

# Town of Windham Vermont Zoning Regulations

# 2019

Approved by Town of  
Windham Selectboard  
Sept 2, 2019

Prepared by the Windham Planning Commission/Zoning Board of Adjustment with the assistance of the Windham Regional Commission. The Town of Windham, Vermont would like to acknowledge and thank the Vermont Department of Housing and Community Development for providing the Municipal Planning Grant funding which supported the preparation of these Zoning Regulations. Counseling assistance was received from the offices of Gerald Tarrant, Esq., Nick Low, Esq. and Ryan Kane, Esq.

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## PROCEDURAL AND APPLICATION INFORMATION

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

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

CONTACT YOUR NEAREST STATE ENVIRONMENTAL OFFICE OR

State of Vermont  
NATURAL RESOURCES BOARD

DISTRICT #2 ENVIRONMENTAL COMMISSION  
100 Mineral Street, Suite 305, Springfield, VT 05156-3168  
Telephone: 802-885-8850  
Email: [sandra.conant@state.vt.us](mailto:sandra.conant@state.vt.us)

5. A CERTIFICATE OF CONFORMANCE

Certificate of Conformance is issued by the ZONING ADMINISTRATOR upon request when an Applicant has complied with ALL of the requirements of the Town of Windham Zoning Regulations and a satisfactory site inspection has been completed. See Section 301 for details.

## **ARTICLE I: AUTHORITY AND PURPOSE**

### **Section 100 ENACTMENT**

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

### **Section 101 PURPOSE**

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

### **Section 102 APPLICATION OF REGULATIONS**

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

### **Section 103 INTERPRETATION**

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

### **Section 104 ADOPTION AND AMENDMENTS**

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

### **Section 105 SEPARABILITY**

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

### **Section 106 EFFECTIVE DATE**

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

### **Section 107 DEFINITIONS**

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

## **ARTICLE II: ZONING DISTRICTS AND DISTRICT STANDARDS**

### **Section 200 ZONING DISTRICTS AND MAP**

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

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

Resource Protection Area Overlay (RPA)  
Historic District Overlay (HD)  
High Elevation Resource Protection Overlay (HE)

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

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

## **Section 201 ZONING DISTRICT STANDARDS**

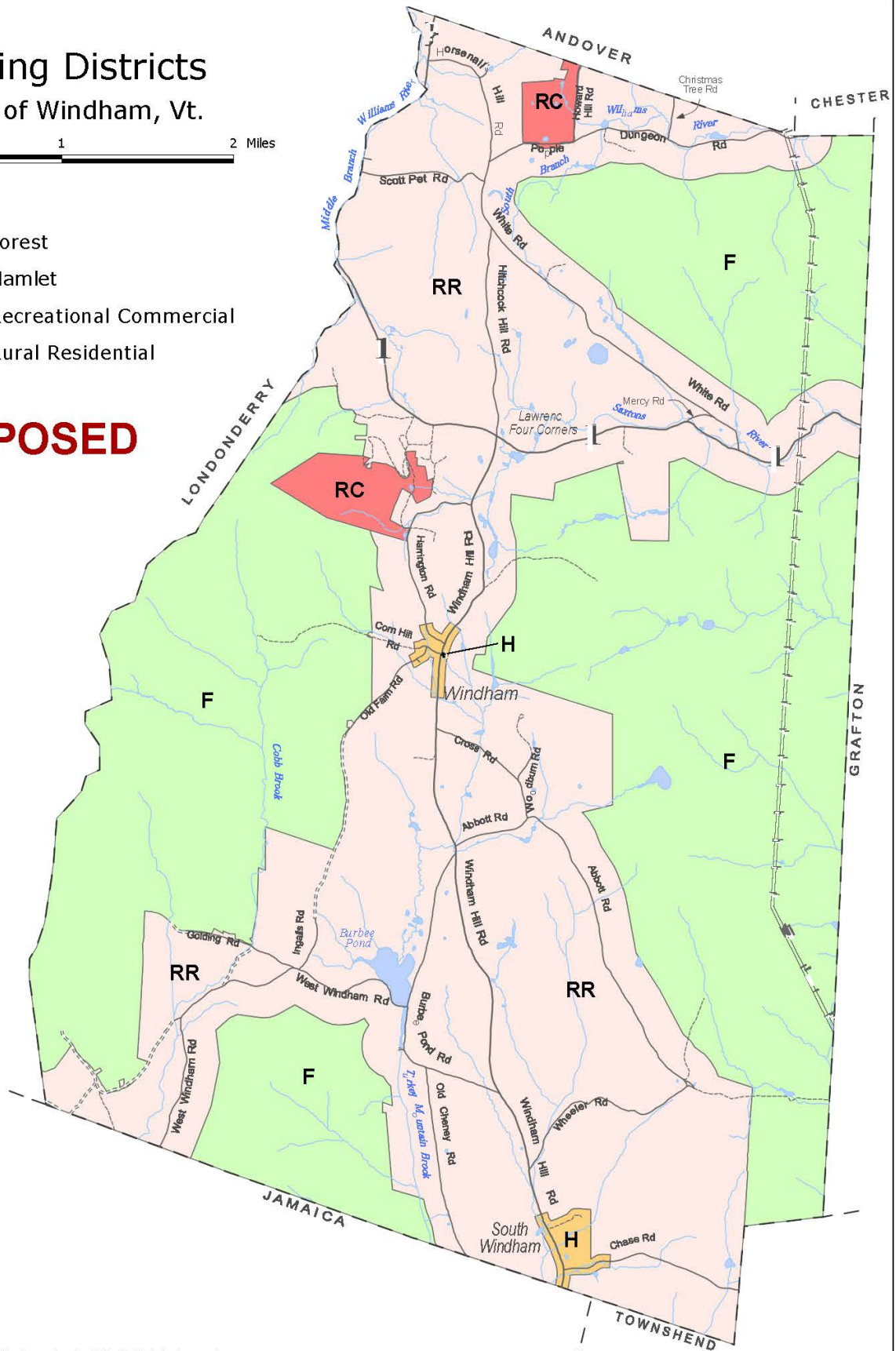
1. Permitted and Conditional Uses: Allowed uses for each District are specified in this section. Permits for Permitted Uses shall be issued in accordance with Section 301. Conditional uses are subject to review in accordance with Section 206. Pursuant to Section 202, both Permitted and Conditional uses may be subject to Site Plan Review under Sections 203-205, and additional standards set forth in Article III.
2. Uses not provided for: Any uses not permitted in these regulations, unless specifically exempted in these Regulations, are prohibited. The Zoning Board of Adjustment, in considering a conditional use application or on appeal, may allow for a use not specifically listed within a district only upon finding that the proposed use is of the same general character as those uses listed for that district and defined under Article II; and such use will not adversely affect other uses within the district or on adjoining lands.
3. Buildings and Use on Lots: There shall be only one principal dwelling or one principal use and its structures on a lot. Provision is made for accessory uses, home occupations, and accessory buildings.
4. Dimensional and Design Standards: All dimensional and design standards for each district are provided below. Additional standards or requirements for particular land uses may be required as set forth in Article V of these Regulations. All setbacks along roads shall be determined from the center of the existing road.
5. Exemptions:
  - a. Pursuant to 24 V.S.A. §4413(d) farm structures, excluding dwellings, accepted agricultural practices and accepted silvicultural practices are exempt from local permitting requirements. However, farmers intending to erect a farm structure must notify the municipality of the intent to build a farm structure, and abide by setbacks contained within the zoning ordinance, unless they provide an approval of lesser setbacks by the Commissioner of Agriculture, Food and Markets. The notification must contain a sketch of the proposed structure and include the setback distances from adjoining property owners and the street right-of-way. Additionally, all farm structures within the Flood Hazard Overlay District must comply with the National Flood Insurance Program. Lastly, the municipality may report violations of Accepted Agricultural Practices or accepted silvicultural practices to the appropriate state authorities for enforcement.
  - b. These Regulations shall not regulate accepted silvicultural practices, as those practices are defined by the Commissioner of Forests, Parks and Recreation under subsection 1021(f) and 1259(f) of Title 10 and section 4810 of Title 6 of the Vermont Statutes Annotated.

# Zoning Districts Town of Windham, Vt.

0 1 2 Miles

- Forest
- Hamlet
- Recreational Commercial
- Rural Residential

**PROPOSED**



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## **Section 201.1 Recreational Commercial (RC)**

*General Description:* Lands within the former Timber Ridge Ski Area, occupied by the original base lodge, accessory structures, and parking areas, and outside the boundaries of the adjacent Forest District (F-2) and Residential District. Lands within the Tater Hill Golf Club occupied by the portion of the golf course within boundaries of the town of Windham, the club house, restaurant, accessory structure, and parking areas.

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

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

*Conditional Uses:* Two Family Dwelling, Multifamily Dwelling, Garage/Gas Stations, Retail over 2,000 square feet, Storage/Warehouse, Planned Unit Development (PUD), Recreational/entertainment facilities, Restaurant, Retail Store, wind energy system, solar array.

*Density:* One unit per lot

*Dimensional Standards:*

- *Minimum Lot Size:* 1 acre OR ½ (one half) acre for PUD (Planned Unit Development)
- *Setbacks:*
  - *Front (measured from the center of the road):* 53' minimum from Windham Hill Road, Route 121, Route 11; 45' minimum from all other roads,
  - *Side and Rear:* 15' side and rear from property lines
- *Building Size* – 2,200 square feet maximum building footprint. Over 2,200 square feet requires conditional use review.
- *Height:* Habitable buildings higher than 35 feet above ground level, and non-habitable structures exceeding 100 feet above ground level are prohibited.

*Design Standards:*

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

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

## **Section 201.2 Hamlet (H)**

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

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

*Permitted Uses:* Single Family Dwelling, Accessory Dwelling Unit

*Conditional Uses:* Two Family Dwelling, Multifamily Dwelling, Home industry/business, Personal Service, Professional Office. Accessory Use, Bed and Breakfast, Country Inn, Education, Garage, Government/Community Services, Planned Unit Development (PUD), solar array.

*Prohibited Uses:* wind energy system.

*Density:* one principal structure per lot



*Dimensional Standards:*

- *Minimum Lot Size:* 1 acre
- *Setbacks:*
  - *Front (measured from the center of the road):*
    - *Minimum:* 53' minimum from Windham Hill Road; 45' minimum from all other roads
    - *Maximum:* 73' maximum from Windham Hill Road; 65' maximum from all other roads
  - *Side and Rear:* 15' side and rear from property lines.
- *Height:* Habitable buildings higher than 35 feet above ground level, and non-habitable structures exceeding 100 feet above ground level are prohibited.

*Design Standards:* Review site design, parking, lighting, setbacks, and related standards for development within Hamlets; and PC request public input at public informational meeting on desirability of creating standards that would protect and enhance the scale, pattern and character of development that defines the Hamlets. This could include discussion of potential creation of historic district / design review district / some sort of overlay district.

### **Section 201.3 Forest Districts (F)**

*General Description:*

Windham has designated four Forest Districts. They are areas of steep slopes and contiguous forest. The land is characterized by the absence of development or improved roads. The following are general descriptions of the Forest Districts:

- the eastern slopes of Glebe Mountain and the Cobb Brook watershed;
- the land area including the Stiles, Willie and Howe Brook watersheds that lies between Windham Hill Road and the Town's eastern boundary;
- the area located in between Popple Dungeon Road and White Road in the northeastern portion of Town; and
- the land around Turkey Mountain.

*Purpose:* Protect large contiguous parcels of forest land and numerous natural and community resource values including town and regional watersheds; protect against soil erosion and related problems with development on steep slopes; minimize impact to municipal services

*Permitted Uses on land below 2000 feet elevation:*

1. Agricultural, including: maple sugaring, pasturing livestock, raising crops, and building accessory to and necessary for such uses.
2. Commercial forestry;
3. Forestry for research, demonstration, education and related uses;
4. Private camp, consisting of a building used occasionally or seasonally for temporary shelter in connection with hunting, fishing or a recreational activity, not operated as a business and subject to the following:
  - a. Only chemical, incinerator, or privy-type toilet facilities permitted in accordance with design standards of the Vermont Department of Environmental Conservation. The camp may not be served by a sewage disposal system consisting of a tank and/or leaching field.
  - b. No privy-type toilet facilities or any discharge of wastewater from sinks, showers, washing machines, or other sources shall be located within 200 feet of any spring, well, stream, brook, river, pond, or Class I, II, or III wetland including any vernal pools on the subject lot or any other lot.
5. Accessory uses customarily incidental to a permitted or conditional use on the same lot. Accessory buildings shall not be used for dwelling purposes.

*Conditional Uses on land below 2000 feet elevation:*

1. Single family dwelling with state approved septic system.
2. A recreational camp for seasonal or occasional use for non-commercial, limited outdoor recreation, such as a trap and skeet shooting range and/or archery range, cross-country skiing, hiking, picnicking and similar low-intensity recreational uses, provided that the lot area is not less than twenty-seven acres, and that all camp facilities are

located not less than 200 feet from the edge of any road right-of-way or other lot line, and subject to the following:

- a. Only chemical, incinerator, or privy-type toilet facilities permitted in accordance with design standards of the Vermont Department of Environmental Conservation. The camp may not be served by a sewage disposal system consisting of a tank and/or leaching field.
- b. No privy-type toilet facilities or any discharge of wastewater from sinks, showers, washing machines, or other sources shall be located within 200 feet of any spring, well, stream, brook, river, pond, or Class I, II, or III wetland including any vernal pools on the subject lot or any other lot.

3. Extraction of Earth Resources (must comply with Section 504).

4. Solar arrays and individual wind energy systems.

*Permitted Uses on land 2000 feet or more in elevation:*

1. Commercial Forestry (including maple sugaring)

*Conditional Uses on land 2000 feet or more in elevation:*

1. Pasturing livestock on previously open land.
2. Forestry for research, demonstration, education and related uses
3. Private camp

*Density:* 1 dwelling unit per lot

*Dimensional Standards:*

- *Minimum Lot Size:* 27 acres
- *Setbacks:*
  - *Front (measured from the center of the road):* 83' minimum from Windham Hill Road, Route 121 or Route 11; 75' minimum from all other roads,
  - *Side and Rear:* 50' side and rear from property lines.
- *Height:*
  - Structures above tree height and/or tall enough to require FAA lighting are prohibited in the forest district areas.
  - Habitable buildings higher than 35 feet above ground level and non-habitable structures exceeding 100 feet above ground level are prohibited.

#### **Section 201.4 Rural Residential (RR)**

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

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

*Permitted Uses:* Single Family Dwelling, Accessory Dwelling Unit

*Conditional Uses:* Two Family Dwelling, Multifamily Dwelling, Home industry/business, Personal Service, Professional Office, Accessory Use, Bed and Breakfast, Country Inn, Education, Garage, Government/Community Services, Planned Unit Development (PUD), Repair Shop, Retail Store, Extraction of Earth Resources (must comply with Section 504), Restaurant, and Recreational Facilities, wind energy system, solar array.

*Density:* one dwelling per lot

*Dimensional Standards:*

- *Minimum Lot Size:* one acre
- *Setbacks:*
  - *Front (measured from the center of the road):* 73' minimum from Windham Hill Road, Route 121 or Route 11; 65' minimum from all other roads,
  - *Side and Rear:* 25' side and rear from property lines.
- *Height:* Habitable buildings higher than 35 feet above ground level, and non-habitable structures exceeding 100 feet above ground level are prohibited.

**Section 201.5 Resource Protection Area Overlay (RPA)**

*General Description:* Overlay district, as shown on the following Resource Protection Area Overlay Maps, identifies resource protection areas throughout the town and includes areas identified as productive farmland, wetland chains, headwaters, wildlife habitat/corridors, scenic areas, and land above 2000 feet in Forest District.

*Purpose:* The purpose of the RPA is to delineate overlay district boundaries and create development, clearing, and maintenance requirements in order to protect these important resources and provide a diversity of wildlife habitat. The Zoning Administrator shall refer any application for development in the RPA to the Zoning Board of Adjustment for site plan review. The ZBA shall approve proposed conditional use development projects if it determines that the resources identified in the RPA Overlay are adequately protected. The ZBA may deny a project if it determines that the resources identified in the RPA Overlay district are not adequately protected.

*Permitted Uses:* As allowed in the underlying zoning districts, subject to site plan review by the Zoning Board of Adjustment.






*Conditional Uses:* As allowed in the underlying zoning districts, subject to site plan review and approval by the Zoning Board of Adjustment.

*Density:* As allowed in the underlying districts.

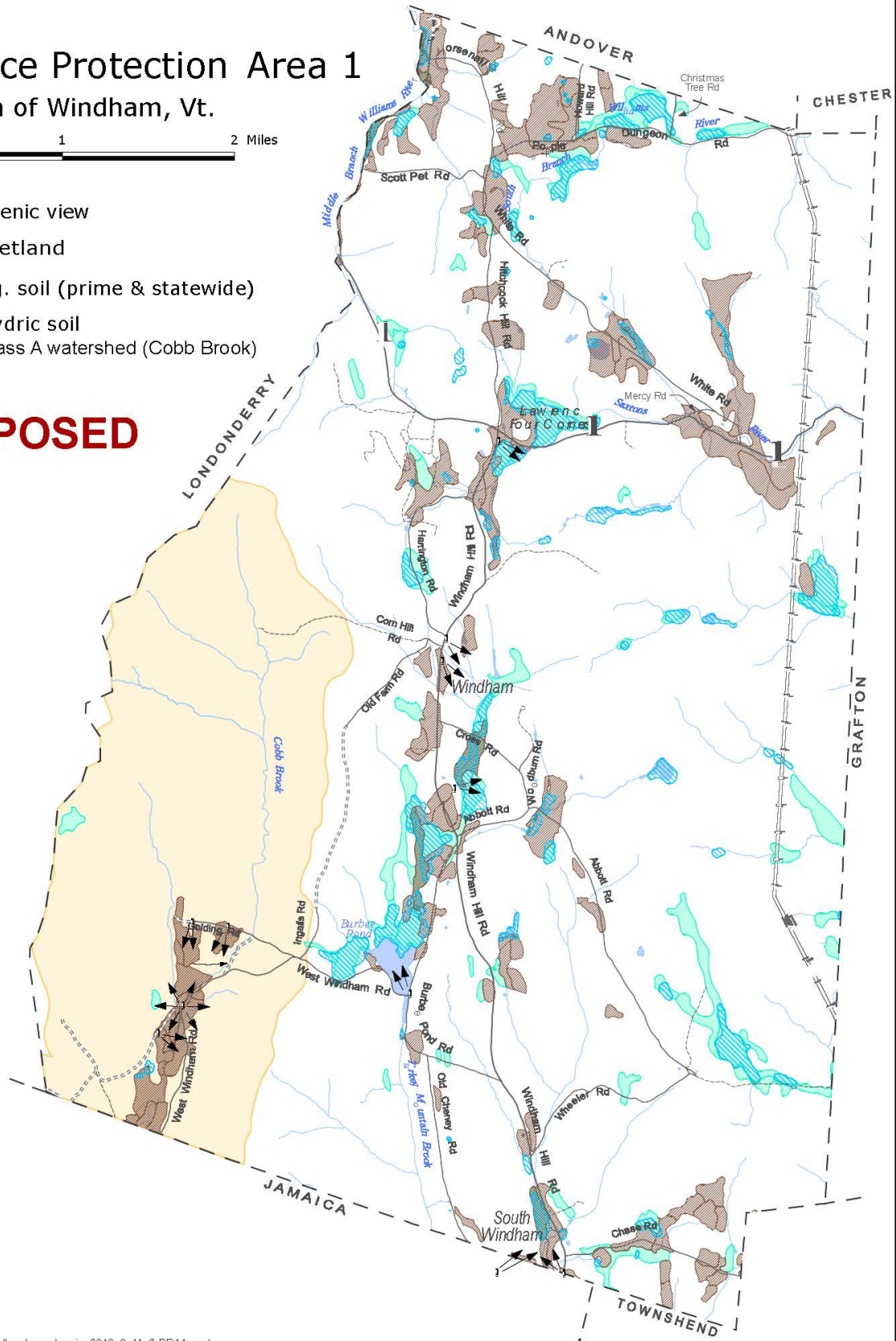
# Resource Protection Area 1

Town of Windham, Vt.

0 1 2 Miles

-  Scenic view
-  Wetland
-  Ag. soil (prime & statewide)
-  Hydric soil
-  Class A watershed (Cobb Brook)

**PROPOSED**






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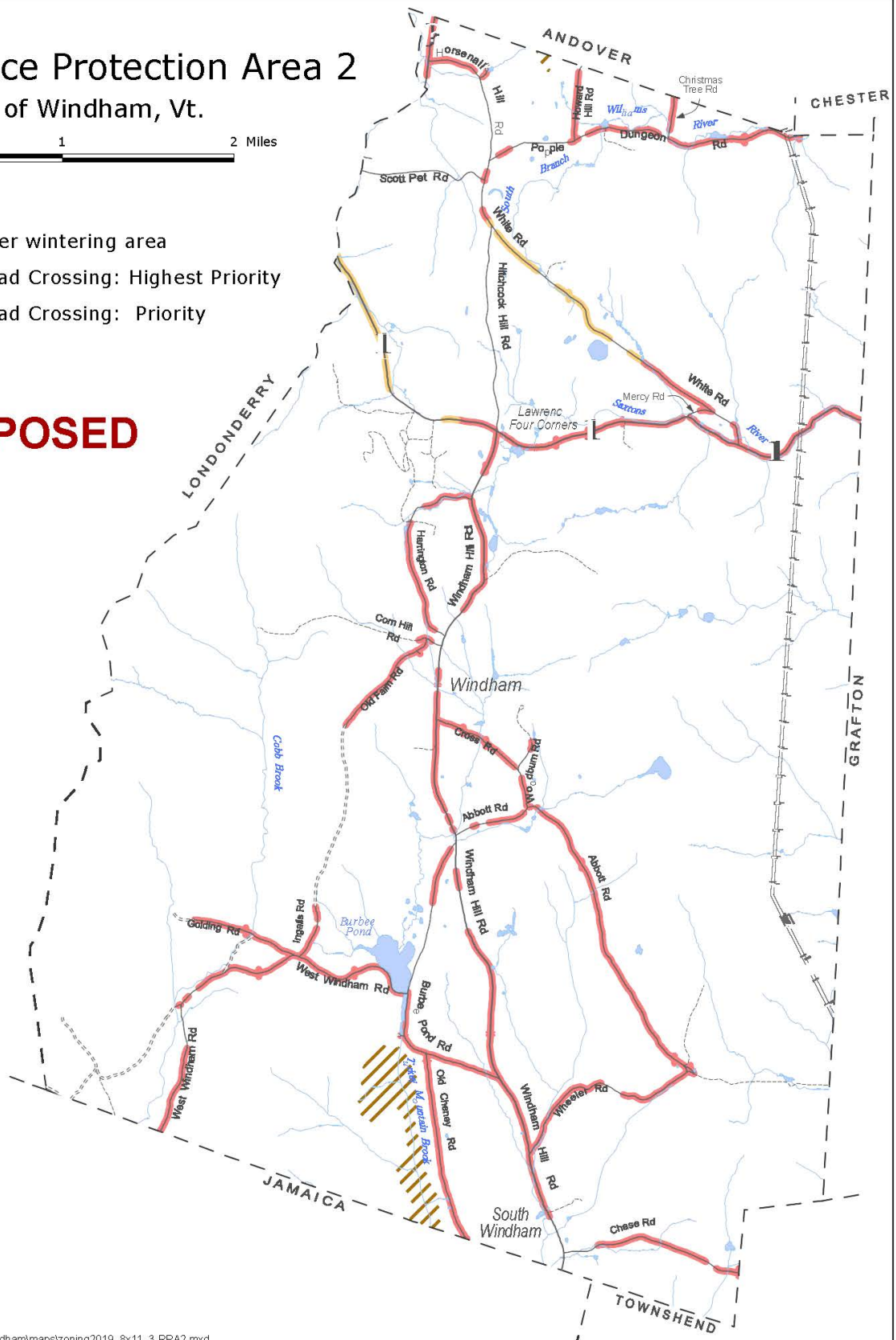
# Resource Protection Area 2

## Town of Windham, Vt.

0 1 2 Miles

-  Deer wintering area
-  Road Crossing: Highest Priority
-  Road Crossing: Priority

**PROPOSED**



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## Section 201.6 Historic District Overlay (HD)

*General Description:* The two Historic Districts in Windham, as shown on maps from the National Register of Historic Places, identify historic places in the Town of Windham and South Windham as described in Chapter VI of the Town Plan. The Windham Congregational Church (Meeting House) and Baptist Church (Valley Bible Church) are part of the Vermont Historic Sites and Structure Survey. The Historic District Overlay covers part of the Hamlets of Windham and South Windham. The structures and area of the District are defined on the National Register of Historic Places (<http://nationalregisterofhistoricplaces.com/vt/windham/districts.html>), the Vermont State Register of Historic Places (<https://orc.vermont.gov/resource/show-resource-table.aspx>) and the Town of Windham (<http://townofwindhamvt.com>) website.

*Purpose:* The purpose of the Historic District is to define the structures in the district which provide a vision of the old town, to maintain the character of the vision for those structures, and to align future modifications and additions to the district with the character of that historic vision. New buildings and building renovations should be consistent with the historic character of the villages. The Historic Districts should continue higher density, support a mixture of business, institutional and civic uses; prevent linear pattern of development; encourage compact development with distinct boundaries so as to preserve open space and minimize rural sprawl.

The adaptive reuse of the properties as mentioned in the conditional uses is encouraged. Adaptive reuse is designed to provide for the continued viability of historic structures that have outlived their original agricultural, civic, or industrial function or the original use was considered abandoned and is once again viable at the location. Through these provisions the town shall allow for the reuse of these structures, including non-conforming uses, while requiring the retention of the historic character.

*Permitted uses:* Single family dwellings with Accessory Structures

*Conditional Uses:* Two Family Dwellings, Multifamily Dwellings, Home industries/Businesses, Personal Services, Professional Office, Accessory Use, Bed and Breakfast, Country Inn, Education, Residential Garage, Government/community Services, solar array.

*Not permitted uses:* Wind energy system.

*Density:* One Dwelling with Accessory Structures per lot.

### *Dimensional Standards:*

- *Minimum Lot Size:* 1 acre
- *Setbacks:*
  - *Front (measured from the center of the road):*
    - *Minimum:* 53' minimum from Windham Hill Road; 45' minimum from all other roads
    - *Maximum:* 73' maximum from Windham Hill Road; 65' maximum from all other roads
  - *Side and Rear:* 15' side and rear from property lines.
- *Height:* Habitable buildings higher than 35 feet above ground level, and non-habitable structures exceeding 100 feet above ground level are prohibited.

Following boundary information from

[https://orc.vermont.gov/Documents/Windham\\_NationalRegister\\_NominationForm\\_00000002.pdf](https://orc.vermont.gov/Documents/Windham_NationalRegister_NominationForm_00000002.pdf)

State of Vermont

Agency of Development and Community Affairs

Division for Historic Preservation

and

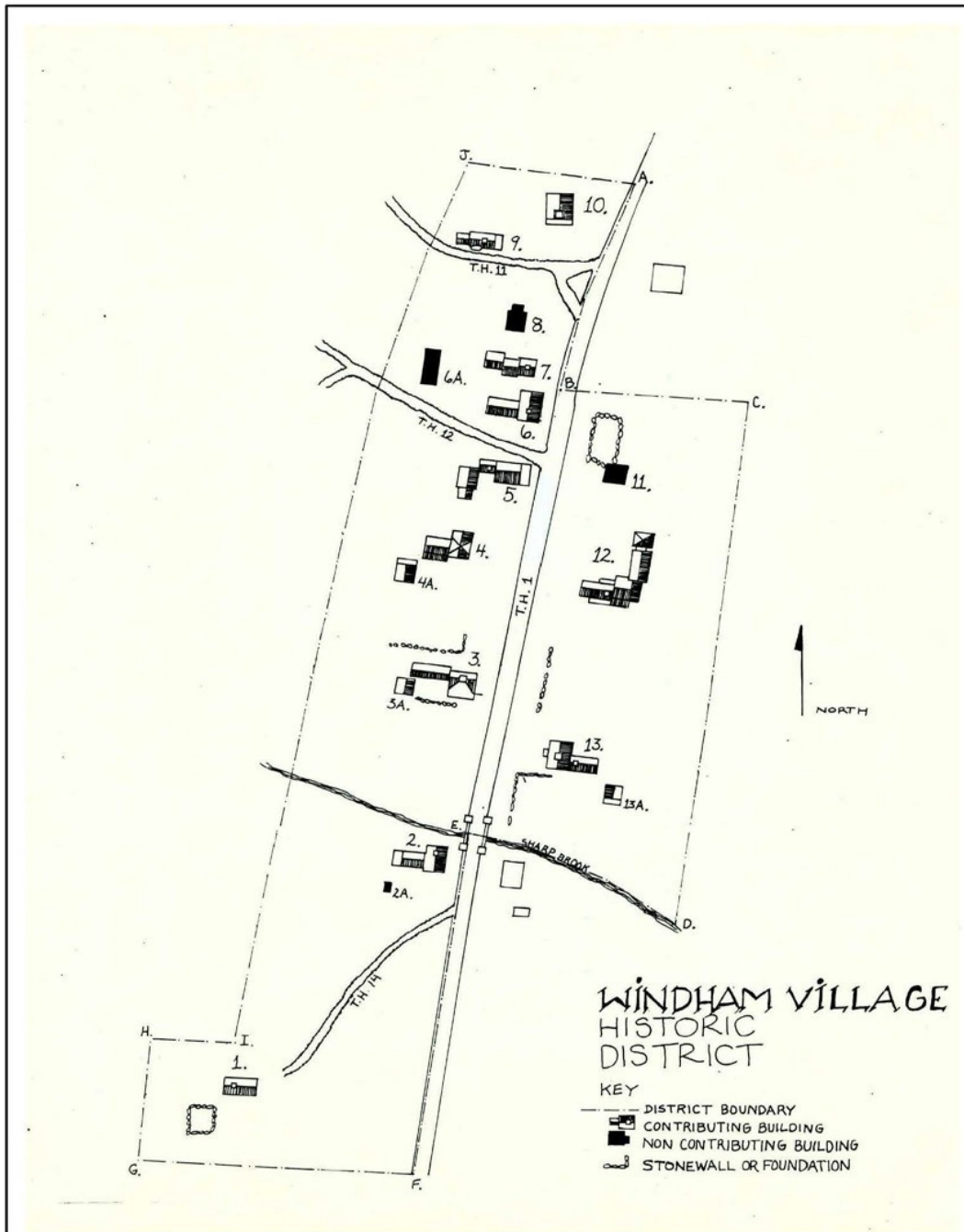
<https://npgallery.nps.gov/NRHP/AssetDetail?assetID=476cb1be-18cc-4aef-8428-8156a0a74013>

National Register of Historic Places

Inventory—Nomination Form

United States Department of the Interior

National Park Service



## Windham Historic District Overlay Map

- |                                      |                                                                       |
|--------------------------------------|-----------------------------------------------------------------------|
| 1 Old Mack Place-Reilly House c.1785 | 8 Winship-Penny House c.1946                                          |
| 2 Adrian House c.1845                | 9 Old Windham Congregational Church Parsonage - Orlando House c. 1855 |
| 2A Adrian Garage c.1980              | 10 Windham Congregational Church c.1802                               |
| 3 Light House c.1843                 | 11 Quamma House c.1970                                                |
| 3A Light Barn c.1920                 | 12 Abbott-Sullivan c.1850                                             |
| 4 Bennett House c.1858               | 13 Old Congregational Parsonage-Mills House c.1835                    |
| 4A Bennett Barn c.1858               | 13A Mills Shed c.1900                                                 |
| 5 Chapman House c.1840               |                                                                       |
| 6 Harris-Moore House c.1840          |                                                                       |
| 6A Moore Woodshop c.1970             |                                                                       |
| 7 Smith-Hall House c.1845            |                                                                       |

From National Register of Historic Places  
United States Department of the Interior  
National Park Service

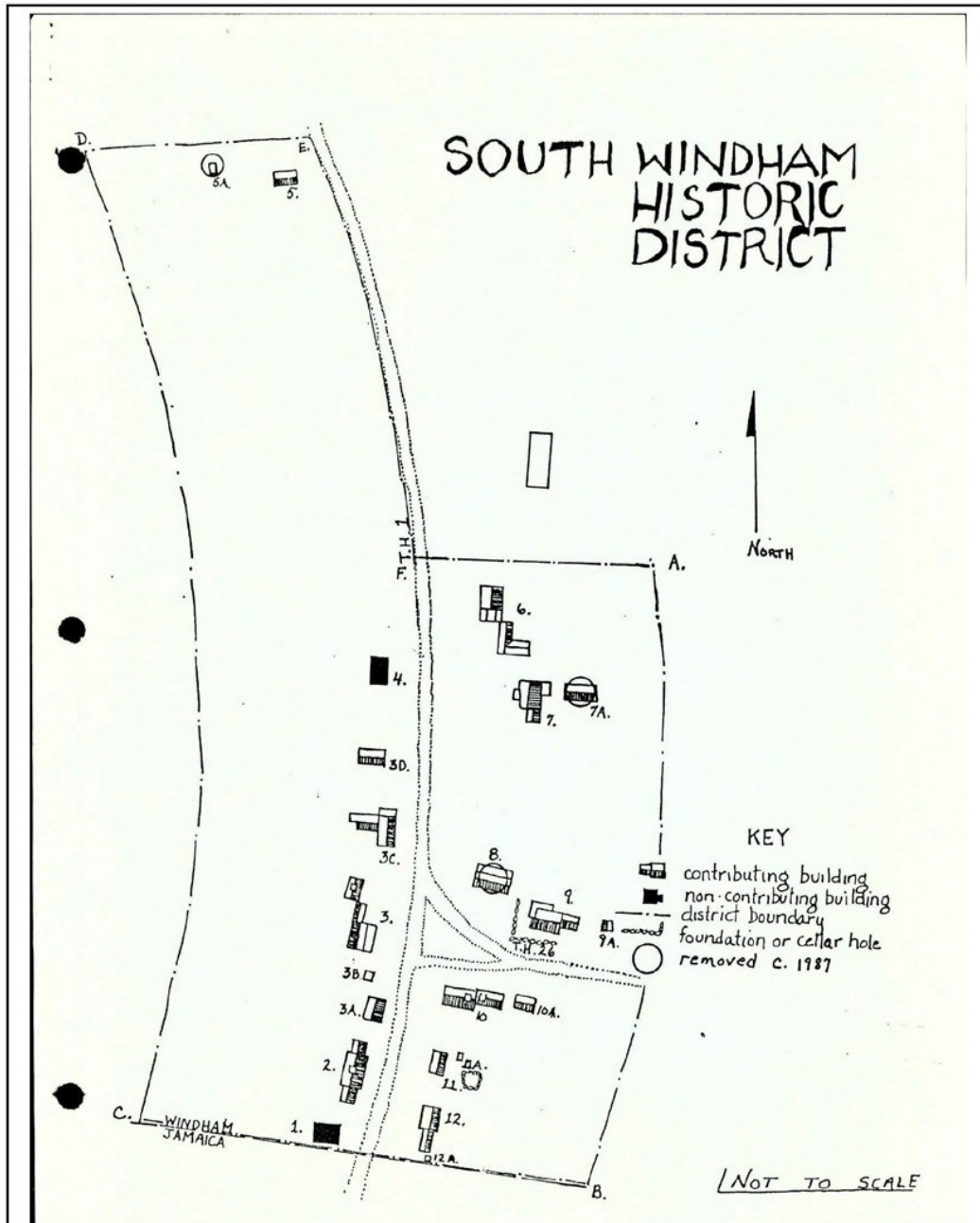


#### WINDHAM BOUNDARY JUSTIFICATION

“The Windham Village Historic District includes the historic buildings associated with the village and their immediate environs. Open and wooded space surrounds the district with the exceptions of a small modern house just north of #11 and the c.1970 town garage just south of #13 and Sharp Brook.”

#### WINDHAM BOUNDARY DESCRIPTION

“The boundary of the Windham Historic District begins at Point A located at the northeast corner of the Windham Congregational Church, property, #10. From this point the boundary extends southerly along the east property line of this lot and continues for about 700 feet along the west edge of the right of way of Town Highway 1 crossing T.H. 11 and continuing to a Point B, located at the intersection of said edge and the western extension of the north property line of #11. From Point B, the boundary follows said extension, crossing T.H. 1, and continuing along said boundary in an easterly direction to Point C, located at the intersection of said boundary and a line parallel to and 300 feet east of the east edge of the right of way of Town Highway No. 1. It thence proceeds in a southerly direction along said line east of the Quamma House, #11, the Sullivan House, #12, and the Dr. Elden Mills House, #13, to Point D, located at the intersection of said line and the north bank of Sharp Brook. From Point D, the boundary of the Windham Historic District continues in a northwesterly direction along the north bank of Sharp Brook passing beneath a bridge carrying T.H. 1 over the brook to Point E located at the intersection of said bank and the western edge of said bridge. The boundary thence proceeds in a southerly direction along said edge of said bridge, crossing the bridge, continuing south along the western edge of the right of way of T.H. 1 crossing T.H. 14 and continuing to Point F, located at the intersection of said edge and the eastern extension of a line 50 yards south of and parallel to the south wall of building #1. It thence proceeds in a westerly direction along said extension, said line and a western extension thereof to Point G located at the southern extension of a line 50 yards west of and parallel to the west wall of building #1. The boundary then proceeds in a northerly direction along said extension, line and a northern extension thereof to Point H, located at the intersection of said extension and the western extension of a line 25 yards north of and parallel to the north wall of building #1. It thence proceeds in an easterly direction along said extension and said line to Point I, located at the intersection of said line and a line 300' west of the western edge of the right of way of T.H. 1. The boundary thence proceeds in a northerly direction, passing to the west of buildings #2, 2A, 3, 3A, 4, 4A, 5, 6, 6A, 7, 8, 9, and 10, crossing Sharp Brook, T.H.12 and T.H. 11 and continuing on to Point J, located at the intersection of said line and a western extension of the north property line of the Windham Congregational Church, #10. It thence proceeds in an easterly direction along said extension and boundary to Point A, the point of origin.”



### South Windham Historic District Overlay Map

- |                                                                 |                                                           |
|-----------------------------------------------------------------|-----------------------------------------------------------|
| 1 Brown Barn c.1940                                             | 7A Hall Chicken Coop c.1920 (removed c.1987)              |
| 2 Harrington-Brown House c.1860                                 | 8 Old Whipple Store-Reed Property c.1855 (removed c.1987) |
| 3 Donally-Perry House c.1850                                    | 9 Kingsbury-Reed House c.1950                             |
| 3A Perry Barn c.1850                                            | 9A Storage Shed c.1900                                    |
| 3B Perry Shed c.1900                                            | 10 Worden House c.1840                                    |
| 3C Perry Barn c.1850                                            | 10A Worden Garage c.1850                                  |
| 3D Perry Barn c.1850                                            | 11 Fellows House c.1840                                   |
| 4 Corriveau c.1968                                              | 11A Fellows Chicken Coop c.1975                           |
| 5 Old Schoolhouse No.5 c.1887                                   | 12 Holmes House c.1835                                    |
| 5A District School No.5 Outhouse c.1900 (removed c.1987)        | 12A Shed c.1920                                           |
| 6 South Windham Baptist Church 1825                             | From National Register of Historic Places                 |
| 7 Old South Windham Baptist Church Parsonage(Hall House) c.1845 | United States Department of the Interior                  |
|                                                                 | National Park Service                                     |

#### SOUTH WINDHAM BOUNDARY JUSTIFICATION

“The boundaries include the historic buildings and their immediate surrounds which give South Windham its rural historic quality. Excluded north of the church, #6, is a deteriorated and altered early twentieth century house. Wooded and some open space extends beyond the boundaries on the remaining sides with the Windham/Jamaica town line creating a distinct edge at the southern end.”

#### SOUTH WINDHAM BOUNDARY DESCRIPTION

“The boundary of the South Windham Historic District begins at Point A, the intersection of the eastern extension of a line 50' north of and parallel to the north wall of the Baptist Church, #6, and a line 200 feet east of and parallel to the eastern edge of the right of way of T.H. 1. It thence proceeds in a southerly direction along said line, crossing T.H. 26, passing to the east of buildings #6, 7, 7A, 8, 9, 9A, 10, 10A, 11, 12, 12A and continuing on to Point B, located at the intersection of said line and the Jamaica/Windham town line. It thence proceeds in an easterly direction along the town line, crossing T.H. 1, to Point C, located at the intersection of the town line and a line 300 feet west of and parallel to the western edge of the right of way of T.H. 1. The boundary thence proceeds in a northerly direction along said line, passing to the west of buildings #1, 2, 3, 3A, 3B, 3C, 3D, 4, 5, and 5A, and continuing on to Point D, located at the intersection of said line and the western extension of a line 25 feet north of and parallel to the north wall of the Old School House No. 5, #5. The boundary thence proceeds in an easterly direction along said extension, line and an easterly extension thereof to Point E, located at the intersection of said extension and the western edge of the right of way of T.H. 1. The boundary thence proceeds in a southerly direction along said edge to Point F, located at the intersection of said edge and the western extension of a line 50 feet north of and parallel to the north wall of the Baptist Church, #6. It thence proceeds in an easterly direction along said extension crossing T.H. 1 and continuing on said extension, said line, and an eastern extension thereof to Point A, the point of beginning.”

*Design Standards:* Historic preservation regulations designate a historic district in its zoning bylaws. Any external alteration to existing structures, or any new construction, would need to be approved by the ZBA. In granting approval, the board must consider:

- The historic or architectural significance of the structure, its distinctive characteristics, and its relationship to the historic significance of the surrounding area.
- The relationship of the proposed changes in the exterior architectural features of the structure to the remainder of the structure and to the surrounding area.
- The general compatibility of the proposed exterior design, arrangement, texture, and materials proposed to be used.
- The environmental setting and aesthetic factors necessary to maintain the historic character of the district.

#### **Section 201.7 High Elevation Resource Protection Overlay (HE)**

General Description: Lands above 2000 feet in Forest Districts.

Purpose: The purpose of the High Elevation Resource Protection Overlay District is to protect fragile, ecologically important land, to preserve forest blocks and to preserve Windham's rural character and scenic landscape. High-elevation sites above 2000 feet in Forest Districts are especially fragile and important for a variety of reasons, particularly because they are the source of the headwaters for numerous streams and rivers, and they include forest blocks and high elevation habitat that may be needed as more and more species adapt to climate change. These areas are appropriate for no development, except for the conditional uses listed below.

Boundaries:

All land at, or above 2000 feet in elevation in all Forest Districts. District boundaries are identified on the attached High Elevation Protection Overlay Map. The provisions of this Article shall only apply to that portion of a parcel located within the Overlay District.

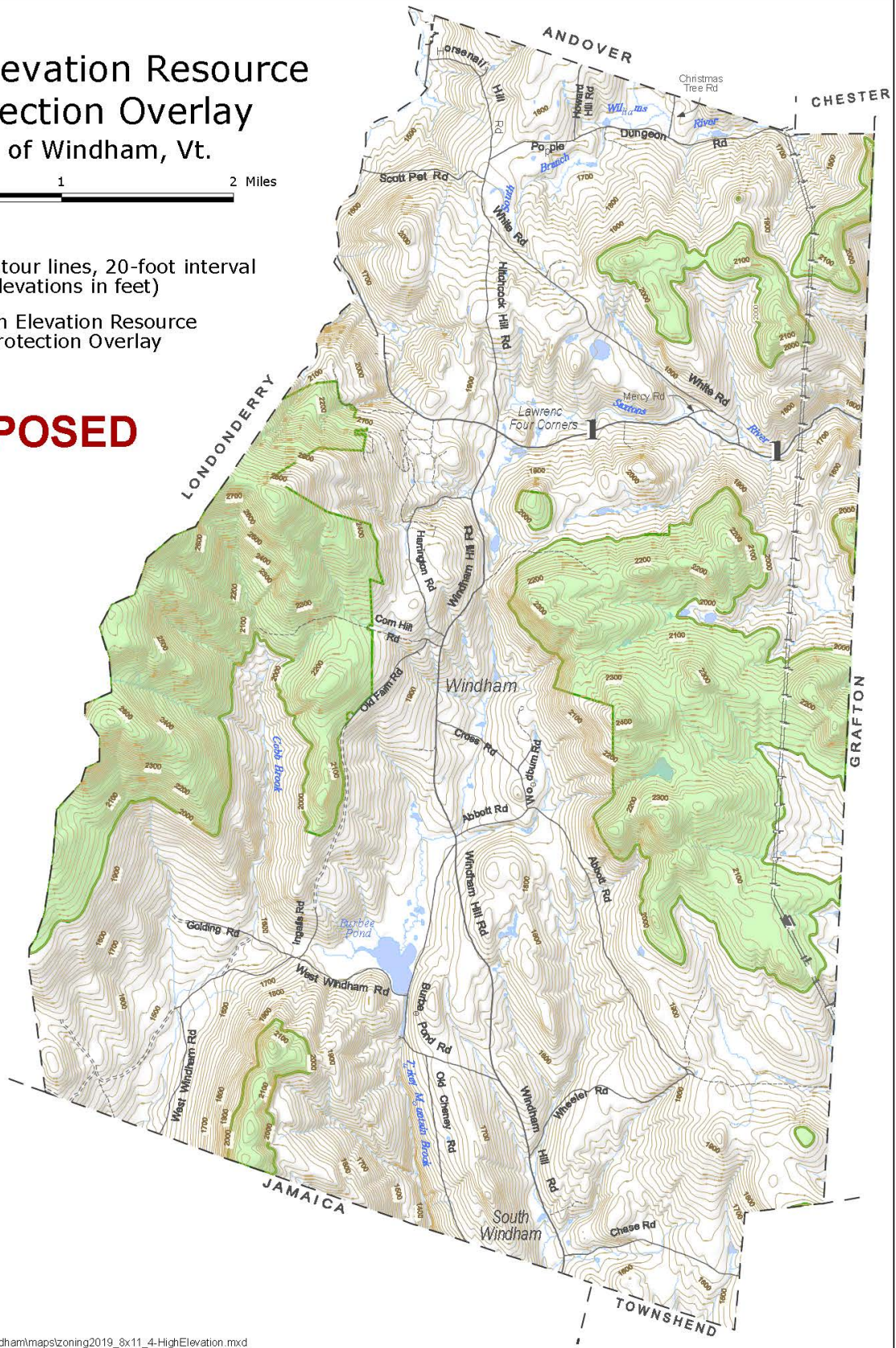


# High Elevation Resource Protection Overlay Town of Windham, Vt.

0 1 2 Miles

- Contour lines, 20-foot interval (elevations in feet)
- High Elevation Resource Protection Overlay

**PROPOSED**



Permitted Uses:

Commercial Forestry (including maple sugaring) in compliance with all State Regulations including the most current version of “Acceptable Management Practices for maintaining Water Quality on Logging Jobs in Vermont” (published by the Vermont Department of Forests, Parks and Recreation).

Conditional Uses:

1. Pasturing livestock on existing open land
2. Forestry for research, demonstration, education and related uses
3. Private camp

Conditional uses shall comply with the standards outlined in Sections 206 and 209 of the Windham zoning regulations. In addition, the Zoning Board of Adjustment shall consider conditional uses in relation to existing vegetation and topography and may impose additional conditions, including but not limited to the following:

- 1) Structures shall be situated so that the height of any structure shall not visually exceed the height of the tree canopy adjacent to or serving as the visual backdrop for the structure.
- 2) Structures shall be situated so that they shall not result in an adverse visual impact, stand in contrast to the surrounding landscape patterns and features, or serve as a visual focal point. In determining whether a structure would result in an adverse visual impact, the ZBA shall consider the following:
  - a) The degree to which the structure is screened by existing vegetation and topography at all times of day or night.
  - b) The visibility of structures at all times of day or night from off-site vantage points, especially the scenic landscapes and viewsheds articulated in Chapter VI, Section C of the Windham Town Plan and on the accompanying map. (This includes exterior lighting which shall be prohibited or must be shielded or directed in such a manner that it is not visible from off-site vantage points.)
- 3) Forest cover shall be maintained adjacent to proposed structures to interrupt the visibility of structures, provide a forested backdrop, and/or soften the visual impact of the structure.
- 4) A tree cutting, landscaping and/or forest management plan may be required to ensure that ridges and hill tops remain wooded, and to ensure that trees remain standing immediately adjacent to buildings to visually interrupt facades and reduce reflective glare, as viewed from off site. Such a plan shall address specific measures to be taken to ensure the survival or, if necessary, replacement of designated trees during or after site disturbance. Such a plan may include additional landscaping and screening to minimize the visibility of a structure as viewed from off-site and to visually integrate the structure into the surrounding landscape.

## **Section 202 SITE PLAN REVIEW**

All uses except the following require site plan approval by the Planning Commission pursuant to Sections 203-205:

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

## **Section 203 SITE PLAN APPROVAL**

No Zoning Permit shall be issued by the Administrative Officer for any use requiring site plan approval by the Planning Commission until a site plan has been submitted and approved in accordance with Sections 202-205.

## **Section 204 SUBMISSION OF SITE PLAN MAP AND SUPPORTING DATA**

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

1. Name and address of the owner of record of the land in question and owners of adjoining lands; name and address of person or firm preparing the map; and scale of map, North point and date.
2. A plan of the property showing existing features, including five-foot contour intervals, existing structures,

large trees, streets, utility easements, rights-of-way, stone walls, cellar holes, all water resources, including but not limited to rivers and streams, wetlands, vernal pools, lakes, and ponds, and land use and deed restrictions.

3. Site plan showing proposed structure locations and land use areas; streets, driveways, traffic circulation, parking and loading areas, adequate percolation test data and water supply, landscaping plans, including site grading, landscape design and screening (includes screened garbage area); and renewable energy resource plan.
4. Construction sequence and time schedule for completion of each phase for buildings, parking spaces and landscaped areas of the entire development.
5. A riparian management plan to protect undisturbed naturally vegetated buffers.

## **Section 205 SITE PLAN REVIEW PROCEDURE**

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

1. Harmonious relationship between proposed uses and existing adjacent uses.
2. Harmonious relationship with proposed uses and structures and existing site features including but not limited to large trees, stone walls, cellar holes, and water resources.
3. Maximum safety of vehicular circulation between the site and the street network.
4. Adequate parking and loading facilities with particular attention to safety.
5. Adequacy of landscaping, screening and setbacks in regard to achieving maximum compatibility and protection of adjacent property. All commercial development, parking, dumpsters, and ground mounted mechanical or electrical equipment or structures shall be screened from any public vantage point through the use of a variety of plant types and species which shall be native Vermont species wherever possible.
6. Freedom from flooding and ponding.
7. Protection of wetlands and vernal pools to at least minimum Vermont Agency of Natural Resources standards, including:
  - a Maintenance of undisturbed naturally vegetated buffers, and
  - b No net loss of wetlands. Where buffer area is compromised, additional buffer areas must be provided.
8. Illumination of structures and exterior areas only at levels necessary to ensure safety and security of persons and property.
9. The size, location, and design of signs.

## **Section 206 CONDITIONAL USES**

General Requirements:

No Zoning permit will be issued by the Zoning Administrator for any use or structure that requires conditional use approval until the Zoning Board of Adjustment grants such approval. In considering an application for conditional use approval the Board shall make findings upon the following specific standards and shall only grant approval upon finding that the proposed use shall not have an undue adverse effect on:

1. The capacity of existing and planned community facilities
2. The character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards in the Town Plan
3. Traffic on roads and highways in the vicinity
4. Bylaws then in effect
5. Utilization of renewable energy resources
6. Headwaters and watersheds
7. Surface or subsurface waters
8. Class I and Class II Wetlands and vernal pools
9. Rare and irreplaceable natural areas, areas with necessary wildlife habitat/corridors and/or critical wildlife populations, or areas with endangered species
10. The aesthetic value and environmental benefits of ridgelines
11. The aesthetic value of the audible and visual environment including the scenic or natural beauty of the area
12. Historic, recreational, and scenic resources, including those resources described in the Windham Town



## Plan, Ch. VI.

### Specific Requirements:

1. Any conditional use shall provide for off-street parking and loading facilities of 900 square feet for every five persons of total planned capacity.
2. All conditional uses shall comply with the Performance Standards in Section 209 of these Regulations.
3. State and Town health ordinances must be complied with.
4. The Board of Selectmen may set specific fee requirements for any of the Conditional Uses.

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

### Section 207 PROHIBITED USES

Uses similar in nature to those specifically permitted may be permitted with conditional use review, but these uses are specifically prohibited in the Town of Windham as they are inherently harmful and generally detrimental to the public welfare.

- A. Blast furnaces
- B. Slaughterhouses
- C. Rendering plants
- D. Hide tanning and curing plants
- E. Processing or manufacturing plants for fertilizer, bone, rubber, asphalt, ammonia or chlorine
- F. Refining or manufacturing petroleum, gas, explosives
- G. Bulk storage of explosives
- H. Dumping of refuse and waste material for landfill
- I. Machinery wrecking yards
- J. Bulk storage of fuel oil, butane, propane, gasoline greater than 1,000 gallons
- K. Commercial and industrial development involving blasting, drilling, hydraulic fracturing or similar techniques that could affect groundwater supplies

In addition, all uses and structures shall be prohibited in the following locations:

1. Development on slopes of 20% or greater
2. Development in Class I and Class II wetlands, vernal pools, and buffers unless authorized by the Vermont Agency of Natural Resources (See Section 205, Site Plan Review Procedure criteria).
3. Development in areas with necessary wildlife habitat and /or critical wildlife populations, and areas with endangered species
4. Development on land above 2000 feet elevation in Forest Districts except for conditional uses described in Sec. 201.7.

### Section 208 NON-CONFORMING USES AND NON-CONFORMING STRUCTURES

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

1. Any non-conforming use may be changed to another non-conforming use only upon approval by the Board of Adjustment, which shall find upon affirmative evidence that such use is no more non-conforming than the old use.
2. Any non-conforming use, if once changed to a conforming use, shall not be changed back again into a non-conforming use.
3. A non-conforming use of a building or lot, which has been discontinued for a period of eighteen (18) months shall constitute an abandonment of the use and shall not be thereafter resumed.



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

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

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

7. Existing Small Lots (see Section 400 A).

## **Section 209 PERFORMANCE STANDARDS**

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

1. No emission of noise in excess of 39 decibels (dBA Lmax) from the hours of 9:00 PM to 6:00 AM.
2. No emission of noxious fumes or gases which are dangerous or injurious to persons, animal life, or vegetation.
3. No vibrations which cause displacement in excess of 0.002 of one inch.
4. No offensive odors discernable at any property line
5. No lighting or signs creating glare which could impair vision of a driver of any motor vehicle.
  - a) Light fixtures must be full cutoff and direct light below the horizontal plane. Illumination of structures and exterior areas shall be limited to levels necessary to ensure safety and security of persons and property.
  - b) Lighting plans must utilize energy efficient lights to the highest degree possible.
  - c) Communication and other high elevation towers must be designed and sited so that they do not require nighttime lighting.
  - d) Lights on structures which are visible above the tree line are prohibited.
6. No liquid or solid wastes which cannot be disposed of by available or existing methods without undue burden on municipal facilities.
7. No undue fire, explosive or other hazards which significantly endangers any property owner or which results in increased burden on municipal facilities.
8. Noise that is plainly audible within a residential structure (one that is used for sleeping and is occupied either full or part time) is prohibited. (See Town Plan Noise Policy 2, Action 1, pg. 44)
9. To control noise, placement of commercial / industrial development facilities within the following minimum setback requirements is prohibited (See Town Plan Noise Policy 2, Action 2, pg.44)
  - Turbines shall be set back according to the following required measurements:
    - a. Minimum of 2,500 feet from property lines
    - b. 300 feet from transmission lines & poles, ski lift equipment & structures, camps, other turbines, and public travel ways.

## **ARTICLE III: ADMINISTRATION AND ENFORCEMENT**

### **Section 301 ZONING PERMIT AND CERTIFICATE OF CONFORMANCE**

#### **Section 301 A Zoning Permit**

No land development as defined herein, which is subject to these Regulations, shall be commenced in the Town of Windham until a zoning permit has been issued by the Zoning Administrator or the development is specifically

exempted from the provisions of these Regulations under Section 301 B. Land development includes the following:

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

### **Section 301 B Exemptions**

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

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

### **Section 301 C Issuance**

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

1. Within thirty (30) days of receipt of a complete application consisting of the application, fee, plot plan and any other approvals required by these Regulations have been properly submitted, the Administrative Officer shall act to either issue or deny a zoning permit in writing, or to refer the application to the Planning Commission or Zoning Board of Adjustment and/or state agency for consideration. In accordance with the Act, if the Administrative Officer fails to act within the 30-day period, a permit shall be deemed issued on the 31<sup>st</sup> day.
2. No zoning permit shall be issued by the Administrative Officer for any use or structure which requires the approval of the Planning Commission or Zoning Board of Adjustment until such approval has been obtained. For permit applications that must be referred to a state agency for review, no zoning permit shall be issued until a response has been received from the state, or the expiration of 30 days following the

submission of the application to the state.

3. If public notice has been issued by the Legislative Body for their first public hearing on a proposed amendment to these Regulations, for a period of 150 days following that notice the Administrative Officer shall review any new application filed for compliance with the proposed amendment and applicable existing Regulations. If the new bylaw or amendment has not been adopted by the conclusion of the 150-day period, or if the proposed bylaw or amendment is rejected, the permit shall be reviewed under all applicable provisions of these Regulations.
4. A zoning permit shall include a statement of the time within which appeals may be taken under Section 306; and shall require posting of a notice of permit, on a form prescribed by the town, within view of the nearest public right-of-way until the time for appeal has expired.
5. The Administrative Officer, within three (3) days of the date of issuance, shall deliver a copy of the zoning permit to the Listers, Planning Commission, and Selectboard; and shall post a copy of the permit in the town office for a period of fifteen (15) days from the date of issuance.

#### **Section 301 D Effective Date**

No zoning permit shall take effect until the time for appeal under Section 306 has passed, or in the event that a notice of appeal is properly filed, until final adjudication of the appeal.

#### **Section 301 E Certificate of Conformance**

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

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

#### **Section 302 EXPIRATION**

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

#### **Section 303 ENFORCEMENT AND PENALTIES**

Violation of these Regulations shall be enforced as prescribed in Sections 4451, 4452, 4454, and 4455 of the Act.

#### **Section 304 DIMENSIONAL WAIVERS**

Dimensional Waivers under Section 304B of these Regulations dimensional waivers may be applied for when seeking approval for development that is not otherwise allowed under these Regulations. In applying for a waiver, the burden of proof is on the Applicant to demonstrate that the waiver request meets waiver criteria of Section 304 A. The Zoning Board of Adjustment may require a survey if essential to verify the location of property lines.

In the event that the Zoning Board of Adjustment grants a waiver, the permittee must comply with all other requirements of these Regulations.

#### **Section 304 A Dimensional Waivers Criteria**

The Zoning Board of Adjustment may grant a waiver to a dimensional requirement, other than density, after

considering the criteria below:

1. Reasonable use of the property is only possible if the Zoning Board of Adjustment grants a waiver of the dimensional requirement.
2. The waiver is the minimum reduction in the dimensional requirement that will enable the reasonable use of the property.
3. The proposed project will still conform to the Town Plan and the purpose of the zoning district in which the land development is located.
4. The proposed project will not have an undue adverse effect on the following:
  - a) The appropriate use or development of surrounding properties;
  - b) The character and aesthetics of the neighborhood, as defined by the purpose of the district in which it is located;
  - c) Traffic patterns and circulation;
  - d) Public health, safety, and utility services;
  - e) Storm water management;
  - f) Water and wastewater capacity;
  - g) The preservation of open space or scenic vistas;
  - h) Historic resources identified in the Windham Town Plan.
5. The need for a waiver was not intentionally self-created by past decisions of the applicant.
6. The waiver is not to the detriment of the public welfare, including the safety and maintenance of the Town and State highways.
7. Structural enlargements that do not increase the degree of nonconformity do not require a waiver.

#### **Section 304 B Dimensional Waiver Application and Review Process**

1. An application to the Zoning Board of Adjustment for a waiver to reduce a dimensional requirement may be made as part of, and simultaneously with, an application for Conditional Use Review or as a separate application if Conditional Use Review is not otherwise required.
2. Pursuant to 24 V.S.A. § 4460(e), the application shall come to the Zoning Board of Adjustment either as an appeal of a decision made by the Administrative Officer or as a referral from the Administrative Officer.
3. The application for a waiver shall follow the same procedure used for Conditional Use Review, approvals, and appeals. (Section 206)
4. The Zoning Board of Adjustment shall consider the impact under the criteria set for in Section 304A. and on abutting landowners in deciding whether to grant the waiver, or to place conditions on the waiver approval.
5. In granting a decision in favor of the Applicant, the Zoning Board of Adjustment may attach reasonable conditions including mitigation by design, screening, or other remedy.
6. Any waiver granted under this section shall be limited to the specific property to which it has been granted. A waiver on one property shall not be construed as a general guideline or standard for any other property.
7. Waiver approvals shall expire if work is not substantially completed within two (2) years from the date they are approved. All work shall be substantially completed as shown on any approved plan before the expiration date. The Administrative Officer may grant an extension if an Application for an Extension is submitted prior to expiration of the Waiver and offers good cause for an extension, such as delays due to weather, illness or other health issues, or other reasons beyond the reasonable control of the Applicant.

#### **Section 305 VARIANCES**

##### **Section 305 A Criteria for a structure that is not primarily a renewable energy resource structure.**

The Board of Adjustment shall hear and decide requests for variances as required by Section 4469(a) of the Act and appeal procedures under Section 306 A. In granting a variance for a structure that is not primarily a renewable energy resource structure, the Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the Town Plan in effect. The Board shall grant a variance and render a decision in favor of the appellant only if *all* of the following facts are found, and the findings are specified in its written decision:

1. There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not the circumstances or conditions

generally created by the provisions of these Regulations in the neighborhood or district in which the property is located;

2. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these Regulations and that the authorization of a variance is necessary to enable the reasonable use of the property;
3. The unnecessary hardship has not been created by the appellant;
4. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare; and
5. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from these Regulations and from the Town Plan.

### **Section 305 B Criteria for a structure that is primarily a renewable energy resource structure**

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

1. It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with these regulations;
2. The hardship was not created by the appellant;
3. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare; and
4. The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the Town Plan.

## **Section 306 APPEALS**

### **Section 306 A Administrative Officer Actions**

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

1. The Board shall hold a public hearing on a notice of appeal within 60 days of its filing, as required under Section 4468 of the Act. The Board shall give public notice of the hearing and mail a copy of the hearing notice to the appellant not less than 15 days prior to the hearing date.
2. Consistent with Section 4470 of the Act, the Board may reject an appeal or request for reconsideration without hearing, and render a decision which shall include findings of fact within 10 days of the filing of a notice of appeal, if the Board determines that the issues raised by the appellant have been decided in an earlier appeal or are based on substantially or materially the same facts by or on behalf of the appellant.
3. In accordance with Section 4468 of the Act, all appeal hearings shall be open to the public and the rules of evidence applicable at these hearings shall be the same as the rules of evidence applicable in contested cases in hearings before administrative agencies as set forth in state statutes [3 V.S.A. §810]. Any interested person or body may appear and be heard in person or be represented by an agent or attorney at the hearing. The hearing may be adjourned by the Board from time to time, provided that the date and place adjourned hearing shall be announced at the hearing.
4. A decision on appeal shall be rendered within 45 days after the final adjournment of the hearing, as required under Section 4464(b) of the Act. The decision shall be sent by certified mail to the appellant within the 45-day period. Copies of the decision shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Administrative Officer and the Municipal Clerk as part of the public records of the municipality, in accordance with Section 4464(b). Failure of the Board to issue a decision within this 45-day period shall be deemed approval and shall be effective on the 46<sup>th</sup> day.
5. A notice of appeal filed under this section shall be in writing and include the following information, in accordance with Section 4466 of the Act:
  - a. the name and address of the appellant,
  - b. a brief description of the property with respect to which the appeal is taken,
  - c. a reference to applicable provisions of these Regulations,
  - d. the relief requested by the appellant, including any request for a variance from one or more provisions of these Regulations, and

- e. the alleged grounds why such relief is believed proper under the circumstances.

### **Section 306 B Appeals to Environmental Division**

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

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

## **ARTICLE IV: GENERAL STANDARDS**

### **Section 400 STATUTORY REQUIREMENTS**

#### **Section 400 A Existing Small Lots**

In accordance with Section 4412(2) of the Act, the following regulations shall apply:

- (A) Any lot that is legally subdivided, is in individual and separate and nonaffiliated ownership from surrounding properties, and is in existence on the date of enactment of these Regulations, may be developed for the purposes permitted in the district in which it is located, even though the small lot no longer conforms to minimum lot size requirements of the new bylaw or interim bylaw unless either of the following applies:
  - (i) The lot is less than one-eighth acre in area; or
  - (ii) The lot has a width or depth dimension of less than 40 feet.
- (B) If an existing small lot subsequently comes under common ownership with one or more contiguous lots, the nonconforming lot shall be deemed merged with the contiguous lot. However, a nonconforming lot shall not be deemed merged and may be separately conveyed if all the following apply:
  - (i) The lots are conveyed in their preexisting, nonconforming configuration.
  - (ii) On the effective date of these Regulations, each lot was developed with a water supply and wastewater disposal system.
  - (iii) At the time of transfer, each water supply and wastewater system are functioning in an acceptable manner as determined by the Vermont Department of Environmental Conservation.
  - (iv) The deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems, potable water systems, or both, in case there is a failed system or failed supply as defined in 10 V.S.A. Chapter 64.

#### **Section 400 B Required Frontage**

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

#### **Section 400 C Protection of Home Occupations**

Consistent with the requirements of Section 502 of these Regulations, no regulation herein is intended to infringe upon the right of any resident to use a minor portion of a dwelling for an occupation which is customary in residential areas and which does not change the character thereof. The primary use of the premises shall be that of a private residence, and the home occupation shall be carried on in the residence or in a typical accessory building. Disturbances such as noise, vibration, smoke, dust, odors, heat, glare, and electrical interference or line voltage variations shall not be produced. On-street parking is not permitted, nor are exterior signs in excess of four (4)



square feet, nor shall the exterior of the building be altered to take on a commercial aspect. The above limitations shall not apply to agricultural uses.

#### **Section 400 D Equal Treatment of Housing**

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

#### **Section 400 E Child Care Home and Child Care Facilities**

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

1. A family child care home serving six or fewer children shall be considered to constitute a permitted single-family residential use of property. A zoning permit is required.
2. A family child care home serving no more than six full-time children and four part-time children, as defined in 33 V.S.A. § 3511(7), shall be considered to constitute a permitted use of property but requires site plan approval based on local zoning requirements.
3. A family child care facility serving more than six full-time and four part-time children shall be reviewed as a conditional use.

#### **Section 400 F Group Homes and Residential Care Homes**

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

#### **Section 400 G Special Public Use Exceptions**

Pursuant to 24 V.S.A. § 4413, the following uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use:

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

Except for State-owned and operated institutions and facilities, each of the land uses listed above shall be in compliance with the National Flood Insurance Program and for compliance with Article VII of these Regulations regulating development in a flood hazard area or river corridor, consistent with the requirements of subdivision 2291(25) and section 4424 of Title 24 of the Vermont Statutes Annotated. These Regulations shall not have the effect of interfering with the intended functional use.

#### **Section 400 H Walls and Fences**



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

#### **Section 400 I Mobile Home Parks**

Mobile homes are permitted in approved mobile home parks subject to the requirements of this section and state law. Mobile home parks, where permitted in the specific zoning district, shall be developed in accordance with the procedures for Planned Residential Development and applicable requirements of Chapter 153 of Title 10 of the Vermont Statutes Annotated. Where there is a conflict between the provisions of these Regulations and state regulations, the latter shall take precedence.

### **Section 401 MISCELLANEOUS REQUIREMENTS**

#### **Section 401 A Abandonment of Structures**

Within one year after a permanent or temporary building or structure has been demolished or destroyed, with no intent to rebuild, all structural materials shall be removed from the site, and the excavation thus remaining shall be covered over or filled to the normal grade by the owners. Failure to complete reconstruction within two (2) years will be considered as abandonment. (See also Section 208-4)

#### **Section 401 B Coordination with Driveway Ordinance**

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

*On review of an application, the Board may:*

- (A) require a larger setback than this subsection requires; or*
- (B) approve an agreement to a smaller setback among the applicant, the municipal legislative body, and each owner of property adjoining the smaller setback.*

#### **Section 401 C Screening Regulations**

The purpose of screening regulations is the preservation of the rural and scenic character of Windham while protecting the privacy of abutting landowners. Screening for commercial property is not intended to hide the view of the parking area but to have a landscape edge along the public highway. In such instances:

- a) Topography and Natural Barriers shall serve as screening where feasible.
- b) Existing flora shall be preserved, where feasible, to block the view from public roads and residences.
- c) Should new screening need to be developed, the use of year-round solid vegetative barrier of non-invasive, zone appropriate plant materials will be used.
- d) Screening will be maintained – Any diseased or dead plant materials will be replaced no later than the spring of the following year.

Where solid screening may be required is along adjoining property lines to obscure the parking area from abutter view. This solid barrier should conform in such a manner that insures the abutter’s privacy. These may consist of an evergreen hedge or solid fence no less than 8 feet in height or any combination thereof.

## **ARTICLE V STANDARDS FOR SPECIAL USES**

#### **Section 501 CAMPGROUND**

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

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

1. An individual access driveway and parking area, suitably surfaced, shall be provided for each campground.
2. Each individual site shall be at least 2,500 square feet in area. Each travel trailer and recreational vehicle site shall have a compacted gravel surface at least twenty-five (25) feet in width.
3. Each individual site shall be located in a clean, dry and well-drained area.
4. There shall be an undeveloped area of not less than 100 feet in depth between all camping sites and the travel portion of any adjacent highway and other boundaries of the campground. These areas shall be landscaped with existing or planted trees or other plant materials for screening purposes.
5. Each site shall have access to water and sewage disposal in compliance with and approved by the State Department of Environmental Conservation.
6. All roads within the campground shall be of sufficient grade and alignment so as to permit safe traffic flow at all times. The design of roads shall be adequate to provide for the utilization of police, fire, ambulance, and other emergency vehicles. Proper traffic signals shall be established.
7. All campgrounds shall keep at least 25% of total ground area for recreation or open space.
8. Each campground is limited to one hundred (100) sites.

### **Section 502 HOME INDUSTRY**

In addition to all other applicable regulations, including Section 400 C., Home Industry as defined in Appendix A of these Regulations shall comply with the following:

1. Home industry shall be carried on by members of the family in a minor portion of the dwelling or in an accessory building.
2. No more than two (2) on-premise employees who are not part of the family are permitted.
3. Disturbances such as noise, vibration, smoke, dust, odors, heat, glare, and electrical interference or line voltage variations shall not be produced at a level which is seriously objectionable or out of character with the neighborhood.
4. Exterior signs in excess of four (4) square feet, exterior storage of materials, exterior indication of the home industry or variation from the residential character of the building, and on-street parking shall not be permitted.

### **Section 503 TIMBER HARVESTING**

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

1. Trees shall not be felled into or across streams. Logging debris dropped into streams and ponds shall be promptly removed.
2. Slash will not be left within 50 feet of property lines, any town road, established recreation trail, pond, lake or stream and 100 feet from buildings.
3. Commercial loggers must secure a permit prior to beginning logging operation.

### **Section 504 EXTRACTION OF EARTH RESOURCES**

- A. The extraction of earth resources for personal use on site up to 500 cubic yards is conditionally permitted with approval of the Zoning Board provided that the proposed operation will not:
  1. Cause a hazard to public health and safety, or;
  2. Adversely affect neighboring properties, property values, or public facilities and services, surface water and groundwater supplies, or natural, cultural, historic, or scenic features.
- B. The new, expanded, or resumption of extraction of earth resources for commercial purposes may be permitted where allowed as a conditional use, with Conditional Use approval by the Zoning Board Administrator pursuant to Section 206, and subject to the following additional requirements. The application shall include erosion control and site reclamation plans showing:
  1. Existing and proposed grades, drainage, and depth to water table;
  2. Erosion control;
  3. Extent and magnitude of the proposed operation including proposed phasing;
  4. Site reclamation plans and finished grades at the conclusion of the operation demonstrating that upon completion of the extracting or processing operation the site will be left by the applicant in a

condition suitable for future use or development.

In addition, prior to approval the Zoning Board Administrator shall find that the proposed operation:

5. Will not cause a hazard to public health and safety;
  6. Will not adversely affect neighboring properties, property values, or public facilities and services, surface water and groundwater supplies, or natural, cultural, historic, or scenic feature; and
  7. At the conclusion of the operation, or any substantial portion thereof, the whole area where removal has taken place shall be covered with not less than 4 inches of topsoil, and seeded with a suitable cover crop.
- C. The Zoning Board Administrator shall consider and may impose conditions with regard to the following factors:
1. Depth of excavation or quarrying;
  2. Slopes created by removal (contours before and after), avoiding the creation of steep slopes in excess of 50%;
  3. Effects on surface drainage on and off the site;
  4. Storage of equipment and stockpiling of materials on-site;
  5. Hours and days of operation for blasting, trucking, and processing;
  6. Effects on adjacent properties due to noise, dust, or vibration;
  7. Effects on traffic and road conditions, including potential physical damage to public highways and bridges;
  8. Creation of nuisances or safety hazards;
  9. Temporary and permanent erosion control;
  10. Effect on natural, cultural, historic, or scenic resources on-site or in the vicinity of the project;
  11. Effect on agricultural land;
  12. Effect on ground and surface water quality and drinking water supplies;
  13. Public safety and general welfare.
- D. A performance bond, escrow account, or other surety acceptable to the Zoning Board Administrator shall be required to ensure reclamation of the land upon completion of the excavation to include any regrading, reseeding, reforestation, or other reclamation activities that may be required. Upon failure of the permit holder, their successors, or assigns to complete site reclamation as required, the town may take legal action as appropriate to ensure site reclamation and cost recovery.

## **Section 505 WIND ENERGY SYSTEMS**

Wind energy systems operated solely for onsite electrical consumption which are subject to municipal zoning regulations (i.e. systems not subject to 30 V.S.A. § 248) shall comply with the following provisions. Wind installations are subject to restrictions set out in Sections 207 and 209 of these regulations.

### **Regulations**

- Turbines shall not be allowed or permitted unless they are setback a minimum of two (2) times the highest blade height measured in a straight line from the closest property line. Highest blade height is measured from the base of the turbine to the tip of a blade in its upright, vertical position.
- Turbines shall not be allowed or permitted unless applicant clearly demonstrates noise will not exceed the 41 dBA Fast Lmax daytime at the closest property line and 39 dBA Fast Lmax nighttime.
- Turbines shall not be allowed with lights.
- Turbines and associated development shall not be allowed on slopes of 20% or greater.
- Noticeable shadowing, shadow flicker, and the risk of ice throw from wind turbines is prohibited.
- The highest blade height allowed, as measured from the base of the turbine to the tip of a blade in its upright, vertical position is 120 feet; maximum blade length is 20 feet.
- The rated capacity of the systems shall not substantially exceed the on-site electric usage of the end-user.
- Turbines are subject to restrictions set out in Sections 207 and 209 of these regulations.

#### Use Regulations in districts

- i) Hamlet (H) and Historic Districts (HD) Individual wind energy systems are a prohibited use.
- ii) Forest District (F) Individual wind energy systems units are a conditional use.
- iii) Rural Residential District (RR) Individual wind energy systems are a conditional use.
- iv) Recreation Commercial (RC) Individual wind energy systems units are a conditional use.

#### Abandonment

- An individual wind system that is out-of-service for a continuous 12-month period without service will be deemed to have been abandoned. The ZA may issue a Notice of Abandonment to the owner or operator and the owner or operator shall have the right to respond within 30 days from the Notice receipt date. The Notice of Abandonment may be within if the Owner provides information that demonstrates the system has not been abandoned.
- If the system is determined to be abandoned, the owner or operator shall remove all above ground structures, equipment and security barriers at the Owner's/Operator's sole expense within 150 days of receipt of Note of Abandonment. If the owner fails to remove the system, the Zoning Administrator may pursue a legal action to have the system removed at the Owner's expense.

#### Decommissioning

- Any turbine installation which has reached the end of its useful life or has been abandoned shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Zoning Administrator by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of the following points.
- Physical removal of all above ground structures, equipment, and security barriers from the site.
- Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations.

### **Section 506      SOLAR ENERGY SYSTEMS**

The following regulations apply to solar installations operated solely for on-site electricity consumption except as otherwise noted. Solar installations are subject to restrictions set out in Sections 207 and 209 of these regulations.

#### A. Setbacks:

A ground-mounted solar energy installation must comply with all setback requirements for the zoning district in which it is located.

#### B. Screening Regulations

The purpose of these screening regulations is the preservation of the rural and scenic character of Windham while promoting the use of renewable resources. These requirements apply to ground-mounted solar installations operated for on-site electricity consumption (i.e. installations that are subject to zoning regulations) and to ground-mounted solar installations that are net-metered or operated for off-site electricity consumption (i.e. installations that are subject to 30 V.S.A. § 248) (see 30 V.S.A. § 248(b)(1)(B)).

- Topography and natural barriers shall serve as screening where feasible.
- Existing flora shall be preserved to block the ground mounted solar units from public roads and residences.
- Should new screening need to be developed, the use of year-round solid vegetative barrier of non-invasive, zone appropriate plant materials will be used.
- Screening will be maintained – Any diseased or dead plant materials will be replaced no later than the spring of the following year.
- Solid screening is not required to hide the units but should be landscaped to visually blend into its surroundings except when in conflict with abutting residences privacy.

- C. Use Regulations in districts
  - i) Hamlet (H) and Historic Districts (HD) Ground mounted and roof mounted solar units are a conditional use.
  - ii) Forest District (F) Ground mounted and roof mounted solar units are a conditional use.
  - iii) Rural Residential District (RR) Ground mounted and roof mounted solar units are a conditional use.
  - iv) Recreation Commercial (RC) Ground mounted and roof mounted solar units are a conditional use.
- D. Abandonment or Decommissioning
 

Any ground mounted solar unit installation which has reached the end of its useful life or has been abandoned shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Zoning Administrator by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

  - 1. Physical removal of all above ground mounted solar unit installations including the structures, equipment, and security barriers from the site.
  - 2. Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations.

## ARTICLE VI: PLANNED UNIT DEVELOPMENT

### Section 600 PLANNED UNIT DEVELOPMENT (PUD)

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

### Section 601 INTENT

The purpose of a PUD is to provide for a mixture and variety of housing types at different concentrations; to provide economies and efficiencies in street utility and public facility construction and maintenance, to provide and enhance allocation and distribution and maintenance of areas designed as common open space; and to provide a mix of development for existing lots which because of physical, topographical, or geological conditions could not otherwise be developed.

### Section 602 DEVELOPMENT REVIEW REQUIREMENTS

#### Section 602 A Development Review

Applications for a PUD shall be reviewed as a conditional use under Section 206 of these Regulations.

#### Section 602 B Application Requirements

The application for a PUD must include the following:

- 1. Application materials required for Site Plan Review set forth in Section 204.
- 2. A narrative Master Plan that includes a brief summary of the project and how it meets the standards set forth in this Article. The master plan shall describe the nature of all proposed modifications or changes of existing land use and development regulations, including standards for the density, lot size, and setbacks.

### Section 603 DIMENSIONAL REGULATIONS

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

### Section 604 GENERAL AND SPECIFIC REGULATIONS

#### Section 604 A General Requirements

- 1. Uses shall be limited to those permitted and/or conditional uses in the location in which the PUD is proposed. Approval granted by the Zoning Board of Adjustment

- under this Section for a PUD involving one or more conditional use under Section 201 shall not exempt the proposed development from such review. The Board may, however, conduct the conditional use review concurrently with PUD review.
2. Density and building area coverage requirements of the regulations shall be met. Deviation from the required amount of usable open space per dwelling unit may be allowed, provided such deviation shall be adjusted for in other sections of the PUD.
  3. The minimum setbacks required shall apply to the periphery of the project.
  4. All other zoning requirements except for those that specifically may be waived or varied under the provisions of this section shall be met.
  5. The proposed PUD shall be in harmony with the Town Plan and shall be in conformance with the requirements of Section 203, Site Plan Approval.

#### **Section 604 B Specific Requirements**

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

#### **Section 605 ADMINISTRATIVE CONTROLS**

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

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

#### **Section 606 OPEN SPACE**

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

### **ARTICLE VII: FLOOD AND FLUVIAL EROSION HAZARD AREA REGULATIONS**

#### **Section 701. STATUTORY AUTHORIZATION AND EFFECT**

In accordance with 10 V.S.A. Chapter 32, and 24 V.S.A. Chapter 117 § 4411, § 4412, § 4414, § 4424, and 24

V.S.A. Chapter 59, there is hereby established a bylaw for areas at risk of flood damage in the Town of Windham, Vermont. Except as additionally described below, all administrative procedures follow town procedures under 24 V.S.A. Chapter 117.

## **Section 702. STATEMENT OF PURPOSE**

It is the purpose of this bylaw to:

1. Implement the goals, policies, and recommendations in the current town plan;
2. 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 related inundation and erosion;
3. Ensure that the selection, design, creation, and use of development in flood hazard areas is accomplished in a manner that minimizes or eliminates the potential for flood and loss or damage to life and property in a flood hazard area and does not impair stream equilibrium, floodplain services, or the river corridor; and
4. Manage all flood hazard areas designated pursuant to 10 V.S.A. Chapter 32 § 753, the local hazard mitigation plan; and make the Town of Windham, its citizens, and businesses eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds as may be available.

## **Section 703. OTHER PROVISIONS**

### **A. Precedence of Bylaw and Greater Restrictions**

The provisions of this bylaw 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. If there is any conflict between the provisions of this bylaw, the more restrictive shall apply.

### **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 and Disclaimer of Liability**

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

## **Section 704. LANDS TO WHICH THESE REGULATIONS APPLY**

### **A. Identification**

The Regulated Flood Hazard Areas include:

1. The River Corridors and Small Stream 50-foot buffers as published by the Vermont Agency of Natural Resources on the Natural Resources Atlas as the Statewide River Corridor Map Layer, and refinements to that data based on field-based assessments. Together these areas are referred to as the “River Corridor” in this bylaw and are hereby adopted by reference and declared to be part of these regulations<sup>1</sup>; and



2. The Special Flood Hazard Area (SFHA) in and on the Flood Insurance Study (FIS) and the accompanying Flood Insurance Rate Maps (FIRMs) dated 09/28/2007, or the most recent revision thereof, issued by the Department of Homeland Security, Federal Emergency Management Agency (FEMA), National Flood Insurance Program, as provided by the Secretary of the Agency of Natural Resources (ANR) pursuant to 10 V.S.A. Chapter 32 § 753, which are hereby adopted by reference and declared to be part of these regulations. This includes all digital data developed as part of the FIS<sup>2</sup>.

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<sup>1</sup> Official River Corridor Maps are available on the Vermont Agency of Natural Resources online Natural Resources Atlas: <http://anrmaps.vermont.gov/websites/anra/>

<sup>2</sup> FIS and FIRMs are available digitally on FEMA's online Map Service Center: <https://msc.fema.gov/portal>

These regulations shall apply to the above referenced areas (hereafter called "Regulated Flood Hazard Areas" unless referenced specifically) in the Town of Windham, Vermont. 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.

#### B. Interpretation

The information presented on any maps, or contained in any studies, adopted by reference, is presumed accurate. If uncertainty exists with respect to the boundaries of the Special Flood Hazard Area or the floodway, the location of the boundary shall be determined by the Floodplain Administrator (FA). If the applicant disagrees with the determination made by the FA, he or she may appeal to the ZBA. The burden of proof shall be on the appellant. A Letter of Map Amendment from the FEMA shall constitute proof.

1. If uncertainty exists with respect to the boundaries of the River Corridor, the location of the boundary shall be determined by the FA. If the applicant disagrees with the determination made by the FA, he or she may appeal to the ZBA. The burden of proof shall be on the appellant. A letter of determination from the Vermont Agency of Natural Resources shall constitute proof.

#### C. Description of FEMA Identified Special Flood Hazard Areas

The FEMA identified floodplain area shall consist of the following specific areas:

1. The Floodway Area shall be those areas identified in the FIS and the FIRM as floodway (AE with Floodway) and which represent the channel of a watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation by more than one (1) foot at any point. This term shall also include floodway areas which have been identified in other available studies or sources of information for those Special Flood Hazard Areas where no floodway has been identified in the FIS and FIRM.
  - a. Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the municipality during the occurrence of the base flood discharge.
2. The AE Area/District shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA for which base flood elevations have been provided.
  - a. AE Area without floodway shall be those areas identified as an AE zone on the FIRM included in the FIS prepared by FEMA for which base flood elevations have been provided but no floodway has been determined.

3. The A Area/District shall be those areas identified as an A Zone on the FIRM included in the FIS prepared by FEMA and for which no base flood elevations have been provided. For these areas, elevation and floodway information from other Federal, State, or other acceptable sources shall be used when available. Where other acceptable information is not available, the base flood elevation shall be determined by using the elevation of a point on the boundary of the identified floodplain area which is nearest the construction site.

In lieu of the above, the town may require the applicant to determine the base flood elevation with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the municipality.

4. The AO and AH Area/District shall be those areas identified as Zones AO and AH on the FIRM and in the FIS. These areas are subject to inundation by 1-percent annual-chance shallow flooding where average depths are between one and three feet. In Zones AO and AH, drainage paths shall be established to guide floodwaters around and away from structures on slopes.

#### D. Changes in Identification of Area

The Identified Floodplain Area may be revised or modified by the ZBA where studies or information provided by a qualified agency or person documents the need for such revision. However, prior to any such change to the Special Flood Hazard Area, approval must be obtained from FEMA. Additionally, as soon as practicable, but not later than six (6) months after the date such information becomes available; a municipality shall notify FEMA of the changes to the Special Flood Hazard Area by submitting technical or scientific data. See Section 708 D of this bylaw for situations where FEMA notification is required.

Administrative revisions to the River Corridor may be made at the request of the municipal legislative body to facilitate infill and redevelopment away from undeveloped river corridors and protect public infrastructure. The Agency of Natural Resources shall make those administrative revisions to the River Corridor or River Corridor Protection Area on the Statewide River Corridor Map Layer that are consistent with the procedure outlined in the most recent *Vermont DEC Flood Hazard Area and River Corridor Protection Procedures*.

### **Section 705. REGULATED FLOOD HAZARD AREA ADMINISTRATION**

#### A. Floodplain Administrator

The Floodplain Administrator may: (A) Fulfill the duties and responsibilities set forth in these regulations, (B) Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees, or (C) Enter into a written agreement or written contract with another agency or private sector entity to administer specific provisions of these regulations.

Administration of any part of these regulations by another entity shall not relieve the municipality of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.

#### B. Duties and Responsibilities of the Floodplain Administrator

1. The Floodplain Administrator shall issue a Permit only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of this and all other applicable local codes and bylaws. Within 30 days after a local land use permit has been

issued or within 30 days of the issuance of any notice of violation, the FA shall:

- a. 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 24 VSA, § 1154(a), and § 4449;
  - b. File a copy of the permit and any approvals in the town office in a location where all town land use permits shall be kept; and,
  - c. The FA may charge the applicant for the cost of the recording fees as required by law.
2. Prior to the issuance of any permit, the Floodplain Administrator shall review the permit application to determine if all other necessary government permits required by state and federal laws have been obtained. The Floodplain Administrator should inform any person applying for a permit or authorization that the person should contact the regional permit specialist employed by the Agency of Natural Resources in order to assure timely action on any related state permits; nevertheless, the applicant retains the obligation to identify, apply for, and obtain relevant state permits.
- a. Per 24 VSA § 4424, 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 Agency, whichever is sooner. The ZBA should consider comments from the NFIP Coordinator at ANR.
  - b. For development within the FEMA Identified SFHA, no permit shall be issued until all other necessary government permits required by state and federal laws have been obtained.

NOTE: Information on what other state and federal permits are or may be required is available by contacting the ANR Regional Permit Specialist.

3. In the case of existing structures, prior to the issuance of any Development/Permit, the Floodplain Administrator shall review the history of repairs to the subject building, so that any Repetitive Loss issues can be addressed before the permit is issued.
4. Within three days following the issuance of a permit, the FA shall:
- a. Deliver a copy of the permit to the Listers of the town; and
  - b. Post a copy of the permit in at least one public place in the town until the expiration of 15 days from the date of issuance of the permit.
5. During the construction period, the Floodplain Administrator or other authorized official shall inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable local laws and bylaws. He/she shall make as many inspections before, during and upon completion of the work as are necessary, including, but not limited to, once the site has been staked out or demarcated but before actual start of construction.
6. In the discharge of his/her duties, the Floodplain Administrator shall have the authority to enter any building, structure, premises or development in the Regulated Flood Hazard Area, upon presentation of proper credentials, at any reasonable hour to enforce the provisions of this bylaw.
7. In the event the Floodplain Administrator discovers that the work does not comply with the permit application or any applicable laws and bylaws, or that there has been a false statement or misrepresentation by any applicant, the Floodplain Administrator shall revoke the Permit and report such fact to the ZBA for whatever action it considers necessary.
8. The Floodplain Administrator shall maintain all records associated with the requirements of this bylaw including, but not limited to:

- 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 municipality) of the lowest floor, including basement, of all new or substantially improved buildings (not including accessory buildings) in the Special Flood Hazard Areas;
  - c. All flood proofing and other certifications required under this regulation;
  - d. All decisions of the ZBA (including conditional use decisions, waivers, variances and violations) and all supporting findings of fact, conclusions and conditions;
  - e. Finished construction elevation data;
  - f. Inspection documentation; and
  - g. Enforcement documentation.
9. The Floodplain Administrator is the official responsible for submitting a biennial report to the FEMA concerning community participation in the National Flood Insurance Program.

### C. Public Notice

1. Prior to the issuance of a permit, proposals needing conditional use review, nonconforming structures and uses review, or approval for a variance or waiver, must have a warned public hearing as per 24 V.S.A. Chapter 117 § 4464. A copy of the application shall be submitted to VT Agency of Natural Resources (ANR) at least 30 days prior to the date of the public hearing. Public notice of the hearing shall be provided not less than 15 days prior to the date of the public hearing by all the following:
  - a. Publication of the date, place, and purpose of the hearing in a newspaper of general circulation in the town affected;
  - b. Posting of the same information in three or more public places within the town 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 and, in any situation in which a waiver or variance is sought regarding setbacks from a state highway, also including written notification to the secretary of transportation. 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; and
  - d. For hearings on subdivision plats located within 500 feet of a town boundary, written notification to the clerk of the adjoining town.
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 affected town; and
  - b. Written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way and, in any situation in which a variance is sought regarding setbacks from a highway, also including written notification to the secretary of transportation. The notification shall include 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 and interested parties as defined per 24 V.S.A. Chapter 117 § 4465(b).

4. Per 24 V.S.A. Chapter 117 § 4464(a)(5), no defect in the form or substance of any required public notice under this section shall invalidate the action of the ZBA 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 ZBA or the Environmental Court, the action shall be remanded to the ZBA to provide new posting and notice, hold a new hearing, and take a new action.

#### D. Decisions

The FA shall act within 30 days of receipt of a complete application, to approve or deny the application, or refer the application to the ZBA. 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 FA can be appealed as per this bylaw and 24 V.S.A. Chapter 117 § 4465-4472. If the FA fails to act within the 30-day period, a permit shall be deemed issued on the 31<sup>st</sup> day.

#### E. Appeals

An interested party may appeal any decision or act taken by the Floodplain Administrator in any town by filing a notice of appeal with the secretary of the ZBA of that town or with the clerk of that town if no such secretary has been elected. This notice of appeal must be filed within 15 days of that decision or act, and a copy of the appeal shall be filed with the Floodplain Administrator. The ZBA shall set a date and place for a public hearing of an appeal within 60 days of the filing of the notice of appeal and shall mail the appellant a copy of that notice not less than 15 days prior to the hearing date. Hearings on appeals are governed per 24 V.S.A. Chapter 117 § 4468. Decisions on appeals are governed per 24 V.S.A. Chapter 117 § 4464(b).

1. The ZBA shall consider comments from the NFIP Coordinator at ANR. The ZBA may recess the proceedings on any application pending submission of additional information. The ZBA should close the evidence promptly after all parties have submitted the requested information, adjourn the hearing, and may deliberate prior to issuing its decision.
2. Decisions of the ZBA shall be issued in writing within 45 days after the adjournment of the final hearing, and failure of the ZBA to issue a decision within this period shall be deemed approval and shall be effective on the 46<sup>th</sup> day. Decisions shall be in writing and shall be sent by certified mail to the applicant and the appellant. Copies of the decision shall also be mailed to every person or body appearing and having been heard at a hearing. The decision will include a notice that an interested person may appeal the decision to the Environmental Court as per 24 V.S.A. Chapter 117 § 4471.
3. Decisions by the ZBA shall include a statement of the factual basis on which the ZBA has made its conclusions regarding how the proposed development will meet the development standards, and a statement of the conclusions. The minutes of the meeting may suffice, provided the factual bases and conclusions relating to the review standards are provided.
4. In rendering a decision in favor of the applicant, the ZBA may attach additional reasonable conditions and safeguards as it deems necessary to implement the purposes of this bylaw and the town plan then in effect. ZBA 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 local law for the approval to be valid. The ZBA 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 town 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.

#### F. Permit Validity



Each permit issued shall:

Contain a statement of the period of time within which an appeal may be filed;

1. Require posting of a notice of permit on a form prescribed by the town within view from the public right-of-way most nearly adjacent to the subject property for not less than 15 days after issuance, which is the appeal filing period.
2. Not take effect until 16 days after issuance, or in the event that a notice of appeal of a decision by the FA is properly filed, no such permit shall take effect until adjudication of that appeal by the ZBA is complete and the time for taking an appeal to the environmental court has passed without an appeal being taken. If an appeal is taken to the environmental court, the permit shall not take effect until adjudication by the environmental court; and,
3. Be valid for a period of two years after issuance.

#### G. Changes

After the issuance of a Permit, no changes of any kind shall be made to the application, permit or any of the plans, specifications or other documents submitted with the application without the written consent or approval of the Floodplain Administrator. Requests for any such change shall be in writing and shall be submitted by the applicant to the Floodplain Administrator for consideration.

#### H. Start of Construction

Work on the proposed construction or development shall begin within 180 days after the date of issuance of the permit. Work shall also be completed within twenty-four (24) months after the date of issuance of the permit or the permit shall expire unless a time extension is granted, in writing, by the Floodplain Administrator.

The actual start of construction 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, footings, 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, whether or not that alteration affects the external dimensions of the building.

Time extensions shall be granted only if a written request is submitted by the applicant, who sets forth sufficient and reasonable cause for the Floodplain Administrator to approve such a request and the original permit is compliant with the bylaw & FIRM/FIS in effect at the time the extension is granted.

### **Section 706. PERMIT APPLICATION GUIDELINES**

#### A. Application Submission Requirements

1. Applications for development in a Regulated Flood Hazard Area shall be made, in writing, to the Floodplain Administrator on forms supplied by the Town of Windham. Such application 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, River Corridors and 50-foot stream buffers, 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 local permit application. The identified permits, or letters indicating that such permits are not required, shall be submitted to the FA and attached to the permit before work can begin;
  - f. 4 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; and one for town record office
  - g. The appropriate fee as determined by the Selectboard.
2. If any proposed construction or development is located entirely or partially within any FEMA defined Special Flood Hazard Area or Town Identified Flood Hazard Area, applicants for Permits shall provide all the necessary information listed below, in addition to that mentioned above in 706.A(1), in sufficient detail and clarity to enable the Floodplain Administrator to determine that:
- a. all such proposals are consistent with the need to minimize flood damage and conform with the requirements of this and all other applicable codes and bylaws;
  - b. all utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage;
  - c. adequate drainage is provided so as to reduce exposure to flood hazards;
  - d. structures will be anchored to prevent floatation, collapse, or lateral movement;
  - e. building materials are flood-resistant;
  - f. appropriate practices that minimize flood damage have been used; and
  - g. electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities have been designed and located to prevent water entry or accumulation.
3. If any proposed construction or development is located entirely or partially within any FEMA defined Special Flood Hazard Area or Town Identified Flood Hazard Area, applicants for Permits shall provide the following data and documentation, in addition to that mentioned above in 706.A(1) and (2):
- a. if available, information concerning flood depths, pressures, velocities, impact and uplift forces and other factors associated with a base flood;
  - b. detailed information concerning any proposed flood proofing measures and corresponding elevations;
  - c. document, certified by a registered professional engineer or architect, which states that the proposed construction or development has been adequately designed to withstand the pressures, velocities, impact and uplift forces associated with the base flood. Such statement shall include a description of the type and extent of flood proofing measures which have been incorporated into the design of the structure and/or the development; and
  - d. documentation, certified by a registered professional engineer or architect, to show that the cumulative effect of any proposed development within any Special Flood Hazard Area (See Section 704.C of this bylaw), when combined with all other existing and anticipated development, will not cause any increase in the base flood elevation in any identified Floodway and will not increase the base flood elevation more than one (1) foot at any point in any Special Flood Hazard Area outside the Floodway.
  - e. If a Vermont Agency of Natural Resources Project Review Sheet was completed and submitted to ANR, this shall also be included in your application to the Town. The ANR Project Review Sheet is a tool that identifies all State and Federal agencies from which permit approval *may* be required for the proposal. Regardless of whether a Project Review

Sheet is completed, all required state and federal permits shall be submitted to the FA and attached to the permit before work can begin in any FEMA defined Special Flood Hazard Area.

4. For applicants seeking conditional use approval, approval under nonconforming structures and uses, a waiver, or a variance, for development within any Regulated Flood Hazard Area, the following also need to be provided, in addition to that mentioned above in 706.A(1), (2) and (3):
  - 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 the parcel or site, especially outside of the hazard area;
  - d. Such pertinent information as identified in the regulations or deemed necessary by the ZBA for determining the suitability of the proposed development for the site;
  - e. For a variance, then the application must include responses to the regulations set forth in 24 VSA § 4469, and CFR 60.6 (only if located in the FEMA Identified SFHA), and Section 711 of this bylaw;
  - f. For a waiver, then the application must include responses to the regulations set forth in CFR 60.6 (only if located in the FEMA Identified SFHA), and Section X of this bylaw;
  - g. Copies of the application sufficient for the ZBA members, the State National Flood Insurance Program Coordinator, and additional parties such as the VT DEC Stream Alteration Engineer and adjacent municipalities if affected under Section 705.C.1(d) of this bylaw; and,
  - h. Any additional fees as required by the Selectboard.
5. It is the responsibility of the applicant to provide material necessary for the Floodplain Administrator, Flood Hazard Review Board, and any other designated Town official, to fully understand the development proposal and to be able to make appropriate determinations using the data and materials provided by the applicant. Costs incurred for the development of application materials are the responsibility of the applicant.

#### B. Referrals

1. Upon receipt of a complete application for a substantial improvement or new construction, the Floodplain Administrator 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. Chapter 117 § 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. The ZBA should consider comments from the NFIP Coordinator at ANR.
2. If the applicant is seeking a permit for the alteration or relocation of a watercourse, applicant shall provide the adequate number of copies of the application for the Floodplain Administrator to submit copies 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 ZBA should consider comments from the NFIP Coordinator at ANR.

## **Section 707. DEVELOPMENT IN REGULATED FLOOD HAZARD AREAS**

### **A. Permit Requirement**

A permit is required from the Floodplain Administrator (FA) for all proposed construction and development in all areas defined in Section 704 A. Development that requires conditional use approval, nonconforming use approval, a waiver, or a variance from the ZBA under these flood hazard regulations, must have such approvals prior to the issuance of a permit by the FA. Any development subject to town jurisdiction in the designated hazard areas shall meet all relevant criteria in Section 708 of this bylaw. 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 Agency, whichever is sooner. The ZBA should consider comments from the NFIP Coordinator at ANR. For development within the SFHA, no permit shall be issued until all other necessary government permits required by state and federal laws have been obtained.

### **B. Permitted Development**

For the purposes of review under these regulations, the following development activities in the Special Flood Hazard area, where outside of the floodway and outside of the River Corridor, and meeting the Technical Provisions in Section 708 of this bylaw, require only an administrative permit from the FA:

1. Non-substantial (< 50% FMV) improvements of less than a 500 square foot footprint to existing residential and non-residential structures, providing the improvements do not decrease the pre-existing distance between the unaltered structure and the top of bank;
2. Accessory structures built in accordance with 708 A 8 of this bylaw;
3. Development related to on-site septic or water supply systems in accordance with 708 A.11 and 13 of this bylaw;
4. Building utilities in accordance with relevant Technical Provisions in Section 708 of this bylaw;
5. At-grade parking for existing buildings; and,
6. Recreational vehicles provided they are fully licensed and ready for highway use.

### **C. Prohibited Development in Regulated Flood Hazard Areas**

For the purposes of review under these regulations, the following development activities are prohibited in any Regulated Flood Hazard Area, and would only be allowed via issuance of a variance:

1. New residential or non-residential structures (including the placement of new manufactured homes);
2. Any improvement to an existing structure that decreases the pre-existing distance between the unaltered structure and the top of bank;
3. Storage or junk yards;
4. New fill, except as necessary to elevate structures above the base flood elevation, and placed in accordance with 708 A.16 of this bylaw;
5. Accessory structures in the Floodway;
6. Critical facilities in all areas affected by mapped flood hazards; and,
7. All development not otherwise exempted, permitted, or conditionally permitted.

### **D. Conditional Use Review**

Conditional use review and approval by the ZBA, is required prior to the issuance of a permit by the FA for the following proposed development, which shall be undertaken in accordance with all relevant technical provisions described in Section 708 A of this bylaw:

1. Substantial improvement, elevation, relocation, or flood-proofing of an existing residential or non-residential structure that does not expand the footprint of the existing structure more than 500 square feet and does not decrease the pre-existing distance between the unaltered structure and the top of bank;
2. Any improvement to an existing residential or non-residential structure that does expand the footprint of the existing structure more than 500 square feet and does not decrease the pre-existing distance between the unaltered structure and the top of bank;

3. Non-substantial improvement of less than a 500 square foot footprint to an existing residential or non-residential structure to existing residential and non-residential structures in the River Corridor that does not decrease the pre-existing distance between the unaltered structure and the top of bank;
4. New or replacement storage tanks for existing structures placed in accordance with Section 708 A.17, 19 and 24 of this bylaw;
5. Any improvements to existing residential and non-residential structures in the floodway;
6. Grading, excavation, or the creation of a pond;
7. Improvements to existing roads or streets, in accordance with Section 708.A.14 of this bylaw;
8. Bridges, culverts, channel management activities, or public projects which are functionally dependent on-stream access or stream crossing;
9. Public utilities;
10. Subdivision of land in the SFHA or River Corridor in accordance with Section 708 A.15 of this bylaw;
11. Accessory structures in the River Corridors, of 500 square feet or less, that represent a minimal investment, and are in accordance with Section 708 A.8 of this bylaw;
12. Building utilities placed in accordance with the relevant standards of this bylaw;
13. Power generation facilities and infrastructure not otherwise regulated by 30 V.S.A. Chapter 5 § 248; and
14. At-grade parking for existing buildings in the River Corridor.

#### 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, in conjunction with an approved site stabilization plan<sup>3</sup>;
2. Maintenance of existing roads and storm water drainage;
3. Silvicultural (forestry) activities conducted in accordance with the Vermont Department of Forests and Parks Acceptable Management Practices; and,
4. Agricultural activities conducted in accordance with the Vermont Department of Agriculture's Required Agricultural Practices. Prior to the construction of farm structures, the farmer must notify the FA in writing of the proposed activity. The notice must contain a sketch of the proposed structure including setbacks.

#### F. Nonconforming Structures and Uses

The ZBA may, after public notice and hearing, approve the repair, relocation, replacement, or enlargement of a nonconforming structure within a Regulated Flood Hazard Area provided that:

1. The proposed development is in compliance with all the Technical Provisions in Section 708 of this bylaw;
2. A nonconforming structure that is substantially damaged or destroyed may be reconstructed in place only in circumstances when the structure cannot be relocated to a less hazardous location on the parcel, provided it is outside of the Floodway. A nonconforming structure cannot be rebuilt in the floodway. The lowest floor of the reconstructed residential structure must be rebuilt with the lowest floor elevated to two feet or more above the base flood elevation, and a non-residential structure must be flood proofed according to Section 708.A.4 of this bylaw, and the structure must otherwise comply with all requirements of the National Flood Insurance Program and this bylaw;
3. Nonconforming structures or uses shall be considered abandoned where such structures or uses are discontinued for not less than 12 months;
4. An individual manufactured home remaining occupied 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; and
5. A nonconformity, located in a Regulated Flood Hazard Area, that the town deems to be a public nuisance or public health risk or hazard may be abated or removed as per 24

### Section 708. TECHNICAL PROVISIONS

The criteria below are the minimum standards for development in Regulated Flood Hazard Areas. Where more than one zone or area is involved, the most restrictive standard shall take precedence.

#### A. Regulated Flood Hazard Area Development Standards

1. *All development shall be:*
  - a. Reasonably safe from flooding and fluvial erosion risk;
  - 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<sup>4</sup>;
  - d. Constructed by methods and practices that minimize flood damage;
  - e. Constructed with electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities designed and/or located to prevent water from entering or accumulating within the components during conditions of flooding;
  - f. Adequately drained to reduce exposure to flood hazards; and
  - g. Located so as to minimize conflict with changes in channel location over time and the need to intervene with such changes.
2. *Within any SFHA, no development shall be permitted without first determining the base flood elevation and demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated encroachments in the municipality, will not cause any increase in the BFE. New development that proposes to displace floodwater storage in the SFHA must provide compensatory storage to offset the impacts of any increase in the extent or level of floodwaters during peak flows up to and including the base flood discharge. This demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and is certified by a licensed professional engineer.*
3. *Replacement of Residential Structures or Residential Structures to be substantially improved (FEMA defines as more than 50% of the fair market value added to the structure) in Zones A, A1-30, AE, and AH shall be located such that the lowest floor is at least two feet above base flood elevation. This must be documented in as-built condition, with a FEMA Elevation Certificate.*

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<sup>3</sup> Approval could come from Army Corps of Engineers, Agency of Natural Resources, a grant funding entity, or the Floodplain Administrator.

<sup>4</sup> Refer to *FEMA Technical Bulletin 2-9: Flood Resistant Materials Requirements*

4. *Non-residential structures in the SFHA to be substantially improved shall:*
  - a. Meet the elevation standards for Residential Structures outlined above in 708 A.3 of this bylaw; or,
  - b. Have the lowest floor, **including basement**, together with attendant utility and sanitary facilities designed so that two feet above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with



structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A permit for flood-proofing shall not be issued until a licensed professional engineer or architect has reviewed the structural design, specifications and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.

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 on all sides*, but below the lowest floor, below BFE and/or are subject to flooding, shall:
  - a. Be used solely for the parking of a vehicle, building access, or incidental storage in an area other than a basement, and such a condition shall clearly be stated on any permits; and,
  - b. Be designed and constructed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs must be certified by a licensed professional engineer or architect, or meet or exceed the following minimum criteria: (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; and (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 be fully licensed and ready for highway use.
8. *Accessory structures*  
Structures accessory to a principal building need not be elevated or flood proofed to remain dry, but shall comply, at a minimum, with the following requirements:
  - a. The structure shall not be designed or used for human habitation, but shall be limited to the parking of vehicles, or to the storage of tools, material, and equipment related to the principal use or activity.
  - b. Floor area shall not exceed 500 square feet.
  - c. The structure will have a low damage potential.
  - d. The structure will be located on the site so as to cause the least obstruction to the flow of flood waters.
  - e. Power lines, wiring, and outlets will be elevated to one foot above the base flood elevation.
  - f. Permanently affixed utility equipment and appliances such as furnaces, heaters, washers, dryers, etc. are prohibited.
  - g. Sanitary facilities are prohibited.
  - h. The structure shall be adequately anchored to prevent flotation or movement and shall be designed to automatically provide for the entry and exit of floodwater for the purpose of equalizing hydrostatic forces on the walls. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria:
    - i. A minimum of two openings having a net total area of not less than one (1) square inch for every square foot of enclosed space.
    - ii. The bottom of all openings shall be no higher than one (1) foot above grade.
    - iii. Openings may be equipped with screens, louvers, etc. or other coverings or devices provided that they permit the automatic entry and exit of flood waters.
9. If a variance is obtained according to Section 711 of this bylaw, *all manufactured homes, and any improvements thereto*, shall be:
  - a. placed on a permanent foundation;
  - b. elevated so that the lowest floor of the manufactured home is at least two feet above the base flood elevation

- c. anchored to resist flotation, collapse, or lateral movement.
- d. have all ductwork and utilities including HVAC/heat pump elevated to two foot above the base flood elevation

10. *Historic Structures*

Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined in this bylaw, must comply with all bylaw requirements that do not preclude a structure or district's continued historic designation. Documentation that a specific bylaw requirement will cause removal of the structure, or district that the structure lies within, from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from bylaw requirements will be the minimum necessary to preserve the historic character and design of the structure and/or district.

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

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

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

14. *Subdivisions, Manufactured Home Parks, and Planned Unit Developments* must be accessible by dry land access outside the special flood hazard area. All subdivision proposals and development proposals containing at least 50 lots or at least 5 acres, whichever is the lesser, in FEMA Identified SFHA's where base flood elevation data are not available, shall be supported by hydrologic and hydraulic engineering analyses that determine base flood elevations and floodway information. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a Conditional Letter of Map Revision and Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant. If such a subdivision is proposed in a flood prone area, assure that:

- a. such proposal minimizes flood damage;
- b. is proposed to be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding; and
- c. adequate drainage is provided to reduce exposure to flood hazards.
- d. New parcels created by subdivision require a reasonable development envelope that conforms to all natural hazard and dimensional standards in this bylaw without requiring a variance or waiver."

15. If *Fill* is used to elevate structures above the base flood elevation, it shall:

- a. extend laterally at least fifteen (15) feet beyond the building line from all points;
- b. consist of soil or small rock materials only - Sanitary Landfills shall not be permitted;
- c. be compacted to provide the necessary permeability and resistance to erosion, scouring, or settling;
- d. be no steeper than one (1) vertical to two (2) horizontal feet unless substantiated data justifying steeper slopes are submitted to, and approved by the Floodplain Administrator; and
- e. be used to the extent to which it does not adversely affect adjacent properties.
- f. Fill shall be inspected and approved by the FA or a professional engineer prior to placement of any structure atop fill.

16. *Storage* of all materials that are buoyant, flammable, explosive or in times of flooding, could be

injurious to human, animal, or plant life, shall be stored at or above one foot above the base flood elevation or flood proofed to the maximum extent possible, including being firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, or lateral movement.

17. *Existing residential and non-residential 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.

18. *Anchoring*

- a. All buildings and structures shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, or lateral movement.
- b. All air ducts, large pipes, storage tanks, and other similar objects or components located below the base flood elevation shall be securely anchored or affixed to prevent flotation.

19. *Floors, Walls and Ceilings*

- a. Wood flooring used at or below the base flood elevation shall be installed to accommodate a lateral expansion of the flooring, perpendicular to the flooring grain without causing structural damage to the building.
- b. Plywood used at or below the base flood elevation shall be of a "marine" or "water-resistant" variety.
- c. Walls and ceilings at or below the base flood elevation shall be designed and constructed of materials that are "water-resistant" and will withstand inundation.
- d. Windows, doors, and other components at or below the base flood elevation shall be made of metal or other "water-resistant" material.

20. *Paints and Adhesives*

- a. Paints and other finishes used at or below the base flood elevation shall be of "marine" or "water-resistant" quality.
- b. Adhesives used at or below the base flood elevation shall be of a "marine" or "water-resistant" variety.
- c. All wooden components (doors, trim, cabinets, etc.) used at or below the base flood elevation shall be finished with a "marine" or "water-resistant" paint or other finishing material.

21. *Electrical Components*

Electrical distribution panels shall be at least three (3) feet above the base flood elevation. Separate electrical circuits shall serve lower levels and shall be dropped from above.

22. *Equipment*

Water heaters, furnaces, air conditioning and ventilating units, and other electrical, mechanical or utility equipment or apparatus shall not be located below the base flood elevation.

23. *Fuel Supply Systems*

All gas and oil supply systems shall be designed to prevent the infiltration of flood waters into the system and discharges from the system into flood waters. All components located below the base flood elevation shall be securely anchored or affixed to prevent flotation or unmooring. Additional provisions shall be made for the drainage of these systems in the event that flood water infiltration occurs.

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 licensed 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 licensed professional engineer certifies that there will be no change in grade and the utilities will be adequately protected from scour.

#### C. River Corridors

Within River Corridors:

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 is not less than the distance between the existing primary structure and the top of bank.
3. The applicant shall demonstrate that:
  - a. Development shall not increase the susceptibility of that or other properties to fluvial erosion damage;
  - b. 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; and
  - c. 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.
4. In a designated center that lies in the River Corridor, infill development is allowed provided that the location of said development is not less than the distance between existing adjacent structures and the top of bank.
5. Bridge and culvert projects must have a Stream Alteration permit; and
6. Channel management activities must be authorized by the Vermont Agency of Natural Resources.

#### D. Alteration or Relocation of Watercourse

1. No encroachment, alteration, or improvement of any kind shall be made to any watercourse until all adjacent towns which may be affected by such action have been notified by the town, and until all required permits or approvals have first been obtained from the Vermont Agency of Natural Resources.
2. No encroachment, alteration, or improvement of any kind shall be made to any watercourse unless it can be shown that the activity will not decrease stream stability, or reduce or impede the flood carrying and sediment transport capacity of the watercourse in any way.
3. In addition, FEMA shall be notified prior to any alteration or relocation of any watercourse.
4. Submission of technical or scientific data is the municipal responsibility, but may pass it unto the applicant. The fees associated with the processing of Letters of Map Change will be charged to the applicant.

- E. Any new construction, development, uses or activities allowed within any Regulated Flood Hazard Area shall be undertaken in strict compliance with the provisions contained in this bylaw and any

other applicable codes, bylaws and regulations.

- E. Any modification, alteration, reconstruction, or improvement of any kind that meets the definition of “Repetitive Loss” shall be undertaken only in full compliance with the provisions of this bylaw.
- G. Within any Regulated Flood Hazard Area, no new construction or development shall be located within the area measured fifty (50) feet landward from the top-of-bank of any watercourse.

#### **Section 709. ENFORCEMENT AND PENALTIES**

- A. This bylaw shall be enforced under the town zoning bylaw in accordance with 24 V.S.A. Chapter 117 § 4451, § 4452 and 24 V.S.A. Chapter 59 § 1974a.
- B. Whenever the Floodplain Administrator or other authorized town representative determines that there are reasonable grounds to believe that there has been a violation of any provisions of this bylaw, or of any regulations adopted pursuant thereto, the Floodplain Administrator shall give notice of such alleged violation as hereinafter provided. Such notice shall:
  - 1. be in writing;
  - 2. include a statement of the reasons for its issuance;
  - 3. state that the alleged offender has an opportunity to cure the violation within seven days of receipt;
  - 4. state that failure to cure the violation may result in fines and/or loss of flood insurance;
  - 5. state 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;
  - 6. be served upon the property owner or his agent as the case may require; provided, however, that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been served with such notice by any other method authorized or required by the laws of this State; and,
  - 7. contain an outline of remedial actions which, if taken, will affect compliance with the provisions of this bylaw.
- C. 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 town clerk for recording in the land records.
- D. After seven days, if the violation has not been remedied, in accordance with 24 VSA Chapter 59 § 1974a, and Chapter 117 § 4451 and § 4452; any person who is found to have violated this bylaw shall be fined by the court not more than \$200.00 for each offense. No action may be brought under this section unless such notice as required 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.
- E. Within any FEMA Identified Special Flood Hazard Area, if any appeals have been resolved, but the violation remains, the FA 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 bylaw, (c) a clear statement that the Floodplain Administrator 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.

## **Section 710. REGULATED FLOOD HAZARD AREA WAIVERS**

- A. The purpose of a waiver is to allow for the reduction of dimensional requirements that might not meet the standards necessary to grant a variance.
1. Pursuant to 24 V.S.A. § 4414(8), waivers to dimensional requirements of this bylaw may be granted by the ZBA after considering the Waiver Criteria in Section 710 A (3) below. The burden of proof is on the applicant to demonstrate that the waiver requested meets the Waiver Criteria.
  2. A waiver may be granted to any of the dimensional requirements in this bylaw.
  3. Waiver Criteria. The ZBA may grant a waiver(s) to a dimensional requirement(s) after making findings on the following criteria:
    - a. The waiver is helpful or necessary to allow for reasonable use of the property.
    - b. The waiver is the minimum reduction in the dimensional requirement that will enable the reasonable use of the property.
    - c. Any adverse effects of the waiver are mitigated by design, screening, or other remedies.
    - d. The need for a waiver was not created by past decisions of the applicant.
    - e. The proposed project will still conform to the Windham Town Plan.
    - f. The proposed project will still conform to the purpose of this bylaw, as stated in Section II of this bylaw, and any underlying zoning district in which the land development is located.
    - g. The proposed project will not have an undue adverse effect on the following:
      - i. Surrounding properties and property values
      - ii. The character and aesthetics of the neighborhood
      - iii. Traffic patterns and circulation
      - iv. Public health, safety, and utility services
      - v. Storm water management
      - vi. Water and wastewater capacity
      - vii. Disability accessibility, fire safety, and other requirements of the law
      - viii. Energy conservation and renewable energy structures
      - ix. Changes in channel location over time and the need to intervene with such changes
      - x. Any increase in the BFE in any FEMA Identified SFHA. In A district, BFE's are determined using the methodology described in Section 704.C(3) of this bylaw.
- B. Waiver Application and Review Process
1. The application shall come to the ZBA either from the applicant as an appeal of a decision of the FA or a referral from the FA.
  2. Requests for waivers are considered by the ZBA. Any request for a waiver will be warned and a public hearing held, subject to procedures set forth in Section 705 of this bylaw.
  3. The ZBA shall consider the opinion of abutters in deciding whether to grant the waiver.
  4. The ZBA shall consider comments from the NFIP Coordinator at ANR in deciding whether to grant the waiver.
  5. In granting a decision in favor of the applicant, the ZBA may attach reasonable conditions, including mitigation by design, screening, or other remedy.
  6. Any waiver granted under this section shall be limited to the specific property to which it



has been granted. A waiver on one property shall not be construed as a general guideline or standard for any other property.

7. Expiration: Waiver approvals shall expire by limitation if work is not completed within twenty-four (24) months after the date of issuance. All work must be completed as shown on any approved plan before the expiration date. One-year extensions of this deadline may be granted by the FA prior to expiration. Requests for extensions must be made in writing.
8. Appeals: Any request for a Waiver that is denied may be appealed subject to Section 705.E of this bylaw.

## **Section 711. REGULATED FLOOD HAZARD AREA VARIANCES**

If compliance with any of the requirements of this bylaw would result in an exceptional hardship to a prospective builder, developer or landowner, the Town of Windham may, upon request, grant relief from the strict application of the requirements. Variances may be granted in writing by the ZBA only in accordance with all the criteria below and in 24 V.S.A. § 4469 and 44 CFR Section 60.6.

1. No variance shall be granted in the Special Flood Hazard Area that would cause any increase in the BFE. In A district, BFE's are determined using the methodology described in Section 704.C.3 of this bylaw.
2. 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.
3. If granted, a variance shall involve only the least modification necessary to provide relief.
4. In granting any variance, the Town of Windham shall attach whatever reasonable conditions and safeguards it considers necessary in order to protect the public health, safety, and welfare, and to achieve the objectives of this bylaw.
5. A variance for development within the River Corridor 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.
6. Whenever a variance is granted, the Town of Windham shall notify the applicant in writing that:
  - a. The granting of the variance may result in increased premium rates for flood insurance.
  - b. Such variances may increase the risks to life and property.
7. In reviewing any request for a variance, the Town of Windham shall consider, at a minimum, the following:
  - a. That there is good and sufficient cause.
  - b. That failure to grant the variance would result in exceptional hardship to the applicant.
  - c. That the granting of the variance will:
    - i. neither result in an unacceptable or prohibited increase in flood heights, additional threats to public safety, or extraordinary public expense,
    - ii. nor create nuisances, cause fraud on, or victimize the public, or conflict with any other applicable state or local bylaws and regulations.
8. A complete record of all variance requests and related actions shall be maintained by the Town of Windham. In addition, a report of all variances granted during the year for properties within the Special Flood Hazard Area and properties insured by the National

Flood Insurance Program, shall be included in the annual report to the FEMA.

Notwithstanding any of the above, however, all structures shall be designed and constructed so as to have the capability of resisting the one-percent (1%) annual chance flood.

## **Section 712. REGULATED FLOOD HAZARD AREA 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.

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

**“Base Flood”** means the flood having a one percent chance of being equaled or exceeded in any given year (also referred to as the “100-year flood” or one-percent (1%) annual chance flood).

**“Base flood discharge”** is the volume of water resulting from a Base Flood as it passes a given location within a given time, usually expressed in cubic feet per second (cfs).

**“Base Flood Elevation” (BFE)** is the elevation shown on the Flood Insurance Rate Map (FIRM) for Zones AE, AH, A1-30 that indicates the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.

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

**“Buffer”** means an undisturbed area consisting of trees, shrubs, ground cover plants, duff layer, and generally uneven ground surface that extends a specified distance horizontally across the surface of the land from the mean water level of an adjacent lake or from the top of the bank of an adjacent river or stream.

**“Building”** is a combination of materials to form a permanent structure having walls and a roof. Included shall be all manufactured homes and trailers to be used for human habitation.

**“Channel”** means an area that contains continuously or periodically 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, once every 1 to 2 years.

**“Community”** means any State or area political subdivision thereof, or any Indian tribe or authorized tribal organization, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

**“Critical facilities”** - includes police stations, fire and rescue facilities, hospitals, shelters, schools, nursing homes, water supply and waste treatment facilities, and other structures the municipality 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 store or gas station.

**“Designated center”** means a downtown, village center, new town center, growth center, or neighborhood development area designated pursuant to 24 V.S.A. Chapter 76A.

**“Development”** means any human-made change to improved or unimproved real estate, including but

not limited to the construction, reconstruction, renovation, repair, expansion, or alteration of buildings or other structures, the placement of manufactured homes; streets, and other paving; utilities; filling, grading and excavation; mining; dredging; drilling operations; storage of equipment or materials; and the subdivision of land.

***“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 municipality.

***“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.

***“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 the official map of a municipality, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the municipality.

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

***“Floodplain or flood-prone area”*** means a relatively flat or low land area which is subject to partial or complete inundation from an adjoining or nearby stream, river or watercourse; and/or any area subject to the unusual and rapid accumulation of surface waters from any source.

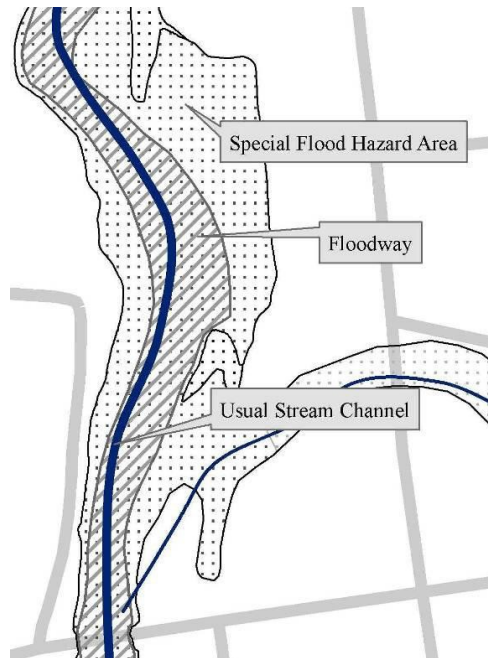
***“Flood proofing” means*** any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

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

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

**“Highest Adjacent Grade”** is the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.



**“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.

**“Identified Floodplain Area”** is an umbrella term that includes all of the areas within which the municipality has selected to enforce floodplain regulations. It will always include the area identified as the Special Flood Hazard Area on the Flood Insurance Rate Maps and Flood Insurance Study, but may include additional areas identified by the municipality. See Section IV.A of this bylaw for what areas the community has included in the Identified Floodplain Area.

**“Letter of Map Amendment” (LOMA)** is an official amendment, by letter from FEMA, to an effective National Flood Insurance Program map. A LOMA establishes a property's location in relation to the Special Flood Hazard

Area. LOMAs are usually issued because a property has been inadvertently mapped as being in the floodplain, but a licensed engineer or surveyor is able to show that the property or structure is actually above the base flood elevation.

**“Lowest floor”** means the lowest floor of the lowest enclosed area, **including basement**. An unfinished or flood resistant partially enclosed area, used solely for parking of vehicles, building access or incidental storage in an area other than a basement area is not considered a building's lowest floor

provided that such enclosure is not designed and built so that the structure in violation of the applicable non-elevation design requirements of this bylaw.

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

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

***“Minor repair”*** is the replacement of existing work with equivalent materials for the purpose of its routine maintenance and upkeep, but not including the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the exit way requirements; nor shall minor repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, oil, waste, vent, or similar piping, electric wiring, mechanical or other work affecting public health or general safety.

***“New construction”*** means structures for which the start of construction commenced on or after effective start date of this floodplain management bylaw (Enter adoption date) and includes any subsequent improvements to such structures. Any construction started after October 14, 2009 and before effective start date of this incorporation of floodplain management (Enter adoption date) into the bylaw is subject to the bylaw in effect at the time the permit was issued, provided the start of construction was within 180 days of permit issuance.

***“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 most recent effective date of floodplain management 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, bylaws, and regulations prior to the enactment of the present bylaws, including a structure improperly authorized as a result of error by the Floodplain Administrator. 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 or a structure that does not conform to the present bylaws but did conform to all applicable laws, bylaws, and regulations prior to the enactment of the present bylaws, including a use improperly authorized as a result of error by the Floodplain Administrator. Uses that were in violation of the flood hazard regulations at the time of their creation, and remain so, remain violations and are not nonconforming uses.

***“Nonconformity”*** means a nonconforming use, structure, lot, or parcel.

***“Non-residential”*** means a commercial or mixed-use building where the primary use is commercial or non-habitational. This includes, but is not limited to: small businesses, churches, schools, farm buildings (including grain bins and silos), pool houses, clubhouses, recreational buildings, government buildings, mercantile structures, agricultural and industrial structures, and warehouses.

***“Non-substantial improvement”*** means any reconstruction, rehabilitation, addition, or other improvement of a structure, of which the cost is less than 50 percent of the market value of the structure before the “start of construction” of the improvement.

**“Person”** means an individual, partnership, public or private association or corporation, firm, trust, estate, municipality, governmental unit, public utility or any other legal entity whatsoever, which is recognized by law as the subject of rights and duties.

**“Post-FIRM Structure”** is a structure for which construction or substantial improvement occurred after December 31, 1974 or on or after the effective date of the community’s first Flood Insurance Rate Map (FIRM) dated September 28, 2007, whichever is later, and, as such, would be required to be compliant with the regulations of the National Flood Insurance Program.

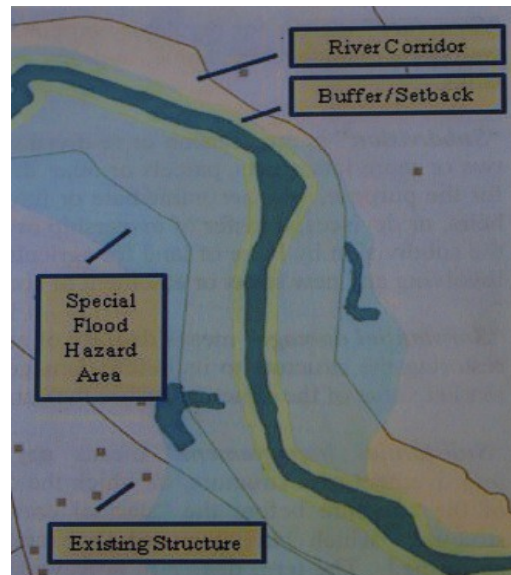
**“Pre-FIRM Structure”** is a structure for which construction or substantial improvement occurred on or before December 31, 1974 or before the effective date of the community’s first Flood Insurance Rate Map (FIRM) dated September 28, 2007, whichever is later, and, as such, would not be required to be compliant with the regulations of the National Flood Insurance Program.

**“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.

**“Repetitive loss”** is flood related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on average, equals or exceeds 25 percent of the market value of the structure before the damages occurred.

**“Regulated Flood Hazard Areas”** is a term that refers to all areas defined in Section IV.A of this bylaw and regulated by this bylaw, and is the total land to which these regulations apply. 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.

**“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, as that term is defined in 10 V.S.A. § 1422, and for minimization of fluvial erosion hazards, as delineated by the Vermont Agency of Natural Resources (ANR) on the online Natural Resources Atlas.



**“Small streams”** are those perennial streams<sup>5</sup> as delineated by the Vermont Agency of Natural Resources (ANR) on the online Natural Resources Atlas, with drainage areas of less than two square miles, which, because of their low sensitivity, small watershed size, steeper valley slope, and/or valley confinement, may attain their least erosive form within an area delineated as a simple 50-foot setback measured horizontally and perpendicularly from the top of each streambank. The river corridor for small streams constitutes the stream channel plus the 50-foot setback on each side.

**“Special Flood Hazard Area” (SFHA)** means an area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. It is shown on the FIRM as Zone A, AO, A1-A30, AE, AE, A99 or AH

<sup>5</sup> Based on the Vermont Hydrography Dataset (1:5000).



***“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 and shall be completed within twenty-four (24) months after the date of issuance of the permit unless a time extension is granted, in writing, by the Floodplain Administrator. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footing, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, regardless whether that alteration affects the external dimensions of the building.

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

***“Subdivision”*** is the division or re-division of a lot, tract, or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs, or devisees, transfer of ownership or building or lot development: Provided, however, that the subdivision by lease of land for agricultural purposes into parcels of more than five acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.

***“Substantial damage”*** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition 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, of which the cost 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 stream bank where an abrupt change in slope is evident. For streams in wider valleys it is the point where the stream is generally able to overflow the banks and enter the floodplain. For steep and narrow valleys, it will generally be the same as the top of slope.

***“Variance”*** means a grant of relief by a community from the terms of a floodplain management regulation.

***“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(b)(5), (c)(4), (c) (10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

## Appendix A. DEFINITIONS

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

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

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

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

**Camp:** Private hunting or fishing camp, consisting of building used occasionally or seasonally for temporary shelter in connection with a recreational activity, not operated as a business and subject to the following:

- a. Only chemical, incinerator, or privy-type toilet facilities permitted in accordance with design standards of the Vermont Department of Environmental Conservation. The camp may not be served by a sewage disposal system consisting of a tank and/or leaching field.
- b. No privy-type toilet facilities or any discharge of wastewater from sinks, showers, washing machines, or other sources shall be located within 200 feet of any spring, well, stream, brook, river, pond, or wetland on the subject lot or any other lot.

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

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

**Development:** The division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation, or landfill, and any change in the use of any building or other structure, or land, or extension of use of land.

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

**Dwelling Unit: Accessory:** an efficiency or one-bedroom apartment that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:

- (i) The property has sufficient wastewater capacity.
- (ii) The unit does not exceed 30 percent of the total habitable floor area of the single-family dwelling.
- (iii) Applicable setback, coverage, and parking requirements specified in the bylaws are met.

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

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

by a common vertical wall or floor.

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

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

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

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

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

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

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

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

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

**Light Industry:** Industrial activities include those activities primarily concerned with the enclosed

manufacturing, processing, or wholesale selling or warehousing of goods.

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

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

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

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

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

**Nonconforming Lots or Parcels:** lots or parcels that do not conform to the present bylaws covering dimensional requirements but were in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a lot or parcel improperly authorized as a result of error by the administrative officer.

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

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

**Non-Complying Structure/Non-Conforming Use: See Section 208**

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

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

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

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

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

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

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

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

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

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

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

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

**Wind Energy Systems, commercial/industrial:**

Wind energy systems (wind farms) that are greater than 500 kW are defined as commercial/industrial systems.

**Wind Energy Systems, Individual:**

Small scale individual wind energy systems are systems not subject to 30 V.S.A. § 248 and are under the regulations in Section 506 of these bylaws.