

TOWN OF HOPKINTON  
ZONING BYLAW

**ARTICLE XXVI**  
**Open Space Mixed Use Development Overlay District**  
**[Added 5-5-2008 ATM, Art. 29]**

**§ 210-162. Development and Design Objectives**

The purposes of the Open Space Mixed Use Development Overlay District (OSMUD District) are to balance conservation and development goals and to protect and enhance the character of the natural and cultural resources of the Town, while promoting planned development and appropriate use of land in accordance with community goals and design guidelines. Toward that end, the OSMUD District is intended to permit the clustering of residential and commercial uses on large tracts of land that have open space as an integral characteristic, and to ensure quality site planning to accommodate a site's physical characteristics, including its topography, vegetation, water bodies, wetlands, open spaces, historic resources and major scenic views.

**§ 210-163. District and Sub-District Delineations; Applicability**

A. The OSMUD District is shown on the Official Zoning Map. The OSMUD District is divided into Residential Subdistricts (R), Commercial Subdistricts (C), and a Village Center Subdistrict (VC), as shown on the Official Zoning Map.

The OSMUD District is an overlay district that is superimposed over the underlying zoning districts. Development of land within the OSMUD District may be undertaken either pursuant to this Article or pursuant to the provisions of this Chapter applicable to the corresponding underlying zoning district except as otherwise provided in § 210-172.

B. Notwithstanding any provision of this Chapter to the contrary, development undertaken pursuant to this Article shall not be subject to the following provisions:

1. Article XVIB, Subdivision Phasing;
2. § 210-125 (Conversion of Residential Property); and
3. § 210-126.1 (Residential Subdivisions of 10 acres or more).

C. Development undertaken pursuant to this Article shall be subject to the following provisions of this Chapter only to the extent provided for, and as modified by, the provisions of this Article:

1. Article XI, Flexible Community Development Bylaw;
2. Article XII, Water Resources Protection Overlay District;
3. Article XVIII, Supplementary Regulations;
4. Article XIX, Nonconforming Uses; and
5. Article XX, Site Plan Review.

**§ 210-164. Definitions [Amended 5-2-2011 ATM, Art. 48]**

Except as otherwise provided in this section, the definition set forth in § 210-4 shall be applicable to all terms used in this Article. Notwithstanding the forgoing, the following terms, as used in this Article, shall have the meanings indicated:

**AFFORDABLE HOUSING** – Any Dwelling Units qualifying as low or moderate income housing as defined by regulations of the Department of Housing and Community Development.

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APARTMENT BUILDING – See definition of Garden Apartment.

ATTACHED DWELLING – A dwelling consisting of two or more dwelling units, each of which has a building element such as a wall, floor, ceiling or roof in common with or other Structure attached to another dwelling unit. Attached dwellings include Garden Apartments.

BUILDABLE AREA – All area of a Development Project that is not Restricted Land.

COMMERCIAL USES – All uses other than Dwelling Uses and Restricted Land Uses.

COMMON OWNERSHIP – Common ownership shall mean ownership by the same person or persons or legal entities or ownership by any two or more persons or entities, when there is active or pervasive control of those legal persons or entities by the same controlling person and there is an intermingling of activity among those persons while engaging in a common enterprise. Common Ownership can include a Condominium or Landowners' Association.

COMMUNITY CENTER – A facility for a social, educational, or recreational purpose, intended primarily for the occupants of the Development Project or the OSMUD District, in which food and beverages may be served and live entertainment may be provided, and which may include performance and assembly space and indoor and outdoor recreational facilities.

CONSTRUCTION ACTIVITY – The construction of new structures or site work associated with the construction of new structures. The term does not include site work not associated with the construction of new structures, the construction of roadways, installation of utilities, restoration and improvement of Restricted Land, additions and improvements to existing structures, or activities involving uses and structures referred to in M.G.L. c.40A §3, to the extent allowed under said section of the General Laws.

CONTINUING CARE RETIREMENT COMMUNITY OR ASSISTED LIVING FACILITY – A facility providing living accommodations and communal facilities for persons over age 62 and that includes at least: a) 24-hour on-site responsible staff; b) a common dining area in which at least one main full meal is served each day; c) optional laundry, housekeeping and personal services available to residents; d) transportation services; and e) common indoor and outdoor passive or active recreational areas. Such a facility may include: a) a medical or nursing home component; and b) retail sales and services for the convenience of residents, accessible only from inside the facility.

CULTURAL USES – Art gallery; art use; museum; public art display space; arts studio, arts; production studio; or ticket sales undertaken in connection with a cultural use.

DESIGN GUIDELINES – The Design Guidelines for the OSMUD District adopted by the Planning Board as part of the Master Plan Special Permit to govern Site Plan Review within the OSMUD District.

DEVELOPMENT PROJECT – A development undertaken pursuant to this Article, as shown on a site plan submitted to the Planning Board for Site Plan Review. A Development Project may consist of one or more lots and may be located in more than one subdistrict, as long as the applicable requirements of this Article are satisfied with respect to each subdistrict.

DUPLEX – An Attached Dwelling consisting of two dwelling units located on a lot in Common Ownership.

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**DWELLING USE** – Use as Dwelling Units as defined in § 210-4, but specifically not including residential units that may be part of a Continuing Care Retirement Community, Assisted Living Facility or similar institution.

**GARDEN APARTMENT** – A multifamily residential land use consisting of two or more dwelling units each of which is on a single level, at least some of which have a floor or ceiling in common with another unit.

**GREENHOUSE** – A building made of a material transparent or partially transparent to light, in which the temperature and humidity can be regulated, and which is used primarily for the cultivation of plants.

**HEALTH AND FITNESS CLUB** – A private club, whether or not operated for profit, solely for the purpose or providing physical fitness, exercise therapy, rehabilitation or health-related services.

**HEIGHT** – The vertical distance from the mean finished grade of all sides of building or structure to the highest point of the roof for flat roofs, to the deck line for mansard roofs and to the mean height between eaves and ridge for gable, hip and gambrel roofs, excluding chimneys, spikes, towers, wireless communication facilities, screens, parapet walls, and other structures, equipment, or projections not used for human occupancy. In determining the height of buildings within the area designated “OSMUD District Height Zone” on the Official Zoning Map, the area above the mean finished grade and below the floor of the first occupiable story, not to exceed 10 feet, shall be excluded from measurement of height and of stories.

**LANDOWNERS’ ASSOCIATION** – A corporation, trust or other legal entity owned or controlled by the owners of all lots within the OSMUD District, or by owners of all lots within a specified area within the OSMUD District, as the context permits or requires.

**MASTER PLAN** – The Master Plan for the OSMUD District as submitted to the Planning Board for approval in a Master Plan Special Permit to be issued pursuant to § 210-172.

**MULTIFAMILY DWELLING OR PROJECT** – A collective term referring to any dwelling units other than a Single Family Dwelling located on an individual lot, including an Attached Dwelling, Simplex Dwelling, Duplex Dwelling, Townhouse, Garden Apartment or Apartment Building.

**NEIGHBORHOOD RESTAURANT** – A restaurant or eating establishment intended for the use and convenience of the residents of the immediate neighborhood, not to exceed 1,500 square feet of indoor seating, which may also include outdoor seating.

**RESTRICTED LAND** – Land devoted to uses permitted by § 210-170A, which may include (1) open space land left substantially in its natural state; (2) open space land that is restored or landscaped, including irrigation, detention and/or retention ponds or stormwater catchment areas and subsurface utilities; (3) open space land used for agricultural purposes; (4) open space land improved for active and passive recreational uses, including pedestrian, bicycle and equestrian trails; (5) land improved for other municipal uses; (6) food preparation and sales areas, restrooms, parking and access areas, and similar uses, structures or portions thereof, operated in association with other Restricted Land uses; and (7) A total of no more than 30 acres of land, which may be

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restricted for the benefit of landowners within a particular area of the OSMUD District. Restricted Land shall not include land set aside for road and/or parking uses that are not accessory to other Restricted Land Uses.

**RESTRICTED LAND COVENANT** – A legally enforceable restriction or covenant, recorded in the Registry of Deeds and enforceable by the Town, providing that the land subject thereto will remain as Restricted Land in perpetuity.

**RETAIL NEIGHBORHOOD STORE** – A store, other than a restaurant or eating establishment, not to exceed 2,000 square feet, located in a neighborhood in which merchandise is sold or services provided for the convenience of the occupants of the immediate neighborhood, such as groceries, prepared take-out food, toilet articles, cosmetics, candy, sundries, medications, newspapers, magazines and ice cream.

**SIMPLEX DWELLING** – A detached dwelling separated from another dwelling unit by not more than 25 feet and located on a lot in Common Ownership.

**SINGLE FAMILY DWELLING** – A detached dwelling unit on an individual lot or a detached dwelling unit separated from another dwelling unit by more than 25 feet, but not including a mobile home or trailer.

**STRUCTURE** – A man-made combination of materials assembled in a fixed location to give support or shelter or for any other purpose, including buildings, frameworks, platforms, sheds, carports, porte-cocheres, covered walkways and the like; provided, however, that signs, fences, tents, poles, swing sets and the like are not to be considered structures.

**TOWNHOUSE** – One of a row of three or more dwelling units, each of which has a wall in common with another dwelling unit, with each dwelling unit having a separate entrance and located on a lot in common ownership.

**§ 210-165. Uses**

No land, structure or building shall be used for any purpose in the OSMUD District, other than as set forth in this section, except as otherwise set forth in this Chapter or otherwise permitted by law.

- A use is permitted by right in any subdistrict that is denoted by the letter “Y”.
- A use is prohibited in any subdistrict that is denoted by the letter “N”.
- A use denoted by the letters “SP” may be permitted by Special Permit from the Planning Board.

Use	Residential Subdistrict	Commercial Subdistrict	Village Center Subdistrict
Single-family dwellings	Y	SP	SP
Multifamily dwellings	Y	SP	Y
Attached dwellings including garden apartments	Y	SP	Y
Senior housing	Y	SP	Y
Home occupations	Y	Y	Y
Licensed home day care providers	Y	Y	Y

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Use	Residential Subdistrict	Commercial Subdistrict	Village Center Subdistrict
Renting of rooms and/or the furnishing of table board in a dwelling occupied as a private residence	Y	Y	Y
Bed-and-breakfast establishments and inns with a maximum of 12 guest rooms	SP	Y	Y
Business or professional offices and banks	N	Y	Y
Community Centers	Y	Y	Y
Conference centers, with or without a residential dormitory component	N	SP	SP
Drive-in, drive-through or drive-up uses, but excluding the dispensing of food or drink	N	Y	Y
Health clubs	SP	Y	Y
Hotels, motels, and inns with greater than 12 guest rooms	N	SP	SP
Light manufacturing and/or assembly with associated professional, administrative and/or clerical offices for uses permitted in the Professional Office (P) District under Article IX	N	Y	Y
Recreational Uses of buildings, structures or land, not limited to occupants of the Development Project or OSMUD District, but excluding recreational uses which are part of the Restricted Land	SP	Y	SP
Research centers and laboratories not involving noxious or hazardous substances and processes	N	Y	Y
Research centers and laboratories with a biosafety Level of Level 1 or Level 2	N	SP	N
Restaurants	N	Y	Y
Neighborhood Restaurants	SP	Y	Y
Retail businesses including retail services involving manufacturing, if clearly incidental and accessory to a retail use on the same premises	N	Y	Y
Retail Neighborhood Stores	SP	Y	Y
Retail stores and retail service shops, including take-out food establishments exclusive of drive-in, drive-up or drive-through take-out	N	Y	Y

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Use	Residential Subdistrict	Commercial Subdistrict	Village Center Subdistrict
food			
Cultural Uses	N	Y	Y
Cinemas, concert halls, theaters, auditoriums	N	SP	SP
Adult day care	SP	Y	Y
Continuing care retirement communities, assisted living facilities, or similar institutions	SP	Y	SP
Group homes	Y	Y	Y
Nursing homes, extended care facilities, or physical rehabilitation facilities	N	Y	SP
Medical centers	N	SP	SP
Out-patient surgery	N	SP	SP
Medical offices	N	Y	Y
Veterinary clinics	N	SP	SP
Municipal Cemeteries	SP	N	N
Places of worship and other religious uses	Y	Y	Y
Funeral homes and mortuaries	SP	Y	SP
Public or semipublic institutions of a philanthropic or charitable character	SP	Y	Y
Child care centers	Y	Y	Y
Municipal uses	Y	Y	Y
Public and private educational uses (including schools for scholastic and non-scholastic subjects) and public libraries	Y	Y	Y
Telecommunication and telephone facilities (if located within a building with another allowed primary use, not to exceed 20% of such building)	Y	Y	Y
Public transportation facilities, limited to 1) shuttle bus stop facilities and 2) park and ride parking facilities intended for occupants of the OSMUD District	Y	Y	Y
Facilities used for water supply or sewage treatment, or associated with the provision of electrical, telephone, gas or cable services within the OSMUD District	Y	Y	Y
Alternate power generation and co-generation facilities serving other uses within the OSMUD District	SP	SP	SP
Agricultural and horticultural uses,	Y	Y	Y

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Use	Residential Subdistrict	Commercial Subdistrict	Village Center Subdistrict
including farms of all kinds, nurseries, gardens, greenhouses and livestock, except fur farms			
Equestrian facilities, public or private	SP	SP	N
Farm stands	Y	Y	Y
Landscaping business and storage/staging facilities	SP	Y	Y
Mixed use buildings consisting of commercial space or retail space on the first floor and a different category of use on one or more upper floors	N	Y	Y
Uses customarily associated with any permitted use on a lot within a Development Project, which may be on a different lot within the same Development Project	Y	Y	Y
Accessory uses	Y	Y	Y
Restricted Land uses	Y	Y	Y

**§ 210-166. Intensity of Use Limitations**

A. Dwelling Uses within the OSMUD District shall be limited to 940 new Dwelling Units constructed after the effective date of this Article. No more than 50 new Dwelling Units so constructed may be single-family dwellings, and the remainder shall be multi-family dwellings, including attached dwellings, garden apartments, units in mixed-use buildings and senior housing.

Neither the dwellings located at 80, 82, 83 nor 90 East Main Street or 26 Clinton Street, nor the Group Home located at 44 Wilson Street, all of which were in existence as of the effective date of this Article, shall be deemed to be a Dwelling Unit for the purposes of this Intensity of Use limitation. However, in the event that any such dwelling is converted to or reconstructed as a multi-family dwelling use, the resulting number of Dwelling Units in excess of one (1) on any such property shall be counted towards the Intensity of Use limitation.

No Accessory Family Dwelling Unit for which the Board of Appeals grants a Special Permit pursuant to § 210-126 shall be deemed to be a separate Dwelling Unit for purposes of this Intensity of Use limitation.

B. Commercial Uses within the OSMUD District shall be limited to 450,000 square feet of Gross Floor Space in the aggregate, which shall be allocated among the Subdistricts as authorized by a Master Plan Special Permit issued pursuant to § 210-172.

C. Commercial uses within the VC Subdistrict shall not exceed 150,000 square feet of Gross Floor Space in the aggregate. No single building within the VC Subdistrict shall exceed 25,000 square feet of Gross Floor Space except for a single building which may contain up to 38,000 square feet of Gross Floor Space; provided, however, that, notwithstanding the foregoing, the

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Planning Board may, by Special Permit, approve a single building in the VC Subdistrict which may contain up to 45,000 square feet of Gross Floor Space.

The following shall be excluded from the calculation of Gross Floor Space for purposes of this Intensity of Use limitation: (i) The building at 83 East Main Street, in existence as of the effective date of this Article, in the event such building is converted to Commercial Use, and the building at 97 East Main Street (the Pearson House); (ii) structures accessory to or commonly associated with a Dwelling Use, such as a clubhouse, recreational amenity or management or marketing space; (iii) uses, structures or portions thereof, operated in association with Restricted Land uses; (iv) structures accessory to agricultural and horticultural use, including greenhouses, except that 40% of the area of a greenhouse that is associated with a retail use in the same or an adjacent building shall be included in the calculation of Gross Floor Space.

**§ 210-167. Affordable Housing**

Affordable Housing shall be provided within the OSMUD District in accordance with the following requirements:

A. Except as otherwise provided in the following paragraph of this Section, not fewer than sixty (60) Dwelling Units within the OSMUD District shall be Affordable Housing, which shall be located within one or more Development Projects containing, in the aggregate, not fewer than two hundred forty (240) Dwelling Units eligible for inclusion in the Massachusetts Department of Housing and Community Development’s Subsidized Housing Inventory.

Notwithstanding the foregoing, if, prior to the issuance of a building permit for a Development Project that contains Affordable Housing, either (i) M.G.L. c. 40B, §§ 20-23 is no longer in effect, or (ii) the rules, regulations or guidelines of the Massachusetts Department of Housing and Community Development issued pursuant to M.G.L. c. 40B, §§ 20-23 no longer provide that all of the units in a rental development that contains at least 25% affordable housing units are eligible for inclusion on the Subsidized Housing Inventory, then not fewer than ninety-four (94) Dwelling Units within the OSMUD District shall be developed as Affordable Housing.

B. All Affordable Housing shall be integrated with the rest of the Development Project in which it is located, and shall be comparable in design, exterior appearance, construction, and quality of exterior materials with other units in such Development Project. The mean number of bedrooms in Affordable Housing Dwelling Units shall be no greater than the mean number of bedrooms in the market-rate Dwelling Units in the Development Project in which they are located.

**§ 210-168. Dimensional Requirements**

A. The following size and setback requirements shall apply to each lot within the applicable Subdistrict, and between Subdistricts:

	Residential Subdistrict (R)	Commercial Subdistrict (C)	Village Center Subdistrict (VC)
Minimum lot frontage	25 feet	100 feet	100 feet
Minimum lot area*	4,000 square feet	30,000 square feet	30,000 square feet
Minimum setback from street line	10 feet	25 feet	25 feet
Minimum side yard	0	0	0

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width			
Minimum rear yard depth	10 feet	10 feet	10 feet
Maximum building height	35 feet or 3 stories, whichever is less; provided, however, that buildings within the area designated OSMUD District Height Zone on the Official Zoning Map, may be 40 feet or 3 stories, whichever is less	35 feet or 3 stories, whichever is less; provided, however, that buildings within the area designated OSMUD District Height Zone on the Official Zoning Map, may be 40 feet or 3 stories, whichever is less	35 feet or 3 stories, whichever is less

\* Notwithstanding the definition of Lot Area in §210-4, the surface area of man-made ponds, retention ponds and irrigation ponds shall be included in the area needed to satisfy Minimum Lot Area requirements within the OSMUD District.

When a Commercial Subdistrict abuts a Residential Subdistrict within the OSMUD District, a setback of at least 50 feet between buildings in the Commercial Subdistrict and the boundary of the Residential Subdistrict shall be provided

B. The following setback requirements shall apply to any lot within the OSMUD District that abuts land outside the OSMUD District:

	Residential Subdistrict (R)	Commercial Subdistrict (C)	Village Center Subdistrict (VC)
Minimum setback from street line	50 feet	50 feet	50 feet
Minimum side yard width	25 feet	25 feet	25 feet
Minimum rear yard	20 feet	25 feet	25 feet

C. All buildings in the Commercial Subdistrict shall be located a minimum of 100 feet from any lot outside the OSMUD District used for residential purposes at the time of Site Plan Review application. Such setback area shall be left undeveloped but landscaped; provided, however, that such setback area may contain access ways. This Subsection shall not be deemed to require a minimum setback from lots that are located across any street or right of way from the OSMUD District boundary.

D. All buildings in the Village Center Subdistrict shall be located a minimum of 100 feet from any lot outside the OSMUD District used for residential purposes at the time of Site Plan Review application. Such setback area shall be left undeveloped but landscaped; provided, however, that such setback area may contain access ways and parking areas, if screening of such parking areas is provided in a manner approved by the Planning Board. The Master Plan Special Permit may authorize the Planning Board to approve, pursuant to § 210-173, a setback of a lesser width than is set forth in this Subsection upon a finding that such a lesser setback is sufficient to screen and/or separate the building from the lot outside of the OSMUD District. This Subsection shall

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not be deemed to require a minimum setback from lots that are located across any street or right of way from the OSMUD District boundary.

**§ 210-169. Parking**

A. The requirements of § 210-124(B) (1) relating to the minimum number of parking spaces shall apply in the OSMUD District, with the following additions and exceptions:

Uses	Requirement
Single family dwelling	2 spaces per dwelling unit
Dwelling units other than single family dwelling and those within mixed use buildings	Dwellings with up to 1 bedroom: 1.5 spaces Dwellings with more than 1 bedroom: 2.0 spaces
Residential Component of a Mixed Use Building	1 space per dwelling unit
Hotel, motel, and inns	1 space for each unit available for occupancy
Adult day care	1 space for each full time employee on the largest shift
Continuing care retirement community or assisted living facility, or similar institutions	3 spaces for each 4 units available for occupancy
Funeral homes and mortuaries	5 spaces per 1,000 square feet of gross floor space, not including corridors and other service areas

B. Structures accessory to agricultural and horticultural use, including greenhouses, shall not be included in the calculation of Gross Floor Space for purposes of the minimum parking requirements:, except that 40% of the area of a greenhouse that is associated with a retail use in the same or an adjacent building shall be included in such calculation of Gross Floor Space.

C. Where parking uses have peak user demands at different times or where different uses are accommodated by a shared parking space, as certified by a registered traffic engineer, the Planning Board, by Special Permit may approve shared parking facilities, designed and intended to serve more than a single use shown on a Site Plan, in satisfaction of the applicable minimum parking requirements of § 210- 124(B) (1), as modified by this Section.

D. The Planning Board may, by Special Permit, approve an amount of parking less than applicable minimum parking requirements of § 210- 124(B) (1), as modified by this Section, if it finds that the lesser amount of parking will not cause excessive congestion or endanger public safety, and that the lesser amount of parking will provide positive environmental or other benefits.

E. The Planning Board may, by Special Permit, approve a combination of on-lot and on-street parking, as is appropriate to a pedestrian-oriented environment, in satisfaction of the applicable minimum parking requirements of § 210- 124(B)(1), as modified by this Section.

F. No Special Permit shall be granted pursuant to Subsection C, D, or E above, unless the Planning Board determines that the provision of parking spaces proposed will be in harmony with the general purpose and intent of this Chapter and adequate for all parking needs, and that all

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parking spaces associated with a use are within practical walking distance thereof. The Planning Board may grant such approvals with conditions, which may include, but need not be limited to, the following:

1. A requirement that shared and off-site parking arrangements between property owners be formalized in an instrument that runs with the land and is recorded at the Registry of Deeds;
2. A requirement that adequate space shall be set aside within the Development Project to construct additional parking spaces in the future should the mix of uses and peak demand times change and require additional parking.

**§ 210-170. Restricted Land**

- A. Restricted Land may be used for active and passive recreation, conservation, forestry, agriculture, natural buffers, underground utilities, municipal purposes and other similar purposes necessary for the convenience and enjoyment of the OSMUD District or the Town, as well as other purposes customarily associated with a use authorized by this Subsection.
- B. The Planning Board shall not issue a Master Plan Special Permit pursuant to §210-172 unless the Master Plan includes not less than 500 acres of Restricted Land consistent with the development and design objectives set forth in §210-162 and planned as large contiguous parcels wherever possible.
- C. Prior to the commencement of a Construction Activity, the North Parcel, consisting of not less than 68 acres, and the South Parcel, consisting of not less than 35 acres, both as shown on the Official Zoning Map, shall be made subject to a Restricted Land Covenant designating such land as open space Restricted Land to be left in substantially its natural state, restored or landscaped, in perpetuity. Thereafter, land designated as Restricted Land shall be subject to a Restricted Land Covenant in accordance with the provisions of Subsection E below.
- D. Except with respect to the North Parcel and the South Parcel, which may not be released from their Restricted Land Covenants, the Restricted Land Covenants applicable to any Restricted Land may provide that such Restricted Land may be released from a Restricted Land Covenant by an instrument executed by the owner, the Planning Board and the Board of Selectmen, and recorded, provided that not less than an equivalent area of land is made subject to a Restricted Land Covenant and substituted therefor, subject to the approval of the Planning Board. The forms of Restricted Land Covenants appropriate for particular Restricted Land uses shall be approved by Town Counsel and included in the Master Plan Special Permit.
- E. Applications for Site Plan Review of Development Projects shall designate 1.80 acres of area to remain as Restricted Land for every 1 acre of Buildable Area within the Development Project. The Restricted Land so designated may be located within the Development Project for which Site Plan Review is being sought or may be located elsewhere within the OSMUD District, and may consist of an entire lot or of a portion of a lot. The North Parcel and the South Parcel may be designated to meet the Restricted Land requirement for Development Projects within the OSMUD District.

In the event that less than 500 acres have been made subject to a Restricted Land Covenant at the expiration of fifteen (15) years from the filing of a Notice pursuant to the provisions of §210-172, the owner or owners of such additional land as is required to achieve the 500-acre total shall subject such land to Restricted Land Covenants. In the event that such owner or owners have not

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made such additional land as is required to achieve the 500-acre total subject to Restricted Land Covenants within 60 days of the expiration of such period, the Planning Board may designate one or more parcels as are required to achieve such 500-acre total, and such parcels shall forthwith be made subject to a Restricted Land Covenant by the owner or owners thereof. The Planning Board shall have the authority to extend such deadline to a later date upon a finding that the holder or holders of the Master Plan Special Permit are continuing to pursue development of the OSMUD District and have not yet achieved substantial completion notwithstanding good faith efforts. The foregoing obligation shall be binding and enforceable pursuant to the provisions of Article XXIV only upon the owner of the parcels required to be restricted at the expiration of such period, as it may be extended, and shall not affect the compliance with this Chapter of any lot in a Development Project which has received Site Plan Approval prior to the expiration of such period, as it may be extended.

F. Restricted Land may be (i) owned by a Landowners' Association, (ii) owned by a non-profit entity, a principal purpose of which is land conservation or the provision of recreational facilities, (iii) conveyed to the Town, or (iv) owned by, made subject to easement rights benefiting, or leased to third parties. In all such cases the uses permitted by such deeds, easements or leases of required Restricted Land shall be consistent with the provisions of this §210-170, the Master Plan Special Permit and the applicable Restricted Land Covenant. A Landowners' Association or other party responsible for Restricted Land may adopt reasonable rules and regulations to govern the use of the Restricted Land under its control and to prevent encroachment thereon.

G. Restricted Land Covenants shall specify the permitted uses of specific parcels of Restricted Land; the responsible party to be charged with maintenance and stewardship of the Restricted Land in perpetuity; and a required program for such maintenance and stewardship. Applications for Site Plan Review of Development Projects shall include an agreement authorizing the Town to perform maintenance or stewardship of areas designated as Restricted Land in connection with the approval of such Development Project in the event of any failure to comply with the required program for maintenance and stewardship of the Restricted Land, after thirty (30) days notice to the Landowners' Association or other responsible party and failure of the Landowners' Association or such party to cure such failure; provided, however, that, if the Town elects to perform any maintenance or stewardship work, the responsible party therefor shall pay the cost thereof, which cost shall constitute a lien, subordinate to any mortgage or other statutory lien, upon the properties in connection with which the Restricted Land was originally designated, until the cost has been paid.

H. Nothing in this Section shall be interpreted to preclude the owner of Restricted Land from imposing additional restrictions on the Restricted Land or a Conservation Restriction or Agricultural Preservation Restriction under M.G.L. c. 184 §31-33 which are not inconsistent with the applicable Restricted Land Covenant.

**§ 210-171. Administration**

A. The Planning Board shall be the Special Permit Granting Authority for any Special Permit authorized by this Article. The Planning Board may adopt and file with the Town Clerk Regulations governing Submission Requirements and Procedures for any such Special Permit.

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B. In all matters in which it has jurisdiction to issue a use Special Permit pursuant to § 210-165, the Planning Board may issue such Special Permits only upon a finding that the proposed use is in harmony with the general purpose and intent of this Chapter. Any such Special Permit shall be subject to such conditions and safeguards as the Planning Board may prescribe. In reviewing any application for such Special Permit, the Planning Board shall give due consideration to promoting the public health, safety, convenience and welfare; shall encourage the most appropriate use of land and shall permit no building or use that is injurious, noxious, offensive or detrimental to its neighborhood.

C. After the initial issuance of a Master Plan Special Permit, uses that require a Special Permit pursuant to § 210-165 may be authorized either by an amendment of the Master Plan Special Permit pursuant to an application filed by or on behalf of the owners of all land covered by the Master Plan Special Permit or by a separate use Special Permit pursuant to an application filed by or on behalf of the owners of the land upon which such use is proposed to be located; provided, however, that all use Special Permits shall be consistent with and subject to all provisions of the Master Plan Special Permit applicable to the OSMUD District as a whole.

**§ 210-172. Master Plan Special Permit**

A. Except as otherwise provided in this Section, no Construction Activity for any Development Project to be located on land within the OSMUD District may commence unless authorized by a Master Plan Special Permit, issued pursuant to the provisions of this Article and M.G.L. c.40A, §9.

B. Prior to the commencement of any Construction Activity for any Development Project approved under an OSMUD District Master Plan Special Permit, the applicant may continue to exercise its rights under the underlying zoning and may elect not to exercise the rights granted in the OSMUD District Master Plan Special Permit. If the applicant elects to exercise the rights granted in the OSMUD District Master Plan Special Permit and pursue development as shown on the approved Master Plan, a Notice to such effect shall be filed with the Town Clerk, Planning Board and Department of Municipal Inspections prior to the issuance of any building permit pursuant to such Master Plan Special Permit. From and after the filing of such Notice, all Construction Activity within the OSMUD District shall be in accordance with the approved Master Plan Special Permit. Activities that do not constitute Construction Activity may be undertaken prior to the filing of the Notice under this Section.

C. Application for Master Plan Special Permit

1. A record owner desiring an OSMUD District Master Plan Special Permit shall file with the Planning Board an application therefor in accordance with any applicable regulations adopted pursuant to §210-171.

2. At a minimum, the application for the Master Plan Special Permit shall contain the following information relating to development of the OSMUD District:

(a) Identification of the entire area of land to be developed;

(b) The existing topography of the land, vegetative cover, soil types, wetlands and water bodies, roads and ways, the general location, size and shape of structures to be removed and the location, size and shape of structures to remain;

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(c) The general proposed location within which structures will be constructed, including a schedule of various land use types including Dwelling Uses, Commercial Uses, mixed use buildings, and/or buildings accessory to Restricted Land uses;

(d) The general proposed location, size and intended use of all Restricted Land, including pedestrian, bicycle and equestrian trails, and the Landowners' Association or other entity intended to own, operate and/or maintain such Restricted Land;

(e) The general proposed location of all existing and proposed roads, water supply systems, wastewater systems, storm water drainage, utilities, and connections to existing infrastructure, and the Landowners' Association or other entity intended to own, operate and/or maintain such facilities;

(f) An analysis of the impact of implementing the Master Plan on surface and ground water quality, groundwater recharge, wildlife habitat and corridors, wetlands and bodies of water, including streams and rivers, both localized and general, and an evaluation of pre-development conditions and post-development conditions;

(g) A traffic impact and access study on the impact of implementing the Master Plan on the operation, safety and overall convenience of the roadway system providing access to the OSMUD District, including impacts on both vehicular and pedestrian travel, and proposed mitigation and trip reduction techniques, if applicable;

(h) An analysis of the projected economic impact of implementing the Master Plan on the Town, prepared by a qualified independent economic research consultant;

(i) A phasing projection indicating the general proposed times within which construction of improvements within the OSMUD District in accordance with the Master Plan is anticipated, which schedule may be subject to variation depending on market forces;

(j) Proposed Design Guidelines for the OSMUD District; and

(k) Proposed forms of the Restricted Land Covenants.

3. Within seven (7) days of receipt of the application, the Planning Board shall transmit copies of the application material to the Board of Selectmen, Director of Public Works, Conservation Commission, Fire Department, Police Department, Board of Health, Design Review Board, and Director of Municipal Inspections for review and comment. The Planning Board shall not approve any such application until the final reports of such departments have been submitted to it or until 35 days have elapsed after the transmittal of the application without such report being submitted.

4. The Planning Board shall hold a public hearing and file its decision with the Town Clerk in conformance with the requirements of M.G.L. c.40A §9.

D. Master Plan Special Permit Approval Criteria

No Master Plan Special Permit shall be granted unless the Planning Board finds that:

1. The Master Plan complies with the provisions of this Article and of the Design Guidelines.

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2. The Master Plan serves the purposes of the OSMUD District as described in §210-162 and will be in harmony with the general purpose and intent of this Chapter.

3. The impact of the development activities shown on the Master Plan is anticipated to be of benefit to the Town.

4. The major intersections and roadways providing access to the OSMUD District will continue to operate at an acceptable level of service (LOS) based on the anticipated impact of vehicular traffic from any previously approved uses within the OSMUD District that will remain plus all new proposed development within the OSMUD District.

5. The Master Plan provides adequately for the convenience and safety of vehicular and pedestrian movement within the OSMUD District and in relation to streets, property or improvements outside of the OSMUD District.

6. The Master Plan provides for the adequacy of the methods of disposal of sewage, refuse, and other wastes, provision of utilities, and the methods of drainage for surface water and seasonal flooding, if any, and protection of water sources for the Town.

E. Master Plan Special Permit Amendment

1. Amendment of the Master Plan Special Permit shall require approval of the Planning Board. An application to amend the Master Plan Special Permit may be submitted separately or together with an application to the Planning Board for Site Plan Review. If the Board determines that such amendment is significant, it shall hold a public hearing in conformance with M.G.L. c. 40A §9. If the Board determines, at a noticed public meeting of the Board but without a public hearing in conformance with MGL c. 40A §9, that such amendment is minor, it may amend the Master Plan Special Permit without a public hearing, and a copy of the amendment shall be filed with the Town Clerk.

2. Applications for amendment to the Master Plan Special Permit may be filed by the owners of the affected land, and shall not be required to be filed by the owners of all land within the OSMUD District.

F. Duration of Approval

The issuance of a building permit within two (2) years of the date of the filing of the decision with the Town Clerk (or the date of the final resolution of any appeal of such decision) and the commencement of a Construction Activity within six (6) months of issuance of a building permit for such Construction Activity shall be deemed to constitute substantial use of rights under the OSMUD District Master Plan Special Permit.

**§ 210-173. Site Plan Review**

A. Construction of all Development Projects within the OSMUD District shall be subject to Site Plan Review by the Planning Board in accordance with the provisions of Article XX, with the following additions and exceptions:

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1. Construction of Development Projects for Residential Uses shall be subject to Site Plan Review, notwithstanding any provision of §210-133 or § 210-134 to the contrary. However Site Plan Review shall not apply to the alteration, reconstruction or enlargement of residential buildings. For the purposes of this Section, a mixed-use building shall be considered a commercial building, and shall not be considered a residential building.

2. Construction of all Development Projects for Commercial Uses shall be considered a Major Project with respect to the procedures contained in Article XX.

3. The Decision Criteria in this Article shall supersede the Decision Criteria contained in § 210-136.

B. As part of the Site Plan Review process, the applicant and/or licensed professionals engaged by the applicant also shall file with the Planning Board a certification indicating the manner in which the Development Project complies with the provisions of this Article, the Master Plan Special Permit and the Design Guidelines.

C. Permissible Building Areas: A Site Plan may show proposed construction within a Permissible Building Area, where the mix of uses and related construction details are subject to change, and shall specify the maximum square feet of Gross Floor Space to be constructed within such Permissible Building Area. Although the Site Plan may show a proposed building in a specific location, the Site Plan approval shall authorize the construction of the Development Project if the structures therein and other site features thereof are located within the Permissible Building Area indicated. After the issuance of a Certificate of Occupancy for a building, the amount by which such building is less than the maximum square footage of Gross Floor Space allocated thereto or the amount by which the number of Dwelling Units constructed is less than the Dwelling Units proposed shall be available for reallocation to other proposed buildings or Dwelling Units within the OSMUD District, subject to further site plan review of the buildings to which such intensity of uses is reallocated, if required.

D. Decision Criteria.

The Planning Board shall approve an application for Site Plan review if it finds that:

1. The Site Plan complies with the Master Plan Special Permit;
2. The Site Plan meets all of the requirements and standards set forth in this Article, the Master Plan Special Permit, and applicable Design Guidelines;
3. The convenience and safety of vehicular and pedestrian movement within the Development Project and in relation to adjacent areas and public ways is ensured;
4. Substantial adverse potential impacts of the Development Project have been adequately mitigated.

E. Minor Modifications: After the filing of a Decision of Site Plan Review, the Planning Board shall have the authority to approve minor modifications to the Site Plan. Minor modifications shall include changes that involve minor Permissible Building Area adjustments, utility or building orientation adjustments; minor adjustments to parking, landscaping, Restricted Land or other building or site details; or other changes that do not significantly increase the square footage of Gross Floor Space of Commercial Uses within a Development Project or the number of

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Dwelling Units in a Development Project. Minor modifications may be approved by the Planning Board at any regularly scheduled public meetings, without the need to hold a public hearing.

F. Duration of Approval: Site Plan approvals under this Article shall remain in effect as to a Development Project as long as a building permit for not less than one (1) building in the Development Project is issued within two (2) years of issuance of the Site Plan approval (or the date of final resolution of any appeal of such issuance).

**§ 210-174. Design Guidelines**

A. To ensure that Development Projects shall be of quality design, the Site Plans for Development Projects within the OSMUD District shall be based on Design Guidelines adopted for the OSMUD District under the Master Plan Special Permit, which shall supersede any inconsistent provisions of design guidelines adopted under Article XXI.

B. The Design Guidelines shall implement the following principles:

1. The design shall consider the natural resources of the land, including topographic, geologic and natural features, and the historical character of the Town, where applicable.

2. Restricted Land and landscaped areas shall complement, enhance or screen the building and parking areas. Natural features shall be incorporated within Restricted Land areas where possible.

3. A network of trails shall provide access to various points of interest, including recreation areas, unique vistas, and historic sites both within and outside of the OSMUD District and shall link Restricted Land areas.

4. The design of the OSMUD District shall incorporate stormwater practices consistent with low impact development techniques in addition to Best Stormwater Management Practices.

5. Buildings within the OSMUD District shall utilize energy efficient design and execution and low impact development techniques and principles, to the extent feasible.

6. The design shall be respectful of existing neighborhood settings.

C. The Master Plan Special Permit may provide that the provisions of the Design Guidelines may be waived by the Planning Board as part of the Site Plan Review process based on a finding that such modifications are necessary or appropriate to meeting the development and design objectives of this Article.

**§ 210-175. Miscellaneous**

A. Modifications to Article XII, Water Resources Protection Overlay District. In the OSMUD District, the following modifications to the provisions generally applicable to the Water Resources Protection Overlay District shall apply:

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1. For purposes of § 210-70(C) (2), the term “Development Project” shall be substituted for the term “lot.”

2. In § 210-70(D) (5), the words “except for excavations related to site work” shall be inserted at the end of the clause.

B. Modifications to Article XVIII, Supplementary Provisions. In an OSMUD District, the following modifications to the Supplementary Provisions shall apply:

1. The provisions of the Design Guidelines shall supersede the provisions of § 210-119.1 pertaining to the width of driveways.

2. The provisions of the Design Guidelines shall supersede the provisions of § 210-124 pertaining to the design of parking facilities.

C. All land within the OSMUD District as of the date of the issuance of the Master Plan Special Permit shall be subject to the provisions of this Chapter as in effect on such date, provided that substantial use of the rights conferred by the Master Plan Special Permit has occurred in accordance with § 210-172(F).