the site.
- (e) The development shall be designed to avoid unnecessary grading; large trees and other attractive existing site features shall be preserved to the extent practicable.
- (f) The development shall be located where normal operation will not cause an unreasonable increase of traffic on public roads in the vicinity.
- (g) Vehicular entrances and exits, drives, and off-road parking and loading areas shall be designed for safe traffic movement under normal use, and for unimpeded access by emergency vehicles.
- (h) Pedestrian ways shall be separated from vehicular traffic, with crossing points clearly marked or otherwise controlled for safety.
- (i) When a development is intended to serve the general public, it shall include at least one access way designed to accommodate physically handicapped persons.

#### 4.2.5 DECISION AND PERMIT

- (1) Within sixty-two (62) days after the close of the public hearing, the Board of Appeals shall issue its decision, and shall promptly send a copy each to the applicant, the Code Enforcement Officer, and the Town Clerk. Such period may be extended to ninety (90) days by agreement between the Board and Applicant. The record, including the complete Application, shall be filed promptly in the Board's records.
- (2) In its decision, the Board may:
  - (a) decline to authorize a Special Permit for the development, stating the reasons therefor; or,
  - (b) authorize a Special Permit for the development, stating any modifications or other conditions found by the Board to be reasonable and necessary for the purposes of these Regulations; or,
  - (c) authorize a Special Permit for the development as proposed in the Application.
- (3) The Permit – The Special Permit shall be issued promptly by the Code Enforcement Officer according to the Board of Appeals decision. It shall incorporate by reference the complete Application, together with any modifications and conditions set by the Board.
- (4) Site Preparation – After receiving the Permit, the Applicant may begin site preparation. During the course of the work, the Officer shall inspect the site to ensure compliance with the Permit.
- (5) Lapse – When site preparation has not been begun within ninety (90) days, or has not been completed within two (2) years, of the date of the Special Permit, the Special

Permit shall lapse. However, the Board of Appeals for good cause may approve a request for an extension of such periods of time by a like amount.

### **4.3 OBTAINING A CERTIFICATE OF COMPLIANCE**

#### **4.3.1 APPLICATION PROCEDURE**

- (1) Certificate Required – No development shall be occupied without a Certificate of Compliance. The Certificate shall state that all activities subject to these Regulations have been properly completed in compliance with the Permit.
- (2) Application – An “Application for a Certificate of Compliance” is part of any Application form for a Land Use Permit or Special Permit. A copy shall be filled out by the Applicant and then sent to the Code Enforcement Officer.
- (3) Inspection – The Code Enforcement Officer shall promptly inspect the premises, and compare the same with the plans, specifications, conditions and other requirements set forth in the relevant Permit or Order.

#### **4.3.2 CERTIFICATE TO BE ISSUED**

- (1) When the Code Enforcement Officer finds that the development conforms with the requirements, he shall promptly issue the Certificate of Compliance to the Applicant; a copy will remain in his files together with the Application.
- (2) When the Code Enforcement Officer finds that the development does not conform with requirements, he shall issue a Notice of Violation pursuant to Subsection 1.3.2 (3). A copy shall remain in the Officer’s file.
- (3) Upon correction of the stated defect by the applicant, the matter shall be reconsidered at once by the Code Enforcement Officer who, when he finds all correct, shall issue the Certificate.

### **4.4 APPEAL FOR ADMINISTRATIVE REVIEW**

#### **4.4.1 GROUND FOR APPEAL**– Anyone may file an Appeal for Administrative Review, when:

- (1) seeking interpretation of a particular provision of these Regulations; or,
- (2) seeking correction of an alleged error in an order, requirement, decision, or determination of the Code Enforcement Officer.

#### **4.4.2 SUBMITTAL** – An appellant may obtain from the Code Enforcement Officer an “Appeal for Administrative Review”. The completed form shall be submitted to the Code Enforcement Officer within thirty (30) days following any decision or other action appealed. The Officer shall promptly send the complete record of the matter to the Board of Appeals. The appeal shall stay all action on the matter under appeal, unless



the Officer shall certify to the Board of Appeals that for stated reasons such stay would in his judgement cause imminent peril to life or property.

4.4.3 **REVIEW** – The Board of Appeals shall hold a public hearing on the Appeal. Public notice shall be given and the hearing shall be conducted in the same manner as provided in paragraph (3) (a) of Subsection 4.5.2. The Board may meet with the appellant and the Code Enforcement Officer to obtain information. Minutes of the hearing shall be part of the record. The Board of Appeals shall duly consider the record.

#### 4.4.4 **DECISION**

- (1) Within sixty-two (62) days after the close of the public hearing, the Board shall issue its decision. It shall affirm the Code Enforcement Officer's determination unless it finds the error alleged, or other ground for reversal or modification. In that case the Board may make such order, requirement, decision or determination as it shall find to be correct, so that the spirit of these Regulations shall be observed, public safety and welfare secured, and substantial justice done.
- (2) A copy of each decision shall be sent promptly to the appellant, the Code Enforcement Officer, and the Town Clerk. The appellant and the Code Enforcement Officer shall then continue with the matter at hand, subject to the terms of the Board's decision.
- (3) Where the Appeal is for an interpretation of the Regulations, the Board shall give their interpretation and the reasons therefor. A file of such decisions shall be maintained for reference.

### 4.5 **APPEAL FOR A VARIANCE**

#### 4.5.1 **GENERAL PROVISIONS**

##### (1) **Area Variances**

- (a) The Board of Appeals shall have the power, upon an appeal from a decision or determination of the Code Enforcement Officer to grant area variances. An area variance shall mean the authorization by the Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of these Regulations.
- (b) In making its determination, the Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board shall consider:
  1. whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the area variance;

2. whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
  3. whether the requested variance is substantial;
  4. whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
  5. whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of Appeals, but shall not necessarily preclude the granting of the area variance.
- (c) The Board of Appeals, in granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.
- (d) An applicant for a Special Permit may appeal for an Area Variance upon being advised by the Code Enforcement Officer or the Board of Appeals that the proposed development would not comply with a specified requirement of Sections VI or VII and accordingly is not allowable. In such cases, the Board shall not consider the Application for Special Permit unless it first shall have issued an Order of Variance.

(2) Use Variances

- (a) The Board of Appeals shall have the authority to issue use variances. A use variance is the authorization for the use of land for a purpose which is otherwise not allowed by, or prohibited by, these regulations.
- (b) No such use variance shall be granted by the Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located,
- (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
  - (2) the alleged hardship relating to the property in questions is unique, and does not apply to a substantial portion of the district or neighborhood;
  - (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
  - (4) that the alleged hardship has not been self-created.

- (3) Imposition of Conditions – The Board of Appeals shall, in the granting of both area variances and use variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of these Regulations, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

#### 4.5.2 APPEAL FOR VARIANCE – PROCEDURES

- (1) Submittal

An appellant may obtain from the Town Clerk an “Appeal for a Variance”. The completed form shall identify the particular provision of these Regulations from which relief is sought and shall be accompanied by the required fee, and materials in support of the appeal as provided in Section 5.6. It shall be submitted to the Town Clerk, who shall inform the Code Enforcement Officer. The Officer shall then promptly send the Appeal and all records of matter in his file to the Board of Appeals. The appeal shall stay action on the matter, unless the Code Enforcement Officer certifies to the Board of Appeals that for stated reasons in his judgement such stay would cause imminent peril to life or property. The Appeal shall be deemed to have been submitted to the Board as provided in paragraph (2) (b) or paragraph (3) of Subsection 4.8.3.

- (2) Review

- (a) Environmental Quality Review – Promptly after receiving an Appeal, the Board of Appeals/Planning Board shall undertake environmental quality review (SEQR) in accordance with Section 4.8. After completing SEQR review, the Board shall finish their action on the Appeal.

- (b) Referral to County Planning Agency – When an Appeal pertains to premises within five hundred (500) feet from a boundary of the Town or from a County or State road, or from a County or State park or other recreation area, the Board of Appeals/Planning Board shall send a copy of the Appeal to the Steuben County Planning Agency for review and recommendation as provided for in paragraph (2) of Subsection 4.2.3.

- (3) Hearing

- (a) The Board of Appeals shall promptly set a date for public hearing of an Appeal, mail notice thereof to the appellant and to the Code Enforcement Officer, publish notice thereof in the official newspaper of the Town, and issue any other notice the Board may choose, at least five (5) days prior to such date. At the hearing relevant information may be presented by interested persons. The Chairperson may compel attendance of witnesses and administer oaths thereto. Minutes of the proceedings shall become part of the record.

- (b) At the hearing, the appellant may be represented by counsel, and may supplement his written Appeal.

(4) Decision and Order

- (a) Time – The Board shall issue their decision within sixty-two (62) days following the close of the public hearing. Copies shall be sent promptly to the appellant, Code Enforcement Officer, and Town Clerk.
- (b) Vote – The affirmative vote of a majority of the members of the Board shall be necessary to grant a variance, except that when the County Planning Agency recommends denial or conditional approval of the appeal, the Board of Appeals shall not act to the contrary except by concurring vote of a majority plus one of the members thereof adopting a Resolution fully setting forth the reasons for their decision.
- (c) Order – When the Board grants relief, an Order of Variance shall be directed to the Code Enforcement Officer, fully describing the variance granted. The Order shall become effective promptly, shall be observed strictly, and shall be enforceable in the same manner as any provision of these Regulations.
- (d) Lapse – A Variance authorized by the Board of Appeals that is not exercised within one year from the date of issuance shall expire without further action by the Board.

#### 4.6 AMENDING THE REGULATIONS

##### 4.6.1 GENERAL PROVISIONS

The Town Board may amend these Regulations after a public hearing, as provided for in this Section. A petition for amendment may be presented by an owner of property affected thereby, and shall be filed with the Town Clerk in a form prescribed by the Town Board; it shall include the required fee. An amendment may be proposed by the Town Board, the Planning Board, or the Board of Appeals.

##### 4.6.2 PROCEDURE

- (1) Advisory Report by Planning Board – A proposed amendment, unless initiated by the Planning Board, shall be referred by the Town Board to the Planning Board which shall report its recommendation to the Town Board, and the reasons therefor, prior to a public hearing. When the Planning Board does not report within sixty-two (62) days or such longer time as may have been agreed upon by it and the Town Board, the Town Board may act without such report.
- (2) Environmental Quality Review – The Planning Board's recommendation shall include its assessment of environmental impact of the proposed amendment, as provided in Subsection 4.8.4. Upon receiving the Planning Board's recommendations, the Town Board shall undertake environmental quality review in accordance with Section 4.8. Following SEQR review the Board shall complete action on the proposed Amendment.

- (3) Referral to County Planning Agency
- (a) Where a proposed amendment would alter the Regulations pertaining to property within five hundred (500) feet from any boundary of the Town, or from any County or State road or highway, or from any County or State Park or other recreational area, the Town Board shall send a copy of the proposal to the Steuben County Planning Agency for review and comment in the same manner as provided for in paragraph (2) of Subsection 4.2.3.
  - (b) When the County Planning Agency disapproves a proposal or recommends modification thereof, the Town Board shall not act to the contrary, except by the concurring vote of four of the members thereof adopting a Resolution fully setting forth the reasons therefor.
- (4) Public Notice, Hearing, and Decision
- (a) The Town Board by resolution shall fix the time and place of the public hearing and cause notice to be given by publishing a notice of the proposed amendment and the time and place of the public hearing in the official newspaper of the Town, not less than ten (10) days prior to the date thereof.
  - (b) Where a proposed amendment would affect property within five hundred (500) feet from a boundary with another Town, written notice of such hearing shall be given to the Town Clerk thereof, and a representative of such Town may appear and be heard at the meeting.
  - (c) The hearing shall be held and any person may present relevant information or views pertaining to the proposal. The minutes of the hearing shall contain the information received.
  - (d) The Town Board shall make its decision within sixty-two (62) days after the close of the public hearing. Every amendment enacted shall be entered in the minutes of the Town Board, and shall become effective as provided by in Section 1.1, paragraph (3). An amendment of the official Land Use Regulations map shall be inscribed thereon and certified by the Town Clerk.
- (5) Protest by Owners – When a protest against a proposed amendment is presented to the Town Board by the owners of twenty (20) percent or more of the area of either
- (a) the property affected thereby, or
  - (b) the properties immediately adjacent to and extending 100 feet therefrom, or
  - (c) the properties directly opposite thereto, and extending 100 feet from the frontage thereof,
- then such amendment shall not be enacted except by the affirmative vote of four of the members of the Town Board.
- (6) Periodic Review – At least once every five years following their enactment, these Regulations shall be reviewed thoroughly by the Planning Board, with advice from the

Board of Appeals and Code Enforcement Officer. The Planning Board shall recommend to the Town Board any amendments it considers desirable.

#### 4.7 FEES

4.7.1 **REQUIREMENT** – Application fees shall be paid to the Town Clerk according to the following schedule. No action shall be taken on an Application or Appeal until the Application has been paid. (Fees may be changed according to changes in State or local requirements, as the Town Board sees necessary).

4.7.2 **FEE SCHEDULE** – When work requiring a Permit is started before the Application is filed, an additional fee of \$50.00 shall be charged. The required fees are as follows:

Application for a Land Use Permit (when Building Permit not needed) .....	5.00
Application for a Special Permit.....	25.00
Application for a Certificate of Compliance .....	None
Appeal for Administrative Review .....	None
Appeal for a Variance.....	25.00
Petition for Amendment .....	25.00
Application for Building Permit .....	
\$35.00 for first 1000 sq. ft.; \$10.00 / each additional 500 sq. ft. or part thereof	

4.7.3 **EXCEPTIONS** – The Building Permit fee shall be \$10.00 for an accessory building or structure or for a building addition exceeding one hundred (100) square feet of gross floor area. No fee shall be charged for a Building Permit for an agricultural building or structure, or for a building addition not exceeding one hundred (100) square feet of gross floor area.

#### 4.8 ENVIRONMENTAL QUALITY REVIEW

##### 4.8.1 POLICY

- (1) In accordance with State Environmental Quality Review (SEQR) regulations (6 NYCRR Part 617), it is hereby declared to be a policy of the Town that protection and enhancement of the environment be given appropriate weight with social and economic considerations, and that those factors be considered together in reaching decisions on proposed developments under these Regulations.
- (2) Applications for Special Permits, Appeals for Variances, and proposals for amending these Regulations, shall be reviewed as provided for in this Section to determine whether the proposed action would be likely to have a significant affect on the environment and, if so, how possible adverse effects could be reduced or prevented.

##### 4.8.2 STANDARDS

- (1) The following actions under these Regulations are deemed likely to have a significant effect on the environment:

- (a) amending these Regulations to change the allowable uses within any land use district, affecting an area of twenty-five (25) acres or larger;
  - (b) authorizing a Special Permit, granting a Variance, or amending these Regulations at the request of an applicant, in order to allow construction of fifty (50) or more dwelling units, or non-residential development that would entail site preparation covering an area of ten (10) acres, or parking space for 1,000 motor vehicles, or a facility with gross floor area exceeding 100,000 square feet;
  - (c) authorizing a Special Permit, granting a Variance, or amending these Regulations in order to allow expansion of an existing non-residential development that would entail site preparation covering five (5) acres, or parking for no more than five hundred (500) motor vehicles, or a facility with gross floor area exceeding 50,000 square feet; and,
  - (d) authorizing a Special Permit, granting a Variance or amending these Regulations in order to allow non-agricultural development within an agricultural district created in accordance with Article 25-AA of NYS Agriculture and Markets Law, comprising: construction of more than twelve (12) dwelling units, or site preparation covering an area of two and one-half acres or larger, or provision of parking spaces for 250 or more motor vehicles, or construction of a facility having a gross floor area of over 25,000 square feet.
- (2) The following actions are deemed unlikely to have a significant effect on the environment:
- (a) granting a Variance, other than for a development noted above in paragraph (1), or as provided in paragraph (3) below;
  - (b) authorizing a Special Permit for a development other than for a development noted above in paragraph (1); and,
  - (c) amending these Regulations for a purpose other than those noted in paragraph (1).
- (3) The following actions under these Regulations are not subject to environmental quality review and do not need an environmental assessment:
- (a) issuing a violation Notice, Order, or Appearance Ticket;
  - (b) issuing a Land Use Permit;
  - (c) issuing a Certificate of Compliance;
  - (d) granting a variance from the required minimum setback distance or depth of required yards; and,
  - (e) deciding an Appeal for Administrative Review, or a request for Clarification of a district boundary.

#### 4.8.3 SPECIAL PERMITS AND VARIANCES

- (1) Environmental Assessment Forms
  - (a) An Application for a Special Permit or Appeal for a Variance shall not be complete until the appropriate Environmental Assessment Form (EAF) has been submitted.
  - (b) When the intended development is likely to have a significant effect on the environment (as listed above) paragraph (1) of Subsection 4.8.2), a Full EAF shall be submitted.
  - (c) When the intended development is not likely to have a significant effect on the environment (as listed above, paragraph (2) of Subsection 4.8.2), a Short EAF shall be submitted.
- (2) Determination of Significance
  - (a) Promptly after receiving an Application or Appeal, the Board of Appeals shall determine whether the proposed development might have a significant effect on the environment. The Board shall use the criteria set forth in Section 617.11 of 6 NYCRR Part 617, and complete Parts II and III of the EAF.
  - (b) When no significant effect is identified, a "Negative Declaration" shall be prepared, certified by the Chairman or other designated officer, and filed with the Board's records. The Application or Appeal shall be deemed to have been submitted on the date of the Board's "Negative Declaration". Review of the proposal then shall proceed as provided in the appropriate Section, above, of these Regulations.
  - (c) When a possibly significant effect on the environment is found by the Board of Appeals, it shall make no decision on the matter until SEQR review has been completed in accordance with provisions of 6 NYCRR Part 617.
- (3) Review Procedure – An Application or Appeal subject to SEQR review (paragraph (2) (c), above) shall be considered to have been submitted on the date of the Board of Appeals' "Notice of Completion of Draft EIS". The matter shall then be reviewed under these Regulations concurrently with its review under SEQR. No final determination shall be reached by the Board before the date of its "Findings Statement" issued at the conclusion of the SEQR review.

#### 4.8.4 AMENDMENTS

- (1) Environmental Assessment Forms
  - (a) Before submitting its recommendation to the Town Board regarding any proposed amendment of these Regulations, the Planning Board shall have prepared the appropriate Environmental Assessment Form (EAF), with all Parts completed in draft form. The Planning Board's recommendation shall include its judgement on the significance of the proposal's likely environmental effects.



- (b) When the proposed amendment is likely to have a significant effect on the environment (as listed above, paragraph (1) of Subsection 4.8.2), a Full EAF shall be prepared and submitted.
  - (c) When the proposed Amendment is not likely to have a significant effect on the environment (as listed above, paragraph (2) of Subsection 4.8.2), a Short EAF shall be prepared and submitted.
- (2) Determination of Significance
- (a) Promptly after receiving the Planning Board's recommendation on a proposed amendment, the Town Board shall review the EAF and determine whether the proposed amendment might have a significant effect on the environment, using the criteria set forth in Section 617.11 of 6 NYCRR Part 617. It may accept or modify the assessment and conclusions proposed by the Planning Board in Parts II and III of the EAF.
  - (b) When no significant effect is identified, the Town Board shall prepare a "Negative Declaration" which shall be certified and filed by the Town Clerk. The Town Board then shall proceed with its consideration of the proposal in accordance with Section 4.6.
  - (c) When a possibly significant effect on the environment is found by the Town Board, no decision on the amendment shall be taken until review has been completed in accordance with the provisions of 6 NYCRR Part 617.
- (3) Review Procedure – The Planning Board's recommendation regarding a proposed amendment subject to SEQR (paragraph (2) (c), above) shall be deemed to have been received by the Town Board on the date of the Town Board's "Notice of Completion of Draft EIS". The matter then shall be considered pursuant to Section 4.6 concurrently with its review under SEQR. The Town Board shall not reach a final decision regarding the amendment before the date of its "Findings Statement" issued at the conclusion of SEQR review.

## SECTION V

### CONTENT OF APPLICATIONS AND APPEALS

#### 5.1 GENERAL PROVISIONS

- 5.1.1 An applicant or appellant may obtain necessary forms from the Town Clerk. Such forms and supplemental information identified in this Section, or specified by the Code Enforcement Officer, are hereby declared to provide the minimum information needed for the purposes of these Regulations.
- 5.1.2 An applicant or appellant shall provide appropriate information, such as a plot plan, scaled drawings, and/or sketches and descriptions of the property, showing existing and proposed conditions. The Code Enforcement Officer in each case shall specify the particular types of information and level of detail for a complete Application for a Land Use Permit or Special Permit. His determination shall be subject to Administrative Review.
- 5.1.3 An applicant or appellant who feels that the specified information would present an inaccurate picture of the matter, may provide additional documentation, which shall be part of the record.

#### 5.2 A LAND USE PERMIT

- 5.2.1 Form – The Application form shall provide spaces for an Application Number and the date accepted, and shall present the following information:
- (1) name, postal address, and telephone number of the owner of record of the property; and of the applicant, if different; the applicant's legal relationship to the owner;
  - (2) tax map identification of the property (map sheet, block and parcel numbers); fire number;
  - (3) the present use or uses of the property;
  - (4) the proposed Allowable Use as listed in Section 6.2; and,
  - (5) a brief description of work proposed to be undertaken.
- 5.2.2 Supplemental Information – An Application shall include enough information describing the proposal so the Code Enforcement Officer can determine its compliance with these Regulations; including one or more clear drawings that shall show appropriate items listed in paragraph (2), Subsection 5.3.2.

#### 5.3 A SPECIAL PERMIT

- 5.3.1 Form – The Application form shall provide spaces for an Application Number and the date submitted, and shall present the following information:

- (1) name, postal address, and telephone number of the owner of record of the property; and of the applicant, if different; the applicant's legal relationship to the owner;
- (2) tax map identification of the property (map sheet, block, and parcel numbers); fire number;
- (3) the present use or uses of the property;
- (4) the proposed Special Use, as listed in Section 6.2; and,
- (5) a brief description of work proposed to be undertaken.

### 5.3.2 SUPPLEMENTAL INFORMATION

- (1) An Application shall include drawings and other appropriate information describing the proposal. The scale of the drawing(s) and acceptable level of detail depend on the location, size and complexity of the proposal, but shall provide the information needed by the Board of Appeals/Planning Board in order to prepare the findings required by Subsection 4.2.4.
- (2) The following items where applicable shall be shown:
  - (a) Existing Conditions:
    - topographical contour lines;
    - property lines, rights-of-way, easements;
    - names of owners of adjoining properties;
    - road names;
    - lot area and dimensions;
    - location and dimensions of required front, rear, and side yards;
    - identification, location and dimensions of all existing buildings and other structures;
    - location, dimensions, and surfacing of all existing drives and parking areas;
    - location and description of existing water supply and sewerage facilities;
    - identification of all utility lines on or adjacent to the property;
    - streams, ditches, culverts, on or adjacent to the property; their direction of flow;
    - location and identification of major trees and other prominent natural features on or adjacent to the property.
  - (b) The Proposal:
    - changes to any of the above features;
    - identification, location and dimensions of all proposed buildings and other structures, drives and parking/loading areas, signs, exterior lighting fixtures, drainage, utilities; and,
    - grading and erosion control plan wherever required pursuant to Subsection 7.3.4.

5.3.3 An appropriate Environmental Assessment Form (Subsection 4.8.3) shall be submitted with Part I duly completed.

#### **5.4 A CERTIFICATE OF COMPLIANCE**

An Application for a Certificate of Compliance is part of an Application for a Land Use Permit/Building Permit or a Special Permit and the information provided therein shall enable the Code Enforcement Officer to determine if all site work has been completed properly.

#### **5.5 APPEAL FOR ADMINISTRATIVE REVIEW**

5.5.1 The Appeal form shall have spaces for an Appeal Number and the date accepted, and shall present the following information:

- (1) Name, postal address, and telephone number of the owner of record of the property; and of the appellant, if different, legal relationship of appellant to owner;
- (2) Tax map identification of the property (map sheet, block, and parcel numbers); fire number.

5.5.2 The appellant shall identify the order, requirement, decisions, or determination of the Code Enforcement Officer from which the Appeal is taken, and the alleged error therein; or, the specific provision of the Regulations for which he seeks an interpretation.

#### **5.6 APPEAL FOR A VARIANCE**

5.6.1 The Appeal form shall have spaces for an Appeal Number and the date submitted, and shall present the following information:

- (1) Name, postal address, and telephone number of the owner of record of the property; and of the appellant, if different; legal relationship of appellant to owner;
- (2) Tax map identification of the property (map sheet, block, and parcel numbers); fire number;
- (3) The specific provision(s) of these Regulations from which a variance is sought
- (4) An appellant shall support his appeal according to the standards in Subsection 4.5.3. He shall provide a statement of the exact variance desired, supplemented by drawings and other materials needed to clearly and accurately describe the particular circumstances that, in his view, would justify the variance.
- (5) Where an appeal is for variance from a requirement other than the minimum setback distance or depth of required yards, appellant shall submit an appropriate Environmental Assessment Form (Subsection 4.8.3) with Part I duly completed.

## SECTION VI

### DISTRICT REGULATIONS

#### 6.1 THE DISTRICTS

##### 6.1.1 DISTRICT ESTABLISHED; PURPOSES

- (1) The Town of Fremont is hereby divided into three land use districts: Agricultural-Residential (AG-R), Low-density Residential (LDR), and Land Conservation (LC).
- (2) In addition to the general purpose of these Regulations, each land use district is intended to accomplish particular purposes, which shall guide the regulation of uses allowed therein:
  - (a) **The Agricultural-Residential (AG-R) District** – To provide for low-density residential and other non-farm uses; to encourage continued agricultural uses; to preserve open space lands and natural resources.
  - (b) **Low-Density Residential (LDR) District** – To provide for concentrations of residential and related uses, with individual water and sewer facilities.
  - (c) **Land Conservation (LC) District** – To identify areas wherein development could result in public safety or health problems, and/or ecological damage because of topography, drainage, and soil characteristics; to protect public water supplies.

##### 6.1.2 LAND USE REGULATIONS MAP

The said land use districts are shown and bounded on the official Land Use Regulations Map, which map together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of these Regulations. Said map shall show the date of enactment of these Regulations and of each subsequent amendment to said map, and shall be duly certified and maintained by the Town Clerk.

##### 6.1.3 INTERPRETATION OF LAND USE REGULATIONS MAP

- (1) The following rules shall apply with respect to the boundaries of any land use district as shown on the official Land Use Regulations Map:
  - (a) Where boundaries of a district appear to follow approximately the center lines of roads, such center lines shall be construed to be such boundaries.
  - (b) Where boundaries of a district appear to be approximately parallel to the center lines or right-of-way lines of roads, such boundaries shall be construed as being parallel thereto and at such distance therefrom as stated on the map. If not stated, such distance shall be determined by use of the scale on the map.
  - (c) Where boundaries of a district appear approximately to follow plotted lot lines, such lot lines shall be construed to be on the boundaries.

- (d) Where boundaries of a district appear to follow the bank of a stream or other watercourse, the boundary shall be deemed to follow such bank, and in the event of any change therein, shall be construed as moving with the actual bank. Boundaries indicated as following approximately the center line of a waterway shall be deemed to follow the center line.
- (2) In other cases of uncertainty, the Board of Appeals shall determine the location of the boundary when asked to do so; no formal application shall be required. The Board shall maintain a file of all such determinations for reference.

## **6.2 ALLOWABLE USES**

### **6.2.1 GENERAL PROVISIONS**

- (1) Except as otherwise provided herein, no premises shall be used for a purpose other than one allowed in the district in which it is situated. Allowable uses are designated below in Subsections 6.2.2 – 6.2.6, as follows:

L - Designates a use allowed in the district, with a Land Use Permit; and,

S - Designates a use allowed in the district, with a Special Permit.

- (2) ~~Uses that~~ are listed but not so designated are not allowed in that district, but if present on the effective date of these Regulations shall be deemed to be non-conforming uses.
- (3) Uses not subject to these Regulations and which may be undertaken without a Permit are identified in Subsection 7.2.1.
- (4) A duly issued Permit for a principal use (Subsections 6.2 – 6.2.5) shall include appropriate provision for accessory structures, buildings, and uses identified in the Application.

TYPE OF USE	DISTRICT		
	LC	AGR	LDR
<b>6.2.2 RESIDENTIAL USES</b>			
Boarding House		L	L
Mobile Home Park		S	S
Multi-Family Dwelling		S	S
Rest Home		L	L
Single-Family Dwelling		L	L
Two-Family Dwelling		L	L
<b>6.2.3 GENERAL USES</b>			
Campground		S	
Cemetery		S	
Church or House of Worship		L	L
Day Nursery		L	L
Essential Services	*L	S	S
Golf Course		S	
Library		L	L
Membership Club		S	S
Municipal Park, Playground		L	L
Other Municipal Buildings		L	L
Nursing Home		L	L
Recreation Dwelling		S	
<b>6.2.4 BUSINESS USES</b>			
Automotive Sales		S	
Carwash		S	
Convenience Business		S	
Drive-In Establishment		S	
Funeral Home		S	
Kennel		S	
Private Use Airport		S	
Professional Office		L	L
Restaurant		S	
Roadside Stand		S	S
Service Station		S	
Small Animal Hospital		L	L
Stable, Commercial		S	
<b>6.2.5 INDUSTRIAL USES</b>			
Automotive Service & Storage		S	
Building Materials, Sales		S	
Excavation Operations		S	
Junk Yard		S	
Manufacturing, Fabrication, Assembly		S	
Oil, Gas Wells		S	
Sawmill		S	
Wholesale Warehouse		S	
Cellular Tower(s)		S	
<b>6.2.6 ACCESSORY USES</b>			
Agricultural Buildings & Structures		L	L
Bridle Path		L	
Customary Residential Storage & Other Structures		L	L
Garage, Private		L	L
Home Occupation		L	L
Required Off-Street Parking & Loading Space		L	L
Roadside Stand		L	L
Sign		L	L
Stable, Private		L	
Swimming Pool (Private)		L	L
Tourist Home (B&B)		L	L
Tennis Court		L	L

\* See Subsection 7.8.3

### 6.3 DENSITY SCHEDULE

The minimum allowable lot area per dwelling unit and minimum lot width for residential uses, the minimum allowable depth of yards for any use, and the maximum allowable height of buildings for any use, shall be as shown on the following schedule:

District/Dwelling Type	Residential Uses Minimum:		Any Allowed Use Building:			
	Lot Area Per Dwelling Unit	Lot Width	Minimum Yard Depths:			Maximum Height
			Front	Rear	Each Side	
AG-R						
Single-Family Dwelling	40,000 square feet	200'	50'	25'***	25'***	3 Stories
Two-Family Dwelling	21,000 square feet	200'				
Multiple-Family Dwelling	15,000 square feet	200'				
LDR						
Single-Family Dwelling	40,000 square feet	200'	50'	25'***	25'***	3 stories
Two-Family Dwelling	21,000 square feet	200'				
Multiple-Family Dwelling	15,000 square feet	200'				
Accessory Buildings (See Section 7.8.8)						

\*Plus 10,000 square feet additional for each dwelling unit in excess of three dwelling units.

\*\*Plus 5 feet for each story in excess of two stories.



## SECTION VII

### SUPPLEMENTAL REGULATIONS

#### 7.1 GENERAL PROVISIONS

The provisions of this Section supplement those of Section VI. When there is any difference between the two, the provisions of this Section shall control unless the contest clearly requires otherwise.

#### 7.2 EXCEPTIONS

##### 7.2.1 NON-REGULATED USES

- (1) Customary farming operations may be undertaken without a Permit, including planting, applying fertilizer, cultivation, crop harvesting, land drainage and other soil and water conservation practices, timber cutting, and use of pesticides and herbicides in compliance with State regulations. Construction of agricultural buildings, accessory buildings and other structures (other than dwellings) does not require a Permit, but shall meet the minimum yard requirements of Section 6.3 and the provisions of Subsection 7.8.1.
- (2) The following are allowed without a Permit:
  - (a) official traffic control signals and signs of New York State, Steuben County, and the Town of Fremont,
  - (b) signs displaying the name and insignia of any government or agency thereof,
  - (c) legal notices and other signs pursuant to a governmental function or otherwise required by law.
- (3) A facility (such as a transmission line) that can be built only after issuance of a Certificate of Environmental Compatibility and Public Need by the NYS Public Service Commission, may be developed without a Permit.
- (4) No Permit shall be required for portable wading or swimming pools not exceeding twenty-four (24) inches in depth. Such pools may be placed in any yard.
- (5) Fences, hedges, walls, poles, posts, and other customary yard accessories, ornaments and furniture may be allowed in any yard without a Permit. Such accessories shall not obstruct visibility at intersections. All fences, natural and fabricated on residential property shall have maximum height of eight (8) feet from the average ground level to the top.
- (6) No Permit shall be required for conducting household or farm auctions, yard sales, or garage sales. Such a sale shall not continue for longer than one (1) week, nor shall a permanent structure be established therefor.

### 7.2.2 PROHIBITED USES

- (1) No premises shall be used in a manner that would endanger the health, safety, or general welfare of the town's residents. The intent of this restriction is to protect adjoining landowners or occupants.
- (2) The following standards shall apply in all districts:
  - (a) There shall be no offensive or objectionable vibration, noise, odor, or glare noticeable beyond the property line, except that customary agricultural practices shall not be restricted hereby.
  - (b) There shall be no physical hazard due to fire, explosion, radiation or other cause, to persons or property.
  - (c) There shall be no storage of material in such a manner that it facilitates the breeding of vermin, or endangers the public health in any way.
  - (d) There shall be no emission of smoke, fly ash or dust in such a manner as to harm the health of persons, animals, or plants or to damage property.

### 7.2.3 NON-CONFORMING USES, STRUCTURES, AND LOTS

- (1) Non-Conforming Status – A lot, structure, use of a structure, use of land, or characteristic of use that was existing lawfully on the effective date of these Regulations, but that is prohibited or restricted hereunder, is hereby declared to be non-conforming and may be continued and maintained as provided herein.
- (2) Structures and Uses – A non-conforming structure, use, or characteristic of use shall be treated as follows:
  - (a) Expansion – A non-conforming structure or use shall not be expanded in any way.
  - (b) Unsafe Structures – A non-conforming structure declared unsafe by a proper authority, may be restored to a safe condition.
  - (c) Restoration – A non-conforming building destroyed or damaged may be rebuilt on the same location to the same dimensions.
  - (d) Discontinuance – When a non-conforming use or characteristic of use has been discontinued for a period of one (1) year, it shall not thereafter be re-established; use of such premises shall be in conformity with the provisions of these Regulations.
  - (e) Changes – When non-conforming premises are brought into conformity with these Regulations, they shall not be allowed again to become non-conforming.
  - (f) Moving – A structure that is moved from one lot to another shall conform with the requirements for the district in which it is located after such move.

(3) Lots – A non-conforming lot of record shall be treated as follows:

- (a) In a district where dwellings are allowed, a non-conforming undeveloped lot of record having a lesser area or width than the minimum required for the district in which it is located, may be used for not more than one (1) single-family dwelling, for which no variance need be obtained, provided that:
  - (i) such lot does not adjoin any other lot held by the same owner, the aggregate area of which lots is equal to or greater than the minimum lot area required in that district; and,
  - (ii) the area of such lot is not less than five thousand (5,000) square feet; and,
  - (iii) such dwelling shall be built with side yards not less than five (5) feet deep and with the set-back not less than the average of the two adjoining front yards.
- (b) In any district, an undersized lot of record may be subdivided only if each and every subdivision of such lot shall be acquired by the owners of adjoining lots, thereby increasing the size of such adjoining lots.

#### **7.2.4 HEIGHT LIMITATIONS**

In any district the maximum allowed height of buildings or structures (Section 6.3) does not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances that usually extend above the roof level and are not intended for human occupancy.

#### **7.2.5 MORE THAN ONE PRINCIPAL BUILDING**

Except as otherwise provided elsewhere herein, more than one building used for an allowed principal use (Subsections 6.2.2 – 6.2.5), may be erected on a single lot, provided that the lot area and yard requirements in Section 6.3 can be met for each building as though it were on a separate lot. A development including multiple principal buildings on a lot shall be allowable only by Special Permit.

### **7.3 PROTECTION OF NATURAL RESOURCES**

#### **7.3.1 POLICY**

Environmental quality can affect land values in the Town, especially for residential, recreational, and agricultural uses. Therefore, it is Town policy to protect and conserve productive farmlands, soil and water resources, woodlands and other wildlife habitat, and scenic areas. Regulations for that purpose are hereby declared to promote the public health, safety, and general welfare.

### 7.3.2 GENERAL PROVISIONS

- (1) A Land Use or Special Permit shall be understood to include the requirement that due consideration be shown for the natural features of the site and its environs: topography and soils; trees and other cover; streams and wetlands; and, scenic views.
- (2) A Land Use or Special Permit shall be understood to authorize site preparation necessary for the development for which the Permit was issued, subject to the provisions of Subsections 7.3.3 and 7.3.4.

### 7.3.3 PROTECTION OF GROUND COVER

The Code Enforcement Officer (for a Land Use Permit/Building Permit) or the Board of Appeals/Planning Board (for a Special Permit) may require reasonable changes in proposed development plans to ensure that site preparation shall not cause the loss of:

- (1) trees, shrubs or other ground cover on slopes of sixty percent (60%) or steeper, or within twenty-five (25) feet from the edge of a wetland regulated pursuant to the NYS Freshwater Wetlands Act; and,
- (2) trees with trunk circumferences of thirty-six (36) inches or greater, measured four and one-half (4-1/2) feet above average ground level.

### 7.3.4 GRADING AND EROSION CONTROL

- (1) Requirement – An Application for a Land Use Permit/Building Permit or a Special Permit shall be supplemented by a grading plan and an erosion control plan as described below, where the Code Enforcement Officer finds that site preparation will include grading, filling and/or excavation either:
  - (a) on a slope of fifteen percent (15%) or steeper; or,
  - (b) over a contiguous area of ten thousand (10,000) square feet or larger; or,
  - (c) including fifty (50) cubic yards or more of excavated or fill material.
- (2) Standard – Erosion control measures, related storm water runoff facilities, and maintenance practices shall be according to standards recommended by the District Conservationist, Steuben County Soil and Water Conservation District.
- (3) Grading Plan – A grading plan shall be designed to minimize foreseeable problems arising from storm water runoff and soil erosion. The plan shall show clearly the proposed finished ground surfaces throughout the development, with all graded areas properly tied back into areas of ungraded land. The plan shall distinguish cut from fill, and existing from proposed contour lines; contours shall be drawn at vertical intervals of not greater than two (2) feet unless the Code Enforcement Officer specifies otherwise.
- (4) Erosion Control Plan
  - (a) An erosion control plan shall be designed to prevent soil loss from the development site. The plan shall identify all erosion control measures and

practices proposed, both during the construction period and following completion, keyed to the proposed construction schedule.

- (b) The erosion control plan shall identify the maintenance practices needed to ensure proper functioning of control measures. The Code Enforcement Officer shall not issue a Certificate of Compliance, when site preparation has been completed, unless such maintenance has been properly performed to that point.

### **7.3.5 WATERSHED PROTECTION**

The Land Conservation (LC) district protects the reservoir system for the City of Hornell water supply. Allowable principal uses are limited to public water supply facilities. By Special Permit a subsurface waste disposal facility may be installed not closer than 250 feet from the mean high water line of any reservoir or tributary thereof, provided that the facility's design and operation shall meet all applicable NYS Health Department requirements.

### **7.3.6 CONVERSION OF RECREATION DWELLINGS**

No recreation dwelling shall be allowed to become occupied permanently as a residential use, except in accordance with a duly issued Land Use Permit/Building Permit or Special Permit, as provided for in Subsection 6.2.2.

## **7.4 ACCESS**

### **7.4.1 GENERAL PROVISIONS**

- (1) Accessibility – Every building hereafter erected or moved shall be on a lot fronting on a road affording safe and convenient vehicular access for normal use and for emergency vehicles.
- (2) A development intended to serve the general public shall include at least one accessway designed for use by physically handicapped persons.
- (3) Improvement Standards – Drives and parking and loading spaces for public use shall be improved with surfaces of a dust inhibiting nature. Drainage facilities shall prevent ponding of water. The property owner shall maintain drives and parking and loading areas in good condition, free of holes, dust, trash and debris. Access ways designed for use by physically handicapped persons shall be properly signed.
- (4) Landscaping/Screening – Where a non-residential use is required to have one or more loading spaces, or is required to have six (6) or more parking spaces that are located less than twenty (20) feet from a residential lot line, such parking and loading areas shall be screened from the view of passersby and from adjacent residences. Such screening shall be by a fence or compact evergreen hedge or other types of trees and shrubs, designed to form a visual screen at least four (4) feet high, except as otherwise required for traffic safety. All parking and loading areas and screening materials shall be properly maintained thereafter, in a sightly and well-kept condition.

## 7.4.2 DRIVEWAYS

- (1) Jurisdiction – Driveway entrances shall comply with regulations of the New York State Department of Transportation or the Steuben County Department of Public Works, or the Town of Fremont, whichever applies, or the following provisions, whichever is more restrictive. The applicant shall obtain a permit that may be required in order to establish an entrance to a County or State road.
- (2) Driveway Openings – No driveway shall enter a public road at a point that is:
  - (a) within fifty (50) feet of the nearest right-of-way line of an intersecting public road; or,
  - (b) within two hundred fifty (250) feet of the ramp nose at an expressway interchange; or,
  - (c) located where the sight distance in either direction along the public road would be less than five hundred (500) feet where the posted speed limit exceeds thirty-five (35) miles per hour. Where the posted speed limit is thirty-five (35) miles per hour or less, sight distance shall be not less than two hundred fifty (250) feet.
- (3) Residential Driveways – Residential driveways shall be located and built in accordance with the following standards:
  - (a) The angle of entry to the road shall not be less than sixty (60) degrees.
  - (b) Driveway pipe a minimum of eighteen (18) inches in diameter and not less than twenty (20) feet in length shall be provided, in order to cross a ditch or drainage swale. Larger sizes may be required, to accommodate anticipated flows. Pipe shall be so placed so as to maintain the drainage gradient of the road ditch.
  - (c) There shall be concrete, laid stone, or integral end sections on all culverts, with heights not to exceed driveway elevations.
  - (d) Driveway entrances shall be not less than ten (10) feet from a property line nor less than twenty (20) feet from the entrance of another driveway.
  - (e) Driveway grades between the edge of road pavement and the set-back line shall not exceed twelve percent (12%).
  - (f) Drives shall have a transition radius of five (5) feet at the curb or the equivalent of a flared entrance.
  - (g) Normally, there shall be one drive per lot; one additional drive may be granted if sufficient frontage exists to meet the requirements stated in subparagraph (d), above.
- (5) Commercial Driveways – Commercial driveways shall be located and built in accordance with the following standards:

- (a) The same as required for Residential driveways.
- (b) The same as required for Residential driveways.
- (c) The same as required for Residential driveways.
- (d) The same as required for Residential driveways.
- (e) Width of a two-way drive shall be not less than thirty (30) feet or greater than fifty (50) feet. Width of a one-way drive shall be not less than fifteen (15) feet nor greater than twenty (20) feet.
- (f) A driveway entrance may be required to be paved.
- (g) Normally, there shall be two driveways per lot; additional driveways may be granted if sufficient frontage exists to meet the requirements stated in subparagraph (d) above.

### 7.4.3 OFF-ROAD PARKING

#### (1) General Provisions

- (a) When a building is erected or changed in use, there shall be provided off-road parking spaces at least nine (9) feet by twenty (20) feet in size, together with appropriate access drives and maneuvering area.
- (b) Residential parking spaces shall be on the same lot as the dwelling served; they shall not be located in the front or side yards. Parking spaces for non-residential uses may be on a different lot, but within 700' from the use served. Private garage spaces may be credited toward the required parking spaces, for any use to which such garage is accessory.
- (c) Uses intended to serve the general public shall include appropriate parking spaces properly located, designed, and signed for use by physically handicapped persons.
- (d) Unless there is no practicable alternative, off-road parking spaces shall be designed with maneuvering areas so that vehicles can exit without backing into the road.

- (2) Number of Spaces Required – Parking spaces shall be provided for various uses in accordance with the following schedule:

SCHEDULE OF OFF-ROAD PARKING AREAS	
TYPE OF USE	NUMBER OF SPACES REQUIRED
Residential	
Single and Two-Family Dwelling	Two (2) per dwelling unit
Multi-Family Dwelling	One and one-half (1 ½) per dwelling unit
Boarding House, Bed & Breakfast	Two (2), plus one (1) per guest sleeping room
Commercial	
Service Station	One (1) for each fuel pump, plus two (2) per service bay
Hotel, Motel	One (1) per sleeping room or unit, plus one-half (1/2) per employee
Funeral Parlor	One (1) per employee, plus one (1) per 100 square feet of floor area in repose rooms, parlors or service rooms
Professional Office	One (1) per 250 square feet of floor area
Restaurant, Tavern	One (1) per 2.5 seats, plus one-half (1/2) per employee
Drive-In Establishment	Three (3) per service window, plus one (1) per full-time employee
Roadside Stand	Three (3) for customers plus one (1) per employee other than a resident of the premises
Retail Business, personal service, and business service, not Elsewhere classified	Five and one-half (5 ½) per 1,000 square feet of gross floor area
Institutional	
House of Worship	One (1) per five (5) persons' capacity
Nursing Home, Rest Home	One (1) per three (3) beds, plus one (1) per employee
Medical Clinic	One (1) per 200 square feet of floor area
Industrial	
All types of manufacturing, storage, wholesale sales	One-half (1/2) per employee on the largest shift, plus one (1) per business vehicle based on the premises

#### 7.4.4 OFF-ROAD LOADING

- (1) General Requirements – When a building for commercial or industrial use is erected or enlarged, at least one off-road truck loading space shall be maintained on the same lot when such use would normally receive or ship more than one truck load per day. Such space shall be provided in addition to required off-road parking spaces. Unless there is no practicable alternative, loading spaces shall be designed so that vehicles can exit without backing onto the road.
- (2) Dimensions – A loading space shall have a minimum dimension of not less than twelve (12) feet in width and fifty (50) feet in length, exclusive of driveways and maneuvering areas. Height clearance shall not be less than fifteen (15) feet.
- (3) Location – Loading spaces shall not encroach on any required front or side yard, access-way, or off-road parking area, except that parking areas may be used for loading spaces whenever the business is closed, or for not more than three (3) hours per day.

### 7.5 YARDS

#### 7.5.1 VISIBILITY FOR TRAFFIC SAFETY

On a corner lot, nothing shall be erected, placed, planted or grown in such a manner as to materially obstruct the line of sight between the intersecting roads, from two and one-half (2 ½) to ten (10) feet above the centerline grades of such roads. This shall apply to the triangular area bounded by the right-of-way lines and a line connecting points thereon located fifty (50) feet from their point of intersection.



## **7.5.2 CORNER LOTS AND THROUGH LOTS**

On corner lots and through lots, the front yard set-back distance shall be provided along both frontages.

## **7.5.3 ARCHITECTURAL PROJECTIONS**

- (1) An open structure such as a porch, stair, balcony, carport, or similar architectural feature shall be considered part of the building to which it is attached, and shall not project into a required yard.
- (2) A chimney, eave, window or bay window, may intrude not more than three (3) feet in depth into a required yard. An uncovered deck or terrace, essentially at ground level, may extend into a yard; if covered, such construction shall be considered a porch.

## **7.6 SIGNS**

### **7.6.1 PROHIBITED SIGNS**

- (1) The following are not allowed:
  - (a) a sign other than an official traffic control device, that uses the words "stop", "danger", or "slow" prominently or in a manner that implies danger to motorists;
  - (b) a sign that obstructs motorists' view of an official traffic control device, or their view of oncoming vehicles less than five hundred (500) feet distant;
  - (c) a sign that produces glare to an extent or in a direction that may be a hazard to motorists';
  - (d) a flashing sign or sign employing flashing, pulsating, intermittent, rotating or moving lights or simulation thereof;
  - (e) a sign affixed to a utility-owned pole;
  - (f) a sign located within a public right-of-way, other than an official traffic control device;
  - (g) a sign advertising a business, industry, profession, commodity, service, or activity that is not located, conducted, sold, or offered upon the premises where such sign is placed.

### **7.6.2 SIGNS ALLOWED WITHOUT PERMIT**

- (1) Permanent Signs – The following signs are allowed without a Land Use Permit on the premises referred to, subject to the stated limitations:
  - (a) a sign not exceeding four (4) square feet in area identifying a professional office, tourist home, boarding house, or home occupation;

- (b) a sign not exceeding two (2) square feet in area denoting the name and address of the occupants;
  - (c) a sign or bulletin board not exceeding twelve (12) square feet in area customarily incidental to a place of worship, library, museum, club or fraternal society;
  - (d) parking directional and handicapped accessibility signs, each not to exceed one (1) square foot in area.
- (2) Temporary Signs – The following are allowed without a Land Use Permit, subject to the limitations specified:
- (a) Construction Sign – There may be one unlighted sign not exceeding twenty (20) square feet in area on a lot identifying persons or firms involved in construction on that site, and, one illuminated sign not exceeding forty (40) square feet in area, identifying the owner and activity for which the building is intended. Such a sign shall not remain for more than one (1) year.
  - (b) Event Sign – There may be one unlighted sign not exceeding thirty-two (32) square feet in area on a lot announcing a campaign, drive, or other event, conducted by a political, civic, religious, charitable, or educational organization. Such a sign shall be removed not later than three (3) weeks following the advertised occasion.
  - (c) Realty Sign – There may be one unlighted sign not exceeding twenty (20) square feet in area, on any lot designed to be read from each road from which the premises are visible, offering the sale, lease or rental of the premises. Such a sign may remain as long as needed.
  - (c) Produce Sign – There may be one unlighted sign, not exceeding twelve (12) square feet in area, advertising the sale of produce grown on the property where the sign is located. Such produce sign shall be removed when the sale of produce has ceased.

### 7.6.3 BUSINESS SIGNS

Business signs require a Land Use Permit/Building Permit. An enterprise may display business signs having a total area of not more than twelve (12) square feet, designed to be read from each road from which the premises are visible. A business sign may be of any type stated in paragraphs (1) – (5) of Subsection 7.6.4, and may be double-faced.

### 7.6.4 GENERAL SIGN REGULATION

The following provisions shall govern all applicable signs:

- (1) Illuminated Sign – An indirectly illuminated sign shall be illuminated only by a shielded light source directed solely at the sign, not causing glare for motorists, pedestrians or neighboring premises. A directly illuminated sign shall not cause glare for motorists, pedestrians, or neighboring premises.

- (2) Projecting Sign – No sign other than an official traffic control device shall overhang a road right-of-way.
- (3) Roof Sign – No sign installation shall extend above the ridge line of the roof.
- (4) Freestanding or Portable Sign – Portable signs and freestanding signs shall not be placed within a road right-of-way, and shall not extend higher than fifteen (15) feet above the ground. Portable and freestanding stands, and signs on vehicles, shall be done in a professional manner, such as magnetic, painted, or decals.
- (5) Wall Sign – A wall sign installation shall extend not more than eighteen (18) inches from such wall, nor more than four (4) feet above the eaves, nor above the ridge line, of the building to which it is attached.
- (6) Revolving Signs – A revolving sign shall be limited to displays of time and/or temperature.
- (7) Lapse – A sign that no longer advertises an existing business, product, service or activity, shall be removed by the owner of the premises upon which the sign is located after written notice. When the Code Enforcement Officer finds such a sign, he shall notify the owner of the premises in writing to remove said sign within thirty (30) days from the date of said notice.

## **7.7 UNREGISTERED VEHICLES**

### **7.7.1 STORAGE OR DISPLAY IN FRONT YARD**

- (1) No unregistered boat or motor vehicle, or recreational vehicle, shall be stored or displayed in a front yard, except as otherwise provided herein.
- (2) Not more than one(1) such boat or vehicle may be displayed for sale by an individual in his front yard.
- (3) An unregistered motor or recreational vehicle held in stock on the premises of a licensed dealer in new or used automotive vehicles shall not be displayed or stored within a road right-of-way, but may be placed ion the front yard of the business.

### **7.7.2 OTHER UNREGISTERED MOTOR VEHICLES**

The following shall be regulated as specifically provided.

- (1) At the request of the Code Enforcement Officer, the owner of an unregistered motor vehicle held for operation in races shall provide satisfactory evidence of bona fide participation in organized racing, and failure to do so shall be deemed evidence of a violation. Such a vehicle shall not be stored in a front yard.
- (2) An unregistered motor vehicle held for operation in a demolition derby may be stored for no longer than sixty (60) days prior to the derby in which it is to be operated, and must be removed from the premises and properly disposed of no later than thirty (30) days following such derby. The owner thereof, upon request, shall inform the Code

Enforcement Officer of the date of such derby, and failure to do so shall be deemed evidence of a violation. Such a vehicle shall not be stored in a front yard.

### 7.7.3 ABANDONED, JUNKED, OR INOPERATIVE MOTOR VEHICLES

- (1) Any motor vehicle, as defined in the Vehicle and Traffic Law of the State of New York that meets any of the following criteria:
  - (a) Unlicensed, wrecked, discarded, dismantle or partly dismantled.
  - (b) Being held or used for the purpose of resale of used parts therefrom, or for the purpose of reclaiming for some use some or all of the materials therein for the purpose of disposing of the same.
  - (c) With respect to any motor vehicle not required to be licensed or not usually on public highways, the fact that such motor vehicle is an "abandoned, junked, or inoperative motor vehicle."
  - (d) The following shall not be deemed a motor vehicle under this law: recreational vehicles, agricultural equipment, and boats.
  - (e) The fact that a motor vehicle may be licensed or registered with the State of New York but does not display a current registration shall be presumptive evidence that such motor vehicle is unlicensed.
  - (f) The use of the singular herein is intended, where applicable, to include the plural.
- (2) Enforcement of these regulations may be initiated by:
  - (a) Code Enforcement Officer
  - (b) Police Officer if such vehicle is a safety hazard
  - (c) Written complaint submitted to the Town Board by an individual
- (3) For the purposes of these regulations, an owner of private property is any person, firm, partnership or corporation, whether business or not-for-profit or religious, charitable or otherwise, or any purchaser, tenant, lessee, occupant, undertenant, receiver or assignee of private premises of private property or any other unit or entity owning real property in the Town of Fremont.
- (4) Regulations: It shall be unlawful for any person within the Town of Fremont to store or deposit or cause, suffer or permit to be stored or deposited more than one(1) abandoned, junked or inoperative motor vehicle or part or piece thereof on any private property within the Town, except within a garage or building, as to be not visible to public or neighbor. Vehicles under cover are not allowed except by permit.
- (5) Removal Procedure: Any abandoned, junked, or inoperative motor vehicle found by the Enforcement Official to be in violation of Section 4, may be removed from the premises on which it is located in the following manner:
  - (a) The Enforcement Officer shall serve written notice on the owner of the private property on which the vehicle is located, ordering such person to remove the same or cause the same to be removed therefrom within thirty(30) days of the date of said service. The Enforcement Official may determine the ownership of any parcel of land in the Town from the current assessment roll.

(b) In the event said abandoned, junked or inoperative motor vehicle or vehicles are not removed from the premises within the time required in the notice, the Town or its representative shall have the right to enter upon the premises to remove and dispose of the abandoned, junked or inoperative motor vehicle or vehicles. The expense of such removal and disposal shall be a lawful charge against the owner of the private property and may be collected, if necessary, in a civil action instituted in the name of the Town.

(6) Penalties for Offenses

(a) In addition to any expenses which may be collected pursuant to Section (5)(b) above, any person committing an offense against these regulations shall be guilty of a violation pursuant to the Penal Law of the State of New York, punishable by a fine not exceeding Two hundred fifty dollars (\$250.00) or by imprisonment for a term not exceeding fifteen (15) days, or by both fine and imprisonment. The continuation of an offense against the provisions of these regulations shall constitute a separate and distinct offense hereunder.

(b) In addition, or as an alternative to the above penalties, the Town Board may also maintain an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of these regulations.

(7) Sixty(60) Day Exemption Permit

(a) Permit is available at the Office of the Town Clerk during regular business hours for a fee of Ten dollars (\$10.00).

(b) Permit is for one motor vehicle for no more than two (2) times per calendar year.

(c) Purpose of Permit:

1. Allow person to make roadworthy a motor vehicle, i.e. to make repairs, etc.
2. Sale of single vehicle by residential owner.
3. Resident/s on extended vacation.

(d) The permit must be displayed in a window of the vehicle, visible from the street.

(e) No permit is needed for NYS Registered Motor Vehicle Repair Shops or Car Dealer. These facilities are exempt.

## 7.8 MISCELLANEOUS USE REGULATIONS

### 7.8.1 FARM ANIMALS

Except in an Agricultural District created pursuant to Agricultural and Markets Law Article 25AA located within the Town of Fremont, housing for farm animals, animal feeding equipment or structures therefor, and outdoor storage of odor or dust-producing materials, shall

not be placed within two hundred (200) feet of a side or rear lot line or three hundred (300) feet of an existing dwelling on another lot, except by Special Permit.

#### 7.8.2 POOLS

- (1) Except for portable pools, private swimming pools shall comply with the following requirements:
  - (a) a pool shall be intended for use primarily by the occupants of the premises; and,
  - (b) a pool shall not be less than five (5) feet away from any lot line; and,
  - (c) a pool, or the entire lot on which it is located, shall be securely enclosed to prevent uncontrolled access by children and animals. Said enclosure shall be no less than four (4) feet in height and maintained with a self-closing and self-latching gate of equal height. However, such enclosure shall be required for an above-ground pool with perimeter decks no less than forty-six (46) inches above the ground, and affording access only by means of a ladder or stairs that can be raised or otherwise blocked to prevent unauthorized entrance.

#### 7.8.3 ESSENTIAL SERVICES

The location, design, maintenance, and operation of essential services shall not adversely affect the character of nearby residential areas. For that purpose, fences, buffer areas or landscaping may be required.

#### 7.8.4 HOME OCCUPATIONS

- (1) Where allowed, a home occupation:
  - (a) shall be carried on only by a member or members of the family residing on the premises;
  - (b) shall not involve sales of good or merchandise at the premises, except as incidental to services provided;
  - (c) shall have no exterior display other than one sign not exceeding two (2) square feet in area, no exterior storage of materials, and no other exterior evidence of variation from the residential character of the principal building;
  - (d) shall use no equipment or process that creates visual or audible interference in any radio or television receiver off the premises, or causes fluctuation of line voltage off the premises; and,
  - (e) shall not cause substantially more traffic than is normal in the neighborhood; required parking spaces shall not be located in the front yard.

#### 7.8.5 SERVICE STATIONS

- (1) Where allowed, a service station shall be subject to the following requirements:

- (a) no structure or area for use by motor vehicles, except access drives and pump islands, shall encroach upon a required yard;
- (b) no fuel pump shall be located closer than twenty (20) feet from a side lot line or closer than twenty (20) feet from a road right-of-way;
- (c) no access drive shall enter a road within one hundred (100) feet of and on the same side of the road as a school or fire station;
- (d) outdoor display of accessory goods for sale is allowable only on the pump island and the building island;
- (e) no motor vehicle parts, or partially dismantled motor vehicles shall be stored outside;
- (f) services offered shall not include: tire re-capping, motor repair requiring removal of block, head or crankcase, major frame and body work, painting, welding, storage of inoperable vehicles; and,
- (g) where a service station abuts a residential district, the latter shall be shielded by a visual buffer of densely planted evergreens, solid fencing or a combination of both. Failure to maintain such buffer in good condition shall be a violation of these Regulations.

#### 7.8.6 CAMPGROUNDS

- (1) General Standards – Where allowed, campgrounds shall be governed by the following requirements:
  - (a) No campground shall be developed on a lot less than two (2) acres in area;
  - (b) No camping space shall be sited within fifty (50) feet of the right-of-way of a public road;
  - (c) Individual spaces shall be dimensioned and arranged so that no camping spaces shall be sited within thirty (30) feet of another; and,
  - (d) No parking or loading, or maneuvering incidental to parking or loading, shall be permitted on a public road.
- (2) Internal Roads – Roads within a campground shall be privately owned, shall afford safe and convenient access to all spaces and facilities, and shall be laid out and built in accordance with the following rules:
  - (a) Surfacing and maintenance shall provide a sound driving surface; and,
  - (b) All traffic into and out of a campground shall be through marked exits and entrances. No material impediment to visibility shall obstruct the view of drivers on public roads.

- (3) Other Locations – An occupied recreational vehicle outside a duly approved campground shall comply with the following rules:
  - (a) There shall be no more than one (1) occupied recreation vehicle on a lot;
  - (b) No recreation vehicle shall be connected permanently to a water supply or sewerage.

#### 7.8.7 MOBILE HOMES

- (1) Placement – A mobile home, whether or not placed in a mobile home park, shall be placed on a stand consisting of appropriate material properly placed, drained, graded and compacted so as to be durable and adequate for the maximum load anticipated during all seasons. The mobile home shall be skirted around the bottom portion with uniform durable material and ventilation, within sixty (60) days from placement of the unit, weather permitting.
- (2) Standards – A mobile home shall be installed in accordance with the manufacturer's instructions, and shall meet all relevant State and Federal standards.
- (3) Density – In a mobile home park, mobile homes shall comply with the lot size and separation standards stated in the Town of Fremont Mobile Home Park Ordinance. Elsewhere, mobile homes shall comply with provisions of Sections 6.3 and 7.4 for single-family dwellings.
- (4) Pre-1976 Mobile Homes shall not be allowed unless they are fully inspected and meet all Federal and State requirements, specifically the Residential Code of New York State.

#### 7.8.8 ACCESSORY BUILDINGS

Accessory buildings may be located not less than five (5) feet from a lot line or from another building. Subject to that restriction, not more than one accessory building not larger than 100 square feet in area may be located within a required rear yard or side yard. Additional accessory buildings shall be located within the buildable portion of the lot, except that a roadside stand or a private garage accessory to a residence may be located in a front yard.

#### 7.8.9 ADULT USES

It is the intent of the Town of Fremont to regulate Adult Uses in order to reduce or mitigate potential secondary impacts of such uses that have occurred in other communities, including, but not limited to, increased crime rates, noise, and traffic; decreased property values; and general deterioration of neighborhoods and hindrance of economic development.

- (1) Adult uses shall be permitted in the Agricultural-residential District subject to the following restrictions:

Adult uses are prohibited within:

- (a) One Thousand (1,000) feet of any single-family, two-family, or multiple-family dwelling.



- (b) One Thousand (1,000) feet of any public or private school or day care center.
  - (c) One Thousand (1,000) feet of any church or other religious facility or institution.
  - (d) One Thousand (1,000) feet of any public park, public bike path, playground, playing field, cemetery, or civic or recreational facility.
  - (e) One Thousand (1,000) feet of any other existing adult use.
- (2) No more than one adult use shall be located on any lot.
  - (3) The distances provided above shall be measured by following a straight line, without regard to intervening buildings, from the nearest point of the property parcel upon which the adult use is to be located to the nearest point of the property parcel from which the adult use is to be separated.
  - (4) No adult use shall be conducted in any manner that allows the observation of any material depicting, describing, or relating to specified sexual activities or specified anatomical areas from any property not operating as an adult use. This provision shall apply to any sign, show, window, or other openings.
  - (5) There shall be no outdoor sign, display or advertising of any kind other than one identification sign limited to only the name of the establishment.
  - (6) Adult uses shall meet all other regulations of the Town of Fremont including but not limited to lot and bulk regulations, parking regulations, and signage.
  - (7) The right to maintain a legal nonconforming adult use shall terminate in one year from the effective date of this law, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. The owner may apply to the Zoning Board of Appeals for an extension of the amortization period and the Zoning Board of Appeals may grant an extension upon finding that there are substantial and uncovered costs which cannot be recouped within a year. Such nonconforming uses shall not be increased, enlarged, extended, or altered within the one-year period or within any extension of the one-year period except that the use may be changed to a conforming use.

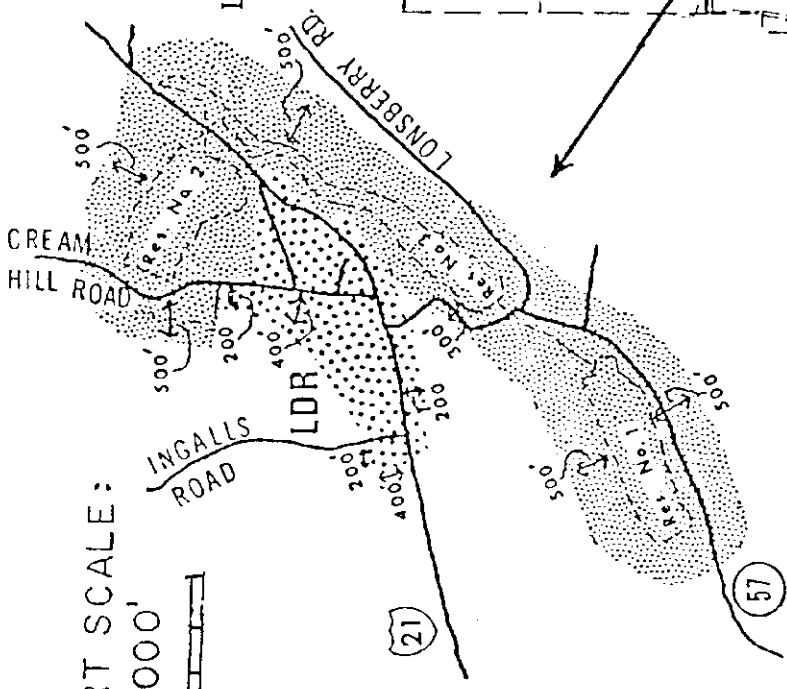
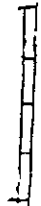
#### **7.8.10 EXCAVATION OPERATIONS**

- (1) Operation: A Special Permit shall be required for an excavation of earth materials for commercial purposes, such as top soil, fill, sand, or gravel, including the separation and grading of sand or gravel. Such operation shall be subject to the following regulations:
  - (a) All structures and excavations shall be not less than thirty (30) feet from any street right-of-way or other property line.
  - (b) Fencing or similar effective barriers not less than six (6) feet in height may be required where excavations are to exceed four (4) feet in depth.
  - (c) All buildings, structures, and machinery used in such operations shall be removed within six (6) months following termination of operations.

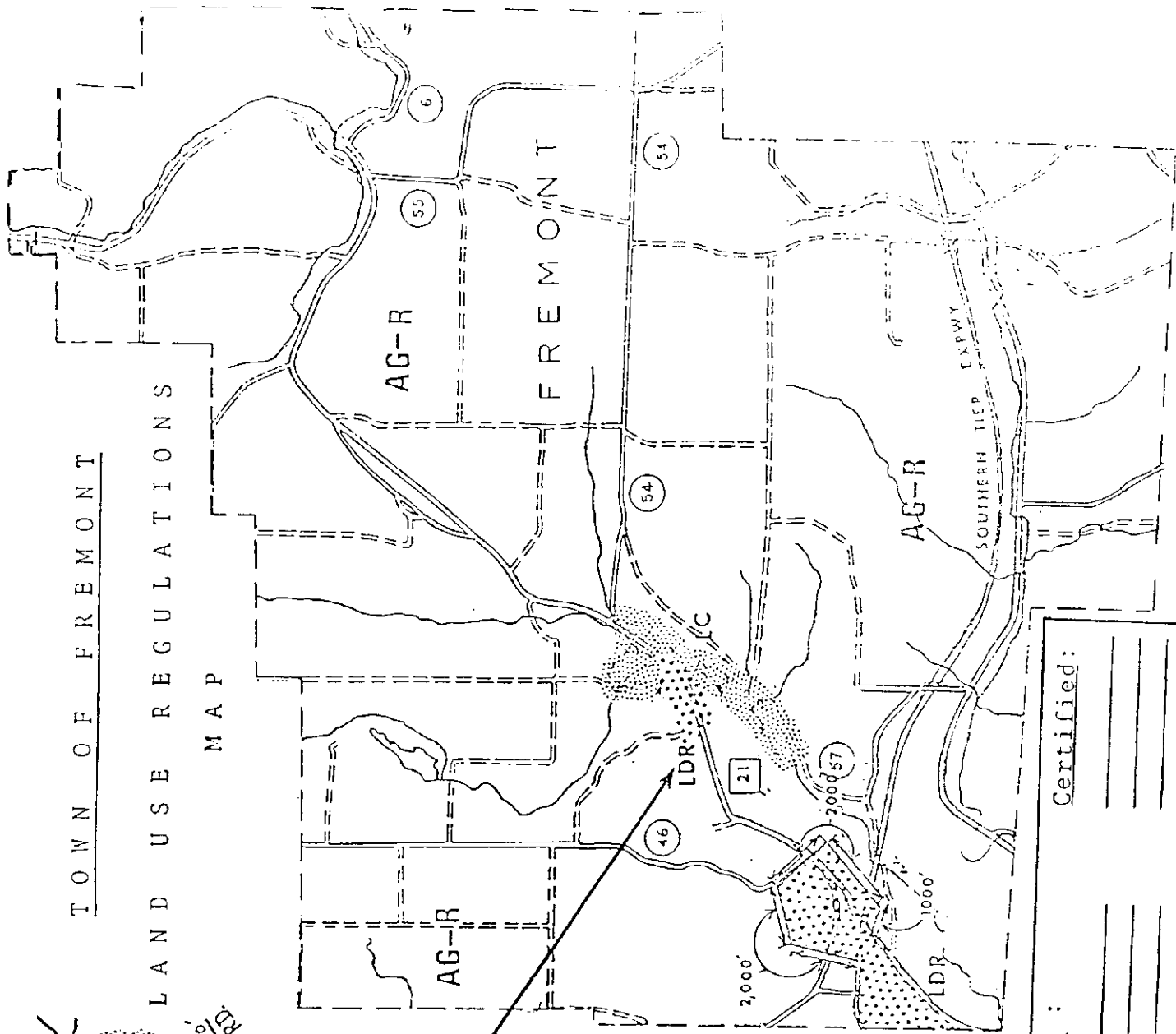
- (d) All equipment used for the excavation and processing shall be equipped, maintained and operated in such a manner as to prevent noise, vibration, dust, and injurious conditions on adjoining properties.
- (2) Restoration: Excavated areas must be rehabilitated within one (1) year after termination of operations, in accordance with the following standards, or in accordance with the NYS Mined Lands Reclamation Law where applicable. The Town Board may require the operator to post a bond or equivalent security sufficient to cover such rehabilitation.
  - (a) Side slopes of excavated areas shall not be steeper than one (1) foot vertical distance for each one and one-half (1 ½) feet horizontal distance.
  - (b) All excavations must either a) be made into a pond by excavating to a level not less than four (4) feet below water producing depth, or b) be filled if necessary to a level above the seasonal high water table, and graded and drained.
  - (c) Grading and backfilling shall leave the site in substantial conformity with the Topography of adjoining lands.
- (3) Terms: The provisions of paragraphs (1) and (2) above shall be conditions for a Special Permit issued for such an operation.




INSERT SCALE:

2000'



TOWN OF FREMONT  
LAND USE REGULATIONS  
MAP



-  AG-R AGRICULTURAL-RESIDENTIAL
-  LDR LOW DENSITY RESIDENTIAL
-  LC LAND CONSERVATION

As referred to in Section 6.1.2 of the Town of Fremont Land Use Regulations, enacted as Local Law No. 1 of 2005 on May 10, 2005.

CERTIFIED : *Norma Kelly*  
Town Clerk



AMENDED :

1.	Certified:
2.	
3.	
4.	

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(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 2005 of the ~~(County)~~(City)(Town)(Village) of Fremont was duly passed by the Town Board on May 10 2005, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*  
*(Elective Chief Executive Officer\*)*

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*  
*(Elective Chief Executive Officer\*)*

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*  
*(Elective Chief Executive Officer\*)*

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

**5. (City local law concerning Charter revision proposed by petition.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph.....1....., above.

Harna J. Kilburg  
Clerk of the County legislative body, City, Town or Village Clerk  
or officer designated by local legislative body

(Seal)

Date: May 11, 2005

**(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)**

STATE OF NEW YORK  
COUNTY OF Steuben

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

[Signature]  
Signature

Attorney for the Town  
Title

~~County~~  
~~City~~ of Fremont  
Town  
~~Village~~

Date: MAY 11, 2005

# Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE  
41 STATE STREET, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

STATE OF NEW YORK  
DEPARTMENT OF STATE  
**FILED**  
DEC 26 2007

~~County~~  
~~City~~ of Fremont  
~~Town~~  
~~Village~~

Local Law No. 2 of the year 2007

**MISCELLANEOUS  
& STATE RECORDS**

A local law Providing For The Administration and Enforcement Of The  
(Insert Title)  
New York State Uniform Fire Prevention and Building Code

Be it enacted by the Fremont Town Board of the  
(Name of Legislative Body)

~~County~~  
~~City~~ of Fremont as follows:  
~~Town~~  
~~Village~~

See Copy of Local Law Annexed Hereto

(If additional space is needed, attach pages the same size as this sheet, and number each.)



**A LOCAL LAW PROVIDING FOR THE  
ADMINISTRATION AND ENFORCEMENT OF THE  
NEW YORK STATE UNIFORM FIRE PREVENTION AND BUILDING CODE**

Local Law # 2 of 20 07.

Be it enacted by the [ Town Board ] of the [~~City / Town / Village~~] of Fremont, in the County of Steuben, as follows:

**SECTION 1. PURPOSE AND INTENT**

This local law provides for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the Uniform Code) and the State Energy Conservation Construction Code (the Energy Code) in this [~~City / Town / Village~~]. This local law is adopted pursuant to section 10 of the Municipal Home Rule Law. Except as otherwise provided in the Uniform Code, other state law, or other section of this local law, all buildings, structures, and premises, regardless of use or occupancy, are subject to the provisions this local law.

**SECTION 2. DEFINITIONS**

In this local law:

“Building Permit” shall mean a permit issued pursuant to section 4 of this local law. The term “Building Permit” shall also include a Building Permit which is renewed, amended or extended pursuant to any provision of this local law.

[“Certificate of Occupancy” / “Certificate of Compliance”] shall mean a certificate issued pursuant to subdivision (b) of section 7 of this local law.

[“City” shall mean the City of \_\_\_\_\_.]

“Code Enforcement Officer” shall mean the Code Enforcement Officer appointed pursuant to subdivision (b) of section 3 of this local law.

“Code Enforcement Personnel” shall include the Code Enforcement Officer and all Inspectors.

“Compliance Order” shall mean an order issued by the Code Enforcement Officer pursuant to subdivision (a) of section 15 of this local law.

“Energy Code” shall mean the State Energy Conservation Construction Code, as currently in effect and as hereafter amended from time to time.

“Inspector” shall mean an inspector appointed pursuant to subdivision (d) of section 4 of this local law.

“Operating Permit” shall mean a permit issued pursuant to section 10 of this local law. The term “Operating Permit” shall also include an Operating Permit which is renewed, amended or extended pursuant to any provision of this local law.

“Permit Holder” shall mean the Person to whom a Building Permit has been issued.

"Person" shall include an individual, corporation, limited liability company, partnership, limited partnership, business trust, estate, trust, association, or any other legal or commercial entity of any kind or description.

"Stop Work Order" shall mean an order issued pursuant to section 6 of this local law.

"Temporary Certificate" shall mean a certificate issued pursuant to subdivision (d) of section 7 of this local law.

["Town" shall mean the Town of Fremont .]

"Uniform Code" shall mean the New York State Uniform Fire Prevention and Building Code, as currently in effect and as hereafter amended from time to time.

["Village" shall mean the Village of \_\_\_\_\_.]

### SECTION 3. CODE ENFORCEMENT OFFICER AND INSPECTORS

(a) The office of Code Enforcement Officer is hereby created. The Code Enforcement Officer shall administer and enforce all the provisions of the Uniform Code, the Energy Code and this local law. The Code Enforcement Officer shall have the following powers and duties:

(1) to receive, review, and approve or disapprove applications for Building Permits, [*Certificates of Occupancy / Certificates of Compliance*], Temporary Certificates and Operating Permits, and the plans, specifications and construction documents submitted with such applications;

(2) upon approval of such applications, to issue Building Permits, [*Certificates of Occupancy / Certificates of Compliance*], Temporary Certificates and Operating Permits, and to include in Building Permits, [*Certificates of Occupancy / Certificates of Compliance*], Temporary Certificates and Operating Permits such terms and conditions as the Code Enforcement Officer may determine to be appropriate;

(3) to conduct construction inspections, inspections to be made prior to the issuance of [*Certificates of Occupancy / Certificates of Compliance*], Temporary Certificates and Operating Permits, fire safety and property maintenance inspections, inspections incidental to the investigation of complaints, and all other inspections required or permitted under any provision of this local law;

(4) to issue Stop Work Orders;

(5) to review and investigate complaints;

(6) to issue orders pursuant to subdivision (a) of section 15 (Violations) of this local law;

(7) to maintain records;

(8) to collect fees as set by the **Town Board** of this [~~City~~ / Town / Village];

(9) to pursue administrative enforcement actions and proceedings;

(10) in consultation with this [~~City's~~ / ~~Town's~~ / ~~Village's~~] attorney, to pursue such legal actions and proceedings as may be necessary to enforce the Uniform Code, the Energy Code and this local law, or to abate or correct conditions not in compliance with the Uniform Code, the Energy Code or this local law; and

(11) to exercise all other powers and fulfill all other duties conferred upon the Code Enforcement Officer by this local law.

(b) The Code Enforcement Officer shall be appointed by **Town Board** The Code Enforcement Officer shall possess background experience related to building construction or fire prevention and shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and the Code Enforcement Officer shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.

(c) In the event that the Code Enforcement Officer is unable to serve as such for any reason, an individual shall be appointed by **Town Board**, to serve as Acting Code Enforcement Officer. The Acting Code Enforcement Officer shall, during the term of his or her appointment, exercise all powers and fulfill all duties conferred upon the Code Enforcement Officer by this local law.

(d) One or more Inspectors may be appointed **Town Board** to act under the supervision and direction of the Code Enforcement Officer and to assist the Code Enforcement Officer in the exercise of the powers and fulfillment of the duties conferred upon the Code Enforcement Officer by this local law. Each Inspector shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and each Inspector shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.

(e) The compensation for the Code Enforcement Officer and Inspectors shall be fixed from time to time by the [**Town Board** of this [~~City~~ / ~~Town~~ / ~~Village~~].

#### SECTION 4. BUILDING PERMITS.

(a) Building Permits Required. Except as otherwise provided in subdivision (b) of this section, a Building Permit shall be required for any work which must conform to the Uniform Code and/or the Energy Code, including, but not limited to, the construction, enlargement, alteration, improvement, removal, relocation or demolition of any building or structure or any portion thereof, and the installation of a solid fuel burning heating appliance, chimney or flue in any dwelling unit. No Person shall commence any work for which a Building Permit is required without first having obtained a Building Permit from the Code Enforcement Officer.

(b) Exemptions. No Building Permit shall be required for work in any of the following categories:

(1) construction or installation of one story detached structures associated with one- or two-family dwellings or multiple single-family dwellings (townhouses) which are used for tool and storage sheds, playhouses or similar uses, provided the gross floor area does not exceed 144 square feet (13.88 square meters);

(2) installation of swings and other playground equipment associated with a one- or two-

family dwelling or multiple single-family dwellings (townhouses);

(3) installation of swimming pools associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses) where such pools are designed for a water depth of less than 24 inches and are installed entirely above ground;

(4) installation of fences which are not part of an enclosure surrounding a swimming pool;

(5) construction of retaining walls unless such walls support a surcharge or impound Class I, II or IIIA liquids;

(6) construction of temporary motion picture, television and theater stage sets and scenery;

(7) installation of window awnings supported by an exterior wall of a one- or two-family dwelling or multiple single-family dwellings (townhouses);

(8) installation of partitions or movable cases less than 5'-9" in height;

(9) painting, wallpapering, tiling, carpeting, or other similar finish work;

(10) installation of listed portable electrical, plumbing, heating, ventilation or cooling equipment or appliances;

(11) replacement of any equipment provided the replacement does not alter the equipment's listing or render it inconsistent with the equipment's original specifications; or

(12) repairs, provided that such repairs do not involve (i) the removal or cutting away of a loadbearing wall, partition, or portion thereof, or of any structural beam or load bearing component; (ii) the removal or change of any required means of egress, or the rearrangement of parts of a structure in a manner which affects egress; (iii) the enlargement, alteration, replacement or relocation of any building system; or (iv) the removal from service of all or part of a fire protection system for any period of time.

(c) Exemption not deemed authorization to perform non-compliant work. The exemption from the requirement to obtain a building permit for work in any category set forth in subdivision (b) of this section shall not be deemed an authorization for work to be performed in violation of the Uniform Code or the Energy Code.

(d) Applications for Building Permits. Applications for a Building Permit shall be made in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. The application shall be signed by the owner of the property where the work is to be performed or an authorized agent of the owner. The application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that the intended work complies with all applicable requirements of the Uniform Code and the Energy Code. The application shall include or be accompanied by the following information and documentation:

(1) a description of the proposed work;

(2) the tax map number and the street address of the premises where the work is to be performed;

(3) the occupancy classification of any affected building or structure;

(4) where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code; and

(5) at least 2 sets of construction documents (drawings and/or specifications) which (i) define the scope of the proposed work; (ii) are prepared by a New York State registered architect or licensed professional engineer where so required by the Education Law; (iii) indicate with sufficient clarity and detail the nature and extent of the work proposed; (iv) substantiate that the proposed work will comply with the Uniform Code and the Energy Code; and (v) where applicable, include a site plan that shows any existing and proposed buildings and structures on the site, the location of any existing or proposed well or septic system, the location of the intended work, and the distances between the buildings and structures and the lot lines.

(e) Construction documents. Construction documents will not be accepted as part of an application for a Building Permit unless they satisfy the requirements set forth in paragraph (5) of subdivision (d) of this section. Construction documents which are accepted as part of the application for a Building Permit shall be marked as accepted by the Code Enforcement Officer in writing or by stamp. One set of the accepted construction documents shall be retained by the Code Enforcement Officer, and one set of the accepted construction documents shall be returned to the applicant to be kept at the work site so as to be available for use by the Code Enforcement Personnel. However, the return of a set of accepted construction documents to the applicant shall not be construed as authorization to commence work, nor as an indication that a Building Permit will be issued. Work shall not be commenced until and unless a Building Permit is issued.

(f) Issuance of Building Permits. An application for a Building Permit shall be examined to ascertain whether the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code. The Code Enforcement Officer shall issue a Building Permit if the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code.

(g) Building Permits to be displayed. Building permits shall be visibly displayed at the work site and shall remain visible until the authorized work has been completed.

(h) Work to be in accordance with construction documents. All work shall be performed in accordance with the construction documents which were submitted with and accepted as part of the application for the Building Permit. The Building Permit shall contain such a directive. The Permit Holder shall immediately notify the Code Enforcement Officer of any change occurring during the course of the work. The Building Permit shall contain such a directive. If the Code Enforcement Officer determines that such change warrants a new or amended Building Permit, such change shall not be made until and unless a new or amended Building Permit reflecting such change is issued.

(i) Time limits. Building Permits shall become invalid unless the authorized work is commenced within 3 months following the date of issuance. Building Permits shall expire 24 months after the date of issuance. A Building Permit which has become invalid or which has expired pursuant to this subdivision may be renewed upon application by the Permit Holder, payment of the applicable fee, and approval of the application by the Code Enforcement Officer.

(j) Revocation or suspension of Building Permits. If the Code Enforcement Officer determines that a Building Permit was issued in error because of incorrect, inaccurate or incomplete information, or that the work for which a Building Permit was issued violates the Uniform Code or the Energy Code, the

Code Enforcement Officer shall revoke the Building Permit or suspend the Building Permit until such time as the Permit Holder demonstrates that (1) all work then completed is in compliance with all applicable provisions of the Uniform Code and the Energy Code and (2) all work then proposed to be performed shall be in compliance with all applicable provisions of the Uniform Code and the Energy Code.

(k) Fee. The fee specified in or determined in accordance with the provisions set forth in section 16 (Fees) of this local law must be paid at the time of submission of an application for a Building Permit, for an amended Building Permit, or for renewal of a Building Permit.

## SECTION 5. CONSTRUCTION INSPECTIONS.

(a) Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer or by an Inspector authorized by the Code Enforcement Officer. The Permit Holder shall notify the Code Enforcement Officer when any element of work described in subdivision (b) of this section is ready for inspection.

(b) Elements of work to be inspected. The following elements of the construction process shall be inspected made, where applicable:

- (1) work site prior to the issuance of a Building Permit;
- (2) footing and foundation;
- (3) preparation for concrete slab;
- (4) framing;
- (5) building systems, including underground and rough-in;
- (6) fire resistant construction;
- (7) fire resistant penetrations;
- (8) solid fuel burning heating appliances, chimneys, flues or gas vents;
- (9) Energy Code compliance; and
- (10) a final inspection after all work authorized by the Building Permit has been completed.

(c) Inspection results. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the Permit Holder shall be notified as to where the work fails to comply with the Uniform Code or Energy Code. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the Uniform Code and the Energy Code, reinspected, and found satisfactory as completed.

(d) Fee. The fee specified in or determined in accordance with the provisions set forth in section 16 (Fees) of this local law must be paid prior to or at the time of each inspection performed pursuant to

this section.

## SECTION 6. STOP WORK ORDERS.

(a) Authority to issue. The Code Enforcement Officer is authorized to issue Stop Work Orders pursuant to this section. The Code Enforcement Officer shall issue a Stop Work Order to halt:

(1) any work that is determined by the Code Enforcement Officer to be contrary to any applicable provision of the Uniform Code or Energy Code, without regard to whether such work is or is not work for which a Building Permit is required, and without regard to whether a Building Permit has or has not been issued for such work, or

(2) any work that is being conducted in a dangerous or unsafe manner in the opinion of the Code Enforcement Officer, without regard to whether such work is or is not work for which a Building Permit is required, and without regard to whether a Building Permit has or has not been issued for such work, or

(3) any work for which a Building Permit is required which is being performed without the required Building Permit, or under a Building Permit that has become invalid, has expired, or has been suspended or revoked.

(b) Content of Stop Work Orders. Stop Work Orders shall (1) be in writing, (2) be dated and signed by the Code Enforcement Officer, (3) state the reason or reasons for issuance, and (4) if applicable, state the conditions which must be satisfied before work will be permitted to resume.

(c) Service of Stop Work Orders. The Code Enforcement Officer shall cause the Stop Work Order, or a copy thereof, to be served on the owner of the affected property (and, if the owner is not the Permit Holder, on the Permit Holder) personally or by registered mail/return receipt. The Code Enforcement Officer shall be permitted, but not required, to cause the Stop Work Order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other Person taking part or assisting in work affected by the Stop Work Order, personally or by registered mail/return receipt provided, however, that failure to serve any Person mentioned in this sentence shall not affect the efficacy of the Stop Work Order.

(d) Effect of Stop Work Order. Upon the issuance of a Stop Work Order, the owner of the affected property, the Permit Holder and any other Person performing, taking part in or assisting in the work shall immediately cease all work which is the subject of the Stop Work Order.

(e) Remedy not exclusive. The issuance of a Stop Work Order shall not be the exclusive remedy available to address any event described in subdivision (a) of this section, and the authority to issue a Stop Work Order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under section 15 (Violations) of this local law or under any other applicable local law or State law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a Stop Work Order.

## SECTION 7. [CERTIFICATES OF OCCUPANCY / CERTIFICATES OF COMPLIANCE]

(a) [Certificates of Occupancy / Certificates of Compliance] required. A [Certificate of Occupancy / Certificate of Compliance] shall be required for any work which is the subject of a Building Permit and for all structures, buildings, or portions thereof, which are converted from one use

or occupancy classification or subclassification to another. Permission to use or occupy a building or structure, or portion thereof, for which a Building Permit was previously issued shall be granted only by issuance of a [*Certificate of Occupancy / Certificate of Compliance*].

(b) Issuance of [*Certificates of Occupancy / Certificates of Compliance*]. The Code Enforcement Officer shall issue a [*Certificate of Occupancy / Certificate of Compliance*] if the work which was the subject of the Building Permit was completed in accordance with all applicable provisions of the Uniform Code and Energy Code and, if applicable, that the structure, building or portion thereof that was converted from one use or occupancy classification or subclassification to another complies with all applicable provisions of the Uniform Code and Energy Code. The Code Enforcement Officer or an Inspector authorized by the Code Enforcement Officer shall inspect the building, structure or work prior to the issuance of a [*Certificate of Occupancy / Certificate of Compliance*]. In addition, where applicable, the following documents, prepared in accordance with the provisions of the Uniform Code by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant for the [*Certificate of Occupancy / Certificate of Compliance*], shall be provided to the Code Enforcement Officer prior to the issuance of the [*Certificate of Occupancy / Certificate of Compliance*]:

(1) a written statement of structural observations and/or a final report of special inspections, and

(2) flood hazard certifications.

(c) Contents of [*Certificates of Occupancy / Certificates of Compliance*]. A [*Certificate of Occupancy / Certificate of Compliance*] shall contain the following information:

(1) the Building Permit number, if any;

(2) the date of issuance of the Building Permit, if any;

(3) the name, address and tax map number of the property;

(4) if the [*Certificate of Occupancy / Certificate of Compliance*] is not applicable to an entire structure, a description of that portion of the structure for which the [*Certificate of Occupancy / Certificate of Compliance*] is issued;

(5) the use and occupancy classification of the structure;

(6) the type of construction of the structure;

(7) the assembly occupant load of the structure, if any;

(8) if an automatic sprinkler system is provided, a notation as to whether the sprinkler system is required;

(9) any special conditions imposed in connection with the issuance of the Building Permit; and

(10) the signature of the Code Enforcement Officer issuing the [*Certificate of Occupancy / Certificate of Compliance*] and the date of issuance.



(d) Temporary Certificate. The Code Enforcement Officer shall be permitted to issue a Temporary Certificate allowing the temporary occupancy of a building or structure, or a portion thereof, prior to completion of the work which is the subject of a Building Permit. However, in no event shall the Code Enforcement Officer issue a Temporary Certificate unless the Code Enforcement Officer determines (1) that the building or structure, or the portion thereof covered by the Temporary Certificate, may be occupied safely, (2) that any fire- and smoke-detecting or fire protection equipment which has been installed is operational, and (3) that all required means of egress from the building or structure have been provided. The Code Enforcement Officer may include in a Temporary Certificate such terms and conditions as he or she deems necessary or appropriate to ensure safety or to further the purposes and intent of the Uniform Code. A Temporary Certificate shall be effective for a period of time, not to exceed [ 6 ] months, which shall be determined by the Code Enforcement Officer and specified in the Temporary Certificate. During the specified period of effectiveness of the Temporary Certificate, the Permit Holder shall undertake to bring the building or structure into full compliance with all applicable provisions of the Uniform Code and the Energy Code.

(e) Revocation or suspension of certificates. If the Code Enforcement Officer determines that a [Certificate of Occupancy / Certificate of Compliance] or a Temporary Certificate was issued in error because of incorrect, inaccurate or incomplete information, and if the relevant deficiencies are not corrected to the satisfaction of the Code Enforcement Officer within such period of time as shall be specified by the Code Enforcement Officer, the Code Enforcement Officer shall revoke or suspend such certificate.

(f) Fee. The fee specified in or determined in accordance with the provisions set forth in section 16 (Fees) of this local law must be paid at the time of submission of an application for a [Certificate of Occupancy / Certificate of Compliance] or for Temporary Certificate.

## SECTION 8. NOTIFICATION REGARDING FIRE OR EXPLOSION.

The chief of any fire department providing fire fighting services for a property within this [City / Town / Village] shall promptly notify the Code Enforcement Officer of any fire or explosion involving any structural damage, fuel burning appliance, chimney or gas vent.

## SECTION 9. UNSAFE BUILDING AND STRUCTURES

Unsafe structures and equipment in this Town shall be identified and addressed in accordance with the following procedure:

Notify the Code-Enforcement Officer.

## SECTION 10. OPERATING PERMITS.

(a) Operation Permits required. Operating Permits shall be required for conducting the activities or using the categories of buildings listed below:

(1) manufacturing, storing or handling hazardous materials in quantities exceeding those listed in Tables 2703.1.1(1), 2703.1.1(2), 2703.1.1(3) or 2703.1.1(4) in the publication entitled "Fire Code of New York State" and incorporated by reference in 19 NYCRR section 1225.1;

(2) hazardous processes and activities, including but not limited to, commercial and industrial operations which produce combustible dust as a byproduct, fruit and crop ripening, and waste handling;

(3) use of pyrotechnic devices in assembly occupancies;

(4) buildings containing one or more areas of public assembly with an occupant load of 100 persons or more; and

(5) buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by resolution adopted by the **Town Board** of this *Town*

Any person who proposes to undertake any activity or to operate any type of building listed in this subdivision (a) shall be required to obtain an Operating Permit prior to commencing such activity or operation.

(b) Applications for Operating Permits. An application for an Operating Permit shall be in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. Such application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that quantities, materials, and activities conform to the requirements of the Uniform Code. If the Code Enforcement Officer determines that tests or reports are necessary to verify conformance, such tests or reports shall be performed or provided by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant.

(c) Inspections. The Code Enforcement Officer or an Inspector authorized by the Code Enforcement Officer shall inspect the subject premises prior to the issuance of an Operating Permit.

(d) Multiple Activities. In any circumstance in which more than one activity listed in subdivision (a) of this section is to be conducted at a location, the Code Enforcement Officer may require a separate Operating Permit for each such activity, or the Code Enforcement Officer may, in his or her discretion, issue a single Operating Permit to apply to all such activities.

(e) Duration of Operating Permits. Operating permits shall be issued for such period of time, not to exceed one year in the case of any Operating Permit issued for an area of public assembly and not to exceed three years in any other case, as shall be determined by the Code Enforcement Officer to be consistent with local conditions. The effective period of each Operating Permit shall be specified in the Operating Permit. An Operating Permit may be reissued or renewed upon application to the Code Enforcement Officer, payment of the applicable fee, and approval of such application by the Code Enforcement Officer.

(f) Revocation or suspension of Operating Permits. If the Code Enforcement Officer determines that any activity or building for which an Operating Permit was issued does not comply with any applicable provision of the Uniform Code, such Operating Permit shall be revoked or suspended.

(g) Fee. The fee specified in or determined in accordance with the provisions set forth in section 16 (Fees) of this local law must be paid at the time submission of an application for an Operating Permit, for an amended Operating Permit, or for reissue or renewal of an Operating Permit.

## SECTION 11. FIRE SAFETY AND PROPERTY MAINTENANCE INSPECTIONS

(a) Inspections required. Fire safety and property maintenance inspections of buildings and structures shall be performed by the Code Enforcement Officer or an Inspector designated by the Code Enforcement Officer at the following intervals:

(1) Fire safety and property maintenance inspections of buildings or structures which contain an area of public assembly shall be performed at least once every twelve (12) months.

(2) Fire safety and property maintenance inspections of buildings or structures being occupied as dormitories shall be performed at least once every twelve (12) months.

(3) Fire safety and property maintenance inspections of all multiple dwellings not included in paragraphs (1) or (2) of this subdivision, and all non-residential buildings, structures, uses and occupancies not included in paragraphs (1) or (2) of this subdivision shall be performed at least once every (36) months

(b) Inspections permitted. In addition to the inspections required by subdivision (a) of this section, a fire safety and property maintenance inspection of any building, structure, use, or occupancy, or of any dwelling unit, may also be performed by the Code Enforcement Officer or an Inspector designated by the Code Enforcement Officer at any time upon:

(1) the request of the owner of the property to be inspected or an authorized agent of such owner;

(2) receipt by the Code Enforcement Officer of a written statement alleging that conditions or activities failing to comply with the Uniform Code or Energy Code exist; or

(3) receipt by the Code Enforcement Officer of any other information, reasonably believed by the Code Enforcement Officer to be reliable, giving rise to reasonable cause to believe that conditions or activities failing to comply with the Uniform Code or Energy Code exist;

provided, however, that nothing in this subdivision shall be construed as permitting an inspection under any circumstances under which a court order or warrant permitting such inspection is required, unless such court order or warrant shall have been obtained.

(c) OFPC Inspections. Nothing in this section or in any other provision of this local law shall supersede, limit or impair the powers, duties and responsibilities of the New York State Office of Fire Prevention and Control ("OFPC") and the New York State Fire Administrator under Executive Law section 156-e and Education Law section 807-b. *[INCLUDE THE FOLLOWING PROVISIONS IF THE CITY/TOWN/VILLAGE WISHES TO RELY ON THE INSPECTIONS PERFORMED BY OFPC, AND DOES NOT WISH TO HAVE THE CODE ENFORCEMENT OFFICER INSPECT BUILDINGS THAT ARE INSPECTED BY OFPC: Notwithstanding any other provision of this section to the contrary:*

*(1) the Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a building or structure which contains an area of public assembly if OFPC performs fire*

*safety and property maintenance inspections of such building or structure at least once every twelve (12) months;*

*(2) the Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a building or structure occupied as a dormitory if OFPC performs fire safety and property maintenance inspections of such building or structure at least once every twelve (12) months,*

*(3) the Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a multiple dwelling not included in paragraphs (1) or (2) of subdivision (a) of this section if OFPC performs fire safety and property maintenance inspections of such multiple dwelling at intervals not exceeding the interval specified in paragraph (3) of subdivision (a) of this section; and*

*(4) the Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a non-residential building, structure, use or occupancy not included in paragraphs (1) or (2) of subdivision (a) of this section if OFPC performs fire safety and property maintenance inspections of such non-residential building, structure, use or occupancy at intervals not exceeding the interval specified in paragraph (3) of subdivision (a) of this section.]*

(d) ~~Fee~~. The fee specified in or determined in accordance with the provisions set forth in section 16 (Fees) of this local law must be paid prior to or at the time each inspection performed pursuant to this section. This subdivision shall not apply to inspections performed by OFPC.

## **SECTION 12. COMPLAINTS**

The Code Enforcement Officer shall review and investigate complaints which allege or assert the existence of conditions or activities that fail to comply with the Uniform Code, the Energy Code, this local law, or any other local law, ordinance, or regulation adopted for administration and enforcement of the Uniform Code or the Energy Code. The process for responding to a complaint shall include such of the following steps as the Code Enforcement Officer may deem to be appropriate:

(a) performing an inspection of the conditions and/or activities alleged to be in violation, and documenting the results of such inspection;

(b) if a violation is found to exist, providing the owner of the affected property and any other Person who may be responsible for the violation with notice of the violation and opportunity to abate, correct or cure the violation, or otherwise proceeding in the manner described in section 15 (Violations) of this local law;

(c) if appropriate, issuing a Stop Work Order;

(d) if a violation which was found to exist is abated or corrected, performing an inspection to ensure that the violation has been abated or corrected, preparing a final written report reflecting such abatement or correction, and filing such report with the complaint.

## **SECTION 13. RECORD KEEPING.**

(a) The Code Enforcement Officer shall keep permanent official records of all transactions and activities conducted by all Code Enforcement Personnel, including records of:

(1) all applications received, reviewed and approved or denied;

- (2) all plans, specifications and construction documents approved;
- (3) all Building Permits, [*Certificates of Occupancy / Certificates of Compliance*], Temporary Certificates, Stop Work Orders, and Operating Permits issued;
- (4) all inspections and tests performed;
- (5) all statements and reports issued;
- (6) all complaints received;
- (7) all investigations conducted;
- (8) all other features and activities specified in or contemplated by sections 4 through 12, inclusive, of this local law, including; and
- (9) all fees charged and collected.

(b) All such records shall be public records open for public inspection during normal business hours. All plans and records pertaining to buildings or structures, or appurtenances thereto, shall be retained for at least the minimum time period so required by State law and regulation.

#### SECTION 14. PROGRAM REVIEW AND REPORTING

(a) The Code Enforcement Officer shall annually submit to **Town Board** of this [~~City~~ / Town / Village] a written report and summary of all business conducted by the Code Enforcement Officer and the Inspectors, including a report and summary of all transactions and activities described in section 13 (Record Keeping) of this local law and a report and summary of all appeals or litigation pending or concluded.

(b) The Code Enforcement Officer shall annually submit to the Secretary of State, on behalf of this [~~City~~ / Town / Village], on a form prescribed by the Secretary of State, a report of the activities of this [~~City~~ / Town / Village] relative to administration and enforcement of the Uniform Code.

(c) The Code Enforcement Officer shall, upon request of the New York State Department of State, provide to the New York State Department of State, from the records and related materials this [~~City~~ / Town / Village] is required to maintain, excerpts, summaries, tabulations, statistics and other information and accounts of the activities of this [~~City~~ / Town / Village] in connection with administration and enforcement of the Uniform Code.

#### SECTION 15: VIOLATIONS

(a) Compliance Orders. The Code Enforcement Officer is authorized to order in writing the remedying of any condition or activity found to exist in, on or about any building, structure, or premises in violation of the Uniform Code, the Energy Code, or this local law. Upon finding that any such condition or activity exists, the Code Enforcement Officer shall issue a Compliance Order. The Compliance Order shall (1) be in writing; (2) be dated and signed by the Code Enforcement Officer; (3) specify the condition or activity that violates the Uniform Code, the Energy Code, or this local law; (4) specify the provision or provisions of the Uniform Code, the Energy Code, or this local law which is/are

violated by the specified condition or activity; (5) specify the period of time which the Code Enforcement Officer deems to be reasonably necessary for achieving compliance; (6) direct that compliance be achieved within the specified period of time; and (7) state that an action or proceeding to compel compliance may be instituted if compliance is not achieved within the specified period of time. The Code Enforcement Officer shall cause the Compliance Order, or a copy thereof, to be served on the owner of the affected property personally or by ~~registered mail /~~ ~~return receipt~~ / ~~return receipt~~. The Code Enforcement Officer shall be permitted, but not required, to cause the Compliance Order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other Person taking part or assisting in work being performed at the affected property personally or by ~~registered mail /~~ ~~return receipt~~ provided, however, that failure to serve any Person mentioned in this sentence shall not affect the efficacy of the Compliance Order.

(b) Appearance Tickets. The Code Enforcement Officer and each Inspector are authorized to issue appearance tickets for any violation of the Uniform Code.

(c) Civil Penalties. In addition to those penalties proscribed by State law, any Person who violates any provision of the Uniform Code, the Energy Code or this local law, or any term or condition of any Building Permit, [*Certificate of Occupancy / Certificate of Compliance*], Temporary Certificate, Stop Work Order, Operating Permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this local law, shall be liable to a civil penalty of not more than \$200 for each day or part thereof during which such violation continues. The civil penalties provided by this subdivision shall be recoverable in an action instituted in the name of this [*City / Town / Village*].

(d) Injunctive Relief. An action or proceeding may be instituted in the name of this [*City / Town / Village*], in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of the Uniform Code, the Energy Code, this local law, or any term or condition of any Building Permit, [*Certificate of Occupancy / Certificate of Compliance*], Temporary Certificate, Stop Work Order, Operating Permit, Compliance Order, or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this local law. In particular, but not by way of limitation, where the construction or use of a building or structure is in violation of any provision of the Uniform Code, the Energy Code, this local law, or any Stop Work Order, Compliance Order or other order obtained under the Uniform Code, the Energy Code or this local law, an action or proceeding may be commenced in the name of this [*City / Town / Village*], in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or an abatement of the condition in violation of such provisions. No action or proceeding described in this subdivision shall be commenced without the appropriate authorization from the **Town Board** of this [*City / Town / Village*].

(e) Remedies Not Exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or remedy available to address any violation described in this section, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this section, in section 6 (Stop Work Orders) of this local law, in any other section of this local law, or in any other applicable law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section, in section 6 (Stop Work Orders) of this local law, in any other section of this local law, or in any other applicable law. In particular, but not by way of limitation, each remedy and penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the penalties specified in subdivision (2) of section 381 of the Executive Law, and any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any penalty specified in subdivision (2) of section 381 of the Executive Law.

## SECTION 16. FEES

A fee schedule shall be established by resolution of the **Town Board** of this [~~City~~ / ~~Town~~ / ~~Village~~]. Such fee schedule may thereafter be amended from time to time by like resolution. The fees set forth in, or determined in accordance with, such fee schedule or amended fee schedule shall be charged and collected for the submission of applications, the issuance of Building Permits, amended Building Permits, renewed Building Permits, [*Certificates of occupancy / Certificates of Compliance*], Temporary Certificates, Operating Permits, fire safety and property maintenance inspections, and other actions of the Code Enforcement Officer described in or contemplated by this local law.

## SECTION 17. INTERMUNICIPAL AGREEMENTS

The **Town Board** of this [~~City~~ / ~~Town~~ / ~~Village~~] may, by resolution, authorize the Supervisor of this [~~City~~ / ~~Town~~ / ~~Village~~] to enter into an agreement, in the name of this [~~City~~ / ~~Town~~ / ~~Village~~], with other governments to carry out the terms of this local law, provided that such agreement does not violate any provision of the Uniform Code, the Energy Code, Part 1203 of Title 19 of the NYCRR, or any other applicable law.

## SECTION 18. PARTIAL INVALIDITY

If any section of this local law shall be held unconstitutional, invalid, or ineffective, in whole or in part, such determination shall not be deemed to affect, impair, or invalidate the remainder of this local law.

## SECTION 19. EFFECTIVE DATE

This local law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 2007 of the ~~(County)~~(City)(Town)(Village) of Fremont was duly passed by the Town Board on Dec. 11 2007 in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
*(Elective Chief Executive Officer\*)*

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
*(Elective Chief Executive Officer\*)*

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
*(Elective Chief Executive Officer\*)*

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.



5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph-----1-----, above.

Norma J. Kilbury  
Clerk of the County legislative body, City, Town or Village Clerk  
or officer designated by local legislative body  
Norma J. Kilbury, Town Clerk  
Date: 12/18/07

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK  
COUNTY OF Steuben

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature [Signature]

Attorney For The Town  
Title

~~County~~  
~~City~~ of Fremont  
Town  
~~Village~~

Date: 12/20/07

Local Law No. 1 of 2008

A LOCAL LAW GOVERNING WIND ENERGY FACILITIES  
IN THE TOWN OF FREMONT

Be it hereby enacted by the Town Board of the Town of Fremont as follows:

**Section 1: Title**

This Local Law shall be known as the "Wind Energy Facilities Law of the Town of Fremont."

**Section 2:** The Table of Allowable Uses under Section 6.2 is amended to add the following:

Section 6.2.5 Industrial Uses

Wind Energy Generating Systems, allowed with a Special Use Permit in the AGR District

Section 6.2.6 Accessory Uses

Small Wind Energy Generating Systems, not exempted under Section 8.5(E), allowed with a Special Use Permit in the AGR District and LDR District.

Wind Measurement Tower, allowed with a Special Use Permit in the AGR District

**Section 3:** Section 7.2.1, "Non-Regulated Uses" of the Town of Fremont Land Use Ordinance, is hereby amended to read, in part, as follows:

(3) A facility (such as a transmission line) that can be built only after issuance of a Certificate of Environmental Compatibility and Public Need by the NYS Public Service Commission, may be developed without a Permit, except for wind energy generating devices regulated by Section VIII of this Ordinance.

**Section 4:** The following Section VIII is hereby added Town of Fremont Land Use Ordinance to read in its entirety as follows:

WIND ENERGY OVERLAY ZONE

§ 8.1 Wind Energy Overlay Zone

The Town Board of the Town of Fremont hereby adopts the rules and procedures for creating Wind Energy Overlay Zones to promote the effective and efficient use of the Town's wind energy resource through wind energy conversion systems (WECS), and to regulate or prohibit the placement of such systems so that the public health, safety, and welfare will not be jeopardized.

### § 8.2 Authority.

A. The Town Board of the Town of Fremont adopts this Section under the authority granted by:

1. Article IX of the New York State Constitution, § 2(c)(6) and (10).
2. New York Statute of Local Governments, § 10 (1), (6), and (7).
3. New York Municipal Home Rule Law, § 10 (1)(i) and (ii) and § 10 (1)(a)(6), (11), (12), and (14).
4. The supersession authority of New York Municipal Home Rule Law, § 10 (2)(d)(3).
5. New York Town Law, Article 16 (Land Use).
6. New York Town Law § 130(1)(Building Code), (3)(Electrical Code), (5)(Fire Prevention), (7)(Use of streets and highways), (7-a)(Location of Driveways), (11)(Peace, good order and safety), (15)(Promotion of public welfare), (15-a)(Excavated Lands), (16)(Unsafe buildings), (19)(Trespass), and (25)(Building lines).
7. New York Town Law § 64(17-a)(protection of aesthetic interests) and (23)(General powers).

### § 8.3 Findings.

A. The Town Board of the Town of Fremont finds and declares that

1. Wind energy is an abundant, renewable, and nonpolluting energy resource of the Town and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.
2. The generation of electricity from properly sited wind turbines, including small systems, can be cost effective, and in many cases existing power distribution systems can be used to transmit electricity from wind-generating stations to utilities or other users, or on-site consumption can be reduced.
3. Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners and the general public.

4. Wind Energy Facilities represent significant potential aesthetic impacts because of their large size, lighting, and shadow flicker effects.

5. If not properly regulated, installation of Wind Energy Facilities can create drainage problems through erosion and lack of sediment control for facility sites and access roads, and harm farmlands through improper construction methods.

6. Wind Energy Facilities may present a risk to bird and bat populations if not properly sited.

7. If not properly sited, Wind Energy Facilities may present risks to the property values of adjoining property owners.

8. Wind Energy Facilities are significant sources of noise, which, if unregulated, can negatively impact adjoining properties.

9. Construction of Wind Energy Facilities can create traffic problems and damage local roads.

10. Wind Energy Facilities can cause electromagnetic interference issues with various types of communications.

#### **§ 8.4 Definitions.**

A. As used in this Section VIII, the following terms shall have the meanings indicated:

1. **AGRICULTURAL OR FARM OPERATIONS** — means the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation, and marketing of crops, livestock, and livestock products as a commercial enterprise, including a commercial horse boarding operation,” as defined in New York Agriculture and Markets Law § 301 and “timber processing,” as defined in subdivision fourteen of New York Agriculture and Markets Law § 301. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

2. **EAF** - - Environmental Assessment Form used in the implementation of the SEQRA as that term is defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.

3. **RESIDENCE** — means any dwelling suitable for habitation existing in the Town of Fremont on the date of a specific application is deemed completed, including seasonal homes, hotels, hospitals, motels, dormitories, sanitariums, nursing homes, senior housing, schools or other buildings used for educational purposes. A residence may be part of a multi-dwelling or multipurpose building, but shall not include correctional institutions.

4. SOUND PRESSURE LEVEL — means the level which is equaled or exceeded a stated percentage of time. An  $L_{10} - 50$  dBA indicates that in any hour of the day 50 dBA can be equaled or exceeded only 10% of the time, or for 6 minutes. The measurement of the sound pressure level can be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other accepted procedures.
5. SMALL WIND ENERGY CONVERSION SYSTEM (“Small WECS”) — A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce on-Site consumption of utility power.
6. SITE — The parcel(s) of land where the Wind Energy Facility is to be placed. The Site could be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where multiple lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements. Any property which has a Wind Energy Facility or has entered into an agreement for said Facility or a setback agreement, shall be considered as part of the Site.
7. TOTAL HEIGHT — The height of the tower and the furthest vertical extension of the WECS.
8. WIND ENERGY CONVERSION SYSTEM (“WECS”) — A machine that converts the kinetic energy in the wind into a usable form (commonly known as a “wind turbine” or “windmill”).
9. WIND ENERGY FACILITY — Any Wind Energy Conversion System, including Small Wind Energy Conversion Systems, or Wind Measurement Tower, including all related infrastructure, electrical lines and substations, access roads, and accessory structures.
10. WIND MEASUREMENT TOWER — a tower used for the measurement of meteorological data such as temperature, wind speed, and wind direction.
11. WIND ENERGY OVERLAY DISTRICT — a district which encompasses part or parts of one or more underlying districts and that establishes requirements for Wind Energy Facilities.

#### **§ 8.5 Permits and ReLand Use Required.**

- A. No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Fremont except in compliance with this Section.
- B. No WECS, except a Small WECS, shall be constructed, reconstructed, modified, or operated in the Town of Fremont, except in a Wind Energy Overlay District, pursuant to an application for reLand Use and for special use permit approved pursuant to this Section.

C. No Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of Fremont except pursuant to a Special Use Permit issued pursuant to this Section.

D. Notwithstanding any other provision of this Ordinance, Special Use Permits for Wind Energy Facilities shall be issued by the Town Board.

E. Exemptions. No permit or other approval shall be required under this Section for WECS utilized solely for agricultural operations in a state or county agricultural district, as long as the facility is set back at least one and a half times its Total Height from a property line, and does not exceed 120 feet in height. Towers over 120 feet in Total Height utilized solely for agricultural operations in a state or county agricultural district shall apply for a special use permit in accordance with this Section 7, but shall not require a height variance. Prior to the construction of a WECS under this exemption, the property owner or a designated agent shall submit a sketch plan or building permit application to the Town to demonstrate compliance with the setback requirements.

F. This Section shall apply to all areas of the Town of Fremont.

G. Transfer. No transfer of any Wind Energy Facility or Special Use Permit, nor sale of the entity owning such facility including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), will occur without prior approval of the Town, which approval shall be granted upon written acceptance of the transferee of the obligations of the transferor under this Section, and the transferee's demonstration, in the sole discretion of the Town Board, that it can meet the technical and financial obligations of the transferor. No transfer shall eliminate the liability of the transferor nor of any other party under this Section unless the entire interest of the transferor in all facilities in the Town is transferred and there no outstanding obligations or violations.

H. Notwithstanding the requirements of this Section, replacement in kind or modification of a Wind Energy Facility may occur without Town Board approval when (1) there will be no increase in Total Height; (2) no change in the location of the WECS; (3) no additional lighting or change in facility color; and (4) no increase in noise produced by the WECS.

#### **§ 8.6 Applicability.**

A. The requirements of this Section shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed after the effective date of this Section.

B. Wind Energy Facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this Section, shall not be required to meet the requirements of this Section; provided, however, that

1. Any such preexisting Wind Energy Facility which does not provide energy for a continuous period of twelve (12) months shall meet the requirements of this Section prior to recommencing production of energy.

2. No modification or alteration to an existing Wind Energy Facility shall be allowed without full compliance with this Section.

3. Any Wind Measurement Tower existing on the effective date of this Section shall be removed no later than twenty-four (24) months after said effective date, unless a Special Use Permit for said Wind Measurement Tower is obtained.

C. Wind Energy Facilities may be either principal or accessory uses. A different existing use or an existing structure on the same Site shall not preclude the installation of a Wind Energy Facility or a part of such facility on such Site. Wind Energy Facilities constructed and installed in accordance with this Section shall not be deemed expansions of a nonconforming use or structure.

#### **§ 8.7 Wind Energy Overlay District Rules.**

A. Wind Energy Overlay District may be created in the Agricultural-Residential (AG-R) District only.

B. Initial requests for Wind Energy Overlay Districts shall be submitted with applications for WECS Special Use Permits. No Wind Energy Overlay District may be initially created without specific requests for WECSs.

C. Once a Wind Energy Overlay District has been created, new WECSs or accessory structures or facilities may be added in that District by grant of a Special Use Permit pursuant to the requirements of this Section.

#### **§ 8.8 Applications for Wind Energy Conversion Systems Special Use Permits and Wind Energy Overlay District.**

A. A joint application for creation of a Wind Energy Overlay District and Special Use Permit for individual WECS shall include the following:

1. Name, address, and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the representation.

2. Name and address of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.

3. Address, or other property identification, of each proposed tower location, including Tax Map section, block, and lot number.

4. A description of the project, including the number and maximum rated capacity of each WECS.

5. A plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following.

(a) Property lines and physical dimensions of the Site.

(b) Location, approximate dimensions, and types of major existing structures, including all residences, and uses on Site, public roads, and adjoining properties within five hundred (500) feet of the boundaries of the proposed Wind Energy Overlay Zone.

(c) Location and elevation of each proposed WECS.

(d) Location of all above ground utility lines on the Site or within one radius of the Total Height of the WECS, transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.

(e) Location and size of structures above 35 feet within a five-hundred-foot radius of the proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas, and slender or open lattice towers are not considered structures.

(f) The Land Use designation of the subject and adjacent properties as set forth on the official Town Land Use Map.

(g) Proposed boundaries of the Wind Energy Overlay Zone.

(h) To demonstrate compliance with the setback requirements of this Section, circles drawn around each proposed tower location equal to:

(i) One and a half times the tower height radius.

(ii) Five-hundred foot radius.

(iii) One-thousand foot radius.

(i) Location of residential structures within one thousand feet of each proposed tower. The distance from the center of the tower to any off-site residence within one thousand feet shall be noted.

(j) All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.

6. Vertical drawing of the WECS showing Total Height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of



climbing pegs, and access doors. One drawing may be submitted for each WECS of the same type and Total Height.

7. Landscaping Plan depicting vegetation describing the area to be cleared and the specimens proposed to be added, identified by species and size of specimen at installation and their locations.

8. Lighting Plan showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure, but if such determination is not available at the time of the application, no building permit for any lighted facility may be issued until such determination is submitted.

9. List of property owners, with their mailing addresses, within 500 feet of the boundaries of the proposed Wind Energy Overlay Zone. The applicant may delay submitting this list until the Town Board calls for a public hearing on the application.

10. Decommissioning Plan: The applicant shall submit a decommissioning plan, which shall include: 1) the anticipated life of the WECS; 2) the estimated decommissioning costs in current dollars; 3) how said estimate was determined; 4) the method of ensuring that funds will be available for decommissioning and restoration; 5) the method, such by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current; and 6) the manner in which the WECS will be decommissioned and the Site restored, which shall include removal of all structures and debris to a depth of three feet, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation), less any fencing or residual minor improvements requested by the landowner. The Plan shall include the Decommissioning Bond required by this Section.

11. Complaint Resolution: The application will include a complaint resolution process to address complaints from nearby residents. The process may use an independent mediator or arbitrator and include a time limit for acting on a complaint.

12. An application shall include information relating to the construction/installation of the wind energy conversion facility as follows:

(a) A construction schedule describing commencement and completion dates;  
and

(b) A description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.

13. Completed Part 1 of the Full EAF.

14. Applications for Special Use Permits for Wind Measurement Towers subject to this Section may be jointly submitted with the WECS.

15. For each proposed WECS, include make, model, picture, and manufacturer's specifications, including noise decibels data. Include Manufacturers' Material Safety Data Sheet documentation for the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants, and coolants.

16. If the applicant agrees in writing in the application that the proposed WECS may have a significant adverse impact on the environment, the Town Board shall issue a positive declaration of environmental significance.

17. If a positive declaration of environmental significance is determined by the SEQRA lead agency, the following information shall be included in the Draft Environmental Impact Statement ("DEIS") prepared for a Wind Energy Facility. Otherwise, the following studies shall be submitted with the application:

(a) Shadow Flicker: The applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECSs and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or mitigate the problems.

(b) Visual Impact: Applications shall include a visual impact study of the proposed WECS as installed, which may include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed Site from at least two locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence. The Visual Impact Study will specifically detail impacts on the Land Conservation District created by this Ordinance.

(c) A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed Zone.

(d) Noise Analysis: a noise analysis by a competent acoustical consultant documenting the noise levels associated with the proposed WECS. The study shall document noise levels at property lines and at the nearest residence not on the Site (if access to the nearest residence is not available, the Town Board may modify this requirement). The noise analysis shall provide pre-existing ambient noise levels and include low frequency noise.

(e) Property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of values of properties adjoining WECS Sites, including properties across public roads from the Site.

(f) An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems, and other wireless communication.

18. Tower design information sufficient to demonstrate compliance with wind-loading requirements.
19. Analysis of potential ice-throwing and damage from blade throw impacts.
20. A statement, signed under penalty of perjury, that the information contained in the application is true and accurate.

#### **§ 8.9 Application Review Process.**

- A. Applicants may request a pre-application meeting with the Town Board, or with any consultants retained by the Town Board for application review
- B. Twelve copies of the application shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission. If any variances are requested, variance application fees shall be paid at the time of the receipt of the application.
- C. Town staff or Town-designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Section is included in the application.
- D. If the application is deemed incomplete, the Town Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of WECSs proposed is increased.
- E. Upon submission of a complete application, including the grant of any application waiver by the Town Board, the Town Clerk shall transmit the application to the Town Board. The applicant shall post the completed application and any accepted environmental impact statements on the Internet. The application shall be referred to the Planning Board in accordance with this Ordinance.
- F. The Town Board shall hold at least one public hearing on the application. Notice shall be given by first class mail to property owners within 500 feet of the boundaries of the proposed Wind Energy Overlay District, and published in the Town's official newspaper, no less than ten nor more than twenty days before any hearing, but, where any hearing is adjourned by the Town Board to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare and mail the Notice of Public Hearing prepared by the Town, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.
- G. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested variances.

H. Notice of the project shall also be given, when applicable, to (1) the Steuben County Planning Board, if required by General Municipal Law §§ 239-l and 239-m, and (2) to adjoining Towns under Town Law § 264.

I. **SEQRA Review.** Applications for WECS are deemed Type I projects under SEQRA. The Town shall conduct its SEQRA review in conjunction with other agencies, and the record of review by said agencies shall be part of the record of the Town's proceedings. The Town may require an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review. At the completion of the SEQRA review process, if a positive declaration of environmental significance has been issued and an environmental impact statement prepared, the Town shall issue a Statement of Findings, which Statement may also serve as the Town's decision on the applications.

J. Upon receipt of the report of the recommendation of the County Planning Board (where applicable), and the report of the recommendation of the Town Planning Board (where applicable), the holding of the public hearing, and the completion of the SEQRA process, the Town Board may approve, approve with conditions, or deny the applications, in accordance with the standards in this Section.

#### **§ 8.10 Standards for WECS.**

A The following standards shall apply to all WECS and related infrastructure, unless specifically waived by the Town Board as part of a permit.

1. All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.

2. No television, radio, or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the telecommunications provisions of the Town Land Use Code. Applications may be jointly submitted for WECS and telecommunications facilities.

3. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.

4. **Lighting of tower.** No tower shall be lit except to comply with FAA requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the Site plan. Security lighting shall be designed to minimize light pollution, including the use of light hoods, low glare fixtures, and directing lights at the ground.

5. All applicants shall use measures to reduce the visual impact of WECSs to the extent possible. WECSs shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. Individual WECSs within a Wind Energy Overlay Zone shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the Zone, to provide reasonable

uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.

6. The use of guy wires is prohibited.
7. No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. No WECS shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that a WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the Special Use Permit for the specific WECS or WECSs causing the interference.
8. All solid waste and hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations.
9. WECSs shall be designed to minimize the impacts land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided when feasible. The use of previously developed areas will be given priority wherever possible.
10. WECSs shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity, particularly bird and bat species.
11. WECS and related infrastructure shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations.
12. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable state and Federal laws and regulations.
13. The maximum Total Height of any WECS shall be 420 feet.
14. Construction of the WECS shall be limited to the hours of 7 a.m. to 8 p.m. except for certain activities that require cooler temperatures than possible during the day, subject to approval from the Town.
15. Substations required to serve WECS are an Essential Public Service under this Land Use Code. Substations shall be screened from public view to the extent possible.
16. The Town of Fremont shall be named as an additional insured under the general liability policy of the applicant, the amount of which insurance shall be no less than an amount to be determined by the Town Board given the nature and scope of the project proposed by the applicant.

17. Any construction or ground disturbance involving agricultural land shall be done in accordance to the NYS Department of Agriculture and Markets' publication titled Guidelines for Agricultural Mitigation for Wind Power Projects.

**§ 8.11 Required Safety Measures.**

- A. Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.
- B. If the property owner submits a written request that fencing be required, a six-foot-high fence with a locking portal shall be required to enclose each tower or group of towers. The color and type of fencing for each WECS installation shall be determined on the basis of individual applications as safety needs dictate.
- C. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information, including a local telephone number with 24 hour, 7 day a week coverage. The Town Board may require additional signs based on safety needs.
- D. No climbing pegs or tower ladders shall be located closer than twelve (12) feet to the ground level at the base of the structure for freestanding single pole.
- E. The minimum distance between the ground and any part of the rotor or blade system shall be twenty (20) feet.
- F. WECSs shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked.
- G. Accurate maps of the underground facilities shall be filed with the town and with "Dig Safely New York (1-800-962-7962)" or its successor.

**§ 8.12 Traffic Routes.**

A. Construction of WECS poses potential risks because of the large size construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECS and/or associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include (1) minimizing traffic impacts from construction and delivery vehicles; (2) minimizing WECS related traffic during times of school bus activity; (3) minimizing wear and tear on local roads; and (4) minimizing impacts on local business operations. Permit conditions may require remediation during construction, limit WECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public, and all applicable state, county, and

municipal highway authorities and superintendents whose roads are included in the WECS traffic routes plan. Notification to all applicable highway authorities and superintendents will include the number and type of vehicles and their size, their maximum gross weight, the number of round trips, and the dates and time periods of expected use of designated traffic routes.

B. The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a WECS. A public improvement bond shall be posted prior to the issuance of any building permit in an amount, determined by the Town Board, sufficient to compensate the Town for any damage to local roads.

C. If the applicant uses any seasonal use highway in the off-season, it shall be solely responsible for the maintenance of said highway including but not limited to snow plowing. No act of maintenance on a seasonal use highway by an applicant shall be considered as Town maintenance of that highway for purposes of determining the seasonal use status of the highway.

#### § 8.13 Setbacks for Wind Energy Conversion Systems.

A. The statistical sound pressure level generated by a WECS shall not exceed  $L_{10} - 50$  dBA measured at the closest exterior wall of any residence existing at the time of completing the SEQRA review of the application. If the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus 5 dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.

B. In the event audible noise due to WECS operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph 1) of this subsection shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third (1/3) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one third (1/3) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and above, by eight (8) dBA for center frequencies between one hundred and sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred and twenty-five (125) Hz.

C. In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than five (5) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project Site are sufficient to allow Wind Turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.

D. Any noise level falling between two whole decibels shall be the lower of the two.

E. Each WECS shall be setback from Site boundaries, measured from the center of the WECS, a minimum distance of:

1.  $1\frac{1}{2}$  times Total Height with minimum 500 feet from the nearest Site boundary property line, except the setback shall be 500 feet where the boundary is with state, county, town, or village-owned property.

2.  $1\frac{1}{2}$  times Total Height with minimum 500 feet from the nearest public road.

3. 1,000 feet from the nearest off-Site residence existing at the time of application, measured from the exterior of such residence.

4. 100 feet from state-identified wetlands. This distance may be adjusted to be greater or lesser at the discretion of the reviewing body, based on topography, land cover, land uses, and other factors that influence the flight patterns of resident birds.

F. Other Wind Energy Facility structures and improvements shall comply with the underlying Land Use district regulations.

#### **§ 8.14 Noise and Setback Easements; Variances**

A. In the event the noise levels resulting from a WECS exceed the criteria established in this Section, or a setback requirement is not met, a waiver is hereby granted from such requirement where the adjoining owner's property is considered part of the Site.

1. Written consent from the affected property owners shall be obtained stating that they are aware of the WECS and the noise and/or setback limitations imposed by this Section, and that they wish to be part of the Site as defined herein, and that consent is granted to (1) allow noise levels to exceed the maximum limits otherwise allowed or (2) allow setbacks less than required; and

2. In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, shall be recorded in the County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and may not be revoked without the consent of the Town Board, which consent shall be granted upon either the completion of the decommissioning of the benefited WECS in accordance with this Section, or the acquisition of the burdened parcel by the owner of the benefited parcel or the WECS.

3. In any case where written consent is not obtained, and therefore a property is not part of the Site, a variance from the Board of Appeals shall be required.

#### **§ 8.15 Creation of Wind Energy Overlay Districts and Issuance of Special Use Permits.**



A. Upon completion of the review process, the Town Board shall, upon consideration of the standards in this Section and the record of the SEQRA review, issue a written decision setting forth the reasons for approval, conditions of approval, or disapproval.

B. If approved, the Town Board will direct the Town Clerk to modify the Official Map to reflect the creation of the Wind Energy Overlay Districts, and authorize Town staff to issue a Special Use Permit for each WECSs upon satisfaction of all conditions for said Permit, and direct the building inspector to issue a building permit, upon compliance with the Uniform Fire Prevention and Building Code and the other conditions of this Section.

C. The decision of the Town Board shall be filed within five days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.

D. If any approved WECS is not substantially commenced within two years of issuance of the permit, the special use permit shall expire.

#### **§ 8.16 Abatement.**

A. If any WECS remains non-functional or inoperative for a continuous period of 1 year, the applicant agrees that, without any further action by the Town Board, it shall remove said system at its own expense. Removal of the system shall include at least the entire above ground structure, including transmission equipment and fencing, from the property. This provision shall not apply if the applicant demonstrates to the Town that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan after public hearing.

B. Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSEERDA, or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Town Board all reports to and from the purchaser of energy from individual Wind Energy Conversion Systems, if requested necessary to prove the WECS is functioning, which reports may be redacted as necessary to protect proprietary information.

C. Decommissioning Bond or Fund. The applicant, or successors, shall continuously maintain a fund or bond payable to the Town for the removal of non-functional towers and appurtenant facilities in an amount to be determined by the Town for the period of the of the life of the facility. This fund may consist of a letter of credit from a State of New York-licensed financial institution. All costs of the financial security shall be borne by the applicant.

#### **§ 8.17 Limitations on Approvals; Easements on Town Property.**

A. Nothing in this Section shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the Wind Energy Facility. Nothing in this Section shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the

wind flow to any Wind Energy Facility. It shall be the sole responsibility of the Facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.

B. Pursuant to the powers granted to the Town to manage its own property, the Town may enter into noise, setback, or wind flow easements on such terms as the Town Board deems appropriate, as long as said agreements are not otherwise prohibited by state law or this Section.

#### **§ 8.18 Testing Fund; Permit Revocation.**

A. Testing fund. A Special Use Permit shall contain a requirement that the applicant fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as every two years, or more frequently upon request of the Town Board in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Special Use Permit and this Section and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.

B. Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Town Board. The applicant shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.

C. Notwithstanding any other abatement provision under this Section, and consistent with § 8.16 and § 8.18(B), if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, (1) order either remedial action within a particular timeframe, or (2) order revocation of the Special Use Permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security posted as part of the Decommission Plan to remove the WECS.

### **Wind Measurement Towers**

#### **§ 8.20. Wind Site Assessment.**

The Town Board acknowledges that prior to construction of a WECS, a wind Site assessment is conducted to determine the wind speeds and the feasibility of using particular Sites. Installation

of Wind Measurement Towers, also known as anemometer (“Met”) towers, shall be permitted as Special Use in the Agricultural-Residential (AR1) Use Zone and the Transitional Use Zone.

**§ 8.21. Applications for Wind Measurement Towers.**

A. An application for a Wind Measurement Tower shall include

1. Name, address, and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
2. Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
3. Address of each proposed tower Site, including Tax Map section, block, and lot number.
4. Site plan
5. Decommissioning Plan, based on the criteria in this Section for WECS, including a security bond or cash for removal.

**§ 8.22. Standards for Wind Measurement Towers.**

A. The distance between a Wind Measurement Tower and the property line shall be at least the Total Height of the tower. Sites can include more than one piece of property and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent of those property owners.

B. Special Use permits for Wind Measurement Towers may be issued by the Town Board for a period of up to two years. Permits may be renewed if the Facility is in compliance with the conditions of the Special Use Permit.

**Small Wind Energy Conversion Systems**

**§ 8.30. Purpose and Intent.**

The purpose of this Section is to provide standards for small wind energy conversion systems designed for on-site home, farm, and small commercial use, and that are primarily used to reduce on-site consumption of utility power. The intent of this Section is to encourage the development of small wind energy systems and to protect the public health, safety, and community welfare.

**§ 8.31. Permitted Areas.**

Small Wind energy systems may be permitted in any Land Use district upon issuance of a Special Use Permit.

**§ 8.32. Applications.**

A Applications for Small WECS special use permits shall include:

1. Name, address, and telephone number of the applicant. If the applicant will be represented by an agent, the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the agent to represent the applicant.
2. Name and address of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
3. Address of each proposed tower Site, including Tax Map section, block, and lot number.
4. Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.
5. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Electric Code.
6. Sufficient information demonstrating that the system will be used primarily to reduce on-site consumption of electricity.
7. Written evidence that the electric utility service provider that serves the proposed Site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and so states so in the application, to connect the system to the electricity grid.
8. A visual analysis of the Small WECS as installed, which may include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

**§ 8.33. Development Standards.**

All small wind energy systems shall comply with the following standards. Additionally,

such systems shall also comply with all the requirements established by other sections of this Section that are not in conflict with the requirements contained in this section.

1. A system shall be located on a lot a minimum of one acre in size, however, this requirement can be met by multiple owners submitting a joint application.
2. Only one small wind energy system tower per legal lot shall be allowed, unless there are multiple applicants, in which their joint lots shall be treated as one lot for purposes of this Section.
3. Small Wind energy systems may be used primarily to reduce the on-Site consumption of electricity.
4. Tower heights may be allowed as follows:
  - (a) 65 feet or less on parcels between one and five acres.
  - (b) 120 feet or less on parcels of five or more acres.
  - (c) The allowed height shall be reduced if necessary to comply with all applicable Federal Aviation Requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.
5. The maximum turbine power output is limited to 100 kW.
6. The system's tower and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporate non-reflective surfaces to minimize any visual disruption.
7. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas (e.g., public parks, roads, trails). To the greatest extent feasible a small wind energy system:
  - (a) Shall not project above the top of ridgelines.
  - (b) If visible from public viewing areas, shall use natural landforms and existing vegetation for screening.
  - (c) Shall be screened to the maximum extent feasible by natural vegetation or other means to minimize potentially significant adverse visual impacts on neighboring residential areas.
8. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
9. All on-site electrical wires associated with the system shall be installed underground

except for "tie-ins" to a public utility company and public utility company transmission poles, towers and lines. This standard may be modified by the decision-maker if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.

10. The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.

11. At least one sign shall be posted on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logo, or advertising shall be placed or painted on the tower, rotor, generator, or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner

12. Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:

- (a) Tower-climbing apparatus located no closer than 12 feet from the ground.
- (b) A locked anti-climb device installed on the tower.
- (c) A locked, protective fence at least six feet in height that encloses the tower.

13. Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground.

14. Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be re-graded and re-vegetated to the pre-existing natural condition after completion of installation.

15. To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a 250 foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.

16. All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Building Code and National Electric Code.

17. All small wind energy systems shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer.

**§ 8.34. Standards.**

A Small Wind Energy System shall comply with the following standards:

1. Setback requirements. A Small WECS shall not be located closer to a property line than one and a half times the Total Height of the facility.

2. Noise. Except during short-term events including utility outages and severe wind storms, a Small WECS shall be designed, installed, and operated so that noise generated by the system shall not exceed the 50 decibels (dBA), as measured at the closest neighboring inhabited dwelling.

**§ 8.35. Abandonment of Use.**

A. Small WECS which is not used for twelve (12) successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit by the Town.

B. All Small WECS shall be maintained in good condition and in accordance with all requirements of this section.

**Miscellaneous**

**§ 8.40. Fees.**

A. There shall be non-refundable Application fees as follows:

1. Wind Energy Overlay Zone: \$500 per zone.
2. WECS Special Use Permit: \$100 per megawatt of rated maximum capacity.
3. Wind Measurement Towers: \$20 per vertical foot per tower.
4. Wind Measurement Tower Special Use Permit renewals: \$200 per Wind Measurement Tower.
5. Small WECS: \$200.
6. The cost of all legal notices and mailings shall be assessed to the applicant.

B. Building Permits.

1. The Town believes the review of building and electrical permits for Wind Energy Facilities requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall be increased by administrative costs which shall be \$100 per permit request, plus the amount charged to the Town by the outside consultant hired by the Town to review the plans and inspect the work. In the alternative, the Town and the applicant may enter into an agreement for an inspection and/or certification procedure for these unique facilities. In such case, the Town and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans or certifications, or to conduct inspections as agreed by the parties.

2. The applicant shall, prior to the receipt of a building permit, demonstrate that the proposed facility meets the system reliability requirements of the New York Independent System Operator, or provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and/or the applicable Transmission Owner.

C. Nothing in this Section shall be read as limiting the ability of the Town to enter into Host Community agreements with any applicant to compensate the Town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.

D. The Town Board may amend these fees, by resolution after a properly noticed public hearing.

**§ 8.41. Tax Exemption.**

The Town hereby exercises its right to opt out of the Tax Exemption provisions of Real Property Tax Law §487, pursuant to the authority granted by paragraph 8 of that law.

**§ 8.42. Enforcement; Penalties and remedies for violations.**

A. In addition to the Code Enforcement Officer, the Town Board may appoint such Town staff or outside consultants as it sees fit to enforce this Section.

B. Any person owning, controlling, or managing any building, structure, or land who shall undertake a wind energy conversion facility or wind monitoring tower in violation of this Section or in noncompliance with the terms and conditions of any permit issued pursuant to this Section, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$350 or to imprisonment for a period of not more than fifteen days, or subject to both such fine and imprisonment for a first offense, for a Second offense (both within a period of five years), a fine not less than \$350 nor more than \$700, or imprisonment not to exceed six months, or both, and for a Third or more offense (all of



Which occurred within five years), a fine not less than \$700 nor more than \$1000, or imprisonment not to exceed six months, or both. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The town may institute a civil proceeding to collect civil penalties in the amounts set forth herein for each violation and each week said violation continues shall be deemed a separate violation.

C: In case of any violation or threatened violation of any of the provisions of this Section, including the terms and conditions imposed by any permit issued pursuant to this Section, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving, and/or use, and to restrain, correct, or abate such violation, to prevent the illegal act.

#### Section 5: Severability

Should any provision of this Local Law be declared by the courts to be unconstitutional or invalid, such decision shall not effect the validity of this Local Law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

#### Section 6: Effective Date

This Local Law shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.