

ZONING REGULATIONS TOWN OF WINDHAM, VERMONT

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ZONING REGULATIONS TOWN OF WINDHAM, VERMONT

PROCEDURAL AND APPLICATION INFORMATION

Town of Windham Zoning Permit Procedures and Applications are available at the Town Office, 5976 Windham Hill Rd.

1. ACCESS for DRIVEWAY OR ROAD APPLICATIONS
PERMIT ISSUED BY SELECTBOARD
2. ADDRESS - 911 LOCATION ADDRESS
A location address will be assigned by the Zoning Administrator upon the submission of the Zoning Application as follows in Item 3 below.
3. STRUCTURE
As listed in the Zoning Regulations Application, which defines all projects and the attendant fees.
PERMIT WILL BE ISSUED BY THE ZONING ADMINISTRATOR
4. STATE PERMITS+++
It is the responsibility of the property owner to identify, apply for, and obtain relevant State permits that may be required for the project being undertaken by the property owner. Some information in this regard is available at the Town Office.

CONTACT YOUR NEAREST STATE ENVIRONMENTAL OFFICE
100 Mineral Street
Suite 303
Springfield, Vermont 05156-3168
Telephone: 802-885-8850
Email: sandra.conant@state.vt.us
5. A CERTIFICATE OF CONFORMANCE+++ is issued by the ZONING ADMINISTRATOR when ALL of the requirements of the Town of Windham Zoning Regulations are evident, and a satisfactory site inspection is completed.

ZONING REGULATIONS TOWN OF WINDHAM, VERMONT

ARTICLE I AUTHORITY AND PURPOSE

Section 100. ENACTMENT

In accordance with the Vermont Planning and Development Act [24 V.S.A., Chapter 117], hereinafter referred to as the “Act,” the zoning bylaws set forth are hereby enacted by the Town of Windham. These bylaws and maps shall be known as the “Town of Windham Zoning Regulations.”

Section 101 PURPOSE

It is the intent of these regulations to implement the Windham Town Plan, provide for orderly community growth, protect agriculture, soil, forests, water, natural resources, public health, recreation, historical sites, and to further the purposes established in the Act.

Section 102 APPLICATION OF REGULATIONS

Where these Regulations impose a greater restraint or restriction than is provided under any other statute, bylaw, ordinance, rule or regulation, then these Regulations shall govern.

Section 103 INTERPRETATION

On the date these amendments become effective, they shall amend in its entirety the previously adopted Town of Windham Zoning Regulations.

Section 104 ADOPTION AND AMENDMENTS

These Regulations shall be adopted and may be amended according to the requirements and procedures established in Sections 4441, 4442 and 4444 of the Act.

Section 105 SEPERABILITY

The invalidity of any article or section of these Regulations shall not invalidate any other part.

Section 106 EFFECTIVE DATE

These Regulations shall take effect in accordance with the voting and other procedures contained in Section 4442(c) of the Act.

Section 107 DEFINITIONS

Definitions contained in the Act are incorporated herein by reference. Additional definitions are included in Appendix A.

ARTICLE II ZONING DISTRICTS AND DISTRICT STANDARDS

Section 200 ZONING DISTRICTS AND MAP

For the purposes of this bylaw, the Town of Windham is divided into the following four zoning districts:

Rural Residential	(RR)
Hamlet	(H)
Recreation Commercial	(RC)
Forest	(F)

The location and boundaries of the zoning districts are established and shown on the official “Town of Windham Zoning Districts Map” which is hereby made a part of this bylaw.

The official zoning map shall be located in the Town Clerk’s office. Any and all changes to the official zoning map shall be made in conformance with the zoning amendment procedures and requirements set forth in the Act [Sections 4441, 4442 and 4444].

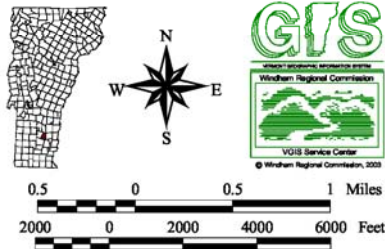
Section 201 ZONING DISTRICT STANDARDS

1. Permitted and Conditional Uses: Allowed uses for each District are specified in this section. Permitted uses are subject to review in accordance with Section 202. Conditional uses are subject to review in accordance with Section 203. Both Permitted and Conditional uses may be subject to Site Plan Review under Section 203, and additional standards set forth in Article III.
2. Uses Not Provided for: Any uses not permitted in these regulations, unless specifically exempted in this Bylaw, is prohibited. The Board of Adjustment, in considering conditional use application or on appeal, may allow for a use not specifically listed within a district only upon finding that the proposed use is of the same general character as those uses listed for that district and defined under Article II; and such use will not adversely affect other uses within the district or on adjoining lands.
3. Buildings and Use on Lots: There shall be only one principal dwelling or one principal use and its structures on a lot. Provision is made for accessory uses, home occupations and accessory buildings.
4. Dimensional and Design Standards: All dimensional and design standards for each district are provided below. Additional standards or requirements for particular land uses may be required as set forth in Article V of this bylaw. All setbacks along roads shall be determined from the center of the existing road.
5. Exemptions:
 - a. Pursuant to 24 V.S.A. §4413(d) farm structures, excluding dwellings, accepted agricultural practices and accepted silvicultural practices are exempt from local permitting requirements. However, farmers intending to erect a farm structure must notify the municipality of the intent to build a farm structure, and abide by setbacks contained within the zoning ordinance, unless they provide an approval of lesser setbacks by the Commissioner of Agriculture, Food and Markets. The notification must contain a sketch of the proposed structure and include the setback distances from adjoining property owners and the street right-of-way. Additionally, all farm structures within the Flood Hazard Overlay District must comply with the National Flood Insurance Program. Lastly, the municipality may report violations of Accepted Agricultural Practices or accepted silvicultural practices to the appropriate state authorities for enforcement.
 - b. This bylaw shall not regulate accepted silvicultural practices, as those practices are defined by the commissioner of forests, parks and recreation under subsection 1021(f) and 1259(f) of Title 10 and section 4810 of Title 6.

Town of Windham, Vt.

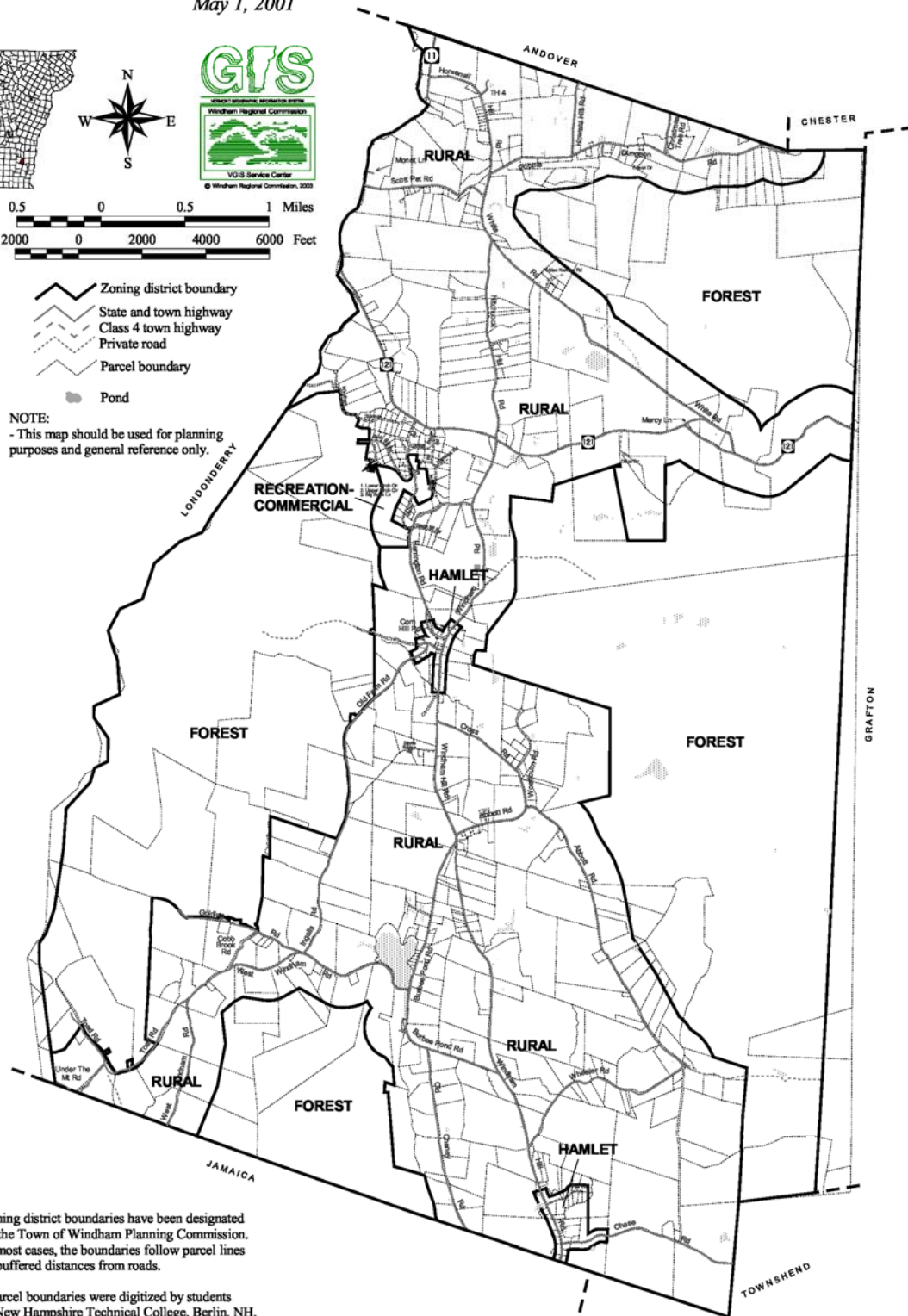
Zoning Districts Map

*adopted by vote of the Town
May 1, 2001*



- Zoning district boundary
- State and town highway
- Class 4 town highway
- Private road
- Parcel boundary
- Pond

NOTE:
- This map should be used for planning purposes and general reference only.



Zoning district boundaries have been designated by the Town of Windham Planning Commission. In most cases, the boundaries follow parcel lines or buffered distances from roads.

- Parcel boundaries were digitized by students at New Hampshire Technical College, Berlin, NH, from 1:5000 mylar tax maps in 1996.

October 2003; c:\towns\windham\zoning.apr: Zoning districts map - B&W 11x17

Section 201.1 Recreational Commercial (RC)

General Description: Lands within the former Timber Ridge Ski Area, occupied by the original base lodge, accessory structures, and parking areas, and outside the boundaries of the adjacent Forest District (F-2) and Residential District.

Purpose: Provide for commercial development in an area selected to minimize impacts on the town's rural character and traditional land uses, including forestry, agriculture and residential.

Conditional Uses: 2 Family Dwelling, Garage/Gas Stations, Retail over 2200 square, Storage/Warehouse, Planned Unit Development (PUD), Recreational facilities, Restaurant, Retail Store.

Density: One unit per lot

Permitted Uses: Single Family Dwelling, Bed and Breakfast, Country Inn, Professional Offices, Personal Services

Minimum Lot Size: 1 acres OR ½ (one half) acres for PUD

Setbacks:

Front (measured from the center of the road):

53' minimum from Windham Hill Road, Route 121 or Route 11; 45' minimum from all other roads,

Side and Rear: 15' side and rear

Building Size – 2200 square feet maximum building footprint. Over 2200 square feet requires conditional use review.

Site Design for PUDs – PUDs with building grouped together in a village design with shared parking, open space, and integrated street tree and landscape design.

Parking – to be located in the side and rear yards.

Section 201.2 Hamlet (H)

General Description: Areas of town with existing higher density of development, characterized by a traditional village or fairly dense mixed-use settlement pattern, as exists in Windham Center and South Windham.

Purpose: Continue historic higher density, mixed uses settlement pattern; prevent linear pattern of development; encourage compact development with distinct boundaries so as to preserve open space and minimize rural sprawl

Permitted Uses: Single Family Dwelling

Conditional Uses: 2 Family Dwelling, Home industry/business, Personal Service, Professional Office. Accessory Use, Bed and Breakfast, Country Inn, Education, Garage, Government/Community Services, Planned Residential Development (PRD)

Density: one dwelling per lot

Minimum Lot Size: ½ acre

Setbacks:

Front (measured from the center of the road):

Minimum: 53' minimum from Windham Hill Road, Route 121 or Route 11; 45' minimum from all other roads

Maximum: 73' maximum from Windham Hill Road, Route 121 or Route 11; 65' maximum from all other roads

Side and Rear: 15' side and rear

Section 201.3 Forest Districts (F)

General Description: See map of Zoning Districts

Purpose: Protect large contiguous parcels of forest land and numerous natural and community resource values; consider physical limitations of soil and slope; minimize impact to municipal services

Permitted Uses:

1. Agricultural, including: maple sugaring, pasturing livestock, raising crops, and building accessory to and necessary for such uses.
2. Commercial forestry and related uses;
3. Forestry for research, demonstration, education and related uses;
4. Private recreational hunting, or fishing camp, consisting of building used occasionally or seasonally for temporary shelter in connection with a recreational activity, not operated as a business and subject to the following:
 - a. Only chemical, incinerator, or privy-type toilet facilities permitted in accordance with design standards of the Vermont Department of Environmental Conservation. The camp may not be served by a sewage disposal system consisting of a tank and/or leaching field.

- b. No privy-type toilet facilities or any discharge of wastewater from sinks, showers, washing machines, or other sources shall be located within 200 feet of any spring, well, stream, brook, river, pond, or wetland on the subject lot or any other lot.
5. A camp for seasonal or occasional use for adults, families, or children, whether operated for profit or not, provided that the lot area is not less than twenty-seven acres plus an additional 8000 square feet for each person accommodated, and that all camp facilities are located not less than 200 feet from the edge of any road right-of-way or other lot line, and sewage disposal facilities are in accordance with the design standards of the Vermont Department of Environmental Conservation.
6. Accessory uses customarily incidental to a permitted or conditional use on the same lot. Accessory buildings shall not be used for dwelling purposes.

Conditional Uses:

1. Single family dwelling with state approved septic system.
2. Recreational use but not including amusement park type facilities, tennis courts, golf courses and other recreational activities requiring facilities.
3. Extraction of materials such as loam, stone, rock, gravel, etc.

Density: 1 dwelling unit per lot

Minimum Lot Size: 27 acres

Setbacks:

Front (measured from the center of the road):

83' minimum from Windham Hill Road, Route 121 or Route 11; 75' minimum from all other roads,

Side and Rear: 50' side and rear

Section 201.4 Rural Residential (RR)

General Description: All remaining lands in Windham shall be zoned Rural Residential and subject to the Permitted and Conditional Uses and General Performance Standards of the current Zoning Regulations.

Purpose: Continue historic residential settlement pattern; prevent linear pattern of development; encourage compact development with distinct boundaries so as to preserve open space and minimize rural sprawl

Permitted Uses: Single Family Dwelling

Conditional Uses: 2 Family Dwelling, Home industry/business, Personal Service, Professional Office, Accessory Use, Bed and Breakfast, Country Inn, Education, Garage, Government/Community Services, Planned Residential Development (PRD), Planned Unit Development (PUD), Repair Shop, Retail Store, Extraction of Minerals, Restaurant, & Recreational Facilities

Density: one dwelling per lot

Minimum Lot Size: one acre

Setbacks:

Front (measured from the center of the road):

73' minimum from Windham Hill Road, Route 121 or Route 11; 65' minimum from all other roads,

Side and Rear: 25' side and rear

Section 202 SITE PLAN REVIEW

All uses except the following require site plan approval by the Planning Commission:

1. Single- or two-family dwelling, accessory buildings, structures and uses, except in Forest Districts.
2. Alteration, modification or improvement of existing structures insofar as the same constitutes a remodeling thereof without causing a change in the use or character of the property, provided all applicable requirements of these Regulations are met (See definition – modification)
3. Home occupations (see Section 400 C and Definitions – Appendix A)

Section 203 CONDITIONAL USES

General Requirements:

No Zoning permit will be issued by the Zoning Administrator for any use or structure that requires conditional use approval until the Board of Adjustment grants such approval. In considering its action, the Board shall make findings upon specific standards set forth in the regulations. The proposed use shall not adversely affect:

1. The capacity of existing and planned community facilities

2. The character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards in the Town Plan
3. Traffic on roads and highways in the vicinity
4. Bylaws then in effect
5. Utilization of renewable energy resources
6. Audible and Visual impact.

Specific Requirements:

Any conditional use shall provide for off-street parking and loading facilities of 900 square feet for every five persons of total planned capacity.

State and Town health ordinances must be complied with.

The Board of Selectmen may set specific fee requirements for any of the Conditional Uses.

In granting conditional use approval, the Board may attach such additional reasonable conditions, as it deems necessary to implement the ordinance. The Board shall hold a public hearing upon notice of the application and shall act to approve or deny the application with forty-five (45) days after the adjournment of the final public hearing. Failure to so act within such period shall be deemed approval.

Section 204 PROHIBITED USES

Uses similar in nature to those specifically permitted may be permitted with conditional use review, but these uses are specifically prohibited.

- A. Blast furnaces
- B. Slaughter houses
- C. Rendering plants
- D. Hide tanning and curing plants
- E. Processing or manufacturing plants for fertilizer, bone, rubber, asphalt, ammonia or chlorine
- F. Refining or manufacturing petroleum, gas, explosives
- G. Bulk storage or explosives
- H. Dumping of refuse and waste material for landfill
- I. Machinery wrecking yards
- J. Bulk storage of fuel oil, butane, propane, gasoline greater than 1,000 gallons

Section 205 NON-CONFORMING USES AND NON-CONFORMING STRUCTURES

The following definitions per Title 24 VSA Chapter 117 §4303 shall apply to this section and throughout this Bylaw.

“Non-conforming use” means a use of land that does not conform to the present bylaws but did conform to all applicable laws, ordinances and regulations prior to the enactment of the present bylaws, including a use not properly authorized as a result of error by the Zoning Administrator.

“Non-conforming structure” means a structure or part of a structure that does not conform to the present bylaws but was in conformance with all applicable laws, ordinances and regulations prior to the enactment of the present bylaws, including a structure improperly authorized as a result of error by the Zoning Administrator.

Any non-conforming use of land or buildings legally existing at the effective date of these regulations or of any pertinent amendment thereof may be continued or changed, and any non-conforming structure so existing may be reconstructed, structurally altered. All are subject to the following provisions:

1. Any non-conforming use may be changed to another non-conforming use only upon approval by the Board of Adjustment, which shall find that such use is no more non-conforming than the old use.
2. Any non-conforming use, if once changed to a conforming use, shall not be changed back again into a non-conforming use.

3. A non-conforming use of a building or lot, which has been discontinued for a period of eighteen (18) months shall constitute an abandonment of the use and shall not be thereafter resumed.
4. A non-conforming structure may be extended or expanded beyond the existing dimensions only upon approval by the Board of Adjustment, which shall find that such extension or expansion does not create a greater non-compliance with these Regulations.
5. Any non-conforming structure, damaged or destroyed by fire, accident or other causes, may be repaired or reconstructed to its original specification in its original location prior to such damage or destruction, provided such work is undertaken upon approval by the Board of Adjustment. Such work must begin within one year and be completed by the end of two years from the time of damage or destruction. (See also Section 401 A)

The Board may, for reasons of greater conformance with these zoning regulations and goals and objectives of the Town Plan, condition its approval for such repairs or reconstruction on changes to the original specifications and/or original location of the structure. These conditions may be imposed in the spirit of improving public health and safety, preserving the traditional settlement pattern of Town, or other similar reasons at the discretion of the Board, and should not create hardship for the applicant.

6. Nothing in this section shall be deemed to prevent normal maintenance and repair of a non-conforming structure.

Section 206 PERFORMANCE STANDARDS

In accordance with Section 4414(5) of the Act, the following performance standards must be met as measured at the property line of the premises on which the use is situated.

1. No emission of noise in excess of 70 decibels.
2. No emission of noxious fumes or gases which are dangerous or injurious to persons, animal life, or vegetation.
3. No vibrations which cause displacement in excess of 0.002 of one inch.
4. No offensive odors.
5. No lighting or signs creating glare which could impair vision of a driver of any motor vehicle.
6. No liquid or solid wastes which cannot be disposed of by available or existing methods without undue burden on municipal facilities.
7. No undue fire, explosive or other hazards which significantly endangers any property owner or which results in increased burden on municipal facilities.

ARTICLE III: ADMINISTRATION AND ENFORCEMENT

Section 301 ZONING PERMIT AND CERTIFICATE OF CONFORMANCE

A. Zoning Permit

No land development as defined herein, which is subject to these regulations, shall be commenced in the Town of Windham until a zoning permit has been issued by the Zoning Administrator or the development is specifically exempted from the provisions of these regulations under Section 301 B. Land development includes the following:

1. Any activity that involves construction, conversion, structural alteration, relocation or enlargement of a building if the footprint, roof plan or height of the building is changed
2. Construction or enlargement of steps, decks, porches, pools, fences, or sheds
3. Addition of new signs
4. Subdivision of properties or changes in property line configurations
5. A home occupation or home business
6. An alteration that results in a larger structure;
7. Mining, excavation, landfill, or land disturbance including the extraction of earth and mineral resources
8. Any change in use, or extension of use of land or buildings
9. Renovations, alteration, restoration, or modification (interior or exterior) to a property that is an improvement to condition or quality, which creates value. This is to be determined by the Zoning Officer or Listers, guided by State Standards. Exempt is repair or maintenance to a property that does not create value, as to be determined by the town officers cited above and guided by State Standards.

B. Exemptions

In accordance with Section 4446 of the Act, no zoning permit shall be required for the following, which have been determined by the Town to impose no impact, or merely a de minimus impact on the surrounding land area and overall pattern of land development, or which are by law otherwise exempted from municipal review:

1. Any structure for which construction began prior to the effective date of these regulations, providing such construction complied with all applicable local regulations in effect when construction commenced.
2. Minor grading and excavation associated with road and driveway maintenance (including culvert replacement and re-surfacing) and yard improvements associated with accessory uses to existing principle uses (contouring yards, establishing garden and landscape areas).
3. Accepted agricultural practices (AAPs), including farm structures, as defined by the Secretary of Agriculture, Food and Markets in accordance with Section 4413(d) of the Act; however, written notification, including a sketch plan of the structure showing setback distances from road rights-of-way, property lines, and surface waters, shall be submitted to the Administrative Officer prior to any construction, as required under the AAPs.
4. Accepted management practices (AMPs) as defined by the Commissioner of Forests, Parks and Recreation, in accordance with Section 4413(d) of the Act.
5. Uncovered entry stairs and handicap ramps for access to the first floor above grade which do not extend into or obstruct public rights-of-way.
6. Public utility power generation and transmission facilities regulated by the Vermont Public Service Board under 30 V.S.A. §248, including wind generators and solar collectors that are net metered or connected to the power grid [§4413(b)].
7. Hunting, fishing and trapping activities as defined by the state [24 V.S.A. §2295].
8. Except in the Flood Hazard Overlay District, any alteration that does not result in a change in the footprint or roof planes of the structure or a change in use. (Note: ALL development in the Flood Hazard Overlay District DOES require a permit)

C. Issuance

A zoning permit shall be issued by the Administrative Officer only in accordance with Section 4449 of the Act and the following provisions:

1. Within thirty (30) days of receipt of a complete application consisting of the application, fee, plot plan and any other approvals required by these Regulations have been properly submitted, the Administrative Officer shall act to either issue or deny a zoning permit in writing, or to refer the application to the Planning Commission or Zoning Board of Adjustment and/or state for consideration. In accordance with the Act, if the Administrative Officer fails to act within the 30-day period, a permit shall be deemed issued on the 31st day.
2. No zoning permit shall be issued by the Administrative Officer for any use or structure which requires the approval of the Planning Commission or Zoning Board of Adjustment until such approval has been obtained. For permit applications that must be referred to a state agency for review, no zoning permit shall be issued until a response has been received from the state, or the expiration of 30 days following the submission of the application to the state.
3. If public notice has been issued by the Legislative Body for their first public hearing on a proposed amendment to these regulations, for a period of 150 days following that notice the Administrative Officer shall review any new application filed for compliance with the proposed amendment and applicable existing bylaws. If the new bylaw or amendment has not been adopted by the conclusion of the 150 day period, or if the proposed bylaw or amendment is rejected, the permit shall be reviewed under all applicable provisions of this bylaw.
4. A zoning permit shall include a statement of the time within which appeals may be taken under Section 608; and shall require posting of a notice of permit, on a form prescribed by the town, within view of the nearest public right-of-way until the time for appeal has expired.
5. The Administrative Officer, within three (3) days of the date of issuance, shall deliver a copy of the zoning permit to the Listers; and shall post a copy of the permit in the town office for a period of fifteen (15) days from the date of issuance.

D. Effective Date

No zoning permit shall take effect until the time for appeal under Section 308 has passed, or in the event that a notice of appeal is properly filed, until final adjudication of the appeal.

E. Certificate of Conformance

A certificate of conformance issued by the Administrative Officer shall be required prior to the use or occupancy of any land or structure, or part thereof, for which a zoning permit has been issued.

1. An application for a certificate of conformance shall be provided with the zoning permit issued by the Administrative Officer. The applicant shall submit a completed application to the Administrative Officer prior to the use or occupancy of the land or structure.
2. A Certificate of Conformance shall not be issued until all necessary approvals and permits required by these regulations have been obtained for the project, and the Administrative Officer determines that the project has been fully completed in conformance with all such approvals and permits.
3. Within 14 days of receipt of the application for a Certificate of Conformance, the Administrative Officer may inspect the premises to ensure that all work has been completed in conformance with the zoning permit and associated approvals, including all applicable permit conditions. If the Administrative Officer fails to either grant or deny the Certificate of Conformance within 14 days of the submission of an application, the certificate shall be deemed issued on the 15th day.

Section 302 EXPIRATION

A Zoning Permit shall expire six (6) months from the effective date if the project has not been started and two years from effective date if the project has not been completed. Further construction will necessitate a re-application for a Zoning Permit.

Section 303 ENFORCEMENT AND PENALTIES

Violation of these Regulations shall be regulated as prescribed in Sections 4451, 4452, and 4454 of the Act.

Section 304 SITE PLAN APPROVAL

No Zoning Permit shall be issued by the Administrative Officer for any use requiring site plan approval by the Planning Commission until a site plan has been submitted and approved in accordance with Sections 202, 305, and 306.

Section 305 SUBMISSION OF SITE PLAN MAP AND SUPPORTING DATA

The owner shall submit in triplicate site plan maps and supporting data to the Planning Commission, which should include the following:

1. Name and address of the owner of record of the land in question and owners of adjoining lands; name and address of person or firm preparing the map; and scale of map, North point and date.
2. Survey of the property showing existing features, including five-foot contour intervals, structures, large trees, streets, utility easements, rights-of-way, and land use and deed restrictions.
3. Site plan showing proposed structure locations and land use areas; streets, driveways, traffic circulation, parking and loading areas, adequate percolation test data and water supply, landscaping of plans, including site grading, landscape design and screening (includes screened garbage area); and renewable energy resource plan.
4. Construction sequence and time schedule for completion of each phase for buildings, parking spaces and landscaped areas of the entire development.

Section 306 SITE PLAN REVIEW PROCEDURE

In considering its action the Planning Commission shall consider and may impose appropriate conditions and safeguards with respect to the following:

1. Harmonious relationship between proposed uses and existing adjacent uses.
2. Maximum safety of vehicular circulation between the site and the street network.
3. Adequacy of landscaping, parking and loading facilities with particular attention to safety.
4. Adequacy of landscaping, screening and setbacks in regard to achieving maximum compatibility and protection of adjacent property.
5. Freedom from flooding and ponding.

Section 307 VARIANCES

Section 307 A. Criteria.

The Board of Adjustment shall hear and decide requests for variances as required by Section 4469(a) of the Act and appeal procedures under Section 308 A. In granting a variance, the Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the Town Plan currently in effect. The Board may grant a variance and render a decision in favor of the appellant only if *all* of the following facts are found, and the findings are specified in its written decision:

1. There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located;
2. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations and that the authorization of a variance is necessary to enable the reasonable use of the property;
3. The unnecessary hardship has not been created by the appellant;
4. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare; and
5. The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.

Section 307 B. Renewable Energy Structures

Where a variance is requested for a structure that is primarily a renewable energy resource structure, in accordance with Section 4469(b) of the Act, the Board may grant such variance only if *all* of the following facts are found in the affirmative and specified in its written decision:

1. It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with these regulations;
2. The hardship was not created by the appellant;
3. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and
4. The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.

Section 308 APPEALS

Section 308 A. Administrative Officer Actions

Any interested person as defined under Section 4465 of the Act may appeal a decision or act of the Administrative Officer within 15 days of the date of the decision or act by filing a notice of appeal with the Secretary of the Zoning Board of Adjustment, or the Municipal Clerk if no Secretary has been elected, and by filing a copy of the notice with the Administrative Officer.

1. The Board shall hold a public hearing on a notice of appeal within 60 days of its filing, as required under Section 4468 of the Act. The Board shall give public notice of the hearing and mail a copy of the hearing notice to the appellant not less than 15 days prior to the hearing date.
2. The Board may reject an appeal or request for reconsideration without hearing, and render a decision which shall include findings of fact within 10 days of the filing of a notice of appeal, if the Board determines that the issues raised by the appellant have been decided in an earlier appeal or are based on substantially or materially the same facts by or on behalf of the appellant [§4470].
3. In accordance with Section 4468 of the Act, all appeal hearings shall be open to the public and the rules of evidence applicable at these hearings shall be the same as the rules of evidence applicable in contested cases in hearings before administrative agencies as set forth in state statutes [3 V.S.A. §810]. Any

interested person or body may appear and be heard in person or be represented by an agent or attorney at the hearing. The hearing may be adjourned by the Board from time to time, provided that the date and place adjourned hearing shall be announced at the hearing.

4. A decision on appeal shall be rendered within 45 days after the final adjournment of the hearing, as required under Section 4464(b) of the Act. The decision shall be sent by certified mail to the appellant within the 45 day period. Copies of the decision shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Administrative Officer and the Municipal Clerk as part of the public records of the municipality, in accordance with Section 4464(b). Failure of the Board to issue a decision within this 45 day period shall be deemed approval and shall be effective on the 46th day.
5. A notice of appeal filed under this section shall be in writing and include the following information, in accordance with Section 4466 of the Act:
 - a. the name and address of the appellant,
 - b. a brief description of the property with respect to which the appeal is taken,
 - c. a reference to applicable provisions of these regulations,
 - d. the relief requested by the appellant, including any request for a variance from one or more provisions of these regulations, and
 - e. the alleged grounds why such relief is believed proper under the circumstances.

Section 308 B. Appeals to Environmental Court

In accordance with Section 4471 of the Act, an interested person who has participated in a regulatory proceeding of the Planning Commission or Zoning Board of Adjustment may appeal a decision rendered by the Planning Commission or Zoning Board of Adjustment within 30 days of such decision, to the Vermont Environmental Court. Appeals to Environmental Court shall also meet the following requirements:

1. "Participation" in a Planning Commission or Zoning Board of Adjustment proceeding shall consist of offering, through oral or written testimony, evidence of a statement of concern related to the subject of the proceeding.
2. The notice of appeal shall be filed by certified mailing, with fees, to the Environmental Court and by mailing a copy to the Municipal Clerk, or the Administrative Officer if so designated, who shall supply a list of interested persons (including the applicant if not the appellant), to the appellant within five (5) working days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person. If any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.

ARTICLE IV GENERAL STANDARDS

Section 400 STATUTORY REQUIREMENTS

Section 400 A. Existing Small Lots

In accordance with Section 4412 of the Act, the following regulations shall apply:

(A) Any lot that is legally subdivided, is in individual and separate and nonaffiliated ownership from surrounding properties, and is in existence on the date of enactment of this bylaw, may be developed for the purposes permitted in the district in which it is located, even though the small lot no longer conforms to minimum lot size requirements of the new bylaw or interim bylaw unless either of the following applies:

- (i) The lot is less than one-eighth acre in area; or
- (ii) The lot has a width or depth dimension of less than 40 feet.

(B) If an existing small lot subsequently comes under common ownership with one or more contiguous lots, the nonconforming lot shall be deemed merged with the contiguous lot. However, a nonconforming lot shall not be deemed merged and may be separately conveyed if all the following apply:

- (i) The lots are conveyed in their preexisting, nonconforming configuration.

- (ii) On the effective date of this bylaw, each lot was developed with a water supply and wastewater disposal system.
- (iii) At the time of transfer, each water supply and wastewater system is functioning in an acceptable manner.
- (iv) The deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems, potable water systems, or both, in case there is a failed system or failed supply as defined in 10 V.S.A. Chapter 64.

Section 400 B. Required Frontage

No land development may be permitted on lots which do not either have frontage on a public road or public waters, or with the approval of the Planning Commission, access to such a road or waters by a permanent easement or right-of-way at least twenty feet in width.

Section 400 C. Protection of Home Occupations

No regulation herein is intended to infringe upon the right of any resident to use a minor portion of a dwelling for an occupation which is customary in residential areas and which does not change the character thereof. The primary use of the premises shall be that of a private residence, and the home occupation shall be carried on in the residence or in a typical accessory building. Disturbances such as noise, vibration, smoke, dust, odors, heat, glare, and electrical interference or line voltage variations shall not be produced. On-street parking is not permitted, nor are exterior signs in excess of four (4) square feet, nor shall the exterior of the building be altered to take on a commercial aspect. The above limitations shall not apply to agricultural uses.

Section 400 D. Equal Treatment of Housing

1. This bylaw shall not have the effect of excluding low and moderate income housing.
2. Pursuant to 24 V.S.A. § 4412 (1)(B), mobile homes, modular homes and prefabricated housing are considered a single-family dwelling and must meet the same zoning requirements applicable to single-family dwellings.
3. An accessory dwelling unit that is located within or appurtenant to an owner occupied single family dwelling shall be a permitted use. An accessory dwelling unit shall be defined as efficiency or one-bedroom apartment, located within or appurtenant (see Definitions) to an owner-occupied single-family dwelling, that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:
 - a. The property has sufficient wastewater capacity.
 - b. The unit does not exceed 30 percent of the total habitable floor area of the single-family dwelling.
 - c. Applicable setback, coverage, and parking requirements specified in the bylaws are met. A zoning permit is required.

Section 400 E. Child Care Home and Child Care Facilities

A “family child care home or facility” means a home or facility where the owner or operator is to be licensed or registered by the state for child care. The following shall apply:

1. A family child care home serving six or fewer children shall be considered to constitute a permitted single family residential use of property. A zoning permit is required.
2. A family child care home serving no more than six full-time children and four part-time children, as defined in 33 V.S.A. § 4902(3)(A), shall be considered to constitute a permitted use of property but requires site plan approval based on local zoning requirements.
3. A family child care facility serving more than six full-time and four part-time children shall be reviewed as a conditional use.

Section 400 F. Group Homes and Residential Care Homes

A residential care home or group home, to be operated under state licensing or registration, serving not more than eight persons who have a handicap or disability as defined in 9 V.S.A. § 4501, shall be considered to constitute a permitted single family residential use of property, except that no such home shall be so considered if it located within 1,000 feet of another existing or permitted home. A Zoning Permit shall be required. A residential care home or group home, to be operated under state licensing or registration, serving nine or more who have a handicap or disability as defined in 9 V.S.A. § 4501, shall be reviewed as a multi family dwelling and shall be subject to conditional use and site plan review.

Section 400 G. Special Public Use Exceptions

The following uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use:

- a. State- or community-owned and operated institutions and facilities.
- b. Public and private schools and other educational institutions certified by the state department of education.
- c. Churches and other places of worship, convents, and parish houses.
- d. Public and private hospitals.
- e. Regional solid waste management facilities certified under 10 V.S.A. Chapter 159.
- f. Hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. § 6606a.

Section 400 H. Walls and Fences

Walls and fences are structures and are subject to approval. Walls and fences must not become a traffic hazard. Fences may be considered to be an intrusion of abutting land owners by affecting their view, or the view of the public.

Section 400 I. Mobile Home Parks

Mobile homes are permitted in approved mobile home parks subject to the requirements of this section and state law. Mobile home parks, where permitted in the specific zoning district, shall be developed in accordance with the procedures for Planned Residential Development and applicable state requirements [10 V.S.A., §153]. Where there is a conflict between the provisions of this bylaw and state regulations, the latter shall take precedence.

Section 401 MISCELLANEOUS REQUIREMENTS

Section 401 A. Abandonment of Structures

Within one year after a permanent or temporary building or structure has been demolished or destroyed, with no intent to rebuild, all structural materials shall be removed from the site, and the excavation thus remaining shall be covered over or filled to the normal grade by the owners. Failure to complete reconstruction within 2 years will be considered as abandonment. (See also Section 205-4)

Section 401 B. Coordination with Driveway Ordinance

The Zoning Administrator shall not issue a Zoning Permit until such time as he or she has received an approved copy of a permit to build an access road or driveway as required by the Town of Windham – Town Ordinance for the Construction of Roads. This section shall only apply to those applications wherein construction of a driveway or access road is proposed.

ARTICLE V STANDARDS FOR SPECIAL USES

Section 501 CAMPGROUND

No person or persons shall construct or operate a campground for tents, travel trailers or recreational vehicles without first obtaining Conditional Use approval from the Board.

In addition to the above requirements, the following specific standards must be satisfied.

1. An individual access driveway and parking area, suitably surfaced, shall be provided for each campground.
2. Each site shall be at least 2,500 square feet in area. Each travel trailer and recreational vehicle site shall have a compacted gravel surface at least twenty-five (25) feet in width.
3. Each site shall be located in a clean, dry and well-drained area.
4. There shall be an undeveloped area of less than 100 feet in depth between all camping sites and the travel portion of any adjacent highway and other boundaries of the campground. These areas shall be landscaped with existing or planted trees or other plant materials for screening purposes.

5. Each site shall have access to water and sewage disposal in compliance with and approved by the State Department of Environmental Conservation.
6. All roads within the campground shall be of sufficient grade and alignment so as to permit safe traffic flow at all times. The design of roads shall be adequate to provide for the utilization of police, fire, ambulance, and other emergency vehicles. Proper traffic signals shall be established.
7. All campgrounds shall keep at least 25% of total ground area for recreation or open space.
8. Limited to one hundred (100) sites.

Section 502 HOME INDUSTRY

In addition to all other applicable regulations, Home Industry as defined in Appendix A of this bylaw shall comply with the following:

1. Home industry shall be carried on by members of the family in a minor portion of the dwelling or in an accessory building.
2. Two (2) on-premise employees who are not part of the family are permitted.
3. Disturbances such as noise, vibration, smoke, dust, odors, heat, glare, and electrical interference or line voltage variations shall not be produced at a level which is seriously objectionable or out of character with the neighborhood.
4. Exterior signs in excess of four (4) square feet, exterior storage of materials, exterior indication of the home industry or variation from the residential character of the building, and on-street parking shall not be permitted.

Section 503 TIMBER HARVESTING

To minimize environmental impact, improve wildlife habitat and maintain the productivity of the land:

1. Trees shall not be felled into or across streams. Logging debris dropped into streams and ponds shall be promptly removed.
2. Slash will not be left within 50 feet of property lines, any town road, established recreation trail, pond, lake or stream and 100 feet from buildings.
3. Commercial loggers must post a bond of \$500.00 refundable when the fire warden approves the site.

ARTICLE VI: PLANNED RESIDENTIAL AND UNIT DEVELOPMENT

Section 600 PLANNED DEVELOPMENTS

Section 600 A. Planned Residential Development (PRD)

An area of land of three (3) or more acres to create three (3) or more dwelling units developed as a single entity, the plan for which does not correspond in lot size, bulk, or type of dwelling, density, lot coverage, and required open space to the regulations established in any one or more districts created in this Zoning Regulation, shall be reviewed as a Planned Residential Development (PRD).

Section 600 B. Planned Unit Development (PUD)

An area of land of three (3) or more acres to create three (3) or more mixed use units including commercial or industrial and including but not requiring residential in the mix as a single entity, the plan for which does not correspond in lot size, bulk, or type of dwelling, density, lot coverage, and required open space to the regulations established in any one or more districts created in this Zoning Regulation, shall be reviewed as a Planned Unit Development (PUD).

Section 601 INTENT

The purpose of a PRD and PUD are to provide for a mixture and variety of housing types at different concentrations; to provide economies and efficiencies in street utility and public facility construction and maintenance, to provide and enhance allocation and distribution and maintenance of areas designed as common open space; and to provide a

mix of development for existing lots which because of physical, topographical, or geological conditions could not otherwise be developed.

Section 602 DEVELOPMENT REVIEW REQUIREMENTS

Section 602 A. Development Review

Applications for a PRD or PUD shall be reviewed as a conditional use under Section 203 of this Zoning Bylaw.

Section 602 B. Application Requirements

The application for a PUD (& PRD?) must include the following:

1. Application materials required for Site Plan Review set forth in Section 305.
2. A narrative Master Plan that includes a brief summary of the project and how it meets the standards set forth in this Article. The master plan shall describe the nature of all proposed modifications or changes of existing land use and development regulations, including standards for the density, lot size, and setbacks.

Section 603 DIMENSIONAL REGULATIONS

Upon approval of a site plan by the Planning Commission, the lot area, frontage and yard requirements in the Zoning Regulations may be waived for a PRD or PUD.

Section 604 GENERAL AND SPECIFIC REGULATIONS

A. General Requirements

1. Uses shall be limited to those permitted and/or conditional uses in the location in which the PRD or PUD is proposed. Approval granted by the Zoning Board of Adjustment under this Section for a PRD or PUD involving one or more conditional use under Section 201 shall not exempt the proposed development from such review. The Board may, however, conduct the conditional use review concurrently with PUD
2. Density and building area coverage requirements of the regulations are met. Deviation from the required amount of usable open space per dwelling unit may be allowed, provided such deviation shall be adjusted for in other sections of the PRD or PUD.
3. The minimum setbacks required shall apply to the periphery of the project.
4. All other zoning requirements except for those that specifically may be waived or varied under the provisions of this section shall be met.
5. The proposed PRD or PUD shall be in harmony with the Town Plan and shall be in conformance with the requirements of Section 604, Site Plan Approval.

B. Specific Requirements

1. Uses shall be detached single-family dwellings or 2 family dwellings.
2. A minimum density of one acre per dwelling shall be achieved.
3. Building heights should on the average be limited to tree-top-level, but in no case shall they exceed 35 feet.
4. After development of all uses and structure for which conditional use approval has been granted no further development, subdivision or other division of land shall take place on site.
5. A Traffic Impact Analysis shall be submitted as part of the application for approval of a PRD. Based on the findings of such analysis the Town may require the developer to improve existing town roads as set forth in the "Town Ordinance for the Construction of Roads."
6. Roads and utilities within the development shall be maintained by the developer and/or the owners and shall not be the responsibility of the Town.
7. The development shall conform to all federal, state and local building, fire protection and health regulations.
8. The application shall include plans for sewage disposal and water supply.

Section 605 ADMINSTRATIVE CONTROLS

The following administrative procedures and controls shall be required in presenting a PRD or PUD Plan:

1. Open space or common land shall be assured and maintained in accordance with the procedures prescribed by the Planning Commission.
2. The Planning Commission may require that a park or parks be suitably located for playground or other recreational purposes. If the area so required does not exceed more than 15% of the plat area, a payment to the municipality of an amount determined by the legislative body may be required.
3. The development plan shall specify reasonable periods within which development of each section of the PRD or PUD may be started and shall be completed. No building designed or intended for business use, except a Community Center and development office, shall be constructed in any PRD.

Section 606 OPEN SPACE

If the application of this procedure results in land available for park(s), other recreation facilities, open space, school sites or other municipal purposes, the Planning Commission, as a condition of its approval, may establish such conditions on the ownership, use and maintenance of such lands as it deems necessary to assure preservation and use of such lands for their intended purpose.

ARTICLE VII: INUNDATION HAZARD AREA REGULATIONS

Section 701 STATUTORY AUTHORIZATION AND EFFECT

In accordance with 10 V.S.A. Chapter 32, and V.S.A. Chapter 117 §4424, §4411 and §4414, there is hereby established a bylaw for areas at risk of flood damage in the Town of Windham, Vermont. Except as additionally described below, all administrative procedures follow municipal procedures under 24 VSA Chapter 117.

Section 702 STATEMENT OF PURPOSE

It is the purpose of this bylaw to:

- A. Implement the goals, policies, and recommendations in the current municipal plan;
- B. Avoid and minimize the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flooding;
- C. Ensure that the selection, design, creation, and use of development is reasonably safe and accomplished in a manner that is consistent with public wellbeing, does not impair flood plain services or the stream corridor,
- D. Manage the flood hazard area designated pursuant to 10 V.S.A. Chapter 32 § 753, the municipal hazard mitigation plan; and make the Town of Windham, its citizens, and businesses eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds as may be available.

Section 703 OTHER PROVISIONS

A. Precedence of Bylaw

The provisions of these flood hazard bylaws shall not in any way impair or remove the necessity of compliance with any other local, state, or federal laws or regulations. Where this flood hazard regulation imposes a greater restriction the provisions here shall take precedence.

B. Validity and Severability

If any portion of this bylaw is held unconstitutional or invalid by a competent court, the remainder of this bylaw shall not be affected.

C. Warning of Disclaimer of Liability

This bylaw does not imply that land outside of the areas covered by this bylaw will be free from flood damages. This regulation shall not create liability on the part of the Town of Windham, or any municipal official or employee thereof, for any flood damages that result from reliance on this regulation, or any administrative decision lawfully made hereunder.

Section 704 LANDS TO WHICH THESE REGULATIONS APPLY

A. Regulated Flood Hazard Areas

These regulations shall apply to the Special Flood Hazard Area in and on the most current flood insurance studies and maps published by the Department of Homeland Security, Federal Emergency Management Agency, National Flood Insurance Program, as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. Chapter 32 § 753, which are hereby adopted by reference and declared to be part of these regulations.

B. Base Flood Elevations and Floodway Limits in Special Flood Hazard Areas

Where available, base flood elevations and floodway limits provided by the National Flood Insurance Program and in the Flood Insurance Study and accompanying maps shall be used to administer and enforce these regulations. In Special Flood Hazard Areas where base flood elevations and/or floodway limits have not been provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps, it is the applicant's responsibility to develop the necessary data. Where available, the applicant shall use data provided by FEMA, or State, or Federal agencies.

C. Interpretation

The information presented on any maps, or contained in any studies, adopted by reference, is presumed accurate. If uncertainty exists with respect to the boundaries of the Special Flood Hazard Area or the floodway, the location of the boundary shall be determined by the Administrative Officer (AO). If the applicant disagrees with the determination made by the AO, a Letter of Map Amendment from FEMA shall *constitute proof*.

Section 705 SUMMARY TABLE: DEVELOPMENT REVIEW IN HAZARD AREAS

The hazard areas are not appropriate sites for new structures nor for development that increases the elevation of the base flood.

#	Activity	Hazard Zone	
		Special Flood Hazard Area	Floodway
	P Permitted C Conditional Use Review X Prohibited A Exempted		
1	New Structures	X	X
2	Storage	X	X
3	Improvements to Existing Structures	P, C	C
4	Small Accessory Structures	P	X
5	At Grade Parking	P	C
6	Replacement water supply or septic systems	C	C
8	Fill as needed to elevate existing structures	C	C
9	Fill	X	X
12	Grading	C	C
13	Road maintenance	A	A
14	Road improvements	C	C
15	Bridges and culverts	C	C
16	Channel management	C	C
17	Recreational vehicles	P	P
18	Open space, recreation	A	A
19	Forestry	A	A
20	Agriculture	A	A

Section 706 DEVELOPMENT REVIEW IN HAZARD AREAS

A. Permit

A permit is required from the Administrative Officer for all development in all areas defined in Section IV. Development that requires conditional use approval, non-conforming use approval, or a variance from the Appropriate Municipal Panel (AMP) under these flood hazard regulations, must have such approvals prior to the issuance of a permit by the AO. Any development subject to municipal jurisdiction in the designated hazard areas shall meet the criteria in Section VI and VII. Any permit issued will require that all other necessary permits from State or Federal Agencies have been received before work may begin.¹

B. Permitted Development

For the purposes of review under these regulations, the following development activities in the Special Flood Hazard Area where outside of the Floodway, and meeting the Development Standards in Section VII, require only an administrative permit from the AO:

1. Non-substantial improvements;
2. Accessory structures;
3. Building utilities;
4. At-grade parking for existing buildings; and,
5. Recreational vehicles.

C. Prohibited Development in Special Flood Hazard Area

1. New residential or non-residential structures (including the placement of manufactured homes and critical facilities);
2. Storage or junk yards;
3. New fill except as necessary to elevate structures above the base flood elevation;
4. Accessory structures in the floodway; and,

5. All development not exempted, permitted, or conditionally permitted.

D. Conditional Use Review

Conditional use review and approval by the AMP, is required prior to the issuance of a permit by the AO for proposed development within the following:

1. Substantial improvement, elevation, relocation, or flood proofing of existing structures;
2. New or replacement storage tanks for existing structures;
3. Improvements to existing structures in the floodway;
4. Grading, excavation; or the creation of a pond;
5. Improvements to existing roads;
6. Bridges, culverts, channel management activities, or public projects which are functionally dependent on stream access or stream crossing;
7. Public utilities;

E. Exempted Activities

The following are exempt from regulation under this bylaw:

1. The removal of a building or other structure in whole or in part;
2. Maintenance of existing roads and storm water drainage;
3. Silvicultural (forestry) activities conducted in accordance with the Vermont Department of Forests and Parks Acceptable Management Practices; and,
4. Agricultural activities conducted in accordance with the Vermont Department of Agriculture's Accepted Agricultural Practices (AAP). Prior to the construction of farm structures the farmer must notify the AO in writing of the proposed activity. The notice must contain a sketch of the proposed structure including setbacks.

F. Variances

Variances may be granted in writing by the AMP only in accordance with all the criteria in 24 V.S.A. § 4469, § 4424 (E), and 44 CFR Section 60.6ⁱⁱ, after a public hearing noticed as described in Section VIII.

Any variance issued in the Special Flood Hazard Area will not increase flood heights, and will inform the applicant in writing over the signature of a community official that the issuance of a variance to construct a structure below the base flood elevation increases risk to life and property and will result in increased flood insurance premiums up to amounts as high as \$25 for \$100 of coverage. Such notification shall be maintained with a record of all variance actions.ⁱⁱⁱ A copy of such a variance shall be affixed to the deed of the property on file in the municipal clerk's office.

Section 707 DEVELOPMENT STANDARDS

The criteria below are the minimum standards for development in the flood hazard areas. Where more than one zone or area is involved, the most restrictive standard shall take precedence.

A. Special Flood Hazard Area

1. *All development* shall be:
 - a. Reasonably safe from flooding;
 - b. Designed, operated, maintained, modified, and adequately anchored to prevent flotation, collapse, release, or lateral movement of the structure;
 - c. Constructed with materials resistant to flood damage;
 - d. Constructed by methods and practices that minimize flood damage;

- e. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
 - f. Adequately drained to reduce exposure to flood hazards;
 - g. Located so as to minimize conflict with changes in channel location over time and the need to intervene with such changes; and,
 - h. Required to locate any fuel storage tanks (as needed to serve an existing building in the Special Flood Hazard Zone) a minimum of one foot above the base flood elevation and be securely anchored to prevent flotation; or storage tanks may be placed underground, if securely anchored as certified by a qualified professional.
2. In Zones AE, AH, and A1 – A30 *where base flood elevations and/or floodway limits have not been determined*, development shall not be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated encroachment, will not increase the base flood elevation more than 1.00 foot ^{iv} at any point within the community. The demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and certified by a registered professional engineer.
 3. *Structures to be substantially improved* in Zones A, A1-30, AE, and AH shall be located such that the lowest floor is at least one foot ^v above base flood elevation, this must be documented, in as-built condition, with a FEMA Elevation Certificate;
 4. New *subdivision developments*, planned unit developments, or manufactured home parks of more than 5 acres or 50 lots, whichever is less, shall:
 - a. Include base flood elevation data; ^{vi}
 - b. Minimize flood damage within the flood-prone area;
 - c. Provide adequate drainage to reduce exposure to flood hazards; and
 - d. Locate and construct utilities and facilities, such as sewer, gas, electrical, and water systems, so as to minimize or eliminate flood damage.
 5. *Manufactured homes to be replaced or substantially improved* that are:
 - a. Located in a new manufactured home park or subdivision, outside of a manufactured home park or subdivision, in an expansion to an existing manufactured home park or subdivision, or in a manufactured home park or subdivision which has incurred substantial damage from a flood shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to at least one foot ^{vii} above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement during the occurrence of the base flood.
 - b. Located in an existing manufactured home park (created before the FIRM), where elevating a replacement home to or above base flood elevation is *not possible*, the lowest floor shall be supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 48 inches ^{viii} in height above grade and be securely anchored to resist flotation, collapse, and lateral movement.
 6. *Non-residential structures to be substantially improved* shall:
 - a. Meet the standards in VII A 3, or as an alternative to VII A 3, such structures may:
 - b. Have the lowest floor, including basement, together with attendant utility and sanitary facilities be designed so that two feet ^{ix} above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; A permit for flood proofing shall not be issued until a registered professional engineer or architect has reviewed the structural design, specifications and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.
 7. *Fully enclosed areas below the lowest floor*, in buildings being substantially improved, shall:

- a. Be solely used for parking of vehicles, storage, or building access, and such a condition shall clearly be stated on any permits; and,
 - b. Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs must be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria: A minimum of two openings on two walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
8. *Recreational vehicles* on sites within special flood hazard areas shall be:
 - a. On the site for fewer than 180 consecutive days and be fully licensed and ready for highway use;^x or
 - b. Permitted in accordance with the elevation and anchoring requirements for “manufactured homes” in Section VII A 5.
9. A *small accessory* structure of 500 square feet or less^{xi} that represents a minimal investment need not be elevated to the base flood elevation in this area, provided the structure:
 - a. Shall be used only for parking or storage of non-hazardous material;
 - b. Shall be designed to have low flood damage potential;
 - c. Shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
 - d. Shall provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters;
 - e. Shall be firmly anchored to prevent flotation; and,
 - f. Shall have service facilities such as electrical and heating equipment, elevated or flood proofed to at least one foot above base flood elevation.
10. *Replacement water supply systems* shall be designed to minimize or eliminate infiltration of flood waters into the systems.^{xii}
11. *Replacement sanitary sewage systems* shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
12. *Replacement on-site waste disposal systems* shall be located to avoid impairment to them or contamination from them during flooding.
13. *The flood carrying and sediment transport capacity*^{xiii} within the altered or relocated portion of any watercourse shall be maintained, and any alteration or relocation shall not result in any decrease of stream stability;
14. *Bridges and culverts*, which by their nature must be placed in or over the stream, must have a stream alteration permit from the Agency of Natural Resources.
15. *Existing buildings to be substantially improved in Zone AO* shall have the lowest floor, including basement, elevated above the highest adjacent grade, at least as high as the depth number specified on the community’s FIRM, or at least two feet if no depth number is specified.^{xiv}
16. Structures to be substantially improved *must be accessible by dry land* access outside the special flood hazard area.

B. Floodway Areas^{xv}

1. Encroachments or development above grade and below the elevation of the floodway are prohibited unless hydrologic and hydraulic analyses are performed in accordance with standard engineering practice, by a registered professional engineer, certifying that the proposed development will:
 - a. Not result in any increase in flood levels (0.00 feet) during the occurrence of the base flood;
 - b. Not increase any risk to surrounding properties, facilities, or structures from erosion or flooding.
2. Public utilities may be placed underground, and the analyses may be waived, where a registered professional engineer certifies that there will be no change in grade and the utilities will be adequately protected from scour.

Section 708 ADMINISTRATION

A. Application Submission Requirements

1. Applications for development shall include:
 - a. The name and contact information for the owner of the property, including any agents authorized to act on their behalf;
 - b. A thorough description of the proposed development;
 - c. General location map including the address of the property, tax parcel ID, relative locations of the existing development and the nearest public road;
 - d. Where applicable, a site plan that depicts the proposed development, all water bodies, Special Flood Hazard Areas, floodways, any existing and proposed drainage, any proposed fill, and pre and post development grades, and the elevation of the proposed lowest floor, as referenced to the same vertical datum as the elevation on the current Flood Insurance Rate Maps;
 - e. A Vermont Agency of Natural Resources Project Review Sheet for the proposal. The Project Review Sheet shall identify all State and Federal agencies from which permit approval is required for the proposal, and shall be filed as a required attachment to the municipal permit application. The identified permits, or letters indicating that such permits are not required, shall be submitted to the AO and attached to the permit before work can begin; ^{xvi}
 - f. If this is an appeal for a variance, then the appeal application must include responses to the criteria set forth in 24 VSA §4469, §4424 (E), and CFR 60.6
 - g. 3 copies ^{xvii} of the application, including one to be forwarded to the State National Flood Insurance Program Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Program; and,
 - h. The appropriate fee as determined by the Selectboard.
2. For applicants seeking conditional use approval, approval under nonconforming structures and uses, or a variance, the following also need to be provided:
 - a. A list of abutters names and mailing addresses;
 - b. A statement of purpose and need for the proposed development;
 - c. A description of the alternatives considered to the proposed development, including alternate locations on site, especially outside of the hazard area;
 - d. Such pertinent information as identified in the regulations or deemed necessary by the Board for determining the suitability of the proposed development for the site;
 - e. Copies of the application sufficient for the file, the Board members, the State National Flood Insurance Program Coordinator, and additional parties such as the VT DEC Stream Alteration Engineer and adjacent communities if affected under Section 708 B. 2.; and,
 - f. Any additional fees as required by the Selectboard.

B. Referrals

1. Upon receipt of a complete application for a substantial improvement or new construction the AO shall submit a copy of the application and supporting information to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, in accordance with 24 V.S.A. § 4424. A permit may be issued only following receipt of comments from the Agency, or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner.

2. If the applicant is seeking a permit for the alteration or relocation of a watercourse, copies of the application shall also be submitted to the adjacent communities, the Stream Alteration Engineer at the Vermont Agency of Natural Resources, and the Army Corps of Engineers. Copies of such notice shall be provided to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation. A permit may be issued only following receipt of comments from the Vermont Agency of Natural Resources, or the expiration of 30 days from the date the application was mailed to the Vermont Agency of Natural Resources, whichever is sooner.

C. Public Notice

1. Prior to the issuance of a permit, proposals needing conditional use review, nonconforming structures and uses review, or approval for a variance, must have a warned public hearing. A copy of the application shall be submitted to VT ANR at least 30 days prior to the date of the public hearing. Public notice of the hearing shall be provided at least 15 days notice before the date of the hearing by all the following:
 - a. Publication of the date, place, and purpose of the hearing in the newspaper.
 - b. Posting of the same information in three or more public places within the municipality including posting within view from the public right-of-way nearest to the property for which an application is made; and,
 - c. Written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to any public right-of-way, as well as to all interested persons (see Section XI). The notification shall include a description of the proposed project and shall be accompanied by information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal.
 - d. For hearings on subdivision plats located within 500 feet of a municipal boundary, written notification to the clerk of the adjoining municipality.
2. Public notice of all other types of development review hearings, including site plan review shall be given not less than seven (7) days prior to the date of the public hearing, and shall at minimum include the following:
 - a. Posting of the date, place and purpose of the hearing in three (3) or more public places within the municipality; and
 - b. Written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way, which includes a description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding, is a prerequisite to the right to take any subsequent appeal.
3. The applicant shall bear the cost of the public warning and notification of adjoining landowners.
4. No defect in the form or substance of any required public notice under this section shall invalidate the action of the Board where reasonable efforts have been made to provide adequate posting and notice. However, the action shall be invalid when the defective posting or notice was materially misleading in content. If an action is ruled to be invalid by the Board of Adjustment or the Environmental Court, the action shall be remanded to the Board to provide new posting and notice, hold a new hearing, and take a new action.

D. Decisions

1. The Administrative Officer shall act within 30 days to approve or deny the application, or refer the application to the Board. Applications that cannot be approved in compliance with this bylaw shall be denied. The decision shall be issued in writing and include a statement of the factual bases on which the conclusions were made. Decisions of the administrative officer can be appealed as below. If the AO fails to act within the 30-day period, a permit shall be deemed issued on the 31st day.
2. The Board shall consider comments from the NFIP Coordinator at ANR. The Board may recess the proceedings on any application pending submission of additional information. The Board should close

the hearing promptly after all parties have submitted the requested information, adjourn the hearing, and may deliberate prior to issuing its decision.

3. Decisions by the Board shall include a statement of the factual basis on which the Board has made its conclusions regarding how the proposed development will meet the development standards, and a statement of the conclusions. In rendering a decision in favor of the applicant, the Board may attach additional reasonable conditions and safeguards as it deems necessary to implement the purposes of this bylaw and the municipal plan then in effect. Board decisions shall be conditioned to assure that all necessary permits must be also received from those government agencies from which approval is required by Federal, State or Municipal law for the approval to be valid. The Board may provide for the conditioning of permit issuance on the submission of a bond, escrow account, or other surety in a form acceptable to the legislative body of the municipality to assure one or more of the following: the completion of the project, adequate stabilization, or protection of public facilities that may be affected by a project.
4. Decisions of the Board shall be issued in writing within 45 days after the adjournment of the final hearing. All decisions shall be sent by certified mail to the applicant, and the appellant in matters on appeal. Copies of the decision shall also be mailed to every person or body appearing and having been heard at the hearing. The decision will include a notice that an Interested Person may appeal the decision within 15 days.

E. Records

1. Within three days following the issuance of a permit, the Administrative Officer shall:
 - a. Deliver a copy of the permit to the Listers of the municipality; and
 - b. Post a copy of the permit in at least one public place in the municipality until the expiration of 15 days from the date of issuance of the permit.
2. Within 30 days after a municipal land use permit has been issued or within 30 days of the issuance of any notice of violation, the Administrative Officer shall:
 - a. Deliver the original or a legible copy of the permit, or notice of permit, and any approvals to the municipal clerk for recording in the land records as provided in 24 VSA, § 1154(a), and § 4449;
 - b. File a copy of the permit and any approvals in the municipal office in a location where all municipal land use permits shall be kept; and,
 - c. The Administrative Officer may charge the applicant for the cost of the recording fees as required by law.
3. The Administrative Officer shall properly file and maintain a record of: ^{xviii}
 - a. All permits issued in areas covered by this bylaw;
 - b. Elevation Certificates with the as-built elevation (consistent with the datum of the elevation on the current Flood Insurance Rate Maps for the community) of the lowest floor, including basement, of all new or substantially improved buildings (not including accessory buildings) in the Special Flood Hazard Area
 - c. All flood proofing and other certifications required under this regulation; and,
 - d. All decisions of the Board (including variances and violations) and all supporting findings of fact, conclusions and conditions.

F. Permit Validity

Each permit issued shall:

1. Contain a statement of the period of time within which an appeal may be taken
2. Require posting of a notice of permit on a form prescribed by the municipality within view from the public right-of-way most nearly adjacent to the subject property until the time for appeal in has passed.
3. Shall not take effect until 15 days after issuance, or in the event that a notice of appeal a decision by the Administrative Officer is properly filed, no such permit shall take effect until adjudication of that appeal by the Board is complete and the time for taking an appeal to the environmental court has passed without an appeal being taken. If an appeal is taken to the environmental court, the permit shall not take effect until adjudication by the environmental court; and,
4. Be valid for a period of two years.

G. Appeals

An interested person as defined in Section XI may appeal any decision or act taken by the Administrative Officer by filing a notice of appeal with the secretary of the Board, or with the municipal clerk if no such secretary has been elected. This notice of appeal must be filed within 15 days of the date of that decision or act, and a copy of the notice of appeal shall also be filed with the Administrative Officer.

A notice of appeal shall be in writing and shall include the name and address of the appellant, a brief description of the property with respect to which the appeal is taken, a reference to the regulatory provisions applicable to that appeal, the relief requested by the appellant, and the alleged grounds why the requested relief is believed proper under the circumstances.

The Board shall set a date and place for a public hearing of an appeal under this chapter that shall be within 60 days of the filing of the notice of appeal. The Board shall give public notice of the hearing as specified for conditional approval. Any person or body empowered to take an appeal with respect to the property at issue may appear and be heard in person or be represented by an agent or attorney at the hearing. Any hearing held under this section may be adjourned by the Board from time to time; provided, however, that the date and place of the adjourned hearing shall be announced at the hearing. All hearings under this section shall be open to the public and the rules of evidence applicable at these hearings shall be the same as the rules of evidence applicable in contested cases in hearings before administrative agencies as set forth in 3 V.S.A. § 810.

Decisions of the Board may be appealed under §4469 in request for a Variance. Within 30 days of a decision by the Board, under §4471 an Interested Person who has participated in the municipal regulatory proceeding may appeal to the Vermont Environmental Court.

Section 709 CERTIFICATE OF CONFORMANCE

In accordance with Chapter 117 §4449, it shall be unlawful to use or occupy, or permit the use or occupancy of any land or structure, or part thereof, created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure within Special Flood Hazard Area until a Certificate of Conformance is issued therefore by the Administrative Officer, stating that the proposed use of the structure or land conforms to the requirements of these bylaws. A Certificate of Conformance is not required for structures that were built in compliance with the bylaws at the time of construction and have not been improved since the adoption of this bylaw. Within 14 days of the receipt of the application for a Certificate of Conformance, the AO shall inspect the premises to ensure that all permits identified on the Project Review Sheet have been acquired and all that all work has been completed in conformance with the zoning permit and associated approvals. If the AO fails to grant or deny the Certificate of Conformance within 14 days of the submission of the application, the certificate shall be deemed issued on the 15th day.

Section 710 ENFORCEMENT AND PENALTIES

It shall be the duty of the Administrative Officer to enforce the provisions of this bylaw. Upon determination that a violation exists, the Administrative Officer shall notify the alleged offender of the violation by certified mail.

- A. The notice of enforcement shall state that:
 - 1. A violation exists;
 - 2. That the alleged offender has an opportunity to cure the violation within seven days of receipt;
 - 3. That failure to cure the violation may result in fines and/or loss of flood insurance;
 - 4. That the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days within the next succeeding 12 months; and,
 - 5. That the notice of violation may be appealed as specified under 708 G;
- B. Copies of the notice of violation will be:
 - 1. Mailed to the Vermont NFIP Coordinator and, within 30 days be
 - 2. Filed in the land use permit files; ^{and},
 - 3. Delivered to the municipal clerk for recording in the land records.

- C. After seven days, if the violation has not been remedied, in accordance with 10 VSA § 1974a, § 4451, and § 4452, any person who is found to have violated this bylaw shall be fined by the court not more than \$100.00 for each offense. No action may be brought under this section unless such notice as required in has been given as described above in this part. In default of payment of the fine, the violator shall pay double the amount of the fine. Each day that a violation is continued shall constitute a separate offense.
- D. If any appeals have been resolved, but the violation remains, the AO shall submit a declaration to the Administrator of the National Flood Insurance Program requesting a denial of flood insurance to the violator. The declaration shall consist of: (a) the name of the property owner and address or legal description of the property sufficient to confirm its identity or location, (b) a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance, (c) a clear statement that the Administrative Officer making the declaration has authority to do so and a citation to that authority, (d) evidence that the property owner has been provided notice of the violation and the prospective denial of insurance, and (e) a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.
- E. Violations of the Accepted Agricultural Practices shall be enforced under this Section as violations of this bylaw. Such violations shall also be immediately reported to the Secretary of Agriculture for enforcement under 6 V.S.A. Section 4812.

Section 711 INUNDATION HAZARD AREA REGULATIONS DEFINITIONS

“Accessory Structure” means a structure which is: 1) detached from and clearly incidental and subordinate to the principal use of or structure on a lot, 2) located on the same lot as the principal structure or use, and 3) clearly and customarily related to the principal structure or use. For residential uses these include, but may not be limited to garages, garden and tool sheds, and playhouses.

“Appropriate Municipal Panel” (AMP) means a planning commission performing development review, a board of adjustment, a development review board, or a legislative body performing development review.

“Area of Special Flood Hazard” is synonymous in meaning with the phrase “special flood hazard area” for the purposes of these regulations.

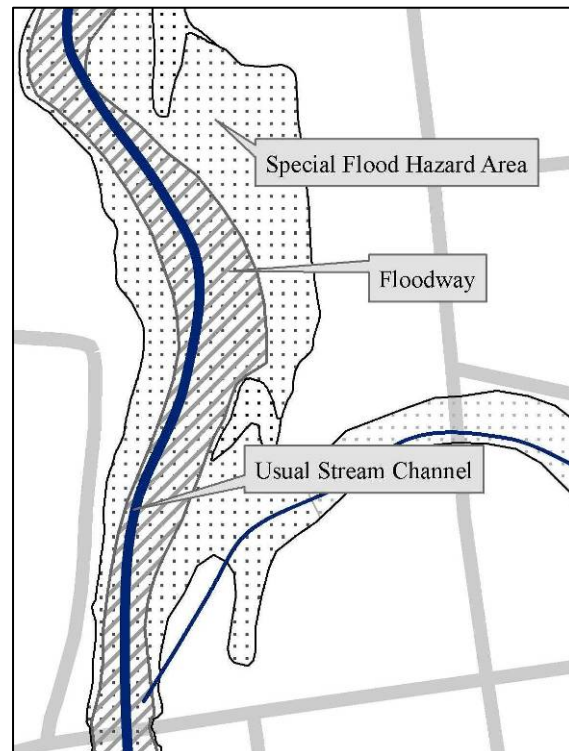
“Base Flood” means the flood having a one percent chance of being equaled or exceeded in any given year (commonly referred to as the “100-year flood”).

“Base Flood Elevation” (BFE) is the elevation of the water surface elevation resulting from a flood that has a 1 percent chance of equaling or exceeding that level in any given year. On the Flood Insurance Rate Map the elevation is usually in feet, in relation to the National Geodetic Vertical Datum of 1929, the North American Vertical Datum of 1988, or other datum referenced in the Flood Insurance Study report, or the average depth of the base flood, usually in feet, above the ground surface.

“Basement” means any area of the building having its floor elevation below ground level on all sides.

“BFE” see Base Flood Elevation

“Common plan of development” is where a structure will be refurbished over a period of time. Such work might be planned unit by unit.



“Critical facilities” - include police stations, fire and rescue facilities, hospitals, shelters, schools, nursing homes, water supply and waste treatment facilities, and other structures the community identifies as essential to the health and welfare of the population and that are especially important following a disaster. For example, the type and location of a business may raise its status to a Critical Facility, such as a grocery or gas station that survive a flood and now are the only sources for food and gas.

“Development” means any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“Existing manufactured home park or subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is *completed before the effective date of the initial floodplain management regulations* adopted by a community.

“Expansion to an existing manufactured home park or subdivision” means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

“Fill” means any placed material that changes the natural grade, increases the elevation, or diminishes the flood storage capacity at the site.

“FIRM” see Flood Insurance Rate Map

“Flood” means (a) a general and temporary condition of partial or complete inundation of normally dry land areas from: the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and mudslides which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current. (b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

“Flood Insurance Rate Map” (FIRM) means an official map of a community, on which the Federal Insurance Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community. In some communities the hazard boundaries are available in paper, pdf, or Geographic Information System formats as a Digital Flood Insurance Rate Map (DFIRM).

“Flood Insurance Study” means an examination, evaluation and determination of flood hazards and, if appropriate, the corresponding water surface elevations or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood related erosion hazards.

“Floodplain or flood-prone area” means any land area susceptible to being inundated by water from any source (see definition of “flood”).

“Flood proofing” means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point. Please note that Special Flood Hazard Areas and floodways may be shown on a separate map panels.

“Floodway, Regulatory in Town of Windham” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point. ^{xix}

“Functionally dependent use” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water.

“Historic structure” means any structure that is: (a) listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (i) by an approved state program as determined by the Secretary of the Interior or (ii) directly by the Secretary of the Interior in states without approved programs.

“Letter of Map Amendment (LOMA)” is a letter issued by the Federal Emergency Management Agency officially removing a structure or lot from the flood hazard zone based on information provided by a certified engineer or surveyor. This is used where structures or lots are located above the base flood elevation and have been inadvertently included in the mapped special flood hazard area.

“Lowest floor” means the lowest floor of the lowest enclosed area, including basement, except an unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building’s lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 CFR 60.3.

“Manufactured home (or Mobile home)” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

“Manufactured home park or subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“New construction” for regulation under this bylaw, means structures for which the *start of construction* commenced on or after the effective date of the floodplain management regulation adopted by the community and includes any subsequent improvements to such structures.

“New manufactured home park or subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is *completed on or after the effective date of the floodplain management regulations* adopted by a community.

“Non-residential” includes, but is not limited to: small business concerns, churches, schools, nursing homes, farm buildings (including grain bins and silos), pool houses, clubhouses, recreational buildings, government buildings, mercantile structures, agricultural and industrial structures, and warehouses.

“Recreational vehicle” means a vehicle which is: (a) Built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) Designed to be self-propelled or permanently towable by a light duty truck; and (d) Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

“Special Flood Hazard Area” is the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. For purposes of these regulations, the term “area of special flood hazard” is synonymous in meaning with the phrase “special flood hazard area”. This area is usually labeled Zone A, AO, AH, AE, or A1-30

in the most current flood insurance studies and on the maps published by the Federal Emergency Management Agency. Maps of this area are available for viewing in the municipal office or online from the FEMA Map Service Center: msc.fema.gov. Base flood elevations have not been determined in Zone A where the flood risk has been mapped by approximate methods. Base flood elevations are shown at selected intervals on maps of Special Flood Hazard Areas that are determined by detailed methods. Please note, where floodways have been determined they may be shown on separate map panels from the Flood Insurance Rate Maps.

“Start of construction” for purposes of floodplain management, determines the effective map or bylaw that regulated development in the Special Flood Hazard Area. The “start of construction” includes substantial improvement, and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footing, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, regardless whether that alteration affects the external dimensions of the building.

“Structure” means, for regulatory purposes under this bylaw, a walled and roofed building, as well as a manufactured home, and any related built systems, including gas or liquid storage tanks.

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged conditions would equal or exceed 50 percent of the market value of the structure before the damage occurred.

“Substantial improvement” means any reconstruction, rehabilitation, addition, or other improvement of a structure after the date of adoption of this bylaw, the cost of which, over three years, or over a the period of a common plan of development,^{xx} cumulatively equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either: (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specification which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (b) Any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

“Violation” means the failure of a structure or other development to be fully compliant with this bylaw. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR 60.3 is presumed to be in violation until such time as that documentation is provided.

“Walkout-on-grade basement” means a basement whose floor is at ground level on at least one side of the house, usually with a door on that side. This is considered the lowest floor as defined by these regulations.

Footnotes: footnotes for this section are found at the end of **Appendix A Definitions** at the end of the document.

Appendix A DEFINITIONS

Accessory Structure: Shed, wood storage bins, swimming pools (in ground), tennis courts, dog kennels, chick house and other structures not covered by the above.

Additions: involves expanding on the footprint of any of the following, or visibly extends the structure either vertically or horizontally.

Appurtenant (structure): appurtenant structure means a structure which is on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure

Bed and Breakfast Establishment: The renting out of not more than six (6) rooms in a residential dwelling to transient guests on a day-to-day basis, whereby breakfast is served to those guests. Bed and breakfast facilities shall be operated under a license issued by the Department of Labor and Industry or the Department of Health. Cooking facilities shall not be provided in the individual guestrooms.

Campground: A public area usually associated with the rental of sites to provide for the temporary space for erecting tents, travel trailers and such. Other amenities may be included such as showers, toilets, etc.

Commercial Sawmill: A commercial establishment used for the sawing of logs into dimensional lumber.

Dwelling Unit: A room or rooms connected together containing cooking, sanitary and sleeping facilities that constitute a separate, independent housekeeping establishment for residents. It shall include prefabricated modular units and mobile homes, as well as recreational vehicles, which remain on a parcel for more than 90 days within any consecutive 12-month period. It shall not include a motel, hotel, boarding house, tourist home, camps or similar structures.

Dwelling, Single-Family: dwelling unit occupied by one family.

Dwelling, Two-Family: Two dwelling units located in a single building, each occupied by families living independently of one another. At a minimum, units in two-family dwelling must be attached by a common vertical wall or floor.

Extraction of Minerals (Loam, Soil, Sand, Stone, Cinders, or Gravel): The extraction and processing of soil, sand, gravel or other geological materials. These activities usually involve heavy equipment.

Fences (See walls): A structure usually made of wood, metal or plastic to define a boundary or to separate areas. Type of fences: rail, stockade, board and batten, etc.

Fill: Includes Loam, Soil, Rock, Stone, Gravel, Sand, and Cinders.

Group Home: Any residential facility operating under a license or registration granted or recognized by a state agency, that serves not more than eight unrelated persons, who have a handicap or disability as defined in 9 V.S.A. § 4501, and who live together as a single housekeeping unit. In addition to room, board and supervision, residents of a group home may receive other services at the group home meeting their health, developmental or educational needs.

Home Industry: A light industry carried on by members of a family in their minor portion of the dwelling or in an accessory building. Two (2) on-premise employees who are not part of the family are permitted.

Inn: A residential dwelling in design used for commercial purposes wherein the patronage is of a transitory nature, the guests being entertained from day to day. Such use must include food service for guests within the structure and may include a restaurant with or without a lounge.

Interested Persons: The definition of an interested person under Section 4465(b) of the Act includes the following:

1. a person owning title to property, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by a bylaw, who alleges that the bylaw imposes on the property

unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case;

2. the Town of Windham or any adjoining municipality;
3. a person owning or occupying property in the immediate neighborhood of a property which is the subject of a decision or act taken under these regulations, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes or terms of the plan or bylaw of that municipality;
4. any ten (10) voters or property owners within the municipality who, by signed petition to the Board of Adjustment allege that any relief requested by a person under this section, if granted, will not be in compliance with the policies, purposes or terms of the plan or regulations of the municipality; and
5. any department or administrative subdivision of the state owning property or any interest therein within the municipality or adjoining municipality, and the Vermont Agency of Commerce and Community Development.

Land Development: The division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation, or landfill, and any change in the use of any building or other structure, or land, or extension of use of land. (24 V.S.A §4303(10))

Light Industry: Industrial activities include those activities primarily concerned with the enclosed manufacturing, processing, or wholesale selling or warehousing of goods.

Mobile Home: A prefabricated structure which is built on a permanent chassis and designed to be used as a dwelling unit, with or without a permanent foundation, includes plumbing, heating, cooling, and electrical systems, and is:

- transportable in one or more sections; and
- at least eight feet wide or 40 feet long or when erected has at least 320 square feet or if the structure was constructed prior to June 15, 1976, at least eight feet wide or 32 feet long; or
- any structure that meets all the requirements of this subdivision except for size and for which the manufacturer voluntarily files a certification required by the U.S. Department of Housing and Urban Development and complies with the standards established under Title 42 of the U.S. Code. 10 V.S.A. § 6201(1).

Mobile Home Park: Any parcel of land under single or common ownership or control which contains, or is designed, laid out or adapted to accommodate, more than two mobile homes. Nothing herein shall be construed to apply to premises used solely for storage or display of mobile homes. Mobile Home Park does not mean any parcel of land under the ownership of an agricultural employer who may provide up to four mobile homes used by full-time workers or employees of the agricultural employer as a benefit or condition of employment or any parcel of land used solely on a seasonal basis for vacation or recreational mobile homes. 10 V.S.A. § 6201(2).

Modification(s): Alteration of interior to finish and/or upgrade previously unfinished areas (i.e., attic space, garage area, basement, barns, etc.). Does not add to outside footprint of structure.

Modular of Manufactured Home: A modular home or manufactured home is that constructed offsite in two or more sections and transported to and permanently assembled on the site is not considered a mobile home.

Non-Complying Structure/Non-Conforming Use: See Section 205

Professional Office: The office of a member of a recognized profession maintained for the conduct of that profession, containing up to two thousand two hundred (2200) square feet of space and adequate parking.

Home Professional Office: A home-based business within a minor portion of a dwelling and consisting of the office of a practitioner of a recognized profession; the practitioner must also reside within the dwelling within which the office located. A Home Professional Office differs from a Home Industry or Home Occupation in that traffic generated by customers of clients is anticipated on a regular basis.

Planned Residential Development (PRD): An area of land to be developed as a single entity for a number of dwelling units.

Planned Unit Development (PUD): An area of land to be developed as a single entity for a mixed use including industrial, and/or commercial, and/or residential.

Quarry: A facility for the removal of minerals from bedrock. May be open pit or tunnel style.

Recreational Facilities, Indoor: Includes an indoor bowling alley, theater, table tennis facility, pool hall, skating rink, gymnasium, swimming pool or similar place of indoor recreation.

Recreational Facilities, Outdoor: Includes a trap, skeet, shooting range and/or archery range, golf course, swimming pool, amusement park, outdoor concert area, tennis court, skiing facility or similar place of outdoor recreation. Limited Outdoor Recreation includes such facilities as trap, skeet, shooting range and/or archery range, and cross-country skiing center, hiking, picnicking and other similar, low-intensity recreational uses.

Residential Care Home (Statutory Definition): A place, however named, excluding a licensed foster home, which provides, for profit or otherwise, room, board and personal care to three or more residents unrelated to the home operator. 33 V.S.A. § 7102(1).

Restaurant (With or Without Lounge): A structure for public eating in which the primary business is the preparation and serving of food and drink for consumption on the premises. The serving of liquor will require a Liquor Control Board permit.

Restoration: Involves the reconstruction of major elements of the structure such as foundations, walls, siding, roof, chimneys, heating systems, fireplaces, plumbing, kitchens, etc. Does not add to the footprint of the original structure.

Retail Store: Establishment engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods containing up to two thousand (2000) square feet of space and parking for up to ten (10) cars (on-street parking is not permitted). Exterior areas for storage of materials are subject to screening. Generally, these establishments buy and receive as well as sell merchandise.

Structure: Any feature, which has been or intends to be added to a site such as barns, house, camps, sheds, TV antennas, chicken coops, etc. A complete list is contained in The Town Zoning Application.

Wall(s) (see Fences): A structure usually made of stone or other materials, which define a boundary, or used to retain dirt as on a sloping terrain, or as used in gardens.

Footnotes for ARTICLE VII: INUNDATION HAZARD AREA REGULATIONS

ⁱ To participate in the National Flood Insurance Program (NFIP), the Code of Federal Regulations requires that communities assure that all other permits have been secured. 44 CFR 60.3 (a) (2)

ⁱⁱ Required for NFIP, 44 CFR Section 60.6

ⁱⁱⁱ Required for NFIP, 44 CFR Section 60.6 (a) (5)

^{iv} The “one foot” standard here should be the same as the standard that the community adopts in the definition of “Floodway, Regulatory in Town of Windham”.

^v Where base flood elevations are available, structures are required to be at or above the base flood elevation, 44 CFR 60.3 (c)(2)(3). Flood insurance rates are substantially reduced for structures one foot or more above base flood elevation. Over time the elevation of the base flood may increase as the stream changes position, as the floodplain is encroached upon, as development increases in the watershed, and as the climate changes. VT DEC strongly recommends that existing structures in all flood hazard areas be at least one foot above the base flood elevation.

^{vi} Required for NFIP, 44 CFR 60.3 (a)(4)

^{vii} See endnote 20 on elevation.

^{viii} The NFIP requires 36 inches of elevation or more, 44 CFR 60.3 (c) 12 (ii). This standard addresses situations where improved or replaced manufactured homes on sites in existing (pre-FIRM) manufactured home parks in the hazard area can not be elevated above the base flood elevation. VT DEC recommends elevating such structures at least 48 inches. Such elevation would only protect the structure from floods smaller and more frequent than the base flood.

^{ix} Flood proofing to two feet above BFE secures the same protection recognized by insurance ratings as elevating to one foot above BFE. http://www.fema.gov/plan/prevent/floodplain/nfipkeywords/floodproofing_certificate.shtm

^x The NFIP requires 180 days or less, 44 CFR 60.3 (c)(14)

^{xi} The community can define a low cost structure by setting a limit such as 500 ft² or less. The community can also choose to not allow such accessory structures. Flood insurance is not available for such structures.

^{xii} The NFIP requires the standards in VII A 10, 11, and 12, 44 CFR 60.3 (a) (5)(6). Under Vermont state law, permits for such activity are handled by VT DEC and are not subject to local control unless the community has been delegated authority. The NFIP requirements are met through the state permit process. If there are additional requirements regarding development (in general) in the hazard zone then any application for development must meet those standards during local review.

^{xiii} The NFIP requires that any altered watercourse maintain its capacity to carry floodwaters, 44 CFR 60.3 (b) 7. VT DEC recommends that any altered watercourse also maintain its ability to transport its sediment load and not decrease stream geomorphic stability.

^{xiv} Communities that do not have AO Zones mapped on their FIRM do not need to adopt this regulation.

^{xv} These standards are recommended by VT DEC and/or required by the NFIP. The floodway is an area reserved to convey floodwaters during the base flood. Encroachments in the floodway are prohibited if they cause any increase in the elevation of the base flood. Actual floodwater movement during the base flood may have considerable destructive velocity and power.

^{xvi} The NFIP requires assurance that all other permits have been secured. The use of the Project Review Sheet is an efficient way to meet that requirement.

^{xvii} Please specify the number of copies sufficient for the AO, AMP, and referrals.

^{xviii} The NFIP requires records to be kept of permits including variances, elevations of new or substantially improved structures, flood proofing, and related certifications. CFR 60.3 (b) (5)

^{xix} If the FIRM includes information on base flood elevations, the NFIP requires that the community adopt a regulatory floodway standard. CFR 60.3 (d) (2). This standard should allow a surcharge of one foot or less. In effect, this allows the base flood elevation to increase up to one foot, thereby increasing the risk of damage to existing properties in or near the Special Flood Hazard Area. Section VI C 3 prohibits new fill, except where necessary to safely elevate structures, as a way to minimize increases in the elevation of the base flood.

^{xx} The community has several options here. “Substantial Development” sets the threshold by which a structure in harm’s way is compelled to be prepared for the base flood. Typically the preparation is to elevate the addition or the structure. The minimum NFIP standard is to define “substantial” as an investment of 50% of the existing value of the structure, or any investment subsequent to “substantial damage” to the structure. This high (50%) threshold may not get the structure or community prepared in time for the next flood, and many improvements are phased over several years. The NFIP encourages communities to adopt stricter standards such as by defining “substantial improvement” as cumulative over a defined period of time (such as three or five years), or by way of a common plan of development. The definition here uses three years. 44 CFR 59.1.