Article 4: USE REGULATIONS

Section 4.0 Except as the Board of Appeals may grant a variance from the provisions of this Zoning Bylaw, no building or structure shall be constructed, and no building, structure or land, or part thereof, shall be used for any purpose or in any manner other than for one or more of the uses hereinafter set forth as permitted in the district in which such building, structure or land is located, or set forth as permissible by special permit in said district and so authorized. All uses not specifically permitted shall be considered to be prohibited.

AGRICULTURAL-RESIDENTIAL DISTRICT I

Permitted Uses

Section 4.1

A. Detached one-family dwelling.
B. Storage on a lot of one or more boats.
C. Religious, educational, municipal, and governmental or public utility structure or area.
D. Public Parks, playgrounds, or recreation buildings, for recreation or community use, not for profit.
E. Renting of rooms or furnishing of board to not more than three (3) people by a family resident in the dwelling.
F. Farm, barn or silo, riding stable, nursery, including the display and sale of natural products usually sold by farms or nurseries, and the raising of stock, and the storage of equipment used in connection with such uses.
G. Use of premises or structures for fishing, shell fishing or agriculture; or work related directly or indirectly thereto.
H. A garage (attached or detached for no more than three cars) and other accessory structures such as a pump house or tool shed.
I. A shed roof dormer may be added to a dwelling with a gable roof existing before March 1976, provided that the length of the dormer is no more than 75% of the distance of the roof segment parallel to the ridge and the dormer spans no more than 75% of the distance of the roof segment between the ridge and eave. The pitch of such shed roof dormer shall have a rise of no less than two inches in each foot.

USES WHICH MAY BE SPECIALLY PERMITTED BY THE BOARD OF APPEALS

Section 4.2 The Board of Appeals may, after notice and hearing as provided in Article 9 of this bylaw, grant a special permit to conduct a use as herein specified, provided that if such use involves the erection or placement of a building or structure the applicant shall submit to the Board plans and other data showing to the satisfaction of the Board that the site preparation and location of the proposed building or structure will preserve and enhance existing large trees, large exposed boulders, water course, hills and other natural features as well as vistas, water views and historic locations and will minimize the intrusion of the building or structure into the character of the existing development in the area and will not unduly burden the water supply for surrounding area as determined by the Board of Health and the Conservation Commission.

ACCESSORY USES

Section 4.2A Accessory uses as specified below which are customarily accessory and incidental to a permitted use, subject to the following provisions.

1. **Guest House,** provided that:

   a. The lot on which the principal dwelling and the accessory dwelling are located contains a minimum area of land of (3) acres,

   b. The maximum floor area of the accessory dwelling shall not exceed 800 square feet, which shall include any roof-covered area enclosed by walls or screening.

   c. Soil percolation tests and location of a septic system for the exclusive use of the accessory dwelling shall be approved by the Board of Health prior to granting of a special permit by the Board of Appeals. If the applicant illustrates to the satisfaction of the Board of Health through the submission of suitable drawings prepared by a Professional Engineer or Registered Sanitarian, that a septic system can be permitted in full compliance with all applicable regulations to serve the guest house only, then the applicant may substitute in place of said guest house septic system, connection to a common septic system on a single parcel of land. Said common septic system must also be in full compliance with all applicable rules and regulations of the Board of Health and any other Board which may have regulatory power, and

   d. A covenant against the lot shall be recorded in the registry of deeds prohibiting any subdivision of the lot on which an accessory dwelling is specially permitted unless the minimum acreage for each subdivided lot conforms to the minimum lot size for the district in which the lot is located as provided in the bylaw.

   e. The owner must own the principal dwelling for five years before a guest house maybe built.

   Exception: On a parcel of land containing a minimum of six (6) acres held in continuous ownership for at least five (5) years, a guest house may be built within five (5) years of the principal dwelling construction if the owner thereof covenants against any subdivision of the parcel.

   f. permits for unbuilt guest houses may not be transferred to new owners.

2. The use of a portion of a dwelling or any accessory building by the owner and occupant for the pursuit of a home occupation, which term shall be construed to mean any activity which results in a product of service of the sale of the same, which is carried on in a residence or accessory building and meets all the following requirements:

a. The use is clearly secondary to the use of the dwelling for dwelling purposes.

b. Not more than one-third of the area of one floor of the dwelling structure is used for such uses, and the total ground coverage of areas within the dwelling and other buildings or structures accessory thereto used for such uses shall not exceed 1,500 square feet.

c. No part of any building built after the adoption of this bylaw used wholly or in part for such uses shall be situated within 200 feet of the front line or of a road or way open to or used by the Public, or within a distance equal to one half of the depth of the lot if the depth of the lot be less than 400 feet. This setback area and the front yard area of any existing dwelling shall not be used for any parking, sales, storage, display or other use connected with any home occupation.

d. Trees, shrubs and natural growth shall be left uncut within 50 feet, or within a distance consisting of 12.5 percent of each dimension of the lot, if that be less than 50 feet of the front, back and all side lines of the lot.

e. Sufficient parking spaces to accommodate in all normal conditions the cars of occupants, employees, customers, and visitors of the premises shall be provided behind the rear line of the principal dwelling and shall, if visible at normal eye level from any point on an abutting lot, be screened with a substantially sight-impervious screen of evergreen foliage which will reach a height of eight feet in three years.

f. All outdoor storage, loading and service areas must be screened from the view of the public road and adjacent residences with a substantially sight-impervious screen of evergreen foliage.

g. No odors, dust, fumes, glare or any noise audible at the lot lines in amounts exceeding those normal to residential use, will be made or created by any use on the premises.

h. Such use must not cause or contribute to any erosion of the land or increase surface water drainage from the lot.

i. Such use must not cause any pollution of the water or air.

j. No external change shall be made which alters the residential appearance of the buildings and structures on the premises and new structures for such use shall conform in appearance and in exterior materials to the residential character of the neighborhood.

k. Site preparation and location of structures must preserve and enhance existing large trees, water courses, hills and other natural features as well as vistas, water views and historic locations and must minimize the intrusion into the character of existing development in the area.

l. Any use permit issued under this bylaw shall be revocable should any provision of this bylaw not be met. A permitted use shall be limited in time for a period no longer than the period of occupancy or ownership, whichever is shorter, of the premises by the applicant or heirs of the applicant.

3. **Swimming Pool and/or Tennis Court.**
A swimming pool and a tennis court are considered accessory to the use of a principle dwelling. The Town will follow the current approved MA Building Code on Swimming Pools 780 CMR and will adhere to the following process:

a. **Permitting and Enforcement:** A Special Permit is required for a swimming pool or tennis court. The Special Permit is issued by the Zoning Board of Appeals and is enforced by the Building Inspector.

b. **Application:** The applicant/owner must own the principal dwelling for two (2) years before applying for a Special Permit for a swimming pool or tennis court. Principal dwelling ownership begins when an occupancy permit for the principal dwelling is issued by the Building Inspector or from the date of transfer of property with an existing occupiable dwelling. Special Permits for new swimming pools and tennis courts may not be transferred to new owners.

c. **Use:** Such swimming pool or tennis court is used only by the residents of the principal dwelling and their guests.

d. **Setbacks:** No portion of the swimming pool or tennis court may be located within 50 feet of any boundary line of said lot. Related equipment will be placed in a location approved by the Zoning Board of Appeals. Depending on the lot, the Zoning Board of Appeals may require a sound insulated shed or underground vault for pool related equipment.

e. **Enclosure:** Swimming pool enclosures are required and must be in accordance with current MA Building Code 780 CMR 120.M. If a stone wall is used for fencing, it must meet MA State Building Code Guidelines for Solid Barrier Surfaces, 780 CMR 120.M 105 Barrier Requirements, Section 3.

f. **Location:** The location of the swimming pool, related equipment or tennis court shall not materially impair the view of natural

surroundings from a way used by the public, from public land or from abutting lots. For safety reasons, there must be a clear line of sight from the principal dwelling to the swimming pool, as determined by the Zoning Board of Appeals.

g. **Covers:** All swimming pools will be equipped with a winter safety cover for off-season use.

h. **Energy Use:** Heated swimming pools (including the heating system, pool related pumps, filters and circulators) are permitted if the heat is supplied by solar or alternative systems, which are the most current energy-efficient systems, as approved by the Zoning Board of Appeals. If a water heating system is added to an existing swimming pool, a Special Permit is required for the installation.

i. **Light:** The swimming pool or tennis court must comply with Chilmark Zoning Bylaw Article 5, Section 5.5, 5.6 and 5.7. Submerged in-pool lights and path lights are permissible. Tennis courts may not be lighted.

j. **Noise:** The swimming pool and related equipment or tennis court must comply with Chilmark Zoning Bylaw Article 5, Section 5.9.

k. **Screening and Landscaping:** A screening plan shall consist of native, non-invasive species, provided they are consistent with Article 4.2A, sections 3.f and 3.j and must be perpetually maintained for the life of the pool.

l. **Fire Protection:** An accessible and functional standpipe is required for pools containing more than 7500 gallons of water with the design, placement and operation to be approved by the Chilmark Fire Chief.

m. **Initial Filling:** The initial filling of the pool shall come from an off-site source and shall not occur until the pool is in compliance with e. Enclosure and the pool area may be safely secured.

n. **Drainage:** The concentration of potentially hazardous chemicals in the water must be significantly reduced and properly tested before any necessary draining of the pool water directly into the ground of the property.

4. **Windmill.** A windmill shall be exempted from the height limitations of Section 6.5 of the Zoning Bylaw and considered accessory to the use of a dwelling or dwellings, subject to the following conditions:

   a. The building inspector may require certification of a registered Massachusetts engineer, furnished by the applicant for safety of structure, installation and operation of the windmill.

b. Climbing access to any tower shall be limited by the installation of a six foot high fence with locked gate, or by limiting tower climbing apparatus to no lower than ten feet above ground.

c. A recommendation by the Site Review Committee (Section 11.3) shall be made regarding the height and siting of the windmill. The committee may require that the applicant erect temporary poles, to a height designated by the building inspector, to mark the proposed location.

d. The Board of Appeals shall determine that the proposed height and location of the windmill does not interfere with the rights of abutters to enjoy their property and that the granting of the Special Permit will satisfy sections 1.0, 4.2 and 9.8 of the bylaws.

e. The building inspector shall be responsible for a biannual inspection of all standing windmills. Any designated safety hazard or nuisance (such as excessive noise, radio and/or television interference) shall be corrected within 60 days or, failing that, dismantled within 30 days. Such action to be subject to approval of the Board of Appeals.

5. **Unlicensed Vehicles.** The outdoor storage of not more than two (2) unlicensed vehicles (other than farm vehicles) on a lot provided that no such vehicle is within 50 feet of any boundary line of the lot and that if any one of such vehicles is visible from any point on a way used by the public, public land, or abutting lot, the vehicles will be screened with a substantially sight-impervious screen of evergreen foliage which will reach a height of eight feet in three years.

6. **Conversion of a Barn.** Conversion of a barn which existed before January, 1973 to a single family guest house, provided that:

   a. It conforms to all conditions for a guest house in section 4.2 A, except that it may exceed the floor area limitation.

   b. The converted barn shall be the only guest house accessory to the main dwelling and no additions shall be allowed.

   c. The visual character of any part of the barn which is in the public view shall be retained.

7. **Room Rentals or Bed and Breakfast Accommodations.** Room rentals or bed and breakfast accommodations for more than three (3) people in a dwelling are subject to the following provisions:

   a. The use shall be clearly secondary to the use of the dwelling as the primary residence of the owner and/or occupant and shall not alter the residential character of the neighborhood.

b. Accommodations shall be limited to not more than six (6) overnight guests and the number of rooms to be rented shall not exceed three (3).

c. Breakfast service shall be operated for only overnight guests.

d. Parking areas shall be located and screened with dense natural vegetation so as to minimize noise and visual intrusion upon neighbors and roadsides.

e. The owner of a dwelling renting rooms to more than three (3) persons shall be required to be licensed annually by the Board of Selectmen after approval by the Board of Health, the Fire Department and the Building Inspector. The use shall be limited in time to the period of occupancy of the licensee.

f. The owner of a dwelling who has rented rooms to more than three (3) persons prior to the adoption of this bylaw may continue to rent the number of rooms rented in 1987, but shall be licensed as described above and shall conform to the other requirements of this bylaw as far as is possible within the lot where the dwelling is located.

8. **Satellite dishes** may be installed providing they are either located in such a way or screened with dense natural vegetation so that they are not visible from public or private ways or from neighbors' dwellings.

NON-ACCESSORY USES

Section 4.2B Non-accessory uses specified below which are not accessory to a permitted use may be permitted subject to the following conditions:

1. A private club , not conducted for profit, a gasoline station, a boat storage and repair or boat building facility, an aquacultural development facility, a marine biological station, a museum, swimming pool, laundromat, tennis courts, non-profit skating rink, boat railway and ramps, practice of a recognized profession, provided:

a. A determination of need or usefulness to the residents of the Town is made by the Board of Appeals,

b. It is the opinion of the Board that such use will not have a material detrimental effect upon, or be inconsistent with the established and future character of the neighborhood and the Town,

c. Any such building or structures shall be faced on the exterior with wood or clay brick, and

d. Any other conditions or safeguards deemed necessary to protect the surrounding neighborhood shall be imposed by the Board of Appeals.

2. Conversion of a one-family dwelling existing on January 15, 1973, into a two-family dwelling.

3. Conversion of a barn over 24 feet in height, existing on January 15, 1973, into a single family dwelling.

4. Removal of gravel, loam, sand and stone provided that:

    a. The Board may restrict the depth and extent of the removal and the distance of the removal from abutting lots in order to insure that such removal will not cause subsidence of any such lots.

    b. If the operation is to continue for more than one year, the area of such removal shall be screened by any method, such as plantings or fencing, as approved by the Board, and

    c. When such removal operation has been completed, or abandoned for two years, the area of removal shall be graded and restored to a sightly condition and planted with soil improving plants, with a permanent cover crop or reforestation.

5. An inn, subject to the following:

    a. Such a business must be located on a site comprising not less than ten (10) acres,

    b. No building or structure used in connection with such business shall be located nearer than 400 feet from any way used by the public,

    c. The facilities shall be limited to accommodations for not more than thirty (30) overnight guests in any arrangement of single and double rooms,

    d. Facilities must be operated for the service of at least two meals to all overnight guests,

    e. Trees, shrubs and natural growth shall be left uncut within 100 feet of all lot lines, and

    f. An inn shall be licensed annually by the Board of Selectmen after approval by the Board of Health, Fire Department and Building Inspector.

    g. These requirements apply to the renting of rooms to more than six (6) people.

6. Wireless Communications Equipment and Facilities, subject to the following:

a. Purpose: The purpose of this provision is to balance the need for the safety and convenience of wireless communications with the Town's desire to preserve the rural nature of the Town as set forth in its Master Plan.

b. Applicants seeking approval for any wireless communications Antenna, Antenna Support, Base Station or Base Station Facility shall comply with the following:

1) If feasible, any Wireless Communications Antenna shall be located on existing telecommunications facilities or other suitable existing Supports. The applicant shall submit documentation of the legal right to install and use the proposed Antenna Support. Otherwise, the applicant shall have the burden of proving that a good faith . effort has been made to so locate and that it is not feasible to locate on an existing Support. Failure to meet this burden shall be grounds for denial of the application. Any owner of an existing Antenna Support, which currently supports an Antenna, must provide appropriate space on a reasonable and non-discriminatory basis or documentation from an impartial expert stating the reasons for not allowing the applicant to share the Antenna Support. All wireless communications Antennas, Antenna Supports, Base Stations and Base Station Facilities built in Chilmark shall be constructed to accommodate additional providers and the owners must make the Support available for use by other wireless communications providers on a reasonable and non-discriminatory basis.

2) All applications shall be completed on a form provided by the Town. Such form shall contain an agreement indemnifying the Town from all legal liability resulting from the construction and operation of the wireless communications Antenna, Antenna Support, Base Station or Base Station Facility. The form shall be signed by an individual authorized to execute a binding indemnification.

3) All applications shall contain the following information and supporting documentation:

a) Inventory of the applicant's existing Antenna Support, Base Station and Base Station Facility sites, including but not limited to specific information about the location, height and design of each Antenna Support:

b) The availability of suitable. pre-existing Antenna Supports or other structures in Chilmark and abutting towns:

c) A scaled site plan and elevation view for any proposed Antenna Support. Antenna Base Station, Base Station Facility or any combination thereof:

d) A copy of all FCC licenses for the provision of wireless services and related communications links (if any) that the applicant intends to operate

e) Such additional information as may be relevant to the factors listed in 4)b) below.

4) Permitting for Antennas, Antenna Supports, Base Stations and Base Station Facilities.

a) There is hereby created a Chilmark Plan Review Committee, the members of which shall be the members of the Planning Board, the members of the Zoning Board of Appeals and a member appointed by the Board of Selectmen, who may be a Selectman.

b) The Chilmark Plan Review Committee may issue a special permit for any proposed Antenna, Antenna Support, Base Station, Base Station Facility, and modifications made to existing Antenna, Antenna Support, Base Station, Base Station Facility, or combination thereof by a two-thirds (2/3) vote of the membership of such committee in accordance with the following procedures:

1. A joint public hearing by the Site Review Committee and the Chilmark Plan Review Committee shall be held for the applicant to present the proposed Antenna, Antenna Support, Base Station or Base Station Facility plan;
2. Recommendations from the Site Review Committee shall be submitted to the Chilmark Plan Review Committee;
3. The Chilmark Plan Review Committee shall provide a written opinion explaining its decision. Such decision shall consider and be based upon the following factors:
   a. Height and type of proposed Antenna and its Support;
   b. Visibility of the Antenna and its Support in the view shed of any property owner(s);
   c. Need for reception in the area;
   d. Proposed location(s) versus possible alternate location(s);
   e. Ability to mask the nature of the Antenna Support;
   f. The number of Antennas involved in the system and in any particular area;
   g. Intrusion of the Antenna or its support above the ridge lines or in public views;
   h. Distance from any residence or public building property line of the Antenna Support;
   i. Compliance with all applicable Town regulations for structures, except for setbacks along public or private ways;

j. The maximum level of radio frequency (RF) output of any Antenna, Base Station or Base Station Facility;

k. Ability of the applicant to financially and functionally provide and maintain the proposed system;

l. Proposed location of any Antenna or Antenna Support in the Roadside or Coastal Districts.

c) The terms of the special permit may take into account the written recommendations of the Site Review Committee. The Chilmark Plan Review Committee may require the applicant to agree to conditions for the issuance of the special permit.

5) Height. The maximum height of any Antenna or Antenna Support shall be determined by the Chilmark Plan Review Committee taking into account all of the factors listed in 6.b.4)b)3. but not greater than seventy (70) feet above the preconstruction natural grade unless a greater height is permitted by a three-fourths (3/4) vote of the Chilmark Plan Review Committee membership.

6) Fencing. Climbing access to any Antenna Support shall be limited by either the installation of a six (6) foot high fence with locked gate or by limiting climbing apparatus to no lower than fifteen (15) feet above ground.

7) Lighting. An Antenna Support shall not be illuminated except as required by the FAA or other applicable Federal or State agencies.

8) Testing. After transmission begins, the owner(s) of any Antenna, Base Station or Base Station Facility shall pay for an independent consultant, selected by the Town, to conduct a test to monitor the compliance of the installation with federal and state radio frequency emissions regulations by any facility site's primary Antennas as well as from repeaters (if any). The independent consultant shall prepare and execute a protocol satisfactory to the Chilmark Plan Review Committee and specific to each facility for evaluating that facility's compliance with such regulations. A report of the compliance test shall be prepared by the independent consultant and submitted to the Chilmark Zoning Officer and the Chilmark Plan Review Committee within thirty (30) days of completion of the testing. Any modification of an existing facility, or the activation of any additional permitted channels, shall require new monitoring. The Chilmark Plan Review Committee may revoke any permit for equipment which does not pass the required testing until such time as it does past the test.

9) At any time thereafter if the Chilmark Zoning Officer has reasonable cause to question the compliance of any installation with radio frequency emissions regulations, he may require the applicant to provide substantiation of such compliance in accordance with the procedure in Section 8)

above and shall furnish the report of compliance or non-compliance to the Chilmark Plan Review Committee. If state or federal regulations are not met, the wireless communications Antenna, Base Station or Base Station Facility shall cease to operate immediately and up until such time as such installation passes such standards as contained in a subsequent written report of the independent consultant.

10) Noise. Wireless communications equipment shall be essentially noiseless at the property line of the equipment or facility, provided that an emergency generator servicing such equipment or facility may emit noise no greater than fifty (50) dBA. Any violation of this excessive noise provision must be corrected within five (5) business days of notice to the provider by the Chilrnark Zoning Officer. The Chilmark Zoning Officer shall immediately report any failure to correct such excessive noise violation to the Chilmark Plan Review Committee.

11) Term. All permits issued under this bylaw shall be for a term not exceeding ten (10) years. At the end of such term as contained in the permit, the permit shall automatically expire unless renewed in accordance with Section 6.b.4) above.

12) Abandonment and Disassembly. Any wireless communications equipment which becomes damaged to the extent of being a public hazard, for which a permit has expired or been revoked, or which ceases to operate for one year or more shall be considered abandoned and must be disassembled at the direction of the Town and at the expense of the owner/operator. Before any permit is issued, every owner/operator of a wireless communications Antenna, Antenna Support, Base Station or Base Station Facility may be required to post and maintain a bond with the Town of Chilmark to cover such costs. The Chilmark Plan Review Committee shall determine the amount of the bond and approve the company that will issue the bond.

13) Exceptions. This bylaw shall not apply to:
    a) An amateur radio or television Antenna not licensed for any commercial use.
    b) FCC approved devices containing Antennas sold to consumers in the mass market for their use.

AGRICULTURAL-RESIDENTIAL DISTRICTS II-A, II-B, III, IV, V and VI
PERMITTED USES

Section 4.3 The permitted uses, and uses which may be specially permitted by the Board of Appeals shall be the same as those prescribed for Agricultural-Residential District

CONSERVATION DISTRICT PERMITTED USES

Section 4.4 In the conservation District, no new building or structure shall be constructed or used, in whole or in part, and no building or structure, or part thereof, shall be altered, enlarged, reconstructed or used, and due to the fragile nature of the area, no land shall be used for any purpose except as follows:

A. Conservation of soil, water, plants and wildlife.

B. Maintenance of the existing Luce Family Cemetery, and of ways or paths provided that a vegetative cover is maintained in such ways.

C. Maintenance of existing open areas, subject to such monitoring as may be required by the Conservation Commission.

D. Selective clearing of new areas to establish or protect natural wildlife habitat and to protect or maintain rare and endangered species may be permitted by an Order of Conditions issued by the Conservation Commission.