

ARTICLE I.
ADOPTION: PURPOSE

1.1 **Adoption.** ~~In accordance with 24 V.S.A. Chapter 117 §§ 4411, §4414, and 4424, 10 V.S.A. Chapter 32, and 24 VSA Chapter 59 Pursuant to Chapter 117 of Title 24, Vermont Statutes Annotated,~~ the Town of Lyndon, Vermont hereby establishes the following ordinance as its zoning bylaws for the Town of Lyndon, which includes the Village of Lyndonville, and adopts the official zoning map for the Town of Lyndon. Except as additionally described below, all administrative procedures follow municipal procedures under 24 VSA Chapter 117.

Commented [CLC1]: Art. 11.1 “Statutory Authorization and Effect” is substantially redundant of Art. 1.1 and 1.2. Thus, I’ve taken the pieces that are not redundant and added them to these sections. A citation to statutory authority is required by FEMA’s NFIP Regulations.

1.2 **Purpose.** It is the purpose of these bylaws to provide for the orderly development of the Town of Lyndon in accordance with and to carry out the Lyndon Town Plan; to regulate the subdivision and uses of land and buildings in the town; to preserve and conserve the natural environment within the Town of Lyndon; to mitigate the burden of property taxes on agricultural, forest and other open lands; to protect residential, agricultural and other areas from undue concentrations of population and buildings and overcrowding of land, from traffic congestion, and from the loss of peace, quiet and privacy that presently characterizes the town; to maintain the historic settlement pattern within the town, and to promote the growth of the town consistent with that traditional settlement pattern; to foster a strong and diverse economy providing satisfying and rewarding job opportunities and to expand economic opportunities within the town while at the same time maintaining high environmental standards; to maintain and enhance the recreational opportunities within the town; to encourage and strengthen agricultural and forest industries and related businesses; ~~and~~ to promote the availability of safe, sanitary, decent and affordable housing for all residents of the town; and to manage areas at risk of flood and fluvial erosion damage in the Town of Lyndon.

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ARTICLE II
ZONING DISTRICTS

2.1 Establishment of Zoning Districts. The Town of Lyndon is divided into the following ~~ten Districts~~ 10 zoning districts and one overlay districts:

- 2.1.1 Rural Residential
- 2.1.2 Residential Neighborhood
- 2.1.3 Village Commercial
- 2.1.4 Park
- 2.1.5 Industrial
- 2.1.6 Commercial
- 2.1.7 Lyndon Corner Industrial
- 2.1.8 Main Street
- 2.1.9 Institutional Control
- 2.1.10 Industrial/Commercial District

2.1.11 Flood Hazard Overlay District

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ARTICLE III

DISTRICT OBJECTIVES AND DISTRICT REGULATIONS

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3.11 Flood Hazard Overlay District. The Flood Hazard Overlay district and the relevant regulations and development standards are fully described in Article XI.

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ARTICLE IV

GENERAL PROVISIONS

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4.6 **Variances.** Applications for a variance from the provisions of this bylaw shall be governed by, and granted or denied in accordance with, the provisions of 24 V.S.A. §4469, after a public hearing noticed as described in § 13.13 of these bylaws.

4.6.1 Pursuant to § 4.4.3 of this bylaw, applications for permission to deviate from the maximum lot coverage or the minimum front, side or rear yard requirements set forth elsewhere herein are not applications for a variance, but are to be granted or denied as conditional uses. Any variance issued in the Special Flood Hazard Area must additionally comply with all the criteria 44 CFR § 60.6 and shall not increase flood heights. Pursuant to 44 CFR § 60.6(a)(5), the AO shall notify the applicant in writing that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions as required by 44 CFR § 60.6 (a)(6).

4.6.2 A variance for development within the River Corridors may be allowed if, based on a review by the Vermont Agency of Natural Resources (ANR), it is determined that the proposed development will not obstruct the establishment and maintenance of fluvial geomorphic equilibrium for the watercourse.

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4.9 ~~Travel trailer~~ **Recreational Vehicle.** A ~~travel trailer~~ recreational vehicle may not be occupied as a residence unless it is connected to a sewage disposal system and a permanent water supply.

* * *

Commented [CLC2]: The overlay language here and in Art. 3.11 is not substantive, however, it is important to connect the Flood Hazard Regulations with the Article II/III Zoning District requirements so potential applicants in the flood hazard areas are aware that there are other development standards in addition to the base zoning district.

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Commented [CLC3]: The language in the current Art. 11.6.F that addresses variances in the Special Flood Hazard Area is being combined with the variance section within the "General Provisions" of the zoning by-laws.

Commented [CLC4]: This language, which is presently the second sentence of the current Art. 4.6, is redundant of Art. 4.4.3.

Commented [CLC5]: This language is from the present version of Art. 11.6.F.2, with some minor cleaning up for purposes of clarity. This language is necessary to comply with FEMA's requirement that variance provisions contain evaluation criteria and insurance notice.

Commented [CLC6]: This is change in terminology is being made to create consistency with related language in Art. XI required by FEMA's NFIP regulations.

ARTICLE V
NON-CONFORMING USES

~~5.1 "Non-Conforming use" means a use of land or use of a structure which does not comply with all zoning regulations where such use conformed to all applicable laws, ordinances and regulations prior to the enactment of these bylaws.~~

~~5.2 "Non-Conforming structure" means a structure or a part thereof not in conformance with the zoning regulations covering building dimensions, height, area, yards, density or off-street parking or loading requirements, where such structure conformed to all applicable laws, ordinances and regulations prior to the enactment of such zoning regulations.~~

~~5.3~~1 In any District other than a Residential Neighborhood ~~or a Flood Hazard Overlay District,~~ a non-conforming use may be moved, enlarged, altered, extended, reconstructed, restored, or changed to another non-conforming use as a conditional use if, after notice and hearing, the DRB finds (a) that the degree of non-conformance after such change will be no more nonconforming than existed prior to such change, and (b) that such change shall not adversely affect:

~~5.31.1~~ The capacity of existing or planned community facilities.

~~5.31.2~~ 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 of the municipal plan.

~~5.31.3~~ Traffic on roads and highways in the vicinity.

~~5.31.4~~ By-laws and Ordinances then in effect.

~~5.31.5~~ Utilization of renewable energy resources.

~~5.31.6~~ Performance standards pursuant to Section 4414 (5) of the Act and Section 4.4.5 of this bylaw.

~~5.4~~2 In a Residential Neighborhood District, if a non-conforming use has been discontinued for more than a 12 month time period, the non-conforming use may not be re-established. An existing non-conforming use or one that has not been discontinued for 12 months may be moved, enlarged, altered, extended, reconstructed, restored, or changed to another non-conforming use as a conditional use if, after notice and hearing, the DRB finds (a) that the degree of non-conformance after such change will be no more non-conforming than existed prior to such change, and (b) that such change shall not adversely affect:

~~5.42.1~~ The capacity of existing or planned community facilities.

Commented [CLC7]: These definitions are being deleted, as they are redundant of the definitions presently in Art. XI, which are being moved to Art. XVII.

Commented [AM8]: Added per 11/25/20 ANR Comment #5.

5.42.2 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 of the municipal plan.

5.42.3 Traffic on roads and highways in the vicinity.

5.42.4 By-laws and Ordinances then in effect.

5.42.5 Utilization of renewable energy resources.

5.42.6 Performance standards pursuant to Section 4414 (5) of the Act and Section 4.4.5 of this bylaw.

5.5 In any district other than a Flood Hazard Overlay District, a non-conforming structure may be maintained, repaired and replaced provided that such action does not increase the degree of non-compliance in any respect.

5.6 Substantial improvements to non-conforming structures in a Flood Hazard Overlay District must meet the development standards in section 11.5.

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ARTICLE XI FLOOD HAZARD REGULATIONS

~~11.1 Statutory Authorization and Effect~~

~~In accordance with 10 V.S.A. Chapter 32, and 24 V.S.A. Chapter 117 §4424, §4411 §4414, and 24 VSA Chapter 59, there is hereby established a bylaw for areas at risk of flood damage in the Town of Lyndon & Village of Lyndonville, Vermont. Except as additionally described below, all administrative procedures follow municipal procedures under 24 VSA Chapter 117.~~

~~11.21 Statement of Purpose~~

It is the purpose of this bylaw to:

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

Commented [AM9]: Added per 11/25/20 ANR Comment #5.

Commented [AM10]: Added per 11/25/20 ANR Comment #5 and 11/13/20 NVDA Comments.

Commented [CLC11]: This language is substantially redundant of Art. 1.1 and 1.2. Thus, we have taken the pieces that are not redundant and added them to the sections above.

Commented [CLC12]: FEMA's NFIP Regulations require a purpose section citing health, safety, and welfare reasons for adoption.

hazard mitigation funds as may be available.

~~11.3~~ Other Provisions

- A. ~~Precedence of Bylaw~~ The provisions of these flood hazard bylaws shall not in any way impair or remove the necessity of compliance with any other local, state, or federal laws or regulations. Where this flood hazard regulation imposes a greater restriction the provisions here shall take precedence.
- B. ~~Validity and Severability~~ If any portion of this bylaw is held unconstitutional or invalid by a competent court, the remainder of this bylaw shall not be affected.

Commented [CLC13]: We have combined this section with the similar language in the bylaws found at Art. 14.2.2

Commented [CLC14]: Art. 14.4 already has language to the same effect; however, the language here at 11.3.A is better, as the existing 14.4 refers to "separability" when the correct legal term is "severability." As a consequence, we have moved this language to 14.4 and struck the original 14.4. Also note that, severability language is required by FEMA's NFIP regulations.

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Commented [CLC15]: This section is required by FEMA's NFIP regulations.

11.2 C. ~~Warning of Disclaimer of Liability~~

This ~~bylaw Article~~ 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 Lyndon ~~& Village of Lyndonville~~ or any municipal official or employee thereof, for any flood or erosion damages that result from reliance on this regulation, or any administrative decision lawfully made hereunder.

11.43 Lands to Which these Regulations Apply

A. Regulated Flood Hazard Areas

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

Commented [CLC16]: Reference to the Village is redundant as the Town of Lyndon encompasses the Village and we are not regulating the Village any differently than we are the Town in general.

Commented [CLC17]: This language is required by FEMA's NFIP regulations.

1. The River Corridors as published by the Vermont Agency of Natural Resources including the Statewide River Corridors, ~~and~~ refinements to that data based on field-based assessments, and VT DEC approved administrative areas which are hereby adopted by reference. Where River Corridors are not mapped, the standards in § 11.5.C shall apply to the area measured as fifty (50) feet from the top of the stream bank or slope.
- ~~2.~~ The Special Flood Hazard Area in and on the most current flood insurance studies and maps published by the Department of Homeland Security, Federal Emergency Management Agency, National Flood Insurance Program, as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. Chapter 32 § 753, which are hereby adopted by reference and declared to be part of these regulations.

Commented [AM18]: Added per 11/25/20 ANR River Corridor Review. Lyndon had several administrative areas approved by ANR on 9/1/20, which could still be subject to River Corridor development standards were this language not clearly included. Administrative areas are areas within the mapped River Corridor that have been effectively removed as they have been determined by ANR meet the development standards in section D (Erosion Hazards) of the 2018 VT DEC Model Bylaw.

Commented [CLC19]: This language is unchanged from the current bylaw. Under 44 C.F.R. § 60.3(c)-(e), we must adopt by reference the current flood insurance study, which this provision does.

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

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

C. Interpretation

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

1. If uncertainty exists with respect to the boundaries of the Special Flood Hazard Area or the floodway, the location of the boundary shall be determined by the Administrative Officer (AO)~~Zoning Administrator (ZA)~~. If the applicant disagrees with the determination made by the ZAAO, a Letter of Map Amendment from FEMA shall constitute proof.
2. If uncertainty exists with respect to the boundaries of the River Corridor, the location of the boundary shall be determined by the ZAAO. If the applicant disagrees with the determination made by the ZAAO, a letter of determination from the Vermont Agency of Natural Resources shall constitute proof.

Commented [CLC20]: All references to "Zoning Administrator" or "ZA" are being replaced throughout with "Administrative Officer" or "AO" to be consistent with our bylaws more generally.

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11.54 Summary Table: Development Review in Hazard Areas

Commented [CLC21]: We are combining Art. 11.5 and 11.6 for the sake of clarity.

~~A. The hazard areas are not appropriate sites for new structures nor for development that increases the elevation of the base flood or obstructs the ability of streams to establish and maintain geomorphic equilibrium.~~
A. Summary Table:

#	ACTIVITY	HAZARD ZONE		
	P Permitted C Conditional Use Review X Prohibited A Exempted	Special Flood Hazard Area Outside	Special Flood Hazard Area Within	River Corridors

Commented [CLC22]: The rows in the current Summary Table are being renumbered as the exist table skipped over the numbers 7, 10, and 11.

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		<u>Floodway Limits</u>	<u>Floodway Limits</u>	
1	New Structures	XC	X	XC
2	Storage	XC	X	XC
3	Improvements to Existing Structures	P, C	C	EP, C
4	Small Accessory Structures	P	X	EP
5	At Grade Parking <u>for Existing Structures</u>	P	C	EP
6	<u>Replacement w</u> Water supply or septic systems	EP	C	EP
8	Fill as needed to elevate existing structures	C	C	C
7	Fill as needed to elevate existing structures	C	C	C
89	Fill	XC	X	XC
912	Grading	C	C	C
1013	Road maintenance	A	A	A
1144	Road improvements	C	C	C
1245	Bridges and culverts	C	C	C
1346	Channel management	C	C	C
1417	Recreational vehicles	P	P	P
18	<u>Open space, recreation</u>	A	A	A
1915	Forestry	A	A	A
2016	Agriculture	A	A	A

Commented [CLC23]: Contains clarifying language recommended by Marty.

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Commented [CLC24]: This section has been deleted as “open space, recreation” is not addressed anywhere else in the current bylaws. Further, it is not really that open space and recreation are “exempted” from the flood hazard bylaws, as suggested here, it’s that open space and recreation are not normally considered “development” as they do not constitute “human-made change to improved or unimproved real estate.”

All development as allowed pursuant to this summary table shall meet the minimum standards set forth below. Where more than one zone or area is involved, the most restrictive standard shall take precedence.

11.6 — Development Review in Hazard Areas

A. Permit

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

Commented [CLC25]: Under Art. 13.2, all “development” requires a permit, thus this section adds much of anything. I have taken the final sentence, which speaks to other State and Federal permits, and added it to Art. 13.7, as from my reading of 44 C.F.R. § 60.3(a)(2), this language is required by FEMA’s NFIP regulations.

B. Exempted Activities

The following are exempt from regulation under this bylaw:

1. The removal of a building or other structure in whole or in part;
2. Maintenance of existing sidewalks, roads, parking areas, and storm water drainage;
3. Silvicultural (forestry) activities conducted in accordance with the Vermont Department of Forests and Parks Acceptable Management Practices; and,

Commented [CLC26]: This is the same as the current Art. 11.6.E, with the exception that we have added sidewalks and parking areas to subsection 2. This section is being moved for purposes of clarity.

4. Agricultural activities conducted in accordance with the Vermont Department of Agriculture's Accepted Agricultural Practices (AAP). Prior to the construction of farm structures, the farmer must notify the AO in writing of the proposed activity. The notice must contain a sketch of the proposed structure including setbacks.

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C. Permitted Development

1. For the purposes of review under these regulations, the following development activities outside the floodway, but within the Special Flood Hazard area where outside of the floodway and outside of and/or the River Corridors, and meeting the Development Standards in Section VII, require only an administrative permit from the ZAAO, provided that they meet the Development Standards in § 11.5:

a. Non-substantial improvements limited to 500 square feet or less in the River Corridor;

~~a.b.~~ Accessory structures limited to 500 square feet or less in the River Corridor;

~~b.c.~~ Development related to on-site septic or water supply systems;

~~e.d.~~ Building utilities;

~~d.e.~~ At-grade parking for existing buildings structures; and

f. River or floodplain restoration projects that do not involve fill, structures, utilities, or other improvements, and which have written confirmation from the ANR Regional Floodplain Manager that the project is designed to meet or exceed the applicable standards in this bylaw; and

g. The placement of a mobile home upon an existing lot within a mobile home park.

1. Recreational vehicles.

2. The placement of a recreational vehicle within the Special Flood Hazard and/or River Corridors, requires only an administrative permit from the AO, provided it meets the Development Standards in § 11.5

Commented [AM27]: Per 11/25/20 ANR Comment #4, I would suggest removing the "i.e." language and reverting back to just "Non-substantial improvements", which covers all the examples being removed.

Commented [CLC28]: This subsections is taken from ANR's Model Bylaws.

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Commented [CLC29]: We have broken out recreational vehicles and given them their own subsection to fix an inconsistency in our current bylaws. Under the Summary Table in our current bylaws, recreational vehicles can be placed in the floodway with an administrative permit. However, this is not consistent with the current 11.6.B, which only refers to "the Special Flood Hazard area where outside of the floodway".

C. Prohibited Development in Special Flood Hazard Area and River Corridors

1. New residential or non-residential structures (including the placement of manufactured homes);

2. Storage or junk yards;

3. New fill except as necessary to elevate structures above the base flood

Commented [CLC30]: We don't need a section that specifically identifies what development is prohibited. We simply identify what development is permitted, and then everything else it automatically prohibited. This simplifies the bylaws and avoids the potential for conflicts between separate provisions.

elevation;

~~4. Accessory structures in the floodway;~~

~~5. Critical facilities are prohibited in all areas affected by mapped flood hazards; and,~~

~~6. All development not exempted, permitted, or conditionally permitted.~~

D. Conditional Use Review

Conditional use review ~~and approval by the DRB~~ is required prior to the issuance of a permit by the AO for all development within the hazard areas, other than those activities which either are exempt under § 11.4.B or require only an administrative permit under § 11.4.C. The following proposed development may be permitted within the hazard areas, provided that the DRB finds that the applicant has complied with the Development Standards in § 11.5:

1. New structures, other than critical facilities, outside the floodway;

2. The use of fill outside the floodway when either

a. used in conjunction or association with a new or existing structure; or

b. used contemporaneously with the removal of a building or other structure, but limited to the structure's footprint or foundation hole.

3. Substantial improvement, elevation, relocation, or flood proofing of existing structures;

4. New or replacement storage tanks for new or existing structures;

5. Non-substantial improvements (i.e., decks, patios, additions or accessory structures) with a footprint of 500 square feet or less improvements to existing structures in the floodway;

6. Grading, excavation; or the creation of a pond;

7. Improvements to existing roads;

8. Storage outside of the floodway;

9. Bridges, culverts, channel management activities, or public projects which are functionally dependent on stream access or stream crossing;

*“Substantial improvement” means any reconstruction, rehabilitation, addition, or other improvement of a structure after the date of adoption of this bylaw, the cost of which, over three years, or over the period of a common plan of development, cumulatively equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed **and may also include interior renovations.***

Commented [CLC31]: This language is redundant as “conditional use review” connotes a review conducted by the DRB.

Commented [AM32]: Per 11/25/20 ANR Comment #3 and 11/13/20 NVDA Comments, I would suggest adding language here to limit the amount of fill allowed in conjunction with the removal of a structure, e.g. limiting fill to the structure footprint or foundation hole. This would not prevent additional fill from being approved on the same parcel in conjunction with subsequent development and would prevent speculative filling.

Commented [CLC33]: Our current bylaw prohibits “storage” in the flood hazard areas, though the term storage is not defined. Storage in this context basically means inventory or stock that is stored outside, as is done at the back of Agway or the hardware store. This draft would allow storage outside the floodway with conditional use review.

~~10. Development related to on-site septic or water supply systems within the floodway;~~

~~7.11. Public utilities~~

~~8.12. At grade parking within the floodway; improvements to existing primary structures in the River Corridors that do not expand the footprint of the existing structure more than 500 square feet; and~~

~~9.13. Building utilities in the River Corridors; and.~~

~~10. At grade parking for existing buildings in the River Corridors.~~

E. Exempted Activities

The following are exempt from regulation under this bylaw:

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

F. Variances

~~Variances may be granted in writing by the DRB only in accordance with all the criteria in 24 V.S.A. § 469, § 4424 (E), and 44 CFR Section 60.6, after a public hearing noticed as described in Section 11.8.~~

- ~~1. A variance for development within the River Corridors may be allowed if, based on a review by VT ANR, it is determined that the proposed development will not obstruct the establishment and maintenance of fluvial geomorphic equilibrium for the watercourse.~~
- ~~2. Any variance issued in the Special Flood Hazard Area will not increase flood heights, and will inform the applicant in writing over the signature of a community official that the issuance of a variance to construct a structure below the base flood elevation increases risk to life and property and will result in increased flood insurance premiums up to amounts as high as \$25 for \$100 of coverage. Such notification shall be maintained with a record of all variance actions.~~

Commented [CLC34]: This draft proposal moves septic and water supply systems outside the floodway into the administrative permit system. However, within the floodway they would still need to get conditional use approval, as is currently the case.

Commented [CLC35]: This language is being added to be consistent with the current Summary Table, which provides that at grade parking in the floodway is subject to conditional use review.

Commented [CLC36]: These projects are being moved to administrative permits, under the heading of "non-substantial improvements" "with a footprint of 500 square feet or less."

Commented [CLC37]: This would now be subject to an Administrative Permit under § 11.4.C.

Commented [AM38]: Added per 11/13/20 NVDA comments to help highlight that "substantial improvements" are not just limited to changes to building footprints or building exteriors.

Commented [CLC39]: This section has been moved to Art. 11.5.B above.

Commented [CLC40]: This section has been moved and combined with Art. 4.6, which covers variances more generally

G. Nonconforming Structures and Uses

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

1. ~~The proposed development is in compliance with all the Development Standards in Section 11.6 of this bylaw;~~
2. ~~A nonconforming structure that is substantially damaged or destroyed may be reconstructed only in circumstances when the structure cannot be relocated to a less hazardous location on the parcel. The lowest floor of the reconstructed structure must be rebuilt to one foot or more above the base flood elevation, and the structure must otherwise comply with all requirements of the National Flood Insurance Program;~~
3. ~~Nonconforming structures or uses shall be considered abandoned where such structures or uses are discontinued for more than 12 months; and,~~
4. ~~An individual manufactured home lot in an existing manufactured home park that is vacated shall not be considered a discontinuance or abandonment of nonconformity. Replacement manufactured homes must be placed so as to meet the development standards in this bylaw.~~

Commented [CLC41]: This section can be struck. Since we will be allowing new development in the Special Flood Hazard Area, existing structures will no longer be non-conforming.

11.75 Development Standards

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

A. Special Flood Hazard Area

1. *All development* shall be:
 - a. Reasonably safe from flooding;
 - b. Designed, operated, maintained, modified, and adequately anchored to prevent flotation, collapse, release, or lateral movement of the structure;
 - c. Constructed with materials resistant to flood damage;
 - d. Constructed by methods and practices that minimize flood damage;
 - e. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
 - f. Adequately drained to reduce exposure to flood hazards;

Commented [CLC42]: This language is required by 44 C.F.R. § 60.3(a)(3)(i).

Commented [CLC43]: This or similar language is required by 44 C.F.R. § 60.3(a)(3)(ii).

Commented [CLC44]: This language is required by 44 C.F.R. § 60.3(a)(3)(iii).

Commented [CLC45]: This language is required by 44 C.F.R. § 60.3(a)(3)(iv).

Commented [CLC46]: This language is required by 44 C.F.R. § 60.3(a)(3)(iv).

- g. Located so as to minimize conflict with changes in channel location over time and the need to intervene with such changes; and,
- h. Required to locate any fuel storage tanks (as needed to serve ~~a new or an~~ existing ~~building structure~~ in the Special Flood Hazard Zone) a minimum of one foot above the base flood elevation and be securely anchored to prevent flotation; or storage tanks may be placed underground, if securely anchored as certified by a qualified professional.
2. ~~In Zones AE, AH, and A1 – A30 where base flood elevations and/or floodway limits have not been determined,~~ development shall not be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated ~~encroachment~~ development, will not increase the base flood elevation more than 1.00 foot at any point within the community. The demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and certified by a licensed professional engineer.
3. ~~Substantially improved or replacement primary structures~~ Development in the special flood hazard area, ~~but outside floodway limits,~~ must not ~~unduly~~ increase base flood elevations or flood velocities. Such development shall not be permitted unless:
- a. ~~an applicant shows that any increase in Base Flood Elevation (BFE) or flood velocities from a proposed project will not negatively impact existing properties by increasing exposure to newly exposing existing structure thereon to inundation during a base flood. This standard may be demonstrated by providing the lowest floor elevations for all neighboring buildings within the same reach as the proposed development project, which are identified as have a footprint located within 1 foot of the base flood elevation as shown on Lidar referenced contours or better, and/or mapping the extent and depth of the increased flood elevation to a Lidar standard within the same reach as the proposed development. it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the base flood elevation more than 0.1 foot at any point within the community.~~ The demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and is certified by a ~~registered~~ licensed professional engineer; or,
- b. the proposal provides compensatory storage for floodwater (in the same reach and at elevations up to and including the base flood elevation) to offset the impacts of the proposal. The net post-construction flood storage capacity shall not be less than the pre-construction capacity. A volumetric analysis and supporting data must be provided by the applicant and certified by a ~~registered~~ licensed professional engineer; or,
4. ~~e. The hydraulic and volumetric analyses required under § 11.5.A.2 and §~~

Commented [CLC47]: This change is being made for purposes of clarity, as the bylaw generally refers to "structures", rather than "buildings."

Commented [CLC48]: This section of the bylaws is required 44 C.F.R. §60.3(d)(2). The only change that has been made from the current bylaw is that I have substituted the word "development" for "encroachment", as I have done elsewhere in these bylaws. I find the term "encroachment" rather ambiguous, since we don't define it in the bylaws. The term "development" is defined broadly to encompass basically any human activity.

Commented [JS49]: This change was made by the Planning Commission after the public Hearing held on 2/3/2021

Commented [CLC50]: This is the language that the Planning Commission adopted at its 1/13/21 meeting

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11.5.A.3 will be waived for replacement or relocated primary structures where the proposal indicates no new fill and no increase in the structure's footprint (or an open foundation design).

Commented [CLC51]: This section, which was formerly § 11.7.A.3.c, has revised slightly and moved to higher outline level, for purposes of clarity.

4.5 ~~New structures or s~~ Structures to be substantially improved in Zones A, A1-30, AE, and AH shall be located such that the lowest floor is at least one foot above base flood elevation, this must be documented, in as-built condition, with a FEMA Elevation Certificate.

Commented [CLC52]: Under 44 C.F.R. §60.3(c)(2), new or substantially improved structured need only have their lowest floor elevated to BFE, not above. Thus, this provision is stricter than required by FEMA.

5.6 ~~New non-residential structures~~ and non-residential structures to be substantially improved shall:

- a. Meet the standards in § 11.5.A.5 ~~§ 11.7(A)(4)~~ or,
- b. Have the lowest floor, including basement, together with attendant utility and sanitary facilities be designed so that two feet above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; a permit for flood proofing shall not be issued until a licensed professional engineer or architect has reviewed the structural design, specifications and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.

Commented [CLC53]: This language is required by 44 C.F.R. § 60.3(c)(3).

6.7 Fully enclosed areas below grade on all sides (including below grade crawlspaces and basements) are prohibited.

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7.8 Fully enclosed areas that are above grade, below the lowest floor, below BFE and subject to flooding, shall:

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- a. Be solely used for parking of vehicles, storage, or building access, and such a condition shall clearly be stated on any permits; and,
- b. Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs must be certified by a licensed professional engineer or architect, or meet or exceed the following minimum criteria: A minimum of two openings on two walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

Commented [CLC54]: This language is would seem necessary to comply with 44 C.F.R. § 60.3(b)(5) by implication.

Commented [CLC55]: This subsection is required by 44 C.F.R. §60.3(c)(5).

Commented [CLC56]: This language has not been changed; however, we note that there are alternatives available under the NFIP regulations. According to 44 C.F.R. §60.3(c)(14) placed within a flood hazard area, must either (1) be on the site for less than 180 days, or (2) be elevated and anchored as a manufactured home, or (3) be fully licenses and ready for highway use. This third option, which is the one Lyndon currently uses, is likely the easiest option to administer.

8.9 ~~Recreational vehicles~~ must be fully licensed and ready for highway use.

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9.10 A small accessory structure of 500 square feet or less that represents a minimal investment need not be elevated to the base flood elevation in this area,

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provided the structure is placed on the building site so as to offer the minimum resistance to the flow of floodwaters and shall meet the criteria in § 11.5.A.6 ~~VH A-6~~ (above).

~~40.11.~~ Water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

Commented [CLC57]: Required by 44 C.F.R. §60.3(a)(5)-(6).

~~41.12.~~ Sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

Commented [CLC58]: Required by 44 C.F.R. 44 C.F.R. §60.3(a)(5)-(6).

~~42.13.~~ On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

Commented [CLC59]: Required by 44 C.F.R. §60.3(a)(6)(ii).

~~43.14.~~ The flood carrying and sediment transport capacity within the altered or relocated portion of any watercourse shall be maintained, and any alteration or relocation shall not result in any decrease of stream stability.

Commented [CLC60]: Required by 44 C.F.R. §60.3(b)(7).

~~44.~~ Bridges and culverts, which by their nature must be placed in or over the stream, must have a stream alteration permit from the Agency of Natural Resources where applicable.

Commented [CLC61]: This section is being removed as it does not actually do anything. If you need a stream alteration permit from ANR, you need a stream alteration permit from ANR. Nothing we say in our bylaws will change that.

15. Access to new subdivisions and new planned unit developments must be located on dry land outside the special flood hazard area. ~~Aceess to new subdivisions and new planned unit developments must be located on dry land outside the special flood hazard area.~~

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~~16.~~ Existing buildings, including manufactured homes, to be substantially improved in Zone AO shall have the lowest floor, including basement, elevated above the highest adjacent grade, at least as high as the depth number specified on the community's FIRM, or at least two feet if no depth number is specified.

Commented [CLC62]: This section has been reworded to maintain the intent of the existing rule, which is to prohibit the creation of new potentially risky emergency situations during a flood emergency. The existing language could be misinterpreted so as to place restrictions on existing lots that are accessed by public roads that are currently below BFE.

B. Floodway Areas ~~Additional Requirements~~

1. 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:

Commented [CLC63]: This language would be required by 44 C.F.R. §60.3(c)(8), if Lyndon had land that was designated Zone AO; however, since Lyndon does not, this section can be deleted.

a. Not result in any increase in flood levels (0.00 feet) during the occurrence of the base flood;

Commented [CLC64]: Our revisions to the bylaws make no substantive changes to current practice within the floodway.

b. Not increase any risk to surrounding properties, facilities, or structures from erosion or flooding.

Commented [CLC65]: This additional language proposed by Marty here is intended to make clear that proposed development within the floodway limits must meet the requirements in § 11.5.B in addition to those in § 11.5.A.

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

1. Development within designated centers shall be allowed within the River Corridors if the applicant can demonstrate that the proposed development will not be any closer to the river than pre-existing adjacent development.
2. Development outside of designated centers shall meet the following criteria:
 - a. In-Fill Between Existing Development: Development must be located no closer to the channel than the adjacent existing primary structures, within a gap that is no more than 300 feet, or
 - a.b. Down River Shadow: An addition to an existing structure, or an accessory structure that is adjacent to an existing structure, shall be located in the shadow area directly behind and further from the channel than the existing structure, or within 50 feet to the downstream side and no closer to the top of bank. Below-ground utilities may also be placed within the same shadow dimensions of an existing below-ground system.

Commented [CLC66]: We have imported the River Corridor development standards that are in ANR's Model Bylaws and struck the language that is in the current bylaws. Per discussions at our Aug. 10 meeting, we have excluded what in the Model Bylaws subsection IV.C.3, as redundant.

Commented [CLC67]: The ANR Model Bylaws use the term "existing habitable structure" at this point. Upon Marty's suggestion, I have removed the word "habitable" as unnecessary and potentially confusing.

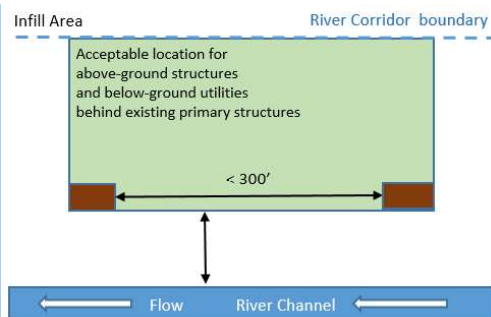


Figure 1 In-fill Development Standard

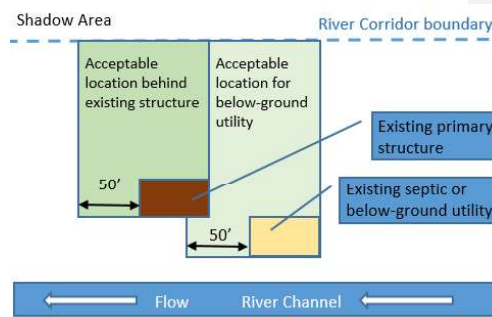


Figure 2 Shadow Area Development Standard

Commented [AM68]: Added per 11/25/20 ANR Comment #8 to help illustrate 11.5.C.2 standard.

3. River Corridor Performance Standard

- a. Proposals that do not meet the infill or shadowing criteria in section § 11.5.C.2 must demonstrate and the DRB must find that the proposed development will:
 - i. not be placed on land with a history of fluvial erosion damage or be imminently threatened by fluvial erosion (for example, if an adjacent riverbank is subject to existing stabilization efforts, such as the application of riprap or other forms of hard armoring, the DRB may conclude that the land is not immediately threatened by fluvial erosion).
 - ii. not cause the river reach to depart from or further depart from

Commented [CLC69]: This language is based upon discussions at our Aug. 10 meeting.

Commented [AM70]: Removed per 11/25/20ANR Comment #6 and 11/25/20 ANR River Corridor Review. This example is unnecessary and creates potential for confusion in a situation where riprap is present but there is still a realistic threat of fluvial erosion. Removal does not change the intent or purpose of 11.5.C.3.a.i.

the channel width, depth, meander pattern, and slope associated with natural stream processes and equilibrium conditions; and

- iii. not result in an immediate need or anticipated future need for stream channelization solely as a result of the proposed development, that would increase flood elevations and velocities or alter the sediment regime triggering channel adjustments and erosion in adjacent and downstream locations.

b. Proposals that meet the infill or shadowing criteria in § 11.5.C.2 are presumed to meet the River Corridor Performance Standard. However, The DRB has the option to require an applicant to demonstrate that a proposal meets the River Corridor Performance Standard if there is a concern that the proposed development is at particular risk from fluvial erosion or may increase fluvial erosion, based on location or past flood damage.

- ~~1. Improvements to existing structures, and any associated fill as needed to comply with elevation requirements in the Special Flood Hazard Area shall not decrease the distance between the existing primary building and the top of bank;~~
- ~~2. Accessory structures may be located within 50 feet of the existing primary building provided that the location does not decrease the distance between the existing primary structure and the top of bank;~~
- ~~3. Development shall not increase the susceptibility of that or other properties to fluvial erosion damage;~~
- ~~4. Development shall not increase the potential of materials being swept onto other lands or into the stream and causing damage to other properties from fluvial erosion;~~
- ~~5. Development shall not cause an undue burden on public services and facilities including roads, bridges, culverts, and emergency service providers during and after fluvial erosion events;~~
- ~~6. Bridge and culvert projects must have a Stream Alteration Permit; and,~~
- ~~7. Channel management activities must be authorized by the Agency of Natural Resources~~

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11.86 Administration

A. Application Submission Requirements

- ~~4.~~ Where applicable, applications for development shall include a site plan that depicts the proposed development, all water bodies, Special Flood Hazard Areas, floodways, River Corridors, the shortest horizontal distance from the

proposed development to the top of bank of any stream, any existing and proposed drainage, any proposed fill, and pre and post development grades, and the elevation of the proposed lowest floor, as referenced to the same vertical datum as the elevation on the current Flood Insurance Rate Maps;

- 1.
2. ~~A Vermont Agency of Natural Resources Project Review Sheet for the proposal. The Project Review Sheet shall identify all State and Federal agencies from which permit approval is required for the proposal, and shall be filed as a required attachment to the municipal permit application. The identified permits, or letters indicating that such permits are not required, shall be submitted to the ZA and attached to the permit before work can begin.~~

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Commented [CLC71]: Per Annie's comments on an earlier draft, the current 11.8.2 is being deleted, as this is not the Town's responsibility.

B. Referrals

1. Upon receipt of a complete application for a substantial improvement or new construction the ZA-AO shall submit a copy of the application and supporting information to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, in accordance with 24 V.S.A. § 4424. A permit may be issued only following receipt of comments from the Agency, or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner. The AO and the DRB shall consider all comments from ANR.
2. If the applicant is seeking a permit for the alteration or relocation of a watercourse, copies of the application shall also be submitted to the adjacent communities, the Stream Alteration Engineer at the Vermont Agency of Natural Resources, and the Army Corps of Engineers. Copies of such notice shall be provided to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation. A permit may be issued only following receipt of comments from the Vermont Agency of Natural Resources, or the expiration of 30 days from the date the application was mailed to the Vermont Agency of Natural Resources, whichever is sooner. ~~The Board should consider comments from the NFIP Coordinator at ANR.~~

Commented [CLC72]: This language is from ANR's current Model Flood Hazard Bylaws. It clarifies, but does not change current practice.

Commented [CLC73]: Notification to adjacent communities of watercourse alterations and relocations is required under 44 C.F.R. §60.3(b)(6).

C. Decisions.

~~The DRB shall consider comments from the NFIP Coordinator at ANR. The DRB may recess the proceedings on any application pending submission of additional information.~~

Commented [CLC74]: This language is unnecessary. The first sentence is covered in § 11.6.B. The second sentence is standard practice to all DRB proceedings.

D-C. Records

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

1. All permits issued in areas covered by Article XI~~this bylaw~~;
2. An Elevation Certificate with the as-built elevation (consistent with the datum of

the elevation on the current Flood Insurance Rate Maps for the community) of the lowest floor, including basement, of all new, substantially improved, or flood proofed buildings (not including accessory buildings) in the Special Flood Hazard Area;

3. All flood proofing and other certifications required under this regulation; and,
4. All decisions of the DRB (including variances and violations) and all supporting findings of fact, conclusions and conditions.

11.9 Certificate of Occupancy

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

11.10.7 Enforcement and Penalties

- A. This bylaw shall be enforced under the municipal zoning bylaw in accordance with 24 VSA Chapter 117 § 4451, § 4452 and 24 VSA Chapter 59 §1974a, A copy of the notice of violation will be mailed the State NFIP Coordinator.
- B. If any appeals have been resolved, but the violation remains, the ~~ZA~~ AO shall submit a declaration to the Administrator of the National Flood Insurance Program requesting a denial of flood insurance to the property pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.
- C. Violations of the Accepted Agricultural Practices shall be enforced under this Section as violations of this bylaw. Such violations shall also be immediately reported to the Secretary of Agriculture for enforcement under 6 V.S.A. § 4992 ~~6 V.S.A. Section 4812.11.1.~~

11.11 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~~

Commented [CLC75]: Art. 13.10 of our bylaws already addresses certificates of occupancy generally. Additionally, this language here puts a strict time limit on the Administrative Officer, whereas 13.10 does not. It seems illogical to have a separate procedure for obtaining a certificate of occupancy within the flood hazard areas, as opposed to everywhere else in town. As a consequence, we have deleted 11.9.

Commented [CLC76]: FEMA’s NFIP regulations require that the bylaws of participating communities provide “adequate enforcement provision.” The language in our existing bylaws has previously been deemed adequate and in not being changed.

Commented [CLC77]: This simply fixes an incorrect statutory citation.

Commented [CLC78]: The definitions in Art. 11.11 is being combined with the generally applicable definitions found in Art. 17, as the way it is now, we have two definitions of “Special Flood Hazard Area”, two definitions of “Mobile Home”, and two definitions of “Structure.” Also, the definitions of “Accessory Structure” and “Accessory Building or Use” should be combined.

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 (commonly referred to as the “100 year flood”).

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

“BFE” see Base Flood Elevation

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

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

“Channel width” (or bankfull width) is the width of a stream channel when flowing at a bankfull discharge. The bankfull discharge is the flow of water that first overtops the natural banks. This flow occurs, on average, about once every 1 to 2 years.

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

“Compensatory storage” means a volume not previously used for flood storage and which shall be in a volume not previously used for flood storage and which shall be incrementally equal to the theoretical volume of flood water at each elevation, up to and including the base flood elevation, which would be displaced by the proposed project. Such compensatory volume shall have an unrestricted hydraulic connection to the same waterway or water body. Further, with respect to waterways such compensatory volume shall be provided within the same reach of river, stream, or creek.

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

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

including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

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

“FIRM” see Flood Insurance Rate Map

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

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

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

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

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

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

“Floodway, Regulatory in Town of Lyndon & Village of Lyndonville” 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.

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

“Grading” means the movement or replacement of topsoil or other materials originating on the site and within the hazard area. Grading results in minor or no changes to topographic elevations. If new material is brought from outside the hazard area and such new material is not offset with an equal or greater removal of material from the portion of the site within the hazard area, the new material shall be considered “fill” and shall not be considered grading.

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

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

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

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

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

“Nonconforming structure” means a structure or part of a structure that does not conform to the present bylaws but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a structure improperly

authorized as a result of error by the administrative officer. Structures that were in violation of the flood hazard regulations at the time of their creation, and remain so, remain violations and are not nonconforming structures.

“Nonconforming use” means use of land that does not conform to the present bylaws but did conform to all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a use improperly authorized as a result of error by the administrative officer.

“Noneconformity” means a noneconforming use, structure, lot, or parcel.

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

“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.

“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 Agency in accordance with the ANR River Corridor Protection Guide.

“Special Flood Hazard Area” is the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. For purposes of these regulations, the term “area of special flood hazard” is synonymous in meaning with the phrase “special flood hazard area”. This area is usually labeled Zone A, AE, AO, AH, or A1-30 in the most current flood insurance studies and on the maps published by the Federal Emergency Management Agency. Maps of this area are available for viewing in the municipal office or online from the FEMA Map Service Center: msc.fema.gov Base flood elevations have not been determined in Zone A where the flood risk has been mapped by approximate methods. Base flood elevations are shown at selected intervals on maps of Special Flood Hazard Areas that are determined by detailed methods. Please note, where floodways have been determined they may be shown on separate map panels from the Flood Insurance Rate Maps.

“Start of construction” for purposes of floodplain management, determines the effective map or bylaw that regulated development in the Special Flood Hazard Area. The “start of construction” includes substantial improvement, and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The

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

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

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

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

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

* * *

ARTICLE XIII ADMINISTRATION AND ENFORCEMENT

* * *

13.2.1 No person shall commence development without first obtaining a permit therefor pursuant to these bylaws. Any land development not specifically authorized by, or exempt from, this bylaw is prohibited. A person who wishes to undertake development shall first apply in writing to the Zoning Administrator for a permit.

Commented [CLC79]: Language added at the 1-6-21 Planning Commission meeting to address concerns raised by Attorney Dingleline

Commented [AM80]: Per 11/25/20 ANR comment #2 and 11/25/20 ANR River Corridor Review. This is standard language for any zoning bylaw, which applies to the entire Bylaw...not just ART XI. This option negates the need to list out all the prohibited uses ART XI and keeps the ART XI structure consistent with the rest of the Bylaw.

- 13.7 The Administrative Officer shall notify the applicant in writing whether the permit is approved or denied and shall state the reasons therefor. Any permit issued within the Special Flood Hazard Area will require that all other necessary permits from State or Federal Agencies have been received before work may begin.

* * *

ARTICLE XIV AMENDMENTS, INTERPRETATION, EFFECTIVE DATE

- 14.1 **Amendments.** These bylaws may be amended according to the requirements and procedures established in 24 V.S.A. §§4441 & 4442, Sections 4441 and 4442 of the Aet.

- 14.2 **Interpretation.**

14.2.1 These bylaws shall be interpreted to be minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare.

14.2.2 The provisions of these bylaws shall not in any way impair or remove the necessity of compliance with any other local, state, or federal laws or regulations. Except as is provided in 24 V.S.A. §4413(c), Section 4413(c) of the Aet. and where it is specifically provided to the contrary in these bylaws, these bylaws are not intended to repeal, annul or in any way impair any regulations or permits previously adopted or issued, provided, however, that where these bylaws impose a more stringent requirement upon use of a structure or land than are required by any other statute, ordinance, rule, regulation, permit, easement or agreement, the provisions of these bylaws shall control.

- 14.3 **Effective Date.** The effective date of these bylaws shall be determined according with 24 V.S.A. §4442, Section 4442C of the Statutes.

- 14.4 **Validity and Severability** – If any portion of these bylaws is held unconstitutional or invalid by a competent court, the remainder of this bylaw shall not be affected. Separability. The invalidity of any article or section of these bylaws shall not invalidate any other article or section thereof.

- 14.5 **Repeal.** The ordinance entitled the "Zoning Ordinance of the Town of Lyndon," adopted in accordance with the now superseded provisions of 24 V.S.A. Vermont Statutes Annotated, Title 24 Chapter 59, together with all changes and amendments thereto is repealed as of the effective date of these bylaws.

ARTICLE XVII DEFINITIONS[†]

[†] Definitions in Section 11.11 shall supersede Article XVII definitions for the purposes of Flood Hazard Area

Commented [CLC81]: Similar language is found in the current Art. 11.6.A. FEMA's NFIP regulations appear to require such a statement. It is being added to related language here in Art. XIII, with modification to make clear that it only applies to permits within the Special Flood Hazard Area.

Commented [AM82]: 11/13/20 NVDA Comments suggest requiring a Project Review Sheet. The proposed 13.7 language does not prohibit an AO from requiring this to fulfill the 44 CFR requirement. There may be other ways to enforce the 44 CFR requirement that the AO may find work better, thus leaving this language less specific for the time being seems okay to me.

Commented [CLC83]: This section is unrelated to the flood hazard regulations; however, since we amending other portions of this article, we are correcting the citations found in this article while we are at it.

Commented [CLC84]: FEMA's NFIP regulations require that the bylaws of participating communities contain an "abrogation and greater restriction section." The existing language in Art. 14.2.2 as modified here, should be sufficient to meet this requirement.

Commented [CLC85]: FEMA's NFIP regulations require a "severability section." We have used the language found in the current Art. 11.3.A, rather than the language found in the current version of Art. 14.4 as the existing 14.4 refers to "separability" when the correct legal term is "severability."

Commented [CLC86]: This footnote is now unnecessary as the definition sections are being combined.

~~"Accessory Building or Use" means a building on the same lot with, and of a nature customarily incidental and subordinate to, the principal use of or structure on such lot.~~

"Accessory Dwelling Unit" is defined as an efficiency or one-bedroom apartment within or appurtenant 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.

"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.

"Act" means Chapter 117 of Title 24, Vermont Statutes Annotated.

"Administrative Officer (AO)" means the administrative officer for the Town of Lyndon appointed pursuant to 24 V.S.A. § 4448.

"Affordable Housing" means either of the following:

- (A) Housing that is owned by its inhabitants whose gross annual household income does not exceed 80 percent of the county median income, or 80 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including principal, interest, taxes, insurance, and condominium association fees is not more than 30 percent of the household's gross annual income.
- (B) Housing that is rented by its inhabitants whose gross annual household income does not exceed 80 percent of the county median income, or 80 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including rent, utilities, and condominium association fees, is not more than 30 percent of the household's gross annual income.

"Affordable Housing Development" means a housing development of which at least 20 percent of the units or a minimum of five units, whichever is greater, are affordable housing units. Affordable units shall be subject to covenants or restrictions that preserve their affordability for a minimum of 15 years or longer as provided in municipal bylaws.

"Agriculture" means the raising of crops, livestock raising and feeding, poultry raising and feeding, field crop farming and animal husbandry, greenhouse operations, and includes a roadside stand for the sale of agricultural products raised on the premises.

"Antenna" means a device for the transmission or reception of personal wireless service

Commented [CLC87]: This definition currently found in Art. 17, is being deleted, as it is redundant with the definition of "Accessory Structure" which is being imported from Art. 11.11.

~~regulation under Article XI.~~

signals together with any appurtenances to an antenna.

“Appropriate Municipal Panel” is defined as a Planning Commission, the Zoning Board of Adjustment, Development Review Board, or a Legislative Body performing development review.

“Automobile Repair Facility” means any building or land area, or portion thereof, used for the servicing and repair of automobiles.

“Automobile Service Station” means a facility used or designed to be used for the sale of gasoline, diesel fuel and other petroleum fuel for the operation of motor vehicles, for the sale of lubricating oil, and for cleaning motor vehicles.

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

Commented [CLC88]: This definition is required by FEMA.

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

Commented [CLC89]: This definition is required by FEMA.

“Bed and Breakfast” means a portion of a dwelling in which the operator of the bed and breakfast business permanently resides, made available to transients for overnight accommodations and a meal for those transients for compensation, where such use is secondary to the occupancy of the dwelling by the operator of the bed and breakfast business.

“BFE” see *“Base Flood Elevation”*.

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

“Business Plaza” for the purposes of these Regulations, a business plaza consists of three or more directly adjoining retail and/or service establishments served by common curb cuts, access facilities, or parking areas.

“DRB” means the Development Review Board for the Town of Lyndon established pursuant to the Act.

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

“Channel width” (or *bankfull width*) is the width of a stream channel when flowing at a bankfull discharge. The bankfull discharge is the flow of water that first overtops the

natural banks. This flow occurs, on average, about once every 1 to 2 years.

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

"Community Care Home" means a structure, all or a portion of which is used to provide living accommodations, meal and personal care on a continual basis operated as a business for persons with physical, emotional or cognitive impairment.

"Compensatory storage" means a volume not previously used for flood storage and which shall be in a volume not previously used for flood storage and which shall be incrementally equal to the theoretical volume of flood water at each elevation, up to and including the base flood elevation, which would be displaced by the proposed project. Such compensatory volume shall have an unrestricted hydraulic connection to the same waterway or water body. Further, with respect to waterways such compensatory volume shall be provided within the same reach of river, stream, or creek.

"Convenience Store" means a retail store of less than 2,000 square feet offering for sale prepackaged food products, household items, newspapers, magazines, beer, wine and food for consumption off of the premises.

"Critical facilities" means facilities that are vital to public health and safety, including police stations, fire and rescue facilities, hospitals, shelters, schools, nursing homes, water supply and waste treatment facilities.

"Day Care Center" means an establishment operated as a business on a continual basis, to provide care, protection, supervision and/or education for more than six children under the age of 16 outside of their homes for periods of less than 14 hours per day by a person other than a child's own parent, guardian or relative. "Day Care Center" also means an establishment operated as a business on a continual basis, to provide care, protection, supervision and/or education for more than six adults with physical, emotional or cognitive impairment outside of the adult's home for periods of less than 24 hours per day by persons other than the adult's parent, guardian or relative. (Note: pursuant to Section 4412 (5) of V.S.A. 24, a state registered or licensed day care facility serving six or fewer children shall be considered by right to constitute a permitted single-family residential use of property.)

"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" see "Land Development".

"Dwelling Units" means one room or rooms connected together, constituting a separate, independent housekeeping establishment which is physically separated from any other rooms or dwelling units in the same structure, and containing independent cooking, sleeping and bath facilities.

"Equilibrium condition" means the width, depth, meander pattern, and longitudinal slope of a stream channel that occurs when water flow, sediment, and woody debris are transported

Commented [CLC90]: We have substituted the definition of "critical facilities" in the current ANR model bylaws, for the version in our current bylaws. This definition is consistent with most people's understanding of what a "critical facility" is and doesn't get us bogged down in the subjective determinations like the current bylaw

Commented [AM91]: Definition from Section B: Definitions, VT DEC 2018 Model Bylaw, added per 11/25/20 ANR River Corridor Review and 11/13/20 NVDA Comments.

by the stream in such a manner that it generally maintains dimensions, pattern, and slope without unnaturally aggrading or degrading the channel bed elevation.

Commented [AM92]: Definition from Section B: Definitions, VT DEC 2018 Model Bylaw, added per 11/25/20 ANR River Corridor Review.

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

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

Commented [CLC93]: These definitions are not currently in our bylaws; however, they are required by FEMA.

"*Extraction of Earth Resources*" means the removal or recovery, by any means, of soil, rock, minerals, or organic substances other than vegetation from water or land, on or beneath the surface thereof.

"*Facility*" ("facilities") means facilities for the provision of personal wireless services.

"*Family*" means (a) an individual, or two or more persons related by blood, marriage, adoption (including those placed in the home for adoption), and foster children, or (b) a group of not more than six persons who need not be related by blood, marriage, adoption, potential adoption or foster care, living together as a single housekeeping unit.

"*Family Child Care Home or Facility*" is defined as a home or facility where the owner or operator is to be licensed or registered by the state for child care. A family child care home serving six or fewer children shall be considered to constitute a permitted single-family residential use of property. A family child care home serving no more than six full-time children and four part-time children, as defined in subdivision 33 V.S.A. § 4902(3)(A), shall be considered to constitute a permitted use of property but may require site plan approval based on local zoning requirements. A family child care facility serving more than six full-time and four part-time children may, at the discretion of the municipality, be subject to all applicable municipal bylaws.

"*Farm Structure*" In accordance with 4413 (d) of the Act, any building for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with agriculture or accepted agricultural practices. This includes a silo or a farm stand for the sale of agricultural products principally produced on the farm, but specifically excludes other types of farm stands and dwellings for human habitation.

"*Farm Employee Residence*" means a single- or two-family dwelling occupied only by employees (and such employee's family if any) of the farm on which the residence is located.

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

“FIRM” see “Flood Insurance Rate Map”.

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

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

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

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

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

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

“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.

“Forestry” means silviculture and includes the harvesting of timber.

“Frontage” shall mean the width of a lot measured at the line where the lot adjoins the abutting public highway or public waters.

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

Commented [CLC94]: This definition is required by FEMA.

Commented [CLC95]: This definition is required by FEMA.

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Commented [CLC96]: This definition is required by FEMA, if the term is used in the bylaws.

Commented [CLC97]: This definition is required by FEMA.

“Guest Home” has the same meaning as Bed and Breakfast except that a guest home does not serve meals.

“Grading” means the movement or replacement of topsoil or other material originating on the site and within the hazard area. Grading results in minor or no changes in topographic elevations. If new material is brought from outside the hazard area and such new material is not offset with an equal or greater removal of material from the portion of the site within the hazard area, the new material shall be considered “fill” and shall not be considered grading.

“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.

Commented [CLC98]: This definition is required by FEMA, if the term is used in the bylaws.

“Home Occupation” is an occupation carried on for profit inside of a dwelling unit, which is customary in residential areas, does not use more than a minor portion of the occupant’s dwelling, is carried on by the occupant of the dwelling, does not change the character of the area in which it is situated, and is secondary to the use of the property as a dwelling by the residents thereof.

“Infill development” means construction, installation, modification, renovation, or rehabilitation of land, interests in land, buildings, structures, facilities, or other development in an area that was not previously developed but is surrounded by existing development.

Commented [AM99]: Definition from Section B: Definitions, VT DEC 2018 Model Bylaw, added per 11/25/20 ANR River Corridor Review.

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

of the plan or bylaw of that municipality. This petition to the appropriate municipal panel must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal. (5) Any department and administrative subdivision of this state owning property or any interest in property within a municipality listed in subdivision (2) of this subsection, and the agency of commerce and community development of this state.

“Land Development” means the division of a parcel into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure; any mining, excavation or landfill for a commercial purpose; and any change in the use of any structure or land or extension of the use of land. "Land Development" does not include the replacement of an existing sign with another sign of the same type construction and having the same or less area than the sign being replaced. For regulator purposes within the Special Flood Hazard Area (SFHA) or River Corridor, "development" means any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

Commented [CLC100]: This definition is required by FEMA.

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

“Light Industry” means a facility not exceeding two thousand square feet in size, employing not more than ten persons (including the owner or operator of the Light Industry), and which emits no noise, odors or light which can be detected on surrounding land held by owners other than the owner of the land on which the Light Industry is located.

“Lot” means a parcel of land occupied or to be occupied by a building or buildings, a mine, an excavation, or a landfill. A lot shall be of sufficient size to meet the minimum requirements of this bylaw. A lot shall have frontage on a public highway, or access thereto by a legal perpetual right-of-way not less than fifty feet in width. A lot may consist of (a) a single lot of record; (b) a portion of a lot of record; (c) a combination of complete lots of record, or complete lots of record and portions of lots of record, or of portions of lots of record; and (d) a parcel of land described by metes and bounds.

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

Commented [CLC101]: This definition is required by FEMA.

“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”.

Commented [CLC102]: This definition is required by FEMA.

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

“Manufacturing” means the processing, treatment and/or conversion of raw, semi-finished or finished materials into a different, more or less refined form or state, including the physical assembly, from standardized parts, of a distinct or finished product that differs from its individual components. This definition does not include the processing of agricultural goods raised on the premises, which falls under the definition of agriculture.

“Medical Clinic” means any establishment where human patients are examined and treated by doctors or dentists but are not hospitalized overnight.

~~“Mobile Home” see “Manufactured home”. means a structure less than 20 feet wide designed and built to be a moveable family dwelling unit~~

~~“Mobile Home Park” see “Manufactured or mobile home park or subdivision” means land upon which two or more mobile homes are parked and occupied for living purposes.~~

“Multi-Family Dwelling” means a residential building designed for and occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units.

“Neighborhood Facility” means a building or a portion of a building used for a commercial facility selling food for consumption off the premises, household goods, beer and wine, newspapers, magazines, patent medicines and sundries intended principally to serve the Residential Neighborhood in which it is located, and not exceeding 600 square feet in area.

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

~~“New manufactured home park or subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of 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, ordinances, and regulations prior to the enactment of the present bylaws, including a structure improperly authorized as a result of error by the administrative officer. Structures that were in violation of the bylaws at the time of their creation, and remain so, remain violations and are not nonconforming structures.~~

~~“Nonconforming use” means use of land that does not conform to the present bylaws but did conform to all applicable laws, ordinances, and regulations prior to the enactment of the~~

Commented [CLC103]: This definition is required by FEMA. Our existing definition of “Mobile Home Park” within Art. 17 is likely close enough, but to avoid any issue, we have substituted FEMA’s language.

Commented [CLC104]: This definition is being deleted as it is redundant with the definition of “Manufactured home (or Mobile home)” that has been imported above from Art. 11.11.

Commented [CLC105]: This definition is required by FEMA.

Commented [CLC106]: This definition is not currently in either Art. 11.11 or Art. 17. However, it is required by FEMA.

present bylaws, including a use improperly authorized as a result of error by the administrative officer.

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

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

“Office” means a structure, or a portion thereof, in which administrative, clerical or professional services are performed.

“Outdoor Recreation” means the organized or unorganized use of fields, trails, bodies of water, or other land for recreational purposes and includes swimming pools, tennis courts, skating rinks, playground equipment, horseback riding trails, storage and accessory buildings, and similar facilities.

“Person” means an individual, a corporation, a partnership, an association, or any other incorporated or unincorporated organization or group.

“Personal Service” means a business providing services of a personal nature including barber, hairdresser, beauty parlor, shoe repair, laundromat, dry cleaner, photography studio, and other similar business.

“Personal Wireless Services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services as those terms are defined in 47 U.S.C. § 332.

“Planned Unit Development” means one or more lots, tracts, or parcels of land to be developed as a single entity, the plan for which may propose any authorized combination of density or intensity transfers or increases, as well as the mixing of land uses. This plan, as authorized, may deviate from bylaw requirements that are otherwise applicable to the area in which it is located with respect to lot size, bulk, or type of dwelling or building, use, density, intensity, lot coverage, parking, required common open space, or other standards in accordance with 24 V.S.A. § 4303.

“Planning Commission” means the Planning Commission of the Town of Lyndon established pursuant to the Act.

“Private Club” means an establishment operated on a not-for-profit basis for social, recreation or education purposes, but open only to members and members' guests, and not to the general public.

“Public Building” means a structure occupied by a federal, state or local government agency and used, in part or in whole, by members of the public.

"Reach" is generally defined as is a section of a stream or river along which similar hydrologic conditions exist, such as discharge, depth, area, and slope. It can also be the length of a stream or river (with varying conditions) between two streamgages, or a length of river for which the characteristics are well described by readings at a single streamgage. However, in practical use, a reach is just any length of a stream or river. The term is often used by hydrologists when they're referring to a small section of a stream or river rather than its entire length.

"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.

"Retail Service" means the offering of services at retail to the general public.

"Retail Store" means a building, or portion thereof, the principal activity of which is the offering of goods for sale to the general public at retail.

"River" means the full length and width, including the bed and banks, of any watercourse, including rivers, streams, creeks, brooks, and branches which experience perennial flow. "River" does not mean constructed drainageways, including water bars, swales, and roadside ditches.

"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 Agency in accordance with the ANR River Corridor Protection Guide.

"School" means a facility used for education, instruction or research in any branch of knowledge including, but not limited to, private and public elementary and secondary schools, colleges, universities, business schools, trade schools, schools of dance, and schools of martial arts.

"Sign" means any assemblage of materials placed for the purpose of informing, or attracting the attention of, persons not on the premises on which the sign is located, for a commercial purpose.

"Single-Family Dwelling" means a detached residential dwelling unit designed for and occupied by one family.

~~"Special Flood Hazard Area" is defined as the floodplain within a community subject to a 1% or greater chance of flooding within a given year.~~

"Special Flood Hazard Area" is the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. This area is usually labeled Zone A, AE, AO,

Commented [CLC107]: This is the definition of "Reach" provided by the US Geological Survey. See https://www.usgs.gov/faqs/what-a-reach?qt-news_science_products=0#qt-news_science_products

Commented [CLC108]: This definition is required by FEMA.

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Commented [AM109]: Definition from Section B: Definitions, VT DEC 2018 Model Bylaw, added per 11/25/20 ANR River Corridor Review.

Commented [CLC110]: This definition in the existing version of Art. 17 is being deleted as it is redundant, and not entirely consistent, with the definition of that same term that has being imported from Art. 11.11 below.

AH, or A1-30 in the most current flood insurance studies and on the maps published by the Federal Emergency Management Agency. Maps of this area are available for viewing in the municipal office or online from the FEMA Map Service Center: msc.fema.gov. Base flood elevations have not been determined in Zone A where the flood risk has been mapped by approximate methods. Base flood elevations are shown at selected intervals on maps of Special Flood Hazard Areas that are determined by detailed methods. Please note, where floodways have been determined, they may be shown on separate map panels from the Flood Insurance Rate Maps.

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

Commented [CLC111]: This definition is required by FEMA.

“Storage” for regulator purposes within the Special Flood Hazard Area (SFHA) or River Corridor, shall means the aggregation of materials, items, or objects whether natural or human-made; that is kept as a stockpile, collection, or inventory; where individual materials from the stockpile, collection or inventory may change, but where the general footprint of the stored materials continues to be used for the same purpose; whether set upon the land or within a container, structure, or facility; and that would not otherwise be in compliance with applicable development standards.

Commented [CLC112]: This definition is taken from ANR's model bylaws.

“Street” means any public thoroughfare affording access to property.

“Structure” means an assembly of materials with a fixed location on the ground, or attached to something having a fixed location on the ground, intended for occupancy or use. This term includes, but is not limited to, a building, mobile home, trailer, tractor trailer, billboard or sign. For regulatory purposes within the Special Flood Hazard Area (SFA) and River Corridor, “structure” means a walled and roofed building, as well as a manufactured home, and any related built systems, including gas or liquid storage tanks.

Commented [CLC113]: This definition is required by FEMA.

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

Commented [CLC114]: This definition is required by FEMA.

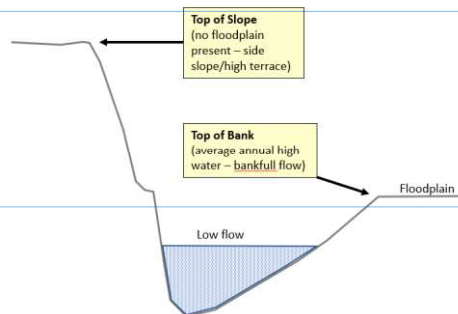
percent of the market value of the structure before the damage occurred.

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

Commented [CLC115]: This definition is required by FEMA.

“Suitable Pad” means a solid foundation that will not heave in the winter. For mobile home installation, a suitable pad could include a concrete slab, gravel, asphalt, piles, frostwalls, or any other stable platform.

“Top of Bank” means the point along a streambank where an abrupt change in slope is evident, and where the stream is generally able to overflow the banks and enter the adjacent floodplain during flows at or exceeding the average annual high water stage. 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.



Commented [AM116]: Added graphic from Section B: Definitions, VT DEC 2018 Model Bylaw for clarity.

Commented [AM117]: Replaced existing language with definition from Section B: Definitions, VT DEC 2018 Model Bylaw for clarity and consistency.

“Top of Slope” means a break in slopes adjacent to steep-banked streams that have little or no floodplain; or a break in slope where the side slopes adjacent to an incised, or deeply cut, channel meet floodplains that have been abandoned or are undergoing abandonment.

Commented [AM118]: Definition from Section B: Definitions, VT DEC 2018 Model Bylaw, added per 11/25/20 ANR River Corridor Review.

“Tower” means any structure on which one or more antennas are to be mounted.

“Transient Lodging” means a guest home, hotel, motel, or other structure providing overnight accommodations to the traveling public.

“Truck Terminal” means a facility used for the purpose of loading or unloading materials or goods from trucks, for the primary purpose of transferring materials and goods, either for distribution or changing from one transportation carrier to another. The definition of “truck terminal” does not include the facility of a shipper of origin or receiver of goods at the final destination.

“Two-Family Dwelling” means a detached residential building containing two dwelling units, designed for occupancy and occupied by not more than two families.

“Use” means the specific purpose for which a structure or land is or may be occupied, maintained, designated or intended. The term "Permitted Use" or its equivalent does not include any nonconforming use or nonconforming structure.

“Violation” means the failure of a structure or other development to be fully compliant with these bylaws. Within the context of the flood hazard regulations, a structure or other development without an elevation certificate, other certifications, or other evidence of compliance required in 44 CFR 60.3 is presumed to be in violation until such time as that documentation is provided.

“Watercourse” means any perennial stream. “Watercourse” shall not include ditches or other constructed channels primarily associated with land drainage or water conveyance through or around private or public infrastructure.

“Wetland” means an area inundated by surface or ground water with a frequency to support aquatic vegetation or aquatic life that depend on saturated or seasonally saturated soil conditions for growth and reproduction.

Commented [CLC119]: This definition is required by FEMA.

Commented [CLC120]: The term “watercourse” is used in the bylaws on several occasions, but is not presently defined. Thus, I have taken the definition used in ANR’s Stream Alteration Rule. 12-030-022 Vt. Code R. § 2-27-201 (48).