TOWN OF TEMPLE, N.H.

Zoning Ordinance

(As amended through March 8, 2016)

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TOWN OF TEMPLE, NH - ZONING ORDINANCE
(As amended through March 8, 2016)

ARTICLE I: AUTHORITY AND PURPOSE

Section 1: Authority & Purpose

Pursuant to the authority conferred by the Revised Statutes of the State of New Hampshire, Chapter 674, 1983 and as amended, the following ordinance is hereby enacted by the voters of the Town of Temple. The purpose of this ordinance is to promote the health, safety, convenience and general welfare of the community; to protect and conserve the value of property and to promote the preservation of the rural aspect of the Town of Temple. Also that the community may grow in an orderly manner, this ordinance is designed to:

- lessen congestion in the streets;
- secure safety from fires and other dangers;
- promote health and the general welfare;
- provide adequate light and air;
- prevent the overcrowding of land;
- provide opportunities for affordable housing;
- avoid undue concentration of population;
- assure proper use of natural resources and other public requirements; and
- facilitate the adequate provision of transportation, solid waste facilities, water, sewerage, schools, parks, and child day care.

Section 2: Title

This ordinance shall be known, and may be cited as, the "Town of Temple Zoning Ordinance", hereinafter referred to as "this ordinance."

ARTICLE II: DEFINITIONS

In the interpretation and enforcement of this Ordinance, all words other than those defined specifically below shall have the meanings implied by their context in this Ordinance or their ordinarily accepted meanings. The word <u>person</u> includes a firm, association, organization, partnership, trust company, or corporation, as well as an individual. The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular. The word <u>shall</u> is mandatory, the word <u>may</u> is permissive.

CLASSIFICATION OF ROADS: Highways of State divided into Six Classes - RSA 230:4.

1. Class I - all existing or proposed highways on primary state highway system (except compact area of towns and cities).
2. Class II - all existing or proposed highways on secondary state highway system (except compact area of towns and cities).
3. Class III - state recreational roads.
4. Class IV - all highways within compact sections of cities and towns over 6500. "Compact" mainly occupied by buildings and dwellings. Note - there are numerous legislative classifications as to classification.
5. Class V - all other traveled highways which town has a duty to maintain, called town roads.
6. Class VI - all other existing public ways including those discontinued as open highways and made subject to gates and bars and those not maintained by town in suitable condition for travel for five years or more.

Accessory Building: A subordinate building or portion of the dwelling, the use of which is incidental to that of the dominant use of the dwelling.

Agriculture/Farm/Farmstand: (2013) All operations involved with the growing of crops, the raising of animals, and any activities associated with marketing the products. For a complete definition, refer to RSA 21:23-a.

Bed and Breakfast: (1996) "Bed and Breakfast establishment" means an owner occupied residence, a portion of which is used for lodging overnight transient guests, for compensation, with no separate kitchen facilities, and where the only meal served is breakfast.

Building: Any structure for the shelter, support, or enclosure of persons, animals, chattels, or property of any kind.

Certified Community Residence: (RSA 171-A:9-:17) (2001)

A Certified Community Residence that is part of an organization incorporated under RSA 171.A:4, licensed for more than one but not more than three persons, and is part of the State of New Hampshire Health and Human Services Delivery System under Health Facility Licensing Rules.

Dwelling: Any building, or portion thereof, which is designed or used exclusively for residential purposes.

Commercial Use: (2013) An occupation, employment, or enterprise that is carried on for profit by the owner, lessee, or licensee.

Dwelling Unit: An area of a residential building designed for use by one family.

Family: One or more persons, no more than four of whom are unrelated, occupying a dwelling and living as a single housekeeping unit, as distinguished from a group occupying a boarding house, lodging house, or hotel as herein defined.

Farm Stand: (1996) A Farm Roadside Stand shall remain an agricultural operation and not be considered commercial, provided that at least 35% of the product sales in dollar volume is attributable to products produced on the farm or farms of the stand owner.

Filling Station: Any building, structure or premise, enclosure or other place used for the dispensing, sale, or offering for sale automobile fuels and oils.

Frontage: The length of the lot bordering on a Class V or better road.

Garage, Private: An accessory building designed or used to house or enclose a motor vehicle.

Garage, Public: A building or portion thereof, other than a private garage, designed or used for servicing, repairing, equipping, hiring, selling, or storing motor-driven vehicles.

Garbage: (2013) Accumulated animal, vegetable and other matter that attends the preparation, handling, consumption, storage or decay of plant and animal matter, including meats, fowl, birds, fruit, vegetable or dairy products and the waste wrappers or containers thereof.

Height of Structure: (2013) Measured from the median ground elevation around the building to the ridge of the roof or centerline on a sloped roof.

Home Business I: (2010) A business, profession or trade which is conducted by a resident of the premises entirely within the dwelling or accessory building, and does not involve more than occasional vehicular traffic to the property.

Home Business II: (2010) A business, profession, or trade which is conducted by a resident of the premises entirely within the dwelling or accessory building, and may involve an increase in vehicular traffic to the property for clients, patients, associates or employees.

Home Business III: (2010) A business, profession, or trade which is conducted by a resident of the premises but not necessarily entirely enclosed within the dwelling or accessory building structures, and which may involve an increase in vehicular traffic to the property.

Home Products: (2013) Items made entirely within a dwelling or accessory building that are intended for sale.

Hotel, Motel, or Inn: A building or portion thereof where lodging is offered to transient guests for compensation, and in which there are more than five sleeping rooms with or without cooking facilities in any individual room or apartment.

Licensed Community Residence: (RSA 151:2 I(e) (2001) A Residential Care Facility that is part of an organization incorporated under RSA 151:2 I(d), licensed for 4 or more persons, and has had ALL of it's beds certified as being part of the State of New Hampshire Health and Human Services Delivery System under Health Facility Licensing Rules, with the issuance of a Community Care Waiver.

Lodging House or Boarding Houses: Any dwelling, other than a hotel or motel, in which living accommodations without kitchen facilities are rented to five or more non-transient guests.

Lot Lines Along a Right-of-Way: Lot lines along a public or private right-of-way shall be considered to be at the edge of the right-of-way (not at the edge of the traveled way).

Lot, Plot, or Parcel: A parcel of land occupied or intended for occupancy by one main building, together with its accessory buildings, and uses customarily incidental to it, including the open spaces required by this Ordinance.

Manufactured Housing: Any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. (RSA 674:31)

Manufactured Housing Park: A land area occupied or designed for occupancy by two or more manufactured housing units.

Motor Vehicle Junk Yard: (2001) Means any business and any place of storage or deposit, whether in connection with any other business or not, which has stored or deposited 2 or more unregistered and uninspected motor vehicles which are no longer intended or in condition or legal use on the public highways, or used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded or secondhand material which has been a part, or intended to be a part, of any motor vehicle, the sum of which parts or material shall be equal in bulk to 2 more motor vehicles. Shall also include any place of business or storage or deposit of motor vehicles purchased for the purpose of dismantling the vehicles for parts or for use of the metal for scrap and where it is intended to burn material which are parts of a motor vehicle or cut up

the parts thereof.

Multiple Dwelling: A residential building designed for occupancy by two or more families.

Non-conforming Use: A use which lawfully occupied or used a structure or lot at the time this ordinance became effective and which does not conform with the use regulations of the District in which it is located.

One-Family Dwelling: A detached residential dwelling unit, other than a mobile home, designed for one family only.

Public Highway: Each of those highways that are shown on the "Town of Temple, N.H. Zoning Map 1972" or have subsequently been accepted or relocated by vote of town meeting or by the New Hampshire State Highway Department.

Repair: (2001) To restore to sound or good condition after damage or decay.

Retail: (2010) An establishment primarily engaged in the selling of goods or products on the premises to the public.

Residential Care Facility: (2001) A Residential Care Facility shall be defined according to RSA 151:2 I (e), as may be amended by the State of N.H. Residential care facilities, whether or not they are private homes or other structures built or adapted for the purpose of providing residential care, offering services beyond room and board to more than two (2) but not more than eight (8) individuals, who may or may not be elderly or suffering from illness, injury, deformity, infirmity or other permanent or temporary physical or mental disability.

Seasonal Dwelling: (2013) A camp or cottage dependent on season for usage. Often without running water, or up-to-date septic system.

Signs: (2013) Any device affixed to the ground or a structure or stationary object that brings a visual message to the public. Sign may consist of one or more sections or modules in which case the sum of the square feet of all sections or modules shall be considered when meeting the requirements of this ordinance.

Structure: (2013) Anything constructed or erected with a fixed location on, above or below the ground, or attached to something having a fixed location on, above, or below the ground.

Tract: (2002) A parcel of land proposed to be subdivided or approved as a Planned Residential Development (PRD).

Travel Trailers/Recreational Vehicles/Camper: (2013) A motorized vehicle or trailer used for traveling and recreational activities and equipped with living space and amenities found in a home.

ARTICLE III: ESTABLISHMENT OF ZONING DISTRICTS

Section 1: Districts
For the purpose of this Ordinance the Town of Temple is divided into the following three zoning districts hereinafter referred to as "Districts":

Village and Historic Preservation District: This District includes all land within one-quarter mile radius of the Town Hall, as per the Zoning Map.

Rural Residential and Agricultural District: This District includes all land outside the Village and Historic Preservation District except that land that is in the Mountain District.

Mountain District: This District includes all the land shown therein on the "Town of Temple, N.H. Zoning Map 1972." (The boundaries of this District, as shown on the Zoning Map, were derived mainly from the early "Ranges and Lots" layout of the Town.) The lands therein include; that portion of the New Ipswich Gore as shown on the Zoning Map; Lots 12, 13, 14 and 15 in Ranges I, II, and III; Lots 12 and 13 plus the northern one-half of Lot 11 in Range IV; Lots 11 and 12 plus the northern two-thirds of Lot 8, 9, and 10 and the northern one-third of Lot 7 in Range V; Lots 7, 8, 9, 10 and 11 in Range VI; Lots 9, 10, and 11 in Ranges VII and VIII; Lots 6, 7, 8, 9, and 10 in Range IX; Lots 4 and 5 in Range X; All of the Peterborough Addition; All of the Borland Farm; And the northern one-third of the Lyndeborough Addition, as shown on the Zoning Map. (NOTE: "Ranges and Lots," as used in the above paragraph are the divisions of land into which the Town was divided at the time of the Town's incorporation and were first shown on the early maps of the Town.)

Section 2: Zoning Map
The Zoning Districts listed above shall be bounded as shown on the map entitled "Town of Temple, N.H. Zoning Map 1972", which map is filed with the Town Clerk and is made part of this Ordinance by reference.

ARTICLE IV: GENERAL PROVISIONS
The following sections shall apply to all districts.

Section 1: Sanitary Facilities: All new installations and major repairs of septic tank systems and other sanitary drainage facilities shall be in accordance with the State standards of the Water Supply and Pollution Control Commission of New Hampshire and the Water Pollution Control regulations for the Town of Temple, N.H.

Section 2: Garbage: No garbage, rubbish, or trash shall be brought into town. (Garbage defined as per RSA 149-M.)

Section 3: Roads and Driveways: That portion of each new road or driveway that is within thirty feet of the public highway and any portion that could create a drainage problem along the public highway must be built to meet the requirements of the road agent and the selectmen. See the Town of Temple Driveway Regulations for these requirements. All costs must be borne by the owner. No driveway shall serve more than one lot, unless granted approval by the Planning Board.

Section 4: Off-Street Parking: Each new dwelling shall provide a suitable parking space for at least four cars, garage and driveway included.

Section 5: Setback: (2007) Except as noted elsewhere in this ordinance, each new building, addition or accessory building shall be setback at least thirty-five feet from all lot lines. New lot lines shall be at least thirty-five feet from any existing building and/or accessory building.

Section 6: Height of Structures: (1996) No structure shall be built over forty feet high.

Section 7: Multiple Dwellings

7.10 Multiple dwellings shall not be allowed, except as allowed in Article IV Sections 7A, 19 and 26

7.20 There shall be no more than one dwelling on a lot plot or parcel, except as allowed in Article IV Sections 7A, 19 and 26

Section 7A: **Accessory apartments are permitted in all residential districts.** The intent of this section is to allow home owners with more house than needed to generate extra income, elderly to have caretakers or renters share a home, and as a source of affordable housing in Temple.

7A.10 (2001) Only one accessory apartment is permitted per lot and must be attached to and part of the primary residence.

7A.20 Manufactured housing units are not eligible for subdivision into accessory apartments.

7A.30 The accessory apartment shall have a minimum floor area of 400 square feet, but in no case shall the floor area compromise more than 30% of the floor area of the primary residence. Floor area of dwellings for the purposes of this section shall be calculated as follows:

- Finished living areas with full headroom shall be measured from the outside face of the structure.
- The area of attics and half floors shall be measured by the area with at least four feet of headroom.
- The full area of a useable basement may be included.
- To be counted as part of the existing residence any addition to structure must have had an occupancy permit for one year.

7A.40 Written state approval of adequate septic capacity required or state approved plan in case of failure of existing system.

7A.50 Applicant must show adequate water supply.

7A.60 (2001) Adequate provision shall be made for off street parking separate from primary residence parking, for at least one car.

7A.70 The accessory apartment shall be within the existing primary residence. In no case shall a "detached" unit be allowed, except as noted in Section 7B below.

7A.80 Occupancy permits required before use as an accessory apartment.

7A.90 Accessory apartments shall not be allowed in Planned Residential Developments.

Section 7B: **Detached accessory apartments:**

7B.10 A detached accessory apartment shall be permitted on lots that are at least twice the minimum lot size for that district.

7B.20 Neither primary residence nor accessory apartment may be manufactured housing.

7B.30 The accessory apartment shall have a minimum floor area of 400 square feet, but in no case shall the floor area compromise more than 30% of the floor area of the primary residence. Floor area of dwellings for the purposes of this section shall be calculated as follows:

- Finished living areas with full headroom shall be measured from the outside face of the structure.
- The area of attics and half floors shall be measured by the area with at least four feet of headroom.
- The full area of a useable basement may be included.
- To be counted as part of the existing residence any addition to structure must have had an occupancy permit for one year.

7B.40 (2001) Written state approval of adequate septic capacity is required or a state approved plan in case of failure of existing system.

7B.50. (2001) Applicant must show adequate water supply.

7B.60 (2001) Adequate provision shall be made for off street parking as defined in 7A.60 above.

7B.70 (2001) Occupancy permits required before use as a detached accessory apartment.

7B.80 (2001) Only one detached accessory apartment is allowed per lot.

7B.90 (2001) Detached accessory apartments shall not be allowed in Planned Residential Developments.

Section 8 Manufactured Housing: Manufactured housing shall conform to Sections 1, 3, 4, 5, 6, and the lot size requirement of the District in which it is located.

Section 9 Temporary Use of Manufactured Housing or Trailers: A manufactured home or trailer may be located temporarily on a lot for up to three years while a permanent dwelling is being constructed, provided it complies with Section 8.

Section 10 Motor Vehicle Junk Yards: Motor vehicle junkyards shall abide by the state laws on this subject (RSA 236: 111-129).

Section 11 (2010) **Home Business**

A. Home Business I:
A Home Business I will be permitted in all zoning districts if it conforms to all of the requirements of this section.

1. It shall be carried out only by residents of the premises and involve a service provided by or product produced by those residents.

2. It shall be operated entirely within the dwelling and/or accessory building and shall involve no more than half the total interior floor space and in no case more than 2000 square feet.

3. It shall be clearly secondary to the use of the premises for dwelling purposes and not alter the general character of the neighborhood or reduce the value of any surrounding property.

4. It shall result in no external evidence of the enterprise except for a permitted sign and shall not have an adverse effect on the environment or the surrounding properties as a result of noise, odors, smoke, dust, lights, pollution (soil, water or air), increases in traffic or in parking requirements, or as a result of other nuisances.

5. It shall not include on-site Retail except for the sale of produce and products grown or made on-site or the sale of other products that are clearly incidental to the business, profession or trade.

6. It shall have no outdoor display of goods, and no outdoor storage of materials or equipment. One business related vehicle may be stored on site without required screening.

7. The dwelling or accessory building shall not provide window displays or other characteristics or features normally associated with Retail or other commercial use.

B. Home Business II:
A Home Business II will be permitted in the Village and Rural/Agricultural zoning districts if it conforms to all of the requirements of this section.

1. It shall be carried out by residents of the premises and not more than three on-premise employees who are not residents.

2. It shall be operated entirely within the dwelling and/or accessory building and shall involve no more than half the total interior space and in no case more than 2000 square feet.

3. It shall be clearly secondary to the use of the premises for dwelling purposes and not alter the general character of the neighborhood or reduce the value of any surrounding property.

4. It shall result in no external evidence of the enterprise except for a permitted sign and shall not have an adverse effect on the environment or the surrounding properties as a result of noise, odors, smoke, dust, lights, pollution (soil, water or air), excessive increases in traffic or in parking requirements, or as a result of other nuisances.

5. It shall not include on-site Retail except for the sale of produce and products grown or made on-site or the sale of other products that are clearly incidental to the business, profession or trade.

6. It shall have no outdoor display of goods, and no outdoor storage of materials or equipment. One business related vehicle may be stored on site without required screening.

7. The dwelling or accessory building shall not provide window displays or other characteristics or features normally associated with Retail or other commercial use.

C. Home Business III:

A Home Business III will be permitted in the Rural/Agricultural zoning district if it conforms to all of the requirements of this section.

1. It shall be carried out by residents of the premises and not more than three on-premise employees who are not residents.

2. It shall be operated entirely within the dwelling and/or accessory building and shall involve no more than half the total interior space and in no case more than 2000 square feet.

3. It shall be clearly secondary to the use of the premises for dwelling purposes and not alter the general character of the neighborhood or reduce the value of any surrounding property.

4. It may result in external evidence of the enterprise but shall not have an adverse effect on the environment or the surrounding properties as a result of noise, odors, smoke, dust, lights, pollution (soil, water or air), excessive increases in traffic or in parking requirements, or as a result of other nuisances.

5. It shall not include on-site Retail except for the sale of produce and products grown or made on-site or the sale of other products that are clearly incidental to the business, profession or trade.

6. It shall have no outdoor display of goods, and no outdoor storage of materials or equipment unless screened from roads and surrounding properties by natural or structural means to such an extent and in such manner as may be specifically required and approved through site plan review by the Planning Board. One business related vehicle may be stored on site without required screening.

7. The dwelling or accessory building shall not provide window displays or other characteristics or features normally associated with Retail or other commercial use.

D. Special Exception

Any business activity that exceeds the standards for Home Business I, II or III, and any Garage-Public, Filling Station or Retail business, must comply with Article IV, Section 13.

Section 12 Farming and Related Rural Pursuits: Farming, logging, sugaring and related rural pursuits that have been normal in this town are permitted.

Section 13 (2010) **Industry, Commercial and Non commercial Enterprises:** Trade, enterprises, facilities, whether commercial, non commercial and/or industrial use of land or buildings, including the commercial excavation of earth materials, not specifically authorized under other sections of this ordinance,

may be permitted by special exception if approved by the Board of Adjustment after a public hearing on the subject. At said public hearing the Board of Adjustment shall only grant a special exception upon finding that the Standards outlined in Section 13A and the Conditions in 13B have been met.

Section 13A (2010) **Special Exception Standards**

1) The proposed use shall be set back at least five hundred feet from any existing dwelling of another owner; provided, however, that, at the discretion of the Board of Adjustment, this distance may be reduced in any amount to a minimum of two hundred feet, but only if written permission is obtained from the abutting owners affected;

2) The Board of Adjustment finds that the proposed use shall have off street parking which will be ample to serve the proposed use; provided, however, that any such off street parking shall, at a minimum, be set back at least fifty-five (55) feet from all lot lines.

3) The proposed use shall not adversely affect the value of adjacent property. An adverse affect on adjacent property is one which would be obnoxious or injurious or limit the use of neighborhood property by causing such problems as excessive noise, odor, smoke, refuse matter, vibration, traffic, dust, fumes, light, glare, drainage, or other conditions that are associated with the intended use but are not typical of permitted uses within the area.

4) The proposed site shall be in an appropriate location for the use. Among the factors the Board of Adjustment will consider are: lot size, topography, soils, water resources, road access and locations of driveways, condition of existing structures and other relevant characteristics such as whether the proposed use is compatible with the surrounding land uses.

5) No hazardous waste shall be permanently stored on or disposed of on the property.

6) Traffic generated by the proposed use shall not present a safety hazard to the community for either vehicles or pedestrians, nor shall it cause excessive wear and tear to town roads.

7) Appropriate buffering landscaping shall be provided within the setback areas, of a type and amount deemed appropriate by the Planning Board during Site Plan Review.

8) The Board of Adjustment shall, when appropriate, request a recommendation from the Planning Board, the Conservation Commission, Road Agent and/or the Health Officer concerning the proposed use.

Section 13B (2010) **Special Exception Conditions**

In the event that the Board of Adjustment finds that the above standards have been met and, accordingly, grants a special exception, any such use SHALL comply with the following additional conditions and the Board of Adjustment may not waive compliance with the following conditions as part of its decision regarding the special exception:

1) All buildings shall be set back at least one hundred feet from all lot lines;

2) Access shall be provided by not more than two driveways, not more than thirty-two (32) feet wide;

3) The total footprint of all buildings and structures shall occupy no more than one-eighth (1/8) of the lot or parcel of land.

4) Proposed use shall be located on a town or state maintained road or street.

5) All food shall be served and consumed within the building(s), except that a seasonal outdoor dining area and or take out services may be approved during Site Plan review.

6) No drive through services shall be provided

7) New facilities shall be located on a lot at least 5 acres in size.

8) Any retail store shall not exceed 3000 square feet of floor space

9) There shall be no outdoor display of goods, and no outdoor storage of materials or equipment unless screened from roads and surrounding properties by natural or structural means to such an extent and in such manner as may be specifically required and approved by the Planning Board during Site Plan Review. One business related vehicle may be stored on site without required screening.

However, this prohibition is NOT intended to limit the Board of Adjustment in the exercise of its authority to consider applications for variances from the terms of the ordinance made pursuant to RSA 674:33, (I)(b).

Approvals granted hereunder shall expire at the end of twelve months after the date of the Notice of Decision if the activity for which the Special Exception is granted has not been started or significantly acted upon. The Board of Adjustment, upon timely application, may extend the expiration date for an additional twelve months at its discretion and without a public hearing.

Section 14 (2010) Not used

Section 15 Removal of Ruins: No owner or occupant of any land shall permit any building ruins caused by fire, explosion, flood, storm, or other acts of God to be left unfinished or incomplete thereon, but shall finish or complete or remove the same within two years of occurrence.

Section 16 (2007) **Home Products and Produce:** Home products and produce may be sold, and exposed for sale.

Section 17 Signs:

(a) Property owners of business, professional, or service enterprises shall be allowed two advertising signs on the premises for their goods and services only, such signs not to exceed eight square feet each.

(b) Two signs not exceeding eight square feet each are permitted on any lot advertising that lot and/or building thereon for sale or lease.

(c) Two signs, advertising their goods and services only and not exceeding twenty square feet each, are permitted on the premises of any commercial or industrial enterprise that has been approved by the Board of Adjustment according to Section 13.

(d) "No Trespassing" and official Town, State, and Federal signs shall be exempt from these regulations.

(e) (2016) No external signs using neon, flashing lights, internal illumination, or rotating or moving components are permitted. A business may have one internally lit sign that does not move, rotate, or flash, with the sole word "OPEN", provided that sign is no larger than 1 square foot and is mounted internally within a window of the business' building.

(f) Each residence shall be permitted to have nameplates.

(g) Temporary signs for special occasions shall be permitted.

Section 18 Travel Trailers and Recreational Vehicles: Any property owner or lessee may, in addition to his house, accommodate one travel trailer, motor home, pick-up camper, or similar recreational vehicle for non-paying guests, for a period not to exceed ninety days in any one year. This applies only to such vehicles as are used for sleeping and/or living purposes. This is not intended to restrict the storage or parking of up to two such vehicles during periods of non-use on the premises of the owner.

Section 19 Planned Residential Development

A. Purpose:
The purpose of this Article IV Section 19 is to encourage reasonable flexibility in the development of land for residential purposes, to promote the most efficient use of land and to preserve significant natural and man-made features and open space in the design and development of residential projects. The specific objectives of these provisions and the general standards with which all proposed Planned Residential Developments shall comply are:

1. Promote the conservation of the natural environment and the development of land in harmony with natural features of the specific site proposed for development.

2. (2002) Preserve open space and the natural beauty of existing rural roads, farmlands, woodlands and cultural features which give the Town much of its identity.

3. (2002) Provide open space and recreation areas for the enjoyment of the residents of the development.

4. Promote economy and efficiency in the design, construction and maintenance of new roads and utilities for the developer, the Town and the residents of the proposed development.

5. Avoid development of lands which by virtue of excessive slope, wetness, flood hazard or similar conditions are unsuitable for residential use.

6. Promote a wide range of housing opportunities for individuals and families of various ages and economic circumstances.

7. Provide an efficient and expedient regulatory procedure while assuring high quality design, engineering and site planning.

8. Protect the health, safety and welfare of present and future residents of the Town.

B. Standards and Criteria:

1. (2006) Planned Residential Development shall be a permitted use in the Rural Residential and Agricultural District, of the Town of Temple.

2. (2002) The minimum tract size for any Planned Residential Development shall not be less than 6 contiguous acres.

3. (2002) Any tract proposed for a Planned Residential Development shall have a minimum of 300 contiguous feet of frontage on a class V or better road.

4. (2002) The maximum allowable density in any Planned Residential Development shall be calculated as follows:

TOTAL area in acres of the tract

MINUS area of all un-developable lands which shall include all surface waters on the tract, all lands with slopes of 25% or greater, all soils designated by the U.S.D.A. Soils Conservation Service in cooperation with the Hillsborough County Conservation District to be poorly drained or very poorly drained, and all lands within the 100-year flood zone. On-site determination of soil types may be conducted at the request of the Planning Board by an agent of the Hillsborough County Conservation District or a qualified soil scientist approved by the Town of Temple Planning Board. Structures, paved areas, service areas and other developed facilities shall be built <u>only</u> on the developable area or developable portion of the tract, excepting, however, stream and wetlands crossings as shall be necessary for the construction of an internal system of roads or ways.

EQUALS total developable area.

TOTAL developable area minus area of all streets and/or road rights-of-way in the development

DIVIDED by the minimum lot size for the zone in which the tract is located

EQUALS the maximum number of dwelling units permitted (fractions should be rounded down to the next lowest number).

WORKFORCE HOUSING DENSITY BONUS: For every two units of workforce housing in a development meeting the requirements of Article IV Section 26 and RSA 674:58-61, one additional dwelling unit shall be allowed, up to a maximum bonus of 25% more units than otherwise allowed in this section.

5. Minimum lot size, frontage, setback and other dimensional requirements specified in the Zoning Ordinance and/or Subdivision Regulations may be modified or waived by the Planning Board within the Planned Residential Development provided that the Planning Board after review of the required application materials finds that the proposal is consistent with the objectives outlined in paragraph A and other provisions of this Article. A Planned Residential Development may provide for private road access within the Planned Residential Development provided that a waiver of Town responsibility for municipal services in a form acceptable to Town counsel is delivered with any approval of the Planned Residential Development and further, provided that notice of private roads within the Planned Residential Development

is suitably recorded in any document or instrument concerning the creation of the Planned Residential Development at the Hillsborough County Registry of Deeds.

6. (2002) All land in the Planned Residential Development which is not covered by buildings, septic systems, wells, paved areas, parking and service areas, and which is not set aside as private yards, patios, or gardens for the residents shall be treated as open space. The area of the open space shall be at least forty percent (40%) of the total area of the Planned Residential Development tract. At least fifty percent (50%) of the land required to be set aside as open space shall be land that is not undevelopable land as defined in Article IV: Section 19 (a). The open space area shall have a shape, dimension, character and location suitable to assure use for park, recreation, conservation or agricultural purposes by at least all of the residents of the Planned Residential Development. To the extent possible, as much open space as possible shall be contiguous. Such provisions shall further hold that all the open space shall be readily accessible to all residents of the Planned Residential Development and that such open space shall be retained in perpetuity, and a note to this effect shall be placed on the final plat, for one or more of the following uses: conservation, agriculture, recreation or park. No building construction or substantial alteration of terrain or topography, whether it is to be structures or septic systems, shall take place in the open space. Where the Planning Board feels that it is in the best interests of the Town, this land may be conveyed to the Town (subject to the approval of the homeowners association and the voters at Town Meeting). Timber harvesting in the open space shall be conducted only consistent with good timber stand management practices pursuant to a timber management plan prepared by a qualified licensed forester.

The open space shall be conveyed to a homeowners association, whose membership includes all the owners of lots or units contained in the tract. The developer shall be responsible for the formation of the homeowners association of which the developer or owner shall be a member until a majority of lots of record are sold. The homeowners association shall be structured so as to provide that the membership and obligation of unit purchasers in the homeowners association will be automatic upon the conveyance of title or lease of dwelling units.

7. To provide an adequate transition between the development and abutting lands or public roadways all Planned Residential Developments shall provide for a natural existing vegetation perimeter buffer with a minimum of 35 foot depth along any existing public road frontage, side lot line or rear lot line, provided, however where there are existing residential dwelling units abutting the Planned Residential Development, then the buffer shall be a minimum of 100 feet from any existing dwelling unit. No cutting of timber or brush, or pruning of trees will be allowed in the buffer zone for any reason without approval from the Planning Board.

8. No lots shown on the plan for which a permit is granted under this Planned Residential Development ordinance shall be further subdivided and a note to this effect shall be placed on the final plat.

9. Where there are differences between Planned Residential Development requirements and the Subdivision Regulations, the requirements of the Planned Residential Development shall prevail. All the regulations and restrictions not specifically mentioned in this ordinance shall be those of the zoning district in which the Planned Residential Development is located.

C. Procedure:

Applicants for approval for the proposed Planned Residential Development shall make application to the

Planning Board in the same fashion as specified in the Subdivision Regulations. In the course of review of the proposal by the Planning Board, the Board shall hear evidence presented by the Applicant and determine whether, in the Board's judgment, the proposal meets the objectives and purpose set forth above, in which event the Board shall grant approval to the proposal, subject to such reasonable conditions and limitations as the Board shall deem appropriate.

Section 20: (1996) **Bed & Breakfast:** Bed & Breakfasts are allowed in all districts by special exception from the Zoning Board of Adjustment with the following conditions:

1. There is no existing accessory apartment.
2. No more than 3 rooms may be rented.
3. A change of use permit and an occupancy permit must be obtained from the Selectmen.
4. There must be adequate off street parking.
5. Must show adequate septic & water capacity.
6. Will be subject to annual inspections by the Code Enforcement Officer and/or Health Officer.
7. Must be the minimum lot size requirements for the district.
8. Will not compromise the peace and enjoyment of the neighborhood.

Section 21: (2001) **Residential Care Facilities:** Residential Care Facilities may be permitted in all districts by special exception if approved by the Board of Adjustment after a public hearing on the subject. Any existing residential care facility, or an organization offering services as a residential care facility, may be expanded only by special exception, if approved by the Board of Adjustment after a public hearing on the subject. This shall mean expansion of any existing structures, the building of any new facilities, or the expansion of services to any new or additional property or structure. Remodeling without expansion, or the construction of accessory structures shall not require a special exception. In all cases the proposed residential care facility shall conform to the following requirements:

1. Must be licensed by the State of NH Health Facilities Administration pursuant to RSA 151, or be in the process of applying for such license.
2. Must meet the minimum lot size requirements for the district in which it is located.
3. Setbacks must meet the minimum setback requirements for the district in which it is located.
4. Must show that the provisions of Article IV Section 7 and Article IV Section 14 are not violated or that the facility qualifies under this section, number 11 below.
5. Must have adequate off street parking to ensure that any facility vehicles, resident caregiver vehicles, resident aide vehicles and visitor's vehicles are not parked in State or Town right-of-ways.
6. Must show adequate septic & water capacity, per State of NH-DES regulations, for the number of residents anticipated to live in the structure.
7. Will be subject to annual inspections by the Code Enforcement Official and/or Health Officer.
8. Will be required to obtain a certificate of occupancy from the Board of Selectmen indicating the change of use upon obtaining the special exception.
9. Will not compromise the peace and enjoyment of the neighborhood.
10. Shall be required to obtain Site Plan Review from the Planning Board upon the granting of a special exception by the Zoning Board of Adjustment.
11. More than one Residential Care Facility may be allowed on one lot or parcel, but not more than one-half the dwelling units that would be allowed if the lot or parcel were to be subdivided under the requirements of Article IV: Section 19, Planned Residential Development (PRD). For the purposes of this section, staff accommodations shall not be deemed to be accessory apartments.

Section 22: (2001) Certified Community Residence: (RSA 171.A:4)
May be permitted and is not required to be in compliance with Temple's zoning ordinance if properly licensed by the State of New Hampshire.

Section 23: (2001) Licensed Community Residence: (He-P814 by RSA 151.9)
May be permitted and is not required to be in compliance with Temple's zoning ordinance if properly licensed by the State of New Hampshire and in possession of a Community Care Waiver issued by the Department of Health and Human Services certifying ALL beds in the facility.

Section 24: (2008) Mountain District Conservation Development

The purpose of the Mountain District Conservation Development (MDCD) design is to conserve agricultural and forestlands, habitat, water quality, and rural character that would likely be lost through conventional development approaches in Temple's Mountain District.

A. Objectives:

To accomplish this goal, flexibility and creativity in design is encouraged.

1 To conserve areas with productive soils for continued agricultural and forestry use by preserving blocks of land large enough to allow for economic and ecologically sensitive operations.

2 To encourage the maintenance and enhancement of habitat for plant and animal communities, including rare species.

3 To minimize site disturbance and erosion through retention of existing vegetation and avoiding development in sensitive areas.

4 To conserve land that protects water quality and quantity, including watersheds and buffers along streams, wetlands, ponds, and land overlying aquifers.

5 To protect scenic views and special elements of rural character.

6 To minimize the impact of exterior lighting.

7 To conserve and maintain historic settings, cellar holes, stone walls, archeological sites and structures that serve as significant visible reminders of the town's history.

8 To provide for outdoor recreational needs of residents, including trails and scenic beauty.

9 To provide for a town-wide trail network for the health, enjoyment and safe travel of residents.

10 To provide for a wide range of housing opportunities.

11 To provide greater efficiency in the siting of services and infrastructure by reducing road length and width and utility runs.

12 To create compact neighborhoods accessible to open space amenities and with a strong community identity and quality of life.

13 To minimize runoff by reducing the land area covered by impervious surfaces.

B. Applicability:

1 **Ten Acre Minimum** – In any residential subdivision in Temple's Mountain District (MD) where three or more lots are being applied for, an applicant must apply for a MDCD under this Article unless the applicant demonstrates and the Planning Board finds that a conventional subdivision plan is more appropriate to the site and better meets the objectives of this ordinance. Applicants for subdivisions of fewer than three lots may apply under this MDCD ordinance.

2 **Minimum Frontage** – A minimum of fifty feet of frontage on a Class 5 road shall be required.

3 **Phased Subdivision Applications** – This MDCD ordinance shall apply to the phased subdivision of a parcel over a period of time through separate successive applications. The density and design requirements of this Article shall apply to phased applications for the original parcel as though the development of the entire parcel were proposed in one application at one time. The total permitted density will be based upon the acreage and characteristics of the original parcel that existed as of the date of enactment of this Article.

4 **InterDistrict Lots** – If the lot is partly in the MD and partly in the Rural Residential and Agricultural (RA) District, one of the two following approaches will be used:

(a) The MDCD shall apply in the MD portion. Either the PRD or Conventional Subdivision ordinance shall be used in the RA District portion. The houses allowed under the MDCD formula may be located either in the MD or the RA District portion. However, houses allowed under the RA District calculation shall be located in the RA District portion only.

(b) The entire parcel shall be treated as if it was entirely within the MD and all calculations and proceedings shall follow this MDCD ordinance.

C. Site Planning Process:

The application process shall consist of informal discussions, a land evaluation, a conceptual design review, and a final plat review.

1 Informal Discussion – The applicant shall schedule informal discussions with the Planning Board at one or more of its regular public meetings to review the purposes and provisions of the ordinance with respect to the property, the intent of the applicant, and the conservation features of the property.

2 Land Evaluation – Includes identification of conservation features and the proposed Conservation Area(s). At the start of the Land Evaluation process, the Planning Board shall notify all abutters by regular mail. The applicant shall prepare a conceptual plan showing the conservation features and proposed Conservation Area(s) of the property. The proposed Conservation Area(s) shall consist of a minimum of 50% of the developable area of the property. The plan shall show at a minimum:

(a) Contours based at least upon topographical maps published by the U.S. Geological Survey;

(b) Undevelopable areas (wetlands, steep slopes, etc);

(c) Aquifers, water bodies and perennial watercourses, NRCS soil types;

(d) Fields, tree lines, utilities, roads, trails, historic and habitat features;

(e) Proposed Conservation Areas.

3 Conceptual Design Review - The purpose of the conceptual plan is to identify issues, problems, and opportunities before the applicant incurs extensive engineering costs. Conceptual Design Review for a MDCD has **five major components**;

(a) Calculation of number and location of building sites: The applicant shall calculate the number of building lots to be allowed according to Section D of this Article. The applicant shall locate the potential building sites and preliminary individual or centralized well and septic disposal areas. Potential sites shall be located to advance the purposes of this Article listed in Section A. 1. in order to minimize impacts upon sensitive resources on the property and limit the amount of infrastructure needed to serve the development. When possible, building sites should be screened from existing public vantage points.

(b) Location of roads:
Next, the conceptual plan shall show the roads and curb cuts for the building sites. Wetland crossings and impacts upon sensitive resources shall be minimized. The applicant shall also lay out any trails needed to access the Conservation Area(s) from the building lots and roads.

(c) **Location of lot lines and estimated locations of wells and septic systems:**
The applicant shall locate the lot lines for the building lots as well as estimated locations of wells and septic systems.

(d) **Storm water management:**
The applicant shall provide plans for storm water management.

(e) **Exterior lighting and vegetation cutting/removal:**
The applicant shall provide plans for exterior lighting and vegetation cutting/removal.

All other requirements of Temple's Subdivision Regulations shall also apply, unless deferred by the Planning Board until the Final Plat stage.

4 **Final Plat Review** -- Once the Conceptual Design has been accepted, the approval of the final plat will be considered according to the Temple Subdivision Regulations including engineering and studies for topography, soils, septic design, wetlands delineation, road layout, and other features.

This stage will also include review of the proposal for ownership and uses of the Conservation Areas, stewardship of any conservation easements, and deed restrictions or conservation easement language assuring permanent protection of Conservation Areas, as required in Section G of this Article.

D. Density:

1 The intent of this Article is to enable the applicant to decrease lot sizes and conserve land as open space, thereby lowering development costs and increasing the desirability of the project.

2 The maximum number of building lots allowed in a MDCD shall be **calculated as follows**:

(a) **Total area** in acres of the tract…

(b) **Minus area of all undevelopable lands** which shall include all surface waters on the tract, all lands with slopes of 25% or greater, all soils designated by the USDA Soils Conservation Service in cooperation with the Hillsborough County Conservation District to be poorly drained or very poorly drained, and all lands within the 100 year flood zone. On site determination of soil types may be conducted at the request of the Planning Board by an agent of the Hillsborough County Conservation District or qualified soil scientist approved by the Town of Temple Planning Board. Structures, paved areas, service areas and other developed facilities shall be built only on the developable area or developable portion of the tract, excepting, however, stream and wetland crossings as shall be necessary for the construction of an internal system of roads or ways…

(c) **Equals total developable land.** Total developable land…

(d) **Minus area of all streets** and/or road rights-of-way in the development…

(e) **Divided by the five** acre minimum lot size…

(f) **Equals the maximum number of dwelling units** permitted (fractions should be rounded down to the next lowest number.)

3 The Planning Board may approve a **density bonus** of up to 10% if the applicant provides exceptional public benefits, namely:

(a) Conserving 60% or more of the developable land as open space; or

(b) Providing public access to trails or dedicated Conservation Area(s).

E. Lot Size:

Planning Board has the discretion to determine appropriate lot size consistent with the objectives of this ordinance.

F. Buffers:

To provide an adequate transition between the development and abutting lands or public roadways all MDCDs shall provide for a natural existing vegetation perimeter buffer with a minimum of 35 foot depth along any existing public road frontage, side lot line or rear lot line. No cutting of timber or brush, or pruning of trees will be allowed in the buffer zone for any reason without approval from the Planning Board. No more than one proposed new dwelling shall be within 250 feet of any existing dwelling.

G. Ownership and Protection of Conservation Areas:

1 **Conservation areas** provided by MDCDs **shall be permanently protected as open space** and shall be conveyed to one of the following entities, subject to the approval of the Planning Board:

(a) To the homeowners association, whose membership includes all the owners of lots or units contained in the tract. The developer shall be responsible for the formation of the homeowners association of which the developer or owner shall be a member until a majority of lots of record are sold. The homeowners association shall be structured so as to provide that the membership and obligation of unit purchasers in the homeowners association will be automatic upon the conveyance of title or lease of dwelling units.

(b) To the Town of Temple and accepted by the Board of Selectmen for open space or other specified conservation uses;

(c) To the State of New Hampshire for permanent open space uses;

(d) To a private non-profit organization which is exempt from tax under Section 501 (c)(3), or similar provision of the Internal Revenue Code, and whose principal purpose is the conservation of open space and has the financial and organizational means for perpetual stewardship.

(e) To a private landowner that will manage it for uses consistent with the purposes of this Article.

2 **Conveyances of land** are subject to the approval of the Planning Board and shall include:

(a) Conveyances of land to the Town or State will be subject to permanent deed restrictions.

(b) Conveyances of land to private entities will be subject to a permanent conservation easement granted to qualified non-profit organization which is exempt from tax under Section 501 (c)(3), or similar provision of the Internal Revenue Code, and whose principal purpose is the conservation of open space and has the financial and organizational means for perpetual stewardship.

(c) Recording at the Hillsborough County Registry of Deeds

(d) No further subdivision,

(e) No residential or industrial development,

(f) No roads or commercial uses except for agriculture, forestry or outdoor recreational activities conducted according to best management practices.

(g) No septic systems or buildings of any kind

(h) No structures except those consistent with the use of the land for recreational trails.

3 **General public access** to the Conservation Areas will not be required unless the land is conveyed in fee simple to the Town or State or a specific public trail corridor easement is proposed. Except in the aforesaid cases, the rights to post land and limit public access will remain with the landowner.

H. Conservation Area Location and Design:

1 Except as otherwise provided herein, **a minimum of 50% of the developable area** of the property must be included in a Conservation Area. Exclusions from the developable area are steep slopes in excess of 25%, wetland soils, and rock outcroppings;

2 In evaluating the acceptability of proposed Conservation Area(s) the Planning Board shall consider the extent to which the location and design of the area achieves these objectives:

(a) Large enough blocks of land are conserved to retain ecosystem diversity, function and habitat integrity;

(b) Large enough blocks of land are conserved to sustain agricultural or forestry operations and buffer them from nearby development;

(c) For trail or stream corridors, wide enough buffers are provided from building lots (minimum of 75 feet);

(d) Access to and/or benefits from the open space are provided to the greatest number of lots within the subdivision;

(e) Linkages or contiguity with existing or potential Conservation Areas on abutting properties are provided;

(f) Scenic views from public roads and prominent ridgelines are conserved as much as possible; and

(g) Creative and successful achievement of the Objectives listed in Section A.

SECTION 25: (2009) SMALL WIND ENERGY SYSTEMS (SWES)

A. Purpose:

This small wind energy systems ordinance is enacted in accordance with RSA 674:62-66, and the purposes outlined in RSA 672:1-III-a. The purpose of this ordinance is to accommodate small wind energy systems in appropriate locations, while protecting the public's health, safety and welfare. In addition, this ordinance provides a permitting process for small wind energy systems to ensure compliance with the provisions of the requirements and standards established herein.

B. Definitions:

Meteorological tower (met tower). Includes the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. For the purpose of this ordinance, met towers shall refer only to those whose purpose are to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system.

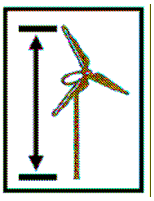
Modification. Any change to the small wind energy system that materially alters the size, type or location of the small wind energy system. Like-kind replacements shall not be construed to be a modification.

Net metering. The difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's small wind energy system that is fed back into the electric distribution system over a billing period.

Power grid. The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

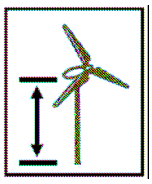
Shadow flicker. The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.

Small wind energy system. A wind energy conversion system consisting of a wind generator, a tower, and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and will be used primarily for onsite consumption.



System height. The vertical distance from ground level to the tip of the wind generator blade when it is at its highest point.

Tower. The monopole, guyed monopole or lattice structure that supports a wind generator.



Tower height. The height above grade of the fixed portion of the tower, excluding the wind generator.

Wind generator. The blades and associated mechanical and electrical conversion components mounted on top of the tower whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

C. Procedure for Review:

1. Building Permit: Small wind energy systems and met towers are an accessory use permitted in all zoning districts where structures of any sort are allowed. No small wind energy system shall be erected, constructed, or installed without first receiving a building permit from the building inspector. A building permit shall be required for any physical modification to an existing small wind energy system. Met towers that receive a building permit shall be permitted on a temporary basis not to exceed 3 years from the date the building permit was issued.

2. Application: Applications submitted to the building inspector shall contain a site plan with the following information:

   i) Property lines and physical dimensions of the applicant's property.

   ii) Location, dimensions, and types of existing major structures on the property.

   iii) Location of the proposed small wind energy system, foundations, guy anchors and associated equipment.

   iv) Tower foundation blueprints or drawings.

   v) Tower blueprints or drawings.

   vi) Setback requirements as outlined in this ordinance.

   vii) The right-of-way of any public road that is contiguous with the property.

   viii) Any overhead utility lines.

   ix) Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity.

   x) Small wind energy systems that will be connected to the power grid shall include a copy of the application for interconnection with their electric utility provider.

   xi) Sound level analysis prepared by the wind generator manufacturer or qualified engineer.

   xii) Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code.

   xiii) Evidence of compliance or non-applicability with Federal Aviation Administration requirements.

   xiv) List of abutters to the applicant's property.

3. Abutter and Regional Notification: In accordance with RSA 674:66, the building inspector shall notify all abutters and the local governing body by certified mail upon application for a building permit to construct a small wind energy system. The public will be afforded 30 days to submit comments to the building inspector prior to the issuance of the building permit. The building inspector shall review the application for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the building inspector shall follow the procedures set forth in RSA 36:57, IV.

D. Standards:

1. The building inspector shall evaluate the application for compliance with the following standards;

   a. Setbacks: The setback shall be calculated by multiplying the minimum setback requirement number by the system height and measured from the center of the tower base to property line, public roads, or nearest point on the foundation of an occupied building.

Minimum Setback Requirements			
Occupied Buildings on Participating Landowner Property	Occupied Buildings on Abutting Property	Property Lines of Abutting Property and Utility Lines	Public Roads
0	1.5	1.1	1.5

      i) Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.

      ii) Guy wires used to support the tower are exempt from the small wind energy system setback requirements.

   b. Tower: The maximum tower height shall be restricted to 35 feet above the tree canopy within 300 feet of the small wind energy system. In no situation shall the tower height exceed 125 feet.

   c. Sound Level: The small wind energy system shall not exceed 60 decibels using the A scale (dBA), as measured at the site property line, except during short-term events such as severe wind storms and utility outages.

   d. Shadow Flicker: Small wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. Significant shadow flicker is defined as more than 30 hours per year on abutting occupied buildings. The applicant has the burden of proving that the shadow flicker will not have significant adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.

   e. Signs: All signs including flags streamers and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for manufacturer identification or appropriate warning signs.

   f. Code Compliance: The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code.

   g. Aviation: The small wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations including but not limited to 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424.

   h. Visual Impacts: It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the optimal wind resources on the property.

i) The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, wind generator design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground, except when the financial costs are prohibitive.

ii) The color of the small wind energy system shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the surrounding environment. Approved colors include but are not limited to white, off-white or gray.

iii) A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.

i) Approved Wind Generators: The manufacturer and model of the wind generator to be used in the proposed small wind energy system must have been approved by the California Energy Commission or the New York State Energy Research and Development Authority, or a similar list approved by the state of New Hampshire, if available.

j) Utility Connection: If the proposed small wind energy system is to be connected to the power grid through net metering, it shall adhere to RSA 362-A:9.

k) Access: The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

l) Clearing: Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and as otherwise prescribed by applicable laws, regulations, and ordinances.

E. Abandonment:

1. At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the building inspector by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.

2. Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the building inspector. "Physically remove" shall include, but not be limited to:

   a. Removal of the wind generator and tower and related above-grade structures.

   b. Restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.

3. In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous 12-month period. After the 12 months of inoperability, the building inspector may issue a Notice of Abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. After review of the information provided by the owner, the building inspector shall determine if the small wind energy system has been abandoned. If it is determined that the small wind energy system has not been abandoned, the building inspector shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.

4. If the owner fails to respond to the Notice of Abandonment or if, after review by the building inspector, it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind generator and tower at the owner's sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy system after the Notice of Abandonment procedure, the building inspector may pursue legal action to have the small wind energy system removed at the owner's expense.

F. Violation:

It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance. Small wind energy systems installed prior to the adoption of this ordinance are exempt from this ordinance except when modifications are proposed to the small wind energy system.

G. Penalties:

Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as allowed by NH Revised Statutes Annotated Chapter 676:17.

SECTION 26: (2010) **WORKFORCE HOUSING**

I. Purpose. The purposes of this Section are as follows:

A. To encourage and provide for the development of affordable workforce housing;

B. To ensure the continued availability of a diverse supply of home ownership and rental opportunities for low to moderate income households;

C. To meet the goals related to affordable housing provisions set forth in the town's Master Plan; and

D. To comply with the requirements of SB 342, An Act establishing a mechanism for expediting relief from municipal actions which deny, impede, or delay qualified proposals for workforce housing (RSA 674:58-61). In the course of implementing this Article, the Town of Temple has considered the region's affordable housing needs.

II. Authority. This innovative land use control Article is adopted under the authority of RSA 674:21, and is intended as an "Inclusionary Zoning" provision as defined in RSA 674:21(I)(k) and 674:21(IV)(a), as well as RSA 672:1, III-e, effective July 2009, which states:

"All citizens of the state benefit from a balanced supply of housing which is affordable to persons and families of low and moderate income. Establishment of housing which is decent, safe, sanitary and affordable to low and moderate income persons and families is the in the best interests of each community and the state of New Hampshire, and serves a vital public need. Opportunity for development of such housing shall not be prohibited or unreasonably discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers."

III. Applicability

A. **Zoning District**. Development in accordance with the provisions of this Article is permitted as a conditional use in the Rural Residential and Agricultural District.

B. **PRD Requirement:** Projects including workforce housing shall be limited to Planned Residential Developments, and follow the procedures of Article IV Section 19, this Section and the Town of Temple Subdivision Regulations.

C. **Permitted Uses:** Single family, duplex, and multi-family housing, or a mix of housing types within the same development are permitted within an application under this Article.

IV. Procedural Requirements / Applicant

A. Notice of Intent to Build Workforce Housing. Any person who applies to the Planning Board for approval of a development that is intended to qualify as workforce housing under this subdivision shall file a written statement of such intent as part of the application.

B. Waiver. Failure to file such a statement shall constitute a waiver of the applicant's rights under RSA 674:61 (the builder's remedy), but shall not preclude an appeal under other applicable laws.

C. Statement Required. In any appeal where the applicant has failed to file the statement required by this section, the applicant shall not be entitled to a judgment by a court on appeal that allows construction of

the proposed development, or otherwise permits the proposed workforce housing development to proceed despite its nonconformance with the municipality's ordinances or regulations.

V. Procedural Requirements/ Planning Board

A. **Notice of conditions**. If the Planning Board approves an application to develop workforce housing subject to conditions or restrictions, it shall notify the applicant in writing of such conditions and restrictions and give the applicant an opportunity to establish the cost of complying with the conditions and restrictions and the effect of compliance on the economic viability of the proposed development. The Board's notice to the applicant of the conditions and restrictions shall constitute a conditional approval solely for the purpose of complying with the requirements of RSA 676:4 I (i). It shall not constitute a final decision for any other purpose, including the commencement of any applicable appeal period.

B. **Submission of evidence to establish cost of complying with conditions.** Upon receiving notice of conditions and restrictions as described above, the applicant may submit evidence to establish the cost of complying with the conditions and restrictions and the effect on economic viability within the period directed by the Board, which shall not be less than 30 days. Upon receipt of such evidence, the Board shall allow the applicant to review the evidence at the Board's next meeting for which 10 days notice can be given, and shall give written notice of the meeting to the applicant at least 10 days in advance. At such meeting, the Board may also receive and consider evidence from other sources. The Board may affirm, alter, or rescind any or all of the conditions or restrictions of approval after such meeting.

C. **Final decision.** The Board shall not issue its final decision on the application before such meeting, unless the applicant fails to submit the required evidence within the period designated by the Board, in which case it may issue its final decision any time after the expiration of the period. If an applicant notifies the Board in writing at any time that the applicant accepts the conditions and restrictions of approval, the Board may issue its final decision without further action under this paragraph.

D. **Appeals.** Any person who has filed the written notice and whose application to develop workforce housing is denied or is approved with conditions or restrictions which have a substantial adverse effect on the viability of the proposed workforce housing development may appeal the municipal action to the Superior Court under RSA 674:61 or RSA 676:5 III seeking permission to develop the proposed workforce housing.

VI. Definitions

A. **Affordable:** Affordable means housing with combined rental and utility costs or combined mortgage loan debt services, property taxes, and required insurance that do not exceed 30 percent of a household's gross annual income.

B. **Multi-family housing:** Multi-family housing for the purpose of workforce housing, means a building or structure containing 5 or more dwelling units, each designed for occupancy by an individual household.

C. **Reasonable and realistic opportunities for the development of workforce housing**: opportunities to develop economically viable workforce housing within the framework of a municipality's ordinances and regulations adopted pursuant to this chapter and consistent with RSA 672:1, III-e.

D. **Workforce housing/owner occupied:** housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development.

E. **Workforce housing/renter occupied**: rental housing which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this section.

F. **Area Median Income (AMI):** the median income of the greater region, either the HUD Metropolitan or Non-Metropolitan Fair Market Rent Area to which the community belongs, as is established and updated annually by the United States Department of Housing and Urban Development. Income considers both wage income and assets.

G. **Market Rate Housing:** any units within a development, whether the unit is to be owner or renter occupied, that is intended to be available for sale or occupancy at the prevailing market value for the area similar to comparable real estate transactions.

VII. Density Bonus

A. **Formula.** A Planned Residential Development plan that will guarantee a designated percentage of units no lower than 20 percent, reserved as workforce housing, will be granted one additional dwelling unit for every two workforce housing units built up to a maximum total of ~~33~~25% more total units than would be allowed for a development with less than 20% designated workforce housing units.

B. **Yield Plan.** The applicant shall submit a yield plan with sufficient detail including soil types and slope as well as any natural resource constraints zoning such as wetland/lot size or percentage restrictions to determine the achievable density on the parcel that would meet the standards of the underlying zoning district.

VIII. General Requirements of Workforce Housing Units

A. **Architectural compatibility of all units.** The dwellings qualifying as workforce housing shall be compatible in architectural style and exterior quality of materials and appearance with the market rate dwellings of similar type, (i.e., affordable and market rate multifamily units, affordable and market rate single family homes) in the proposed development. The workforce housing units should be interspersed throughout the overall development and not concentrated in a separate area of the development. Workforce housing units shall be mixed with, and not clustered together or segregated in any way from market rate units.

B. **Phasing.** The phasing plan for the development shall provide for the development of workforce housing units concurrently with the market-rate units.

C. **Multi-Family Housing**, up to six units per structure, is allowed only as part of a workforce housing development. The ratio of workforce housing units to market rate housing units within each structure must match as closely as possible the ratio of the whole proposed project.

IX. Affordability

A. Certification of Income Levels. To ensure that only eligible households purchase/rent the designated affordable housing units, the purchaser/renter of a workforce housing unit must submit copies of their last three years federal income tax returns and written certification, verifying that their annual income level, combined with household assets, does not exceed the maximum level as established by this ordinance. The tax returns and written certification of income and assets must be submitted to the developer of the housing units, or the developer's agent, prior to the transfer of title. A copy of the tax

return and written certification of income and assets must be submitted to the Monitoring Authority within 30 days following the transfer of title.

B. Assurance of continued affordability. Workforce housing units offered for sale shall require a lien, granted to the Town of Temple be placed on each workforce housing unit. The value of the lien shall be equal to the difference between the fair market value of the unit and its reduced affordable sale price, which is indexed according to the qualifying income standards. The municipality's lien is inflated over time at a rate equal to the Consumer Price Index (CPI). Future maximum resale values shall be calculated as the fair market value minus the CPI adjusted lien value. Subsequent sales are not limited based on income targets, but the combination of maintenance of the municipality's lien and adherence to this Article's definition of affordable housing for a period of 30 years.

C. Rent Increases. Workforce housing rental units shall limit annual rent increases to the percentage increase in the area median income, except to the extent that further increases are made necessary by hardship or other unusual conditions.

D. Documentation of restrictions. Deed restrictions, restrictive covenants, or contractual arrangements related to dwelling units established under this Article must be documented on all plans filed with the town's Planning Board and with the Registry of Deeds.

X. Administration, Compliance, and Monitoring

A. **Administration.** This Article shall be administered by the Planning Board.

B. **Certificate of Occupancy.** No certificate of occupancy shall be issued for a workforce housing unit without written confirmation of the income eligibility of the tenant or buyer of the workforce housing unit and confirmation of the rent or price of the workforce housing unit as documented by an executed lease or purchase and sale agreement.

C. **Monitoring Authority:** Ongoing responsibility for monitoring the compliance with resale and rental restrictions on workforce housing units shall be the responsibility of the Temple Planning Board, until such time as the Town of Temple establishes a Municipal Housing Authority.

D. **Annual report.** The owner of a project containing workforce housing units for rent shall prepare an annual report certifying that the gross rents of affordable units and the household income of tenants of workforce housing units have been maintained in accordance with this Article. Such reports shall be submitted to the Monitoring Authority on or before February 15th and shall list the contract rent and occupant household incomes of all workforce housing units for the previous calendar year.

SECTION 27: (2012) LARGE WIND ENERGY SYSTEMS (LWES)

A. PURPOSE: The purpose of this Ordinance is to provide for the development and use of wind power as an alternative energy source, benefiting both the economy and the environment, while protecting public health, safety, property values, wildlife, and general welfare; preserving environmental, historic and scenic resources; controlling Sound Pressure Levels; and preventing electromagnetic interference. This ordinance provides a permitting process to ensure compliance with requirements and standards established therein.

This Ordinance is adopted pursuant to the enabling provisions of NH RSA 674:1,V, NH RSA 674:16, NH RSA 674:17(j), and NH RSA 162-H. In addition, pursuant to the provisions of NH RSA 674:21, the Temple Board of Selectmen is hereby granted the authority to issue permits for the construction or operation of Large Wind Energy Systems, including Meteorological Towers, in the Town of Temple, subject to these provisions.

If there is a conflict between provisions in this Ordinance, or between its provisions and those in any other ordinance or regulation, this Ordinance shall apply. Should any section or provision of this Ordinance be declared by the courts to be invalid, such a decision shall not invalidate any other section or provision of the Ordinance.

B. DEFINITIONS: The following terms shall have the meanings indicated:

"Adverse Noise Impacts" - Disturbances that interfere with: customary speech and communications both indoors and outdoors, telephone conversations, reading, tasks requiring concentration, listening to music or television, and sleep.

"Applicant" - The person, firm, corporation, company, or other entity who applies for approval under this Section, as well as the Applicant's successor(s), assign(s) and/or transferee(s) as to any approved LWES or testing facility. An applicant must have the legal authority to represent and bind the landowner or lessee who will construct, own, and operate the LWES or testing facility. The duties and obligations regarding approval for any approved LWES or testing facility shall be with the owner of the LWES or testing facility, and jointly and severally with the owner and operator or lessee of the LWES or testing facility.

"Application" - An application for a LWES under this Section.

"Automatic Obstruction Lighting System" - A lighting system that provides continuous 360-degree surveillance of the airspace around a wind farm from the ground level to above aircraft flight altitudes, automatically activating obstruction lighting when aircraft are detected at a defined outer perimeter and course of travel.

"Background Sound Pressure Level" – The Sound Pressure Level represented without the wind turbines operating and when man-made and natural intrusive sounds are at a minimum. The intent of this definition is to exclude Sound Pressure Level contributions from intermittent noises such as traffic and emergency vehicles, and from seasonal natural sounds such as tree frogs and crickets that are not present year round.

"Blade Glint" - The intermittent reflection of the sun off the surface of the blades of a single Wind Turbine or multiple Turbines.

"Debris Hazard" - Hazard owing to the possibility that the parts of a LWES, or material (ice or other debris) accumulated on its rotating elements, could be dislodged and fall or be thrown some distance onto surrounding property.

"FAA" - The Federal Aviation Administration.

"Health" - State of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

"Impact(s)" - Includes any effect on the environment, including sound and visual impacts such as changes in sound pressure, noise and light in the environment.

"Large Wind Energy System (LWES)" - An electricity-generating facility with a generating capacity of over 100 kilowatts, consisting of one or more Wind Turbines, including any substations, Met Towers, cables/wires, and other buildings accessory to such facility.

"Leq" - The equivalent continuous Sound Pressure Level that has the same acoustic energy for a constant Sound Pressure Level as for a fluctuating or intermittent level in the same period of time.

"Met Tower" - A meteorological tower used for the measurement of wind speed.

"Natural Environment" – Includes navigable waters, waters of a contiguous zone, ocean waters and any other surface water, groundwater, drinking-water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States, including wildlife, ecosystems, and habitat, and historical, cultural, recreational and archeological resources.

"Noise" – Any unwanted sound or any sound that is not part of the natural environment.

"Non-Participating Landowner"- Any landowner who is not a Participating Landowner pursuant to definition below.

"Octave Band" - A band of sound covering a range of frequencies such that the highest is twice the lowest, as defined in ANSI Standard S1.11.

"One-Third Octave Band" - A band of sound covering a range of frequencies such that the highest frequency is the cube root of two times the lowest, as defined in ANSI Standard S1.11.

"Participating Landowner"- Any landowner on whose property all or a portion of a Large Wind Energy System is located pursuant to an agreement with the Applicant or any landowner who has waived his or her rights for protection under this Ordinance.

"Permit to Construct" – After the application has been accepted by the Planning Board, the Temple Board of Selectmen shall issue a Permit to construct the project.

"Permit to Operate" – A written approval issued by the Temple Board of Selectmen to operate a LWES once such project has been approved by the Planning Board.

"Project Boundary" - A continuous line that encompasses all Wind Turbines and related equipment to be used in association with a Large Wind Energy System.

"Public Infrastructure" – Roadways, culverts, and bridges maintained by the Town of Temple or State of New Hampshire.

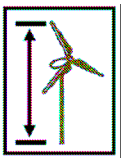
"Setback" – The distance a LWES tower base is set back from abutting property lines, structures, or other features.

"Shadow Flicker" – The effect when the blades of an operating Wind Turbine pass between the sun and an observer, casting a readily observable, moving shadow on the observer and his/her immediate environment.

"Sound Power Level" - Lw. Ten times the logarithm to the base ten of the ratio of the sound power radiated by the source to a reference sound power, expressed in decibels (dB). The reference sound power is 1 picowatt (pW).

"Sound Pressure Level" - Lp. Twenty times the logarithm to the base ten of the ratio of a given sound pressure to a reference sound pressure of 20 microPascals (uPa), expressed in decibels (dB).

"Total Height" - When referring to a Wind Turbine, the distance measured from ground level to the blade extended at its highest point.



"Tower Shadowing" - The shadow created on the surrounding area by the sun shining on a Wind Turbine.

"Useful Life" - The LWES or individual Wind Turbine(s) will be presumed to be at the end of its useful life if no electricity is generated for a continuous period of twelve (12) months.

"Visual Clutter" - The accumulation of diverse built elements on a site, especially elements that contrast with their surroundings in form, color, texture, or pattern.

"Welfare" - A state of well-being.

"Well-being" - A good or satisfactory condition of existence; a state characterized by health, happiness, and prosperity.

"Wind Shear" - The difference in atmospheric wind speed and direction occurring over relatively small increases in altitude (wind gradient).

"Wind Turbine" - A wind-energy conversion system that converts wind energy into electricity through the use of a wind-turbine generator, including the turbine, blade, tower, base, and pad transformer, if any.

C. <u>LARGE WIND ENERGY SYSTEM REQUIREMENTS:</u>

1. <u>Design, Manufacture, Construction, and Maintenance Standards</u>.

   a. In order to minimize Visual Clutter, Wind Turbines shall use tubular towers of similar design, size, operation, and appearance throughout the project, which shall be painted a non-reflective, non-obtrusive color. Blades shall be coated or otherwise designed with a material to minimize Blade Glint.

   b. At LWES sites, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening, and landscaping that will blend with the existing natural setting and environment.

c. Wind Turbines shall not be used for displaying any signs or advertising except for signs at ground level for reasonable identification of the manufacturer, owner, or operator of the LWES, the utility procuring the power, emergency contact information, and appropriate warnings as required by national, state, and local laws. Such identification shall not be illuminated. All signage shall meet Temple's ordinance requirements. Any graffiti on LWES structures shall be removed as soon as practical.

d. Control wiring and power lines shall be wireless or below ground except where collector wiring is brought together for connection to the transmission or distribution network adjacent to that network. The Planning Board may permit above-ground wiring, if in the opinion of the Planning Board, its Impact, including but not limited to environmental and visual Impacts, is less than the Impact of below-ground wiring.

e. The Applicant of an LWES shall not undertake any blasting without specific approval of such blasting during Site Plan Review. Terms and conditions for the blasting, including any necessary notifications, shall be specified during Site Plan Review.

   i. The Applicant shall prepare an inventory of all structures, wells, bridges, and other seismically sensitive structures that could potentially be damaged by blasting.

   ii. Before each blasting event, the Applicant shall notify all Participating and Non-Participating Landowners whose property can be potentially damaged of the time and date of the event. The Applicant shall receive signature verification of such notice.

   iii. Flying rock traveling in the air or along the ground is not permitted to cross into the property of Non-Participating Landowner(s).

   iv. A blasting log for each blast shall be kept on site at the LWES office for not less than five (5) years, and copies of the required blasting log shall be promptly submitted to the Planning Board upon completion of construction of the LWES.

   v. Pre-blasting and post-blasting inspection and documentation may be required by the Planning Board.

f. If at any time during construction, operation, or maintenance of the LWES, the Applicant wishes to modify the approved Site Plan, the Applicant shall submit to the Planning Board an Amended Site Plan for review and approval.

g. Construction and maintenance activities shall be organized and timed to minimize Impacts on residents and wildlife from noise, disruption (including disruption of wildlife habitat), and the presence of vehicles and people. Construction and maintenance, unless there is an imminent threat to life or property, shall be performed only on weekdays between the hours of 7 AM and 6 PM. The Planning Board has the authority to waive this requirement if, in its opinion, there is good reason to do so.

h. Any construction equipment or parts (used or unused) kept on site shall be stored indoors except during periods of construction, maintenance, and repair.

2. Height.

a. The Total Height of the Wind Turbines shall not exceed 450 feet.

b. Met Towers must be less than 200 feet in height, and must be designed so as not to require lighting in compliance with FAA regulations. Guy wires are allowed on Met Towers, but must be designed so as to limit environmental hazards to wildlife, especially birds and bats.

3. Setbacks.

All LWES tower bases must be sited so as to be set back from adjacent property lines by at least two thousand (2,000) feet. An exception can be made to this requirement in the case of a Participating Landowner who waives his or her rights under this ordinance; such waiver shall exclude the ability of the owner of that property to have or build any structures within 2,000 feet of the closest LWES tower and shall be recorded in the Hillsborough County Registry of Deeds. In no case shall the Setback be less than 1.5 times the maximum height of the Wind Turbine from the nearest property line.

Additional Setbacks may be required to meet noise standards.

The applicant shall submit a graph of the required Setback for each hazard as a circle for a single tower or as a series of connected arcs for multiple towers centered on each turbine and submitted with the required Setback graphically superimposed to scale on town maps identifying lot owners, structures, and lot property lines.

4. Communications Interference.

Any LWES shall be sited and operated so that it does not interfere with television, telephone (including cellular and digital), microwave, satellite (dish), navigational, or radio reception to neighboring areas. The Applicant shall provide certification from a NH licensed Professional Engineer confirming that the proposed project will not interfere with television, telephone (including cellular and digital), microwave, satellite (dish), navigational, or radio reception to neighboring areas. The Applicant shall be responsible for the full cost of any remediation necessary to provide equivalent alternate service or to correct any problems. Remedies may include relocation or removal of the LWES. The Applicant of the LWES shall respond within five business days to any request for a communications interference investigation by a property owner within the Project Boundary and a three-mile radius beyond the Project Boundary. Testing shall commence within ten working days of the request. The Applicant is responsible for mitigating within ten working days from determination of interference cause attributed to the operation of the LWES.

5. Sound Pressure Level Limits and Measurement.

The intent of this section is to preserve the quiet rural environment of Temple and to provide protection from Excessive Sound Pressure Levels that cause adverse Impacts to public Health, Welfare, and Well-being. The existing Background Sound Pressure Levels in Temple are less than 30 dBA. Annoyance due to Noise, as measured by community surveys, is the

consequence of activity interference. Sound Pressure Level limits are based on the recommended guidelines found in the United States Environmental Protection Agency's document *Information On Levels Of Environmental Noise Requisite To Protect Public Health And Welfare With An Adequate Margin of Safety, 550/9-74-004, March 1974* and include levels requisite to protect against activity interference. These Sound Pressure Level limits are consistent with the World Health Organization (WHO) night-noise guidelines for exposure to noise during sleep, found in the following documents: *Night Noise Guidelines (NNLG) For Europe, 2007* and *ISBN 978 92 890 4173 7*, *2009.*

a. Sound Pressure Levels produced by the LWES shall not exceed 33 dBA (Leq 10 minute) anywhere at any time on a Non-Participating Landowner's property.

b. The Planning Board may impose greater noise constraints if it deems such constraints are necessary to protect the public health, safety, and welfare of the community.

c. Any model used to predict Wind Turbine Noise shall use the following parameters:

   i. Each Wind Turbine shall be considered as an individual and unique noise emitter.

   ii. The prediction model shall use the Manufacturer's highest sound-power levels, as measured using standard IEC 61400-11 (edition 2.1, dated November 2006), which shall be submitted in 1/3 octave band for frequencies 31.5 to 8000 Hz. Test reports performed for the same model(s) proposed for the LWES shall be submitted in full.

   iii. The prediction model shall use a Wind Shear (wind profile power law exponent, alpha) of no less than 0.50, where Wind Shear is defined as the difference in atmospheric wind speed and direction occurring over relatively small increases in altitude.

   iv. There shall be no attenuation (zero) for ground cover, since a Wind Turbine is an elevated noise emitter.

   v. There shall be no attenuation (zero) for foliage, since trees have no leaves from November to April.

   vi. Add a plus-5-dB design margin to the predicted Sound Pressure Levels to account for variations in atmospheric propagation due to refraction (the bending of sound waves in the atmosphere due to changes in air temperature or wind gradient).

   vii. Ground absorption values used in the modeling software shall be set to 0 for water and hard concrete or asphalt surfaces and 0.5 for all other surfaces.

d. Noise measurements shall be taken with the Wind Turbines turned on and turned off to determine any Background Noise to be accounted for. The Applicant shall cooperate by shutting Wind Turbines off and turning them on during acoustic testing at times required by the acoustic-monitoring personnel.

e. The wind velocity at the sound measurement microphone shall not exceed 2 m/s (4.5 mph) during measurements of Background Sound Pressure Level, and the maximum wind speed at the microphone for noise measurements during Wind Turbine operation shall not exceed 4 m/s (9 mph).

6. Shadow Flicker, Tower Shadowing, and Blade Glint.

a. The facility shall be designed such that Shadow Flicker or Tower Shadowing falling on or in any Non-Participating Landowner's property or a public road shall be limited as follows:

i. The Shadow Flicker or Tower Shadowing shall not exceed twenty (20) hours per year in total.

ii. The traffic volumes shall be fewer than 500 vehicles per day on the roadway.

iii. The Shadow Flicker or Tower Shadowing shall not fall onto an intersection.

b. Blades shall be coated or otherwise designed with a material to minimize Blade Glint.

c. Within twelve months of the date when the project becomes fully operational, or at any time upon receipt of a verified complaint of Shadow Flicker, Tower Shadowing, and/or Blade Glint, the Applicant shall submit to the Planning Board a Shadow Flicker, Tower Shadowing, and Blade Glint study certifying that Shadow Flicker, Tower Shadowing, or Blade Glint present no deleterious effects for any occupied structure located within a one-mile radius of any Wind Turbine. If Shadow Flicker and/or Blade Glint exceeds any of the conditions listed above, the source Wind Turbine(s) shall be shut down until the Shadow Flicker, Tower Shadowing, or Blade Glint problem is remedied.

7. Public Infrastructure.

The Applicant shall avoid, mitigate, or repair any and all adverse impacts to any Public Infrastructure occasioned by or in any manner related to the installation, operation, maintenance, and repair or decommissioning of the LWES. This includes reimbursement to the Town or State for any repairs or reconstruction reasonably deemed necessary by the Town or State.

8. Erosion and Storm Water Control.

During the Useful Life of the LWES, the Applicant shall maintain any erosion and storm-water control practices described in the Erosion and Storm-Water Control Plans and Life Cycle and Decommissioning Plans submitted with the Application for Site Plan Review.

9. Safety.

a. Each Wind Turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. All Wind Turbines shall be equipped with redundant braking systems. This includes both aerodynamic (including variable pitch) over-speed controls and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode, whereby they are engaged in

the case of loss of load on the generator. Stall regulation shall not be considered a sufficient braking system for over-speed protection. A manual electrical and/or over-speed shutdown disconnect switch shall be provided and clearly labeled on/in the Wind Turbine structure.

b. The blade tip of any Wind Turbine shall, at its lowest point, have ground clearance of not less than 75 feet.

c. Any Wind Turbine and/or accessory structure shall not be climbable up to above 15 feet above ground level.

d. The LWES shall be designed to prevent unauthorized access to electrical and mechanical components and shall have access doors that are kept securely locked at all times when service personnel are not present.

e. Appropriate warning and safety signage shall be placed on any Wind Turbine, accessory structure, and/or electrical equipment, and posted at all LWES entrances.

f. All structures shall be self-supporting. No guy-wire-supported structures shall be permitted, with the exception of Met Towers.

g. A sign bearing emergency contact information shall be posted near the tower(s) or operations and maintenance office building.

h. Signage shall be placed at the road access to warn visitors about the potential danger of falling and thrown ice and the Debris Hazards.

i. Any Wind Turbine that is found to present an imminent physical threat of danger to human life, wildlife, or property, or that is found to exceed the noise standards of this Ordinance, shall be immediately shut down. Following repair or redesign to comply with the noise standards of this Ordinance, the Wind Turbine shall be certified to be safe and to comply with this Ordinance by a NH licensed Professional Engineer prior to resumption of operation.

10. Rescue, Fire, and Hazard Protection.

The Applicant shall assure that the LWES complies with the following fire- control and -prevention measures.

a. A plan acceptable to the Temple Fire Chief for fire-fighting and rescue services, including water accessibility, any necessary equipment, and/or training for local fire protection and rescue personnel, shall be prepared and updated annually. The full cost of implementing and maintaining the plan, including equipment, equipment maintenance, and staffing, shall be the responsibility of the Applicant.

b. The Applicant shall comply with all laws applicable to the generation, storage, clean-up, transportation, and disposal of hazardous wastes generated during any phase of the project's life.

11. Environmental Impact.

The Wapack Range, situated along the western edge of Temple, is the centerpiece of a crucial migration route that is recognized by the Federal government. The Wapack Range, approximately 22 miles long, is part of a unique geological formation known as a "leading line," which creates a long, reliable updraft that birds intentionally travel to, to assist in their migration. There is no other "leading line" formation for hundreds of miles --effectively, there is not another one in New England. Well-documented records indicate that more than 5,000 migrating raptors have been known to travel through this precise corridor in the course of a single day. More than 13,000 migrating raptors are counted each fall migration season. Therefore, we take particular care in protecting this critical flyway and the natural environment which supports it.

The Applicant shall take appropriate measures to minimize, eliminate, or mitigate adverse impacts on the natural environment during the entire life cycle of the LWES and shall comply with all Federal, State and local laws regulating environmental impacts. In making its determination under this section, the Planning Board shall consider the U.S. Fish and Wildlife Service *"Wind Turbine Guidelines Advisory Committee Recommendations," dated March 4, 2010,* or subsequent updates, the "Proposed Wind Power Siting Guidelines - May 29, 2007" (which was developed by the Wind Energy Facility Siting Guidelines Working Group and forwarded to the NH Energy Policy Committee Wind Siting Subcommittee), and any recommendations of the New Hampshire Fish and Game Department and the Temple Conservation Commission.

a. Environmentally Sensitive Areas. The plan for the LWES shall reflect the natural capabilities of the site to support development. Environmentally sensitive areas--including but not limited to wetlands, vernal pools, seeps or springs, steep slopes (greater than 15%), watersheds, floodplains, significant wildlife habitats, fisheries, habitat for rare or endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers--will be maintained and preserved to the maximum extent possible. The Applicant shall demonstrate appropriate measures for protecting these resources during the entire life cycle of the project.

b. Wildlife. The Applicant shall demonstrate that the LWES will have no significant adverse Impact on area wildlife and wildlife habitat. Such analysis shall include but not be limited to adverse Impacts on birds, bats, raptors, animals, and habitat fragmentation. In addition, the Applicant must demonstrate that the LWES will have no undue adverse Impact on rare, threatened, or endangered wildlife. The wildlife and habitat analysis must include pre-construction field studies conducted by a qualified wildlife biologist selected by the Planning Board and paid for by the Applicant. Such studies shall span at least two coincident migration cycles.

c. Avian and Bat Species. Development and operation of a LWES shall have no adverse impact on bird or bat species.

i. All above-ground lines, transformers, or conductors should comply with the Avian Power Line Interaction Committee (APLIC, http://www.aplic.org/) published standards to prevent avian mortality.

ii. The design and installation of the LWES shall avoid, to the extent practicable, the creation of artificial habitat for raptors or raptor prey; e.g., electrical equipment boxes on or near the ground that can provide shelter and warmth and horizontal perching opportunities on the towers or related structures.

iii. In order to minimize the detrimental Impacts on bat and bird populations, all Wind Turbines shall be configured and or controlled so that the blades will not turn when wind velocity at hub height is less than 10 mph. In addition, there may be periods of time when the Wind Turbine operations must be curtailed to protect bats and raptors and other migratory birds.

d. Ground and Surface Water. The LWES will not adversely affect the quality or quantity of ground and surface waters. The Applicant shall demonstrate to the Planning Board's satisfaction that there are no unusual risks caused by the LWES. The Board may require that spill prevention and control measures be installed, and that all activities involving potentially permeable pollutants, including at delivery and transfer points, be conducted under cover and over an impervious surface surrounded by dikes. Whenever sedimentation is caused by stripping vegetation or grading, it shall be the responsibility of the Applicant to remove it from all adjoining surfaces, drainage systems, and watercourses and to repair any damage as quickly as possible at the Applicant's expense.

e. Historical, Cultural, Archeological. Because the preservation of historic resources is very important to the Town of Temple, the Applicant shall be required to:

i. Inventory and map all historically significant sites located within two thousand (2000) feet of the proposed LWES project area, including stone walls, structures, roadways, and cellar holes.

ii. Provide a plan outlining how the Applicant proposes to minimize the impact of construction and ongoing operation of the LWES on those sites.

As a condition of approving the Applicant's Historical, Cultural, Archeological protection plan, the Planning Board may require specific setbacks of LWES structures or roadways from significant sites and/or other actions that protect or restore items of historic significance.

12. Visual Impact.

a. An LWES shall be designed and located so as not to cause adverse visual Impacts, including Visual Clutter and Impacts caused by any lighting, and so as not to dominate views from residential areas, cultural resource areas, public recreational and scenic areas, trails used by the public including the Wapack Trail, open space within the Town, or any public road right-of-way.

b. Dominance is determined by how an LWES will be seen within its visual context and occurs when the project would cause a change in the balance or feel of the character of the surrounding area or create a very dominant focal point that detracts from other important natural or cultural focal points. (The Planning Board may use as a reference document *A Visual Impact Assessment Process for Wind Energy Projects*,

Vissering, Sinclair, and Margolis, May 2011.) Some of the factors to be considered in evaluating the degree of dominance are:

i. appearance of proximity,

ii. duration of view,

iii. expectation for natural or intact landscape setting,

iv. uniqueness of a scenic resource,

v. whether the view is directly ahead over extended distances, and

vi. whether large numbers of turbines are visible in many views.

c. All available mitigation techniques to reduce the visual impacts of the LWES shall be considered, including methods prescribed by the American Landscape Institute. The use of Automatic Obstruction Lighting Systems, such as those manufactured by DeTect and OCAS, is mandatory for Wind Turbines with FAA lighting.

d. Photographic simulations shall be provided from potentially sensitive public and private viewpoints. The Planning Board may request that particular viewpoints be illustrated. Such locations could include the center of Town, public recreation areas, historic sites, and scenic sections of Town or State roads.

Simulation photographs shall be taken at 50mm (or digital equivalent) and illustrated on 11 x 17" printed copies for each simulation. If several photographic frames are required to illustrate the breadth of the project from a particular viewpoint, illustrations shall be provided of each 50mm frame, plus a combined panoramic view. Any visible roads, site clearing, and all project infrastructure shall be depicted on the simulations.

The report shall employ a standard visual-impact-assessment methodology for detailing what the visual impacts of the project would be and explaining why these may be acceptable or unacceptable.

The report shall identify all mitigation methods proposed by the applicant, if any, to address the potential visual impacts of the LWES. These methods may include turbine siting and distance between towers; reductions in turbine height or numbers; design and size; hazard lighting mitigation by employing Automatic Obstruction Lighting Systems; underground placement of collector lines; and other methods.

The Planning Board may require additional mitigation measures to minimize the impact on scenic resources of the Town.

13. <u>Financial, Technical, and Managerial Capability</u>.

Applicant shall demonstrate to the Planning Board that it has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of this ordinance.

D. APPLICATION PROCEDURE.

1. Applications for new and replacement LWESs shall be filed and processed in accordance with the Town of Temple Planning Board's Site Plan Review regulations.

2. An LWES is presumed to have regional impacts. Therefore the procedure shall include notification as per NH RSA 36: 54-57.

3. Submission Requirements: In addition to standard Planning Board requirements, applicants for a LWES shall submit the following:

3.1 A demonstration satisfactory to the Planning Board that the Applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of this ordinance.

3.2 Plans prepared and stamped by a NH licensed Professional Engineer that show the location, shape, size, color, materials, textures, landscaping, design, and total height of all proposed components of Met Towers and LWES, including the proposed access to the project site (including Town and State roads) and associated transmission lines.

3.3 A location map to scale of current and planned land uses within the project boundary and a one-mile radius beyond the project boundary, showing the location of all proposed Wind Turbines and required setbacks for each, and that identifies Participating Landowners. These maps must be prepared by a NH licensed land surveyor.

3.4 A site grading and clearing plan that shows all areas to be cleared and all grade changes. The plan shall include details on the collector lines, locations and heights of poles, clearing limits for above-ground lines, substations, transmission line details, and upgrades or changes to existing power lines. This plan should delineate environmentally sensitive areas.

3.5 Historical, Cultural, Archeological Inventory and Resource Map prepared by NH licensed land surveyor, and Applicant's plan to minimize impact of LWES construction and operation on these sites.

3.6 Environmental Resource Map prepared by a qualified NH licensed land surveyor.

3.7 Intended period of data collection for the Met Tower.

3.8 Certification of the non-reflecting properties of the external surfaces of the LWES.

3.9 Calculations and supporting data for all setbacks for each turbine.

3.10 List of property owners whose property wholly or in part falls within the standard setback areas.

3.11 Studies and Reports as required by the Planning Board, including but not limited to those listed below. The cost of any required study, report, plan, mitigation effort, or any other work required to be done by the Planning Board, is the full responsibility of the applicant.

3.11.1 Sound Pressure Level Study

3.11.2 Rescue, Fire, and Hazard Protection Plan

3.11.3 Road and Property Risk Assessment

3.11.4 Wildlife and Bird Impact Study and Protection Plan

3.11.5 Groundwater and Surface Water Quality studies

3.11.6 Visual Impact Assessment, including photographic simulations

3.11.7 Communication Interference Certificate

3.11.8 Shadow Flicker, Tower Shadowing, and Blade Glint study

3.11.9 Safety Plan

3.12 A Complaint Resolution Plan to address any complaints from affected parties during construction and over the life of the operation. The Plan shall identify a contact person and a process for mediation.

3.13 A Decommissioning and Site Restoration Plan as outlined in Section J (Decommissioning).

3.14 Storm Water Management Plan – pre- and post-decommissioning.

3.15 Erosion Control Plan

3.16 Landscape Plan showing restoration of disturbed areas after completion of construction.

3.17 Estimate of decommissioning costs prepared by a NH licensed Professional Engineer

3.18 Blasting plan, including inventory of all potentially affected structures

3.19 Any other information deemed necessary by the Board in order to make an informed decision.

4.0 Repowering. When an LWES is planned for a retrofit, the Applicant must apply to the Planning Board for approval before any portion of the LWES may be repowered.

5.0 Permit to Operate.

5.1 Following construction of an LWES, before commencing operation, the Applicant shall apply to the Board of Selectmen for a Permit to Operate. The application shall include the following:

5.1.1 An Inspection Report prepared and signed by a NH licensed Professional Engineer certifying the structural and operational integrity of the LWES, and completion of construction in accordance with all submitted and approved building, road, and lighting plans, and any other plans submitted to the Planning Board as required.

5.1.2 A decommissioning fund.

5.1.3 A signed statement that the Applicant and project site landowner(s) have read this Ordinance, understand all its provisions, and agree to abide by them.

5.2 A Permit to Operate shall be valid for thirty (30) years. Application for renewal requires a new

Application to the Planning Board, governed by then-current ordinances.

5.3 Applications for a Permit to Operate or a Renewal Permit will be heard at the next regularly scheduled Planning Board or Board of Selectmen meeting for which adequate legal notice has been posted.

5.4 If a Permit to Operate is transferred to a new Owner or Operator, the new Owner or Operator is bound by all conditions, requirements, and financial obligations of the original permit.

5.5 All conditions of approval shall be reviewed annually by the Planning Board or Board of Selectmen.

5.6 A Permit to Operate may be revoked and the LWES required to cease operations if the Board of Selectmen determines that there is a violation of any provision of this ordinance or other applicable regulations. The Permit shall not be reinstated until the Board of Selectmen determines at a duly noticed public meeting that all violations have been corrected.

E. EASEMENTS AND LEASES:

1. Any landowner may grant an easement to the Applicant for any Impacts of the LWES on their property and shall advise all subsequent owners of the property that the standards permitted by this Section may be exceeded on the property. The terms of the easement must be consistent with the current application for an LWES. Easement periods shall be limited to thirty (30) years.

2. The full terms of any leases or easements shall be recorded with the Registry of Deeds.

3. The option period for any land agreement shall be limited to five (5) years.

4. Nothing in this Ordinance shall be construed to restrict the rights of Non-Participating Landowners.

F. ONGOING REQUIREMENTS:

1. Monitoring: Upon reasonable notice, Town of Temple officials or their designated representatives may enter a lot on which an LWES has been approved for the purpose of monitoring noise, Impacts on the Natural Environment, and other impacts that may arise. In such a case, the Town will provide the Applicant with 24-hour advance telephone notice, followed by e-mail notification for the record.

2. Post-construction Water-Quality Study:

a. Within six (6) months of the first Wind Turbine becoming operational, and every twelve (12) months thereafter for a period of three (3) years, a water-quality study of all wells, springs, and water resources specifically identified during the Site Plan Review shall be designed and carried out by a water-quality professional approved by the Board of Selectmen.

b. Upon receipt of a substantiated complaint that the integrity or water quality of any well has been damaged by the LWES construction, the Planning Board may require prompt investigation of the complaint by a water-quality professional approved by the Board of Selectmen, at the expense of the Applicant.

c. If degradation or contamination of any well, spring, or water resource is found to have occurred, the Applicant shall be considered in violation of this Section and subject to the provisions of the Enforcement Subsection of this Section.

d. The Applicant is responsible for all costs associated with water-quality testing and corrective action if necessary.

3. Annual Power Production Report: The Applicant shall submit an annual power-production report to the Board of Selectmen. The power-production report shall cover the preceding calendar year, and shall be submitted by February 15 of the following year. The report shall be in a form agreed to by the Board of Selectmen and shall include actual power production in kilowatt-hours for each Wind Turbine.

4. Environmental Impact Studies: Recognizing the importance of wildlife as described in C. 11, continuing environmental impact studies shall be required.

a. At least every 3 years, and more frequently if deemed appropriate by the Board of Selectmen, an environmental study shall be conducted by a qualified wildlife biologist selected by the Board of Selectmen and paid for by the Applicant.

b. If the post-construction field studies demonstrate substantive harm to the Natural Environment, the Applicant shall develop an appropriate mitigation plan acceptable to the Board of Selectmen. The Applicant shall be responsible for the full cost of implementing the mitigation plan.

c. In addition, the Applicant shall submit a quarterly report to the Board of Selectmen identifying all dead birds and bats found within 500 feet of the LWES. Reporting shall continue for at least three (3) years after the first Wind Turbine becomes operational, or longer if required by the Board of Selectmen. In the event of an avian or bat mortality kill of threatened or endangered species, or discovery of more than six (6) dead birds or bats of any variety on site, the Applicant shall notify the Board of Selectmen and the New Hampshire Department of Fish and Game within 24 hours. Within thirty (30) days of the occurrence, the Applicant shall submit a report to the Board of Selectmen describing the cause of the occurrence and the steps taken to avoid future occurrences. During migration seasons, the Board of Selectmen reserves the right to request video surveillance as part of environmental-impact studies.

5. Decommissioning Costs. Estimated total costs of decommissioning, prepared at the Applicant's expense by an independent NH licensed Professional Engineer approved by the Board of Selectmen, shall be submitted to the Board of Selectmen every fifth year of operation. Funds required under Section J of this ordinance shall be updated within 90 days of acceptance by the Board of Selectmen.

6. Noise Compliance Report. Within four (4) months of the first Wind Turbine becoming operational and again within two (2) months after all Wind Turbines have become operational, and at any time the Board of Selectmen deems it necessary due to the number of complaints received, the Applicant shall submit to the Board of Selectmen a noise-compliance report certifying compliance with the noise regulations set forth herein. The report shall be prepared under the direction of a Professional Engineer or a Board Certified member of the Institute of Noise Control Engineering (INCE). The report shall be signed or

stamped by this person. This person shall be selected by the Board of Selectmen, and the report paid for by the Applicant. The report shall comply with the following:

a. Except as specifically noted otherwise, sound measurements shall be conducted in compliance with the most recent version of the American National Standards Institute (ANSI) Standard S12.18-1994 "Outdoor Measurements of Sound Pressure." Sound data shall be recorded with both dBA filtering and unfiltered down to 0.5Hz. Wind speeds shall be logged simultaneously with Sound Pressure Level data.

b. Sound Pressure Level meters and calibration equipment shall comply with the most recent version of ANSI Standard S1.4 “Specifications for General Purpose Sound Pressure Level Meters,” and shall have a calibration traceable to the National Institute of Standards and Testing (NIST) performed within the preceding 24 months.

c. Noise measurements shall be taken at locations and times when the Wind Turbine is clearly audible and dominating the acoustical environment. All unattended measurements shall consider the Wind Turbine as dominating the acoustical environment.

d. Noise measurements shall be taken with the Wind Turbines on and off to determine any background noise to be accounted for. The Applicant shall cooperate by shutting Wind Turbines off and turning them on during acoustic testing at times required by the acoustic-monitoring personnel.

e. The acoustic-monitoring personnel shall determine if extraneous sounds such as those made by insects, frogs, or other wildlife are contributing to the measured Leq Sound Pressure Level and remove their contributions either by relocating the measurement microphone to a spot not affected by such sounds or conducting testing at dates and times when such sounds are not present. The acoustic-monitoring personnel may correct the Leq Sound Pressure Level using full or 1/3 octave band analysis to subtract Wind Turbine “off” levels from Wind Turbine “on” levels, and by removing data in 1/3 octave bands from the Leq computation that are contaminated by extraneous sounds.

f. The wind velocity at the sound-measurement microphone shall not exceed 2 m/s (4.5 mph) during measurements of Background Sound Pressure Level, and the maximum wind speed at the microphone for noise measurements during turbine operation should not exceed 4 m/s (9 mph).

g. During Wind Turbine testing the atmospheric profile shall be Pasquill Stability Class E or F preferred, Class D as alternate. Wind Turbine acoustic testing shall be conducted with hub-height wind speeds varying between cut-in and cut-out speeds.

h. The Wind Turbine shall be fully engaged blades-to-generator and running the standard power output program and producing the maximum power output for the incoming hub-height wind speed. Feathering or other blade angle manipulations that are not part of the normal Wind Turbine program to obtain maximum power output shall be prohibited during acoustic testing. If the wind turbine must be feathered due to a high wind condition for safety purposes, the testing shall be rescheduled.

i. Wind Turbine power output and hub-height wind speed data at 10-minute or shorter intervals shall be provided to the acoustic-monitoring personnel by the Applicant for the entire sound-measurement period.

j. Noise measurements shall be taken at locations specified by the Planning Board, which shall also set the direction of noise monitoring. The Planning Board may employ a NH licensed Professional Engineer, whose fees shall be paid by the Applicant, for advice regarding these measurements.

7. If the Applicant intends to assign or transfer the ownership, control, or authority of the LWES, the Applicant must give the Board of Selectmen 30 days' advance notice. Applicant shall also provide notice of any change in name or contact information.

G. PUBLIC INQUIRIES AND COMPLAINTS:

Throughout the life of the project, including the decommissioning phase, the LWES Applicant shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints. The Complaint Resolution Plan submitted with the initial application shall be used to resolve complaints. However, this process shall not preclude the local government from acting on a complaint, and local provisions for complaint resolution shall prevail and supersede all Applicant complaint resolution processes.

a. Any individual, group of individuals, or reasonably identifiable entity may file a signed-and-dated written complaint with the Applicant of the LWES. If any complaints are received by phone, the Applicant shall inform the complainant that complaints must be submitted in writing. Any complaints received directly by the Board of Selectmen shall be referred to the Applicant.

b. The Applicant of the LWES shall report to the Board of Selectmen all complaints received concerning any aspect of the LWES construction, operation, or decommissioning as follows:

i. Complaints received by the Applicant shall be reported to the Board of Selectmen or its designee within five business days; except that complaints regarding unsafe and serious violations of this Section shall be reported to public-safety personnel immediately, and the Board of Selectmen or its designee by the following business day.

ii. The Applicant shall document each complaint by maintaining a record including at least the following information:

- Name of the LWES and the Applicant
- Name of complainant, address, phone number
- A copy of the written complaint
- Specific property description (if applicable) affected by complaint
- Nature of complaint (including weather conditions if germane)
- Name of person receiving complaint, date received

- Date reported to the Board of Selectmen or its designee
- Initial response, final resolution, and date of resolution

c. The Applicant shall maintain a chronological log of complaints received, summarizing the above information. A copy of this log, and a summary of the log by type of complaint, shall be sent on or before January 15, March 15, July 15, and October 15 to the Board of Selectmen, covering the previous calendar quarter. An annual summary shall accompany the January 15 submission.

d. The Board of Selectmen shall forward copies of any health-related complaints to the Temple Board of Health and the State Board of Health.

e. The Board of Selectmen may designate a person to seek a complaint resolution that is acceptable to the complainant, the Board of Selectmen, and the Applicant. If such a resolution cannot be obtained, the Board of Selectmen may take action as authorized by Section H: Enforcement and Penalties.

f. The Board of Selectmen may at any time determine that a complaint shall be subject to enforcement and penalties as defined in Section H: Enforcement and Penalties.

H. ENFORCEMENT AND PENALTIES:

1. The enforcement of this Section shall be the responsibility of the Temple Board of Selectmen or its agent, who is hereby authorized to cause any LWES, building, place, premises, or use to be inspected, and to order in writing the remedying of any condition found to exist in violation of this Section.

2. An Applicant not responding to the following conditions in the manner specified shall be considered to be in violation of this Section.

a. Unsafe. If a Wind Turbine or the LWES presents an imminent physical threat of danger to life or significant threat to property, as determined by the Planning Board, the Board of Selectmen, or one of their designated agents, it shall be deemed unsafe and immediately shut down. It shall then be repaired or otherwise made safe and certified so by a NH licensed Professional Engineer selected by the Planning Board prior to resumption of operation. Costs for the NH licensed Professional Engineer shall be the responsibility of the Applicant. The Board of Selectmen, or its designee, shall have the right to access the LWES site to verify conditions and/or repair progress.

b. Serious Violations. The Applicant of the LWES is responsible for mitigating any serious violations of standards within ten business days upon receipt of written notification of determination of any cause attributed to the operation of the LWES. A serious violation is defined as any of the following:

i. Sound Pressure Level exceeding the levels specified in Subsection C. 5 of this ordinance, for anything other than a freak occurrence.

ii. The occurrence of Shadow Flicker, Tower Shadowing, or Blade Glint exceeding the standards specified in Subsection C. 6 of this Ordinance.

iii. Degradation or contamination exceeding US Environmental Protection Agency standards of any surface or subsurface water resource. (In the case of degradation or contamination of a well, the obligation for mitigation shall be deemed satisfied if the Applicant provides the affected well owner with a reasonable emergency water supply and within thirty (30) days commences implementation of corrective measures to the satisfaction of the well owner and subject to the approval of the Planning Board.)

iv. Any hazardous-substance spill.

v. Communication/electromagnetic interference (other than emergency communication).

c. Emergency Communication. Interference with emergency communications must be mitigated within 24 hours.

d. Other Violations. If the Board of Selectmen determines that a violation of this Section has occurred, and the violation is determined to be neither unsafe nor a serious violation, or to interfere with emergency communications, the Board of Selectmen shall provide written notice to the Applicant, and the Applicant shall be responsible for mitigating the problem within 30 days. Mitigation involving significant construction or physical modification may take up to 90 days to be completed.

3. An Applicant failing to comply with any provision of this Section by failing to resolve a violation before the expiration of the mitigation periods defined in this Subsection may be subject to:

a. Revocation of Site Plan Approval, requiring shutdown and removal of any Wind Turbine(s) and restoration of the site as described under Subsection J,

b. Fines pursuant to RSA 676:17,

c. Any other remedies the Board of Selectmen deems necessary to assure the safe operation of the LWES and the protection of residents,

d. Reimbursement to the Town of Temple for expenses incurred in obtaining relief, including but not limited to reasonable attorney fees.

I. DECOMMISSIONING:

1. The Applicant shall, at his or her expense, complete decommissioning (including site restoration) of the LWES, or individual Wind Turbine(s), within twelve (12) months after it is deemed unsafe, abandoned, or at the end of its useful life.

2. Site Restoration shall include:

a. Removal of Wind Turbines, buildings, cabling, electrical components, foundations, and any other associated facilities to a depth of two feet below the ground surface. Conduits buried deeper than two feet may remain in place, but all cables must be removed, and any pull boxes, junction boxes, transformer vaults, and other structures

within two feet of the surface must be removed and remaining conduit ends permanently sealed and capped.

b. Removal from the property of all items in outdoor storage.

c. On-site-road and open-work-area removal, if any, to preconstruction conditions, excepting portions of roads useful for the proposed use of the site. If any roads are retained, excess paving and gravel shall be removed back to an appropriate width approved by the Planning Board, and the remaining areas loamed and seeded.

d. Re-grading and re-vegetation necessary to return the subject property to the condition existing prior to establishment of the LWES. The restoration shall reflect the site-specific character including topography, vegetation, drainage, and any unique environmental features. If, in the opinion of the Planning Board, grades and vegetation existing at the time of decommissioning are sufficiently stable and well established, they may be allowed to remain.

e. Implementation of the post-decommissioning storm-water runoff plan.

J. FINANCIAL ASSURANCE:

1. As a condition precedent to Site Plan Approval for an LWES, the Applicant must submit an acceptable form of financial assurance such as cash, performance bond, certificate of deposit, or irrevocable letter of credit. The amount of the financial assurance shall be established by the Planning Board and be based on what it would cost for the repair of public infrastructure and for the decommissioning of the LWES and reclamation of the site in the event the Applicant fails to do so.

2. The amount of financial assurance shall be reviewed periodically by the Board of Selectmen to ensure that it equals outstanding decommissioning costs. Financial assurance may be adjusted, upwards or downwards, when required by the Board of Selectmen. For instance, the Board of Selectmen may adjust financial assurance based upon prevailing or projected inflation rates, or the latest cost estimates for decommissioning.

3. Such financial assurance shall be kept in full force and effect during the entire time a LWES facility exists or is in place. Such financial assurance shall be irrevocable and non-cancelable until such time as the Board of Selectmen certifies that decommissioning and reclamation are complete and releases the obligation. If the Applicant fails to remove the LWES and reclaim the site, the Town of Temple may remove or cause the removal of the LWES and the reclamation of the site. The Town may recover the cost of decommissioning and reclamation from any financial assurance provided by the Applicant. Any decommissioning and reclamation cost incurred by the Town that is not recovered from the Applicant will become a lien on the property where the removal or reclamation takes place and may be collected from the landowner in the same manner as property taxes.

4. If the Applicant fails to complete decommissioning within the periods prescribed above, then the Town may take such measures as necessary to complete decommissioning. The entry into and submission of evidence of a Participating Landowner agreement to the Town shall constitute agreement and consent of the parties to the agreement, and of their respective

heirs, successors, and assigns, that the Town may take such action as necessary to implement the decommissioning plan.

5. The escrow agent shall release the decommissioning funds when the Applicant has demonstrated and the Board of Selectmen concurs that decommissioning has been satisfactorily completed, or upon written approval of the Town in order to implement the decommissioning plan.

6. The entry into and submission of evidence of a Participating Landowner agreement to the Town shall constitute agreement and consent of the parties to the agreement, and of their respective heirs, successors and assigns, that the Town may take such action as necessary to implement the decommissioning Plan.

K. LAW: All references to the New Hampshire RSAs include the Statute in effect at the time of enactment of this Section or as subsequently amended or revised.

L. WARNING AND DISCLAIMER OF LIABILITY: This Section shall not create a duty or liability on the part of or a cause of action against the Town of Temple, its officers, or employees thereof, for any damages that may result from administration of or reliance on this Section.

M. SEVERABILITY: The invalidity of any provision of this Section shall not affect the validity of any other provision, nor any prior decisions made on the basis of the valid provisions of this Section.

N. EFFECTIVE DATE: This Section shall take effect upon its passage, and as amended.

SECTION 28: (2013) AQUIFER PROTECTION

I. AUTHORITY

This ordinance is adopted pursuant to the enabling provisions of RSA 674:16 and 674:21 relative to innovative land use controls.

II. PURPOSE

Aquifers are an essential natural resource and a major source of public drinking water. Therefore, their protection is critical to the Town of Temple to ensure that there is a sufficient and sustainable source of safe drinking water for generations to come.

III. DEFINITIONS

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

Impermeable Surface: A surface that will not allow any substance to penetrate into the ground and is free from cracks.

Regulated Substance: The following is a list of regulated substances: petroleum, petroleum products, and substances listed under 40 CFR 302, 7-1-05 edition, excluding ammonia, sodium hypochlorite, sodium hydroxide, acetic acid, sulfuric acid, potassium hydroxide, potassium permanganate, propane and other liquefied fuels which exist as gases at normal atmospheric temperature and pressure.

IV. DELINEATION OF AQUIFER PROTECTION OVERLAY DISTRICT

The extent of the Aquifer Protection Overlay District subject to this ordinance shall be the outermost edge of all aquifer deposits designated as stratified drift aquifer on the map entitled Town of Temple, NH – Aquifer Protection Overlay District map.

When the actual Aquifer Protection Overlay District boundary is in dispute, the landowner shall consult a professional geologist, hydrologist, or other qualified professional to determine more accurately the boundary of the Aquifer Protection Overlay District. It is the obligation of the landowner to prove that they are not in an area of stratified drift aquifer. The Planning Board will make the final decision as to whether the disputed property is in the Aquifer Protection Overlay District or not.

V. APPLICABILITY

All activities and uses within the Aquifer Protection District fall within one of the categories below. For any activity/use that does not have a clear distinction as to the category, a determination shall be made by Temple's Planning Board.

A. PERMITTED USES/ACTIVITIES

All uses that are permitted in the underlying Zoning District are permitted herein with the exception of the uses in Section V.B below and provided that such use adheres strictly to the following Performance standards:

1. All fertilizer, manure, and compost must be stored by using best management practices as found in accordance with the Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets, and Food, July 2008, and any subsequent revisions;

2. Regulated Substances shall be stored in a tank or closed container located inside a building or if outside, on an Impermeable Surface with a containment berm to capture any leakage or overflows and to protect the tank/closed container from water runoff . Regulated Substances should be a minimum of 75 feet from surface water and storm drains and a minimum of 100 feet from wells.

B. Prohibited Uses/Activities

The following uses and activities have been identified as posing a potential threat to the quality of aquifer resources. Therefore the establishment or operation of these uses and activities are prohibited within the Aquifer Protection District.

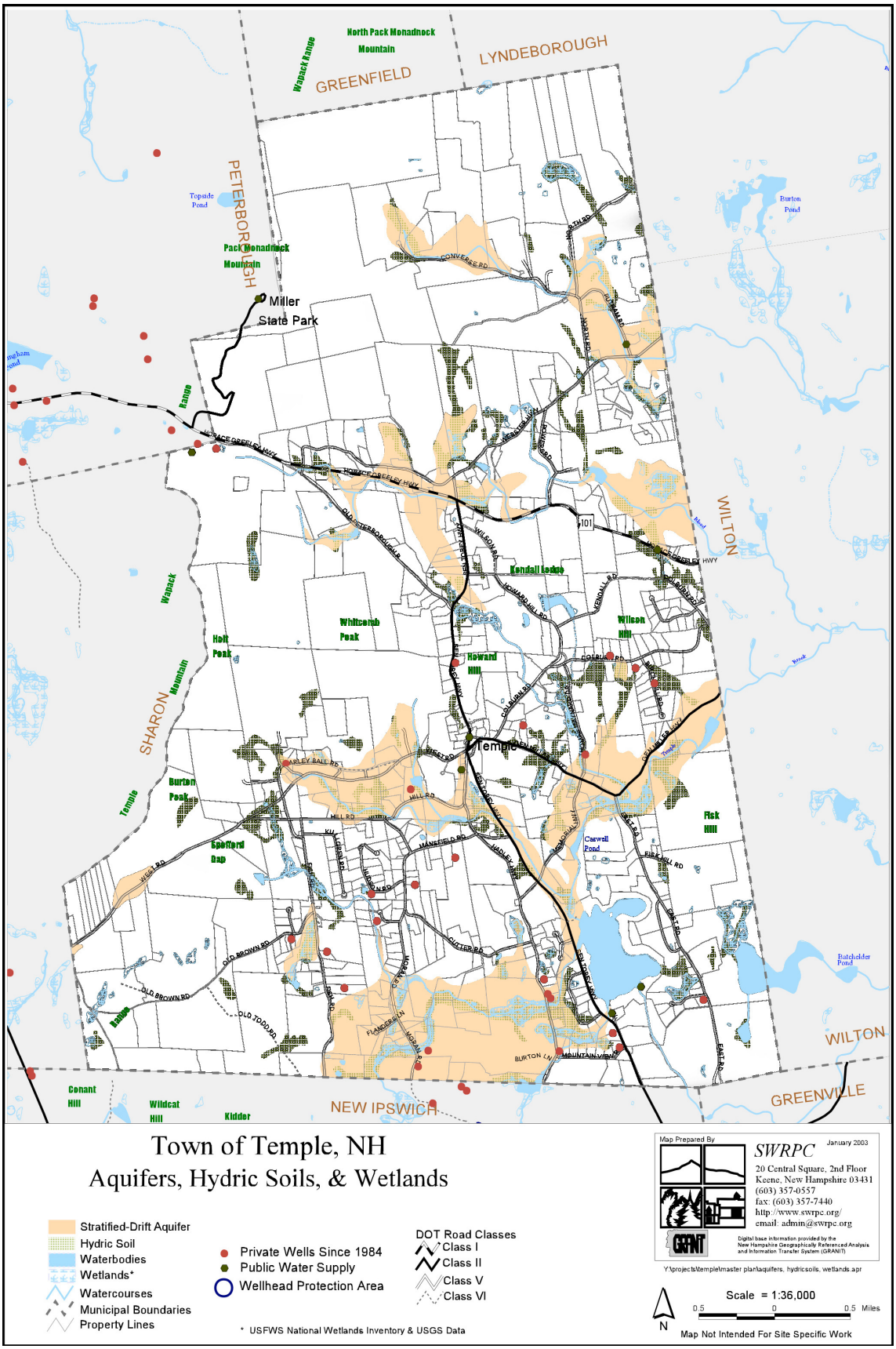
1. Automobile repair or body shop
2. Floor drains or sinks that directly discharge into the ground
3. Gasoline station, petroleum bulk plant or terminal
4. Hazardous waste disposal facility
5. Motor Vehicle Junkyard
6. Outdoor storage of road salt or other deicing substances over 1 cubic yard. Quantities under 1 cubic yard must be covered.
7. Solid waste landfill or waste water treatment facility.

C. Pre-existing Uses/Activities

Any use or activity that does not conform to this ordinance and which was in existence prior to the enactment of this ordinance shall be allowed to continue. The use or activity shall not, however, be permitted to change or expand unless it is to a more nearly conforming use or activity. Non-conforming uses or activities must be in compliance with all applicable state and federal requirements, including Env-Wq 401, Best Management Practices Rules.

VI. Enforcement

Any violation of the requirements of this ordinance shall be subject to the enforcement procedures and penalties detailed in RSA 676 or RSA 485-C.


Town of Temple, NH
Aquifers, Hydric Soils, & Wetlands
Stratified-Drift Aquifer
Hydric Soil
Waterbodies
Wetlands*
Watercourses
Municipal Boundaries
Property Lines
Private Wells Since 1984
Public Water Supply
Wellhead Protection Area
DOT Road Classes
Class I
Class II
Class V
Class VI
* USFWS National Wetlands Inventory & USGS Data
Map Prepared By
SWRPC
January 2003
20 Central Square, 2nd Floor
Keene, New Hampshire 03431
(603) 357-0557
fax: (603) 357-7440
http://www.swrpc.org/
email: admin@swrpc.org
Digital base information provided by the New Hampshire Geographically Referenced Analysis and Information Transfer System (GRANIT)
Y:\projects\temple\master plan\aquifers, hydricsoils, wetlands.apr
Scale = 1:36,000
0.5 0 0.5 Miles
N
Map Not Intended For Site Specific Work
LYNDEBOROUGH
GREENFIELD
PETERBOROUGH
WILTON
SHARON
NEW IPSWICH
GREENVILLE
North Pack Monadnock Mountain
Wapack Range
Pack Monadnock Mountain
Miller State Park
Topside Pond
Burton Pond
Kendall Lodge
Whitcomb Peak
Holt Peak
Howard Hill
Wilson Hill
Temple
Burton Peak
Spofford Gap
Fisk Hill
Carswall Pond
Batchelder Pond
Conant Hill
Wildcat Hill
Kidder
Wapack
Mountain
Temple
Range
101
HORACE GREELEY HWY
OLD TEMPLE RD
WILSON RD
KENDALL RD
HOWARD HILL RD
COLBURN RD
COLBURN HWY
COLLINS HWY
BURTON HWY
MOUNTAIN VIEW RD
EAST RD
FISK HILL RD
HANSFIELD RD
HILL RD
OLD BROWN RD
OLD TODD RD
BURTON LN
CONVERSE RD
PLEASANT ST

SECTION 29: (2013) WETLANDS PROTECTION

I. AUTHORITY

This ordinance is adopted pursuant to the enabling provisions of RSA 674:16- Grant of Power and RSA 674:21Innovative Land Use Controls.

II. PURPOSE

Temple's water resources are a valuable asset because they provide drinking water, recreational opportunities, wildlife habitat and flood control. Without protection, these resources are at risk of degradation. The purpose of this ordinance is to establish protection standards that will help maintain these resources.

III. DEFINITIONS

Riparian Buffer: An area of land with established plant material that is allowed to grow with little or no maintenance along the banks of waterbodies. These buffers help to stabilize the soil and prevent stormwater erosion. They also filter contaminants from stormwater prior to entering the waterbody.

Reference Line**:** The ordinary high water mark of the water body or the delineated edge of the wetland or vernal pool as defined in RSA 482-A.

Wetlands: An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

IV. APPLICABILITY

This ordinance shall apply to all properties which border or contain reservoirs, ponds, intermittent and year round streams, wetlands and vernal pools within the Town of Temple.

All properties that are regulated by the New Hampshire Shoreland Water Quality Protection Act shall comply with RSA 483-B (Shoreland Water Quality Protection Standards) in addition to the protection standards listed herein. When the standards and practices established in this ordinance conflict with other local or state laws and/or rules the more stringent stand shall be used.

V. PROTECTION STANDARDS

A. Setbacks- No structures (temporary or permanent) shall be constructed or installed within 75' of the Reference Line of the waterbody except as described below.

B. Riparian Buffer- A 50' vegetative buffer strip is required measured from the Reference Line of the waterbody. All existing vegetation including trees, shrubs, and undergrowth shall remain undisturbed within this area except for normal maintenance including trimming and removal of dead trees.

C. Walkways and Docks- Walkways and docks within the riparian buffer shall be constructed so as to direct stormwater from causing direct discharge into the waterbody.

D. Stormwater management – water flow shall be considered in selecting the location and design of any construction or other activity within the Setback area designated in A above so as to reduce the flow of stormwater from entering the waterbody prior to filtration.

E. Hazardous Materials- Hazardous materials including fertilizer, pesticides and herbicides shall not be used or stored within the Setback area specified in A above.

VI. EXEMPTIONS

The following uses and/or activities are exempt from the provisions of this ordinance and are specifically allowed with the Setback and Riparian Buffer areas referenced in V (A) and (B) above:

1. Removal or control by non-chemical means of invasive non-native or poisonous plant species
2. The removal of dead, diseased, unsafe, or fallen trees, saplings, and shrubs
3. Normal trimming, pruning, and thinning of branches to the extent necessary to protect structures, and maintain clearances.
4. Forest management not associated with shoreland development or land conversion, and conducted in compliance with RSA 227-J: 9 (Timber Harvesting).
5. Agriculture activities and operations provided such activities and operations are conducted in accordance with best management practices (BMPs).
6. Temporary stream, stream bank, and other vegetation restoration projects, the goal of which is to restore the shoreline and riparian buffer to an ecologically healthy state.
7. Wildlife and fisheries management activities consistent with the State Wildlife Action Plan and applicable state laws.
8. Flood control structures, utility rights of way, road crossings such as bridges and culverts as required and water dependent structures.
9. For the purpose of this ordinance, fences are not considered structures and are therefore permitted within the riparian buffer.
10. Other uses permitted by the NH DES or under Section 404 of the Clean Water Act. Notwithstanding the above, all exempt uses, structures or activities shall comply with all applicable best management practices <u>and</u> shall not diminish water quality as defined by the Clean Water Act. All exempted uses shall be located as far from the Reference Line as reasonably possible.

VII. PRE-EXISTING USES/ACTIVITIES

Any use or activity that does not conform to this ordinance and which was in existence prior to the enactment of this ordinance shall be allowed to continue. The use or activity shall not, however, be permitted to change or expand unless it is to a more nearly conforming use or activity. Non-conforming uses or activities must be in compliance with all applicable state and federal requirements, including Env-Wq 401, Best Management Practices Rules.

VIII. ENFORCEMENT

Any violation of the requirements of this ordinance shall be subject to the enforcement procedures and penalties detailed in RSA 676 or RSA 485-C.

SECTION 30: (2013) LIGHTING/DARK SKY PROTECTION

Outdoor lighting installed in the Town of Temple shall comply with the requirements specified below.

I. AUTHORITY

This ordinance is adopted pursuant to the enabling provisions of RSA 674:16 and 674:21 relative to innovative land use controls.

II. PURPOSE

The intent of this ordinance is to maintain the rural character of Temple, in part by preserving the visibility of night-time skies. This ordinance recognizes the importance of lighting for safety and security while encouraging energy efficiency, and promotes good neighborly relations by preventing glare from outdoor lights from intruding on nearby properties or posing a hazard to pedestrians or drivers.

III. DEFINITIONS

Direct Light: Light emitted directly from the lamp, off of the reflector or reflector diffuser, or through the refractor or diffuser lens, of a luminaire.

Fixture: The assembly that houses the lamp or lamps and can include all or some of the following parts: housing, mounting bracket or pole socket, lamp holder, ballast, reflector or mirror, and/or refractor or lens.

Lamp: The component of a luminaire that produces the actual light.

Luminaire: A complete lighting assembly that includes the fixture and its lamp or lamps.

Flood or Spotlight: Any light fixture or lamp that incorporates a reflector or a refractor to concentrate the light output into a directed beam in a particular direction.

Glare: Light emitting from a luminaire with intensity great enough to reduce a viewer's ability to see and, in extreme cases, causing momentary blindness.

Height of Luminaire: The height of a luminaire shall be the vertical distance from the ground directly below the centerline of the luminaire to the lowest direct-light-emitting part of the luminaire.

Indirect Light: Direct light that has been reflected or has scattered off of other surfaces.

Light Trespass: The shining of light produced by a luminaire beyond the boundaries of the property on which it is located.

Lumen: A unit of luminous flux. One foot candle is one lumen per square foot. For the purposes of this ordinance, the lumen-output values shall be the initial lumen output rating of a lamp.

Outdoor Lighting: The night-time illumination of an outside area or object by any manmade device located outdoors that produces light by any means.

Temporary Outdoor Lighting: The specific illumination of an outside area or object by any manmade device located outdoors that produces light by any means for a period of less than seven days with at least 180 days passing before being used again.

III. OUTDOOR LIGHTING DESIGN

A. Any luminaire emitting *more than* 1800 lumens (with 1,700 lumens being the typical output of a 100-watt incandescent bulb) shall be fully shielded so as to produce no light above a horizontal plane through the lowest direct light-emitting part of the luminaire. (Such fixtures usually are labeled Dark Sky Certified or Compliant.)

B. Any luminaire with a lamp or lamps rated at a total of *more than* 1800 lumens, and all flood or spot lights with a lamp or lamps rated at a total of *more than* 900 lumens, shall be mounted at a height equal to or less than the value 3 + (D/3) where D is the distance in feet to the nearest property boundary. The maximum height of the luminaire shall not exceed 40 feet.

C. Any luminaire with a lamp or lamps rated at 1800 lumens *or less*, and all flood or spot lights with a lamp or lamps rated at 900 lumens *or less*, may be used without restriction to light distribution or mounting height, except that, to prevent light trespass, if any flood or spot light is aimed or toward residential buildings on adjacent or nearby land, or to create glare perceptible to pedestrians or persons operating motor vehicles on public ways, the luminaire shall be redirected, or its light output reduced or shielded, as necessary to eliminate such conditions.

D. Moving, fluttering, blinking, or flashing, neon or tubular lights or signs shall not be permitted, except as temporary seasonal holiday decorations. Signs may be illuminated only by continuous direct white light with illumination confined to the area of the sign and directed downward.

E. Luminaires mounted on a canopy shall be recessed in the ceiling of the canopy so that the lens cover is recessed or mounted flush with the ceiling of the canopy and fully shielded. Luminaires shall not be mounted on the sides or top of the canopy, and the sides of the canopy shall not be illuminated.

F. When aviation lighting is required, the latest technologies shall be employed in order to minimize the visual impact of such lighting.

G. The Planning Board requests that lighting controlled by the Town of Temple or other controlling agencies take advantage of the latest technologies in order to satisfy the intent of this ordinance.

IV. EXEMPTIONS

A. Public-roadway illumination, emergency lighting, and vehicular luminaires shall be exempt.

B. Seasonal holiday lighting and illumination of the American and state flags shall be exempt from the requirements of this ordinance, providing that such lighting does not produce glare on roadways and neighboring residential properties.

C. Installations existing prior to the enactment of this ordinance are exempt from its requirements. However, any changes to an existing lighting system, fixture replacements, or any grandfathered lighting system that is moved, must meet these standards.

V. TEMPORARY LIGHTING

Any temporary outdoor lighting for construction or other purposes that does not conform to the requirements of this article may be permitted by the planning board after considering:

A. The public and/or private benefits that will result from the temporary lighting.

B. Any annoyance or safety problems that may result from the use of the temporary lighting.

C. The duration of the temporary non-conforming lighting.

SECTION 31: COMMERCIAL AND INDUSTRIAL NOISE (2016)

1. PURPOSE: This ordinance is enacted to preserve quality of life, peace and tranquility, and protect the natural environment. Residents shall be protected from adverse health effects from exposure to adverse health effects from excessive noises emitted from commercial and industrial development by regulating noise levels and sound quality. This ordinance establishes the acoustic baseline, background sound levels for project design purposes, and limits the maximum noise level emissions for commercial and industrial developments.

2. APPLICABILITY AND LIMITATIONS:

   a. This section applies to all commercial and industrial development noise(s) generated by operating equipment and devices that can be detected by the human ear on another property. Commercial and industrial development includes all facilities used for: commerce, manufacturing of goods, transportation of goods or materials (including all means of transportation), office use, generation and bulk transmission of energy resources and provision of services.

   b. The following noise sources are specifically excluded from this ordinance.

      - Residential properties including a home business on the residential property
      - Agricultural use
      - Forestry use
      - Vehicle backup alarms & safety alarms, emergency equipment
      - Short term incidental noise (e.g. lawn mowing or snow removal)
      - Excavation or mining at licensed gravel pits
      - Residential construction (when constructed at the permanent site of the residence)

3. METHOD: This ordinance adopts International Standards Organizational (ISO 1996-1:2003) as summarized in Table 1. This standard estimates community response by the increase in the dBA noise level. This ordinance also applies dBA response corrections for objectionable sound level and quality.

Table 1 – ISO 1996-1:2003

DBA Above Noise Level Criterion	Estimated Community Response	
	Category (ISO)1	Description (EPA)2
0	None	No Observed Reaction
5	Little	Sporadic Complaints
10	Medium	Widespread Complaints
15	Strong	Threats of Community Action
20	Very Strong	Vigorous Community Action

[1] ISO 1996-1:2003, Acoustics -- Description, measurement and assessment of environmental noise -- Part 1: Basic quantities and assessment procedures

[2] United States Environmental Protection Agency's document "Information on Levels of Environmental Noise Requisite To Protect Public Health and Welfare With An Adequate Margin of Safety", 550/9-74-004, March 1974

4. BACKGROUND BASELINE: The Town of Temple is situated in a rural area and is therefore a quiet community, which has defined the acoustic baseline as follows.

Table B – Town of Temple Background Sound Levels

Zoning District	Day (from 7 AM to 7:00 PM)	Night (from 7 PM to 7:00 AM)
Village and Historic Preservation District	35 dBA (10-min L90)	25 dBA (10-min L90)
Rural and Agricultural District	35 dBA (10-min L90)	25 dBA (10-min L90)
Mountain District	40 dBA (10-min L90)	30 dBA (10-min L90)

Note: L90 is sound level exceeded 90% of the time

5. NOISE LIMITS: All commercial and industrial noise emissions shall not exceed the following noise limits anywhere at any time on another property unless the owner of that property has granted a noise easement to the facility. As part of the application the developer shall provide modeling of the anticipated noise emissions.

Table 3 – Town of Temple Operational Noise Limits

Zoning District	Maximum Noise Limit Day (from 7 AM to 7:00 PM)	Maximum Noise Limit Night (from 7 PM to 7:00 AM)
Village and Historic Preservation District	45 dBA (10-min L10)	35 dBA (10-min L10)
Rural and Agricultural District	45 dBA (10-min L10)	35 dBA (10-min L10)
Mountain District	50 dBA (10-min L10)	40 dBA (10-min L10)

Note: L10 is sound level exceeded 10% of the time

6. SOUND QUALITY CORRECTIONS: When objectionable sound quality is present, or may become present as a result of the developments, maximum noise level limits on Table 3 shall be reduced as shown in Table 4. These penalties are cumulative up to a maximum of -10 dB.

Table 4– Town of Temple Sound Quality Corrections

Sound Category		Specific Description	Method	Reduction to Maximum Limit
a	**Tone(s)**	1 Steady Tone	ANSI S1.13; 1/3 Octave Band	-5 dBA
		Fluctuating	ANSI S1.13; Narrow Band	
		Multiple Tones	ANSI S1.13; Narrow Band	
b	**Low Frequency**	20 Hz to 1000 Hz	dBC minus >15 dB	-5 dBA
c	**Infrasound**	<1 Hz to 20 Hz	dBL minus >15 dB	-5 dBA

[1] e.g. Wind Turbine

7. PLANNING BOARD RESPONSIBILITY: The maximum noise level (L10) increase is 10 dB based on the zoning district baseline background L90. The Planning Board shall have discretion to reduce the 10 dB increase to 7 dB when there is potential for project future expansion or for another nearby development.

8. NOISE COMPLIANCE: Pre-construction modeling estimates and post- construction compliance noise measurements are the financial responsibility of the project owner and shall be independently performed by a qualified professional chosen by the Selectmen when directed by Code Enforcement, Planning Board, or Zoning Board. Compliance noise measurements shall not exceed the stipulated noise limits and shall include Project Sound Quality Corrections when warranted.

9. NOISE MEASUREMENTS: All noise measurements shall (must) exclude contributions from wind on microphone, tree/leaf rustle, flowing water, and natural sounds such as tree frogs and insects. The latter two can be excluded by calculating the dBA by excluding octave band measurements above the 1000 Hz band.

    a. All acoustic terminology, noise predictions and sound measurements shall comply with recognized international standards (ANSI, IEC & ISO).

ARTICLE V: DISTRICTS AND USES

A. Village and Historic Preservation District

The Village and Historic Preservation District shall enjoy the following provisions: (It shall be mainly a District of dwellings and farms and include in its purpose the preservation and protection of the historical heritage of buildings and lands in the District).

Section 1: Permitted Uses

Buildings may be erected, altered, or used for one-family year-round dwellings and farms. (See General Provisions, Article IV, Section 7.)

Section 2: Lot Area and Dimensions

The area of each lot shall be at least two acres. Each lot shall be capable of containing a square two hundred feet by two hundred feet. The minimum frontage requirement shall be two hundred fifty feet on a class V or better road.

Section 3: Prohibited Uses

Manufactured housing and manufactured housing parks are prohibited. Commercial enterprises of any kind are prohibited other than those existing or as outlined in General Provisions, Article IV, Section 13. Home businesses shall be allowed pursuant to Article IV, Sections 11-A and 11-B.

B. Rural Residential and Agricultural District

The Rural Residential and Agricultural District shall enjoy the following provisions: (It shall be mainly a district of farms, residences, and woodlands.)

Section 1: Permitted Uses

Buildings may be erected, altered, or used for one-family year-round or seasonal dwellings and farms. (See General Provisions, Article IV, Section 7.)

Section 2: Lot Area and Dimensions

The area of each lot shall be at least three acres. Each lot shall be capable of containing a square two hundred fifty feet by two hundred fifty feet. The minimum frontage requirement shall be three hundred feet on a class V or better road.

Section 3: Prohibited Uses

Commercial enterprises of any kind are prohibited, other than those existing or as outlined in General Provisions, Article IV, Section 13. Home businesses shall be allowed pursuant to Article IV, Sections 11-A, 11-B, and 11-C.

Section 4: Manufactured Housing Parks

Each manufactured housing park shall (a) be approved by the Board of Adjustment according to Article IV, Section 13, and (b) each manufactured housing site thereon shall conform to Article IV, Section 8.

C. Mountain District
The Mountain District shall enjoy the following provisions: (It shall be mainly a district of mountains and woodlands.)

Section 1: Permitted Uses
Buildings may be erected, altered, or used for one-family year-round or seasonal dwellings.

Section 2: Lot Area and Dimensions
The area of each lot shall be at least five acres. Each lot shall be capable of containing a square three hundred feet by three hundred feet. The minimum frontage requirement shall be three hundred fifty feet on a Class V or better road.

Section 3: Prohibited Uses
Manufactured housing and manufacturing housing parks are prohibited. Commercial enterprises of any kind are prohibited, other than those existing or as outlined in General Provisions, Article IV, Section 13. Home businesses shall be allowed pursuant to Article IV, Section 11-A.

Section 4: (2000) **Height of Buildings and Other Structures**
Deleted March 2000.

ARTICLE VI: BOARD OF ADJUSTMENT

Section 1: Creation:
A Board of Adjustment is hereby created and shall have the terms and power hereby conferred upon the Board of Adjustment by the provisions of New Hampshire Revised Statutes Annotated, Chapters 672-677, 1983 and as may be amended. The Board of Adjustment members and alternates will be appointed by the Selectmen, who shall also be responsible for filling vacancies and maintaining the full membership of the Board.

Section 2: Adoption of Rules:
The Board of Adjustment shall adopt rules to govern its proceedings in accordance with the NH Office of State Planning handbook for local officials "The Board of Adjustment in New Hampshire" (1993), and the provisions of Chapters 672-677, Revised Statutes Annotated, 1983, and as amended.

Section 3: Interpretation:
The Board of Adjustment may hear and decide a case where it is alleged there is error in any order, requirement, decision, or determination made by the Selectmen or their agent in the enforcement of this ordinance.

Section 4: Appeals:
Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the Board a notice of appeal specifying the grounds thereof. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as notice to the parties in interest, and decide the same within thirty (30) days. Upon the hearing, any party

may appear in person or by agent or attorney. An appeal cannot be taken to or granted by the Board of Adjustment for both a special exception and variance at the same time or concurrently for the same case, use, structure or lot.

Section 5: Variances:
The Board of Adjustment shall authorize upon appeal in specific cases a variance from the terms of this Ordinance as will not be contrary to the public interest if, owing to special conditions, a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship. The Board shall grant a variance provided the following conditions are satisfied:
1. No diminution in the value of surrounding properties would be suffered.
2. Granting the permit would be of benefit to the public interest.
3. Denial of the permit would result in unnecessary hardship to the owner seeking it.
4. By granting the permit substantial justice would be done.
5. The use must not be contrary to the spirit of the Ordinance.

Section 6: Special Exceptions:
The Board of Adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of this Ordinance. All special exceptions shall be made in harmony with the general purpose and intent of the ordinance and shall be in accordance with the general or specific rules contained in this ordinance.

ARTICLE VII: NON-CONFORMING USES, STRUCTURES AND LOTS

Any lawful use of land or buildings or parts thereof at the time of the adoption of this ordinance may be continued indefinitely, although such use does not conform to the provisions of this ordinance, subject to the conditions listed below.

Section 1: Non-Conforming Uses

1. When any existing non-conforming use of land or buildings has been discontinued for two years, the land and buildings shall thereafter be used only in conformity to this ordinance.

2. A non-conforming use may not be changed to another non-conforming use. If a non-conforming use is superseded by a conforming use, the non-conforming use may not thereafter be resumed.

3. (2001) A non-conforming use may not be substantially expanded or enlarged; natural, but limited, expansion may be allowed under some circumstances by special exception if approved by the Board of Adjustment after a public hearing on the subject. In all cases the proposed expansion shall conform to the following requirements:
1. Must meet the minimum lot size requirements for its use and for the district in which it is located.
2. Setbacks must meet the minimum setback requirements for its use and for the district in which it is located.
3. Expansion and/or enlargement of use will not render the property or premises proportionally less adequate.
4. Expansion of use will not require an expansion of the total non-conforming area used.
5. Expansion of use will not adversely affect the neighborhood.
6. Expansion of use must be related to and a continuation of the existing non-conforming use and

cannot increase the degree of non-conformity.

7. Any expansion of use must conform with Planning Board Site Plan Review.
8. The Zoning Board of Adjustment may apply any other restrictions to the expansion of use that it deems necessary to protect the peace and enjoyment of the neighborhood.

Section 2: Non-Conforming Structures

1. Any non-conforming structure destroyed or damaged by fire or other casualty, in whole or part, may be replaced by a structure to be used for the same purpose as the one destroyed, provided that such reconstruction or replacement shall not exceed in cubic contents that of the original structure, and that it occur within 12 months of the casualty.

2. Any non-conforming structure may be altered, provided that such alteration conforms with the dimensional and setback requirements for the zoning district in which it is located.

3. (2001) A non-conforming structure may be expanded by Special Exception if approved by the Board of Adjustment after a public hearing on the subject, provided that the expansion does not encroach any more into the non-conforming direction than the existing structure. Expansion in a conforming direction is permitted. In addition to the above criteria, the Board will also consider the following conditions:
   a. The proposal will not adversely affect the adjacent area.
   b. There will be no nuisance or serious hazard to vehicles or pedestrians.
   c. Approval would be consistent with the intent of the Master Plan, after having given due consideration to recommendations received from the Planning Board, Conservation Commission and the Selectmen, within thirty (30) days of receipt of the petition by the Board of Adjustment.

Section 3: Non-Conforming Lots of Record

In any district, a vacant lot which was a lawful lot of record as of the effective date of this ordinance may be developed for the uses permitted in that district, even though the lot does not conform to the area or frontage requirements of this ordinance. The applicable district requirements for yard setbacks and state septic system requirements shall still apply. Contiguous lots under one ownership, any one of which has less than the required frontage and/or minimum area for the district, must be combined to conform to the zoning requirements before any building permit is granted, unless said lots have been previously approved by the Planning Board.

ARTICLE VIII: ADMINISTRATION

Section 1: Duty

It shall be the duty of the Selectmen, and they are hereby given power and authority to administer and enforce the provisions of this ordinance. The Selectmen may appoint an agent to administer (accept and issue building permits and inspect) but not enforce this ordinance.

Section 2: (2001) **Building Permit Required**

It shall be unlawful to erect and use any structure, alter, remodel (except as noted in Section 3 below) or repair (except as noted in Section 6 below) any existing building, change the use of any land, building or structure, remove or demolish any existing structure, to repair or replace any existing structure destroyed or damaged by fire or an act of God, or relocate any building in any district within the Town of Temple without

first obtaining a building permit from the Board of Selectmen or their agent, unless such structure or building is less than 125 square feet and serves as an accessory use to an existing residence. The Selectmen or their agent shall issue any and all building permits requested when such building permit is in accordance with the provisions of this ordinance. Prior to the granting of a permit for the development or change or expansion of any non-residential use or multi-family use, excepting agricultural use, Site Plan Review approval shall be granted by the Planning Board. Before any structure or dwelling may be occupied, all inspections must be completed and a certificate of occupancy issued by the Selectmen.

Section 3: (2002) **Remodeling**
No building permit shall be required for remodeling or repairing the interior of a structure where the purpose for which the building or structure is to be used is not changed, or a change in electrical wiring involves only one existing branch circuit, or there is no change to existing plumbing, or the building is not enlarged or the use extended or the number of dwelling units is not increased.

Section 4: Enforcement
Upon any well-informed information that this ordinance is being violated, the Selectmen shall take immediate steps to enforce the provisions of this ordinance by seeking an injunction in the Superior Court or by any other legal action.

Section 5: (2001) **Penalties**
Any person, firm, or corporation violating any provision of this ordinance, any related or applicable rule as well as any condition of any approval or directive of the code enforcement officials of the town shall be subject to such enforcement action as may be available under applicable law, including but not limited to RSA 676:15-18, at the discretion and in the judgment of the selectmen and/or the code enforcement official or other authority having jurisdiction.

Section 6: (2001) **Repairing**
No building permit shall be required for minor repairs where the purpose for which the building or structure is to be used is not changed, or the building is not enlarged or the use extended or the number of dwelling units is not increased, unless said repair requires changes in electrical wiring involving more than one existing branch circuit, or existing plumbing, in which case a building permit will be required. A minor repair shall be considered work done to less than twenty five percent (25%) of the building or structure.

Section 7: (2001) **Inspections**

1. It shall be the duty of the Code Enforcement Officer , who will be appointed by the Selectmen, to inspect all new residences, prior to the issuance of a building permit for that residence, to insure the compliance of existing zoning ordinances, building codes and life safety codes, where necessary. After inspection of available architectural/building plans and/or building site and having determined that the owner/builder of a residence will be in compliance with current zoning laws or such other requirements as may be required by New Hampshire RSA's, the Code Enforcement Officer shall so certify compliance by affixing his signature to the building permit prior to the issuance of said permit by the Selectmen. The Code Enforcement Officer may inspect a building site at his discretion during construction to insure compliance and will be responsible for a final inspection authorizing an occupancy permit.

2. It shall be the duty of the Highway Road Agent, who is elected, to inspect all new residences, prior to

the issuance of a building permit for that residence, to insure the compliance of existing highway department policies for the maintenance of Temple's roadways. He shall determine that any connection of a new driveway to an existing town roadway, whether by quality of construction or water runoff drainage or any other consideration, shall not adversely affect that roadway, and after such determination shall certify compliance by affixing his signature to the building permit prior to the issuance of said permit by the Selectmen. The Highway Road Agent will additionally inspect any points of access/egress to town roadways by any vehicles involved in, but not limited to, commerce or any other use on a temporary basis. The Highway Road Agent shall have the power to require, as he shall determine the necessity of, a cash bond.

3. It shall be the duty of the Health Officer, who will be appointed by the Selectmen, to inspect all new residences, prior to the issuance of a building permit for that residence, to insure the compliance of existing zoning ordinances and NHDES regulations. After inspection of available architectural/building plans and/or building site and having determined that the owner/builder of a residence will be in compliance with current zoning laws or such other requirements as may be required by NHDES, the Health Officer shall so certify compliance by affixing his signature to the building site septic plan and building permit prior to the issuance of said permit by the Selectmen. The Health Officer will inspect a building site at his discretion during construction and prior to burying the septic system to insure compliance and will be responsible for a final inspection authorizing an occupancy permit.

ARTICLE IX: AMENDMENTS
This ordinance may be amended by vote as provided in Chapter 675 of the New Hampshire Revised Statutes Annotated, 1983, as amended.

ARTICLE X: CONFLICT
Nothing contained in this ordinance shall be construed as repealing or modifying any other ordinance or regulation of this Town, except such as may be specifically repealed or modified by this ordinance, but shall be in addition thereto. Nor shall anything in this ordinance be construed as repealing or modifying any private restrictions placed upon property by covenant, deed, or other private agreement, or any restrictive covenants running with the land to which the Town is a party, but shall be in addition thereto. Whenever the provisions of this ordinance differ from those prescribed by any statute, other ordinance or other regulation or restriction, that provision which imposes the greater restriction or the highest standard shall govern.

ARTICLE XI: SAVINGS CLAUSE
If any article, section, sub-section, sentence, clause or phrase of these regulations is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of these regulations.

ARTICLE XII: EFFECTIVE DATE
This ordinance shall take effect upon its passage.

ARTICLE XIII: TELECOMMUNICATIONS FACILITIES

SECTION I: AUTHORITY

This Ordinance is adopted by the Town of Temple on March 8, 2005, in accordance with the authority granted by the New Hampshire Revised Statutes Annotated 674:16 and 21.

SECTION II: PURPOSE

These regulations have been enacted in order to establish general guidelines for the siting of towers and antennas and to enhance and fulfill the following goals:

A. Preserve the authority of the Town of Temple to regulate and provide for reasonable opportunity for the siting of telecommunications facilities.

B. Enhance the ability of providers of telecommunications services to provide such services to the community effectively and efficiently.

C. Reduce the adverse impacts such facilities may create, including, but not limited to: impacts on aesthetics, environmentally sensitive areas, historically significant locations, flight corridors, wildlife and human health and safety including injurious accidents to person and property, and diminution of property values.

D. Preserve Temple's unique view sheds and scenic values, in particular those associated with Temple Mountain, Pack Monadnock, North Pack Monadnock, and Mount Monadnock, and all other significant hills and vistas.

SECTION III: DEFINITIONS

A. Antenna: Means any exterior apparatus designed for telephonic, radio, television, personal communications service, pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth.

B. Average Tree Canopy Height: Means the average height found by inventorying the height above ground level of all trees over 20 feet in height for a radius of 150 feet.

C. Tower: Means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas.

D. Telecommunications Facilities; Means any antenna, tower, or other structure intended for use in connection with the transmission or reception of radio or television signals or any other electromagnetic transmission/receptions.

SECTION IV: LOCATION OF TELECOMMUNICATIONS FACILITIES

A. Telecommunications facilities may be permitted in all districts if located in an existing building or hidden or camouflaged from view. In no case, however, shall such a facility be sited in a location that would unreasonably impact any significant views.

B. Due to the high quality of scenery in the Town of Temple, tower profiles that interrupt distant or near views are deemed to be detrimental to both property values and the general scenic quality of Temple.

SECTION V: PERMITTED USES

A. Principal or Secondary Use. Telecommunications facilities may be considered either principal or secondary uses. Having an existing permitted use on site shall not preclude the addition of such facility as a Secondary Use as long as all other provisions of the Ordinance are met.

   A different existing use or an existing structure on the same lot shall not preclude the installation of a facility on such lot. Sites with multiple existing uses may be precluded from having towers added if, in the opinion of the Planning Board, the additional use substantially reduces the residential or scenic character of the area.

   For purposes of determining whether the installation complies with district development regulations, including but not limited to setback and lot coverage requirements, the dimensions of the entire lot shall control, even though the facility may be located on leased parcels within such lots. Facilities that are installed in accordance with the provisions of this Ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.

B. Any alteration of the original permitted use and device configuration of the facility will require a new approval.

C. Amateur Radio & Receive-Only Antennas. This Ordinance does not apply to any antenna used exclusively in the amateur radio services that is eligible under the Amateur Radio Preemption, 101 FCC 2nd 952 (1985).

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

SECTION VI: CONSTRUCTION PERFORMANCE REQUIREMENTS

A. Federal Requirements. All facilities must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate such facilities. If such standards and regulations are changed, the owners of facilities governed by this Ordinance shall bring these into compliance within six (6) months of the effective date of the changes, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring facilities into compliance with any changes shall constitute grounds for the removal, in accordance with Section X, of the tower or antenna, as abandoned, at the owner's expense through the execution of the posted security.

B. Building Codes/Safety Standards. To ensure the structural integrity of towers and antennas, all facilities will be inspected every three (3) years by an engineer approved by the Town, with the cost to be paid by the owner, and the report submitted to the Town. If the report concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within 30 days, such action shall constitute an abandonment and grounds for the removal, in accordance with Section X, of the tower or antenna, as abandoned, at the owner's expense through execution of the posted security.

SECTION VII: STANDARDS

A. Height.

1. The height of any structure will be the minimum necessary in order to transmit and receive signals. The intent to serve a large area with one tall installation will not be accepted as justification of height. Multiple, minimum-height towers may be preferred, and required depending upon the resulting visual impact.

2. The applicant must demonstrate that every reasonable effort has been made to cause the facility to have the least possible visual impact on the Town at large, including demonstration of the need for the proposed height and camouflage techniques. In no case, however, may any tower extend more than 25 feet above the existing on-site vegetation or average tree canopy height. If no vegetation exists on site, any tower may not extend more than 25 feet above ground level.

B. Location.

1. Site location and development shall preserve the existing character of the surrounding buildings and land uses and the zoning district as much as possible. Telecommunications facilities shall be integrated through location and design to blend in with existing characteristics of the site.

2. Telecommunication facilities shall not be sited in locations where they will negatively affect historic or significant views as determined by the Planning Board or any state of federal law or agency, or where they will create visual clutter as determined by the Planning Board.

3. The Planning Board reserves the right to request that the applicant reasonably demonstrate that siting the telecommunications facility in a proposed location will not negatively affect historic or significant views or create visual clutter.

4. If a telecommunications facility is proposed to be sited in a location that the Planning Board has determined will negatively affect historic or significant views or create visual clutter, the applicant must demonstrate that there is no other location that could provide similar coverage. The applicant must also demonstrate that there are no available opportunities for co-location on existing facilities that would provide similar coverage.

C. Setbacks and Separation. In addition to compliance with the minimum zoning district setback requirements for other structures, towers shall be set back a distance equal to 125% of the height of the tower from any property lines.

D. Security Fencing. Towers shall be enclosed by security fencing not less than six (6) feet in height and shall also be equipped with an appropriate anti-climbing device.

E. Co-Location. While the Town supports the sharing of telecommunication facilities, where appropriate and feasible, an opportunity for co-location is not to be considered a justification for excessive height of towers. Co-location opportunities shall also not exclude the investigation of alternative sites or multiple towers on one site.

F. Landscaping.

1. A buffer shall be provided that effectively screens the view of the compound from adjacent property. The standard minimum buffer shall consist of a landscaped strip at least 10 feet wide outside the perimeter of the compound, and shall be expanded as required by the Planning Board based on site-specific considerations. Natural vegetation is preferred.

2. In locations where the visual impact of the compound would be minimal or nonexistent, the landscaping requirement may be reduced or waived entirely.

3. Existing on-site vegetation and natural landforms on the site shall be preserved and disturbance minimized to the maximum extent possible. In some cases, such as towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.

G. Camouflaging.

1. Camouflaging of towers is required and must be approved by the Planning Board.

2. At a tower site, the design of the tower, buildings and related structures shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities with the natural setting and built environment.

3. Existing on-site vegetation and natural landforms on the site shall be preserved and disturbance minimized to the maximum extent possible. In some cases, such as towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.

4. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment visually unobtrusive.

5. Where possible, dish antennae will be arranged contiguous to or below the abutting tree line.

SECTION VIII: CONDITIONAL USE PERMITS

A. General. Telecommunications Facilities are permitted only after obtaining a Conditional Use Permit. All such uses must comply with other applicable ordinances and regulations of the Town of Temple (including Site Plan Review Regulations).

B. Issuance of Conditional Use Permits. In granting the Conditional Use Permit, the Planning Board may impose conditions to the extent that it concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties, and preserve the intent of this Ordinance.

1. Procedure on Application.

a. The Planning Board shall act upon the application in accordance with the procedural requirements of the Site Plan Review Regulations and RSA 676:4.

b. All towns within 20 miles of the proposed location will be notified of the public hearing, by certified mail, to be paid by the applicant. A notice will also be posted in the newspaper customarily used for legal notices by these municipalities. Such notice shall be published not less than 7 days nor more than 21 days prior to the public hearing date.

2. Decisions. All decisions shall be rendered in writing, in accordance with RSA 676:3 and the National Wireless Telecommunications Siting Policy – Section 332(c)(47 U.S.C.332(c)), which mandates that a denial be based upon substantial evidence contained in the written record.

3. Permits shall be renewable every five (5) years. When possible, this time frame shall be consistent with the timing for performance bond renewal. Updates or improvements in camouflaging technology can be required by the Planning Board at this time.

C. Plan Requirements. Each applicant requesting a Conditional Use Permit under this Ordinance shall submit a scaled plan showing or accompanied by the following information:

1. Title block that shows the name of the development or project.
2. North arrow, date of plat, scale; name, address and seal of all persons preparing the plat.
3. Signature block for Planning Board endorsement and approval.
4. Vicinity sketch and zoning district(s).
5. Total area of the parcel in acres and square feet.
6. Lot frontage.
7. Boundary lines and approximate dimensions and bearings.
8. Tax map and lot numbers.
9. Locations and descriptions of any existing or proposed easements, deed restrictions, or covenants.
10. Physical features on the site and within 200 feet of the site.
11. Soil information based on the Hillsborough County Soil Survey.
12. All natural features, such as streams, ponds, wetlands, etc.
13. Existing and proposed grades and contours, and base flood elevations.
14. Shape, size, height, location and use of existing and proposed structures on the site.
15. Existing buildings and structures within 500 feet of the site.
16. Access to the site, with location and width of existing and proposed driveways.
17. A driveway permit been granted from either the NH DOT or the Town of Temple.
18. Locations, names, right-of-way and travel widths of any existing and proposed roads on the property and within 200 feet of the site.
19. Final road profiles and cross-sections for any new roads.
20. Locations and sizes of all electric and telephone lines on the site.

21. Existing and proposed fire hydrants and/or fire ponds.

22. Existing and proposed methods of handling storm water runoff, and the direction of the flow indicated by arrows.

23. Sizes and locations of all storm water drainage lines, catch basins, drywells, drainage ditches, retention basins, and culverts.

24. Location, types, and sizes of all existing and proposed landscaping and screening.

25. Location of any proposed lighting.

D. Other Information Required. In order to assess compliance with this Ordinance, the Planning Board shall require the applicant to submit the following prior to any approval:

1. Photographic documentation of the balloon test(s) from all roads from which the site is visible.

2. Propagation maps showing proposed radio frequency (RF) coverage.

3. Detailed maps showing all of the carrier's current or planned externally visible tower and monopole locations in the state within a 20-mile radius, both active and inactive.

4. Site descriptions for each of the above locations showing the antenna height and diameter, and all externally visible structures.

5. A description of why less visibly intrusive alternatives for this facility was not proposed.

6. The applicant shall submit written proof that the proposed use/facility complies with the FCC regulations on radio frequency exposure guidelines.

7. The applicant shall submit written proof that it has conducted an evaluation of any requirements of the National Environmental Policy Act (NEPA) pertaining to the proposed facility, as may be required under applicable FCC rules, and the results of any such evaluation. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and/or NEPA, the applicant shall submit the EA or EIS to the Planning Board prior to the beginning of the federal 30-day comment period; the Town proceedings with respect to the proposed facility shall become part of the FCC application requirements.

8. If the applicant is proposing to build a new tower, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna. The evidence may consist of:

a. substantial evidence that no existing towers or structures are located within the geographic area needed to meet the applicant's requirements;

b. substantial evidence that the applicant can demonstrate other limiting factors that render existing towers and structures unsuitable.

c. substantial evidence that the applicant's proposed antenna would cause electromagnetic interference with the antenna(s) on the existing towers, or that existing towers or structures would cause electromagnetic interference with the applicant's proposed antenna;

d. information on the number of sites for wireless telecommunication facilities each provider will require;

e. information on sites outside of the Town for the particular coverage area that are being considered; and f. information on how the siting of a wireless telecommunication facility will affect the ability to allow a competitor's antennas on the same property.

9. It is mandatory that the applicant provide the Planning Board with studies of alternative sites in Town that have been considered for siting.

10. The applicant will provide the Planning Board with any copies of the federal license from the FCC proving that they, or their contracted client, are eligible to deploy their systems under the Federal Telecommunications Act of 1996.

11. The applicant will submit an agreement to the Town to the effect that the Town will be held harmless for any extraordinary fire or safety events.

SECTION IX: WAIVERS

A. Any portion of these regulations may be waived or modified when, in the opinion of the Planning Board, strict conformity would pose an unnecessary hardship to the applicant and such waiver would not be contrary to the purpose, spirit and intent of these regulations.

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

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

SECTION X: BONDING AND SECURITY INSURANCE

A. The applicant shall provide a bond to the Town in an amount that would be sufficient to cover the costs of removal and disposal of the facility components. The Planning Board shall set the form and amount of the security. The Planning Board shall also require the applicant to submit proof of appropriate liability insurance with respect to the proposed facilities prior to construction.

B. If the Planning Board requires an engineering assessment in order to set the amount of the bond, the cost of that assessment shall be borne by the applicant.

SECTION XI: REMOVAL OF ABANDONED ANTENNAS AND TOWERS

1. Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said tower provides proof of quarterly inspections. The owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the tower.

2. If the abandoned tower is not removed within 90 days, the Town may execute the security and have the tower removed. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.

SECTION XII: ADMINISTRATION AND ENFORCEMENT

1. It shall be the duty of the Board of Selectmen, and they are hereby given the power and authority, to enforce the provisions of this ordinance. The Selectmen may appoint an agent to enforce this ordinance.

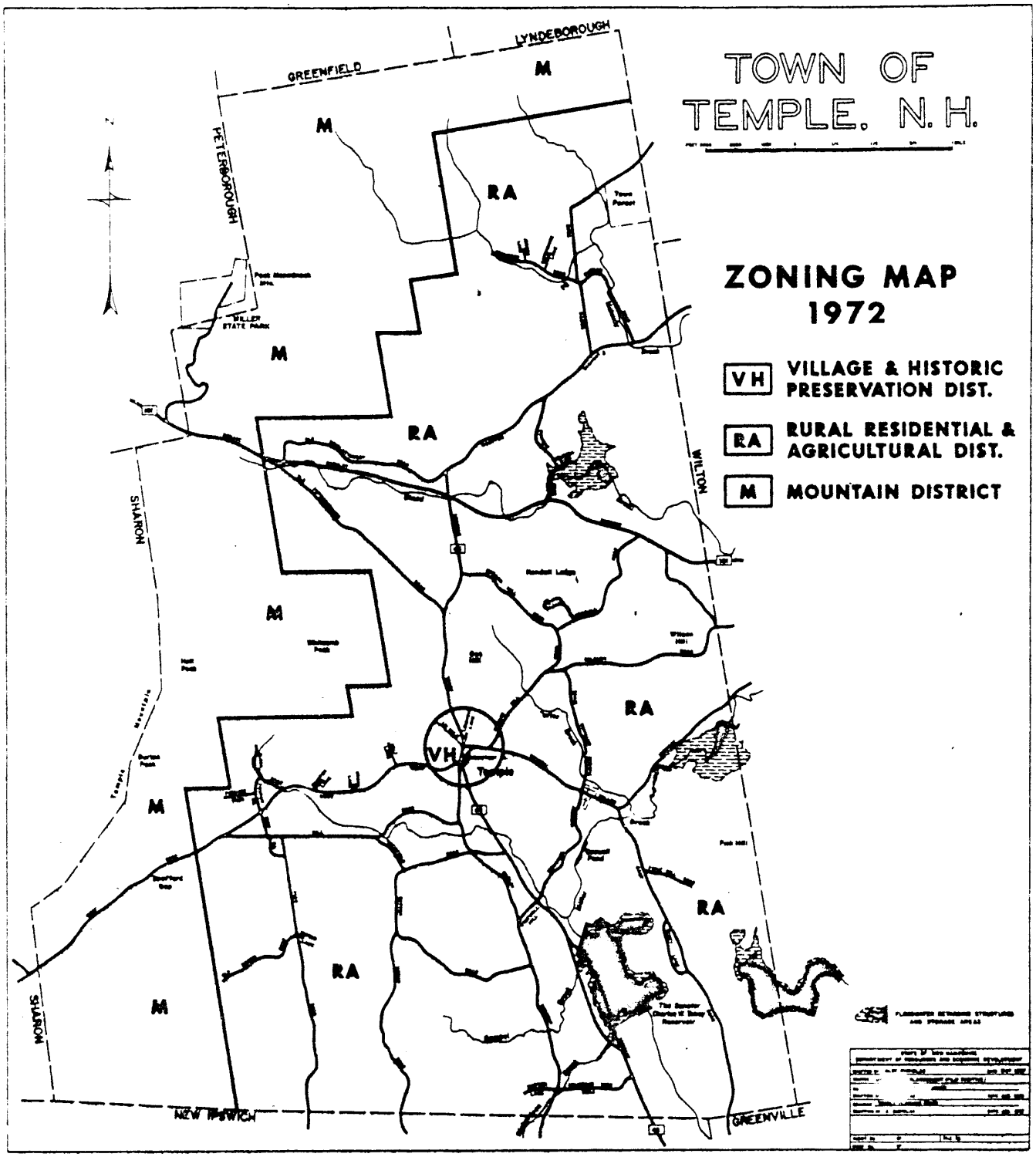
2. Upon any well-founded information that this ordinance is being violated, the Selectmen shall take immediate steps to enforce the provisions of this ordinance by seeking an injunction in the Superior Court or by any other legal action.

SECTION XIII: SEVERABILITY

The invalidity of any provision of this ordinance shall not affect the validity of any other provision.

SECTION XIV: APPEALS

Pursuant to RSA 676:5, any decision made under this ordinance cannot be appealed to the Board of Adjustment, but to the superior court as provided by RSA 677:15.


TOWN OF
TEMPLE, N.H.
ZONING MAP
1972
VH VILLAGE & HISTORIC PRESERVATION DIST.
RA RURAL RESIDENTIAL & AGRICULTURAL DIST.
M MOUNTAIN DISTRICT
LYNDEBOROUGH
GREENFIELD
PETERBOROUGH
SHARON
WILTON
NEW IPSWICH
GREENVILLE
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