

**Town of Grafton, VT**  
**FLOOD HAZARD PREVENTION REGULATIONS**

*Adopted – (XXXXXX, XX, XXXX)*

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**I. Statutory Authorization and Effect**

In accordance with 10 V.S.A. Chapter 32, and 24 V.S.A. Chapter 117 §4424, §4411 §4414, and 24 V.S.A. §2291(25) there is hereby established a bylaw for areas at risk of flood damage in the Town of Grafton, Vermont. Except as additionally described below, all administrative procedures follow municipal procedures under 24 VSA Chapter 117.

These regulations are for Grafton's Special Flood Hazard Areas (SFHA's) and comply with the National Flood Insurance Program (NFIP) requirements set forth in 44 CFR Parts 59 and 60.

**II. Statement of Purpose**

It is the purpose of this bylaw to:

- A. Implement the goals, policies, and recommendations in the municipal plan; and
- B. Minimize and prevent 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 and other flood related hazards; and
- C. Ensure that the design and construction of development in flood hazard areas are accomplished in a manner that minimizes or eliminates the potential for flood and loss or damage to life and property in a flood hazard area; and
- D. Manage all flood hazard areas designated pursuant to 10 V.S.A. Chapter 32 § 753; and
- E. To make the Town of Grafton and its property owners eligible for federal flood insurance and other disaster recovery and hazard mitigation funds as may be available.

**III. 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 or erosion damages. This regulation shall not create liability on the part of the Town of Grafton, or any municipal official or employee thereof, for any flood or erosion damages that result from reliance on this regulation, or any administrative decision lawfully made hereunder.

#### **IV. Lands to Which These Regulations Apply**

##### **A. Regulated Flood Hazard Area**

The Flood Insurance Study (FIS), aka Flood Elevation Study, and maps are on file in the office of the Town Administrator in the Grafton Town Offices.

##### **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 of the AO (a) an appeal may be made to the Development Review Board (DRB), which is initiated by filing an appeal with the DRB, or (b) the applicant may obtain a Letter of Map Amendment from FEMA which shall be determinative of the boundary issue.

#### **V. Development Review in Special Flood Hazard Areas**

##### **A. Permits**

A permit is required from the Administrative Officer for all development in all areas defined in Section IV as indicated below. Development that requires conditional use approval, or a variance from the Development Review Board (DRB) under these flood hazard regulations, must have such approvals prior to the issuance of a permit by the ZA. 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. There are four categories of development in the SFHA:

##### **1. 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 ZA:

- a. Non-substantial improvements and repairs costing no more than the equivalent of \$1,000 in time and materials for the year;
- b. New or replacement storage tanks for existing structures;
- c. Accessory structures, poles and fences that do not obstruct flood flows;
- d. Development related to on-site septic, water supply systems or utilities;
- e. Public utilities;
- f. At-grade parking for existing buildings; and,

- g. Channel management activities, public projects, or replacement bridges and culverts, which are functionally dependent on stream access or stream crossing and have an ANR Stream Alteration Permit;
2. Prohibited Development in Special Flood Hazard Area
- a. New residential or non-residential structures (including the placement of manufactured homes), except as allowed under Section VII(A);
  - b. Nontransient storage outside a structure;
  - c. Junk yards;
  - d. Accessory structures in the floodway;
  - e. Critical facilities are prohibited in all hazard areas including the 0.2% annual chance hazard area;
  - f. New encroachments within the regulatory floodway, except for: floodplain restoration projects, channel management activities, health and safety measures, public utilities, and minor improvements to existing structures or relating to bridges, culverts, roads; and,
  - g. All development not exempted, permitted, or conditionally permitted.

3. Conditional Use Review

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

- a. New residential or non-residential structures (including the placement of manufactured homes) as allowed for under Section VII(A);
- b. Substantial improvement, replacement, elevation, relocation, or flood proofing of existing structures;
- c. Any increase in footprint to existing structures in the special flood hazard area;
- d. Grading, excavation; or the creation of a pond;
- e. Improvements to existing roads in the special flood hazard area; and,
- f. New development in the floodway which is functionally dependent on stream access or stream crossing (floodplain restoration projects; channel management activities; health and safety measures; public utilities; additions to existing structures, or relating to new bridges, culverts, roads, or public projects).

4. Exempted Activities

The following are exempt from regulation under this bylaw:

- a. The removal of a building or other structure in whole or in part; (Please note that repair or removal of a building may affect insurance or grant eligibility)
- b. Emergency repairs and improvements costing not more than the equivalent of \$1,000 in time and materials for the year;
- c. Maintenance of existing roads and storm water drainage;
- d. Recreational vehicles (with current inspection and registration);
- e. Silvicultural (forestry) activities conducted in accordance with the Vermont Department of Forests and Parks Acceptable Management Practices; and,
- f. Agricultural activities conducted in accordance with the Vermont Department of Agriculture's Required Agricultural Practices (RAP). 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.

### Development Permits in Hazard Areas

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

#### B. Variances

Variances from the Special Flood Hazard Area regulations may be granted in writing by the DRB only in accordance with 24 V.S.A. §4469 and with all the criteria of 44 CFR 60.6 and this Subsection F. after a public hearing noticed as described in Section VIII.

##### 1. Matters to be Considered in Variance Procedures

In passing upon such applications, in addition to the requirements of said § 4469, the DRB shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:

- a. The danger that materials may be swept onto other lands to the injury of others;
- b. The danger of life and property due to flooding or erosion damage;
- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- d. The importance of the services provided by the proposed facility to the community;
- e. The necessity to the facility of a waterfront location, where applicable;
- f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- g. The compatibility of the proposed use with existing and anticipated development;
- h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- i. The safety of access to the property in times of flood for ordinary and emergency vehicles;

- j. The expected heights, velocity, duration, rate of rise, and sediment of transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

Upon consideration of factors listed above, and the purpose of this ordinance, the DRB may attach such conditions to the granting of variances as it deems necessary to further the purposes of these regulations.

## 2. Procedures for Variance Hearings

In addition to the requirements of 24 VSA § 4469, in considering variances to these flood hazard area regulations, the DRB shall follow the following procedures, which include the procedures for the granting of variances found in 44 CFR, Section 60.6, of the National Flood Insurance Program regulations:

- a. No-Impact Certification within the Floodway. Variances shall not be issued within any designated floodway if any impact in flood conditions or increase in flood levels during the base flood discharge would result. A No-Impact Certification within the Floodway from A Vermont registered professional engineer is required to satisfy this prohibition set forth in 44 CFR, Section 60.6(a)(1).
- b. Variances may be issued for new construction and substantial improvement to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the procedures set forth in (I) 2 c, d, and e herein.
- c. Variances shall only be issued when there is:
  - (1) A showing of good and sufficient cause;
  - (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and,
  - (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;
- d. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
- e. Any applicant to whom a variance is granted shall be given written notice over the signature of a Town official that:
  - (1) The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and,
  - (2) Such construction below the base flood level increases risks to life and property.
- f. A copy of the notice shall be recorded by the AO in the Office of the Town Clerk and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.
- g. The AO will maintain a record of all variance actions, including justification for their issuance, and report such variances issued in the Town's annual or biennial

report submission to the Federal Emergency Management Agency or State NFIP Coordinator upon request.

- h. Historic Structures. Variances may be issued for the repair or rehabilitation of “historic structures” upon a determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as an “historic structure” and the variance is the minimum to preserve the historic character and design of the structure.
- i. Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that
  - (1) the criteria of paragraphs (I) 2 a through d of this section, above, are met, and
  - (2) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

#### C. Nonconforming Structures and Uses

The DRB may, after public notice and hearing, approve the repair, relocation, replacement, or enlargement of a nonconforming structure within a hazard area provided that:

1. The proposed development is in compliance with all the Development Standards in Section VI of this bylaw;
2. A nonconforming structure within the Special Flood Hazard Area that is substantially damaged or destroyed may be reconstructed only in circumstances when the structure cannot be relocated to a less hazardous location on the parcel. The lowest floor of the reconstructed structure must be rebuilt to one foot or more above the base flood elevation, and the structure must otherwise comply with all requirements of the National Flood Insurance Program; and
3. An individual manufactured home lot in an existing manufactured home park that is vacated shall not be considered a discontinuance or abandonment of nonconformity. Replacement manufactured homes must be placed so as to meet the development standards in this bylaw.

## VI. Development Standards

The criteria below are the minimum standards for development in the two flood hazard areas.

#### A. Special Flood Hazard Areas

1. *All development* in the Special Flood Hazard Area 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 during the occurrence of the base flood;
  - 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. Require within flood-prone areas new and replacement any fuel storage tanks (as needed to serve an existing building in the Special Flood Hazard Zone) be located 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 at any point within the Town. The demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and certified by a licensed professional engineer.
  3. *New, substantially improved or replacement primary structures in the special flood hazard area* must not increase base flood elevations or flood velocities. Such 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 1.0 foot at any point within the Town. The demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and certified by a licensed professional engineer; or,
    - a. the proposal provides compensatory storage for floodwater (in the same reach and at elevations up to one foot above the base flood elevation) to offset the impacts of the proposal. A volumetric analysis and supporting data must be provided by the applicant and certified by a registered professional engineer; or,
    - b. The volumetric analysis will be waived for replacement or relocated primary structures where the proposal indicates no increase in the structure's footprint; or for new structures proposing a lowest floor elevation of at least two feet above the base flood elevation, an open foundation design, and no new fill.
  4. *New, substantially improved, rebuilt or relocated structures* in Zones A, A1-30, AE, and AH shall be located such that the lowest floor is at least one foot above base flood elevation, this must be documented, in as-built condition, with a FEMA Elevation Certificate;
  5. *New or substantially-improved non-residential structures* shall:
    - a. Meet the standards in VII A 4; or,
    - b. Have the lowest floor, including basement, together with attendant utility and sanitary facilities be designed so that two feet 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 licensed 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.
  6. *Fully enclosed areas below grade* on all sides (including below grade crawlspaces and basements) are prohibited.
  7. *Fully enclosed areas that are above grade*, below the lowest floor, below BFE and

subject to flooding, 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 licensed 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* must be currently registered, inspected and ready for highway use;
  9. A *small accessory* structure of 500 square feet or less that represents a minimal investment need not be elevated to the base flood elevation in this area, provided the structure is placed on the building site so as to offer the minimum resistance to the flow of floodwaters and shall meet the criteria in VII A 1 (above).
  10. *New and replacement water supply systems* shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
  11. *Fuel storage tanks* as needed to serve an existing building shall be located 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.
  12. *New and 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.
  13. *New and replacement on-site waste disposal systems* shall be located to avoid impairment to them or contamination from them during flooding.
  14. *The flood carrying and sediment transport capacity* 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;
  15. *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 where applicable.
  16. *Subdivisions and Planned Unit Developments must be accessible by dry land* access outside the special flood hazard area, and:
    - a. New subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions) that are greater than 50 lots or 5 acres, whichever is the lesser, shall include base flood elevation data.
    - b. Subdivisions (including manufactured home parks) shall be designed to assure:
      - 1) such proposals minimize flood damage within the flood-prone area,
      - 2) public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and
      - 3) adequate drainage is provided to reduce exposure to flood hazards
  17. *Existing buildings, including manufactured homes, 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 Town's FIRM, or at least two feet if no depth number is specified.

18. *All manufactured homes* to be placed in the SFHA shall be installed using methods and practices which minimize flood damage, must be elevated above the BFE, with the lowest floor at or above 1.00 foot above the BFE, and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring shall include, but are not limited to, use of over-the-top or frame ties to ground anchors, in addition to applicable State or local anchoring requirements for resisting wind forces.
19. Minor above-ground improvements outside of the floodway, such as poles or fences that minimally displace or divert floodwaters, do not require compensatory storage.

#### B. Floodway Areas

1. New encroachments within the regulatory floodway, except for minor improvements to existing structures or relating to bridges, culverts, roads, stabilization projects, access to water, public utilities or health and safety measures, are prohibited.
2. Encroachments, including fill, new construction, substantial improvements and other development are prohibited unless hydrologic and hydraulic analyses are performed in accordance with standard engineering practice, by a licensed professional engineer, certifying that the proposed development will:
  - a. Not result in any increase in flood levels (0.00 feet) in the Town during the occurrence of the base flood;
  - b. Not increase flood velocities; and
  - c. Not increase flood or erosion risk to surrounding properties, facilities, or structures.
3. Public utilities may be placed underground, and the analyses may be waived, where a licensed professional engineer certifies that there will be no change in grade and the utilities will be adequately protected from scour.

### VII. Administration

#### A. Administrative Officer

1. *Designation of the Administrative Officer for These Flood Hazard Regulations:* The Selectboard of the Town of Grafton hereby appoints the Administrative Officer to administer and implement the provisions of these regulations.
2. *Duties and Responsibilities of the Administrative Officer:* *The Administrative Officer is* hereby authorized and directed to enforce the provisions of this ordinance. The administrative officer is further authorized to render interpretations of this ordinance, which are consistent with its spirit and purpose. Duties of the Administrative Officer shall include, but not be limited to:
  - a. Review all development permits to assure that the permit requirements of this ordinance have been satisfied;
  - b. Advise applicant that additional federal or state permits may be required, and if specific federal or state permit requirements are known, require that copies of such permits be provided and maintained on file with the development permit.
  - c. Notify adjacent communities and the Stream Alteration Engineer at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section at least 30 days prior to issuing any permit for the alteration or relocation of a watercourse and copies of such notification shall be

submitted to the Administrator of the National Flood Insurance Program. Any permit issued shall assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

- d. Where base flood elevation (BFE) data is available per Subsection (C) of this section or the Flood Insurance Rate Map (FIRM), verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved buildings, in accordance with 5.1.8.
- e. Where BFE data is available per Subsection (C) or the Flood Insurance Rate Map (FIRM), verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved buildings have been flood-proofed, in accordance with Subsection (G).
- f. Review certified plans and specifications for compliance.
- g. Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (determination of the horizontal limits only, not vertical) the Administrative Officer shall make the necessary interpretation. The person contesting the location of the boundary may appeal the interpretation to the ZBA.
- h. When base flood elevation data or floodway data have not been provided in accordance with Subsection (E) of this Section, then the Administrative Officer shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer the provisions of Subsection (G).
- i. Prior to issuing a permit the Administrative Officer shall submit a copy of the application and supporting information to the State National Floodplain Insurance Program Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section 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.
- j. Provide information, testimony, or other evidence, as needed, during variance request hearings.
- k. When damage occurs to a building or buildings, the following actions shall be conducted:
  - 1) Determine whether damaged structures are located within the Special Flood Hazard Area;
  - 2) Conduct damage assessments for those damaged structures located in the SFHA; and,
  - 3) Make a reasonable attempt to notify owner(s) of damaged structure(s) of the requirement to obtain a building permit/floodplain development permit prior to repair, rehabilitation, or reconstruction.

## B. Application Submission Requirements

Applications for development shall include:

1. Where applicable, a site plan that depicts the proposed development, all water bodies, special flood hazard areas, floodways, the shortest horizontal distance from the proposed development to the top of bank of any stream, 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. In particular:

- a. All applications for permits for development in the SFHA must be heard as a conditional use by the DRB. Those hearings shall be scheduled, noticed and heard using the same procedures as other conditional uses under these Zoning Regulations.
  - b. Submission Requirements - Applications for Flood Hazard Review shall include two (2) copies of a map drawn to scale showing:
    - (a) The dimensions of the lot;
    - (b) The location of existing and proposed structures;
    - (c) The elevation above mean sea level of the lowest floor, including basement, of all new or substantially improved structures and notations as to whether or not such structures contain a basement;
    - (d) The relationship of the above to the streambank and, based upon the best information available (including Federal Insurance Administration data, if issued), the elevation and limits of the 100 year (base) flood.
  - c. If any portion of the proposed development is within a designated Floodway, the application must show that the development standards in Subsection VI A 1 and VI B of this Section are met.
  - d. If the proposed development is in the Floodway Fringe Area(s), the application must show that the development standards in Subsection VII A of this Section are met.
  - e. All permits required for the proposed development by municipal law.
2. 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.

#### C. Referrals

1. Upon receipt of a complete application for new construction, a substantial improvement or development in the floodway, the ZA 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. The Board should consider comments from the NFIP Coordinator at ANR.

#### D. Review Procedure and Decisions

1. The DRB shall review the application, comments from the State National Floodplain Insurance Program Coordinator at the Vermont Department of Environmental Conservation, River Management Section, if available, and other pertinent information available to insure compliance with the development standards set forth in Subsection (G), below.
2. The DRB shall review the application and assure that all permits required for the proposed development by municipal law have been received by the applicant.
3. If the DRB approves the proposed project, among other conditions, the DRB shall, in its decision, make the approval contingent on the applicant obtaining all permits required by federal or state agencies, as shown on the project review sheet.
4. The permit issued by the Administrative Officer after the DRB approval shall contain, among other conditions, a statement that the validity of the permit is contingent on the applicant obtaining all permits required by federal or state agencies, as shown on the project review sheet.
5. Applicant is required to obtain the legally required permits from the entity indicated on the permit review sheet, or, if it is determined by that agency that a permit is not required, a letter so stating from the agency, and as received provide copies of the permit or letter to the Administrative Officer for the applicant's file.

#### E. Records

The Administrative Officer shall properly file and maintain a record of:

1. All permits issued in areas covered by this bylaw;
2. An Elevation Certificate with the as-built elevation (consistent with the datum of the elevation on the current Flood Insurance Rate Maps for the Town) of the lowest floor, including basement, of all new, substantially improved, or flood proofed buildings (not including accessory buildings) in the Special Flood Hazard Area;
3. All flood proofing and other certifications required under this regulation;
4. All determinations related to Substantial Damage and Substantial Improvement; and,
5. All decisions of the DRB (including variances and violations) with the supporting findings of fact, conclusions and conditions.

### **VIII. Certificate of Occupancy**

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 occupancy 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 occupancy 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 occupancy, the ZA 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 ZA fails to grant or deny the certificate of occupancy within 14 days of the submission of the application, the certificate shall be deemed issued on the 15<sup>th</sup> day. If a Certificate of Occupancy cannot be issued, notice will be sent to the owner and copied to the lender.

### **IX. Enforcement and Penalties**

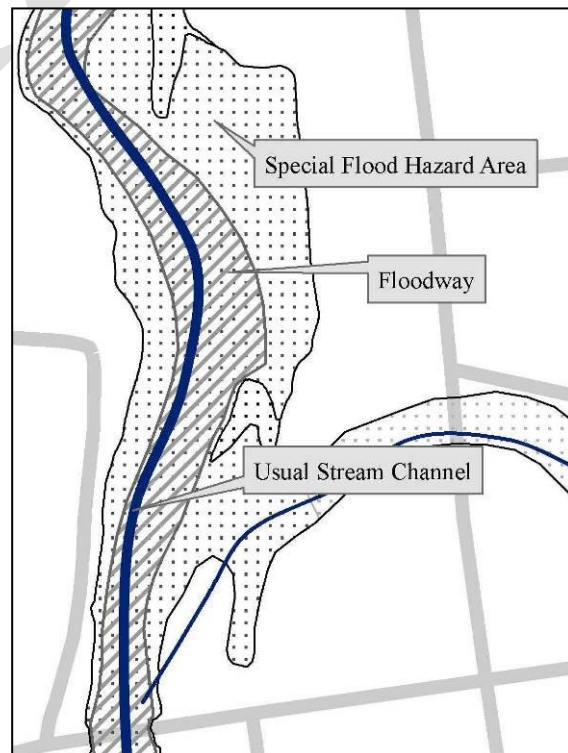
- A. It shall be the duty of the Administrative Officer to enforce the provisions of these regulations. Whenever any development occurs contrary to these flood hazard area regulations, the Administrative Officer, in his/her discretion, shall institute appropriate action in accordance with the provisions of 24 V.S.A. §1974a or pursuant to 24 V.S.A. § 4451 or 24 V.S.A. § 4452 to correct the violation. No action may be brought unless the alleged offender has had at least a seven-day warning notice by certified mail. An action may be brought without the seven-day notice and opportunity to cure if the alleged offender repeats the violation after the seven-day notice period and within the next succeeding twelve months. The seven-day warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days.
- B. If the structure is still noncompliant after the opportunity to cure has passed, the Administrator Officer shall submit a declaration to the Administrator of the NFIP requesting a denial of flood insurance. Section 1316 of the National Flood Insurance Act of 1968, as amended, authorizes FEMA to deny flood insurance to a property declared by the Town to be in violation of their flood hazard area regulations. The declaration shall consist of:
1. the name of the property owner and address or legal description of the property sufficient to confirm its identity or location,
  2. a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance,
  3. a clear statement that the public body making the declaration has authority to do so and a citation to that authority,
  4. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance, and
  5. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

## X. Definitions

- **“Accessory Structures”** – In the SFHA: A small accessory building that represents a minimal investment need not be elevated to the base flood elevation provided the structure meets the following requirements:
  1. The structure must only be used for parking or storage,
  2. The structure must have required openings to allow floodwaters in and out,
  3. The structure must be constructed using flood resistant materials below the Base Flood Elevation,
  4. The structure must be adequately anchored to resist flotation, collapse, and lateral movement, and
  5. All building utility equipment including electrical and heating must be elevated or floodproofed.
- **“Area of Special Flood Hazard”** is the land in the floodplain within Town subject to a 1 percent or greater chance of flooding in any given year. The area may be designated a Zone A on the Flood Hazard Boundary Map (FHBM). After detailed ratemaking has been completed in preparation for publication of the Flood Insurance Rate Map (FIRM), Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/AI-30, AR/AE, AR/AO, AR/AH, AR/A, VO or V1-30, VE, or V. For purposes of these

regulations, the term “special flood hazard area” is synonymous in meaning with the phrase “area of special flood hazard”.

- **“Bankfull Width”** (or *Channel Width*) is the width of a stream channel when flowing at a bankfull discharge. The bankfull discharge is the flow of water that first overtops the natural banks.
- **“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.
- **“BFE”** see Base Flood Elevation
- **“Buffer”** means an undisturbed area consisting of trees, shrubs, ground cover plants, duff layer, and generally uneven ground surface that extends a specified distance horizontally across the surface of the land from the mean water level of an adjacent lake or from the top of the bank of an adjacent river or stream.
- **“Channel”** means an area that contains continuously or periodic flowing water that is confined by banks and a streambed.
- **“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, municipal water supply and waste treatment facilities.
- **“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.
- **“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”** or **“Flooding”** 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 as defined in (a) of this definition.

- **“Flood Elevation 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.
- **“Flood Hazard Areas”** - Those areas shown as Special Flood Hazard Areas on Flood Insurance Rate Maps , further defined as those areas in which a flood would have a one percent (1%) chance of occurring each year.
- **“Flood Insurance Rate Map” (FIRM)** means an official map of the Town, on which the Federal Insurance Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the Town.
- **“Flood Insurance Study (FIS)”** – The official hydraulic & hydrologic report provided by FEMA. The report contains flood profiles, as well as the FIRM, FHBM (where applicable) and the water surface elevation of the base flood. See also “Flood Elevation Study”
- **“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”** – See “Regulatory Floodway”
- **“Floodway Fringe”** - The remaining portion of the flood hazard area excluding the floodway.
- **“Functionally Dependent Use”** means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes docking facilities, port facilities, that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.
- **“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 licensed 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”.
- **“New Construction” means** for the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain and erosion hazard area management purposes, *new construction* means structures for which the *start of construction* commenced on or after the effective date of these bylaws and includes any subsequent improvements to such structures.
- **“Nonconforming 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 administrative officer. Structures that were in violation of the flood and/or erosion hazard regulations at the time of their creation, and remain so, remain violations and are not nonconforming structures.
- **“Nonconforming use”** means 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 improperly authorized as a result of error by the administrative officer.
- **“Nonconformity”** means a nonconforming use, structure, lot, or parcel.
- **“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.



- **“Principally above ground”** means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.
- **“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.
- **“Regulatory 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 a designated height.
- **“Special flood hazard area”** – see “area of special flood hazard”
- **“Start of construction”** for purposes of floodplain and/or erosion hazard area management, determines the effective map or bylaw that regulated development in the Special Flood Hazard or Erosion 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 floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. Structure for insurance purposes, means:
  - (a) A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;
  - (b) A manufactured home, also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or
  - (c) A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the Town’s floodplain management and building regulations or laws. For the latter purpose, “structure” does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in (c) of this definition, or a gas or liquid storage tank.
- **“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, the cost of which 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”. Substantial Improvement (This definition applies only to the Flood Hazard Review Procedures specified in Section 5.6 of these Bylaws) – For the purposes of determining “substantial improvement” value and exceptions in (a) only, the Administrative Officer is “the local code enforcement official.”
- **“Top of Bank”** means that vertical point along a stream bank where an abrupt change in slope is evident. For streams in wider valleys it is the point where the stream is generally able to overflow the banks and enter the floodplain. For steep and narrow valleys, it will generally be the same as the top of slope.
- **“Variance”** means a grant of relief by the Town from the terms of a floodplain management regulation.
- **“Violation”** means the failure of a structure or other development to be fully compliant with the Town’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.