Town of Fayston, Vermont
Land Use Regulations

August 29, 2012

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Land Use Regulations

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Article 1. Authority and Purpose

Section 1.1 Enactment

There are hereby established Zoning and Subdivision Regulations for the Town of Fayston in accordance with the Vermont Planning and Development Act [24 VSA Chapter 117]. These regulations shall be known and cited as the "**Town of Fayston Land Use Regulations**."

[Statutory references. 24 VSA Chapter 117 §§4401, 4419]

Section 1.2 Purpose

These regulations are hereby adopted to provide for orderly community growth and development; to incorporate and implement the Fayston 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 Fayston Town Plan, these regulations are intended to:

a) encourage responsible use and careful stewardship of natural resources, rural character, and cultural heritage;

b) maintain, preserve and enhance natural features and environmental quality for the benefit of future generations;

c) accommodate a reasonable rate of population growth that does not overburden town services and facilities, or adversely affect the town's rural character; support businesses and industries that are compatible with and complementary to Fayston's rural character and high quality of life; promote the development of a wide variety of housing types to meet the needs of residents;

d) guide development in a manner that preserves important community resources, while encouraging a range of land uses in appropriate locations; and

e) maintain a reasonable balance between community-imposed limitations on land use and the rights of individual landowners.

Section 1.3 Application of Regulations

No land development or subdivision of land shall commence within the Town of Fayston except in compliance with these regulations. Land development, as defined in Article 10, shall not include customary maintenance activities. Any land development and/or subdivision of land not specifically authorized under this regulation is prohibited, unless otherwise exempted from

these regulations under Article 9, Section 2 Exemptions, or under the Act. 24 VSA Chapter 117 §§4302, 4411, 4418

All subdivisions of land, uses and structures lawfully in existence as of the effective date of these regulations are allowed to continue indefinitely. Change, alterations or expansions to pre-existing subdivisions, structures or uses shall be subject to all applicable requirements of these regulations, including provisions applying to nonconforming uses and/or noncomplying structures under Section 3.8.

Land Development. The construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining, excavation, landfill, grading, paving, or drilling operations, or storage of equipment or materials and any change in the use of any building or other structure, or land, or extension of use of lands.

Subdivision of Land. The division of any parcel of land into two or more parcels for the sale, conveyance, lease, or development. The term "subdivision" includes re-subdivision involving the adjustment of boundaries between two or more existing parcels.

[Statutory reference. 24 VSA Chapter 117 §4446]

Section 1.4 Interpretation

(A) The provision of these regulations shall be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience, and general welfare.

(B) These regulations shall not repeal, annul or in any way impair any permit previously issued.

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

Section 1.5 Effective Date

(A) These regulations shall take effect on the day of their approval by the legal voters of the Town of Fayston.

(B) The zoning ordinance, zoning map and subdivision regulations for the Town of Fayston in effect prior to the adoption of these regulations and map shall be deemed repealed as of the effective date of these regulations and map.

[Statutory reference. 24 VSA Chapter 117 §4442]

Section 1.6 Amendment or Repeal

(A) These regulations may from time to time be amended or repealed to respect changing social, environmental, or economic conditions within the town.

(B) Any mandatory changes enacted by the state shall automatically become part of these regulations.

[Statutory references. 24 VSA Chapter 117 §§4441 and 4442]

Section 1.7 Severability

The provisions of these regulations are severable. If any of these regulations or the application thereof is held invalid, the invalidity does not affect other provisions or applications of these regulations that can be given effect without the invalid provision or application.

When the Administrative Officer cannot definitely determine the location of a district boundary, the DRB and/or appropriate state or federal official may be consulted prior to issuing a determination. A determination by the Administrative Officer regarding the location of a district boundary may be appealed to the DRB under Section 9.5.

Where a district boundary divides a lot in single ownership as of the effective date of this bylaw, or any amendment thereto, the DRB may permit, subject to conditional use review under Article 5, the extension of district standards for either portion of the lot up to fifty (50) feet beyond the district line into the remaining portion of the lot.

Article 2. Zoning Districts and Standards

Section 2.1 Establishment of Zoning Districts & Map

(A) The Town of Fayston is hereby divided into the following zoning districts as described in the accompanying tables (Tables 2.1 – 2.8) and shown on the official zoning map and associated overlays:

- Forest (FR) District
- Soil and Water Conservation (SW) District
- Recreation (REC) District
- Rural Residential (RR) District
- Irasville Commercial (IC) District
- Resort Development District
- Flood Hazard Overlay (FHO) District
- Industrial District (ID)

(B) The location and boundaries of each zoning district are depicted on the official "Fayston Zoning Map" and include the Special Flood Hazard Area in and on the most current flood insurance studies and maps published by the Department of Homeland Security, Federal Emergency Management Agency, National Flood Insurance Program, as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. Chapter 32 § 753, which are hereby adopted by reference and declared to be part of these regulations. The official zoning map and associated overlays may only be altered by amendment to these regulations in accordance with Section 1.6 and 24 VSA Chapter 117.

(C) The official zoning map and overlays shall be located in the Fayston Town Office, and shall be identified by the signatures of the Select Board, as attested to by the Town Clerk. These maps shall be the final authority as to the zoning status of any lands or waters in the town.

[Statutory references. 24 VSA Chapter 117 §§4441 and 4442]

Section 2.2 Zoning District Boundary Interpretation

(A) Where uncertainty exists as to the location of district boundaries shown on the official zoning map and overlays, the following rules shall apply:

(1) Boundaries indicated as following roads, transportation or utility rights-of-way shall be interpreted to follow the centerlines of such features.

(2) Boundaries indicated as following rivers or streams shall be interpreted to follow the channel centerline and shall move with the centerline of such features.

(3) Boundaries indicated as following lot lines shall be interpreted to follow the delineated property boundary.

(4) Boundaries indicated as following contour lines shall be interpreted to follow a constant, specified elevation as measured from mean sea level or other accepted reference datum.

(5) Distances not specifically indicated shall be determined by the scale on the official zoning map.

(B) The abandonment or relocation of a right-of-way or roadway, or the change in a line or feature that references a district boundary line, after the effective date of this bylaw, shall not affect the location of the district boundary line except with regard to shorelines, streams and rivers as specified above.

(C) When the Administrative Officer cannot definitely determine the location of a district boundary, the Planning Commission and/or appropriate state or federal official may be consulted prior to issuing a determination. A determination by the Administrative Officer regarding the location of a district boundary may be appealed to the DRB under Section 9.5.

(D) Where a district boundary divides a lot in single ownership as of the effective date of this bylaw, or any amendment thereto, the DRB may permit, subject to conditional use review under Article 5, the extension of district standards for either portion of the lot up to fifty (50) feet beyond the district line into the remaining portion of the lot.

Section 2.3 Application of District Standards

(A) All uses and structures, unless specifically exempted under Section 9.2, must comply with all prescribed standards for the district in which they are located, as set forth in Tables 2.1-2.8 and as defined in Article 10, unless otherwise specified in this bylaw. The standards for each district shall apply uniformly to each class of use or structure, unless otherwise specified. Nonconforming uses and noncomplying structures in lawful existence as of the effective date of this bylaw shall be regulated in accordance with Section 3.8.

(B) Overlay district standards shall be applied concurrently with the standards for underlying zoning districts. Where overlay districts impose more restrictive standards on the use of land or a structure, the standards of the overlay district shall apply.

(C) Uses for each district are classified as "**permitted uses**" to be reviewed by the Administrative Officer in accordance with Section 9.3, or as "**conditional uses**" to be reviewed by the DRB in accordance with Article 5. Both permitted and conditional uses are subject to applicable district requirements and general standards set forth in Article 3. Variances from the provisions of this bylaw may be considered only on appeal to the DRB, in accordance with Sections 9.5 and 9.6.

(D) All uses not specifically allowed under, or exempted from, the provisions of this bylaw, are prohibited.

Section 2.4 Zoning District Standards

The following Tables 2.1 to 2.8 set forth the stated purpose, allowed uses and specific standards for each zoning district. Additional district standards pertaining to conditional uses may be found under Section 5.4 and for planned unit developments under Article 8. Standards applicable to specific uses also may be set forth in Article 4.

Table 2.1
Forest (FR) District

(A) **Purpose.** The purpose of the Forest District is to protect significant forest resources and headwater streams and to prevent most development in areas with steep slopes, shallow soils, wildlife habitat, fragile features, scenic resources and poor access to town roads, facilities and services.

(B) **Permitted Uses:**

1. Forestry [see (E)1]
2. Pond [see Section 4.11]

(C) **Conditional Uses:**

1. Outdoor Recreation Facility [see (E)2]
2. Pond [see Section 4.11]
3. Ski Lift/Limited Ski Area Operations [see (E)3]
4. Telecommunication Facility [see (E)4 & Section 4.15]
5. Wind Energy Facility [see (E)4 & Section 4.17]

(D) **Dimensional Standards** (unless otherwise specified for a particular use):

Minimum Lot Size	25 acres
Minimum Frontage	300 feet

(E) **Supplemental District Standards:**

(1) Forestry activities shall meet all applicable state regulations, and shall, as a minimum standard, comply with Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, published by the Vermont Department of Forests, Parks & Recreation. A town permit is not required.

(2) Outdoor recreation facilities in this district are limited to hiking trails, bicycle riding trails, horseback riding trails, VAST trails, trail shelters, warming huts, and tent platforms.

(3) Ski area operations and facilities in the district are limited to ski trails, ski lifts, warming huts, snowmaking facilities and, where appropriate, restaurant facilities, and those activities inherent to routine operation and maintenance of a commercial alpine or Nordic ski area. Specific consideration shall be given to environmental constraints and aesthetic impacts with regard to the siting of such facilities in high elevation and steep slope areas.

(4) Telecommunications and wind energy facilities in this district are limited to those facilities that require no additional roads or trails for access and only use existing

power lines (if required). All connections to existing power lines shall be ground laid or buried cable.

Table 2.2
Soil and Water Conservation (SW) District

(A) **Purpose.** The purpose of the Soil and Water Conservation District is to protect significant forest resources and headwater streams and to limit development in areas with steep slopes, shallow soils, wildlife habitat, fragile features, scenic resources and limited access to town roads, facilities and services.

(B) **Permitted Uses:**

1. Accessory Dwelling [see Section 4.1]
2. Accessory Structure/Use (to a permitted use)
3. Agriculture [see (E)1]
4. Day Care Facility [6 or fewer persons, see Section 4.6]
5. Dwelling/Single Family
6. Forestry [See (E)2]
7. Group Home [8 or fewer residents, see Section 4.7]
8. Home Occupation [see Section 4.8]
9. Pond [see Section 4.11]
10. Outdoor Recreation Facility [see (E)3]

(C) **Conditional Uses:**

1. Accessory Dwelling [see Section 4.1]
2. Accessory Structure/Use (to a conditional use)
3. Adaptive Reuse [see Section 4.2]
4. Cemetery
5. Day Care Facility [see Section 4.6]
6. Dwelling/Multi-Family or Single Family in PRD
7. Dwelling/Two Family
8. Outdoor Recreation Facility [see (E)3]
9. Pond [see Section 4.11]
10. Public Facility/Utility [see (E)4]
11. Ski Lift/Ski Area Operations
12. Telecommunications Facility [see Section 4.15]
13. Wind Energy Facility [see Section 4.17]
14. Wood Processing & Storage [see Section 4.18]

(D) **Dimensional Standards** (unless otherwise specified for a particular use):

Minimum Lot Size	5 acres
Maximum Density (dwellings)	1 unit per 5 acres
Maximum Building Envelope	25,000 ft^2 or the minimum amount of land necessary to site a septic system and water system whichever is less
Minimum Frontage	300 feet
Minimum Setback/Front (from centerline of road)	65 feet
Minimum Setback/Side	25 feet
Minimum Setback/Rear	25 feet
Maximum Height	35 feet
Maximum Lot Coverage	20%

(E) **Supplemental District Standards:**

(1) Agricultural activities, including the construction of farm structures, shall meet all applicable state regulations, and comply with Accepted Agricultural Practices (AAPs) as defined and administered by the Department of Agriculture [see Section 9.2(A)(3)]. A town permit is not required.

(2) Forestry activities shall meet all applicable state regulations, and shall, as a minimum standard, comply with Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, published by the Vermont Department of Forests, Parks & Recreation [see Section 9.2 (A)(4)]. A town permit is not required.

(3) Outdoor recreation facilities allowed as a permitted use in this district are limited to hiking trails, bicycle trails, horseback riding trails, VAST trails, trail shelters, warming huts, and tent platforms. All other outdoor recreation facilities require conditional use approval.

(4) Public utilities within this district are limited to "closed" facilities [see Article 10, Definitions – Public Facilities].

Table 2.3
Recreation (REC) District

(A) **Purpose.** The purpose of the Recreation District is to allow for a compact settlement pattern that minimizes the impact on sensitive lands through the use of Planned Unit and Planned Residential Development provisions. In addition, the purpose is to encourage tourist accommodations, vacation homes, recreation and cultural facilities in a manner compatible with the town.

(B) **Permitted Uses:**

1. Accessory Dwelling [see Section 4.1]
2. Accessory Structure/Use (to a permitted use)
3. Agriculture [see (E)1]
4. Day Care Facility [6 or fewer persons, see Section 4.6]
5. Dwelling/Single Family
6. Forestry [See(E)2]
7. Group Home [8 or fewer residents, see Section 4.7]
8. Home Occupation [see Section 4.8]
9. Outdoor Recreation Facility [see (E)3]
10. Pond [see Section 4.11]

(C) **Conditional Uses:**

1. Accessory Dwelling [see Section 4.1]
2. Accessory Structure/Use (to a conditional use)
3. Adaptive Reuse [see Section 4.2]
4. Bed & Breakfast
5. Camp/Refuge/Retreat
6. Campground [see Section 4.4]
7. Cemetery
8. Cultural Facility
9. Day Care Center [see Section 4.6]
10. Dwelling/Multi-Family (only in PRD or PUD) or Single Family in PRD
11. Dwelling/Two Family
12. Home Industry [see Section 4.8]
13. Hotel (only in a PUD)
14. Indoor Recreation Facility
15. Inn
16. Kennel
17. Mixed Use [see Section 4.9]
18. Neighborhood Grocery Store (only in PUD)
19. Office
20. Outdoor Recreation Facility [see (E)3]
21. Place of Worship
22. Pond [see Section 4.11]
23. Private Club (only in a PUD)
24. Public Facility/Utility [see (E)4]
25. Restaurant (only in a PUD)
26. School
27. Sewage Treatment Facility (only for a PUD)
28. Ski Lift/Area Operations
29. Telecommunications Facility [see Section 4.15]
30. Tourist Commercial (only in PUD)
31. Wood Processing & Storage [see Section 4.18]

(D) **Dimensional Standards** (unless otherwise specified for a particular use):

Minimum Lot Size	1 acre
Maximum Density (dwellings)	1 unit per acre
Maximum TDR Density (dwellings)	4 units per acre
Maximum Density Guest Rooms	7 guest rooms per acre
Maximum TDR Density (guest rooms)	21 guest rooms per acre
Minimum Frontage	125 feet
Minimum Setback/Front (from centerline of road)	65 feet
Minimum Setback/Side	25 feet
Minimum Setback/Rear	25 feet
Maximum Height	35 feet
Maximum Lot Coverage	40%

(E) **Supplemental District Standards:**

(1) Agricultural activities, including the construction of farm structures, shall meet all applicable state regulations, and comply with Accepted Agricultural Practices (AAPs) as defined and administered by the Department of Agriculture [see Section 9.2(A)(3)]. A town permit is not required.

(2) Forestry activities shall meet all applicable state regulations, and shall, as a minimum standard, comply with Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, published by the Vermont Department of Forests, Parks & Recreation [see Section 9.2(A)(4)]. A town permit is not required.

(3) Outdoor recreation facilities allowed as a permitted use in this district are limited to hiking trails, bicycle trails, horseback riding trails, cross-country skiing, and VAST trails, trail shelters, warming huts, and tent platforms. All other outdoor recreation facilities require conditional use approval.

(4) Public facilities within this district may be "open" or "closed" facilities [see Article 10, Definitions – Public Facilities].

Table 2.4
Rural Residential (RR) District

(A) **Purpose.** The purpose of Rural Residential District is to promote agriculture, forestry and preserve rural resources and natural features and to permit low-density residential development in appropriate locations. To ensure the protection of environmental resources and maintain open space, the clustering of new development is strongly encouraged to provide for moderate to high density residential development, and appropriate non-residential uses, in areas with good access to town roads, facilities and services.

(B) **Permitted Uses:**

1. Accessory Dwelling [see Section 4.1]
2. Accessory Structure/Use (to a permitted use)
3. Agriculture [see (E)1]
4. Day Care Facility [6 or fewer persons, see Section 4.6]
5. Dwelling/Single Family
6. Forestry [See (E)2]
7. Group Home [8 or fewer residents, see Section 4.7]
8. Home Occupation [see Section 4.8]
9. Pond [see Section 4.11]
10. Outdoor Recreation Facility [see (E)3]

(C) **Conditional Uses:**

1. Accessory Dwelling [see Section 4.1]
2. Accessory Structure/Use (to a conditional use)
3. Adaptive Reuse [see Section 4.2]
4. Bed & Breakfast
5. Camp/Refuge/Retreat
6. Campground [see Section 4.4]
7. Cemetery
8. Cultural Facility
9. Day Care Center [see Section 4.6]
10. Dwelling/Multi-Family or Single Family only in PRD
11. Dwelling/Two Family
12. Home Industry [see Section 4.8]
13. Indoor Recreation Facility
14. Inn
15. Kennel
16. Mobile Home Park [see Section 4.10]
17. Neighborhood Grocery Store
18. Outdoor Recreation Facility [see (E)3]
19. Place of Worship
20. Pond [see Section 4.11]
21. Private Club
22. Public Facility/Utility [see (E)4]
23. Sand & Gravel Operations [see Section 4.13]
24. School
25. Sewage Treatment Facility
26. Telecommunications Facility[see Section 4.15]
27. Wood Processing & Storage[see Section 4.18]

28. Private Club
29. Public Facility/Utility [see (E)(4)]
30. Sand & Gravel Operations [see Section 4.13]
31. School
32. Sewage Treatment Facility
33. Telecommunications Facility[see Section 4.15]
34. Wood Processing & Storage[see Section 4.18]

(D) Dimensional Standards (unless otherwise specified for a particular use):

Minimum Lot Size	1 acre
Maximum Density	1 unit per acre
Minimum Frontage	100 feet
Minimum Setback/Front (from centerline of road)	65 feet
Minimum Setback/Side	25 feet
Minimum Setback/Rear	25 feet
Maximum Height	35 feet
Maximum Lot Coverage	35%

(E) Supplemental District Standards:

(1) Agricultural activities, including the construction of farm structures, shall meet all applicable state regulations, and comply with Accepted Agricultural Practices (AAPs) as defined and administered by the Department of Agriculture [see Section 9.2(A)(3)]. A town permit is not required.

(2) Forestry activities shall meet all applicable state regulations, and shall, as a minimum standard, comply with Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, published by the Vermont Department of Forests, Parks & Recreation[see Section 9.2(A)(4)]. A town permit is not required.

(3) Outdoor recreation facilities allowed as a permitted use in this district are limited to hiking trails, bicycle trails, horseback riding trails, cross-country skiing, and VAST trails, trail shelters, warming huts, and tent platforms. All other outdoor recreation facilities require conditional use approval

(4) Public facilities within this district are limited to "closed" facilities [see Article 10, Definitions – Public Facilities].

Table 2.5
Irasville Commercial (IC) District

(A) **Purpose.** The purpose of the Irasville Commercial District is to encourage mixed uses, medium density commercial office and business activities in an area with good road access.

(B) **Permitted Uses:**

1. Accessory Dwelling [see Section 4.1]
2. Accessory Structure/Use (to a permitted use)
3. Day Care Facility [6 or fewer persons, see Section 4.6]
4. Dwelling/Single Family
5. Dwelling/Two Family
6. Group Home [8 or fewer residents, see Section 4.7]
7. Home Occupation [see Section 4.8]

(C) **Conditional Uses:**

1. Accessory Dwelling [see Section 4.1]
2. Accessory Structure/Use (to a conditional use)
3. Adaptive Reuse [see Section 4.2]
4. Bed & Breakfast
5. Cemetery
6. Cultural Facility
7. Day Care Center [see Section 4.6]
8. Dwelling/Multi-Family (only in a PRD or PUD) or Single Family in PUD
9. Home Industry [see Section 4.8]
10. Indoor Recreation Facility
11. Inn
12. Mixed Use [see Section 4.9]
13. Neighborhood Grocery Store
14. Office
15. Outdoor Recreation Facility
16. Place of Worship
17. Pond [see Section 4.11]
18. Public Facility/Utility [see (E)1]
19. School
20. Sewage Treatment Facility
21. Telecommunications Facility [see Section 4.15]
22. Warehouse & Storage
23. Wood Processing & Storage [see Section 4.18]

(D) **Dimensional Standards** (unless otherwise specified for a particular use):

Minimum Lot Size	1 acre
Minimum Frontage	75 feet
Minimum Setback/Front (from centerline of road)	65 feet
Minimum Setback/Side	15 feet
Minimum Setback/Rear	15 feet
Maximum Height	35 feet

(E) **Supplemental District Standards:**

(1) Public facilities within this district may be "open" or "closed" facilities [see Article 10, Definitions – Public Facilities].

Table 2.6
Resort Development (RD) District

(A) **Purpose**. The purpose of the Resort Development District is to encourage the development of a compact, mixed use growth center at the bases of the Sugarbush (Mount Ellen Base Area) and Mad River Glen ski areas. Such development should accommodate four-season resort activities, and should occur in accordance with comprehensive base area planning that establishes a clear indication of the desired and anticipated pattern of future development.

(B) **Permitted Uses:**

1. Accessory Dwelling [see Section 4.1]
2. Accessory Structure/Use (to a permitted use)
3. Day Care Facility [6 or fewer persons, see Section 4.6]
4. Dwelling/Single Family
5. Dwelling/Two Family
6. Group Home [8 or fewer residents, see Section 4.7]
7. Office
8. Outdoor Recreation Facility [see (E)1]
9. Pond [see Section 4.11]

(C) **Conditional Uses:**

1. Accessory Dwelling [see Section 4.1]
2. Accessory Structure/Use (to a conditional use)
3. Adaptive Reuse [see Section 4.2]
4. Bed & Breakfast
5. Cultural Facility
6. Day Care Facility [see Section 4.6]
7. Dwelling/Multi-Family (only in PRD or PUD) or Single Family in PRD
8. Home Industry [see Section 4.8]
9. Hotel (only in PUD)
10. Indoor Recreation Facility (only in PUD)
11. Inn
12. Mixed Use [see Section 4.9]
13. Neighborhood Grocery Store
14. Outdoor Recreation Facility [see (E)1]
15. Place of Worship
16. Pond [see Section 4.11]
17. Private Club (only in PUD)
18. Public Facility/Utility [see (E)2]
19. Restaurant
20. Sewage Treatment Facility (only in PUD)
21. Ski Lift/Ski Area Operations
22. Telecommunications Facility [see Section 4.15]
23. Tourist Commercial (only in PUD)
24. Tourist Commercial (only in PUD)

(D) **Dimensional Standards** (unless otherwise specified for a particular use):

Minimum Lot Size	¼ acre
Maximum Density (dwelling)	1 unit per ½ acre
Maximum TDR Density (dwelling)	4 units per ½ acre
Maximum Density (guest rooms)	10 guest rooms per ½ acre
Maximum TDR Density (guest rooms)	20 guest rooms per ½ acre
Minimum Frontage	n/a (per PRD/PUD)
Minimum Front Setback	15 feet
Minimum Side and Rear Setback	15 feet
Maximum Height Single Family Residence	35 feet
Maximum Height all other	50 feet

(E) **Supplemental District Standards:**

(1) Outdoor recreation facilities allowed as a permitted use in this district are limited to hiking trails, bicycle trails, horseback riding trails, cross country skiing, and VAST trails, trail shelters, warming huts, and tent platforms. All other outdoor recreation facilities require conditional use approval.

(2) Public facilities within this district may be "open" or "closed" facilities [see Article 10, Definitions – Public Facilities].

Table 2.7
Flood Hazard Overlay (FHO) 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). **Warning: areas located outside this mapped district may also be subject to periodic or occasional flooding.**

(B) **Permitted Uses:**

1. Non-substantial improvements;
2. Development related to on-site septic or water supply systems;
3. Building utilities
4. Outdoor Recreation Facility [see (E)(3)]
5. Agriculture [see (E)1]
6. Forestry [see (E)2]

(C) **Conditional Uses:**

1. Substantial Improvements [see Article 10 for definition of substantial improvement]/Additions of any size [see (E)(4)] elevation, relocation, or flood proofing of existing structures;
2. New or replacement storage tanks for existing structures;
3. Improvements to existing structures in the floodway;
4. Improvements to existing roads;
5. Bridges, culverts, channel management activities, or public projects that are functionally dependent on stream access or stream crossing;
6. Public utilities

(D) **Dimensional Standards** (unless otherwise specified). As specified for the underlying district.

(E) **Supplemental District Standards**

(1) Accepted agricultural practices and best management practices (AAPs, BMPs), including farm structures, as defined by the Secretary of Agriculture, Food and Markets in accordance with the Act. Written notification, including a sketch plan showing structure setback distances from road rights-of-way, property lines, and surface waters shall be submitted to the Administrative Officer prior to any construction, as required under AAPs. Such structures shall meet all setback requirements under these regulations, unless waived by the Secretary. A town permit is not required.

(2) Forestry activities shall meet all applicable state regulations, and shall, as a minimum standard, comply with *Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont*, published by the Vermont Department of Forests, Parks & Recreation. A town permit is not required.

(3) Outdoor recreation facilities in this district are limited to recreation fields, unpaved trails, and public swimming, boating and fishing accesses that do not include fixed structures or parking facilities.

(4) New structures, except as required for flood control or stream management, are specifically prohibited within the flood hazard overlay district. Additions or substantial improvements [see Article 10 for definition of substantial improvement] to structures legally in existence as of the effective date of these regulations may be allowed subject to conditional use review and applicable federal and state requirements for development within flood hazard areas.

(5) Mandatory state [24 VSA Chapter 117 §4424] and federal [44 CFR 60.2, 60.3, 60.5] requirements for continued municipal eligibility in the National Flood Insurance Program, including but not limited to associated structural standards, definitions [44 CFR Part [59.1], administrative and variance requirements as most recently amended, and the most recent Flood Insurance Rate Map and Flood Insurance Study are hereby adopted by reference. Accordingly:

a) Applications for development within the Flood Hazard Area Overlay District must include information required under Section 5.2.

b) A copy of the application shall be submitted to the Flood Plain Management Section of the Vermont Department of Environmental Conservation, in accordance with 24 VSA §4424. A permit may be issued only following receipt of comments from the Agency, or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner. Adjacent communities and the Vermont Department of Environmental Conservation shall be notified at least 30 days prior to issuing a permit for the alteration or relocation of a watercourse and copies of such notification shall be submitted to the Administrator of the Federal Insurance Administration.

c) Development in the Flood Hazard Area Overlay District shall be subject to all applicable state and federal siting, design and flood proofing standards as most recently amended (available from the Administrative Officer), in addition to applicable requirements of the underlying zoning district.

d) Base Flood Elevations and Floodway Limits in Special Flood Hazard Areas. Where available, base flood elevations and floodway limits provided by the National Flood Insurance Program and in the Flood Insurance Study and accompanying maps shall be used to administer and enforce these regulations. In Special Flood Hazard Areas where base flood elevations and/or floodway limits *have not* been provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps, it is the applicant's responsibility to

develop the necessary data. Where available, the applicant shall use data provided by FEMA, or State, or Federal agencies.

e) Requests for variances for development within the Flood Hazard Area Overlay District must meet the requirements of Section 9.6(D), in addition to variance requirements under Section 9.6(A).

f) Permits, certifications and variance actions for development within the Flood Hazard Area Overlay District shall be recorded by the Administrative Officer in accordance with Section 9.8(E), subsections (1) and (2).

g) See Article 10 for definition of Development.

h) See Article 10 for definition of Substantial Improvement

i) See Article 10 for definition of Substantial Damage

(6) Development Standards. The criteria below are the minimum standards for development in the flood hazard overlay district. Where more than one zone or area is involved, the most restrictive standard shall take precedence.

a) In Flood hazard areas, all development shall be.

1) Reasonably safe from flooding;

2) Designed, operated, maintained, modified, and adequately anchored to prevent flotation, collapse, release, or lateral movement of the structure;

3) Constructed with materials resistant to flood damage;

4) Constructed by methods and practices that minimize flood damage;

5) 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;

6) Adequately drained to reduce exposure to flood hazards;

7) Located so as to minimize conflict with changes in channel location over time and the need to intervene with such changes; and,

8) 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 FEMA Flood Map 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 1.00 foot at any point within the community. The demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and certified by a registered professional engineer.

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:

1) Meet the standards in 2.7(E)(5)(h)(i)(c); or,

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

e) Fully enclosed areas below grade on all sides (including below grade crawlspaces 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:

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

2) Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs must be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria. a minimum of two openings on

two walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

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 base flood elevation 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 VII A 6 (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; 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.

m) Subdivisions and Planned Unit Developments must be accessible by dry land access outside the special flood hazard area.

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

(7) Floodway Area Standards:

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:

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

2) 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.

Table 2.8
Industrial (IN) District

(A) **Purpose.** The purpose of the Industrial District is to promote well-paying, year-round employment in the Mad River Valley by encouraging the concentration of manufacturing and other compatible uses in an appropriate location that will have minimal negative impact on surrounding properties and the rural character of the community.

(B) **Permitted Uses:**

1. Agriculture [See (E)1]

(C) **Conditional Uses:**

1. Accessory (Caretakers) Apartment
2. Accessory Structure
3. Repair Facility
4. Accessory Use
5. Day Care Facility
6. Commercial Water Extraction
7. Contractors Yard
8. Extraction of Earth Resources
9. Manufacturing
10. Mixed Use
11. Office
12. Public Facility
13. Restaurant (as an accessory to, and contained within, another allowed use)
14. Retail
15. Telecommunications Facility
16. Warehouse
17. Wholesale Trade

(D) **Dimensional Standards** (unless otherwise specified for a particular use):

Minimum Lot Size	10,000 square feet
Minimum Road Frontage	75 feet
Minimum Setback – Front (from center line of road)	25 feet
Minimum Setbacks – Sides	15 feet
Minimum Setback – Rear	15 feet
Maximum Building Height	50 feet
District Boundary	50 feet
Rivers, Streams, and Wetlands	In accordance with Section 3.13

(E) **Supplemental District Standards:**

(1) Accepted agricultural practices and best management practices (AAPs, BMPs), including farm structures, as defined by the Secretary of Agriculture, Food and

Markets in accordance with the Act. Written notification, including a sketch plan showing structure setback distances from road rights-of-way, property lines, and surface waters shall be submitted to the Administrative Officer prior to any construction, as required under AAPs. Such structures shall meet all setback requirements under these regulations, unless waived by the Secretary. A town permit is not required.

(2) Landscaping & Screening. In reviewing applications for conditional use review pursuant to Article 5, the DRB may require the installation of landscaping and/or screening to limit or prevent visibility of structures, storage areas and associated uses from adjacent parcels and own roads. The DRB also may require the establishment and maintenance of a vegetative screen along district boundaries to provide a visual barrier between the district and adjacent residential areas. Such screening should consist of a mix of tree and plant species designed to maintain a naturalized appearance and dense visual barrier.

(3) All uses shall comply with the review standards set forth in Article 4, and Section 5.4. In reviewing applications for conditional use review within the Industrial District, the DRB shall require a proposed construction plan, a description and specifications for all proposed machinery, operations, and products to be located and/or stored on-site, and a description of the methods or techniques to be used to ensure siting, use and operation in conformance with performance standards listed in Section 5.4.

Article 3. General Regulations

Section 3.1 Access, Driveway and Frontage

(A) **Access (Curb Cuts).** Access onto public highways is subject to the approval of the Fayston Select Board, and for state highways, the approval of the Vermont Agency of Transportation. As a condition to access approval, compliance with all pertinent local ordinances and regulations is required. If DRB subdivision or conditional use approval is required, access permit(s) shall be obtained after DRB approval has been obtained. Access permits must be obtained prior to the issuance of a zoning permit.

> ***Applicability***. Land development may only be permitted on lots in existence prior to the effective date of these regulations that either have frontage on a maintained State, Class I, II, or III public road or public waters or with the approval of the Development Review Board for access to such a road or waters by means of a permanent easement or right-of-way at least 25 feet wide or a Class IV road. For access subject to Development Review Board approval, the board may consider the intended use of the property, safety, traffic, road & site conditions in granting, conditioning or denying approval. Lots created after the effective date of these regulations are subject to all applicable provisions herein regarding access and frontage. [24 VSA §4412(3)]

In addition, the following provisions shall apply to all parcels having road frontage on town highways:

(1) With the exception of accesses (curb-cuts) used solely for agricultural or forestry purposes, no lot in existence as of the effective date of these regulations may be served by more than one access (curb cut). The DRB may approve and recommend to the Select Board additional accesses to properties in the event that:

a) the additional access is necessary to ensure vehicular and pedestrian safety; or

b) the strict compliance with this standard would, due to the presence of one or more physical features (e.g., streams, steep slopes, wetlands), result in a less desirable development or subdivision design than would be possible with the allowance of an additional access; or

c) **PRD/PUD** approved in accordance with Article 8, must have a traffic management plan.

(2) Access shall be limited to an approved width, and shall not extend along the length of road frontage.

(3) An access shall be located at least 100 feet from the intersection of public road rights-of-way (125 feet from centerline), for all uses except for single and two-family dwellings, which shall be located at least 50 feet from such intersections (75 feet from centerline), unless otherwise approved by the DRB in accordance with conditional use approval under Article 5 or subdivision approval under Article 7.

(4) Shared access is encouraged, and may be required for development subject to subdivision and/or conditional use approval.

(B) **Driveways**. Driveways shall meet the following standards.

(1) Driveways shall be constructed to town driveway standards (Vermont Agency of Transportation's B-71 Standards for Commercial and Residential Driveways. http://www.aot.state.vt.us/caddhelp/download/standards/English/PDF/stdb71.pdf or contact ZA] unless otherwise required or allowed under subdivision or conditional use review.

(2) Driveways, measured from the side of the driveway, shall be located at least ten (10) feet from side property lines. Driveways providing shared access to two or more lots created by the subdivision process may be located less than ten (10) feet from the side property lines.

(3) No driveway shall exceed a slope of 3% within 35 feet of the center line of a road, or shall intersect with a road at an angle of less than 70° within 35 feet of the center line of a road.

(4) Driveways that, in any 50 foot section, exceed an average grade of 15% shall use best construction practices and submit an erosion control plan in accordance with Section 3.4.

(5) Driveways exceeding 500 feet in length shall include, at minimum, one 12' x 30' pull-off area based on site distance visibility or every 500 feet of driveway whichever is less (i.e., 2,000 foot driveway would require 4 pull-off areas).

(C) **Frontage**. Frontage requirements for parcels served by private rights-of-way that are a minimum of 50 feet in width and/or that serve three or more parcels shall be the same as the requirements for parcels served by public rights-of-way.

(D) **Stream Crossing Structures.** Stream Crossing Structures may be permitted subject to approval by the DRB in accordance with Section 5.3. In granting approval, the DRB shall require certification of the bridge/culvert design by a licensed professional engineer. Any permits required by the Agency of Natural Resources shall be obtained prior to the granting of local permits.

Section 3.2 Conversion or Change of Use

(A) A conversion or a change in the use of land, existing buildings or other structures is subject to the provisions of these regulations as follows:

(1) The proposed use shall be subject to all the requirements of these regulations pertaining to such use, including but not limited to any district, access, and/or parking requirements, as well as any other applicable municipal, state or federal regulations currently in effect.

(2) An accessory structure such as a garage or barn may be converted to a principal use allowed within the zoning district, only if the structure is located on a separate conforming lot and complies with all dimensional, setbacks, parking, subdivision and other requirements applicable; or it is developed as an adaptive reuse (Section 4.2).

(3) The proposed use complies with all dimensional, setback, parking, subdivision and other requirements applicable to the proposed use and district.

(4) A conversion or change of use from one permitted use to another permitted use requires a zoning permit issued by the Administrative Officer under Section 9.3.

(5) A conversion or change of use from a permitted to a conditional use, or from a conditional use to another conditional use, requires conditional use approval under Article 5.

(6) A conversion or change of use in a non-complying structure requires conditional use approval under Article 5.

(7) Where there is a conversion or change of use involving increased water use and wastewater generation, a zoning permit shall be issued by the Administrative Officer only after a wastewater disposal permit has been issued by the State of Vermont.

(8) Changes or conversions involving nonconforming uses and/or non-complying structures also are subject to and will be reviewed under Section 3.8.

Section 3.3 Equal Treatment of Housing

(A) No provisions of these regulations shall:

(1) Have the effect of excluding mobile homes, modular housing, or other forms of prefabricated housing from the municipality except upon the same terms and conditions as conventional housing is excluded. Mobile homes shall be considered single family dwellings, and must meet the zoning requirements for such dwellings,

except when located in an approved mobile home park (Section 4.10) or sales establishment, or allowed as a temporary structure (Section 4.16); or

(2) be interpreted to prevent the establishment of a mobile home park within designated zoning districts, which meets all applicable requirements for such use; or

(3) be interpreted to prevent the establishment of multi-family dwellings pursuant to local standards within designated zoning districts (see Article 2); or

(4) have the effect of excluding as a permitted use one accessory dwelling unit that is located within or appurtenant to an owner-occupied single family dwelling in districts where such residences are permitted or conditional uses (Section 4.1).

[Statutory reference. 24 VSA Chapter 117 §4412(1)]

Section 3.4 Erosion and Sediment Control and Stormwater Management

Applicability. To promote erosion control and stormwater management practices that maintain pre-development erosion rates and hydrology, all development requiring a municipal land use permit and forestry is subject to the provisions of these regulations as follows.

(A) **Exemptions.** Any development that requires a state stormwater permit is exempt from the approval requirements of Article 9, Section 9.1 (B) (3). However, the Town of Fayston would prefer that the Low Impact Development Standards described in this Section be incorporated in the overall project design of State permitted projects as well.

(B) **Application Requirements.** The following information shall be presented on a plan or plans drawn to scale with supporting documents and technical details. The DRB or Zoning Administrator may require that the application materials be prepared by a qualified professional. For further explanation on how to develop this information see The Low Risk Site Handbook and the Erosion Prevention and Sediment Control Field Guide at the Vermont Department of Environmental Conservation's Stormwater Management website at http://www.vtwaterquality.org/stormwater.htm or check with Fayston's Zoning Administrator.

(1) An existing condition site assessment providing baseline information on features including slope profiles showing existing gradients, soil types, tree canopy and other vegetation, natural waterbodies, wetlands and site features that aid in stormwater management including natural drainage ways and forested and vegetated lands located on stream and wetland buffers;

(2) An erosion and sediment control plan that incorporates accepted management practices as recommended by the state in the most recent editions of the Low Risk Handbook for Erosion Prevention and Sediment Control or The Vermont Standards

and Specifications for Erosion Prevention and Sediment Control, or the most recent Agency of Natural Resources standards as determined by the [DRB].

(C) **Sediment and Erosion Control Standards.** All development is subject to the following pre-development and construction site standards to ensure that all sources of soil erosion and sediment on the construction site are adequately controlled, and that existing site features that naturally aid in stormwater management are protected to the maximum extent practical. Standards are statements that express the development and design intentions of this article. The guidelines suggest a variety of means by which the applicant might comply with the standards. The guidelines are intended to aid the applicant in the design process and the Administrative Officer and the DRB when reviewing applications. Options for compliance with the standards are not limited to the guidelines listed.

(1) **Minimize land disturbance.** Development of a lot or site shall require the least amount of vegetation clearing, soil disturbance, duration of exposure, soil compaction and topography changes as possible.

a) To the extent feasible, soils best suited for infiltration shall be retained and natural areas consisting of tree canopy and other vegetation shall be preserved, preferably in contiguous blocks or linear corridors.

b) The time the soil is left disturbed shall be minimized. The Administrative Officer or DRB may require project phasing to minimize the extent of soil disturbance and erosion during each phase of site development.

c) There shall be no soil compaction except in the construction disturbance area, which shall be identified and delineated in the field with appropriate safety or landscape fencing. In areas outside the disturbance area there shall also be no storage of construction vehicles, construction materials, or fill, nor shall these areas be used for circulation.

d) Development on steep slopes equal to or in excess of 15%, or which results in such slopes, shall be subject to conditional use review in accordance with Article 5.

(2) **Preserve natural areas.** Development shall not result in an undue adverse impact on fragile environments, including wetlands, wildlife habitats, streams, lakes, steep slopes, floodplains and vegetated riparian buffers.

a) Open space or natural resource protection areas shall be retained preferably in contiguous blocks or linear corridors where feasible, for the protection of the best stormwater management features identified in the site assessment as required in Section 3.4(C)(1).

b) Forested lands located on stream and wetland buffers and steep slopes are priority areas and are subject to regulations in Section 3.13.

c) Lot coverage and building footprints shall be minimized and where feasible, development clustered to minimize site disturbance and preserve large areas of undisturbed space. Environmentally sensitive areas, such as steep slopes shall be a priority for preservation and open space.

(3) **Manage water, prevent erosion and control sediment during construction.** Applicants shall maintain compliance with the accepted erosion prevention and sediment control plan as required by Section 3.4(B) (2).

a) Runoff from above the construction site must be intercepted and directed around the disturbed area.

b) On the site itself, water must be controlled, and kept at low velocities, to reduce erosion in drainage channels.

c) The amount of sediment produced from areas of disturbed soils shall be minimized by utilizing control measures such as vegetated strips, diversion dikes and swales, sediment traps and basins, check dams, stabilized construction entrances, dust control, and silt fences.

d) Immediate seeding and mulching or the application of sod shall be completed at the conclusion of each phase of construction, or at the conclusion of construction if not phased.

e) The applicant shall follow the erosion prevention and sediment control practices for construction that occurs from October 15th to May 15th found in Section 3.2 Winter Construction Limitations as outlined in The Vermont Standards and Specifications for Erosion Prevention and Sediment Control, or the most recent Agency of Natural Resources standards for winter construction.

(D) **Low Impact Development (LID) Standards and Guidelines for Stormwater Management.** All applications for development are subject to the following post construction stormwater management standards and guidelines to ensure that stormwater management approaches that maintain natural drainage patterns and infiltrate precipitation are utilized to the maximum extent practical.

The use of LID design approaches shall be implemented to the maximum extent practical given the site's soil characteristics, slope, and other relevant factors. To the extent that LID design approaches are not proposed in the stormwater management plan, as required in Section 3.4(C), the applicant shall provide a full justification and demonstrate why the use of LID approaches is not possible before proposing to use conventional structural

stormwater management measures which channel stormwater away from the development site.

Standards are statements that express the development and design intentions of this article. The guidelines suggest a variety of means by which the applicant might comply with the standards.

Standard (1): **Vegetation and Landscaping.** Vegetative and landscaping controls that intercept the path of surface runoff shall be considered as a component of the comprehensive stormwater management plan.

Guideline (a): Design parking lot landscaping to function as part of the development's stormwater management system utilizing vegetated islands with bioretention functions.

Guideline (b): Incorporate existing natural drainage ways and vegetated channels, rather than the standard concrete curb and gutter configuration to decrease flow velocity and allow for stormwater infiltration.

Guideline (c): Divert water from downspouts away from driveway surfaces and into bioretention areas or rain gardens to capture, store, and infiltrate stormwater on-site.

Guideline (d): Consider construction of vegetative LID stormwater controls (bioretention, swales, filter strips, buffers) on land held in common.

Standard (2): **Development on Steep Slopes.** Development on steep slopes equal to or in excess of 15% shall be sited and constructed, and slopes stabilized to minimize risks to surface and ground waters and to protect neighboring properties from damage. With the exception of land development associated with the operation, maintenance and expansion of an alpine ski resort, development shall not take place on slope gradients of 25% or more. All development on slopes equal or in excess of 15% is subject to Conditional Use Review under Article 5.

Guideline (a): Locate house sites, subsurface sewage systems and parking areas on the flattest portion of the site.

Guideline (b): Minimize crossing steep slopes with roads and driveways and lay them out to follow topographic contours in order to minimize soil and vegetation disturbance. Avoid long driveways.

Standard (3): **Reduce Impervious Surfaces.** Stormwater shall be managed through land development strategies that emphasize the reduction of impervious surface areas such as streets, sidewalks, driveway and parking areas and roofs.

Guideline (a): Evaluate the minimum widths of all streets and driveways to demonstrate that the proposed width is the narrowest possible necessary to conform to safety and traffic concerns and requirements.

Guideline (b): Reduce the total length of residential streets by examining alternative street layouts to determine the best option for increasing the number of homes per unit length.

Guideline (c): Reduce driveway lengths by minimizing setback distances. Encourage common driveways.

Guideline (d): Use permeable pavement for parking stalls and spillover parking, sidewalks, driveways and bike trails.

Standard (4): **Low Impact Integrated Management Practices (IMPs).** Stormwater shall be managed through the use of small-scale controls to capture, store and infiltrate stormwater close to its source.

Guideline (a): Create vegetated depressions, commonly known as bioretention areas or rain gardens that collect runoff and allow for short-term ponding and slow infiltration. Raingardens consist of a relatively small depressed or bowl-shaped planting bed that treats runoff from storms of one inch or less.

Guideline (b): Locate dry wells consisting of gravel or stone-filled pits to catch water from roof downspouts or paved areas.

Guideline (c): Use filter strips or bands of dense vegetation planted immediately downstream of a runoff source to filter runoff before it enters a receiving structure or water body. Natural or man-made vegetated riparian buffers adjacent to waterbodies provide erosion control, sediment filtering and habitat.

Guideline (d): Utilize shallow grass-lined channels to convey and store runoff.

Guideline (e): When paving, use permeable paving and sidewalk construction materials that allow stormwater to seep through into the ground.

Guideline (f): Consider other LID techniques such as rooftop gardens and/or rain barrels and cisterns of various sizes that store runoff conveyed through building downspouts. Rain barrels are generally smaller structures, located above ground. Cisterns are larger, often buried underground, and may be connected to the building's plumbing or irrigation system.

Guideline (g): Add minerals and organic materials to soils to increase its capacity for absorbing moisture and sustaining vegetation.

Section 3.5 Existing Small Lots

(A) Any lot that is legally subdivided, is in individual and separate, non-affiliated ownership from surrounding properties, and is in existence on the date of these regulations, may be developed for the purposes allowed in the district in which it is located, even though not conforming to the minimum lot size requirements. Development of an existing small lot shall be subject to all other applicable requirements of these regulations, including dimensional and setback standards set forth in Article 2 and municipal and state setback standards for the location of in-ground sewage disposal systems. Development may be prohibited if either of the following applies:

(1) the lot is less than one-eighth acre in area; or

(2) the lot has a width or depth dimension of less than 40 feet.

(B) An existing small lot that is in affiliated or common ownership with one or more contiguous lots as of the effective date of these regulations, or that subsequently comes under affiliated or common ownership with one or more contiguous lots, shall be deemed merged with the contiguous lot(s) for the purposes of these regulations. However, such lots shall not be deemed merged and may be separately conveyed if, ***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 this bylaw, 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 by 10 VSA Chapter 64.

[Statutory reference. 24 VSA Chapter 117 §4412(2)]

Section 3.6 Height and Setback Requirements

(A) Height is measured vertically from the highest point on top of the structure (excluding exemptions under Section 3.6 (B) to the average (of the highest and lowest) finished grade at the foundation or base.

(B) The following structures are specifically exempt from the height provisions of these regulations.

(1) agricultural structures, including barns and silos;

(2) church steeples, spires and belfries;

(3) ski facilities, including lift towers; and/or

(4) accessory structures associated with a public or residential use that are less than 50 feet in height from the average finished grade at ground level to the highest point of the structure, such as antennas, satellite dishes less than 3 feet in diameter, wind generators with blades less than 20 feet in diameter, rooftop solar collectors, chimneys, belvederes and cupolas, flag poles, and weather vanes.

(C) The DRB may permit structures in excess of district height requirements as a conditional use subject to review under Article 5, and upon condition that:

(1) the structure does not constitute a hazard to public safety, or to adjoining properties;

(2) the portion of the structure above the district height requirement shall remain unoccupied except for normal maintenance, unless occupancy is expressly approved by the DRB;

(3) front, side and rear yard setbacks are sufficient to protect adjoining properties and rights-of-way in the event of structural collapse;

(4) the structure is not to be used for advertising purposes;

(5) access to the structure, particularly for climbing, is restricted;

(6) lighting, if deemed necessary by the DRB in accordance with state and federal regulations, shall be restricted to the minimum required for security and safe operation; and

(7) all applicable conditional use standards under Section 5.3 are met.

(D) Notwithstanding the minimum setback standards for front yards (setback from centerline of road) and side and rear yards (setback from parcel boundaries) for various zoning

districts set forth in Article 2 Tables 2.1 through 2.7, the DRB may allow the modification of building setbacks as a conditional use reviewed in accordance with Article 5 and subject to the following provisions:

(1) The DRB may allow for a reduction of the front setbacks from sixty-five (65) to not less than forty-five (45) feet, and side/rear setback reduction from twenty-five (25) to not less than ten (10) feet from the side or rear property line and:

a) accomplishes the preservation of a scenic feature (s) not otherwise protected by the required setback; or

b) is necessitated by building constraints caused by geologic, topographic, or hydrologic conditions.

(2) Any reduction of setback standards beyond the allowance described in subsection (1) above may only be granted in accordance with variance standards under Section 9.6.

(3) This section does not apply to setbacks from surface waters set forth in Section 3.13.

[Statutory references. 24 VSA Chapter 117 §§4412(6), 4413 and 4414(8)]

Section 3.7 Lot and Yard Requirements

(A) In each district, a lot size minimum is specified. This lot size minimum shall apply to each principal use listed, including each dwelling unit, each seven (7) guest rooms (see Section 4.5), or each 5,000 square feet of commercial use proposed on a parcel.

(B) Only one single principal use or structure may be located on a single lot, unless permitted within the specific district as a mixed use or as an adaptive reuse of a historic accessory structure (e.g. barn), or otherwise approved by the DRB as part of a PUD or PRD under Article 8.

(C) An accessory structure or use must conform to all lot setbacks, coverage and other dimensional requirements for the district in which it is located.

(D) No lot shall be so reduced in area that it cannot conform to area, yard, setback, frontage, coverage and other dimensional requirements as prescribed in these regulations, except as approved by the DRB for PUDs or PRDs under Article 8.

(E) Space required under these regulations to satisfy area, yard, or other open space requirements in relation to one structure shall not be counted as part of a required open space for any other structure.

(F) Any yard adjoining a street shall be considered a front yard. A corner lot or any lot with frontage on more than one road shall be considered to have only one front yard as determined by the Administrative Officer.

Section 3.8 Non-complying Structures & Nonconforming Uses

(A) **Non-complying Structures.** Any structure, or portion thereof, legally in existence as of the effective date of these regulations, including a structure improperly authorized as a result of error by the administrative officer, which does not comply with the requirements of these regulations, shall be deemed a non-complying structure. A non-complying structure may be allowed to continue indefinitely, but shall be subject to the following provisions. A non-complying structure:

(1) may undergo normal repair and maintenance without a permit provided that such action does not increase the degree of noncompliance;

> **Degree of Noncompliance.** The extension of a structure, that results in an additional encroachment of the non-complying feature/element, represents an increase in the degree of non-compliance. An expansion in the volume or area of a structure shall not constitute an increase in the degree of noncompliance unless the expansion results in encroachment upon the setback that is greater than the existing non-complying encroachment.

(2) may be restored or reconstructed after damage from any cause within one year provided that the reconstruction does not increase the degree of noncompliance that existed prior to the damage;

(3) if residential, may be structurally enlarged, expanded or moved, upon approval of the Administrative Officer, provided the enlargement, expansion or relocation would otherwise be conforming. All other residential non-complying structures may be enlarged or expanded with the approval of the DRB as a conditional use in accordance with Section 5.3, provided the expansion or enlargement:

a) does not increase the total volume or area of the non-complying portion of the structure in existence prior to the effective date of these regulations by more than 50%, and
b) does not extend the non-complying feature/element of a structure beyond the point that constitutes the greatest pre-existing encroachment.

(4) if commercial, may be structurally enlarged, expanded or moved upon approval of the DRB, provided the enlargement, expansion or relocation is a non-residential use and does not increase the degree of noncompliance;

(5) may, subject to conditional use review under Article 5, undergo alteration or expansion that would increase the degree of noncompliance solely for the purpose of meeting mandated state or federal environmental, safety, health, energy

regulations or handicap access in accordance with ADA standard which would allow for continued use of the non-complying structure;

(6) shall not extend into the town right-of way; and

(7) a conversion or change of use of a non-complying structure requires conditional use approval under Article 5.

(B) **Nonconforming Uses**. Any use of land or structure legally in existence as of the effective date of these regulations, including a use improperly authorized as a result of error by the ZA, that does not conform to these regulations shall be deemed a nonconforming use. Nonconforming uses that 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 if such use has been changed to, or replaced by, a conforming use, or if such use has been discontinued for a period of 12 months, regardless of the intent to re-establish such prior use except with the approval of the DRB, subject to conditional use review under Article 5;

(2) shall not be re-established or continued following abandonment or discontinuance resulting from structural damage from any cause, 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, or if reasonable effort is being made to reinstate the use to the satisfaction of the DRB.

(3) shall not be changed to another non-conforming use without the approval of the DRB in accordance with Article 5, and then only to a use which, in the opinion of the DRB, is of the same or a more restricted nature;

(4) shall not be moved, enlarged, or increased by any means whatsoever, except with the approval of the DRB subject to conditional use review under Article 5. In no case shall a nonconforming use be moved to a different lot within the district in which it is located; and/or

(5) shall not be changed in a non-complying structure without approval of the DRB in accordance with Article 5.

[Statutory references. 24 VSA Chapter 117 §§4303(13-16) and 4412(7)]

Section 3.9 Parking, Loading and Service Area Requirements

(A) Parking. For every structure or use, off-street parking spaces shall be provided as set forth below:

(1) All required parking spaces shall have a minimum width of nine (9) feet, a minimum length of twenty (20) feet, and unobstructed access and maneuvering room.

(2) Parking areas intended for commercial and/or public use that are adjacent to residential uses shall be set back at least twenty-five (25) feet from the nearest property line including rights of way, and shall be located to the side or rear of buildings. Industrial setbacks shall be fifteen (15) feet, unless otherwise approved by the DRB under conditional use review.

(3) All commercial and industrial developments must provide adequate, clearly marked handicapped parking spaces in accordance with state and federal (ADA) requirements.

(4) For development subject to conditional use review, shared parking and/or landscaping, screening, lighting, snow removal, pedestrian or transit facilities may be required as a condition of approval.

(5) The DRB may require the preparation and implementation of a parking management plan, to include designated employee parking requirements, directional signs, and other management strategies to ensure the most efficient use of available parking. The DRB may, as a requirement of conditional use review in accordance with Article 5, require the submission of a parking management plan prepared by a licensed engineer or other qualified professional.

(B) Loading and Service Areas. Where a proposed development will require the frequent or regular loading or unloading of goods, sufficient on-site service areas shall be provided. Service areas also may be required for emergency vehicles, waste disposal and collection, bus, taxi, or van service, and other purposes as may be necessitated by the proposed use, type of vehicle and frequency of deliveries. All loading and service areas shall be clearly marked, and located in such a manner that parked vehicles will not block or obstruct sight visibility at intersections or from any internal road or access. The DRB may, as a requirement of conditional use review in accordance with Article 5, limit the hours in which loading and deliveries may take place.

(C) Waivers. The DRB, subject to conditional use review under Article 5, may waive on-site parking, loading and/or service area requirements based on the DRB's determination that due to unique circumstances, the strict application of these standards is unnecessary or inappropriate.

Table 3.1

Minimum Off-Street Parking Requirements

Use	Parking Spaces
Commercial/Retail Establishments	1 per 250 sq. ft. of gross floor area accessible to the public
Day Care Facility/School	3 spaces per 10 persons enrolled in facility
Home Industry	2 per dwelling unit, 1 per additional employee & 1 per customer
Lodging (B&B, inn, lodge, hotel)	1 per guest room, and 1 per employee for the largest shift
Mixed Use	1) Total required for each use, or 2) Where two or more uses on the same or nearby sites are able to share the same parking spaces because their parking demands occur at different times (both during the day and during the week), the same parking spaces may be counted to satisfy the parking requirements for each use upon the approval of the Development Review Board
Office. Professional/Business/Government	1 space plus one per 300 sq. ft. of office space
Public assembly	1 per 4 seats or 200 sq. ft. of gross floor area, whichever is greater
Residential/Accessory dwelling	1 per dwelling unit
Residential/ Multi-Family	3 per every 2 dwelling units
Residential/Single or Two Family	2 per dwelling unit
Unspecified	As determined by the Development Review Board
Manufacturing	1.25 per employee, for the largest shift
Storage, Warehouses, Other Non-Public Uses	1 per 1000 sq. ft. of gross floor area, 1 per employee

Section 3.10 Sign Requirements

(A) **Applicability.** A zoning permit shall be required prior to the erection, construction or replacement of any outdoor sign, except for signs that are specifically exempted from these provisions, or specifically prohibited as listed under Table 3.2.

(B) **General Standards.** All signs, other than those specified in Table 3.2, shall require a zoning permit issued by the Administrative Officer in accordance with the following requirements:

(1) Outdoor advertising signs shall only be permitted for the purposes of identifying an existing, on-premise use in those districts where such uses are permitted.

(2) There shall be only one sign per principal business or service, unless otherwise approved by the DRB in accordance with Section 4.9 for mixed uses.

Table 3.2

Exempt and Prohibited Signs

(A) **Exempt Signs**. No zoning permit shall be required for the following types of signs:

(1) One sign offering real estate for sale, not to exceed 4 square feet which shall be located on the premises, outside of the road right-of-way, and shall be removed from the premises within 5 business days of conveyance of the property.

(2) One residential sign per dwelling unit identifying the occupant, not to exceed 4 square feet in area; and residential flags or banners intended solely for ornamental or non-advertising purposes.

(3) Signs relating to trespassing and hunting, each not to exceed 2 square feet in area.

(4) Temporary auction, lawn, or garage sale, not to exceed 2 in number and 6 square feet in total area, which shall be removed immediately following the event or sale.

(5) Temporary election signs to be posted and removed in accordance with state law.

(6) Temporary signs or banners advertising public or community events, to be displayed in designated locations on town property with the prior permission of the Select Board, which shall be removed immediately following the event.

(7) Signs or bulletin boards incidental to places of worship, schools, libraries or public facilities, not to exceed one per establishment, 16 square feet in total area, or 6 feet in height above ground level.

(8) Signs Identifying trailheads of publicly accessible recreation trails, not to exceed one per trailhead, 16 square feet in total area, or 8 feet in height above the ground level.

(9) Unlit wall-mounted or freestanding signs advertising a home occupation, home industry or day care facility, not to exceed one per residential dwelling or 4 square feet in area.

(10) On-premise historic or landmark signs, not to exceed one in number or 6 square feet in area.

(11) Wall murals intended solely for artistic, non-advertising purposes.

(12) Window signs that do not exceed 30 percent of the window pane area.

(13) One temporary construction sign, not to exceed 8 square feet in total area or 10 feet in height, providing such sign is promptly removed immediately following completion of construction.

(B) **Prohibited Signs**. The following signs are prohibited in all districts:

(1) Signs that impair highway safety.

(2) Signs that are internally illuminated, animated, flashing, oscillating, revolving or made of reflective material including fluorescent colors, unless necessary for public safety or welfare.

(3) Signs painted on or attached to rock outcrops, trees, or similar natural features.

(4) Signs that extend above the eve of a building roof.

(5) Permanent signs which project over public rights-of-way or property lines.

(6) Signs identifying businesses or uses that are no longer in existence.

(7) Signs located on unregistered motor vehicles that are used primarily as a support or foundation.

(3) On-premise business signs shall not exceed 16 square feet indicating activities conducted on-site.

(4) No sign, including mounted or freestanding supporting structures, shall exceed 15 feet in height, or the height of the nearest building on the premises, whichever is less.

> ***Measurement.*** The area of measurement of any sign shall be the total area of the sign face to the outer edge, excluding any supporting frames or panels. Signs consisting of freestanding characters shall include any intervening spaces (the entire message area) in the calculation of total sign area. The height of the sign shall be measured to the highest point of the supporting structure.

(5) Signs shall be illuminated so as not to produce undue glare, hazards, or distractions. A constant, shielded light source may be used for indirect lighting, provided that the light fixture is mounted to direct light onto the sign surface, and does not adversely affect neighboring properties, rights-of-way, or vehicular traffic. Internally illuminated signs are expressly prohibited.

(6) No sign shall be located within 15 feet of any property line, 15 feet to the nearest part of the traveled portion of any road, nor within 50 feet to any road intersection.

(7) All signs shall be maintained in a secure and safe condition. Nothing in these regulations shall prevent normal sign maintenance and repair, including the replacement of broken parts. If the Administrative Officer is of the opinion that a sign is not secure, safe, or in a good state of repair, a written warning and/or notice of violation under Section 9.7(C) may be issued with a request that any defect in the sign immediately is corrected.

Section 3.11 Storage of Flammable Commodities

(A) All storage of flammable or hazardous liquid or gas shall conform to state and federal regulations to ensure that proper setbacks from property lines and surface water are maintained and appropriate dikes are installed where required.

Section 3.12 Storage of Motor Vehicles

(A) No one may place, discard or abandon a junk motor vehicle in a place where it is visible from a road, nor may anyone abandon or discard any motor vehicle upon the land of another with or without the permission of the landowner.

Section 3.13 Streams and Wetlands

Landowners planning to develop near streams and wetlands must refer to state and federal regulations in addition to these local regulations.

> ***Ordinary High Water Mark.*** The line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(A) **Buffer Strip**. To prevent soil erosion, protect wildlife habitat and maintain water quality, a vegetated buffer strip shall be maintained for a minimum of 50 feet from wetlands, streams, brooks and rivers. The 50 feet buffer strip shall be measured from the ordinary high water mark at the edge of the stream, brook or river or from the edge of the wetland as delineated by a wetland ecologist. No development, excavation, landfill or grading shall occur within the buffer strip, with the exception of clearing and associated site development necessary to accommodate the following:

(1) Stream and insignificant class 3 wetland crossings by roads, driveways and utilities.

(2) Streambank stabilization and restoration projects, in accordance with all applicable state and federal regulations.

(3) Bicycle and pedestrian paths and trails, only if there is no way that they can be located outside the 50' buffer. In cases where a path or trail is proposed to be located wholly or in part within the buffer, unpaved paths or trails are allowable. Otherwise, the proposal must go through conditional use review. Prior to submitting an application, applicant must consult with the Vermont Agency of Natural Resources, or comparable state agency, as to the best practices for this path or path segment and submit the findings to the DRB along with their application..

(4) Public recreation facilities and improved brook/lake accesses (e.g., swimholes, boat launches, fishing accesses).

(B) **Buildings, Structures and Septic Systems**. No building or structure including a septic system is allowed within 50 feet (or two times the width) of any stream, brook or river or within 50 feet of the edge of any wetland (as delineated by a wetland ecologist) without approval of the DRB in accordance with Article 5. The width of a stream, brook or river is the distance between the ordinary high water mark on the left and right banks. In addition to the conditional use criteria, the DRB shall find that the proposed building or structure will not adversely affect:

(1) the ability of the stream to carry floodwaters;

(2) stream channel stability;

(3) the water quality of the stream due to potential erosion and runoff; or

(4) the natural beauty of the stream;

and is in keeping with the historic settlement pattern of the area.

(B) The expansion or enlargement of any structure in existence prior to the effective date of these regulations and not in compliance with subsections (B) may be permitted with the approval of the DRB in accordance with Article 5.

(C) No alteration of the natural course of any stream shall be allowed except to rectify a natural catastrophe for the protection of the public health, safety and welfare; to bridge such streams for the purpose of crossing by persons and their possessions; or as stipulated in Sections 3.1 (Access, Driveways) and 4.11 (Ponds) and State agency referral under Article 9.

(D) The impoundment of any water course is subject to the provisions of Section 4.11 (Ponds) and State agency referral under Article 9.

(E) For development subject to subdivision or conditional use review, minimum required setback and/or undisturbed buffer strip distances may be increased as appropriate based on site, slope or soil conditions and the nature of the proposed use.

(F) No wetland, swamp, or marsh shall be filled or altered except as approved by the DRB which shall find that:

(1) there are no undue adverse effects to the surrounding environment;

(2) the ecology of the area is not adversely affected and the area is not a water recharge area or wildlife habitat or breeding ground;

(3) there will be no danger to the public health, safety, or welfare from eliminating a flood water retention area, water recharge area or similar use; and

(4) the Agency of Natural Resources, Department of Environmental Conservation approval, where applicable, shall also be required prior to the issuance of a zoning permit.

Section 3.14 Transfers of Development Rights

(A) **Purpose.** To encourage the preservation of important resource lands and the town's rural character, and to encourage concentrated development in the Recreation and Resort Development Districts, the transfer of development rights from designated sending areas to designated receiving areas is allowed in accordance with the following provisions.

(B) **Sending Areas.** Development rights may be transferred from lands that are located in the Rural Residential and/or Soil and Water Conservation Districts pursuant to Article 2 which, in the judgment of the DRB, have outstanding natural, scenic, recreation or historic resource values. In exercising this judgment, the DRB will consider the Mad River Valley

Rural Resource Protection Plan, Town of Fayston Resource Map Series, Town Plan and other relevant information pertaining to the potential resource value of these lands.

(C) **Receiving Areas.** Development rights transferred from a parcel(s) in a designated sending area may be used to increase the allowable density of a Planned Unit Development (PUD) and/or Planned Residential Development (PRD) within the Recreation and Resort Development Districts as designated in Article 2, which for the purposes of these regulations shall be designated as receiving area(s).

(D) **Densities.** Maximum densities shall be as established in Article 2 under dimensional standards for the respective districts. Density shall be transferred in one acre increments, with each acre being equal to one dwelling unit or two lodging units of density beyond the maximum density for the district within which the receiving area parcel is located, with the total density not to exceed the TDR density for that district. Any sending parcel(s) that retains a portion of the total allowable development rights shall retain a minimum of one acre of density.

(E) **Administration.** The removal of density (development rights) from a parcel within a designated sending area, and the transfer of density to a parcel(s) within a designated receiving area, shall be administered in accordance with the following:

(1) The removal of development rights from a parcel within a sending zone (sending parcel) shall be accomplished through a conservation easement, of a form and content approved by the DRB, to be recorded in the Fayston Land Records. Such easement shall specify that the protected portions of the parcel are to be used only for open space, agriculture, forestry and outdoor recreation purposes, and may not be used in a manner that involves the placement of structures or sewage treatment facilities. In addition, the easement shall be accompanied by a recordable plat which clearly depicts:

a) the boundaries of the sending area parcel;

b) the boundaries of the portion of the parcel to be restricted by the conservation easement; and

c) the total, unallocated density available under current zoning regulations prior to the transfer, and shall specify the total reduction of density resulting from the transfer, in tabular format.

(2) The transfer of development rights to a parcel within a receiving zone (receiving parcel) shall be accomplished through a written agreement, approved by the DRB concurrently with Planned Residential Development or Planned Unit Development approval pursuant to Article 8. Said written agreement shall be of a form and content approved by the DRB, and shall be recorded in the Fayston Land Records.

Such agreement shall specify the total density being transferred to the receiving area parcel and shall include a deed reference to the density reduction easement from which the TDR density originated.

Upon the removal of development rights from a sending parcel, and prior to the transfer to a receiving parcel, development rights may be held in a "TDR Density Bank", to be administered by the DRB. The TDR Density Bank will allow for the removal of development rights from a sending parcel(s) by private, nonprofit conservation organizations, the Town of Fayston, the Mad River Conservation Partnership or any other interested party, without the immediate transfer of TDR density to a receiving parcel(s). It will further permit the removal of TDR density from a single sending parcel and the incremental transfer of that TDR density to multiple receiving parcels over an extended period of time. Such TDR Density Bank shall consist of an easement, approved by the DRB and recorded in the Fayston Land Records, which shall provide a current record of total development rights removed from sending parcels, together with a current record of TDR density transferred to one or more receiving parcels, and a current record of all unallocated TDR density still available for transfer to parcels within a designated receiving area. Concurrent with any transfer of TDR density, the TDR Density Bank shall be updated by the DRB. Said update shall occur at a regularly scheduled meeting of the DRB, shall require a positive vote of the DRB, and shall involve revising the easement and recording the revised easement in the Fayston Land Records.

Article 4. Specific Use Regulations

Section 4.1 Accessory Dwelling

(A) There shall be only one principal dwelling per single-family residential lot. An accessory dwelling or apartment is not permitted on any lot containing two-family or multi-family dwellings. An accessory dwelling may, however, be approved on a residential lot with one single-family dwelling, subject to the following provisions, which are also intended to meet statutory requirements pertaining to accessory dwellings included in the Act:

(1) One accessory dwelling may be approved for a lot on which a single-family dwelling is the principal use, for use as an apartment, or for the housing of family members or domestic help. Accessory dwellings shall satisfy the following requirements:

a) The accessory dwelling shall be located within the principal dwelling or in an existing accessory structure.

b) The accessory dwelling shall meet all setback and other dimensional requirements for the district in which it is located; or, for an existing non-complying structure, the accessory dwelling shall in no way increase the degree of noncompliance under Section 3.8.

c) The floor area of the accessory dwelling shall not exceed 30 percent of the existing livable floor area of the principal dwelling.

d) It shall be demonstrated to the Administrative Officer that adequate water supply, septic system, and off-street parking capacity exist to accommodate residents of the accessory dwelling

e) The permit for the accessory dwelling shall clearly state that the dwelling is an accessory structure to the single-family residence and shall be retained in common ownership. An accessory dwelling may only be subdivided and/or converted for sale or use as a single or multi-family dwelling if it meets all current local and state regulations applying to such dwellings, including all density, dimensional and other requirements for the district in which it is located.

(B) An accessory dwelling of greater than 30 but not more than 40 percent of the existing livable floor area of the principal dwelling located within the principal dwelling or an existing accessory structure may be permitted in designated zoning districts subject to the requirements of subsection (A) and conditional use review in accordance with Article 5.

(C) An accessory dwelling in an accessory structure built after the effective date of these regulations may be permitted in designated zoning districts subject to the requirements of subsection (A) and conditional use review in accordance with Article 5.

[Statutory reference. 24 VSA Chapter 117 §4412(1) (E)]

Section 4.2 Adaptive Reuse

(A) **Intent.** The purpose of this provision is to enable the continued viability of certain historic buildings in Fayston that have outlived their original function (e.g., including barns and school houses) whether or not such buildings are non-complying structures, by permitting additional uses within the current dimensions of such structures, subject to conditional use review under Article 5 and the provisions of this Section.

(B) A structure that shall be considered appropriate for adaptive reuse may include any structure, excluding a building designed and used as a single family dwelling, which:

(1) has historical or architectural significance to the town, as determined by listing on the Vermont Historic Sites and Structures Survey, or determined to have become eligible for listing on the Vermont Historic Sites and Structures Survey since the time of its most recent publication, or determined by listing on the National Register of Historic Places, including designated contributing structures within a historic district listed on the National Register of Historic Places;

(2) is at least 50 years old; and

(3) has a minimum floor area of 1,000 square feet.

(C) Structures determined to be appropriate for adaptive reuse may be put to one of the following uses in any zoning district (where adaptive reuse is allowed) subject to conditional use approval under Article 5:

(1) any use permitted within the district in which the structure is located;

(2) single or multi-family dwelling, if the associated lot area is at least one acre and the total number of units does not exceed 3 units per one acre;

(3) enclosed storage facility;

(4) community center;

(5) uses associated with local arts, crafts, and culture (e.g., artists' studios, galleries) opened to customers by appointment only;

(6) other uses as determined by the DRB to meet the intent of this Section and conditional use criteria under Article 5.

(D) It also shall be demonstrated to the satisfaction of the DRB that:

(1) adequate water supply, septic system, and off-street parking capacity exist to accommodate proposed use; and

(2) exterior renovations are compatible with the original architectural design of the structure.

Section 4.3 Campers and Temporary Shelters

(A) It shall be unlawful for any person to park a camper (travel trailer, recreation vehicle) or other temporary shelter (e.g., tent, tipi, yurt), except in an approved campground or on a residential or undeveloped lot, subject to the following provisions:

(1) it is not located within required setbacks for the district in which it is located; and

(2) it is not occupied for dwelling purposes for more than 90 days within any one year period; and

(3) it is not hooked up to a water system, septic system or other utilities, except in accordance with subsection (D), below.

(B) Two campers or other temporary shelters may be parked on a residential lot (lot in which a dwelling is the principal use) or on an undeveloped lot provided that:

(1) they are not located within required setbacks for the district in which it is located; and

(2) they are not occupied for dwelling purposes for more than 90 days within any one year period; and

(3) they are not hooked up to a water system, septic system or other utilities, except in accordance with subsection (D), below.

(C) A camper or temporary shelter may be occupied for greater than 90 days on a residential lot if permitted as an accessory dwelling in accordance with Section 4.1 (Accessory Dwellings).

(D) Any sewage generated by a camper or other temporary shelter shall be disposed of in accordance with all applicable local, state and federal regulations.

Section 4.4 Campground

(A) Travel trailer, recreational vehicle, or primitive campgrounds may be permitted in the Recreation District and primitive campgrounds may be permitted in the Rural Residential District subject to conditional use review under Article 5, state agency referral as applicable under Section 9.3, and the following additional provisions:

The parcel of land for a campground shall be no less than 5 acres in area, with at least 20% of the total campground area set aside for conservation, recreation and open space.

All campgrounds shall meet minimum setback requirements for the districts in which they are located. Buffer areas of at least 50 feet in width along property boundaries, and 100 feet in width along public rights-of-way and waters, shall be maintained. Buffer areas shall not be included in the calculation of open space under subsection (1). No building, camp site, parking or service area shall be located in buffer areas. The DRB may reduce or eliminate buffer requirements if such modification will serve to preserve a scenic view, provided that privacy for adjoining property owners can be maintained.

Landscaping and/or fencing along property boundaries may be required as appropriate for screening, security, and privacy.

Campgrounds shall provide lavatory, shower, and toilet facilities sufficient to serve all camp sites. Wastewater disposal systems must be designed and installed in accordance with applicable municipal and state regulations.

A campground shall provide sufficient access and parking for each camp site. Each camp site shall be at least 1,000 square feet in area.

(B) For substantially undeveloped, primitive camping areas (e.g., tenting areas) located on public or private lands, the DRB may waive any or all of the requirements under subsection (A) if it is demonstrated to the DRB'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 Commercial Accommodations [Bed & Breakfast, Inn/Lodge, Hotel]

(A) Three categories of commercial accommodations, as defined in Article 10, may be permitted in designated zoning districts, and may be subject to conditional use review in accordance with Article 5. The standards for Bed & Breakfasts, Inn/Lodge and Hotels are summarized in Table 4.1.

Table 4.1
Comparison of Commercial Accommodations

	Bed & Breakfasts	Inns	**Hotels**
Number of guest rooms	up to 7	up to 15	Greater than 15
Owner/operator must reside on premise	Yes	No	No
Off-street parking required	Yes [Section 3.9]	Yes [Section 3.9]	Yes [Section 3.9]
On site dining for guests	Breakfast only	Yes	Yes
On site dining for non-guests	No	Yes	Yes
Exterior appearance must maintain residential character	Yes	Yes	No

Section 4.6 Day Care Facilities

(A) A state registered or licensed family day care facility that serves 6 or fewer persons on a full-time basis and up to 4 additional persons on a part-time basis, and is conducted within a single-family dwelling by a resident of that dwelling, shall be considered a permitted single-family residential use of the property. A zoning permit shall be required in accordance with Section 9.3.

(B) A day care facility operated in a residence that serves more persons than indicated in subsection (A), and non-residential day care facilities, may be allowed in designated zoning districts subject to conditional use review under Article 5.

[Statutory reference. 24 VSA Chapter 117 §4412(5)]

Section 4.7 Group Home

(A) A state licensed or registered residential care home or group home, to be operated under state licensing or registration, serving not more than 8 persons who have a handicap or disability as defined in 9 VSA §4501, shall be considered by right to constitute a single family residential use of property, except that no home shall be so considered if it locates within 1,000 feet of another such home.

(B) All other residential care facilities, including group homes serving more than 8 persons, may be allowed in designated zoning districts subject to conditional use review under Article 5.

[Statutory reference. 24 VSA Chapter 117 §4412(1) (G)]

Section 4.8 Home Based Businesses [Home Occupation, Home Industry]

(A) **Home Occupation Exemptions.** No provision of these regulations shall prevent a person from using a minor portion of a dwelling for the conduct of an occupation that is customary in residential areas and that does not have an undue adverse effect upon the character of the residential area in which the dwelling is located. No permit or approval shall be required for a home occupation that meets the following standards (see also Table 4.2).

(1) The home occupation shall be conducted only by residents of the dwelling.

(2) The home occupation shall be carried on within an area not to exceed 200 square feet of the primary dwelling. An accessory structure may not be used.

(3) Exterior displays of goods and wares, the exterior storage of materials, or other exterior indications of the home occupation, including alterations to the residential character of the principal structure shall not be permitted.

(4) No on-premise business sign is permitted.

(5) No materials or mechanical equipment shall be used that will be detrimental to the residential character of the dwelling or adjoining dwellings because of vibration, noise, dust, smoke, odor, heat, glare, interference with radio or television reception, or other undesirable factors.

(6) No additional traffic shall be generated.

(7) Retail sales are not permitted.

(B) **Home Occupations** Home occupations, as distinguished from exempt home occupations under subsection (A) and home industries under subsection (C), are permitted as an accessory use in all districts where residential uses are permitted. A permit application shall be submitted to the Administrative Officer for a determination as to whether the proposed use is a home occupation in accordance with the following provisions:

(1) The home occupation shall be conducted only by residents of the dwelling.

(2) The home occupation shall be carried on within a minor portion of the dwelling or a minor portion of accessory building such as a garage or barn. In no case shall the home occupation occupy greater than an area equal to 40% of the floor area of the primary dwelling.

(3) Exterior displays of goods and wares, the exterior storage of materials, or other exterior indications of the home occupation, including alterations to the residential character of the principal or accessory structures shall not be permitted. One unlit exterior sign is permitted in accordance with Section 3.10.

(4) No materials or mechanical equipment shall be used that will be detrimental to the residential character of the dwelling, adjoining dwellings or neighborhood because of vibration, noise, dust, smoke, odor, heat, glare, interference with radio or television reception, or other undesirable factors.

(5) No traffic shall be generated in substantially greater volumes than would normally be expected from a residential use in the neighborhood. Parking shall be provided on-site in accordance with Section 3.9.

(6) Retail sales are not permitted as part of a home occupation, with the exception of the sale of goods and/or crafts created on the premises in which retail sales are incidental to the home occupation.

(7) The home occupation shall be open to the public by scheduled appointment only.

(8) The zoning permit shall clearly state that the use is limited to a home occupation, approved in accordance with the above provisions, which is accessory to the principal residential use and shall be retained in common ownership and management. Any proposed expansion of the home occupation beyond that permitted will require a separate zoning permit for a home industry under this section, or other use as appropriate.

(C) **Home Industry.** Home industries (as distinguished from Home Occupations) may be permitted in designated zoning districts subject to conditional use review in accordance with Article 5 and the following provisions:

(1) The owner and operator of the home industry shall reside on the lot.

(2) The home industry shall be carried on within the principal dwelling and/or accessory structure(s) providing the use of such space does not change the character of the property or neighborhood.

(3) No materials or mechanical equipment shall be used that will be detrimental to the residential character of the dwelling, adjoining dwellings or neighborhood because

of vibration, noise, dust, smoke, odor, heat, glare, interference with radio or television reception, or other undesirable factors.

(4) The business shall not necessitate any change in the outward appearance of the dwelling unit or accessory structures on the lot.

(5) The residents of the dwelling unit and no more than 4 non-resident employees may be employed on-site at any one time.

(6) The business shall not generate traffic, including but not limited to delivery truck traffic, in excess of volumes that are characteristic of the neighborhood.

(7) Adequate off-street parking shall be provided for all residents, employees and customers in accordance with Section 3.9.

(8) Adequate provision for water supply and wastewater disposal shall be provided.

(9) There shall be no long-term storage of hazardous waste or materials; fuel storage shall be limited to that needed for heating and necessary servicing of equipment (see Section 3.11).

(10) The business shall be visually compatible with neighboring lots and uses; landscaping and screening may be required as appropriate. In addition, any outdoor storage of materials and equipment, including building or construction materials, unregistered vehicles or heavy equipment, firewood or lumber, may be required to be completely screened year-round from the road and from neighboring properties.

(11) On-site wholesale and/or retail sales shall be limited to products produced on the premises.

(12) No home industry shall operate at a scale or density that would diminish the residential character of the neighborhood.

(13) The permit for a home industry shall clearly state that the industry is a home-based business that is accessory to the principal residential use, and shall be retained in common ownership and management. A home industry may be subdivided and/or converted for sale or use apart from the residential use only if it meets all current municipal and state regulations pertaining to such use, including density, dimensional, and other requirements for the district in which it is located. Separate permits shall be required as appropriate prior to subdivision, sale and/or conversion.

[Statutory reference. 24 VSA Chapter 117 §4412(4)]

Table 4.2
Comparison of Standards for Home-Based Business

	Exempt from Permit	Home Occupation	Home Industry
Secondary to residential use	Yes	Yes	Yes
Within principal dwelling	Yes	Yes	Yes
Within accessory structures	No	Yes	Yes
Maximum Square Footage	200 Square Feet	Up to 40% of Dwelling	No Limit
Outdoor storage of materials/equipment	No	No	Yes
Employees (FTEs)	Residents Only	Residents Only	4 Additional
Parking Spaces	For Residence Only	For Residence Only	2 per Dwelling, 1 per Employee, 1 per Customer
Lighting	No	No	Yes (w/ screening)
Landscaping/Screening	No	No	May be Required
Signs	No Business Sign	One, 4 sq. ft.	One, 4 sq. ft.
Retail Sales	No	Limited to products produced on-site	Limited to products produced on-site
Conditional Use Review	No	No	Yes

Section 4.9 Mixed Uses

(A) In designated districts, more than one use may be permitted within a single building or on a single lot subject to conditional use review in accordance with Article 5 and the following provisions:

(1) Each of the proposed uses is otherwise allowed as a permitted or conditional use in the district in which the mixed use is proposed.

(2) The combined uses meet all applicable standards for the district in which the mixed use is proposed, including minimum setbacks and frontage, maximum lot coverage and minimum lot size.

(3) The mixed use meets all applicable general provisions contained in Article 3, including parking requirements under Section 3.9 based on the cumulative parking demand for the various proposed uses and sign requirements (Section 3.10).

Section 4.10 Mobile Home Park

(A) Mobile home parks may be permitted in designated districts subject to conditional use review in accordance with Article 5 and the following provisions:

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

(1) Proposed parks shall comply with the requirements of Article 8 and 10 VSA Chapter 153.

(2) Proposed parks shall comply with all applicable state and local laws, ordinances and regulations relating to water supply and waste disposal.

(3) The parcel of land for a mobile home park shall be no less than 5 acres in area.

(4) All mobile home parks shall have individual lots for units, adequate driveways, and sufficient parking and open or recreational space.

(5) Each mobile home lot shall be at least 12,000 square feet in area, and shall have an average width of at least 60 feet and an average depth of at least 120 feet and shall have planted thereon at least 4 trees of native species of at least 1 inch diameter at chest height.

(6) All roads within a mobile home park shall comply with Town road standards, and adequate walkways shall be provided.

(7) Parking shall be provided in accordance with Section 3.9.

(8) A minimum of twenty percent of the total land area in any mobile home park shall be set aside for common recreational use.

(9) All mobile home parks shall meet minimum setback requirements for the districts in which they are located. Buffer areas of at least 50 feet in width along property boundaries, and 100 feet in width along public rights-of-way and waters, shall be maintained. Buffer areas shall not be included in the calculation of recreation land under subsection (8). No building, mobile home, parking or service area shall be located in buffer areas. The DRB may reduce or eliminate buffer requirements if such modification will serve to preserve a scenic view, provided that privacy for adjoining property owners can be maintained.

(B) In accordance with the Act, if a mobile home park legally in existence as of the effective date of these regulations is determined to be nonconforming under these regulations; its nonconforming status shall apply only to the park as a whole, and not to individual home

sites within the park. Accordingly, the requirements of Section 3.8 shall not apply to an individual mobile home site for the purposes of replacing an existing mobile home on the site with a mobile home of the same or larger footprint, as long as a distance of at least 10 feet is maintained from adjoining mobile home sites. Sites within an existing park that are vacated shall not be considered discontinued or abandoned.

[Statutory reference. 24 VSA Chapter 117 §4412(7)(B)]

Section 4.11 Ponds

(A) **Intent.** The construction of a pond shall require a zoning permit in order to protect the lives and property of citizens, the infrastructure of the community, and the health of the natural environment. The purpose of regulating said construction is to reduce the possibility of failure from improper design or construction; to minimize potential flood damages incurred to upstream and/or downstream properties by the storage of flood waters; and to minimize the damages caused by the sudden release of stored water from a failure of the dam or intentional rapid draining of the impoundment.

(B) The creation of a pond that impounds less than 100,000 cubic feet of water and does not include a structural element greater than ten (10) feet high (measured from the lowest elevation of the downstream toe to the crest) may be permitted upon application and receipt of a zoning permit. In issuing a zoning permit, the Administrative Officer shall find that:

(1) If the project necessitates any work in a stream and if a stream alteration permit or other approval is required from the Vermont Department of Environmental Conservation in accordance with 10 VSA Chapter 41, such permit or approval has been received.

(2) The proposed pond poses no danger to neighboring properties, roads, bridges and culverts.

(3) Applications for Ponds shall include the following mapped information:

a) all neighboring property uses;

b) all structures on the adjacent properties – to include, buildings, springs, septic systems, wells, driveways, roads, etc.;

c) hydrologic connectivity to any stream, wetland, or wet area that may be hydrologically effected by the pond;

d) the spillway for the pond.

(C) If the project requires a permit or approval due to impacts on wetlands; rare, threatened, or endangered species; or the passage of fish; or if the project requires a permit or approval from the US Army Corps of Engineers, the Act 250 District Commission, or any other state or federal authority, such permit or approval has been received.

(D) Upon issuance of the zoning permit, the Administrative Officer shall duly note that the applicant is responsible for the pond's safety and liable for its failure if he or she does not maintain, repair, and operate the pond in a safe and proper manner.

(E) Any pond that impounds more than 100,000 cubic feet of water or includes a structural element greater than ten (10) feet high measured from the lowest elevation of the downstream toe to the crest shall be subject to conditional use review pursuant to Article 5. In granting approval, the DRB shall find that:

(1) The proposed pond is designed and certified by a Vermont licensed professional engineer with experience in pond design.

(2) The proposed pond poses no danger to neighboring properties, roads, bridges and culverts.

(3) The project has received a permit from the Vermont Department of Environmental Conservation in accordance with 10 VSA Chapter 43 if the proposed pond will impound or be capable of impounding more than 500,000 cubic feet of water.

Section 4.12 Public Facilities/Utilities

(A) The following uses are subject to conditional use review pursuant to Article 5, and may only be regulated with respect to size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, and landscaping or screening requirements and only to the extent that regulations do not have the effect of interfering with the intended functional use:

(1) Public and private hospitals (may be located within 1 mile of Route 100 or Route 17 only).

(2) Regional solid waste management facilities certified by the State [10 VSA, Chapter 159] (may be located within 1 mile of Route 100 or Route 17 only).

(3) Hazardous waste management facilities for which a notice of intent to construct has been received under state law [10 VSA, §6606a] (may be located within 1 mile of Route 100 or Route 17 only).

(B) Reasonable provision has been made for the following uses within designated districts, which are subject to all applicable provisions of these regulations including district requirements.

(1) State or community owned and operated institutions and facilities (see *"Public Facilities – open and closed" in* Article 10).

(2) Public and private schools and other educational institutions certified by the Vermont Department of Education (see *"School"* in Article 10).

(3) Churches and other places of worship, convents and parish houses (see *"Place of Worship"* in Article 10).

(C) Telecommunications utility structures, where allowed as conditional uses, shall comply with the following:

(1) the facility shall be no closer than one hundred (100) feet from the center line of any road; and

(2) a landscaped area of at least twenty-five (25) feet shall be maintained in front, rear, and side yards.

(D) In accordance with the Act, public utility power generating plants and transmission facilities regulated by the Vermont Public Service Board (under 30 VSA §248) are specifically exempted from municipal land use regulations.

[Statutory reference. 24 VSA Chapter 117 §4413(a)]

Section 4.13 Sand and Gravel Operations

(A) The extraction or removal of topsoil, sand, or gravel or other similar material except where incidental to any development lawfully undertaken in accordance with these regulations, may be permitted in designated districts subject to conditional use review under Article 5, and findings that the proposed operation shall not:

(1) cause any hazard to public health and safety, or

(2) adversely affect neighboring properties, property values or public facilities and services; surface water and groundwater supplies; or natural, cultural, historic or scenic features.

(B) In granting approval, the DRB may consider and impose conditions with regard to the following factors as it deems relevant:

(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;

(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 safety and general welfare.

(C) The application for a conditional use permit under Section 5.2 also shall include erosion control and site reclamation plans showing:

(1) existing grades, drainage and depth to water table;

(2) the extent and magnitude of the proposed operation including proposed phasing; and

(3) finished grades at the conclusion of the operation.

(D) A performance bond, escrow account, or other surety acceptable to the Select Board shall be required to ensure reclamation of the land upon completion of the excavation, to include any re-grading, reseeding, reforestation or other reclamation activities that may be required. Upon failure of the permit holder, their successors or assigns to complete site reclamation as required, the town may take legal action as appropriate to ensure site reclamation and cost recovery.

(E) The processing of earth materials (e.g. gravel, sand, topsoil) extracted off-site, including crushing, storage and distribution, is only permitted within designated zoning districts as a defined use or as an accessory to another defined use (e.g. town highway facility), and is subject to DRB approval as a conditional use in accordance with this Section and Article 5.

[Statutory reference. 24 VSA Chapter 117 §4464(b)(4)]

Section 4.14 Special Events

(A) Special events (e.g., weddings and receptions; concerts, festivals, fairs and other cultural events; conferences, trade and antique shows) are permitted as a principal or accessory use of any parcel providing that such use occurs for no more than 10 days within any calendar year. Churches and other religious institutions, funeral homes, schools, and municipal properties are specifically exempted from this definition. Any single event involving greater than 200 participants shall be approved by the Select Board in accordance with the Fayston Entertainment Ordinance.

(B) The use of any parcel for hosting special events for greater than 10 days within any calendar year may be permitted as an accessory use to another principal use with the approval of the DRB in accordance with Article 5. In granting approval, the DRB shall determine that adequate provision has been made for temporary wastewater disposal, solid waste disposal, and noise, traffic and crowd control as appropriate. The DRB may impose conditions regarding the number of participants, hours of operation, and other limitations related to scale and intensity as deemed appropriate.

Section 4.15 Telecommunication Facilities

(A) New or expanded telecommunication facilities, including but not limited to towers and accessory structures may be permitted in designated zoning districts subject to conditional use review under Article 5 and the following provisions:

(1) a proposal for a new tower shall not be permitted unless it is determined by the DRB that the equipment planned for the proposed tower cannot be accommodated on an existing approved tower, building or structure.

(2) new towers shall be designed to accommodate the co-location 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) all towers, including antennae, shall be less than 150 feet in height as measured from the lowest grade at ground level to the top of the highest structure or component.

(4) no wireless telecommunication site shall be located within 500 feet of an existing residence.

(5) towers shall be set back from all property lines and public rights-of-way for a distance equaling their total height, including attached antennas. The DRB may waive this requirement:

a) if tower design and construction guarantees that it will collapse inwardly 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.

(6) tower construction and wiring shall meet all state and federal requirements, including but not limited to Federal Communication Commission requirements for transmissions, emissions and interference. No telecommunication facility shall be located in such a manner that it poses a potential threat to public health or safety.

(7) towers shall be enclosed by security fencing at least 6 feet in height, and shall be equipped with appropriate anti-climbing devices.

(8) new towers shall be sited and designed to minimize their visibility. No tower shall be located on an exposed ridge line or hill top. New or modified towers and antennae shall be designed to blend into the surrounding environment to the greatest extent feasible, through the use of existing vegetation, landscaping and screening, the use of compatible materials and colors, or other camouflaging techniques.

(9) towers shall not be illuminated by artificial means and shall not display strobe lights unless such lighting is specifically required for a particular tower by the Federal Aviation Administration or other federal or state authority.

(10) the use of any portion of a tower and/or fencing for signs other than warning or equipment information signs is strictly prohibited.

(11) access roads, and all accessory utility buildings and structures shall be designed to aesthetically blend in with the surrounding environment and meet all other minimum requirements for the district in which they are located. Ground-mounted equipment shall be screened from view. Setback, landscaping and screening requirements may be increased as appropriate based on site conditions, and to

protect neighboring properties and uses. All utilities proposed to serve a telecommunications site shall be installed underground.

(12) all abandoned or unused towers and associated facilities shall be removed within 12 months of the cessation of operations at the site, and the site shall be restored to its original appearance. A copy of the relevant portions of any signed lease that 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 Select Board may be required to ensure tower removal and site reclamation.

(B) Notwithstanding the requirements of Subsection (A), wireless telecommunications equipment to be mounted on existing towers, utility poles, ski lifts, or other structures may be permitted by the Administrative Officer without conditional use or site plan review provided that:

(1) the existing structure (tower, utility pole, etc.) can safely carry the added static and dynamic load of the new equipment.

(2) no changes are made to the height or appearance of such structure except as required for mounting;

(3) the height of the antenna as mounted does not exceed height requirements under Section 3.6;

(4) no panel antenna shall exceed 72 inches in height or 24 inches in width;

(5) no dish antenna shall exceed 3 feet in diameter; and

(6) any accompanying equipment shall be screened from view.

(C) **Application Requirements**. In addition to the application requirements set forth in Section 5.2, applications for new towers shall also include the following:

(1) a report from a qualified and licensed professional engineer that describes tower height, construction design and capacity, including cross-sections, elevations, potential mounting locations, electric power requirements, electromagnetic radiation patterns, and fall zones. The construction design shall include allowable loading for possible future shared used of the tower. The town reserves the right to select the engineer;

(2) information regarding the availability of existing towers and buildings located within the site search ring for the proposed site, including written documentation from other tower owners within the search ring that no suitable sites are available.

(3) a letter of intent committing the tower owner and his/her successors to allow the shared use of the tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use.

(4) written documentation that the proposed tower shall comply with all requirements of the Federal Communications Commission, and the Federal Aviation Administration;

(5) any additional information needed to determine compliance with the provisions of these regulations.

(D) 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 that is intended solely for residential use, and does not, as mounted, exceed 35 feet in height above the lowest grade at ground level.

(2) All citizens band radio antennae or antennae operated by a federally licensed amateur radio operator that do not exceed a height of 50 feet above the grade level, whether free standing or mounted, and that meet all setback requirements for the district in which they are located.

[Statutory reference. 24 VSA Chapter 117 §4414(12)]

Section 4.16 Temporary Uses and Structures

(A) A temporary permit may be issued by the Administrative Officer for non-complying structures, excluding residential dwellings, which are incidental to a construction project, for a period not exceeding one year, conditional upon written agreement by the owner to remove the structure and/or discontinue the use upon expiration of the permit. This permit may be renewed under special circumstances at the discretion of the Administrative Officer.

(B) Any trailer used for storage or other accessory use for a period exceeding 30 days shall be considered a structure subject to all of the terms and conditions of these regulations.

(C) The use of temporary structures, including campers, recreational vehicles, tents and yurts, for dwelling purposes shall meet the requirements for Campers and Temporary Shelters under Section 4.3.

(D) The use of temporary structures associated with a special event open to the general public (e.g. cultural performance, sporting event, community function) approved by the Fayston Select Board, or associated with a special event operated as an accessory to another use permitted in accordance with these regulations; or associated with a one-

time private function (e.g. wedding, family reunion), does not require a zoning permit provided the temporary structures are removed within 14 days of construction or as otherwise permitted by the Select Board in accordance with the Entertainment Ordinance or DRB in accordance with Article 5.

Section 4.17 Wind Energy Facility

(A) **Applicability.** A wind energy facility may be allowed in any zoning district as a conditional use subject to conditional use review by the DRB under Article 5, and the requirements of this section. However, no wind generation facility shall be sited within the Flood Hazard Area Overlay District, or within 200 feet of any peak or ridgeline within the town.

(B) **Application Requirements.** In addition to the application information required under Section 5.2, the applicant for a wind energy facility shall supply the following;

(1) the contact information for the person(s) authorized to operate, maintain and ensure the safety of the facility;

(2) a site development plan showing:

a) the footprint of all proposed facilities, including generation, collection and transmission facilities, and other accessory structures and access roads, in relation to existing site features;

b) facility setback distances from property lines, public rights-of-way, peaks, ridgelines, and existing structures on the site and on adjoining properties;

c) prevailing wind conditions, including wind direction and speed, and wind access or buffer areas as required for facility operation.

(3) a report from a qualified, licensed professional engineer that describes facility design and installation specifications, including:

a) tower design, elevations, cross-sections, and fall zones;

b) wind turbine information, including maximum rotor size, operational speeds, and blade throw distances;

c) power generation, collection and transmission capacities, and

d) tower, rotor, and electrical safety specifications.

(4) other information the DRB may require to determine conformance with these regulations, including but not limited to:

a) an analysis of projected noise levels in relation to existing noise levels at the proposed site;

b) a biological assessment, prepared by a qualified biologist in consultation with the Vermont Department of Fish & Wildlife, to determine potential impacts to birds and other wildlife and to determine associated operation, management and monitoring protocols;

c) a visual impact assessment, including visual simulations of the facility from vantage points specified by the DRB.

(C) **Facility Design Requirements.** Wind energy facilities shall be sited and designed in accordance with the following:

(1) Equipment selected shall, to the extent feasible, minimize the need for structural supports (e.g., guy wires). Guy wires and other structural supports shall be clearly marked to avoid collision.

(2) Equipment shall, to the extent feasible, be consolidated on the turbine tower or foundation pad.

(3) All electrical collection lines shall be placed underground

(4) Access to all facilities shall be restricted to reduce public hazards and personal injury. Warning signs shall be placed on all towers, electrical equipment and at project entrances. Perimeter fencing and screening also may be required by the DRB as needed to further limit public access to the facility and/or to screen ground equipment from view.

(5) Turbine towers are specifically exempt from the maximum height requirement for the district in which they are located; however no tower shall exceed 100 feet in height. The lowest portion of a turbine blade shall be at least 15 feet above the ground surface.

(6) The lighting of turbine towers, or the use of towers for advertising purposes, is prohibited. Maximum tower height may be reduced by the DRB as needed to avoid federal or state lighting requirements.

(7) Towers shall be setback at least 500 feet from all property boundaries and public rights-of-way, and at least 1,000 feet from any existing off-site residence. Required setback distances may be increased by the DRB for larger wind generating facilities

or as needed to mitigate potential adverse impacts to properties and uses within the vicinity of the project.

(8) The facility shall not generate continuous mechanical and/or aerodynamic noise in excess of 75 dB(A) as measured at the property line, unless otherwise approved by the DRB based on submitted noise level analyses that show no noise impacts to surrounding properties. As a condition of approval, the DRB may require the monitoring and reporting of operational noise levels, and any related noise complaints, for a one year period, and impose additional noise reduction requirements as appropriate.

(9) The facility shall not create disruptive electromagnetic interference. Wind turbines shall be filtered and/or shielded to prevent interference with broadcasting signals and navigational systems.

(10) Towers and turbines shall be designed and sited to:

a) minimize their overall density and visual impact, and to avoid the appearance of a "wind wall," through adequate spacing, and uniform tower design, blade number and rotational direction,

b) minimize project visibility through the use of non-reflective, unobtrusive surfaces and colors that blend with their surroundings, except for markings as required for safety and/or to reduce avian collisions, and

c) minimize high wind, icing, and electrical fire hazards.

(11) To minimize potential environmental and visual impacts, wind energy facilities, to the extent feasible, shall:

a) be sited and designed to avoid impacts to resident and migratory avian populations,

b) use a roadless project design, through the use of existing accesses, the use of mesh mats or grating over existing vegetation to provide temporary access, and/or air lift transport,

c) consolidate access and utility corridors, and use local topography and land cover to minimize facility and corridor visibility, and

d) minimize the area cleared of vegetation and disturbed for site development, and avoid areas of steep slope (>25%) to minimize the amount of cut, fill and erosion control required.

(C) **Removal**. All abandoned, unused, obsolete, or noncompliant wind energy facilities, including facilities that have not produced electricity for a continuous period of one year, shall be removed within twelve months of the cessation of operation, and the site shall be restored to its natural state. A copy of the relevant portions of any signed lease that requires the applicant to remove the facility shall be submitted at the time of application. A bond or other form of surety acceptable to the Fayston Select Board may be required

Section 4.18 Wood Processing and Storage

(A) Commercial wood processing and storage operations may be permitted in designated zoning districts subject to conditional use review under Article 5. In addition to the standards set forth in Article 5, the DRB may require specific conditions or modifications to the project to ensure the following:

(1) The wood processing and storage operation will not create dangerous, injurious, noxious or otherwise objectionable conditions that adversely affect the reasonable use of adjoining or neighboring properties.

(2) The operation will not take place within 50 feet of the center line of the road, and within 25 feet of the rear or side property lines. The DRB may increase any of the aforementioned setbacks if deemed appropriate to meet the standards set forth in Article 5. Setback requirements for any building or structure shall be in conformance with the setback requirements set forth in Article 3 for the district in which the proposed Wood Processing and Storage facility is located. The applicant's plan shall show the location of all property lines and primary and accessory structures on the lot where the operation is proposed. The applicant's plan shall indicate the distances from all processing and storage activities to property lines.

(3) The proposed hours of operation will not result in an adverse effect on the reasonable use of adjoining or neighboring properties. The DRB or ZA may set the permitted hours of operation as a condition of approval.

The administrative Officer may issue permits for the operation of portable mills, not to exceed 1 month (may be renewable), subject to the conditions of Section 4.18 (A) (1) through (3) above.

Article 5. Conditional Review

Section 5.1 Applicability

(A) This article applies to development requiring conditional use review and approval by DRB prior to the issuance of a zoning permit under Section 9.3. A zoning permit shall not be issued by the Administrative Officer until DRB approval is granted, in accordance with the Act and the following standards and procedures.

(B) When subdivision and conditional use review are both required for a particular project, subdivision review (and any associated review for planned residential or planned unit development) shall precede conditional use review. To the extent applicable, conditional use approval shall incorporate the findings and conditions of subdivision approval. To expedite the review process, the DRB is authorized to hold subdivision and conditional use hearings, either jointly or separately, on the same date, if requested by the applicant. Hearing notices may be warned jointly. Written decisions must be issued separately by the DRB.

[Statutory reference. 24 VSA Chapter 117 4414(3)]

Section 5.2 Application Requirements

(A) In addition to the application requirements under Section 9.3 (B) for a zoning permit, an application for conditional use review by the DRB shall include associated fees, and one original and two complete copies of the following information as applicable to the development:

(1) applicant information, including the name and address of the applicant, the property owner of record, and the person or firm preparing the application and supporting materials;

(2) the date of the application, to also be shown on all supporting materials;

(3) proof of notification to adjoining landowners;

(4) a general location map (on a USGS topographic map or Vermont orthophoto base) showing the location of the proposed development in relation to zoning districts, public highways, drainage and surface waters, and adjoining properties and uses;

(5) a site plan, drawn to scale, that shows:

a) north arrow, scale, title (project name), date, and the name of the preparer;

b) property lines, dimensions and required setback distances;

c) the location (footprints) of existing and proposed structures, including all buildings, other structures, signs, and/or walls;

d) existing and proposed roads, driveways, rights-of-way and easements; and

e) existing and proposed utility lines, water supply and wastewater disposal areas.

(6) additional information may be requested by the DRB to determine conformance with these regulations, including one or more of the following:

a) existing site features, including ridgelines, hill tops and areas of steep slope (> 25%); drainage, surface waters, wetlands, and associated setback areas; vegetation and tree lines; historic features (e.g., structures, cellar holes, stone walls), and designated critical habitat, flood hazard and source protection areas;
b) elevation contours, at intervals to be specified by the DRB,
c) existing and proposed structural elevations,
d) existing and proposed parking and loading areas, and pedestrian paths,
e) proposed site grading (cut and fill), stormwater management, and erosion control measures in accordance with Section 3.4,
f) proposed outdoor lighting, landscaping and screening,
g) an "elevation certificate" as required under the National Flood Insurance Program for development within flood hazard areas,
h) stormwater, erosion control, lighting, landscaping, buffer, forest or wildlife management plans, or
i) traffic, visual, and fiscal impact assessments.

(7) See Zoning Administrator for relevant forms.

(B) **Waivers**. The application will not be considered complete by the DRB until all required materials have been submitted. One or more application requirements may be waived by the DRB, at the request of the applicant, based on the determination that the information is unnecessary for a comprehensive review of the application. Waivers shall be issued by the DRB in writing at the time the application is accepted and deemed complete. No requirements of the Flood Hazard Regulations may be waived.

(C) **Technical Review**. To assist in its evaluation of an application, the DRB may require the submission of an independent technical analysis of one or more aspects of a proposed development, prepared by a qualified professional acceptable to the DRB, to be funded by the applicant.

[Statutory reference. 24 VSA Chapter 117 §4440(d)]

Section 5.3 Review Procedures

(A) At the time an application is deemed complete, the DRB shall schedule a public hearing, warned in accordance with Section 9.8 (D). The DRB may recess the hearing (adjourn to a time and date) as needed to allow for the submission of testimony and evidence by the applicant or other interested parties.

(B) The DRB shall act to approve, approve with conditions, or deny an application for a conditional use within 45 days of the date of the final public hearing. The written decision shall include findings, any conditions of approval or reasons for denial, and provisions for appeal to the Environmental Court. The failure of the DRB to act within this 45 day period shall be deemed approval.

(C) **Effective Dates.** Permits granted under Article 5 shall remain in effect for 2 years from the date of issuance, unless the permit states otherwise. A one year administrative renewal may be granted by the Administrative Officer if there are no changes to the permit, the renewal is requested prior to the expiration date, and the renewal of the related Zoning Permit is being requested along with the request for a one year extension of the Conditional Use Permit.

[Statutory reference. 24 VSA Chapter 117 §4464]

Section 5.4 Review Standards

(A) **General Review Standards.** Conditional use approval shall be granted by the DRB upon finding that the proposed development shall not result in an undue adverse effect on any of the following:

(1) The capacity of existing or planned community facilities and services. The DRB shall consider the demand for community facilities and services that will result from the proposed development in relation to the existing and planned capacity of such facilities and services, and any adopted capital budget and program currently in effect. The DRB may request information or testimony from other local officials to help evaluate potential impacts on community facilities and services. To minimize adverse impacts to community facilities and services, the DRB may impose conditions as necessary on the provision of facilities, services or related improvements needed to serve the development, and/or the timing and phasing of development in relation to planned municipal capital expenditures or improvements.

(2) Character of the area affected. The DRB shall consider the design, location, scale, and intensity of the proposed development in relation to the character of the

neighborhood or area affected by the proposed development, as determined from zoning district purpose statements, municipal plan policies and recommendations, and evidence submitted in hearing. The DRB may impose conditions as necessary to eliminate or mitigate adverse impacts to the area, neighboring properties and uses, including conditions on the design, scale, intensity, or operation of the proposed use.

(3) Traffic on roads and highways in the vicinity. The DRB shall consider the potential impact of traffic generated by the proposed development on the function, capacity, safety, efficiency, and maintenance of roads, highways, intersections, bridges, and other transportation infrastructure in the vicinity of the project. The DRB may request information or testimony from the Select Board, Road Commissioner or state officials to help evaluate potential impacts on town and state highways in the vicinity of the development. A traffic impact study, prepared in accordance with Section 6.4, also may be required to determine potential adverse impacts and appropriate mitigation measures. The DRB may impose conditions as necessary to ensure that a proposed development will not result in unsafe conditions for pedestrians or motorists, including the installation of infrastructure improvements or accepted traffic management and control measures as required by the development.

(4) Bylaws in effect. The DRB shall determine whether the proposed development conforms to other applicable municipal bylaws and ordinances currently in effect. The DRB shall not approve proposed development that does not meet the requirements of other municipal regulations in effect at the time of application. The DRB shall further find that the conditional use is consistent with the Fayston Town Plan, its goals and objectives.

(5) The utilization of renewable energy resources. The DRB shall consider whether the proposed development will interfere with the sustainable use of renewable energy resources either by diminishing their future availability, or by interfering with access to such resources. Conditions may be imposed as necessary to ensure the long-term availability of, and continued access to, renewable energy resources.

(B) **Specific Review Standards**. In addition to the general standards under Section (A), the DRB may also consider and attach specific conditions to conditional use approval as appropriate to avoid, minimize or mitigate the adverse impacts of a proposed development, including:

(1) **Siting & Dimensional Standards.** All conditional uses shall meet minimum applicable dimensional and density standards as specified for the district in which the use is located (Article 2), the particular use (Article 4), and for surface waters and wetlands protection (Section 3.13). In addition, the DRB may specify as a condition of approval lower densities of development, increased frontage or setback

distances, increased buffer areas, and/or designated building envelopes that limit the area to be used for structures and parking, as necessary to avoid or minimize adverse impacts to the character of the area, to significant natural and historic resources identified in the town plan or through site investigation, or to adjoining properties and uses.

(2) **Performance Standards**. In determining appropriate performance standards for a particular use, the DRB may consult with state regulatory officials and consider accepted industry standards. In addition, the DRB may limit the hours of operation so that the proposed use is compatible with the character of the neighborhood and area and/or require the installation, operation, and maintenance of such devices and/or such methods of operation to prevent or reduce the impacts described below. In determining ongoing compliance, the burden of proof shall fall on the applicant, property owner, and/or all successors and assigns. All conditional uses may be required to meet performance standards as measured from the property line at the time of application. No use, under normal conditions, may cause, create or result in:

a) regularly occurring **noise** in excess of 70 decibels as measured at the property line, or which otherwise represents a significant increase in noise levels in the vicinity of the use so as to be incompatible with the surrounding area;

b) **clearly apparent vibration** that, when transmitted through the ground, is discernable at property lines without the aid of instruments;

c) **smoke, dust, noxious gases, or other forms of air pollution** that constitute a nuisance or threat to neighboring landowners, businesses or residents; that endanger or adversely affect public health, safety or welfare; that cause damage to property or vegetation; or that are offensive and uncharacteristic of the affected area;

d) **releases of heat, cold, moisture, mist, fog or condensation** that are detrimental to neighboring properties and uses, or the public health, safety, and welfare;

e) **any electromagnetic disturbances or electronic transmissions or signals** that will repeatedly and substantially interfere with the reception of radio, television, or other electronic signals, or that are otherwise detrimental to public health, safety and welfare (except from telecommunications facilities that are specifically licensed and regulated through the Federal Communications Commission).

f) glare, lumen, light or reflection that constitutes a nuisance to other property owners or tenants, that impairs the vision of motor vehicle operators, or that is otherwise detrimental to public health, safety, and welfare;

g) liquid or solid waste or refuse in excess of available capacities for proper disposal that cannot be disposed of by available existing methods without undue burden to municipal or public disposal facilities; that pollute surface or ground waters; or that is otherwise detrimental to public health, safety and welfare; or

h) undue fire, safety, explosive, radioactive emission or other hazard that endangers the public, public facilities, or neighboring properties; or that results in a significantly increased burden on municipal facilities and services.

i) agricultural operations shall at minimum observe Accepted Agricultural Practices (AAPs) as defined and administered by the Vermont Department of Agriculture (Section 9.2, Exemptions).

j) forestry operations shall at minimum observe Acceptable Management Practices (AMPs) as defined and administered by the Vermont Department of Forests, Parks and Recreation (see Section 9.2, Exemptions). Such AMPs include Acceptable Management practices for Maintaining Water Quality on Logging Jobs in Vermont.

(3) **Access & Circulation Standards.** All conditional uses shall meet applicable access management standards as specified in Section 3.1, Access, Driveway, and Frontage. The DRB, in consultation with the Select Board and state, may impose conditions as necessary to ensure the safety of vehicular and pedestrian traffic on and off-site, including but not limited to conditions on access and intersection locations, limits on the number of curb cuts, requirements for shared access and/or parking, and provisions for emergency access, parking, service and loading area, snow storage, pedestrian paths and transit facilities (e.g., sheltered bus stops) as appropriate.

(4) **Landscaping & Screening Standards.** The DRB may require landscaping, fencing, screening or site grading as necessary to maintain the character of the area, or to screen unsightly or incompatible uses from town highways, other public rights-of-way, or adjoining properties. Particular consideration will be given to the preservation of existing vegetation, visibility of the development from public vantage points, and the adequacy of landscaping and screening materials to meet seasonal weather and soil conditions. A landscaping management plan, and surety for up to three years that is acceptable to the Fayston Select Board, may be required to ensure that required landscaping and screening is properly installed and maintained.

(5) **Stormwater Management & Erosion Control Standards.** All conditional uses shall incorporate accepted stormwater management and erosion control practices as appropriate for the setting, scale and intensity of the existing and planned development. Development shall be sited and designed to minimize stormwater

runoff and erosion during all phases of development. The DRB may require the submission of a stormwater management and/or erosion control plan, prepared by a qualified professional (see section 3.4 for requirements).

(B) **District Standards.** In addition to district standards that pertain to all uses under Article 2; the following standards also shall apply to conditional uses within specified zoning districts:

(1) **Irasville Commercial District.** Conditional uses within the Irasville Commercial District shall be sited and designed to minimize aesthetic or visual impacts to other properties in the area and as viewed from Route 100. The DRB may impose conditions as needed on building materials, color, roof pitch, building height, and landscaping and screening, to minimize the visual impacts of a development.

(2) **Forest District**. Development within the Forest District should not detract from the site's scenic qualities, nor obstruct significant views from public vantage points, and should blend in with the existing landscape. Development shall take into consideration existing contours and forest cover to ensure that adequate opportunities exist for the siting and natural screening of development to minimize site disturbance and visual impacts. The DRB may require the submission of a visual impact assessment for conditional uses within this district, and/or require additional screening of structures consistent with the natural and built environment.

(3) **Flood Hazard District.** New structures, except as required for flood control or stream management, are specifically prohibited within the flood hazard district. Conditional uses within this district, including floodway development or substantial improvements [see Article 10 for definition of Substantial Improvement] to existing structures, shall meet all federal and state siting and development standards as required for municipal participation in the National Flood Insurance Program (NFIP), that are incorporated by reference in these regulations.

(4) **Industrial District**. Conditional Uses in the Industrial District shall be sited and designed to have a minimal negative impact on the surrounding properties and the rural character of the community.

[Statutory references. 24 VSA Chapter 117 §4414(3)(A), (5), (9)]

Article 6. Subdivision Standards

Section 6.1 Application of Standards

(A) The DRB shall evaluate any minor or major subdivision of land as defined in Section 7.1 in accordance with the standards set forth in this Article. Where these standards conflict with other provisions of these regulations, the more stringent shall apply.

(B) The DRB may waive or vary subdivision review standards, subject to appropriate conditions, in accordance with Section 7.1(E). Any request for a waiver shall be submitted in writing by the applicant at the time of application. In granting such waivers, the DRB shall require such conditions that will, in its judgment, substantially secure the objectives of any waived or varied requirements. Development standards of the Flood Hazard Regulations may not be waived.

(C) The DRB may require the applicant to submit additional information to determine conformance with the following standards. The DRB also may require the modification or phasing of a proposed subdivision, or measures to avoid or mitigate any impacts.

(D) To assist in its evaluation of an application, the DRB may require submission of an independent technical analysis of one or more proposed aspects of a proposed development, prepared by a qualified professional acceptable to the DRB, to be funded by the applicant.

(E) The DRB may require from the applicant for the benefit of the town a performance bond, in an amount sufficient to cover the full cost of constructing any public improvements that the DRB may require in approving the project under these standards. The Town Select Board shall approve the amount of the bond. Such performance bond shall be submitted prior to signing the final plan plat under Section 7.5.

[Statutory references. 24 VSA Chapter 117 §§4418 and 4464(2), (6)]

Section 6.2 General Standards

(A) **Character of the Land.** All land to be subdivided shall be, in the judgment of the DRB, of such a character that it can be used for the intended purpose(s), as stated in the application, without danger to public health and safety, the environment, neighboring properties, or the rural character and natural beauty of the community. Land designated as flood hazard areas and land characterized by poor drainage, inadequate capability to support structures, including roads, utilities and buildings, or other hazardous conditions shall not ordinarily be subdivided.

(B) **Conformance with the Town Plan & Other Regulations.** Subdivisions of land shall be in conformance with these regulations, the policies of the Fayston Town Plan, the capital budget and program, and all other bylaws, ordinances and regulations currently in effect.

(C) **Lot Layout.** The layout of lots shall conform to the town's land use regulations, under Section 3.7. The following standards shall apply to all subdivisions:

(1) Corner Lots. Corner lots shall have sufficient width to permit a front yard setback on one road and a side yard setback on the other road(s).

(2) Side Lot Lines. Side lot lines shall generally be at right angles to straight streets, or radial to curved street lines.

(3) Lot Shape. Lots with regular shapes should be created unless (curves, jogs, dog-legs, etc.) warranted by conditions of topography, the location of natural features or existing road conditions.

(4) Lot Size and Density. Lot sizes and densities in these regulations (Article 2) are a minimum standard; lower densities and/or larger lot sizes may be required by the DRB based on prevailing site conditions and the potential impact on fragile features and natural and cultural resources identified in the Town Plan and through site investigations. Densities may be increased by the DRB only for planned residential and planned unit developments in accordance with Article 8 of these regulations.

Monuments & Lot Corner Markers. Permanent monuments and corner markers shall be placed on all subdivided parcels in conformance with the Rules of the Board of Land Surveyors, Part 5, Standards for the Practice of Land Surveying.

Establishment of Development Envelopes. The DRB shall require development envelopes to identify and limit the location of principal and accessory structures, parking areas, and associated site development (excluding road and utility rights-of-way or easements) on one or more portions of a lot. The size and shape of each development envelope shall at minimum be determined by district setback requirements unless otherwise specified in these regulations. The DRB may require the identification of specific building footprints if, in their judgment, such information is required to meet the standards set forth in these regulations.

Landscaping & Screening. The preservation, planting and maintenance of trees, ground cover or other vegetation, of a size and type deemed appropriate by the DRB, may be required in the following instances.

(1) to provide an undisturbed vegetated buffer between developed and undeveloped portions of the site to protect water quality and/or other natural features; a buffer area of at least fifty (50) feet should be established from the ordinary high water

mark of any stream and/or the delineated boundary of an identified wetland, in accordance with Section 3.13;

(2) to provide screening of development to increase privacy, reduce noise and glare, or to otherwise soften and/or lessen the visual impacts of development;

(3) to establish street trees along public or private roads to establish a canopy effect and/or maintain a pedestrian scale where the DRB deems it appropriate; and/or

(4) to establish a barrier between incompatible land uses.

Energy Conservation. To conserve energy, subdivisions shall be designed and located in a manner that will reduce the need for vehicular travel. Subdivisions shall use the least amount of area for roadways and the least length of sewer, water and utility lines within environmentally and economically sound limits. The siting of buildings should maximize solar access where feasible, and landscaping should be effectively used to provide wind barriers and reduce heat loss or gain.

Disclosure of Subsequent Development Plans. Whenever an applicant submits a proposal for development on a minor portion of a parcel the DRB may require a general indication of the intended uses of the remaining portion of land. Such an indication should include access, type of use, intensity of use, and phasing.

Section 6.3 Protection of Natural and Cultural Resources

(A) **Suitability of Land for Subdivision.** All land to be subdivided shall be, in the judgment of the DRB, of such a character that it can be used for intended purpose(s), without undue adverse impact on public health and safety, the environment, neighboring properties, or the rural character and natural beauty of the community. To this end, the DRB may require that applicants provide a detailed site analysis identifying all fragile features and natural and cultural resources described below, the impact of the proposed subdivision on those resources, and the protection measures proposed to avoid or mitigate those impacts.

(B) **Protection of Wetlands, Floodplains and Surface Waters**. Subdivision boundaries, lot layout and development envelopes shall be located and configured to avoid any adverse impact to wetlands, floodplains, streams and rivers. In addition to requirements found under Section 3.13 and Table 2.7, methods for avoiding such impacts may include but may not be limited to the following:

(1) lot boundaries shall be configured to prevent the fragmentation of floodplain or wetlands unless appropriate legal mechanisms are put in place to ensure permanent protection.

(2) development envelopes and the layout of roads, driveways and utilities shall be located and sized to exclude these features, except as provided under Section 3.13(A). At a minimum, development envelopes and associated site improvements shall be setback the minimum distance required under these regulations.

(C) **Protection of Steep Slopes, Prominent Hilltops and Ridgelines.** Subdivision boundaries, lot layout and development envelopes shall be located and configured to minimize adverse impacts to areas of the parcel that have slopes greater than 15%, to prevent disturbance to slopes in excess of 25%, and to avoid the placement of structures on prominent hilltops and ridgelines. Methods for avoiding such adverse impacts may include but may not be limited to the following:

(1) locating development envelopes to exclude these features.

(2) prohibiting excavation, filling and development on slopes in excess of 25%, with the exception of land development associated with the operation, maintenance and expansion of an alpine ski resort.

(3) locating and configuring development envelopes so that the height of any structure placed on the site after subdivision will not visually exceed the height of the adjacent tree canopy serving as the visual backdrop to the structure, and shall be located down-slope of ridgelines and prominent hilltops.

(4) using or sharing existing accesses and rights-of-way where feasible when developing access roads, including the conversion of logging roads to private roads or driveways, and utility corridors; following existing contours to achieve angled ascents, and avoiding areas of steep slope.

(5) land characterized by steep slopes, shallow soils, prominent knolls and ridgelines should remain undeveloped.

(D) **Protection of Wildlife Habitat and Natural Areas.** Subdivision boundaries, lot layout and development envelopes shall be located and configured to minimize adverse impacts on critical wildlife habitat, including travel corridors, and natural areas identified in the Fayston Town Plan, by the Vermont Department of Fish and Wildlife, or through site investigation. Methods for avoiding such adverse impacts may include but may not be limited to the following:

(1) development envelopes shall be located to exclude identified natural areas and wildlife habitat, including deer wintering areas and other critical habitats. A buffer area of adequate size shall be established to ensure the protection of critical habitat.

(2) to avoid the fragmentation of natural areas and wildlife habitat, including large tracts of forest land and undeveloped corridors serving as wildlife travel corridors

between larger tracts of core habitat, the DRB may require the submission of a wildlife habitat assessment, prepared by a wildlife biologist or comparable professional, to identify the function and relative value of impacted habitat and provide recommended management strategies to maintain or enhance those values and function. The DRB may also consult with Vermont Fish and Wildlife Department staff prior to issuing a decision.

(3) roads, driveways and utilities shall be designed to avoid the fragmentation of identified natural areas and wildlife habitat.

(4) identified natural areas and critical wildlife habitat should be designated as open space.

(E) **Protection of Historic & Cultural Resources.** Subdivision boundaries, lot layout and development envelopes shall be located and configured to minimize adverse impacts to historic and archaeological sites and resources identified in the Fayston Town Plan, by the Vermont Division for Historic Preservation, or through site investigation. Methods for minimizing adverse impacts may include but may not be limited to the following:

(1) historic features, including stone wall and cellar holes, should be preserved and integrated into the subdivision design (e.g., driveways may follow stone walls) to the extent practical.

(2) prior to development on sites that have been identified as being archaeologically sensitive in the town plan or through site investigation, the DRB may require a site assessment to identify the presence and relative value of archaeological resources on the site, and to document the archaeological resource and/or recommend strategies for its protection.

(3) the subdivision of land shall be designed to maintain the historic context of the site, as defined by historic structures located on the property and in the immediate vicinity of the site, and to minimize the impact of new development on the historic and architectural integrity of historic resources.

(F) **Protection of Open Land.** Subdivision boundaries, lot layout and development envelopes shall be located and configured to avoid the encroachment of development onto open lands and prime and statewide agricultural soils. Methods for avoiding such adverse impacts may include but may not be limited to the following:

(1) development envelopes shall be located at field and orchard edges or, in the event that no other land is practical for development, on the least fertile soils in order to minimize the use of productive agricultural land, and disruption to the scenic qualities of the site.

(2) buildings and associated building lots should be clustered to avoid the fragmentation of open lands/fields and productive farmland. Land characterized as primary agricultural soils shall not be subdivided in a manner that will prevent agricultural use.

(3) access roads, driveways and utility corridors shall be shared to the extent feasible; and, where sites include linear features such as existing roads, tree lines, stone walls, and/or fence lines, shall follow these to minimize visual impacts and the fragmentation of open and agricultural land.

(4) intact parcels of open land and/or productive farmland shall be designated as open space; conservation easements, limitations on further subdivision, or comparable site protection mechanisms may be required.

(G) **Modifications for cluster development.** Notwithstanding this section, the DRB may waive or modify one or more of the above within a planned residential or a planned unit development, in the event that it determines that the benefits of modification would result in a more desirable settlement pattern, and the impacts on identified resources can be mitigated either on or off site.

Section 6.4 Roads, Driveways and Pedestrian Access

(A) **Applicability of Road Standards.** These standards apply to all proposed public roads and to private roads serving more than one lot. Acceptance of private roads by the town is subject to the approval of the Fayston Select Board pursuant to state law for the laying out of public rights-of-way. Construction of roads to these standards in no way ensures such acceptance.

(B) **Road Design.** All roads serving proposed subdivisions shall generally conform to the dimensional and geometric design standards for local roads and streets contained within the *Vermont State Standards for the Design of Transportation Construction, Reconstruction and Rehabilitation on Freeways, Roads and Streets,* dated October, 1997, or as most recently amended. Minimum design standards include the following.

(1) rights-of-way for all roads shall be a minimum of 50 feet in width.

(2) to ensure adequate safety and service, the width of travel lanes and shoulders shall be based on average daily traffic (ADT) and design (anticipated posted) speeds. **ADT shall be calculated based on trip generation rates in the most recent Institute of Transportation Engineers (ITE) Trip Generation Handbook. For residences, since second homes are frequently converted to primary residences, ADT shall be calculated using the trip generation rates for primary residences (10 trips per day for a single family home).** The design standards for rural roads are included in Table 6.1. The standards set forth in Table 6.1 shall be considered the maximum

standards, although the DRB may modify such standards in situations in which such modification is warranted to ensure pedestrian and vehicular safety; and when the strict application of the standards would adversely impact the scenic character and/or natural resources or features located on the site.

Table 6.1
Minimum Lane and Shoulder Widths for Rural Roads

Design Volume (ADT)	0-25	25-50	50-100	100-400	400-1500	1500-2000	2000+
Design Speed (mph)	Width of Lane/Shoulder (ft.)						
25	7/0	8/0	9/0	9/2	9/2	10/3	11/3
30	7/0	8/0	9/0	9/2	9/2	10/3	11/3
35	7/0	8/0	9/0	9/2	9/2	10/3	11/3
40	7/0	8/0	9/2	9/2	9/2	10/3	11/3
45	---	---	9/2	9/2	9/2	10/3	11/3
50	---	---	9/2	9/2	10/2	10/3	11/3

Source:. Vermont State Standards for the Design of Transportation Construction, Reconstruction & Rehabilitation on Freeways, Roads & Streets, October 1997.

(3) lower design and posted speeds may be considered to avoid and/or minimize impacts to historic, architectural, scenic, natural or other resources; to avoid excess costs of construction; or to better comply with the town plan.

(4) wider travel lanes and/or shoulders may be required as appropriate to road function (i.e., for on-street parking, collector and arterial roads), or to safely accommodate shared use by bicycles.

(5) permanent dead end roads and cul-de sacs shall be discouraged unless deemed necessary by the DRB due to physical site limitations or safety considerations. No dead end road shall be permitted without a suitable turn around at its terminus. "T" or "Y" configurations suitable to topography are preferred, but a cul-de-sac with a radius of not less than 30 or more than 40 feet may also be considered as appropriate.

(6) roads shall logically relate to topography to minimize site disturbance, including the amount of cut and fill required, and to produce usable lots, reasonable grades and safe intersections in relation to the proposed use of the land to be served by such roads. Road grades should be consistent with local terrain. Maximum road grade shall not, for any 50 feet section, exceed an average grade of 15%.

(7) techniques for the preservation of scenic road corridors and streetscapes should be employed during construction and for the maintenance of roads within designated scenic areas, including but not limited to the selection of visually compatible materials, the preservation of existing features, and the management of vegetation within the road corridor.

(C) **Road Construction Standards.** Road construction, including specifications relating to the crown, grade, sub-base and surfacing, shall conform to the Vermont Agency of Transportation's Standard A-76, as most recently amended (find under Downloads/Cad Resources @aot.state.us) or contact the ZA.

(D) **Intersections.** A new or relocated road, and any driveway, shall meet the standards set forth in Section 3.1 of these regulations and shall be located so that:

(1) a safe sight stopping distance is provided, as determined by probable traffic speed, terrain, alignments and climatic extremes. Generally, sight distance should be eleven (11) times the speed limit (e.g., a curb cut on a road with 40 mph speed limit would require a minimum sight distance of 440 feet that provides a gap of 7.5 seconds of travel time);

(2) the intersection is directly opposite an existing road or driveway to form a four-way intersection, if feasible;

(3) the intersection crosses the existing road at an angle of between seventy (70) and ninety (90) degrees;

(4) the intersection grade does not exceed plus or minus three (3) percent, and;

(5) no structure or planting is situated to impair corner visibility.

(E) **Drainage and Storm Water.** A storm water drainage system shall be provided that is designed to control and manage storm water collected on all proposed roads and/or parking areas in accordance with Section 6.5 of these regulations. Generally, roadbeds, shoulders, ditches and culverts shall be designed and maintained in conformance with the *Vermont Better Backroads Manual*, as most recently amended.

(F) **Coordination with Adjoining Properties.** The arrangement of roads in the subdivision shall provide for the continuation of roads of adjoining subdivisions and for proper projection of roads through adjoining properties that are not yet subdivided, in order to make possible necessary fire protection, movement of traffic and construction or extension, presently or when later required of needed utilities and public services. Where, in the opinion of the DRB, topographic or other conditions make such continuance undesirable or impracticable, the above conditions may be modified.

(G) **Access (Curb Cut) Management.** To better manage traffic flow and safety, avoid congestion and frequent turning movements, preserve the carrying capacity of important travel corridors, and to avoid strip development, the following access management standards shall apply to all subdivisions:

(1) in accordance with statute and Section 3.1, access to state highways shall be subject to the approval of the Vermont Agency of Transportation and access to town roads shall be subject to approval of the Fayston Select Board, after consultation with the DRB. Access to all lots created by subdivision of any such parcel and to all buildings or other land development located thereon shall be only from such permitted access road or driveway.

(2) to promote shared driveways and/or internal development roads providing access to multiple lots, subdivisions shall comply with the provisions of Section 3.1 of these regulations.

(3) if a subdivision has frontage on primary and secondary roads, access shall be from the secondary road unless the DRB determines that topographic or traffic safety conditions make such an access unpractical.

(4) where extensions of new roads could provide future access to adjoining parcels, a right-of-way shall be provided.

(H) **Traffic and Road Capacity.** Traffic generated by the proposed subdivision shall not result in unreasonable traffic congestion or exceed the capacity of roads and intersections in the vicinity of the subdivision. The DRB may request the preparation of a traffic impact study to identify impacts and mitigation measures necessary to ensure road safety and efficiency, the cost of which is to be borne by the applicant. The implementation of mitigation measures, including required road improvements necessitated by the subdivision, shall be the responsibility of the applicant as follows:

(1) where an existing access road is inadequate or unsafe, the DRB may require the applicant to upgrade the access road to the extent necessary to serve additional traffic resulting from the subdivision and to conform to these standards.

(2) in situations where a development may require the realignment, widening or an increase in the capacity of an existing road, or where the town plan or capital program indicates that such improvements may be required in the future, the applicant may be required to reserve land for such improvements.

(3) in the case of subdivisions requiring construction of new roads, any existing road that provides either frontage to new lots or access to new roads shall meet these standards.

(4) where a subdivision requires expenditures by the town to improve existing road(s) to conform to these standards, the DRB may disapprove such subdivision until the Select Board certifies that funds for the improvements have been ensured. The applicant may be required to contribute part or all of the expenses involved with road improvements necessitated by the project.

(I) **Driveways.** Driveways shall meet the standards set forth in Section 3.1 of these regulations. In addition, driveways should be laid out to follow existing linear features, such as utility corridors, tree lines, hedgerows and fence lines; to avoid the fragmentation of and adverse impact to fragile features and natural and cultural resources described in Section 6.3.

(J) **Modification of Road Standards.** In the case of unusual topographic conditions or other circumstances that would make the strict adherence to these standards a substantial hardship, the DRB may modify the strict application of one or more of these standards providing the applicant can demonstrate that the proposed road is accessible by emergency response vehicles, does not pose any threat to the safety of motorists or pedestrians, will not result in unreasonable maintenance requirements for landowners, and is designed in a manner that is consistent with other applicable standards of these regulations.

(K) **Parking and Transit Stops.** For major subdivisions located on existing or proposed public transit routes, sheltered transit stops that may include centrally located park and ride areas and bike racks to serve the development, will be incorporated in subdivision design. Major residential subdivisions shall also incorporate one or more sheltered school bus stops as appropriate.

(L) **Pedestrian Access.** The DRB may require pedestrian rights-of-way to facilitate pedestrian circulation within the subdivision and to ensure access to adjoining properties or uses or to public facilities.

(M) **Legal Requirements.**

(1) every subdivision plat shall show all proposed road and pedestrian rights-of-way, as required under these regulations, regardless of whether the proposed right-of way is intended to be accepted by the town. In the event that the right-of-way is not intended for acceptance by the town, the mechanism by which the right-of-way is to be maintained, owned and/or conveyed shall be clearly documented.

(2) documentation and assurance shall be provided that all proposed roads and rights-of-way will be adequately maintained either by the applicant, a homeowners' association or through other legal mechanisms. Such documentation shall be in a form approved by the DRB and filed in the Fayston Land Records. The notice of decision conditions shall be referenced on the Mylar.

Section 6.5 Storm Water Management and Erosion Control

(A) Temporary and permanent storm water management and erosion control measures shall be incorporated into subdivision design and layout to control surface runoff and prevent

sedimentation and water pollution on-site and downstream from the proposed subdivision (see Section 3.4).

Section 6.6 Community Services and Facilities

(A) **Municipal Facilities & Services.** The proposed subdivision shall not create an undue burden on municipal facilities or create an unreasonable demand for public services. The DRB may require the phasing of development to coordinate the anticipated demand for municipal facilities and services with the planned provision of those facilities and services, in accordance with a duly adopted capital budget and program. In determining whether a subdivision will place an undue burden on facilities or services, the DRB may consult with the appropriate municipal body (e.g., Select Board, School Board).

(B) **Emergency Service Facilities.** The DRB may require that adequate water storage or distribution facilities for fire protection be provided within the subdivision. Where practicable, or where required by the DRB, fire hydrants, dry hydrants, or ponds shall be installed by the applicant. Emergency vehicle access shall be provided to within a minimum distance of fifty (50) feet of all structures. Adequate turn around space shall be provided. The DRB may require documentation from the Waitsfield/Fayston Fire Department and/or other emergency service providers as to the adequacy of emergency access and fire protection facilities.

Section 6.7 Water Supply and Wastewater Disposal

(A) **Water Supply.** Water supply systems shall be designed and built to meet all applicable state and municipal requirements. There shall be no adverse impact on existing water supplies from the proposed water supply for the subdivision. The DRB may require evidence that adequate water supply is available through an existing or proposed system prior to granting final approval. The DRB may require as a condition of approval, or as a condition of issuing zoning permits, that the applicant provide the necessary state permits.

(B) **Wastewater Disposal.** On-site sewage disposal systems shall be designed in accordance with Vermont Department of Environmental Conservation regulations. Technical information, including soils analysis and septic design, shall be prepared by a professional Vermont-licensed engineer, or a Certified Site Technician, who shall certify that the proposed system complies with the aforementioned rules. In the event that an off-site disposal system is proposed, such system shall be secured through an easement or other form of legal conveyance.

(C) **Connection to Existing System (s).** Where connection to an existing water and/or wastewater system is proposed, the applicant shall provide evidence as to the adequacy of the system to meet the needs of the proposed development. The applicant will be required to provide such pumping and other facilities as may be necessary to serve the

proposed development. The DRB also may require that the applicant provide or have installed, at his expense, larger lines, pumping, storage and other facilities outside of the subdivision, if required specifically to meet the requirements of the proposed development.

(D) **Community Systems.** Proposed development may be serviced by private, community water and/or wastewater systems that shall be designed and installed in accordance with all applicable municipal and state regulations and standards.

(E) **Waivers**. In the event that the applicant is proposing the creation of a lot(s) not requiring water or wastewater systems, the DRB may waive the provisions of these regulations pertaining to water and wastewater disposal, providing that the plat recorded with the Town Clerk clearly indicates that the intended use of the lot(s) will not require water or wastewater disposal systems, and the applicant submits an affidavit to the DRB stating his/her intent that will be incorporated as a condition of subdivision approval.

Section 6.8 Utilities

(A) **Location.** All utilities, existing and proposed, throughout the subdivision shall be shown on the final plat, and be located as follows:

(1) all utility systems, which may include but not be limited to electric, gas, telephone, fiber optics and television cable, shall be located underground throughout the subdivision, unless deemed by the DRB to have minimum visual impact on surrounding property and views or to be unreasonable due to site conditions.

(2) the applicant shall coordinate subdivision design with the utility companies to insure adequate and suitable areas for installation, both for the proposed subdivision and anticipated development on lands adjacent to the subdivision.

(3) utility corridors shall be shared with other utility and/or transportation corridors, and be located to minimize site disturbance, the fragmentation of farmland and other designated open space, and any adverse impacts to natural, cultural or scenic resources and public health.

(B) **Easements**. Utility easements of sufficient width shall be provided to serve both the proposed subdivision and existing and anticipated development outside the subdivision. Such easements shall be shown on the final plat.

Section 6.9 Signs

(A) The DRB may place more restrictive conditions regarding the size, height, location and number of signs than those specified in Section 3.10 or by State regulations in order to

maintain the visual character of the area and to insure the safety and efficiency of pedestrian and vehicular circulation.

Section 6.10 Dedication of Open Space and Common Land

(A) **Intent**. Subdivisions shall be designed to preserve open space areas and common land for parks, recreation and transportation paths, viewshed and historic site protection and/or to preserve forest and farm land and fragile features under Section 6.3.

(B) **Preservation of Open Space**. The preservation of open space is strongly encouraged, and shall be required for Planned Residential Developments (PRD) and Planned Unit Developments (PUD) approved in accordance with Article 8 of these regulations. Designated open space may include the portion of a single lot outside of the development envelope that is characterized by one, or more of the features referenced in Section 6.3 and/or, where necessary, may encompass the contiguous boundaries of such features located on multiple lots. Open space shall be designated in accordance with the aforementioned PRD/PUD standards and the legal requirements set forth in subsection (D), below.

(C) **Creation of Common Land.** Land held in common for the preservation and maintenance of open space; the maintenance and protection of shared facilities, such as community wastewater systems, community water supplies, recreation or community facilities, or recreation, including road and trails rights-of-way, may be held under separate ownership from contiguous parcels and shall be subject to the legal requirements set forth below.

(D) **Legal Requirements.** The DRB may require that protected open space be dedicated, either in fee or through a conservation easement approved by the DRB, to the Town of Fayston, the Mad River Conservation Partnership, a community association comprising all of the present and future owners of lots in the subdivision, and/or a non-profit land conservation organization. At a minimum, designated open space shall be indicated with appropriate notation on the final plat. Land held in common shall be subject to deed restrictions stipulating the permitted and restricted use of such lot, and establishing the person or entity responsible for maintenance and long term stewardship. All costs associated with administering and maintaining open space and/or common land shall be the responsibility of applicant and subsequent land owners.

Article 7. Subdivision Review

Section 7.1 Applicability

(A) Whenever any subdivision of land is proposed, the subdivider or authorized agent shall apply for and secure approval of the proposed subdivision prior to undertaking:

(1) any construction, lot, building, or road development or clear cutting (excluding forestry or agricultural activities);
(2) the issuance of any permit for any land development involving land to be subdivided;
(3) any sale, conveyance or lease of any subdivided portion of a property; and/or
(4) the filing of a subdivision plat with the Town Clerk.

> ***Subdivision of Land.*** The division of any parcel of land into two or more parcels for the purposes of sale, conveyance, lease, or development. The term "subdivision" includes boundary adjustments, amended subdivisions, re-subdivisions of previously subdivided land, and planned residential and planned unit development.

Approval shall be granted in accordance with the procedures outlined in Table 7.1 and as provided below.

[Statutory reference. 24 VSA Chapter 117 §4418].

(B) **Minor and Major Subdivisions.** For the purposes of these regulations, subdivisions shall be classified by the DRB, as minor or major subdivisions in accordance with the following:

(1) **Minor Subdivisions** shall include lot line or boundary adjustments between existing lots that do not result in new or nonconforming lots; the subdivision of land, or the re-subdivision of a previously subdivided parcel, that results in the creation of five or fewer lots, regardless of any change in ownership; and amendments to an approved subdivision plan that will not substantially change the nature of any previous subdivision or conditions of approval.

(2) **Major subdivisions** shall include any subdivision containing six or more lots, or requiring any new road greater than 800 feet in length; and planned unit or planned residential development.

(C) **Coordination with Planned Residential or Planned Unit Development Review.** Subdivision applications for Planned Unit or Planned Residential Developments (PUDs and PRDs) shall be reviewed as major subdivisions under this Article. PUDs and PRDs shall meet the standards set forth in Article 8, as well as subdivision standards included in Article 6, unless waived by the DRB.

Table 7.1
Subdivision Review At A Glance

Action	Responsibility/ Time Frame
Discussion/Sketch Plan Phase [all subdivisions]:	
1. Submission of sketch plan & any waiver requests	Applicant; at least 15 days prior to a regularly scheduled Development Review Board meeting
2, Development Review Board meeting	Applicant (or authorized agent) attendance required
3. Classification of subdivision as minor or major; written sketch plan approval or within minutes	Development Review Board; within 30 days of determining that the sketch plan is complete
Minor Subdivision [residential < 6 lots]:	
1. Submission of final subdivision plan, including any waiver requests, proposed plat and supporting documentation	Applicant; within 6 months of the date of sketch plan approval
2. Development Review Board public hearing	Development Review Board; within 30 days of receipt of the final subdivision plan
3. Subdivision/plat approval & Notice of Decision	Development Review Board; within 45 days of the hearing adjournment date
4. Final Mylar recording in the town records	Applicant; within 180 days of the date of subdivision approval
5. Certificate of compliance (if required)	Administrative Officer; upon completion of required improvements
Major Subdivision [residential 6 or more lots; 2 or more hearings required]:	
1. Submission of preliminary subdivision plan including any waiver requests, supporting documentation	Applicant; within 6 months of the date of sketch plan approval
2. Development Review Board public hearing	Development Review Board; within 30 days of receipt of the preliminary subdivision plan
3. Preliminary subdivision/plat approval, following 1st public hearing	Development Review Board; within 45 days of the hearing adjournment date of first public hearing
4. Submission of final subdivision plan, including final plat, documentation of compliance with preliminary approval and other supporting documentation	Applicant; within 6 months of the date of preliminary plan approval
5. Final Development Review Board public hearing	Development Review Board; within 30 days of receipt of the final subdivision plan
6. Final subdivision/plat approval, following 2ed public hearing	Development Review Board; within 45 days of the hearing adjournment date of 2nd public hearing.
7. Final Mylar recording	Applicant; within 180 days of the date of final subdivision and plat approval
8. Certificate of Compliance (if required)	Administrative Officer; upon completion of required improvements

(D) **Coordination with Conditional Use Review.** Conditional use review under Article 5 may occur concurrently with subdivision review if all application, and procedural requirements pertaining to each respective review process are met, and separate findings and decisions are issued.

(E) **Waiver Authority**. The DRB may waive or vary one or more of the following, subject to appropriate conditions: application requirements; preliminary plat review and preliminary public hearing requirements for major subdivisions; and subdivision review standards set forth in Article 6. The request for a waiver shall be submitted in writing by the applicant with the subdivision application, and it shall be the responsibility of the applicant to provide sufficient information to justify the waiver and to enable the DRB to reach a decision. In granting such waivers, the DRB shall require such conditions as will in its judgment secure substantially the objectives of any waived or varied requirements of these regulations. No requirements or review standards of the Flood Hazard Regulations may be waived.

(F) **Technical Review**. To assist in its evaluation of an application, the DRB may require the submission of an independent technical analysis of one or more aspects of a proposed development, prepared by a qualified professional acceptable to the DRB, to be funded by the applicant.

[Statutory reference. 24 VSA Chapter 117 §4440(d)]

Section 7.2 Discussion/Sketch Plan Review [applies to all applications for subdivision]

(A) **Sketch Plan Requirements**. The applicant shall submit to the Administrative Officer, at least 15 days prior to a regularly scheduled DRB meeting, one copy of a proposed sketch plan that includes the information specified for sketch plan review under Table 7.2, and the required application fee.

(B) **Discussion/sketch plan Meeting**. The applicant and/or an authorized agent shall attend an initial meeting with the DRB, to be held at a regularly scheduled meeting of the DRB, to discuss the subdivision application and proposed sketch plan. At this meeting the DRB may request any additional information as needed to act on the sketch plan.

(C) **Action on Discussion/Sketch Plan** Within 30 days of finding that a discussion/sketch plan application is complete (see Table 7.2, Discussion Sketch Plan), the DRB, based on the information provided, shall issue in the meeting minutes:

(1) a determination of whether the subdivision is a minor subdivision to be reviewed under Section 7.4, or a major subdivision to be reviewed under Sections 7.3 and 7.4;

(2) the granting or denial of requested waiver provisions;

(3) a preliminary determination of whether or not the proposed subdivision plan generally conforms to applicable subdivision review standards under Article 6, these and other municipal regulations and ordinances, the Fayston Town Plan, and any municipal and/or school capital budget and program currently in effect; and

(4) recommendations for proposed changes in subsequent submissions, including any requests for additional studies or supporting documentation.

(D) **Effect of Discussion/Sketch Plan Determinations.** DRB determinations and associated recommendations shall remain in effect for 6 months from the date of issuance, unless otherwise approved or extended by the DRB. Within 6 months of the determination by the DRB, the applicant may apply to the DRB for preliminary plan review under Section 7.3 for major subdivisions, or final plan and plat approval under Section 7.4 for minor subdivisions.

(E) **Boundary Line Adjustments**. Applications for boundary adjustments that are determined by the DRB to not result in the creation of a new or nonconforming lot, or the significant increase of the development density of one or more lots, may be exempted from sketch plan review requirements and proceed immediately from initial application to final plat approval.

[Statutory reference. 24 VSA Chapter 117 §4418(2)]

Section 7.3 Preliminary Plan Review [1st Public Hearing for major subdivisions]

(A) **Application Requirements**. Within six months of the date of action on a sketch plan and determination that the subdivision is a major subdivision by the DRB, the applicant shall submit an application and associated fees for preliminary plan and plat approval to include, one original and six copies of the information required for preliminary plan review as specified in Table 7.2 at least 15 days prior to DRB hearing.

(B) **Public Hearing**. Within 30 days of deeming that the preliminary plan application is complete, the DRB shall hold a public hearing on the preliminary plan, warned per Section 9.8(C)(1). The preliminary public hearing may be waived by the DRB (see Section 7.1(E)).

(C) **Preliminary Plan Approval**. Within 45 days of the date of adjournment of the public hearing, the DRB shall approve, approve with modifications, or disapprove the preliminary plan and associated plat based on a determination of whether or not the preliminary plan conforms to applicable subdivision review standards under Article 6, the town plan and other municipal regulations in effect. The DRB may also require, as a condition of approval, the submission of proposed changes or modifications resulting from further study. Approval, conditions of approval, or grounds for disapproval, and provisions for appeal, shall be set forth in a written notice of decision. The approval of a preliminary plan shall be effective for a period of six months from the date of written notice of

approval, unless otherwise approved or extended by the DRB in the written notice of decision.

(D) **Phasing**. At the time that the DRB grants preliminary plan approval it may require the subdivision to be divided into two or more phases to ensure project conformity with the town plan and capital budget and program currently in effect. Conditions may be imposed upon the filing of an application for final plat approval for each phase as the DRB deems necessary to ensure the orderly development of the project and to avoid overburdening town facilities and services.

(E) **Effect of Preliminary Plan Approval**. Approval of the preliminary plan shall not constitute approval of the final subdivision plan and plat. Subsequent to the approval of the preliminary plan, the DRB may require the submission of all applicable approvals of municipal officials and/or agencies having jurisdiction over the project (e.g., Select Board, Health Officer), and such state and federal agencies as may be required by law. Upon receipt of evidence of approval of the preliminary plan by said agencies, as required, and the expiration of all relevant appeal periods, the applicant may apply to the DRB for final plan approval under Section 7.4.

Section 7.4 Final Plan Review [Minor Subdivision Hearing and 2nd Public Hearing for Major Subdivisions]

(A) **Application Requirements**. Within six months of the date of sketch plan approval for minor subdivisions, or preliminary plan approval for major subdivisions, unless otherwise waived by the DRB, the applicant shall submit an application for final subdivision plan approval, including plat approval. If the applicant fails to do so, s/he will be required to resubmit, for minor subdivisions, a new sketch plan or, for major subdivisions, a new preliminary plan, for approval subject to any new zoning and subdivision regulations. The application for final subdivision plan and plat approval shall include associated fees and one original and six copy of the information for final plan and plat review specified under Table 7.2 at least 15 days prior to the DRB meeting/hearing.

(B) **Public Hearing**. Within 30 days of the date that the DRB deems that a final plan application is complete, the DRB shall hold a public hearing on the final plan and associated plat, warned in accordance with Section 9.8(C)(1). Copies of the hearing notice shall also be sent, at least 15 days prior to the hearing date, to the clerk of an adjacent municipality in the case of a plat located within 500 feet of a municipal boundary.

(C) **Final Plan Approval**. Within 45 days of the date of adjournment of the public hearing, the DRB shall approve, approve with conditions, or disapprove the final subdivision plan, based on a determination of whether or not the plan and associated plat conform to subdivision review standards under Article 6, the town plan and other municipal regulations in effect. Failure to act within such 45 day period shall be deemed approval, as certified by the Town Clerk. Approval, conditions of approval, or grounds for

disapprovals, and provisions for appeal under Section 9.5, shall be set forth in a written notice of decision. Copies of the notice of decision shall be sent to the applicant and any other interested parties appearing at the public hearing within the 45 day period.

(D) **Effect of Final Plan Approval**. The DRB approval of a final subdivision plan and associated plat 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 a formal resolution of the Select Board, in accordance with state statute. A final plan approval shall contain a time limit within which all improvements shall be completed, not to exceed three years unless otherwise required or extended by the DRB.

[Statutory references. 24 VSA §§4463(a), (c) and 4464(b)]

(E) **Performance Guarantee**. Where infrastructure is needed as part of subdivision approval, the DRB may require a performance guarantee in the form of a Letter of Credit, an escrow account or other security. Such Performance guarantee shall be posted before any site modification.

(1) when a performance guarantee is required the applicant shall file it with the Town in an amount sufficient to provide for and secure to the public the full cost of completion of all streets and required infrastructure within a period of time fixed by the Administrator and to ensure that all infrastructure and construction remain in satisfactory condition for a period of two (2) years after completion of all items (the amount to be approved by the Select Board). Such guarantee may consist of separate portions covering required infrastructure and maintenance.

(2) the DRB shall specify the time period within which the required infrastructure for each phase must be completed, but in no case for a term longer than two (2) years. The term of the guarantee for each phase may, with the consent of the applicant be extended for an additional period not to exceed two (2) years. The time period shall be expressed as part of the posting of the guarantee.

(3) if any required infrastructure have not been installed or maintained as provided within the terms of such performance guarantee, the guarantee shall be considered to be forfeited after thirty (30) days written notice. Upon receipt of the proceeds, the Town shall establish an escrow account and draw on it to install or maintain such infrastructure, and in the event the proceeds are insufficient therefore, the applicant shall be liable for reimbursing the Town for the balance. Any balance remaining in the escrow account at the end of the established maintenance period shall be refunded to the applicant, after all expenses to the Town are paid.

(F) **Maintenance of Infrastructure**. The applicant shall be required to maintain all infrastructures and provide for snow removal until a homeowners' or tenants' association

or other approved organization is established and assumes the maintenance responsibilities or until acceptance of said infrastructure by the Select Board.

Section 7.5 Plat Recording Requirements [applies to all approved subdivisions]

(A) Within 180 days of the date of receipt of final plan approval under Section 7.4(C), the applicant shall file one Mylar copy and two paper copies of the final plat for recording with the town in conformance with the requirements of 27 VSA Chapter 17. All three copies of the final plat shall contain all required elements listed in Table 7.2. Approved subdivision plats not filed and recorded within this 180 day period shall expire

(B) Prior to plat recording, the plat must be signed by at least two authorized members of the DRB. The DRB may, as a condition of final plat approval, require that other notations pertaining to conditions of subdivision approval also be included on the final plat.

(C) For any subdivision that requires the construction of roads or other public improvements by the applicant, the DRB may require the applicant to post a performance bond or comparable surety prior to signing the final plat.

(D) The municipality shall meet all recording requirements for final subdivision plan approval as specified for municipal land use permits under Section 9.8.

[Statutory reference. 24 VSA Chapter 117 §4464(b)]

Section 7.6 Certificate of Compliance

If specifically required by the DRB as a condition of final subdivision plan approval prior to the issuance of a zoning permit for subsequent use or development of an approved lot, the applicant shall submit a Certificate of Compliance in accordance with Section 9.4 and the Act.

Section 7.7 Revisions to an Approved Plat

No changes, modifications, or other revisions that alter the plat or conditions attached to an approved subdivision plan shall be made unless the proposed revisions are first resubmitted to the DRB and the DRB approves such revisions after public hearing. In the event that such subdivision plan revisions are recorded without complying with this requirement, the revisions shall be considered null and void.

Table 7.2
Subdivision Application Requirements

(A) Application Information (due 15 days prior to DRB meeting/hearing)	**Discussion/ Sketch Plan**	**1st Major Subdivision Public Hearing**	**Minor Subdivision Hearing/ 2nd Major Subdivision Hearing**
Application Form - 1 original & 6 copy		✓	✓
Application Fee		✓	✓
Name of project, if any		✓	✓
Name, address, telephone number of applicant (landowner and/or subdivider). Name, address, telephone number of land owner.	✓	✓	✓
Written description of proposed development plans, including number and size of lots, maps , etc.; general timing of development	✓	✓	✓
Waiver request, in writing (if any)	✓	✓	✓
Names, addresses of all adjoining property owners		✓	✓
Evidence of written notification to adjoiners of intent to subdivide; to include copies of any waiver requests		✓	✓
Disclosures of existing permits and/or previous denials on parcel	✓	✓	✓
(B) Plan/Plat Mapping Requirements	**Sketch**	**Draft Plat**	**Final Plat**
Notice of Decision Reference Number			Mylar
Materials	Paper	Paper	Mylar
Date, North Arrow, Legend		✓	✓
Preparer Information, Certifications		✓	✓
Scale (minimum 1 inch = 100 feet)		✓	✓
Project boundaries, property lines, existing and proposed lot lines and dimensions	Drawn	Drawn	Surveyed
Adjoining land uses, roads and drainage, names of adjoining landowners		✓	✓
Zoning district designations and boundaries	✓	✓	✓
Location of significant natural features, including but not limited to: - slopes with a gradient of 25% or greater; - critical wildlife habitat; - flood hazard areas; - surface waters, wetlands and associated buffer areas; - historic sites and features, including stone walls; and - other significant geologic features and landforms, including prominent knolls and ridgelines, - The base flood elevation for subdivisions of greater than 5 acres or 50 lots and within the special flood hazard overlay district. Note. An acceptable resource could be the Arrowwood Environment maps as relating to the Town of Fayston		✓	✓
Existing and proposed elevations, contour lines		20' interval	20' interval
Existing and proposed roads, paths, parking areas, associated rights-of- way or easements, springs, and shallow wells, driveway locations and driveway profiles.	Drawn	Drawn	Surveyed
Proposed building envelopes		✓	✓
Proposed utilities, water and wastewater systems and associated rights-of-way or easements		✓	✓
Road profiles; road, intersection and parking area geometry and construction schematics		✓	✓

Table 7.2 (continued)
Subdivision Application Requirements

(B) Plan/Plat Mapping Requirements (continued)	**Discussion/ Sketch**	**Draft Plat**	**Final Plat**
Proposed landscaping and screening		✓	✓
Proposed conservation buffer and/or easement areas		✓	✓
Monument locations		✓	✓
(C) Supporting Information & Documentation (due 15 days prior to DRB meeting/hearing)	**Discussion Sketch Plan**	**1st Public Hearing for Major Subdivisions**	**Minor Subdivision Hearing/ 2nd Major Subdivision Hearing**
Site location map showing proposed subdivision in relation to major roads, drainage ways, and adjoining properties	Sketch	Draft	Final
Statement of compliance with the Town Plan and applicable local regulations	✓	✓	✓
Proof of notification of adjacent land owners. see under definitions "Certification of Service"		Letter	Letter
Notice of Decision Reference Number			✓
Engineering reports (water and wastewater systems)		✓	✓
Existing and proposed traffic generation rates, volumes		Estimated	Documented
Off-site easements (e.g., for water, wastewater, access)	Description	Draft	Final
Proposed phasing schedule	Description	Draft	Final
Proposed covenants and/or deed restrictions	Description	Draft	Final
Proposed homeowner or tenant association or agreements	Description	Draft	Final
Proposed performance bond or surety		Description	Final
(D) As may be required by the Development Review Board (due 15 days prior to DRB meeting/hearing	**Discussion Sketch Plan**	**1st Public Hearing for Major Subdivisions**	**Minor Subdivision Hearing and 2nd Major Subdivision Hearing**
Stormwater and erosion control plan		As required under sketch plan approval	As required under sketch plan or 1st public hearing
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)			
Contour lines < 20'			
Fiscal impact analysis (analysis of fiscal costs and benefits to the Town)			
Visual impact analysis and mitigation plan			
Environmental impact assessment (analysis of potential environmental impacts, proposed mitigation measures)			
Site visit made by the DRB at a time that on-the-ground conditions allow for observation of all relevant site characteristics.			
Other			

Article 8. Planned Residential and Planned Unit Developments

Section 8.1 Purpose

(A) Planned Residential Developments (PRDs) and Planned Unit Developments (PUDs) are encouraged in designated districts to:

(1) create a more desirable environment than would be possible through the strict application of other sections of these regulations;

(2) concentrate development to avoid the fragmentation of productive forest, wildlife habitat and farmland;

(3) utilize a pattern of development that preserves trees, outstanding natural, topographic and geologic features, and prevents soil erosion, and minimizes visual impact;

(4) increase density, reduce lot size and/or provide for streets and utilities in a cost effective manner;

> ***Planned Residential Development (PRD).*** An area of land, controlled by a landowner or group of landowners, to be developed as a single entity for a number of dwelling units; the plan for which does not correspond in lot size, building bulk, or type of dwelling, density, lot coverage, and required open space under these regulations except as a planned residential development.
>
> ***Planned Unit Development (PUD).*** One or more lots, tracts, or parcels of land to be developed as a single entity, the plan for which may propose any combination of density or intensity transfers, density or intensity increases or the mixing of land uses, and that need not correspond to bylaw requirements that are otherwise applicable to the area in which it is located with respect to size, bulk, or type of dwelling, density, intensity, lot coverage, parking, and required open space under or other standards..

(5) accommodate new development in a manner that maintains the town's historic settlement patterns and protects significant natural, cultural and scenic features as described in the Fayston Town Plan;

(6) provide for a logical, functional integration of mixed land uses;

(7) incorporate a pedestrian orientation, de-emphasizing private autos;

(8) conserve energy through centralized system design and site orientation;

(9) provide for sufficient and aesthetically inviting recreation amenities for year-round use;

(10) features a consistency in design, and an overall high quality of construction and attractiveness; and/or

(11) encourage creative layout of development and efficient use of land.

(B) To achieve these objectives, the DRB may modify applicable area and dimensional standards required elsewhere in these regulations simultaneously with the approval of a final subdivision plan and associated plat.

[Statutory references. 24 VSA Chapter 117 §4417].

Section 8.2 Coordination with Other Review Processes

(A) Applications for PRDs and PUDs shall be reviewed simultaneously with application for major subdivision review in accordance with the requirements and procedures set forth in Article 7.

(B) At the time of PRD or PUD approval, the DRB shall include in its decision a clear indication of all approved modifications of development standards, and may include conditions related to the location, scale, density, intensity and/or overall design of future development within the PRD or PUD.

(C) Approval granted by the DRB under this section for a PRD or PUD that involves the development of one or more conditional uses shall not exempt the proposed development from conditional use review in accordance with Article 5. An application for conditional use approval within an approved PRD or PUD shall incorporate applicable conditions of subdivision and PRD or PUD approval.

Section 8.3 Planned Residential Developments (PRDs)

(A) **Applicability**. Planned Residential Development (PRD) provisions may be applied, at the request of the applicant, to any sized parcel to be subdivided within designated zoning districts, but they are encouraged for any subdivision creating more than five building lots.

(B) **Application Requirements.** Applications for PRD shall be submitted simultaneously with applications for major subdivision review in accordance with the requirements set forth in Article 7. In addition to the application materials specified in Table 7.2, applications for PRDs must include:

(1) a statement describing all of the proposed modifications or changes from the existing land use regulations, and the standards and criteria that the applicant proposes for the development, including standards for the design, dimensions and spacing of buildings and sizes of lots and open spaces, and associated density calculations; and

(2) a brief summary of the project and how it meets the standards set forth in this section.

(C) **General Standards.** In addition to the standards set for the in Article 6, PRDs shall meet the following:

(1) Allowed Uses. PRDs shall include only residential uses, and related accessory uses and structures, and common areas and facilities intended for use by residents of the PRD. Dwelling units may be of varied types, including single family and accessory dwellings, two-family dwellings, and multi-family dwellings. The PRD may also provide for the use of designated open space, in accordance with Section 8.5.

(2) Density. The overall density of the project shall not exceed the number of dwelling units permitted, in the DRB's judgment, if the land were subdivided into lots in accordance with the standards for the district(s) in which the land is situated, except where specifically permitted in these regulations and as permitted below:

a) a density bonus of up to 25% of the permitted overall density, at the discretion of the DRB, may be permitted in any district in instances in which not less than 75% of the total acreage is set aside as permanent open space in accordance with Sections 6.10 and 8.5 or in instances of efficient layout, exceptional design or other purposes under Section 8.1; or

b) a density bonus of up to 25% of the permitted overall density, at the discretion of the DRB, may be permitted in instances in which not less than 20% of the total number of dwelling units created are affordable units, as defined in Article 10; or

c) a density bonus of up to 50% of the permitted overall density, at the discretion of the DRB, may be permitted in instances in which not less than 50% of the total number of dwelling units created are affordable housing units, as defined in Article 10, and the PRD is located within the Recreation District; or

d) a density bonus of up to 25% of the permitted overall density, at the discretion of the DRB, may be permitted in instances where recreational amenities are dedicated permanently for the use and enjoyment of the public.

(3) Consistency. The PRD shall be consistent with the goals and policies of the Fayston Town Plan and all applicable subdivision standards set forth in Article 6.

(4) Unified Treatment. The PRD shall be an effective and unified treatment of the development possibilities of the project site, and the development plan shall make appropriate provision for preservation of streams, stream banks, steep slopes, wet areas, and unique natural and manmade features.

(5) Coverage. Maximum land coverage by buildings, roads, driveways, patios, decks, recreational amenities (i.e., tennis courts, in-ground swimming pools) and sidewalks shall not exceed 40% of the total gross acreage of the development.

(6) Setbacks and Screening. To insure compatibility with the character of the district and the privacy of adjoining properties, and to avoid degradation of the area's scenic quality, the DRB may require setbacks and screening for structures, parking areas , and other development along the perimeter of the PRD

Section 8.4 Planned Unit Developments (PUDs)

(A) **Applicability**. Planned Unit Development (PUD) provisions may be applied, at the request of the applicant, to any sized parcel to be subdivided or developed in the Recreation or Irasville Commercial District.

(B) **Application Requirements.** Applications for PUD shall be submitted simultaneously with applications for major subdivision review in accordance with the requirements set forth in Article 7. In addition to the application materials specified in Table 7.2, applications for PUDs must include:

(1) a statement describing all of the proposed modifications or changes from the existing land use regulations, and the standards and criteria that the applicant proposes for the development, including standards for the design, dimensions and spacing of buildings and sizes of lots and open spaces, and associated density calculations;

(2) a brief summary of the project and how it meets the standards set forth in this section; and

(3) additional information required by the DRB to determine whether the proposed mix of uses, density, scale and intensity of uses will meet the standards set forth in Article 6 and below.

(C) **General Standards.** In addition to the standards set forth in Article 6, PUDs shall meet the following:

(1) Allowed Uses. A PUD may include a mix of uses, including any permitted or conditional uses allowed within the zoning district(s) in which it is located. PUDs may also include associated accessory structures and uses, and common areas and facilities for use by occupants of the PUD or the general public. The PUD may also provide for the use of designated open space, in accordance with Section 8.5.

(2) Density. The overall density of the project shall not exceed the number of dwelling units, commercial beds or square footage of commercial uses permitted, in the DRB's judgment, if the land were subdivided into lots in accordance with the standards for the district(s) in which the land is situated, except where specifically provided under the district regulations and/or transfer of development rights provisions set forth in Section 3.14.

(3) Consistency. The PUD shall be consistent with the goals and policies of the Fayston Town Plan and all applicable subdivision standards set forth in Article 6.

(4) Unified Treatment. The PUD shall be an effective and unified treatment of the development possibilities of the project site, and the development plan shall make appropriate provision for preservation of streams, and stream banks, steep slopes, wet areas, and unique natural and manmade features.

(5) Coverage. Maximum land coverage by buildings, roads, driveways, patios, decks, recreational amenities (i.e., tennis courts, in-ground swimming pools) and sidewalks shall not exceed 40% of the total gross acreage of the development.

(6) Setback and Screening. To insure compatibility with the character of the district and the privacy of adjoining properties, and to avoid degradation of the area's scenic quality, the DRB may require setbacks and screening for structures, parking areas , and other development along the perimeter of the PUD.

Section 8.5 Additional Standards for PRDs and PUDs

(A) In any PRD or PUD, approval of such development shall carry with it provision, whether by deed restrictions, restrictive covenant, or other appropriate legal means, to ensure the permanent retention in open space of the undeveloped portions of the development parcel.

(1) Open space shall be clearly defined on the development plan by location, dimensions, and acreage.

(2) Upon approval of the development, that portion designated as open space shall be recorded as such in the Town records.

(3) Dedicated open space:

a) Up to 15% of the total acreage of any development parcel may, with the approval of the Board of Selectmen, be dedicated to the Town of Fayston and/or the Mad River Conservation Partnership as open space.
b) Such open space shall be dedicated to the Town of Fayston and/or the Mad River Conservation Partnership in fee simple, or as a use easement for a period of not less than ninety-nine years.
c) The Town of Fayston and/or the Mad River Conservation Partnership shall use any dedicated open space for recreational, nature or conservation purposes.
d) Dedicated open space shall be in a location or locations, size and shape approved by the DRB, and shall not include buildings, roads, driveways, parking spaces, or yard areas of individual dwellings.

(B) In PRDs and PUDs that include affordable housing, approval of such development shall carry with it management and legal requirements to ensure the long-term affordability of such units, which at minimum shall be for 15 years from the date of construction.

Article 9. Administration & Enforcement

Section 9.1 Permits and Approvals

> ***Municipal Land Use Permit***. a zoning, subdivision, site plan or building permit or approval, any of that relate to land development as defined in statute, that has received final approval from the applicable board, commission or officer of the municipality [24 VSA Chapter 117 4303(11)].

(A) **Permit Requirements**. No development or subdivision of land may begin in the Town of Fayston until all applicable **municipal land use permits** and approvals have been issued, unless the development is specifically exempted from these regulations under Section 9.2. Any permit issued for development in the Flood Hazard Overlay District will require that all other necessary permits from State or Federal Agencies have been received before work may begin. Municipal permits and approvals include:

(1) **Zoning Permits** issued by the Administrative Officer under Section 9.3 for all development (including signs), except for subdivisions of land requiring subdivision approval and any activity exempted under Section 9.2;

(2) **Conditional Use Approval** issued by the DRB under Section 5.3 for uses subject to conditional use review, including uses within any overlay districts;

(3) **Subdivision Approval** issued by the DRB under Section 7.4 for the subdivision or re-subdivision of land;

(4) **Planned Unit** or **Planned Residential Development (PUD or PRD) Approval** issued by the DRB under Section 8.2 in association with subdivision approval; and/or

(5) **Certificates of Occupancy and Certificates of Compliance** issued by the Administrative Officer under Section 9.4.

(B) **Additional Permits & Approvals.** Additional permits or approvals may be required for activities associated with land development and subdivision including, but not necessarily limited to, the following:

(1) Wastewater Disposal System Construction & Use Permits issued by the Vermont Agency of Natural Resources.

(2) Driveway/Curb Cut (Access) Permit issued by the Fayston Select Board, after consulting with the DRB, or the Vermont Agency of Transportation.

(3) Stormwater and Erosion Control Approval in accordance with Section 3.4

(C) The Zoning Administrator will coordinate the development review process on behalf of the Town of Fayston, refer applications to the appropriate board or municipal officer, and provide information and assistance to applicants for municipal land use permits as appropriate.

[Statutory reference. 24 VSA Chapter 117 §4303(11)]

Section 9.2 Exemptions

(A) The following uses and structures are exempted from these regulations. No permit or approval shall be required for.

(1) The normal maintenance and repair of existing structures, utilities and infrastructure that does not result in any change to the footprint or height of a building, nor results in a change of use.

(2) Minor grading and excavation associated with road and driveway maintenance (including culvert replacement and resurfacing), and lawn and yard maintenance (e.g., for gardens or landscaping).

(3) Accepted agricultural practices and best management practices (AAPs, BMPs), including farm structures, as defined by the Secretary of Agriculture, Food and Markets in accordance with the Act. Written notification, including a sketch plan showing structure setback distances from road rights-of-way, property lines, and surface waters shall be submitted to the Administrative Officer prior to any construction, as required under AAPs. Such structures shall meet all setback requirements under these regulations, unless waived by the Secretary.

(4) Accepted management practices (AMPs) for silviculture (forestry) as defined by the Commissioner of Forests, Parks, and Recreation, in accordance with the Act.

(5) Private home identification signs no larger than four (4) square foot (See Table 3.2).

(6) Temporary signs indicating short term activities such as yard or garage sales do not require a permit. These signs may not number more than two (2) per activity, must not exceed four (4) square feet in size, and may remain in place no more than one (1) week.

(7) Home occupations conducted only by residents of the dwelling and carried on within an area not to exceed 200 square feet of the primary dwelling (See Section 4.8 (A)).

(B) The following uses and structures are exempt from these regulations in all districts except the Flood Hazard Overlay District. When in the Flood Hazard Overlay District, the following uses and exemptions require a permit from the Administrative Officer. Development in the Flood Hazard Overlay District that requires conditional use approval, non-conforming use approval, or a variance from the DRB under these flood hazard regulations, must have such approvals prior to the issuance of a permit by the ZA. Any development subject to municipal jurisdiction in the designated hazard areas shall meet the development standards in Article 2.7(g). Any permit issued for development in the Flood Hazard Overlay District will require that all other necessary permits from State or Federal Agencies have been received before work may begin.

(1) Residential entry stairs (excluding decks and porches), handicap ramps, walkways, and fences or walls less than six (6) feet in height that do not obstruct public rights-of-way, nor interfere with corner visibility or sight distances for vehicular traffic.

(2) Up to two (2) accessory structures per lot, provided that each structure does not exceed eighty (80) square feet in floor area and 10 feet in height, and meet all setback distances for the district in which it is located. This exemption excludes properties located within the Flood Hazard Overlay District. **Properties in the Flood Hazard Overlay District require a permit for all size structures.**

(3) Transit or bus stop shelters that do not exceed two hundred (200) square feet in area and twelve (12) feet in height, are set back at least five (5) feet from edge of the travel lane, and do not otherwise interfere with corner visibility or sight distances for vehicular traffic.

(4) Garage sales, yard sales, auctions or related activities not exceeding three (3) consecutive days, nor more than twelve (12) days in any calendar year.

(C) Decisions of the Administrative Officer as to whether a use is exempt under this section may be appealed to the DRB under Section 9.5.

[Statutory references. 24 VSA Chapter 117 §§4413(d), 4446]

Section 9.3 Zoning Permit

(A) No development requiring a zoning permit shall commence until a permit has been issued by the Administrative Officer.

(B) **Application Requirements**. The application for a zoning permit must be submitted to the Administrative Officer on forms provided by the town, along with any application fees as established by the Select Board. In addition, the following will be required as applicable:

(1) Applications for permitted uses 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 a sketch plan, no smaller than 8" x 11", drawn to scale, that accurately depicts the following.

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 of existing and proposed accesses (curb cuts), 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;

g) erosion and sediment prevention and stormwater management; and

h) such other information as may be needed to determine compliance with these regulations.

(2) Applications for Ponds shall include the following mapped information:

a) all neighboring property uses;

b) all structures on the adjacent properties – to include, buildings, springs, septic systems, wells, driveways, roads, etc.;

c) hydrologic connectivity to any stream, wetland, or wet area that may be hydrologically affected by the pond;

d) the spillway for the pond.

(3) Applications for permits that require review and approval by the DRB or Select Board must also include information required for such review (see Section 3.4(B), Section 5.2, Table 7.2,). The Administrative Officer shall refer the application to the appropriate board or municipal official(s).

(4) **Technical Review**. To assist in evaluation of an application, the zoning administrator may require the submission of an independent technical analysis of one or more

aspects of a proposed development, prepared by a qualified professional acceptable to the zoning administrator, to be funded by the applicant.

(C) **Issuance of Zoning Permits.** A zoning permit shall be issued by the Administrative Officer only in accordance with the Act and the following provisions:

(1) No zoning permit shall be issued by the Administrative Officer for any use or structure that requires approval of the DRB and/or Select Board until such approval has been obtained.

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

(3) No zoning permit shall be issued by the Administrative Officer for any use or structure that requires a state permit until such permit has been obtained.

(4) For uses requiring state and/or federal permit approval and/or referral (e.g., Flood Hazard Area Review) an Agency of Natural Resources 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 Zoning Administrator and attached to the permit before work can begin.

(5) If public notice has been issued by the Select Board for their first public hearing on a proposed amendment to these regulations, the Administrative Officer shall issue a zoning permit for development that is subject to the proposed amendment only in accordance with the requirements of the Act.

(6) The Administrative Officer may require storm water and erosion control measures in accordance with article 3.4.

(7) Within 30 days of receipt of a complete application, including all application materials, fees and required approvals, the Administrative Officer shall act to either issue or deny a permit in writing, or to refer the application to the Development Review for consideration. If the Administrative Officer fails to act within the 30-day period, a permit shall be deemed issued on the 31st day.

(8) The Administrative Officer shall, within three (3) days of the date of issuance, deliver a copy of the permit to the Listers, and post a copy of the permit at the town office. The permit shall be posted for a period of 15 days from the date of issuance.

(D) **Effective Dates.** No zoning permit shall take effect until the time for appeal under Section 9.5 has passed, or in the event that a notice of appeal is properly filed, until the appeal has been decided. Permits shall remain in effect for two (2) years from the date of issuance, unless the permit specifies otherwise. All development authorized by the zoning permit shall be substantially commenced within this period, or the zoning permit shall become null and void and reapplication and approval for further development shall be required. A one-time, one-year administrative extension may be granted by the Administrative Officer, if the extension is requested prior to the permit's expiration date.

(E) **Display of Zoning Permit.** 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 9.5 has passed.

[Statutory references. 24 VSA Chapter 117 §§4448, 4449]

Section 9.4 Certificates of Occupancy and Compliance

(A) Certificate of Occupancy. A certificate of occupancy issued by the Administrative Officer is required prior to the use or occupancy of land, structures, or part thereof, for which a zoning permit has been issued.

(1) Application(s) for certificates of occupancy shall be provided with the zoning permit issued by the Administrative Officer. The applicant shall submit an application to the Administrative Officer upon completion of required improvements, but prior to the use or occupancy of the land or structure.

(2) The applicant shall demonstrate, to the satisfaction of the Administrative Officer, that the proposed use or structure has been completed in conformance with the zoning permit and any associated approvals, including all applicable permit conditions. The applicant also must provide certification from a professional engineer or site technician licensed by the state that any wastewater system has been installed and tested as approved by the state. The Administrative Officer 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 complete structure provided that the Administrative Officer can determine it meets all applicable zoning permit conditions.

(4) A certificate of occupancy shall be issued or denied by the Administrative Officer within 14 working days of receipt of the application. If the Administrative Officer 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 Administrative Officer may be appealed to the DRB under Section 9.5(A).

(B) **Certificate of Compliance.** After the effective date of these regulations, the DRB may require, as a condition of subdivision approval, that a certificate of compliance be obtained to ensure that public and private improvements have been installed in accordance with the conditions of subdivision approval prior to any further land development.

(1) The application for a certificate of compliance shall be submitted to the Administrative Officer, to include plans drawn to scale that show the location of all monuments, utilities, structures, roadways, easements, and other improvements as constructed. The Administrative Officer shall rely on any information submitted as part of the subdivider's application for subdivision approval to determine whether the as-built drawings conform to the approved plat and associated conditions.

Interested Person. the definition of an interested person under the Act [§4465(b)] includes the following:

- the Town of Fayston or an adjoining municipality;
- a person owning or occupying property in the immediate neighborhood of a property that is the subject of a decision or act taken under these regulations, who can demonstrate a physical or environmental impact on the person's interests under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes or terms of the plan or regulations of the town;
- any ten (10) voters and/or property owners within the town who, by signed petition to the Development Review Board, allege that any relief requested by a person under these regulations, if granted, will not be in compliance with the plan or bylaw of the town; and
- any department or administrative subdivision of the State owning property or any interest therein within the town or adjoining municipality, and the Vermont Agency of Commerce and Community Development.

(2) Within 14 days of receipt of the application for a certificate of compliance, the Administrative Officer may inspect the subdivision to ensure that all work has been completed in conformance with the conditions of subdivision approval. If the Administrative Officer fails to either grant or deny the certificate of compliance within 14 days of the submission of an application, the certificate shall be deemed issued on the 15th day.

(3) In the event that there are discrepancies between the approved subdivision and as-built drawings or completed work, the Administrative Officer shall deny the certificate of compliance. The Administrative Officer, in consultation with the DRB, may require the subdivider to submit an application for an amendment to the subdivision approval, or initiate enforcement action under Section 9.6.

[Statutory reference. 24 VSA Chapter 117 §4449(a)(2)]

Section 9.5 Appeals

(A) **Administrative Officer Decisions.** In addition to the applicant, any **interested person** may appeal a decision or act of the Administrative Officer, within 15 days of the date of the decision or act, by filing a notice of appeal with the Secretary of the DRB, or the Town Clerk if no Secretary has been elected. A copy of the notice of appeal also shall be filed with the Administrative Officer.

(1) The DRB shall hold a public hearing on a notice of appeal within 60 days of its filing, as required under the Act. The DRB shall give public notice of the hearing under Section 9.8, and mail a copy of the hearing notice to the appellant not less than 15 days prior to the hearing date.

(2) The DRB may reject an appeal without hearing, and render a decision within 10 days of the filing of a notice of appeal, if the DRB determines that the issues raised by the appellant have been decided in an earlier appeal, or are based on substantially or materially the same facts, by or on behalf of the appellant.

(3) All appeal hearings shall be open to the public. Any interested person or body may appear and be heard in person or be represented by an agent of attorney at the hearing. The rules of evidence applicable at these hearings shall be the same as the rules of evidence applicable in contested cases in hearings before administrative agencies as set forth in state statute [3 VSA §810]. The hearing may be adjourned from time to time, provided that the date and place of the adjourned hearing shall be announced at the hearing.

(4) A decision on appeal, to include written findings of fact, shall be rendered within 45 days after hearing completion, as required under the Act. Failure to issue a decision within this period shall be deemed approval and shall be effective on the 46th day. Decisions shall be issued in writing and shall include a statement of the factual basis on which the DRB has made its conclusions, and a statement of conclusions. The decision shall also include a statement of the time within which appeals may be taken under Subsection (B). The decision shall be sent by certified mail to the appellant within the 45 day period. Copies of the decision shall be mailed to every interested person or body appearing and having been heard at the hearing, and filed with the Administrative Officer and Town Clerk as part of the public records of the municipality in accordance with Section 9.8(E).

(B) **Development Review Board Decisions.** The applicant, appellant or other **interested person** who has participated in a regulatory proceeding of the DRB may appeal the decision rendered by the DRB within 30 days of such decision to the Vermont Environmental Court. Notice of appeal shall be sent to every interested person appearing and having been heard at the hearing before the DRB.

(1) "Participation" in DRB proceeding shall consist of offering, through oral or written testimony, evidence of a statement of concern related to the subject of the proceeding.

(2) The notice of appeal shall be filed by certified mailing, with fees, to the Environmental Court and by mailing a copy to the Fayston Town Clerk, or the Administrative Officer if so designated, who shall supply a list of interested persons (including the applicant if not the appellant), to the appellant within five (5) working days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person. If any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.

(C) **Notice of Appeal.** A notice of appeal shall be in writing and include the following information:

(1) the name and address of the appellant;

(2) a brief description of the property with respect to which the appeal is taken;

(3) a reference to applicable bylaw provisions;

(4) the relief requested by the appellant, including any request for a variance from one or more provisions of these regulations;

(5) the alleged grounds why such relief is believed proper under the circumstances;

(6) any request for a stay of enforcement that may be granted or denied by the DRB in accordance with the Act; and

(7) for appeals of Administrative Officer decisions to the DRB, proof of notification to adjoining and facing landowners in accordance with subsection 9.8(D)(3); or

(8) for appeals of DRB decisions to the Vermont Environmental Court under subsection (B), a proof of notice by registered or certified mail to all adjoining and facing property owners.

[Statutory references. 24 VSA Chapter 117 §§4464, 4465, 4466, 4468, 4470 and 4471]

Section 9.6 Variances

(A) The DRB shall hear and decide requests for variances as required by the Act and appeal procedures under Section 9.5. **The DRB 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 such 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 the provisions of these regulations and that the authorization of a variance is necessary to enable the reasonable use of the property;

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

(4) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor 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 the zoning regulation and from the plan.

(B) **Technical Review**. To assist in its evaluation of an application, the DRB may require the submission of an independent technical analysis of one or more aspects of a proposed development, prepared by a qualified professional acceptable to the DRB, to be funded by the applicant.

(C) **Renewable Energy Structures**. Where a variance is requested for a structure that is primarily a renewable energy resource structure (solar structure, wind generator, and other similar renewable energy structures), in accordance with the Act, **the DRB may grant such variance only if *all* of the following facts are found in the affirmative and specified in its written decision.**

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

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

(2) 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, nor be detrimental to the public welfare; and

(3) The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

(D) **Variances within the Flood Hazard Area.** In addition to requirements under subsection (A), variances for development within the Flood Hazard Overlay District shall be granted by the DRB only:

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

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

(3) upon determination that the structure or other development conforms to the development standards in Table 2.7(E) (5) (g) and creates no additional threats to public safety;

(4) the variance issued informs 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 the risk to life and property and will result in increased flood insurance premiums up to amounts as high as $25 for $100 of coverage and is maintained with a record of all variance actions.

(E) In granting a variance, the DRB may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect.

[Statutory references. 24 VSA Chapter 117 §§4424, 4469(a), and 4469(b)]

Section 9.7 Violations and Enforcement

(A) **Violations.** The commencement or continuation of any development, subdivision or use that is not in conformance with the provisions of these regulations shall constitute a violation. All violations will be pursued in accordance with the Act. Each day that a violation continues shall constitute a separate offense. It shall be the duty of the Administrative Officer to enforce the provisions of these regulations under 10 VSA §1974a, 24 VSA §4451 and §4452 in accordance with these regulations. All fines imposed and collected for violations by the court shall be paid to the town.

(B) Violations of the Accepted Agricultural Practices shall be enforced as violations of these regulations. Such violations shall also be immediately reported to the Secretary of Agriculture for enforcement under 6 V.S.A. Section 4812.

(C) **Notice of Violation**. The Administrative Officer, upon his/her discovery or a written report of a violation of these regulations, shall investigate, and informally notify the owner that a violation exists. In cases of violations of the Flood Hazard Overlay District a copy of the notice of violation will be mailed to the State NFIP Coordinator. If the violation is not corrected within a time period agreed upon in writing, a formal notice of violation shall then be issued. 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. The warning notice shall state that a violation exists; that the alleged offender has an opportunity to cure the violation within the seven (7) days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven (7) days. Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of the bylaw after the seven-day notice period and within the next succeeding 12 months.

(D) **Appeal.** The property owner may appeal the action of the Administrative Officer under Section 9.5, and request that such action be stayed, pending a full hearing and formal decision by the DRB. In cases of violations to the Flood Hazard Overlay District if the violation remains after all appeals have been resolved, the Administrative Officer shall submit a declaration to the Administrator of the National Flood Insurance Program requesting a denial of flood insurance for the property pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

(E) **Civil Action**. If a violation is imminent or in progress, or if the property owner fails to take action to correct the violation within the designated time, or fails to appeal the notice of violation to the DRB, the Town of Fayston may, at its discretion, immediately institute legal proceedings to prevent, restrain, correct or abate the violation by civil action including, but not limited to, an injunction. No additional notification is required to be sent to the property owner prior to initiating a civil action under the Act.

(F) **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. 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 municipal land use permit unless the permit or a notice of the permit has been recorded in the land records of the municipality under Section 9.8(D).

[Statutory references. 24 VSA Chapter 117 §§4451, 4452, and 4454]

Section 9.8 Municipal Administrative Requirements

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

(1) **Administrative Officer.** The Select Board shall appoint an Administrative Officer, from nominations submitted by the Planning Commission, for a term of three (3) years in accordance with the Act. In the absence of the Administrative Officer, an acting Administrative Officer may be appointed by the Planning Commission in consultation with the Select Board. The Administrative Officer 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) **Development Review Board**. DRB members shall be appointed by the Select Board for three-year terms in accordance with the Act. The DRB shall adopt rules of procedure to guide its official conduct as required under the Act and Vermont's Open Meeting Law [1 VSA §§310-314] The DRB shall have all powers and duties as set forth in the Act to administer the provisions of these regulations, including but not limited to the power to:

a) prepare and/or review and act upon proposed amendments to these regulations,

b) hear and act upon.

1) requests for access related to the subdivision process,

2) applications for design approval,

3) applications for planned residential or planned unit development,

4) applications for subdivision approval,

5) applications for conditional use approval (Section 5.4),

6) appeals from any decision, act or failure to act by the Administrative Officer (Section 9.5(A)

7) variance requests (Section 9.7).

(B) **Fee Schedule**. The Select Board 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 from time to time as deemed necessary by the Select Board. The town shall require that an applicant bear all or a portion of the costs of an independent technical review of an application.

(C) Technical Review shall be conducted in accordance with Section 5.2(C).

(D) **Notice Requirements**:

(1) A warned public hearing shall be required for conditional use review (Section 5.5), appeals (Section 9.5) and variances (Sections 9.6), and final subdivision review (Section 7.2). 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, that 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 the adjoining municipality.

(2) Public notice of all other types of development review hearings, including site plan review, shall be given not less than seven (7) days prior to the date of the public hearing, and shall at minimum include the following:

a) posting of the date, place and purpose of the hearing in three (3) or more public places within the 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, that 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.

(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). 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 DRB 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 DRB 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.

(E) **Permit and Violation Recording Requirements.**

(1) Within 30 days of the issuance or denial of a municipal land use permit or notice of violation, the Administrative Officer shall deliver either the original, a legible copy, or a notice of a municipal land use permit, denial or violation to the Town Clerk for recording in the land records of the town as provided in 24 VSA Chapter 117 §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.

(2) For development within the Flood Hazard Area Overlay District, the Administrative Officer shall also maintain a record of:

a) all permits issued for development in areas of special flood hazard;

b) elevation certificates with the as-built elevation (consistent with the datum of the elevation on the current Flood Insurance Rate Maps for the community) of the lowest floor, including basement, of all 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 all variance actions, including the justification for their issuance.

[Statutory references. 24 VSA Chapter 117 §§432-4325, 4440, 4441, 4444, 4448, 4449(c) and 4464]

Article 10. Definitions

Section 10.1 Terms and Usage

(A) Words, phrases, and terms defined herein or elsewhere in these regulations shall have their usual and customary meanings except where the context clearly indicates a different meaning.

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

(1) The word "*person*" includes a firm, association, organization, partnership, trust, company or corporation, as well as an individual.

(2) The present tense includes the future tense.

(3) Words used in the singular number include the plural, and words used in the plural number include the singular, unless the context clearly indicates the contrary.

(4) The word "*shall*" is mandatory; the word "*may*" is discretionary (permissive); the term "*generally shall*" is mandatory unless the DRB or other applicable body deems otherwise in accordance with these regulations.

(5) The word "*should*" means that an activity is encouraged but not mandated.

(6) The word "*used*" or "*occupied*" includes "*arranged*," "*designed*," "*intended*," or "*maintained*."

(7) The word "lot" includes "parcel" and "plot".

(8) The particular controls the general.

(9) The word "structure" includes "building," "mobile home or trailer," "sign," "wall," or "fence".

(C) For the purposes of flood hazard area regulation under Article 2, National Flood Insurance Program definitions contained in 44 CFR Section 59.1 are hereby adopted by reference and shall be used to interpret and enforce these regulations. Definitions of some commonly used terms are provided herein.

(D) Any interpretation of words, phrases or terms by the Administrative Officer may be appealed to the DRB under Section 9.5. In such cases, the DRB shall base its decision upon the following definitions, state statute, and the need for reasonable and effective implementation of these regulations. The DRB shall publish and update from time to time such written interpretation, to ensure consistent and uniform application of the provisions of these regulations.

Section 10.2 Definitions

Abandoned or Inoperative Vehicle. A vehicle or vehicular parts that are not in working condition or a vehicle unable to meet existing state inspection and licensing requirements.

Abandoned Use. To cease or discontinue an activity without intent to resume, excluding temporary or short-term interruptions to an activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility, or during normal periods of vacation or seasonal closure.

Abutter/Adjacent Property Owner. An owner of record of a lot that has in common one or more points on any boundary with another lot, or that is separated from such a common border by a road, right-of-way, alley, or easement.

Act. 24 VSA, Chapter 117, the Vermont Municipal and Regional Planning and Development Act as most recently amended.

Accepted Agricultural Practices (AAPs). Accepted practices for agriculture, including farm structures other than dwellings, as currently defined by the Secretary of Vermont Agency of Agriculture, Food and Markets (see Section 9.2).

Accepted Management Practices (AMPs). Accepted practices for silviculture (forestry) as currently defined by the Commissioner of the Vermont Department or Forests, Parks and Recreation (see Section 9.2).

Accessory Dwelling. A secondary dwelling unit established in conjunction with and clearly subordinate to a primary single family dwelling unit that is retained in common ownership, is located within, attached to or in an accessory structure on the same lot as the primary dwelling unit, and that otherwise meets applicable criteria of this bylaw (see Section 4.1).

Accessory Structure. A structure that is customarily incidental and subordinate to the permitted or conditional use on the lot, is located on the same lot as the primary structure or use, and is clearly related to the primary permitted or conditional use.

Accessory Use. A use that is customarily incidental and subordinate to the primary use of a lot, is located on the same lot as the primary use and is clearly related to the primary use.

Adaptive Reuse. The rehabilitation or renovation of an existing historic building, as listed on, or determined to have become eligible for listing on, the Vermont Historic Sites and Structures Survey for the Town of Fayston or the National Register of Historic Places, for another use as specified in these regulations (see Section 4.2).

Administrative Officer. See Zoning Administrator

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, 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 65 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.

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

Agriculture. The growing and harvesting of crops; the raising of livestock, including horses; the operation of orchards, including maple orchards or sugar bushes; green houses and nurseries; and the sale of farm produce on the premises where it is produced (see also Accepted Agricultural Practices).

Alteration (To alter). Any 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 Improvement, Substantial Improvement).

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

Approval. A written decision issued by the DRB within the statutory time limit, or in the event of the DRB'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 land records of the Town.

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 that 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.

Artist Studio. Work space for artists or artisans, including individuals engaged in the application, teaching or performance of one of the fine arts or an applied art or craft (see also Gallery and Section 4.2 Adaptive Reuse).

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

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

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

Bed and Breakfast (B&B). A single family dwelling occupied by the owner or operator, in which not more than seven guest rooms within the dwelling and/or in an accessory structure located on the same lot, are rented out to provide overnight accommodations to transient 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. (For establishments with greater than seven guest rooms see Inn/Lodge, Hotel and Section 4.5)

Boundary Lot Line Adjustment. A readjustment, relocation or alteration of a boundary between existing adjoining parcels that are not included in an approved subdivision, and that does not create any new "lot" as defined in these regulations, will not impact access to any parcel, will not adversely impact any significant natural resource or result in fragmentation of agricultural or conservation lands, will not create any nonconforming lots, and in which the conveyed portion of the land is no greater in area than the minimum lot size in the district and is no more than 10% or one (1) acre of the area of the parcel from which it is being conveyed, whichever is less. A boundary line adjustment shall constitute a minor subdivision.

Buffer. Any space between adjoining land uses or between a land use and a natural feature that is intended to visibly and/or functionally separate one use from another; to shield or block noise, lights or other nuisance from neighboring properties; and/or to lessen visual or physical impacts of development on surface waters, wetlands and other natural and scenic areas. Buffers may include open space, woodland, landscaped areas, undisturbed vegetated areas, or other types of physical, visual or sound barriers.

Building. (1) A structure used for the shelter or accommodation of persons, animals, goods, chattels or equipment that has a roof supported by columns or walls; (2) for flood hazard area regulation only, this definition also includes a gas or liquid storage tank that is principally above ground.

Building Bulk. The visual and physical mass of a building or structure; including the size, height, shape, location and relationship of a building or structure to adjoining structures, open areas, street, and lot lines.

Building Coverage. The perimeter limit of any floor space, including porches, balconies or roof overhangs greater than 30 inches projected vertically onto the ground plane.

Building Height. The height of a building or structure as measured vertically from the average (of the highest and lowest) finished grade at the foundation or base to the highest point of the roof for flat and mansard roofs, or to the average height between eaves and ridge for other types of roof (excluding any noted exemptions under Section 3.6).

Bylaws. Municipal regulations applicable to land development adopted under the authority of 24 VSA Chapter 117.

Camp/Refuge/Retreat. An area for children or adults operated for recreational, educational, or spiritual instruction or retreat where lodging and/or board are provided on a temporary or partial year basis.

Camper/Travel Trailer. Any vehicle used as temporary sleeping, camping or living quarters that is mounted on wheels, a truck or a camper body, or towed by a motor vehicle. This definition includes recreation vehicles and travel trailers and motor homes, but specifically excludes mobile homes (see Mobile Home).

Campground. A parcel of land upon which three 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 that are limited to substantially unimproved camp sites intended for tenting use only (see Section 4.4).

Cemetery. Land used or dedicated to the burial of the dead, including as accessory structures mausoleums, columbariums, or maintenance facilities, but excluding crematoriums. An individual burial site on private land, registered with the Fayston Town Clerk in accordance with state law, is exempted from this definition.

Certificate of Occupancy. Certificate issued by the administrative officer to certify that the proposed use is constructed in conformance with the zoning ordinance and approved permit plans (see Section 9.4).

Certificate of Service. A sworn statement in which the applicant certifies to the [Appropriate Municipal Panel] that a copy of the notification of the hearing has been mailed to or otherwise served on all applicable parties as required under 24 V.S.A 4464 (a) (1) (C) or (2) (B).

Clearing. The removal of vegetation as part of site preparation, including the installation of driveways, septic systems, building sites and construction or yard areas.

Commission. The Fayston Development Review Board, as created under the Act.

Commercial Wastewater Treatment Facility. Any privately owned and operated wastewater treatment system, including treatment plant, collection lines, disposal fields, or expansion of facilities, with a capacity greater than 30,000 gallons per day. This definition does not include other types of community wastewater treatment systems associated with individual developments (see Community System).

Common Land. Land within a development or subdivision that is not individually owned or dedicated for public use, but that is designed 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.

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

Community Center. A building used for recreational, social, and cultural activities that is not operated for profit and is intended primarily to serve the population of the community or neighborhood in which it is located (see Section 4.2).

Community System. Any water or wastewater disposal system that provides potable water to or disposes of wastewater from two or more domestic, commercial, industrial, or institutional uses, with the exception of a commercial wastewater treatment facility as defined separately (see Commercial Wastewater Treatment Facility). Such systems shall include related collection, distribution and treatment facilities.

Conditional Use. A land use allowed in a specific district(s) with the approval of the DRB in accordance with the requirements of Article 5.

Conservation Easement. A legal interest in real property imposing limitations on future use and development for the purpose of protecting natural, scenic or open space values of said property, and/or maintaining its availability for agricultural, forest, recreational or open space uses.

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

Critical Wildlife Habitat- Areas of habitat that are crucial to the survival of a species and essential for its conservation and that have been formally designated as such by rule published in the Federal Register

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

Day Care Facility. Any place whose primary function is protection, care, and supervision of children or adults from more than two families by a person other than relatives or guardians, whether for compensation or not, on a regular or continuing basis (see Section 4.6).

Degree of Noncompliance. The extension of a structure that results in an additional encroachment of the non-complying feature/element beyond that point that constitutes the greatest pre-existing encroachment. An expansion in the volume or area of a structure shall not constitute an increase in the degree of noncompliance unless the expansion results in encroachment upon the setback that is greater than the existing non-complying encroachment.

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

Development. See Land Development.

Development Right. (1)The right to build or develop on a specific parcel of land in accordance with the regulations for the district in which the parcel is located; (2) for purposes of the transfer of development rights under Section 3.14; development rights shall also at minimum include any rights held by conservation easement for a specified period of not less than 30 years, granted to the municipality in accordance with state statute [10 VSA Chapter 155] limiting the land uses in the sending area solely to specified purposes, but including at minimum agriculture and forestry.

Driveway. A minor, private travel way serving one parcel that provides access for vehicles to a parking space, garage, dwelling or other structure.

Dwelling, Multi-Family. A building containing three or more dwelling units.

Dwelling, Single-Family. A building or structure containing one dwelling unit.

Dwelling, Two-Family. A building or structure containing two dwelling units.

Dwelling Unit. One or more rooms designed, occupied or intended for occupancy as separate living quarters with cooking, sleeping and sanitary facilities provided for the exclusive use of a single family or individual maintaining a household.

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

Expansion to an existing Manufactured Home Park or Subdivision. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Extraction of Earth Resources. A use involving the on-site removal of surface and subsurface materials, including soil, sand, gravel, stone, rock, minerals or similar materials. Typical uses include sand and gravel pits and quarries, and related operations such as the crushing, screening, and temporary storage of materials on-site (see Section 4.13). Specifically excluded from this definition is the grading and removal of dirt that is associated with and incidental to an approved use (including single-family dwellings, cemeteries, etc.), or subdivision, or an excavation associated with an accepted agricultural practice.

Family. A group of two (2) or more persons related by blood, marriage, adoption or civil union (as recognized by the State of Vermont), or a group of not more than five (5) persons unrelated by blood, marriage, adoption or civil union, living together as a household, or a single person maintaining a household.

FIA. The Federal Flood Insurance Administration.

Flood Hazard Boundary Map (FHBM). An official map of Fayston, 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 Rate Map. An official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study. An examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Flood Proofing. Any combination of structural and nonstructural additions, changes or adjustments to structures that substantially reduce or eliminate flood damage to any combination of real estate, improved real property, water or sanitary facilities, structures, and the contents of structures.

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

Forestry. The use and management of timber land for purposes of conservation and/or wood production and timber harvesting. This definition specifically excludes sawmills, lumber yards and other similar facilities used for the processing and/or manufacturing of wood and wood products, with the exception of portable sawmills and other equipment used on-site in association with timber harvesting activities (see Wood Processing and Storage, & Section 4.18).

Frontage. The distance of the portion of a lot line abutting a road right-of-way.

Gallery. An establishment engaged in the display, sale, or loan, of art and craft work, excluding museums and art galleries (see also Artist Studio and Section 4.2).

Guest Room. An overnight accommodation to transient travelers on a short-term basis of less than one month.

Group Home. A state licensed residential care home serving not more than six (6) persons who are developmentally disabled or handicapped (see Section 4.7).

Hazard Area. Land subject to landslides, soil erosion, earthquakes, water supply contamination, or other natural or human-made hazards as identified within a "local mitigation plan" in conformance with and approved pursuant to the provisions of 44 CFR section 201.6.

Historic structure. Any structure that is. (a) listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district

preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places in states with historic preservation programs that have been approved by the Secretary of the Interior; or (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either. (i) by an approved state program as determined by the Secretary of the Interior or (ii) directly by the Secretary of the Interior in states without approved programs.

Home Industry. An expanded home-based business conducted by the resident(s) of a dwelling unit that is carried on within the principal dwelling and/or an accessory structure, may include outdoor storage of materials, and has no more than four (4) nonresident employees on-site at any one time (see Section 4.8; Home Based Businesses).

Home Occupation. A use conducted entirely within a minor portion of a dwelling unit or accessory structure that is conducted by residents of the dwelling that is clearly incidental and secondary to the use of the dwelling for dwelling purposes, and that does not change the character of the dwelling and neighborhood (see Section 4.8; Home Based Businesses). A Home Occupation has no non-resident employees.

Hotel. A building or group of buildings containing more than 15 guest rooms for occupancy and use by transients on a short-term basis less than an average of one month, and having a management entity operating the building(s) and providing such services as maid service, a central switchboard, or dining facilities. Where rooms in the building(s) are under separate ownership, rental and management contracts between the owner and a rental and management agent or agents is required. For purposes of this definition, separate ownership includes, but is not limited to, interval ownership in fee or leasehold, condominium ownership and cooperative ownership with a proprietary lease (see Section 4.5).

Improvement. Any physical addition to real property, or any part of such addition, including but not limited to any building, structure, parking facility, wall, fencing, or landscaping (see also Substantial Improvement).

Indoor Recreation Facility. A building or structure designed, equipped and used for sports, leisure time, and other recreational activities excluding a movie theater.

Infrastructure. Facilities and services needed to sustain all land use activities.

Inn/Lodge. A building or group of buildings on a single parcel that contain up to fifteen guest rooms that are rented out to provide overnight accommodations to transient travelers on a short-term basis of less than one month average, and that may offer dining facilities (see Section 4.5).

Junk Yard. See Salvage Yard.

Kennel. The boarding, breeding, raising, grooming, or training of four (4) or more dogs, cats, or other household pets.

Land Development. The construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or any mining, excavation, landfill, grading, paving, or drilling operations, or storage of equipment or materials or any change in the use of any building or other structure or land or extension of use of land (see also Subdivision, Section 1.3, and Section 9.2).

Limited Ski Area Operation. Certain activities inherent to routine operation and maintenance of a commercial alpine or Nordic ski area, yet limited by environmental constraints and aesthetic considerations associated with high elevations and steep slopes; to include such activities as ski trails, ski lifts, warming huts, snowmaking facilities and, where appropriate, restaurant facilities (see Ski Area Operation).

Lot. (1) Land of at least sufficient size to meet minimum regulations for use, open spaces, frontage access; (2) a portion of land in a subdivision or plat that is separated from other portions by a property line (see also Contiguous Lands). Land separated by a road right-of-way owned by the same person is considered to be two lots, unless the lot was created before March 2, 1999.

Lot Area. The total land area within the boundaries (lot lines) of a lot, exclusive of any land area designated for a road right-of-way as measured to the boundary of such right-of-way or easement.

Lot Coverage. That portion (percentage) of a lot area that is covered by buildings, structures and other man-made improvements, including parking and loading areas, access roads, service areas, and other impermeable surfaces that prevent the infiltration of storm water.

Lot Depth. The mean horizontal distance from the property line/road right-of-way line of the lot to its opposite rear line measured at right angles to the building front line.

Lot Size. See Lot Area.

Lowest Floor. The lowest floor of the lowest enclosed area (including any 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 (Section 60.3) non-elevation design requirements.

Major Subdivision. All subdivisions other than minor subdivisions and boundary line adjustments, including all planned residential and planned unit developments (see also Boundary Line Adjustment, Minor Subdivision, Subdivision).

Manufactured or Modular Home. A structure, transportable in one or more sections that is built on a permanent chassis or foundation and is connected to required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on the site for greater than 180 consecutive days. For insurance purposes, and the other provisions of these regulations, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

Manufactured Home Park or Subdivision. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean Sea Level. The standard datum to that base flood elevations shown on the Flood Insurance Rate Map, and typical contour elevations, are referenced.

Minor Subdivision. Lot line adjustments; amendments to an approved subdivision plan that will not substantially change the nature of any previous subdivision or conditions of approval; any subdivision creating less than 6 lots (including the retained lot) and not requiring any new (public or private) road greater than 800 feet in length.

Mixed Use. A building or parcel containing two (2) or more uses that are otherwise allowed as permitted or conditional uses within the district in which the building or parcel is located (see Section 4.9).

Mobile Home. A prefabricated dwelling unit that is (1) designed for continuous residential occupancy; and (2) is designed to be moved on wheels, as a whole or in sections (see Section 4.3). Within the meaning of these regulations, a travel trailer shall not be considered a mobile home nor shall a travel trailer be considered a dwelling unit (see also Manufactured Home).

Mobile Home Park. A parcel of land under single or common ownership or control that contains, or is designed, laid out or adapted to accommodate three or more mobile homes (see Section 4.10).

Neighborhood Grocery Store. A retail store offering a variety of household items, including but not limited to food, beverages, paper products, non-prescription medicines, personal care items and other convenience goods primarily directed toward residents and visitors lodged in the immediate area. Gasoline sales, auto service and repairs shall not be included in this definition.

New Construction. For regulation within the Flood Hazard Overlay District, structures for which the start of construction commenced on or after the effective date of the floodplain management regulation adopted by the community and includes any subsequent improvements to such structures.

New Manufactured Home Park or Subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are

to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the floodplain management regulations adopted by a community.

Non-complying Structure. A structure or part of a structure that does not conform to the present bylaws but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws; including a structure improperly authorized as a result of error by the administrative officer.

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

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

Office (Business/Professional). A room, suite of rooms or building used for conducting the affairs of a business, profession or government, or as used as an accessory to personal services, industry and other uses with no more than five employees on site at any one time that are consistent with rural residential community. The on-premise retail sale of goods is specifically excluded from this definition.

Open Space. Land not occupied by structures, buildings, roads, rights-of-way, driveways, parking spaces, recreational facilities, and parking lots. Open space may or may not be held in common. Individual yard areas, or lands so intensively used as to render them inconsistent with this definition, in the DRB's judgment, are excluded.

Ordinary High Water Mark. The line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Outdoor Recreation Facility. Any facility for outdoor recreation, including but not limited to. tennis courts, golf courses, athletic fields, swimming pools, and trails for hiking, horseback riding, bicycling, snowmobiling, and cross-country skiing; except for such facilities that are accessory to a single family dwelling unit, and ski lifts and ski lift facilities that are defined separately for the purposes of these regulations (see Ski Lift, Ski Area Facility, Ski Area Operations).

Path. A cleared way for pedestrians and/or bicycles that may or may not be improved.

Permitted Use. A land use allowed in a specific district or districts upon the issuance of a zoning permit, unless such use is specifically exempted in accordance with Section 9.2. Sometimes referred to as "a use by right."

Place of Worship. A facility used for conducting organized religious services on a regular basis, including accessory uses customarily associated with such a primary use.

Planned Residential Development (PRD). An area of land, controlled by a landowner or group of landowners, to be developed as a single entity for a number of dwelling units; the plan for which does not correspond in lot size, building bulk, or type of dwelling, density, lot coverage, and required open space under these regulations except as a planned residential development (see also Planned Unit Development, Article 8).

Planned Unit Development (PUD). One or more lots, tracts, or parcels of land to be developed as a single entity, the plan for which may propose any combination of density or intensity transfers, density or intensity increases, or the mixing of land uses, and that need not correspond to bylaw requirements that are otherwise applicable to the area in which it is located with respect to lot size, bulk, or type of dwelling, use, density, intensity, lot coverage, parking, required open space, or other standards(see also Planned Residential Development and Article 8).

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.

Primary Structure. A house, camp, or commercial structure that serves the primary use (primary dwelling, seasonal dwelling, office, store, industrial building, etc.) allowed in the zoning district in which it is located.

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 that owns, occupies, or uses certain specified premises, that is not organized or operated for profit, and the benefits of which are available primarily to members only.

Public Facility. A building or other facility owned, leased, held, used, and/or controlled exclusively for public purposes by the Town of Fayston, or any other department or branch of government, or publicly regulated utility. Such a facility may be further characterized as **"open"** to the general public (e.g., town office, meeting hall, post office) or **"closed"** to the general public (e.g., highway maintenance facility, utility substation, solid waste facility).

Public Improvement. Any improvement that shall be owned or maintained by the Town of Fayston.

Public Infrastructure. The basic physical and organizational structures needed for the operation of a municipality such as roads, bridges, water supply, etc.

Reasonable Use. A use of real property that is allowed within the district in which the property is located, that provides some (but not necessarily all) potential benefit to the owner, and that does not lead to unreasonable interference with another's use of property, or with the natural flow of water. Reasonable use does not mean highest and best use; nor does it include accessory uses, structures, or additions that may be customary, but are not necessary, to the existing or intended principal use (e.g., garages, swimming pools).

Receiving Area. An area designated in these regulations in which development rights transferred from sending areas may be used, subject to transfer of development rights provisions under Section 3.14 (see also Development Right, Sending Area).

Recreational vehicle. A vehicle that 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.

Restaurant. An establishment where food and drink is prepared, served, and consumed primarily within the principal building, and excluding fast-food restaurants (see also Fast Food Restaurant).

Ridgeline. The uppermost point 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 public or private street, highway, or other legal way that exists for vehicular travel, that affords access to abutting properties, and that serves more than one lot. . The term road shall mean the entire right-of-way. (See Driveway and Section 3.1).

Salvage Yard. The use of any piece of land for the storage of used machinery (excluding farm machinery), automobiles, appliances or similar material whether for sale or not. A parcel of land shall be considered a junkyard if it contains two or more automobiles or appliances or pieces of machinery or other similar material, if they are abandoned or inoperative as defined above.

School. A public, private or parochial institution certified by the State of Vermont to provide educational instruction to students. Such facilities may also include accessory recreational, lodging and dining facilities, and be used as officially designated, temporary emergency shelters.

Sending Area. An area designated in these regulations in which development rights may be acquired for transfer to receiving areas, subject to transfer of development rights provisions under Section 3.14 (see also Development Right, Receiving Area).

Setback. The horizontal distance from the centerline of the road, lot line, boundary or other delineated feature (e.g., a stream bank or channel, shoreline, or wetland area), to the nearest part of a building, structure, or parking area on the premises.

Sign. Any structure, display, device or representation that is designed or used to advertise, direct to, or call attention to anything; person, business, activity or place.

Sign, On-Premise Business. An accessory sign that directs attention to a business, profession, commodity, service or entertainment carried on, sold, or offered on the same premises.

Sign, Official Business Directional. A sign erected and maintained by the State to indicate to the traveling public the route and the distance to public accommodations, commercial services for the traveling public, and points of scenic, historic, cultural, educational or religious interest.

Significant Wildlife Habitat. Identifiable habitat that is decisive to the survival of a significant number of a species of wildlife at any period of its life.

Silviculture. See Forestry.

Ski Area Operation. Those activities inherent to routine operation and maintenance of a commercial alpine or Nordic ski area to include ski trails, ski lifts, terminal buildings, warming huts, maintenance facilities, snowmaking installations, snack bars, restaurants, base lodges, parking area, ski shop, nursery and any other operations necessitated by normal commercial competition with other ski areas (see Limited Ski Area Operation).

Ski Lift. Facility for the transport of people at a ski area, including tows, chair lifts, gondolas, cable cars and similar facilities.

Special Flood Hazard Area. The floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. For purposes of these regulations, the term "area of special flood hazard" is synonymous in meaning with the phrase "special flood hazard area". This area is usually labeled Zone A, AO, AH, AE, or A1-30 in the most current flood insurance studies and on the maps published by the Federal Emergency Management Agency. Maps of this area are available for viewing in the municipal office or online from the FEMA Map Service Center. msc.fema.gov 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 [see Article 10 for definition of Substantial Improvement], and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footing, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, regardless whether that alteration affects the external dimensions of the building.

Stream. Any surface water course in the Town of Fayston as depicted by the U.S. Geological Survey 7.5 minute Series (topographic) maps or as identified through site investigation; excluding artificially created irrigation and drainage channels.

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 that necessitates pilings, footings, or a foundation attached to the land (see Exemptions under Section 9.2). *Structure* means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

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 (2) or more parcels for the purposes of sale, conveyance, lease, or development. The term "subdivision" includes resubdivision involving the adjustment of boundaries between two or more existing parcels.

Substantial Damage (In Flood Hazard Area Overlay District). Damage of any origin (flood, fire, etc.) sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal, or exceed, 50 percent of the marked value of the structure before the damage occurred, regardless of whether or not the owner intends to fully restore the structure back to its pre-damaged condition. [Title 44 CFR Parts 59 & 60]

Substantial Improvement. Any repair, reconstruction, or improvement of a structure after the date of adoption of these regulations, the cost of which, over three years, or over a period of

common plan of development, cumulatively equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that 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 that have been identified by the local code enforcement official and that 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".,

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

Substantially Commenced. Any Structure or improvement to a structure, the cost of which equals or exceeds 50% of the permit value.

Telecommunications Facility. A tower or other support structure including antennae that will extend 20 or more feet vertically, and related equipment, and base structures to used primarily for communication or broadcast purposes to transmit or receive communication or broadcast signals.(see Section 4.15).

Tourist Commercial. Use limited to retail and service activities supportive of the operation of a commercial ski area.

Transfer of Development Rights. The removal of the right to develop or build, expressed in dwelling units per acre, from land in one zoning district to land in another zoning district where such transfer is permitted.

Use. The purpose for which a building, structure, or parcel of land is designed, arranged, or intended, or for which it is or may be occupied, maintained or used. The term "permitted use" or its equivalent shall not be deemed to include any non-conforming use.

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

Warehouse/Storage. A building used primarily for the storage of goods and materials, and not as a primary location or outlet for business or retail uses (see Section 4.2 Adaptive Reuse).

Wetlands. Those areas of the state that are inundated by surface or groundwater with a frequency sufficient to support vegetation or aquatic life that depend on saturated or seasonally saturated soil conditions for growth and reproduction. Such areas include marshes,

swamps, sloughs, potholes, fens, river and lake overflows, mud flats, bogs, and ponds, but excluding such areas as grow food or crops in connection with farming activities.

Wildlife Habitat. The area in which animals find the food, water and cover they need to survive.

Wood Processing and Storage. The storage and treatment of wood, including such activities as cutting, milling, splitting, seasoning, and storing.

Yard Sale. The casual sale of personal property open to the general public and generally denoted by the terms "garage sale", "attic sale", "lawn sale", "flea market", "barn sale" or similar phrase.

Yurt. A circular domed tent of skins or material stretched over a collapsible lattice framework and used for temporary shelter.

Zoning Administer (ZA), is responsible for the administration and enforcement of zoning and other bylaws adopted under the Vermont Municipal and Regional Planning and Development Act (24 V.S.A. Chapter 117).