

# TOWN OF BENNINGTON

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**TO:** Chair, Town Planning Commissions, Towns of: Glastenbury, Pownal, Shaftsbury, Woodford and Hoosick, NY, and Villages of: Old Bennington and North Bennington, Vermont Department of Economic Housing and Community Development, Bennington County Regional Commission

**FROM:** Barry Horst, Chairman, Town of Bennington Planning Commission, 205 South Street

**Date:** April 8, 2013

**Re:** Proposed Amendment to Bennington's Land Use and Development Regulations

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Enclosed is one copy of: the proposed amendment to Bennington's Land Use & Development Regulations (LUDR), Planning Commission Hearing Notice, and Planning Commission Report.

The Planning Commission has scheduled a Public Hearing to consider the adoption of the proposed amendment to the LUDR on May 6, 2013 at 5:15 p.m. at the Town of Bennington Conference Room, 205 South Street Bennington, Vermont.

Please address any questions, comments, or concerns, to my attention at the address below. Thank you.

Enc: Proposed Amendment to LUDR, Planning Commission Report and Legal Notice for Planning Commission Public Hearing.

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Notice of Public Hearing  
Proposed Amendment  
to  
Bennington's Land Use and Development Regulations  
May 6, 2013 - 5:15 p.m.  
Town of Bennington Conference Room  
205 South Street, Bennington, Vermont

The Bennington Planning Commission will conduct a Public Hearing on May 6, 2013 at 5:15 p.m. at the Town of Bennington Conference Room, 205 South Street Bennington, Vermont, to consider an amendment to Bennington's Land Use and Development Regulations.

1. Statement of Purpose:

The proposed bylaw amendment updates the Town's floodplain regulations as required for compliance with FEMA standards. Adoption of this amendment will ensure that the Town can participate in the National Flood Insurance Program.

2. Area Covered:

The proposed amendment affects the 100 year floodplain as defined by FEMA.

3. Sections of Land Use and Development Regulations Amended:

Table 3.17.

4. Copies of the proposed amendment and the Planning Commission report regarding the proposed amendment are available at the Bennington Town Office Building, Office of the Planning Director, 205 South Street, Bennington.

**The Town of Bennington**  
**Barry Horst, Chair**  
**Bennington Planning Commission**

## Flood Hazard Overlay District

### Planning Commission Report for Municipal Bylaw Amendments

This report is in accordance with 24 V.S.A. §4441(c) which states:

*“When considering an amendment to a bylaw, the planning commission shall prepare and approve a written report on the proposal. A single report may be prepared so as to satisfy the requirements of this subsection concerning bylaw amendments and subsection 4384(c) of this title concerning plan amendments..... The report shall provide(:)*

*(A) brief explanation of the proposed bylaw, amendment, or repeal and ....include a statement of purpose as required for notice under §4444 of this title,*

The proposed bylaw amendment updates the Town’s floodplain regulations as required for compliance with FEMA standards. Adoption of this amendment will ensure that the Town can participate in the National Flood Insurance Program.

*And shall include findings regarding how the proposal:*

*1. Conforms with or furthers the goals and policies contained in the municipal plan, including the effect of the proposal on the availability of safe and affordable housing:*

The Town Plan specifically states as a policy that “Development in regulatory floodplains shall be strictly regulated according to municipal flood hazard area regulations.” The amendment furthers this policy by regulating development in FEMA floodplain areas. The proposed amendment furthers the goal of providing safe housing by regulating the location and type of construction so that flood damage to structures is minimized.

*2. Is compatible with the proposed future land uses and densities of the municipal plan:*

The Town Plan states that development in flood hazard areas is inherently dangerous and should be restricted. Therefore, regulating development in FEMA floodplain areas is consistent with the Town Plan’s proposed land uses and densities.

*3. Carries out, as applicable, any specific proposals for any planned community facilities.”*

The proposal does not involve the construction of any planned community facilities, nor does it restrict the development of any planned community facilities.

**Table 3.17**  
**Flood Hazard Overlay District (FHO)**

**I. Purpose**

It is the purpose of this Flood Hazard Overlay District to:

- A. 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;
- B. 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 Bennington, its citizens, and businesses eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds as may be available.

**II. Disclaimer of Liability**

These regulations do not imply that land outside of the areas covered by this Section will be free from flood or erosion damages. These regulations shall not create liability on the part of the Town of Bennington, or any municipal official or employee thereof, for any flood or erosion damages that result from reliance on these regulations, or any administrative decision lawfully made hereunder.

**III. Lands to Which these Regulations Apply**

**A. Regulated Flood Hazard Area**

These regulations shall apply to the Special Flood Hazard Area in the Town of Bennington, Vermont as described below. This Flood Hazard Overlay District and the regulations herein are the minimum standards that must be met before meeting the additional standards applicable in the underlying district. This Special Flood Hazard Area includes: 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.

**B. Base Flood Elevations and Floodway Limits in Special Flood Hazard Area**

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

**IV. Development Review in Hazard Areas**

**A. Permit**

A permit is required from the Administrative Officer (AO) for all development in the Special Flood Hazard Area. Development that requires a permit with Development Review Board (DRB) approval,

non-conforming use approval, or a variance from the DRB under these flood hazard regulations, must have such approvals prior to the issuance of a permit by the AO. Any development subject to municipal jurisdiction in the designated hazard areas shall meet the criteria in subsection IV and V of this Section. Any permit issued shall require that all other necessary permits from State or Federal Agencies have been received before work may begin.

#### B. Permitted Development

For the purposes of review under these regulations, the following development activities in the Special Flood Hazard Area where outside of the floodway and meeting the Development Standards in subsection V of this Section, require only an administrative permit from the AO:

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

#### C. Prohibited Development in Special Flood Hazard Area

1. New residential or non-residential structures (including the placement of manufactured homes and critical facilities) are prohibited in the floodway.
2. Storage or junk yards;
3. New fill except as necessary to elevate structures above the base flood elevation;
4. Accessory structures in the floodway; and
5. All development not exempted, or permitted.

#### D. Approval by the DRB

Approval by the DRB, is required prior to the issuance of a permit by the AO for the following proposed development:

1. New residential or non-residential structures (including the placement of manufactured homes) in the Special Flood Hazard Area outside of the floodway.
2. Substantial improvement, elevation, relocation, or flood proofing of existing structures;
3. New or replacement storage tanks for existing structures;
4. Improvements to existing structures in the floodway;
5. Grading, excavation; or the creation of a pond;
6. Improvements to existing roads;
7. Installation or improvement of private bridges and culverts; and
8. Public utilities.

#### E. Exempted Activities

The following are exempt from regulation under this Section:

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 AO in writing of the proposed activity. The notice must contain a sketch of the proposed structure including setbacks.

#### F. Variances

Variances in the Special Flood Hazard Area may be granted in writing by the DRB only in accordance with Section 10.6, all the criteria in 24 V.S.A. § 4469, § 4424 (E), and 44 CFR Section 60.6.

Any variance issued in the Special Flood Hazard Area shall not increase flood heights, and shall 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.

#### G. Nonconforming Structures and Uses

The DRB may, in accordance with Section 4.9, approve the repair, relocation, replacement, or enlargement of a nonconforming structure within a Special Flood Hazard area provided that:

1. The proposed development is in compliance with all the Development Standards in subsection V of this Section;
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; and
3. Nonconforming structures or uses shall be considered abandoned where such structures or uses are discontinued for more than 12 months.

**V. Development Standards** – The criteria below are the minimum standards for development in the Special Flood Hazard Area.

#### A. Special Flood Hazard Area

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



- h. Required to locate any fuel storage tanks (as needed to serve an existing building in the Special Flood Hazard Zone) a minimum of one foot above the base flood elevation and be securely anchored to prevent flotation; or storage tanks may be placed underground, if securely anchored as certified by a qualified professional.
2. In Zones A, AE, AH, and A1 – A30 *where base flood elevations and/or floodway limits have not been determined*, development shall not be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated encroachment, will not increase the base flood elevation more than 1.00 foot at any point within the community. The demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and certified by a registered professional engineer.
  3. *Structures, including manufactured homes, to be constructed, placed or 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.
  4. *New subdivision developments, planned unit developments, planned residential developments, or manufactured home parks of more than 5 acres or 50 lots, whichever is less, shall:*
    - a. Include base flood elevation data;
    - b. Minimize flood damage within the flood-prone area;
    - c. Provide adequate drainage to reduce exposure to flood hazards; and
    - d. Locate and construct utilities and facilities, such as sewer, gas, electrical, and water systems, so as to minimize or eliminate flood damage.
  5. *Non-residential structures to be substantially improved shall:*
    - a. Meet the standards in subsection V A 3, or as an alternative to subsection V A 3, such structures may:
    - b. Have the lowest floor, including basement, together with attendant utility and sanitary facilities be designed so that two feet above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; A permit for flood proofing shall not be issued until a registered professional engineer or architect has reviewed the structural design, specifications and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.
  6. *Fully enclosed areas below grade* on all sides (including below grade crawlspaces and basements) are prohibited.
  7. *Fully enclosed areas that are above grade, below the lowest floor, below BFE and subject to flooding, shall:*
    - a. Be solely used for parking of vehicles, storage, or building access, and such a condition shall clearly be stated on any permits; and,
    - b. Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs must be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria: A minimum of two openings on two walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
  8. *Recreational vehicles* must be fully licensed and ready for highway use.
  9. A *small accessory* structure of 500 square feet or less that represents a minimal investment need not be elevated to the base flood elevation in this area, provided the structure shall meet the criteria in subsection V A 7.

10. *Water supply systems* shall be designed to minimize or eliminate infiltration of flood waters into the systems.
11. *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.
12. *On-site waste disposal systems* shall be located to avoid impairment to them or contamination from them during flooding.
13. *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.
14. *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.
15. *New Structures, Subdivisions, Planned Residential Developments and Planned Unit Developments* must be accessible by *dry land* access outside the Special Flood Hazard Area.

#### B. Floodway Areas

1. Encroachments or development above grade and less than one foot above the base flood elevation, are prohibited unless hydrologic and hydraulic analyses are performed in accordance with standard engineering practice, by a registered professional engineer, certifying that the proposed development will:
  - a) Not result in any increase in flood levels (0.00 feet) during the occurrence of the base flood;
  - b) Not increase any risk to surrounding properties, facilities, or structures from erosion or flooding.
2. Public utilities may be placed underground, and the analyses may be waived, where a registered professional engineer certifies that there will be no change in grade and the utilities will be adequately protected from scour.

### **VI. Administration**

#### A. Application Submission Requirements

Applications for development shall include:

1. Where applicable, in addition to the requirements of Article 6 of these regulations, a site plan that depicts the proposed development, all water bodies, Special Flood Hazard Areas, floodways, Fluvial Erosion Hazard Zone, 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;
2. A Vermont Agency of Natural Resources Project Review Sheet for the proposal. The Project Review Sheet shall identify all State and Federal agencies from which permit approval is required for the proposal, and shall be filed as a required attachment to the municipal permit application. The identified permits, or letters indicating that such permits are not required, shall be submitted to the AO and attached to the permit before work can begin.

#### B. Referrals

1. Upon receipt of a complete application for a substantial improvement or new construction, the AO shall submit a copy of the application and supporting information to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources (ANR), in accordance with 24 V.S.A. § 4424. A permit may be issued only following receipt of comments



from the Agency, or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner.

2. If the applicant is seeking a permit for the alteration or relocation of a watercourse, copies of the application shall also be submitted to the adjacent communities, the Stream Alteration Engineer at the Vermont Agency of Natural Resources, and the Army Corps of Engineers. Copies of such notice shall be provided to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation. A permit may be issued only following receipt of comments from the Vermont Agency of Natural Resources, or the expiration of 30 days from the date the application was mailed to the Vermont Agency of Natural Resources, whichever is sooner.

### C. Decisions

The DRB shall consider comments from the NFIP Coordinator at ANR.

### D. Records

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

1. All permits issued in areas covered by this bylaw;
2. An Elevation Certificate with the as-built elevation (consistent with the datum of the elevation on the current Flood Insurance Rate Maps for the 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.

### **VII Certificate of Completion**

Within 14 days of the receipt of an application for a certificate of completion, the AO shall inspect the premises to ensure that all permits identified on the Project Review Sheet have been acquired.

### **VIII. Enforcement and Penalties**

- A. If a violation of this Section remains after all appeals have been resolved, the AO shall submit a declaration to the Administrator of the National Flood Insurance Program requesting a denial of flood insurance for the property pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.
- B. Violations of the Accepted Agricultural Practices within the Special Flood Hazard Area shall be reported to the Secretary of Agriculture for enforcement under 6 V.S.A. Section 4812.

### **IX. Definitions**

The following definitions shall apply to this Section:

**“Accessory Structure”** means a structure which is: 1) detached from and clearly incidental and subordinate to the principal use of or structure on a lot, 2) located on the same lot as the principal

structure or use, and 3) clearly and customarily related to the principal structure or use. For residential uses these include, but may not be limited to garages, garden and tool sheds, and playhouses.

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

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

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

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

**“BFE”** see Base Flood Elevation

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

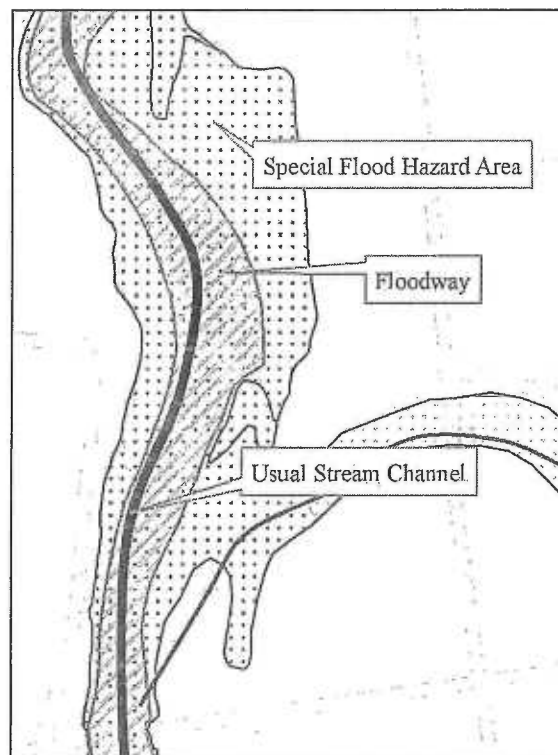
**“Channel width”** (or bankfull width) is the width of a stream channel when flowing at a bankfull discharge. The bankfull discharge is the flow of water that first overtops the natural banks. This flow occurs, on average, about once every 1 to 2 years.

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

**“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 that survive a flood and now are the only sources for food and gas.

**“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.

**“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 initial floodplain management regulations* adopted by a community.

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

***“Fill”*** means any 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 Bennington”*** 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.

***“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 certified 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”.

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

***“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 the 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 flood hazard regulations at the time of their creation, and remain so, remain violations and are not nonconforming structures.

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

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

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

***“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.

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

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

***“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”.

***“Top of Bank”*** means that vertical point along a stream bank where an abrupt change in slope is evident. For streams in wider valleys it is the point where the stream is generally able to overflow the banks and enter the floodplain. For steep and narrow valleys, it will generally be the same as the top of slope.

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