DRAFT
SCENIC ROADS BYLAW 10-28

PURPOSE

The purpose of this bylaw is to protect the scenic quality and character of the town. Roads designated as Scenic Roads are established by the rules and regulations governing local administration of the Scenic Road Act, MGL Ch.40, §15C. A scenic road is a town-designated public way (not a state highway) recognized for its rural, aesthetic, or historical character, particularly featuring trees and stone walls. The Scenic Road Act governs the cutting of trees, or the tearing down or destruction of stone walls or during the repair, maintenance, reconstruction, paving, or other alteration of roads that have been designated as a scenic road by voters at a town meeting. The Town has adopted these regulations with the following objectives: a) to maintain the natural beauty and scenic qualities along scenic roads in the Town of Southampton. b) to enhance the rural character of scenic roads of the Town and encourage compatibility with existing roadside features. c) to implement more fully the provisions of the Scenic Road Act, MGL. Ch.40 §15C.

APPLICABILITY

Any work on any portion of the right-of-way of a scenic road, which was not physically begun at the time the road was designated by the Attorney General's office as a scenic road, shall fall under the auspices of this bylaw and shall conform to these regulations.

CRITERIA

In determining which roads or portions of roads should be recommended to Town Meeting for designation as scenic roads, the following criteria should be considered:

- Overall scenic beauty (and view from the roadside)
- Contributions of trees to scenic beauty
- Contributions of stone walls to scenic beauty
- Prevalence of historic stone walls along the right-of-way
- Age and historic significance of road, trees and stone walls
- Built features along the road such as historic buildings, structures and sites, historic monuments, historic burial grounds, agricultural buildings and fencing.

PROCEDURE TO DESIGNATE A ROAD AS A SCENIC ROAD

The Planning Board, the Conservation Commission, the Historical Commission, or the citizens of the Town of Southampton by petition (consistent with petition requirements to place an article on the warrant) may propose "scenic road" status for any road in the Town of Southampton, other than a numbered route or state highway.

An applicant should submit a written request (petition) to the Planning Board detailing:

- Applicant details
- Location of the road (assessor's map)
- Rationale for requested designation
- Documented support from more than 50% of affected property owners on the subject roadway

The Planning Board shall hold a public hearing on the proposal or petition, publish date and time of the same and notify abutters per standard procedures, but at least fourteen days prior to the hearing date. The Tree Warden, the Highway Superintendent, members of the Conservation Commission and the Historical Commission will attend or provide their written input.

The Planning Board after receiving input from the other committees/departments cited above as well as residents, shall make a recommendation to the Select Board on the merits of the proposed road as a scenic road. If there is a positive recommendation, the Select Board shall include as a warrant article for the next Town Meeting. A simple majority vote is required to pass the article and the designation of the scenic road shall be effective upon posting its approval per guidance as received from the Attorney General's office.

ROADS SUBJECT TO THE PROVISIONS OF THE SCENIC ROAD ACT:
The following roads were designated as Scenic Roads as per the year of the Southampton Annual Town Meetings:

1974: East Street from College Highway to the Manhan Bridge
1974: Rattle Hill Road, the entire length
1974: Russellville Road from Red Brook to the Westfield line
1974: Cold Spring Road from Glendale Road to the Westhampton line
1974: Gunn Road from Pleasant Street to College Highway
1986: Maple Street from College Highway to Crooked Ledge Road.
1987: The entire length of Manhan Road.

DEFINITIONS:

Buffer Zone
A designated neutral area of land that separates land uses and protects the scenic view. This definition only applies to the scenic roads bylaw.

Cutting or Removal of Trees
"Cutting or removal of trees" shall mean the removal of one or more trees, trimming of major branches or cutting of roots that in the opinion of the Tree Warden causes damage to a tree so as to compromise the health of a tree and possibly its eventual destruction. Not included in this definition is the routine or emergency maintenance which removes only permanently diseased or damaged limbs, trunks, or roots, and dead whole trees.

Public Road Right-of-way
"Public Road Right-of-way" (ROW) shall mean the total land area acquired by the Town, including any easements, to be used and maintained as a public way. When the boundary of the public road right-of-way is in issue so that there is a question as to whether or not certain trees or stone walls or any portions thereof are within, on the boundary of, or outside the public road right-of-way, the trees or stone walls shall be presumed to be within or on the boundary of the way until the contrary is shown on a plan stamped by a professional land surveyor (PLS) or engineer (PE).

Removal, Rebuilding or Destruction of Stone Walls
"Removal, rebuilding or destruction of stone walls" shall mean any act to remove more than two linear feet of stone wall; to move stones except for the purposes of repair or maintenance; to sandblast, cover or paint stones; to bury stones; to rearrange stones; or any other act by which a stone wall or portion thereof is removed, broken down, relocated, or obscured with other materials.

Right-of-way Maintenance
"Right-of-way Maintenance" shall mean any work done within the road right-of-way by any person or agency, public or private, that involves the routine maintenance of vegetation, trees, and stone walls, including the pruning of trees performed according to generally accepted principles and methods for pruning as established by the Tree Warden, including vegetation removal from stone walls, and management of invasive species. Roadside clearing of trees to provide for vehicle clearance or for improvement to line-of-sight shall also be included in this definition.

Road
Road shall mean the entire right of way in which the road is located, including any accessory features such as its necessary bridge structures, drainage systems, retaining walls, traffic control devices, and sidewalks, but not intersecting streets or driveways.

Roadway Repair, Maintenance, Reconstruction, or Paving Work
"Roadway Repair, maintenance, reconstruction, or paving work" shall mean any work done within a scenic road layout by any person or agency, public or private, subsequent to the scenic road designation. Construction of new driveways or alteration of existing ones are also included.

Scenic Road
A scenic road is a town-designated public way (not a state highway) recognized for its rural, aesthetic, or historic character, particularly featuring trees and stone walls. Authorized under MLG Ch.40 §15C, this designation requires a public hearing and Town Meeting vote, restricting repairs, maintenance, or reconstruction that would destroy trees or stone walls within the right-of-way.

Stone Wall
"Stone Wall" shall mean: A man-made and often historic structure of stacked or piled stones used to enclose land, define boundaries, or manage livestock, typically dry-laid without mortar. Such a structure as easily observed, is narrow in relation to its length.

Stone Wall Repair and Maintenance
"Stone Wall Repair and Maintenance" shall mean: routine work done on a stone wall within a road right-of-way by any person or agency, public or private, which involves alteration of the form, materials, or appearance of the historic wall, such as removal of invasive and/or other vegetation obscuring or weakening walls; removal of accumulated dirt/gravel/debris piled over or against stone walls; and/or replacement of individual stones dislodged by fallen limbs or other accident into their original position or with stones of similar appearance.

Tree
"Tree" shall mean a perennial woody plant whose trunk has a diameter of eight (8) inches or more as measured four (4) feet above the ground. Cutting or removal of trees shall mean the destruction of one or more trees, as defined here.

ALTERING A SCENIC ROAD

APPLICABILITY
Any person, organization or agency, including but not limited to agencies of the Town of Southampton and the Commonwealth of Massachusetts, proposing to cut or remove trees and/or the removal, rebuilding or destruction of stone walls, or portions thereof, within the public right-of-way, or on the boundary thereof, of any road designated as a Scenic Road by Town Meeting, in connection with repair, maintenance, reconstruction or paving

work, whether or not governed by any other federal, state or local regulations, laws, permits, variances, approvals, or programs, shall comply with the provisions of these Regulations unless expressly exempt under the Scenic Roads Bylaw.

The local authority and jurisdiction of the Planning Board, herein, shall be consistent with the Scenic Road Act and involve roads that are not numbered or designated as state highway. Trees and stone walls within the right of way are jurisdictional. The applicant must obtain an application for any work to be done from the Planning Board.

Stone walls on private property are protected under MGL Ch.266 §105.

Erection of a stonewall within a town right of way requires a permit from the highway department prior to erection of said wall. Any stonewall (including but not limited to new stonewalls) on a scenic road falls within the jurisdiction of this bylaw. Accordingly, erection of such stonewalls also requires approval by the Planning Board in the same manner as alteration of a stonewall.

Prior to alteration or removal of trees in the public right of way, approval in writing is needed from the Tree Warden.

This bylaw shall not apply to projects undertaken by the Town of Southampton and/or public utility companies during regular and routine vegetation management.

Construction of new driveways or modification of existing driveways are subject to the Scenic Road Bylaw only if they involve alteration of a stonewall or trees within the public right of way.

Nothing within this Scenic Road Bylaw precludes requirements for compliance with other regulations and requirements including alteration of areas subject to Conservation Commission jurisdiction.

Any activity proposed or undertaken within 20 feet of the property line shall be referred to as a "buffer zone," and shall be subject to regulation under this bylaw.

Per the Town's Zoning bylaw §275 Article - 7.3 §F.2 Wireless Communications: No wireless communication facility shall be located within 500 feet of a scenic road or have any visual impact on any scenic road.

CONSIDERATIONS
In acting on applications for alterations to scenic roads, the Planning Board may take into consideration the following:

1. Preservation of natural resources;
2. Whether the proposed action would compromise or harm environmental and historical values;
3. Scenic and aesthetic characteristics;
4. Public safety; welfare or convenience;
5. The characteristics of local residential traffic;
6. Compensatory actions proposed, such as replacement of trees or walls;
7. Functional urgency of the repair, maintenance, reconstruction, or paving;
8. Availability of reasonable alternatives that could reduce or eliminate anticipated damage to trees or stone walls:
9. Consistency of the proposed action with existing Town plans and policies and regulations of the Massachusetts Department of Public Works;
10. Additional written evidence contributed by abutters, Town agencies, and other interested parties.

TREE REMOVAL LIMITATIONS

1) No single tree or cluster of trees with a trunk exceeding eight (8) inches in diameter measured at (4) feet above ground shall be cut for a driveway unless the curb cut cannot otherwise be safely located.

2) For each tree with a trunk exceeding eight (8) inches in diameter, that is removed, a tree in a species, size and location, with advice from the Tree Warden and suitable to the Planning Board, shall be planted elsewhere on the property but not in the right of way, or an equivalent payment into the town-wide tree replacement fund shall be made.

STONE WALL REMOVAL LIMITATIONS

1) The maximum amount of stone wall to be removed shall be the width of the new road right of way as approved by the Planning Board.

2) Unless otherwise waived, removed stone shall be used to repair other sections of the wall within the scenic road, in accordance with the Planning Board approval.

3) No wall shall be cut without construction of an appropriate terminus/end point.

4) In no case shall stones be disposed of or used for purposes other than to repair the remaining stone wall within the scenic road without the prior consent of the Planning Board.

5) Any construction of a terminus or repair of a stone wall shall match the method of the existing construction.

DESIGN STANDARDS

Curb Cuts. Each lot fronting on a scenic road shall generally have one driveway curb cut unless it is a common driveway. Curb cuts must comply with Town driveway bylaws and receive written approval from the Highway Superintendent. Subdivision roads and new roads for commercial properties shall be governed by the applicable town regulations for these types of developments. The use of common driveways is encouraged to preserve and to enhance the visual appearance and rural character of scenic roads in the Town of Southampton and dimensions of a common driveway shall be in accordance with Zoning Bylaws.

Waivers. The Planning Board may waive the design standards, as set forth under this Section herein, if it finds that the waiver is consistent with the considerations and intent of this bylaw. The Planning Board shall consider public safety, sight lines, lot configuration, character of the stone wall and existing vegetation in its deliberation for the granting of a waiver.

PROCEDURES FOR ALTERATION OR REMOVAL OF STONE WALLS or TREES

The Plannng Board shall establish expedited procedures to address either the temporary or permanent cutting of trees or alteration or removal of stone walls as part of their Policies and Procedures and include provisions for a performance guarantee. Any written notification of violation issued by the Planning Board shall specify a resolution date. Failure to comply may result in a fine per MGL Ch. 40 §15C.

Application: Any person or organization seeking the consent of the Planning Board under MGL Ch.40 §15C regarding road repair, maintenance, construction, reconstruction, paving or other alteration that will involve the permanent cutting or removal of trees or the permanent tearing down of stone walls or portions thereof on a scenic road, shall file a request with the Planning Board in accordance with the application procedures and regulations they have adopted for carrying out the provisions of this bylaw.

Planning Board hearings shall be held in conjunction with those to be held by the Tree Warden acting under MGL Ch.87 §3. Consent to an action by the Planning Board shall not be construed as inferring consent by the Tree Warden, or vice versa.

Decision and Reporting: The Planning Board shall hold a public hearing per Planning Board directives, and shall make a decision within fifteen (15) days of the closing of the public hearing, unless a longer time is agreed to by the applicant. The date and time of the public hearing shall be set outside of normal weekday work hours so as to encourage maximum citizen participation.

The Planning Board shall, within 15 days of concluding the public hearing relative to a written request for the modification of scenic road, submit a written determination of consent or denial to the applicant and a copy to the Select Board, Building Inspector, Historical Commission, Conservation Commission, Tree Warden, Highway Superintendent and the Town Clerk. The report of denial should just state clearly the specific reason for denial including how the proposal was in conflict with specific design criteria.

ENFORCEMENT

Filing and Restoration Requirement: Cutting or removal of trees, or the tearing down or destruction of stone walls, or portions thereof, within the layout of a designated scenic road, without prior approval from the Planning Board and in violation of this bylaw will necessitate an immediate filing with the Planning Board, as detailed above, and the area affected shall be subject to restoration of the features, as specified by the Planning Board. This restoration shall consist of replacing/repairing the stone wall as necessary and replacing the trees cut. Using the diameter of the tree, 8" measured at 4 feet above the ground, the Planning Board may require the same quantity of tree diameter removed to be replaced**.**

Compliance**:** Failure to comply with the duly issued decision of the Planning Board shall be subject to restoration as detailed above and other remedial measures the Planning Board deems necessary. The Planning Board shall have all other legal and equitable remedies/recourse which may exist, including without limitation the right to seek injunctive relief under the provisions of MGL Ch.40 §21D.

Penalty:
Failure to apply to, and receive Planning Board approval before cutting or removal of trees or the altering or removal of stone walls within the layout of the scenic road is considered to be in violation of this bylaw will be subject to a fine per the Town's General Bylaws Ch. 203, Non-Criminal Disposition.

In addition, the Planning Board and Building Inspector may withhold or revoke any current or pending permit on the property associated with said violation.

Enforcement Authority: The Tree Warden and/or the Highway Superintendent shall have the authority to enforce the provisions of this bylaw.