

# TOWN OF HARTLAND

## FLOOD HAZARD AREA REGULATIONS

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### **I. Statutory Authorization and Effect**

#### **A. Authorization**

In accordance with 10 V.S.A. Chapter 32 and 24 V.S.A. § 4424, there is hereby established a bylaw for areas at risk of flood hazard and fluvial erosion in the Town of Hartland, Vermont.

Unless already established, there is hereby established an Administrative Officer and Flood Hazard Review Board. If any development bylaw is adopted pursuant to then the administrator of the bylaw shall be considered the Administrative Officer of this bylaw. If a Board of Adjustment or Development Review Board is established then it shall also be the Flood Hazard Review Board. The Selectboard shall appoint the Administrative Officer and Flood Hazard Review Board as specified under 24 V.S.A. §4448 and §4460.

#### **B. Warning of Disclaimer of Liability**

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

#### **C. 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.

#### **D. Precedence of Bylaw**

The provisions of this bylaw shall not in any way impair or remove the necessity of compliance with any other local, state, or federal applicable ordinances or regulations. Where this bylaw imposes a greater restriction than other regulations, the provisions of this bylaw shall take precedence to the full effect as allowed by law.

## **II. Statement of Purpose**

It is the purpose of this bylaw to:

1. 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, erosion and other flood related hazards; and
2. Ensure that the design, use, and construction of development in flood and other hazard areas are accomplished in a manner that minimizes or eliminates the potential for damage to life and property;
3. Manage all flood hazard areas designated pursuant to 10 V.S.A. § 753; and
4. Make the Town of Hartland, its citizens, and businesses eligible for federal flood insurance and other federal disaster recovery and hazard mitigation funds as may be available.

## **III. Regulated Areas and Base Flood Elevation (BFE)**

### **A. Regulated Areas**

These regulations shall apply to all areas in the Town of Hartland, Vermont:

1. within 50 feet of the top of bank on the following perennial streams;
  - a) Connecticut River,
  - b) Ottauquechee River,
  - c) Babcock Brook north from Barron Hill Road to the Ottauquechee River,
  - d) Fulling Brook east of its intersections with Draper Road and Brothers Road to the Ottauquechee River,
  - e) Harlow Brook east of the Quechee Road to the Ottauquechee River,
  - f) Alder Meadow Brook south of the intersection of Cobb Hill Road and VT 12 to Lulls Brook,
  - g) McArthur Brook southeast of Shute Road to the Connecticut River,
  - h) Lulls Brook from the intersection of the Jenneville Road and Reeves Road to the Connecticut River,
  - i) Weed Brook from its second crossing of Weed Road to Lulls Brook,
  - j) Densmore Brook southeast from the first crossing at the stone culvert to Lulls Brook, and
2. areas of special flood hazard in and on the most current flood insurance studies and maps published by the Department of Homeland Security, Federal Emergency Agency, National Flood Insurance Program, as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. § 753, which are hereby adopted by reference and declared to be part of these regulations.

If uncertainty exists with respect to the boundaries or elevations on the map or studies noted above, the location of such boundary or elevations shall first be determined by the Administrative Officer if possible. For areas in doubt by the Administrative Officer where such determination could place the structure outside the special flood hazard area, the

burden of proof shall be on the applicant, who shall seek a Letter of Map Amendment/Letter of Map Revision from FEMA, which shall constitute proof. Neither the AO nor the Board may determine that an area shown on the map as being in a floodway or area of special flood hazard is incorrect.

**B. Base Flood Elevation (BFE) and Floodway Limits**

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 areas where base flood elevations and floodway limits have not been provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps, base flood elevation data and floodway limits provided by FEMA or available from State or Federal agencies or other sources, shall be obtained and utilized to administer and enforce these regulations. If no source of data is publicly available, it is the applicant's responsibility to develop this data.

**C. Disputes in Areas and Elevations**

The information contained in any maps or studies adopted by reference is presumed accurate, and shall be used until shown to be otherwise. Rulings by FEMA shall be considered proof for the purposes of this bylaw.

**D. Map Revisions or Amendments**

Applicants who believe that the FIRM or flood study incorrectly shows their property in the flood fringe or floodway must apply to FEMA to make that change. The Town or state cannot change these boundaries, but may comment on any applications to FEMA for map revisions or amendment. The process will involve the applicant retaining an engineer and/or surveyor to provide the necessary data. Forms to apply to FEMA are available on [http://www.fema.gov/plan/prevent/fhm/frm\\_form.shtm](http://www.fema.gov/plan/prevent/fhm/frm_form.shtm).

Applicants believing the map is wrong and their building is not in the hazard area shown need a Letter of Map Amendment (LOMA), or conditional LOMA (CLOMA) for a proposed building. A Letter of Map Revision (LOMR-F) is needed if fill had been used to elevate the grade where the structure is so that it is no longer an area of special flood hazard as mapped. A conditional LOMR-F (CLOMR-F) is needed if fill (if allowed) is proposed to elevate the structure above the base flood.

When any revision or amendment is being sought from FEMA, an application to the town under this regulation will not be considered complete until the relevant letter has been issued by FEMA. Issuance of a LOMR-F or CLOMR-F is not local permission to fill, which may only take place in compliance with this regulation.

#### **IV. Exempted Activities**

The following are exempt from regulation under this bylaw:

1. Silvicultural (forestry) activities not involving the use of structures and conducted in accordance with Vermont Department of Forest and Parks Acceptable Management Practices;
2. Agricultural activities not involving the use of structures and conducted in accordance with Vermont Department of Agriculture Acceptable Agricultural Practices;
3. Recreational vehicles outside of the floodway and at least 35 feet from the top of bank, provided they are on the site for fewer than 180 consecutive days or fully licensed and ready for highway use; and
4. The removal of a structure or building in whole or in part.

#### **V. Flood Hazard Area Development Permit and Conditional Use Approval**

##### **A. Flood Hazard Area Development Permit**

A Flood Hazard Area development permit is required from the Administrative Officer for all proposed fill, construction or other development, including the placement of manufactured homes or recreational vehicles, and storage of chemicals, explosives, flammable liquids, or other hazardous or toxic materials, in all areas covered by this bylaw. Development needing a conditional use approval or a variance must have such prior to receiving a Flood Hazard Area development permit.

##### **B. Permitted Development**

The following activities outside the floodway only require a Flood Hazard Area development permit from the Administrative Officer:

1. Minor improvements to existing structures that do not involve fill and do not decrease structure setbacks from any stream;
2. At-grade parking areas that meet requirements in Article VI;
3. Small accessory structures such as fences, or sheds without foundations or utilities, that meet requirements the in Article VI; or
4. Utilities, except drainage, that do not involve fill and that meet the requirements in Article VI.

##### **C. Conditional Use Approval**

Conditional use approval by the Flood Hazard Review Board, prior to the issuance of a Flood Hazard Area development permit by the Administrative Officer, is required for:

- 1) New roads or drainage, or improvements to these;
- 2) Ponds;
- 3) Fill, excavation and grading of land;
- 4) New construction, including utilities, except as exempted or permitted; or
- 5) Substantial improvement, elevation, or floodproofing of existing structures.
- 6) Creation of a lot.

In granting conditional use approval, the Board shall utilize the standards for development set out below in part VI.

D. Prohibited Development

All development not exempted, permitted or listed as a conditional use is prohibited.

**VI. Development Standards**

A. Floodway Areas

In floodway areas, the following additional standards and restrictions apply:

1. New fill; new storage areas or facilities for chemicals, explosives, flammable liquids, or other hazardous or toxic materials, or new development within the regulatory floodway is prohibited. The only exceptions to this prohibition are bridges, culverts, public utilities, or stabilization projects which by their nature must be placed in the floodway. Such excepted activities must have had hydrologic and hydraulic analyses performed in accordance with standard engineering practice by a registered professional engineer certifying that the proposed development will:
  - (a) not result in loss of any flood storage or increases in flood levels during the occurrence of the base flood,
  - (b) not increase any risk to surrounding properties, facilities or structure from erosion or flooding, as well as
  - (c) not diminish the flood carrying and sediment transport capacity of the floodway in the opinion of the Vermont River Management Program.
  
2. In areas where no regulatory floodway has been designated by the National Flood Insurance Program, development shall not be permitted except as above in the floodway as determined under III.B.

B. Area of Special Flood Hazard (the flood fringe and floodway, also commonly referred to as the 100-year floodplain)

1. All development shall be reasonably safe from flooding and:
  - (a) designed, operated, maintained, modified, and adequately anchored to prevent flotation, collapse, release or lateral movement of the structure or any chemicals, explosives, flammable liquids, or other hazardous or toxic materials during the occurrence of the base flood (see FEMA technical bulletins for guidelines);
  - (b) constructed with materials resistant to flood damage;
  - (c) constructed by methods and practices that minimize flood damage, including the provision of adequate drainage to reduce exposure to flood hazards and no net loss of flood storage capacity;
  - (d) 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 (see FEMA technical bulletins for guidelines); and

- (e) located so as to minimize the degree of conflict with floodwaters and natural channel movement, including not constraining flood flows to a point where bank armoring (rip rap) would be required.
2. For residential development:
- (a) New construction and existing buildings to be substantially improved that are located in Zones A, A1-30, AE, and AH shall have the lowest floor, including basement, elevated to at least one foot above the base flood elevation.
  - (b) New planned unit developments or manufactured home parks shall include base flood elevation data; and
  - c) Manufactured homes to be placed and existing manufactured homes to be substantially improved that are:
    - i. located in a new manufactured home park or subdivision, outside of a manufactured home park or subdivision, in an expansion to an existing manufactured home park or subdivision, or in a manufactured home park or subdivision which has incurred substantial damage from a flood shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to at least one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement during the occurrence of the base flood.
    - ii. located in an existing manufactured home park, where elevating a replacement home to or above base flood elevation is not possible, the lowest floor shall be supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 48 inches in height above grade and be securely anchored to an adequately anchored system to resist floatation, collapse, and lateral movement.
3. For non-residential development:
- (a) New construction located in Zones A, A1-30, AE, and AH shall have the lowest floor, including basement, elevated to at least one foot above the base flood elevation.
  - (b) Existing buildings to be substantially improved located in Zones A, A1-30, AE, and AH shall have the lowest floor, including basement, elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities be designed so that below at least one foot above 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.
  - (c) A permit for a building proposed to be floodproofed 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; and

4. For enclosed areas below the lowest floor:
  - (a) New construction and existing buildings to be substantially improved with fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
  - (b) Enclosed areas below the lowest floor which are subject to flooding shall be used solely for parking of vehicles, building access, or storage and such a condition shall clearly be stated in any permits.
5. Recreational vehicles placed on sites within special flood hazard areas shall either:
  - (a) be on the site for fewer than 180 consecutive days, and
  - (b) be fully licensed and ready for highway use, or
  - (c) be on sites at least one foot above base flood elevation and anchored so as to resist flotation.
6. 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 building:
  - (a) shall not be used for human habitation or storage of hazardous materials,
  - (b) shall be designed to have low flood damage potential,
  - (c) shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters,
  - (d) shall be firmly anchored to prevent flotation, and
  - (f) shall have service facilities such as electrical and heating equipment elevated or floodproofed to at least one foot above base flood elevation.
7. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
8. 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.
9. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

10. Exterior storage of floatable materials, chemicals, explosives, flammable liquids, or other hazardous or toxic materials, must be elevated at least one foot above base flood elevation.
11. 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.
12. Any access roads to habitable structures or critical facilities shall be at least one foot above base flood elevations and able to withstand a 100-year event without failure or overtopping.
13. New subdivision proposals shall include base flood elevation data, and shall be designed to minimize flood damage within the flood-prone area, provide adequate drainage to reduce exposure to flood hazards, and have utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage.

**C. Riparian (streambank) Areas**

Notwithstanding any other part of this bylaw, in order to regulate the potential flood and erosions hazard in unmapped areas near streams and to minimize destabilization of streambanks, no structures are allowed within 50 feet horizontal of the top of bank on streams as specified in part III.A. No fill, excavation, or ground disturbance is allowed with 35 feet of the top of bank along such streams except such activities that are excepted in such a manner as in floodways in part VI.A. above.

**VII. Variances to the Development Standards**

A. Variances to the above standards may be granted in writing by the Flood Hazard Review Board only in accordance with 24 V.S.A. § 4469 and 44 CFR, Section 60.6, and after a hearing noticed in the same manner as for a conditional use. A decision in favor of the appellant shall be granted if all the following facts are found, and the supporting findings are specified in the decision:

1. There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located;
2. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
3. Unnecessary hardship has not been created by the appellant;
4. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the



appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare;

5. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan; and
6. The variance will not result in increased flood heights, increased susceptibility to flooding or erosion, additional threats to public safety or infrastructure (including emergency services during flood events), or extraordinary public expense.

## **VIII. Administration**

### **A. Records**

Within three days following the issuance of a Flood Hazard Area development permit, the Administrative Officer shall:

1. Deliver a copy of the permit and any accompanying conditional approval to the listers of the municipality; and
2. 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.

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:

1. deliver the original or a legible copy of the permit, or notice of permit, and any approvals to the town clerk for recording in the land records as provided in subsection 24 VSA, section 1154(a); and
2. file a copy of the permit and any approvals in the Town office in a location where all municipal land use permits shall be kept.

The Administrative Officer may charge the applicant for the cost of the recording fees as required by law.

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

1. All permits issued in areas covered by this bylaw;
2. The elevation (consistent with the datum of the elevation on the NFIP maps for the community) of the lowest floor, including basement, of all new or substantially improved buildings in areas of special flood hazard;
3. The elevation (consistent with the datum of the elevation on the NFIP maps for the community) to which buildings have been floodproofed in areas of special flood hazard;
4. All floodproofing certifications required under this regulation; and
5. All variances, notices of alleged violation, and conditional use approvals, including justification for their issuance.

### **B. Applications and Referrals**

Prior to issuing a Flood Hazard Area development permit, an application and supporting information shall be submitted by the Administrative Officer (with any fees as determined by the Selectboard), who shall forward a copy of the application to the State National Floodplain Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources,

Department of Environmental Conservation, River Management Section in accordance with 24 V.S.A. § 4424.

If the applicant is seeking a permit for the alteration or relocation of a watercourse, copies of such the application shall also be submitted to the Administrator of the National Flood Insurance Program, adjacent communities and the Stream Alteration Engineer at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section. 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.

### C. Application Submission Requirements

Applications for Flood Hazard Area development shall include:

1. The name and contact information for the owner of the property, including any agents authorized to act on their behalf;
2. Brief description of the proposed development;
3. General location map including the address of the property, tax parcel ID, relative locations of the existing development, the proposed development, any waterbodies, special flood hazard areas, the shortest horizontal distance from the proposed development to the center line and top of nearest bank of any stream, and the nearest public road;
4. Appropriate fee; and
5. Locations of any existing and proposed drainage, and pre and post development grades.

For applicants seeking conditional use approval or a variance, the following also need to be provided:

6. A list of abutters names and mailing addresses;
7. A statement of purpose and need of the proposed development;
8. A description of alternatives considered to proposed development, including alternate locations on site, especially outside of the special flood hazard area or Fluvial Erosion Hazard Area;
9. Elevations of any proposed development;
10. Such other information deemed necessary by the Board for determining the suitability of the site for the proposed development; and
11. Any additional fees needed.

### D. Flood Hazard Area Development Permit Validity

Each permit issued shall contain a statement of the period of time within which an appeal may be taken and shall require posting of a notice of permit on a form prescribed by the municipality within view from the public right-of-way most nearly adjacent to the subject property until the time for appeal in has passed. No permit issued pursuant to this section shall take effect until 15 days after issuance, or in the event that a notice of appeal a decision by the Administrative Officer is properly filed, no such permit shall take effect until adjudication of that appeal by the Flood Hazard Review Board is complete and the time for taking an appeal to the environmental court has passed without an appeal being taken. If an

appeal is taken to the environmental court, the permit shall not take effect until adjudication by the environmental court.

Each permit shall be valid for a period of two years, after which point if no development has occurred it shall be deemed void.

E. Conditional Use Hearing

Proposed developments needing conditional use approval prior to the issuance of a Flood Hazard Area development permit must have a warned public hearing shall be required. Any public notice for a warned public hearing shall be given not less than 30 days after the required submittal to federal and state agencies, and not less than 15 days prior to the date of the public hearing by all the following:

1. Publication of the date, place, and purpose of the hearing in a newspaper of general circulation in the municipality affected.
2. Posting of the same information in three or more public places within the municipality in conformance with location requirements of 1 V.S.A. § 312(c)(2), including posting within view from the public right-of-way most nearly adjacent to the property for which an application is made.
3. 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 the parties in VIII.C above if not done so already. 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.

The applicant may be required to bear the cost of the public warning and the cost and responsibility of notification of adjoining landowners. The applicant may be required to provide a copy of the warning, and demonstrate proof of the posting and of delivery to adjoining landowners either by certified mail, return receipt requested, or by written notice hand delivered or mailed to the last known address supported by a sworn certificate of service.

The Flood Hazard Review Board may recess the proceedings on any application pending submission of additional information. The Board should close the evidence promptly after all parties have submitted the requested information, adjourn the hearing, and may deliberate prior to issuing its decision.

F. Decisions

Decisions by the Administrative Officer to approve or deny an application shall be issued in writing within 30 days of a complete application, and shall include a statement of the factual bases on which the conclusions were made. Applications that cannot be approved until a conditional approval has been given shall be deemed incomplete and referred to the Board. Applications that cannot be approved in compliance with this bylaw shall be denied. Decisions of the Administrative officer can be appealed as below.

Decisions of the Flood Hazard Review Board for variance or conditional use approval shall be issued in writing within 45 days after the adjournment of the final hearing. Failure to issue a decision within this period shall be deemed approval and shall be effective on the 46th day. Conditional use approvals 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. Conditional use approvals shall include a statement of the factual basis on which the Board has made its conclusions regarding how the proposed development will meet the development standards, and a statement of the conclusions. In rendering a decision in favor of the applicant, the Board may attach additional reasonable conditions and safeguards as it deems necessary to implement the purposes of this bylaw and the municipal plan then in effect. The Board may provide for the conditioning of permit issuance on the submission of a bond, escrow account, or other surety in a form acceptable to the legislative body of the municipality to assure one or more of the following: the completion of the project, adequate stabilization, or protection of public facilities that may be affected by a project.

Any decision to grant conditional use approval shall be sent by certified mail within the 45 day period to the applicant, and the appellant in matters on appeal. Copies of the decision shall also be mailed to every person or body appearing and having been heard at the hearing and a copy of the decision shall be filed with the Administrative Officer and the clerk of the municipality as a part of the public records of the municipality.

G. Appeals.

An interested person (see definition) may appeal any decision or act taken by the Administrative Officer by filing a notice of appeal with the secretary of the Flood Hazard Review Board or with the Town 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.

The Flood Hazard Review Board, in the exercise of its functions shall have the following powers, in addition to those specifically provided for elsewhere in law:

- (1) To hear and decide appeals where it is alleged that an error has been committed in any order, requirement, decision, or determination made by the Administrative Officer in connection with the administration or enforcement of this bylaw.
- (2) To hear and grant or deny a request for a variance.

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 Flood Hazard Review Board shall set a date and place for a public hearing of an appeal under this chapter that shall be within 60 days of the filing of the notice of appeal. The Board shall give public notice of the hearing as specified for conditional approval. Any person or body empowered to take an appeal with respect to the property at issue may appear and be heard in person or be represented by an agent or attorney at the hearing. Any hearing held

under this section may be adjourned by the Board from time to time; provided, however, that the date and place of the adjourned hearing shall be announced at the hearing. All hearings under this section shall be open to the public and the rules of evidence applicable at these hearings shall be the same as the rules of evidence applicable in contested cases in hearings before administrative agencies as set forth in 3 V.S.A. § 810.

### **IX. 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. The notice shall state that:

1. a violation exists,
2. that the alleged offender has an opportunity to cure the violation within seven days of receipt,
3. that failure to cure the violation may result in fines and/or loss of flood insurance,
4. that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days within the next succeeding 12 months, and
5. that the notice of violation may be appealed as specific under VIII.F.

If the notice of violation is not appealed, or the alleged violation remedied within 7 days, the Administrative Officer shall:

1. file a copy of the notice of violation in the municipal land use permit files;
2. file a copy of the notice of violation with the Town Clerk for filing in the land records;
3. if located in an area of special flood hazard, 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; and
4. mail a copy of the notice of violation to the violator and the state NFIP Coordinator.

An enforcement action shall be brought under 24 VSA section 4452 or 10 VSA section 1974a to cure the violation.

In accordance with 24 V.S.A., section 4451, any person who is found to have violated this bylaw shall be fined by the court not more than \$100.00 for each offense. No action may be brought under this section unless such notice as required in has been given as described above in this part. In default of payment of the fine, the violator shall pay double the amount of the fine. Each day that a violation is continued shall constitute a separate offense. All fines collected for the violation of this bylaw shall be paid over to the Town of Hartland.

## **X. Definitions**

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

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

***Area of Special Flood Hazard*** is the land in 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 “special flood hazard area” is synonymous in meaning with the phrase “area of special flood hazard”. The area may be designated a Zone A on the Flood Hazard Boundary Map (FHBM). Zone A is the flood insurance rate zone that corresponds to the 100-year floodplains that are determined in the Flood Insurance Study (FIS) by approximate methods. Because detailed hydraulic analyses are not performed for such areas, no BFEs or depths are shown within this zone. 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, or AE. Zones AE and A1-A30 are the flood insurance rate zones that correspond to the 100-year floodplains that are determined in the FIS by detailed methods. In most instances, BFEs derived from the detailed hydraulic analyses are shown at selected intervals within this zone. Zone AH is the flood insurance rate zone that corresponds to the areas of 100-year shallow flooding with a constant water-surface elevation (usually areas of ponding) where average depths are between 1 and 3 feet. The BFEs derived from the detailed hydraulic analyses are shown at selected intervals within this zone. Zone AO is the flood insurance rate zone that corresponds to the areas of 100-year shallow flooding (usually sheet flow on sloping terrain) where average depths are between 1 and 3 feet. The depth should be averaged along the cross section and then along the direction of flow to determine the extent of the zone. Average flood depths derived from the detailed hydraulic analyses are shown within this zone. In addition, alluvial fan flood hazards are shown as Zone AO on the FIRM.

***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)*** the height of the base flood, 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 average depth of the base flood, usually in feet, above the ground surface.

***Basement*** means any area of the building having its floor elevation (below ground level) on all sides.

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

***Channel width*** means the horizontal distance across a stream or river from top of bank to top of bank.

***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.

***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.

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

***Fill*** means any earth materials or woody debris exceeding 20 cubic yards cumulatively from the date of adoption.

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

***Flood Insurance Rate Map (FIRM)*** means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

***Flood Insurance Study*** 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 (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.

***Fluvial Erosion Hazard Area*** means the land area adjacent to stream channels subject to fluvial erosion processes or other channel adjustments as delineated on the current Fluvial Erosion Hazards Area Map.

***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.

***Interested person*** means any one of the following:

- (1) A person owning title to property, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by a bylaw, who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.
- (2) The municipality that has a plan or a bylaw at issue in an appeal brought under this chapter or any municipality that adjoins that municipality.
- (3) A person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under this chapter, who can demonstrate a physical or environmental impact on the person’s interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality.
- (4) Any ten persons who may be any combination of voters or real property owners within a municipality listed in subdivision (2) of this subsection who, by signed petition to the appropriate municipal panel of a municipality, the plan or a bylaw of which is at issue in any appeal brought under this title, allege that any relief requested by a person under this title, if granted, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality. This petition to the appropriate municipal panel must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal.



(5) Any department and administrative subdivision of this state owning property or any interest in property within a municipality listed in subdivision (2) of this subsection, and the agency of commerce and community development of this state.

**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.

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

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

**Minor improvement** means any repairs, reconstruction, or improvement of a structure (other than customary maintenance), the cost of which is less than fifty (50) percent of the market value of the existing structure.

**New construction** means, for the purposes of determining insurance rates, structures, including manufactured homes, 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 regulation under this bylaw, *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 the floodplain management regulations adopted by a community.

**Perennial stream** means a stream or river that flows year round. Unless evidence is presented showing otherwise, streams shown as perennial on USGS topographic maps or in the VCGI stream data layer will be treated as perennial.

**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 at any point.

**Special Flood Hazard Area** – see “area of special flood hazard”.

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

**Structure** means, for regulatory purposes under this bylaw, a walled and roofed building, 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 (“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.

**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 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”.

***Top of Bank*** means that vertical point along a streambank 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.

***Walkout-on-grade basement*** means a basement whose floor is at ground level on at least one side of the house, usually with a door on that side. This is not considered a "basement" as defined by these regulations.