

Town of Burke

Zoning
and
Subdivision
Bylaw

HISTORY OF AMENDMENTS TO BURKE ZONING REGULATIONS	
May 7, 1984	Zoning Regulations amended.
December 7, 1987	Zoning Regulations amended.
January 6, 1990	Original Subdivision Bylaw adopted.
May 2, 1988	Zoning Regulations amended.
May 6, 2001	Zoning Regulations amended regarding provisions for spreading biochemical waste, storage of unregistered vehicles, mobile home parks, abandonment of structures, and setbacks.
November 11, 2006	Zoning Regulations amended to bring them into compliance with new state regulations. Development Review Board created.
July 25, 2007	Zoning Regulations amended to incorporate subdivision regulations, additional zoning districts including a scenic/conservation overlay, residential clustering, expanded PUD provisions, signage and lighting, and provisions for site plan review. ***This revision was partially funded by a Municipal Planning Grant, awarded by the Vermont Agency of Commerce and Community Development.***
March 4, 2008	Amended by public vote to include section §319. Waiver of Setback Requirements.
July 6, 2009	Replaced §908. Traffic Management, added §909. Independent Technical Review and renumbered subsequent Article 9 sections.
August 2, 2009	Amended §210(4). Agricultural-Residential II ("AR II") to add light industry use in ARII along VT Route 5.
August 2, 2010	Replaced §319. Waiver of Setback Requirements to add administrative review option. Minor technical changes to correct referenced section numbers.

July 11, 2011	Removed light industry. Added Class I, Class II, and Class III Industrial Uses and Resource-based Industries. Amended §404 for Home Occupation standards, created exemption for Home Offices, and created provisions and standards for Home Businesses Added §405 Industrial Uses. Revised §204 to allow uses not listed in land use tables, subject to Conditional Use Review and Performance Standards. ***This revision was partially funded by a Municipal Planning Grant, awarded by the Vermont Agency of Commerce and Community Development.***
April 10, 2018	– Defined Construction sign 305(1)L – Added off-street parking provision 310 and standalone parking area definition – Changed number of maps required for final subdivision review from 4 to 2 605(2)A and 605(4)B – §702 Saving Clause removed – Replaced and moved subdivision section – Replaced and moved PUD section – Eliminated separate Clustering provision and incorporated with subdivision provision – Added Daycare Center to ARII District – Removed §408. Storage of Unregistered Vehicles – Removed §411 (2) to not require a minimum acreage for a campground – Included all of incorporated West Burke Village in VMU zoning district – Bylaw updates reflect current National Flood Insurance program requirements and development in areas subject to fluvial erosion. – Renumbered as appropriate *This revision was partially funded by a Municipal Planning Grant, awarded by the Vermont Agency of Commerce and Community Development.*
May 26, 2023	- Added accessory campsites -

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Article 1. Enactment, Purpose and Intent

§101. Enactment

In accordance with the Chapter 117 of Title 24 V.S.A., Vermont Planning and Development Act, hereinafter referred to as "24 V.S.A." there is hereby established a zoning bylaw for the Town of Burke, which is set forth in the text and map that constitute this bylaw. This bylaw shall be known and cited as the "Town of Burke Zoning Bylaw."

§102. Purpose and Intent

(1) The purposes of this bylaw to provide for orderly growth, to further the purposes established in 24 V.S.A. §4302, and to achieve the following specific objectives:

A) To guide the future growth and orderly development of the Town.

B) To ensure and protect the health, safety, and general welfare of the present and future inhabitants of the Town of Burke;

C) To maintain or enhance the quality of life of the inhabitants of the Town of Burke;

D) To provide for the conservation and protection of the natural, visual, and historic assets of the Town; the preservation of the existing rural character of the Town through the proper arrangement of uses and development on parcels; the preservation of adequate open space between developments; and the preservation of land values and an adequate tax base;

E) To protect, conserve, or enhance the environment by securing safety from fire, traffic congestion, environmental pollutants, soil erosion, overuse of land, and other dangers;

F) To avoid and minimize the loss of life and property, the disruption of commerce, and the extraordinary public expenditures and demands on public services that results from flooding related inundation and erosion;

G) Ensure that the selection, design, creation, and use of development in hazard areas is reasonably safe and accomplished in a manner that is consistent with public wellbeing, does not impair stream equilibrium, flood plain services, or the stream corridor;

H) Manage all flood hazard areas designated pursuant to 10 V.S.A. Chapter 32 §753, the municipal hazard mitigation plan; and make the Town of Burke, its citizens and businesses eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds as may be available;

I) To ensure that growth is consistent with the Town's ability to provide public facilities and services, including parks and open spaces, recreation areas, schools, police and fire protection, off-street parking, and water supply and sewage disposal;

J) To establish the most beneficial relationship between uses of land and buildings and the safe and convenient movement of pedestrian and vehicular traffic;

K) To ensure that development encourages efficient and economic uses of energy consistent with current technology;

L) To implement the Town Plan, its policies, and objectives; and

M) To ensure that all land use permits are issued in accordance with state statute.

(2) In any dispute or conflict involving this bylaw, the intent and not the letter shall be the prevailing law.

Article 2. Establishment of Districts and Regulations

§201. Zoning Map and Districts

The zoning map officially titled "Town of Burke Zoning Map," is hereby adopted as part of this bylaw. The Town of Burke Zoning Map shows a division of the town into the following districts:

Village Mixed Use	"VMU"
Village Residential	"VR"
Agricultural Residential I	"AR I"
Agricultural Residential II	"AR II"
Resort	"R"
Conservation & Scenic Overlay	"CSO"
Flood Hazard Overlay	"FHO"

§202. Copies of Zoning Map

Regardless of the existence of the other printed copies of the zoning map, the official zoning map shall be located in the Burke Town Clerk's office. The official zoning map shall be the final authority as to the current zoning status of all properties within the Town of Burke.

§203. District Boundaries

(1) Where the zoning district boundary divides a lot of record on the zoning map at the time such district boundary is adopted, the district that contains more than 50% of the square footage of the lot shall determine the district and its respective uses, except that any subdivision of such a lot shall adhere to the district boundaries, as shown on the zoning map, and be subject to all dimensional and use restrictions in each respective zoning district.

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

(3) When the Administrative Officer cannot definitely determine the location of a district boundary by the scale and dimensions shown on the zoning map, the Development Review Board and/or appropriate state and federal officials may be consulted prior to issuing a determination.

§204. Uses Not Listed or Permitted

In addition to the permitted and conditional uses listed in the land use tables of §210 District Objectives and Land Use Controls, the Development Review Board may approve any use which it finds to be similar to a use allowed in the district, subject to Conditional Use Review and applicable performance standards. Nevertheless, the following uses are prohibited in all zoning districts:

(1) Drive-up windows

(2) Salvage Yards, also known as "Junkyards," as defined and regulated in the Town of Burke Ordinance Regulating Outdoor Storage of Junk and Junk Vehicles.

§205. Uses Exempt from Zoning

No zoning permits shall be required for the following activities:

(1) Accepted agricultural practices, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets, in accordance with 24 V.S.A. §4413(d). Any person who intends to build a farm structure shall notify the Burke Town Clerk of such intent and abide by the setbacks approved by the Secretary of Agriculture, Food and Markets;

(2) Accepted management practices for forestry (sometimes referred to "silviculture"), as those practices are defined by the Commissioner of Forests, Parks and Recreation, in accordance with 24 V.S.A. §4413(d);

(3) Power generation and transmission facilities, which are regulated under 30 V.S.A. §248 by the Vermont Public Service Board. Such facilities, however, should conform to any policies and objectives pertaining to such development in the Burke Town Plan;

(4) Hunting, fishing, and trapping, as specified under 24 V.S.A. §2295 on private or public land. This does not include facilities supporting such activities, such as firing ranges or rod and gun clubs, which for the purposes of these regulations are defined as recreational facilities;

(5) Structures smaller than 300 cubic feet, provided that such structures are not located in regulated flood hazard areas. Cubic footage for ADA compliant handicapped ramps necessary for resident access will also be exempt;

(6) Exterior alterations to structures which do not result in any change to the footprint or height of the structure or a change in use, provided that such alterations are not located in regulated flood hazard areas;

(7) Fences not exceeding eight (8) feet in height which do not extend into or obstruct public rights-of-way; extend into the regulated flood hazard areas; or interfere with corner visibilities or sight distances for vehicular traffic;

(8) Driveways located outside of regulated flood hazard areas;

(9) Yard sales, garage sales, or similar activities that do not exceed more than (3) consecutive days, nor more than twelve (12) calendar days in any calendar year.

(10) Home Offices that are located within a principal dwelling or existing accessory structure, occupies no more than 40% of the gross floor area of the principal dwelling, is carried on by a resident of that dwelling, and involves no signs, public access, outdoor storage or displays, or retail sales.

(11) Maintenance of existing roads and storm water drainage.

§206. Limitations of this Bylaw

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

(1) State- or community-owned and operated institutions and facilities.

(2) Public and private schools and other educational institutions certified by the state Department of Education.

(3) Churches and other places of worship, convents, and parish houses.

(4) Public and private hospitals.

(5) Regional solid waste management facilities certified under 10 V.S.A. Chapter 159.

(6) Hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. § 6606a.

§207. Other Land Use and Relevant Regulations

State and federal government may regulate certain aspects of land use; compliance with this zoning bylaw in no way implies compliance with such state or federal regulations. Such regulations include, but are not limited to: on-lot sewage systems and outdoor furnaces, regulated by the Agency of Natural Resources; underground storage tanks, regulated by the Department of Environmental Conservation; and setback of farm structures, regulated by the Secretary of Agriculture, Food and Markets. Where this regulation poses a greater restriction, the provisions here shall take precedence.

§208. Application of District Regulations

(1) No building shall hereafter be erected or altered:

A. To accommodate or house a greater number of families than permitted in the district in which the building is located; or

B. To have narrower or smaller front, side, or rear setbacks than as specified herein for the district in which the building is located.

(2) Space required under this bylaw to satisfy setback, area, or other open space requirements in relation to one building shall not be used to satisfy the same requirements for any other structure.

(3) Any yard abutting a road shall be considered a front yard for the purposes of this bylaw.

(4) Every part of a required yard shall be open from grade level to the sky, unobstructed, except for the ordinary projections of sills, cornices, pilasters, chimneys, and eaves, provided that no such projection shall extend more than two feet into any required yard. This does not apply to landings less than 25 square feet, steps, or wheelchair ramps.

§209. Permitted and Conditional Uses

[See Article 8, Administration and Enforcement, for complete explanation of the permitting process.]

(1) Permitted uses are uses that may be established by right and require, at a minimum, Administrative Review by the Administrative Officer. All permitted uses other than single- and two-unit dwellings shall also be subjected to Site Plan Review as outlined in §806 of this bylaw after public notice and hearing.

(2) Conditionally approved uses are uses that may be established only when the Development Review Board is able to establish that such a use will have no undue adverse effect on all the conditions and standards as outlined in §807 of this bylaw. After Administrative Review by the Administrative Officer, all conditionally approved uses shall be referred to the Development Review Board for Conditional Use Review after public notice and hearing.

§210. District Objectives and Land Use Controls

The following tables state the objectives and regulations of each district. These tables establish permitted and conditional uses, as well as lot area and dimensional requirements for each district.

§210 (1). Village Mixed Use ("VMU")

General Purpose

The purpose of the Village Mixed-Use District is to continue the established pattern of mixed residential, institutional, and commercial uses in East and West Burke Village. The VMU designates areas appropriate for higher-density development and provides a mix of land uses including commercial, retail, public service, transit, and residential that are in close proximity, planned as a unified complimentary whole, and functionally integrated. The two areas designated by this district – East Burke Village and West Burke Village - are considered to be the Town's "growth centers." This district is also intended to: (a) provide a pedestrian-oriented circulation network that minimizes vehicular traffic, (b) encourage the traditional village center pattern of appropriately scaled buildings facing onto a well-defined and active public street, (c) promote innovative site planning to maximize uses, shared parking, public open space and pedestrian amenities, which create an aesthetically pleasing and socially active community center, and (d) anticipate the future development of additional infrastructure, as appropriate, to support these uses.

Permitted Use

Accessory Use
Art Studio
Bakery
Bed & Breakfast
Childhood Education Facility
Church
Community Center
Dwelling, Accessory Unit
Dwelling, Single-Unit
Dwelling, Two-Unit
Emergency Services
Essential Services
Library
Municipal Offices
Personal Services
Post Office
Restaurant
Retail Store (max. bldg. 10,000 sq. ft.)
Visitor Facility

Conditional Use

Adult Education Facility
Auto Service Station
Bar/Tavern
Business/Professional Services
Cultural Facility
Daycare Center
Dry Cleaning (on-site processing)
Dwelling, Multi-unit
Funeral Home
Health Club
Home Business
Hotel
Inn
Industrial, Class I
Industrial, Class II
Laundromat
Lounge/Nightclub
Medical Clinic
Motel
Movie Theater
Museum
Nursing Home
Public Facility
Public Park
Recreational Facility
Veterinary Clinic

Water/Sewer	Minimum Lot Size*	Min. Lot Width	Front Setback	Side Setback	Rear Setback
Off-lot water ***and*** sewer	.25 acre (10,890 sq. ft.)	80 ft.	40 ft. min.	10 ft. min	15 ft. min.
Off-lot water ***or*** sewer	.35 acre (15,246 sq. ft.)	80 ft.	40 ft. min.	10 ft. min.	15 ft. min.
No off-lot water ***or*** sewer	.75 acre (32,670 sq. ft.)	150 ft.	55 ft. min.	15 ft. min.	25 ft. min.

*Minimum lot size applies to single-lot developments. For information on Density Bonuses see Article 7.

§210 (2). Village Residential ("VR")

The purpose of the Village Residential District is to maintain and preserve the historic character and residential settlement patterns of Burke Hollow, while still providing for some very limited commercial (i.e. bed and breakfast) and public uses (i.e. park, school) that are appropriate for and complement the residential character of the area.

Permitted
Accessory Use
Bed & Breakfast
Childhood Education Facility
Church
Dwelling, Accessory Unit
Dwelling, Single Unit
Dwelling, Two-Unit
Essential Services

Conditional
Art Studio
Cemetery
Community Center
Daycare Center
Emergency Services
Nursing Home
Public Facility
Public Park

Water/Sewer	Minimum Lot Size*	Min. Lot Width	Front Setback	Side Setback	Rear Setback
Off-lot water and/or sewer	.5 acre (21,780 sq. ft.)	100 ft.	40 ft. min.	15 ft. min	25 ft. min.
No off-lot water or sewer	1 acre (43,560 sq. ft.)	150 ft.	40 ft. min.	15 ft. min.	25 ft. min.

*Minimum lot size applies to single-lot developments. For information on Density Bonuses see Article 7.

§210 (3). Agricultural-Residential I ("AR I")

The purpose of the Agricultural Residential I District is to maintain and preserve the agricultural character and scenic qualities of outlying areas while still providing the opportunity for medium-density residential housing and limited non-residential development. The district generally encompasses the areas immediately adjacent to the Town's villages and the Burke Mountain Resort.

Permitted

Accessory Use
Bed & Breakfast
Cemetery
Childhood Education Facility
Church
Dwelling, Accessory Unit
Dwelling, Single Unit
Dwelling, Two-Unit

Conditional

Art Studio
Auto Repair (1)
Business/Professional Services
Campground
Accessory Campsites
Commercial Storage Facility
Cultural Facility
Daycare Center
Dwelling, Multiunit
Essential Services
Funeral Home
Home Business
Inn
Industrial, Class I
Industrial, Class II
Industrial, Class III (2)
Industry, Resource-Based
Kennel
Mobile Home Park
Motor Vehicle Sales (1)
Museum
Nursing Home
Public Facility
Recreational Facility
Retail Store
Veterinary Clinic

(1) Allowed on Rte. 114 and Rte. 5 only
(2) Allowed on Rte. 5 only

Minimum Lot Size*	Min. Lot Width	Front Setback	Side Setback	Rear Setback
2 acre (87,120 sq. ft.)	200 ft.	75 feet min.	50 ft. min.	100 ft. min.

*Minimum lot size applies to single-lot developments. For information on Density Bonuses see Article 7.

Accessory campsites may be permitted in designated districts on lots greater than 5 acres in size and subject to conditional use review in accordance with 806 and 807 and the following provisions

§210(4). Agricultural-Residential II ("AR II")

The purpose of the Agricultural Residential II District is to maintain and preserve the agricultural character and scenic qualities of outlying areas while providing the opportunity for low-density residential housing, limited non-residential development and the continued operation and expansion of agricultural operations, forest management, and other resource based activities. The district encompasses the majority of the Town's open land, including a few farms, the majority of the Town's housing units, and a handful of small businesses. The landscape within this district is a critical element of Burke's rural character and special charm.

Permitted

Accessory Use
Bed & Breakfast
Dwelling, Accessory unit
Dwelling, Single-unit
Recreation, Passive
Recreation Shelters

Conditional

Art Studio
Business/Professional Services
Campground
Accessory Campsites
Cultural Facility
Daycare Center
Essential Services
Extraction of Earth Resources
Heavy Equipment Yard (1)
Home Business
Industrial, Class I, (2)
Industrial, Class II, (2)
Industrial, Class III, (2)
Industry, Resource-based
Inn
Kennel
Log/Lumber Yard (1)
Museum
Public facility
Recreation and Education Camp
Recreation Facility
Truck Terminal Yard (1)
Veterinary Clinic

(1) Allowed on Rte. 114 and Rte. 5 only
(2) Allowed on Route 5 only

Minimum Lot Size*	Min. Lot Width	Front Setback	Side Setback	Rear Setback
5 acre 217,800 sq. ft.	300 ft.	75 feet min.	50 ft. min.	100 ft. min.

*Minimum lot size applies to single-lot developments. For information on Density Bonuses see Article 7.

Accessory campsites may be permitted in designated districts on lots greater than 5 acres in size and subject to conditional use review in accordance with 806 and 807 and the following provisions

§210 (5). Resort ("R")

The Resort District provides commercial hospitality lodgings in attractive and harmonious areas, which accommodate the needs and desires primarily of visitors, tourists and transient guests. Commonly incidental, recreation-oriented uses are anticipated, including golf courses, swimming, tennis, and other similar outdoor activities; as well as facilities contained within the principal resort building: restaurants, cocktail lounges, car rental, health clubs, childcare, professional business offices, convention services and other supporting related uses. Development in this district shall be organized and designed in such a way so that it will not detract from the natural features and attributes of the surrounding area. Physical and visual public access to recreational, historic, and scenic areas shall also be maintained and improved.

Permitted
Accessory Use
Art Studio
Bed and Breakfast
Dwelling, Accessory Unit
Dwelling, Single-Unit
Dwelling, Two-Unit
Emergency Services
Inn
Library
Personal Services
Recreation Facility
Recreation Shelters
Restaurant
Retail Store
Ski Facilities/Services
Ski Lift
Visitor Facility

Conditional Use
Bakery
Bar/Tavern
Business/Professional Services
Campground
Church
Community Center
Convention Facility
Cultural Facility
Daycare Center
Dwelling, Multiunit
Essential Services
Health Club
Hotel
Inn
Kennel
Lounge/Nightclub
Medical Clinic
Motel
Movie Theater
Museum
Private Club
Public Facility
Public Park
Riding Stable
Swimming Pools, Public

Minimum Lot Size*	**Min. Lot Width**	**Front Setback**	**Side Setback**	**Rear Setback**
2 acres (87,120 sq. ft.)	200 ft.	75 feet min.	50 ft. min.	100 ft. min.

*Minimum lot size applies to single-lot developments. For information on Density Bonuses see Article 7.

Accessory campsites may be permitted in designated districts on lots greater than 5 acres in size and subject to conditional use review in accordance with 806 and 807 and the following provisions

§210(6). Scenic and Conservation Overlay ("SCO")

The purpose of the Scenic and Conservation Overlay District (SCO) is to safeguard areas with exceptional scenic and visual quality. The regulations for the SCO supplement the regulations of any underlying district. When the regulations of the SCO and those of the underlying district conflict, the more restrictive provision(s) shall apply.

What is an Overlay District?
Unlike zoning districts with precise boundaries, overlay districts are superimposed over multiple zoning districts. They have uniform development requirements to address development constraints, such as flood hazard areas, steep slopes, and ridgelines. Proposed development in overlay districts require special attention during the development review process, regardless of the uses that are allowed in the underlying district.

(1) **Location:** The SCO includes all lands identified on the Town of Burke's Scenic and Conservation Overlay map, which is part of the official zoning map located in the Town of Burke Clerk's office. If a property owner disputes the delineated boundaries of any of the features as shown on the SCO map, it will be his or her responsibility to prove otherwise.

(2) **Applicability:** These overlay district standards provided herein shall apply to all development and redevelopment in the Town of Burke that are located in the SCO, with the exception of residential additions, accessory structures, and recreational shelters whose combined footprint is less than or equal to 800 square feet. Structures exempted from the SCO standards shall still be subject to other regulatory provisions in this bylaw.

(3) **Development Review:**

A. Planned Unit Development: Proposed development in the Scenic Conservation Overlay that involves the creation of two or more lots over a five-year period shall be reviewed as a Planned Unit Development in accordance with Article 7 of this bylaw.

B. Conditional Use: All other applicable proposed development located in the SCO shall be subjected to Conditional Use Review as outlined in §807 of this bylaw.

(4) **Development Standards:** All proposals for applicable development in the SCO will need to address the following overlay development standards outlined below.

(5) **Minimum Setbacks:** To allow flexibility in house site location and address development standards related to natural and scenic resource protection, the Development Review Board may require, pursuant to Conditional Use Review (see §807), deeper setbacks than those normally required in the district in which the proposed development is located.

(6) **Clearing and Landscaping**

A. On wooded sites, existing forest cover shall be maintained adjacent to proposed structures to interrupt the facade of buildings, provide a forested backdrop to structures, and/or soften the visual impact of new development as viewed from public roads and properties. The Development Review Board shall consider the location of proposed structures relative to existing vegetation, and may require additional tree planting and/or limit the amount of clearing adjacent to proposed development to provide screening and maintain a forested backdrop. A plan for the maintenance of remaining and proposed trees may be required. Such a plan shall

address specific measures to be taken to ensure the survival and, if necessary, replacement of designated trees during or after site development and the installation of all site improvements.

B. No repair, maintenance, development, landscaping, reconstruction, or paving work performed on or adjacent to a town-designated scenic road shall involve the cutting, damage, or removal of any tree with a circumference of 15 inches or more, measured at a point four (4) feet above the ground, except to accommodate a driveway.

C. The Development Review Board may require the retention of a wooded buffer along the front portion of lots fronting a town-designated scenic road, stipulating that healthy trees above a certain diameter may not be removed except to accommodate driveways.

(7) **Placement of Structures:** Careful consideration shall be given to the location of proposed structures relative to site conditions, existing vegetation, and the location of fragile features (including but not limited to steep slopes, streams and identified habitat and natural areas). The Board may limit or restrict the location of structures to ensure that development:

A. Is minimally visible from public roads and properties, and does not stand in contrast to surrounding landscape patterns and features or serve as a visual focal point;

B. Is designed so that the height of any structures does not exceed the height of the adjacent tree canopy serving as the visual backdrop to the structure;

C. Is located down-grade of ridgelines and prominent knolls and is designed so that the height of proposed structures will not exceed the elevation of any adjacent ridgeline;

D. Will not adversely affect natural and scenic resources and fragile areas identified in the Burke Town Plan, including wetlands, critical habitat, steep slopes, areas that are generally unsuitable for development and on-site septic disposal.

(8) **Access:** Access roads, private roads, and driveways shall be designed to follow existing contours, tree lines, and stone walls; avoid stream and wetland crossings; and be no greater than fifty (50) feet in width, except where wider side slopes are needed to prevent erosion.

(9) **Natural Resources**: The applicant must demonstrate that the proposed development will have no undue adverse impact on, or undue fragmentation of, critical wildlife habitat and wildlife travel corridors, unique or fragile resources, or natural and scenic resources.

(10) **Building Design:** The Development Review Board shall consider the overall design of new structures (including the proposed scale, location and materials), and may impose conditions related to the overall design to minimize visual impacts, such as glare, contrasting colors and building materials, as viewed from public roads and properties.

(11) **Erosion Control:** Development shall minimize the removal of native vegetation and grading. Clearing may be limited to one or more portions of the property to prevent erosion and sedimentation of streams; buffer areas may be required to protect streams, wetlands and other fragile features.

(12) **Forest Management:** Forest management activities shall comply with all applicable state regulations and shall, as a minimum standard, comply with Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as revised, published by the Vermont Department of Forests, Parks & Recreation.

(13) **Site Restoration:** Forest management activities designed as pre-development site preparation, including road and driveway construction, clearing and/or grading for house-sites and septic systems or related work, shall be reviewed by the Board under this bylaw. Where a landowner fails to submit predevelopment plans for review, the Board may limit development to the non-impacted portion of the property and/or require the site to be restored or re-vegetated prior to development.

§210 (7). Flood Hazard Overlay ("FHO")

The Flood Hazard Overlay includes all lands in the Town of Burke which are identified as regulated flood hazard areas. These include areas of special flood hazard on the most current National Flood Insurance Program Maps; and river corridors, provisional river corridors, and related stream setbacks that have been identified by the Vermont Agency of Natural Resources. All development, including fill, excavation, grading, or erection or placement of structures, as well as substantial improvement of existing structures and storage of equipment and materials may only be established in accordance with Article 5.

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Article 3. General Provisions

§301. Dwellings Per Lot

(1) Single-unit dwellings shall be limited to one per lot.

(2) A lot with a single-unit dwelling shall contain no other uses than accessory uses.

§302. Equal Treatment of Housing

This bylaw shall not have the effect of excluding low and moderate income housing.

§303. Frontage on or Access to Public Roads

(1) No land development is permitted on lots that do not have either frontage on a public road or a permanent easement or right of way of record approved by the Development Review Board. Frontage applies to all property lines bordering public or private roadways but not driveway easements.

(2) The required easement or right-of-way shall be at least 50 feet in width for any such landlocked parcels.

(3) The required easement or right-of-way shall be located outside of regulated flood hazard areas in order to ensure that the development has dry land access in accordance with §508(14) of this bylaw.

§304. Conservation Standards

(1) Development is prohibited on very steep slopes (equal to or greater than 25%) unless the Development Review Board determines that such development is reasonably required to be in such area and cannot be practicably completed in another location.

(2) All development shall be set back at least fifty (50) feet from the mean water level of all natural lakes and ponds and at least fifty feet from the top of bank of all streams. A greater setback may be required in mapped floodplains and river corridors. A natural vegetative buffer of fifty (50) in width shall be maintained adjacent to the edge of the body of water. The Development Review Board may allow development within this buffer provided that the structure:

A. Is anchored but has no permanent foundation;

B. Is not larger than 225 square feet;

C. Meets the river corridor standards of §510 of this bylaw;

D. Is reasonably required to be in such an area.

(3) The Development Review Board may condition the approval of development described in (1) and (2) by requiring mitigating measures in addition to state regulations regarding erosion control, protection of wetlands, or other environmental concerns.

(4) The Town of Burke's flood hazard regulations, which include regulation of river corridors, shall take precedence over (2) above.

§305. Signs

(1) No zoning permit shall be required for the following signs, which are exempt from these regulations:

A. Signs for home occupations, which are regulated under §404(7) of this bylaw.

B. Signs erected by the state or town on public roads.

C. Non-advertising signs placed for wayfinding, safety, or public service purposes.

D. One sign offering real estate for sale, not to exceed four (4) square feet.

E. Signs related to trespassing and hunting which do not exceed two (2) square feet in area.

F. Temporary signs advertising auctions, lawn or garage sales, provided that the signs are removed immediately following the event or sale.

G. Temporary signs or banners advertising public or community events, provided that these signs are removed immediately following the event.

H. Temporary election signs to be posted and removed in accordance with state law.

I. Unlit signs associated with farm operations.

J. Historic landmark signs.

K. One advertising flag or banner, provided that it does not extend into the public right of way and it is only displayed during hours of operation. Flags that are decorative or patriotic in nature are exempt.

L. Constructions signs, not to exceed four (4) square feet, provided that they are promptly removed following completion of construction.

(2) All signs, except those specified under §305(1) shall require a zoning permit. Signs with a sign area of six (6) square feet or smaller shall be subject to administrative review by the Administrative Officer. All other signs, except for those specified under §305(1) shall be subject to review by the Development Review Board. Sign installations that are part of a development that is subject to Subdivision Review (Article 7), Site Plan Review (§806), or Conditional Use Review (§807) shall be reviewed according to their respective development review processes.

(3) In any district, two signs, neither to exceed twenty (20) square feet of sign area, per non-residential use is allowed, with the exception of home businesses, which are allowed one (1) sign, not to exceed twenty (20) square feet. Additional square footage and/or additional signage will be allowed only by obtaining a Conditional Use permit from the Development Review Board. The Development Review Board shall take into consideration the size of the building facade and viewing distance when determining sign size for a Conditional Use Permit.

(4) Signs that are painted or mounted on a wall of a building shall not extend above any part of the eaves or gables of the building upon which the sign has been placed.

(5) No freestanding sign mounted on the ground shall exceed ten (10) feet in height, or the height of the nearest building on the premises, whichever is less.

(6) Signs that are either mounted on or painted onto the roof of a building shall not be permitted.

(7) Every sign shall be designed and located in such a manner as to:

A. Not impair public safety;

B. Not restrict clear vision between a sidewalk and road, or visibility from any nearby intersection;

C. Not be confused with any traffic sign or signal;

D. Not prevent free access to any door, window, or fire escape.

(8) Under no circumstances shall any sign be placed in the right of way.

(9) Signs may be externally illuminated provided that:

A. The illumination does not provide undue glare, hazards, or distraction;

B. The light source does not illuminate or reflect onto other properties or traffic;

C. A constant, shielded light source is mounted on the top of the sign and is directed on the face of the sign.

D. No sign shall be illuminated during hours when the premises are not occupied or open for business, with the exception of bed & breakfast, hotels, and motels.

(10) Internally illuminated signs shall not be permitted.

(11) Flashing, oscillating, and revolving signs shall not be permitted unless they are necessary for public safety or welfare.

(12) No sign shall contain or support any device that is capable of emitting noise.

(13) 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.

(14) Nonconforming signs shall be brought into compliance when they are replaced. Nonconforming signs may not be expanded, or the message altered to advertise a different owner, management, or brand, unless such altered sign is brought into conformance with these standards.

§306. Lighting

(1) To ensure appropriate lighting while minimizing its undesirable effects, the following general standards shall apply to all outdoor lighting in the Town of Burke:

A. All outdoor lighting shall be kept to the minimum required for safety, security, and intended use, consistent with the character of the neighborhood in which it is located.

B. Permanent outdoor lighting fixtures shall not direct light upward or onto adjacent properties, road, or public waters; and shall not result in excessive lighting levels which are uncharacteristic of a rural area.

C. Outdoor lighting fixtures shall be cast downward and shall be designed to avoid glare and harsh contrasts in color and/or lighting levels.

D. Whenever possible outdoor lighting fixtures shall have timers, dimmers, and/or sensors to reduce energy consumption and eliminate unneeded lighting.

E. Outdoor lighting fixtures for non-residential uses shall be illuminated only during hours of operation.

(2) The installation or replacement of all outdoor lighting fixtures shall require a permit, except for the following:

A. One- or two-unit residential structures,

B. Active farms, and

C. Holiday lighting

(3) Outdoor lighting installations involving two or fewer permanent fixtures may be approved the by Administrative Officer, provided that no single bulb exceeds 150 watts, and that the total wattage of the bulbs does not exceed 300 watts. All other outdoor lighting installations, except for those identified in (2) above, must be approved by the Development Review Board.

(4) Outdoor lighting installations associated with development that is subject to Subdivision Review (Article 7), Site Plan Review (§806), or Conditional Use Review (§807), the Development Review Board may require the following:

A. Information regarding exterior lighting fixtures, including fixture type, mounting locations and heights, illumination levels and distribution, and color;

B. A lighting plan, prepared by a qualified engineer or lighting expert;

C. The underground placement of electrical service to outdoor lighting fixtures;

D. The use of security or street lighting if unusual or hazardous conditions require it. Security lighting, if required by the Development Review Board, shall be shielded and aimed so that only designated surfaces are illuminated; and

E. Street lighting, if deemed necessary by the Development Review Board, for safety or security, such as at road intersections, pedestrian crossings, or walkways.

(5) The Development Review Board may waive or modify the requirements of this section if it finds that doing so will not:

A. Jeopardize the stated intent of (1), or that

B. Such a modification or waiver is needed for public safety, or to meet an overriding public purpose, such as the illumination of a public building or monument.

C.

§307. Abandonment of Structures or Works in Progress

(1) No owner or occupant of land shall permit fire or other ruins to be left, but within one year shall remove, or have substantially commenced the replacement, repair, or rebuilding of the structure.

(2) Within one year after work on an excavation for a building has begun or within one year after a permanent or temporary building has been burned, destroyed, demolished, or abandoned, all structural materials shall be removed from the site and the excavation thus remaining shall be covered over or filled to the normal grade by the owner.

(3) An owner or occupant may apply for a permit in accordance with §804 of this bylaw to extend this deadline by not more than one year, for reasons beyond the applicant's control, such as insurance purposes.

§308. Discontinued Use

No use that requires a zoning permit may be resumed without first obtaining a permit if such use has been discontinued for a period of two years or more or if the use has been replaced by another use.

§309. Obstruction of Vision

On a corner lot, within the triangular area formed by the intersection of two street property lines and a third line joining them at points twenty-five feet away from their intersection, there shall be no obstruction of vision between the height of three (3) and ten (10) feet above the average grade of each street.

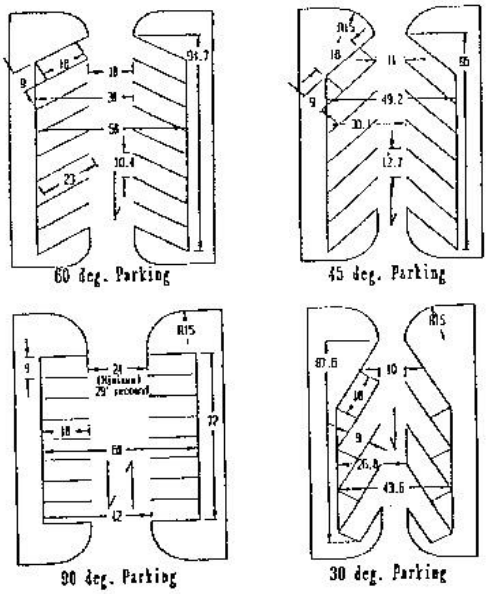
§310. Off-Street Parking

(1) Any public or private area for the temporary parking of vehicles with or without the payment of a fee, that is not incidental or subordinate to the permitted use, shall be reviewed subject to conditional use review.

(2) Off-street parking shall be provided in accordance with the specifications in this section whenever any new use is established or existing use enlarged.

(3) A required parking space shall have a minimum width of nine (9) feet, a minimum length of eighteen (18) feet, unobstructed access and maneuvering room, and a gravel or paved surface sufficient for year-round use.

(4) Parking aisles in required off-street parking areas shall have a minimum width of eleven (11) feet to accommodate one-way parking spaces placed at a 30 degree angle, and a twenty-four (24) foot width to accommodate one-way parking spaces placed perpendicular to the roadway. Suggested parking configurations are pictured here:



(5) Maximum grade in parking areas shall be five (5) percent.

(6) Non-residential parking areas are to be located to the side or rear of buildings.

(7) All residential uses shall require a minimum of two off-street parking spaces per dwelling, except for accessory dwelling units, which shall require only one. The minimum number of off-street parking spaces for all other proposed uses shall be provided in accordance with the requirements listed in Table 310.11.

(8) In addition to the requirements listed in Table 310.11 all multi-family, public, commercial, and industrial uses must provide clearly marked ADA-accessible parking spaces in accordance with state and federal ADA requirements, and at least one (1) bicycle rack.

(9) For development subject to Subdivision Review under Article 7, Site Plan Review under §906 or Conditional Use Review under §907, the size location, and configuration of parking areas may be restricted, and shared parking and/or landscaping, screening, lighting, snow removal, pedestrian or transit facilities may be required as a condition of approval.

(10) The Development Review Board may modify or waive on-site parking requirements based on the determination under one or more of the following provisions that, due to circumstances unique to the development, the strict application these standards is unnecessary or inappropriate:

A. Green areas are to set aside and maintained as open space for future conversion to parking in the event that the off-street parking spaces initially permitted are subsequently deemed inadequate.

B. Adequate shared parking for use by two (2) or more businesses exists on the same or contiguous lots, which are either under common ownership or a long-term lease agreement.

C. Adequate off-street public parking exists within a reasonable walking distance of the proposed use.

D. The proposed use is for affordable or senior housing.

Table 310.11: Minimum Off-Street Parking Requirements

Use	Minimum Parking Spaces Required
Accessory Use	None required
Art Studio	1, plus 1 per unit of gallery rental space
Auto Service Station/Auto Repair	6 per service bay
Bakery	1, plus 1 per 3 seats
Bar/Lounge/Restaurant	1 per 3 seats
Bed and Breakfast	¾ per bedroom, and a minimum of 1
Business/Professional/Municipal Office	1 per every 200 feet of gross floor area
Campground	1 per campsite
Commercial Service/Laundromat/Retail	1 per 150 square feet of gross floor area accessible to the public
Commercial Storage Facility	1 per 1,000 square feet of gross floor area, and 1 per employee
Educational Facility/Daycare Center	3 per every 10 individuals enrolled
Funeral Home	1 per 3 seats
Health Club	1 per 150 square feet of gross floor area, plus 1 per employee
Home Business	1 per 1.2 non-residential employee
Home Occupation	1 per non-residential employee
Hotel/Motel/Inn	1 per bedroom
Industrial, Classes I, II, and III, and Resource-based	1 per 1.2 employee
Library/Post Office/Public Facility/Visitor Facility	1 per 200 square feet of gross floor area
Medical Clinic/Veterinary Clinic	6 per doctor or other primary professional provider
Nursing Home	1 per 3 beds, plus 1 per employee expected, based on average employee occupancy
Personal Services	1 per employee, and 1 per customer service station
Private Club	1 per 3 seats
Public Assembly (Church, Community Center, Convention Facility, Cultural Facility/Movie Theater)	1 per three seats in main assembly room
Recreational Facility	1 per expected participants or spectators
Ski Facilities/Service	1 per 4 daily skier visits
Unspecified	To be determined by the Development Review Board during appropriate review

§311. Off-Street Loading & Service Areas

(1) When a proposed development will require the frequent or regular loading of goods, sufficient on-site loading areas shall be provided.

(2) Service areas may be required for emergency vehicles, waste disposal and collection, bus, taxi, or van service, and other purposes as necessitated by the proposed use.

(3) All loading areas shall be clearly marked and located in such a manner that parked vehicles will not block or obstruct sight visibility at intersection or from any internal road or access.

(4) Required off-street loading and service areas may not be included as off-street parking spaces.

§312. Curb Cuts

(1) Accesses, or for purposes of this bylaw, ”curb cuts” adjoining or affecting town roads, state highways, or surrounding private properties may not be created without adequate drainage. Prior to the creation of any curb cut, the individual seeking to establish such curb cut shall obtain approval from the Town of Burke Selectboard or the appropriate district office of the Vermont Agency of Transportation, depending on jurisdiction. Approval may be conditioned upon installation of one or more culverts in specified size(s) and location(s).

(2) With the exception of 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 curb cut. The Development Review Board may approve additional curb cuts in the event that:

A. The additional curb cut is necessary to ensure vehicular and pedestrian safety; or

B. Strict compliance with this bylaw would, due to the existence or one or more physical features (e.g. rivers, streams, steep slopes, wetlands, areas of special flood hazard, river corridors), result in a less desirable development or subdivision design than would be possible with the allowance of an additional curb cut.

(3) Applicants for a zoning permit for any lot where the number of existing curb cuts exceeds the number allowed under this bylaw must either eliminate or combine excess curb cuts, unless otherwise approved by the Development Review Board in accordance with (2) above.

(4) Subdivision of a lot after the effective date of these regulations shall not create a right to construct more than one access unless otherwise approved by the Development Review Board in accordance with (2) above.

(5) Curb cuts shall be limited to an approved width and shall not extend along the length of road frontage.

(6) Curb cuts shall be located at least 125 feet from the centerline of any intersecting roadway, for all except for single- and two-unit dwellings, which shall be located at least 75 feet from the centerline of any intersecting roadway.

(7) Curb cuts shall be located outside of regulated flood hazard areas to ensure that the development has dry land access.

(8) Shared curb cuts are encouraged, and may be required for development subject to subdivision review or conditional use approval.

§313. Nonconforming Uses

(1) A nonconforming use shall not be changed to another nonconforming use without prior approval of the Development Review Board, which shall specifically find that the proposed use is at least the same, or of a more restricted nature then the current use.

(2) No nonconforming use may be resumed if such use has been discontinued for a period of two years or more. A nonconforming use shall be considered discontinued when either of the following conditions exist:

A. When it is replaced by a conforming use; or

B. When the use has been discontinued for two years.

(3) A structure that is devoted to a nonconforming use shall not be restored for other than a conforming use after damage from any cause, unless the restoration of such structure is substantially commenced within one year.

(4) A structure housing a non-conforming use may not be extended, enlarged, altered, moved, or expanded in any manner that increases or extends a nonconforming use.

(5) Nothing in this section shall be construed to prohibit normal maintenance and repair of a structure devoted to a nonconforming use provided that such action does not increase that degree of, or create any new nonconformance.

(6) Any use of any structure or land that does not conform to this bylaw because it was improperly permitted shall be treated as a nonconforming use.

§314. Nonconforming Structures

(1) A nonconforming structure may not be extended, enlarged, altered, moved, or expanded in any manner that increases or extends the existing nonconformance of the structure.

(2) A nonconforming structure damaged or destroyed by fire, accident, or other casualty shall not be restored to other than a conforming structure unless the repair, reconstruction, or restoration of the structure is completed within one year after damage or destruction.

(3) Notwithstanding §314(1)-(2), a nonconforming structure in regulated flood hazard areas may only be extended, enlarged, altered, moved, or expanded in accordance with §§507-508 of this bylaw.

(4) Nothing in this section shall be construed to prohibit normal maintenance and repair of a nonconforming structure provided that such action does not increase that degree of, or create any new nonconformance.

(5) Any structure that does not conform to this bylaw because it was improperly permitted shall be treated as a nonconforming structure.

§315. Non-Conforming Mobile Homes and Mobile Home Parks

(1) Any lawful mobile home or mobile home park existing at the time this regulation or amendment thereto is adopted may continue, although such use does conform to the provisions of this regulation.

(2) A nonconforming mobile home park shall be treated as such as a whole. The individual lots shall not be considered nonconformities.

§316. Permits Issued Prior to Bylaw Amendment

Permits issued prior to the enactment of this bylaw that are valid on the effective date of this bylaw may be utilized, even if such permits will result in a nonconformity. In addition, nothing contained herein shall require any changes to the plans or construction of previously permitted structures and/or uses. Such nonconformities, however, shall be established within the permit's effective period of one year. Applications to renew expired permits issued under the prior bylaw will not be approved unless the structure or use for which the original permit was issued conforms to the requirements of this bylaw.

§317. Existing Small Lots Served by Off-Site Water *and* Sewer

(1) Any lot that is legally subdivided, is served by both off-site water and sewer services, is in separate and nonaffiliated ownership from surrounding properties, and is in existence on the

date of enactment of this bylaw, may be developed for the purposes permitted in the district in which it is located, even though the lot does not conform to the minimum lot size requirements of the district in which the lot is located.

(2) If such a nonconforming lot subsequently comes under common ownership with one or more contiguous lots, the nonconforming lot shall not be deemed merged with the contiguous lot(s).

§318. Existing Small Lots Not Served by Off-Site Water *and* Sewer

(1) Any lot that is legally subdivided, is in separate and nonaffiliated ownership from surrounding properties on the date of enactment of this bylaw and is not served by both off-site water and sewer services, may be developed for the uses permitted in the district in which it is located, even though the lot does not conform to minimum lot size requirements of the district in which the lot is located, provided such lot is not less than one-eighth acre or has a minimum width or depth dimension of at least 40 feet.

(2) If such a lot as described in (1) above subsequently comes under common ownership with one or more contiguous lots, the nonconforming lot shall be deemed merged with the contiguous lot(s), unless all of the following conditions are met:

A. The lot is conveyed in its preexisting, nonconforming configuration.

B. On the date that this bylaw was enacted, the lot was developed with both a water supply and wastewater disposal system.

C. At the time of transfer, the on-site water supply or wastewater system is functioning normally.

D. In the case of a nonconforming lot with on-site sewage disposal, the deed of conveyance identifies, through a deed restriction on the nonconforming lot or easement on a contiguous lot, a suitable area for a replacement wastewater system, should the existing system fail, as defined in 10 V.S.A. Chapter 64.

§319. Waiver of Setback Requirements

Setback requirements can be reduced subject to administrative review by the Administrative Officer for any existing small lot for which the Administrative Officer is authorized by this bylaw to issue a permit without DRB approval, and setback requirements can be reduced for any other use subject to Conditional Use Review before the Development Review Board without seeking a variance if:

(1) the lot is in the "AR I", "AR II" or "R" zoning district; and
(2) the lot cannot be developed in strict conformance to the minimum setback requirements set forth in the Table relating to its respective district; and
(3) the reduced setback represents the least reduction needed that will afford relief, and the front setback will not be less than fifty-five (55) feet and side and rear setbacks not less than twenty-five (25) feet; and
(4) the other requirements of this bylaw are satisfied.

Article 4. Specific Use Standards

§401. Accessory Unit Dwellings

(1) This bylaw shall not 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, provided that the primary structure is located outside of regulation flood hazard areas. An accessory dwelling unit means an efficiency or one-bedroom apartment that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:

A. The property has sufficient wastewater capacity.

B. The unit does not exceed 30 percent of the total habitable floor area of the single-family dwelling.

C. Applicable setback, coverage, and parking requirements specified in the bylaws are met.

(2) Notwithstanding the provisions above, the creation of an accessory dwelling unit will require conditional use approval from the Development Review Board when one or more of the following is involved:

A. A new accessory structure, constructed after the enactment of these bylaws,

B. An increase in the height or floor area of the existing dwelling, or

C. An increase in the dimensions of the parking areas.

§402. Day Care Homes and Centers

(1) A family day care home serving no more than six full-time children and four part-time children shall be treated as a permitted single-family residential use of property.

(2) A family day care home serving more than six full-time children and four part-time children shall be subject to conditional use review by the Development Review Board.

(3) A day care center shall be subject to conditional use review by the Development Review Board.

§403. Group Homes

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

(2) A residential care home or group home, to be operated under state licensing or registration, serving nine or more who have a handicap or disability as defined in 9 V.S.A. § 4501, shall be reviewed as a multiunit dwelling and shall be subject to conditional use.

§404. Home Offices, Home Occupations, and Home Businesses

(1) Home Offices: No zoning permit shall be required for a home office that is located within a principal dwelling and occupies no more than 40% of the gross floor of the principal dwelling, or is located within an existing accessory structure; is carried on by a resident of that dwelling, and involves no signs, public access or outdoor storage or displays.

(2) **Home Occupations:** No provision of this bylaw shall infringe upon the right of any resident to use a minor portion of a dwelling for an occupation which is customary in residential areas and which does not have an undue adverse impact on the character of the surrounding neighborhood or area. A zoning permit is required to ensure that the proposed home occupation complies with the following standards:

A. The home occupation shall be carried on by residents of the dwelling; in addition up to two (2) nonresident employees may work on the premises at any one time.

B. The home occupation shall be carried on within a minor portion of the principal dwelling, not to exceed more than 40% of the gross floor area of the principal dwelling, or within an existing accessory structure.

C. Exterior storage or display, other than that characteristic of a residential use, is specifically prohibited.

D. The home occupation shall not generate noise, smoke, vibrations, dust, glare, odor, electrical interference or heat which is detectable at the property line, or which otherwise presents a hazard to public health and safety, or to neighboring properties.

E. No traffic shall be generated in substantially greater volumes than would normally be expected from a residential use in the neighborhood, and shall, at a minimum, maintain level of service on all adjoining state and town highways at or above a "C," as outlined in §808 of this bylaw. Home child care, as defined under §402(1) of this bylaw, is specifically exempted from this provision.

F. Off-street parking for residents and nonresident employees shall be provided in accordance with §310 of this bylaw. Outside of normal hours, commercial vehicles other than passenger vehicles (e.g., cars, vans, pick-up trucks) associated with the business shall be screened from the nearest public right of way.

G. There shall be no exterior signage, except for one non-illuminated sign not to exceed six (6) square feet, bearing the name and occupation of the resident.

H. On-site retail sales shall be minor and incidental to the business.

I. Adequate provisions shall be made for water, wastewater and the disposal of solid waste, in accordance with applicable municipal and state regulations.

J. A home occupation in a single unit dwelling shall be subject to administrative review by the Administrative Officer to ensure compliance with these standards. A home occupation in a two-unit or multiunit dwelling shall be subject to conditional use review by the Development Review Board to ensure compliance with these standards.

K. Where it is determined by the Administrative Officer that the proposed use does not meet the definitions or standards of home occupations above, the applicant shall be required to apply for a permit under the use deemed most applicable by the Administrative Officer.

(3) Home Businesses: Home Businesses may be allowed as an accessory to a single-family dwelling, subject to conditional use review, and the following provisions:

A. The home business shall be carried on by residents of the dwelling; in addition up to four (4) nonresident employees may work on the premises at any one time.

B. The home business shall be carried on within a minor portion of the principal dwelling, not to exceed more than 40% of the gross floor area of the principal dwelling or, with the approval of the Development Review Board, a home business located in an accessory structure may occupy an area greater than 40% of the gross floor area of the principal dwelling.

C. The home business shall not have an undue adverse impact on the character of the neighborhood, or result in a change in the outward appearance of the dwelling or the accessory structure.

D. Exterior storage areas (e.g., for building, construction materials, dumpsters) must be completely screened year-round from view from the nearest public right of way and from neighboring properties. Landscaping may be required as appropriate. The storage of hazardous materials anywhere on the premises is prohibited, with the exception of materials customary and characteristic of residential uses (e.g., heating oil).

E. The home business shall not generate traffic, including delivery traffic, in substantially greater volumes than is characteristic of the neighborhood.

F. Adequate off-street parking shall be provided for residents, employees and customers in accordance with §310. Commercial vehicles or equipment associated with the home business shall be parked in an enclosed area, or otherwise screened from view from the nearest public right of way and from adjoining properties.

G. Adequate provisions shall be made for water, wastewater and the disposal of solid waste, in accordance with applicable municipal and state regulations.

H. The home business shall be allowed one (1) sign which shall not exceed twenty (20) feet of sign area, and meet all other applicable sign standards in §305.

I. The home business shall not generate noise, smoke, vibrations, dust, glare, odor, electrical interference or heat which is detectable at the property line, or which otherwise presents a hazard to public health and safety, or to neighboring properties.

J. On-site retail sales shall be minor and incidental to the business.

§405. Industrial Uses

(1) In addition to the general provisions in Article 3, the following standards shall apply to all uses which fall under the classifications of Industrial I, Industrial II, and Industrial III, and Resource-Based Industries. Pre-existing uses and operations in lawful existence as of the effective date of these regulations which exceed any of these standards shall be treated as a nonconforming use and shall be considered exempt until they are discontinued or altered in accordance with §313 of this bylaw.

(2) The Development Review Board may require an independent study pertaining to one or more of the potential impacts to adjoining properties and uses within the vicinity of the project to ensure that the proposed use will operate in conformance with the standards.

A. Dimensions/Intensity:

i. Class I Industrial use <u>structures</u> shall be no greater than 10,000 sq. ft.

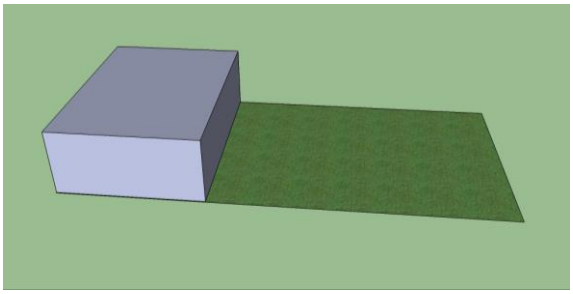
ii. Class II Industrial uses shall be sited on lots that are no smaller than two acres. Gross floor area shall cover no more than 30% of the buildable area the lot. (See the inset.)

iii. Class III Industrial uses shall require a minimum lot size of five acres. Gross floor area shall cover no more than 30% of buildable area the lot. (See inset.)

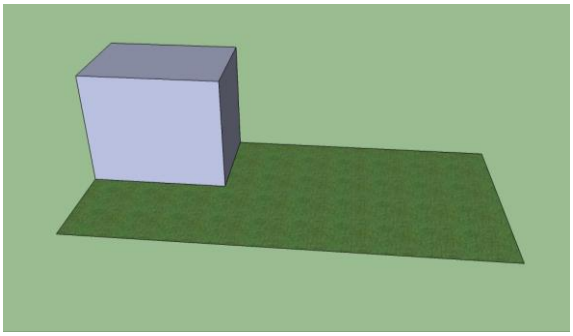
The Gross Floor Area is the sum of <u>all</u> the horizontal areas of all the enclosed floors of a building, including cellars, basements, corridors and lobbies.

The Gross Floor Area for Class II and III Industrial uses can equal no more than 30% of the buildable area of the lot.

For example, this shows a 30% gross floor area for a **<u>one-story</u>** building. (Figure 1)



This shows a 30% gross floor area for a **<u>two-story</u>** building. (Figure 2)



B. Enclosure of Activity:

i. All activities associated with Class I Industrial uses shall be enclosed within the principal structure on the lot.

ii. All activities associated with Class II Industrial uses shall be enclosed within a structure on the lot.

C. Fire and Explosion:

i. The manufacture of flammable liquids and gases and explosive materials is prohibited for Class I and Class II Industrial uses.

ii. All flammable and explosive materials used in processing shall be equipped with adequate safety devices against the hazard of fire and explosion, and adequate firefighting and fire suppression equipment and devices which are standard for such industry or activity.

D. **Vibration:** All industrial uses shall cause no inherent and recurring generated vibration perceptible without instruments at any point along the lot line. Temporary construction and maintenance activities are excluded from this restriction.

E. Noise:

i. Whether pulsating, intermittent, or continuous, noise shall not exceed 60 decibels at the lot line of the property from which it originates from 7:30 a.m. to 7:30 p.m. Specifically exempted from these standards are:

1. Maintenance or construction activity;

2. Transportation vehicles not used in the ordinary operation of a use or a business; and

3. Occasionally used safety signals, warning devices, and emergency relief valves.

ii. Whether pulsating, intermittent, or continuous, noise shall not exceed 40 decibels at the lot line of the property from which it originates from 7:30 p.m. to 7:30 a.m.

F. **Odor:** The emission of odors that are considered offensive to most reasonable people and are detectable at the property line are not permitted.

G. Emissions, Particulates and Air Pollution:

i. No emissions shall be permitted which can cause any damage to health, animals, vegetation, or other forms of property, or which can cause any excessive soiling at any point on or beyond the property.

ii. Dust created by an industrial operation shall not be exhausted or wasted directly into the atmosphere.

iii. Dust and other types of air pollution borne by the wind from such sources as storage areas and roads shall be minimized by landscaping or other acceptable means.

H. **Electrical Interference:** The industrial use shall not create electrical interference in neighboring buildings or land uses.

I. **Heat:** Heat emitted at any or all points shall not at any time cause temperature increase perceptible to humans on any humans on any adjacent property, whether such change be in air, ground or water temperature, or in the temperature of any structure adjoining the property.

J. **Lighting:** Industrial and exterior lighting shall conform to the standards of §306 of this bylaw and shall not be used in such a manner that produces glare on public roads and neighboring properties. Arc welding, acetylene torch cutting or similar process shall be performed so as not to be seen from the nearest public right of way or neighboring properties.

K. **Liquid and Solid Wastes:** No discharge of liquid or solid wastes or other materials of such nature of temperature as can contaminate surface or groundwater shall be permitted into the ground or any rivers, lakes, or ponds, except in accordance with all state and federal regulations.

L. Open Storage:

i. Open storage of materials incidental to Class I and Class II Industrial uses is prohibited.

ii. All open storage of materials incidental to Class III Industrial uses and Resource-based Industries shall be screened from view from the nearest public right of way and neighboring properties and shall be secured from access by the general public.

iii. The open storage of lumber or other combustible materials shall be situated so it may be accessible to fire trucks at any time.

M. Traffic:

i. Traffic and trip generation shall not reduce the operating level of the Burke's state and town highways below a level of service "C." To this end, the Development Review Board may require a Traffic Management study in accordance with §808 of this bylaw.

ii. Class I Industrial uses shall have no more than three (3) truck deliveries per day.

iii. Delivery truck traffic of Class II Industrial uses shall not exceed 10% of the projected daily trip generation.

iv. Hours of Operation: Operating hours for Class I and Class II Industrial uses shall be from 7:30 a.m. to 7:30 p.m. The Development Review Board reserves the right to modify or restrict hours of operation for all classes of industrial uses.

§406. Adaptive Reuse of Historic Accessory and Industrial Structures

(1) The overall purpose of this section is to encourage the viability, reuse, restoration, and rehabilitation of historic accessory structures, such as barns and carriage houses, and industrial structures, such as mills; by allowing for specified uses not otherwise allowed in the district in which they are located, within the current dimensions. Any changes associated with the adaptive reuse shall not significantly alter the facade of the building and shall be in keeping with the essential character of the neighborhood.

(2) For the purposes of this bylaw, applicable structures must be at least fifty (50) years old and either listed or eligible for listing on the state register of historic sites and structures.

(3) The following uses may be allowed, subject to conditional use review:

A. Permitted and conditional uses allowed in the district in which the structure is located.

B. The following additional uses, if not otherwise allowed in the district:

i. Art Studio (with no more than 5 artisans or employees on site at any time)

ii. Business/Professional Services

iii. Community Center

iv. Cultural Facility

v. School

C. Any combination of the above

(4) All adaptive reuse of historic accessory or industrial structures shall also meet the following requirements:

A. The proposed adaptive reuse of a nonconforming structure shall in no way increase the degree of nonconformity.

B. The proposed adaptive reuse shall not significantly alter the footprint, essential character, or immediate context of the historic accessory or industrial structure. In reviewing proposals for adaptive reuse, the Development Review Board shall determine that the adaptive reuse is in accordance with the Burke Town Plan, and that the historic character of the structure will be retained to the extent practical.

(5) A zoning permit issued for an adaptive reuse shall clearly state that the use shall not be re-established if the structure is substantially modified, except in accordance with the requirements of these regulations. All applicable permits and approvals shall be obtained prior to the re-establishment of such use in a substantially modified structure.

(6) In the event that the historic accessory or industrial structure is destroyed or demolished, the structure may be reconstructed and the adaptive re-use re-established with the approval of the Development Review Board under §807. In allowing such reconstruction and re-establishment, the Development Review Board shall determine that, in addition to meeting conditional use standards, the replacement structure closely replicates the historic structure in architectural style, form, massing, scale, building materials, and fenestration.

§407. Extraction of Earth Resources

(1) The commercial extraction or removal of topsoil, sand, gravel, rock, minerals, or other similar earth resource is allowed in the Agricultural-Residential II district and is subject to conditional use review under §807 of this bylaw. In addition to the conditional use standards set forth in §807, for commercial extraction operations that are likely to impact surrounding properties due to the scale, intensity, and timing of the extraction, the presence of fragile natural features (e.g. steep slopes, riparian land), and/or the relative density of nearby land uses, the Development Review Board may also require erosion control and site reclamation plans showing:

A. Existing grades, drainage patterns, and depths to bedrock and the seasonal high water table;

B. The extent and magnitude of the proposed operation, including proposed phasing;

C. Finished grades at the conclusion of the operation; and

D. A detailed plan for the restoration of the site, including final grading and revegetation.

(2) In granting approval, the Development Review Board may impose conditions with regard to any of the following:

A. Depth of excavation or quarrying;

B. Slopes created by removal;

C. Effects on surface drainage, both on- and off-site;

D. Storage of equipment and stockpiling of materials on-site;

E. Hours of operation for blasting, trucking, and processing operations;

F. Effect on adjacent properties due to noise, dust, or vibration;

G. Effect on traffic and road conditions, including potential physical damage to public roads;

H. Creation of safety hazards;

I. Temporary and permanent erosion control, including project phasing to limit exposed area;

J. Effect on ground and surface water quality, and drinking water supplies;

K. Effect on natural, cultural, historic, or scenic resources, either on-site or in the vicinity of the project;

L. Effect on agricultural land; and

M. Public health, safety, and general welfare.

(3) In approving an application, the Development Review Board may require a bond to ensure reclamation of the land upon completion of the excavation, to include any regrading, reseeding, reforestation, or other reclamation activities that may be required as deemed reasonable. This provision specifically does not apply to mining or quarrying operations.

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

§408. Mobile Homes Storage of unregistered vehicles removed-now in Ordinance

(1) This bylaw shall not have the effect of excluding mobile homes, modular housing, or other forms of prefabricated housing from the Town of Burke, except upon the same terms and conditions as conventional housing is excluded.

(2) Mobile homes shall be considered single-unit dwellings, and must meet the zoning requirements for such dwellings, except when located in an approved mobile home park (§409), or when unoccupied and displayed in a mobile home sales establishment, or allowed as a temporary structure under this bylaw (§415).

§409. Mobile Home Parks

(1) Mobile home parks may be permitted in designated districts subject to conditional use review in accordance with §807 and the following provisions.

(2) Proposed mobile home parks shall comply with all applicable state and local laws, ordinances, and regulations, including the requirements of 10 V.S.A., Chapter 153.

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

(4) A strip of land of at least fifty (50) feet in width shall be maintained as a landscaped area abutting all property lines and shall contain trees and shrubs for screening purposes to a minimum height of six (6) feet. No building, mobile home, parking, or service area shall be located within these buffer areas. Buffer areas shall not be included in the calculation of recreation land under (5). The Development Review Board may reduce or eliminate the buffer requirements if such modification will serve to protect a scenic view, provided that privacy for adjoining property owners can be maintained.

(5) A minimum of twenty (20) percent of the total land area in any mobile home park shall be set aside for common recreational use.

(6) Internal roads serving the mobile home park must have a right-of-way at least fifty (50) feet in width, and be appropriately marked and illuminated for emergency vehicular access.

(7) Individual lots within the mobile home park must be at least sixty (60) feet in width and one hundred- twenty (120) feet in depth. Either dimension may have frontage on the internal road. Each lot shall contain:

   A. A pad of sufficient size to accommodate the mobile home;

   B. A driveway at least twenty (20) feet in width;

   C. Two parking spaces;

   D. Space for an accessory building of at least one hundred (100) square feet; and

   E. Minimum distance between trailers and the closest edge of any internal road shall be twenty-five (25) feet. All setbacks to town roads shall be maintained.

(8) When applying for a permit for a mobile home park, in accordance with §807 of this bylaw, the applicant will be asked to provide a complete set of plans, drawn to scale, showing the location of the proposed mobile home park, as well as:

   A. The areas and dimensions of the tract of land;

B. The maximum number, location, and size of all mobile home spaces;

C. The location any existing buildings and any proposed structures;

D. The location and width of driveways, internal roads, parking areas, walkways, turnarounds, recreation and open space; and

E. The location of electrical, water, storm drainage, and sewage disposal system.

(9) In granting approval for a proposed mobile home park, the Development Review Board may require a performance bond from the operator of the park to ensure that the park is developed and operated in accordance with any approvals and permits granted herein.

§410. Recreational Vehicles

(1) Owners or users of camping trailers, pick-up coaches, and/or motor homes (hereinafter referred to as "recreational vehicles"), shall abide by the following regulations except when located in an approved campground (§411) or recreational vehicle sales lot:

(2) The owner of a recreational vehicle may permanently park it on his or her own property, in the rear or side yards, provided the recreational vehicle is not closer than ten (10) feet to any lot line or fifty-five (55) feet from the centerline of the roadway.

(3) Parked recreational vehicles shall not be occupied as living quarters, nor be hooked up to any utilities, for more than a total of thirty (30) days in any calendar year, except as provided in (6).

(4) Visitors may park their recreational vehicles on their hosts' land, provided they are parked in conformance with subsections (1) and (2).

(5) Not more than two recreational vehicles, including the land owner's recreational vehicle, shall be concurrently parked on any lot, unless such lot is an approved campground.

(6) Any recreational vehicle that is occupied or connected to utilities for more than a total of 30 days in any calendar year shall be considered a permanent structure, and the owner shall obtain an appropriate zoning permit in accordance with Article 8, as well as any applicable state permit.

§411. Campgrounds

(1) Campgrounds may be permitted in designated districts subject to conditional use review in accordance with §807 and the following provisions.

(2) Campgrounds shall provide for individual campsites, access driveways, and parking.

(3) All access driveways within a campground must be at least thirty (30) feet in width and have a compacted gravel surface at least twenty (20) feet in width.

(4) No campsite or service building shall be closer to a centerline of a public roadway than eighty (80) feet or closer to a property line than (50) feet.

(5) A strip of land at least fifty (50) feet in width shall be maintained as a landscaped buffer abutting all campground property lines. No campsites or service buildings shall be located within these buffers.

(6) An accessible, adequate, and potable supply of water shall be available at each campsite.

(7) Every campground shall have a dumping station for sewage disposal meeting applicable state and local laws and regulations, as well as provisions for the disposal of solid waste.

(8) Every campground shall provide one or more service buildings in accordance with the following specifications:

A. Flush-type toilets shall be placed in buildings that are not more than a maximum distance of three hundred (300) feet from any campsite or less than fifteen (15) feet from any campsite.

B. Such buildings shall be permanent structures, adequately ventilated and with all opening to the outside effectively screened and supplied with floor drains and in compliance with all town and state requirements.

C. Separate toilets shall be provided for males and females in accordance with state and local laws.

D. Toilet rooms shall contain one lavatory with hot and cold running water for each two toilets or fraction thereof.

(9) When applying for a permit for a campground, in accordance with §807 of this bylaw, the applicant will be asked provide a complete set of plans, drawn to scale, showing the location of the proposed campground, as well as:

A. The areas and dimensions of the tract of land;

B. The maximum number, location, and size of all campsites;

C. The location of any existing buildings and any proposed structures;

D. The location and width of access driveways, internal roads, parking areas, walkways, turnarounds; and,

E. The location of electrical, water, storm drainage and sewage disposal system.

(10) In granting approval for a proposed campground, the Development Review Board may require a performance bond from the operator of the camp to ensure that the camp is developed and operated in accordance with any approvals and permits granted herein.

(11) Recreational vehicles which are part of traveling circuses, fairs, carnivals, etc., may secure from the Administrative Officer temporary permits not to exceed 21 days, provided that all applicable state and local health and sanitation regulations are met.

§411(b) Accessory Campsites

Accessory Campsites: 1-3 campsites that are located, established or temporary: which may accommodate tents, travel trailers, motor homes (not to exceed 25ft in length) or camper vans: and are maintained for occupancy by camping

Accessory campsites may be permitted in designated districts o lots greater than 5 acres in size and subject to conditional use review in accordance with 806 and 807 and the following provisions

Owner of Accessory Campsites which receives compensation for use of the accessory campsites must be a full time resident of Burke and reside on the property for a minimum period of 180 days per calendar year.

(1) When applying for a permit for an Accessory Campsite, in accordance with 806-807 of this bylaw, the applicants will be asked to provide the following:

A. A site plan showing location of campsites.

B. The areas and dimension of the tract of land.

C. Locations of any existing buildings and any proposed structures.

D. Location of water supply.

E. Location of any human waste disposal system.

F. Plan for fire protection, waste disposal, noise mitigation, closure, tree removal and parking Accessory Campsites must comply with the following regulations.

G. Host a maximum of 6 adults (person over age 18) total (2per accessory campsite)

H. Not contain any yurts, cabins, lean too or other structures built or placed for sleeping, cooking or storage.

I. At a minimum, one parking space will be designated for each campsite.

J. Human waste will be managed in accordance with town and state guidelines using recognized disposal methods, either established compliant septic system, GMC moldering privy or commercial composting toilet,(Consult Humanure Handbook) or equivalent. Pit privy and cat hole waste disposal is no permitted.

K. Water and waste disposal will follow all applicable local and state regulations.

L. Quiet hours will be from 10pm to 7am.

M. No camping generators will be used

N. Fire pit will be constructed to contain and prevents fire spread

O. Only natural untreated wood may be burned in fire pits.

P. Only Vermont purchased wood may be burned in fire pits.

Q. Only one fire pit may be constructed for the accessory campsites.

R. Include a Plan for closure and removal of any built structures.

S. Campsites will be no closer than 100 feet to an property line and no closer than 100 feet to the center line of a public or private roadway

T. A strip of land at least 50 feet in width shall be maintained as a buffer abutting all property lines.

U. Motorhomes, travel trailer, fifth wheels, camper vans are limited to 25 ft. in length.

§412. Auto Service Stations

In all districts where permitted, auto service stations shall comply with the following:

(1) An auto service station lot shall not be located within three hundred feet of any lot occupied by a school, hospital, library, or religious institution.

(2) All automobile parts and dismantled or wrecked vehicles are to be stored within a building, and no major repair work is to be performed outside a building.

(3) There shall be no more than two access driveways from any road. The maximum width of each access driveway shall be forty feet.

(4) A curbed, landscaped area shall be maintained at least five feet in depth along all road frontage not used as driveway.

§413. Lounges and Night Clubs

(1) A lounge or night club lot shall not be located within three hundred feet of any lot occupied by a school, hospital, library, or religious institution.

(2) A curbed, landscaped area shall be maintained at least five feet in depth along all road frontage not used as driveway.

(3) In approving permits for lounges and nightclubs in accordance with §807 of this bylaw, the Development Review Board may require the following:

A. Soundproofing measures, made possible by specification of construction materials and/or increased setback areas;

B. Landscaping or screening;

C. Limitation on hours of operation.

§414. Swimming Pools

Private swimming pools installed below ground level shall be enclosed by a lockable fence not less than 5 feet in height with no opening greater than 4 by 4 inches.

§415. Temporary Uses and Structures

A temporary permit may be issued by the Administrative Officer for a period not exceeding one year for a non-conforming use incidental to a construction project provided such a permit is conditioned upon agreement by the owner to remove the structure or use upon expiration of the permit. Such a permit may be renewed, upon application, for an additional period not exceeding one year.

§416. Outdoor Furnaces

(1) Outdoor furnaces may be installed and operated in the following Agricultural-Residential I (AR I) and Agricultural-Residential II (AR II) districts. The installation and operation of outdoor furnaces is prohibited in all other districts.

(2) Outdoor furnaces shall not be used to burn any materials other than untreated wood.

(3) In additional to meeting all state regulations, all outdoor furnaces shall be located at least 200 feet from any abutting property lines.

§417. Spreading Biochemical Waste Solids or Sludge

Anyone intending to spread biochemical waste solids and/or sludge on any land in the Town of Burke shall first notify the town clerk in writing. All such activities shall be done with compliance with state regulations.

Article 5. Flood Hazard Areas

§501. Statutory Authorization and Effect

In accordance with 10 V.S.A. Chapter 32, and V.S.A. Chapter 117 §4411 §4414, and §4424 there is hereby established a bylaw for areas at risk of flood and erosion damage in the Town of Burke, Vermont.

§502. Warning of Disclaimer of Liability

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

§503. Lands to Which This Bylaw Applies

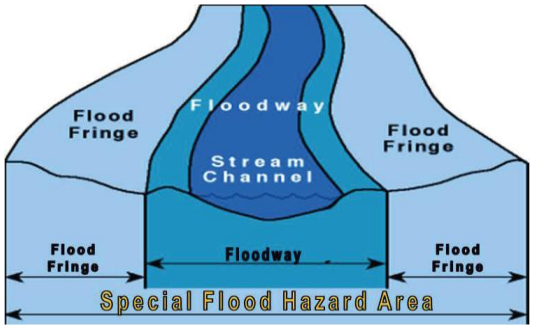
(1) Regulated Flood Hazard Areas. (see Insert) These regulations shall apply to the River Corridors and Special Flood Hazard Areas (hereafter called "hazard areas") in the Town of Burke, Vermont, as described below. River Corridors and Special Flood Hazard Areas overlap a great deal in many places, but they describe different processes and address different kinds of risk. These hazard areas overlay any other existing zoning districts, and the regulations herein are minimum standards that must be met before meeting the additional standards applicable in the underlying zoning district. The hazard areas include:

A. The Special Flood Hazard Area in and on the most current flood insurance studies and maps published by the Department of Homeland Security, Federal Emergency Management Agency, National Flood Insurance Program, as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. Chapter 32 §753, which are hereby adopted by reference and declared to be part of these regulations.

B. The River Corridors as published by the Vermont Agency of Natural Resources including the Statewide River Corridors and refinements to that data based on field assessments which are hereby adopted by reference.

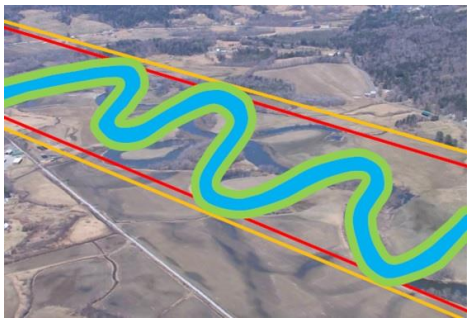
Special Flood Hazard Areas

Special Flood Hazard Areas address **inundation** hazards. These are areas exposed to more than a 1 % chance of inundation by overflow from rivers and streams. The Special Flood Hazard Area is mapped by FEMA to identify risk for the National Flood Insurance Program. This area is composed of the floodway, where the waters run the deepest and fastest. The remaining portion outside of the floodway is known as the flood fringe. Not all of the special flood hazard areas in Burke have mapped floodways. (Information and image courtesy of Vermont DEC River Management Program.)



River Corridors

River Corridor maps are designed with the recognition that rivers are not static, and that flood damages in Vermont are often a result of "fluvial" erosion. Fluvial erosion is most evident when a flooding river dramatically enlarges or makes a catastrophic change in course. A certain amount of erosion is natural in Vermont floods because of the region's relatively steep terrain, geology, and flashy, frequent storms. However, due to human encroachments and historical channel engineering (e.g., bank armoring, berming, and channel straightening), many Vermont rivers have become unstable and now pose increased hazard for nearby human property. This map shows the minimum required area to accommodate lateral shifts (in red), plus a 50 foot riparian buffer to provide additional stability (yellow).



(2) If uncertainty exists with respect to the boundaries of the Special Flood Hazard Area or the floodway, the location of the boundary shall be determined by the Administrative Officer. If the applicant disagrees with the determination made by the Administrative Officer, a Letter of Map Amendment from FEMA shall constitute proof.

(3) If uncertainty exists with respect to the boundaries of the River Corridor, the location of the boundary shall be determined by the Administrative Officer. If the Applicant disagrees with the determination by the Administrative Officer, a letter of determination from the Vermont Agency of Natural Resources shall constitute proof.

§505. Development Review in Hazard Areas

(1) The hazard areas are not appropriate sites for new structures nor for development that Increases the elevation of the base flood or obstructs the ability of the streams to establish and maintain geographic equilibrium.

(2) **Prohibited Development**. The following forms of development are prohibited in **all** hazard areas:

A. New residential development (including the placement of manufactured homes

B. Non-residential structures;

C. Storage or junkyards;

D. New fill except as necessary to elevate structures in the Special Flood Hazard Area; above the base flood elevation;

E. Accessory structures in the floodway;

F. Critical facilities

G. All other development activities not listed in (3), (4), or (5) below.

(3) **Administrative Review**. For the purposes of review under these regulations, the following development activities in the hazard area, are permitted, subject only to Administrative Review by the Administrative Officer, provided they are located outside of the floodway of the Special Flood Hazard Area and outside of the River Corridor:

A. Non-substantial improvements

B. Accessory structures

C. Building utilities

D. At-grade parking for existing buildings

(4) **Conditional Use Review**. Conditional use review and approval by the Development Review Board is required prior to the issuance of a permit by the Administrative Officer for the following proposed development:

A. Substantial improvement, elevation, relocation or flood proofing of an existing structure**;**

B. New or replacement storage tanks for existing structures;

C. Improvements to existing structures in the floodway;

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

E. Improvements to existing roads;

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

G. Public utilities not regulated under Section 248;

H. Improvements to existing primary structures in the River Corridors that do not expand the footprint of the existing structure by more than 500 feet;

I. Accessory structures in the River Corridors of square feet or less, that represent a minimum investment;

J. Building utilities in the River Corridors;

K. At-grade parking for existing buildings in the River Corridors;

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

A. The removal of a building or other structure in whole or in part

B. Maintenance of existing roads and storm water drainage

C. Silvicultural (forestry) activities conducted in accordance with the Vermont Department of Forests and Parks Acceptable Management Practices

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

E. Public utilities regulated under Section 248

(6) All development that is neither Prohibited nor Exempt shall require, at a minimum, Administrative Review by the Administrative Officer. Development that requires conditional use approval, non-conforming use approval, or a variance must have additional approvals from the Development Review Board prior to the issuance of a permit by the Administrative Officer. Such approvals shall be granted after public notice and hearing, and in accordance with Article 8 of this bylaw. Any permit issued in hazard areas shall require that all other necessary permits from state or federal agencies have been received before work may begin.

Table 505 (7): Summary Development Review in Hazard Areas

Activity	**Hazard Areas**		
P Permitted C Conditional Use Review X Prohibited E Exempted	Special Flood Hazard Area	Floodway	River Corridor
New Structures	X	X	X
Storage	X	X	X
Improvements to Existing Structures	P/C	C	C
Small Accessory Structures	P	X	C
At Grade Parking	P	C	C
Replacement water supply or septic systems	P	P	P
Fill as needed to elevate existing structures	C	C	C
Fill	X	X	X
Grading	C	C	C
Road Maintenance	E	E	E
Road Improvements	C	C	C
Bridges and culverts	C	C	C
Channel Management	C	C	C
Recreational vehicles	P	P	P
Removal of an existing structure	E	E	E
Open space, recreation	E	E	E
Forestry	E	E	E
Agriculture	E	E	E

§506. Variances

(1) Variances may be granted in writing by the Development Review Board only in accordance with all the criteria in 24 V.S.A. §4469.In addition to meeting the criteria of §811 of this bylaw, it must be demonstrated that the variance for development will not:

A. obstruct the establishment and maintenance of fluvial geomorphic equilibrium for the watercourse. Such determination shall be based on a review by the Vermont Agency of Natural Resources; or

B. increase flood heights within a special flood hazard area.

(2) Approval of variance will be issued in writing and in accordance with §813 of this bylaw. The decision will inform the applicant, over the signature of the Administrative Officer, that the issuance of a variance to construct a structure below the base flood elevation increases risk to life and property and will result in increased flood insurance premiums up to amounts as high as $25 for $100 of coverage. Such notification shall be maintained with a record of all variance actions.

§507. Nonconforming Structures

(1) The Development Review Board may after public notice and hearing, approve the repair, relocation, or enlargement of a non-conforming structure, provided that such activity meets the development standards of §508 in this bylaw.

(2) Notwithstanding §507(1) a nonconforming structure that is substantially damaged or destroyed due to any cause may be reconstructed only in circumstances when the structure cannot be relocated to a less hazardous location on the parcel.

(3) Notwithstanding §507(1)) and §507(2) a nonconforming structure in the Special Flood Hazard Area that is substantially damaged or destroyed due to any cause may only be reconstructed so that the lowest floor is one foot or more above the base flood elevation, and the structure otherwise complies with all the requirements of the National Flood Insurance Program.

(4) Nonconforming structures or uses shall be considered abandoned when such structures or uses are discontinued for two years, unless the structure is an individual mobile home in a nonconforming mobile home park.

(5) Replacement of an individual manufactured home in a nonconforming or vacated mobile home park must be placed in accordance with the development standards in §508 of this bylaw.

§508. Development Standards in the Special Flood Hazard Area

(1) All development shall be:

A. Reasonably safe from flooding;

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

C. Constructed with materials resistant to flood damage;

D. Constructed by methods and practices that minimize flood damage;

E. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

F. Adequately drained to reduce exposure to flood hazards;

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

H. Required to locate any fuel storage tanks (as needed to serve an existing building in the hazard area) a minimum of one foot above the base flood elevation and be securely anchored to prevent flotation; or storage tanks may be placed underground, if securely anchored as certified by a qualified professional.

(2) In Zones AE, AH, and A1 – A30 where base flood elevations and/or floodway limits have not been determined, development shall not be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and

anticipated encroachment, will not increase the base flood elevation more than 1.00 foot at any point within the community. The demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and certified by a licensed professional engineer.

(3) Structures to be substantially improved in Zones A, A1-A30, AE, and AH shall be located such that the lowest floor is at least one (1) foot above base flood elevation; this must be documented, in as-built condition with a FEMA Elevation Certificate. Historic structures are not required to be elevated if such elevation will invalidate their historic designation.

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

A. Meet the standards in §508(3); OR,

B. Have the lowest floor, including basement, together with attendant utility and sanitary facilities be designed so that two feet above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A permit for flood proofing shall not be issued until a 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.

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

(6) Fully enclosed areas that are above grade, below the lowest floor, below base flood elevation and subject to flooding, shall

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

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

i. 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.

ii. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

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

(8) A small accessory structure of 500 square feet or less that represents a minimal investment may be located within the hazard area and need not be elevated to the base flood elevation in the area, provided the structure is places on the building site so as to offer the minimum resistance to the flow of floodwaters and meet the criteria of §508(6).

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

(10) 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.

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

(12) 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.

(13) 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.

(14) Subdivisions and planned unit developments must be accessible by dry land outside of the Special Flood Hazard Area.

§509. Development Standards in Floodway Areas

(1) Encroachments or development above grade and less than one foot above the base flood elevation are prohibited unless hydrologic and hydraulic analyses are performed in accordance with standard engineering practice by a registered professional engineer, certifying that the proposed development will not:

A. Result in any increase in flood levels (0.00 feet) during the occurrence of base flood; or

B. Increase any risk to surrounding properties, facilities, or structures, from erosion or flooding.

(2) Public utilities may be placed underground, and the analyses may be waived, where a licensed engineer certifies that there will be no change in grade and utilities will be adequately protected from scour.

§510. Development Standards in River Corridors

(1) Improvements to existing structures, and any associated fill as needed to comply with elevation requirements in the hazard shall not decrease the distance between the existing primary building and the top of bank.

(2) Accessory structures may be located within 50 feet of the existing primary building provided that the location does not decrease the distance between the existing primary structure and the top of the bank.

(3) Development shall not increase the susceptibility of that or other properties to fluvial erosion damage.

(4) Development shall not include the potential of materials being swept onto other lands or into the stream and causing damage to other properties from fluvial erosion.

(5) Development shall not cause an undue burden on public services and facilities including roads, bridges, culverts, and emergency service providers during and after fluvial erosion events.

(6) Bridge and culvert projects must have a Stream Alteration Permit.

(7) Channel management activities must be authorized by the Agency of Natural Resources.

§511. Administration

(1) All applications for development in the hazard area shall be made to the Administrative Officer. In addition to the information outlined in §804 of this bylaw, applications for development shall ensure that sketch plan accurately depicts the proposed development in relation to hazard area, any proposed fill and pre- and post-development grades, and the elevation of the proposed lowest floor, as referenced to the same vertical datum as the elevation on the current Flood Insurance Rate Maps.

(2) A Vermont Agency of Natural Resources Project Review sheet shall be attached to the application. The 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 Administrative Officer and attached to the permit before work can begin.

(3) Three (3) copies of the application must be forwarded to the National Flood Insurance Program Coordinator at the Vermont Agency of Natural Resources; Department of Environmental Conservation; River Management Program.

(5) Applicants seeking conditional use approval, approval under nonconforming structures and uses, or a variance, shall also provide:

A. A description of the alternative to the proposed development considered, including alternate locations on site, especially outside of the hazard area.

B. Additional copies of the application for the National Flood Insurance Program Coordinator at the Vermont Agency of Natural Resources, and additional parties as applicable, such as the Vermont Department of Environmental Conservation Stream Alteration Engineer and adjacent communities.

(6) The Administrative Officer will act upon applications for development in accordance with 24 V.S.A. §4449 and §504 of this bylaw. Additionally:

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

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

C. If the application requires approvals from the Development Review Board, the board shall consider comments from the National Flood Insurance Program Coordinator at Vermont Agency of Natural Resources.

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

A. All permits issued in areas covered by this bylaw;

B. An Elevation Certificate with the as-built elevation (consistent with the datum of the elevation on the current Flood Insurance Rate Maps for the community) of the lowest floor, including basement, of all new, substantially improved, or flood proofed buildings (not including small accessory buildings) in the hazard area;

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

D. All decisions of the Development Review Board (including variances and violations) and all supporting findings of fact, conclusions and conditions.

§512. Enforcement and Penalties

(1) The Administrative Officer shall enforce these regulations in accordance with §816 of this bylaw. Additionally, the Administrative Officer will mail a copy of the notice of violation to the State National Flood Insurance Program coordinator.

(2) If the violation remains after all appeals have been resolved, the Administrative Officer shall submit 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.

(3) Violations of the Accepted Agricultural Practices shall be enforced as violations of the municipal bylaw. Such violations shall also be immediately reported to the Secretary of Agriculture for enforcement under 6 V.S.A. §4812.

Article 6. Subdivision Review

§601. Applicability

(1) In accordance with 24 V.S.A. §4418, whenever any subdivision of land is required that is not specifically exempted under (2) of this bylaw, the subdivider and/or his or her authorized agent shall apply for and secure approval of such proposed subdivision according to the procedures outlined in this bylaw prior to any of the following activities:

A. Construction, land clearing, or building development;

B. Contract of sale of all or any part of the land or structures involved;

C. Granting of a permit for the erection of a building or structure; or

D. Filing of a subdivision plan with the Town Clerk

What is a subdivision?
A subdivision is the division of a lot, tract, or parcel of land into two (2) or more lots for the immediate or future purpose of transfer of ownership or right to use, or of building or development. This definition shall apply to all residential, commercial, industrial, recreational, agricultural, institutional, municipal, and forestry uses, and for utilities. **Resubdivision** (i.e. relocation of lot lines and the division of commonly held land among multiple owners) are also considered subdivisions.

(2) The following activities are exempted from subdivision review:

A. Creation of rights-of-way or easements which do not result in the subdivision of land into two or more parcels;

B. The leasing of parcels for agricultural or forestry purposes, provided no new roads are created for uses other than accepted agricultural or forestry practices;

C. Parcels under single ownership which are divided by a state or town road provided the resulting lots on either side of the dividing road may be developed separately and the uses that they contain function independently.

§602. An Overview of the Subdivision Review Process

Action	Who does it, and when
All Subdivisions start with Sketch Plan Review	
1. Sketch Plan is submitted to the Administrative Officer	Subdivider, at any time.
2.Sketch Plan Review	Development Review Board will review the Sketch Plan in a hearing noticed and warned in accordance with §812 of this bylaw. Subdivider (and/or his or her authorized representative) must attend.
3. Proposed subdivision is classified as a Minor or Major Subdivision	Development Review Board, within forty-five (45) days of the conclusion of the Sketch Plan Review. Classification will be documented and issued in writing
Minor Subdivisions	
1. Final Subdivision Plan submitted to Administrative Officer	Subdivider – Must be done within one (1) year of receiving classification as a minor subdivision for review by the administrative officer in accordance with §804 of this bylaw.
2. Approved Final Subdivision Plan gets recorded in the Town Clerk's Office	Subdivider – Within ninety (90) days of receiving Final Subdivision Plan Approval.
Major Subdivisions	
1. Preliminary Subdivision Plan is submitted to Administrative Officer.	Subdivider – Must be done within six (6) months of receiving classification as a major subdivision.
2. Preliminary Subdivision Plan Review	Development Review Board – Within forty-five days of receipt of Preliminary Subdivision Plan in a hearing noticed and warned in accordance with §912 of this bylaw.
3. Preliminary Subdivision Plan is approved or disapproved.	Development Review Board – Within forty-five (45) days of close of Preliminary Subdivision Plan Review Hearing. Decision is issued in writing in accordance with §913 of this bylaw.
4. Final Subdivision Plan is submitted to Administrative Officer	Subdivider – Must be done within one (1) year from receiving Preliminary Subdivision Plan Approval.
5. Final Subdivision Plan is approved or disapproved.	Development Review Board – Within forty-five (45) days of close of Final Subdivision Review Hearing. Decision is issued in writing, in accordance with §913 of this bylaw.
6. Approved Final Subdivision Plan gets recorded in the Town Clerk's Office.	Subdivider – Within ninety (90) days of receiving Final Subdivision Plan Approval.

§603. Sketch Plan Review (All Subdivisions)

(1) All applications for subdivisions shall begin with Sketch Plan Review. The subdivider and/or his or her authorized agent shall submit a Sketch Plan of the proposed subdivision to the Administrative Officer. The Sketch Plan shall include the following information:

A. Name and address of the landowner and/or applicant.

B. Names of all abutting property owners.

C. Copies of written notification to all abutting property owners of the site in question. If any portion of the land involved with the subdivision is within 500 feet of the boundary of an adjoining town, a copy of written notification to either the planning commission or town clerk of that town shall also be submitted.

D. Map drawn to scale showing the location of the development parcel in the town.

E. A written description of proposed development plans, including the number and size of lots and general timing of construction.

F. A plan at a scale not to exceed 1" per 200', drawn on a contour map showing the project boundaries, adjacent land uses, layout of proposed uses, and significant natural and man-made features, including:

i. Wetlands;

ii. Flood hazard areas as defined in §503 of this bylaw;

iii. Slopes in excess of 25%;

iv. Surface waters;

v. Agricultural soils and open farmland;

vi. Recreation trails, sidewalks, or other pedestrian amenities

vii. Scenic features identified in the Burke Town Plan;

viii. Prominent knolls and ridgelines

ix. The area(s) of the site designated for open space and their size(s)

x. The area(s) of the site designated for parking and loading, and the size of the individual spaces

xi. The number of the dwelling units, if any, that are proposed to be affordable or for senior housing; and

xii. A proposed landscape plan and details of plant types, quantities, and sizes.

(2) The Administrative Officer may require additional information before recommending that the applicant proceed with the application.

(3) Within forty-five (45) days of conclusion of the Sketch Plan Review hearing, the Development Review Board shall determine, based on the information provided:

A. Whether the proposed subdivision is to be classified as a ***major*** subdivision or a ***minor*** subdivision in accordance with these regulations. (See inset and Article 10. Definitions.) This classification will determine the subsequent levels of subdivision review.

B. Whether the subdivision must be reviewed as a Planned Unit Development due to the subdivision's location within specific zoning district and/or overlay, the proposed scope and density of development, and the proposed mix of uses.

C. Changes to be made to subsequent submissions in order to achieve compliance with this bylaw; and

D. The need for additional studies or supporting documentation.

Classification of Subdivisions
The subdivision review process depends on whether the proposed subdivision is a *minor* or *major* subdivision.

A minor subdivision is:
- a re-subdivision; OR
- a subdivision that results in no more than five (5) lots, all of which are for single-unit residences; and
  - does not require more than 800 feet of new roads; and
  - does not require an extension of municipal services.

A major subdivision is any subdivision that:
- creates more than five (5) lots; or
- creates new lots for commercial, industrial, or commercial recreation uses, or for multiunit housing; or
- requires more than 800 feet of new roads; or
- requires an extension of municipal services; or
- involves a planned unit development (see Article 7)

(4) Such determination shall be issued in writing.

§604. Preliminary Plan Review (Major Subdivisions Only)

(1) Within six (6) months of being classified as a Major Subdivision, the subdivider shall submit to the Administrative Officer a Preliminary Subdivision Plan. The application shall conform to:

A. The requirements sets forth in this bylaw;

B. The layout originally shown in the Sketch Plan; and

C. The recommendations made by the Development Review Board during the Sketch Plan Review.

(2) The subdivider shall submit three (3) copies of the complete Preliminary Subdivision Plan, which shall include:

A. A completed subdivision permit application form obtainable from the Burke Town Clerk.

B. Maps drawn to a scale of no greater than 100 feet per inch

C. All information submitted for the Sketch Plan Review.

D. A statement of how the proposed subdivision complies with the Town Plan and this bylaw.

E. Description of the proposed water supply. If the water source is a community water supply system, evidence of the right to use such system and the adequacy of such system to meet water supply requirements shall be shown. All design criteria shall be in accordance with applicable state and local regulations.

F. A description of proposed sewage disposal system. If on-site sewage disposal is proposed, then the subdivider shall submit a registered professional engineer's report prepared in conformance with applicable state and local regulations. If a community sewage disposal system is to be used, the subdivider shall submit evidence of the right to use such system and an engineer's statement of the adequacy of the system to handle the additional sewage.

G. Preliminary grading plans showing areas of cut and fill revised contours, at a contour interval not greater than five (5) feet.

H. A storm water drainage plan, drawn at a contour interval not greater than five (5) feet, shall indicate the methods of collecting and discharging of drainage, as well as methods for temporary and permanent erosion control.

I. All existing and proposed right-of-way lines, widths of roads, typical road profiles, dimensions of all lot lines and sizes of all lots, locations of all buildings, walkways, amenities, utilities, and other manmade improvements.

J. Evidence that the traffic generated by the project will not cause the capacity of roadways and intersections in the area to be exceeded. Information to be provided shall include, but not be limited to, current traffic volumes, current excess capacities or deficiencies; trip generation estimates and their impact on capacities; and sight stopping distances for new road intersections with town highways.

K. Typical landscaping plans showing plant types, ground cover, lighting, and signage.

L. All land proposed to be dedicated to open or public uses, or to be reserved for screening and buffer purposes and the methods for assuring and maintaining such dedication or reservation.

M. A description of any proposed covenants and or deed restrictions which are intended to cover all, or part of the subdivision.

N. A description of the homeowners association or other form or management organization, if such is proposed.

(3) If the subdivider fails to submit a complete Preliminary Subdivision Plan to the Administrative Officer within the six-month period, the subdivider shall be required to resubmit a Sketch Plan for Sketch Plan Review, which shall be subject to the regulations currently in effect.

(4) Within forty-five (45) days of the Administrative Officer's receipt of the complete Preliminary Subdivision Plan, the Development Review Board will hold a Preliminary Subdivision Plan Review hearing. Such hearing shall be noticed and warned in accordance with §912 of this bylaw.

(5) The Development Review Board shall issue a decision within forty-five days of the closing of the Preliminary Subdivision Plan Review hearing. The decision – whether to approve with or without modifications or to disapprove – shall be issued, in writing, and in accordance with §913 of this bylaw.

(6) At the time the Development Review Board grants Preliminary Subdivision Plan approval, it may require the plat to be divided into two or more phases to ensure conformity with the Town Plan and/or any Capital Program. The Development Review Board may impose such conditions upon the filing of the applications for Final Subdivision Plan approval for each phase, as it deems necessary to ensure orderly development of the plan.

(7) Approval of the Preliminary Subdivision Plan shall not constitute approval of the Final Subdivision Plan.

(8) Approval of the Preliminary Subdivision Plan shall be effective for a period of one (1) year from the date of the written notice of approval.

§605. Final Plan Review (All Subdivisions)

(1) The subdivider shall submit to the Administrative Officer a Final Subdivision Plan within one (1) year from the date of:

A. The Development Review Board's classification of the proposed subdivision as a minor subdivision; or

B. The Development Review Board's approval of the Preliminary Subdivision Plan Application for a major subdivision.

(2) For an application for major subdivision, the subdivider shall submit

A. Two (2) copies of the Final Subdivision Plan, prepared by a Vermont licensed surveyor. The Development Review Board may request additional copies;

B. All information, revisions, or additional levels of detail requested by the Development Review Board during the Preliminary Subdivision Plan Review;

C. If the subdivider is granting easements to the Town, a written acknowledgement of the subdivider's responsibility for maintenance of easement areas until such land has been legally accepted by the Town.

(3) If the subdivider fails to submit a complete Final Subdivision Plan for a major subdivision within the required timeframe, he or she shall be required to resubmit a Preliminary Subdivision Plan, which shall be subject to regulations currently in effect, unless the Development Review Board determines that the lengthy delay has been completely beyond the subdivider's control.

(4) For an application for a minor subdivision, the subdivider shall submit:

A. A completed subdivision permit application form obtainable from the Burke Town Clerk;

B. Two (2) copies of the Final Subdivision Plan, prepared by a Vermont licensed surveyor. The Development Review Board may request additional copies; and

C. Any information requested by the Development Review Board during Sketch Plan Review.

(5) If the subdivider fails to submit a complete Final Subdivision Plan for a minor subdivision within the required timeframe, he or she shall be required to resubmit a Sketch Plan, which shall be subject to regulations currently in effect, unless the Development Review Board determines that the lengthy delay has been completely beyond the subdivider's control.

(6) Within thirty (30) days of the Administrative Officer's receipt of the completed Final Subdivision Plan for a minor subdivision, the Administrative Officer shall, in accordance with §804 of this bylaw, either issue or deny a zoning permit in writing, or refer the application to the Development Review Board for consideration. If the Administrative Officer fails to act within the 30-day period, a permit shall be deemed issued on the 31st day.

(7) Within forty-five (45) days of the Administrative Officer's receipt of the complete Final Subdivision Plan for a major subdivision, the Development Review Board will hold a Final Subdivision Plan Review hearing. Such hearing shall be noticed and warned in accordance with §812 of this bylaw.

(8) The Development Review Board shall issue a decision within forty-five days of the closing of the Final Subdivision Plan Review hearing. The decision – whether to approve with or without modifications or to disapprove – shall be issued, in writing, and in accordance with §813 of this bylaw.

(9) The Development Review Board may require, as a condition of Final Subdivision Plan approval, the following documentation:

A. Agreement to convey to the town land to be used for streets, open space, and other purposes;

B. Description of easements and rights-of-way over property to remain in private ownership;

C. Descriptions of easements to drain onto or across other property.

§606. Performance Bond Requirements

(1) If the proposed subdivision requires road construction or any public improvement, the Development Review Board may, in accordance with §4464(b)(2),(6) of the Act, require as a condition of Final Subdivision Plan Approval, a performance bond to cover the expenses of such project. Security that the project shall be completed may be required in the form of a:

A. Surety bond, issued by a survey company authorized to do business in Vermont, to be filed with the Town of Burke Selectboard in form and amount satisfactory to it; or

B. Letter of credit, cash, escrow account, or savings bank book properly endorsed to the Town of Burke in an amount to be determined by the Town of Burke Selectboard; or

C. Performance bond from the developer or contractor.

(2) The performance guarantee shall not be released until the Development Review Board has certified substantial completion of the project in accordance with the conditions of Final Subdivision Plan approval. The performance bond shall run for a term to be fixed by the Development Review Board, but no longer than three (3) years, without the written consent of the subdivider.

(3) If the project has not been substantially completed in accordance with the conditions of Final Subdivision Plan approval, and within the term of the performance bond, the bond shall be forfeited to the Town of Burke and upon receipt of the proceeds, the Town of Burke shall install or maintain such improvements as are covered by the performance bond.

(4) The Development Review Board may also require surety covering the maintenance of the project for a period of two (2) years after acceptance by the Town. Surety shall be not less than ten (10) percent of the estimated cost of the project.

§607. Plan Recording Requirements (all approved subdivisions)

(1) All Final Subdivision Plans must be recorded in the office of the Burke Town Clerk within ninety (90) days from approval by the Development Review Board. If the subdivider fails to record the Final Subdivision Plan within the required timeframe, he or she shall be required to resubmit a Final Subdivision Plan for approval, subject to the current regulations currently in effect.

(2) Prior to recording, the plan must be signed by two (2) authorized members of the Development Review Board. For any subdivision which requires the construction of

streets or other public improvements by the subdivider, the authorized members of the Development Review Board shall not sign the approved plan until the subdivider has:

A. Met the performance bond requirements of §606 of this bylaw, or;

B. Constructed all public improvements to the satisfaction of the commission.

(3) Two copies of the approval Final Subdivision Plan shall be filed with the Town Clerk. The plan to be recorded shall be of a size determined by the Development Review Board.

(4) No changes, modifications, or revisions that alter the conditions attached to a subdivision permit shall be made unless the plan is first resubmitted to the Administrative Officer in accordance with these bylaws, and the Development Review Board approves such modifications after public hearings notices and warned in accordance with §812 of this bylaw.

(5) A Subdivision Plan recorded without required approvals as outlined in this bylaw shall be considered null and void.

§608. General Subdivision Standards

(1) **Development Suitability**. All land to be subdivided shall be physically suited for its intended use and the proposed density of development, without posing a danger to public health, safety, or the environment. Subdivisions shall set aside as designated open space, and exclude from development, land that is characterized by poorly drained (hydric) soils, mapped wetlands, surface waters and flood hazard areas as defined in §503 of this bylaw, very steep slopes (greater than or equal to 25%), and other known hazard areas.

(2) **Development Pattern**. The development pattern established by a proposed subdivision shall conform to the development patterns specified for the zoning district(s) in which it is located. Accordingly, to the extent physically feasible and consistent with other requirements of these regulations, the subdivision shall:

A. Conform to zoning, site plan and conditional use standards that apply to the subsequent development of subdivided lots.
B. Connect to and extend existing road, recreation path, sidewalk and utility corridors.

(3) **Lot layout**. The layout of lots to be created by the subdivision shall conform to the requirements of this bylaw and shall be appropriate for the intended use. Lots shall be laid out and configured to:

A. Conform to site topography and the suitability of the land for development, as required under Subsection (1);
B. Conform to planned district development patterns, as required under Subsection (2);

C. Meet zoning district dimensional requirements, except as modified for Planned Unit Development under Article 7; and
D. Avoid excessively narrow or irregularly shaped lots (e.g., with curves, jogs, dog-legs, etc.) unless warranted due to topographic constraints, or to limit the fragmentation of natural or scenic features. Side lot lines should generally be at right angles to roads.
E. Avoid to the extent physically feasible any fragmentation or parcelization of agricultural soils and land enrolled in current use.
F. Avoid to the extent physically feasible any adverse impacts to source protection areas.
G. Avoid to the extent physically feasible any adverse impacts to critical wildlife habitat and natural communities.
H. Maintain access and functionality of existing farm and logging roads.

(4) **Existing Site Features**. Existing site features, including natural contours and drainage patterns, natural vegetative cover (e.g., timber stands, shade trees, ground cover, riparian buffers), unique geological features (e.g., ridgelines, ledges, outcrops), surface waters, wetlands, flood hazard areas as defined in §503 of this bylaw, scenic views, and historic sites and structures shall be incorporated in subdivision layout and design as necessary to minimize the extent and amount of site disturbance, and to preserve existing site functions.

(5) Roads, Driveways, and Utility Corridors.

A. Roads and driveways shall be accessible by dry land access, outside of the flood hazard areas as defined in §503 of this bylaw.

B. Where functionally practical, roads, driveways and utility corridors shall be shared and sited to:

i. Avoid very steep slopes;

ii. Minimize the number and extent of stream and wetland crossings;

iii. Avoid any adverse impacts to agricultural soils and land enrolled in current use.

(6) S**urvey Monuments.** The locations of all existing and proposed survey monuments, corner monuments, and building envelope pins shall be shown on the survey plat.

§609. Scenic Conservation Overlay Standards

(1) **Building Envelope**. The designation of building envelopes that limit the location of structures, parking areas and associated site improvements (excluding driveways, roads, utility corridors and septic systems) is required for all lots in the Scenic and Conservation Overlay District. Building envelopes need not be surveyed, but shall be marked on the ground with iron pins.

(2) Subdivision boundaries, lot layouts, driveways, roads and utility corridors, and building envelopes shall be located and configured in accordance with the General

Subdivisions Standards in §608 and shall be located and configured to avoid or mitigate the adverse impacts of development to the extent physically feasible to critical wildlife habitat, wildlife travel corridors, and natural resources.

(3) Subdivision boundaries, lot layouts, building envelopes, driveways, and road and utility corridors shall be located in consideration development standards in §210(6) to minimize visual impacts.

(4) To the extent physically feasible, driveways, roads, and utility corridors shall be shared and shall follow existing contours and linear features (e.g. tree lines, field edges, stone walls); and shall not exceed fifty (50) feet in width, except where a wider width is needed to accommodate side slopes to prevent erosion.

(5) Methods for limiting and mitigating adverse impacts to wildlife corridors include, may not be limited to the following:

A. Subdivision boundaries, lot lines, infrastructure, driveways and road and utility corridors shall be located to avoid, to the extent feasible, the parcelization, fragmentation, isolation or destruction of such areas.

B. Building envelopes, to the extent feasible, shall be located to exclude such areas. In the event that no other land is practical for development, building envelopes and subsequent shall be designed to minimize encroachment into these areas and/or any associated adverse impacts.

C. Buffers, resource management plans, or other appropriate mitigation measures may be required to ensure the long-term conservation and sustainable use of these areas.

D. The applicant and the Development Review Board may also consult with state officials or other qualified professionals to identify and consider means by which to avoid or mitigate the adverse impacts of development on conserved areas and resources.

(6) One or more of the following mitigation measure may be required by the Development Review Board as necessary to ensure the long-term protection and sustainable use of conserved areas and resources in the Scenic Conservation Overlay:

A. The identification of conservation areas on the subdivision plat as "protected open space" with a notation on the plat and incorporated in deed language that these areas cannot be further subdivided and shall remain undeveloped except for incidental accessory structures associated with active farming and forestry operations, and outdoor recreation.

B. Buffer areas (under §617) and buffer or resource management plans prepared by a qualified professional that direct the long-term management and sustainable use of these areas. This may include management plans as required for parcel enrollment in the state's Use Value Appraisal (Current Use) Program.

C. Conservation area ownership and/or management by:

i. an association of homeowners or tenants, under adopted agreements, conservation easements or deed restrictions;

ii. the Town of Burke, if conveyed to and accepted by the Burke Select Board for public use; or

iii. a qualified individual or conservation organization acceptable to the Development Review Board, subject to conservation easements or deed restrictions that ensure that the conservation area is sustainably managed for its intended purpose. Designated conservation areas may also be conveyed to the State of Vermont.

§610. Subdivision Review Standards for Roads

(1) Projects that may generate traffic that exceeds the existing capacity of adjacent roadways, or intersections shall be phased in a manner that allows the improvement of said capacity.

(2) If a development may require realignment, widening, or otherwise increasing the capacity of an existing road, or if the town plan or capital program calls for such improvement, the subdivider may be required to reserve land for the improvements.

(3) Intersections with existing roadways shall be as close to ninety (90) degrees as possible. Approaches to intersection with existing roads shall be at a maximum grade of 3% for a distance of 100 feet from the edge of the travel lane. Intersections shall be located so as to provide a minimum sight stopping distance in accordance with the following standards of the American Association of State Highway officials:

Minimum Stopping Sight Distance	
Design Speed of Roadway (mph)	**Stopping Sight Distance (feet)**
30	176
40	263
50	369
60	491

(4) The Development Review Board may restrict the number of curb cuts or impose special intersection design requirements along all Town Highways in the interest of preserving their visual character.

(5) All roads shall comply with the design standards as specified herein, unless otherwise waived by the Development Review Board due to specific site conditions, such as but not limited to visual impact, roadside parking and land ownership:

Type of Design Standard	**Design Requirement**	
	Peak Hour Design Volume (# of vehicles)	
	Fewer than 500	500 or more
Right- of Way Width	50'	66'
Minimum Pavement Width	20'	24'
Shoulder Width	3'	6'
Maximum Street Slope	10%	10%
	OR	
	12% for a maximum of 1000'	12% for a maximum of 1000'
	OR	
	15% for a maximum of 500'	15% for a maximum of 500'

(6) All cul-de-sacs in excess of 800 feet in length shall terminate in a turnaround having a minimum outside radius of fifty (50) feet and a travel lane width of twenty (20) feet, unless otherwise required for emergency vehicle access.

§611. Pedestrian Access

The Development Review Board may review right-of-way within the subdivision to facilitate pedestrian circulation and to ensure public access through the property to adjoining properties or uses.

§612. Water and Sewage

(1) Water supply systems – both individual and community – shall be designed and built to meet all applicable state and local requirements. The Development Review Board may require evidence that adequate water supply is available prior to granting Final Subdivision Plan Approval.

(2) All disposal of sewage shall meet all state and local regulations. Where connection to a pre-existing community sewage disposal system is proposed, the subdivider shall provide evidence as to the adequacy and availability of such a system.

§613. Utilities

The Development Review Board may require the underground installation of power and telephone lines wherever it is appropriate to maintain and protect the visual character of an area, or to protect property values of adjacent properties. Where inclusion of utilities in existing rights-of-way is impractical, unobstructed easements twenty (20) feet in width shall be provided with satisfactory access to roadways.

§614. Drainage and Erosion Control

(1) The Development Review Board may require culverts, rip rap sedimentation ponds and basins, drainage swales, hay bale dikes, seeding, mulching, and other forms of temporary and permanent drainage and erosion control techniques as may be necessary to control surface runoff. Factors to be considered in determining the types of controls necessary shall include vegetation and ground cover, slopes, soil types, percentage of land covered by impermeable surfaces, distances to streams, and impact on adjacent properties.

(2) The Development Review Board may require the phasing of construction to reduce the amount of land disturbed by construction at any one time, and may stipulate deadlines for the installation of erosion control, or soil stabilization measures.

(3) Culverts shall have, at a minimum, a 25-year storm rating.

(4) The Development Review Board may request determination of the effect of the subdivision on the existing downstream drainage capacity outside of the area of the subdivision. Where it is determined that the increased runoff will overload the capacity of the downstream system, the Development Review Board may request the subdivider to delay construction until capacities are adequate and may request the subdivider to assist in the capacity improvements deemed necessary.

§615. Fire Protection

(1) The commission may require for the provision of fire ponds or other forms of water storage, standpipes, hydrants, and access and turnaround facilities for firefighting equipment and other facilities necessary for adequate fire protection.

(2) Fire ponds shall be designed to provide three (3) times the minimum water storage capacity necessary to satisfy state, local, or fire insurance underwriters' requirements.

(3) Fire pond design shall be based on an engineer's analysis of soil permeability, bearing capacity, effect of slope and runoff, emergency spillway requirements, and maintenance of adequate stream flow.

(4) Fire truck access shall be provided to within a minimum distance of 100 feet of all structures, and a fire truck turnaround having a minimum outside radius of 50 feet may be required.

§616. Signs

The Development Review Board may place more restrictive conditions regarding the size, height, and location of signs than those specified in the §304 in this bylaw to ensure the safety and efficiency of pedestrian and vehicular circulation.

§617. Provision of Buffer Areas

(1) The Development Review Board may require greater setbacks from property boundaries than specified in this bylaw in order to create buffer zones between adjoining uses and public thoroughfares. Conditions for requiring buffer areas shall include lack of dense vegetation; proximity to scenic highways; heightened visibility

due to planned unit development and cluster subdivisions; incompatibility of adjacent uses.

(2) The Development Review Board may request that the subdivider coordinate buffer areas on adjoining parcels in order to provide a continuous system of greenbelts.

§618. Landscaping and Site Preservation

(1) The Development Review Board may require landscaping for the purposes of screening and improvements of the visual appearance of manmade improvements. Landscaping plans shall indicate the size, species, and location of all plants and ground cover.

(2) Land shall be subdivided and improved in reasonable conformity to existing topography in order to minimize grading and to retain the natural vegetative cover.

§619. Disclosure of Subsequent Development Plans

Whenever a subdivider submits a proposal for development on only a portion of a contiguous parcel, the Development Review Board may require a general indication of the intended uses of the remaining portion of land. Such an indication should include access, type of use, and phasing.

§620. Waiver Authority

(1) In accordance with §4418(2)(A) of the Act, the Development Review Board may waive or modify subdivision application and/or review standards set forth in this bylaw pertaining to a particular application, subject to appropriate conditions, which in its judgment:

A. are not necessary to protect public health, safety, and general welfare; or

B. are inappropriate because of an inadequacy or lack of connecting facilities adjacent to or within proximity of the subdivision.

(2) The request for a waiver shall be submitted by the subdivider in writing. It shall be the responsibility of the subdivider to provide sufficient information to justify any waiver or modification to be granted by the Development Review Board.

(3) In granting waivers, the Development Review Board shall require such conditions that will, in its judgment, substantially meet the objectives of the requirements so waiver or varied. No such waiver may be granted if it would have the effect of nullifying the intent and purpose of the Burke Town Plan, or vary other provisions of these regulations, or other municipal ordinances or regulations in effect.

§621. Public Acceptance of Streets and Open Spaces

(1) Nothing in this bylaw shall be construed to constitute acceptable by the Town of Burke of any road, easement, utility, park, recreation area, or other open space shown on the Final Subdivision Plan.

(2) The Development Review Board may require the filing of a written agreement, between the subdivider and the Town of Burke Selectboard, which addresses future deed and title dedication and the provision for the cost of grading, development, equipment, and maintenance of any such improvements.

§622. Compliance With Other Provisions of This Bylaw

Nothing in these subdivision regulations shall be so construed as to supersede the conditions and criteria for permit approval set forth in other bylaws or ordinances currently in effect. This includes, but is not limited to conditional use criteria, performance standards for industrial uses, and requirements for development within the Scenic Conservation Overlay.

Article 7. Planned Unit Development (PUD)

§701. Purpose

(1) Planned unit development, as authorized under 24 V.S.A. §4417 and defined under Article 10, allows flexibility in the application of the town's zoning regulations in order to promote development that better conforms to the Burke Town Plan. Specifically, the purposes of planned unit development under this bylaw are to:

> Planned Unit Developments (PUDs) are broadly defined under state statute. They can incorporate a mix of uses, or they can be exclusively residential. For all intents and purposes, residential clusters and mixed use developments are considered to be PUDs under this bylaw.

A. Carry out the purposes of the Burke Town Plan, as set forth in the plan's stated goals, policies and objectives;

B. Allow for a more desirable pattern and density of development than would be possible through the strict application of bylaw standards;

C. Promote the creative design and layout of development and the efficient use of land and infrastructure;

D. Cluster development to avoid the fragmentation of productive forest, farmland and wildlife habitat, and to enhance Burke's rural character as described in the Burke Town Plan;

E. Promote energy-efficient development and long-term access to renewable energy resources;

F. 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 Burke Town Plan;

G. Allow for compact, village-scale mixed-use development within growth centers designated in the Burke Town Plan; and

H. Provide for a diversity of housing types, including affordable housing in appropriate locations.

(2) To achieve these objectives, the Development Review Board is hereby empowered to modify zoning district density and dimensional requirements under this bylaw concurrently with conditional use approval (under §807) or final subdivision approval (under §605). Allowed uses under this bylaw may not be modified.

§702. Applicability

(1) All applications for planned unit development shall be reviewed by the Development Review Board to determine if planned unit development meets the objectives outlined in §701, as well as development standards in applicable zoning districts, including overlay districts.

A. A proposed planned unit development that requires a subdivision of land shall be reviewed as a major subdivision using the procedures and standards set forth for a major subdivision as described in Article 6 of this bylaw, and the standards under this Article. PUD approval will be issued concurrently with final subdivision and plat approval.

B. A proposed planned unit development that requires no subdivision of land shall be reviewed as a conditional use, using the procedures and standards set forth for conditional uses as described in §807 of this bylaw, and the standards under this article. PUD approval will be issued concurrently with conditional use approval.

(2) Pursuant to the terms of 24 V.S.A. § 4417, the Development Review Board may authorize densities and intensities of development that do not correspond with or are not otherwise expressly permitted by this bylaw for the area in which a planned unit development is located. In furtherance thereof, the Development Review Board shall have the discretion to modify specific standards set forth in this bylaw when such modification would promote greater conformance with the purpose and intent of these bylaws, as set forth in §102, and the objectives for planned unit developments under §601, including without limitation:

A. Lot size, district setback and coverage requirements and maximum building heights.

B. Limits on the density of development allowed on portions of the site to be developed.

C. Setback and screening to ensure compatibility with the character of the area, maintain privacy of adjoining properties, and avoid degradation of the area's scenic quality.

D. Parking, including modification of the number and location of spaces required.

E. The location and physical characteristics of the proposed planned unit development.

F. The location, design, type, and use of the lots and structures proposed.

G. The amount, location, and proposed use of open space.

(3) All other applicable standards under this bylaw that are not modified by the Development Review Board and other municipal ordinances in effect shall apply.

(4) To encourage integrated master planning, a planned unit development may incorporate multiple adjoining properties in common ownership, or in separate ownership if a joint PUD application is filed by all participating property owners. One contact person shall be identified on a joint application to coordinate development review proceedings with participating property owners, and to facilitate communication with the Town.

(5) PUD subdivision approval shall not exempt subsequent development from site plan or conditional use review as applicable under these regulations. Site plan or conditional use review, however may be conducted concurrently with final subdivision and planned unit development review.

§703. PUD Applications

(1) In addition to the application information normally required for review, the application for a PUD shall also include, as applicable to the proposed development:

A. A statement setting forth the nature of all proposed modifications, changes, or supplement to the existing zoning bylaws including, but not limited to, proposed increases in the allowed density of development, and requested changes or waivers to district dimensional standards.

B. Density calculations used to determine the overall density of development within the PUD and requested density bonuses under §707 .

C. A Sketch Plan, indicating the locations and types of structures and uses to be included in the planned unit development, including building footprints or envelopes, use area allocations, building elevations and exterior design specifications.

D. The location, extent and intended use of open space, proposed resource conservation management plans or strategies, and conservation easements, deed restrictions, covenants or similar legal protections.

E. For projects that include affordable housing and senior housing as defined under Article 10, associated administration and legal agreements shall ensure their availability to qualified households for a minimum of 15 years from the date of substantial completion.

F. Proposed measures to mitigate or offset the adverse impacts of concentrated higher density or clustered development on identified natural, cultural and scenic resources and properties within and in the immediate vicinity of the planned development, and community facilities and services serving the development.

(2) **Master Plan.** A master plan must be submitted for any planned unit development that incorporates multiple properties under separate ownership, or is to be developed in phases. At minimum the master plan shall include site or subdivision plans and narratives that generally depict and describe for each portion or phase of the proposed development:

A. The locations and types of existing and planned structures and uses;

B. The locations of existing and planned connecting roads, parking areas, and sidewalks or walking paths;

C. The locations of existing and planned utility corridors and shared or community water, wastewater, waste management and group net-metered renewable energy systems;

D. The location, extent and intended use of designated open space areas;

E. The overall level or intensity of development at build-out, including the projected number of households, residents or occupants, trip generation rates, and the maximum design capacity of buildings and infrastructure, including roads and parking areas;

F. A schedule for the phasing of development in relation to the available capacity of existing and planned infrastructure and facilities intended to serve the proposed development;

G. Evidence of established and proposed ownership patterns and interests in the coordinated, integrated and cohesive development of the proposed project.

(3) **Preliminary Plan**. If the PUD is being reviewed as a major subdivision or if the developer is proposing a change to the approved Sketch Plan, a Preliminary Plan will be required. A Preliminary Plan may only deviate from the layout originally shown in the Sketch Plan, provided that:

A. The overall density of the planned unit development remains unchanged;

B. The planned unit development does not incorporate any uses not previously identified in the PUD Sketch Plan;

C. The boundaries of the parcel containing the planned unit development remain unchanged.

(4) **Performance Bond**. Development Review Board may require from the applicant, for the benefit of the Town, a performance bond or other acceptable surety as per §606 in an amount sufficient to cover the full cost of constructing any public improvements that the Development Review Board may require in approving the project, such performance bond to be submitted prior to commencement of the approved plan.

§704. Density Calculations.

Total allowable building lots, or commercial uses within a planned unit development shall not exceed the number which would be permitted if, in the Development Review Board's judgment, the land were subdivided and developed into lots in conformance with zoning district regulations, unless a density bonus is granted under §707 below.

(1) Calculations of the allowed overall density of development shall be based on total parcel acreage, excluding existing and proposed road rights-of-way, and lot size and density requirements for the zoning district(s) in which the development is located. This calculation of the site's overall "yield" shall be used to determine the number and type of building lots or units that may be clustered at higher densities on those portions of the site or parcel that are most physically suited for development, in conformance

with this bylaw. For this purpose, accessory dwelling units, as described in §401, shall not be included in density calculations.

(2) For planned unit development on two or more adjoining parcels, the allowed overall density shall be calculated as the sum of the allowed density for each parcel; however building lots or units may be transferred from one parcel to developable areas on another parcel.

(3) For a planned unit development within two or more zoning districts, the allowed overall density of development shall be the sum of the allowed density calculated for each area of the planned unit development within a particular zoning district, using the density and dimensional standards for that district. Density (building lots or units) may then be transferred from those portions of the site or parcel(s) within the lower density zoning district(s) to developable portions of the site or parcel(s) within the higher density zoning district(s).

§705. General Standards

(1) **Town Plan**. The planned unit development must conform to and be consistent with applicable goals, policies and objectives of the Burke Town Plan.

(2) **Layout and Design**. In approving a proposal for a planned unit development, the Development Review Board must find that the proposal meets the following standards, with respect to both its internal design and its relationship to its surroundings. The planned unit development shall provide for unified, logical and functionally integrated site development that:

A. Incorporates and preserves existing site features in site or subdivision layout and design, including existing topography, drainage and vegetative cover (e.g., shade trees, groundcover, riparian buffers), particularly as necessary to minimize surface runoff and soil erosion, and the visual impacts higher density development;

B. Establishes or reinforces planned patterns and densities of development for the zoning district(s) in which it is located, including the incorporation of conservation areas under §609 as designated open space.;

C. Concentrates or clusters development on the most physically developable portion the site(s), in conformance with this bylaw; and excludes from development areas of very steep slope (greater than or equal to 25%), designated flood hazard areas, and surface waters, wetlands and associated buffers;

D. Features consistent design and an overall high quality of construction and attractiveness;

E. Maximizes the privacy of individual residential units included in higher density residential and mixed use development (e.g., through building design, landscaping, buffering, or architectural screening); and

F. Incorporates a pedestrian-friendly network of interconnecting walkways, trails and bikeways that provide alternatives to motor vehicle use,

(3) **Traffic**. The planned unit development shall not cause, or contribute to the degeneration of the Level of Service (LOS) on public highways and intersections below LOS C, or their current LOS, if lower than a C, unless the Development Review Board finds that, for a particular project, a lower LOS is appropriate to the setting, justified to avoid or minimize the adverse impacts of related traffic improvements on adjoining properties and resources, and the lower LOS does not jeopardize public safety.

(4) **Phasing**. The planned unit development shall provide for phased growth, if necessary, to prevent overburdening the existing and planned capacity of community facilities and services.

§706. Open Space Standards

(1) **Designation**. All planned unit development shall incorporate designated open space areas, as depicted on the site plan or subdivision plat, that are appropriate to the type, location and purpose of the planned development. Designated open space may include one or more common greens, playgrounds, pocket parks, community gardens or other, more formal open space areas for use by the occupants or the general public as designated open space.

A planned unit development in the Scenic and Conservation Overlay District shall require a minimum of 60% of the gross area to be reserved as designated open space.

(2) **Characteristics.** Designated open space shall be of a character, size, extent, and shape suitable for its intended purpose or use. Designated open space areas shall not include building lots, road rights-of-way, access or parking areas, but may include other commonly held land (e.g., community water supply and wastewater system areas) only if intended open space uses can also be functionally supported.

(3) **Ownership**. Designated open space areas may be held in common or single ownership to include:

A. Ownership by non-profit community association, corporation, or cooperative organized under the laws of Vermont (e.g., a condominium or homeowners' association), that is responsible for maintenance of all open space, as well as roadways, and other common elements of the development.

B. Dedication of designated open space (e.g. a park, playground, or conserved parcel), through conveyance of land or interests in land, to a public or nonprofit entity acceptable to the Development Review Board, such as the Town of Burke, a state or federal agency, or a land trust.

(4) **Management**. Designated open space areas shall be managed by the owner for its intended purpose and use, as approved by the Development Review Board. The Board may require the submission of a long-term management plan for the protection and sustainable management of conserved resources.

(5) **Protection.** No future subdivision or development of designated open space, as approved by the Development Review Board shall be allowed, except as incidental to its intended use.

A. Designated open space areas shall be clearly identified on the site plan or subdivision plat recorded in the town land records as "protected open space," with an accompanying notation that no further subdivision or development is allowed.

B. A planned unit development shall carry with it provisions, whether by deed restrictions, restrictive covenants, easements, or other appropriate legal means as approved by the Development Review Board, to ensure the permanent retention of designated open space.

§707. Density Bonuses

(1) The Development Review Board, at the request of the applicant, may grant one or more density bonuses as an incentive to meet the following objectives for planned mixed use or clustered development. Density bonuses, as applied in combination, shall not increase the overall density of development by more than 100 percent, based on "yield" calculations under §704.

A. **Affordable Housing**. A density bonus of up to 50% may be considered for planned unit development that meets the definition of affordable housing development under Article 10, as determined from current federal housing and income data, and secured by associated administration and legal agreements to ensure their availability to qualified households for a minimum of 15 years from the date a Certificate of Occupancy is issued.

B. **Public Dedication**. A density bonus of up to 50% may be considered for planned unit development that includes the permanent dedication of land, interests in land or facilities for public access or use (e.g., trail, park, playground, conservation area), as accepted by the Town of Burke, the state, a federal agency, or a qualified nonprofit organization acceptable to the Development Review Board (e.g., a trails association or land trust).

C. **Open Space**. A density bonus of up to 50% may be considered accordingly:

i. for a planned unit development outside of the Scenic and Conservation Overlay that designates at least 50% of the gross area as open space;

ii. For a planned unit development in the Scenic and Conservation Overlay that designates at least 80% of the gross area as open space.

D. **Building Design**. A density bonus of up to 50% may be considered for planned unit development that incorporates one or more of the following design features, as certified by a professional architect or engineer licensed by the state:

i. Energy efficient building design that exceeds minimum state energy efficiency standards for residential and commercial buildings.

ii. Residential development in which single family units do not exceed 1,500 square feet, and two- and multi-family dwellings do not exceed 1,200 square feet.

iii. Universal, barrier free architectural design that creates buildings and environments that are inherently accessible to the able-bodied, elderly and physically disabled without additional adaptation or specialization, beyond minimum Americans with Disabilities Act guidelines.

(2) In order for the Development Review Board to grant one or more density bonuses, the applicant must:

A. Clearly document that the developable portion of the parcel(s) and supporting roads, infrastructure, utilities and services can accommodate higher densities of development; and

B. Incorporate measures in development design necessary to mitigate the adverse impacts of higher density development on designated open space areas and conserved resources, adjoining properties, and the character of the area affected by the development.

Article 8. Administration and Enforcement

§801. Administrative Officer

(1) The Administrative Officer shall be appointed by the Selectboard, following the nomination by the Planning Commission, to administer the zoning bylaws, as provided for in 24 V.S.A. §4448. The Selectboard may remove an Administrative Officer for cause at any time after consultation with the Planning Commission. The Administrative Officer shall literally administer and strictly enforce the provisions of this bylaw, and in doing so shall inspect development, maintain records, and perform other related tasks as is necessary and appropriate. All development review is initiated with the Administrative Officer.

(2) The Administrative Officer is responsible for posting, on the applicant's property, within view of the public right-of-way, any permit issued by the Administrative Officer or any development application awaiting a hearing by the Development Review Board. Such posting shall occur within 24 hours of any permit issued by the Administrative Officer; or in the case of any scheduled hearing of the Development Review Board, posting shall adhere to the time-frames specified in §912 with subsequent information on approval or denial added within 24 hours of the Board's decision.

(3) An acting Administrative Officer may be appointed by the Selectboard, from nominations submitted by the Planning Commission, who shall have the same duties and responsibilities of the Administrative Officer in the Administrative Officer's absence, or if the Administrative Officer has a conflict of interest. In the event an acting Administrative Officer is appointed, the Selectboard shall establish clear policies regarding the authority of the Administrative Officer relative to the authority of the acting Administrative Officer.

§802. Planning Commission

(1) The Planning Commission shall consist of not less than three (3) nor more than nine (9) members appointed by the Burke Selectboard in accordance with 24 V.S.A. §§4321-4323. At least a majority of members shall be residents of the municipality. Any member of the Planning Commission may be removed at any time by a unanimous vote of the Selectboard.

(2) The Planning Commission shall adopt rules of procedure and rules of ethics with respect to conflicts of interest to guide its official conduct, as required under 24 V.S.A. §4461(a) and Vermont's Open Meeting Law.

(3) The Planning Commission shall have the following duties regarding this bylaw, in accordance with 24 V.S.A. §4441:

A. To prepare proposed amendments to this bylaw, and consider proposed amendments submitted by others, including amendments supported by a petition signed by at least five percent of the voters of the Town of Burke.

B. To prepare and approve written reports on any proposed amendment to this bylaw; and

C. To hold one or more warned public hearings on proposed amendments to these regulations, prior to submission of a proposed amendment and written report to the Selectboard.

§803. Development Review Board

(1) The Development Review Board shall consist of not fewer than five (5) nor more than nine (9) members appointed by the Selectboard for specified terms in accordance with 24 V.S.A. [§4460(b) and (c)]. The Selectboard also may appoint alternates, for specified terms, to serve on the Development Review Board in situations when one or more members of the Board are disqualified or are otherwise unable to serve. Any member of the Development Review Board may be removed for cause by the Selectboard upon written charges and after public hearing.

(2) The Development Review Board shall adopt rules of procedure and rules of ethics with respect to conflicts of interest to guide its official conduct, as required under 24 V.S.A. §4461(a) and Vermont's Open Meeting Law.

(3) The Development Review Board shall have all powers and duties as set forth in 24 V.S.A. Chapter 117 to administer the provisions of these regulations, including but not limited to the power to hear and act upon:

A. Appeals from any decision, act, or failure to act by the Administrative Officer, as described in §810 of this bylaw, and any associated variance requests, as described in §811 of this bylaw;

B. Applications for site plan approval, as described in §806 of this bylaw;

C. Applications for conditional use approval, as described in §807 of this bylaw;

D. Applications for rights-of-way or easements for development lacking frontage, as described in §303 of this bylaw;

E. Applications for subdivision approval, as described in Article 6 of this bylaw;

F. Applications for conditional uses with flood hazard areas, as described in Article 5 of this bylaw; and

G. Applications for planned unit developments, as described in Article 7 of this bylaw.

§804. Administrative Review

(1) No land development as defined in 24 V.S.A. §4303(10), except for those exempted in §205 of this bylaw, may be commenced without a permit issued by the Administrative Officer. No zoning permit may be issued by the Administrative Officer unless the proposed development complies with all applicable sections of this bylaw, and all applicable approvals required by the Development Review Board have been granted. All development review is initiated with the Administrative Officer, through the administrative review process.

(2) An application for a zoning permit shall be filed with the Administrative Officer on forms provided by the Town of Burke. All required application fees for all relevant development review processes, as set by the Town of Burke Selectboard, shall be submitted with the application as well. The application shall include a sketch plan, no smaller than 8.5" x 11", drawn to scale, that depicts at a minimum:

A. Dimensions of the lot, including existing property boundaries;

B. Location, footprint, and height of existing and proposed structures or additions;

C. Location of existing and proposed accesses (curb cuts), driveways and parking areas;

D. Location of existing and proposed easements and rights-of-way;

E. Existing and required setbacks from property boundaries, road right-of-way, surface waters, and wetlands;

F. Location of existing and proposed water and wastewater systems;

G. Proposed erosion and sedimentation control measures to be undertaken; and

H. Other information, as required by the Administrative Officer to determine conformance with these regulations.

(3) The application shall include names and addresses of all abutting property owners along with the completed zoning permit.

(4) Development requiring approval(s) from the Development Review Board prior to the issuance of a zoning permit may require additional information. This information, as well as fees required for such approvals, shall be submitted concurrently with the application for a zoning permit. An application that is not accompanied by all the required fees will not be subject to development review until such fees have been paid.

(5) Within thirty (30) days of receipt of a complete application, including all application materials and fees, the Administrative Officer shall either issue or deny a zoning permit in writing, or refer the application to the Development Review Board for consideration. If the Administrative Officer fails to act within the 30-day period, a permit shall be deemed issued on the 31st day.

(6) Zoning permits and letters of denial shall include a statement of the time within which appeals may be taken under §810 of this bylaw; and shall require posting a notice of permit, on a form provided by the Town of Burke. The Administrative Officer shall post this notice of permit within view from the public right-of-way nearest the subject property until the time for appeal has expired.

(7) Within three (3) days of the date of issuance, the Administrative Officer shall deliver a copy of the zoning permit to the Town of Burke, and shall post a copy of the permit in the Town of Burke municipal offices for a period of fifteen (15) days from the date of issuance.

(8) No zoning permit shall take effect until the time for appeal under §810 of this bylaw has passed, or in the event that a notice of appeal is properly filed, until final adjudication of the appeal.

(9) Zoning permits shall remain in effect for one year from the date of issuance. All development authorized by the permit shall be substantially commenced within this one-year period, or reapplication shall be required to continue development.

(10) Within 30 days of the issuance of a zoning permit, the Administrative Officer shall deliver the original, a legible copy, or a notice of the permit to the Burke Town Clerk for recording in the Town of Burke land records.

§805. Scheduled Site Inspections

(1) One or more of the following scheduled site inspections may be required in association with the issuance of a zoning permit by the Administrative Officer under §804 to ensure that development conforms to the permit requirements and these regulations:

A. Following the staking or flagging of building footprints, and prior to the laying of a foundation or footings;

B. Following the laying of the foundation or footings; or

C. Following the substantial completion of the project, prior to the issuance of a Certificate of Occupancy.

(2) One or more site inspections may be required as a condition of subdivision approval, to ensure that the installation of infrastructure conforms to the conditions and specification of subdivision approval and other applicable municipal regulations.

(3) The Administrative Officer shall notify the applicant that a site inspection is to take place and shall complete the inspection within five days of such notification. No further work shall be initiated until the site inspection has been completed.

(4) The Administrative Officer may initiate enforcement action under §816 upon determination that permit or approval conditions have been violated.

§806. Site Plan Review

(1) The purpose of site plan review is to ensure that the site layout and design of permitted uses are safe, functional, and of a scale that is compatible with their settings and consistent with these bylaws.

(2) No zoning permit shall be issued by the Administrative Officer for any permitted use or structure except for those authorized within this bylaw until the Development Review Board grants site plan approval after public notice and hearing and in accordance with 24 V.S.A. §4416. In reviewing site plans, the Development Review Board may impose appropriate safeguards with respect to the following standards and conditions:

A. Site layout and design: Site layout and design shall incorporate and/or protect significant site features – both natural and historic – including but not limited to: existing vegetation; surface waters and wetlands; historic sites and structures; prominent ridgelines, hilltops, and slopes of 25% or greater.

B. Parking, loading, and service areas: The applicant must be able to reasonably demonstrate that on-site parking, loading, and service areas are adequate, functional, and safe and pose minimal off-site impacts. Shared parking areas to serve multiple properties are encouraged. Parking, loading, and service areas shall be located to the side or rear of the building; parking within the front setback area is prohibited. Conditions may be imposed with regard to the extent, location, landscaping, screening, paving, and curbing of parking, loading and service areas.

C. Access: Provisions shall be made for adequate and safe pedestrian and vehicular access to and from the site. The Development Review may impose conditions, including but not limited to: the restriction of vehicular access to a side or secondary road; the reduction, consolidation, or elimination of curb cuts; or, if feasible, shared access with adjoining properties.

D. Circulation: Adequate space for maneuvering in and out of parking, loading, and service areas, and shall be located so as not to interfere with pedestrian and vehicular circulation to, from, and within the site.

E. Landscaping and screening: Site plans shall incorporate landscaping and screening which preserves and incorporates existing vegetation, is suited to existing site conditions, enhances development and features unique to the site, and serves to buffer or screen incompatible features from neighboring properties or public rights-of-way.

F. Stormwater management and erosion control: Site plans shall indicate what measures will be taken to minimize soil disturbance during and after construction. The Development Review Board may limit the size and extent of any paved areas to minimize runoff and erosion from the site.

G. Snow removal: Applicants shall demonstrate how snow removal will not impede pedestrian and vehicular circulation or access to the site, or pollute nearby bodies of water.

H. Signage, according to §305 of this bylaw.

I. Lighting, according to §306 of this bylaw.

J. The protection and utilization of renewable energy resources.

K. Hours of operation.

L. Anticipated noise levels.

M. Placement of dumpsters.

§807. Conditional Use Review

(1) After public notice and hearing, the Development Review Board shall determine, using all of the standards outlined in §806, if a proposed conditional use has the potential to have an undue adverse effect on the following:

A. The capacity of existing or planned community facilities;

B. The character of the area affected; as defined by purpose or purposes of the zoning district within which the project is located, and specifically stated policies of the Burke Town Plan;

C. Traffic on roads and highways in the vicinity;

D. Bylaws in effect with special reference to this zoning bylaw, and;

E. Utilization of renewable energy resources.

2) In permitting a conditional use, the Development Review Board may impose, in addition to the regulations and standards expressly specified by this bylaw, other reasonable conditions found necessary to protect the best interests of the surrounding property, the neighborhood, or the Town as a whole. These conditions may include the following:

A. Increasing the required lot size or yard dimensions in order to protect adjacent properties;

B. Limiting the coverage or height of buildings because of obstruction of view or reduction of light or air to nearby properties, or scale of surrounding development;

C. Controlling the location and number of vehicular access points to the property;

D. Increasing road width;

E. Increasing the number of off-street parking or loading spaces required.

Site Plan Review and Conditional Use Review

Site Plan Review is a tool used by the Development Review Board to examine all proposed permitted uses in Burke, except for single- and two-unit dwellings. Although permitted uses may be established by right, they still require a certain level of scrutiny to ensure that 1) the proposed use meets the development standards in Burke's zoning bylaw, and 2) the applicant takes all possible measures to mitigate any potential adverse effects. The Development Review Board makes this determination by applying the criteria listed in §806 to evaluate the internal aspects of the use, such as signage, lighting, and landscaping.

Conditional Use Review (for conditional uses) evaluates proposed uses that may or may not be appropriate for any given site in a zoning district. Using the same criteria listed in §806 and applying the standards set forth in §807, the Development Review Board will evaluate the broader aspects of a proposed use, such as whether or not the use will have undue adverse effect on the character of the area or the capacity of community facilities.

F. Limiting the number, location, and size of signs.

G. Requiring suitable landscaping where necessary to reduce noise and glare and to maintain the property of a character in keeping with the surrounding area.

H. Specifying a specific time limit or phased schedule for construction, alteration, or enlargement of a structure to house a conditional use.

I. Requiring that any future enlargement or alteration of the use be reviewed by the Development Review Board to permit the specifying of new conditions.

J. Requiring the installation, operation, and maintenance of devices or methods that, in the opinion of the Development Review Board, may prevent or reduce fumes, gas, dust, smoke, odor, noise, vibration, or similar nuisance.

K. Modification of the proposed design and/or location of structures and service areas of the proposed conditional use to ensure its compatibility with the area affected.

L. Modifying or restricting hours of operation.

(3) Change of use, expansion or contraction of land area, or expansion of structures for uses which are designated as conditional uses within the district in which they are located, and which are existing therein prior to the effective date of this bylaw, shall conform to all regulations herein.

§808. Traffic Management

(1) In keeping with the Burke Town Plan, land development shall be regulated to maintain operating level of service on the Town's state and town highways at or above level of service "C." This shall be accomplished in a manner that does not adversely affect the scenic beauty or rural character of the Town or its roadway network. This objective may be achieved through mitigating measures, including, but not limited to:

A. Limitation on the frequency of curb cuts;

B. Provision of adequate site distances;

C. Transit;

D. Parking requirements; and

E. Project phasing or reduction in project size.

(2) To establish a proposed land development's potential impact on traffic, and to identify necessary and appropriate mitigating measures, the Development Review Board may require the applicant to conduct or commission a traffic impact study that will identify, at a minimum:

A. A description of the general location of the project;

B. A statement of existing traffic conditions and projected traffic conditions in five (5) years;

C. A statement comparing the operating level of service of the roadway(s) and/or intersection(s) in the Town with and without the proposed project(s) at the opening date of the project and in five (5) years; and

D. A statement of recommendations outlining any adverse traffic impact of the proposed project and necessary improvements to provide an acceptable operating level of service.

(3) When the cumulative impact of two or more concurrent proposed developments is at issue, the applicants of those developments may be required to jointly fund an analysis of the potential cumulative impact.

§809. Independent Technical Review

(1) Pursuant to 24 V.S.A. §4440(d), the Selectboard may establish procedures and standards for requiring an applicant to pay for reasonable costs of an independent technical review of all or portions of an application, as requested by the Development Review Board.

(2) Upon review of an application, the Development Review Board may determine that it needs the assistance of an independent technical consultant or consultants to evaluate all or portions of the application. Upon making such a determination, the Development Review Board may hire independent consultants, the reasonable costs of whose services shall be paid for by the applicant, and in accordance with the procedures and standards established by the Selectboard.

§810. Appeals of Administrative Officer Decisions

(1) Any interested person as defined under 24 V.S.A. §4465 (see inset) 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 Town Clerk, and by filing a copy of the notice with the Administrative Officer. A notice of appeal filed under this section shall be in writing and include the following information:

A. The name and address of the appellant,

B. A brief description of the property with respect to which the appeal is taken,

C. A reference to applicable provisions of these regulations,

D. The relief requested by the appellant, including any request for a variance from one or more provisions of these regulations, and

E. The alleged grounds why such relief is believed proper under the circumstances.

The definition of an interested person under 24 V.S.A. §4465(b) includes the following:

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

(2) The Development Review Board shall hold a public hearing on a notice of appeal within 60 days of its filing, as required in 24 V.S.A. §4468. The Development Review Board shall give public notice of the hearing under §812 of this bylaw, and shall mail a copy of the hearing notice to the appellant not less than 15 days prior to the hearing date.

(3) The Development Review Board may reject an appeal or request for reconsideration without hearing, and render a decision which shall include findings of fact within 10 days of the filing of a notice of appeal, if the Board determines that the issues raised by the appellant have been decided in an earlier

appeal or are based on substantially or materially the same facts presented by or on behalf of the appellant.

(4) All appeal hearings shall be open to the public and shall be conducted in accordance with the Development Review Board's rules of procedures, as required by 24 V.S.A. §4461. Any interested person or body may appear and be heard in person or be represented by an agent or attorney at the hearing. The hearing may be adjourned by the Board from time to time, provided that the date, time, and place of the continuation of the hearing are announced at the hearing.

(5) A decision on appeal shall be rendered within 45 days after the final adjournment of the hearing. The decision shall be sent by certified mail to the appellant within the 45 day period. Copies of the decision shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Administrative Officer and the Municipal Clerk as part of the public records of the municipality, in accordance with §813 of this bylaw. If the Development Review Board fails to issue a decision within this 45-day period, the appeal will be deemed approved and shall be effective on the 46th day.

§811. Variances

The Development Review Board shall hear and decide requests for variances in accordance with 24 V.S.A. §4469(a) and appeal procedures under §810 of this bylaw. In granting a variance, the Development Review Board 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. The Development Review Board may grant a variance and render a decision in favor of the appellant only if all of the following facts are found, and the findings are specified in its written decision:

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

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

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

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

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

§812. Public Hearings

(1) In accordance with 24 V.S.A. §4464, all development review processes conducted by the Development Review Board will be conducted in a public hearing, with notice of hearing given not less than 15 days prior to the date of the public hearing.

(2) Warning of all development review hearings shall be issued accordingly:

A. By publishing the date, place and purpose of the hearing in a local newspaper of general circulation; and

B. By posting 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; and

C. By written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way. This written notice shall include a description of the proposed project, clearly identify how and where additional information may be obtained, and state that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal.

(3) All meetings and hearings of the Planning Commission and the Development Review Board, except for deliberative sessions, shall be open to the public and conducted in accordance with adopted Rules of Procedure and Vermont's Open Meeting Law.

(4) In any public hearing, there shall be an opportunity for each person to attempt to demonstrate interested party status. The Secretary of each respective municipal panel shall keep a record of the name, address, and participation of these persons.

(5) The Development Review Board may recess a hearing on any application or appeal pending the submission of additional information, provided that the next hearing date and place is announced at the hearing.

(6) Any action or decision of the Planning Commission and the Development Review Board shall be taken by the concurrence of a majority of the members.

§813. Decisions

(1) In accordance with 24 V.S.A. §4464(b), the Development Review Board shall issue all decisions within 45 days after the adjournment of the hearing. Failure to issue a decision within the 45-day period shall be deemed approval and shall be effective the 46th day.

(2) All decisions shall be issued in writing and shall separately state findings of fact and conclusions of law. Findings of fact shall explicitly and concisely restate the underlying facts that support the decision, based exclusively on evidence of the record. Conclusions shall be based on the findings of fact. The decision shall also include a statement of the time within which appeals may be taken. The minutes of a meeting may suffice, provided that the factual basis and conclusions relating to the review standards are provided in accordance with these requirements.

(3) In rendering a decision in favor of the applicant, the Development Review Board may attach additional reasonable conditions and safeguards as it deems necessary to implement these regulations and the town plan currently in effect.

(4) All decisions shall be sent by certified mail, within the required 45-day period, to the applicant or the appellant on matters of appeal. Copies of the decision also shall be mailed to every person appearing and having been heard at the hearing, and filed with the Administrative Officer and Clerk as part of the public record of the municipality.

§814. Appeals to Environmental Court

(1) In accordance with 24 V.S.A. §4471, an interested person who has offered oral or written testimony in a hearing of the Development Review Board may appeal a decision within 30 days of such decision, to the Vermont Environmental Court.

(2) The notice of appeal shall be filed by certified mailing, with fees, to the Environmental Court and by mailing a copy to the Administrative Officer of the Town of Burke, who shall supply a list of interested persons (including the applicant, if the applicant is not the appellant), to the appellant within five (5) working days.

(3) 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.

§815. Certificate of Occupancy

(1) It shall be unlawful to use or occupy, in whole or in part, any of the following forms of development until the Administrative Officer has issued a Certificate of Occupancy certifying that such development conforms to any approved permits, plans, specifications, and requirements of these regulations.

A) New structures, permitted after the enactment of this bylaw;

B) Changes of use, permitted after the enactment of this bylaw, which entail alteration to existing structures, in which said structure was vacant during the progress of the work;

C) All structures in the Special Flood Hazard Area or River Corridor.

(2) Notwithstanding §815(1) no Certificate of Occupancy shall be required for residential accessory uses or structures, provided that such uses or structures are located outside of the Special Flood Hazard Area or River Corridor.

(3) Notwithstanding §815(1), the Development Review Board reserves the right to require a Certificate of Occupancy as a condition of approval for other forms of development, including, but not limited to subdivisions of land that require improvement or services related to the development, such as the creation or extension of roads, extension or relocation of utility lines, creation of fire ponds.

(4) At the time the application for a Certificate of Occupancy is submitted, the applicant also shall submit the following:

A) A copy of the septic permit from the State of Vermont, or a letter of determination stating that no such permit is required.

B) A certificate of compliance with residential or commercial building energy codes, or credible evidence that no such compliance is required;

C) Other information, as deemed appropriate by the Development Review Board, such as as-built drawings to scale of roads or utilities.

(5) At the time the application for a Certificate of Occupancy is submitted for development in the Special Flood Hazard Area or River Corridors, the applicant also shall submit the following:

A. A completed Project Review Sheet from the VT ANR Permit Specialist and assurance that all permits identified on the Project Review Sheet have been acquired ;

B. Demonstration from a qualified professional that any fuel storage tanks have been properly flood proofed and anchored; all utilities have been elevated or flood proofed;

C. For new or substantially improved structures, not including accessory structures, a FEMA Elevation Certificate with as-built structure elevations completed by a registered land surveyor or professional engineer;

D. For non-residential dry flood proofed structures, an as-built FEMA Flood proofing Certificate completed by a professional engineer or licensed architect;

E. For accessory structures or enclosed areas below base flood elevation, demonstration of an adequate number and placement of properly installed and functioning flood openings.

(6) Within 30 days of receipt of the application for a Certificate of Occupancy, the Administrative Officer may inspect the premises to ensure that all work has been completed in conformance with the zoning permit and associated approvals, including all applicable permit conditions. If the Administrative Officer fails to either grant or deny the Certificate of Occupancy within 30 days of the submission of an application, the certificate shall be deemed issued on the 31st day.

§816. Penalties

(1) All violations shall be pursued in accordance with 24 V.S.A. §§4451 and 4452. The Administrative Officer shall act on behalf of the Town of Burke to impose a fine of up to, but not more than, $100 for each violation. Each day that a violation continues shall constitute a separate offense. All fines imposed and collected shall be paid over to the Town of Burke.

(2) The Administrative Officer shall not bring any action against an alleged violation unless the alleged offender has had at least seven (7) days' notice by certified mail that such a violation exists. The notice of violation also shall be recorded in the land records of the Town of Burke. The notice of violation shall state that:

A. A violation exists,

B. The alleged offender has had an opportunity to cure the violation within the seven-day notice period, and

C. The alleged offender will not be entitled to an additional warning notice.

(3) Within 30 days of the issuance of a notice of violation, the Administrative Officer shall deliver either the original or a legible copy to the Burke Town Clerk for recording in the Town of Burke land records.

(4) The Administrative Officer may bring action without notice and opportunity to cure if the alleged offender repeats the violation of the regulations after the seven-day notice period and within the next succeeding 12 months.

(5) In accordance with 24 V.S.A. §4454(a), the Administrative Officer may take action against an alleged violation within 15 years from the date the violation first occurred, and not thereafter. The burden of proving the date the alleged violation first occurred shall be on the alleged offender.

(6) In accordance with 24 V.S.A. §4454(b) the Administrative Officer shall not take action against an alleged violation unless the permit or notice of the permit has been recorded in the land records of the Town of Burke.

Article 9. Amendments, Interpretation, Effective Date, Separability

§901. Amendments

This bylaw may be amended according to the requirements and procedures established in 24 V.S.A. §§4441 and 4442.

§902. Interpretation

In their interpretation and application, the provisions of these regulations shall be held to be minimum requirements adopted for the promotion of the public health, safety, comfort, convenience, and general welfare.

Except for 24 V.S.A. §4413(c) and where in this bylaw it is specifically provided to the contrary, it is not intended by this bylaw to repeal, annul, or in any way impair any regulations or permits previously adopted or issued, provided however, that, where these regulations impose a greater restriction upon use of a structure or land than are required by any other statute, rule, regulation, permit, easement or agreement, the provisions of this bylaw shall control.

§903. Effective Date

This bylaw shall take effect in accordance with the procedures contained in 24 V.S.A. §4442.

§904. Separability

The invalidity of any article or section of these regulations shall not invalidate any other article or section thereof.

§905. Repeal

Upon the adoption of this bylaw, the former Town of Burke Zoning Bylaw, adopted May 6, 2001, is hereby declared repealed and shall have no further force or effect.

Article 10. Definitions

The word person includes a firm, association, partnership, trust, company, or corporation, as well as an individual.

The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.

The word shall is mandatory, the word may is permissive.

Acre: 43,560 square feet.

Accessory Structure: A structure which is 1) detached from and clearly incidental and subordinate to the principal use of or structure on a lot, 2) located on the same lot as the principal structure or use, and 3) clearly and customarily related to the principal structure or use. For residential uses, these include, but may not be limited to garages, garden and tool sheds, and playhouses.

Accessory Use: A use or on the same lot with, and of a nature customarily incidental and subordinate to, the principle use or structure.

Adult Education Facility: Any building or part thereof that is designed, constructed, or used for education or instruction on any branch of knowledge outside of the elementary, middle, high school, or college levels, and primarily intended for persons over the age of 18.

Affordable Housing: Housing that is owned or rented by its inhabitants, whose gross annual household income does not exceed 80 percent of the county median income, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including principal, interest, taxes and insurance, or rent, utilities, and condominium association fees, is not more than 30 percent of the household's gross annual income.

Agriculture: The business of cultivating the soil, producing crops and/or raising livestock useful to man, and all other practices outlined in the statutory definition of farming, according to Title 10 §6001(22):

(1) The cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; or

(2) The raising, feeding, or management of livestock, poultry, fish, or bees; or

(3) The operation of greenhouses; or

(4) The production of maple syrup; or

(5) The onsite storage, preparation, and sale of agricultural products principally produced on the farm; or

(6) The on-site production of fuel or power from agricultural products or wastes produced on the farm; or

(7) The raising, feeding, or management of four or more equines owned or boarded by the farmer, including training, showing, and providing, instruction and lessons in riding, training, and the management of equines.

Agricultural Soil: Soils currently classified as either Prime Farmland or Other Additional Farmland of Statewide Importance by the U.S. Department of Agriculture Natural Resource Conservation Service.

Area of Special Flood Hazard*:* See Special Flood Hazard Area.

Art Studio: A place of work for an artist, artisan, or craftsperson, including persons engaged in the application, teaching, or the sale of original works, including but not limited to drawing, vocal or instrumental music, painting, sculpture, woodworking, and writing.

Auto Repair: Any area of land, including structures thereof, which is used or designed to be used for the general repair, rebuilding, or reconditioning of engines, motor vehicles, or trailers.

Auto Service Station: Any area of land, including structures thereon, that is used or designed to be used for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles, including as an accessory use the sale and/or installation of lubricants, tires, batteries, and similar vehicle accessories; vehicle polishing, washing, spraying, or otherwise cleaning, or the sale of snack food, tobacco, drinks, newspapers, and similar convenience goods.

Bakery: An establishment that sells baked goods that are prepared on the premises, and may include a seating area for dining, either within or immediately outside the establishment.

Bar: An establishment in which alcoholic beverages are served, primarily by the drink, and where food or packaged liquors may also be served or sold. Also see TAVERN.

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

Base Flood Elevation (BFE): the height of the base flood, 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 average depth of the base flood, usually in feet, above the ground surface.

Basement: Any area of the building having its floor elevation (below ground level) on all sides.

Bed & Breakfast: A building serving as a dwelling unit which has the capacity to provide overnight accommodations from no more than five (5) bedrooms, as well as a morning meal to transient guests for compensation.

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

Building: A walled and roofed structure, including a gas or liquid storage tank that is principally above ground.

Business/Professional Services: An establishment engaged in rendering administrative support; management or consultation; or service to other business establishments or individuals on a fee or contractual basis, such as advertising and mailing; banking; insurance; building maintenance; employment services; and research, development, and testing.

Campground: A plot of ground upon which two or more campsites are located, established; which may accommodate tents, travel trailers, or yurts; and are maintained for occupancy by camping units of the general public as temporary living quarters for recreation, educational, or vacation purposes.

Campsite: Any plot of ground within a campground intended for exclusive occupancy by a camping unit or camper.

Accessory Campsites: 1-3 campsites that are located, established or temporary; which may accommodate tents, travel trailers, motor homes (not to exceed 25ft in length) or camper vans: and are maintained for occupancy by camping units of the general public as temporary living quarters for recreational, education or vacation purposes**.**

Cemetery: Property used for the interment of the dead.

Certificate of Occupancy: A certification issued by the Administrative Officer upon completion of a project to certify that the proposed use was established in conformance with the zoning bylaws and approved permit plans.

Channel: An area that contains continuously or periodic flowing water that is confined by banks and a streambed.

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

Childhood Education Facility: Any building or part thereof that is designed, constructed, or used for education or instruction, that is licensed by the state and meets the requirements for elementary, middle, or high school education.

Church: A building or structure, or group of buildings or structures, which are maintained and controlled by a religious body organized to sustain public worship.

Cluster Development: A form of land use in which the residential density allowed by a property's zoning remains unchanged, but dwelling units are grouped together rather than distributed on a uniform basis over the property by reducing the lot area required for each dwelling unit and placing the remaining land in common open space.

Commercial Storage Facility: A building or group of buildings containing separate, individual, and private storage spaces of varying sizes available for lease or rent for varying periods of time.

Common plan of development: Where a structure will be refurbished over a period of time. Such work might be planned unit by unit.

Community Center: A building that is owned and operated by a public or nonprofit group or agency, and is used for recreational, social, educational, and cultural activities.

Community Sewage Disposal System: Any sewage disposal system that disposes of waste water created by two (2) or more residential, commercial, industrial, or institutional sources.

Community Water System: Any water system that supplies water for two (2) or more residential, commercial, industrial, or industrial uses.

Construction Sign: A temporary sign erected on the premises where construction is taking place, during the period of such construction, indicated the names of the architects, engineers, landscape architects, contractors, or similar artisans, and the owners, financial supports, sponsors, and similar individuals or firms having a role or interest with respect to the structure or project.

Convention Facility: A building or portion thereof designed to accommodate 100 people or more in assembly.

Critical facility: - Includes police stations, fire and rescue facilities, hospitals, shelters, schools, nursing homes, water supply and waste treatment facilities, and other structures the community identifies as essential to the health and welfare of the population and that are especially important following a disaster.

Cul de Sac: A street intersecting another street at one end and terminating at the other end by some form of vehicular turnaround.

Cultural Facility: A museum, theater, concert hall, or other establishment offering ongoing programs, performances, or exhibits of cultural, educational, historical, or scientific interest, excluding movie theaters.

Curb Cut: A defined area of ingress and/or egress between a property and an abutting road right-of-way.

Daycare Center: An establishment where the owner or operator is to be licensed or registered by the State of Vermont for child care, operated as a business on a continual basis, to provide care, protection, supervision and/or education for more than six full-time and four part-time children under the age of 16 outside of their homes for periods of less than 14 hours per day by a person other than a child's own parent, guardian or relative. For the purposes of this bylaw, "Day Care Center" also means an establishment operated as a business on a continual basis, to provide care, protection, supervision and/or education for more than six adults with physical, emotional or cognitive impairment outside of the adult's home for periods of less than 24 hours per day by persons other than the adult's parent, guardian or relative.

Dedication: The formal acceptance by the Town of Burke of title to streets, easements, or land to be used for public purposes.

Design Speed (of roadway): A selected speed used to determine the various geometric design features of the roadway.

Development: Any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, subdivision of land, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

Drive-Up Window: Facilities that encourage or permit customers to receive services or obtain goods while remaining in their motor vehicles.

Driveway: A private right of way providing access from a highway, and serving not more than two (2) lots.

Dwelling, Accessory Unit: An efficiency or one-bedroom apartment, located within or appurtenant to an owner-occupied single-family dwelling, that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation.

Dwelling, Multiunit: A residential building designed for occupancy, rental, or lease by three or more families, living independently of each other in individual dwelling units, where the number of families in residence does not exceed the number of dwelling units provided.

Dwelling, Single Unit: One room, or rooms connected together, constituting a separate and single independent housekeeping establishment for owner occupancy, rental or lease, physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities.

Dwelling, Two-Unit: A residential building designed for occupancy, rental, or lease by two families living independently of each other in individual dwelling units.

Emergency Services: Police, firefighters, and emergency medical technicians, and other first responders to public safety crises.

Essential Services: The erection, construction, alteration, or maintenance of public or private utilities, or municipal or other governmental agencies of underground, or overhead gas, electrical, steam, or water transmissions, or distribution systems, including poles, wires, mains, drains, sewers, pipes, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, street signs, and similar equipment and accessories therewith and including buildings reasonably necessary for the furnishing of adequate service by such utilities.

Existing Small Lot: A lot or parcel that does not conform to the present bylaw covering dimensional requirements, but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaw, including a lot or parcel improperly authorized as a result of error by the administrative officer.

Extraction of earth resources: Excavation and removal of rock, stone, ore, sand, gravel, soil, minerals, and similar materials from the surface or subsurface. For the purpose of this bylaw, this definition does not include the removal of earth resources incidental to construction activity.

Family: One or more persons living, sleeping, cooking, and eating on the same premises as a single housekeeping unit.

Family Day Care Home: A day care facility which provides for care on a regular basis in the caregiver's own residence for not more than ten children at any one time. Of this number, up to six children may be provided care on a full-time basis and the remainder on a part-time basis. In this bylaw, care of a child on a part-time basis shall mean care of a school-age child for not more than four hours a day. These limits shall not include children who reside in the residence of the caregiver; except:

A. these part-time school-age children may be cared for on a full-day basis during school closing days, snow days and vacation days which occur during the school year; and

B. during the school summer vacation, up to 12 children may be cared for provided that at least six of these children are school age and a second staff person is present and on duty when the number of children in attendance exceeds six. These limits shall not include children who are required by law to attend school (age 7 and older) and who reside in the residence of the caregiver. 33 V.S.A. § 4902(3).

Farm Structure: A building, enclosure, or fence for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with accepted agricultural or farming practices, including a silo, as "farming" is defined in subdivision 6001(22) of Title 10, but excludes a dwelling for human habitation.

Fence: An artificially constructed barrier of any material or combination of materials erected to enclose, screen, or separate areas.

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

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

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

Flood Insurance Rate Map (FIRM): An official map of a community on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium application 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 non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate, improved real property, water and sanitary facilities, or structures and their contents.

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

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

Fluvial Erosion: Erosion caused by streams and rivers. Fluvial erosion can be catastrophic when a flood event causes a rapid adjustment of the stream channel size and/or location.

Forestry: Establishment primarily engaged in the operation of timber tracts, tree farms, forest nurseries, the gathering of forest products, or in performing forest services.

Frontage: The side of a lot that is abutting a state highway, town road, public or private road, or public waters.

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

Funeral Home: A building used for the preparation of the deceased for burial and the display of the deceased and rituals that commonly take place before burial or cremation.

Gross Floor Area: The sum of the gross horizontal areas of all enclosed floors of a building, including cellars, basements, mezzanines, corridors, and lobbies from the exterior face of exterior walls, or from the centerline of a common wall separating two dwelling units, but excluding any space with a floor-to-ceiling height of less than 6 feet, six inches.

Health Club: An establish which is open to paying members and their guests for various forms of exercise, including aerobic exercise, running and jogging, exercise equipment and machines, and game courts.

Heavy Equipment Yard: A lot or portion of a lot or parcel used to store and maintain construction equipment and other materials and facilities customarily used by a contractor in the building or excavation trade.

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 which have been approved by the Secretary of the Interior; or (d)

individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (i) by an approved state program as determined by the Secretary of the Interior or (ii) directly by the Secretary of the Interior in states without approved programs.

Home Business: A business conducted by the resident(s) of a single-family dwelling, and not more than four (4) non-resident employees, which is carried on within the principal dwelling and/or an accessory structure, and otherwise meets the requirements of this bylaw.

Home Office: A self-employment activity conducted entirely within a minor portion of a principal dwelling or within an existing accessory structure which is carried on by a resident of that dwelling, and involves no signs, retail sales, public access or outdoor storage or displays.

Home Occupation: Any use conducted either within a minor portion of a dwelling or within an accessory structure, is carried on by the occupants thereof, or not more than two 2 nonresidents, which is incidental and secondary to the use of the dwelling for dwelling purposes, does not change the character thereof, and otherwise meets the requirements of this bylaw.

Hotel: A building containing rooms which are rented as a series of twenty-five (25) sleeping units or more, with each sleeping unit consisting of at least a bedroom and a bathroom.

Industry: The assembling, manufacturing, compounding, processing, packaging, treatment, or testing of materials, goods, or products.

Industry, Resource-Based: The value-added processing, packaging, or treatment of forestry or agricultural products. For purposes of this bylaw, the definition excludes extraction of earth resources or Class III Industries.

Inn: A building or group of buildings on a single parcel which contains fewer than twenty-five (25) guest rooms which are rented out to provide overnight accommodations to transient travelers on a short-term basis, and which may offer dining facilities.

Inoperable Vehicle: A vehicle, or parts, thereof, that is not in working condition; or a vehicle unable to meet existing state inspection and licensing requirements.

Junkyard: Any place of outdoor storage or deposit that is maintained, operated or used in connection with a business for storing, keeping, processing, buying or selling junk or as a scrap metal processing facility. "Junkyard" also means any place of outdoor storage or deposit, not in connection with a business, which is maintained or used for the storing or keeping of four or more junk motor vehicles which are visible from any portion of a public highway. However, the term does not include a private garbage dump or a sanitary landfill that is in compliance with 24 V.S.A. §§ 2201 et seq. and any applicable state regulations. It does not mean a garage where wrecked or disabled motor vehicles are stored for less than 90 days for inspection or repairs.

Kennel: Any structure or premises in which more than six (6) animals or pets are kept, boarded, bred, or trained for commercial gain.

Laundromat: An establishment providing washing, drying, or dry-cleaning machines on the premises for rental use to the general public.

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

Level of Service (LOS): A technical term used to rate highway traffic congestion, ranging from A for excellent conditions to F for failure conditions. Complete free-flow operations with no restrictions caused by traffic conditions are described as LOS "A". LOS "F" represents forced or breakdown of the traffic stream characterized by the familiar traffic jam. LOS "B" through LOS "E" describe progressively congested traffic conditions.

Level of Service C (LOS C): A common designation for rural highways, which represents a constrained constant flow below speed limits, with additional attention required by the drivers to maintain safe operations.

Library: A place, open to the general public, which contains books and other resources for reading, research, and study.

Log/Lumber Transfer Yard: An area and structures used for the storage, distribution, and sale of finished or rough-cut lumber and lumber products.

Lot: A lot is a parcel of land occupied or to be occupied by only one main building and the accessory buildings or uses customarily incident to it. A lot shall be of sufficient size to meet minimum zoning requirements for use, coverage and area and to provide such yards and other open spaces as herein provided. Such lot shall have frontage on an improved public street or other means of access approved by the Development Review Board, and it may consist of:

A. A single lot of record;

B. A portion of a lot of record;

C. A combination of complete lots of record, or of complete lots of record and portions of lots of record, or of portions of lots of record: or

D. A parcel of land described by metes and bound provided that in no case of division or combination shall any residual lot or parcels be created which does not meet the requirements of this bylaw.

Lot Width: Width of a lot shall be considered to be the distance between straight lines connecting front and rear lot lines at each side of the lot, measured across the rear of the required front yard; however, that width between the lot lines at their foremost points (where they intersect with the street line) shall not be less than eighty (80) percent of the required lot width except in the case of lots on the turning circle of a cul-de-sac, where the eighty (80) percent requirement shall not apply.

Lot of Record: A lot, which is part of a subdivision recorded in the office of the Town Clerk, or a lot or parcel described by metes and bounds, the description of which has been so recorded.

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

Lounge/Nightclub: An establishment serving liquor and meals and in which music, dancing, or entertainment is conducted.

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

Master Plan: A long-range planning tool submitted by the applicant for a conditional use permit which provides a technical basis for review of the combined impacts of the proposed use and/or development.

Mean Sea Level: The National Geodetic Vertical Datum (NVGD) of 1929, or other datum, to which base flood elevations shown on the Flood Insurance Rate Map are referenced.

Medical Clinic: An establishment where patients are admitted for examination and treatment on an outpatient basis by physicians, dentists, other medical personnel, psychologists, or social workers.

Minimum lot depth: The smallest dimension of the lot measured perpendicular to the frontage.

Minimum lot width: The smallest dimension of the lot measured, running parallel to the back of the lot's required frontage.

Mobile Home: See Manufactured home.

Mobile Home Lot: A plot of ground within a mobile home park designated for the accommodation of one mobile home.

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

Motel: A one- or two-story establishment providing sleeping accommodations for transients, with a majority of the rooms, laid side by side, having direct access to the outside without the necessity of passing through a main lobby.

Movie Theater: A place where motion pictures are shown the public for a fee.

Municipal Offices: A building or portion thereof dedicated to the administrative function of town officials, including record keeping; processing and storage of permits, registrations, certificates, licenses, and deeds; and collection of fees or fines.

Museum: A building or portion thereof which is open to the general public and is devoted to the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historic, cultural, or artistic value.

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

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

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

Nursing Home: An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals, who by reason of advanced age, chronic illness, or infirmity are unable to care for themselves.

Off-Lot Sewer: The disposal of waste water by a system not located on the lot on which is located the building for which these utilities are provided.

Off-Lot Water: The provision of water from a source not located on the lot on which is located the building for which this utility is provided.

On-Lot Sewer: A set of components or systems that treat, convey, and dispose of wastewater located on the lot on which is located the building for which these utilities are provided.

On-Lot: Water: The provision of water from a source such as a drilled well, located on the same or adjacent lot as the building for which the utility is provided.

Open Space: A portion of land permanently set aside for public or private use and will not be developed. This area may include wetlands, floodplains or flood-hazard areas, steep slopes, stream corridors, prime agricultural lands, habitats of endangered wildlife, scenic views, historical or cultural features, archaeological sites, or other elements to be protected from development, as well as easements for public utilities. The space may be used for

passive or active recreation and may contain limited improvements as are complementary, necessary, or appropriate to the use and enjoyment of the open area.

Outdoor Water Furnace: Any equipment, device, or apparatus, or any part thereof, which is installed, affixed, or situated outdoors for the purpose of burning untreated wood to produce heat or energy uses as a component of a heating system providing heat to any interior space or water source.

Parking Area: Any public or private area designed for temporary parking of vehicles with or without payment of a fee.

Parking Space: An off-street parking area which is to be used exclusively for the temporary storage of a single motor vehicle.

Permanent Foundation: Cement block walls, poured cement walls, or a cement slab having four or more sides, which will provide stable support upon which a structure can be erected or placed.

Personal Services: Establishments primarily engaged in providing services involving the care of a person or his or her personal goods or apparel, including, but not limited to dry cleaning, beauty and barber shops, shoe repair, dry cleaning drop off and pick up, and spas.

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

Post Office: A building or portion thereof that houses a local branch of the United States Post Office in which mail is received, sorted, and delivered, and where stamps and other postal materials are sold.

Principal Building: Any building or structure whose use, actual or intended, is not subordinate to any use located in another building on the same lot.

Private Club: An establishment operated for social, recreation, or education purposes, but open only to members and guests of members, and not the general public.

Public Facility: Any structure or premises used by agencies of local, county, state, or federal government. Includes, but is not limited to correctional facilities; airports; municipal garages; and recycling centers.

Public Park: A tract of land owned by public or private entities and available to the general public for recreational purposes.

Recreation and Education Camp: A lot or a group of contiguous lots that contain one or more permanent structures, which are maintained for occupancy by groups or organizations as temporary living quarters for recreational, educational, or vacation purposes.

Recreation Shelter: A dwelling for private, noncommercial use, which is not intended for full-time occupancy, and which does not have all the amenities of a single-unit dwelling, such as plumbing or central heating.

Recreation, Passive: A form of recreation, such as hiking or cross-country skiing, which does not require any facilities, such as a ballfield.

Recreational Facility: A building or premises used for sports, leisure time activities, and other customary and usual recreational.

Recreational vehicle*:* A vehicle which is: (a) Built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) Designed to be self-propelled or permanently towable by a light duty truck; and (d) Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

Residential Use: Single-unit, two-unit, and multiunit dwellings; and mobile homes.

Restaurant: An establishment where food and drink are prepared, served, and consumed, mostly within the principal building.

Resubdivision: The relocation of lot lines.

Retail Sales: The sale of goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of goods, which occurs through general public access and regular hours of operation in a location specifically designated for such activity. For purposes of this bylaw, retail sales does not include occasional transactions that may occur on any premises through direct selling to consumers, away from any fixed retail location.

Retail Store: An establishment engaged in retail sales.

Right of Way: The right of one to pass over the property of another.

River: A natural stream of water which may be navigable, is of greater volume than a creek, is flowing in a permanent bed or channel between defined banks or walls, and has a current that may be either continuous in one direction or affected by the ebb and flow of the tide.

River Corridor: The land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel and that is necessary for the natural maintenance or natural restoration of a dynamic equilibrium condition, as that term is defined in 10 V.S.A. §1422, and for minimization of fluvial erosion hazards, as delineated by the Agency in accordance with the ANR River Corridor Protection Guide.

Road Frontage: Lot lines which abut a road.

Salvage Yard: See Junkyard.

Senior Housing: Housing that is restricted to seniors (and possibly younger adults with disabilities). It does not include supportive services or staffing to address the special needs of aging residents, nor is it licensed by a government agency. Subsidized versions of senior housing may be supervised by a government housing agency.

Setbacks, Front: The measurement from the center portion of the traveled portion of the abutting private or public roadway to the building.

Setbacks, Rear: The measurement from the rear lot line to building.

Setbacks, Side: The measurement from the side lot line to the building.

Sign: Any structure, display, divide, or representation that is designed or used or advertise, direct to, or call attention to any person, business, activity, or place; and is visible from any highway or other right-of-way.

Sign Area: The entire face of a sign, including any advertising surface that contains lettering, as well as any framing, trim, or molding, but not including the supporting structure. For purposes of this bylaw, only one side of a double-sided identical signs constitutes total sign area.

Ski Facility/Service: Any facility or service that is incidental and subordinate to the use and operation of ski lifts, including, but not limited to ticket sales, ski rentals and sales, ski instruction, maintenance and administrative facilities, snowmaking equipment and structures, and eating facilities, which are located on the same lot as the primary use and are clearly related to the primary use. This definition specifically excludes lodging facilities (e.g. hotels and inns) and residential uses, which are defined separately for the purposes of these regulations.

Ski Lift: Facility for the transport of people within a ski area, including tows, chair lifts, gondolas, cable cars and similar facilities, and on-mountain accessory facilities such as warming huts.

Skier Visits: The number of persons using the ski facility on a daily, weekly, yearly, or other basis.

Slope: An inclined surface, expressed as a percentage, to be calculated as the amount of vertical elevation rise gained over a horizontal distance run.

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

Start of construction: For purposes of floodplain management, determines the effective map or bylaw that regulated development in the Special Flood Hazard Area. The "start of construction" includes substantial improvement, and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of

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

Street: Any road affording access to abutting properties.

Stopping Sight Distance: The length of roadway ahead visible to the driver.

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

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 a lot, tract, or parcel of land into two (2) or more lots for the immediate or future purpose of transfer of ownership or right to use, or of building or development. This definition shall apply to all residential, commercial, industrial, recreational, agricultural, institutional, municipal, and forestry uses, and for utilities; and resubdivision and the division of land held in common and subsequently divided into parts among multiple owners.

Subdivision, Major: Any subdivision that creates more than five (5) lots; or creates new lots for commercial, industrial, or commercial recreation uses, or for multiunit housing; or requires more than 800 feet of new roads; or requires an extension of municipal services; or involves a planned unit development

Subdivision, Minor: A re-subdivision; OR a subdivision that results in no more than five (5) lots, all of which are for single-unit residences; and does not require more than 800 feet of new roads; and does not require an extension of municipal services.

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

Substantial Improvement: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either before the improvement or repair is started; or if the structure has been damaged and is being restored, before the damage occurred. This term does not, however, include:

A. Any project for improvement of a structure in order to comply with existing state or local health, sanitary, or safety code specifications, which are solely necessary to assure safe living conditions; or

B. Any alteration of a structure listed on the National Register of Historic Places, or a State Inventory of Historic Sites.

Substantially Commenced: Visible signs of activity on new construction of a new structure or repair of a damaged structure, including the commitment of resources and materials to a project, such as the pouring of a foundation, the completion of a frame, or the delivery of all required building materials to the construction site.

Swimming Pool: A water-filled enclosure, permanently constructed or portable, having a depth or more than 18 inches below the level of the surrounding land, or an above-surface pool, having a depth of more than 30 includes, designed, use, and maintained for swimming and bathing.

Tavern: An establishment in which alcoholic beverages are served, primarily by the drink, and where food or packaged liquors may also be served or sold. Also see BAR.

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

Travel trailer: A recreational vehicle that is towed by a car or truck. See RECREATIONAL VEHICLE.

Trip Generation: The total number of vehicle trips produced by a specific land use or activity.

Truck Terminal Yard: An area and premises were cargo is stored and where trucks load and unload on a regular basis.

Use: The specific purpose for which land or a building is designed, arranged, or intended, or for which it is or may be occupied or maintained.

Utility Corridor: Right of way or easement for utility lines on either publicly or privately owned land.

Veterinary Clinic: Any structure or premises in which animals or pets are given medical or surgical treatment, or are boarded indoors for commercial gain.

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

Visitor Facility: A building or portion thereof designed to accommodate travelers by providing personal orientation, maps, brochures, and other tourist amenities.

Wetlands: All lands identified on the Vermont Significant Wetland Inventory (VSWI), which are inundated by surface or ground water 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, but are not limited to marshes, swamps, sloughs, potholes, fens, river and lake overflows, mud flats, bogs and ponds, but exclude such areas where food and crops are grown in connection with farming activities.

Yard: An unoccupied area of ground, as defined by setback requirements, in which no structure, building, or portion thereof may be located.

Yard, Front: The yard area which is measured width-wise along the front lot line, extending to the side lot lines, and depth-wise from the center of the roadway to the front line of the building.

Yard, Rear: The yard area which is measured width-wise along the rear lot line, extending to the side lot lines, and depth-wise from the rear lot line to the rear line of the building.

Yard, Side: The yard area which is measured width-wise along the side line of the building to the nearest side lot line, and measured depth-wise from the front lot line to the rear lot line.

Yard Sale: The casual sale of personal property open to the general public and generally denoted by the terms “garage sale,” “lawn sale,” “barn sale,” or similar phrase.