

TOWN OF COLRAIN, MASSACHUSETTS  
PROTECTIVE ZONING BYLAW

As amended by Annual or Special Town Meetings held on:

- April 30, 1973
- June 26, 1978
- June 23, 1980
- February 22, 1982
- October 7, 1985
- March 28, 1988
- May 2, 1988
- January 23, 1989
- June 26, 2000
- July 2, 2001
- December 16, 2002
- May 8, 2007
- June 23, 2008
- May 9, 2012
- May 6, 2014

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PROTECTIVE ZONING BYLAW

SECTION I: INTRODUCTION

I-1 Purpose

SECTION II: ZONING DISTRICTS

- II-1 Village Districts
- II-2 Rural District
- II-3 Commercial-Industrial Districts
- II-4 Flood Plain District
- II-5 Location of Districts

SECTION III: USE REGULATIONS

- III-1 Prohibited Uses
- III-2 Use Regulations Schedule
- III-3 Home Based Businesses
- III-4 Removal of Natural Materials

SECTION IV: SIGN REGULATIONS

IV-1 Sign Requirements

SECTION V: NON-CONFORMING USES & STRUCTURES

V-1 General Regulations

SECTION VI: INTENSITY REGULATIONS

- VI-1 Lot Area
- VI-2 Dimensional Schedule
- VI-3 General Regulations
- VI-4 Back Lot Development
- VI-5 Back Lot Development with Open Space Set-Aside (added December 16, 2002)
- VI-6 Cluster Development Bylaw (added May 8, 2007; revised May 9, 2012)

SECTION VII: BUILDING REQUIREMENTS

SECTION VIII: DEFINITIONS

SECTION IX: ADMINISTRATION

- IX-1 Enforcement
- IX-2 Board of Appeals
- IX-3 Amendment

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IX-4 Validity

SECTION X: WIRELESS COMMUNICATIONS FACILITIES

- X-1 Purpose
- X-2 Submittal Requirements
- X-3 Approval Criteria
- X-4 Fees and Costs
- X-5 Modifications
- X-6 Exemptions
- X-7 Waivers

SECTION XI: COMMON DRIVEWAYS

SECTION XII: SPECIAL PERMITS

SECTION XIII: DEVELOPMENT SITE PLAN REVIEW (added May 8, 2007; revised May 9, 2012)

SECTION XIV: TEMPORARY MORATORIUM ON THE CONSTRUCTION OF LARGE SCALE WIND ENERGY SYSTEMS (added May 9, 2012, May 6, 2014)

SECTION XV: LARGE-SCALE GROUND-MOUNTED SOLAR-PHOTOVOLTAIC SYSTEM BYLAW

SECTION XVI: TEMPORARY MORATORIUM ON MEDICAL MARIJUANA BYLAW

SECTION XVII: COMMERCIAL CAMPGROUNDS

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**PROTECTIVE ZONING BYLAW  
FOR THE TOWN OF COLRAIN, MASSACHUSETTS**

**SECTION I: INTRODUCTION**

I-1 Purpose

The purpose of this Bylaw shall be to promote the general welfare of the Town of Colrain; to protect the health and safety of its inhabitants; to encourage the most appropriate use of land within the Town; to increase the amenities of the Town; to reduce the hazard from fire by regulating the location and use of buildings and the open areas about them to minimize confusion or congestion; to eliminate and prevent misuse of the Town's natural resources; and to protect, conserve, and increase the value of property within the Town.

**SECTION II: ZONING DISTRICTS**

For the purpose of this Bylaw, the Town of Colrain is hereby divided into the following zoning districts as listed below and as shown on the Official Zoning Map of the Town of Colrain adopted by Town Meeting vote on May 9, 2012:

II-1 Village Districts : Village Districts are designated to encourage a mix of uses that reflect traditional land use patterns. Mixed-use zoning districts embody the traditional compact development of land, buildings, and structures by integrating a variety of complementary uses, such as residential, retail, office, civic and entertainment. Such districts reduce land and energy consumption and greenhouse gas emissions and have a number of other fiscal, social, and environmental benefits.

- (a) Center Village District (CV)
- (b) Griswoldville East Village (GEV)
- (c) Shattuckville Village (SV)

II-2 Rural District (R)

The remainder of the Town which is not in the Village Districts or Commercial- Industrial Districts as shown on the Official Zoning Map of the Town of Colrain shall be in the Rural District.

II-3 Commercial-Industrial Districts ( CI): Commercial-Industrial Districts are designated to encourage a combination of business and light industrial uses that reflect traditional land use patterns in the areas so designated.

- (a) Griswoldville West (CI-GW)
- (b) Lyonsville(CI-L)
- (c) Stewartville (CI-S)

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II-4 Flood Plain District

The Flood Plain District is herein established as an overlay district. The underlying permitted uses are allowed provided that they meet the requirements of Section VII of this Bylaw as well as those of the Massachusetts State Building Code dealing with construction in flood plains. The Flood Plain District includes all special flood hazard areas designated as Zone A, A1-30 on the Colrain Flood Insurance Rate Maps (FIRM), and the Flood Boundary and Floodway Maps, dated July 2, 1980, on file with the Town Clerk, Planning Board and Building Commissioner. These maps as well as the accompanying Colrain Flood Insurance Study are incorporated herein by reference.

II-5 Location of Districts

The boundaries of each of the said Districts are hereby established as shown, defined, and bounded on a map entitled "Official Zoning Map of the Town of Colrain" dated May 8, 2012. The Zoning Map, with all explanations thereon, is hereby made part of this Bylaw.

- (a) Where the boundary lines are shown upon said map within street lines of public and private ways, the center line of such ways shall be the boundary lines.
- (b) Where the boundary lines are shown upon said map approximately on the location of a property, lot, or boundary line, and the exact location of the property, lot, or boundary line is not indicated by means of dimensions shown in figures, then the property or lot line shall be the boundary line.
- (c) Boundary lines located outside of such street lines and shown approximately parallel thereto, shall be regarded as parallel to street lines, and dimensions shown in figures placed upon said map between such boundary lines from such street lines shall govern; such distance being measured at right angles to such street lines unless otherwise indicated.
- (d) In all cases which are not covered by other provisions of this section, the location of boundary lines shall be determined by the distance in feet, if given, from other lines upon said map, or by the scale of said map.

**SECTION III: USE REGULATIONS**

No building or structure shall be constructed, and no building, structure, or land, or part thereof shall be used for any purpose or in any manner other than for one or more of the uses hereinafter set forth as permissible.

III-1 Prohibited Uses – All Districts

Open air storage of junk, including inoperable motor vehicles, trash, debris, scrap materials, and all other uses which are injurious to their neighborhood or to property in the vicinity are expressly prohibited. Inoperable farm machinery used for spare parts in support of active agricultural operations must be screened from public ways and abutters.

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III-2 Use Regulations Schedule

No building, structure or land shall be erected or used except as permitted in this section and all other sections of these Zoning Bylaws. No more than one principal structure or dwelling may be erected on a lot.

Symbols employed in the following use regulations schedule shall have the following meaning:

- Y – Yes, the use is permitted by right in that Zoning District
- N – No, the use is not permitted in that Zoning District
- SP – The use may be permitted if a Special Permit is granted by the Zoning Board of Appeals
- SPP – The use may be permitted if a Special Permit is granted by the Planning Board
- SPR – The use is permitted subject to Site Plan Review by the Planning Board

Use	Village Districts	Rural District	Commercial - Industrial Districts
<b>Residential Uses</b>			
Single-Family Dwelling	Y	Y	Y
Two-Family Dwelling	Y	SPR	Y
Accessory Apartment	SP	SP	N
Mobile Home Parks	N	N	N
Multi-family Dwelling (3-6 dwellings)	SPR	N	SPR
Multi-family Dwelling (more than 6 dwellings)	SP	N	SP
<b>Agricultural &amp; Recreational Uses</b>			
Farming or Forestry	Y	Y	Y
Commercial Greenhouses on lots equal to or greater than 5 acres	Y	Y	Y
Commercial Greenhouses on lots less than 5 acres	SP	SP	SP
Commercial Recreation	N	SP	N
Wildlife Preserve or Other Conservation Uses	Y	Y	Y
<b>Community Services</b>			
Public Utility Facility	SP	SP	SP
Wireless Communication Facilities	SPP	SPP	SPP
Educational Uses exempted from zoning regulation by M.G.L. Ch.40A, Section 3	Y	Y	Y
Other Educational Uses not exempted from zoning regulation by M.G.L. Ch.40A, Section 3	SP	SP	N
Church, other Religious Use	Y	Y	Y
Municipal Uses not covered elsewhere	SP	SP	SP
Family Day Care Home for 6 or less children or adults	Y	Y	Y

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<b>Use</b>	<b>Village Districts</b>	<b>Rural District</b>	<b>Commercial - Industrial Districts</b>
Family Day Care Home for more than six children or adults	SP	SP	SP
Day Care Center for children exempted from zoning regulations by M.G.L. Ch. 40A, Section 3	Y	Y	Y
Nursing Home, Assisted Living Facility	SP	SP	N
<b>Business Uses</b>			
Business, Professional Offices with less than 6 employees	SPR	SPR	SPR
Business, Professional Offices with 6 or more employees	SP	SP	SP
Banks	SPR	N	SPR
Standalone Automated Teller Machines (ATM)	N	N	SP
Conversion of Historic Industrial or Commercial Structure to Mixed Uses	SPR	SP	SPR
Restaurant, drive through	N	N	N
Restaurant, other	SPR	SP	SP
Seasonal food service	SPR	SP	SP
Retail Store(s) – Building 3,000 sq. ft. or less of enclosed floor space <sup>1</sup>	SPR	N	SP
Retail Store(s) – Building greater than 3,000 sq. ft. up to 12,000 sq. ft. of enclosed floor space <sup>1</sup>	SP	N	SP
Flea Markets	SP	N	SP
Artisan Studios	Y	Y	Y
Motor Vehicle Sales	N	N	SP
Laundry, Laundromat	SP	N	SP
Theaters	SP	SP	SP
Hotels	SPR	N	SPR
Motels	SP	N	N
Inns	SPR	SP	SP
Bed and Breakfast, up to 6 bedrooms <sup>2</sup>	SPR	Y	N
Building Materials, Sales & Storage	SP	SP	SPR
Home Based Business	Y	Y	Y
Funeral Home	SP	SP	SP
Equipment Rentals	SP	SP	SPR
Kennels	N	SP	SP
Farm Stand	Y	Y	Y

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Use	Village Districts	Rural District	Commercial - Industrial Districts
Business Uses not listed above, other than retail uses, where the physical appearance, operation, parking requirements and traffic impacts resemble a use permitted (Y, SPR, or SP) above and which will not have a detrimental impact on adjacent or nearby uses	SP	SP	SP
<b>Industrial Uses</b>			
Junk yards, dumps, and landfills	N	N	N
Light Industrial Uses	N	N	SP
Freight or Transportation Facilities	N	N	SP
Gasoline Station, Automotive Repair Garages	SP	SP	SP
Quarrying, Gravel Mining & Earth Removal	N	SP	SP
Collection, treatment, storage, burial, incineration or disposal of radioactive waste, including but not limited to low level radioactive waste	N	N	N
Sawmill	N	SP	SP
Bulk Storage, Warehousing	N	SP	SP
<u>Large-Scale Ground-Mounted Solar-Photovoltaic System with a footprint greater than 0.10 acres up to 1.0 acres<sup>3,4</sup> (See Section XV)</u>	<u>SPR</u>	<u>SPR</u>	<u>SPR</u>
<u>Large-Scale Ground-Mounted Solar-Photovoltaic System with a footprint greater than 1.0 acres<sup>3,4</sup> (See Section XV)</u>	<u>N</u>	<u>SP/SPR</u>	<u>SP/SPR</u>

1 - Outdoor storage, sales or display associated with any retail use requires Site Plan Review (see Section XIII). (Added May 9, 2012)

2 - Prior to opening a Bed & Breakfast establishment the building must be inspected by the Building Inspector to ensure compliance with the State Building Code including requirements related to fire safety. Please contact the Building Inspector if you are considering opening this type of business to learn about these Building Code requirements. (Added June 23, 2008)

3 - Smaller scale ground-mounted solar-photovoltaic systems (occupying a footprint less than or equal to 0.10 acres and building-mounted solar-photovoltaic systems do not need to comply with Section XV, but shall require a building permit and must comply with all other applicable local, state, and federal requirements.

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4 - Acreage thresholds apply in the aggregate to new facilities and expansion of existing facilities. For expansions, the acreage of the existing facility would be added to those of the proposed expansion to determine the overall size and generating capacity. Required setback areas, as per Section XV -3(b)(1), shall not be counted toward a facility's total acreage

### III-3 Home Based Businesses

Uses customarily accessory to residential uses, such as home occupations or professional uses, are allowed as an accessory use of a dwelling, provided that:

- a) Such use is clearly secondary to the residential use and the home based business shall be carried on within the principal building or an accessory building. No more than 50% of the gross floor area of the residence shall be used for the purposes of the home based business.
- b) The home based business shall be carried on by a resident of the principal dwelling and not more than two nonresidents shall be employed on the premises at the same time.
- c) No external change is made which alters the residential appearance of the building on the lot.
- d) Except for a permitted sign there shall be no exterior display, no exterior storage of materials and no other exterior indication of the home based business or other variation from the residential character of the premises.
- e) Traffic shall not exceed volumes normally expected in a residential neighborhood. For purposes of this bylaw this shall be defined as 15 trips per day per dwelling unit which is 150% of the average weekday trip rate for a single family home from the Institute for Traffic Engineers Trip Generation Manual.
- f) Adequate off-street parking shall be provided.
- g) Automotive repair garages operating out of a residential property may have no more than four (4) cars to be repaired located on the premises at any one time, must meet all other criteria for a home based business, and shall require a special permit from the Zoning Board of Appeals. Commercial used car sales from residential properties are prohibited.
- h) No retail sales shall be allowed except for products produced on the premises and provided that a Special Permit is granted by the Zoning Board of Appeals.

### III-4 Removal of Natural Materials

The sale of sod, earth, mineral aggregates, stone or rock from a parcel of land hereafter shall require a special permit of approval from the Selectmen, authorized by the Board of Appeals, except where such is incidental to the construction of an approved building, or is a routine part of normal farming or house maintenance operations.

## SECTION IV: SIGN REGULATIONS

### IV-1 Sign Requirements

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- (a) Off-Premises Signs. Signs shall not be allowed that pertain to other premises or to products, accommodations, services or activities located on other premises. However, an off-premises directional sign without internal illumination and not exceeding nine square feet may be allowed by Special Permit from the Board of Appeals upon their determination that such will serve public convenience without detriment to the neighborhood.
- (b) On-Premises Signs. Signs whose content relates exclusively to the premises on which they are located, or to products, accommodations, services or activities on those premises shall be allowed as follows:
  - (1) Unlighted directional signs of 2 square feet or smaller are not limited nor are subsidiary signs such as travel club and credit card signs if incorporated within an approved on-premise sign framework.
  - (2) On any premises there shall be not more than one freestanding sign, other than direction signs. The area of said sign shall not exceed 32 square feet, except for home based businesses where a sign shall not exceed 9 square feet.
  - (3) There shall be not more than one building sign per business or other enterprise. No such building sign shall project above the roof or exceed 15% of the area of the wall it is attached to.
- (c) Sign Prohibitions. No sign shall flash or move. No sign shall cause glare on any public way or adjoining property. Signs shall be illuminated only during the operating hours of the establishment.

**SECTION V: NON-CONFORMING USES & STRUCTURES**

V-1 General Regulations

- (a) The lawful use of any structure or land existing at the time of the enactment or subsequent amendment of this Bylaw may be continued although such structure or use does not conform with provisions of this Bylaw.
- (b) A non-conforming use is the use of any building or structure or land lawfully occupied at the time of the adoption of, or amendment to, this Bylaw which does not conform to the requirements of this Bylaw.
- (c) Any building or structure or part of a building or structure or land which at the time of adoption of or amendment to this Bylaw is or is being put to a non-conforming use may be:
  - 1. Externally altered or enlarged in that use but only after the granting of a permit therefore by the Board of Appeals.
  - 2. Rebuilt or restored at the same location and again used as previously in the case of a building destroyed or damaged by fire, explosion, or other catastrophe. Such building or structure so restored shall not exceed in volume or area the original non-conforming structure or building unless permit is given by the Board of Appeals; and shall be at least equal in appearance and character to the original structure. Such rebuilding or restoration shall be commenced within six (6) months after such catastrophe.
- (d) Once changed to a conforming use, no structure or land shall be permitted to revert to a non-conforming use.

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- (e) A non-conforming use which has been abandoned or discontinued for a period of two (2) years shall not be re-established, and any future use shall conform with this Bylaw.

**SECTION VI: INTENSITY REGULATIONS**

VI-1 Lot Area

Any principal building or dwelling unit, including mobile homes, hereafter erected or placed in the Town of Colrain, and any use conducted in the Town shall be located on a lot having no less than the minimum requirements set forth in the table below. No more than one residential structure shall be erected upon any such lot. No existing lot shall be changed as to size or shape so as to result in the violation of the requirements set forth below.

VI-2 Dimensional Schedule

	Minimum Area (a)	Minimum Frontage in feet (b)	Front in feet (c)(d)	Yard Dimensions Side in Feet (d)	Rear in feet (d)	Maximum Height in feet	Maximum Lot Coverage
Village Districts	20,000 sq. ft.	100	30	15	30	35	70%
Rural Districts	1 ½ acre	300	50	40	40	35	25%
Commercial-Industrial Districts	2 acres	300	50	50	50	45	50%

- (a) Any lot in a village district having a two-family dwelling structure shall provide not less than 30,000 square feet of land.
- (b) A lot or parcel of land having an area or a frontage of lesser amounts than required by this Bylaw may be considered as coming within the area or frontage requirements of this Section, provided such a lot or parcel of land was shown on a plan or described in a deed duly recorded or registered at the time of the adoption of the Bylaw and did not at the time of such adoption adjoin other land of the same owner available for use in connection with this parcel.
- (c) To be measured from the right-of-way line where a plan of the way is on file with the Registry of Deeds or, in the absence of such a plan from a line twenty-five (25) feet from and parallel to the center line of the traveled way.
- (d) All Large-Scale Ground-Mounted Solar-Photovoltaic Systems shall have front, side, and rear yard setbacks of at least 50 feet, pursuant to the requirements of Section XV-3(b)(1). Required setback areas shall not be counted toward a facility's total acreage.

VI-3 General Regulations

Projecting eaves and uncovered steps shall not be taken as coming within the meaning of this section.

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No lot on which is located any building shall be changed or reduced in area or shape so that it does not conform to the provisions of this Bylaw.

- (a) Provided further, however, that this regulation shall not apply in the case of a lot a portion of which is taken for the public use.
- (b) No sign, fence, wall, tree, hedge, or other vegetation, and no building or other structure shall be more than three and one half (3 ½) feet above the established street grade within the area formed by the intersecting street lines and a straight line joining said street lines at a point which is twenty-five (25) feet distant from the point of intersection measured along said street lines. In all areas of the Town, a corner lot shall provide unobstructed visibility at intersections.

#### VI-4 Back Lot Development

A parcel with no contiguous land in common ownership may be divided into two lots, one of which does not meet the above frontage requirements, provided that one of the lots meets all dimensional requirements, and the other has the following:

- (a) frontage on a street, and a connecting strip leading to the buildable portion of the lot, each at least 50 feet wide, (as amended December 16, 2002)
- (b) width where the principal building is to be erected at least equal to the normally required lot frontage,
- (c) lot area, exclusive of connective strip, at least equal to 3 acres and front, side, and rear yard setbacks as required,
- (d) and a driveway no longer than one thousand (1,000) feet.

#### VI-5 Back Lot Development With Open Space Set-Aside (added December 16, 2002)

Back Lots with Open Space Set-Aside may be allowed by the Planning Board by special permit.

##### 1) Purpose

The purposes of this section, in addition to the general purposes of these Zoning Bylaws, are to: encourage the efficient use of land resources in new residential development; to increase opportunities for the preservation of agricultural land, forested land, and other open space; to preserve the scenic qualities of the Town; and to protect or enhance the value of properties in the Town by enabling landowners to create appropriate patterns of land ownership, use, and development, subject to public review and approval.

##### 2) Eligible Parcels

There are two categories of eligible parcels to be considered pursuant to this Section VI-5.

- a. Contiguous Parcels: Land eligible to be considered pursuant to this category shall be parcels which abut the types of roadways eligible for ANR development pursuant to M.G.L. Ch. 41, Sec. 81L, have vital access as contemplated by M.G.L. Ch. 41, Sec. 81M and which have lot frontage as required by Colrain's Zoning Bylaws. Contiguous parcels include lots in single ownership that are separated only by a public way.

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- b. Noncontiguous Parcels: Land eligible to be considered pursuant to this category shall be limited to two parcels. The parcel to be preserved must about the types of roadways eligible for ANR development pursuant to M.G.L. Ch. 41, Sec. 81L, must have vital access as contemplated by M.G.L. Ch. 41, Sec. 81M, must have lot frontage as required by Colrain's Zoning Bylaws, and must be farmland in active agricultural use or have soils classified by the Natural Resources Conservation Service (formerly the Soil Conservation Service) as "prime" or of "statewide importance" which comprise at least 80% of the lot area to be protected.

The parcel(s), from which the Back Lots are proposed to be created, should not be farmland in active agricultural use, should be set back at least 400 feet from the nearest public way and need not abut a public way.

For purposes of the remainder of this Section VI-5, farmland shall be defined as farmland primarily and directly used: for raising animals for the purpose of selling such animals or a product derived from such animals in the regular course of business; for raising fruits, vegetables, berries, nuts and other foods for human consumption; for raising feed for animals; for growing flowers, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs for the purpose of selling such products in the regular course of business; or for growing trees for the purpose of selling forestry products. Farmland shall also be defined as land having soil classified as agriculturally "prime" or of "statewide importance" by the Natural Resources Conservation Service. In addition, the parcels upon which the Back Lots are to be placed must have access via a right-of-way to a public way prior to Planning Board approval and must not be farmland in active agricultural use.

### 3) General Description

For eligible parcels, the owner or prospective developer may petition for a special permit from the Planning Board to create back building lots meeting the following description: each lot shall be at least one and a half (1-1/2) acres in area, shall have no roadway frontage as defined by M.G.L. Ch. 41, Sec. 81L, and shall be accessible from a public way by means of a deeded right of way across land of others. This right of way shall be a common driveway serving up to four Back Lots. If two or more Back Lots are created on a tract, they shall be contiguous and compactly laid out to minimize the development of land wherever possible.

In exchange for the special permit to build one or more Back Lots, the applicant shall formally and permanently place conservation restrictions on the same number of ANR lots having a minimum area of 1-1/2 acres and 300 feet of lot frontage for each Back Lot to be created and meeting the Requirements outlined in section 4) below. The protected property shall have contiguous road frontage and a minimum depth of 200 feet measured from the edge of the road.

### 4) Requirements

A special permit may be granted by the Planning Board if it finds that the applicant's Back Lot proposal would serve the purposes set forth above better than an "Approval Not Required" (ANR) division of the land creating the same number of lots, and would meet the general standards for special permits set forth in these Zoning Bylaws. The permanently restricted land shall form a single contiguous tract. The procedures for creating such Back Lots can be found in Colrain's Subdivision Regulations. Applicants are encouraged to prepare a preliminary sketch of the proposed Back Lots and ANR lots to be protected and to meet with the Planning Board to discuss such proposal prior to filing. The Back Lot proposal must meet the following additional criteria:

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a. Parcel Requirements:

(i) For contiguous parcels:

For one (1) to four (4) Back Lots: For each Back Lot created, a defined portion of the tract of land having a minimum area of one and a half (1-1/2) acres and at least three hundred feet (300') of lot frontage eligible for ANR development which meets the requirements of Colrain's Zoning Bylaws, and having vital access as contemplated by M.G.L. Ch. 41, Sec. 81M shall be preserved and permanently restricted to agricultural, forestry, conservation and/or recreational use in accordance with the provisions of M.G.L. Ch. 184, Sec. 31-33. The aggregate acreage of the Back Lots may be up to two and one-half (2.5) times greater than the aggregate acreage of the protected land area having roadside frontage provided that the following minimum requirements are met as shown in the table below. For example, if ten (10) acres of protected land having the required lot frontage is provided, the aggregate acreage of the Back Lots may be up to twenty-five (25) acres.

	Minimum Aggregate Protected Acreage	Minimum Aggregate Back Lot Acreage
1 Back Lot	1.5 Acres	1.5 Acres
2 Back Lots	3.0 Acres	3.0 Acres
3 Back Lots	4.5 Acres	4.5 Acres
4 Back Lots	6.0 Acres	6.0 Acres

Acreage counting towards the minimum requirements for protected roadside land under the conservation restriction shall not include wetlands areas as defined by M.G.L. Ch. 131, Sec. 40 (Massachusetts Wetlands Law), land which is already protected by the Agricultural Preservation Restriction (APR) Program or a conservation restriction placed on the deed, or land within the 100 year floodplain.

(ii) For noncontiguous parcels:

For one (1) to four (4) Back Lots: For each Back Lot created, a defined portion of a tract of land having a minimum area of one and a half (1-1/2) acres and at least three hundred feet (300') of lot frontage eligible for ANR development which meets the requirements of Colrain's Zoning Bylaws, and having vital access as contemplated by M.G.L. Ch. 41, Sec. 81M shall be preserved and permanently restricted to agricultural use in accordance with the provisions of M.G.L. Ch. 184, Sec. 31-33. Eligible land to be protected shall be limited to farmland as defined in section VI-5.2)b. The aggregate acreage of the Back Lots may be up to two and one-half (2.5) times greater than the aggregate acreage of the protected land area having roadside frontage provided that the following minimum requirements are met as shown in the table below. For example, if ten (10) acres of protected land having the required lot frontage is provided, the aggregate acreage of the Back Lots may be up to twenty-five (25) acres.

	Minimum Aggregate Protected Acreage	Minimum Aggregate Back Lot Acreage
1 Back Lot	1.5 Acres	1.5 Acres
2 Back Lots	3.0 Acres	3.0 Acres

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3 Back Lots	4.5 Acres	4.5 Acres
4 Back Lots	6.0 Acres	6.0 Acres

Acreage counting towards the minimum requirements for protected roadside land under the conservation restriction shall not include wetlands areas as defined by M.G.L. Ch. 131, Sec. 40 (Massachusetts Wetlands Law), land which is already protected by the Agricultural Preservation Restriction (APR) Program or a conservation restriction placed on the deed, or land within the 100 year floodplain.

- b. The restricted roadside land shall not be crossed by any access road or driveway serving building lots, except by the common driveway permitted to serve the Back Lots in return for restricting the land.
- c. The maximum number of Back Lots that may be created shall equal the number of roadside lots that meet the subdivision "approval not required" (ANR) criteria and Colrain's zoning criteria of three hundred (300) feet of lot frontage, vital access as contemplated by M.G.L. Ch 41, Sec. 81M and the zoning criteria of one and a half (1-1/2) acres of area and shall not exceed four (4) lots for every common driveway. Additionally, for every four Back Lots created, on-site septic system evaluations certified by the Board of Health are required to confirm that at least three of the four ANR lots could be built upon pursuant to 310 CMR 15.00 (Title 5 of the Massachusetts Environmental Code) and M.G.L. Ch 111, Sec. 31 (Board of Health) or their equivalents. The Planning Board reserves the right to physically inspect the site with members of the Board of Health.
- d. All the Back Lots created shall be in a single, compact portion of the original eligible parcel to the maximum extent possible. Dwelling units shall be integrated into the existing landscape through placement of buildings within woodland, along the edges of fields, screened by natural vegetation or topographic features, to the maximum extent possible. Developers are encouraged to construct buildings in a manner which will have the least visual impact as viewed from the roadside. Developers are further encouraged, in the case of farmland to be protected, to provide a vegetated buffer of at least 40 feet between the residential lot lines and farmland to minimize conflicts between residential and farming activities.
- e. All natural site features including, water courses, one hundred year flood plains, wetlands, ponds and other water bodies, marshes, scenic points and historic sites shall be preserved.
- f. Common driveways shall be used to serve the Back Lots in accordance with this Bylaw Section VI-5. A special permit application for Back Lot development featuring a common driveway shall not be granted until satisfactory legal documents have been submitted and approved to guarantee each Back Lot owner access over the common driveway, to guarantee that the common driveway cannot be submitted to the town for acceptance as a public way, and to guarantee that all lot owners using the driveway share equitably in the costs of its maintenance. For Noncontiguous eligible parcels, developers must have a right-of-way for access to a public way prior to Planning Board approval.
- g. On Back Lots created under the provisions of this section VI-5, the Planning Board has the option to require that building envelopes be defined on the plan submitted to the Planning Board to show placement of buildings and other structures for each proposed lot.
- h. Construction on each Back Lot shall be limited to one single-family house and related accessory buildings. Outbuildings and other structures for agricultural or horticultural use are exempted from this restriction.

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i. The plan submitted to the Planning Board for approval shall state both on the written application and on the accompanying plans that no further subdivision of land will take place upon the common driveway. Upon granting the special permit, the Planning Board will approve the plan with a condition limiting the lots upon which buildings may be erected to the number specified in the plan. Such plan shall include on its face the following notation: "the Common Driveway(s) shown on this plan shall not be considered a 'way shown on a' subdivision plan for the purposes of M.G.L. Sec. 81L."

j. No Back Lot of any size, once created, shall be further divided.

k. Every deed conveying a Back Lot created under this Section VI-5 shall incorporate by reference the special permit authorizing the lot's creation, and any conditions imposed by the said permit.

Special permits may be issued pursuant to the procedural requirements described in M.G.L. Ch. 40A Sec. 9. A special permit granted under this section shall lapse after two (2) years if substantial use or construction has not begun, except for good cause. In granting a special permit the Planning Board shall specify actions which must be taken within two years in order to demonstrate "substantial use."

#### 5) Common Driveway Standards

A common driveway is a driveway which begins at a public way and provides access to one or more building lots. A common driveway serving up to and no more than four Back Lots shall conform to the following requirements and standards.

a. The following minimum requirements must be met for a common driveway serving one or more Back Lots:

(i) An easement providing permanent access for all properties served by the driveway shall be provided upon application and, if approved, recorded by the applicant in the Registry of Deeds;

(ii) The special permit shall state that the driveway is not a private road or a public road, that it does not meet the standards for a Town road and/or a public way, and that the driveway shall permanently remain a private driveway;

(iii) Maintenance of the common driveway shall be assured through a homeowners association approved by the Planning Board and binding upon those served by the driveway, which shall require the landowners to maintain the driveway to the standards of this Bylaw at their mutual and exclusive expense. Such maintenance shall include keeping the driveway clear of tree branches to a height of 15 feet and clearing of snow and sanding of ice to provide year-round access for emergency vehicles; and

(iv) The grade, length and location of common driveways and adjacent areas shall be constructed and maintained to provide adequate access and turnaround for vehicles, including emergency vehicles, year round. To assure this, common driveways shall conform to the design standards stated in Colrain's Subdivision Regulations for Alternate Plan Procedures for Back Lots, Section VI.

b. Lot Area Dimensions

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Back Lots created pursuant to this section VI-5 shall not be required to meet the frontage requirements of Colrain's Zoning Bylaws.

6) Conservation Restrictions Requirements

a. A conservation restriction means a right, in perpetuity, stated in the form of a restriction or covenant in a deed, appropriate to retaining land predominantly in its agricultural farming, forest or recreational use and forbidding or limiting any or all of the following:

- (i) Construction or placing of buildings except for those used for agricultural purposes;
- (ii) Excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such a manner as to adversely affect the land's overall future agricultural, forest or recreational potential; or
- (iii) Other acts or uses detrimental to such retention of the land for agriculture, forest or recreational use.

b. The conservation restriction placed on the land shall meet the following minimum criteria:

- (i) The conservation restriction shall be held by the Town of Colrain Conservation Commission or by a non-profit land trust approved by the Planning Board or jointly.
- (ii) The conservation restriction shall be recorded by the holder in the Franklin County Registry of Deeds.
- (iii) The conservation restriction shall be approved by the Commissioner of Food and Agriculture or the Secretary of the Executive Office of Environmental Affairs as appropriate, and additionally approved by the Colrain Board of Selectmen if the restriction is held by a non-profit land trust.
- (iv) The land covered by the conservation restriction shall be noted on the plan and in the special permit granted by the Planning Board.
- (v) The form and content of the conservation restriction will be consistent with the sample included in the Colrain Subdivision Regulations.

c. Protected parcel(s) may be either retained by the original landowner or entity, or may be conveyed out as follows:

- (i) Conveyed to a non-profit land trust whose principal purpose is to conserve farmland and/or forest land, subject to the covenant requiring employment of land management practices which will ensure that existing agricultural fields and pastures will be plowed or mowed at least once per year. Included with the covenant shall be copies of a lease, for a minimum of five years, with a farmer or operator who will use the land for agricultural purposes;

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(ii) Conveyed to the town's Conservation Commission, at no cost. Such a conveyance shall be at the option of the town and shall require approval at Town Meeting; or

(iii) Conveyed to another landowner, who shall abide by the terms of the conservation restriction which may include a covenant requiring the employment of land management practices which will ensure that existing agricultural fields and pastures will be plowed or mowed at least once per year. (as amended)

VI-6: Cluster Development Bylaw (added May 8, 2007; revised May 9, 2012)

a) Purpose

The purpose of this section, in addition to the general purposes of these Zoning Bylaws, is to:

1. promote and protect agricultural and forestry-related activities by preserving the most viable agricultural and prime forest land;
2. promote the efficient installation and maintenance of utilities, streets, and other facilities in a more concentrated area to make housing more affordable;
3. encourage a less sprawling form of development that preserves open land and protects the natural and cultural features of the site;
4. promote the efficient provision of municipal services and protect existing and potential water supplies;
5. maintain the rural character of the Town;
6. promote the siting of buildings that is sensitive to existing natural and historic features; and
7. protect the value of real property.

Protected Open Space for the purposes of Section VI-6 is defined as the land set aside as permanently protected open space pursuant to Section VI-6 g).

b) General Description

This optional bylaw provides residents and developers of land in the Rural and Commercial-Industrial Districts with an alternative to a standard subdivision development that is often incompatible with agricultural and forested land use and operations. Cluster Development refers to residential development in which lots for buildings and accessories are grouped together in one or more clusters within the boundaries of a larger parcel of land. The building lots are of a reduced size and concentrated together, taking up only a portion of the parcel of land. A permanent conservation restriction preventing future development is placed on the open space to be preserved. Only single-family homes may be located in a Cluster Development.

c) Procedures

1. The Planning Board may approve a plan for the construction of a Cluster Development in any district except for the Village District, subject to the regulations and conditions set forth under this section and Section XIII Development Site Plan Review and Colrain's Subdivision Regulations.

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2. Applicants are encouraged to contact the Planning Board prior to the application for Cluster Development Site Plan Review to discuss the applicant's plans and promote better communication. Applicants are encouraged to submit a conceptual plan for review by the Planning Board prior to the application for Cluster Development Site Plan Review. Materials and information to be submitted with the conceptual plan shall be agreed upon by the applicant and the Board.

3. Applicants for a Cluster Development shall submit seven (7) copies of a Cluster Development and the narrative required to meet the requirements of this Cluster Development Bylaw, Section XIII Development Site Plan Review, and the requirements of Colrain's Subdivision Rules and Regulations for a preliminary plan, which plan shall show locations of proposed streets, building envelopes and Protected Open Space. The plan shall be prepared by a professional engineer, registered architect, registered landscape architect, or registered land surveyor.

The Planning Board approval for Cluster Development Site Plan Review shall not substitute for compliance with the Subdivision Control Act nor oblige the Planning Board to approve a related Definitive Plan for subdivision approval nor reduce any time periods for the Board consideration under that law. However, in order to facilitate processing, the Planning Board may, insofar as practical under law, adopt regulations establishing procedures to allow the applicant and Planning Board to agree on an application which shall satisfy this section and the Board's regulations under the Subdivision Control Act, if applicable. In addition, to the extent permitted by law, the Planning Board shall coordinate the public hearing requirement for a Cluster Development with the Public Hearing required for a Definitive Subdivision Plan. The applicant is also responsible for obtaining all applicable permits or approvals that may be required for the Cluster Development from other Town Boards or municipal officials.

4. In addition to any information required by the above-referenced Subdivision Rules and Regulation, the application shall include the following information:

- a. The form of organization proposed to own, manage, and maintain the preserved land;
- b. The substance of covenants to be imposed upon use of land;
- c. A preliminary septic system design;
- d. A development schedule;
- e. measures to prevent soil erosion, increased runoff, and flooding, and to manage stormwater;
- f. preliminary drainage calculations (definitive calculations to be included with definitive subdivision plan);
- g. projected traffic flow patterns and the total number of building lots;
- h. proposed design features intended to integrate the proposed development into the existing landscape; and
- i. the proposed use (e.g. farming, forestry, etc.), size, shape, location, and natural resource value of the land to be permanently protected.

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5. Upon receipt of the application, the Town Clerk shall transmit copies of the application to the Planning Board, Conservation Commission, the Board of Health, the Highway Superintendent, the Fire Chief and the Police Chief. In addition, the Town Clerk will notify the Historical Commission and Open Space Committee that a copy of the application is available for review at Town Hall. Town Boards and municipal officials other than the Planning Board shall have 45 days from the date the completed application is received by the Town Clerk to report to the Planning Board their findings and recommendations. The Fire and Police Chief will review the application to ensure that the proposal provides adequate emergency vehicle access to all lots. If necessary to ensure compliance with this section, the Planning Board may require further reasonable engineering or environmental analysis to be conducted at the expense of the applicant.

After the opportunity for review of other boards and municipal officials has taken place, the Planning Board shall hold a hearing under this section, in conformity with the provisions of Chapter 40A, Section 11 of the Massachusetts General Laws, the provisions of the Zoning Bylaws and the regulations of the Planning Board. In addition, to the extent permitted by law, the Planning Board shall coordinate the public hearing requirement for the Cluster Development with the Public Hearing required for a Definitive Subdivision Plan.

d) Minimum Standards

1. The minimum area of land for a Cluster Development is ten (10) acres. All land within the Cluster Development tract shall be under single ownership or control at the time of the application. Adjoining lots must be adjacent to or only separated by a public way from the other lot.

2. One Single Family dwelling and accessory structures are permitted on each building lot. Only Single Family dwelling units are permitted in a Cluster Development.

3. The maximum density of a Cluster Development shall not exceed the allowed density for a conventional subdivision in any zoning district unless a density bonus is granted pursuant to Section VI-6 h). In a Cluster Development, the maximum number of building lots will be determined by one of the following methods at the Applicants option:

a. Method 1 - The maximum density for the Cluster Development under Method 1 shall be calculated by taking the parcel area and subtracting out any acreage that is wetlands, floodplains, existing permanently protected open space, land with slopes greater than 25%, and 10% of the total parcel area for roads and drainage to find the Net Parcel Area. The Net Parcel Area shall be divided by the Minimum Lot Area of the zoning district in which the parcel is located to determine the maximum number of lots allowed. All wetlands shall be defined under the supervision of the Conservation Commission and in accordance with the provisions of the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40.

b. Method 2 - A preliminary plan for a conventional (non-Cluster Development) subdivision for the site shall be submitted illustrating the number of lots that could be created under a conventional subdivision and the results of deep hole and perc tests indicating how many of these lots would be buildable. The perc tests shall be conducted under the supervision of the Board of Health, and in conformance with Title 5, percolation tests. The number of buildable lots will equal the maximum density of the Cluster Development.

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4. Each lot shall have adequate road access. The Planning Board shall determine that each lot shown on the plan has practical access from the way upon which the lot fronts, in that there are no legal or physical impediments which will prevent access particularly for emergency vehicles such as fire engines and ambulances. The road serving the Cluster Development shall comply with the Design Standards of Colrain's' Subdivision Regulations unless such compliance is waived by the Planning Board pursuant to Section 5.2 of the Subdivision Regulations.

5. At least thirty-five (35) percent of the total lot area shall be preserved as Protected Open Space including agricultural or forested land. The minimum required Protected Open Space shall not include wetlands, floodplains, existing permanently protected open space, land with slopes greater than 25%, roadways or accessory uses. To the extent possible the preserved land shall form a contiguous tract to enable continued farming or forestry operations.

6. With the Definitive Subdivision Plan, the applicant shall submit a septic system design for the Cluster Development prepared by a Registered Professional Engineer and approved by the Board of Health, in conformance with Title 5 of the State Environmental Code, and a plan illustrating the location of water supply wells. A Cluster Development may utilize shared septic systems designed, installed and maintained in accordance with the State Environmental Code Title 5, 310 CMR. Septic systems shared or otherwise should be located outside of all agricultural land supporting farming operations to the maximum extent possible.

7. Every Cluster Development shall include a condition that the approved and recorded Definitive Subdivision Plan of said Cluster Development shall have endorsed upon it a statement that the subdivision is an approved Cluster Development and that no land within the subdivision may be further subdivided as to increase the number of building lots.

8. Each lot shall comply with the minimum dimensional requirements of this Cluster Development By-law.

e) Dimensional and Density Requirements

1. The minimum building lot size for Cluster Development shall be 32,000 square feet, with a minimum of 100 feet of frontage on a street. The Front Yard setback shall not be less than 25 feet for all principal and accessory structures. Side and Rear Yard setbacks shall not be less than 10 feet for all principal and accessory structures, except that attached single family dwelling units may be laid out with one side having no Side Yard setback (zero setback). The other Side Yard of an attached single family unit (the nonattached side) shall be at least 10 feet. Nonattached single family units shall have a minimum Side Yard setback of 10 feet. The maximum height of dwelling units and structures shall be 35 feet.

f) Additional Site Design Standards

1. Wherever it is feasible, all residential buildings shall be located away from agricultural soils that are classified by the U. S. Soil Conservation Service as prime farmland and soils of state and local importance and placed on soils the least suitable for production of crops and livestock. This provision does not apply to the location of on-site septic disposal systems that must be placed on soils meeting the Massachusetts Environmental Title 5 Code.

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2. The layout and construction of utilities, drainage systems, and roads shall be located to have the least possible impact on agricultural lands and uses or mature forest stands.
3. To minimize conflict between agricultural operations, all residential lot lines shall be located at least one hundred (100) feet from agricultural activities. This area shall be made up of a buffer strip of trees or open space.
4. To the maximum extent possible, residential units should be integrated into the landscape to avoid interrupting the view of the agricultural or forested landscape from adjacent public ways. Vegetative and structural screening, landscaping, grading, and building placement on the lot should be used to minimize visual interference with pre-existing landscape features.
5. To the maximum extent possible, structures should be sited within any woodland contained on the parcel; along the edges of fields; or in locations where structures can be visually screened or absorbed into natural vegetative or topographic features.
6. All residential structures and accessory uses within the development shall be set back from the property lines of the development by a buffer strip of at least fifty (50) feet in width to be kept in a natural, landscaped or managed condition.
7. Design of roads, utilities, and drainage shall be functionally equivalent to the standards contained in the Planning Board's Subdivision Regulations insofar as reasonably applicable, but the Board may vary those standards to meet the particular needs of the Cluster Development and natural features.
8. There shall be an adequate, safe, and convenient arrangement of pedestrian circulation, facilities, roadways, driveways, and parking. There shall be no parking in the buffer strip, or in areas not otherwise designated for parking.

g) Open Space Requirements

The following standards shall apply to open space to be protected as part of the Cluster Development:

1. The area to be preserved as agricultural or forested land, as required under Section VI-6 g) shall be made subject to a perpetual restriction of the type described in M.G.L. c.184 (including future amendments thereto and corresponding provisions of future laws) running to or enforceable by the Town of Colrain. To insure this, a Conservation Restriction in accordance with M.G.L. Chapter 184 shall be imposed on the Protected Open Space and recorded in the Registry of Deeds by the applicant at the time the approved Definitive Plan is submitted to the Registry of Deeds for recording. The applicant shall notify the Planning Board in writing within ten (10) days after the Conservation Restriction and the Definitive Plan, as approved and endorsed, have been recorded at the Franklin County Registry of Deeds and, in the case of registered land, with the recorder of the Land Court, of such recording, noting book, page number and date of recording. The Conservation Restriction placed on the Protected Open Space shall be held by the Conservation Commission of the Town of Colrain, a suitable State Agency, or by a non-profit conservation land trust the principal purpose of which is the conservation or preservation of open space. Any fees associated with the holding and enforcement of the Conservation Restriction by an entity such as a non-profit conservation land trust will be the responsibility of the Applicant or Homeowners Association as agreed to in writing prior to the recording of the Conservation Restriction. The purpose of the Conservation Restriction will be to clearly identify the uses and

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restrictions which apply to the Protected Open Space in order to protect the value of the property within the development. The Conservation Restriction shall limit the use of the protected land to the following:

- a. Agricultural production, including but not limited to, the raising of crops and livestock, forest management activities, nurseries, orchards;
- b. Activities necessary to successful agricultural production, including but not limited to, farm equipment operations, manure storage, and use of pesticides, herbicides, and fertilizers as regulated by state and federal laws;
- c. Farm support operations, including but not limited to, farm equipment storage, agricultural processing, greenhouses, and farm animal veterinary services.
- d. Uses may also include passive recreation, easements for utilities, easements for existing or future septic systems, and easements for private drinking water wells.

Said restriction shall be in such form and substance as the Planning Board shall prescribe and may contain additional restrictions on development and use of the land as the Planning Board may deem appropriate to meet the purposes of this Section.

2. The Protected Open Space may be conveyed in one of the following ways:

a. Conveyed to an incorporated non-profit Homeowners Association made up of the owners within the development subject to a covenant, running with the land that provides for the following:

I. Ownership and membership within the Homeowners Association shall pass with conveyances of the lots in perpetuity.

II. Maintenance of agricultural open space shall be ensured by establishing a maintenance fee for each lot sufficient to cover maintenance expenses or through a comparable arrangement satisfactory to the Planning Board. The covenant established shall describe land management practices that will ensure that the existing fields and pastures will be plowed or mowed at least once per year. Included with the covenant shall be copies of a lease, for a minimum of five years, with a farmer or operator who will use the land for agricultural purposes. Such a land agreement document shall be submitted with the Definitive Subdivision Plan and shall be subject to approval by the Planning Board and Town Counsel. A tentative agreement should be established and presented with the Preliminary Subdivision Plan.

III. The covenant established shall specify that each lot owner have equal say in determining the affairs of the organization, and that costs shall be assessed equally to each lot.

b. Conveyed to a suitable State Agency or non-profit land trust whose principal purpose is to conserve farmland and/or forest land, subject to the covenant requiring employment of land management practices which will ensure that existing agricultural fields and pastures will be plowed or mowed at least once per year; or

c. Conveyed to the town, at no cost. Acceptance of such a conveyance shall be at the option of the town and shall require approval at Town Meeting; or

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d. The Planning Board, at the request of Applicant, may consider granting a Special Permit to have the Protected Open Space retained by a private individual or a trust owned by private individuals provided that the interests of the residents of the Cluster Development will be protected as outlined in the requirements of the Conservation Restriction. Such Special Permit shall meet the requirements of Section XII, Special Permits of the Zoning Bylaws and other requirements to be determined by the Planning Board. A Conservation Restriction shall be placed on the Protected Open Space as specified in g) 1.

h) Bonus Incentives

1. Creating a subdivision development using the cluster approach is often less expensive for the developer as roads are shorter and utilities are grouped together. Thus, Colrain's provision of a Cluster Development option should be considered an incentive unto itself. However, to further encourage Cluster Development the following "point incentive system" has been developed. A development plan that meets any of the following criteria will earn the number of points listed. Depending on the total number of points earned, a developer may earn a bonus in the form of extra building lots allowed within the development. The Planning Board will determine, upon review of the development plan, the bonus point total.

a. Any development that increases the amount of land permanently preserved by 5% above the 35% requirement earns 10 points. Each additional 5% increase in preserved land results in an additional 10 points.

b. An agricultural management plan that ensures continued crop production for a 10-year term, rather than just haying and mowing, earns 10 points.

c. For protected forestland, a forest management plan for a 10-year term that is prepared by a forester with credentials acceptable to the Planning Board earns 10 points.

d. A Cluster Development plan that protects at least 10 acres of land in one contiguous tract earns 5 points; a plan that protects at least 20 acres in on contiguous tract earns 10 points.

e. A Cluster Development plan that protects land in a tract that is contiguous to an already protected area so as to increase the area of working agricultural land or forest wildlife habitat earns 10 points.

f. A Cluster Development plan that screens structures from view from a public way as evidenced by cross sections of the definitive plan at a scale of 1 inch = 10 feet earns 10 points.

g. Architectural designs for the single-family structures that match the current character of the area earn 10 points. Architectural elevation drawings of the single-family homes must accompany the Cluster Development to be eligible to receive points in this category.

2. A Cluster Development Plan that earns at least 40 points will earn a 10% building lot bonus above the basic number of building lots allowed under Section VI-6 d) 3. A Cluster Development Plan that earns 60 points or more earns a 20% building lot bonus above the basic number of building lots allowed under Section VI-6 d) 3. If the point total results in a building lot bonus of a fractional number, the bonus building lot total will be rounded down to the next lowest whole number. The total number of bonus lot(s)

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cannot be more than 20% of the maximum number of building lots allowed before the addition of bonus lots (eg. 2 bonus lots for a 10-lot subdivision for a total of 12 lots).

i) Criteria for Approval

1. Approval of a Cluster Development shall be granted only if the Planning Board determines that the requirements of the Cluster Development and Development Site Plan Review bylaws have been complied with.

**VII: BUILDING REQUIREMENTS**

- (a) A temporary dwelling on a lot may be occupied by the owner and his family during the construction of a permanent residence for a period of no longer than two (2) years from the date construction is commenced, provided construction starts within six (6) months from the date the building permit is issued, and conforms to these Bylaws.
- (b) Mobile homes occupied for more than thirty (30) days for housing or business purposes shall conform to all zoning and other regulations and requirements affecting permanent dwellings.
- (c) No accessory building or structure shall be located within the required front, side, or rear yard setback area.
- (d) To promote safety, no accessory building may be used as a dwelling, except for Accessory Apartments.
- (e) Travel trailers may be stored in a garage or other accessory building. Travel trailers stored outside for more than thirty (30) days per year must be stored no closer to the road than the rear of the dwelling. In addition, the travel trailer(s) shall not be stored within any front, side or rear yard setback area. Travel trailers used for living and/or business purposes are prohibited.
- (f) The following requirements apply in the Flood Plain Area:
  - A. Within Zone A, where the base flood elevation is not provided on the FIRM, the applicant shall obtain any existing base flood elevation data and it shall be reviewed by the Building Commissioner for its reasonable utilization toward meeting the elevation or flood proofing requirements, as appropriate, of the State Building Code.
  - B. In the floodway, designated on the Flood Boundary and Floodway Map, the following provisions shall apply:
    1. All encroachments, including fill, new construction, substantial improvements to existing structures, and other development are prohibited unless certification by a registered professional engineer is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the 100-year flood.
    2. Any encroachment meeting the above standard shall comply with the floodplain requirements of the State Building Code.
- (g) Within Zone A1-30, all mobile homes shall provide that:

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- (a) stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level; and
- (b) adequate surface drainage and access for a hauler are provided, and
- (c) in the instance of elevation on pilings, lots are large enough to permit steps, piling foundations are placed in stable soil no more than ten (10) feet apart, and reinforcement is provided for piers more than six (6) feet above ground level.

(h) The placement of mobile homes is prohibited in the floodway.

VIII, DEFINITIONS, TO ADD THE FOLLOWING NEW DEFINITIONS:

**Building Permit**—A construction permit issued by an authorized Building Inspector evidencing that the project is consistent with the state and federal building codes as well as local zoning bylaws.

**By-Right**—By-Right shall mean that development may proceed without the need for a Special Permit, variance, amendment, waiver, or other discretionary approval, subject to issuance of a building permit and compliance with all applicable local, state and federal requirements, including but not limited to applicable safety, construction, electrical and communications requirements and other provisions of this Bylaw, such as setback requirements, as specified for the zoning district in which it is located. By-right development may be subject to site plan review to determine conformance with local zoning ordinances or bylaws.

**Large-Scale Ground-Mounted Solar-Photovoltaic System**—A Solar-Photovoltaic System which has a footprint greater than 0.10 acres.

**Solar-Photovoltaic Array**—An arrangement of solar-photovoltaic panels.

**Solar-Photovoltaic System**—Groups of solar-photovoltaic arrays for the generation of electricity, including all appurtenant structures such as the support foundation, power conditioning and control equipment, storage, active thermal control, security system, conduit and instrumentation.

**Solar-Photovoltaic System Footprint**: The entire ground-surface area covered by the Solar-Photovoltaic System.

**Zoning-Enforcement Authority**—The Selectmen or Building Inspector appointed by the Selectmen charged with enforcing the Zoning Bylaw pursuant to Section IX-1, of the Colrain Protective Zoning Bylaw.

**SECTION IX: ADMINISTRATION**

IX-1 Enforcement

This Bylaw shall be enforced by the Selectmen or a Building Inspector appointed by them. No building or structure shall be built without a building permit having been issued by the Building Inspector. No building or structure shall be structurally altered and no use of land or building shall be begun or changed without a permit for this purpose having been issued by the Building Inspector; and such permit is in conformance with this Bylaw. Likewise, no building shall be occupied until a certificate of occupancy has been issued by the Building Inspector. Any person violating any of the provisions of this Bylaw may be fined not more than \$20.00 for each offense. Each day that said violation continues shall constitute a separate offense.

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## IX-2 Board of Appeals

There is hereby established a Board of Appeals of five members and two associate members, to be appointed by the Selectmen as provided in Chapter 40A of the General Laws. The Board of Appeals shall act on all matters within its jurisdiction under this Bylaw in the manner prescribed in Chapter 40A of the General Laws. The Board of Appeals shall have the following powers:

- (a) To hear and decide on an appeal taken by any person aggrieved by reasons of his/her inability to obtain a permit from any administrative official under the provisions of Chapter 40A of the General Laws, or any officer or Board of the Town; or by any person aggrieved by any order or decisions of the inspector of buildings or any other administrative official in violation of any provisions of Chapter 40A, General Laws, or by this Bylaw.
- (b) To hear and decide on special permit applications as required by the provisions of this Bylaw and of M.G.L. Chapter 40A.
- (c) To hear and decide appeals or petitions for variances from the terms of this Zoning Bylaw including variances for use, with respect to particular land or structures. The Zoning Board of Appeals shall grant no variances which would amount to an amendment of this bylaw. Such variance shall be granted only in cases where the Zoning Board of Appeals finds all of the following:
  - (1) A literal enforcement of the provisions of this Zoning Bylaw would involve a substantial hardship, financial or otherwise, to the petitioner or appellant.
  - (2) The hardship is owing to unique circumstances relating to the soil conditions, shape or topography of such land.
  - (3) The hardship is especially affecting such land or structures, but not generally the zoning nor overly district in which it is located.
  - (4) Desirable relief may be granted without either:
    - (a) Substantial detriment to the public good; or
    - (b) Nullifying or substantially derogating from the intent or purpose of this Zoning Bylaw.

## IX-3 Amendment

This Bylaw may be amended from time to time at an annual or Special Town Meeting in accordance with the provisions of Section 5 of M.G.L. Chapter 40A.

## IX-4 Validity

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

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**SECTION X: INSTALLATION OF WIRELESS COMMUNICATIONS FACILITIES**

X-1 Purpose

Installation of wireless communication facilities constructed or installed on towers, buildings or structures require a special permit from the Planning Board and are subject to the following conditions to minimize the adverse impacts of towers, to avoid damage to adjacent properties, to lessen impacts to adjacent properties, to maximize the usage of towers, and to minimize the number constructed.

X-2 Submittal

Submittal: An application for a permit shall be filed with the Planning Board and shall be accompanied by six (6) copies of the following:

- (a) A site plan prepared by a professional engineer at a scale of 1"=40' which will show the following under conditions of full site build-out:
  - i. Tower location, including guy wires if any, and tower
  - ii. Accessory building(s) and equipment
  - iii. Topography (contours at 2 feet intervals), including wetlands
  - iv. Other feasible sites, if any
  - v. Fencing and landscaping
  - vi. Lighting
  - vii. Areas to be cleared of vegetation
  - viii. Site boundaries
  - ix. Abutters
  - x. Access Road and power supply
- (b) A locus map at a scale of 1"=80' which shall show all dwellings, streets, bodies of water, landscape features, and Priority Habitats for endangered species (as determined by the Massachusetts Natural Heritage & Endangered Species Program) within 1000 feet. Contour intervals of 10 feet shall also be shown on this map.
- (c) A plan showing eight (8) site view lines in a one (1) mile radius from the site shown beginning at true north and continuing clockwise at 45-degree intervals. A profile of the ground surface elevation shall be shown, and a distinction shall be made between cleared areas and wooded areas along the profile. Scale shall be 1"=400 feet horizontal; 1"=100 feet vertical.
- (d) A copy of the request to install the facilities and the certification that the request complies with the Federal Communications Commission (FCC) and Federal Aviation Administration (FAA) regulations.

X-3 Approval Criteria

Approval Criteria: The following shall be considered prior to the approval/denial of an application and may be used as a basis to impose reasonable conditions on the applicant.

- (a) Siting: Before any new wireless communication facility is approved, the applicant must demonstrate that it is not feasible to locate their antenna and facilities on an existing tower or structure. Before a new wireless communication facility is proposed in the agricultural/residential district, the applicant must demonstrate that it is not feasible to locate their antenna and facilities in other districts or on municipal property. Such demonstration studies shall include a summary of propagation studies and a plan for any network of facilities.

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- (b) Co-location: Any new wireless communication facility must be designed to the maximum extent that is practical and technologically feasible, for co-location of other telecommunications antennas, including offering space to all other providers at market rates.
- (c) Aesthetics: Telecommunications facilities must be designed, located and buffered to the maximum extent that is practical and technologically feasible. The Planning Board retains the option to require applicant to conduct balloon test or to require similar demonstration.
- (d) Radio Frequency Effect: All telecommunications facilities shall be operated only at Federal Communications Commission designated frequencies and power levels. The applicant shall provide certifications to support that the maximum allowable frequencies and power levels will not be exceeded. Certifications shall include technical specifications, an explanation of those specifications, and, if necessary, field verification.
- (e) Location and Site Requirements:
  - i. The setback distance from property lines shall be a minimum distance at least equal to the height of the wireless communication facility, plus twenty (20) feet.
  - ii. Distance from all dwellings shall be at least 500 feet.
  - iii. Access shall be provided by a roadway to the site that respects the natural terrain and minimizes erosion and construction on unstable soils and steep slopes and is approved by the Planning Board and the Fire Chief to assure emergency access at all times.
  - iv. The wireless communication facility shall be designed to accommodate the maximum number of uses technologically practical.
  - v. Height of the wireless communication facility shall not exceed the lesser of fifty (50) feet over the remaining tree canopy or one hundred twenty (120) feet.
  - vi. Existing on-site vegetation shall be preserved to the maximum extent possible.
- (f) Removal of Tower: The applicant shall agree to remove any telecommunications facility that ceases to be used for its intended purpose for 12 consecutive months. The Planning Board shall require a financial performance guarantee to insure that unused facilities are removed.
- (g) Maintenance of Telecommunications Facility: All telecommunications facilities shall be maintained in good order and repair. Any paint and finish must be maintained and repaired when the blemishes are visible from the property line.

X-4 Fees and Costs

Fees and Costs:

(a) Applicant shall pay a permit application fee of \$500.00 at the time of submittal.

(b) The Planning Board reserves the right to engage independent consultant(s) to assist with its review of the submittal at a reasonable fee, to be borne by the applicant.

X-5 Modifications

Modifications:

(a) Any extension, addition of cells, or construction of new or replacement towers or transmitters or accessory buildings beyond those identified or shown in the site plan submitted shall be subject to an amendment to the Special Permit, following the procedures and fees in effect as of the date of the application for such modification.

X-6 Exemptions

Exemptions:

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(a) Amateur radio towers in accordance with terms of any amateur radio service license issued by the Federal Communications Commission provided that the tower meets the height limits expressed above and is not used or licensed for any commercial purposes.

X-7 Waivers

Waivers:

(a) The Planning Board may, but is not required to, waive any individual submittal requirement in Section X-2.

**SECTION XI: COMMON DRIVEWAYS**

Common Driveways serving up to no more than two (2) building lots may be allowed by Special Permit by the Planning Board provided that all of the following provisions shall be met.

- (a) Common driveways shall not be considered public ways and shall not provide lot frontage;
- (b) Each lot served by a common driveway must meet all of the dimensional requirements of these Zoning Bylaws including lot frontage;
- (c) An easement not less than twenty feet wide providing permanent access to each lot served by the Common Driveway shall be provided upon application, and if approved, recorded by the applicant in the Registry of Deeds. Evidence of such recording shall be submitted to the Building Inspector prior to the issuance of a building permit for any lot served by the Common Driveway;
- (d) An agreement making lot owners sharing a Common Driveway responsible for maintenance, including snowplowing, and repair of the Common Driveway to provide adequate access and turnaround for vehicles, including emergency vehicles, shall be a condition of the Special Permit and shall be recorded at the Registry of Deeds. Evidence of such recording shall be submitted to the Building Inspector prior to the issuance of a building permit for any lot served by the Common Driveway;
- (e) Common Driveways shall not be longer than five hundred (500) feet measured along the centerline of the Common Driveway from its point of intersection with the street to the most distant point of the turnaround;
- (f) The length of the individual driveway originating at the end of the Common Driveway plus the length of the Common Driveway shall not exceed one thousand (1000) feet. The individual driveway shall be measured along its centerline from its point of intersection with the centerline of the Common Driveway to its termination at the building it serves;
- (g) The maximum grade for a Common Driveway shall be no greater than twelve percent (12%) and the minimum grade shall be not less than two percent (2%);
- (h) The intersection of the Common Driveway centerline and the street centerline shall not be less than sixty (60) degrees and the grade within fifty (50) feet of the intersection of the driveway and the street shall not exceed five percent (5%);
- (i) The subgrade and finished travel surface of the Common Driveway shall be not less than twelve (12) feet wide nor greater than sixteen (16) feet wide;
- (j) A hammerhead or other turnaround with a turning radius sufficient for a 40-foot emergency vehicle shall be provided at the end of the Common Driveway;
- (k) Storm drains, swales, culverts and drainage retention areas as are necessary to permit the unimpeded flow of all natural water courses and to ensure drainage of the Common Driveway must be provided;

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- (l) The Planning Board, if it deems it necessary, may require engineering plans of the lots to be served by the Common Drive prepared by a Professional Engineer showing the location of the Common Driveway, drainage, topography, water courses, wetlands, etc.; and
- (m) The Common Driveway shall be constructed with a minimum of twelve (12) inches of compacted gravel, oil & stone, asphalt, or concrete according to accepted construction standards.

**SECTION XII: SPECIAL PERMITS**

(a) Special permit granting authority. Unless specifically designated otherwise, the Board of Appeals shall act as the special permit granting authority.

(b) Public hearings. Special permits may be issued only after a public hearing(s) is held within sixty-five (65) days after the applicant files a completed application with the Town Clerk and gives the special permit granting authority a copy of the said application noting the date and time of its filing with the Town Clerk.

(c) Criteria. Special permits may be granted by the special permit granting authority only upon its written determination that the proposed use is in harmony with the general purpose and intent of this Zoning Bylaw and will not have adverse effects which overbalance its beneficial effects on either the neighborhood or the town, in view of the particular characteristics of the site and of the proposal in relation to that site. The determination shall take into consideration each of the following:

- (1) Social, economic or community needs which are served by the proposal.
- (2) Traffic flow and safety.
- (3) Adequacy of utilities and other public services.
- (4) Impacts on neighborhood character and historic and cultural resources.
- (5) Protection of the natural environment.
- (6) Potential fiscal impact.
- (7) Attendance at public schools.
- (8) Positive employment consequences.
- (9) For manufacturing or industrial use, including processing, fabrication or assembly, no such use shall be permitted which would be detrimental or offensive or tend to reduce property values in the

same

or adjoining districts by reason of dirt, odor, fumes, gas, sewage, refuse, noise, excessive vibration, or danger of explosion or fire.

(d) Conditions. Special permits may be granted with such reasonable conditions, safeguards or limitations on time or use as the special permit granting authority may deem necessary to serve the purposes of this Zoning Bylaw.

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(e) Expiration. Special permits shall lapse twenty-four (24) months following special permit approval (plus such time required to pursue or await the determination of an appeal referred to in M.G.L. Ch. 40A, Sec. 17, from the grant thereof) if a substantial use thereof or construction has not begun, except for good cause.

**SECTION XIII: DEVELOPMENT SITE PLAN REVIEW** (added May 8, 2007; revised May 9, 2012, revised sect. c May 6, 2014)

- a) Purpose. The purpose of Site Plan Review is to ensure that new developments are designed in a manner which reasonably protects the environmental and scenic qualities of the neighborhood and the Town.
  
- b) Site Plan Review Process. The Site Plan Review process will be conducted by the Planning Board.
  
- c) Applicability. Site Plan Review shall be required for the following types of activities and uses:
  - 1. Cluster Developments (see Section VI-6);
  - 2. Outdoor storage, sales or display associated with any retail use;
  - 3. Construction, exterior alteration or exterior expansion of more than 1,000 square feet of, or change of use within a municipal, institutional, commercial, industrial, or multi-family structure;
  - 4. Construction or expansion of a parking lot for a municipal, institutional, commercial, industrial, or multi-family structure;
  - 5. Grading, clearing, or other land development activity EXCEPT for the following: single family residences, landscaping on a lot with an existing dwelling, clearing necessary for percolation and other site tests, work incidental to agricultural activity, or work in conjunction with an approved subdivision plan or earth removal permit;
  - 6. Construction, operation, and/or repair of Large-Scale Ground-Mounted Solar-Photovoltaic Systems occupying a footprint greater than 0.10 acres.
  - ~~6-7.~~ Any use listed in the Use Regulation Schedule (Section III-2) as requiring Site Plan Review.
  
- d) Procedures. An applicant for Site Plan Review shall file a completed application with the Town Clerk. The Town Clerk shall acknowledge receipt of the plans by signing and dating the application form. The application submitted to the Town Clerk shall include seven (7) copies each of an application form, Site Plan and any narrative documents as outlined in the submittal requirements. Upon receipt of the application, the Town Clerk shall transmit copies of the application to the Planning Board, Zoning Board of Appeals, Conservation Commission, the Board of Health, the Building Inspector, the Highway Superintendent, the Fire Chief and the Police Chief. In addition, the Town Clerk will notify the Historical Commission and Open Space Committee that a copy of the application is available for review at Town Hall. These Town Boards and municipal officials shall have 45 days from the date the completed application is received by the Town Clerk to report to the Planning Board their findings and recommendations, and they can attend the public hearing(s). No building permits for projects requiring Site Plan Review shall be issued until the Planning Board has approved the Site Plan or unless the required time period for

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taking action on a Site Plan has lapsed without action from the Planning Board. The applicant is also responsible for obtaining all applicable permits or approvals that may be required for the proposed development from other Town Boards or municipal officials.

- e) Public Hearing. The Planning Board shall hold a public hearing within 65 days after the filing of an application and shall take final action on an application for Site Plan Review approval within 90 days of the close of the public hearing. Notice and posting of the public hearing shall comply with the provisions of M.G.L. Chapter 40A, Section 11, regarding notice for public hearings. To the extent permitted by law, the public hearing should be coordinated with any other public hearing required for a definitive subdivision plan or a Special Permit.
  
- f) Required Contents of a Site Plan. All Site Plans shall be prepared by a registered architect, registered land surveyor, registered landscape architect, or professional engineer. A locus map at a scale of 1" = 100 feet shall be provided showing parcels and roads within 300 feet of the property line. The Site Plans shall be on standard sheets of 24 inches by 36 inches and prepared at a scale of 1"=40 feet or finer. The Site Plan and accompanying narrative shall contain the following:
  - 1. Name of project, boundaries, locus map(s) showing site's location in Town, date, north arrow and scale of plan;
  - 2. Name(s) and address(es) of the owner(s) of the land, the developer (if applicable), and/or their designee;
  - 3. Name, title, and address of person(s) who prepared the plan;
  - 4. Names and addresses of all owners of record of abutting lots and those within 300 feet of the property line;
  - 5. All existing lot lines, easements and rights of way;
  - 6. Location and use of buildings and structures within 300 feet of the site;
  - 7. Location and use of all existing and proposed buildings and structures, including approximate height and floor area;
  - 8. Location and size in acres of wetlands on the site reviewed and approved by the Colrain Conservation Commission;
  - 9. The location and a description of all proposed septic systems, sewer connections, water supplies, storm drainage systems, utilities and other waste-disposal methods;
  - 10. Location and date of all registered "perc" tests on the site;
  - 11. Location of all proposed new lot lines;
  - 12. Existing and proposed topography at a two-foot contour interval for the proposed grading and landscape plan;
  - 13. Location of proposed public and private ways on the site;
  - 14. Location and size of proposed parking and loading areas, driveways, walkways, access and egress points;
  - 15. The location and a description of proposed open space or recreation areas;
  - 16. Size and location of existing and proposed sign(s);
  - 17. Surface drainage strategy that prevents increased drainage off-site or pollution;
  - 18. Existing vegetation that will be left undisturbed and proposed landscape features, including the location and a description of screening, fencing and plantings using non-invasive species;
  - 19. Design features which will integrate the proposed development into the existing landscape, maintain neighborhood character, and screen objectionable features from neighbors and roadways;
  - 20. Estimated average daily and peak-hour vehicle trips to be generated by the site and traffic flow patterns for both vehicles and pedestrians, showing adequate access to and from the site and adequate circulation within the site.

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g) Decision. The Planning Board's action shall consist of either:

1. Approval of the Site Plan based upon the determination that the proposed project is in compliance and consistent with the criteria set forth in this Bylaw;
2. Approval of the Site Plan subject to conditions, modifications, and restrictions as the Planning Board may deem necessary; or
3. Denial of the Site Plan based upon specific findings such as a determination that there was insufficient information submitted with the proposal to adequately review it or that the project is inconsistent with the requirements of these Zoning Bylaws.

The decision of the Planning Board shall be filed with the Town Clerk within 90 days of the close of the Public Hearing and the written record of the decision including any approved Site Plan shall be filed with the Town Clerk within 14 days of the final vote or sooner to meet the 90 day maximum time frame. A copy of any approved Site Plan and the decision of the Planning Board shall be sent by the Town Clerk to the Building Inspector and to the Registry of Deeds, where applicable.

h) Administration and Waivers. The Planning Board may adopt and from time to time amend regulations for the submission and approval of Site Plans. The Planning Board may waive any of the requirements for Site Plan submittal and approval if the simplicity or scale of the project warrants such action. The Planning Board may also request any additional information it should need to render a decision. For large or complex projects, the Planning Board shall have the right to retain a registered professional engineer, planner, designer or other professional to advise the Board regarding any or all aspects of the Site Plan. The applicant shall be responsible for the costs of such advice.

i) Compliance with Other Bylaws. The Site Plan shall comply with any zoning bylaws for parking, loading, dimensions, environmental controls and all other provisions of the Zoning Bylaw. Before approval of a Site Plan, the Planning Board may request that the applicant make modifications in the proposed design of the project to ensure that the above criteria are met.

j) Review Criteria

The Planning Board's evaluation of the proposed Site Plan shall include, as appropriate, the following:

1. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.
2. Adequacy and arrangement of pedestrian traffic access and circulation, pedestrian walkways, control of intersections with vehicular traffic and overall pedestrian safety and convenience.
3. Location, arrangement, appearance and sufficiency of off-street parking and loading.

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4. Location, arrangement, size, design and general site compatibility of buildings, lighting and signs in relation to the terrain and to the use, scale, and proportions of existing and proposed buildings in the vicinity.
  5. Selection and location of lighting fixtures so that they are pedestrian in scale, prevent light pollution of the night sky, and do not produce illumination beyond the property boundaries. Full cut-off down lighting fixtures that do not project light above the horizontal plane shall be used in all instances.
  6. Location of buildings to provide a solar and wind orientation which encourages energy conservation, if appropriate.
  7. Adequacy of landscaping to provide a visual buffer from abutting properties, to provide shade to improve energy efficiency during the summer months, and to improve the visual appearance of parking areas and the site in general.
  8. Findings of the Zoning Board of Appeals relative to whether approval of a proposed site plan, with or without conditions, modifications, or restrictions, would be contrary to the protection of the environmental or scenic characteristics of the neighborhood or the Town, or the avoidance of conditions likely to create a nuisance affecting abutting properties.
- k) Appeal. An appeal of a Site Plan Review Decision by the Planning Board shall be filed in a court of competent jurisdiction in accordance with M.G.L. Chapter 40A, Section 17.

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#### **Section XIV TEMPORARY MORATORIUM ON THE CONSTRUCTION OF LARGE SCALE WIND ENERGY SYSTEMS**

- a) Purpose. For the past year, the Town of Colrain has been working on developing a bylaw to address the construction of large scale wind energy systems, however, due to the complex nature of such a bylaw, new information about large scale wind energy systems, and the need for professional assistance, the Town needs more time to work on the bylaw. Thus, it is necessary to establish a temporary 12 month moratorium on the use of land and the construction of structures related to such large scale wind systems and the issuance of building permits in connection with the same.
- b) Temporary Moratorium. Notwithstanding any other provision in the Town of Colrain Zoning Bylaw to the contrary, no building permit may be issued for the construction of any large scale large wind energy system of more than 35 kilowatts, until May 6, 2015. The purpose of this temporary moratorium is to allow sufficient time to continue a planning process to address the effects of such structures and uses in the Town and to enact bylaws in a manner consistent with sound land use planning goals and objectives.
- c) The temporary moratorium for twelve (12) months from May 6, 2014 to May 6, 2015 is in order to complete the Large Scale Wind Energy System by-law.

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SECTION XV: LARGE-SCALE GROUND-MOUNTED SOLAR-PHOTOVOLTAIC SYSTEM BYLAW

XV-1 Purpose

The purpose of this bylaw is to regulate the creation of Large-Scale Ground-Mounted Solar-Photovoltaic Systems by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such Solar-Photovoltaic Systems that address public safety; minimize impacts on scenic, natural, and historic resources; and provide adequate financial assurance for the eventual decommissioning of such Solar-Photovoltaic Systems.

a) Applicability. This section applies to Large-Scale Ground-Mounted Solar-Photovoltaic Systems proposed to be constructed after the effective date of this section. This section also pertains to physical modifications that materially alter the type, configuration, or size of Solar-Photovoltaic Systems and/or related equipment.

- 1) The provisions set forth in this section shall apply to the construction, operation, and/or repair of Large-Scale Ground-Mounted Solar-Photovoltaic Systems occupying a footprint greater than 0.25 acres.
- 2) Smaller scale ground-mounted solar-photovoltaic systems (occupying a footprint less than or equal to 0.25 acres) and building-mounted solar-photovoltaic systems do not need to comply with this section, but shall require a building permit and must comply with all other applicable local, state, and federal requirements.

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XV-2 General Requirements for Large-Scale Ground-Mounted Solar-Photovoltaic Systems

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a) Compliance with Laws, Ordinances and Regulations. The construction and operation of all Solar-Photovoltaic Systems shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a Solar-Photovoltaic System shall be constructed in accordance with the State Building Code and other applicable local, state and federal requirements.

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b) Building Permit. No Solar-Photovoltaic System shall be constructed, installed or modified as provided in this section without first obtaining a Building Permit including payment of the required fee.

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c) Fees. The application for a Site Plan approval and/or for a Special Permit for a Solar-Photovoltaic System shall be accompanied by the appropriate fees for each review or permit, as specified in the Rules and Regulations of the Planning Board and the Zoning Board of Appeals, respectively.

XV-3 Site Plan Review Requirements

All Large-Scale Ground-Mounted Solar-Photovoltaic Systems with a footprint greater than 0.25 acres shall undergo Site Plan Review by the Planning Board pursuant to Section XIII, Development Site Plan Review, prior to construction, installation or modification, and shall also comply with the additional provisions of this section.

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a) Required Information. Pursuant to the Site Plan Review process, the solar-photovoltaic system project proponent shall provide the following information:

- 1) Name, title, address, contact information and signature of any agents representing the project proponent;

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- 2) Name, title, address, contact information and credentials for proposed Solar-Photovoltaic System installer(s);
- 3) Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);
- 4) Locations of any Priority Habitat Areas defined by the Natural Heritage & Endangered Species Program (NHESP) on or near the project site;
- 5) Locations of floodplains and inundation areas for moderate or high-hazard dams that would impact the project site;
- 6) Locations of local or National Historic Districts. The owner shall obtain written local or national historical or archeological district verification from the Town Clerk as to whether or not the project is sited within such a district, then at the time of site plan submission to the Town Clerk, the owner must also complete a Project Notification Form (obtain from: <http://www.sec.state.ma.us/mhc/>) accompanied by standard documents, e.g., USGS locus map, scaled project plans showing existing and proposed conditions, and current photographs keyed to the plan);
- 7) Proof of liability insurance. The owner or operator shall provide a certificate of insurance showing that the project has sufficient liability coverage pursuant to industry standards, including coverage without limitation during construction, operation, and maintenance and possible damage outside of the Solar-Photovoltaic System area;
- 8) Utility Notification. No Large-Scale Ground-Mounted Solar-Photovoltaic System shall be constructed until evidence has been provided that the utility company that operates the electrical grid where the Solar-Photovoltaic System is to be located has been informed of the Solar-Photovoltaic System owner's or operator's intent to install a grid-connected generator facility;
- 9) Blueprints or drawings of the Solar-Photovoltaic System signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures as well as the location and size of proposed parking and driveways, walkways, access and egress points;
- 10) Documentation of the major system components to be used, including the electric generating components, transmission systems, mounting system, inverter;
- 11) The project proponent shall submit documentation of actual or prospective authority to access and control the project site sufficient to allow for construction, operation, and maintenance of the proposed Solar-Photovoltaic System;
- 12) A list of any hazardous materials proposed to be located on the site in excess of household quantities and a plan to prevent their release to the environment;
- 13) A copy of an Interconnection Application filed with the utility including a one- or three-line electrical diagram detailing the Solar-Photovoltaic System, associated components, and electrical interconnection methods, with all Massachusetts Electrical Code compliant disconnects and overcurrent devices;
- 14) A plan for the operation and maintenance of the Solar-Photovoltaic System, which shall include measures for maintaining safe access to the Solar-Photovoltaic System, storm water and vegetation controls, as well as general procedures for operation and maintenance of the Solar-Photovoltaic System.

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b) Project Design

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- 1) Setbacks: All Large-Scale Ground-Mounted Solar-Photovoltaic Systems shall have front, side, and rear yard setbacks of at least 50 feet. Acreage thresholds apply in the aggregate to new facilities and expansion of existing facilities. For expansions, the acreage of the existing facility would be added to those of the proposed expansion to

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determine the overall size and generating capacity. Required setback areas shall not be counted toward a facility's total acreage.

- 2) Appurtenant Structures. All appurtenant structures to Solar-Photovoltaic Systems shall be subject to current zoning regulations concerning the bulk and height of structures, lot area, setbacks, and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.
- 3) Lighting. Lighting of Solar-Photovoltaic Systems shall be consistent with Town, state and federal law. Lighting of other parts of the Solar-Photovoltaic System, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the Solar-Photovoltaic System shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.
- 4) Signage. Signs on photovoltaic Solar-Photovoltaic Systems shall comply with the Town's sign regulations in Section IV. A sign consistent with the sign bylaw shall be required to identify the owner and provide a 24-hour emergency contact phone number. Solar-Photovoltaic Systems shall not be used for displaying any advertising except for reasonable identification of the manufacturer.

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#### XV-4 Special Permit Requirements

Large-Scale Ground-Mounted Solar-Photovoltaic Systems with a footprint greater than 1.0 acres shall also require a Special Permit from the Zoning Board of Appeals pursuant to the provisions of Section XII, Special Permits, and shall comply with the additional provisions of this section.

- a) Administration and Waivers. The Special Permit-Granting Authority may waive any of the requirements for a Special Permit submittal and approval if the project warrants such action. It may also request any additional information it shall need to render a decision. The Special Permit-Granting Authority shall have the right to retain a registered professional engineer, planner, designer or other professional to advise the Board regarding any or all aspects of the Special Permit submittal. The applicant shall be responsible for the costs of such advice.
- b) Application Process. An applicant for a Special Permit shall file a completed application with the Town Clerk. The Town Clerk shall acknowledge receipt of the plans by signing and dating the application form. The application submitted to the Town Clerk shall include seven (7) copies each of an application form, Site Plan and any narrative documents as outlined in the submittal requirements. Upon receipt of the application, the Town Clerk shall transmit copies of the application to the Special Permit-Granting Authority, Conservation Commission, the Board of Health, the Building Inspector, the Highway Superintendent, the Fire Chief and the Police Chief. In addition, the Town Clerk will notify the Historical Commission and Open Space Committee that a copy of the application is available for review at Town Hall. These Town Boards and municipal officials shall have 45 days from the date the completed application is received by the Town Clerk to report to the Special Permit-Granting Authority their findings and recommendations, and they can attend the public hearing(s). No Special Permit for Large-Scale Ground-Mounted Solar-Photovoltaic Systems shall be issued until the Planning Board has approved the Site Plan or unless the required time period for taking action on a Site Plan has lapsed without action from the Planning Board. The applicant is also responsible for obtaining all applicable permits or approvals that may be required for the proposed development from other Town Boards or municipal officials.
- c) Public Hearing. The Special Permit-Granting Authority shall hold a public hearing within 65 days after the filing of an application and shall take final action on an application for a Special Permit within 90 days of the close of the public hearing. Notice and posting of the public hearing shall comply with the provisions of M.G.L. Chapter 40A, Section 11, regarding notice for public

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hearings. To the extent permitted by law, the Special Permit public hearing shall be coordinated with the public hearing required for Site Plan Review.

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XV-5 Environmental and Safety Standards

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a) Screening. Design features which will integrate the proposed development into the existing landscape, maintain neighborhood character, and screen objectionable features from neighbors and roadways; Solar-Photovoltaic Systems and any appurtenant structures shall be screened from view by a minimum fifteen (15) foot wide staggered and group planted shrubs and small trees. Such plantings shall use a mix of deciduous and evergreen species and may be located within the setback area. Said vegetative screening shall reach a mature form to effectively screen the Solar-Photovoltaic System within five years of Solar-Photovoltaic System. Planting of the vegetative screen shall be completed prior to final approval of the electric Solar-Photovoltaic System by the Building Inspector. The facility shall be designed to minimize impacts to agricultural and environmentally sensitive land and to be compatible with continued agricultural use of the land whenever possible. The use of exotic plants, by the most recent copy of the "Massachusetts Prohibited Plant List" Department of Agricultural Resources, is prohibited. Siting shall be such that the view of the solar electric generating Solar-Photovoltaic System from other areas of Town shall be as minimal as possible.

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b) Vegetation Control. Herbicides shall only be applied by properly licensed personnel, as enforced by the Department of Agricultural Resources. Mowing, grazing or using geotextile materials underneath the solar arrays are possible alternatives.

c) Noise. Noise generated by Solar-Photovoltaic Systems and machinery shall conform to applicable state and local noise regulations, including DEP's Division of Air Quality noise regulations, 310 CMR 7.10. Sound or noise levels may not exceed 50 dBA, at the boundary of the property. A source of sound will be considered in violation of said regulations if the source:

- 1) increases the broadband sound level by more than 10 dBA above ambient;
- 2) produces a "pure tone" condition, when an octave band center frequency sound pressure level exceeds the two (2) adjacent center frequency sound pressure levels by three (3) decibels or more.

Said criteria are measured both at the property line and at the nearest inhabited residence. "Ambient" is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment hours, unless established by other means with the consent of the DEP.

d) Access Roads. Access roads shall be constructed to minimize impact to environmental or historic resources.

e) Emergency Services. The Solar-Photovoltaic Systems owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the Solar-Photovoltaic System shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the Solar-Photovoltaic System.

f) Solar-Photovoltaic System Maintenance. The owner or operator shall maintain the Solar-Photovoltaic System in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the Solar-Photovoltaic System and any access road(s).

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g) Modifications. All material modifications to a Solar-Photovoltaic System made after issuance of the required building permit shall require approval by the Planning Board and the Special Permit-Granting Authority, where applicable.

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XV-6 Abandonment or Decommissioning

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a) Removal Requirements. Any Solar-Photovoltaic System that has reached the end of its useful life or has been abandoned shall be removed. The owner or operator shall physically remove the Solar-Photovoltaic System no more than 150 days after the date abandonment or the end of its useful life. The owner or operator shall notify the Planning Board and Special Permit Granting Authority (where applicable) by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- 1) Physical removal of all Solar-Photovoltaic Systems, structures, equipment, security barriers, transmission lines, and other components from the site.
- 2) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- 3) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board and the Special Permit Granting Authority (where applicable) may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

b) Abandonment. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the Solar-Photovoltaic System shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board and Special Permit Granting Authority (where applicable) . If the owner or operator of the Solar-Photovoltaic System fails to remove the Solar-Photovoltaic System in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Town may seek a court order to enter the property and physically remove the Solar-Photovoltaic System.

c) Financial Surety. Proponents of projects shall provide a form of surety issued by an entity with sufficient financial strength, either through escrow account, bond or otherwise, to cover the cost of removal in the event the Town must remove the Solar-Photovoltaic System and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board and the Special Permit Granting Authority (where applicable), but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein. Such surety will not be required for municipally- or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

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**SECTION XVI: TEMPORARY MORATORIUM ON MEDICAL MARIJUANA BYLAW**

(a) Purpose: By vote at the State election on November 6, 2012, the voters of the Commonwealth approved a law regulating the cultivation, distribution, possession and use of marijuana for medical purposes. The law provides that it is effective on January 1, 2013 and the State Department of Public Health is required to issue regulations regarding implementation within 120 days of the law's effective date. Currently under the Zoning Bylaw, a Medical Marijuana Treatment Center is not a permitted use in the Town [as applicable] and any regulations promulgated by the State Department of Public Health are expected to provide guidance to the Town in regulating medical marijuana, including Medical Marijuana Treatment Centers. The regulation of medical marijuana

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raises novel and complex legal, planning, and public safety issues and the Town needs time to study and consider the regulation of Medical Marijuana Treatment Centers and address such novel and complex issues, as well as to address the potential impact of the State regulations on local zoning and to undertake a planning process to consider amending the Zoning Bylaw regarding regulation of medical marijuana treatment centers and other uses related to the regulation of medical marijuana. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Medical Marijuana Treatment Centers so as to allow the Town sufficient time to engage in a planning process to address the effects of such structures and uses in the Town and to enact bylaws in a manner consistent with sound land use planning goals and objectives.

(b) Definition

"Medical Marijuana Treatment Center" shall mean a "not-for-profit entity, as defined by Massachusetts law only, registered by the Department of Public Health, that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers."

(c) Temporary Moratorium

For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for a Medical Marijuana Treatment Center. The moratorium shall be in effect from May 6, 2014 through May 6, 2015. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of medical marijuana in the Town, consider the Department of Public Health regulations Regarding Medical Marijuana Treatment Facilities and related uses, and shall consider adopting new Zoning Bylaws to address the impact and operation of Medical Marijuana Treatment Centers and related uses. Or take any action relative thereto.

## SECTION XVII: COMMERCIAL CAMPGROUNDS

(a) Purpose: to provide clarity for the land use and definition of "camper" and "commercial campgrounds" and to provide a framework for the development of a commercial campground

(b) Definitions:

Camper: A vehicular type portable structure without permanent foundation, which can be towed, hauled or driven and primarily designed as temporary living accommodation for recreational, camping and travel use and including but not limited to travel trailers, truck campers, camping trailers and self-propelled mobile homes. Note: This definition also includes the definition of a recreational vehicle.

Campground: Premises used for any type of camper or tenting or for temporary overnight facilities of any kind.

Commercial campgrounds are allowed only by Special Permit from the Zoning Board of Appeals and following approval from the Board of Health, and shall conform to the following minimum requirements;

- (a) A campground parcel must have a minimum area of 30 acres
- (b) The campground shall be used for part-time occupancy for no more than ninety days
- (c) A maximum of thirty (30) camper or tent sites shall be allowed per campground
- (d) Campgrounds shall not be placed within 150 feet of a road or a lot line.

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