

without the approval of the Covenants Committee, unless in compliance with established Design Guidelines.

(l) Cutting Trees. No live trees with a diameter in excess of four inches, measured twelve inches above ground, nor trees in excess of two inches in diameter, similarly measured, which are generally known as flowering trees (such as dogwood or redbud) or as broad leaf evergreens (such as holly, laurel, or rhododendron), no live vegetation on slopes of greater than twenty percent gradient or marked "no cut" areas on approved site plans may be cut, including trees located in any "Tree Save Area" designated on the Development Plan, if any, without the prior written approval of the Covenants Committee unless necessary to construct improvements based on plans previously approved by the Covenants Committee. Further, no live trees planted by the Declarant or a Builder to comply with County ordinances or the Proffers shall be cut without the prior written approval of the Covenants Committee. The Board of Directors may adopt Rules and Regulations for cutting of trees to allow for selective clearing or cutting.

(m) Antennas. No exterior antenna, satellite dish or similar exterior improvement shall be maintained upon the Property unless the prior written approval of the Covenants Committee is obtained; provided, however, that the Association shall not prevent access to telecommunication services in violation of applicable law. Exterior antennas, satellite antennas greater than one meter (39 inches) in diameter or located in the front of the dwelling, or amateur radio equipment generally will not be allowed upon the Property; provided, however, that (i) an Owner may install an antenna permitted by the Association's antenna rule upon prior written notice to the Covenants Committee, (ii) the Covenants Committee may approve other antenna in the appropriate circumstances; and (iii) the Covenants Committee may establish additional guidelines for antennas as technology changes. The Board of Directors may install and maintain antennas, satellite dishes or similar equipment on the Common Area to serve the Property.

(n) Fences. Except for any fence or wall installed by the Declarant or a Builder (as permitted by the Declarant) or by the Association, no fence or wall shall be installed except with

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. C (p. 55): FCC OTARD Satellite Dish / Antenna Preemption Defect: Clause imposes a blanket ban, prior-approval delay, or sub-1-meter size cap on residential reception antennas/satellite dishes preempted by 47 C.F.R. § 1.4000.

Statutory / Legal Reference: 47 C.F.R. § 1.4000 (FCC OTARD Rule)

Statutory Comparison: Under the FCC Over-the-Air Reception Devices (OTARD) Rule, 47 C.F.R. § 1.4000, promulgated under § 207 of the Telecommunications Act of 1996, any covenant or rule that prohibits, requires prior architectural approval before installation, or restricts satellite dishes/antennas measuring one meter (39.37 inches) or less in diameter on property within the owner's exclusive use or control is federally preempted and void.

CURRENT WORDING IN DOCUMENT:

(m) bntenna\$. No exterior antenna, satellite dish or similar exterior improve,ment shall be maintained upon the Property unless the prior written approval of the Covenants Committee is obtained; provided, however, that the Association shall not prevent access to telecommunication services in violation of applicable law.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Amend Section C to incorporate the mandatory statutory safe harbors of 47 C.F.R. § 1.4000 (FCC OTARD Rule); Va. Code Ann. §§ 55.1-1800 to 55.1-1836 (Virginia Property Owners' Association Act) & 18 VAC 48-50 / 48-60 / 48-70 (Virginia CIC Board & Ombudsman Regulations), permitting OTARD reception antennas (up to 1 meter in diameter without prior approval) and solar/EV/water-wise installations within statutory parameters.

ISSUE #1