

# **Town of Cavendish Flood Hazard Area Regulations**

**ADOPTED October 17<sup>th</sup>, 2016**

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and October 17, 2016]**

**Cavendish, Vermont**

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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 and §4414, there is hereby established a bylaw for areas at risk of flood damage in the Town of Cavendish Vermont. Except as additionally described below, all administrative procedures follow 24 VSA Chapter 117.

These Regulations may be amended in accordance with 24 VSA, Chapter 117 §§4424 and 4441-4442.

## **II. 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 Cavendish, its citizens, and businesses eligible for federal flood insurance, federal disaster recovery funds, 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 damages. This regulation shall not create liability on the part of the Town of Cavendish 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.

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

### A. Regulated Flood Hazard Areas

These regulations shall apply to the River Corridor and Special Flood Hazard Areas (hereafter called “hazard areas”) in the Town of Cavendish, Vermont as described below. These hazard areas overlay any other existing zoning districts and the regulations herein are the minimum standards that must be met before meeting the additional standards applicable in the underlying district. These hazard areas include:

1. The River Corridor as determined on the most current River Corridor Map published by the Vermont Agency of Natural Resources which are hereby adopted by reference and declared to be part of these regulations.
2. 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.
3. The Stream Setback applies to lands within 50 feet of streams as measured perpendicularly from the top of bank.

### B. Base Flood Elevations (BFE) 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 Federal, or State agencies.

### C. Interpretation

The information presented on any maps, or contained in any studies, adopted by reference, is presumed accurate.

1. 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.
2. If uncertainty exists with respect to the boundaries of the River Corridor, the location of the boundary shall be determined by the AO. If the applicant disagrees with the determination made by the AO, a letter of determination from the Vermont Agency of Natural Resources shall constitute proof.

The Flood Insurance Study and maps are on file in the Cavendish Town Offices.

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

### VI. Development Review in Hazard Areas

#### A. Permit

A permit is required from the Administrative Officer (AO) 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 Cavendish Planning Commission (PC) 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.

## **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, River Corridor and Stream Setback, and meeting the Development Standards in Section VII, require only an administrative permit from the AO:

1. Non-substantial improvements
2. Accessory structures
3. Development related to on-site septic or water supply systems
4. Building utilities
5. At-grade parking for existing buildings
6. Recreational vehicles

## **C. Prohibited Development in Special Flood Hazard Area, River Corridors, and Setbacks:**

1. New residential or non-residential structures (including the placement of manufactured homes).
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.
5. Critical facilities are prohibited in all areas affected by mapped flood hazards.
6. All development not exempted, permitted, or conditionally permitted.

## **D. Conditional Use Review**

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

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.
8. Improvements to existing primary structures in the River Corridor or Stream Setback that do not expand the footprint of the existing structure more than 500 square feet.
9. Accessory structures in the River Corridor or Stream Setback, of 500 square feet or less, that represent a minimal investment.
10. Building utilities in the River Corridor or Stream Setback.
11. At-grade parking for existing buildings in the River Corridor or Stream Setback.

## **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.
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 PC only in accordance with all the criteria in 24 V.S.A. Chapter 17 §4469, §4424 (E), and 44 CFR Section 60.6, after a public hearing noticed as described in Section VIII.

1. A variance for development within the River Corridor or Stream Setback may be allowed if, based on a review by VT ANR, it is determined that the proposed development will not obstruct the establishment and maintenance of fluvial geomorphic equilibrium for the watercourse.
2. 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.

### **A. Matters to be considered in Variance Procedures**

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

1. The danger that materials may be swept onto other lands to the injury of others;
2. The danger of life and property due to flooding or erosion damage.
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
4. The importance of the services provided by the proposed facility to the community;
5. The necessity to the facility of a waterfront location, where applicable.
6. The availability of alternative locations for the proposed use, which are not subject to flooding or erosion damage.
7. The compatibility of the proposed use with existing and anticipated development;
8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
9. The safety of access to the property in times of flood for ordinary and emergency vehicles.
10. The expected heights, velocity, duration, rate of rise, and sediment of transport of the floodwaters and the effects of wave action, if applicable, expected at the site.

11. 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.
12. Upon consideration of factors listed above, and the purpose of these regulations, the PC may attach such conditions to the granting of variances as it deems necessary to further the purposes of these regulations.
13. Hydrologic and hydraulic studies submitted by Vermont registered professional engineers.

### **G. Nonconforming Structures and Uses**

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

1. The proposed development is in compliance with all the Development Standards in Section VII of this bylaw.
2. A nonconforming structure 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.
3. Nonconforming structures or uses shall be considered abandoned where such structures or uses are discontinued for more than 12 months.
4. 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.

## **VII. 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.
  - 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 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 above base flood elevation or one foot above Irene high water mark, whichever is greater. ; This must be documented, in as-built condition, with a FEMA Elevation Certificate;
  4. *Non-residential structures to be substantially improved* shall:
    - a. Meet the standards in VII A 3; 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 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.
  5. *Fully enclosed areas below grade* on all sides (including below grade crawlspaces and basements) are prohibited.
  6. *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.

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, to meet or exceed the following minimum criteria:

1. 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.
2. The bottom of all openings shall be no higher than one foot above grade.
3. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

7. *Recreational vehicles* must;

- a. Be on the site for fewer than 180 consecutive days,
- b. Be fully licensed and ready for highway use, and
- c. Be permitted in accordance with the elevation and anchoring requirements for “manufactured homes”.

8. *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 6 (above).

9. *Water supply systems* shall be designed to minimize or eliminate infiltration of floodwaters into the systems.

10. *Sanitary sewage systems* shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.

11. *On-site waste disposal systems* shall be located to avoid impairment to them or contamination from them during flooding.

12. *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.

13. *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.

14. *Subdivisions and Planned Unit Developments* must be accessible by dry land access outside the special flood hazard area.

15. *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 community's FIRM, or at least two feet if no depth number is specified.

16. All new development in the SFHA will be permitted only if the results of a hydraulic and hydrology analysis indicates that there would be no rise (0.00 feet) in the BFE.

#### B. Floodway Areas

1. Encroachments or development above grade and less than one foot above the base flood elevation, 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.
3. Except for 1) substantial improvements within the footprint of existing buildings, 2) grading that does not raise existing grades, or 3) a functionally dependent facility - encroachments, including fill, new construction, substantial improvements, and other development, are prohibited.
4. The placement of manufactured homes (mobile homes) is prohibited.
5. Development or land disturbing activity shall not be permitted within the boundaries of the regulatory floodway unless the potential effect of such on flood heights is fully offset by accompanying improvements which have been approved by appropriate Federal, State, and local authorities.

#### C. River Corridor and Stream Setback

1. Improvements to existing structures, and any associated fill as needed to comply with elevation requirements in the Special Flood Hazard Area shall not decrease the distance between the existing primary building and the top of bank.
2. Accessory structures may be located within 50 feet of the existing primary building provided that the location does not decrease the distance between the existing primary structure and the top of bank.
3. Development shall not increase the susceptibility of that or other properties to fluvial erosion damage.
4. Development shall not increase the potential of materials being swept onto other lands or into the stream and causing damage to other properties from fluvial erosion.
5. Development shall not cause an undue burden on public services and facilities including roads, bridges, culverts, and emergency service providers during and after fluvial erosion events.
6. Bridge and culvert projects must have a Stream Alteration Permit.

7. Channel management activities must be authorized by the Agency of Natural Resources.
8. Native woody vegetation should predominate within 50 feet of the top of bank to reduce erosion rates, stabilize banks, slow floodwaters, capture sediments, and not degrade water quality and riparian habitat.

## **VIII. Administration**

### A. Administrative Officer and Planning Commission

There is hereby established an Administrative Officer (AO) and the Cavendish Planning Commission to be appointed by the Selectboard as specified under 24 VSA §4448 and §4460.

The Selectboard of the Town of Cavendish hereby appoints an Administrator to implement the provisions of these regulations and is herein referred to as the Administrative Officer (AO). The Selectboard further appoints the Planning Commission (PC) to conduct conditional use approval, non-conforming use approval, and variances under these regulations.

### B. 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.
- 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. Three (3) copies 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.
- 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 PC for determining the suitability of the proposed development for the site.
- e. Copies of the application sufficient for the file, the PC 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 VII C 2.
- f. Any additional fees as required by the Selectboard.

### C. 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. The PC should consider comments from the NFIP Coordinator at ANR.

### D. 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.
  - 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 (as defined in 24 V.S.A. Chapter 117). 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.
    - 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 PC 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 Planning Commission or the Environmental Court, the action shall be remanded to the PC to provide new posting and notice, hold a new hearing, and take a new action.

#### E. Decisions

1. The Administrative Officer (AO) shall act within 30 days to approve or deny the application, or refer the application to the PC. 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 31<sup>st</sup> day.
2. The Planning Commission shall consider comments from the NFIP Coordinator at ANR. The PC may recess the proceedings on any application pending submission of additional information. The PC 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 PC shall include a statement of the factual basis on which the PC 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 PC 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. PC 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 PC 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 PC 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 or electronically transmitted 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.

#### F. 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.
  - 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.
  - 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:
  - 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.
  - d. All decisions of the Planning Commission (including variances and violations) and all supporting findings of fact, conclusions, and conditions.

#### G. 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 has passed.
3. Not take effect until 15 days after issuance, or in the event that a notice of appeal of a decision by the Administrative Officer is properly filed, no such permit shall take effect until adjudication of that appeal by the PC 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.
4. Be valid for a period of two years.

#### H. Appeals

An interested person, as defined in Chapter 117, may appeal any decision or act taken by the Administrative Officer by filing a notice of appeal with the secretary of the PC, 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 PC 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 PC 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 PC 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 PC may be appealed under §4469 in request for a Variance. Within 30 days of a decision by the PC, under §4471 an Interested Person who has participated in the municipal regulatory proceeding may appeal to the Vermont Environmental Court.

#### **IX. 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 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 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.

## **X. 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.
5. That the notice of violation may be appealed as specified under VIII H.

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 24 V.S.A. §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 required notice has been given as prescribed in this section. 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.
  
- F. Bond Term & Forfeiture – a performance bond or other surety may be required by the PC pursuant to their review. The amount, term, and conditions of the forfeiture shall be stated in the decision, which requires the surety and shall be reflected in the surety contract. The surety contract shall be filed with the Town Clerk and shall be satisfactory to the Selectboard, as the Town Legislative Body, as to form, sufficiency, and manner of execution.

## **XI. Definitions**

Unless specifically defined below, words or phrases used in these regulations shall be interpreted so as to give them the meaning they have in common usage and to give these regulations its most reasonable application. This section may contain terms not found in this regulation but a reader may encounter in the material referenced by it.

**Administrative Officer** means the person appointed by the Selectboard to administer and implement the provisions of these regulations, which are also referred to at the Floodplain Administrator.

**A Zone** means portions of the SFHA in which the principle source of flooding is runoff from rainfall, snowmelt, or a combination of both. In A zones, floodwaters may move slowly or rapidly, but waves are usually not a significant threat to buildings. A Zones are areas of 100-year flood, in which base flood elevations and flood hazard factors have not been determined.

**A1 – A 30 and AE zone** is the Special Flood Hazard Area inundated by the 100-year flood, base flood elevations are determined.

**“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, carports, storage sheds, pole barns, and hay sheds.

**Addition** (to an existing building) means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.

**AH Zone** is an area of 100-year shallow flooding where depths are between 1 and 3 feet (usually shallow ponding), base flood elevations are shown.

**AO Zone** is an area of 100-year shallow flooding where depths are between 1 and 3 feet (usually sheet flow on sloping terrain), base flood elevations are shown.

**Appeal** means a request for a review of the floodplain administrative officer’s interpretation of any provision of these regulations or a request for a variance.

**Appropriate Municipal Panel** means a planning commission performing development review, a board of adjustment, a development review board, or a legislative body performing development review.

**Area of shallow flooding** means a designated AO or AH Zone on the community’s Flood Insurance Rate Map (FIRM) with flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**Area of special flood hazard** means that portion of the floodplain within a community subject to inundation by the base flood and / or flood-related erosion hazards as shown on a FIRM as Zone A, AE, A1-A30, AH, or AO. **“Area of Special Flood Hazard”** is synonymous in meaning with the phrase “special flood hazard area” for the purposes of these regulations.

**B and X zones (shaded)** are areas of 500-year flood, areas subject to the 100-year flood with average depths of less than 1 foot or with contributing drainage area less than 1 square mile, and areas protected by levees from the base flood.

**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 that portion of a building having its floor elevation below ground level on all sides.

**Building** see Structure.

**C Zones** are areas determined to be outside the 500-year floodplain.

**“Channel”** means an area that contains continuously or periodic flowing water that is confined by banks and a streambed.

**“Channel width”** (or bankfull 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. This flow occurs, on average, about once every 1 to 2 years.

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

**Community** is a political entity that has the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.

**“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.

**Development** means any man-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.

**Elevated building** means a non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers), shear walls, or breakaway walls.

**Elevation Certificate** is a certified statement that verifies a building’s elevation information.

**Existing Construction** any structure for which the “start of construction” commenced before the date of the initial Flood Insurance Rate Map, October 15, 1981

**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 floodplain management regulations adopted by a community before.

**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 manufactured 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

**Five-Hundred Year Flood** means the flood that has a 0.2 percent or greater chance of being equaled or exceeded in any year. Areas subject to the 500-year flood have a moderate to low risk of flooding.

“**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.

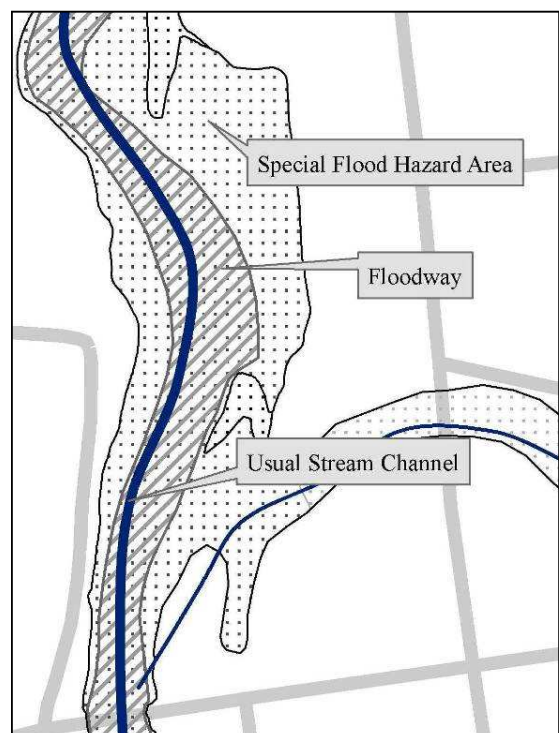
**Flood Boundary and Floodway Map (FBFM)** means the official map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated the areas of flood hazards and regulatory floodway.

**Flood Hazard Boundary Map (FHBM)** means an official map of a community, issued by FEMA, where the boundaries of the areas of special flood hazard have been identified as Zone A.

“**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 (FIS)** means an examination, evaluation and determination of flood hazards and, if appropriate, 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.

**Floodplain management** means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

**Floodplain Administrator** is the individual appointed to administer and enforce these floodplain management regulations.

**Floodplain management regulations** means these regulations and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

**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.

**Floodproofing Certificate** is a form used to certify compliance for non-residential structures as an alternative to elevating buildings to or above the BFE or ABFE.

**“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.

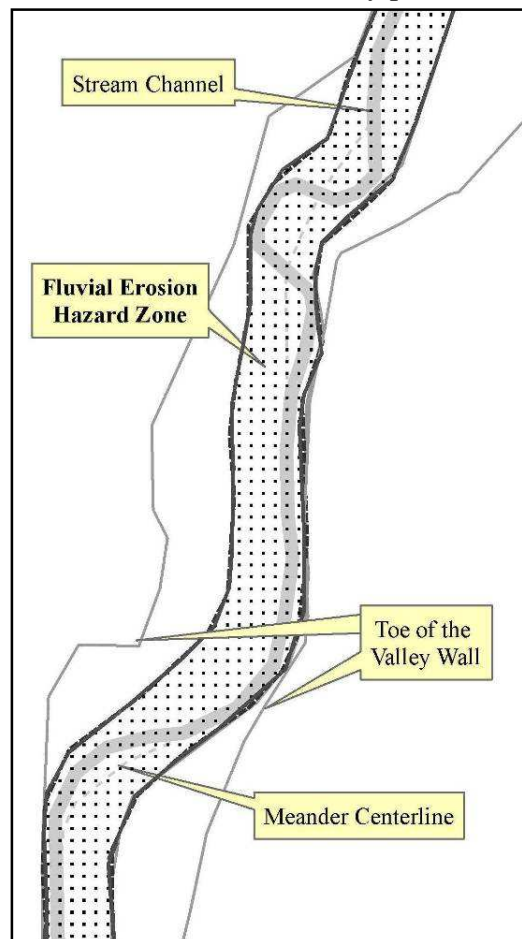
**“Floodway, Regulatory in Town/City/Village of \_\_\_\_\_”** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point.

**Floodway fringe** means that area of the floodplain on either side of the regulatory floodway.

**Floor** means the top surface of an enclosed area in a building, including basement, i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.

**Freeboard** means a factor of safety, usually expressed in feet above the BFE, which is applied for the purposes of floodplain management. It is used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the base flood.

**“Fluvial Erosion”** is erosion caused by streams and rivers. Fluvial erosion can be catastrophic when a flood event causes a rapid adjustment of the stream channel size and/or location.



**Functionally dependent facility** means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair, or seafood processing facilities. The term does not include long- term storage, manufacture, sales, or service facilities.

**Hardship** (as related to variances of these regulations ) means the exceptional hardship that would result from a failure to grant the requested variance. The [Governing body] shall require that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is NOT exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

**Highest adjacent grade** means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a building.

**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.

**Hydrologic and Hydraulic Engineering Analysis** means an analysis performed by a professional engineer, registered in the State of Vermont, in accordance with standard engineering practices as accepted by FEMA, used to determine flood elevations and / or floodway boundaries.

**Increased Cost of Compliance (ICC)** means the cost to repair a building substantially damaged by flooding that exceeds the minimal repair cost and that is required to bring a substantially damaged building into compliance with the local flood damage prevention ordinance. Acceptable mitigation measures are elevation, relocation, demolition, or any combination thereof. All renewal and new business policies with effective dates on or after June 1, 1997, will include ICC coverage.

**Legislative Body** means the selectboard in the case of a town, the trustees in the case of an incorporated village, and the mayor, alderpersons, and city council members in the case of a city, and the supervisor in the case of an unorganized town or gore.

**Letter of Map Change (LOMC)** is an official FEMA determination, by letter, to amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, and Flood Insurance Studies. LOMCs are broken down into the following categories:

Letter of Map Amendment (LOMA)

A revision based on technical data showing that a property was incorrectly included in a designated SFHA. A LOMA amends the current effective FIRM and establishes that a specific property is not located in a SFHA.

Letter of Map Revision (LOMR)

A revision based on technical data that, usually due to manmade changes, shows changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. One common type of LOMR, a LOMR-F, is a determination concerning whether a structure or parcel has been elevated by fill above the BFE and is, therefore, excluded from SFHA.

Conditional Letter of Map Revision (CLOMR)

A formal review and comment by FEMA as to whether a proposed project complies with the minimum NFIP floodplain management criteria. A CLOMR does not amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Insurance Studies.

**Lowest adjacent grade** means the elevation of the sidewalk, patio, deck support, or basement entryway immediately next to the structure and after the completion of construction. It does not include earth that is emplaced for aesthetic or landscape reasons around a foundation wall. It does include natural ground or property compacted fill that comprises a component of a building's foundation system.

**“Lowest floor”** means the lowest finished 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** means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used 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.

**Map Panel Number** is the four-digit number followed by a letter suffix assigned by FEMA on a flood map. The first four digits represent the map panel, and the letter suffix represents the number of times the map panel has been revised.

**Market value** means the building value, excluding the land (as agreed between a willing buyer and seller), as established by what the local real estate market will bear. Market value can be established by independent certified appraisal, replacement cost depreciated by age of building (Actual Cash Value) or adjusted assessed values.

**Mean Sea Level:**

- a.) On a FIRM: The average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of these regulations , the term is synonymous with National Geodetic Vertical Datum (NGVD).
- b.) On a DFIRM: The average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of these regulations , the term is synonymous with North American Vertical Datum (NAVD).



**Mitigation** means sustained actions taken to reduce or eliminate long-term risk to people and property from hazards and their effects. The purpose of mitigation is twofold: to protect people and structures, and to minimize the costs of disaster response and recovery.

**National Flood Insurance Program (NFIP)** is the federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the Federal Government and the private insurance industry. **National Geodetic Vertical Datum (NGVD)**, as corrected in 1929, is a vertical control used on a FIRM as a reference for establishing varying elevations within the floodplain.

**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 management purposes, *new construction* means structures for which the *start of construction* commenced on or after the effective date of the floodplain management regulation adopted by a 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 floodplain regulations adopted by a community.

**"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 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.

**North American Vertical Datum (NAVD)**, as corrected in 1988, is a vertical control used on a DFIRM as a reference for establishing varying elevations within the floodplain.

**Obstruction** includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

**One-Hundred Year Flood (100 Year Flood)** is the flood that has a 1-percent or greater chance of being equaled or exceeded in any given year. Over the life of a 30-year loan, there is a 26-percent chance of experiencing such a flood within the SFHA.

**PC** means the Cavendish Planning Commission

**Participating Community** is any community that voluntarily elects to participate in the NFIP by adopting and enforcing floodplain management regulations that are consistent with the standards of the NFIP.

**Probation** means formally notifying participating communities of violations and deficiencies in the administration and enforcement of the local floodplain management regulations.

**Public safety and nuisance** means anything which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

**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 one foot.

**Repair** means the reconstruction or renewal of any part of an existing building.

**Repetitive Loss** means flood-related damages sustained by a structure on two separate occasions during a 10-year period ending on the date of the event for which the second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25% of the market value of the building at the time of each such flood event.

**“River corridor”** means the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel and that is necessary for the natural maintenance or natural restoration of a dynamic equilibrium condition and for minimization of fluvial erosion hazards, as delineated by the Agency in accordance with river corridor protection procedures. (10 V.S.A. § 1422(12)).

**Section 1316** is that section of the National Flood Insurance Act of 1968, as amended, which states that no new flood insurance coverage shall be provided for any property that the Administrator finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

**“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](http://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.

**“Stream”** means a stream or river included in the Vermont Hydrography Dataset (VHD). The VHD is maintained by the Vermont Center for Geographic Information.

**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. For insurance purposes, “structure” 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 (“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 community’s floodplain management and building ordinances 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.

**Subrogation** means an action brought by FEMA when flood damages have occurred, flood insurance has been paid, and all or part of the damage can be attributed to acts or omissions by a community or other third party.

**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, 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”.

**Substantially improved existing manufactured home parks or subdivisions** is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

**Suspension** means the removal of a participating community from the NFIP because the community has not enacted and/or enforced the proper floodplain management regulations required for participation in the NFIP.

**“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.

**“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.

**Variance** is a grant of relief from the requirements of these regulations , which permits construction in a manner otherwise prohibited by these regulations where specific enforcement would result in an unnecessary hardship.

**Violation** means the failure of a structure or other development to be fully compliant with these regulations . A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in these regulations is presumed to be in violation until such time as that documentation is provided.

**Watercourse** means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

**Water surface elevation** means

- c.) On a FIRM: The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.
- d.) On a DFIRM: The height, in relation to the North American Vertical Datum (NAVD) of 1988, (or other datum where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

**X zone** means the area where the flood hazard is less than that in the SFHA. Shaded X zones shown on recent FIRMs (B zones on older FIRMs) designate areas subject to inundation by the flood with a 0.2-percent or greater annual probability of being equaled or exceeded (the 500-year flood). Unshaded X zones (C zones on older FIRMS) designate areas where the annual exceedance probability of flooding is less than 0.2 percent.

**Zone** means a geographical area shown on a Flood Hazard Boundary Map or a Flood Insurance Rate Map that reflects the severity or type of flooding in the area.