

TOWN OF ERVING

ZONING BYLAW

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SECTION 1 - PURPOSE AND ADMINISTRATION

1.1 Purpose

The purposes of this Bylaw are: to plan for the orderly growth of the Town of Erving; to promote the prosperity and well being of its inhabitants while retaining the rural character of the Town; to conserve the value of land and buildings and prevent blight; to protect natural resources and prevent pollution of the environment; to encourage the appropriate use of land throughout the Town; to protect public health and safety; to prevent overcrowding and undue concentration of population while providing housing guidelines appropriate for residents of all income levels; to support the development of adequate municipal services consistent with managed growth of the Town; to maintain the scenic characteristics of the area as an attraction for recreational and tourist activities; and to preserve historical and other cultural resources, in accordance with the provisions of M.G.L. Chapter 40A, and Article 89 of the Amendments to the Massachusetts Constitution.

1.2 Enforcement

The Building Inspector shall administer and enforce this Zoning Bylaw. Buildings or structures may be constructed, altered, or changed in use only upon certification by the Building Inspector that such action is in compliance with the then applicable Bylaw and that all necessary local permits have been received.

1.3 Penalty

Any person violating any of the provisions of this Bylaw may be fined Three Hundred Dollars (\$300) for each offense. Each day that such violation continues shall constitute a separate offense.

1.4 Filing Fees and Hiring of Outside Consultants

1.4.1 Filing Fees

Any application for a Special Permit, variance, and/or appeal for a commercial project (non-residential) shall be accompanied by a filing fee of \$500.00; for a residential project the filing fee shall be \$300.00, plus any additional expenses as specified in this Bylaw.

1.4.2 Hiring of Outside Consultants

- A. Purpose. As provided by G.L. Ch. 44 §53G, the Erving Planning Board may impose reasonable fees for the employment of outside consultants, engaged by the Planning Board, for specific expert services. Such services shall be deemed necessary by the Planning Board to come to a final decision on an application submitted to the Planning Board pursuant to the requirement of: Town of Erving Subdivision Regulations, as they may be amended or enacted from time to time. The Planning Board may also impose fees for other consultant services, related to application review, or permit conditioning or monitoring, under any of the above-referenced laws or regulations.

- B. **Special Account.** Funds received pursuant to these rules shall be deposited with the town treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Planning Board without further appropriation as provided in G.L. Ch. 44 §53G. Expenditures from this account shall be made only in connection with a specific project or projects for which a consultant fee has been collected from the applicant. Expenditures of accrued interest may also be made for these purposes.
- C. **Consultant Services.** In hiring outside consultants, the Planning Board may engage engineers, planners, lawyers, designers, or other appropriate professionals able to assist the Planning Board and to ensure compliance with all relevant laws, ordinances, bylaws and regulations. Specific consultant services may include but are not limited to analysis of applications, title searches, mapping of lot and/or municipal boundaries and/or right of way, and environmental or land use law. Services may also include on-site monitoring during construction, or other services related to the project deemed necessary by the Planning Board. The consultant shall be chosen by, and report only to, the Planning Board and/or its administrator.

1.5 Zoning Board of Appeals (ZBA)

There is hereby established a Zoning Board of Appeals of three members, to be appointed by the Selectmen, each member to be appointed for a term of three years, terms to be so arranged that the term of one member expires each year. The Selectmen shall appoint two associate members so that the Chairman of the ZBA may designate any such associate member to sit on the board in case of absence, inability to act, or conflict of interest on the part of any member thereof, or in the event of a vacancy on the board.

1.6 Special Permit Granting Authority

Except as otherwise noted in this Zoning Bylaw, the Special Permit Granting Authority (SPGA) shall be the Planning Board. Special Permits shall be granted only for proposals in compliance with the provisions of this Bylaw, and with M.G.L. Chapter 40A, and upon written determination by the Planning Board that the proposal will not have adverse effects which overbalance its beneficial effects on the Town, as measured by the purposes of the Bylaw. In acting on Special Permits, the Planning Board shall consider the Special Permit Criteria listed in Section 6.

1.7 Validity

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

1.8 Applicability

Where the application of this Bylaw imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this Bylaw shall control.

1.9 Amendments

This Bylaw may be amended from time to time in the manner described in M.G.L., Chapter 40A.

SECTION 2 - GENERAL REGULATIONS

The following regulations shall apply throughout the Town of Erving and to all land uses, unless otherwise specified herein.

2.1 Pre-existing Uses, Structures, and Lots

2.1.1 Continuation and Restoration

Any use or building, whether conforming to this Bylaw or not, may be continued if that use or building was lawfully existing at the time that it became nonconforming, and may be restored if destroyed by fire or other accidental or natural cause. However, if such use is discontinued or abandoned for more than 24 months, subsequent use shall comply with this Bylaw.

2.1.2 Alteration or Expansion

- A. Nonconforming buildings or nonconforming uses of buildings or land may be expanded only if granted a Special Permit by the Zoning Board of Appeals (ZBA), upon the ZBA's determination that the expansion will not be substantially more detrimental to the neighborhood than the existing nonconforming use or building based on the criteria established in Section 6.1.9. A nonconforming single or two-family dwelling or accessory structure may be altered, reconstructed, or otherwise structurally changed provided that it does not increase the nonconforming nature of the structure.
- B. Pursuant to Section 1.2 and this Section 2.1.2, the Building Inspector may permit the repair, alteration, reconstruction, extension or structural change of a lawful, dimensionally nonconforming single family or two family dwelling or, a portion thereof, or accessory structures thereto, provided the proposed change does not constitute a change of use under this Bylaw, and one of the following conditions is met:
 - 1. In the case of a building nonconforming solely because of insufficient lot frontage or lot area, or both, the proposed change shall meet all dimensional requirements for front, side and rear yards, lot coverage, and maximum height.
 - 2. In the case of a dimensionally nonconforming building with sufficient lot frontage and lot area, where said building, or a portion thereof, is nonconforming, as to one of the following dimensional requirements: front, side or rear yard, lot coverage, or maximum height; provided that all other dimensional requirements met by the building prior to the proposed change shall be met after completion of the proposed change.

2.1.3 Nonconforming Lots

Requirements for lot size, frontage, and front, side, and rear yards shall not apply to a lot for a single-family or two-family residential use which at the time of recording or endorsement, whichever occurs

sooner, was not held in common ownership with other adjoining land, conformed to the then existing requirements, and had less than the requirements of this Bylaw but at least five thousand (5,000) square feet of area and fifty (50) feet of frontage.

For Common Lot exemptions for Single and Two Family Use see M.G.L. Chapter 40 Section 6.

2.1.4 Conformance

Construction or operations under a Building or Special Permit shall conform to any subsequent amendment of this Bylaw unless the use or construction is commenced within a period of six months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

2.2 Environmental Controls

2.2.1 Erosion Control

The Planning Board or the Zoning Board of Appeals may require, for any proposed development requiring a Special Permit or variance, that the site design, building design, or construction process be modified so as to protect soil from erosion or excessive uncontrolled surface water runoff. No grading or construction shall take place on slopes in excess of 25% except under Special Permit from the Planning Board, which shall be granted only upon demonstration that adequate provisions have been made to protect against erosion, soil instability, uncontrolled surface water runoff, or other environmental degradation. To ensure compliance with these requirements, the Planning Board may require topographic data at the developer's expense prior to acting upon an application for a Special Permit.

2.2.2 Screening

Open storage and loading or service areas shall be screened from any adjacent residence or public way by plantings. Junk, trash, or debris shall be confined out of sight.

2.2.3 Hazard

No use shall be allowed which would create hazard due to explosion, fire, or other causes. Potentially hazardous conditions shall be fenced, covered, or otherwise rendered safe.

2.2.4 Flooding

The floodway, as shown on the FIRM map for the Town of Erving, for any stream or river shall not be reduced by filling.

2.2.5 Disturbances

No use shall be allowed if it will cause sound or noise in excess of 50 dBA, or vibration, odor, or flashing, more than twenty (20) feet from the boundaries of the originating premises, except for warning devices, construction work, maintenance, or other special circumstances. Normal farming practices are exempt from the noise and odor requirements of this provision.

2.2.6 Removal of Natural Materials

The removal of sod, earth, mineral aggregates, stone or rock from a parcel of land hereafter shall require a Special Permit except where it is incidental to the construction of an approved building or is a routine part of normal farming or house maintenance operations.

2.2.7 Hillside Areas

Hillside areas shall be retained with vegetative cover as follows:

Average Slope (by %)	Minimum % of the slope that must remain covered with vegetation
10.0-14.9	25
15.0-19.9	40
20.0-24.9	55
25.0-29.9	70
30+	85

2.2.8 Stormwater Management

All development shall comply with the stormwater management regulations promulgated by the Massachusetts Department of Environmental Protection and the U.S. Environmental Protection Agency and other reasonable requirements established by the Planning Board, Highway Superintendent, or Town Engineer.

SECTION 3 - DISTRICTS

3.1 Establishment of Districts

The entire Town of Erving is hereby divided into the following types of districts:

Central Village (CV)
Village Residential (VR)
Rural Residential (RR)
French King Commercial District (C)

3.2 Overlay Districts

Two overlay districts are hereby created entitled the Aquifer Protection Overlay District and the Wireless Communication Facilities Overlay District.

3.3 Location of Districts

The boundaries of the said districts are hereby established as defined in this section, and as depicted on the map entitled "Official Zoning Map, Erving, Massachusetts" Dated June 6, 2005. The Zoning Map, with all explanations thereon, is hereby made a part of this Bylaw.

3.4 Boundaries of Districts

3.4.1 Boundary Lines Based on Roads

Boundary lines located outside of public and private ways and shown approximately parallel to their rights of way shall be regarded as parallel to them, with distances separating them being measured at right angles to the public or private way unless otherwise indicated.

3.4.2 Boundary Lines Based on Zoning Map

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 Zoning Map, by the use of identifications as shown on the Zoning Map, or by the scale of the Zoning Map.

3.4.3 Boundary Lines Dividing a Lot

Where a district boundary line (other than for an overlay district) divides any lot existing at the time such line is adopted, the following conditions shall apply:

- A. If the Lot has frontage within only one district, the requirements of that district shall govern the entire lot.
- B. If the lot has frontage within two or more districts, the owner may either:
 1. Follow the requirements of the more restrictive district in the entire lot, or

2. Follow the requirements of the less restrictive district into the more restrictive district for a distance no greater than thirty (30) feet.

3.4.4 Contour Lines as Boundary Lines

Where boundary lines are contour lines they are of indicated elevation above the datum mean sea level of the U.S. Geological Survey.

3.4.5 Changing Zoning Map

Any change of the Zoning Map shall constitute an amendment to this Bylaw and the procedure for making such a change shall conform to the requirements for amending this Bylaw.

SECTION 4 - USE REGULATIONS

4.1 General Regulations

No building or structure shall be constructed, and no building, structure or land, or plan thereof shall be used for any purpose or in any manner other than for one or more uses hereinafter set forth as permissible. Any uses not listed in the Use Regulations Schedule, Section 4.2, shall be considered prohibited.

4.2 Use Regulations Schedule

No building, structure or land shall be erected or used except as permitted in this section and all other sections of this Zoning Bylaw. 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 Planning Board

Residential Uses	Central Village	French King Commercial District	Village Residential	Rural Residential
Single-Family Dwelling	Y	Y	Y	Y
Two-Family Dwelling	SP	Y	SP	Y
Accessory Apartment	SP	Y	SP	Y
Temporary Mobile Home (see Section 4.8)	Y	Y	Y	Y
Mobile Home & Mobile Home Parks	N	N	N	N
Bed and Breakfast, up to 6 rooms	Y	Y	Y	Y
Multi-Family Dwelling	SP	N	N	N
Agricultural & Recreational Uses	Central Village	French King Commercial District	Village Residential	Rural Residential
Farming or Forestry	Y	Y	Y	Y
Commercial Greenhouse(s) on a lot equal to or greater than 5 acres	Y	Y	Y	Y
Commercial Greenhouse(s) on a lot less than 5 acres	SP	SP	SP	SP
Commercial Recreation	SP	SP	SP	SP
Wildlife Preserve or Other Conservation Uses	Y	Y	Y	Y

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Community Services	Central Village	French King Commercial District	Village Residential	Rural Residential
Public Utility Facility not exempted from zoning regulation by M.G.L. Ch.40A	SP	SP	SP	SP
Wireless Communication Facility in the Wireless Communication Overlay District	SP	N*	N*	SP
Educational Uses exempted from zoning regulation by M.G.L. Ch.40A, Section 3	Y	Y	Y	Y
Other Educational Uses not exempted from zoning regulation by M.G.L. Ch.40A, Section 3	SP	SP	SP	SP
Church, other Religious Use	Y	Y	Y	Y
Municipal Uses not covered elsewhere	SP	SP	SP	SP
Family Day Care Home for six (6) or less children or adults	Y	Y	Y	Y
Family Day Care Home for more than six (6) children or adults	SP	SP	SP	SP
Day Care Center for children exempted from zoning regulations by M.G.L. Ch. 40A, Section 3	Y	Y	Y	Y
Nursing Home	SP	SP	SP	SP
Business Uses				
Business, Professional Offices with less than six (6) employees	Y	Y	SP	SP
Business, Professional Offices with six (6) or more employees	Y	SP	SP	SP
Banks	Y	SP	N	N
Restaurant, drive through	SP	N	N	N
Restaurant, other	Y	SP	SP	SP
Drive through - other	SP	N	N	N
Motor Vehicle Sales	SP	N	N	N
Laundry, Laundromat	SP	N	N	N
Theaters	SP	SP	N	N
Motels, Hotels	SP	SP	SP	SP
Inns	SP	SP	SP	SP
Building Materials, Sales & Storage	SP	N	N	N
Home Based Business	Y	Y	Y	Y
Retail Store(s) – Building 2,500 sq. ft. or less	Y	SP	SP	SP
Retail Store(s) – Building greater than 2,500 sq. ft. but less than 5,000 sq. ft.	Y	SP	N	N
Retail Store(s) – Building greater than 5,000 sq. ft.	SP	N	N	N
Self-Storage Facility	SP	N	N	N
Farm Stand	Y	Y	Y	Y

Business Uses (continued)	Central Village	French King Commercial District	Village Residential	Rural Residential
Other principal uses where the physical appearance, operation, parking requirements, and traffic impact resemble a use permitted (Y or SP) above, and which will not have a detrimental impact on adjacent or nearby uses	SP	SP	SP	SP
Commercial Kennels	N	SP	N	SP
Hobby Kennels	SP	Y	SP	Y
Industrial Uses				
Junk yards, dumps, and landfills	N	N	N	N
Manufacturing, Processing & Laboratories	SP	N	N	N
Freight or Transportation Facilities	SP	N	N	N
Gasoline Station, Automotive Repair Garages	SP	N	N	N
Quarrying, Gravel Mining & Earth Removal	N	N	N	N
Collection, treatment, storage, burial, incineration or disposal of radioactive waste, including but not limited to low level radioactive waste	N	N	N	N
Sawmill	N	N	SP	SP
Bulk Storage, Warehousing	SP	N	N	N

*No Wireless Communications Overlay District is located in the French King Commercial District or the Village Residential District

4.3 Groundwater Protection District

4.3.1 Purpose of District

The purpose of this Groundwater Protection District Bylaw is:

- a. to promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses of the Town of Erving;
- b. to preserve and protect existing and potential sources of drinking water supplies;
- c. to conserve the natural resources of the town; and
- d. to prevent temporary and permanent contamination of the environment.

4.3.2 Scope of Authority

The Groundwater Protection District is an overlay district superimposed on the zoning districts. This overlay district shall apply to all new construction, reconstruction, or expansion of existing buildings and new or expanded uses. Applicable activities or uses in a portion of one of the underlying zoning districts which fall within the Groundwater Protection District must additionally comply with the

requirements of this district. Uses that are prohibited in the underlying zoning districts shall not be permitted in the Groundwater Protection District.

4.3.3 Definitions

For the purposes of this section, the following words and phrases shall have the following meaning:

Aquifer: Geological formation composed of rock and sand, or gravel that contains significant amounts of potentially recoverable water.

Groundwater Protection District: The zoning district defined to overlay other zoning districts in the Town of Erving. The groundwater protection district may include specifically designated recharge areas.

Zone II: The area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at a safe yield with no precipitation), as defined in 310 Code of Massachusetts Regulations (CMR) 22.00.

Impervious Surface: Material or structure on, above, or below the ground that does not allow precipitation or surface water to penetrate directly into the soil.

Mining: The removal or relocation of geological materials such as topsoil, sand, gravel, metallic ores, or bedrock.

Recharge Areas: Areas that collect precipitation or surface water and carry it to aquifers. Recharge Areas may include areas designated as Zone I, Zone II, or Zone III.

Toxic or Hazardous Materials: Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water of the Town of Erving. Toxic or hazardous materials include, without limitation, synthetic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as Toxic or Hazardous under Massachusetts General Laws (MGL) Chapter 21C and 21E and 310 CMR 30.00, and also includes such products as solvents and thinners in quantities greater than normal household use.

4.3.4 Establishment and Delineation of Groundwater Protection District

For the purpose of this district, there are hereby established within the town certain groundwater protection areas consisting of aquifers or Zone II recharge areas identified by Tighe & Bond as part of their Source Water Assessment Program Conceptual Zone II Delineation report prepared for the Massachusetts DEP, September 1999. This map is entitled "Figure 2 – Zone II Delineation, Erving Well #1, Erving Water Department, Erving, Massachusetts" at a scale of 1:25,000. This map is hereby made a part of the town zoning bylaw and is on file in the Office of the Town Clerk and areas that are shown as Zone II recharge areas are the Groundwater Protection District.

4.3.5 District Boundary Disputes

If the location of the District boundary in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a Special Permit application to the Special Permit Granting Authority (SPGA). Any application for a special permit for this purpose shall be accompanied by adequate documentation.

4.3.6 Use Regulations

In the Groundwater Protection District the following regulations shall apply:

A. Permitted Uses

The following uses are permitted within the Groundwater Protection District, provided that all necessary permits, orders, or approvals required by local, state or federal law are also obtained:

1. conservation of soil, water, plants and wildlife;
2. outdoor recreation, nature study, boating, fishing, and hunting where otherwise legally permitted;
3. foot, bicycle and/or horse paths, and bridges;
4. normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply and conservation devices;
5. maintenance, repair, and enlargement of any existing structure, subject to section 4.3.6.B (prohibited uses) and section 4.3.6.C (special permit uses);
6. residential development, subject to section 4.3.6.B (prohibited uses) and section 4.3.6.C (special permit uses);
7. farming, gardening, nursery, conservation, forestry, harvesting, and grazing, subject to section 4.3.6.B (prohibited uses) and section 4.3.6.C (special permit uses);
8. construction, maintenance, repair, and enlargement of drinking water supply related facilities such as, but not limited to, wells, pipelines, aqueducts, and tunnels.

Underground storage tanks related to a Permitted Use are categorically not permitted.

B. Prohibited Uses

The following uses are prohibited:

1. landfills and open dumps as defined in 310 CMR 19.006;
2. storage of liquid petroleum products, except the following:
 - a. normal household use, outdoor maintenance, and heating of a structure;
 - b. waste oil retention facilities required by statute, rule, or regulation;
 - c. emergency generators required by statute, rule, or regulation; or
 - d. treatment works approved under 314 CMR 5.00 for treatment of ground or surface water.provided that such storage, listed in items a. through d. above, is in free-standing containers within buildings having an impervious floor surface which will contain any spill or in above ground covered tanks with a secondary containment area adequate to contain a spill equal to 110% of the size of the container's total storage capacity;
3. landfilling of sludge or septage as defined in 310 CMR 32.05;
4. storage of sludge or septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;
5. individual sewage disposal systems that are designed in accordance with 310 CMR 15.00 to receive more than 110 gallons of sewage per quarter acre under one ownership per day, or 440 gallons of sewage on any one acre under one ownership per day, whichever is greater provided that:
 - a. the replacement or repair of a system, which will not result in an increase in design capacity, or the design capacity of 310 CMR 15.00, whichever is greater, shall be exempted; or
 - b. in cluster subdivisions the total sewage flow allowed shall be calculated based on the number of percable lots in the entire parcel.
6. storage of deicing chemicals unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
7. storage of animal manure unless covered or contained in accordance with the specifications of the United States Natural Resource Conservation Service;
8. earth removal, consisting of the removal of soil, loam, sand, gravel, or any other earth material (including mining activities) to within 6 feet of historical high groundwater as

- determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, except for excavations for building foundations, roads, or utility works;
9. facilities that generate, treat, store, or dispose of hazardous waste subject to MGL 21C and 310 CMR 30.000, except the following:
 - a. very small quantity generators as defined under 310 CMR 30.000;
 - b. household hazardous waste centers and events under 310 CMR 30.390;
 - c. waste oil retention facilities required by MGL Chapter 21, Section 52A; and
 - d. water remediation treatment works approved by DEP for the treatment of contaminated ground or surface waters.
 10. automobile graveyards and junkyards, as defined in MGL Chapter 140B, Section 1;
 11. treatment works that are subject to 314 CMR 5.00 including privately owned sewage treatment facilities, except the following:
 - a. the replacement or repair of an existing treatment works that will not result in a design capacity greater than the existing treatment works;
 - b. the replacement of existing subsurface sewage disposal systems with wastewater treatment works that will not result in a design capacity greater than the design capacity of the existing systems;
 - c. treatment works approved by the Massachusetts Department of Environmental Protection designed for the treatment of contaminated groundwater;
 - d. sewage treatment facilities in those areas with existing water quality problems when it has been demonstrated to the Department of Environmental Protection's and the Special Permit Granting Authority's satisfaction both that these problems are attributable to current septic problems and that there will be a net improvement in water quality.
 12. storage of hazardous materials, as defined in MGL Chapter 21E, unless they are in free-standing containers within buildings having an impervious floor surface which will contain any spill or in above ground covered tanks with a secondary containment area adequate to contain a spill equal to 110% of the size of the container's total storage;
 13. industrial and commercial uses which discharge process wastewater on-site;
 14. stockpiling and disposal of snow and ice containing deicing chemicals if brought in from outside the district;
 15. storage of commercial fertilizers, as defined in MGL Chapter 128, Section 64, unless such storage is within a structure designated to prevent the generation and escape of contaminated runoff or leachate;
 16. the use of septic system cleaners which contain toxic or hazardous chemicals.
- C. Uses and Activities Requiring A Special Permit
- The following uses and activities are permitted only upon the issuance of a Special Permit by the Special Permit Granting Authority (SPGA) under such conditions as they may require:
1. enlargement or alteration of existing uses that do not conform to the Groundwater Protection District;
 2. the application of fertilizers for non-domestic or non-agricultural uses. Such applications shall be made in a manner so as to minimize adverse impacts on groundwater due to nutrient transport, deposition, and sedimentation;
 3. those activities that involve the handling of toxic or hazardous materials in underlying zoning (except as prohibited under Section 4.3.6.B). Such activities shall require a special permit to prevent contamination of groundwater;
 4. the construction of dams or other water control devices, ponds, pools, or other changes in water bodies or courses, created for swimming, fishing, or other recreational uses, agricultural uses, or drainage improvements. Such activities shall not adversely affect water quality or quantity;

5. any use that will render impervious more than 15% or 2,500 square feet of any lot, whichever is greater. A system for groundwater recharge must be provided which does not degrade groundwater quality. For non-residential uses, recharge shall be by storm water infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all non-residential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.

4.3.7 Procedures for Issuance of Special Permit

- A. The Special Permit Granting Authority (SPGA) under this bylaw shall be the Select Board. Such special permit shall be granted if the SPGA determines, in conjunction with the Board of Health, the Conservation Commission, the Department of Public Works, the Water Department and the Planning Board that the intent of this bylaw, as well as its specific criteria, are met. The SPGA shall not grant a special permit under this section unless the petitioner's application materials include, in the SPGA's opinion, sufficiently detailed, definite, and credible information to support positive findings in relation to the standards given in this section. The SPGA shall document the basis for any departures from the recommendations of the other town boards or agencies in its decision.
- B. Upon receipt of the special permit application, the SPGA shall transmit one copy to the Planning Board, Board of Health, the Conservation Commission, the Department of Public Works and the Water Department, for their written recommendations. Failure to respond within 35 days of receipt by the Board shall indicate approval or no desire to comment by said department. The applicant shall provide seven (7) copies of the application to the SPGA.
- C. The SPGA may grant the required special permit only upon finding that the proposed use meets the following standards, those specified in Section 6 of this bylaw, and any regulations or guidelines adopted by the SPGA. The proposed use must:
 1. in no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of water that is available in the Groundwater Protection District, and
 2. be designed to avoid disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.
- D. The SPGA may adopt regulations to govern design features of projects. Such regulations shall be consistent with subdivision regulations adopted by the municipality.
- E. The applicant shall file seven (7) copies of a site plan and attachments with the SPGA. The site plan shall be drawn at a proper scale as determined by the SPGA and be stamped by a professional engineer. All additional submittals shall be prepared by qualified professionals. The site plan and its attachments shall at a minimum include the following information:
 1. a complete list of chemicals, pesticides, herbicides, fertilizers, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use;
 2. for those activities using or storing such hazardous materials, a hazardous materials management plan shall be prepared and filed with the Hazardous Materials Coordinator, Fire Chief, and the Board of Health. The plan shall include:
 - a. provision to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and clean-up procedures;
 - b. provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces;

- c. evidence of compliance with the Massachusetts Hazardous Waste Management Act 310 CMR 30, including obtaining an EPA identification number from the Massachusetts Department of Environmental Protection.
- 3. proposed down-gradient location(s) for groundwater monitoring well(s), should the SPGA deem the activity a potential groundwater threat.
- F. The SPGA shall hold a hearing, in conformity with the provision of MGL Chapter 40A, Section 9, within 65 days after the filing of the application with the Town Clerk. Notice of the public hearing shall be given by publication and posting and by first-class mailings to “parties of interest” as defined in MGL Chapter 40A, Section 11. The decision of the SPGA and any extension, modifications, or renewal thereof shall be filed with the SPGA and Town Clerk within 90 days following the closing of the public hearing. Failure of the SPGA to act within 90 days shall be deemed as a granting of the permit. However, no work shall commence until a certification is recorded as required by said Section 11.
- G. Written notice of any violations of this Bylaw shall be given by the Building Inspector to the responsible person as soon as possible after detection of a violation or a continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the requirement or restriction violated, and may also identify the actions necessary to remove or remedy the violations and preventive measures required for avoiding future violations and a schedule of compliance. A copy of such notice shall be submitted to the Board of Health, the Conservation Commission, the Department of Public Works, and the Water Department. The cost of containment, clean up, or other action of compliance shall be borne by the owner and operator of the premises. For situations that require remedial action to prevent adverse impact to the water resources within the Groundwater Protection District, the Town of Erving, Building Inspector, the Board of Health, or any of their agents may order the owner or operator of the premises to remedy the violation. If said owner and/or operator does not comply with said order, the Town of Erving, the Building Inspector, the Board of Health, or any of their agents, if authorized to enter upon such premises under the terms of the special permit or otherwise, may act to remedy the violation. The remediation cost shall be the responsibility of the owner and operator of the premises.

4.3.8 Severability

A determination that any portion or provision of this overlay protection district is invalid shall not invalidate any other portion or provision thereof, nor shall it invalidate any special permit previously issued thereunder.

4.4 Wireless Communication Overlay District

4.4.1 Purpose

The purpose of the “Wireless Communication Overlay District” is to designate areas in which wireless communication facilities may be located in order to protect Erving’s community character and minimize the harm to public health, safety, and general welfare.

4.4.2 Definitions

- A. Wireless Communication Facilities Overlay District is defined as all lands within the Town of Erving designated as the "Wireless Communications District," as depicted on the map entitled "Official Zoning" for Erving, Massachusetts.
- B. Wireless Communication Facility shall mean fixtures and/or equipment used by a public utility or a Federal Communication Commission licensed commercial entity for the transmission and reception of radio signals including:
 - 1. reception and transmission equipment and fixtures such as antennas, communication dishes, and similar devices; and
 - 2. Buildings, towers, and monopoles that are erected and used primarily to support such equipment.A Wireless Communication Facility may also include accessory mechanical, electronic, or teletronic equipment necessary to operate such a facility, provided however that the facility shall be for transmission and reception, and not a principal facility for conducting a communications business.
- C. Wireless Communication Services shall mean the provision of the following types of services:
 - 1. cellular telephone service;
 - 2. personal communications; and
 - 3. enhanced specialized mobile radio service.
- D. Wireless Communication Towers shall mean a structure (with antennas if any) designed to facilitate wireless communication services.

4.4.3 Applicability

The Wireless Communication Overlay District shall be construed as an overlay district as identified on the Official Zoning map. All requirements of the underlying districts shall remain in full force and effect, except as may be specifically superseded herein.

4.4.4 Special Permit Required

A Wireless Communication Facility may only be erected in the Wireless Communication Overlay District provided that a Special Permit is granted. The Special Permit Granting Authority shall be the Erving Planning Board. A special permit may be granted if the Special Permit Granting Authority determines that the adverse effects of the proposed facility will not outweigh its beneficial impacts on the Town or neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site, the determination shall include the following:

- A. communication needs served by the facility;
- B. traffic flow and safety, including parking, loading, and distance to occupied structures;
- C. impacts on neighborhood character, including aesthetics;
- D. impacts on the natural environment;
- E. impacts to historical and scenic areas;
- F. potential fiscal impact, including impact on Town services, tax base, and employment; and
- G. new towers or poles shall be considered only upon a finding that existing structures of facilities can not accommodate the applicant.

4.4.5 Design Guidelines and Conditions

All Special Permits for Wireless Communication Facilities shall be subject to the following conditions:

- A. To the extent possible, Wireless Communication Facilities shall be placed on existing structures, including water tanks, towers, and electrical transmission towers;
- B. To the extent possible, Wireless Communication Facilities shall be co-located to minimize the impact to the community and environment;
- C. Applicants should include a plan to accommodate foreseeable future users where technically practicable without increased impact to the community and environment;
- D. To the extent possible, the design of the Wireless Communication Facility shall minimize the visual impact on the community and environment. Color schemes shall be utilized which blend in with the landscape, including the skyline. Landscaping shall be required to screen as much of the support structure as possible;
- E. Fencing shall be required to control access to the Wireless Communication Facility, and shall be compatible with the scenic area;
- F. Wireless Communication Facilities shall be maintained in good order and repair and appearance;
- G. Wireless Communication Facilities which have not been used for their intended purpose for one year shall be dismantled and removed at the owner's expense;
- H. Any new tower or monopole shall not be erected nearer to the property line than a distance equal to the vertical height of the structure, nor shall it be allowed within 500 feet of any residential structure, or 1000 feet from any school for safety reasons;
- I. No new towers or monopoles may be erected in any scenic or historical area as identified by the Town's Open Space Plan or Master Plan;
- J. Any and all signage shall comply with the Town of Erving Zoning Bylaw, and no advertising devices shall be allowed on any Wireless Communication Facility;
- K. Lighting shall be limited to that needed for safety, emergencies, security, and/or as required by the Federal Aviation Administration;
- L. There shall be a minimum of one (1) parking space for each facility, to be used in connection with the maintenance of the site, and not to be used for the permanent storage of any vehicles or equipment;
- M. Applicant shall submit a written report inventorying existing Wireless Communication Facilities in Erving and adjacent towns and documenting why existing facilities cannot accommodate the applicant's requirements. No new facilities shall be permitted until the applicant proves, to the reasonable satisfaction of the Planning Board, that no existing facility can accommodate the applicant's requirements. New facilities will only be considered after a finding that existing facilities, or previously approved facilities cannot accommodate the proposed uses;
- N. Applications for Special Permits may be conditionally approved with conditions upon fulfillment of the requirements contained in this Bylaw. Applicants for Special Permits shall be denied if the applicant cannot fulfill the requirements of this Bylaw. The Erving Planning Board may require a financial performance guarantee to ensure any of these conditions; and
- O. Any replacement, modification, or additional user/carrier to an existing wireless communication facility shall require a separate Special Permit, subject to all of the requirements of this Bylaw.

4.4.6 Submittal Requirements

All Special Permit applications for a Wireless Communication Facility shall be made and filed in compliance with the procedural requirements of M.G.L. Chapter 40A, Sec 9. In addition, 5 copies of the following information, professionally prepared, must be submitted for an application to be considered:

- A. A locus plan at a scale of 1"=200' which shall show all property lines, the exact location of the proposed structure(s), street, topography, landscape features, all structures within 1000 feet, setback lines, and easements;
- B. A detailed site plan and elevations at a scale of 1"=10' or larger;

- C. A color photograph or rendition of the facility with its antennas and/or panels. For satellite dishes or antennas, a color photograph or rendition illustrating the dish or antenna at the proposed site, also, a prepared rendition illustrating a view of the facility from the nearest street or streets;
- D. A description of the facility including technical specifications, height, and design, a statement of capacity of the facility including the number and type panels, antennas, and transmitter and/or receivers that it can accommodate and the basis for those calculations;
- E. A certification that the proposed facility complies with, or is exempt from, all applicable federal and state requirements, including regulations administered by the Federal Aviation Administration, Federal Communication Commission, and the Massachusetts Aeronautics Commission, and the Massachusetts Department of Public Health;
- F. An estimated cost of demolition, removal, and to extent feasible, restoration of the site to its original condition, by an appropriately licensed contractor(s) independent from the owner or installer. Any estimate submitted must be valid for at least one year; and
- G. In the event the SPGA, determines that circumstances necessitate expert technical review, that expense shall be paid by the applicant.

4.4.7 Use Restrictions

- A. In no event shall any tower be located closer than 150% of the vertical height of the tallest tower from any other tower.
- B. Tower height shall not exceed 65 feet above the tree canopy. No Wireless Communication Facility shall exceed 90 feet on bare terrain in height as measured from the mean grade, out 25 feet, 4 points, 90 degrees apart, from the center point of the tower to the highest point. In an effort to encourage co-location of antennas or panels on any one facility, the height of the facility may be increased by 10 feet for each co-locator up to a maximum total of 120 feet. The tower must be structurally capable of providing space for six major co-locators on the tower. That tower plan must be stamped capable of the six co-locators by a Licensed Professional Engineer.
- C. Traffic associated with the facility shall not adversely effect abutting ways.
- D. Facilities shall be suitably screened from abutters and residential neighborhoods.
- E. An annual statement shall be provided to the Board of Selectmen and Board of Assessors with the following information:
 - 1. The name(s) and business addresses of all service companies using the facility;
 - 2. An estimate of current demolition and removal costs and, to the extent feasible, restoration of the site to original condition.
- F. Any restriction previously posed in any section of this Bylaw.

4.4.8 Non Use

All structures associated with wireless communication facilities which have not been used for their intended purpose for 1 year shall be dismantled and removed at the owner's expense. Prior to issuance of a building permit for a wireless communications tower, the applicant is required to post with the Town treasurer a bond or other form of financial security acceptable to said treasurer in an amount set by the Board of Selectmen. This amount may be adjusted annually based on estimated demolition, removal, and restoration costs. The amount shall be sufficient to cover demolition or removal costs in the event that the Building Inspector condemns the tower or parts thereof or accessory facilities and structures, or deems it was unused for 1 year. The Building Inspector shall give the applicant 45 days written notice in advance of any demolition or removal actions.

4.4.9 Exemptions

- A. Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the Federal Communication Commission shall be exempt provided that the tower is not used or licensed for any commercial purposes and that the antennae structure shall be no higher than is required to effectively accommodate amateur radio communication needs.
- B. Satellite dishes and antennas for residential use only.
- C. Commercial entities using satellite dishes or antennas for which reception signals are a free service to their customers.

4.4.10 Waivers

The Erving Planning Board may (but is not required to) waive strict compliance with the Use Restriction requirements of Section 4.4.7 of this Bylaw when, the applicant can prove, with engineering evidence, that service cannot otherwise be provided.

4.5 Parking and Loading Requirements

4.5.1. Number of Spaces

Adequate off-road parking must be provided to service all increases in parking demand created by new structures, additions or change of use. The number and location of parking spaces must conform to the standards described in Section 4.5.2, unless the Planning Board, acting as the Special Permit Granting Authority, determines that an alternate provision would be adequate for all parking needs because of special circumstances such as shared parking or uses having peak parking demands at different time.

4.5.2 Requirements

- A. Dwelling: 2 parking spaces per dwelling unit.
- B. Hotel, motel, guest house, and lodging house: 1 space per guest unit.
- C. Offices, Retail stores: 2 spaces per 180 sq. ft. of floor area, but not fewer than 2 spaces per separate enterprise.
- D. Restaurant, place of assembly: 1 space per 3 persons maximum occupancy as allowed under the State Building Code.
- E. Industrial Use: 1 space per employee per shift
- F. Required spaces must be on the same lot as the use they serve, except that spaces on a separate lot in the same ownership may be credited if not further than 350 feet from the building entrance of the activity they serve.
- G. Adequate off-road parking must be provided for commercial vehicles.

4.5.3 Parking Areas for 10 or More Vehicles

The following shall apply:

- A. Their use shall not require backing onto a public way;
- B. There shall be not more than one entrance and one exit from such lots per 300 feet of frontage. To meet this requirement, legal arrangements may be made for shared access;
- C. Such lots require screening from any abutting residential use by dense shrubs and trees or opaque fencing not inconsistent with the neighborhood character;

- D. The parking area shall be located to the side or rear of the property to the maximum extent feasible. On site parking and loading areas sufficient to accommodate employees and truck deliveries must be provided;
- E. Adequate screening of parking areas from abutting residential parcels and roadways shall be provided. A minimum five (5) foot wide buffer area shall provide adequate screening of the parking area from abutting residential uses. Such buffer area shall be planted with a combination of evergreen and deciduous shrubs that are at least five (5) feet in height. Solid wood fencing may also be used which may reduce the buffer area required;
- F. Adequate screening of refuse areas containing dumpsters or other containers shall be provided from abutting parcels and roadways. Solid wood fencing should be used unless an alternative acceptable to the Planning Board is approve;
- G. Lighting shall be pedestrian in scale with fixtures not exceeding sixteen (16) feet in height and cut-off fixtures that direct light downward should be used; and
- H. Lighting shall not produce direct illumination or glare beyond the property boundaries

4.5.4 Loading Requirements

Adequate off-road loading facilities and space must be provided to service all needs created by new construction, whether through new structures or additions to old ones, and by change of use of existing structures. Facilities shall be so sized and arranged that no trucks need back onto or off a public way, or be parked on a public way while loading, unloading, or waiting to do so.

4.6. Sign Regulations

4.6.1 Purpose.

The following sign regulations are intended to allow the identification and location of activities or premises while protecting the visual character of the town and the safety of its residents. Any exterior sign or advertising device hereafter erected or maintained shall conform to the following regulations.

4.6.2 General Restrictions.

- (1) All permanent signs erected or relocated, which are greater than 6 square feet shall require a permit issued by the Building Inspector.
- (2) No permanent exterior sign shall flash, move or display movement or generate music or an audible message.
- (3) Signs may be lighted internally or externally, but illumination of all signs shall be of a white light and shall be shielded and not be directed onto adjacent property, roadways or upward.
- (4) Signs may be illuminated only during normal business hours.
- (5) Neon signs are prohibited.
- (6) No sign shall be placed closer than 10 feet to a public right-of-way or within any side or rear yard requirement and it shall not impair pedestrian or vehicular traffic flow or sight.
- (7) Freestanding signs may be up to 15 feet in height above the ground, measured from the average ground grade on the premises to the top of the sign.

- (8) Signs attached to a building may be either flat against the wall or perpendicular to it but shall not project more than two feet above the eaves line of the building or more than three feet from the vertical plane of the wall. Signs attached to a parapet shall not project above the top of the parapet.
- (9) Double-sided signs with equal and parallel faces providing identical information on both sides shall be measured on one side only in determining square footage.
- (10) Non-accessory signs or billboards (general advertising not related to the premises) are prohibited.

4.6.3 General Sign Regulations

(1) On-premises signs.

- a. Any residential dwelling is allowed one sign for each family/household residing on the premises, indicating the name of the owner or occupant or the name of the building, or other non-commercial message. Such sign may pertain to a permitted accessory use. In special instances, the Zoning Board of Appeals may issue a special permit for a larger or second sign for a residential dwelling. In determining whether to grant an increase in signage under this subsection, the Zoning Board of Appeals shall consider the respective interests of the applicant, the adjacent property owners, and the interests of Town at large.
- b. One announcement or bulletin board up to 12 square feet is allowed for a public, educational, charitable or religious organization.
- c. Commercial and industrial uses shall be allowed two signs, one attached to the building and one freestanding. Any commercial message on such signs shall be limited to identification of the establishment and the products or services available or produced on the premises.
- d. Businesses sharing a single building are allowed one wall sign per business up to 15 square feet, and one shared freestanding sign up to 20 square feet for the entire premises bearing the name of each business located there. In special instances, the Zoning Board of Appeals may issue a Special Permit to each business for larger signs herein before specified, which have an aggregate total of not more than 30 square feet for the freestanding sign, and 20 square feet for a wall sign, upon the Board's determination that the sign will serve the informational needs of the motoring public, will not obscure the legibility of existing signs on adjacent premises, will not obstruct sight distance of traffic on the highway, employs minimum wording to enhance legibility, and is consistent with the rural character of the neighborhood and Town. The Special Permit shall specify the size and location and maximum height of the sign(s), not to exceed 20 feet in height, and impose other terms and regulations as the Zoning Board of Appeals may deem to be in the public interest.

(2) Off-premises signs

- a. Off-premise signs are signs which are not located on the property where the business/establishment is operated. Off-premise signs are prohibited in the Town of Erving, with the following exceptions:
 - 1. "Tourist Oriented Directional Signs" and associated "trailblazing signs," as defined by Mass Highway in the Rules and Standards for Tourist Oriented Directional Signing on Conventional Roads. Such signs shall conform to both Mass Highway regulations and the following local regulation.
- b. A Special Permit granted by the Zoning Board of Appeals shall be required as evidence of community approval for "trailblazing signs." Approval of a Special Permit for "trailblazing signs" shall be subject to a finding by the Zoning Board of Appeals that such signs will promote the public interest, will not endanger the public safety, and will be of such size, location and design as to not be detrimental to the neighborhood. The Zoning Board of Appeals shall have the authority to establish and amend rules and regulations pertaining to the design and placement of "trailblazing signs" within the Town of Erving. Such signs shall not exceed nine square feet in area or 10 feet in height.

4.6.4 Nonconforming Signs

(1) Continuance.

A nonconforming sign lawfully existing at the time of adoption or subsequent amendment of this Bylaw may continue although such sign does not conform to the provisions of this section, but if the business being advertised is discontinued for a period of two years or more, then the use of the sign shall not be resumed and the sign shall be removed.

(2) Maintenance.

Any lawfully existing sign may be maintained, repaired or repainted, but shall not be expanded, extended or enlarged, in dimension or use, except in conformance with the provisions of this bylaw.

(3) Replacement.

Any sign replacing a nonconforming sign shall conform to the provisions of this bylaw, and the nonconforming sign shall not thereafter be displayed. If a nonconforming sign is destroyed by vandalism, act of God or other reason beyond the control of the owner, it may be restored or replaced within two years.

4.6.5 Exempt Signs

(1) Signs exempt from this bylaw:

- a. Legal notices for identification, information, or providing direction created or required by governmental bodies.
- b. Signs directing and guiding traffic and parking, but bearing no advertising matter, including name or products.
- c. Signs of up to 5 square feet advertising rental or sale of the premises. Such signs shall be promptly removed within five days after the sale, rental or lease is consummated.
- d. Tag Sale Signs, but only during the period that the sale is in progress. Allowed only for tag sales which occur no more often than once each month.
- e. Seasonal Farm Stand Signs not to exceed a period of six months in a calendar year.
- f. Contractor's sign which is removed within five days after the work is completed.
- g. Temporary Commercial signs which are removed promptly upon completion of the activity to which they relate. Temporary commercial signs shall not exceed 12 square feet in area and 10 feet in height. Temporary Commercial signs shall not be in place more than 5 days per month.
- h. A single portable or movable commercial sign is allowed during regular business hours, provided such sign stands on legs or wheels, and does not exceed 12 square feet.
- i. Internal signs within a building or structure which are not viewable from a road are exempt from the provisions of this bylaw.

4.7 Home Based Business

A business or profession is allowed as an accessory use of a dwelling ("home occupation"), provided that:

- A. Such use is clearly secondary to the residential use and the home occupation shall be carried on within the principal building or an accessory building on the lot or an adjoining lot in common ownership. Such adjoining lot in common ownership must be either adjacent to or only separated by a public way from the lot on which the principal building is located. No more than 50% of the gross floor area of the residence shall be used for the purposes of the home occupation. If the home occupation is located in an accessory building, the gross floor

area devoted to the home occupation shall not exceed 50% of the gross floor area of the residence or 2,000 square feet, whichever is greater.

- B. The home occupation shall be carried on by a resident of the principal dwelling and not more than two nonresidents shall be employed on the premises at any one time.
- C. No external change is made which alters the residential appearance of the building on the lot.
- D. Except for a permitted sign of not more than two (2) square feet, per section 4.6.3.A, there shall be no exterior display or other exterior indication of the home occupation or other variation from the residential character of the premises. No outside storage shall be allowed unless a special permit is granted by the Planning Board and such outside storage is screened from neighboring properties and the public way by a fence or an evergreen hedge of sufficient depth or height to provide screening.
- 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 approximately 150% of the average weekday trip rate for single family homes from the Institute for Traffic Engineers Trip Generation Manual.
- F. Adequate off-street parking shall be provided. Parking areas shall not be within 20 feet of a street line or within any required side or rear yard and shall be adequately screened from neighboring residential uses. Parking areas shall not have more than four spaces per dwelling unit.
- G. The home occupation shall comply with the environmental performance standards listed in Section 2.2.
- H. Automotive repair shops operating out of a residential dwelling and which otherwise meet the criteria for a home occupation shall require a Special Permit from the Planning Board.
- I. No retail sales shall be allowed except for products produced on the premises, provided that all other requirements of Section 4.7.1 can be met and a Special Permit is granted by the Planning Board.

4.8 Temporary Mobile Home

The owner or occupier of a residence which has been destroyed by fire or other natural holocaust can apply for a permit from the Building Inspector and a permit from the Board of Health to place a mobile home on the site of such residence and may reside in such mobile home for a period not to exceed twelve months while the residence is being rebuilt. Any such mobile home shall be subject to the provisions of the State Sanitary Code.

4.10 Large-Scale Ground-Mounted Photovoltaic Installations

4.10.1 Purpose

The purpose of this subsection of the Zoning Bylaw is to establish appropriate criteria and standards for the placement, design, construction, operation, monitoring, modification and removal of new large-scale ground-mounted solar photovoltaic installations that address public safety, minimize impacts on scenic, natural and historic resources and to provide adequate financial assurance for the eventual

decommissioning of such installations. The provisions set forth in this section shall apply to the construction, operation, and/or repair of large-scale ground-mounted solar photovoltaic installations.

4.10.2 Applicability

This section applies to large-scale ground-mounted solar photovoltaic installations 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 existing installations or related equipment.

4.10.2.A Definitions

As-of-Right Siting: As-of-Right Siting shall mean that development may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval. As-of-right development may be subject to site plan review to determine conformance with local zoning ordinances or bylaws. Projects cannot be prohibited, but can be reasonably regulated by the inspector of buildings, building commissioner, local inspector, or if there is none in a town, the board of selectmen, or person or board designated by local ordinance or bylaw.

Building Inspector: The inspector of buildings, building commissioner, or local inspector, or person or board designated by local ordinance or bylaw charged with the enforcement of the zoning ordinance.

Building Permit: A construction permit issued by an authorized building inspector; the building permit evidences that the project is consistent with the state and federal building codes as well as local zoning bylaws, including those governing ground-mounted large-scale solar photovoltaic installations.

Large-Scale Ground-Mounted Solar Photovoltaic Installation: A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity of 250kWDC.

On-Site Solar Photovoltaic Installation: A solar photovoltaic installation that is constructed at a location where other uses of the underlying property occur.

Rated Nameplate Capacity: The maximum rated output of electric power production of the Photovoltaic system in Direct Current (DC).

Site Plan Review: review by the Site Plan Review Authority to determine conformance with Local zoning ordinances or bylaws.

Site Plan Review Authority: For purposes of this bylaw, Site Plan Review Authority refers to the Town of Erving Planning Board.

Zoning Enforcement Authority: The person or board charged with enforcing the zoning ordinances or bylaws.

4.10.3 Location

Large-Scale Ground Mounted Photovoltaic Installations shall be allowed by right with site plan review and approval for all parcels of land under single ownership that contain 40 contiguous acres or greater. Parcels 20 contiguous acres and greater, but less than 40 contiguous acres may be approved for Large-Scale Ground Mounted Photovoltaic Installations by Special Permit from the Planning Board (the Special

Permit Granting Authority), upon a determination of compliance with the General Requirements for all Large-Scale Ground-Mounted Photovoltaic Installations - Section as set forth below, and Section 6 of the Erving Bylaws – Special Permit and Site Plan Review.

4.10.4 General Requirements for all Large-Scale Ground-Mounted Photovoltaic Installations

The following requirements are common to all solar photovoltaic installations to be sited in designated locations.

4.10.4.1 Compliance with Laws, Ordinances and Regulations

The construction and operation of all large scale solar photovoltaic installations shall meet 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 installation shall be constructed in accordance with the State Building Code, and further comply with all other provisions of the Erving Zoning bylaws.

4.10.4.2 Building Permit and Building Inspection

No large scale solar photovoltaic installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

4.10.4.3 Fees

The application for a building permit for a large scale solar photovoltaic installation must be accompanied by the fee required for a building permit.

4.10.5 Site Plan Review

Ground-mounted large scale solar photovoltaic installations with 250 kW or larger of rated nameplate capacity shall undergo site plan review by the Erving Planning Board acting as the Site Plan Review Authority (SPRA) and obtain approval there from prior to construction, installation or modification as provided in this section. No large scale solar photovoltaic installation shall be added to, modified or changed without additional site plan review and approval from the SPRA without first obtaining a building permit.

4.10.6 Application Requirements

All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts.

Pursuant to the site plan review process, the project proponent shall provide the following documents:

1. A site plan showing:
 - (a) Property lines and physical features, including roads and buildings, for the project site.
 - (b) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures, and a landscape plan (in plan view) identifying plant material to be used to screen all appurtenant structures (per 4.10.7.5) and identifying plant material or fencing to be used to satisfy the requirement for a buffer between installation and property edge as per Section 4.10.8.3.

- (c) Blueprints of the solar photovoltaic installation 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.
 - (d) One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices.
 - (e) Documentation of the major system components to be used, including the PV panels, mounting system, and inverter.
 - (f) Name, address, and contact information for proposed system installer.
 - (g) Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any.
 - (h) Name, contact information and signature of any agents representing the project proponent, if any.
- 2. Documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation.
 - 3. An operation and maintenance plan which shall include measures for maintaining safe access to the installation, storm water controls, and general procedures for operational maintenance of the installation.
 - 4. Proof of liability insurance.
 - 5. Payment of financial surety that satisfies Section 4.10.11.3.
 - 6. Utility Notification. No large-scale ground-mounted solar photovoltaic installation shall be constructed until evidence has been given to the SPRA that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar photovoltaic installation owner or operator's intent to install an interconnected customer-owned generator. Off grid systems shall be exempt from this requirement.

4.10.7 Design Standards

4.10.7.1 Dimensional and Density Requirements

All large-scale ground-mounted solar photovoltaic arrays shall have 75 foot set-backs to adjacent non-owned parcels, as well as compliance with the yard, space, coverage percentage, and height requirements of the zoning district(s) in which the installation is located.

4.10.7.2 Lighting

Lighting of solar photovoltaic installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Lighting of the solar photovoltaic installation shall be directed downward and inward and shall incorporate full cut off fixtures to reduce light pollution.

4.10.7.3 Signage

Signs shall comply with Section 4.6 of the Erving Zoning Bylaws. A sign compliant with Section 4.6 of the Erving Zoning Bylaw shall be required to identify the owner and provide a 24-hour emergency contact phone number. Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.

4.10.7.4 Utility Connections

Reasonable efforts, as determined by the SPRA, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

4.10.7.5 Appurtenant Structures

All appurtenant structures to large-scale ground-mounted solar photovoltaic arrays shall conform to the setback requirements of the zoning district in which the installation is located. 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. All appurtenant structures shall have a Landscape Plan.

4.10.8 Safety and Environmental Standards

4.10.8.1 Emergency Services

The large scale solar photovoltaic installation 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 installation shall be clearly marked. The owner or operator shall provide the name, phone number, and email of the person responsible for public inquiries throughout the life of the installation.

4.10.8.2 Land Clearing, Soil Erosion and Habitat Impacts

Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the large scale ground-mounted solar photovoltaic installation or otherwise prescribed by applicable laws, regulations, and bylaws.

4.10.8.3 Landscaped Buffer Strip

A landscaped buffer strip is intended to provide in a reasonable time a visual barrier between the Large-scale ground-mounted solar photovoltaic installation and adjacent parcels. Except for vehicular and pedestrian passways, the areas shall be used only for an interplanting of deciduous and evergreen trees and shrubs, with lawn or other suitable and appropriate ground cover. The buffer must provide coverage of three feet in height from the proposed grade to the top of the majority of the planting material at time of installation. Reasonable leeway may be provided by the SPRA to allow for expected growth of the buffer strip over time. The buffer strip shall occupy at least 20% of the depth between the property line and the mandated setback of the zoning district where the installation is located. Where considered appropriate in the judgment of the site plan review authority, walls and fences may be used in addition to in lieu of plantings. A planting plan showing the types, sizes and locations of material to be used shall be subject to the approval of the SPRA. The SPRA may waive the requirements of the visual barrier where it deems it advisable.

4.10.9 Monitoring and Maintenance

4.10.9.1 Installation Conditions

The large scale ground-mounted solar photovoltaic installation owner or operator shall maintain the facility in good conditions. 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. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access/road(s) unless accepted as a public way.

4.10.9.2 Modification Conditions

Any material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the SPRA.

4.10.10 Waivers

1. The SPRA may waive strict compliance with any requirement of the Design Standards, Safety and Environmental Standards section of this bylaw, or the rules and regulations promulgated hereunder, where:
 - (a) Such action is allowed by federal, state and local statutes and/or regulations;
 - (b) Is in the public interest;
 - (c) Is not inconsistent with the purpose and intent of this by-law.
2. Any applicant may submit a written request to be granted such a waiver. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of the by-laws does not further the purposes or objectives of this by-law.
3. All waiver requests shall be discussed and voted on by the SPRA.
4. If in the SPRA deems additional time or information is required in the review of a waiver request, the SPRA may continue the request for a waiver until such time as the SPRA deems it is ready to vote on said request.

4.10.11 Abandonment or Decommissioning

4.10.11.1 Removal Requirements

Any large scale ground mounted solar photovoltaic installation which has reached the end of its useful life or has been abandoned shall be removed. The owner or operator shall physically remove the installation no more than one hundred and fifty (150) days after the date of discontinued operations. The owner or operator shall notify the SPRA by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- (a) Physical removal of all large scale ground solar photovoltaic installations, arrays, structures, equipment, security barriers and above ground transmission lines from the site, if any.
- (b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- (c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The SPRA may allow the owner or operator to leave landscaping or designated below grade foundations in order to minimize erosion and disruption to vegetation.

4.10.11.2 Abandonment

Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than one

year without the written consent of the SPRA. If the owner or operator of the large scale ground mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within one hundred and fifty (150) days of abandonment or the proposed date of decommissioning, the Town may enter the property and physically remove the installation, and/or take any other available legal or equitable action against the owner/applicant.

4.10.11.3 Financial Surety

Owner/applicant(s) of large scale ground mounted solar photovoltaic projects shall provide a form of surety through escrow account cash or surety bond to cover the cost of removal in the event the Town must remove the installation and remediate the landscape, in an amount determined to be reasonable by the SPRA, but in no event to exceed more than one hundred and twenty five (125%) percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. 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.

4.11 Community Bylaw For Floodplain Districts

4.11.1 Statement Of Purpose (B, C, D, E Communities)

The purposes of the Floodplain District are to:

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

4.11.2 Floodplain District Boundaries And Base Flood Elevation And Floodway Data

- A. FLOODPLAIN DISTRICT BOUNDARIES AND BASE FLOOD ELEVATION DATA (b, c, d, e communities with modifications)

For communities with "Community-Based" FIRMs and FIS:

The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas designated on the Town of Erving's Flood Insurance Rate Maps (FIRM's) issued by the Federal Emergency Management Agency (FEMA) for the administration of the NFIP dated July 5, 1982 as Zone A and A1-A30, and the FEMA Flood Boundary & Floodway Maps dated July 5, 1982, both sets of maps which indicate the 100-year regulatory floodplain. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Flood Insurance

Study (FIS) report dated July 5, 1982. The FIRM, Flood Boundary & Floodway Map, and FIS report are incorporated herein by reference and are on file with the Planning Board, Conservation Commission and the Franklin County Cooperative Inspection Program.

B. BASE FLOOD ELEVATION AND FLOODWAY DATA

1. Floodway Data. In Zones A and A1-30, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
2. Base Flood Elevation Data. Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones.

4.11.3 Notification Of Watercourse Alteration (B, C, D, E Communities)

In a riverine situation, the Emergency Management Director shall notify the following of any alteration or relocation of a watercourse:

- Adjacent Communities
- NFIP State Coordinator
Massachusetts Department of Conservation and Recreation
251 Causeway Street, Suite 600-700
Boston, MA 02114-2104
- NFIP Program Specialist
Federal Emergency Management Agency, Region I
99 High Street, 6th Floor
Boston, MA 02110

4.11.4 Use Regulations

A. REFERENCE TO EXISTING REGULATIONS (b, c, d, e communities)

The Floodplain District is established as an overlay district to all other districts. All development in the district, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

- Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR 120.G, "Flood Resistant Construction and Construction in Coastal Dunes");
- Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- Inland Wetlands Restriction, DEP (currently 310 CMR 13.00);

- Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);

Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

B. OTHER USE REGULATIONS

- 1) In Zones A1-30 along watercourses that have a regulatory floodway designated on the Town of Erving's Flood Boundary & Floodway Maps encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge. (d, e communities)
- 2) All subdivision proposals must be designed to assure that:
 - a) such proposals minimize flood damage;
 - b) all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
 - c) adequate drainage is provided to reduce exposure to flood hazards. (b, c, d, e communities)
- 3) Existing contour intervals of site and elevations of existing structures must be included on plan proposal. (optional for b, c, d, e communities)
- 4) There shall be established a "routing procedure" which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, Building Commissioner and the Franklin County Cooperative Inspection Program for comments which will be considered by the appropriate permitting board prior to issuing applicable permits. (optional for b, c, d, e communities)

4.11.5 Permitted Uses (B, C, D, E Communities)

The following uses of low flood damage potential and causing no obstructions to flood flows are encouraged provided they are permitted in the underlying district and they do not require structures, fill, or storage of materials or equipment:

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

4.11.6 Definitions

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

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

COASTAL HIGH HAZARD AREA means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM as Zone V, V1-30, VE.

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

DISTRICT means floodplain district.

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

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

FLOOD HAZARD BOUNDARY MAP (FHBM) means an official map of a community issued by FEMA where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or E.

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

FLOOD INSURANCE STUDY means an examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

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

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

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

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

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

ONE-HUNDRED-YEAR FLOOD - see BASE FLOOD.

REGULATORY FLOODWAY - see FLOODWAY

SPECIAL FLOOD HAZARD AREA means an area having special flood and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, V, V1-30, VE.

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

SUBSTANTIAL DAMAGE means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

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

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

ZONE A1-30 and **ZONE AE** (for new and revised maps) means the 100-year floodplain where the base flood elevation has been determined.

ZONE AH and **ZONE AO** means the 100-year floodplain with flood depths of 1 to 3 feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

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

ZONES B, C, AND X are areas identified in the community Flood Insurance Study as areas of moderate or minimal flood hazard. Zone X replaces Zones B and C on new and revised maps.

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

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

4.12 Medical Marijuana Moratorium Bylaw

4.12.1.1 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. These regulations have now been published. Currently under the Zoning Bylaw, a Medical Marijuana Treatment Center is not a permitted use in the Town of Erving 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 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 address the potential impact of the State regulations on local zoning and to undertake a planning process to consider amending the zoning bylaws 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.

4.12.1.2 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."

4.12.1.3 Temporary Moratorium

For the reasons set forth, 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 through October 31, 2014. 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 Centers and related uses, and shall consider adopting new Zoning Bylaws to address the impact and operation of Medical Marijuana Treatment Centers and related uses.

SECTION 5 - INTENSITY REGULATIONS

5.1 Dimensional Requirements

A structure or accessory structure, shall be erected or used, or a lot shall be changed in size or shape, only in conformity with the following requirements, and not more than one (1) dwelling shall be built upon any such lot.

5.2 Dimensional Schedule

Districts	Minimum Lot Area in sq. ft.	Minimum Lot Frontage in feet	Yard ¹ Dimensions			Maximum Height in feet	Maximum Lot Coverage ²
			Front in feet	Side in feet	Rear in feet		
Central Village	21,780	125	20	10	20	45	70%
Village Residential	21,780	125	20	10	20	35	50%
Rural³ Residential	87,120	225	50	50 ⁴	50 ⁵	35	35%
French King Commercial	87,120	225	100	50	50	45	50%

¹Fences may be located within the front, side, or rear yard provided that they are set back from the property line by at least two (2) feet with the finished side facing towards the exterior of the property.

²Lot Coverage -- The area of a lot occupied by structures, walkways, drives, parking or other impervious or semi-pervious surfaces.

³Yard Dimension requirements for pre-existing nonconforming lots of 30,000 square feet or less in the Rural Residential District may be reduced to the Yard Dimensions required for the Village Residential District.

⁴The 'side' setback requirements in rural residential for an accessory structure shall be 20 feet or 1½ times the height of the accessory structure, whichever is greater, not to exceed 50 feet.

⁵The 'rear' setback requirements in rural residential for an accessory structure shall be 20 feet or 1½ times the height of the accessory structure, whichever is greater, not to exceed 50 feet.

5.3 Exception to Dimensional Requirements for Yards

- A. The Zoning Board of Appeals may reduce, by Special Permit, the dimensional requirements for front, rear, and side yards related to building setbacks for nonconforming lots in the Central Village and Village Residential districts provided that the Zoning Board of Appeals makes a determination that the proposed structure is consistent in scale or setback with the structures in abutting parcels and the immediate neighborhood. The Special Permit may be granted if the proposal is in accordance with the criteria of this Section 5.3, rather than Section 6.1.9 Special Permit Criteria. An Impact Statement in accordance with Section 6.1.6 is not required. The Zoning Board of Appeals shall make the following determinations before granting an exception:
1. The Zoning Board of Appeals shall specifically determine that the reduced dimensional requirement for a front, side or rear yard will have no adverse effect on adjacent properties or historic structures.
 2. The Zoning Board of Appeals shall specifically determine that the reduced dimensional requirement for a front, side or rear yard will not be a detriment to the public good and will not substantially undermine the intent of the Erving Zoning Bylaws.
 3. The impact on adjoining premises from sound, light, odor, noise, and other disturbances is avoided or minimized.
 4. The proposal will avoid or minimize topographic change, removal of mature trees or other botanical assets, removal of cover vegetation, risk of erosion or siltation, increased storm water runoff from the site, or displacement of natural habitats.
 5. The proposal will not cause surface or groundwater pollution, surface or subsurface drainage detrimental to abutting properties, or adverse effects upon the natural environment in the area where the use is located.
- B. The applicant shall file, with the application for a Special Permit, a detailed plan drawn to scale of the property that shows the lot lines and dimensions of the property, the dimensional setbacks requirements as they currently exist for front, side or rear yards, the proposed location of the structure, and any proposed reduction to the dimensional requirements. In addition, the diagram shall include all utility accesses and shall be signed under pains and penalties of perjury. The applicant shall provide an explanation as to why they are requesting a reduction in setbacks from the dimensional requirements of the Zoning Bylaws. The Zoning Board of Appeals can require that a surveyed plan prepared by a Registered Surveyor be submitted if needed to make their determination.

SECTION 6 - SPECIAL PERMIT AND SITE PLAN REVIEW

6.1 Special Permits

6.1.1 Purpose

Special Permits are intended to provide a detailed review of certain uses and structures which may have a substantial impact upon traffic, municipal services, and the community character of the Town among other considerations. The Special Permit review process is intended to insure a harmonious relationship between proposed development and its surroundings, and to insure that proposals are consistent with the purpose and intent of this Bylaw.

6.1.2 Procedure for Issuing Special Permits

Special Permits shall be granted, denied, or issued with conditions by the Planning Board according to the provisions of Chapter 40A of the Massachusetts General Laws.

6.1.3 SPGA Rules and Regulations

Pursuant to Section 9 of Chapter 40A of the Massachusetts General Laws, the Planning Board may adopt rules relative to the issuance of Special Permits. These rules and regulations may relate to the size, form, content and style of the plans and procedures for submission and approval of such Special Permits, and shall not be inconsistent with the General Laws and provisions of this Bylaw. The Planning Board may from time to time amend these rules. Copies of the rules shall be on file and available for review at the office of the Town Clerk.

6.1.4 Application Fee

A fee shall be collected by the Town Clerk at the time that an application for a Special Permit is submitted. Said fee shall reflect the cost of printing, advertising and mailing for the permitting process. Additional expenses in excess of the filing fee shall be assessed to the applicant and must be paid in order for the application to be processed by the Special Permit Granting Authority.

6.1.5 Waivers

Upon written request from the applicant prior to the filing of an application, the Planning Board may waive the submission of such materials, plans, studies, and analyses or parts thereof, as may not be needed for, or germane to, consideration of the application, if the potential impact of the development is minimal in the opinion of the Planning Board.

6.1.6 Impact Statement

Except as waived under Section 6.1.5, above, the Special Permit application must be accompanied by an impact statement. The Impact Statement shall detail the probable effects of the subdivision or development on the following aspects of concern to the Town:

1. attendance at public schools;
2. increases in vehicular traffic;
3. changes in the number of legal residences;
4. provision of housing for Town residents and for persons of low and moderate income;

5. increases in municipal services;
6. load on public utilities or future demand for them;
7. public safety;
8. changes in tax revenue;
9. changes in surface drainage;
10. increased consumption of groundwater;
11. increased refuse disposal;
12. pollution of water and air;
13. land erosion or loss of tree cover;
14. disturbance of other aspects of the natural ecology;
15. blocking of views;
16. harmony with the character of surrounding development; and
17. preservation of historic and other cultural resources

6.1.7 Review Process

The Planning Board will review the Impact Statement, giving weight to the factors outlined above as they affect the future of the Town and of the neighborhood adjacent to the site. It may ask for further information where necessary to review the application adequately, and may make recommendations for modifications to the development as is appropriate to protect the Town. For large or complex projects, the Planning Board shall have the right to retain outside consultants, such as registered engineers, planners, designers, legal counsel, or other professionals, to advise the Board regarding any or all aspects of the special permit application. The applicant shall be responsible for the costs of such advice. The Board may also require the posting of a Bond, or other security satisfactory to the Board, to assure compliance with the approved special permit and stated conditions for approval.

6.1.8 Public Hearing

After the opportunity for review by other boards has taken place, the Planning Board shall hold a hearing under this section within 65 days from the date of filing of the applications, in conformity with the provisions of M.G.L., Ch. 40A Section 9. Abutters shall be notified by mail of the Public Hearing. The decision of the Planning Board, and any extension, modification or renewal thereof, shall be made within 90 days following the closing of the public hearing, and the written record of the decision shall be filed with the Town Clerk within 14 days of the final vote or sooner as required to meet the 90 day maximum time frame. A copy of the decision shall be mailed to the Applicant by the Town Clerk and to any person attending the Public Hearing which requests it.

6.1.9 Criteria

In acting upon Special Permits, the Planning Board or ZBA shall consider whether:

- A. There is sufficient Town capacity to service the premises, considering existing roads, town equipment, and other municipal services.
- B. The impact on adjoining premises from sound, light, odor, noise, and other disturbances is avoided or minimized.
- C. The proposal will avoid or minimize topographic change, removal of mature trees or other botanical assets, removal of cover vegetation, risk of erosion or siltation, increased storm water runoff from the site, or displacement of natural habitats.
- D. The proposal will not cause surface or groundwater pollution, surface or subsurface drainage detrimental to abutting properties, or adverse effects upon the natural environment in the area where the use is located.
- E. There is adequate sight distance and traffic safety at the entrance to public ways.

- F. The proposal is compatible with the neighborhood character.
- G. The proposal minimizes adverse effects upon historic and other cultural resources.
- H. There are positive employment and fiscal consequences.
- I. The activity, traffic, site plan, and building design will influence positively the Town's community character.
- J. The activity, site plan, and building design are consistent with development of tourist activity in Erving.
- K. Curb cuts on Route 2 (Mohawk Trail) are minimized to prevent traffic congestion and accidents.
- L. Lighting is designed to minimize glare and light pollution and cut off fixtures will be employed to the maximum extent feasible.

6.1.10 Lapse of Special Permit

If substantial use or construction under a Special Permit has not commenced within one year of the date of issuance of the Special Permit, that permit shall be considered to have lapsed. Such time period shall be extended by the time required to pursue or await the determination of an appeal pursuant to M.G.L. Section 40A Section 17.

6.1.11 Conformance with Bylaw Amendments

When subsequent amendments to the Bylaw are made, operations or construction under a Special Permit shall conform to the Amendments unless use or construction is commenced within 6 months after issuance of the permit.

6.2 Site Plan Review

6.2.1 Purpose

Site Plan Review is intended to allow the Planning Board to discuss with landowners at a preliminary stage in the development process how proposed changes in use and/or parcelization might be designed in order to achieve a harmonious relationship between the proposed changes and their surroundings.

6.2.2 Applicability

A Site Plan Review shall be required:

1. for any creation of lots, whether a subdivision or not, that results in the creation of four (4) or more lots; or
2. when a non-residential or non-agricultural development on a single lot or contiguous lots under common ownership will create more than 5,000 square feet of enclosed floor area, will include a drive through, or will have 10 or more parking spaces or 2,000 square feet or greater of parking area.

6.2.3 Procedures

At a regularly scheduled meeting of the Planning Board, the landowner or his or her designee will present documentation of the location of the parcel(s) in question, will describe the nature of the changes in use and/or parcelization that are being considered, and will present a site plan as required in Section 6.2.4. When applicable, an application for a building permit will be complete only when the application is accompanied by an approved Site Plan. For large or complex projects, the Planning Board shall have the

right to retain outside consultants, such as registered engineers, planners, designers, legal counsel, or other professionals, to advise the Board regarding any or all aspects of the site plan. The Board may also require the posting of a Bond, or other security satisfactory to the Board, to assure compliance with the approved site plan and stated conditions for approval. Site Plan approval shall lapse within one year unless substantial use or construction has commenced however, such time period may be extended if necessary to pursue or wait for a determination of an appeal in accordance with M.G.L. Chapter 40A Section 17.

6.2.4 Required Contents of a Site Plan

The site plan 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 of wetlands on site and within 300 feet of the property line;
9. Location of proposed water supply well or hook-up to the public water supply;
10. Location and date of all registered "perc" tests or proposed sewer hook-up;
11. Location of all proposed new lot lines;
12. Existing and proposed topography at a two-foot contour interval;
13. Location of proposed public and private ways on the site;
14. Location and size of proposed parking and loading areas, layout of pedestrian and vehicular circulation, and location of curb cuts, entrance(s) and exit(s) and queuing lane for any drive through;
15. Size and location of existing and proposed sign(s);
16. Surface drainage strategy that prevents pollution and increased drainage off-site;
17. Existing vegetation that will be left undisturbed and proposed planting areas; and
18. Other proposed methods to screen development.

6.2.5 Standards for Review

The following criteria and guidelines shall be used by the Planning Board in evaluating the Site Plan and all information submitted as part of the application:

- A. The site plan conforms to all appropriate provisions of the Zoning Bylaw including but not limited to signage, landscaping and parking.
- B. The site plan avoids or minimizes traffic and safety impacts of the proposed development on adjacent highways or roads, minimizes curb cuts, and maximizes the convenience and safety of vehicular and pedestrian movement within the site including off-street parking and loading needs.
- C. The architectural design, lighting, layout and landscaping of the proposed development is in harmony with the historic, rural character of the Town of Erving.

- D.* The site plan shows adequate measures to prevent pollution of surface or groundwater and to minimize erosion, flooding and sedimentation and includes a stormwater management plan prepared in accordance with good engineering, hydrologic and pollution control practices, including best management practices recommended by the DEP.
- E.* The proposed development, to the extent feasible:
- 1.* is integrated into the existing landscape and relates harmoniously to the terrain and to the use, scale, and proportions of existing and proposed buildings in the vicinity;
 - 2.* provides a solar and wind orientation that encourages use of renewable energy and energy conservation;
 - 3.* minimizes obstruction of scenic views;
 - 4.* preserves unique natural or historical features;
 - 5.* minimizes removal of trees, vegetation, and soil and grade changes;
 - 6.* maximizes open space retention;
 - 7.* prevents pollution of surface and ground water and prevents increases to flooding;
 - 8.* maximizes the use of underground utilities;
 - 9.* screens objectionable features from neighboring properties and roadways through trees, shrubs and other landscaping features to constitute a visual buffer as well as a buffer for noise, light and odor;
 - 10.* minimizes curb cuts, traffic congestion and safety impacts to roads, particularly along Route 2 (the Mohawk Trail);
 - 11.* maximizes the use of landscaping materials to lessen the impact of the development; and
 - 12.* minimizes glare and light pollution and utilizes cut off fixtures to the maximum extent feasible.

6.2.6 Decision

The Planning Board's action shall consist of either:

- A.* 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;
- B.* Approval of the site plan subject to conditions, modifications, and restrictions as the Planning Board may deem necessary; or
- C.* Denial of the site plan based upon the determination that there was insufficient information submitted with the proposal to adequately review it or that the project is inconsistent with the requirements of this Zoning Bylaw and no conditions, modifications, requirements, or restrictions can be imposed pursuant that would ensure compliance with this Zoning Bylaw.

SECTION 7 - PHASING OF GROWTH

7.1 Purpose

The purposes of this section are: to promote orderly growth in the Town of Erving, consistent with the rate of growth over 10 years prior to the adoption of this provision; to phase growth so that it will not unduly strain the community's ability to provide basic public facilities and services; to provide the town, its boards and its agencies with information, time and capacity to incorporate such growth into the Master Plan and the regulations of the community; and to preserve and enhance existing community character and the value of property. Section 7 shall remain in effect until December 31, 2015.

7.2 Regulations

7.2.1 Scope

No building permit for a residential unit or units shall be issued unless in accordance with the Regulations of Section 7 of this Bylaw.

7.2.2 Application

The Regulations of this section shall apply to all definitive subdivision plans, divisions of land not requiring subdivision approval, and Special Permits which would result in the creation of a new dwelling unit or units. Dwelling units shall be considered as part of a single development for purposes of Phased Growth if located either on a single parcel or contiguous parcels of land which are in the same ownership at the time an application is submitted.

7.2.3 Issuance of Residential Building Permits

- A. Except as provided below, a town-wide total of not more than twelve (12) new dwelling units shall be authorized by the Town within any one calendar year.
- B. General Applicants. Not more than two (2) dwelling units shall be authorized via a Building Permit(s) for any one applicant within any calendar year except as provided below.
- C. Special Conservation Development Projects (see 8.2). Up to four (4) building permits for one Special Conservation Development Project will be allowed in each calendar year. Building permits for up to four (4) dwelling units may be obtained by the same person receiving a Special Permit for an approved Special Conservation Development Project and those building permits will only count as one (1) unit toward the annual town-wide total of twelve (12). In a calendar year when a Special Conservation Development Project has already received the above described four (4) building permits, other Special Conservation Development Projects will be eligible to apply for building permits for up to two (2) dwelling units which will count towards the town-wide total of twelve (12).
- D. Special Large Lot Projects. Up to four (4) building permits per calendar year may be issued for Special Large Lot Projects, which permits shall not count towards the building permit cap. To qualify for one of these building permits, a parcel must have frontage eligible for two (2) ANR (Subdivision Approval Not Required) lots and a minimum of 25 acres. The owner of such a parcel may apply for a single or a two-family dwelling. The remainder of the parcel not used for building(s) must be placed under a conservation easement that prohibits further development of the parcel.

7.3 Administration

7.3.1 Rules and Regulations

The Planning Board may adopt rules and regulations relative to the administration of this Section. The Planning Board may from time to time amend the rules and regulations. Copies of the rules and regulations shall be on file and available for review at the office of the Town Clerk.

7.3.2 Order of Processing Applications for Building Permits

The Building Inspector shall process applications for residential building permits in a chronological order determined by the date upon which the Building Inspector receives a completed application. The Building Inspector will not record an application as complete and received without verification that the applicant has complied with required development-related reviews and approvals by the Conservation Commission, the Zoning Board of Appeals, the Planning Board, and the Highway Superintendent, and others as required by the General Laws of the Commonwealth of Massachusetts and the Bylaw of the Town of Erving. As each complete application is received, the Building Inspector shall assign it a number in a chronological order along with previously received completed applications of the same category (i.e., exempted development, general applications, or special project applications). The Building Inspector shall then grant Building Permits in accordance with the provisions of Section 7.

7.3.3 Excess Permit Applications

Beginning January 1 of each year, the Building Inspector shall hold over from the previous year, and place at the head of the chronological order only those completed applications which were received previously but for which no building permit was issued. All other applicants, including those who received building permits for part of their proposed development, shall obtain their place in chronological order by submitting a complete application.

7.4 Building Permit Amendment

No change may be made to an existing building permit without the approval of the Building Inspector as required by the State Building Code.

SECTION 8 - OPTIMAL DEVELOPMENT METHODS

8.1 Flexible Development for Small Projects

8.1.1 Purpose

Flexible Development is an optional development device, not requiring a Special Permit, designed to encourage efficient use of Erving's topography, preserve open space and maintain the overall density allowed through the Town's zoning.

8.1.2 Method

Any parcel in the Rural Residential District may be divided into not more than three (3) lots, whether a subdivision or not, and built upon under the following alternative area and frontage requirements.

- A. The average frontage for all building lots created shall be no smaller than the minimum required under Section 5, Intensity Regulations, but individual lots may have frontage of as little as 60% of that requirement.
- B. The number of building lots created shall be no more than would have been allowed according to Section 5, Intensity Regulations for that zoning district.
- C. Individual lot area per unit may be as little as 50% of the minimum lot size required in Section 5.
- D. Opting to develop under this method does not remove the developer's obligation to conform to all other rules and laws pertaining to construction or subdivision.
- E. The ANR or Subdivision Plan creating the lots shall be endorsed by the Planning Board as Approved for Flexible Development.
- F. No further increase in the number of lots shall be allowed through subsequent land division and this restriction shall be recorded on relevant plans and deeds.

8.2 Conservation Development

8.2.1 Purpose

The purpose of a Conservation Development is to encourage the preservation of common land for conservation, agriculture, open space, forestry and recreational use; to preserve historical or archaeological resources; to protect existing or potential public or private water supplies; to protect the value of real property; to promote more sensitive siting of buildings and better overall site planning; to promote better utilization of land in harmony with its natural features and with the general intent of the Zoning Bylaw through a greater flexibility in design; and to allow more efficient provision of municipal services.

A Conservation Development shall consist of single and/or two-family residential dwellings where the houses are arranged together into one or more groups within the development, and are separated from adjacent properties by undeveloped land. This type of development may occur as either a subdivision or as lots being created on an existing public way. The Planning Board may grant a Special Permit for a Conservation Development subject to the following provisions.

8.2.2 Procedures

- A. Filing an Application. Each application for a Special Permit for a Conservation Development shall be filed with the Town Clerk with a copy filed forthwith with the Planning Board, and shall be accompanied by 10 copies of a preliminary plan of the entire parcel under consideration. The plan shall be prepared by a professional architect, professional engineer, registered landscape architect, or registered land surveyor. Applicants are encouraged to meet with the Planning Board prior to submitting a formal application.
- B. Contents of Application. Said application and plan shall be prepared in accordance with information required for a definitive subdivision plan in the Rules and Regulations of the Planning Board governing subdivision of land, whether or not the development constitutes a subdivision, and shall include proposed location, bulk and height of all proposed buildings. In addition, the applicant shall provide the following information:
 - 1. The number of dwellings which would be constructed under this Bylaw by means of a conventional development plan considering the whole parcel, exclusive of water bodies, new access roads, slopes greater than twenty-five percent (25%), wetlands, floodplain, and land prohibited from development by legally enforceable restrictions, easements or covenants, or other constraints dictated by the Erving Zoning Bylaw;
 - 2. A plan of the site, including wetlands, water bodies, slopes, the capability of soils to support the proposed development, areas within the 100-year floodplain, and such other natural features as the Planning Board may request. In addition, an existing topographic map and a proposed topographic map at two-foot intervals may be requested;
 - 3. A summary of the environmental issues or constraints relating to the proposed plan;
 - 4. A description of the neighborhood in which the tract lies, including utilities and other public facilities, and the impact of the proposed plan on them;
 - 5. Identification of the conservation land proposed within the Conservation Development, with respect to use, size, shape, location, and natural resource value, and accessibility by residents of the Town or of the Conservation Development;
 - 6. Materials indicating the landowner's interest in the land to be developed, the form of the organization proposed to own and maintain the common land, the substance of covenants and grants of easements to be imposed upon the use of land and structures, and a development schedule;
 - 7. If necessary to determine compliance with the requirements or intent of this section, the Planning Board may require further engineering or environmental analysis to be prepared at the expense of the applicant; and
 - 8. Other reasonable requirements requested by the Planning Board.
- C. Review of Other Boards. Before acting upon the application, the Planning Board shall submit it with the plan to the chairperson of the following boards and departments which may review it jointly or separately: the Select Board, Zoning Board of Appeals, Board of Health, the Conservation Commission, the Fire Chief, and the Highway Superintendent. Any such board or agency to which petitions are referred for review shall submit such recommendations as it deems appropriate to the Planning Board and the applicant. Failure to make recommendations within 45 days of receipt shall be deemed as a lack of opposition.
- D. Public Hearing. The Planning Board shall hold a hearing under this section, in conformity with the provisions of M.G.L. Ch. 40A Section 9, and of the Zoning Bylaw and regulations of the Planning Board. The hearing shall be held within 65 days after filing of the application with the Planning Board and the Town Clerk. Notice shall be given by publication and posted as defined in M.G.L. Ch.40A Section 9. The decision of the Planning Board, and any extension, modification or renewal

thereof, shall be made within 90 days following the closing of the public hearing, and the written record of the decision shall be filed with the Town Clerk within 14 days of the final vote or sooner as required to meet the 90 day maximum time frame. Failure of the Planning Board to act within 90 days shall be deemed a grant of the permit applied for. Issuance of the permit requires an affirmative vote of four members of a five-member board. A copy of the decision shall be mailed to the Applicant by the Town Clerk and to any person attending the Public Hearing which requests it.

- E. Relation to Subdivision Control Law. Planning Board approval of a Special Permit hereunder shall not substitute for compliance with the subdivision control act, nor oblige the Planning Board to approve any related definitive plan for subdivision, nor reduce any time periods for board consideration under that law. However, in order to facilitate processing, the Planning Board shall, insofar as practical under existing law, adopt regulations establishing procedures for submission of a combined plan and application which shall satisfy this section and the board's regulations under the subdivision control act.

8.2.3 Criteria for Approval

The Planning Board may grant a Special Permit under this section only if it finds that the applicant has demonstrated the following:

- A. that the Conservation Development plan will be in harmony with the general purpose of the Bylaw and the requirements of M.G.L., Ch. 40A, and the Master Plan of the Town;
- B. that it will not have a detrimental impact on the neighborhood;
- C. that it will be designed with due consideration for health and safety;
- D. that it is superior to a conventional plan in preserving land, significant site features, or landscapes;
- E. that it minimizes environmental disruption; and
- F. that it meets all other Special Permit Criteria identified in Section 6.

8.2.4 Minimum Requirements

- A. The minimum area of land required for a Conservation Development shall be ten (10) acres for a subdivision or eight (8) acres for lots on an existing public way which lots do not require subdivision approval. The parcel shall be held in single ownership or control at the time of application.
- B. The maximum number of dwellings for the development shall not exceed that which is normally allowed in the district under a conventional plan.
- C. The development shall include lots for single and/or two-family dwellings only.
- D. Each lot shall have adequate access on a public or approved subdivision road.
- E. Each lot shall comply with the minimum dimensions required in this provision.
- F. Each lot shall be of a size and shape to provide a building site which shall be in harmony with the natural terrain and other features of the land.
- G. At least thirty-five percent (35%) of the total parcel of land shall be set aside as common land, not including wetlands, water bodies, floodplains, slopes greater than twenty-five (25%), roadways, and land prohibited from development by legally enforceable restrictions, easements or covenants, and other constraints dictated by the Erving Zoning Bylaw. Most of the proposed land to be conserved should be contiguous and useable for the purposes described herein.
- H. All residential structures and accessory structures within the development shall be set back from the boundaries of the development by a buffer strip of at least fifty (50) feet in width to be kept in a natural condition.
- I. 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.

- J. Design of roads, utilities, and drainage shall be functionally equivalent to the standards contained in the Planning Boards Subdivision Control Regulations insofar as is reasonably applicable, but the Board may vary those standards to meet the particular needs of the Conservation Development.
- K. No Conservation Development shall be approved unless the applicant can show to the satisfaction of the Planning Board that the potential for groundwater pollution is no greater from the proposed Conservation Development than would be expected from a conventional subdivision with single- and/or two-family houses on lots meeting the normal lot size requirements located on the same parcel. The burden of proof shall be on the applicant.
- L. No septic system shall be allowed with a sewage flow exceeding 10,000 gallons per day (GPD). Reserve area requirements shall not be waived for any system with a flow over 2,000 GPD. Septic systems shall be placed in the development to maximize the distance between systems and may be placed within common open areas rather than on individual lots.

8.2.5 Dimensional and Density Requirements

- A. Building lot sizes shall not be less than 32,670 square feet.
- B. In no instance shall a designated lot have less than 125 feet of frontage on a public or approved subdivision road.
- C. Minimum front, rear and side yard setbacks shall be 25 feet from the respective lot line.

8.2.6 Required Conservation Land

- A. All land not devoted to dwellings, accessory uses, roads, or other development shall be set aside as common land for recreation, conservation, or agricultural uses which preserve the land in essentially its natural condition. As a general guidance, natural resource land such as wetlands or land that is suitable for extensive public recreational use, should be conveyed to the Town or to a land trust; whereas land which will be principally used by the residents of the Conservation Development should be conveyed to a home owners association.
- B. Further subdivision of common open land or its use for other than the above listed uses, except for easements for underground utilities, water supplies and septic systems, shall be prohibited. Structures or buildings associated with recreation, conservation, or agricultural uses may be erected but shall not exceed 5% coverage of such common open land. Any portions of an underground septic system which are located within the common open land shall be marked with a permanent marker that records their location and depth.
- C. Such common open land shall be either:
 - 1. conveyed to a corporation or trust owned or to be owned by the owners of lots within the development. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots in perpetuity;
 - 2. conveyed to a non-profit organization, the principal purpose of which is the conservation or preservation of open space; or
 - 3. conveyed to the Town of Erving, at no cost, and be accepted by it for a park or open space use. Such conveyance shall be at the option of the Town and shall require the approval of the voters at a Town Meeting.
- D. In any case, where such land is not conveyed to the Town, a restriction enforceable by the Town shall be recorded to ensure that such land shall be kept in an open or natural state and not be developed for residential use or accessory uses such as parking or roadways. Such restrictions shall further provide for maintenance of the common land in a manner which will ensure its suitability for its function, appearance, cleanliness and proper maintenance of drainage, utilities and the like.

- E. If the common land is to be conveyed to the lot owners within the development, ownership and maintenance of such land shall be permanently assured through an incorporated non-profit homeowner's association, covenant, or other land agreement through which each lot owner in the development is automatically a member and each lot is subject to a charge for a share of the maintenance expenses or through a comparable arrangement satisfactory to the Planning Board. Such land agreement documents shall be submitted with the Development Plan and shall be subject to approval by the Planning Board and Town Counsel. These covenants shall also include provisions for the maintenance of all common facilities and utilities.
- F. Such covenants shall specify how the organization will be governed and how costs will be assessed and that the organization shall remain under the control of the developer until a majority of the lots are conveyed to permanent owners.
- G. Such covenants shall provide that in the event that the organization established to own and maintain the common open land or any other commonly owned facilities or utilities or any successor organization fails to maintain the common open land or any other commonly owned facilities or utilities in reasonable order and condition in accordance with the Conservation Development Plan, the Town may, after notice to the organization and public hearing, enter upon such land and maintain it in order to preserve the taxable values of the properties within the development and to prevent the common land from becoming a public nuisance. The covenants shall also provide that the cost of such maintenance by the Town shall be assessed ratably against the properties within the development and shall become a charge on said properties enforceable as a real estate tax and that such charge shall be paid by the property owners within thirty (30) days after receipt of a statement therefore.
- H. Further Requirements.
 - 1. There shall be no amendments or changes to an approved Conservation Development Plan without review and approval from the Planning Board.
 - 2. No lot within an approved Conservation Development may be further subdivided so as to increase the number of lots, and a notation to this effect shall be shown on any Definitive Plan of a subdivision and on the approved Site Analysis/Development Plan if not a subdivision under the Subdivision Control Law.
 - 3. No use other than residential, agricultural, forestry or recreation shall be permitted.
 - 4. The Board may grant a Special Permit hereunder for Conservation Development even if the proposed development is not subject to the Subdivision Control Law.

SECTION 9 - DEFINITIONS

In these Regulations, the following terms shall have the meanings here assigned to them:

Accessory Apartment - The alteration of an existing single-family home with no expansion of square footage to create one additional dwelling unit consisting of no more than four rooms and no more than 800 square feet of living area. The Accessory Apartment shall be occupied by no more than two people. The owner of the property shall permanently occupy the principal or accessory residence. Adequate off-street parking shall be provided.

Accessory Building or Structure - A subordinate building or structure, the use of which is incidental to the main or principal use on the lot, as permitted in the Zoning district. Where an accessory building is attached to the main building, such accessory building shall be counted as part of the main building.

Accessory Use - A use located on the same lot with (or in) the main building or main use which is subordinate and customarily incidental to the use of the main building or the land.

Applicant - An owner, or the authorized agent or representative of the owner.

Bed and Breakfast - A dwelling in which overnight accommodations are provided or offered for transient guests for compensation.

Building - A combination of any materials, whether portable or fixed, having a roof to form a structure for the shelter of persons, animals or property. The word "building" shall be construed where the text requires, as being followed by the words "or part(s) thereof. "

Building Height (in feet) - The vertical distance from the average finished exterior grade on the street side of a building to the highest point of the roof or parapet for flat or shed roofs, to the deck line for mansard roof, or the mean level of the highest gable or slope of a hip pitch or sloped roof. Height limitations shall not apply to chimneys, spires, cupolas, TV antennae, or other parts of structures which do not enclose potentially habitable floor space.

Campground - A parcel of land used or intended to be used, let, or rented for temporary short-term occupancy (not to exceed 90 days) by campers or transient tourists utilizing tents, trailer coaches, or other types of movable or temporary shelter.

Certified - Shall mean certified by a Planning Board, as applied to a plan or other instrument required or authorized by the Subdivision Control Law to be recorded, and shall mean bearing a certificate or endorsement signed by a majority of the members of the Planning Board.

Commercial - Of or relating to the buying, selling and trading of goods and services.

Commercial Kennel -- A structure or parcel of land used for the harboring or care of more than fifteen (15) dogs that are more than six (6) months old. There may be retail sales to pet stores or puppy brokers or boarding for a fee. Commercial Kennels must be located on a lot five acres or greater. In addition, the location on the parcel where the dogs are harbored or exercised must be set back 200 feet from each lot line to minimize the impacts to neighbors from noise and odors.

Commercial Recreation - Any recreational activity, indoors or outdoors for which a fee is charged.

Home Based Business - Any home occupation which can meet the requirements of Section 4.7.

Disposal Facility - A place where garbage, refuse, etc, is deposited.

Drainage - The flow of surface and subsurface water.

Drive-Through, other – A business or commercial establishment that incorporates facilities which allow customers to purchase or perform business or commercial activities while seated in a motor vehicle.

Dwelling - Any building designed for residential use and containing kitchen and sanitary facilities.

Dwelling Unit - Living quarters for a single family with cooking, living, sanitary, and sleeping facilities substantially independent of those of any other unit. Not more than one (1) family is permitted per dwelling unit.

Family - One or more persons, all of whom are related by birth, marriage or adoption, living as a unit, or not more than five (5) persons not legally related, living together as a single housekeeping unit. Any unrelated individual over five (5) shall constitute another family.

Floodway - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Hobby Kennel -- A structure or parcel of land used for the harboring or care of five (5) to fifteen (15) dogs that are more than six (6) months old, with no retail sales to pet stores or puppy brokers or boarding for a fee. Hobby Kennels must be located on a lot two acres or greater. The harboring or care of four (4) dogs or less is not considered a Kennel for the purposes of Erving's Zoning Bylaw.

Hotel - A building containing rooms used or designed to be used for sleeping purposes by transient guests where the only kitchen and dining facilities provided are for public use within the building or in an accessory building.

Inn - An historic structure used or designed for overnight lodging for transient guests, and which may also provide a restaurant to lodgers and the public. An inn shall be located in a building fifty (50) years or more in age. A guest(s) may not stay at an Inn for more than 90 days in any six-month period.

Industry - The production and sale of goods or materials.

Living Area - The outside dimensions of a dwelling unit commonly used as living quarters excluding attached garage, porch and breezeways.

Lot - A plot or parcel of land with definite boundaries, ascertainable by recorded deed or plan, having frontage on a street and occupied or capable of being occupied by one principal building.

Lot Frontage - The boundary of a lot coinciding with a street line provided that there must be both rights-of-access and potential vehicular access across that boundary to a potential building site and the street has been determined by the Planning Board to provide adequate access to the premises under the provisions of the Subdivision Control Law and the Erving Subdivision Regulations currently in effect. Lot frontage shall be measured continuously along one street line between side lot lines or, in the case of corner lots, between one side lot line and the midpoint of the corner radius. The portion of a lot fronting

on a discontinued road, or a road which is not continuously constructed to a point beyond the border of the subject lot, does not constitute frontage for purposes of Approval Not Required Plans. Access to a building lot must be via the front lot line which provides the Minimum Lot Frontage required.

Lot Line (Front) - The line separating the lot from the public way across which access is gained to the property.

Lot Line (Rear) - The lot line opposite to and most distant from the front lot line.

Lot Line (Side) - Any lot line not a front lot line or rear lot line.

Lumber or Wood Processing Plant - Any business that uses logs as a raw material, including sawmills, pulp mills and mechanized cordwood mills.

Mobile Home - A movable or portable dwelling unit on a chassis, designed for connection to utilities when in use and designed with or without the necessity of a permanent foundation for year-round living. This definition shall not include those vehicles known as camping or travel trailers or motor homes.

Mobile Home Park - Premises which have been planned and improved for the placement of mobile homes for non-transient use.

Motel - Attached, semi-detached, or detached dwelling units having separate outside entrances, parking space convenient to each unit and providing lodging for transient clientele.

Multi-Family Dwelling - A dwelling containing three (3) but not more than four (4) dwelling units, separated by vertical walls or horizontal floors, designed for occupancy by not more than four (4) families.

Occupancy - The state of habitation by people.

Principal Building - The main or most important building on a lot in which is conducted the principal use of the lot. Attached structures such as garages, greenhouses, and similar structures are to be considered as part of the principal building.

Public Way - Publicly controlled way accepted by the Town, County, or State government for use as a road or street.

Recorded - Recorded in the Franklin County Registry of Deeds except that as affecting registered land, it shall mean filed with the Recorder of the Land Court.

Restaurant, Drive-Through - A restaurant that incorporates facilities such as a drive-through window that allows customers to purchase food or drinks while seated in a motor vehicle.

Restaurant, Other - Premises for which the principle use is the preparation and sale of food or drink to be consumed on-site.

Sign - Any permanent or temporary structure, device, letter, word, model, banner, pennant, insignia, symbol, trade flag, or representation used as, or which is in the nature of an advertisement, announcement, or direction, or is designed to attract the eye, either by its presence or by intermittent or

repeated motion or illumination, which is on a public way or on private property within public view of a public way or public park or reservation.

Sign Area - The area of a sign shall be considered to include all lettering, wording and accompanying designs and symbols, together with the background, whether open or enclosed, on which they are displayed and frame around the sign and any extensions. The supporting structure is not included and only one side of a sign shall be counted in computing the total square feet of signs.

Single-Family Dwelling - A building containing one dwelling unit.

Sludge - The semi-solid or liquid residual generated from a municipal, commercial, or industrial wastewater treatment plant.

Store - Any place of business where goods or products are sold at wholesale or retail rates.

Street - A way meeting the description of one of the ways contained within the definition of "subdivision" in M.G.L., Chapter 41, Section 81-L.

Structure - Anything constructed or erected the use of which requires a fixed location on the ground, or attachment to something located on the ground to give support or shelter, including buildings, sheds, billboards, fences, satellite dishes, tanks, or the like, or the parts thereof, and swimming pools. The word "structure" shall be construed where the text requires, as being followed by the words "or part(s) thereof "

Subdivision - A division of land which creates one or more lots which do not have frontage on an existing public way as further defined in M.G.L., Chapter 41, Section 81-L.

Travel Trailer, Camp Trailer or Motor Home - A mobile unit either supported on its own wheels, or those of another vehicle, which is intended as a temporary dwelling not for permanent residency. Such trailers may be occupied for a maximum of 90 days per year, but for no more than 30 consecutive days, and shall be maintained so as to remain mobile. No permanent structure or service, including but not limited to electrical, gas or septic, may be attached to it. This definition does not include Mobile Homes.


Two Family Dwelling - A building containing two dwelling units also known as a duplex.


Wetlands - Areas defined by the Massachusetts Wetlands Protection Act including swamps, marshes, ponds, lakes, watercourses, and areas subject to flooding.


SECTION 10 - MAPS


10.1 Zoning Map


Legend


- 

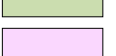
Streams & rivers
- 

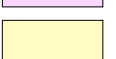
Sewer lines
- 


Water lines
- 


Water
- 


Wetland
- 


Central Village (CV)
- 


Village Residential (VR)
- 


French King Commercial District (C)
- 


Rural Residential (RR)
- 

Groundwater Protection Overlay District (GP)
- 

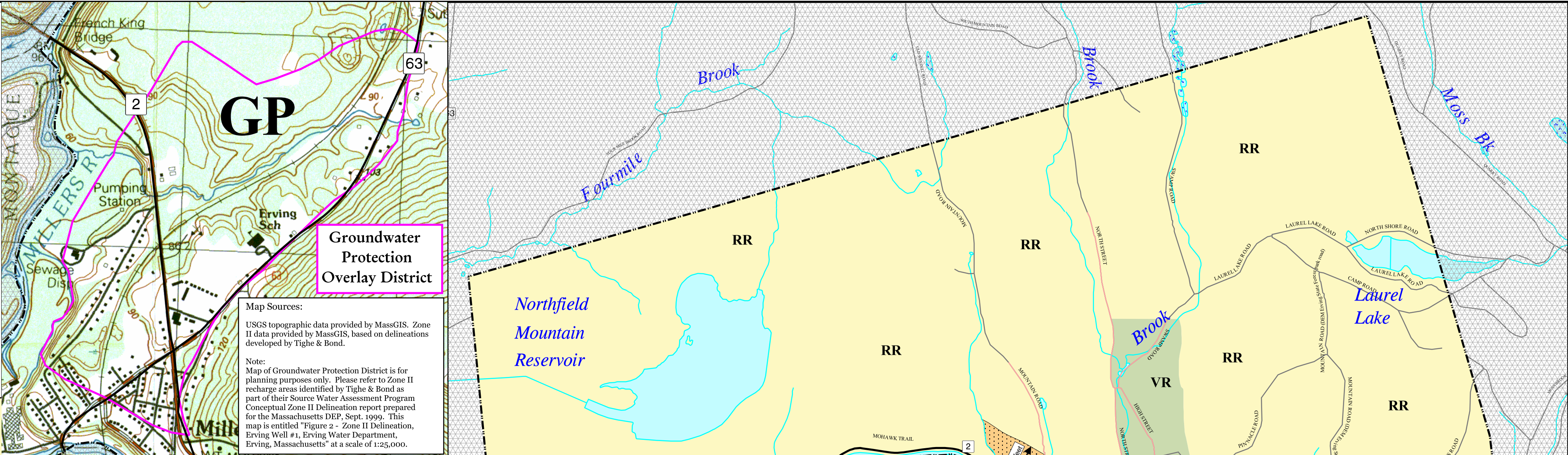
Wireless Communication Overlay District (WD)
- 

Town line
- 

Rail line
- 

Roads
- 

Major roads

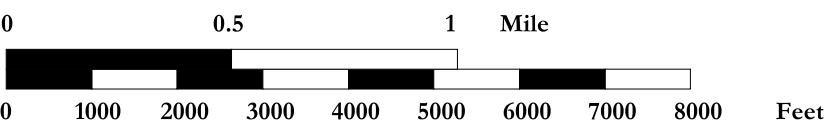
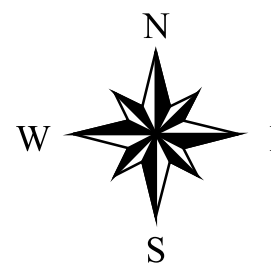


Map Sources:

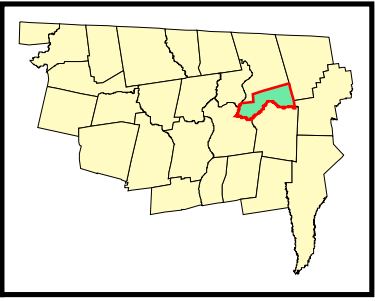
Map produced by The Franklin Regional Council of Governments Planning Department. GIS data sources include the FRCOG Planning Department, the Massachusetts Highway Department and MassGIS. Digital data obtained from MassGIS represent the efforts of the Massachusetts Executive Office of Environmental Affairs and its agencies to record information from the sources cited in the associated documentation. EOEa maintains an ongoing program to record and correct errors in the GIS data that are brought to its attention. EOEa makes no claims as to the reliability of the GIS data or as to the implied validity of any uses of the GIS data. EOEa maintains records regarding all methods used to collect and process these digital data and will provide this information on request. Executive Office of Environmental Affairs, MassGIS EOEa Data Center, 251 Causeway Street, Suite 900, Boston, MA 02114-2500.

Road data provided by Massachusetts Highway Department. Town line, rail line, river, stream, pond, National Wetlands Inventory, and aquifer data provided by MassGIS. Zoning, wireless communications overlay, water and sewer line data digitized by FRCOG Planning Department staff.

Note: Depicted boundaries are a approximate and are intended for planning purposes only. Portions of the source data were obtained from 1:100,000 scale maps, therefore the accuracy of the line work on this map is +/- 100 feet.



Scale refers to map of the town (not insets).



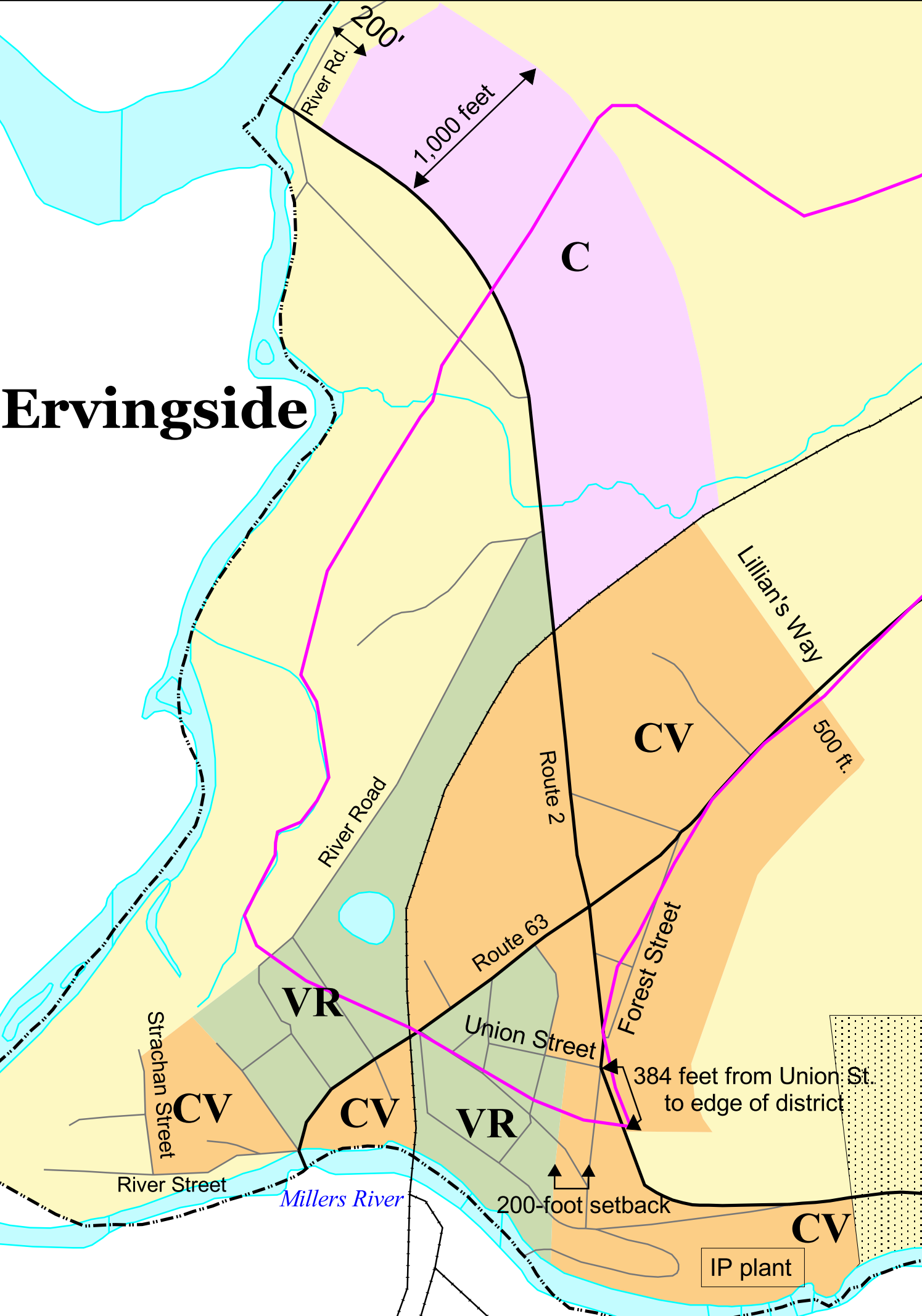
Town of Erving
Franklin County
Massachusetts



FRANKLIN REGIONAL COUNCIL OF GOVERNMENTS
Main Office: 413-774-3167
425 Main Street
Greenfield, Massachusetts 01301

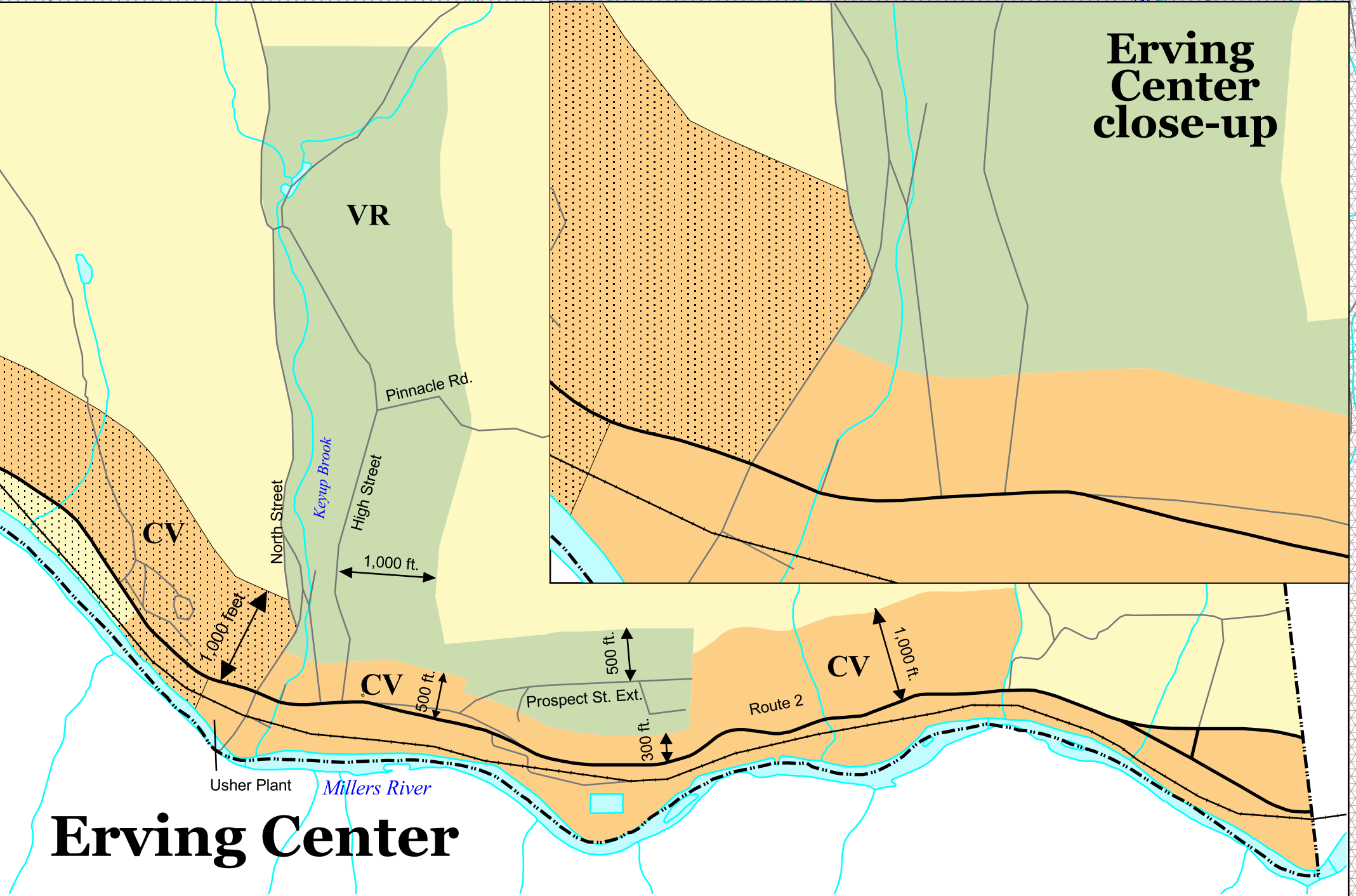
June 6, 2005

Erving

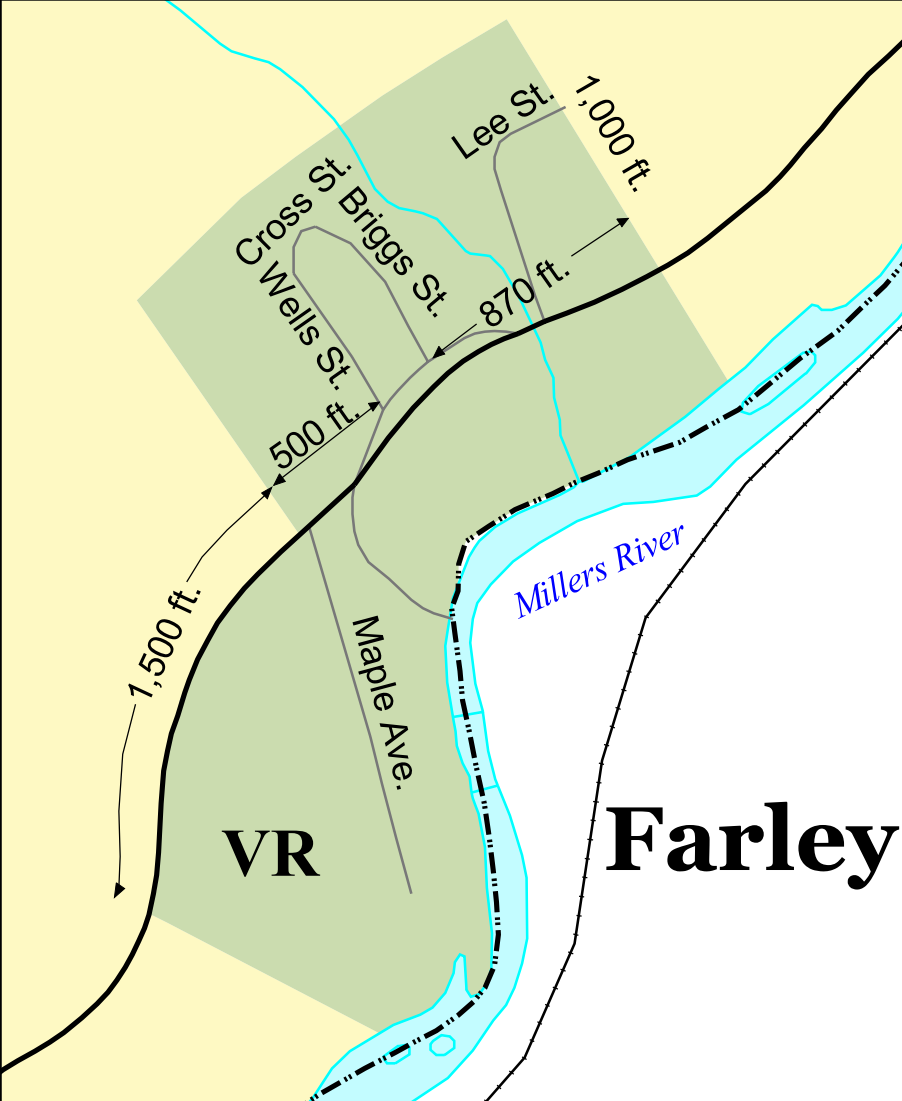


Official Zoning Map
for the
Town of Erving

Erving Center



Erving Center
close-up



Farley

10.2 Groundwater Map

Water Purveyor:

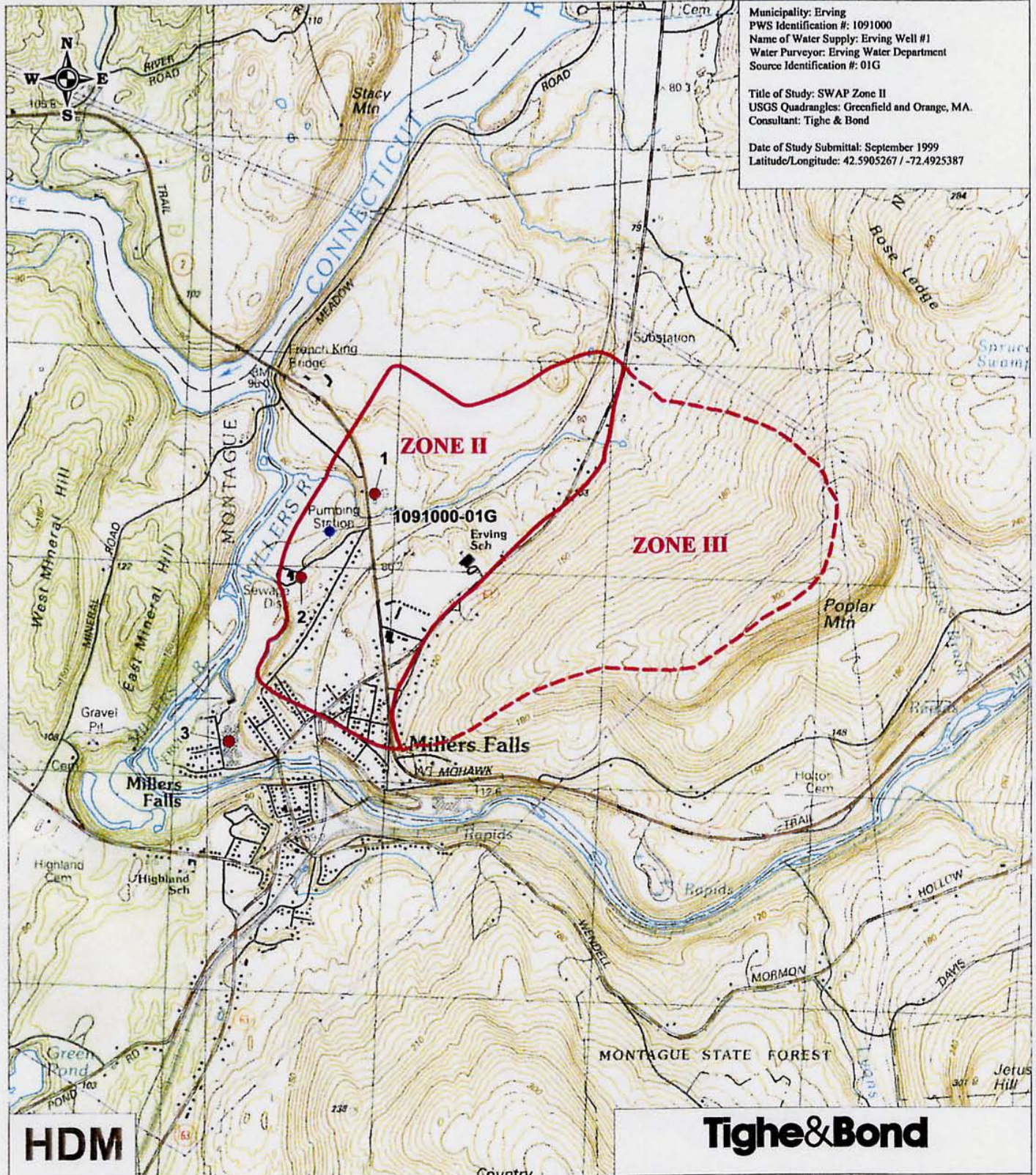
Consultant:

Regional Water Supply Chief:

Municipality: Erving
PWS Identification #: 1091000
Name of Water Supply: Erving Well #1
Water Purveyor: Erving Water Department
Source Identification #: 01G

Title of Study: SWAP Zone II
USGS Quadrangles: Greenfield and Orange, MA.
Consultant: Tighe & Bond

Date of Study Submittal: September 1999
Latitude/Longitude: 42.5905267 / -72.4925387



HDM

LEGEND

- Well
- Potential Contamination Source
- Zone II
- - - Zone III

Topographic contour interval = 6 Meters

Country
Scale: 1:25,000

Tighe & Bond

**FIGURE 2
ZONE II DELINEATION**

**ERVING WELL #1
ERVING WATER DEPARTMENT
ERVING, MASSACHUSETTS**