

## **ARTICLE III**

### **GENERAL PROVISIONS**

#### **Section 3.1 Scope of this Article**

The provisions, restrictions and limitations contained in this Article III, shall be applicable to all land use districts in the Townships of Homestead and Inland.

#### **Section 3.2 Prohibition**

Except as otherwise provided in this Ordinance, no lot or parcel of land, no existing building, structure or part thereof and no new building, structure or part thereof, shall hereafter be located, erected, constructed, reconstructed, altered or used for purposes other than in conformity with the provisions of this Ordinance.

#### **Section 3.3 Nonconformities**

In the event that any lawful use, activity, building or structure which exists or is under construction at the time of the adoption of this Ordinance and is not in conformance with the provisions of the zoning district in which it is located, such use, activity, building or structure shall be considered a legal nonconforming use and be allowed to remain as such.

##### **A. Nonconforming Lots of Record**

A nonconforming lot of record which does not meet the dimensional requirements of the district in which it is located may be used for any purpose authorized within that district, provided that an adequate potable water supply and safe sewage disposal facilities can be provided. Any required variances may be requested pursuant to the procedures and standards of this Ordinance.

##### **B. Classification of nonconformities**

###### **1. Classification of Nonconforming Uses and Structures**

All nonconforming uses and structures shall be designated either a Class A or Class B nonconforming use or structure. Unless designated a Class A nonconforming use or structure under Section 3.3.B.2, the nonconforming use or structure shall be deemed a Class B nonconforming use or structure. If a Class B nonconforming use or structure is damaged or destroyed, the property owner may seek a Class A designation under Section 3.3.B.2 after such damage or destruction.

## 2. Procedures for Designation as a Class A Nonconforming Use or Structure

A property owner who desires that his or her property be designated a Class A nonconforming use or structure shall file an application with the Zoning Administrator requesting the designation. The application shall include the names and addresses of all people and legal entities with an interest in the property, the legal description of the property, the facts in support of the designation, and the fee established by resolution of the township board. After the Zoning Administrator receives a completed application, he or she shall forward the application to the Planning Commission for consideration. The Planning Commission shall then hold at least one (1) public hearing on the application. The notice of the public hearing shall be the same as for a variance before the Zoning Board of Appeals. The Planning Commission's decision whether to grant the Class A designation shall be made pursuant to the standards contained in Section 3.3.B.3 and shall be in writing. The Planning Commission may attach reasonable conditions to the Class A designation to assure compatibility of the nonconforming use or structure with surrounding property uses. The property owner shall receive no vested interest in the Class A designation, since that designation may be revoked by the Planning Commission under Section 3.3.B.4.

## 3. Standards for Class A Designation

The Planning Commission shall grant a Class A designation for a nonconforming use or structure if it finds that all of the following standards are met:

- a. The nonconforming use or structure was lawful at the time of its inception.
- b. The continuation of the nonconforming use or structure will not adversely affect surrounding properties and will not significantly depress property values in the immediate area.
- c. The nonconforming use or structure is of economic benefit to the township.

## 4. Revocation of Class A Designation

Upon the filing of a request by the Zoning Administrator or by the Planning Commission's own action, a Class A designation shall be revoked by the Planning Commission following the same procedures required for the initial designation upon a finding that as a result of any change of conditions or circumstances the nonconforming use or structure no longer qualifies for a Class A designation under Section 3.3.B.2.

## 5. Regulations Concerning Class A Nonconforming Uses and Structures

- a. The Planning Commission, after a public hearing held following the procedures of a variance hearing before the Zoning Board of Appeals, may permit a Class A nonconforming use to be restored, improved, modernized, or expanded if it finds that after such improvement, modernization, or expansion the nonconforming use will continue to qualify for a Class A designation under Section 3.3.B.2.
- b. The Planning Commission, after a public hearing held following the procedures of a variance hearing before the Zoning Board of Appeals, may permit a Class A nonconforming structure to be repaired, reconstructed, or enlarged if it finds that the repairs, reconstruction, or enlargement will not increase the nonconformity and that after such repairs, reconstruction, or enlargement the nonconforming structure will continue to qualify for a Class A designation under Section 3.3.B.2. For purposes of this subsection, in those cases where the setback of a structure is nonconforming by fifty percent (50%) or less of the distance required by this Ordinance, the structure may be enlarged up to the distance of the nonconforming setback without being considered an increase in the nonconformity, provided that the overall nonconforming setback is not further reduced. If a Class A nonconforming structure is completely destroyed or removed by the property owner, the Planning Commission shall require that the structure be rebuilt or replaced in greater conformance or even in complete conformance with the requirements of this Ordinance, unless the Planning Commission finds the cost of building a conforming structure or a structure in greater conformance exceeds one hundred fifty percent (150%) of the cost of rebuilding the destroyed or removed structure with the same nonconformity. The Planning Commission may require the property owner to provide site plans and construction cost estimates when deciding whether to require either complete or greater conformity for the new structure.
- c. A Class A nonconforming use may be replaced by another nonconforming use if the Planning Commission, after a public hearing held following the procedures of a variance hearing before the Zoning Board of Appeals, finds that all of the following standards are met:
  - i. The new nonconforming use will be similar to the existing nonconforming use.

- ii. The new nonconforming use qualifies for a Class A designation under Section 3.3.B.2.
  - iii. The new nonconforming use will not increase the extent or intensity of the nonconforming use on the property.
- d. The Planning Commission may attach reasonable conditions to any approval granted under this subsection to assure compatibility of the nonconforming use or structure with surrounding property uses.
  - e. The public hearing required by Section 3.3.B.2 for designation as a Class A nonconforming use or structure may be held at the same time as any public hearing required in this section.

#### 6. Regulations Concerning Class B Nonconforming Uses and Structures

- a. The expansion of a Class B nonconforming use or structure shall not be permitted.
- b. The Planning Commission, after a public hearing held following the procedures of a variance hearing before the Zoning Board of Appeals, may permit a Class B nonconforming structure to be repaired if the planning commission finds that such repairs are necessary to maintain the structure in a safe condition.
- c. If a Class B nonconforming structure is completely destroyed or removed by the property owner, the structure shall not be rebuilt or replaced, except in complete conformance with the requirements of this Ordinance.
- d. A Class B nonconforming use may not be replaced by another Class B nonconforming use. However, a Class B nonconforming use may be replaced with a Class A nonconforming use if the Planning Commission, after a public hearing held following the procedures of a variance hearing before the Zoning Board of Appeals, finds that the new nonconforming use will not increase the extent or intensity of the nonconforming use on the property.
- e. If a mineral extraction operation is a Class B nonconforming use, the holes or shafts existing on the parcel at the time the use became nonconforming may be worked or enlarged, but no new holes or shafts shall be established on that parcel or on any other contiguous parcels.

## 7. Variance Petition Permitted

Nothing in this Section shall prevent the owner of a nonconforming use or structure from submitting a variance petition as provided in Article XV, Section 15.6.

### **Section 3.4 Principal Uses**

Except as otherwise specifically permitted, no lot may contain more than one (1) principal (main) structure or use, excepting groups of apartment buildings, offices, retail business buildings, agricultural structures, or other similar related groups of buildings.

### **Section 3.5 Accessory Buildings**

- A. Authorized accessory buildings may be erected as part of the principal building or may be connected to the principal building by a roofed porch, patio, breezeway or similar structure or may be completely detached from the principal building.
- B. Where any accessory building is attached to the side or front of a principal building, such accessory building shall be considered part of the principal building for purposes of determining setback requirements.
- C. A detached accessory building shall be located no closer to a front, side or rear lot line than the permitted distance for the principal structure on the same lot.
- D. An accessory building may be constructed prior to the principal building, provided the use within the building would be an accessory use to any permitted use within that zoning district excluding a home business.

### **Section 3.6 Essential Services**

The erection, construction, alteration and maintenance of essential services such as drains, sewers, pipes and conduits, but not including buildings and substations, shall be exempt from the regulations set forth in this Ordinance and shall be permitted in any district. Telecommunication towers, alternative tower structures, WECS, and antennas shall be regulated and permitted pursuant to this Ordinance and shall not be permitted as essential services, whether public utilities or private utilities.

### **Section 3.7 Mobile Homes**

Mobile homes located in licensed mobile home parks shall comply with the requirements of Act 96 of 1987, as amended. Mobile homes located outside of licensed mobile home parks shall be considered single-family dwellings as defined in this Ordinance and shall comply with all regulations applicable to single family dwellings.

### **Section 3.8 Camping / Recreational Vehicles**

Private non-commercial camping shall be allowed on vacant or improved land. Such camping may consist of multiple tents and/or travel trailers, motor homes or similar vehicles. Camping on any property shall not exceed a total of one hundred eighty (180) days in any calendar year. The temporary occupancy of multiple tents, travel trailers, motor homes and other similar vehicles used for camping shall have access to sanitary facilities and all waste disposals shall meet health department requirements.

Storage of recreational vehicles owned by the property owner shall be allowed in the side and rear yards of properties, but not within the required setbacks.

### **Section 3.9 Temporary Dwelling Occupancy during the Construction of a Dwelling**

For the express purpose of promoting the health, safety and general welfare of the inhabitants of the Townships, and of reducing hazards to health, life and property, no basement-dwelling, cellar-dwelling, garage-house, tent, camper, travel trailer, recreational vehicle, mobile home not installed according to the requirements of this Ordinance, or other temporary structure shall hereafter be erected or moved upon any premises and used for dwelling purposes except under the following applicable conditions:

- A. The location shall conform to the provisions governing yard requirements of standard dwellings in the district where located.
- B. The use shall be for the sole purpose of providing dwelling facilities for the owner of the premises during the period in which a dwelling conforming to the provisions of this Ordinance is in process of erection and completion, but not to exceed twelve (12) months. One (1) additional twelve (12) month extension may be obtained from the Zoning Administrator beginning with the date of issuance of the zoning permit. The temporary dwelling shall be removed upon completion of construction of a dwelling complying with the requirements of this Ordinance.
- C. Installation of septic system and water well shall be constructed and maintained in accordance with the standards of materials and installation recommended by District Health Department, and shall precede occupancy of the temporary dwelling.
- D. Application for the erection and use of a temporary dwelling shall be made at the time of zoning permit application for the permanent dwelling. On approval and delivery of the zoning permit, the applicant shall certify in a space allotted for that purpose, and on the copy retained for filing by the township, that he has full knowledge of the limitations of the permit and the penalty pertaining thereto. No such permit shall be transferable to any other person.
- E. No annexes shall be added to temporary dwellings.

### **Section 3.10 Second Dwelling on Parcel**

- A. This Ordinance does not permit a second dwelling on a residential parcel where the principal use is a dwelling; however under the circumstances specified herein, this Section shall allow for placement of a second dwelling on a parcel when circumstances require extended members of the family to take residence nearby but in separate living quarters due to age, illness or handicap such that they cannot care for themselves; while at the same time maintaining the character of the single family neighborhood.
- B. A second dwelling may be placed on the same parcel where a dwelling already exists if the following conditions are met:
1. The application for a zoning permit includes a site plan which meets the requirements of Article XIII, Section 13.4 B, Formal Site Plan Review.
  2. The second dwelling shall comply with all applicable construction, height, yard and setback regulations of this Ordinance. The Board of appeals shall not grant variances to construction, height, yard or setback regulations of the Ordinance to the primary or secondary dwellings when both are located on the same parcel.
  3. The minimum distance between the principal and second dwelling shall be equal to twice the side yard setback required in the respective zoning district, AND the design of the second dwelling shall be a movable structure and shall be temporary, to be removed when no longer occupied by a qualified resident. Before a permit is issued, the applicant shall provide assurance by way of a security deposit or bond to cover removal costs.
  4. The second dwelling shall be located in the side or rear yard.
  5. The dwelling is on a parcel with frontage on either a public or private road, with a driveway adequate to provide off-road parking for two (2) dwellings (at least, but not limited to three (3) parking spaces), which has access to a public or private road or alley.
  6. Occupancy of either dwelling shall be only by family member(s) or an extended family that require daily supervision or care from a family member residing in the other dwelling located on the parcel.
  7. The application shall include written recommendation from a medical doctor, community mental health professional or judge, stating that the family member requires daily supervision or care from a family member residing in either dwelling on the parcel.

- C. The permit, when issued, shall indicate it is a temporary permit and not transferable to another individual. This permit is to be renewed annually at no cost to the applicant.

### **Section 3.11 Greenbelt**

- A. To preserve and protect natural resources, water quality, and community scenic and recreational values, a greenbelt shall be established and maintained on all waterfront property. (The purpose of the greenbelt is to maintain a vegetative strip, which is to stabilize banks and shorelines, prevent erosion, absorb nutrients in water runoff from adjacent lands, structures, and impervious surfaces, and provide shading for the water to maintain cool temperatures.) The greenbelt shall include all the land area located within twenty five (25) feet of the ordinary high water mark of any watercourse abutting or traversing the property. Within the greenbelt, the following development and use restrictions shall apply:
  - 1. No structures or impervious surfaces shall be allowed within the greenbelt. Pervious walkways may be allowed when located and designed so as not to unreasonably interfere with, degrade or decrease the effectiveness of the greenbelt.
  - 2. No dredging or filling shall be allowed except for reasonable sanding of beaches where permitted by county, state and federal law. Existing soil and organic matter shall not be altered or disturbed within the greenbelt, except as is necessary in the management of the greenbelt.
  - 3. The use, storage and application of pesticides, herbicides, fertilizers, biosolids, and any product containing phosphates and nitrates are prohibited within the greenbelt.
  - 4. Unsightly, offensive or potentially polluting or hazardous material, including but not limited to; garbage, trash, refuse, petroleum products, or toxic chemicals shall not be dumped, burned, or stored within the greenbelt and must meet any requirements of county, state and federal law.
  - 5. Shorelines composed of naturally occurring sand, gravel, cobblestone or rock shall be left in their natural state.
  - 6. Natural shrubbery, trees, or other vegetation shall be preserved as far as practicable, and where removed it shall be replaced with other vegetation that is equally or more effective in retarding and filtering runoff, preventing erosion and preserving natural beauty. Management of natural



vegetation within a greenbelt to enhance wildlife habitat, views and to maximize the effectiveness and beauty of the greenbelt may be allowed.

7. Dead, diseased, or dying trees or trees in danger of falling and causing damage or stream blockage may be removed: however, the root structure shall be left undisturbed in order to reduce the risk of erosion and disturbance of the greenbelt, unless the root structure is diseased and represents a danger to surrounding vegetation.
  8. The greenbelt shall be shown on any plot plan or site plan submitted for approval during the process of developing a waterfront parcel.
- B. Above and below ground commercial petroleum facilities, gas stations, auto repair shops, auto washes, oil change establishments, slaughterhouses, industrial uses involved in the manufacturing, compounding, processing, or treating of products, solid waste landfills, junkyards, confined animal feedlots, and subsurface discharges from a wastewater treatment plant shall meet all standards of all applicable county, state, and federal laws and shall not be located within three hundred (300) feet of a greenbelt.

### **Section 3.12 Home Businesses**

While the Townships recognize that many residents feel the necessity to work at home, the Townships also recognizes the right of all residents to be free from actual or potential nuisance which may be caused by non-residential activities conducted in a residential zone. The intent of this section is to provide standards to ensure Home Occupations, Home Based Businesses, and Bed & Breakfast Establishments are compatible with other allowed uses in residential zones, and thus to maintain and preserve the residential character of the surrounding zone. The following regulations shall apply to all Home Businesses:

- Home Businesses shall be incidental and subordinate to the principal use of the lot or parcel for residential purposes, except for a Short-term Rental.
- The use shall not detract from the residential nature or character of the premises or surrounding zone and shall be compatible with surrounding properties and dwelling units.
- Home Businesses shall not result in the creation of conditions that would constitute a nuisance to neighboring properties, surrounding zoning districts, or the Townships as a whole; including, but not limited to noise, traffic, lighting or parking.
- There shall be no exterior evidence of the Home Business other than an unlighted nameplate not to exceed four (4) square feet in area.

## **A. Inspections, Revisions, Termination, and Extensions**

1. Any home occupation, home based business, short-term rental, or bed and breakfast establishment may be subject to periodic review by the Zoning Administrator.
2. Revisions or additions to a Short-term Rental and Bed & Breakfast shall constitute a change of use and shall be subject to Formal Site Plan Review and revised approval by the Planning Commission. The revised Site Plan shall indicate the change.
3. Revisions or additions to a Home Based Business shall constitute a change of use and shall be subject to Formal Site Plan Review and revised approval by the Planning Commission. The revised Site Plan shall indicate the change.
4. In the event that a Home Business is not being conducted in a manner consistent with a residential use or Home Business; and/or is not in compliance with this Ordinance the Zoning Administrator shall have the authority to initiate enforcement action against the owner/operator of the Home Business in accordance with this Ordinance.

## **B. Home Occupations**

Any activity which is clearly secondary to a residential use, carried out for economic gain, and which meets all of the following requirements:

1. Home Occupations are permitted in all zoning districts in which single-family dwellings are permitted as a matter of right.
2. Home Occupations shall be operated in their entirety within the dwelling or within an attached or detached garage or accessory building.
3. Home Occupations shall be conducted only by the person or persons occupying the premises as their principal residence.
4. Additions to a dwelling or accessory structure for the purpose of conducting a Home Occupation shall be of an architectural style that is compatible with the architecture of the dwelling or accessory building and shall be designed so that the addition can be used for residential purposes if the home occupation is discontinued.
5. Home Occupations shall be incidental and subordinate to the principal use of the lot or parcel for residential purposes and shall not detract from the residential character of the premises or neighborhood.

6. Home Occupations shall not result in the creation of conditions that would constitute a nuisance to neighboring property owners and the Townships as a whole. Any machinery, mechanical devices, or equipment employed in the conduct of a Home Occupation shall not generate noise, vibration, radiation, odor, glare, smoke, steam, electrical interference at a volume greater than 60 decibels at the property boundary, or create other conditions not typically associated with the use of the lot or parcel for residential purposes.
7. Traffic and delivery or pickup of goods shall not exceed that normally created by residential uses.
8. The outdoor storage of goods and/or materials associated with the home occupation is prohibited.
9. Adequate off-street parking shall be provided for patrons and clients.
10. No process, chemicals, or hazardous materials shall be used or stored on sites which are contrary to any applicable State or Federal laws.
11. There shall be no exterior evidence of the Home Occupation other than an unlighted nameplate not to exceed four (4) square feet in area.

### **C. Home Based Business**

Any activity conducted on the premises and/or the premises serves as a base of operation from which to conduct the activity off-site, except a home occupation and a business conducting primarily retail sales, which is clearly secondary to a residential use, carried out for economic gain, and meets all of the following requirements:

1. Home Based Businesses may be permitted in any zoning district in which single-family dwellings are permitted, subject to Site Plan Review as specified in Article XIII of this Ordinance. Home Based Businesses shall be allowed on the basis of individual merit. A periodic review of each such business may be performed to ensure the conditions of approval are adhered to. If a premise is sold, leased, or rented to a party other than the applicant, the use shall be reviewed for compliance with the original permit by the Zoning Administrator. If any changes are necessary, the request will be reheard by the Planning Commission subject to Article XIII.
2. Home Based Businesses shall be incidental and subordinate to the use of the premises for residential purposes and shall not detract from the residential character of the premises or neighborhood. There shall be no exterior evidence of such industry other than an unlighted nameplate not exceeding

four (4) square feet in area.

3. A Home Based Business shall occupy not more than one building. The floor area of such buildings shall not exceed twenty four hundred (2400) square feet.
4. The outdoor storage of vehicles, goods, and/or materials of any kind is prohibited unless screened from view by a tight-board wood fence, landscaped buffer, landscaped berm, etc. which shall retain the residential character of the neighborhood.
5. Home Based Businesses shall not result in the creation of conditions that constitute a nuisance to neighboring property owners and surrounding zoning district. Any machinery, mechanical devices or equipment employed in the conduct of a Home Based Business shall not generate noise, vibration, radiation, odor, glare, smoke, steam, electrical interference or other condition not typically associated with the use of the premises for residential purposes.
6. Traffic and delivery or pickup of goods shall not exceed that normally created by residential uses.
7. Home Based Businesses shall be conducted only by the person or persons residing on the premises.
8. To ensure that the Home Based Business is compatible with surrounding residential use, a "not-to-exceed" number of vehicles that may be parked at any given time during business operations shall be established by the Planning Commission during the review and approval process.
9. Hours of operation shall be approved by the Planning Commission.
10. Adequate off-street parking shall be provided for patrons, clients and off-site employees.
11. No process, chemicals, or hazardous materials shall be used or stored on sites which are contrary to any applicable State or Federal laws.

#### **D. Bed & Breakfast Establishments**

1. Bed & Breakfast facilities shall be permitted in any zoning district in which single-family dwellings are permitted, subject to Planning Commission approval per Article XIII, Site Plan Review.
2. Off-street parking shall be provided for all clients.

### **Section 3.13 Short-Term Rentals**

Short-term rentals shall be permitted in any zoning district in which single-family dwellings are permitted, subject to Planning Commission approval per Article XIII, Site Plan Review.

#### **A. Application and Fee Requirements**

An operator seeking a zoning permit under this Ordinance shall submit a complete application to the Zoning Administrator and pay the required fee, which shall be determined from time to time by resolution of the Township Boards. The application shall include proof of ownership of, or the legal right to rent, a dwelling unit or efficiency dwelling unit, and all information reasonably necessary for the Zoning Administrator to determine whether the applicable standards for approval provided in part B have been met.

#### **B. Standards for Approval**

The Zoning Administrator shall approve, or approve with conditions, an application for a short term rental only upon a finding that the application complies with all of the following applicable standards:

1. A dwelling unit, other than an efficiency dwelling unit, shall comply with all of the following requirements:
  - a. A room that constitutes habitable space as defined in the Ordinance, other than a kitchen, shall not be less than 7 feet in any plan dimension. Kitchens shall have a clear passageway of not less than 3 feet between the front of countertops and appliances and/or between the front of countertops and walls.
  - b. Except as provided herein, habitable spaces, hallways, corridors, laundry areas, bathrooms, toilet rooms and habitable basement areas shall have a clear ceiling height or not less than 7 feet. Provided, however, (1) beams or girders spaced not less than 4 feet on center and projecting not more than 6 inches below the required ceiling height may be installed, and (2) bedrooms having a sloped ceiling over all or part of the bedroom shall have a clear ceiling height of at least 7 feet over not less than one-third of the required minimum floor area.
  - c. All bedrooms within a dwelling unit shall comply with the following requirements:
    - i. Every bedroom occupied by one person shall contain at least 70 square feet of floor area, and every bedroom occupied by more

than one person shall contain at least 50 square feet of floor area for each occupant thereof. In calculating the floor area of a bedroom having a sloped ceiling over all or part of the bedroom, only that portion of the bedroom with a clear ceiling height of 5 feet or more shall be included.

- ii. Except in dwelling units having only one (1) bedroom, the bedrooms shall not constitute the only means of access to other bedrooms or habitable space and shall not serve as the only means of ingress or egress from other habitable spaces.
  - iii. Every bedroom shall have access to at least one bathroom and one toilet room on the same story as the bedroom or on an adjacent story without passing through another bedroom.
  - iv. A kitchen and space not defined as habitable space in this Ordinance shall not be used for sleeping purposes.
  - v. If habitable space other than a kitchen is to be used for sleeping purposes, then that habitable space shall have a minimum square footage equal to the minimum area required for that habitable space plus the area required for a bedroom with the number of occupants intending to sleep in the habitable space.
- d. All spaces to be occupied for food preparation purposes shall contain suitable space and equipment to store, prepare and serve foods in a sanitary manner. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage.
- e. A dwelling unit to be occupied by 3-5 tenants shall comply with both of the following additional requirements:
- i. The dwelling unit shall have a living room no less than 120 square feet and a dining room of no less than 80 square feet. A dwelling unit with combined living room and dining room spaces shall have no less than 200 square feet and shall be located within the dwelling unit so as to function as a combination living room / dining room.
  - ii. The operator shall provide no less than two (2) off-street parking spaces on the same property as the dwelling unit.
- f. A dwelling unit to be occupied by 6 or more tenants shall comply with both of the following additional requirements:

- i. The dwelling unit shall have a living room no less than 150 square feet and a dining room of no less than 100 square feet. A dwelling unit with combined living room and dining room spaces shall have no less than 250 square feet and shall be located within the dwelling unit so as to function as a combination living room / dining room.
  - ii. The operator shall provide no less than two (2) off-street parking spaces for the first 6 occupants, and one (1) additional off-street parking space for each 4 additional occupants. All off-street parking spaces shall be located on the same property as the dwelling unit.
2. An efficiency dwelling unit shall comply with all of the following requirements:
  - a. No more than two (2) tenants shall occupy the dwelling.
  - b. The dwelling shall have habitable space of no less than 220 square feet.
  - c. The dwelling shall contain a kitchen that includes a sink, cooking appliance, and refrigeration appliance each having a clear working space of not less than 30 inches in front.
  - d. The dwelling unit shall contain no less than one (1) bathroom.

3. Conditions.

The Zoning Administrator may impose reasonable conditions which are reasonably necessary to ensure compliance with the standards for approval provided in part B, above.

4. Nuisance

A violation of these provisions is hereby declared to be a public nuisance, a nuisance per se and is hereby further declared to be offensive to the public health, safety and welfare.

### **Section 3.14 Yard Sales**

Yard sales or garage sales may be permitted, provided such sales are not conducted on the same lot for not more than seven (7) consecutive days during any ninety (90) day period. and provided further, that such sales are conducted only on a lot upon which a principal use is located. Items displayed for sale, signs, banners and all items associated with the sale are to be removed after seven (7) days.

### **Section 3.15 Fences, Walls and Hedges**

- A. Notwithstanding other provisions in this Ordinance, fences, walls or hedges may be permitted on any property in any District, provided that no fence or wall shall exceed six (6) feet in height. Such fences, walls or hedges shall not obstruct sight distances needed for safe vehicular traffic, nor create a hazard to traffic or pedestrians. Agricultural fences used to confine or restrict animals may exceed the height limits of this section, but must comply with MDNR requirements. All such fences, walls or structural screens shall be maintained in good repair and safe condition and shall be constructed of material which will not be detrimental to the health, safety and welfare of adjacent residents.
- B. Buffering or screening shall be required for the development of commercial or light industrially zoned property located adjacent to residentially used or zoned property. The required screening may consist of a landscape buffer, fence or wall. The buffering or screening shall be shown on the required site plan. A fence or wall used to provide such screening shall be a minimum of six (6) feet in height, or evergreen plant materials used to create a landscape buffer shall be at least six to eight (6-8) feet in height at time of planting and maintained in a living condition.
- C. Where a lot borders a watercourse, fences or walls shall not be constructed within the required twenty five (25) foot greenbelt.

### **Section 3.16 Water Supply and Sewage Disposal Facilities**

All water supply and sanitary sewage disposal systems either public or private, for any building hereafter erected, altered or moved upon any premises shall comply with the Benzie-Leelanau District Health Department sanitary code requirements. Plans must be submitted to and approved by the responsible agencies. The written approval of such facilities by District Health Department shall be filed with application for a Zoning Permit.

### **Section 3.17 Storm Water Retention**

Storm water drainage in excess of natural conditions shall be retained on site. This provision may require storm water retention ponds where appropriate. An exception may be made for water leaving the site via an adequately sized existing storm water ditch, storm water pipe or through other storm water facilities that will be developed at the same time as the proposed new use.

### **Section 3.18 Hazardous Materials/Groundwater Protection**

All business or industries that store, use or generate hazardous or polluting materials as defined in this Ordinance, shall meet all county, state and federal requirements for storage, spill prevention, record keeping, emergency response, transport and disposal of said hazardous materials. No discharge to groundwater, including direct and indirect discharges, shall be allowed without required permits and approvals.



- A. Sites at which hazardous materials are stored, used or generated shall be designed to prevent spills and discharges to the air, surface of the ground, groundwater, surface water and wetlands.
- B. Secondary containment for below and above ground areas where hazardous and polluting materials are stored, used, or generated shall be provided and maintained. Secondary containment shall be sufficient to store the material for the maximum anticipated period of time necessary for the recovery of any released material.
- C. General purpose floor drains shall be allowed only if they are connected to a public sewer system, an on-site holding tank, or a system authorized through a State groundwater discharge permit.
- D. The Planning Commission may require a performance bond or similar assurance for safeguards prior to approval. The Planning Commission may require site plan review at five-year intervals.

**Section 3.19 Junkyards, Salvage Yards, and Sanitary Landfills**

The location of a junkyard, salvage yard or sanitary landfill shall be not less than one hundred twenty-five (125) feet from any public highway. All uses of such facilities shall be completely screened from sight by natural terrain, or by a neatly finished and maintained wooden or masonry fence, or by well maintained evergreens. Glare from any process, such as arc welding, conducted at a junkyard, salvage yard or sanitary landfill, which emits harmful rays, shall be screened so as not to constitute a hazard or nuisance to adjacent properties.

**Section 3.20 Outdoor Lighting**

- A. In order to preserve dark night skies, all outdoor lighting, in all districts whether for illuminating sites, parking areas, buildings, docks, signs and/or other structures shall be shielded, shaded, designed and/or directed away from all adjacent properties, districts and uses; and further shall not glare upon or interfere with persons and vehicles using private or public streets and roads. Lighting fixtures are to be of the full cut-off design with horizontally aligned flush mounted (non-protruding) lens, directing light on-site only, and no more than twenty (20) feet in height.
- B. Except for commercial outdoor displays, lighting for commercially used properties shall be limited to the hours of operation, plus one (1) hour before and one (1) hour after. Additionally, motion sensor type of security lighting shall be allowed.
- C. The Planning Commission may permit taller or require shorter fixtures only when the Commission determines that unique conditions exist and where a waiver would reduce the number or size of light fixtures; not adversely impact neighboring properties and permit fixtures in proportion to height and bulk of nearby buildings

and other fixtures. Site lighting shall not exceed twenty (20) foot candelas as measured three (3) feet above the ground surface, directly under the fixture.

- D. Billboard or Highway advertising sign luminance shall not be greater than 4,200 candelas per meter squared beginning one hour after sunrise and continuing until one hour before sunset, and not greater than 200 candelas per meter squared at all other times.

### **Section 3.21 Outdoor Advertising Signs and Media**

The economic health and well being of the Townships, Benzie County and the region depends upon the area's natural scenic beauty and environmental quality. The region's highway corridors are subject to the highest visual exposure of any areas within the Townships and region. Therefore, it is deemed necessary within these corridors to protect the area's natural landscapes and community character from visual pollution. Such protection is deemed essential to the community health, safety and welfare.

The purpose of this section is to preserve the desirable character of the Townships, as well as to recognize the need for and privilege of advertising, so that people unfamiliar with the area, such as tourists and transients, may avail themselves of the goods and services afforded by the local business places. At the same time, the Townships recognize the right of residents to be free of advertising that could adversely affect property values and create an unpleasant or less than desirable atmosphere. The use and erection of all outdoor signs and media shall be subject to all state and local codes and statutes, in addition to the provisions of this ordinance. All such signs shall be maintained in good repair and safe condition and shall be constructed of material which will not be detrimental to the health, safety and welfare of Townships residents.

#### **A. Signs Not Requiring a Sign Permit**

The following signs may be placed in any zoning district without a sign permit, provided such signs comply with any applicable federal or state law or regulation and are located so as not to cause a nuisance or safety hazard:

1. One (1) non-illuminated identification sign per use, not exceeding four (4) square feet of sign surface.
2. Street name signs, route markers and other traffic control signs erected or approved by state, or county agencies when necessary to give proper directions or to otherwise safeguard the public.
3. Non-advertising signs erected by any organization, person, firm or corporation that is needed to warn the public of dangerous conditions and unusual hazards including but not limited to: road hazards, high voltage, fire danger, explosives, severe visibility, etc.

4. Non-advertising signs exclusively devoted to controlling property access (no trespassing, private property, keep out, no hunting, hiking trail, day use only, and similar instructional messages), provided the sign surface does not exceed the maximum size limitations of subsection B. below.
5. Non-advertising signs marking a historically significant place, building or area when sanctioned by a national, state or local historic organization recognized by the Planning Commission, provided the sign surface does not exceed the maximum size limitations of subsection B. below.
6. Signs that have been approved in conjunction with a valid site plan or zoning permit for any principal or accessory use, and signs required by federal or state agencies in connection with federal or state grant programs.
7. Temporary real estate signs, not exceeding ten (10) square feet, on individual lots advertising a premise for sale or rent.
8. Signs advertising sales such as garage, estate, auction, moving, and yard sales, which last no more than seven (7) consecutive days, provided the sign surface does not exceed the maximum size limitations of subsection B below.
9. Political and noncommercial signs, provided the sign surface does not exceed the maximum size limitations of subsection B below.
10. All real estate signs, both on-premise and off-premise, shall be removed seven (7) within days of the sale or rental of the property.

**B. Signs Requiring a Permit**

The size of any publicly displayed sign, symbol or notice on a premises to indicate the name of the occupant, to advertise the business transacted there, to express political or other non-commercial political views, or directing to some other locale, shall be regulated as follows:

<u>Use District</u>	<u>Maximum Size of Sign per Side</u>
FR, RR. R-1	Four (4) square feet
MR, MH	Thirty Two (32) square feet
C-1	On premise thirty two (32) square feet Off premise two hundred thirty (230) square feet

Residential subdivisions and developments shall be limited to one (1) sign per entrance of not more than sixteen (16) square feet per sign.

1. In addition to the size limitations stated in Subsection 3.21.B above, the following conditions shall apply to all signs erected in any use district:
  - a. No sign, except non-illuminated residential name plates and political and non-commercial signs shall be erected or altered until approved by the Zoning Administrator (ZA) or authorized by the Planning Commission (PC) as part of an approved site plan. Approval shall be based on compliance with setbacks, size dimensions and other dimensional regulations of the zoning ordinance. After approval, the required sign permit shall be issued by the ZA.
  - b. No signs shall be located on any street corner which would obscure the vision of drivers using said streets, or conflict with traffic control signals at the intersection of any streets. No signs shall obstruct the vision of drivers at any driveway, parking lot or other route providing ingress or egress to any premises.
  - c. Illumination of signs shall be directed, shaded or designed so as not to interfere with the vision of persons on the adjacent highway, streets or properties. The projected light shall not emanate beyond the sign nor illuminate the night sky.
  - d. Electronic sign surfaces shall comply with all of the following requirements:
    - i. The electronic sign surface shall only be within a freestanding sign or a wall sign.
    - ii. The area of the electronic sign surface shall not exceed 75% of the total sign surface.
    - iii. The message or image shall be static during its display and shall not move or be animated in any way.
    - iv. The message or image displayed shall remain static for no less than three (3) seconds before changing.
    - v. Any change of message or image shall be completed simultaneously throughout the entire electronic sign surface so that no portion of the new message or image is visible in the electronic sign surface at the same time as the old message or image.
    - vi. Any light emitting diodes (LED's), fiber optics, light bulbs, or other illumination devices used to display the message or image within the electronic sign surface shall automatically dim to a light level no

greater than 1500 NITS (candelas per square meter) at or before one-half hour following sunset.

- e. In those instances where a business use or tourist service facility is not located directly on a major route, but is dependent upon passer-by traffic for support, not more than two (2) off-premises directory signs per business shall be permitted, subject to review and approval of location by the Zoning Administrator. Not more than one (1) freestanding sign per three hundred (300) feet of road frontage or per lot may be allowed, except if the signs are directional signs as provided by the Michigan Department of Transportation and approved by the Zoning Administrator. No off-premises sign shall be permitted in FR, RR or R-1 Zoning Districts.
- f. Freestanding signs may be permitted in a front yard provided the sign is located at least ten (10) feet behind the front property line. No freestanding sign shall exceed a maximum of twenty (20) feet in height, measured from the ground to the top of the sign, regardless of the zoning district.
- g. Both sides of any freestanding or overhanging sign may be used for display.
- h. All directional signs required for the purpose of orientation, when established by the Townships, County, State, or Federal governments, shall be permitted in all districts.
- i. No sign shall project beyond or overhang the wall, roof or any architectural feature by more than five (5) feet and shall be no less than fourteen (14) feet above the right-of-way. However, prior to the erection or overhanging of a sign in a public right-of-way, the sponsor of such sign shall receive the approval of the proper governmental agency having jurisdiction over such right of-way.
- j. Roof position signs are specifically prohibited.
- k. The number of signs allowed will be decided by the Planning Commission at the time of site plan review. Factors considered will include building size, location and length of street frontage and lot size, and the cumulative total sign area for on-site signs shall not exceed that allowed in the district as per Subsection 3.21.B above.
- l. In no case shall a sign or signs exceed a total of ten (10) percent of the building face to which they are attached.
- m. Portable signs, meeting the standards of this Section, shall be allowed for

a maximum of thirty (30) days with the issuance of a sign permit.

- n. Except as provided in subsections o and p below, advertising devices such as banners, balloons, flags, pennants, pinwheels, searchlights or other devices with similar characteristics are prohibited, except when used temporarily for period not to exceed thirty (30) days to announce the opening of a new type of business or new owner.
- o. In the case of special events, which occur no more than once every six (6) months, advertising devices such as banners, balloons, flags, pennants, pinwheels, searchlights or other devices with similar characteristics, are permitted with Zoning Administrator's approval, for a period of not more than fourteen (14) days prior to the event and shall be removed within one (1) day of the completion of the event.
- p. In the case of seasonal recurring events, advertising devices such as banners, balloons, flags, pennants, pinwheels, searchlights or other devices with similar characteristics, are permitted with Zoning Administrator's approval, such advertising devices shall not be permitted more than two weeks in advance of the event and shall be removed immediately following the event.
- q. Non-business related signs shall be permitted.
- r. Political signs shall be removed within five days after the election or ballot issue.
- s. The use of any lawful outdoor business or informational sign erected prior to this ordinance and in use at the date this ordinance is enacted, which does not meet these standards, may be continued. Such signs shall be designated as "Nonconforming signs". The maintenance, reconstruction, alteration, discontinuation and change in the nonconforming nature of a nonconforming sign shall be governed by this ordinance.

### **C. Provisions for Billboards**

Billboards may be established upon the issuance of a land use permit by the Zoning Administrator, provided they meet the following conditions:

- 1. Not more than two (2) billboards may be located for each linear mile of highway regardless of the fact that such billboards may be located on different sides of the highway. The linear mile measurement shall not be limited to the boundaries of the Townships where the highway extends beyond such boundaries. Double-faced billboard structures (i.e., structures having back-to-back billboard faces) and V- type billboard structures having only one face visible to traffic proceeding from any given direction on a

highway shall be considered as one billboard. Otherwise, including billboard structures with tandem (side by side) or stacked (one above the other) billboard faces, shall be considered as two billboards and shall be prohibited in accordance with the minimum spacing requirement set for in 2. below.

2. No billboard shall be located within three thousand (3,000) feet of another billboard abutting either side of the same highway.
3. No billboard shall be located within three hundred (300) feet of a residential zone and/or existing residence. If the billboard is illuminated, this required distance shall be four hundred (400) feet.
4. No billboard shall be located closer than the required setback requirement from a property line adjoining a public right-of-way or a setback requirement from any interior boundary line of the premises on which the billboard is located.
5. The surface display area of any side of a billboard may not exceed six hundred (600) square feet. Billboards may be double-faced but not stacked or in tandem.
6. The height of a billboard shall not exceed twenty five (25) feet above the natural grade of the ground on which the billboard sits.
7. No billboard shall be on top of, cantilevered or otherwise suspended above the roof of any building.
8. A billboard may be illuminated, provided such illumination is concentrated on the surface of the sign and is so located as to avoid glare, upward light or reflection onto any portion of an adjacent street or highway, property, landscaping, etc., the path of oncoming vehicles, or any adjacent premises. In no event shall any billboard have flashing or intermittent lights, nor shall the lights be permitted to rotate or oscillate.
9. A billboard must be constructed in such a fashion that it will withstand all wind and vibration forces which can normally be expected to occur in the vicinity. A billboard must be maintained so as to assure proper alignment of structure, continued structural soundness, and continued readability of message.
10. A billboard established within a business, commercial or industrial area, as defined in the "Highway Advertising Act of 1972" being Act 106 of PA 1972, bordering interstate highways, freeways or primary highways as defined in said Act shall, in addition to complying with the above conditions,

also comply with all applicable provisions of said Act and the regulations promulgated thereunder, as such from time to time may be amended.

11. No person, firm or corporation shall erect a billboard within the Townships without first obtaining a permit thereof from the Zoning Administrator, which permit shall be granted upon a showing of compliance with the provisions of this Ordinance, payment of a fee thereof, and the contractual agreement allowing for the installation of said billboard. Permits shall be issued for a period of one (1) year, but shall be renewable annually upon inspection of the billboard by the Zoning Administrator, confirming continued compliance with this Ordinance and payment of the billboard permit fee. The amount of the billboard permit fee required hereunder shall be established by resolution of the Township Boards and shall bear a reasonable relationship to the cost and expenses of administering this permit requirement. The Township Boards shall further have the right to amend the aforementioned resolution from time to time within the forgoing limits of reasonableness.
12. Billboards with static messages and/or so called LED signs, that change are permitted, provided the rate of change between messages is not less the twelve (12) seconds. The change sequence shall be accomplished by means of instantaneous re-pixelization and shall be configured to default to a static display in the event of mechanical or electronic failure.

### **Section 3.22 Topsoil Removal, Earth Removal, Quarrying, Gravel, Sand and Clay Extraction, Gravel Processing and all other Mineral Extraction and Processing Businesses**

Earth Removal, Quarrying, Gravel Processing, Mining and Related Mineral Extraction Businesses may be considered in any zoning district as a Special Use, following the requirements of Article III, Section 3.22, and Article XII, Special Land Uses.

In addition to the Standards for Decisions specified in Article XII, Sections 12.4 and Article XIII, Section 13.4, part D, Criteria for Review, the following conditions and limitations are, or shall be, strictly complied with, in addition to any other requirements contained in the Zoning Ordinance or in any other ordinance controlling such operations.

#### **A. Location**

1. All such operations shall be located on a primary road, as defined by Benzie County, for ingress and egress thereto, or on a road which does not create traffic through an area developed primarily for residential purposes. Where necessary, the Planning Commission may require the applicant to construct and/or improve a road to accommodate the truck travel necessitated by the operations as a condition to such operations, and for the purpose of routing traffic around residential areas and preventing the breaking up of existing



roads which are not "all weather" roads.

2. No such excavation operation shall be permitted closer than 150 feet to interior boundary lines of the property or such larger setback as may be required by the Planning Commission to adequately protect adjoining properties. However, if the adjoining property is also used for such mining and excavation operation, then the Planning Commission may reduce or eliminate the required setback from that interior boundary line. In addition, such setback may be temporarily reduced to 50 feet if reclamation of the land is promptly affected to increase the setback to at least 150 feet in accordance with the reclamation plan approved by the commission and adequate lateral support as set forth at all times maintained.
3. No excavation operation shall be permitted within 50 feet of adjoining public and private roads except for the lowering of land adjoining said rights-of-way to the grade level of said rights-of-way, or topsoil removal. Such excavation businesses shall at no time be permitted where adequate lateral support for the maintenance of adjoining lands is not maintained.
4. The permanent processing plant and its accessory structures shall not be located closer than 250 feet from the interior property lines and adjoining public or private rights-of-ways and shall, where practicable, be located at a lower level than the surrounding terrain to lessen visual and noise impact. In addition, the foregoing shall apply to the digging or excavating apparatus and to the stockpiling or loading of materials . and to the location of transportation equipment.
5. No such excavation operation shall be located within 100 feet of the banks of any stream or waterway unless previously approved, in writing, by the Michigan Water Resources Commission, or such other state commission having jurisdiction thereof. No such mining operations shall interfere with the natural established flow of surface waters to the detriment or damage of adjoining public or private properties. Greenbelt provisions shall be complied with as provided in Article III, Section 3.11.

## **B. Site Barriers**

Site barriers shall be provided along all boundaries of the site where quarrying gravel processing, mining and related mineral extraction is proposed, which lack natural screening conditions through existing contours or evergreen growth. Such barriers shall consist of one or more of the following:

1. Earth berms constructed to a height of six feet above the mean elevation of the centerline of the adjacent public highway or six feet

above the general level of terrain along interior property lines, as the case may be. Such berms shall have slopes that are not in excess of one foot vertical to three feet horizontal and shall be planted with grass, trees or shrubs.

2. Plantings of evergreen trees or shrubbery in rows parallel to the boundaries of the property, not less than four feet in height at the time of planting and which grow to not less than six feet in height at maturity sufficiently spaced to provide effective sight barriers when six feet in height.
3. Masonry walls or attractive solid fences made of uniform new materials constructed to a height of not less than six feet and maintained in good repair.

### **C. Nuisance Abatement**

1. Noise and vibration shall be minimized in their effect upon adjacent properties by the utilization of modern equipment designed to accomplish such minimization and by the proper use of berms, walls, and natural planting screens. All equipment shall be maintained and operated in such a manner so as to eliminate, as far as practicable, excessive noise and vibrations which are not necessary in the operation of such equipment.
2. Air pollution in the form of dust and dirt shall be kept to a minimum and comply with current MDEQ standards.
3. Hours. The hours of operation shall be as established during the site plan review process according to Article VII to minimize any adverse impacts on adjoining properties.
4. Fencing. All dangerous excavations, pits and pond areas, banks or slopes shall be fenced with a minimum height of six (6) feet, and posted with signs around the perimeter thereof a maintained to prevent injury to children or others, and such excavations shall be eliminated as expeditiously as possible.

### **D. Reclamation of Mined Areas or Excavated Areas**

1. Reclamation and rehabilitation of mined areas shall be accomplished as soon as practicable following the mining or excavation of an area. Rehabilitation and reclamation shall be commenced immediately upon the termination of the mining or excavation operations in any area consisting of one acre or more. Substantial completion of reclamation and rehabilitation shall be

effected within one year after termination of mining or excavation activity. Inactivity for a 12-month consecutive period shall constitute, for this purpose, termination of mining activity.

2. The following standards shall control reclamation and rehabilitation:
  - a. All excavation shall be either to a water-producing depth of not less than five feet below the average summer level of water in the excavation, or shall be graded or backfilled with non-noxious, non-inflammable and non-combustible solids to insure:
    - i. That the excavated areas shall not collect stagnant water and not permit the same to remain therein; or,
    - ii. That the surface of such area which is not permanently submerged is graded or backfilled as necessary to produce a gently rolling surface that will minimize wind and water erosion, and which will be generally compatible with the adjoining land area.
  - b. The banks of all excavations shall be sloped to the waterline in a water-producing excavation, and to the pit floor in a dry operation at a slope that shall not be steeper than one foot vertical to three feet horizontal.
  - c. Top soil of a quality equal to that occurring naturally in the area shall be replaced on excavated areas not covered by water, except where streets, beaches, or other planned improvements are to be completed within a one-year period. Where used, top soil shall be applied to a minimum depth of four inches sufficient to support vegetation.
  - d. Vegetation shall be restored by the appropriate seeding of grasses or the planting of trees and shrubs to establish a permanent vegetative cover on the land surface and to minimize erosion.
  - e. Upon cessation of mining operations by abandonment or otherwise, the operating company, within a reasonable period of time not to exceed 12 months thereafter, shall remove all plant structures, foundations, buildings, stockpiles and equipment, provided that buildings and structures which have a function under the reclamation plan and which can be lawfully used under the requirements of the zoning district in which they will be located under such plan may be retained.
  - f. A performance bond or cash shall be furnished the township clerk insuring the proper rehabilitation and reclamation of the mined and excavated areas prior to the commencement of any such mining or excavating operations. The amount of guarantee shall be not less than \$4,000 per acre proposed to be mined or excavated in the following 12 months' period and which has previously been mined or excavated

during any preceding period and not reclaimed and rehabilitated in accordance with this ordinance and the applicant's filed plan.

- g. Submission of Operational and Reclamation Plans
- h. No earth removal, quarrying, gravel processing, mining and related mineral extraction businesses shall be allowed or commenced until a plan has been submitted to the Planning Commission disclosing compliance with all of the provisions of this ordinance, or the manner in which compliance will be secured by the applicant. Such plans shall include, among other things, the following:
  - aa. A contour map of the tract of land involved in the operations, including dimensions of the same, access thereto abutting public streets, and whether or not the same are "all weather" roads, additional roads, if any, to be constructed, and the location and nature of abutting improvements on adjoining property.
  - bb. The number of acres and the location of the same proposed to be operated upon within the following 12-months' period after commencement of operations.
  - cc. The type of mining or processing proposed to be conducted and the nature of the equipment to be used.
  - cc. The location of the principal processing plant and the distance of any proposed excavation or mining from the boundaries of the site.
  - ee. Soil boring tests shall be made around the perimeter of the excavation site in the event excavation or activities are to be conducted closer than 150 feet from the boundaries of the site, said boring tests shall disclose conditions satisfactory for lateral support of adjacent premises as determined by the township engineer. The written consent of the owners of adjoining premises and of the Planning Commission shall be required if mining operations shall be closer than specified in the within ordinance to the boundaries of the site.
  - ff. A map or plan disclosing the final grades and elevations to be established following the completion of the mining operations, including the proposed uses then contemplated for the land, future lakes and roads and such other matters as may evidence the bona fide nature of the reclamation and rehabilitation plans and the fact that the land will not be devastated and rendered unusable by the proposed mining activities. Such plan shall be submitted to the County Cooperative Extension Office and to

the Soil Conservation District for recommendation to the Planning Commission.

- gg. Soil boring tests shall be submitted to provide the depth of the groundwater table of the proposed site.
- hh. An environmental impact statement, concerning the existing environmental conditions in the proposed area to be excavated, which should include statements concerning, but not limited to: land, vegetation, water, etc.
- ii. A soil erosion and drainage plan shall be submitted as provided by the Soil Erosion and Sedimentation Act, part 91 of Act 451 of 1994, as amended.

i. Hearing

After receiving a complete application for the a special use permit for an earth removal, quarrying, gravel processing, mining, and related mineral extraction business accompanied by the required plans and specifications and permit fees, the Planning Commission shall hold a public hearing as specified in Article XII, Section 12.1.

### **Section 3.23 Provisions for Flea Markets, Open Air Markets**

Flea markets and open air markets shall comply with all of the following requirements:

- A. Access is from a State Highway or County Primary Highway. Access must be approved by MDOT and/or the Benzie County Road Commission prior to approval by the Townships.
- B. Sanitary facilities shall be approved by the County Health Department prior to approval of the use by the Townships.
- C. Storage of merchandise and/or other items shall be screened from view of adjacent property.
- D. Trash and waste paper shall not be allowed to accumulate and blow onto adjacent property and adequate facilities and/or services for the removal of trash, junk and other items shall be shown at the time of application.
- E. Signs shall be as regulated in Article III, Section 3.21.
- F. Parking shall be provided outside of a public or private road on the basis of three spaces for each stall or vendor and shall be a dust free, durable surface graded and sloped to provide drainage. No parking shall be permitted on the public road. A detailed site plan shall be provided with the application.

- G. Adequate provision shall be made for access by emergency vehicles, and loading and unloading areas.
- H. Lighting shall be non-flashing and shall be directed only downward and into the property and in compliance with Article III, Section 3.20.
- I. Minimum lot size shall be two and one half (2 ½) acres.
- J. Noise levels shall not be greater than normal street noise at the property boundary of 65 decibels.
- K. Hour of operation shall not be after 11:00 p.m. or before 7:00 a.m. unless different hours are approved with site plan approval upon a finding that due to the remote location of the property extended hours of operation will not cause any substantial adverse effects on adjoining properties or upon a finding that lesser hours of operation are necessary to minimize substantial adverse effects on adjoining properties.

**Section 3.24 Natural Features and Open Space Protection**

The following shall apply to all development proposals for which a site plan is required:

- A. A twenty-five (25) foot filtration buffer along streams and tributary swales shall be established to inhibit erosion and sedimentation and preserve their natural character; the standards of Article III, Section 3.11 Greenbelts, shall apply.
- B. Existing grades and topography are to be retained; mass grading or extensive filling and land balancing shall be limited to the minimum extent necessary for the proposed use of the land.
- C. Slopes over twenty percent (20%) and unique wildlife habitats shall be preserved to the maximum extent possible.
- A. The proposed development shall be planned to avoid, to the maximum extent feasible the cutting, trimming, or clearing of trees and other natural vegetation, within twenty five (25) feet of any watercourse.
- B. Dedication of lands and facilities for passive and active outdoor recreational activities shall be contiguous to or link with current and planned townships open spaces to the extent practical, providing that such lands provide for the recreational needs of the residents and/or preserve significant natural features.

## **Section 3.25 Private Roads**

### **A. Purpose**

The Townships have determined that as tracts and parcels of land are divided, sold, transferred, and developed, private roads are being created to provide access to the newly created properties which are not subject to regulation under the Land Division Act, as amended, or other State regulations. The townships determines it is in the best interest of public health, safety, and welfare to regulate the construction and improvement, extension, relocation, and use of private roads to assure that:

1. Private roads are designed with width, surface, and grade to assure safe passage and maneuverability of private vehicles, and police, fire, ambulance, and other safety vehicles.
2. Private roads are constructed of suitable materials to ensure minimal maintenance and safe passage.
3. Private roads will be constructed so as to protect against or minimize soil erosion to prevent damage to lakes, streams, wetlands, and natural environment of the Townships.
4. Private roads appropriately serve the properties and individuals they are intended to serve.

### **B. Private Roads Permitted**

Private roads are permitted provided they conform to the requirements of this Section.

### **C. Exceptions**

Exceptions are as set forth in paragraph D-1 below, all parcels of land or lots created by a land division, platted subdivision, and site condominium units must front on a public or private road which meets this Ordinance requirements and a land use and or zoning permit for a structure or building shall not be issued until a final road permit has been issued by the Zoning Administrator.

### **D. General Private Road Requirements**

1. The provisions of this Section shall only apply to a new private road which provides access to ten (10) or more existing or proposed lots or parcels and all site condominium units.
2. After the effective date of this Ordinance, a private road shall not be

constructed, extended, or relocated, except in accordance with the minimum standards and requirements of this Ordinance. If an existing road is proposed to be extended, the new portion shall comply with the standards of this Ordinance.

3. The provisions of this Ordinance shall not apply to access roads internal to any individual lot, parcel, or tract of land which has direct frontage access and is under the control of one person, firm, corporation, association, or other entity provided that the access road does not provide access to any abutting lot, parcel, or tract of land.

#### **E. Private Roads**

All private roads constructed in the Townships shall be located within a permanent right-of-way easement duly recorded with the Benzie County Register of Deeds.

#### **F. Easements**

Such easements shall be a minimum of forty (40) feet in width, unless additional right-of-way is required for adequate construction.

#### **G. Dead-ends and Cul-de-Sacs**

At any dead-end or cul-de-sac, the easement shall widen to a minimum radius of ninety (90) feet and an overhead clearance of sixteen feet (16 ') and shall otherwise meet the access requirements of the Homestead and Inland Fire Departments.

#### **H. Construction Standards and Road Geometrics**

Except as otherwise provided in this Ordinance, the creation of a road that serves a division of land, subdivision or site condominium development consisting of one or more principal buildings, other than a subdivision as defined by the Land Division Act, as amended, shall meet or exceed the cross-sectional construction standards established by the Benzie County Road commission for all public roads, shall have minimum roadway surface of at least six (6) inches of road gravel (MDOT 22A) with a twelve (12) inch sand sub-base (MDOT Class) or equivalent material as approved by the Township Engineer, at the applicant's expense.

#### **I. Zoning Board of Appeals**

The Zoning Board of Appeals, pursuant to the Michigan Zoning Enabling Act (Act 110 of 2006, as amended) may grant a variance of the above stated construction standards, road geometrics, or design standards in this Section based on the following standards:



1. Whether anticipated traffic flows will overburden the proposed roadway design.
2. If any unusual topographic conditions will constrain the roadway design.
3. To what extent roadway design will preserve natural features on the site.
4. Whether a stub road connection would be created.
5. Whether or not the proposed roadway should be constructed with curb and gutter drainage structures.

#### **J. Roadway Surface**

All private roadway surfaces shall be developed with a minimum width of twenty four (24) feet and shall be located within the established right-of-way.

#### **K. Dedication of Rights-of-Way or Easements**

While not required to be dedicated to the public, no structure or development activity shall be established within approved rights-of-way or easements. All plans, as submitted for approval, must show the private road easement including a legal description, and must include the grades for these roads.

#### **L. Connection to County Roads**

Construction authorization from the Benzie County Road Commission is required for connection to a County road. When applicable, a permit is also required from the County under the Soil Erosion and Sedimentation portion of PA 451 of 1994, part 91, as amended.

#### **M. Cul-de-sacs**

Cul-de-sacs shall meet or exceed the Benzie County Road Commission cross-section specifications and:

1. Any cul-de-sac shall terminate at the property line except when precluded by a natural barrier or when the cul-de-sac terminates at the last available building envelope, lot or parcel within the development and that building envelope, lot or parcel fronts on the cul-de-sac.
2. Frontage measurements along the cul-de-sac shall be measured at the front setback line and at right angles to the lot depth.
3. Not more than four (4) dwelling units or structures shall have frontage

on a cul-de-sac.

**N. Maximum Number of Principal Single Family dwellings or Parcels of Land Served**

No more than twenty five (25) dwellings or parcels of land may be served by a single private road if only one (1) point of intersection is provided between a private road and a public road. No more than seventy five (75) dwellings or parcels of land may be served by a private road where two or more points of intersection are provided between a private road or roads and public roads. Where more than seventy five (75) dwelling units or parcels of land are served, the road shall be a paved street built to full Benzie County Road Commission standards.

**O. Road Construction Application**

Application for road construction shall be made at the same time as application for land division, if applicable, and at least thirty (30) days prior to the meeting date for which the applicant requests consideration. Prior to approval by the Planning Commission, the applicant shall prepare and provide ten (10) sets of a general property development site plan complying with the requirements for formal site plan review and approval pursuant to the requirements found in Article XIII of this Ordinance. The following additional information shall be submitted:

1. An application for approval of a joint road maintenance and easement agreement shall be made to the Zoning Administrator at the same time as application for land division, if a private road is required under this Section. Such application shall include a proposed road maintenance and easement agreement signed by the private road proprietor(s) to be recorded with the Township Clerks and the Benzie County Register of Deeds that contains the following provisions:
  - a. A method of initiating and financing of such road construction and maintenance in order to keep the road up to properly engineered specifications and free of snow or debris.
  - b. A workable method of apportioning the costs of maintenance and improvements to current and future users.
  - c. A notice that if repairs and maintenance are not made, the Township Board may bring the road up to the established Township Road Standards for private roads and assess the owners of the parcels on the private road for the improvements.
  - d. A notice that no public funds of the Townships are to be used to build, repair, or maintain the private road and the Townships have

no responsibility for the maintenance or upkeep of the road.

- e. The United States Postal Service and the local school district are not required to traverse this private improvement and may provide service only to the closest public access. (Maintenance of Private Roads Act, PA 139 of 1972, as amended.) All conditions and requirements concerning public roads shall be deemed the same for private roads, i.e., location on a public road, setbacks (front yard measured from the property line), etc.
  - f. Majority vote rules regarding road maintenance and improvement decisions.
  - g. The owner of each parcel will be responsible for payment of the share of costs apportioned to his or her parcel.
  - h. The owners shall have standing and the right to commence legal or equitable action against a delinquent parcel owner or parcel owners to foreclose a lien or otherwise collect the sums owed.
  - i. The agreement shall be recorded and shall run with the land and bind and benefit the parcels, and the owners thereof, in perpetuity.
  - j. The owner or owners of the land served by the road shall provide for the requirement to grade, drain, and otherwise maintain the private road in accordance with the requirements of the Ordinance.
  - k. Easements to the public for purposes of emergency and other public vehicles and whatever public utility services are necessary.
  - l. The owners of any and all property using the road shall refrain from prohibiting, restricting, limiting or in any manner interfering with normal ingress and egress and use shall include use by family, guests, invitees, vendors, tradesman, delivery persons, and others bound to or returning from any of the properties or having a need to use the road.
2. The proposed road maintenance and easement agreement shall be sent to the Township Attorney for review and approval. All associated costs shall be borne by the applicant.
  3. The Zoning Administrator shall approve the road maintenance and easement agreement if the information and agreements required by this section have been met by the applicant. Following approval, the road maintenance and easement agreement shall be recorded with the Benzie County Register of Deeds.

## **P. Application**

Approval Process for Preliminary and Final Road Construction Permit:

1. After the Zoning Administrator has approved the road maintenance and easement agreement required by Section 3.25.O.1, an application for road construction may be made at least 30 days prior to the meeting date for which the applicant requests consideration.
2. Prior to approval by the Planning Commission, the applicant shall prepare and provide ten (10) sets of a general property site plan complying with the requirements for site plan review and approval pursuant to the requirements found in Article XIII of this Ordinance. A site plan for the private road shall be submitted to the Zoning Administrator. The Zoning Administrator may submit the private road site plan to the Benzie County Road Commission and the Township Engineer for review and comment.
3. The recommendations of the Road Commission and the Township Engineer shall be forwarded to the Planning Commission, who shall be responsible for granting approval for the private road application.
4. The planning commission shall approve a private road application if it finds that all of the applicable requirements of this section have been met. If the private road application is approved by the Planning Commission, preliminary construction permit will be issued by the Zoning Administrator. If the application is rejected, the reasons for the rejection and any requirements for approval will be given in writing to the applicant.
5. The applicant will arrange for timely inspections by the Township Engineer during construction of, and upon completion of the private road. Such costs shall be borne by the applicant.
6. The final road permit shall be issued by the Zoning Administrator after the private road has been constructed and certification has been made by the Township Engineer that the road has been built according to the site plan and the requirements of this Ordinance.

## **Q. Failure to Perform**

Failure by the applicant to begin construction of the private road according to approved plans on file with the Townships within one (1) year from the date of approval shall void the approval and a new plan shall be required by the Townships subject to any changes made by the Benzie County Road Commission or the Townships in its standards and specifications for road construction and

development. The private road shall be completed within one and one-half (1-1/2) years.

#### **R. Posting of Private Roads**

All private roads shall be designated as such and shall be clearly posted with a clearly readable name which can be easily seen in an emergency. The sign shall be paid for, posted, and thereafter maintained by the property owner's association or developer. The developer shall check with the Benzie County Road Commission to avoid a duplicate of names and give approval of the same.

#### **S. Private Drives**

Private Drives serving three (3) to nine (9) dwellings and /or parcels are not required to comply with the established standards for a private road. All private drives shall have a road surface of not less than twenty four feet in width, and shall have signs posted at all access points from a public road, clearly stating the name and "Private Drive, not maintained by Township or County". All private drives shall be recorded with the Benzie County Register of Deeds and with the Township.

#### **T. Private Drives / Land Divisions**

In the event any divisions of land are made such that a formally designated private drive will serve an additional tenth (10th) dwelling unit or parcel, then the portion of the private drive between the new dwelling unit or parcel and the public road shall be required to comply with the Private Road provisions of this section. The costs of upgrading the private drive to a private road shall be the responsibility of the party creating the tenth (10th) parcel accessing the drive.

### **Section 3.26 Open Space Preservation**

Statement of Intent: To allow, at the option of the landowner, the development of an open space residential development as a special use under the provisions of Act 110 of 2006, as amended.

An Open Space residential development shall be considered under Formal Site Plan Review requirements as outlined in Article XIII, Section 13.4.B in the following zoning districts:

- FR Forest Residential
- RR Rural Residential
- R-1 Single Family Residential
- MR Mixed Residential

#### **A. Application**

The application review and approval process as outlined in Article VII shall be followed.

In addition, as part of the review process, a yield plan showing the proposed development as it would be permitted under conventional development regulations in the zoning district where the property is located, as outlined in this ordinance, shall be submitted by the applicant. The Planning Commission shall use this yield plan in determining the density and number of dwelling units to be used in calculating the Open space Preservation Development Plan.

All other regulations of the zoning district, such as building height, setbacks, minimum floor area, etc., remain in full effect as outlined in the zoning ordinance regulations.

## **B. Access**

All access to the interior roads of the proposed development and the development shall not create or use more than two (2) curb cuts to a public road, unless approved by the Benzie County Road Commission or the Michigan Department of Transportation District Manager. Access shall meet all standards set forth by the Benzie County Road Commission and the Michigan Department of Transportation.

If the interior access to serve dwelling units is to be by private road, such access shall meet all of the requirements of the private road standards and regulations of the Townships as outlined in Article III, Section 3.25 of this ordinance.

## **C. Dedication of Open Space**

The applicant shall provide to the Townships evidence of the creation of legal documents, as filed with the Benzie County Register of Deeds, setting aside the dedicated open space created as part of the project as permanent open space in perpetuity.

Such dedication may be in the form of a conservation easement, plat dedication, restrictive covenant or other legal means that runs with the land.

All land not intended to be conveyed to individual dwelling units, building envelopes or lots shall be set aside for the use of all occupants of the development. All such lands shall be protected by restrictions or covenants running with the land and shall be approved by the Township Attorney to assure the following:

1. Title to open space is held in common ownership by the owners of all units/lots in the Open Space Development.
2. A permanent organization for maintenance and management of all such areas shall be assured by legal documents prior to the issuance of a Land Use Permit.

### **Section 3.27 Site Condominium and Subdivision Developments**

The following regulations shall apply to all site condominium or subdivision developments within the Townships:

- A. All condominium or subdivision projects shall be subject to the standard requirements set forth for the zoning district in which the project is proposed.
- B. The maximum number of residential units allowed for a residential site condominium or subdivision project shall be calculated based on dividing the total project acreage by the minimum lot requirements as per the schedule of regulations in the appropriate land use district. In the case of fractional units, the number of allowed units shall be rounded down to the number of whole units.
- C. Minimum spacing between detached residential buildings shall not be less than one and one-half (1 ½) times the height of the higher building as measured from the lowest first floor elevation, or 20 feet minimum, whichever is greater. All exterior walls for clustered structures shall have a minimum fire rating of two (2) hours.
- D. All condominium or subdivision developments shall be subject to the requirements and standards included in Article XIII, Section 13.4.B, Formal Site Plan Review Prior to recording the Master Deed (required by the Condominium Act, as amended) or final plat approval (required by the Land Division Act, as amended), the condominium or subdivision development shall undergo site plan review and approval pursuant to this Ordinance.
- E. Site Plans for Phased Projects: prior to expansion of a condominium or Subdivision development to include additional land, each new phase of the project shall undergo site plan review and approval pursuant to Article XIII Section 13.4.B Formal Site Plan Review of this Ordinance.
- F. Planted, landscaped, or existing natural vegetative buffer areas with a minimum width of twenty-five (25) feet are required along all exterior boundaries of the property to be developed, shall be maintained in a living condition, and a description of the buffer areas shall be stated in the Master Deed, describing any uses, restrictions maintenance requirements, and/or any other relevant information, and shall provide adequate and appropriate buffering for the design of the project, existing natural features, as well as adjacent land uses as specified in Section 3.28.

### **Section 3.28 Landscaping**

The following shall apply to all development proposals for which a formal site plan is required:

### **A. Site Landscaping**

1. In addition to any landscape buffer and/or parking lot landscaping required by this section, ten (10) percent of the site area, excluding thoroughfare right of way, shall be landscaped in grass, groundcover, shrub and/or other natural, living landscape materials and maintained in a living condition.
2. Areas used for storm drainage purposes, such as unfenced drainage courses or retention areas in front or side yards, may be included as a portion of the required landscaped area, but may not exceed five (5) percent of the site area or one half of the required site landscaping area.

### **B. Landscape Buffer**

1. A strip of land with a minimum width of twenty five (25) feet shall be located between the buildable area and the abutting road right-of-way and shall be landscaped with a minimum of one (1) tree for each thirty linear feet. The trees shall have a height of twelve (12) feet or a minimum caliper of 2 ½ inches at the time of planting. The remainder of the landscape buffer shall be landscaped in grass, groundcover, shrub and/or other natural, living landscape materials, and maintained in a living condition.
2. Access ways from public rights-of-way through the required landscape strips shall be permitted, but such access ways shall not be subtracted from the linear dimension used to determine the minimum number of trees required unless such calculation would result in a violation of the spacing requirement set forth in this section.

### **C. Parking Lot Landscaping**

1. Separate landscaped areas shall be required either within or at the perimeter of parking lots. There shall be one (1) tree for every eight (8) parking spaces, and a minimum landscaped area within any designated parking area of fifty (50) square feet. All deciduous trees are to be a minimum of 2 1/2 inch caliper, and coniferous trees five (5) feet in height. A minimum distance of three (3) feet shall be established between proposed tree or shrub plantings and the backside of the curb or edge of pavement.

## **Section 3.29 Towers**

A. Telecommunication towers and alternative tower structures located on property owned, leased, or otherwise controlled by the Townships shall be permitted as a use by right provided a license or lease authorizing such telecommunication tower or alternative tower structure has been approved by the Townships.

B. Antenna co-located on telecommunication towers and alternative tower structures which have received a special land use permit under Article XII of this Ordinance shall



be permitted in any zoning district according to supplemental regulations as specified in Article XII, Section 12.07.C.

### **Section 3.30 Animals**

The following shall apply to the keeping of animals and livestock:

Except for individual pets or 4-H projects, the raising or keeping of small animals, such as rabbits, poultry, goats or sheep, shall not be permitted on parcels less than one (1) acre in size.

The keeping of large livestock, such as hogs, horses or cattle is allowed on any parcel of land two and one half (2 ½) or more acres in size. Such animals shall not be housed closer than one fifty (50) feet from a neighboring residential structure and shall be properly housed, fenced, maintained and controlled so as not to be objectionable or offensive. Special care shall be taken so that accumulation and/or storage of manure will not create offensive odors to adjacent uses, and so that any run-off from such manure storage or accumulation will not degrade the quality of surface water. These requirements are subject to the Right to Farm Act, Act 93 of 1981, as amended, and the subsequent Generally Accepted Agricultural Management Practices.

### **Section 3.31 Outdoor Storage**

Yards for the storage of supplies, material and machinery generally used by contractors and heavy equipment businesses either owned or not by the property owner, and off-season storage of boats and recreational units shall be located only in areas approved by the Planning Commission following the provisions of Article XII, Special Use Permits and Article XIII Site Plan Review. Such storage yards shall be sufficiently screened from view from off the property and may be enclosed with approved evergreen landscaping and/or a solid fence not less than six (6) feet and not more than eight (8) feet high and constructed and maintained in such suitable manner in accordance with this Ordinance.

In approving or disapproving such a fence to screen outdoor storage, the following standards shall be applied:

- A. The fence shall be constructed in accord with Section 3.15 of this Ordinance and of such materials and of such design as to reasonably prevent trespassers from entering the premises.
- B. The fence shall be constructed of materials which totally obstruct the view off the premises enclosed.
- C. The fence shall be maintained in an attractive manner and shall not in any way be used as a sign or billboard.
- D. Lighting shall be regulated in Section 3.20.

E. Signs shall be as regulated in Section 3.21.

F. Landscaping shall be as regulated in Section 3.28.

### **Section 3.32 Private Community Sanitary Sewer Systems**

Pursuant to the requirements of Act 241 of 2005, as amended, the Townships of Homestead and Inland, Benzie County, Michigan, are not responsible or subject to penalties or sanctions for an unauthorized discharge from a private community sanitary sewer system constructed within the townships under a permit from the Michigan Department of Environmental Quality, unless the townships have accepted responsibility in writing for the same, and has also been notified by MDEQ of such responsibility.

### **Section 3.33 Conditional Rezoning**

#### **A. Purpose and Scope**

It is recognized that there are certain instances where it would be in the best interests of the townships, as well as advantageous to property owners seeking a change in zoning boundaries, if certain conditions could be proposed by property owners as part of a request for a rezoning. It is the intent of this Section to provide a process consistent with the provisions of Section 405 (MCL125.3405) of the Michigan Zoning Enabling Act (Act 110 of 2006, as amended) by which an owner seeking a rezoning may voluntarily propose conditions regarding the use and/or development of land as part of the rezoning request.

#### **B. Application and Offer of Conditions**

1. An owner of land may voluntarily offer in writing conditions relating to the use and/or development of land for which a rezoning is requested. This offer may be made either at the time the application for rezoning is filed, or may be made at a later time during the rezoning process.
2. The required application and process for considering a rezoning request with conditions shall be the same as that for considering rezoning requests made without any offer of conditions, except as modified by the requirements of this Section.
3. The owner's offer of conditions may not purport to authorize uses or developments not permitted in the requested zoning district.
4. The owner's offer of conditions shall bear a reasonable and rational relationship to the property for which the rezoning is requested.
5. Any use or development proposed as part of an offer of conditions that would require a special land use permit under the terms of this Ordinance may only

be commenced if a special land use permit for such use or development is ultimately granted in accordance with the provisions of this Ordinance.

6. Any use or development proposed as part of an offer of conditions that would require a variance under the terms of this Ordinance may only be commenced if a variance for such use or development is ultimately granted by the Zoning Board of Appeals in accordance with the provisions of this Ordinance.
7. Any use or development proposed as part of an offer of conditions that would require site plan approval under the terms of this Ordinance may only be commenced if site plan approval for such use or development is ultimately granted in accordance with the provisions of this Ordinance.
8. The offer of conditions may be amended during the process of rezoning consideration provided that any amended or additional conditions are entered into voluntarily by the owner. An owner may withdraw all or part of the offer of conditions at any time prior to the final rezoning action of the Township Board provided that, if such withdrawal occurs subsequent to the Planning Commission's public hearing on the original rezoning request, then the rezoning application shall be referred to the Planning Commission for a new public hearing with the appropriate notice and a new recommendation.

#### **C. Planning Commission Review**

The Planning Commission, after public hearing and consideration may recommend approval, approval with recommended changes or denial of the rezoning; provided however, that any recommended changes to the offer of conditions are acceptable to and thereafter offered by the Owner.

#### **D. Township Board Review**

After receipt of the Planning Commission's recommendation, the Township Board shall deliberate upon the requested rezoning and may approve or deny the conditional rezoning request. Should the Township Board consider amendments to the proposed conditional rezoning advisable and if such contemplated amendments to the offer of conditions are acceptable to and thereafter offered by the owner, then the Township Board shall, in accordance with Section 405 of the Michigan Zoning Enabling Act (MCL 125.3405), refer such amendments to the Planning Commission for a report thereon within a time specified by the Township Board and proceed thereafter in accordance with said statute to deny or approve the conditional rezoning with or without amendments.

#### **E. Approval**

1. If the Township Board finds the rezoning request and offer of conditions acceptable, the offered conditions shall be incorporated into a formal written Statement of Conditions acceptable to the owner and conforming in form to

the provisions of this Section. The Statement of Conditions shall be incorporated by attachment or otherwise as an inseparable part of the ordinance adopted by the Township Board to accomplish the requested rezoning.

2. The Statement of Conditions shall:
  - a. Be in a form recordable with the Register of Deeds of Benzie County.
  - b. Contain a legal description of the land to which it pertains.
  - c. Contain a statement acknowledging that the Statement of Conditions runs with the land and is binding upon successor owners of the land.
  - d. Incorporate by attachment or reference any diagram, plans or other documents submitted or approved by the owner and that are necessary to illustrate the implementation of the Statement of Conditions. If any such documents are incorporated by reference, the reference shall specify where the document may be examined.
  - e. Contain a statement acknowledging that the Statement of Conditions shall be recorded by the Township with the Benzie County Register of Deeds.
  - f. Contain the notarized signature of all of the owners of the subject land preceded by a statement attesting to the fact that they voluntarily offer and consent to the provisions contained within the Statement of Conditions.
3. Upon the rezoning taking effect, the Zoning Map shall be amended to reflect the new zoning classification along with a designation that the land was rezoned with a Statement of Conditions. The Township Clerk shall maintain a listing of all lands rezoned with a Statement of Conditions.
4. The approved Statement of Conditions shall be filed by the Township with the Register of Deeds of Benzie County.
5. Upon the rezoning taking effect, the use of the land so rezoned shall conform thereafter to all of the requirements regulating use and development within the new zoning district as modified by any more restrictive provisions contained in the Statement of Conditions.

#### **F. Compliance with Conditions**

1. Any person who establishes a development or commences a use upon land that has been rezoned with conditions shall continuously operate and maintain the development or use in compliance with the entire conditions set forth in the Statement of Conditions. Any failure to comply with a condition contained within the Statement of Conditions shall constitute a violation of this Zoning

Ordinance and shall be deemed a nuisance per se and subject to judicial abatement as provided by law.

2. No permit or approval shall be granted under this Ordinance for any use or development that is contrary to an applicable Statement of Conditions.

#### **G. Time Period for Establishing Development or Use**

Unless another time period is specified in the Ordinance rezoning the subject land, the approved development and/or use of the land pursuant to building and other required permits must be commenced upon the land within 18 months after the rezoning takes effect and thereafter proceed diligently to completion. This time limitation may, upon written request, be extended by the Township Board if (1) it is demonstrated to the Township Board's reasonable satisfaction that there is a strong likelihood that the development and/or use will commence within the period of extension and proceed diligently thereafter to completion and (2) the Township Board finds that there has not been a change in circumstances that would render the current zoning with Statement of Conditions incompatible with other zones and uses in the surrounding area or otherwise be inconsistent with sound zoning policy.

#### **H. Reversion of Zoning**

If an approved development and/or use of the rezoned land do not occur within the time frame specified under Subsection G above, then the land shall revert to its former zoning classification as set forth in MCL125.3405. The reversion process shall be initiated by the Township Board requesting that the Planning Commission proceed with consideration of the rezoning of the land to its former zoning classification. The procedure for considering and making this reversionary rezoning shall thereafter be the same as applies to all other rezoning requests.

#### **I. Subsequent Rezoning of Land**

When land that is rezoned with a Statement of Conditions is thereafter rezoned to a different zoning classification, to the same zoning classification but with a different or no Statement of Conditions, whether as a result of a reversion of zoning pursuant to Subsection H above or otherwise, the Statement of Conditions imposed under the former zoning classification shall cease to be in effect. Upon the owner's written request, the Township Clerk shall record with the Register of Deeds of Benzie County a notice that the Statement of Conditions is no longer in effect.

#### **J. Amendment of Conditions**

1. During the time period for commencement of an approved development or use specified pursuant to Subsection G above, or during any extension thereof granted by the Township Board, the Township shall not add to or alter the conditions in the Statement of Conditions.

2. The Statement of Conditions may be amended thereafter in the same manner as was prescribed for the original rezoning and Statement of Conditions.

#### **K. Township Right to Rezone**

Nothing in the Statement of Conditions, nor in the provisions of this Section shall be deemed to prohibit the Township from rezoning all or any portion of land that is subject to a Statement of Conditions to another zoning classification. Any rezoning shall be conducted in compliance with this Ordinance and the Michigan Zoning Enabling Act (MCL 125.3101 et seq.)

#### **L. Failure to Offer Conditions**

The Township shall not require an owner to offer conditions as a requirement for rezoning. The lack of an offer of conditions shall not affect an owner's rights under this Ordinance.

### **Section 3.34 Wind Energy Conversion Systems (WECS)**

#### **A. Household WECS**

A Household WECS shall be allowed in all Land Use Districts as a permitted use and as regulated by this Section, and a Commercial WECS is allowed in all Land Use Districts as a special use as regulated by this Section and Article XII, with formal site plan approval as specified in Article XIII by the Planning Commission. In addition to the requirements regarding special uses and site plans, an application for a WECS shall contain the following requirements:

1. Documentation establishing the legal mechanism for siting the WECS, that is, by easement, license, lease or by virtue of ownership of the parcel.
2. A site plan showing the locations of all existing overhead electrical transmission wires or distribution lines whether utilized or not, and the location of each WECS with its specific dimensions.
3. A project description showing for each WECS its height above grade, diameter of the rotor and tower type.
4. Construction plans and specification for each proposed WECS and its anchoring system certified as structurally safe by a manufacturer registered with the State of Michigan.
5. A statement of the survival wind speed for each WECS.
6. In the case of an interconnected WECS, proof of written notice to the local electric utility company of the proposed interconnection and the utilities

response thereto.

## **B. Size and Setbacks**

1. The minimum parcel size shall be two (2) acres for each WECS. This minimum size requirement shall supersede all other parcel size requirements for the land use district within which the WECS is proposed.
2. Any WECS shall be setback from a property line and from any public or private road right of way or easement a distance of no less than 1.25 times the height of the WECS.

## **C. Accessory Structures**

All electrical lines or wires extending substantially horizontally above the ground between a WECS and an accessory building or structure or between two or more WECS shall be at least fourteen (14) feet above the ground at all points unless buried underground.

## **D. Construction Standards**

1. A Commercial WECS shall be a free-standing structure without guy wires, cables or anchoring mechanisms extending beyond the mounting foundation of the WECS. A Household WECS may utilize guy wires and other anchoring mechanisms according to the manufacturer's set up instructions.
2. The maximum level of noise generated by any WECS shall not exceed 55 dB(A) as measured on the dB(A) scale measured at the lot line. The owner and operator shall provide certification after construction and upon request of the Townships, re-certification that such decibel is being maintained. A household WECS must provide manufacturers data.
3. All WECS must comply with all state construction and electrical codes. Interconnected WECS shall comply with the applicable utility, Michigan Public Service Commission and Federal Energy Regulatory Commission interconnection standards.
4. The WECS rotor shall be located on the tower or support such that the minimum blade clearance above the ground level at the tower location is not less than twenty (20) feet.
5. Each WECS shall comply with all uniform or national building, electrical, mechanical and fire codes.
6. Vibration due to the WECS at the parcel boundaries shall not be perceptible.
7. Towers shall be designed and constructed in such a manner that climbing

devices are only accessible with a separate ladder to a height of twelve (12) feet.

8. The entire WECS including turbines, alternators, generators and interconnect systems shall be filtered and/or shielded to prevent the emission of generated radio frequency energy which would cause any interference with radio and/or television broadcasting or reception or which would cause unreasonable interference with the operation of cell phones or other wireless devices and shall comply with Federal Communication Commission rules 47 CFR, parts 15 and 18 including all relevant parts thereof.
9. No WECS, Household or Interconnected, shall be installed in a location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television or wireless phone or other person communication systems would produce interference to electromagnetic transmission or reception. No WECS shall be installed long the major axis of an existing microwave, UHF or VHF communication link where its operation is likely to produce interference with the electromagnetic transmission or reception of signals.
10. No displays, advertising signs or other identification of any kind intended to be visible from the ground or other structures shall be permitted except as required for emergency purposes.
11. Each WECS shall be painted with non-reflective paint of an unobtrusive color designed to minimize off-site visibility of the WECS.
12. Lighting for each WECS shall comply with the legal minimums established by the Federal Aviation Administration (FAA), the Michigan Aeronautical Commission (MAC) or their successor agencies.
13. All new power transmission lines shall be installed underground from the base of the WECS to a point within 50 feet of the nearest overhead utility distribution circuit. Only one (1) utility connection exit shall be permitted for a Commercial WECS. Further, setbacks from any existing overhead electrical lines shall be equal to and not less than the height of the WECS unless the local utility requirements are more restrictive, then they shall apply.
14. Existing site vegetation shall be preserved to the maximum extent practical.

#### **E. Use Standards**

1. A WECS shall be removed by the owner or operator or the property owner within six (6) months of being abandoned. For the purposes of this paragraph, abandonment is defined as continuous and uninterrupted non-use for a period of six (6) months or more, without cause attributable to damage, repairs,



maintenance or upgrades.

2. A removal bond or other performance guarantee for the maintenance or removal of each WECS and all accessory structures may be recommended by the Planning Commission and approved by the Township Board.
3. The Special Use application shall be signed by both the owner and operator of the WECS, who shall also be responsible jointly for the operation and maintenance of the WECS.

### **Section 3.35 Clearing of Land – Permit Required**

Unless associated with a bona fide forestry, agricultural practice or public works project (such as the installation of utilities or other similar activities conducted by, or on behalf of the state, federal government, county, or the townships), it shall be unlawful for any person to engage in land clearing of over one (1) acre, including the stripping and removal of topsoil or existing vegetation, from any site, parcel, or lot within Homestead and Inland Townships without first receiving appropriate zoning approval.