Middlesex Land Use & Development Regulations

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Prepared by the Planning Commission

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LAND USE & DEVELOPMENT REGULATIONS
TOWN OF MIDDLESEX, VERMONT
October 10, 2016

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ARTICLE 1. PURPOSE & AUTHORITY

Section 1.1 Enactment

In accordance with Vermont Planning and Development Act, 24 V.S.A. Chapter 117 (the Act), there are established zoning and subdivision regulations for the Town of Middlesex, Vermont, (the Town). These regulations shall be known and cited as the "Middlesex Land Use & Development Regulations." Also, to effect the purpose of 10 V.S. A. Chapter 32, and in accordance with 24 V.S.A. § 4424, there is established regulation of areas of special flood hazard in the Town.

Section 1.2 Purpose

These regulations are adopted to incorporate and implement the Town Plan as most recently amended; and to integrate all administrative and regulatory provisions for the Town's zoning and subdivision regulations into a single set of land use regulations. Consistent with the Town Plan, the purpose of these regulations are:

- to provide for reasonable orderly community growth and development;
- to encourage the appropriate and efficient use of all lands in the Town in a manner which promotes and protects public health, safety and the general welfare of the community;
- to implement and encourage responsible use and careful stewardship of natural resources, rural character, and cultural heritage;
- to maintain, preserve, and enhance natural features and environmental quality for the benefit of future generations;
- to support businesses and industries that are compatible with and complementary to the Town's rural character and high quality of life;
- to promote the development of a wide variety of housing types to meet the needs of residents;
- to guide development in a manner that preserves important community resources while encouraging a range of land uses in appropriate locations; and
- to balance the protection of individual property rights of landowners with the other purposes listed above.

Section 1.3 Application & Interpretation

(A) The application of these regulations is subject to all provisions of the Act.
(B) No land development or land subdivision shall commence within the Town except in compliance with these regulations.
(C) Subdivisions of land, uses, or structures lawfully in existence as of the effective date of these regulations are allowed to continue; they are "grandfathered" under these regulations. However, material changes, alterations or expansions to pre-existing structures or uses shall be subject to these regulations;
(D) These regulations shall not repeal, annul or limit any permit previously issued.

Section 1.4 Adoption & Effective Date

(A) These regulations shall take effect on the date of their adoption by the Town. Upon their adoption, *"Middlesex Zoning Regulations*," adopted March 1, 2011 are no longer in effect.
(B) These regulations may be amended or repealed in accordance with the Act [§§4441, 4442].

Section 1.5 Severability

The invalidity of any provision or application of these regulations shall not invalidate any other part.

ARTICLE 2. ZONING DISTRICTS

Section 2.1 Establishment of Zoning Districts & Map

(A) The Town is hereby divided into the following zoning districts as described in the accompanying tables (Tables 2.1 - 2.7) and shown on the official zoning map and associated overlays:

- Village District
- Industrial District
- Mixed Use District
- Medium Density Residential District
- Rural Residential District
- Conservation District
- Flood Hazard Overlay District

(B) The location and boundaries of each zoning district are depicted on the official "Town of Middlesex Zoning Map" and the most current National Flood Insurance Program maps, which are incorporated by reference and are a part of these regulations.

(C) The official zoning map and overlays shall be located in the Middlesex Town Office, and shall be identified by the signatures of the Select Board (SB), as attested to by the Town Clerk.

Section 2.2 Application of District Standards

(A) All uses and structures, unless specifically exempted under Section 7.3 or otherwise specified in these regulations, must comply with all prescribed standards for the district in which they are located, as set forth in Tables 2.1 - 2.7.

(B) All uses and structures not specifically allowed under, or exempted from, these regulations are prohibited.

Section 2.3 Zoning District Standards

Tables 2.1 - 2.7 set forth the stated purposes and allowed uses and specific standards for each zoning district. Additional district standards pertaining to conditional uses are in Section 5.4, and for planned residential or planned unit developments in Section 5.7. Standards applicable to specific uses are also set forth in Article 4.

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TABLE 2.1
VILLAGE DISTRICT

(A) Purpose. The purpose of the Village District is to allow for a concentrated mix of residential, cultural and commercial uses within the Town's traditional community centers in a manner that respects the historic settlement pattern of a compact village surrounded by rural countryside.

(B) Permitted Uses:

1. Accessory Dwelling
2. Accessory Structure (to a permitted use)
3. Agriculture
4. Bed & Breakfast
5. Cemetery
6. Dwelling/Single Family
7. Dwelling/Two Family
8. Funeral Home
9. Group Home (6 or fewer residents)
10. Home Child Care
11. Home Occupation
12. Personal Service
13. Place of Worship
14. Private Club
15. Professional/Business Office

(C) Conditional Uses: (See Article 5, Section 5.4)

1. Accessory Structure/Use (to a conditional use)
2. Bank/Financial Institution
3. Community Center
4. Cultural Facility
5. Day Care Center
6. Dwelling- Multi-Family
7. Health Clinic
8. Home Industry
9. Hotel/Motel
10. Lumberyard
11. Mixed Use
12. Public Facility/Utility
13. Rail Siding
14. Recreation Facility (Indoor)
15. Recreation Facility (Outdoor)
16. Residential Care Facility
17. Restaurant [excluding drive-through]
18. Retail between
19. School
20. Transit/Transportation Facility
21. Telecommunications Facility
22. Veterinary Clinic

(D) Dimensional Standards (unless otherwise specified for a particular use)**:**	
Minimum Lot Size	10,000 square feet
Minimum Frontage	70 feet
Minimum Setback/Front	35 feet
Minimum Setback/Side	10 feet
Minimum Setback/Rear	10 feet
Minimum Setback/Side and Rear for Accessory Structure	5 feet
Maximum Height	35 feet
Minimum Setback from Water	75 feet

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TABLE 2.2
MIXED-USE DISTRICT

(A) Purpose. The purpose of the Mixed-Use District is to provide an opportunity for residential development and compatible non-residential uses in a compact manner in an area with convenient access to major transportation corridors and proximity to Middlesex Village.

(B) Permitted Uses:

1. Accessory Dwelling
2. Accessory Structure (to a permitted use)
3. Agriculture
4. Bed & Breakfast
5. Campground
6. Day Care Center
7. Dwelling/Single Family
8. Dwelling/Two Family
9. Dwelling/Multi-Family
10. Forestry
11. Group Home
12. Home Child Care
13. Home Occupation

(C) Conditional Uses: (See Article 5, Section 5.4)

1. Extraction of Earth Resources
2. Home Industry
3. Light Industry
4. Mixed Use
5. Mobile Home Parks
6. Professional/Business Office
7. Public Facility/Utility
8. Recreation Facility [Indoor]
9. Recreation Facility [Outdoor]
10. Telecommunications Facility
11. Restaurant (Limited to 75 seats, no drive-through facilities)
12. Research & Development Facility

(D) Dimensional Standards (unless otherwise specified for a particular use)**:**	
Minimum Lot Area per Principal Structure and/or Dwelling Unit	One (1) structure per two (2) acres
Minimum Lot Size	as approved in accordance with Section 5.4
Minimum Frontage	100 feet, or as approved per Section 5.4
Minimum Setback/Front	75 feet from the center of the road; 50 feet from any interior road.
Minimum Setback/Side	25 feet, or as approved per Section 5.4
Minimum Setback/Rear	25 feet, or as approved per Section 5.4
Minimum Setback/Side and Rear for Accessory Structure	20 feet
Maximum Height	35 feet
Maximum Building Gross Floor Area	25,000 square feet
Minimum Setback from Water	75 feet

(E) Supplemental District Standards

1. All subdivisions shall be reviewed and approved as a Planned Residential or Planned Development (PRD or PUD) in accordance with section 5.7

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TABLE 2.3
INDUSTRIAL DISTRICT

(A) Purpose. The purpose of the Industrial District is to encourage a variety of industrial, manufacturing and appropriate commercial and residential uses in locations that have historically been used for such uses, are served by good highway access, and that will have minimal negative impact on surrounding properties and the rural character of the community.

(B) Permitted Uses:

1. Accessory Structure (to a permitted use)
2. Agriculture
3. Forestry
4. Group Home
5. Home Child Care
6. Home Occupation
7. Recreation (Outdoor)
8. Research & Development Facility
9. Professional/Business Office
10. Veterinary Clinic

* within an existing single family dwelling

(C) Conditional Uses: (See Article 5, Section 5.4)

1. Accessory Dwelling
2. Accessory Structure/Use (to a conditional use)
3. Bulk Fuel Storage
4. Contractor's Yard
5. Day Care Center
6. Dwelling/Multi-Family
7. Dwelling/Single Family
8. Dwelling/Two Family
9. Hazardous Waste Facility
10. Home Industry
11. Kennel
12. Light Industry
13. Lumberyard
14. Manufacturing
15. Motor Vehicle Repair Services
16. Public Facility/Utility
17. Rail Siding
18. Recreation Facility (Indoor/Outdoor)
19. Salvage Yard
20. Sanitary Landfill
21. Sawmill
22. Telecommunications Facility
23. Transfer Station
24. Trucking Terminal
25. Warehouse/Storage Facility

(D) Dimensional Standards (unless otherwise specified for a particular use)**:**	
Minimum Lot Size	1 acre
Minimum Frontage	100 feet
Minimum Setback/Front	50 feet
Minimum Setback/Side	25 feet
Minimum Setback/Rear	25 feet
Minimum Setback/District Boundary [non-residential use]	75 feet
Maximum Height	35 feet
Minimum Setback from Water	75 feet
Minimum Setback for Accessory Structure	20 feet

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TABLE 2.4
MEDIUM DENSITY RESIDENTIAL DISTRICT

(A) Purpose. The purpose of the Medium Density Residential District is to accommodate medium density residential development and compatible uses in areas of town that are well served by public roads and good access to community facilities and services, and are generally more appropriate for such uses and settlement patterns than in surrounding rural and conservation districts.

(B) Permitted Uses:

1. Accessory Dwelling
2. Accessory Structure (to a permitted use)
3. Agriculture
4. Bed & Breakfast
5. Cemetery
6. Dwelling/Single Family
7. Dwelling/Two Family
8. Forestry
9. Group Home
10. Home Child Care
11. Home Occupation

(C) Conditional Uses: (See Article 5, Section 5.4)

1. Accessory Structure (to a conditional use)
2. Community Center
3. Cultural Facility
4. Day Care Center
5. Dwelling/Multi-Family (only in PRD under Section 5.7)
6. Extraction of Earth Resources
7. Greenhouse/Nursery
8. Home Industry
9. Mobile Home Park
10. Residential Care Facility
11. Place of Worship
12. Public Facility/Utility
13. Recreation Facility (Outdoor)
14. School
15. Telecommunications Facility

(D) Dimensional Standards (unless otherwise specified for a particular use)**:**	
Minimum Lot Size	2 acres
Minimum Area per Unit	2 acres
Minimum Frontage	200 feet
Minimum Setback/Front	75 feet
Minimum Setback/Side	50 feet
Minimum Setback/Rear	50 feet
Minimum Setback/Rear (Accessory Structure)	10 feet
Maximum Height	35 feet
Minimum Setback from Water	75 feet

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TABLE 2.5
RURAL RESIDENTIAL DISTRICT

(A) Purpose. The purpose of the Rural Residential District is to promote agriculture and forestry and preserve rural resources and natural features and to permit low density residential development in appropriate locations.

(B) Permitted Uses:

1. Accessory Dwelling
2. Accessory Structure (to a permitted use)
3. Agriculture
4. Cemetery
5. Dwelling/Single Family
6. Dwelling/Two Family
7. Forestry
8. Group Home
9. Home Child Care
10. Home Occupation

(C) Conditional Uses:(See Article 5, Section 5.4)

1. Accessory Structure (to a conditional use)
2. Bed & Breakfast
3. Extraction of Earth Resources
4. Home Industry
5. Kennel
6. Mobile Home Park
7. Public Facility/Utility
8. Recreation Facilities (Outdoor)
9. Telecommunications Facility

(D) Dimensional Standards (unless otherwise specified for a particular use)**:**	
Maximum Overall Density	One (1) dwelling per five (5) acres (See Article 6.2(C)
Minimum Lot Size	2 acres (See Article 6.2(C)
Minimum Frontage (lot less than 5 acres)	200 feet
Minimum frontage (lot 5 acres or greater)	300 feet
Minimum Setback/Front	75 feet
Minimum Setback/Side	50 feet
Minimum Setback/Rear	50 feet
Minimum Setback/Rear (Accessory Structure)	50 feet
Maximum Height	35 feet
Minimum Setback from Water	75 feet

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TABLE 2.6
CONSERVATION DISTRICT

(A) Purpose. The purpose of the Conservation District is to protect significant natural and agricultural resources and headwater streams by limiting development in areas with steep slopes, shallow soils, large tracts of wildlife habitat, valuable timber and scenic hills and ridgelines. They are also generally distant from public services and facilities and as a result, are difficult and costly to access.

(B) Permitted Uses:

1. Accessory Dwelling
2. Accessory Structure/Use (to a permitted use)
3. Agriculture
4. Dwelling/Single Family
5. Forestry
6. Group Home
7. Home Child Care)
8. Home Occupation

(C) Conditional Uses: (See Article 5,Section 5.4)

1. Accessory Structure/Use (to a conditional use)
2. Bed & Breakfast
3. Extraction of Earth Resources
4. Home Industry
5. Mixed Use
6. Public Facility/Utility
7. Recreation [Outdoor]
8. Telecommunications Facility

(D) Dimensional Standards (unless otherwise specified for a particular use)**:**	
Maximum Overall Density	One (1) dwelling unit per 10 acres (See Article 6.2 (C))
Minimum Lot Size	4 acres (See Article 6.2 (C))
Minimum Frontage	400 feet
Minimum Setback/Front	75 feet
Minimum Setback/Side	50 feet
Minimum Setback/Rear	50 feet
Minimum Setback/Rear (Accessory Structures)	20 feet
Maximum Height	35 feet
Minimum Setback from Water	75 feet

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TABLE 2.7
FLOOD HAZARD AREA OVERLAY DISTRICT

(A) Purpose. The purpose of the Flood Hazard Area Overlay District is to (1) protect public health, safety, and welfare by preventing or minimizing hazards to life and property due to flooding, and (2) to ensure that private property owners within designated flood hazard areas are eligible for flood insurance under the National Flood Insurance Program (NFIP).

(B) Permitted Uses:

1. Agriculture
2. Home Child Care*
3. Forestry
4. Home Occupation*
5. Group Home*

* within an existing single family dwelling.

C) Conditional Uses: (See Article 5, Section 5.4)

All other uses allowed within the underlying zoning district, except for contractor s yards, salvage yards, and solid and hazardous waste management facilities, which are specifically excluded from this district.

(D) District Standards

1. Where the standards of this overlay district differ from underlying district standards, the more restrictive shall apply.

2. Uses permitted within the Flood Hazard Area Overlay District include agriculture and forestry, undeveloped open space, and those uses generally allowed within existing single family dwellings which do not require structural alterations (i.e., home child care and home occupations).

3. Mandatory state [§ 4412] and federal [44 CFR §§ 60.3 and 60.6] requirements for continued eligibility in the National Flood Insurance Program, including but not limited to associated structural standards, definitions, administrative and variance requirements, are hereby adopted by reference and shall be applied to all development in this district; accordingly:

   a. Applications for development within the Flood Hazard Area Overlay District must include information required under Section 5.6.

   b. Development in the Flood Hazard Area Overlay District shall be subject to flood hazard area review standards under Section 5.6, in addition to applicable requirements of the underlying zoning district.

   c. Requests for variances for development within the Flood Hazard Area Overlay District must meet the requirements of Section 5.6 in addition to variance requirements under Section 7.6.

   d. Permits, certifications and variance actions for development within the Flood Hazard Area Overlay District shall be recorded by the Zoning Administrator (ZA) in accordance with Section 7.8.

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ARTICLE 3. GENERAL REGULATIONS

Section 3.1 Applicability

In addition to 24 V.S.A. [§§4412, 4413] the following provisions apply to all land development in the Town.

Section 3.2 Access, Driveway & Frontage Requirements

No land development may be permitted on lots which do not have frontage either on a public road, class 4 town or private road or public waters or, with the approval of the Planning Commission (PC) or Select Board (SB), as applicable, have access to such a road or waters by a permanent easement, right-of-way or fee-simple ownership that is at least 20 feet in width. Applicant must apply for a driveway access permit in accordance with the Town Highway Ordinance.

Section 3.3 Conversions & Changes of Use

(A) Proposed conversions or changes in the use of land, existing buildings, or other structures are subject to all regulations pertaining to such use.

(B) A conversion or change from a permitted use to a conditional use, or from a conditional use to a different conditional use, shall be approved by the Zoning Board of Adjustment (ZBA) subject to conditional use review under Section 5.4 and, depending upon the nature of the use, may require site plan approval under Section 5.5 prior to the issuance of a zoning permit.

Section 3.4 Pre-Existing Small Lots

(A) In accordance with the Act Pursuant to [§4412(2) & (7)], any lot that is legally subdivided with individual and separate and non-affiliated ownership from surrounding properties, and is in existence on the effective date of these regulations may be developed for the purposes permitted in the district in which it is located, and is in accordance with these regulations, if such lot is at least one-eighth (1/8) of an acre in area with a minimum width or depth of forty (40) feet.

(B) Existing small lots in affiliated or common ownership, or such lots which subsequently come under common ownership with one or more contiguous lots, shall be deemed merged with the contiguous lots for the purpose of these regulations. However, such lots shall not be deemed merged, and may be separately conveyed, if in accordance with [§ 4412], all of the following requirements are met:

(1) the lots are conveyed in their pre-existing, nonconforming configuration; and
(2) on the effective date of these regulations, each lot had been developed with a water supply and wastewater disposal system; and
(3) at the time of transfer, each water supply and wastewater system is functioning in an acceptable manner; and
(4) the deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems, potable water systems, or both, in case there is a failed system or failed supply as defined in 10 V.S.A Chapter 64.

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Section 3.5 Height Requirements

(A) The maximum height of structures in all districts shall not exceed the district maximum, except as permitted under Subsection (B), or for the following which are specifically exempted from the height requirements of these regulations:

(1) agricultural farm structures as provided by [§4413(d)];
(2) steeples, spires, belfries, bell and clock towers; and
(3) accessory structures associated with residential use which are less than fifty (50) feet in height above the lowest grade at ground level at the base of the structure, including antennas, flag poles, ornamental cupolas, chimneys, wind generators with blades less than twenty (20) feet in diameter, and rooftop solar collectors.

(B) The ZBA may permit structures in excess of the district standard subject to conditional use review under Section 5.4 upon finding that:

(1) the structure does not constitute a hazard to public safety, or to adjoining properties;
(2) that the portion of the structure above the district maximum height shall remain unoccupied except for normal maintenance;
(3) the structure is not to be used for advertising purposes;
(4) the portion of the structure above the minimum height for the district within which it is located shall not be lighted;
(5) the proposed building height and scale are consistent with the character of the immediate surroundings.

(C) Not withstanding these regulations, or the district maximum height standards, telecommunication facilities shall meet the standards set forth in Section 4.13.

Section 3.6 Lot & Yard Requirements

(A) Only a single principal use or structure may be located on a single lot, unless permitted within the specific district as:

(1) an accessory use to a principal use;
(2) a mixed use (see Section 4.8);
(3) agricultural and forestry uses on a lot occupied by another use; or
(4) as otherwise approved by the PC as part of a Planned Residential Developments (PRDs) or Planned Unit Developments (PUDs) in accordance with Section 5.7.

Section 3.7 Noncomplying Structures & Nonconforming Uses

(A) In accordance with [§4412(7)], this section addresses noncomplying structures and nonconforming uses.

(B) **Noncomplying Structures.** Any pre-existing structure which is not in compliance with these regulations with regard to density, setbacks, height, lot size or other dimensional standard, or which does not otherwise meet these regulations, is deemed a noncomplying structure. Noncomplying structures legally in existence on the effective date of these regulations will be allowed to continue indefinitely, but shall be subject to the following provisions. A noncomplying structure:

(1) may undergo normal repair and maintenance, provided that such action does not increase the Degree of Noncompliance as defined in Appendix 1, Section 2.

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(2) may be restored or reconstructed after damage from fire or other catastrophe, provided that the reconstruction does not increase the degree of noncompliance which existed prior to the damage and that the reconstruction occurs within two years of the damage;
(3) may be structurally enlarged, expanded or moved, upon approval of the ZA, provided the enlargement, expansion or relocation does not increase the Degree of Noncompliance;
(4) may undergo alteration or expansion which would increase the degree of noncompliance solely for the purpose of meeting state or federal environmental, safety, health or energy regulations; and/or
(5) may, in the case of single family, two family and multi-family dwellings, in districts in which such uses are allowed, be structurally enlarged or expanded, provided:
  (a) the purpose of the expansion is a permitted use within the applicable district;
  (b) no portion of the proposed expansion is closer to the centerline of any adjacent highway than the closest point of the existing dwelling;
  (c) the existing dwelling is not located within the highway right-of-way; and
  (d) the expansion complies with minimum side yard setback standards for the district within which it is located.

(C) **Nonconforming Uses**. Any use of land or a structure which does not conform to the uses allowed for the district in which it is located shall be deemed a nonconforming use. Nonconforming uses which legally exist on the effective date of these regulations may be continued indefinitely, but shall be subject to the following provisions. A nonconforming use:
(1) shall not be re-established or continued following abandonment or discontinuance resulting from structural damage from fire or other catastrophe, unless the nonconforming use is carried on uninterrupted in the undamaged part of the structure, or the use is reinstated within one year of such damage;
(2) shall not be re-established if such use has been changed to, or replaced by, a conforming use, or if such use has been discontinued for a period of two years, regardless of the intent to re-establish such prior use; and
(3) shall not be changed to another nonconforming use without the approval of the ZBA in accordance with conditional use review under Section 5.4.

Section 3.8 Parking & Loading Requirements

Parking and loading shall meet the needs of all business or other uses under the terms of any site plan requirement unless otherwise approved under Sections 5.4, and/or Section 5.5.

Section 3.9 Protection of Water Resources

(A) **Surface Waters.** To prevent soil erosion and sedimentation of surface waters, maintain water quality and protect wildlife habitat, the following standards apply:

(1) All structures shall be set back a minimum of 75 feet from all streams, rivers and public lakes, as measured from the top of the bank, although the ZBA may, in accordance with conditional use review under Section 5.4, approve the placement of a structure within the 75 feet setback provided that:

  (a) reasonable provision is made for the protection of water quality such as, the planting of shade trees adjacent to streambanks, the establishment of vegetated buffer areas along streambanks, and/or storm water management provisions to collect and disperse storm water away from the stream or river; and
  (b) The building placement will better reflect the historic settlement pattern and character of the surrounding area, if applicable.

(2) An undisturbed, vegetated buffer strip shall be maintained for a minimum of 25 feet from all streams, rivers and lakes. The 25 feet buffer strip shall be measured from the top of the streambank. No development, excavation, filling, clearing or grading shall occur within the buffer strip, with the exception of clearing and associated site development necessary to accommodate the following:

(a) road, driveway and utility crossings;
(b) streambank stabilization and restoration projects, in accordance with state and federal regulations;
(c) unpaved bicycle and pedestrian paths and trails;
(d) recreation facilities, including structures associated with lake or pond access;
(e) agriculture in accordance with Acceptable Agricultural Practices (AAPs) as set forth by the Commissioner of Agriculture, Food and Markets, and forestry in accordance with Acceptable Management Practices (AMPs) as set forth by the Vermont Department of Forests, Parks and Recreation; or
(f) any use exempted in subsection (1), above.

(3) No alteration of the natural course of any stream shall be allowed unless a stream alteration permit has been issued by the Vermont Department of Environmental Conservation. Such alterations within the Flood Hazard Area Overlay District are subject to Section 5.6.

(B) **Wetlands.** Before undertaking Land Development, land owners should contact the Vermont Agency of Natural Resources to determine whether a wetland exists on their property and should meet applicable State laws.

(C) **Groundwater**. To ensure the protection of groundwater resources to serve current and future Town residents, these standards shall apply to all development:

(1) The following potential sources of contamination are specifically prohibited within designated Source Protection Areas, unless it is demonstrated to the satisfaction of the ZBA under conditional use review (Section 5.4), that no potential for contamination of a water supply exists:

(a) gasoline and motor vehicle service and repair facilities;
(b) machine and body shops;
(c) car washes;
(d) the outdoor storage of road salt and other de-icing chemicals;
(e) public or community wastewater treatment facilities;
(f) fuel storage, except for agricultural or residential use;
(g) underground storage tanks;
(h) solid waste disposal facilities and sanitary landfills;
(i) dry cleaning, furniture stripping, metal plating, and photographic processing activities;
(j) junk and salvage yards;
(k) extraction and quarrying activities;
(l) cemeteries;
(m) lawn and garden stores;
(n) power plants and substations; and/or
(o) any other use which involves the generation, use, storage, treatment, transportation or disposal of potential contaminants greater than normal household use.

An application for development within designated Source Protection Areas which is subject to conditional use review under Section 5.4, shall also be forwarded for review by the local fire or water district having jurisdiction prior to the issuance of a permit, if applicable. Development within a Source Protection Area

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shall be managed in accordance with the adopted source protection plan for that area. Conditions may be attached as appropriate, in consultation with the local district and/or the state.

Section 3.10 Steep Slopes

(A) Development shall not take place on slope gradients in excess of 25% with the exception of limited site improvements necessary to facilitate development on contiguous land with less than 25% gradient. Accepted agricultural practices and acceptable forestry practices are exempted from this section in accordance with Section 7.3.

Section 3.11 Storage of Hazardous Materials

(A) All storage tanks shall comply with state and federal regulations.

(B) The storage of any highly flammable or hazardous liquid or gas in tanks above ground with unit capacity greater than 550 gallons shall be prohibited, unless such tanks, up to and including 10,000 gallon capacity, are placed not less than 80 feet from all property lines, and unless all such tanks of more than 10,000 gallon capacity are placed not less than 200 feet from all property lines.

(C) Tanks containing flammable and/or hazardous liquids located above ground and having a capacity greater than 550 gallons shall be properly retained with dikes having a capacity not less than 1.5 times the capacity of the tanks they surround.

Section 3.12 Sign Requirements

(A) A zoning permit shall be required prior to the erection, construction or replacement of any outdoor sign that is used to identify a principal business or service, except for those signs on Town Highways for which the Middlesex Highway Ordinance applies.

(B) Signs as specified in Subsection (A) shall require a zoning permit issued either by the ZA or approved in conjunction with a conditional use, variance or site plan review process.

(1) There shall only be one sign per principal business or service.
(2) No sign shall be placed within a public right of way.
(3) All signs shall be maintained in a safe and secure condition.
(4) Signs shall comply with existing site conditions, and the character of the neighborhood.
(5) Lighting of signs shall comply with Section 5.4 (C) (8) and shall not be illuminated when the business is not open for business.
(6) Signs shall be no larger than 16 square feet.

(C) If the ZA determines that a sign is not secure, safe or in a good state of repair, the ZA may issue a written warning and/or notice of violation under Section 7.7 and may require that any defect in the sign be corrected immediately.

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ARTICLE 4. SPECIFIC USE STANDARDS

Section 4.1 Applicability

The following standards apply to specific uses in all zoning districts in which such uses are allowed.

Section 4.2 Accessory Dwellings

(A) In accordance with the Act [§4412(1)], one attached or detached dwelling unit which is accessory to a single family dwelling may be allowed in any district subject to review by the ZA under Section 7.2 and the following requirements:

(1) either the primary single family dwelling or the accessory dwelling must be occupied by the owner;
(2) the floor (total living) area of the accessory dwelling shall not exceed 600 square feet, or 30% of the floor area of the total existing living area of the primary single family dwelling, whichever is greater; Living areas are determined by the exterior measurements of the dwellings. Finished areas in basements are not included in the living area; and
(3) at least one on-site parking space shall be provided for the residents of the accessory dwelling.

(B) Any zoning permit issued for an accessory dwelling shall clearly state that the dwelling is permitted only as an accessory to the principal use of the property and shall be retained in common ownership.

(C) An accessory dwelling may be subdivided and/or converted for conveyance or use as a principal dwelling only if it is found to meet all current municipal regulations applying to a two family dwelling, or to two single family dwellings if detached, including all density and dimensional requirements for the district in which it is located. All applicable municipal permits and approvals shall be required prior to conversion to, or conveyance as, a principal dwelling.

Section 4.3 Campers & Temporary Shelters

(A) Campers (e.g., recreational vehicle, travel trailer) or other temporary shelters may be located, stored or parked on public or private property in accordance with the following:

(1) campers and other temporary shelters may be located in approved campgrounds (see Section 4.4), sales establishments and, for a specified period, on construction sites for use as a temporary structure;
(2) campers or temporary shelters may be stored on the lot of a single or two family dwelling and/or on an undeveloped parcel, provided that they are not located within required setbacks for the district in which it is located, are not occupied for dwelling purposes for more than 90 days within any one year period; and are not connected to the residential water or wastewater system or other utilities;
(3) any camper or temporary shelter that is used for dwelling purposes for more than 90 days within any one year period, or is sited so as not to be readily moveable, shall be deemed a dwelling and be subject to all zoning regulations applicable to accessory or single family dwellings; and
(4) any wastewater or sewage generated by a camper or temporary shelter shall be disposed of in accordance with state and federal law.

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Section 4.4 Campgrounds

(A) A new or expanded recreational vehicle campground, improved seasonal campground, or primitive campground may be permitted in designated zoning districts subject to a site plan and conditional use review under Section 5 and the following provisions:

(1) The parcel of land for a campground shall be no less than five acres in area or the minimum lot area for the district in which it is located, whichever is greater;
(2) All campgrounds shall meet minimum setback requirements for the districts in which they are located. A minimum 75 foot setback shall be required from any residential property. No building, camp site, parking or service area shall be located in setback areas;
(3) Landscaping and/or fencing along property boundaries shall be required as appropriate for screening, security, and privacy;
(4) Campgrounds shall provide lavatory, shower, and toilet facilities sufficient to serve all camp sites; and
(5) Adequate provision for the safe, sanitary disposal of trash and recyclables shall be provided on site.

(B) The ZBA may waive any or all of the requirements under subsection (A) if it is demonstrated to the ZBA's satisfaction that access, total lot area, camp site area, and setback distances are sufficient to:

(1) support the proposed level of use, and

(2) avoid any adverse impacts to water quality, natural areas, and adjoining properties and uses.

Section 4.5 Extraction of Earth Resources

(A) The extraction of earth resource may be allowed in designated districts subject to conditional use review under Section 5.4. In addition to the conditional use standards set forth in Section 5.4, for commercial extraction operations which are likely to impact surrounding properties due to the scale, intensity and timing of the extraction, the presence of fragile natural features and/or the relative density of nearby land uses, the ZBA shall also require erosion control and site plans showing:

(1) existing grades, drainage patterns and depths to bedrock and the seasonal high water table;
(2) the extent and magnitude of the proposed operation, including proposed phasing;
(3) finished grades at the conclusion of the operation; and
(4) a detailed plan for the restoration of the site, including final grading and revegetation.

(B) In granting approval, the ZBA may impose conditions with regard to any of the following:

(1) depth of excavation or quarrying;
(2) slopes created by removal;
(3) effects on surface drainage on and off-site;
(4) storage of equipment and stockpiling of materials on-site;
(5) hours of operation for blasting, trucking, and processing operations;
(6) effects on adjacent properties due to noise, dust, or vibration;
(7) effects on traffic and road conditions, including potential physical damage to public highways;
(8) creation of nuisances or safety hazards;
(9) temporary and permanent erosion control, including project phasing to limit exposed area;
(10) effect on ground and surface water quality, and drinking water supplies;
(11) effect on natural, cultural, historic, or scenic resources on-site or in the vicinity of the project;
(12) effect on agricultural land; and
(13) public health, safety and general welfare.

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(C) A performance bond, escrow account, or other surety acceptable to the SB may be required to ensure reclamation of the land upon completion of the excavation. Upon failure of the permit holder, or their successors or assigns, to complete site reclamation, the Town may take legal action to ensure site reclamation and cost recovery.

(D) This section shall not apply to normal agricultural and/or forestry operations, public road maintenance and construction, the operation of a cemetery, or the removal of earth resources for a use that is incidental to another duly permitted construction activity located on the same parcel from which the materials were extracted.

Section 4.6 Home Based Businesses

(A) Home Child Care. In accordance with the Act [§ 4412(5)], a state registered or licensed child care home serving six or fewer children on a full-time basis and up to four additional children on a part time basis, which is conducted within a single family dwelling by a resident of that dwelling, shall be considered a permitted use of a single family residence. No zoning permit is required for home child care providing it meets the requirements of this section.

Nonresidential daycare centers, and those daycare centers operated from a dwelling which serve greater than six children full-time, may be permitted in designated zoning districts as a conditional use subject to review under Section 5.4.

(B) Home Occupations. In accordance with the Act [§4412(4)], no provision of these regulations may infringe upon the right of any resident to use a minor portion of a dwelling for an occupation which is customary in residential areas and which does not change the character of the surrounding neighborhood or area. No zoning permit is required for a home occupation provided such home occupation complies with the following standards:

(1) The home occupation shall be carried on by residents of the dwelling and not more than two additional non-residential employees;
(2) The home occupation shall not result in excessive noise, traffic, smoke, vibration, dust, glare, odors, electrical interference or heat that is detectable at the boundary of the property; and
(3) On-site retail sales, and the service or repair of automobiles, are prohibited (see subsection Home Industry under (C)).

(C) Home Industry. Home industry, as distinguished from "home occupation" under Subsection (B), may be allowed as an accessory to a single family dwelling in designated zoning districts subject to conditional use review under Section 5.4, and the following standards:

(1) The home industry shall be conducted by residents of the dwelling, and up to four full-time nonresident employees (or full-time equivalent part-time nonresident employees);
(2) The home industry shall be carried out within the principal dwelling or an accessory structure;
(3) Exterior storage areas for materials and equipment associated with the home industry may be approved by the ZBA provided that such areas are clearly designated and are adequately screened from public view and neighboring properties. Designated storage areas shall meet the setbacks for the district in which the use is located, although the ZBA may require greater setbacks to avoid impacts on neighboring properties. The storage of hazardous materials anywhere on the premises is prohibited, with the exception of materials customary and characteristic of residential uses (e.g., heating oil); and
(4) The home industry shall not result in excessive noise, traffic, smoke, vibration, dust, glare, odors, electrical interference or heat that is detectable at the boundary of the property.

(D) Permits and Approvals The zoning permit issued for a home industry shall clearly state that the home business is permitted only as an accessory to the principal residential use of the property, and as such shall be retained in common ownership. A home occupation or home industry may be subdivided and/or converted for conveyance as a separate, principal use only if it is found to meet all current municipal regulations applying to such use, including all density and dimensional requirements for the district in which it is located. All applicable municipal permits and approvals shall be required prior to subdivision, conversion, or conveyance of a home business as a principal use.

Section 4.7 Light Industry & Manufacturing

(A) Light industry (as distinguished from home industry under Section 4.6 (C) and manufacturing are permitted in designated zoning districts subject to conditional use review under Section 5.4. In addition to the standards set forth in Article 2 and Section 5.4, such uses shall meet the following standards:

(1) All industrial and manufacturing activities, and the maintenance and repair of vehicles and equipment, shall be conducted within an enclosed building or buildings, or within a designated outdoor area screened year-round from the road and from neighboring properties;
(2) Outdoor storage of materials, vehicles and heavy equipment shall be limited to a designated area approved by the ZBA. This area shall be screened year-round from the road and from neighboring properties**.** Dead metal (e.g., inoperable, unused, unregistered equipment) shall not be stored on the premises;
(3) Any area designated for the outdoor storage of materials shall be set back a minimum of 100 feet from road rights-of-way, surface waters, wetlands and adjacent properties unless the ZBA finds that the neighboring property is occupied by a compatible non-residential use. All other setback and dimensional standards for the district in which the light industry is located shall apply. The ZBA may however, as a condition of approval, require greater setbacks based on specific site conditions to protect water quality and neighboring properties;
(4) In approving an industrial or manufacturing use under Section 5.4, the ZBA may place conditions on the proposed activity, including conditions on the hours of operation, in order to protect public health, safety, and welfare, municipal facilities and services, and other public investments;
(5) The on-site storage of hazardous materials shall require the specific approval of the ZBA. In approving such storage the ZBA shall require the submission of a hazard mitigation plan, prepared by or on the behalf of the applicant, to ensure the protection of ground and surface waters and public safety in the event of a spill or release; and
(6) Sufficient landscaping and screening shall be provided along parcel boundaries and within the project site to protect adjacent properties from objectionable visual impacts. At a minimum, a landscaped buffer a minimum of 30 feet deep shall be located along all boundaries adjoining a residential property.

Section 4.8 Mixed Uses

(A) In designated zoning districts, more than one principal use may be allowed within a single building or on a single lot, subject to the following standards:

(1) Each of the proposed uses is allowed as a permitted or conditional use within the zoning district in which the mixed use is located; and
(2) The uses in combination meet all applicable standards for the district in which the mixed use is proposed, including minimum lot, frontage and setback requirements; or the mixed use is part of a Planned Unit Development (PUD) reviewed in accordance with Section 5.7.

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Section 4.9 Mobile Home Parks

(A) Mobile home parks may be permitted in designated districts subject to conditional use review in accordance with Section 5.4 and the following provisions:

(1) Proposed parks shall comply with all applicable state regulations, including regulations relating to water supply and wastewater disposal;
(2) The parcel of land for a mobile home park shall have a minimum area of no less than five acres, or the minimum lot area for the district in which it is located, whichever is greater;
(3) Each mobile home shall be located on a dedicated site of not less than 8,500 square feet in area. Each site shall be landscaped with two or more trees;
(4) Mobile home parks shall meet minimum setback requirements along their perimeter for the district in which they are located. Setback areas shall not be included in the calculation of recreation land or open space under this section. A strip of land 25 feet deep shall be maintained as a landscaped buffer along all property boundaries;
(5) Each mobile home, and associated accessory structures, shall be set back a minimum of 10 feet from adjoining mobile home sites;
(6) All roads within a mobile home park shall comply with Section 6.5, and adequate walkways shall be provided;
(7) Adequate parking shall be provided;
(8) A minimum of 100 square feet of indoor storage space (e.g., storage shed, or a central storage building) shall be provided for each mobile home located within the park; and
(9) A minimum of 20% of the total land area in any mobile home park shall be set aside for common recreational use or open space.

(B) The mobile home park owner, or designated operator, as a condition of ZBA approval, shall:

(1) maintain all park buildings, roads, parking areas, paths, utilities, infrastructure, landscaping, open space and common areas in good condition, and shall provide for the regular collection and removal of recyclables, waste and garbage; and
(2) remove snow from all park roads and service areas.

(C) Changes or alterations to park area, design, layout or common facilities are subject to conditional use review in accordance with the above provisions. The owner of a mobile home within an approved mobile home park may apply for a zoning permit under Section 4.2 for a deck or accessory structure which meets site setback requirements under subsection (A), without additional approval by the ZBA. The replacement of a permitted mobile home(s) within an approved mobile home park also shall require a zoning permit issued by the ZA in accordance with Section 7.2 to ensure ongoing compliance with all conditions of conditional use approval.

Section 4.10 Pond Construction

(A) The construction of ponds and other impoundments may be allowed as an accessory use in any district upon receipt of a zoning permit in accordance with Section 7.2. In the issuance of a permit the ZA shall find that:

(1) Any pond that will impound, or be capable of impounding in excess of 500,000 cubic feet of water has received a permit from the Vermont Department of Environmental Conservation in accordance with 10 V.S.A. Chapter 43.

(2) Any pond involving the alteration of a stream has received a stream alteration permit from the Vermont Department of Environmental Conservation in accordance with 10 V.S.A. Chapter 41.

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(B) In addition to the application materials set forth in Section 7.2, an application to construct any pond involving the impoundment of water through the creation of an embankment, berm, or other structure that exceeds the natural grade of the site and contains greater than 20,000 cubic feet of water shall include written certification that the pond has been designed by a state licensed professional engineer, or is allowed as a conditional use after finding it poses no danger to neighboring properties.

Section 4.11 Protected Public Uses

(A) In accordance with the Act [§ n4413(a)], the following public facilities or uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping and screening requirements, and only to the extent that such regulations do not have the effect of excluding, or interfering with the intended functional use:

(1) state or community owned and operated institutions and facilities;
(2) public and private schools and other educational institutions certified by the Vermont Agency of Education;
(3) churches and other places of worship, convents, and parish houses;
(4) public and private hospitals;
(5) regional solid waste management facilities certified by the state under 10 V.S.A. Chapter 159; and
(6) hazardous waste management facilities for which a notice of intent to construct has been received by the state under 10 V.S.A. § 6606a.

(B) Reasonable provision has been made for siting of the public facilities listed in Subsection (A) and uses within specified zoning districts, as summarized in Table 7.1. Such facilities or uses must meet district requirements and may be subject to site plan review under Section 5.5 or conditional use review under Section 5.4. Associated conditions of approval shall not exceed allowed regulation, as specified in the Act and Subsection (A) above.

(C) In accordance with the Act [§4413(b)], public utility power generating plants and transmission facilities regulated by the Vermont Public Service Board (under 30 V.S.A. § 248) are specifically exempted from these regulations.

Section 4.12 Salvage Yards

(A) New or expanded salvage yards may be permitted within designated zoning districts subject to conditional use review under Section 5.4 and the following requirements:

(1) Salvage yards shall meet all setback standards for the district in which the yard is located and shall be set back at least 75 feet from surface waters and wetlands. Required setbacks may be increased as appropriate based on specific site conditions, and to protect water quality and neighboring properties;
(2) Yards shall be screened as appropriate from public view and from adjoining residential properties;
(3) Salvage yards shall be secured as necessary to protect public health, safety, and welfare, and neighboring properties. Exterior lighting shall be the minimum required for security and safe operation;
(4) Conditions and limitations may be imposed with regard to traffic generated, hours of operation, and the on-site storage of hazardous materials in order to protect neighboring properties, public infrastructure including roads, and the character of the area in which the yard is located; and

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(5) All salvage yards must be certified by the State and must meet the requirements of 24 V.S.A. § 2241-2283; and
(6) All salvage yards shall be responsible for all upkeep and maintenance of fences, screening, and other required site improvements, and the proper storage of salvaged and hazardous materials, as required under municipal and state regulations, and associated conditions of approval.

(B) All materials shall be removed from the site within 12 months of the cessation or abandonment of operations and the site shall be restored to a safe, usable condition. Site restoration, including the clean-up and disposal of hazardous materials, shall be subject to state and federal laws. A site restoration plan may be required as a condition of approval.

Section 4.13 Telecommunications Facilities

(A) Purpose. The purpose of this section is to protect the public health, safety, general welfare and scenic character of the Town, while accommodating the communication needs of residents and businesses. The intent of these regulations is to:

(1) Preserve the character and appearance of the Town while allowing adequate telecommunication services to be developed;
(2) Minimize the impact of telecommunications facilities on the scenic, historic, environmental, natural and human made resources and property values of the Town;
(3) Provide standards and requirements for the siting, design, appearance, construction, monitoring, modification, and removal of telecommunications facilities;
(4) Minimize tower and facility proliferation by requiring the sharing of existing communications facilities, towers and sites where possible and appropriate;
(5) Facilitate the provision of wireless telecommunications services to the residences and businesses of the Town;
(6) Minimize the adverse visual effects of towers and other facilities through careful design and siting standards; and
(7) Encourage, through performance standards and incentives, the location of towers and antennas in non-residential areas and away from other sensitive areas such as schools, hospitals and childcare facilities;
(8) Conform to the objectives and principles set forth in the Middlesex Town Plan.

(B) **Consistency with Federal Law**. In accordance with the Telecommunications Act of 1996 and other federal law, these regulations shall not be interpreted in a manner that would:

(1) Prohibit or have the effect of prohibiting the provision of wireless telecommunications services; Unreasonably discriminate among providers of functionally equivalent services; or
(2) Regulate wireless telecommunications services on the basis of the environmental effects of radio frequency emissions to the extent that the regulated services and facilities comply with the Federal Communications Commission (FCC) regulations concerning such emissions.

(C) **Applicability**: Telecommunications facilities shall include all facilities subject to licensing or regulation by the FCC, including towers, associated accessory structures, buildings and/or equipment, except as specifically exempted under subsection (D) below. New, modified or expanded telecommunication facilities, except as specified for small scale facilities under subsection (E) below, may be allowed in designated zoning districts as conditional uses subject to review under Section 5.4 and the requirements of this section; However,

(1) A new tower shall not be permitted unless it is found by the ZBA that the equipment planned for the proposed tower cannot be accommodated on an existing approved tower, building or structure;
(2) No towers are allowed within the exclusion areas identified in subsection (I) below.
The ZBA can hire qualified person(s) to conduct an independent technical review of applications filed under this section and can require the applicant to pay for all reasonable costs thereof.

(D) **Exemptions**. The following are specifically exempted from the provisions of this section:

(1) A single ground or building mounted radio or television antenna or satellite dish not exceeding 36 inches in diameter which is intended solely for residential use, and does not, as mounted, exceed 35 feet in height above the lowest grade at ground level;
(2) Citizens band radio antennas operated by federally licensed amateur radio operators which do not exceed a height of 50 feet above the grade level, whether free standing or mounted, and which meet all setback requirements for the district in which they are located; and
(3) Replacement of telecommunications facilities operated by public (municipal, state or federal) or not-for-profit emergency service providers (e.g., fire, ambulance) in association with their duties.

(E) **Small Scale Facilities.** Notwithstanding other provisions under this section or Article 5, the following may be permitted in any zoning district by the ZA in accordance with Section 7.2 without conditional use approval:

(1) Small scale wireless telecommunications equipment, including antennas, microcells or repeaters, which are to be installed on existing towers, utility poles, or other structures, or the installation of ground facilities less than 20 feet in height, provided that:
    (a) such device is located a minimum of 50 feet from an existing residence;
    (b) no changes are made to the height or appearance of such structure except as required for mounting;
    (c) the height of the facility as mounted does not extend the total height of the structure by more than 10 feet;
    (d) no panel antenna shall exceed 72 inches in height or 24 inches in width;
    (e) no dish antenna shall exceed 3 feet in diameter; and
    (f) any accompanying equipment shall be screened from view.
(2) Wireless communications facilities designed for temporary use, provided that:
    (a) the temporary facility is permitted for the duration of the intended use or event, as specified in the permit, which shall not exceed 60 days, and is removed immediately upon the expiration of the permit; and
    (b) the height of the facility does not exceed 50 feet from grade, and the facility complies with all other provisions of these regulations.

(F) **Application Requirements**. In addition to the requirements under Section 5.3, applications for new towers shall also include the following:

(1) the name and address of the applicant, landowners of record and agents, and contact information for the person(s) authorized to operate, maintain and ensure the safety of the facility;
(2) information regarding existing coverage, the feasibility of using repeaters or microcells on existing structures to achieve desired coverage, the availability of other towers, buildings and structures located within 5 miles of the proposed site, and written documentation from other facility owners that no suitable sites are available;
(3) a site plan showing the footprint of all proposed facilities, including towers and accessory structures, and proposed access roads, in relation to existing site features and adjoining properties;

(4) a report from a qualified and licensed professional engineer which describes facility height, design, construction and capacity, including cross-sections, elevations, potential mounting locations, and fall zones;
(5) a letter of intent committing the tower owner and his/her successors to allow shared use of the facility if an additional user agrees in writing to meet reasonable terms and conditions for shared use;
(6) written documentation that the proposed tower shall comply with all requirements of the FCC and the Federal Aviation Administration (FAA); and
(7) any additional information as needed to determine compliance with the provisions of these regulations, including but not limited to visual impact assessments or independent evaluations of the proposed facility, to be paid for by the applicant.

(G) **Findings.** No tower or wireless telecommunications facility shall be erected, constructed or installed without first obtaining a conditional use approval from the ZBA. In approving an application for conditional use, the ZBA must determine that the proposed facility, or modification to an existing facility, is in compliance with the standards set forth in Section 5.4 and Subsection (H) below. In addition, the ZBA shall, in consultation with independent consultant(s) if appropriate, make all of the following applicable findings before granting the conditional use approval:

(1) the applicant is not already providing adequate coverage and/or adequate capacity to the Town;
(2) the applicant is not able to use existing tower/facility sites either with or without the use of repeaters to provide adequate coverage and/or adequate capacity to the Town;
(3) the applicant has endeavored to provide adequate coverage and adequate capacity to the Town with the least number of towers and antennas which is technically and economically feasible;
(4) good faith efforts have been made to locate new towers adjacent to existing towers;
(5) the applicant has agreed to rent or lease available space on the tower, under the terms of a fair-market lease, with reasonable conditions and without discrimination to other wireless telecommunications providers; and
(6) the proposed facility complies with rules as adopted in FCC 97-303 and procedures outlined in FCC Bulletin 65 regarding emissions and exposure from electromagnetic radiation, and that the required monitoring program has been developed and shall be paid for by the applicant.

(H) **Telecommunication Facility Standards.** In addition to the required findings described under Subsection (G) above, the ZBA shall ensure that all proposed telecommunications facilities comply with the following standards:

(1) **Compliance with Federal Regulations.** Telecommunication facility construction and wiring shall meet all state and federal requirements, including FCC requirements for transmissions, emissions and interference. No telecommunication facility shall be located or operated in such a manner that it poses a potential threat to public health or safety. Prior to the siting of new antennas at existing sites, a cumulative Radio Frequency Radiation (RFR) emissions study shall be performed by the applicant to certify FCC compliance;
(2) **Colocation Requirements.** New towers shall be designed to accommodate the collocation of both the applicant's antennas and comparable antennas for one or more additional users, depending on tower height. Towers must be designed to allow future rearrangement of antennas, and to accept antennas mounted at varying heights;
(3) **Setbacks.** No wireless telecommunication facility shall be located within 500 feet of an existing residence. Towers shall be set back from all property lines and public rights of-way for a distance equaling their total height, including attached antennas, unless otherwise permitted by the ZBA in accordance with the following:

(a) if tower design and construction guarantees that it will collapse inwardly upon itself, and that no liability or risk to adjoining private or public property shall be assumed by the municipality; or

(b) to allow for the integration of a tower into an existing or proposed structure such as a church steeple, light standard, utility pole, or similar structure, to the extent that no hazard to public health, safety or welfare results;

(4) **Access Roads and Utilities:** Access roads, and all accessory utility buildings and structures shall be designed to follow natural contours, aesthetically blend in with the surrounding environment, and meet all other minimum requirements for the zoning district in which they are located. Utility lines (e.g., power) serving telecommunications facilities shall follow access roads and not involve extensive clearing; the ZBA may require that such utilities be buried where they are likely to otherwise have an adverse visual impact;

(5) **Landscaping/Screening** Ground-mounted equipment shall be screened from view. The ZBA may require increased setback, landscaping and screening as appropriate based on site conditions, to protect neighboring properties and uses;

(6) **Fencing and Signs**: Towers shall be enclosed by security fencing at least 6 feet in height, but not greater than 12 feet in height, and shall be equipped with appropriate anti-climbing devices. The ZBA may require that appropriate landscaping materials be planted adjacent to the security fence to screen it from view of neighboring properties and public roads. The use of any portion of a tower for signs other than warning or equipment information signs is strictly prohibited;

(7) **Building Design**: Communication equipment shelters and accessory buildings shall be designed to be architecturally similar and compatible with each other, and shall be no more than 12 feet high. Whenever possible, the buildings shall be joined or clustered so as to appear as one building;

(8) **Tower Height and Visual Impacts.** New telecommunications facilities, including towers, shall be sited and designed to minimize their visibility and not result in an undue adverse impact on the town's scenic landscape. In no case shall a tower and all associated telecommunications facilities exceed a height of 180 feet, although the Z BA may impose conditions regarding the location, height and design of the structure, including a reduction of tower height, in accordance with the following:

(a) The ZBA may require an assessment of potential visual impacts from specified vantage points. In determining whether a facility's impact on scenic resources would be undue and adverse, the Board will consider the period of time during which the proposed tower would be viewed by the traveling public on a public highway;

i. the frequency of the view experienced by the traveling public;

ii. the degree to which the tower would be screened by existing vegetation, the topography of the land, and existing structures;

iii. background features in the line of sight to the proposed tower that obscure the facility or make it more conspicuous;

iv. the distance of the proposed tower from the vantage point and the proportion of the facility that is visible above the skyline;

v. the sensitivity or unique value of a particular view affected by the proposed tower, including scenic features or landscapes identified in the Middlesex Town Plan and/or through a site assessment; and

vi. the potential disruption to a view shed that provides context to a historic or scenic resource.

(b) Any tower designed to accommodate a single provider shall not exceed a maximum height of 100 feet. The ZBA may allow taller towers, in accordance with these standards, up to the maximum of 180 feet, to encourage collocation and discourage multiple facilities;

(c) No tower shall be located on an unforested hilltop or ridgeline, Telecommunications facilities should be installed in forested settings wherever feasible. No tower, antenna and/or associated fixtures or equipment shall exceed a height of 20 feet greater than the average height of the canopy measured within a 200 feet radius of the facility. A management plan

may be prepared and submitted to the ZBA to ensure that the adjoining tree cover will be maintained to create the visual impression of the tower and/or associated equipment emerging from a largely unbroken tree canopy and protruding no more than 20 feet above that canopy;

(d) Telecommunications facilities shall not be illuminated by artificial means and shall not display strobe lights; and

(e) Telecommunications facilities shall be designed to blend into the surrounding environment, to the greatest extent feasible, through the use of natural topography, existing vegetation, landscaping and screening, the use of compatible materials and colors, and/or other camouflaging techniques. Camouflaging techniques which may be required by the ZBA include designing the facility to mimic natural or architectural features, depending upon the context of the surrounding landscape and applicable zoning districts;

(9) **Use of Repeaters**: The use of repeaters to assure adequate coverage, or to fill holes within areas of otherwise adequate coverage, while minimizing the number of required facilities is encouraged. Applicants shall detail the number, location, power output and coverage of any proposed repeaters in their systems and provide engineering data to justify their use;

(10) **Coverage Area**: Not more than 50% of the primary coverage from the proposed facility may be located outside of Middlesex unless the applicant can demonstrate an inability to locate within the town(s) which is primarily receiving service from the proposed facility; and

(11) **Alternative Sites**: The ZBA shall have the authority to impose conditions consistent with the purpose of this section in approving a proposed facility. The ZBA may designate an alternative location for the tower to be evaluated by the applicant if it is determined that the proposed location would result in undue adverse aesthetic impacts. In consideration of this, the applicant may revise its application to include such a site, assuming it is available to the applicant and reasonably technically feasible to meet the applicant's communication objectives.

(I) **Prohibited Locations:** Telecommunication facilities are expressly prohibited within the Telecommunications Facility Exclusion Area depicted on the Official Zoning Map. Exclusion areas include all land above an elevation of 1,400 feet on Dumpling Hill and all land above an elevation of 1,500 feet in the main range of the Worcester Mountains;

(J) **Documentation of Denial**. In accordance with federal regulations, any decision by the ZBA to deny an application for a conditional use under this section shall be written and supported by substantial evidence contained in a record.

(K) **Mandatory Conditions**. All permits granted under this section shall contain the following conditions:

(1) The permittee shall demonstrate annually that he or she is in compliance with all FCC standards, regulations and requirements regarding RFR, and provide to the ZBA the basis for his or her representation. The permittee shall provide a list of the most recent RFR readings at the site, their distances from the tower/transmitter, dates of the readings, and the name of the person or company who took the readings.

(2) The owner of a facility shall annually, on January 15, file a declaration with the ZA certifying the continuing safe operation of every facility installed subject to these regulations. Failure to file a declaration shall mean that the facility is no longer in use and considered abandoned. An owner who has failed to file an annual declaration with the ZA by January 15 may, by February 15, file a declaration of use or intended use and may request the ability to continue the use of the facility/tower.

(3) Before testing or operating a new service or change in existing service, the telecommunications provider shall notify the Town at least 10 calendar days in advance of the change and allow the Town to monitor interference levels during that testing process.

(L) **Removal.** Within 12 months of the cessation of operations of the site all abandoned, unused, obsolete, or noncompliant telecommunications facilities, including towers, accessory structures and/or equipment shall be removed, and the site shall be restored to its original appearance. A copy of the relevant portions of any signed lease which requires the applicant to remove the tower and associated facilities shall be submitted at the time of application. A bond or other form of surety acceptable to the SB may be required to ensure tower maintenance or removal and site reclamation.

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ARTICLE 5. DEVELOPMENT REVIEW

Section 5.1 Applicability

(A) Before a zoning permit under Section 7 is issued one or more of the following development review procedures may apply:

(1) Conditional Use Review;
(2) Site Plan Review;
(3) Flood Hazard Area Review; and/or
(4) Planned Residential Developments (PRDs) and Planned Unit Developments (PUDs)

Section 5.2 Review Coordination

(A) Where an application requires both site plan review and conditional use review, the ZBA shall consider the application for conditional use approval pursuant to Section 5.4, act to approve or disapprove it, and provide its written findings and conditions to the PC for consideration in its deliberations under Section 5.5. The following should be considered**:**

(1) Conditional use review typically requires compliance with standards addressing the impact of proposed land uses on adjacent properties, the neighborhood or district in which the project is located. Standards and conditions emphasize those considerations in which off-site impacts of a proposed project can be identified, avoided and/or mitigated.

(2) Site plan review typically requires that a project be consistent with the purpose and character of the district within which it is located. Standards and conditions emphasize those considerations related to internal layout of the site, its physical design, and its functional integration with surrounding properties and uses.

(B) Specific uses subject to both flood hazard review and conditional use review shall be reviewed concurrently in accordance with Section 5.4 and 5.6 by the ZBA.

Section 5.3 Application Requirements

(A) **Development Plan**. An applicant for conditional use review or site plan review shall submit, in addition to a zoning permit application under Section 7.2, one original and two complete copies of a development plan and any supporting information, and include the following:

(1) the names and addresses of the property owner(s) of record, the applicant if different from the property owners, and the person(s) or firm preparing the application and plan;

(2) the names and addresses of all adjoining property owners, as determined from the current Grand List and any applicable property transfers since the date of the current Grand List. Proof of written notification to all adjoining property owners notifying them of the application, in accordance with Act [§ 4464(a)].

(3) a project location map showing the location of proposed development in relation to other properties, surface waters, land uses, roads and utilities within the vicinity of the project; and

(4) a site development plan, drawn to scale, which shows the following, unless specifically waived by the PC or ZBA:
   (a) title block, north arrow, scale, and the application date;
   (b) existing and proposed property boundaries, easements and rights-of-way;

(c) designated zoning district boundaries, including overlay districts;
(d) site features, including contours, prominent topographic features and areas of steep slope (in excess of 25%); government designated surface waters, mapped wetlands and associated setback distances; designated floodplain areas; land cover, including tree lines; designated water supply source protection areas; critical habitat areas; and designated archaeological and/or historic sites;
(e) the location of existing and proposed structures and facilities, including building footprints and elevations, walls and fence lines, utilities, roads, driveways, parking and loading areas, and pedestrian paths;
(f) proposed traffic and pedestrian circulation patterns, including access points to adjoining properties, public roads and public waters;
(g) the location of proposed or existing water supply and wastewater disposal systems and design details; and
(h) proposed grading, drainage, landscaping, screening, signs, and lighting details;

(5) a project schedule, including the sequence of construction and a schedule for the completion of each phase of development, including site clearing and preparation, building construction, the installation of roads, driveways, parking areas, utilities, facilities and landscaping, and site reclamation, as applicable to the development; and

(6) any additional information requested by the PC or ZBA to determine project conformance with the provisions of these regulations (e.g., erosion control, storm water management or site reclamation plans; or traffic, fiscal or visual impact analyses).

(B) The application shall not be considered complete until all required forms, information and associated fees have been submitted. The PC and/or ZBA may waive one or more application requirements upon determination that the information is unnecessary for review of the application.

5.4 Conditional Use Review

(A) **Applicability**. Any use or structure requiring conditional use approval shall not be issued a zoning permit by the ZA until the ZBA grants such approval in accordance with the Act [§4414(3)], and these regulations. Conditional use review by the ZBA under this section shall apply only to those uses designated as conditional uses in Article 2 or as otherwise specified in these regulations.

(B) **Review Process**. Upon determining that the application is complete, the ZBA shall schedule a public hearing, warned in accordance with the Act [§ 4464(a)]. The ZBA shall act to approve, approve with conditions, or deny an application for conditional use review within 45 days of adjournment of the final public hearing; and shall issue a written decision. The written decision shall include a statement of the factual bases on which the ZBA made its conclusions, a statement of those conclusions, any conditions imposed on the applicant, and shall specify the period of time within which the decision may be appealed to the Environmental Court. Failure to act within the 45 day period shall be deemed approval. The decision shall be mailed, via certified mail, to the applicant within the 45 day period. Copies of the decision shall also be mailed to every person or body appearing and having been heard at the hearing, and a copy of the decision shall be recorded in accordance with section 7.8(D).

(C) **General Standards**. Conditional use approval shall be granted by the ZBA upon finding that the proposed development will not result in an adverse effect on the following:

(1) **Site Features.** Site layout and design, to the extent feasible, shall protect significant site features, such as, surface waters, wetlands, critical habitat areas and associated buffers, ridgelines, hilltops, areas of steep slope (>25%) areas, primary agricultural and forest soils, existing farm

and pasture land, historic sites and structures, tree lines, walls and fences. The ZBA may impose conditions to protect existing site features such as increased setback and buffers.

(2) **Access**. Provisions should be made for adequate and safe access from the site to maintained public or private roads in accordance with Section 3.2. The ZBA may require that access be shared between adjoining properties and/or uses, and may require the reduction, consolidation or elimination of noncomplying accesses. Requirements for shared access shall be made either at the time of site plan approval if similar provision has been made on contiguous parcels, or contingent upon future development of neighboring properties.

(3) **Circulation**. Provision shall be made for adequate and safe on-site vehicular and pedestrian circulation, in relation to the intended use and the location of buildings and parking areas. The ZBA may require clearly marked travel lanes, pedestrian crossings, and pedestrian paths connecting buildings, parking areas, and adjoining properties to ensure vehicular and pedestrian safety and convenience.

(4) **Parking, Loading, Service & Outdoor Storage Areas**. Provisions should be made for on-site parking, loading and outdoor service areas shall be provided. The ZBA may impose conditions with regard to the extent, siting, landscaping, screening, paving, curbing and sharing of parking, loading and outdoor service areas to ensure site safety, function, and to avoid or minimize adverse off-site impacts.

(5) **Layout & Site Design.** The location and orientation of structures on the site will be consistent with their proposed setting and context, as determined from the Town Plan zoning district objectives, existing site conditions and features, adjoining or facing structures in the vicinity, and setback and buffering requirements. The ZBA may impose conditions with regard to structure siting, orientation, and setbacks to ensure development is compatible with its setting and context.

(6) **Landscaping & Screening**. Provisions shall be made that are consistent with the existing site conditions to incorporate landscaping and screening which is suited to existing site conditions, enhances development and features unique to the site, integrates the development and site with surrounding properties, serves to buffer or screen incompatible development, and outdoor storage or service areas from neighboring properties and public rights-of-way.

(7) **Storm Water Management & Erosion Control**. Provisions shall be made for storm water management and erosion control.

(8) **Lighting**. Information regarding the location, type and level of illumination of all outdoor lighting shall be provided. Exterior lighting shall be kept to the minimum required for safety, security and intended use and should be consistent with the character of the neighborhood in which it is located.

(9) **Bylaws in effect.** The ZBA shall determine whether the proposed development conforms to other regulations and ordinances currently in effect, including but not limited to the specific policies of the Town Plan. The ZBA shall not approve a proposed development that does not meet the requirements of other regulations and ordinances in effect at the time of application.

(10) **Sign Requirements.**

(a) There shall only be one sign per principal business or service.
(b) No sign shall be placed within a public right of way.
(c) All signs shall be maintained in a safe and secure condition.

(d) Signs shall comply with existing site conditions, character of the neighborhood. Lighting of signs shall comply with section 5.4(C)(8) and shall not be illuminated when the business is not open for business.

(e) Signs shall be no larger than 16 square feet.

(D) **Zoning District Standards.** All conditional uses shall comply with the dimensional, density, siting and associated standards for the district(s) in which the use or development is located, including overlay districts.

5.5 Site Plan Review

(A) **Applicability**. Site plan review by the PC under Section 5.5 shall be required for all development designated as a "Permitted Use" in Article 2, excluding single (one) and two family dwellings, agriculture and related farm structures, forestry, and development that is specifically exempted from review and permit requirements under Section 7.3. Site plan review standards and conditions are intended to ensure that building and site design is attractive, safe, functional and consistent with the purpose and character of the district within which it is located. Any use or structure requiring site plan approval shall not be issued a zoning permit by the ZA until the PC grants such approval in accordance with the Act [§ 4416], and the following standards and procedures.

(B) **Review Process**. Upon determining that the application is complete, the PC shall schedule a public hearing, warned in accordance with the Act [§ 4464(a)]. The PC shall act to approve, approve with conditions, or deny an application within 45 days of adjournment of the final public hearing and shall issue a written decision. The written decision shall include a statement of the factual bases on which the PC made its conclusions, a statement of those conclusions, any conditions, and shall specify the period of time within which the decision may be appealed to the Environmental Court. Failure to act within the 45 day period shall be deemed approval. The decision shall be mailed, via certified mail, to the applicant within the 45 day period. Copies of the decision shall also be mailed to every person or group appearing and having been heard at the hearing, and a copy of the decision shall be recorded in accordance with section 7.8(D).

(C) **General Standards**. The PC shall consider and may impose appropriate conditions:

(1) **Site Features.** Site layout and design, to the extent feasible, shall protect significant site features, such as, surface waters, wetlands, critical habitat areas and associated buffers, ridgelines, hilltops, areas of steep slope (>25%) areas, primary agricultural and forest soils, existing farm and pasture land, historic sites and structures, tree lines, walls and fences. The PC may impose conditions to protect existing site features such as increased setback and buffers.

(2) **Access**. Provisions should be made for adequate and safe access from the site to maintained public or private roads in accordance with Section 3.2. The PC may require that access be shared between adjoining properties and/or uses, and may require the reduction, consolidation or elimination of noncomplying accesses. Requirements for shared access shall be made either at the time of site plan approval if similar provision has been made on contiguous parcels, or contingent upon future development of neighboring properties.

(6) **Circulation**. Provision shall be made for adequate and safe on-site vehicular and pedestrian circulation, in relation to the intended use and the location of buildings and parking areas. The PC may require clearly marked travel lanes, pedestrian crossings, and pedestrian paths connecting buildings, parking areas, and adjoining properties to ensure vehicular and pedestrian safety and convenience.

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(7) **Parking, Loading, Service & Outdoor Storage Areas**. Provisions should be made for on-site parking, loading and outdoor service areas shall be provided. The PC may impose conditions with regard to the extent, siting, landscaping, screening, paving, curbing and sharing of parking, loading and outdoor service areas to ensure site safety, function, and to avoid or minimize adverse off-site impacts.

(8) **Layout & Site Design.** The location and orientation of structures on the site will be consistent with their proposed setting and context, as determined from the Town Plan zoning district objectives, existing site conditions and features, adjoining or facing structures in the vicinity, and setback and buffering requirements. The PC may impose conditions with regard to structure siting, orientation, and setbacks to ensure development is compatible with its setting and context.

(6) **Landscaping & Screening**. Provisions shall be made that are consistent with the existing site conditions to incorporate landscaping and screening which is suited to existing site conditions, enhances development and features unique to the site, integrates the development and site with surrounding properties, serves to buffer or screen incompatible development, and outdoor storage or service areas from neighboring properties and public rights-of-way.

(7) **Storm Water Management & Erosion Control**. Provisions shall be made for storm water management and erosion control.

(8) **Lighting**. Information regarding the location, type and level of illumination of all outdoor lighting shall be provided. Exterior lighting shall be kept to the minimum required for safety, security and intended use and should be consistent with the character of the neighborhood in which it is located.

(9) **Bylaws in effect.** The PC shall determine whether the proposed development conforms to other regulations and ordinances currently in effect, including but not limited to the specific policies of the Town Plan. The PC shall not approve a proposed development that does not meet the requirements of other regulations and ordinances in effect at the time of application.

(10) **Sign Requirements.**

(a) There shall only be one sign per principal business or service.
(b) No sign shall be placed within a public right of way.
(c) All signs shall be maintained in a safe and secure condition.
(d) Signs shall comply with existing site conditions, character of the neighborhood.
(e) Lighting of signs shall comply with section 5.4(C)(8) and shall not be illuminated when the business is not open for business.
(f) Signs shall be no larger than 16 square feet.

(D) **Zoning District Standards.** All permitted uses shall comply with the dimensional, density, siting and associated standards for the district(s) in which the use or development is located, including overlay districts.

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Section 5.6 Flood Hazard Areas

(A) **Development Review in Flood Hazard Areas** Conditional use approval by the ZBA, including the application of flood hazard area development standards, is required for all conditional uses within the Flood Hazard Area Overlay District. Table 2.7 lists the conditional uses in Flood Hazard Areas. These conditional uses shall be subject only to review under Section 5.6 and not under the conditional use standards of Section 5.4.

(1) **Permit.** Any development subject to the Town's jurisdiction in the designated Flood Hazard areas shall require a permit as provided for in this section. Development that requires conditional use approval, non-conforming use approval, or a variance from the ZBA, must have such approvals prior to the issuance of a permit by the ZA. Any permit issued will require that all other necessary permits from state or federal agencies will have been received prior to the commencement of any work.

(2) **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 Section B below, require only an administrative permit from the ZA:

(a) Non-substantial improvements,
(b) Accessory structures,
(c) Development related to on-site septic or water supply systems,
(d) Building utilities,
(e) At-grade parking for existing buildings, and
(f) Recreational vehicles.

(3) **Prohibited Development in Special Flood Hazard Area.** The following development is prohibited in Special Flood Hazard areas.

(a) New residential or non-residential structures (including the placement of manufactured homes);
(b) Storage or junk yards,
(c) New fill except as necessary to elevate structures above the base flood elevation;
(d) Accessory structures in the floodway,
(e) Critical facilities; and
(f) All development not exempted, permitted, or conditionally permitted.

(4) **Conditional Use Review.** Conditional use review and approval by the ZBA, is required prior to the issuance of a permit by the ZA for the following proposed development within the Special Flood Hazard Area:

(a) Substantial improvement, elevation, relocation, or flood proofing of existing structures;
(b) New or replacement storage tanks for existing structures,
(c) Improvements to existing structures in the floodway,
(d) Grading, excavation, or the creation of a pond;
(e) Improvements to existing roads,
(f) Bridges, culverts, channel management activities, or public projects which are functionally dependent on stream access or stream crossing, and
(g) Public utilities.

(5) **Exempted Activities.** The following are exempt from regulation under this section:

(a) The removal of a building or other structure in whole or in part;
(b) Maintenance of existing roads and storm water drainage;
(c) Silvicultural (forestry) activities conducted in accordance with the Vermont Department of Forests and Parks Acceptable Management Practices;

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(d) Agricultural activities conducted in accordance with the Vermont Department of Agriculture's Accepted Agricultural Practices. 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.

(6) **Variances.** Variances within the Flood Hazard Area may be granted in writing by the ZBA only in accordance with all the criteria in 24 V.S.A. § 4469, § 4424 (E), and 44 CFR Section 60.6, after a public hearing noticed as described in subsection (C) of this section.

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.

(7) **Non-Conforming Structures and Uses.** The ZBA may, after public notice and hearing, approve the repair, relocation, replacement, or enlargement of a nonconforming structure within a flood hazard area provided that:

(a) 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;
(b) Nonconforming structures or uses shall be considered abandoned where such structures or uses are discontinued for more than 12 months; and
(c) An individual manufactured home lot in an existing manufactured home park that is vacated shall not be considered a discontinuance or abandonment of nonconformity.

(B) Development Standards in Flood Hazard Areas 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.

(1) **Special Flood Hazard Area**

(a) All development shall be:
i. Reasonably safe from flooding;
ii. Designed, operated, maintained, modified, and adequately anchored to prevent flotation, collapse, release, or lateral movement of the structure;
iii. Constructed with materials resistant to flood damage;
iv. Constructed by methods and practices that minimize flood damage;
v. 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;
vi. Adequately drained to reduce exposure to flood hazards;
vii. Located so as to minimize conflict with changes in channel location over time and the need to intervene with such changes; and
viii. 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.

(b) In Zones AE, AH, and A1 – A30 where base flood elevations and/or floodway limits have not been determined, development shall not be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated encroachment, will not increase the base flood elevation more than one (1) foot at any point within the Town. The demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and certified by a registered professional engineer.

(c) 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.

(d) Non-residential structures to be substantially improved shall:

i. Meet the standards in 5.6(B)(1)(c) above; or

ii. Have the lowest floor, including basement, together with attendant utility and sanitary facilities be designed so that two (2) 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.

(e) Fully enclosed areas below grade on all sides (including below grade crawl spaces and basements) are prohibited.

(f) Fully enclosed areas that are above grade, below the lowest floor, below Base Flood Elevation (BFE) and subject to flooding, shall

i. Be solely used for parking of vehicles, storage, or building access, and such a condition shall clearly be stated on any permits; and

ii. 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. 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.

(g) Recreational vehicles must be fully licensed and ready for highway use.

(h) A small accessory structure of 500 square feet or less that represents a minimal investment need not be elevated to the BFE in this area, provided the structure is placed on the building site so as to offer the minimum resistance to the flow of floodwaters and shall meet the criteria in section 5.6 (B)(f)(ii) above.

(i) Water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

(j) 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.

(k) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(l) 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.

(m) 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.

(n) Subdivisions and PUDs must be accessible by dry land access outside the special flood hazard area.

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(o) 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 Flood Insurance Rate Maps "FIRM", or at least two feet if no depth number is specified.

(2) **Floodway Areas**

(A) 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:

i. Not result in any increase in flood levels (zero feet) during the occurrence of the BFE;

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

(B) 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.

(C) Administration

(1) **Application Submission Requirements**

(a) Applications for development shall include:

i. Where applicable, a site plan that depicts the proposed development, all water bodies, Special Flood Hazard Areas, floodways, any existing and proposed drainage, any proposed fill, and pre and post development grades, and the elevation of the proposed lowest floor, as referenced to the same vertical datum as the elevation on the current FIRM;

ii. An 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; and

iii. Where available, base flood elevations and floodway limits provided by the National Flood Insurance Program "NFIP" and in the Flood Insurance Study and accompanying maps shall be used where base flood elevations and/or floodway limits have not been provided by the NFIP 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

(2) **Referrals**

(a) Upon receipt of a complete application for a substantial improvement or new construction, the ZA shall submit a copy of the application and supporting information to the State NFIP Coordinator at ANR, in accordance with 24 V.S.A. § 4424. A permit may be issued only following receipt of comments from ANR, or the expiration of 30 days from the date the application was mailed to ANR, whichever is sooner.

(b) 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 ANR, and the Army Corps of Engineers. Copies of such notice shall be provided to the State NFIP Coordinator at ANR. A permit may be issued only

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following receipt of comments from ANR, or the expiration of 30 days from the date the application was mailed to the ANR, whichever is sooner. The ZA should consider comments from the NFIP Coordinator at ANR.

(3) **Records**

The ZA shall properly file and maintain a record of:

a. All permits issued in areas covered by this regulation;

b. Elevation Certificates with the as-built elevation (consistent with the datum of the elevation on the current FIRM for the community) of the lowest floor, including basement, of all new or substantially improved buildings (not including accessory buildings) in the Special Flood Hazard Area

c. All flood proofing and other certifications required under this regulation; and,

d. All decisions of the ZBA (including variances and violations) and all supporting findings of fact, conclusions and conditions.

(D) Certificate of Occupancy

In accordance with VSA Chapter 117 § 4449, it shall be unlawful to use or occupy, or permit the use or occupancy of any land or structure, or part thereof, created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure within Special Flood Hazard Area until a certificate of occupancy is issued therefore by the ZA, stating that the proposed use of the structure or land conforms to the requirements of these regulations. A certificate of occupancy is not required for structures that were built in compliance with the regulations 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 can not be issued, notice will be sent to the owner and copied to the lender.

(E) Enforcement and Penalties

a. This bylaw shall be enforced under these regulations in accordance with 10 VSA § 1974a, § 4451, and § 4452.

b. If any appeals have been resolved, but the violation remains, the ZA shall submit a declaration to the NFIP Administrator 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 regulation. Such violations shall also be immediately reported to the Secretary of Agriculture for enforcement under 6 V.S.A. § 4812.

(F) Warning of Disclaimer of Liability

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

(G) Definitions

The following definitions apply to Section 5.6 and Table 2.7

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

"Base Flood Elevation" (BFE) 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.

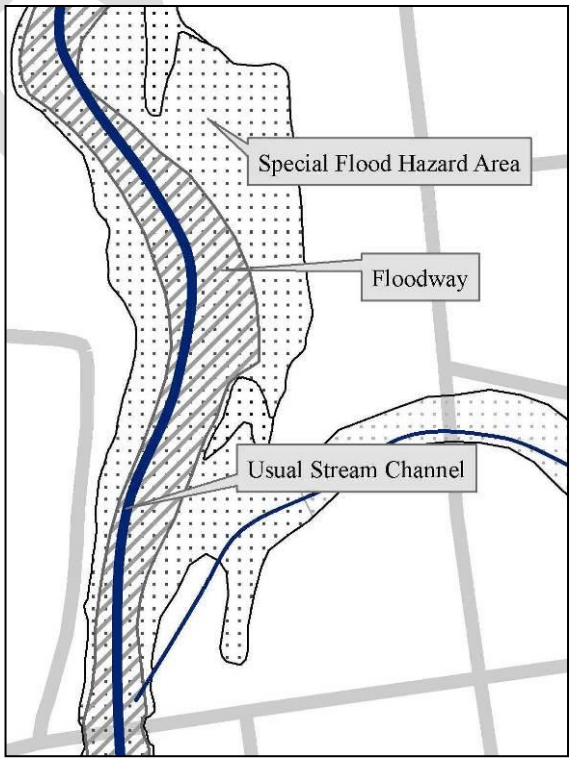
"Common Plan of Development" is where a structure will be refurbished over a period of time. Such work might be planned unit by unit.

"Critical Facilities" - 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 store or gas station.

"Development" 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" Any placed material that changes the natural grade, increases the elevation, or diminishes the flood storage capacity at the site.

"Flood" (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) 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 Town.

"Floodplain or flood-prone area" Any land area susceptible to being inundated by water from any source (see definition of "Flood").

"Functionally dependent use" A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water.

"Historic structure" Any structure that is: (a) listed individually in the National Register of Historic Places (a listing maintained by the United Sstates 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 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; 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 in states without approved programs.

"Letter of Map Amendment (LOMA)" A letter issued by the Federal Emergency Management Agency (FEMA) 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.

"Manufactured home (or Mobile home)" 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" 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.

"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" 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. 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 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 of whether that alteration affects the external dimensions of the building.

"Structure" A walled and roofed building, as well as a manufactured home, and any related built systems, including gas or liquid storage tanks.

"Substantial damage" 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" Any reconstruction, rehabilitation, addition, or other improvement of a structure after the date of adoption of this section, the cost of which, over three years, 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" The failure of a structure or other development to be fully compliant with Section 5.6. 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.

Section 5.7 Planned Residential Developments (PRDs) and Planned Unit Developments (PUDs)

(A) **Purpose**. In accordance with the Act [§4417], two categories of Planned Developments are established: Planned Residential Developments (PRDs) and Planned Unit Developments (PUDs). PRDs are allowed in all zoning districts excluding the Industrial District. PUDs are allowed in the Village District, Mixed Use District and Industrial District. Both PRDs and PUDs are intended to allow for innovative and flexible design and development that will promote the most appropriate use of land, and specifically achieve one or more of the following objectives:

(1) to encourage compact, pedestrian-oriented development and re-development, and to promote a mix of residential uses or nonresidential uses, or both, especially in downtowns, village centers, new town centers and associated neighborhoods;
(2) to implement the policies of the Town Plan, such as the provision of affordable housing;
(3) to encourage any development to be compatible with the use and character of surrounding rural lands;
(4) to provide for flexibility in site and lot layout, building design placement and clustering of buildings, use of open areas, provision of circulation facilities, including pedestrian facilities and parking, and related site and design considerations that will best achieve the goals for the area as articulated in the Town Plan and these regulations within the particular character of the site and its surroundings;

(5) to provide for the conservation of open space features recognized as worthy of conservation in the Town Plan and Land Use and Development Regulations, such as the preservation of agricultural land, forest land, trails, and other recreational resources, critical and sensitive natural areas, scenic resources, and protection from natural hazards;
(6) To provide for efficient use of public facilities and infrastructure; and
(7) To encourage and preserve opportunities for energy-efficient development and redevelopment.

(B) Review Procedure. A PRD or PUD shall be reviewed under Article 6, Subdivision Review. Additionally, PRD or PUD application shall include a statement describing any proposed modifications, changes or supplements to requirements of these regulations. Modifications, changes or supplements to these regulations approved by the PC shall be noted in writing and filed in the Town Land Records. Any requirement of these regulations not specifically modified shall remain in effect and be applicable. PRD and PUD standards and procedures may be applied, at the request of the applicant, to the subdivision of any size parcel in all zoning districts.

(C) Coordination with Conditional Use Review. Approval granted by the PC for a PRD or PUD involving the development subject to conditional use review shall not exempt the proposed development from subsequent ZBA review. The ZBA shall incorporate any conditions of subdivision and PRD or PUD approval.

(D) General Standards. The modification of the requirements of the zoning regulations by the PC may be permitted in accordance with the following standards:

(1) The PRD or PUD shall meet all applicable standards in Article 6 and shall be consistent with the Town Plan and municipal regulations and ordinances. The PRD or PUD shall also meet local and state regulations for sewage disposal and the protection of water quality.

(2) The PRD or PUD shall include provisions as appropriate for the preservation or protection of surface and ground waters; wetlands and floodplains; significant topographic features, including hilltops and ridgelines; areas of steep slope or shallow soil; significant resource lands, including agricultural and forest land; historic or archaeological sites and structures; natural and critical habitat areas; and open spaces, and scenic views.

(3) The PC may allow for a greater concentration or intensity of development within some section(s) of the development than in others, on individual lots which are smaller than the minimum lot size for the district within which the PRD or PUD is located, provided that there is an offset by a lesser concentration in other sections of the development.

(4) The minimum front, side and rear yard setbacks at the periphery of the PRD or PUD shall be as required for the particular district unless otherwise specified by the PC. The PC may allow other setback standards, such as zero lot lines.

(5) Provision shall be made for the preservation of open space within the Medium Density Residential, Rural Residential and Conservation Districts. Preserved open space shall be deemed, either in fee or through a conservation easement to the Town, a community association comprising all of the present and future owners of lots or dwellings in the project, or a non-profit land conservation organization. Such easements must be approved by the PC. Land held in common shall be subject to appropriate deed restrictions stipulating the permitted and restricted use of such lot, and establishing the person(s) or entity responsible for maintenance and long-term stewardship. The PC shall approve the location, size and shape of lands set aside to be preserved for open space in accordance with the following:

a. Open space land shall provide for the protection of identified resources, including farmland, productive forest, wildlife habitat, natural areas, aquifer protection areas, surface waters, stream banks, historic and archaeological sites, and scenic views and vistas;

b. Designated open space may include the portion of a single lot which is characterized by one or more of the above-referenced features, or may encompass the contiguous boundaries of the above referenced feature located on multiple lots;

c. The location, shape, size and character of the open space shall be suitable for its intended use. Generally, open space shall be at least 50% of the total area for projects involving a parcel(s) of 25 acres or more. For smaller parcels, open space should be in proportion to the size and scope of the project, and its intended use;

d. Open space shall be suitably improved and/or maintained for its intended use, except for open space containing natural or cultural resources worthy of preservation that may be required to be left unimproved. Provisions shall be made to enable lands designated for agriculture and forestry to be used for those purposes. The PC as appropriate may require management plans for forests and/or wildlife habitat. Areas preserved for agricultural and/or forestry use should be of a size that retains their eligibility for state and town tax abatement programs;

e. Open space land shall be located so as to conform with and extend existing and potential open space lands on adjacent parcels; and

f. Sewage disposal areas and utility and road rights-of-way or easements, access and parking areas shall not be counted as open space areas, except where the applicant can prove, to the satisfaction of the PC, that they will in no way disrupt or detract from the values for which the open space is to be protected.

(6) Provision for the preservation of open space should also be made within the Village and Mixed Use Districts. In these districts, which are intended to accommodate compact development at higher densities than in more rural residential and conservation districts, open space should be integrated into compact development patterns and be designed as formal green spaces, such as "village greens," pathways and trails, parkland and playgrounds, intended to serve the proposed development.

(1)

(7) Where a district boundary line divides a parcel, the PC may allow the development of a single PRD or PUD with a total density based on the combined allowable density of each district.

(2)

(8) Two or more contiguous parcels under the ownership or control of the applicant may be combined for review as a PRD or PUD. The permitted density on one parcel may be increased as long as the overall density for the combined parcels does not exceed that which could be permitted, in the PC's judgement, if the land were subdivided into lots in conformance with district regulations;

(E) **Specific Standards to Planned Residential Developments**. In addition to the general standards under subsection (D) above, PRDs shall also meet the following standards:

(1) The total number of dwelling units shall not exceed that which would be permitted in the PC's judgement if the parcel were subdivided into buildable lots in conformance with the district minimum lot area required for single family dwellings. The PC may, however, grant a density bonus increasing the number of dwelling units allowed in a PRD in accordance with the following:

a. The PC may grant a density increase of up to 25% of the allowable number of units in instances in any district in which a significant portion (75% or greater) of the site is preserved as open space and/or the PC determines that the PRD reflects an exceptional site design that will result in

the preservation of important natural resources and the creation of such amenities as pedestrian paths, parkland and/or playgrounds.

b. The PC may grant a density increase of up to 50% of the allowable number of units in any district in instances in which not less than 50% of the total number of dwelling units created are Affordable Housing units, as defined in Appendix 1, Section 2.

c. The PC may grant a density increase of up to 50% of the allowable number of units in the Conservation District in instances in which not less than 50% of the site is preserved as open space. For the purpose of granting a density bonus within the Conservation District, the 50% density bonus will be applied to the maximum fractional number of dwelling units that may be allowed based upon the maximum density allowed in the district, to be rounded down to the nearest whole number after the bonus is applied (e.g., a 30 acre parcel may have 1.5 units x 50% bonus = 2.25 units/lots, rounded to 2 units/lots).

(2) A PRD shall include only residential uses and associated accessory structures and uses allowed within the district in which the PRD is located. The dwelling units permitted may, at the discretion of the PC, be of varied types, including single-family, two-family, or multi-family construction, and may be attached or detached.

(F) **Specific Standards to Planned Unit Developments**. In addition to the general standards under subsection (D) above, PUDs shall also meet the following standards:

(1) The total number of allowable residential units and/or commercial or industrial space within the PUD shall not exceed the number which could be permitted in the PC's judgement, if the land were subdivided into lots in conformance with the zoning regulation for the district in which the project is located.

(2) A PUD may include any permitted or conditional uses allowed in the district in which it is located. Multiple principal structures and/or uses on a lot, or multiple ownership of a single structure may be permitted.

(3) Principal buildings and mixed uses shall be arranged to be compatible, and buffered as appropriate to ensure visual and acoustical privacy for the residents of the development and for adjacent properties.

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ARTICLE 6. SUBDIVISION REVIEW

Section 6.1 Applicability

(A) Whenever a subdivision is proposed, the subdivider shall apply for and secure approval in accordance with these regulations prior to:

(1) commencing any construction, land development, site preparation, or land clearing (excluding forestry or agricultural activities);
(2) the issuance of any permit for any land development involving land to be subdivided;
(3) the sale or lease of any subdivided portion of a property; and/or
(4) filing a subdivision plat in the land records of the Town.

(B) **Exemptions**. The following are exempted from subdivision review :
(1) parcels leased for agricultural or forestry purposes where no permanent roads or structures are established;
(2) rights-of-way or easements which do not result in subdivision of land; and
(3) boundary adjustments between existing or proposed parcels which do not create new or nonconforming lots or uses.

(C) **Classification of Minor and Major Subdivisions.**
(1) **Minor subdivisions** are to be reviewed by the ZA under Section 6.2, 6.3, and 6.4 and include:

a. the subdivision of land or the resubdivision of a previously subdivided parcel which results in the creation of a total of three or fewer lots within any five year period;
b. an amendment to an approved subdivision which does not substantially alter the subdivision nor result in the creation of a major subdivision; and
c. the creation of a lot which does not meet minimum frontage or access requirements, which is subject to approval under Section 3.2.

(2) **Major subdivisions**, to be reviewed by the PC under Section 6.2, 6.3 and 6.5 and include:
a. the subdivision of land or the resubdivision of a previously subdivided parcel which results in the creation of a total of four or more lots within any five-year period and/or involves the construction of a new road;
b. an amendment to an approved subdivision which substantially alters the subdivision or conditions of approval or which results in the creation of a major subdivision or a new road; and
c. a planned residential development or planned unit development (PRD and PUD).

(D) **Coordination with Planned Residential Development or Planned Unit Development Review**. Applications for PRDs or PUDs shall be reviewed by the PC as subdivisions in accordance with Section 6.3 below and under Section 5.7 above.

Section 6.2 General Standards

(A) **Middlesex Town Plan & Regulations**. Subdivisions shall conform to the Middlesex Town Plan, these regulations, and all other Town regulations and ordinances in effect at the time of application.

(B) **District Settlement Patterns**. A subdivision shall be designed to achieve the purpose, objectives and desired settlement patterns of the zoning district(s) in which it is located. New subdivisions of land shall:

(1) maintain and extend desired settlement patterns, as defined in Article 2 and the Middlesex Town Plan. including lot areas and configurations, building locations, and road networks; and
(2) maintain contiguous tracts of open land with adjoining parcels.

(C) Density & Lot Size in the Rural Residential and Conservation Districts. The subdivision of parcels in the Rural Residential or Conservation District shall be subject to the density and lot size provisions set forth in Table 2.5 and Table 2.6, respectively, and the following requirements:

(1) **Density & Lot Size:**

a. **Minimum Lot Size**. A lot may be a minimum of 2 acres in Rural Residential or 4 acres in Conservation, provided that the balance of the acreage necessary to achieve the maximum density remains with one or more lot created at the time of subdivision. Such acreage shall not be used to calculate allowable density for any other use. For example: In Rural Residential a 30 acre parcel may be subdivided into 6 lots, in accordance with subsection (D), which may be comprised of five 2-acre lots and one 20 acre lot. In Conservation a 60-acre parcel may be subdivided into 6 lots, which may be comprised of five 4-acre lots and one 40-acre lot. No portion of the 20 or 40 lot may be used to comply with the density requirement for more than one dwelling or use.

b. **Residential Density.** With regard to the subdivision of any lot the maximum density shall not exceed one dwelling unit or other principal use for every 5-acres in Rural Residential or 10-acres in Conservation. The maximum number of dwelling units or other uses which may be developed on or subdivided from a parcel in existence as of date of passage to include existing dwelling units, shall be calculated by dividing the total area of the pre-subdivision parcel (in acres) by 5 or 10 acres/dwelling unit, and rounding downward to the nearest whole number.

(2) Applications for sketch plan review and final plat approval involving parcels located within the Rural Residential and/or Conservation District shall include a notation specifying the maximum allowable density before and after subdivision, and shall indicate which lot or lots carry the right of further subdivision and which lots cannot be further subdivided, as determined and limited by Table 2.5 or 2.6; and

(3) The PC shall maintain a master list of all subdivided parcels, separate from the Town's land records, indicating the total density allowed for the pre-existing parcel at the time of subdivision and the total density associated with each subdivided lot after subdivision.

(D) Lot Layout. Lot layouts shall:

1. be consistent with the suitability of land for development, as defined under Subsection (A) above;
2. conform to desired district settlement patterns, as required under subsection (B) above;
3. meet zoning district minimum lot size and density requirements under Article 2, except as modified for planned residential developments under Section 5.7;
4. conform to lot and yard requirements under Section 3.6;
5. avoid irregularly shaped lots (e.g., with curves, jogs, dog-legs, etc.) unless warranted due to topographic constraints or to minimize the fragmentation of natural, scenic or cultural features; and
6. avoid elongated "spaghetti lots" by ensuring that the maximum length of a lot is not greater than four times its width as measured at the lot's narrowest point.

(E) **Survey Monuments**. The locations of all proposed permanent surveying monuments and corner markers, as required under the Rules of the Board of Land Surveyors, shall be identified on the final subdivision plat.

(F) **Wastewater Systems**. All subdivisions requiring individual and/or community (clustered) systems, shall be designed in accordance with applicable state and municipal regulations. Sewage disposal areas may be required to be identified on the final plat.

Section 6.3 Subdivision Review

(A) **Subdivision Approval Requirement**. The ZA or PC shall review all subdivisions in accordance with the Act [§4418] and these regulations.

(B) **Waiver Authority** Pursuant to the Act [§ 4418] the ZA or PC may waive application requirements as specified in Table 6.1 or subdivision standards under this section which, in their judgment:

(1) are not needed to protect public health, safety, and general welfare,
(2) are inapplicable due to the inadequacy or lack of connecting facilities adjacent to or in proximity to the subdivision,
(3) would unnecessarily add to the cost of an Affordable Housing development as defined in Appendix 1, Section 2,
(4) the applicant is seeking a deferral under subsection 6.5(A)(5).

The request for a waiver shall be in writing and submitted with the subdivision application. The applicant shall provide sufficient information to justify the waiver, and to enable the ZA or PC to reach a decision. In granting waivers, the ZA or PC may require such conditions that will substantially meet the objectives of the requirements waived. No waiver may be granted if the waiver would undermine the intent and purpose of these regulations or other municipal ordinances and regulations.

(C) **Sketch Plan Review**. Prior to the submission of an application for a major subdivision review, the applicant may submit a sketch plan to the ZA for consideration by the PC at a regularly scheduled PC meeting.

(1) **Purpose**. The purpose of sketch plan review is to acquaint the PC with the proposed subdivision at an early stage in the design process, prior to the applicant incurring significant expense.

(2) One original and two copies of the sketch plan, which includes information specified in Table 6.1 should be submitted to the ZA for consideration by the PC at least 15 days prior to a regularly scheduled PC meeting.

(3) **Effect.** The PC may offer comments and recommendations at the meeting or within 30 days of the date of the meeting provide comments and recommendations to the applicant in writing. Such comments are advisory, shall not constitute an appealable decision or action of the PC, and shall not be binding on subsequent major subdivision review.

Section 6.4 Minor Subdivision Review.

An application for subdivision approval including applicable fees shall be made on forms provided by, and filed, with the ZA. The application shall include the information specified in section A of Table 6.2. The application must include in writing any requested waivers to be considered under Subsection 6.3 (B). The ZA shall review the application without the need for a public hearing, but may forward the application to the PC for its review. A boundary survey by a registered surveyor shall be recorded within 180 days after approval of the application in the Town land records.

Section 6.5 Major Subdivision Review

(A) An application for subdivision approval, including applicable fees, shall be made on forms provided by and filed with the ZA. The application shall include seven (7) copies of the information for subdivision plan approval specified in Table 6.1. The PC also may require a fiscal impact analysis, to be paid for by the subdivider that is commensurate with the scope and scale of the proposed subdivision and/or the phasing of development in accordance with a duly adopted municipal or school capital budget and program. The application must also include in writing any requested waivers to be considered under subsection 6.3 (B). The PC shall consider the application in accordance with the following:

(1) **Public Hearing**. As required by the Act [§ 4464], upon submission of a complete application the PC shall schedule a public hearing on the application, warned in accordance with subsection 7.8 and the Act [§ 4464]. In the event that the subdivision is located within 500 feet of a municipal boundary, copies of the hearing notice also shall be sent, at least 15 days prior to the hearing date, to the Regional Planning Commission and to the clerk of the adjacent municipality. After the hearing is convened the PC may continue the hearing as needed to request and allow for the submission of additional information or studies to determine conformance with these regulations.

(2) **Final Approval**. The PC shall act to approve, approve with conditions, or deny an application for subdivision approval within 45 days of adjournment of the final public hearing; and shall issue a written decision. The written decision shall include a statement of the factual bases on which the PC made its conclusions, a statement of those conclusions, including any conditions, and shall specify the period of time within which the decision may be appealed to the Environmental Court. Failure of the PC to act within the 45 day period shall be deemed approval. The decision shall be mailed, via certified mail, to the applicant within the 45 day period. Copies of the decision shall also be mailed to every person or group appearing and having been heard at the hearing, and a copy of the decision shall be recorded in accordance with Subsection 7.8(D).

(3) **Performance Bonding**. For any subdivision that includes the construction of roads or other physical improvements, the PC may require the subdivider to post a performance bond or other surety to ensure completion of the improvements in accordance with approved specifications. In accordance with the Act [§4464], the term of a performance bond shall be fixed by the PC for a period not to exceed three years, unless with the consent of the owner, it is extended for an additional period not to exceed three years. If any required improvements have not been installed or maintained as provided, the bond shall be forfeited to the Town which shall then use the proceeds to install and maintain covered improvements.

(4) **Effect**. Approval by the PC of a subdivision shall not be construed to constitute acceptance by the Town of any street, easement, utility, park, recreation area or other open space shown on the final plat. Such acceptance may be accomplished only by an act of the SB, in accordance with state law for the laying out of public rights-of-way.

(5) Deferral of Subdivision Standard(s). The ZA may, at the request of the applicant defer review of a proposed minor subdivision's compliance with the standards set forth in Section 6.4 above in the event the proposed subdivision involves the creation of a lot(s) that is solely intended for forestry, agriculture or other use not involving land development. Both the ZA's decision and the plat recorded in the Town Land records shall clearly indicate the intended use of the lot(s), and shall require that any change in the use of the deferred lot be approved by the PC only upon a determination that the proposed use and associated development complies with the standards set forth in Section 6.4. All lots, however, shall meet the minimum lot size for the district in which the parcel is located, including any density requirement related to the creation of new lots set forth in Subsection 6.2(D).

(B) Recording & Amendment Requirements.

In accordance with the Act [§4463], within 180 days of the date of receipt of final subdivision approval under Subsection (A)(2) the subdivider shall file three copies of plan and final plat (one Mylar, two paper), signed by an authorized representative of the PC, for recording in the Town land records in conformance with the requirements of 27 V.S.A. Chapter 17. The approval of subdivision plats not filed within 180 days shall expire. The ZA may, however, grant one 90 day extension for plat filing in the event the applicant documents that other required local and/or state permits are still pending.

(1) Subdivisions within the Rural Residential District and Conservation District shall include a notation on the final plat recorded in the Town land records specifying the maximum allowable density before and after subdivision, and indicating which lot or lots carry the right of further subdivision and which lots cannot be further subdivided, as determined and limited by Table 2.5 and 2.6 and Subsection 6.2(D).

(2) The Town shall meet all recording requirements for subdivision approvals as specified for Town land use permits under Section 7.8.

(3) No changes, modifications, or other revisions that alter the final plat or the conditions attached to subdivision approval shall be made unless the proposed revisions are first submitted for review by the PC under Section 6.2 above as a subdivision amendment. In the event that revisions are recorded without complying with this requirement, the revisions shall constitute a violation of these regulations, and be considered null and void.

(C) The PC shall evaluate subdivisions under the standards set forth in this Article. The PC, to assist in evaluation, may require:

(1) An independent technical review of the proposed subdivision under one or more standards, prepared by a qualified professional and paid for by the subdivider; provided such technical review is commensurate with the scale and scope of the proposed subdivision; and

(2) The phasing of development, and/or additional measures to avoid or mitigate any adverse impacts likely to result from the proposed subdivision.

Section 6.6 General Regulations

(A) **Storm Water Management & Erosion Control**. Subdivisions shall incorporate temporary and permanent storm water management and erosion control practices appropriate for the type and density of proposed development.

(B) **Landscaping & Screening.** Subdivisions shall preserve or maintain trees, ground cover, or other vegetation to:

(1) preserve tree lines, wooded areas of particular natural or aesthetic value to the site, or critical wildlife habitat areas.
(2) provide vegetated buffers between developed and undeveloped portions of the site to protect water quality, or other natural or scenic features.
(3) provide screening to increase privacy, reduce noise or glare, or establish a barrier between incompatible land uses.

(C) **Roads & Access.** Access to the subdivision and to individual lots shall be provided in accordance with Section 3.2. All access onto town highways shall be subject to the approval of the SB or for state routes, the Vermont Agency of Transportation. Such approval shall be required prior to final subdivision

plan approval. To better manage traffic flow and safety, to avoid congestion, and to preserve the capacity of local roads, the PC may also:

(A) Application information Required for Minor & Major Subdivisions
Application Form [1 copy]
Application Fee
Name, address of applicant [landowner and/or agent]
General description of proposed development plans, including: number and size of lots, intended use, general timing of development
Written Waiver request [optional]
Names, addresses of all adjoining property owners
One copy of a sketch plan, drawn on paper at an appropriate scale, to accurately depict: • Scale, Date, North Arrow, Legend, • Project boundaries and property lines, • Existing and proposed lot lines, dimensions, • Adjoining land uses, roads and drainage, • Zoning district designations and boundaries, and • A general indication of the location of natural and physical features located on the site, including buildings, roads, driveways, parking areas, fences and walls, watercourses, wetlands, areas of slope in excess of 25%, and a general indication of land cover, including forested areas and land in agricultural production.
(B) Plan/Plat Mapping Requirements [Required for major subdivision approval]
Application Fee
Application Form [1 copy]
Name, address of applicant [landowner and/or agent]
General description of proposed development plans, including: number and size of lots, intended use, general timing of development
Waiver request, in writing [optional]
A survey, drawn on Mylar at scale of not less than 1”=100’, and two paper copies, to include: • Scale, Date, North Arrow, Legend, • Preparer Information, Certifications, • Project boundaries and property lines, • Existing and proposed lot lines, dimensions, • Adjoining land uses, roads and drainage, • Zoning district designations and boundaries, • An indication of the location of natural and physical features located on the site, including buildings; roads, driveways and parking areas; fences and walls; watercourses; wetlands; areas of slope in excess of 25%; and a general indication of land cover, including forested areas and land in agricultural production, • Existing and proposed roads, paths, common or shared parking areas, associated rights-of- way or easements, • Proposed utilities, water and wastewater systems.
Monument locations
Site location map showing proposed subdivision in relation to major roads, drainage ways, and adjoining properties
Statement of compliance with town plan and applicable local regulations
Engineering reports (water and wastewater systems)
Proposed covenants and/or deed restrictions, off-site easements (e.g., for water, wastewater, access), and/or proposed homeowner or tenant association or agreements (if any)
All information required for applications for minor subdivisions approval set forth in subsection (B), above
Existing and proposed elevations, contour lines within 50 feet of any proposed excavation/grading

Road profiles, road, intersection and parking area geometry and construction schematics
Proposed conservation buffer and/or open space easement areas
Proposed phasing schedule
Proposed performance bond or surety
(C) Additional information: Items that may be required by the PC for applications for major subdivision
Storm water and erosion control plan
Grading plan (showing proposed areas of cut and fill)
Open space management plan
Site reclamation plan (for subdivisions involving extraction)
Traffic impact analysis (current and proposed traffic volumes, capacities, levels of service, proposed improvements)
Fiscal impact analysis (analysis of fiscal costs and benefits to the town)
Historic or archeological assessment
Environmental impact assessment (analysis of potential environmental impacts, proposed mitigation measures)

(1) limit the number of access points onto public highways.
(2) require shared access, driveways, and/or roads to serve multiple lots.
(3) require access from secondary roads, if a proposed subdivision has frontage on both primary and secondary roads, and
(4) require rights-of-way for future road extensions to connect to adjoining parcels.

(D) **Public Facilities & Utilities Public Facilities** The proposed subdivision shall not create an undue burden on existing and planned public facilities. The PC may consult with municipal and school officials to determine whether adequate capacity exists to serve the subdivision.

(E) **Legal Requirements**
(1) Land reserved for the protection of significant natural, cultural or scenic features, or other open space areas, may be held in common, or in separate ownership from contiguous parcels. Such land may be dedicated, either in fee or through a conservation easement approved by the PC, to the municipality, an owners' association comprised of all present or future owners of subdivided lots, or a nonprofit conservation organization. Land designated for protection shall be indicated with appropriate notation on the final subdivision plat.

(2) The subdivider shall provide documentation and assurances that all required improvements, associated rights-of-way and easements, and other common lands or facilities will be maintained either by the subdivider, an owners' association, or through other legal means acceptable to the PC. Such documentation, as approved by the PC, shall be filed in the Town land records.

ARTICLE 7. ADMINISTRATION & ENFORCEMENT

Section 7.1 Permits & Approvals

(A) **Permit Requirements**. In accordance with the Act [§ 4446], no development or subdivision of land may begin in the Town until all applicable Municipal land use permits and approvals have been issued, unless the development is specifically exempted from these regulations under Section 7.3. Such permits and approvals include:

(1) **Zoning Permits** under Section 7.2 for all development.

(2) **Site Plan Approval** under Section 5.5 for all uses subject to site plan review.

(3) **Conditional Use Approval** under Section 5.4 for uses subject to conditional use review, including uses within any overlay district.

(4) **Subdivision Approval** under Section 6.2 for the subdivision or re-subdivision of land.

(5) **Planned Residential** or **Planned Unit Development (PRD or PUD)** under Section 5.7 in association with subdivision approval.

(6) **Boundary Line Adjustment –** By all affected Land Owners

(B) The ZA will coordinate the development review process on behalf of the Town, refer applications to the appropriate board or Town officer, and provide information and assistance to applicants for municipal land use permits as appropriate [§ 4448(c)].

Section 7.2 Zoning Permit Requirements

(A) **Application Requirements**. A zoning permit application must be submitted to the ZA on forms provided by the Town, along with any application fees as established by the SB. The following is also required:

(1) All applications shall include a statement describing the existing and intended use of the land and structures and/or any proposed structural changes, and be accompanied by two copies of a sketch plan, no smaller than 8” x 11", drawn to scale, that accurately depicts:
   a. the dimensions of the lot, including existing and proposed property boundaries;
   b. the location, footprint, and height of existing and proposed structures and additions;
   c. the location and dimensions of existing and proposed accesses, driveways and parking areas;
   d. the location of existing and proposed easements, rights-of-way and utilities;
   e. setbacks from property boundaries, road rights-of-way, surface waters, and wetlands;
   f. the location of existing and proposed water and wastewater systems; and
   g. such other information as may be needed to determine compliance with these regulations.

(2) Applications for permits that require review and approval by the ZBA, PC and/or SB shall also include information required for all applicable reviews. The ZA shall refer the application to the appropriate board following submission,

(3) Any permit application that has to be referred to a state agency, under Article 2 and/or Section 5.6,

must include a brief report describing the proposed use, location, and an evaluation of the effects of such use on municipal and regional plans currently in effect. The report shall be forwarded by the ZA to the appropriate state agency or department within twenty-one (21) days of its receipt.

(4) A Boundary Line Adjustment application requires filing a map drawn to scale with the application.

(B) **Issuance of Zoning Permits**. A zoning permit shall be issued by the ZA only in accordance with the Act [§§4448, 4449] and the following:

(1) No zoning permit shall be issued by the ZA for any use or structure that requires approval of the ZBA, PC and/or SB until such approval has been obtained;

(2) No zoning permit shall be issued by the ZA for the development of a lot for which major subdivision approval is required until subdivision approval has been obtained;

(3) For uses requiring state agency referral no zoning permit shall be issued until the expiration of 30 days following the submission of a report and/or application to the appropriate state agency or department;

(4) If public notice has been issued by the SB for their first public hearing on a proposed amendment to these regulations, the ZA shall issue a zoning permit for development that is subject to the proposed amendment only in accordance with the requirements of the Act [§ 4449(d)];

(5) The ZA shall act to either issue or deny a zoning permit in writing, or to refer the application to the PC or ZBA for consideration. In accordance with the Act [§ 4448], if the ZA fails to act within the 30-day period, a permit shall be deemed issued on the 31st day;

(6) Each zoning permit issued shall include a statement of the time within which appeals may be taken under Section 7.5 below; and shall require posting of a notice of permit, on a form prescribed by the municipality, within view of the nearest public right-of-way until the time for appeal has expired; and

(7) Within three (3) days of issuance, the ZA shall deliver a copy of the permit to the Listers, and post a copy at the Town Office for a period of 15 days from the date of issuance.

(C) **Effective Dates.** No zoning permit shall take effect until the time for appeal under Section 7.5 has passed, or in the event that a notice of appeal is properly filed, until final adjudication of the appeal. Permits and associated conditions will run with the land and be binding upon the landowner's future heirs and assigns. A permit will, however, expire and become null and void within one (1) year from the date of issuance if the permitted development has not been substantially commenced. Prior to the expiration of the permit, the ZA may issue an extension for one (1) additional year in the event the permittee can document an unavoidable delay in the substantial completion of the project.

(D) **Display of Zoning Permit.** In accordance with the Act [§4449], the notice of a zoning permit must be displayed within view from the public right-of-way nearest to the property until the time for appeal under Section 7.5 has passed.

Section 7.3 Exemptions

(A) In accordance with the Act [§4446], no zoning permit shall be required for the following:

(1) Any building for which construction lawfully began prior to the effective date of these regulations, provided that such construction is substantially completed within two (2) years of the effective date;

(2) Normal maintenance, repair, remodeling or interior alteration of an existing structure that does not result in a change in use or any change to the footprint, height dimensions or expansion in the total area of the structure;

(3) Residential entry stairs (excluding deck or porch areas), handicap ramps, walkways, and fences or walls no greater than six feet in height which do not extend into or obstruct public rights-of-way, or interfere with corner visibility or sight distances for vehicular traffic;

(4) Up to two (2) accessory structures, such as a shed, tree house, doghouse, child's play house, or similar structure with a floor area of not more than 80 square feet (each) and a height of not more than 10 feet which is located at least 10 feet from all property lines, provided the structure(s) is not located within the Flood Hazard Overlay District. A zoning permit is required for all other accessory structures;

(5) Prefabricated, temporary carports and storage covers, assembled out of metal structural supports and fabric, provided such covers are not affixed to a permanent foundation and meet all setback standards for the district in which they are located;

(6) The ordinary use of a small room of a dwelling for personal office use and/or paperwork for business activity carried on elsewhere (see Section 4.6 for additional standards related to other types of home businesses);

(7) Noncommercial outdoor recreation that does not involve the development or use of structures or substantial site improvement (e.g., construction of parking area at a trail head);

(8) Minor grading and excavation associated with road and driveway maintenance (including culvert replacement and re-surfacing) and yard improvements associated with accessory uses to existing principal uses (contouring yards, establishing garden and landscape areas), provided the grading and excavation is not located within the Flood Hazard Overlay District;

(9) Temporary signs and banners, garage sales, yard sales and auctions not exceeding 3 consecutive days, nor more than 12 days per calendar year, which do not cause unsafe traffic conditions or parking problems; and

(10) Fuel storage as an accessory structure to an allowed use, provided such storage meets the requirements of Section 3.11, and provided the structure(s) are not located within the Flood Hazard Overlay District.

(B) In accordance with the Act [§ 4413(d)], Accepted Management Practices and Accepted Agricultural Practices, including farm structures are exempted from the permit requirements under Section 7.2. However, written notification, including a sketch plan of the structure showing setback distances from road rights-of-way, property lines, and surface waters shall be made to the ZA prior to any construction as required under the Accepted Agricultural Practices.

(C) Public utility power generating plants and transmission facilities regulated by the Vermont Public Service Board (under 30 V.S.A. §248) are exempted from these regulations in accordance with the Act [§ 4413(b)].

Section 7.4 Certificates of Occupancy

(A) In accordance with the Act [§ 4449((a)(2)], no building or building addition for which a zoning permit has been issued shall be occupied or used, in whole or in part, until a certificate of occupancy has been issued by the ZA, certifying that such building or addition conforms to the approved plans, specifications, and requirements of the permit and these regulations.

(1) An application for a certificate of occupancy shall be provided with the zoning permit issued by the ZA. Prior to the use or occupancy of the building or addition the applicant shall submit the certificate of occupancy application to the ZA upon completion of required improvements.

(2) The applicant shall demonstrate, to the satisfaction of the ZA, that the proposed building or addition has been completed in conformance with the zoning permit and any associated approvals, including all applicable permit conditions. The ZA may inspect the premises to ensure that all work has been completed in conformance with the zoning permit and associated approvals prior to issuing a certificate.

(3) A certificate of occupancy may be issued for a substantially completed structure if the ZA determines that it meets all applicable permit conditions.

(4) A certificate of occupancy shall be issued or denied by the ZA within 14 days of receipt of the application. If the ZA fails to either grant or deny the certificate of occupancy within 14 days of the submission of an application, the certificate shall be deemed issued on the 15th day. The decision of the ZA may be appealed to the PC under Section 7.5(A) below.

Section 7.5 Appeals

(A) In accordance with the Act [§ 4465], the applicant or any other interested person may appeal a decision or act of the ZA by filing a notice of appeal with the ZBA or the Town Clerk if no Secretary has been elected, within 15 days of the date of such decision or act. A copy of the notice of appeal also shall be filed with the ZA.

(B) Decisions of the ZBA & PC. The applicant, appellant or other interested person who has participated in a regulatory proceeding of the ZBA or PC may appeal the decision rendered by the ZBA or PC within 30 days of such decision, to the Vermont Environmental Court, in accordance with the Act [§4471].

Section 7.6 Variances & Setback Waivers

(A) **Setback Waivers**. Notwithstanding the minimum setback standards for front yards (setback from highway right-of-way) and side and rear yards (setback from parcel boundaries) for various zoning districts set forth in Article 2, the ZBA may allow the modification of building setbacks as a conditional use reviewed in accordance with Section 5.4 and subject to the following provisions:

(1) The parcel associated with the waiver request was legally in existence prior to November 2, 2004, and

(2) The ZBA may allow for a reduction of the front, side and rear setback, providing the reduction will not adversely impact the use and enjoyment of adjacent parcels, and the reduced setback complies with conditional use standards set forth in Article 5.

(B) **Variances.** The ZBA shall hear and decide upon requests for variances pursuant to the Act [§4469(a)] and appeal procedures under Section 7.5. The Board may grant a variance and render a decision in favor of the appellant only if all of the following facts are found and the findings are specified in its written decision:

(1) There are unique physical circumstances or conditions, including irregularity, narrowness, or

shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located;

(2) Because of such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with these regulations, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;

(3) The unnecessary hardship has not been created by the applicant;

(4) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare; and

(5) The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the Town Plan.

(C) **Variances involving Renewable Energy Structures**. On an appeal for a variance from the provisions of these regulations that is requested for a structure that is primarily a renewable energy resource structure, the ZBA may grant that variance and render a decision in favor of the appellant only if ***all*** the following facts, as listed in the Act [§ 4469(b)], are found, and the findings are specified in its decision:

(1) It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with these regulations;

(2) The hardship was not created by the appellant;

(3) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare; and

(4) The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the Town Plan.

(D) **Variances within the Flood Hazard Area Overlay District**. Variances within the Flood Hazard Area Overlay District shall be granted by the ZBA only:

(1) in accordance with the Act [§4424] and the criteria for granting variances found in 44 CFR Section 60.6 of the National Flood Insurance Program regulations;

(2) upon a determination that during the base flood discharge the variance will not result in increased flood levels; and

(3) upon a determination that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(E) In granting a variance or setback waiver under this section, the ZBA may attach conditions that it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the Town Plan.

Section 7.7 Violations & Enforcement

(A) **Violations**. The commencement or continuation of any land development or use that does not meet the requirements of these regulations shall constitute a violation. All violations shall be pursued in accordance with the Act [§§ 4451, 4452]. Each day that a violation continues shall constitute a separate offense. The ZA shall institute, in the name of the Town, any appropriate action, injunction or other proceeding to enforce the provisions of these regulations. All fines imposed and collected shall be paid over to the Town.

(B) **Notice of Violation**. No action may be brought under this section unless the alleged offender has had at least seven (7) days notice by certified mail that a violation exists, as required under the Act [§ 4451]. The notice of violation also shall be recorded in the Town land records under Section 7.8(D). The warning notice shall state a violation exists, the alleged offender has an opportunity to cure the violation within the seven days, and the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days. Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation after the seven-day notice period and within the next succeeding 12 months.

(C) **Limitations on Enforcement.** An action, injunction or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required or duly recorded municipal land use permit may be instituted against the alleged offender if the action, injunction or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred, and not thereafter, in accordance with the Act [§4454]. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted. No enforcement proceeding may be instituted to enforce an alleged violation of a Town land use permit unless the permit or a notice of the permit has been recorded in the Town land records under Section 7.8(D).

Section 7.8 Town Administrative Requirements

(A) **Appointments**. The following appointments or elections shall be made in association with the administration and enforcement of these regulations:

(1) **Zoning Administrator (ZA)**. The SB shall appoint a ZA, from nominations submitted by the PC, for a term of three (3) years in accordance with the Act [§4448]. In the absence of the ZA, an Acting ZA may be appointed by the SB, from nominations submitted by the PC, who shall have the same duties and responsibilities of the ZA in the ZA's absence. The ZA shall literally administer and strictly enforce the provisions of these regulations, and in doing so shall inspect development, maintain records, and perform other related tasks as is necessary and appropriate.

(2) **Zoning Board of Adjustment (ZBA)**. ZBA members and alternates shall be appointed by the SB for specified terms in accordance with the Act [§4460]. The ZBA shall adopt rules of procedure to guide its official conduct as required under the Act and Vermont's Open Meeting Law. The ZBA shall have all powers and duties as set forth in the Act to administer the provisions of these regulations, the power to hear and act upon:

- applications for conditional use approval (Section 5.4); and
- appeals of any decision, act or failure to act by the ZA (Section 7.5(A));
- variance requests (Section 7.6).

(3) **Planning Commission (PC)**. The PC shall be elected to specified terms by Town voters in accordance with the Act [§§ 4321, 4323]. The PC shall adopt rules of procedure to guide its official conduct in accordance with the Act [§ 4323] and Vermont's Open Meeting Law [1 V.S.A. 310-314]; and shall have powers and duties as set forth in the Act [§ 4325], including the power to hear and decide:

(a) requests and petitions for regulation amendments,
(b) requests for site plan approval (Section 5.5),
(c) requests for major subdivision approval (Section 6.5),
(d) applications for planned residential and planned unit developments (Section 5.7),
(e) ZA Nominations
(f) Requests for access and frontage approval (Section 3.2)

(4) **Select Board**. The SB shall be elected to specified terms by the voters of the Town in accordance with the Act [§§4321, 4323]. The SB shall adopt rules of procedure to guide its official conduct as required under the Act and Vermont's Open Meeting Law. The SB shall have all powers and duties as set forth in the Act to administer the provisions of these regulations, the power to hear and act upon:

- requests for driveway access approval (Section 3.2);

(B) **Fee Schedule**. The SB shall establish a schedule of fees to be charged in administering these regulations, with the intent of covering the Town's administrative costs. Such fees may be revised as deemed necessary by the SB.

(C) **Public Hearing Notice Requirements**.

(1) In accordance with the Act [§4464(a)], a warned public hearing shall be required for conditional use review (Section 5.4), appeals and variances (Sections 7.5, 7.6) and final subdivision review (Section 6.2). Any public notice for a warned public hearing shall be given not less than 15 days prior to the date of the public hearing by all of the following:
   a. publication of the date, place and purpose of the hearing in a newspaper of general circulation in the town;
   b. posting of the same information in three (3) or more public places within the municipality, including posting of a notice within view from the public right-of-way nearest to the property for which the application is being made;
   c. written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way, which includes a description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal; and
   d. for hearings on subdivision plats located within 500 feet of a municipal boundary, written notification to the clerk of any adjoining municipality.

(2) Public notice of all other types of development review hearings, including site plan review (Section 5.5) shall be given not less than seven (7) days prior to the date of the public hearing and shall at minimum include:
   a. posting of the date, place and purpose of the hearing in three (3) or more public places within the municipality, and
   b. written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way, which includes a description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding is a pre-requisite to the right to take any subsequent appeal.

(3) The applicant or appellant shall be required to bear the cost of public warning and the cost and responsibility of notifying adjoining landowners, as required under Subsections (C)(1) and (C)(2) above. The applicant shall be required to demonstrate proof of delivery to adjoining landowners, as determined from the most recent municipal grand list, either by certified mail, return receipt requested, or by written notice hand-delivered or mailed to the last known address supported by a sworn certificate of service.

(4) No defect in the form or substance of any required public notice under this section shall invalidate the action of the ZBA or PC where reasonable efforts have been made to provide adequate posting and notice. However, the action shall be invalid when the defective posting or notice was materially misleading in content. If an action is ruled to be invalid by the Environmental Court, the action shall be remanded to the ZBA or PC to provide new posting and notice, hold a new hearing, and take a new action.

(5) Public hearings concerning proposed amendments to these regulations shall be noticed and warned in accordance with the Act [§§ 4441, 4444].

(D) **Permit & Violation Recording Requirements**.

(1) Within 30 days of the issuance of a Town land use permit or notice of violation, the ZA shall deliver either the original, a legible copy, or a notice of the Town land use permit or notice of violation to the Town Clerk for recording in the Town land records generally as provided for in 24 V.S.A. § 1154(a) and (c), and file a copy in the Town Office in a location where all municipal land use permits shall be kept, as required under the Act [§ 4449(c)]. The applicant shall be charged for the cost of the recording fees.

(2) For development within the Flood Hazard Area Overlay District, the ZA shall also maintain a record of:
   a. permits issued for development in areas of special flood hazard;
   b. elevation certificates that show the elevation, in relation to mean sea level, of the lowest floor, including basement, of all new or substantially improved buildings;
   c. the elevation, in relation to mean sea level, to which buildings have been flood-proofed;
   d. all flood-proofing certifications required under this regulation; and
   e. all variance actions, including the justification for their issuance.

APPENDIX 1 DEFINITIONS

Section 1 Terms & Usage

(A) Except where specifically defined here or in the Act, or unless otherwise clearly required by the context, all words, phrases and terms in these regulations shall have their usual, customary meanings.

(B) In the interpretation of words and terms used, defined, or further described here, the following shall apply:

(1) the specific controls the general,
(2) the present tense includes the future tense,
(3) the singular includes the plural,
(4) the word "shall" is mandatory; the word "may" is permissive,
(5) the word “structure” includes “building”,
(6) the word “road” includes ”street” and “highway”,
(7) the word “lot” includes “parcel”,
(8) the word “person” includes an individual, partnership, association, corporation, company or organization, and
(9) the word “occupied” or “used” shall be considered as though intended, arranged or designed to be used or occupied.

(C) For the purposes of flood hazard area regulation under Article 5, National Flood Insurance Program definitions contained in 44 CFR Section 59.1 are adopted by reference and shall be used to interpret and enforce these regulations. Definitions of commonly used terms are provided in Section 5.7(G).

(D) Any interpretation of words, phrases or terms by the ZA may be appealed to the PC under Section 7.5. In such cases, the PC shall base its decision upon the following definitions, state statute, and the need for reasonable and effective implementation of these regulations. The PC shall publish and update from time to time such written interpretation, to ensure consistent and uniform application of the provisions of these regulations.

Section 2 Definitions

Abutting Property: Two or more parcels which share a common parcel boundary or point. Abutting property shall also include facing properties across road rights-of-way. See also Contiguous Land.

Accepted Agricultural Practices (AAPs): Accepted practices for agriculture, including farm structures other than dwellings, as currently defined by the Secretary or Vermont Agency of Agriculture, Food and Markets in accordance with the Act [§ 4413(d)]. See also Agriculture.

Accepted Management Practices (AMPs): Accepted silvicultural (forestry) practices as currently defined by the Commissioner of the Vermont Department of Forests, Parks and Recreation in accordance with the Act [§ 4413(d)].

Accessory Dwelling: A secondary dwelling unit established in conjunction with and clearly subordinate to a single family dwelling which is retained in common ownership, is located on the same parcel as the primary structure, and which otherwise meets applicable criteria of these regulations (see Section 4.2). This definition encompasses accessory apartments as required under the Act [§ 4412(1)].

Accessory Structure: A structure which is: 1) detached from and clearly incidental and subordinate to the principal use of a 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, playhouses, and in-ground swimming pools which are incidental to the residential use of the premises and not operated for gain. See also Accessory Use.

Accessory Use: A use which is customarily incidental and subordinate to the principal use of a lot or parcel of land, is located on the same lot as the primary use, and is clearly related to the principal use.

Access: A defined area of vehicular ingress and/or egress between property and an abutting road right-of-way.

Act: 24 V.S.A. Chapter 117, the Vermont Municipal and Regional Planning and Development Act as amended.

Affordable Housing: Housing that is either: (1) owned by its inhabitants, whose gross annual household income does not exceed 80 percent of the Washington County median income, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including principal, interest, taxes and insurance and condominium association fees, is not more than 30 percent of the household's gross annual income; or (2) rented by its inhabitants whose gross annual household income does not exceed 80 percent of the Washington County median income, 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. 24 V.S. A. § 4303(1).

Affordable Housing Development: A housing development of which at least 20 percent of the units, or a minimum of five units, whichever is greater, are affordable housing and are subject to covenants or restrictions that preserve their affordability for a minimum of 15 years. 24 V.S. A. § 4303(2).

Agriculture: Land or structures primarily used for cultivating soils, producing crops, or raising livestock; orchards and maple sugar production; the storage, processing or sale of products raised on the premises; or as otherwise defined by the Secretary of the Agency of Agriculture, Food and Markets. Structures which are customarily accessory to agricultural uses and are located on the same parcel as an agricultural use, with the exception of residential dwellings, shall be included in this definition. See also Accepted Agricultural Practices, Farm Structure.

Alteration: Structural change, change of location, or addition to a building or structure, excluding normal maintenance and repair. Alterations shall include any construction that changes the number of dwelling units, or increases the size of a building or structure in terms of its height, length, width, footprint, or gross floor area. See also Substantial Improvement.

Applicant: The owner of land or property proposed to be developed in accordance with these regulations, and/or his or her duly authorized representative. Any party with a legal interest in land development may apply in cooperation with the owner of the property.

Approval: A written decision issued by the ZBA or PC within the statutory time limit, or in the event of the ZBA's or PC's failure to act within the specified time limit, a certification of such failure to act issued by the Town Clerk, as attached to the permit application and recorded in the Town land records.

Area of Shallow Flooding: A designated AO or AH Zone on the Flood Insurance Rate Map (FIRM) having a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where the velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard: Land in the floodplain which is subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary

Map (FHBM). After detailed rate making is completed in preparation for the Flood Insurance Rate Map, Zone A is refined into Zones A, AO, AH, A1-30, AE, or A99.

Bar: See Restaurant.

Bank: See Financial Institution.

Base Flood: The flood having a one percent chance of being equaled or exceeded in any given year.

Basement: Any area of a building having its floor at subgrade (below ground level) on all sides.

Bed & Breakfast (B&B): A single family dwelling occupied by the owner or operator, in which not more than six double occupancy rooms within the dwelling and/or in an accessory structure located on the same lot, are rented out to provide overnight accommodations to travelers. Individual cooking and eating facilities shall not be provided. Breakfasts shall be the only meals served and shall be limited to overnight guests. The bed and breakfast shall function as a private home with house guests. See also Hotel/Motel.

Boundary Adjustment: A division of land for the purpose of adjusting boundaries between adjacent lots or parcels, where no new lot is created. A boundary adjustment shall not create a nonconforming lot. See Section 7.1 and 7.2.

Buffer: Any space between adjoining land uses or between a land use and a natural feature, which is intended and designed to reduce the impact of one use on the other use or feature. Buffers may include open space, woodland, landscaped areas, undisturbed vegetated areas, or other types of physical, visual or sound barriers.

Building: A structure used for the shelter or accommodation of persons, animals, goods, chattel or equipment, which has a roof supported by columns or walls. For development within the flood hazard area overlay district, this definition also includes a gas or liquid storage tank that is principally above ground. See also Structure.

Building Height: The distance measured vertically from the average (of the highest and lowest) finished grade at the base or foundation to the highest point on top of the building (or structure), excluding any noted structural exemptions from height requirements under Section 3.5.

Bulk Fuel Storage: A structure used for the safekeeping and containment of a mass or aggregate of fuel which is counted, weighed, or measured for subsequent sharing, parceling out, allotting, dispensing, or apportioning, excluding fuel storage of less than 1,050 gallons for use by the owner or occupant of the property on which the fuel is stored.

Camp: See Dwelling Unit.

Camper: Any vehicle used as temporary sleeping, camping or living quarters, which is mounted on wheels, a truck or a camper body, or is towed by a motor vehicle. This definition includes recreation vehicles and travel trailers, but specifically excludes mobile homes. See Mobile Home.

Campground: A parcel of land upon which two or more campsites are located for occupancy by a tent, cabin, lean-to, or similar structure as temporary living quarters for recreation, education, or vacation purposes. "Primitive" campgrounds are further characterized as campgrounds which are limited to substantially unimproved camp sites intended for tenting use only.

Cemetery: Land used or dedicated to the burial of the dead, which includes as accessory structures mausoleums, columbarium's, and maintenance facilities, but specifically excludes crematoriums. An

individual or family burial plot on private land, registered with the Town Clerk in accordance with state law, is exempted from this definition.

Change of Use: Any use which differs substantially from an established use based on the type, intensity, or magnitude of use. For example, this may include a change from one type of use to another (e.g., from a residential to commercial use), or from an accessory to a principal use, or from seasonal to year-round use.

Church: See Place of Worship.

Commercial Use: An enterprise that is carried on for profit by the owner, lessee or licensee.

Common Land: Land within a development or subdivision that is not individually owned or dedicated for public use, but which is intended to be held in common, for use, enjoyment, management and maintenance by the residents of the development or subdivision. Such land may include but not be limited to open space areas, parking lots, pedestrian walkways, utility and road rights-of way.

Community Care Facility: A residential care facility licensed by the state which provides 24-hour supervision, personal care services, and limited medical services to seven or more individuals who are in need of care, protection and/or assistance to sustain the activities of daily living. See also Group Home.

Community Center: A building owned by a public or nonprofit entity, or a homeowners or similar community association, which is used for recreational and social activities and is intended primarily to serve the population of the community in which it is located.

Community System: Any water supply or wastewater disposal system other than a municipally-owned system which provides potable water to or disposes of wastewater from two or more domestic, commercial, industrial, or institutional uses. Such systems shall include related collection, distribution and treatment facilities.

Contiguous Land: (1) A parcel of land contained within a single, unbroken parcel boundary (a division of land by a town or private road right-of-way shall not render such land noncontiguous); or (2) two or more parcels which share a common parcel boundary or point.

Contractor's Yard: A parcel of land with or without buildings on it to be used for the storage of equipment, materials, and/or vehicles used in the operation of construction and related trades.

Cultural Facility: A museum, theater, concert hall, botanical or zoological garden, or other establishment which offers programs, performances or exhibits of cultural, educational, historical, or scientific interest, and is not operated as a commercial use. See also Commercial Use, Recreation/Indoor.

Day Care Center: All state registered or licensed day care facilities which do not meet the definition of "home child care," including nonresidential child and adult day care facilities, and home-based child care facilities that serve more than six children on a full-time basis. See also Home Child Care, Residential Care Facility.

Degree of Noncompliance: The extent to which a structure encroaches upon or otherwise violates one or more dimensional standard of these regulations. For example, the extension of a structure which results in an additional encroachment of the noncomplying feature/element, including the expansion of the volume or area of a structure within a building setback, and would increase the degree of noncompliance

Density: The number of dwelling units, principal uses or structures permitted per area of land, excluding land area within designated road rights-of-way.

Development: See Land Development. (See Section 5.6 (G) for the definition of the term "development as used in Section 5.6 and Table 2.7)

Drive-through: A business establishment which includes a driveway approach or parking spaces for motor vehicles to serve patrons while in the motor vehicle rather than within a building or structure.

Driveway: A private travel way, easement or right –of-way, serving up to three adjoining parcels, which provides vehicular access from an adjoining road to a parking space, garage or other structure. See also Road.

Dwelling Unit: A space consisting of one or more rooms designed, occupied or intended for occupancy as a separate living quarters, with cooking, sleeping, and sanitary facilities provided within that space for the exclusive use of a single family or individual maintaining a household. See also Family, Accessory Dwelling, Single Family (1), Two-Family (2), and Multi-Family Dwelling.

Easement: The legal authorization given by a property owner to another person or party for the use of any designated part of his or her property for a specified purpose.

Educational Facility: See School.

Elderly Housing: A multiple dwelling in one or more buildings, each unit of which is specifically designed and intended for occupancy by at least one person who is retired and 55 years of age or older. Each housing may include, as accessory structures or uses, congregate dining and recreational facilities, and assisted living services.

Erosion Control: Measures to prevent the detachment and movement of soil or rock fragments or the wearing away of the land surface by water, wind, ice and gravity.

Extraction of Earth Resources: A use involving the on-site removal of surface and subsurface materials, including soil, sand, gravel, stone or organic substances other than vegetation, from land or water. Customary extraction operations include sand and gravel pits, and accessory operations such as the crushing, screening, and temporary storage of materials on-site (see Section 4.5). Specifically excluded from this definition are the grading and removal of dirt which is associated with and incidental to an approved site plan or subdivision, or an excavation associated with an Accepted Agricultural Practice. See also Quarrying.

Family: A group of two or more persons living together as a household, or a single person maintaining a household.

Farm Structure: In accordance with the Act [§ 4413(d)], a building for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with agricultural or farming practices, as "farming" is defined in 10 V.S.A. 6001(22). This definition includes such farm structures as barns, silos, fences and manure pits, but specifically excludes a dwelling for human habitation. See also Accessory Dwelling, Agriculture, Accepted Agricultural Practices.

Farming: See Agriculture.

Final Plat: The final drawings on which the subdivision is presented to the PC for approval and which, if approved, shall be filed for record with the Town Clerk.

Financial Institution: A bank, credit union, savings and loan, finance, mortgage or investment company that is open to the public.

FFIA: The Federal Flood Insurance Administration.

Flood Hazard Area: Those lands subject to flooding from the 100-year flood, as defined in the existing or subsequently revised "Flood Insurance Study for the Town of Middlesex, Vermont" and the Flood Hazard Boundary Map (FHBM) or subsequent Flood Insurance Rate Map (FIRM), published by the Flood Insurance Administration, and available at the Middlesex Town Office.

Flood Hazard Boundary Map (FHBM): An official map of Middlesex, issued by the Flood Insurance Administration, where the boundaries of flood and mudslide (i.e. mudflow) related erosion areas having special hazards are designated as Zone A, M, and/or E.

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

Flood Proofing: Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improve real property, water and sanitary facilities, structures, and their contents.

Floodway: 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.

Forestry: The use and management of woodlands for purposes of timber production, harvesting, and management for commercial, wildlife and/or conservation purposes. This definition excludes permanent sawmills, lumber yards and other facilities used for the processing and/or manufacturing of wood and wood products; but may include, as accessory uses, portable sawmills and equipment used on-site in association with timber harvesting activities. See also Accepted Management Practices, Sawmill.

Frontage: The width of a lot abutting a road as measured at the street line.

Funeral Home: A building or part thereof used for human funeral services. Such building may also contain space and facilities for preparation of the dead for internment or cremation; the performance of autopsies and associated surgical procedures; the storage and sale of caskets, funeral urns and related funeral supplies; and the storage of funeral vehicles, but shall not include facilities for cremation.

Gas Station: An establishment principally used for the sale of gasoline or other fuel types for motor vehicles. This definition excludes motor vehicle repair services and the sale of food and unrelated convenience or grocery items. See Also: Motor Vehicle/Equipment Repair, Retail Store.

Greenhouse/Nursery: The use of land, buildings and/or structures for the purpose of selling lawn and garden equipment, furnishings and supplies. This definition specifically does not include nurseries and greenhouses that are defined by the state as "agriculture" or "Accepted Agricultural Practices" and are therefore exempted from these regulations. See also Agriculture, Accepted Agricultural Practices.

Group Home: A state licensed residential care home serving not more than 8 persons who are developmentally disabled or handicapped. In accordance with the Act [§4412(1)], a group home, as defined, shall be considered by right to constitute a permitted single family residential use of property, except that no such home shall be so considered if it locates within 1,000 feet of another group home.

Hazardous Waste Facility: A facility that stores processes, neutralizes, reclaims, treats or disposes of hazardous waste for which a notice of intent to construct has been received under state law [10 V.S.A. § 6606a].

Health Clinic: A building or part thereof used for the medical, dental, surgical, or therapeutic treatment of human beings, but does not include a public or private hospital or a professional office of a doctor located in his or her residence. See also Home Occupation.

Height: see Building Height.

Home Child Care: In accordance with the Act [§ 4412(5)], a state registered or licensed child care home serving 6 or fewer children on a full-time basis, and up to 4 additional children on a part-time basis, which is conducted within a single family dwelling by a resident of that dwelling. A child care home as defined shall be considered a permitted use of a single family dwelling. See also Day Care Center, Home Occupation.

Home Industry: A home-based business other than a Home Occupation which is conducted by the resident(s) of a single family dwelling, which is carried on within the principal dwelling and/or an accessory structure, and which meets the requirements of these regulations. See also Home Occupation.

Home Occupation: A use conducted entirely within a minor portion of a single family dwelling which is conducted by resident family members, which is clearly incidental and secondary to the use of the dwelling for dwelling purposes, which does not change the residential character of the neighborhood, and which meets the requirements of these regulations (see Section 4.6). See also Bed & Breakfast, Home Child Care, Home Industry.

Hospital: An institution authorized by the state to provide primary and emergency health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, or other physical or mental conditions, and including, as an integral part of the institution, related facilities such as laboratories, outpatient facilities, training facilities, medical offices, central service facilities, and staff residences. See also Health Clinic.

Hotel/Motel: A building containing bedrooms and other facilities rented out to provide overnight accommodations to transient travelers, and having a management entity operating the building(s) and providing such services as maid service, a central switchboard, or dining facilities to occupants of the lodging facility. See also Bed & Breakfast.

Junk Yard: See Salvage Yard.

Kennel: The boarding, breeding, raising, grooming, or training of four or more dogs, cats, or other household pets of any age for a commercial use and/or which are not owned by the owner or occupant of the premises. See also Veterinary Clinic.

Land Development: In accordance with the Act [§4303(10)], the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or any mining, excavation or landfill, or any changes in the use of any building or other structure or land or extension of use of land (unless specifically exempted under Section 7.3). See also Subdivision. This definition does not apply to the term “development as used in Section 5.6 and Table 2.7 “Development” as used in Section 5.6 and Table 2.7 is defined in Section 5.6 (G).

Level of Service: (1) A measure of the relationship between public service and facility capacity and the demand for public services and facilities; (2) for traffic, the operating conditions that a driver will experience while traveling on a particular street or highway, including frequency of stops, operating speed, travel time, traffic density and vehicle operating costs.

Light Industry: A use providing for the manufacturing of goods predominately from previously prepared materials of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products or components. See also Manufacturing.

Loading Space: An off-street space which is at least twelve feet wide, thirty-five feet long, and fourteen feet high, not including the access driveway, and having direct access onto a road, which is used for the temporary parking of one licensed motor vehicle.

Lot: (1) Land occupied or to be occupied by a principal structure or use and its accessory structures and/or uses, together with required open spaces, having not less than the minimum area, width or depth required for a lot in the district in which such land is situated, and having frontage on a road, or other means of access as may be approved by the Board; (2) a portion of land in a subdivision or plat that is separated from other portions by a property line (see also Contiguous Land). A separate deed description for a parcel of land does not necessarily constitute a lot for zoning and development purposes.

Lot Area: The total land area within the property (boundary) lines of a lot, excluding any area within the boundaries of an existing or proposed road right-of-way.

Lot (Corner): Lot at the intersection of two roads (streets) which has an interior angle of less than 135 degrees. A lot abutting a curved street shall be considered a corner lot if the tangents to the curve at the points of intersection of the side lot lines intersect at an interior angle of less than 135 degrees.

Lot Depth: The mean horizontal distance from the street line of the lot to its opposite rear line.

Lot Frontage: See Frontage.

Lot Line: Property line bounding a Lot (parcel).

Lot Size: See Lot Area.

Lot Width: The width of a Lot as measured at right angles to lot depth.

Lowest Floor: The lowest floor of the lowest enclosed area (including basement). An unfinished floor or flood resistant enclosure, used solely for parking 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 applicable federal (44 CFR Section 60.3) non-elevation design requirements.

Lumberyard: A building, structure or designated area for the storage and on-site sale of raw or finished lumber products and related building/construction supplies. See also Sawmill.

Manufactured Home: A single family dwelling, transportable in one or more sections, which is built on a permanent foundation and is connected to required utilities. For floodplain management purposes only, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on the site for more than 180 consecutive days. See also Single Family Dwelling, Mobile Home. This definition dos not apply to the terms "manufactured home" as used in Section 5.6 and Table 2.7 "Manufactured Home" as used in Section 5.6 and Table 2.7 are defined in Section 5.6 (G).

Manufacturing: The processing, treatment and/or conversion of raw or semi-finished materials into a different form or state. This definition does not include the processing of agricultural goods raised on the premises, which falls under the definition of Agriculture. See also Light Industry.

Mean Sea Level: The standard datum to which base flood elevations shown on Flood Insurance Rate Maps, and typical contour elevations, are referenced.

Mixed Use: A building or parcel containing two or more uses which are otherwise allowed as permitted or conditional uses within the district in which the building or parcel is located (see Section 4.8). See also Accessory Use.

Mobile Home: A prefabricated dwelling unit which is (1) designed for continuous residential occupancy; and (2) is designed to be moved on wheels, as a whole or in sections. In accordance with the Act [4406(4)], a mobile home shall be considered a single family dwelling, and cannot be excluded from a zoning district except on the same terms and conditions as conventional housing is excluded. See also Single Family Dwelling. This definition dos not apply to the terms "Mobile Home" as used in Section 5.6 and Table 2.7 "Mobile Home" as used in Section 5.6 and Table 2.7 are defined in Section 5.6 (G).

Mobile Home Park: A parcel of land under single or common ownership or control which contains, or is designed, laid out or adapted to accommodate three or more mobile homes.

Motor Vehicle Repair Services: An establishment whose principal purpose is the repair of motor vehicles and/or heavy equipment, including body shops, general vehicle and engine repair shops, and rebuilding and/or reconditioning shops. The retail sale of gasoline is excluded from this definition. See also Retail Store.

Multi-Family Dwelling: A building housing three or more dwelling units, including apartments or attached town houses. See also Dwelling Unit.

Noncomplying Structure: A structure or part thereof lawfully in existence as of the effective date of these regulations, but not in compliance with the provisions of these regulations, including but not limited to building bulk, height setbacks, 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 these regulations.

Nonconforming Use: The use of land or a structure lawfully in existence as of the effective date of these regulations which does not conform with these regulations (including but not limited to allowed uses within the district in which it is located), where such use(s) conformed to all applicable laws, ordinances and regulations prior to the enactment of these regulations.

Open Space: Land not occupied by structures, buildings, roads, drive-ways, rights-of-way, recreational facilities, and parking lots.

Parcel: See Lot.

Person: Any individual, partnership, corporation, association, unincorporated organization, trust, or any other legal or commercial entity, including a joint venture or affiliated ownership which owns or controls land or other property to be subdivided and/or developed under the provisions of these regulations. The word "person" shall also include any municipality or other government agency.

Personal Service: A business which provides services of a personal nature, including but not limited to: laundry and dry cleaning, beauty and barber shops, shore repair, funeral services, and photographic studios.

Phasing: Development undertaken in a logical time and geographical sequence, typically to ensure that development is coordinated with the provision of services and facilities and will not result in adverse environmental impacts (e.g., erosion).

Place of Worship: A building used solely for purposes of assembly and worship by a legally established and recognized religious institution. This definition also includes customary accessory structures such as parish houses.

Planned Residential Development (PRD): An area of land, controlled by a landowner, to be developed as a single entity for a number of dwelling units; the plan for which does not correspond in lot size, bulk,

or type of dwelling, density, lot coverage, or required opens space under these regulations except as a planned unit development. See also Subdivision.

Planned Unit Development (PUD) An area of minimum contiguous size, as specified in this ordinance, to be planned, developed, operated and maintained according to plan as a single entity, the plan for which does not conform to the Zoning and Subdivision Regulations concerning lot size, bulk, type of dwelling, commercial or industrial use, density, lot coverage or required open space.

Planning Commission: The Middlesex Planning Commission, as created under the Act.

Plot Plan or Plat: A map or representation on paper, Mylar or other accepted material, of a piece of land subdivided into Lots and roads, drawn to scale.

Pre-existing: A use or structure that was legally in existence as of the effective date of these regulations.

Principal Structure: A building or structure within which the main or principal use of the lot on which the building is located is conducted. See also Accessory Structure, Structure.

Private Club: A corporation, organization, or association or group of individuals existing for fraternal, social, recreational, or educational purposes, for cultural enrichment or to further the purposes of agriculture, which owns, occupies, or uses certain specified premises, which is not organized or operated for profit, and the benefits of which are available primarily to members only.

Professional/Business Office: A room, suite of rooms or building principally used for conducting the affairs of a business, profession, or service industry. This definition specifically excludes office space which is associated with Home Occupations, or is clearly accessory to another allowed principal use. It also specifically excludes the on-premise retail sale of goods and services. See also Home Occupation.

Public Property: Owned, leased, held, used, and/or controlled exclusively for public purposes by the Town, or any other department or branch of government, or publicly-regulated utility.

Public Assembly Use: See Cultural Facility, Public Facility.

Public Improvement: Any improvement which shall be owned and/or maintained by the Town of Middlesex or other department or branch of state or federal government..

Public Facility/Utility: A building, utility or other facility owned, leased, held, used, and/or controlled exclusively for public purposes by a municipal, state or federal government, regulated utility or railroad. Such facilities include, but may not be limited to: municipal buildings and garages, water and wastewater facilities, power generation and transmission facilities, reservoirs, institutional facilities, and telephone, cable and electrical distribution lines. Public facilities and utilities, including distribution and service lines to individual uses, are allowed within all zoning districts unless otherwise specified, or specifically excluded, under district standards (see Section 4.12). See also Sanitary Landfill, Transfer Station, Hazardous Waste Facility, School, Telecommunications Facility.

Public Road: A road (street, highway) which is constructed within the boundaries of an officially deeded and municipally accepted public right-of-way (town highway), or a designated state road. See also Road.

Quarrying: The removal of rock by means of open excavation to supply material for construction, industrial or manufacturing purposes, and related operations such as blasting, crushing and the temporary storage of materials on site (see Section 4.5). See also Extraction of Earth Resources.

Rail Siding: Land, a building or structure used for the loading and off-loading of rail freight and associated storage and distribution of off-loaded freight.

Reconstruct: To replace or rebuild a building or structure that has been substantially destroyed or demolished without regard to cause.

Recreation Facility/Indoor: A building or structure designed, equipped and used for sports, leisure time, and other recreational activities, except for such facilities which are accessory to an approved educational facility or a residential use. This includes, but may not be limited to bowling alleys, movie theaters, pool halls, skating rinks, gymnasiums, and indoor swimming pools. See also Community Center, Cultural Facility.

Recreation Facility/Outdoor: A facility for outdoor recreation, including but not limited to a stadium, tennis courts, golf courses, athletic fields, swimming pools, and trails for hiking, horseback riding, bicycling, snowmobiling, and cross-country skiing; except for such facilities which are accessory to an approved educational facility or a residential use.

Recreation Vehicle: See Camper.

Research & Development. An organization or business that works to develop or improve its products or services and or ideas and develops new ones.

Residential Care Facility: A facility licensed by the state which provides primarily non-medical residential care services to seven or more individuals in need of personal assistance essential for sustaining the activities of daily living, or for the protection of the individual, on a 24-hour a day basis. See also Day Care Center, Group Home.

Residential Use: The use of a structure principally for dwelling purposes, and associated customary accessory uses such as Home Child Care or Home Occupation as defined under these regulations. For the purposes of these regulations, Group Homes shall also be considered a residential use of a single family dwelling.

Restaurant: Premises where food and drink are prepared, served and consumed primarily within the principal building. This definition includes taverns, but specifically excludes entertainment clubs.

Retail Store: Establishment where goods or merchandise are offered for retail sale or short term rental to the general public for personal, business or household consumption and services incidental to the sale of such goods are provided. Retail Store shall exclude and Drive-Through service, new and used car sales and service and trailer and mobile homes sales and service. See also: Gas Station.

Ridgeline: The uppermost points on a profile of a ridge, hill, cliff, slope or face. It may coincide with the top (highest elevation) of a rock cliff or, where the bedrock is not exposed, the most obvious break in slope associated with the underlying bedrock. The term does not include intermediate terraces, steps, or elevations along the face of a slope.

Road: A right-of-way that provides access to four or more parcels. The word “Road” shall mean the entire right-of-way, unless otherwise specified under these regulations.

Road Grade: Officially established grade (slope) of the road upon which a lot fronts. If there is no officially established grade, the existing grade of the road shall be taken as the road grade.

Salvage Yard: A facility or area for storing, keeping, selling, dismantling, shredding, or salvaging of discarded material or scrap metal. This definition includes, but is not limited to “Junkyards’ as defined by the state.

Sanitary Landfill: An engineered facility for the disposal of solid waste, identified in the Central Vermont Solid Waste Management District Implementation Plan and certified by the state [10 V.S.A Chapter 159], which is designed and operated to minimize public health and environmental impacts.

Sawmill: A facility where logs are temporarily stored, and sawn, split, shaved, stripped, chipped or otherwise processed to produce lumber or other wood products. Portable chippers, sawmills, or other equipment used on a temporary basis to process wood on the site of an active logging operation are excluded from this definition. See also Forestry.

School: An educational facility licensed by the State of Vermont to provide educational instruction to students. This includes public, private or parochial institutions. Such facilities may also include accessory recreational and dining facilities, and be used as officially designated, temporary emergency shelters.

Screening: The use of planted vegetation, fencing, walls, natural topography or earthen berms to visually shield or obscure a structure or use from neighboring structures, properties, rights-of-way, and/or designated public vantage points.

Service Area: An area designated on-site to accommodate customary accessory services to a principal use or structure, including but not limited to recycling and waste disposal facilities, snow storage, cart and bicycle storage, emergency service areas (e.g., fire lanes), and transit services.

Setback: The horizontal distance from a road, lot line, boundary or other delineated feature (e.g., a stream bank, shoreline, or wetland area), to the nearest structural element of a building, structure, or parking area on the premises. In the case of a road, the distance shall be measured starting 25 feet from the road centerline.

Sign: Any structure, display, device, or representation, that is designed or used to advertise, direct to, or call attention to any thing, person, business activity or place, and is visible from any public highway or other public vantage point. This definition does not include the flag, pennant, or insignia of any nation, state, or municipality

Significant Wildlife Habitat: Significant wildlife habitats are those natural features that are essential for the survival and/or reproduction of the native wildlife of Middlesex. This shall include, but is not limited to, (1) deer winter habitat; (2) habitat for rare, threatened and endangered species; (3) concentrated black bear feeding habitat (bear-scarred beech and oak stands); and (4) wetlands that provide critical functions for sensitive or unusual wetland-dependent wildlife such as breeding/nesting habitat for wading birds (bitterns, herons), waterfowl (ducks, geese) and otter and vernal pools.

Silviculture: See Forestry.

Single Family Dwelling: A building housing one principal dwelling unit designed and intended for year-round use. See also Accessory Dwelling, Dwelling Unit, Group Home, Mobile Home, Manufactured Home.

Slope: The deviation of a surface from the horizontal, usually expressed in percent or degrees.

Storm Water Management: The collecting, conveyance, channeling, holding, retaining, detaining, infiltrating, diverting, treating or filtering of surface water and/or runoff, together with applicable non-structural management techniques.

Story: Part of a building which is between one floor level and the next higher floor level, excluding basements and attics.

Stream: Any surface water course in the Town as depicted by the U.S. Geological Survey on topographic maps or as identified through site investigation; excluding artificially created irrigation and drainage channels. See also: Stream Channel.

Stream Channel: A defined area that demonstrates clear evidence of the permanent or intermittent passage of water and includes, but may not be limited to bedrock channels, gravel beds, sand and silt beds, and swales. A stream bank may define the usual boundaries, but not the flood boundaries, of a stream channel. Artificially created water courses such as irrigation and drainage ditches are specifically excluded from this definition. See also Stream.

Street: See Road.

Street Line: The boundary of an existing or proposed road (street) right-of-way. Where the width of a public road is not established, the street line shall be considered to be twenty-five feet from the center of the road.

Structure: An assembly of materials on the land for occupancy or use, including but not limited to a building, mobile home or trailer, sign, wall or fence which necessitates pilings, footings, or a foundation attached to the land (see Exemptions under Section 7.3). See also Building. This definition does not apply to the term "structure" as used in Section 5.6 and Table 2.7. "Structure" as used in Section 5.6 and Table 2.7 are defined in Section 5.6 (G).

Subdivider: Any person who shall lay out for the purpose of transfer of ownership or right to use any subdivision or part thereof. The term shall include an applicant for subdivision approval.

Subdivision: The division of any parcel of land into two or more parcels for the purposes of immediate or future sale, conveyance, or development. Subdivision includes re-subdivisions, amended subdivisions, Lot Line (boundary) adjustments, and the division of land held in common among several owners. See also Parcel.

Substantial Improvement: Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure either: (a) before the improvement or repair is started, or (b) if the structure has been damaged and restored, before the damage occurred. For the purpose of administering flood hazard area regulations, this definition excludes the improvement of a structure to comply with existing municipal or state health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions. This definition does not apply to the term "substantial improvement" as used in Section 5.6 and Table 2.7. "Substantial improvement as used in Section 5.6 and Table 2.7 are defined in Section 5.6 (G).

Substantially Completed: The completion of a permitted building or structure to the extent that it may be safely occupied for its intended use.

Telecommunications Facility: (1) A support structure which is primarily for communication or broadcast purposes and which will extend vertically 20 feet or more, in order to transmit or receive communication signals for commercial, industrial, municipal, county, state or other governmental purposes, and/or (2) associated telecommunications equipment and ancillary facilities that provide access and/or house equipment.

Temporary Shelter: A structure intended to be used for a limited amount of time such as a tent, tepee or yurt.

Tower. A vertical structure for antenna(s) and associated equipment that provide telecommunication services.

Town Highway: See Public Road.

Town Land Use Permit: As defined in the Act [§4403(11)] to include, as issued by the Town: (1) final zoning, subdivision, site plan or building permits or approvals relating to subdivision and land development; (2) septic or sewage system permits; (3) final official minutes of meetings which relate to permits or approvals, which serve as the sole evidence of such permits or approvals; (4) certificates of occupancy, compliance or similar certificates; and (5) any amendments to the previously listed, permits, approvals and/or certificates.

Town Plan: The Middlesex Town Plan as most recently adopted.

Transfer Station: A facility certified by the State that functions as a collection point for solid waste that will subsequently be transported to a state-approved landfill or disposal facility, excluding facilities for the storage of hazardous wastes. The facility will include, at minimum, a receiving hopper and compacting equipment which are housed in an enclosed structure. See also Hazardous Waste Facility, Sanitary Landfill.

Transit/Transportation Facility: A building, structure, or area designed and intended for use by persons changing transportation modes such as bus and train stations, and park-and-ride facilities.

Trucking Terminal: A building or property used as relay station for the loading, unloading, and transfer of goods transported by truck, or which provides containerized freight handling facilities or rail truck services, and/or where the local pick-up, delivery and temporary storage of goods incidental to the primary function of the freight shipment operation is provided.

Two-Family Dwelling: A building housing two principal dwelling units. See also Accessory Dwelling, Dwelling Unit.

Use: The purpose for which a building, structure, or parcel of land is designed, intended, occupied or used.

Variance: As set forth in the Act [§4469], permission to depart from the literal requirements of these regulations. Such permission is limited to departures from zoning requirements relating to frontage, setback, yard, coverage and height requirements (see Section 7.6). See also Degree of Noncompliance, Noncomplying Structure, Nonconforming Use.

Veterinary Clinic: A building or premises used for the medical or surgical treatment and temporary boarding of domestic animals and pets. See also Kennel.

Warehouse/Storage Facility: One or more structures used for the storage of goods and materials, and not as a primary location or outlet for business or retail uses.

Wetlands: As defined by Vermont Wetlands Title10 V.S.A. § 902.

Yard: The area on a lot, defined by front, side or rear setback distances, which is not occupied by a building or structure.

Yard Sale: The casual sale of personal property open to the general public.