TOWN OF UNDERHILL, VT
UNIFIED LAND USE & DEVELOPMENT REGULATIONS

Adopted by Australian Ballot
March 1, 2011

Amended:

March 4, 2014
March 6, 2012

Prepared by the
Underhill Planning Commission

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The Vermont Department of Economic, Housing & Community Development

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		PAGE
ARTICLE I.	**AUTHORITY & PURPOSE**	
Section 1.1	Enactment	1
Section 1.2	Purpose	1
Section 1.3	Application & Interpretation	1
Section 1.4	Effective Date	2
Section 1.5	Bylaw Amendments	2
Section 1.6	Severability	2
ARTICLE II.	**ZONING DISTRICTS**	
Section 2.1	Zoning Districts & Zoning Map	3
Section 2.2	Boundary Interpretations	3
Section 2.3	Application of District Standards	5
District Tables		
Table 2.1	District Summary Table	7
Table 2.2	Underhill Flats Village Center District	9
Table 2.3	Rural Residential District	12
Table 2.4	Water Conservation District	15
Table 2.5	Mt. Mansfield Scenic Preservation District	18
Table 2.6	Soil and Water Conservation District	21
Table 2.7	Flood Hazard Area Overlay District	24
ARTICLE III.	**GENERAL REGULATIONS**	
Section 3.1	Abandoned & Damaged Structures	26
Section 3.2	Access	27
Section 3.3	Conversion or Change of Use	30
Section 3.4	Equal Treatment of Housing	31
Section 3.5	Fences & Walls	32
Section 3.6	Height Requirements	33
Section 3.7	Lot, Yard & Setback Requirements	35
Section 3.8	Nonconforming Lots	36
Section 3.9	Nonconforming Structures	37
Section 3.10	Nonconforming Uses	37
Section 3.11	Outdoor Lighting	38
Section 3.12	Outdoor Storage	39
Section 3.13	Parking, Loading & Service Areas	41
Table 3.1	Minimum Off-Street Parking Requirements	41
Section 3.14	Performance Standards	43
Section 3.15	Ponds	44

		PAGE
ARTICLE III.	**GENERAL REGULATIONS**	
Section 3.16	Signs	47
Section 3.17	Source Protection Areas	52
Section 3.18	Steep Slopes	53
Section 3.19	Surface Waters & Wetlands	60
Section 3.20	Swimming Pools	64
Section 3.21	Tennis Courts	64
Section 3.22	Water Supply & Wastewater Systems	65
ARTICLE IV.	**SPECIFIC USE STANDARDS**	
Section 4.1	Applicability	67
Section 4.2	Accessory Dwelling	67
Section 4.3	Adaptive Reuse of Historic Structures	68
Section 4.4	Camper (Recreation Vehicle, Temporary Shelter)	70
Section 4.5	Campground	70
Section 4.6	Commercial Lodging (Bed & Breakfast, Inn)	71
Table 4.1	Summary of Commercial Lodging Facility Standards	72
Section 4.7	Contractor's Yard	72
Section 4.8	Day Care Facility (Home Child Care, Day Care Facility)	73
Section 4.9	Extraction & Quarrying	73
Section 4.10	Gas Station	80
Section 4.11	Group & Residential Care Homes	82
Section 4.12	Home Business (Home Occupation, Home Industry)	82
Table 4.2	Summary of Home Occupation & Home Industry Standards	84
Section 4.13	Mixed Use	85
Section 4.14	Mobile Home Park	85
Section 4.15	Motor Vehicle Service & Sales	88
Section 4.16	Public Facility	89
Section 4.17	Salvage Yard	90
Table 4.3	Salvage Yard Minimum Setback Requirements	92
Section 4.18	Telecommunications Facility	94
Section 4.19	Temporary Structure or Use	103
ARTICLE V.	**DEVELOPMENT REVIEW**	
Section 5.1	Applicability	105
Section 5.2	Development Review Process	106
Section 5.3	Site Plan Review	108
Section 5.4	Conditional Use Review	113
Section 5.5	Waivers & Variances	116
ARTICLE VI.	**FLOOD HAZARD AREA REVIEW**	
Section 6.1	Statutory Authorization & Effect	120
Section 6.2	Statement of Purpose	121

		PAGE
ARTICLE VI.	**FLOOD HAZARD AREA REVIEW**	
Section 6.3	Lands to Which Regulations Apply	121
Section 6.4	Permit Requirements	122
Section 6.5	Development Review Procedures	124
Section 6.6	Flood Hazard Area Development Standards	125
Section 6.7	Nonconforming Structures	128
Section 6.8	Variances	128
Section 6.9	Administration & Enforcement	129
ARTICLE VII.	**SUBDIVISION REVIEW**	
Section 7.1	Purpose	132
Section 7.2	Applicability [Minor, Major]	132
Section 7.3	Sketch Plan Review	134
Section 7.4	Application Requirements	136
Section 7.5	Preliminary Subdivision Review	137
Section 7.6	Final Subdivision Review	139
Section 7.7	Plat Recording Requirements	140
Section 7.8	Revisions to an Approved Subdivision	141
ARTICLE VIII.	**SUBDIVISION STANDARDS**	
Section 8.1	Applicability	143
Section 8.2	General Standards	144
Section 8.3	Natural & Cultural Resources	147
Section 8.4	Open Space & Common Land	152
Section 8.5	Stormwater Management & Erosion Control	153
Section 8.6	Transportation Facilities	155
Table 8.1	Travel Lanes and Shoulder Widths, Rural Roads	159
Section 8.7	Public Facilities & Utilities	161
Section 8.8	Legal Requirements	163
ARTICLE IX.	**PLANNED UNIT DEVELOPMENT**	
Section 9.1	Purpose	165
Section 9.2	Applicability	165
Section 9.3	Application Requirements	166
Section 9.4	Review Process	167
Section 9.5	General Standards	168
Section 9.6	Density Bonuses	170
ARTICLE X.	**ADMINISTRATION & ENFORCEMENT**	
Section 10.1	Permits & Approvals	172
Section 10.2	Exemptions	173
Section 10.3	Zoning Permit	175

		PAGE
ARTICLE X.	**ADMINISTRATION & ENFORCEMENT**	
Section 10.4	Certificates of Occupancy & Compliance	178
Section 10.5	Appeals	180
Section 10.6	Violations & Enforcement	182
Section 10.7	Administrative Requirements & Procedures	183
ARTICLE XI.	**DEFINITIONS**	
Section 11.1	Terms & Usage	188
Section 11.2	General Definitions	188
Section 11.3	Flood Hazard Area Regulation Definitions	213
Section 11.4	Telecommunications Facility Regulation Definitions	217
ZONING MAP		

APPENDICES

Except where specifically incorporated by reference, the following Appendices are not part of the adopted bylaw. These documents are provided as recommended by the Planning Commission and Development Review Board as guidelines to aid applicants in meeting bylaw standards.

A Road and Driveway Standards

1. [Reserved, Underhill Highway Ordinance]
2. VT A-76 Standards for Town and Development Roads
3. VT B-71 Standards for Residential and Commercial Drives
4. Diagrams
5. Vermont State Design Standards (http://www.aot.state.vt.us/progdev/standards/statabta.htm)

B Low Impact Development Guides

1. Low Impact Development for Homeowners and Developers (VANR Brochure)
2. Vermont Low Impact Development Guide for Residential and Small Sites
3. Additional Resources (Publications, Web Sites, etc.) – available at Town Office

C Landscaping Guides

1. Lists of Native and Salt Tolerant Species
2. Additional Resources (Publications, Web Sites, etc.) – available at Town Office

ARTICLE I. AUTHORITY & PURPOSE

Section 1.1 Enactment

A. Pursuant to the Vermont Planning and Development Act (24 VSA Chapter 117), hereinafter referred to as "the Act," there is hereby established a unified bylaw to govern land use and development in the Town of Underhill, Vermont. This bylaw shall be known as the "Underhill Land Use and Development Regulations."

B. This bylaw replaces and supersedes the following previously enacted municipal bylaws:

- Underhill Zoning Regulations as amended through March 2003.
- Underhill Subdivision Regulations as amended through March 2002.
- Town of Underhill Flood Hazard Area Regulations as amended through March 2010.

These bylaws are repealed as of the effective date of the Underhill Land Use and Development Regulations.

Section 1.2 Purpose

A. The purposes of these regulations are to:

1. Promote and protect public health, safety, and welfare within the Town of Underhill.
2. Further state planning goals and purposes established under the Act [§4302].
3. Implement a unified development plan for the Town of Underhill that conforms to stated goals, policies and strategies in the Underhill Town Plan.
4. Integrate land use and development regulations, including zoning, flood hazard, site plan and subdivision regulations, into one comprehensive document to promote coordinated and expedited municipal review of land development.
5. Protect the individual property rights of landowners to the extent consistent with the other purposes of these regulations.

Section 1.3 Application & Interpretation

A. These regulations, and their administration and enforcement, are subject to all provisions of the Act [24 VSA Chapter 117] as most recently amended.

B. No land subdivision or development shall commence in the Town of Underhill except in conformance with these regulations. Land subdivision or development not specifically authorized under these regulations, unless exempted under the Act or Section 10.2, is prohibited.

Note: For a list of required permits and approvals, see Section 10.1. For a list of uses, structures and activities that are exempt from these regulations, see Section 10.2.

C. These regulations are not intended to repeal, annul, or in anyway impair any previously issued permit or approval. All land subdivisions, uses, and structures legally in existence as of the effective date of these regulations, March 2, 2011, are allowed to continue. Changes or alterations to pre-existing subdivisions, structures, or uses must meet all applicable requirements of these regulations, including requirements for nonconforming lots, uses and structures.

D. Where these regulations impose a greater restriction on the use of land or a structure than is required by any other statute, ordinance, rule, or regulation, these regulations shall apply.

E. For purposes of Act 250 jurisdiction, these regulations include both zoning and subdivision regulations adopted in accordance with the Act [§§ 4411, 4418, 4419].

F. Additional municipal, state or federal permits may be required beyond those identified in these regulations. It is the applicant's responsibility to secure all required municipal, state and federal permits prior to commencing land subdivision and development.

Section 1.4 Effective Date

These regulations shall take effect 21 days from the date of adoption by a majority of the members of the Underhill Selectboard, or immediately upon adoption as a result of a petitioned or warned town vote.

Section 1.5 Bylaw Amendments

A. These regulations, including the official zoning map incorporated by reference under Section 2.1, may be amended or repealed only in accordance with the Act [§§ 4441, 4442].

1. Proposed changes to these regulations or the zoning map shall be submitted in writing to the Underhill Planning Commission for consideration, as required under the Act [§4442].

B. Proposed amendments to Flood Hazard Area Overlay District regulations under Table 2.7 and Article VIII shall be sent to the Vermont Agency of Natural Resources, River Management Program at least fifteen days prior to the Planning Commission's first public hearing to be reviewed for conformance with federal and state program requirements.

Section 1.6 Severability

The provisions of these regulations are severable. If any provision of these regulations, or its application by the town, is held invalid by a court of jurisdiction, this shall not affect the validity or application of other provisions of these regulations.

ARTICLE II. ZONING DISTRICTS

Section 2.1 Zoning Districts & Zoning Map

A. For the purposes of these regulations, the Town of Underhill is divided into the following zoning districts:

1. Underhill Flats Village Center District
2. Rural Residential District
3. Water Conservation District
4. Mt Mansfield Scenic Preservation District
5. Soil and Water Conservation District
6. Flood Hazard Overlay District

B. The location and boundaries of each zoning district are shown on the official “Town of Underhill Zoning Map,” which is incorporated as part of these regulations. Flood Hazard Overlay District boundaries for Special Flood Hazard Areas (SFHAs) are shown in and on the most current Flood Insurance Study and National Flood Insurance Program maps for the Town of Underhill, which are incorporated as part of these regulations. The official zoning map and flood hazard area maps, located in the Underhill Town Office, shall be the final authority as to the current zoning status of land and waters in the town. Changes may be made to the official "Town of Underhill Zoning Map" only in accordance with the bylaw amendment process referenced under Section 1.5.

C. The official “Town of Underhill Zoning Map” is Appendix A “Zoning Map” (revision date June, 1985) to the September 1985 Underhill zoning regulations, subject to subsection D below.

D. Notwithstanding any other provision of these Unified Land Use and Development Regulations, the adjustment to the southern boundary of the Water Conservation District adopted by the Planning Commission on October 24, 1972 as Paragraph III of proposed amendments to the Comprehensive Plan and by the Selectboard on December 27, 1972 shall continue in full force and effect.

Section 2.2 Boundary Interpretations

A. Where uncertainty exists as to the location of district boundaries shown on the zoning map, the following rules shall apply:

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

2. Boundaries indicated as following lot lines shall be interpreted as following delineated property boundaries.

3. Boundaries indicated as following rivers or streams shall be interpreted as following the channel centerlines of such features, and shall move with river or stream channels.

4. Boundaries indicated as following contour lines shall be interpreted as following constant, specified elevations as measured from mean sea level or other accepted reference datum.

5. Boundaries indicated as following compass headings shall be interpreted as following such headings.

6. Boundaries indicated as parallel or perpendicular to, or extensions of, the above features shall be interpreted as such on the ground.

7. Distances not specifically indicated on the map shall be determined from the scale on the official zoning map.

B. The abandonment or relocation of a right-of-way, or the change in a line or feature that references a district boundary line, after the effective date of these regulations, shall not affect the location of the district boundary, except as specified for streams, rivers and shorelines under A.3.

C. In the Flood Hazard Overlay District, where available (i.e., in Zones A1-A30, AE and AH) base flood elevations and floodway limits provided by the National Flood Insurance Program (NFIP) in the Flood Insurance Study and accompanying Flood Insurance Rate Maps for the town shall be used to administer and enforce flood hazard provisions of these regulations.

1. In areas where base flood elevations and floodway limits *have not* been provided by the NFIP (i.e., Zone A), it is the applicant's responsibility to develop and provide necessary data. Where available, the applicant shall use base flood elevations and floodway data available provided by the Federal Emergency Management Agency, other federal agencies or the state.

D. When the Zoning Administrator cannot definitely determine the location of a district boundary, the Planning Commission or appropriate state official may be consulted prior to issuing a determination. A determination by the Zoning Administrator regarding the location of a district boundary may be appealed to the Development Review Board under Section 10.5.

1. Where there is a dispute as to where a district boundary lies, the Development Review Board may require that the property owner verify the location of the district boundary line through a survey by a licensed surveyor.

2. If uncertainty exists with respect to the boundary of a Special Flood Hazard Area (SFHA) or floodway, the boundary shall be determined by the Zoning Administrator or

Development Review Board in consultation with the National Flood Insurance Program Coordinator at the Vermont Agency of Natural Resources. If the applicant disagrees with the determination, a Letter of Map Amendment (LOMA) from FEMA, supplied by the applicant, shall constitute proof of a boundary location.

E. When a lot proposed for development includes portions in different districts, the following shall apply:

1. The proposed use must be allowed on that portion of the lot within the district in which the use is to occur. If the use is to occur in both districts, it must be allowed within both districts.

2. The minimum frontage and minimum setback requirement for that portion of the lot within the district in which the structure is to be located shall control. If the structure is to be in both districts, the more stringent requirement shall control.

3. The Development Review Board may allow, subject to conditional use review, the extension of district standards, except for road frontage requirements, up to a distance of 100 feet into either portion of the lot. Frontage requirements for the district in which the road frontage is located shall apply.

F. When a lot is divided by a town boundary, the town boundary shall be considered in the same manner as a property line, and the standards of these regulations shall be applied to that portion of the lot located in the Town of Underhill in the same manner as if the entire lot were located in the town.

Section 2.3 Application of District Standards

A. Table 2.1 provides a summary of dimensional requirements and allowed uses by zoning district. Tables 2.2 through 2.7 set forth the stated purpose, allowed uses and specific standards for each zoning district.

B. Overlay district standards shall be applied concurrently with the standards for the underlying zoning district(s). Where an overlay district imposes more restrictive standards, overlay district standards shall apply.

C. All uses and structures, unless specifically exempted from these regulations under Section 10.2, must meet applicable standards for the zoning district(s) in which they are located under Tables 2.2 through 2.7. Uses not listed under a particular zoning district are prohibited in that district. The standards for each district apply uniformly to each class of use or structure, unless otherwise specified in these regulations. Nonconforming uses and structures must meet the requirements of Sections 3.8 and 3.9.

D. Uses listed for each district are classified as "permitted" or "conditional" uses, described as follows:

1. "**Permitted uses**" are reviewed by the Zoning Administrator prior to the issuance of a zoning permit under Section 10.3. Site plan review by the Development Review Board under Section 5.3 is also required prior to the issuance of a zoning permit for any permitted use except for agriculture, forestry, single and two family dwellings, and associated accessory uses and structures such as small group homes, home child care operations and home occupations, unless otherwise specified under these regulations. Site plan review ensures that site layout – the locations of structures, accesses (curb cuts), driveways and parking areas on the lot – is functional, safe, and consistent with the purpose and character of the zoning district.

2. "**Conditional uses**" are those that require conditional use approval by the Development Review Board under Section 5.4 before a zoning permit can be issued by the Zoning Administrator. Conditional use review ensures that any adverse impacts of development to adjoining properties, roads, community facilities and services, and the neighborhood or area in which the proposed use is located, are addressed.

3. Both permitted and conditional uses must meet relevant zoning district standards under the following district tables, general standards under Article III, and applicable use standards under Article IV.

Table 2.1 District Summary Table

Zoning District	Underhill Flats Village Center	Rural Residential	Water Conservation	Mt Mansfield Scenic Preservation	Soil and Water Conservation
Districts Standards:					
Minimum Lot Size	1 acre	3 acres	5 acres	10 acres	15 acres
Minimum Frontage	150 ft	250 ft	300 ft	400 ft	400 ft
Minimum Setbacks:					
Principal (Front/Side/Rear)	0/20/20 ft	30/50/50 ft	30/50/50 ft	30/75/75 ft	30/75/75 ft
Accessory (Front/Side/Rear)	0*/15/15 ft	30/20/20 ft	30/20/20 ft	30/20/20 ft	30/20/20 ft
Driveway (Side/Rear)	12 ft	12 ft	12 ft	12 ft	12 ft
Max Building Coverage	50%	25%	20%	10%	7%
Max Lot Coverage	75%	50%	30%	15%	10%
Max Height	35 ft	35 ft	35 ft	35 ft	35 ft
PUD, PRD	Allowed	Allowed	Allowed	Allowed	Allowed
*Accessory structures shall be located at or behind the front building line of the principal structure.					
Uses (P - Permitted Use, P^S - Permitted w/Site Plan Review, C - Conditional Use, X - Not Allowed):					
Accessory Structure, Use	P / C	P / C	P / C	P / C	P / C
Adaptive Reuse	C	C	C	C	C
Agribusiness	X	C	C	C	C
Agriculture	P	P	P	P	P
Agritourism	X	C	C	C	C
Alpine Ski Facility	X	X	X	C	C
Bed & Breakfast	P^S	P^S	P^S	P^S	P^S
Camp	X	P	P	P	P
Campground	X	C	C	C	C (Primitive)
Cemetery	C	C	C	C	X
Community Center	C	C	C	X	X
Contractors Yard	X	C	C	X	X
Cultural Facility	C	C	C	X	X
Day Care Facility	P^S	C	C	C	X
Dwelling – Accessory	P	P	P	P	P
Dwelling – Single Family	P	P	P	P	P
Dwelling – Two Family	P	P	P	P	P
Dwelling – Multifamily (3+ units)	C Max: 8 Units	C Max: 8 units	C Max: 8 units	C Max: 5 units	X
Extraction & Quarrying	X	C	C	C	C
Forestry	P	P	P	P	P
Financial Institution	C	X	X	X	X
Funeral Home	C	C	C	X	X
Garden Center	X	C	C	C	X
Gas Station	C	C (RT 15)	X	X	X
Grocery Store	C	X	X	X	X
Group Home	P	P	P	P	P
Health Clinic	C	C	C	X	X

Zoning District	Underhill Flats Village Center	Rural Residential	Water Conservation	Mt Mansfield Scenic Preservation	Soil and Water Conservation
Uses (Permitted - P, Permitted w/ Site Plan - P^S, Conditional - C, X - Not Allowed):					
Home Child Care	P	P	P	P	P
Home Industry	C	C	C	C	C
Home Occupation	P	P	P	P	P
Inn	C	C	C	C	X
Kennel	X	C	C	C	C
Light Industry	C	C (RT15)	X	X	X
Mixed Use	P^S / C	C	C	C	C
Mobile Home Park	C	C	X	X	X
Mobile Home Sales	C	X	X	X	X
Motor Vehicle Sales & Service	C	X	X	X	X
Nature Center	X	C	C	C	C
Nordic Ski Facility	X	X	X	C	C
Office	P^S	C	C	X	X
Outdoor Market	C	C	C	C	X
Parking Facility	C	X	X	X	X
Personal Service	P^S	C	C	X	X
Private Club	C	X	X	X	X
Public Facility:					
Government – Public	P^S	P^S	P^S	P^S (Parks)	P^S (Parks)
Government – Other	P^S	C	C	C	X
Institutional	X	C (RT 15)	X	X	X
Place of Worship	P^S	P^S	P^S	X	X
School – Public, Private	C	C	C	X	X
Waste Mgt Facility	X	C (RT 15)	X	X	X
Recreation – Indoor	C	C (RT 15)	C	X	X
Recreation – Outdoor	C	C	C	C	C
Residential Care Facility	C	C	C	X	X
Restaurant	C	C	C	C	X
Retail Store	P^S / C	C	C	X	X
Salvage Yard	X	C(RT 15)	X	X	X
Sawmill	X	C (RT15)	X	X	X
Snack Bar	P^S	C	C	X	X
Telecommunications Facility	C	C	C	C	C
Transit Facility	C	C	C	X	X
Veterinary Clinic	C	C	C	C	C
Wildlife Management Area	X	P^S	P^S	P^S	P^S

Table 2.2 Underhill Flats Village Center District

A. **Purpose:** The purpose of the Underhill Flats Village Center District (formerly known as the Residential District) is to allow for the continuation of existing small scale commercial, residential and public uses, and to encourage development that is compatible with and promotes a compact, historic village settlement pattern. This may include higher densities of development as supported by existing and planned infrastructure.

B. **Permitted Uses:**

1. Accessory Structure, Use (to a permitted use)
2. Agriculture (Section 10.2)
3. Dwelling– Accessory (Section 4.2)
4. Dwelling– Single Family
5. Dwelling– Two Family
6. Forestry (Section 10.2)
7. Group Home (max: 8 residents; Section 4.11)
8. Home Child Care (max: 10 children; Section 4.8)
9. Home Occupation (Section 4.12)

Site Plan Review (see E.2):

10. Bed & Breakfast (max: 5 rooms; Section 4.6)
11. Day Care Facility (see Section 4.8)
12. Dwelling – Multifamily (max: 4 units)
14. Office
16. Place of Worship
17. Public Facility (see E.5 below; Section 4.16)
18. Retail Store (max: 4000 SF)
19. Snack Bar

C. **Conditional Uses:**

1. Accessory Structure, Use (to a conditional use)
2. Adaptive Reuse (Section 4.3)
3. Cemetery
4. Community Center
5. Cultural Facility
6. Dwelling– Multifamily (max: 8 units)
7. Financial Institution
8. Funeral Home
9. Gas Station (Section 4.10)
10. Grocery Store (max: 20,000 SF)
11. Health Clinic
12. Home Industry (Section 4.12)
13. Inn (max: 24 guest rooms; Section 4.6)
14. Light Industry (max: 10,000 SF)
15. Mixed Use (max: 10,000 SF; Section 4.13)
16. Mobile Home Park (Section 4.14)
17. Mobile Home Sales (Section 4.14)
18. Motor Vehicle Sales & Service (Section 4.15)
19. Outdoor Market
20. Parking Facility
21. Private Club
22. Recreation– Indoor
23. Recreation– Outdoor
24. Residential Care Facility (Section 4.11)
25. Restaurant (max: 90 seats; no drive-through)
26. Retail Store (max: 10,000 SF)
27. School– Public, Private (see E.6, Section 4.16)
28. Telecommunications Facility (Section 4.18)
29. Transit Facility
30. Veterinary Clinic

Table 2.2 Underhill Flats Village Center District, continued

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

Minimum Lot Size	1 acre
Minimum Frontage (along road ROW)	150 feet
Minimum Setbacks – Principal Structures	
Front (from road ROW/front lot line)	None
Side (from side lot lines)	20 feet
Rear (from rear lot line)	20 feet
Minimum Setbacks – Accessory Structures	
Front (from front lot line)	See E.4
Side (from side lot lines)	15 feet
Rear (from rear lot line)	15 feet
Minimum Setback – Surface Waters, Wetlands	See Section 3.19
Minimum Setbacks - Driveways	See E.5
Maximum Building Coverage (all building footprints)	50%
Maximum Lot Coverage (all impervious surfaces)	75%
Maximum Height (see Section 3.6)	35 feet
Planned Development (PUD, PRD)	Allowed

E. **Supplemental District Standards:**

1. All allowed uses within this district must meet applicable general standards for development under Article III. Specified uses are also required to meet applicable use standards under Article IV.

2. Agriculture, forestry, single and two family dwellings, and associated accessory uses including group homes, home child care and home occupations do not require site plan review. All other permitted uses are subject to site plan review under Section 5.3. Such uses must receive site plan approval from the Development Review Board prior to the issuance of a zoning permit. Conditional uses are subject to conditional use review under Section 5.4 and must receive conditional use approval from the Development Review Board prior to the issuance of a zoning permit.

3. Maximum square footage (SF) limitations listed above for specified uses within this district refer to the maximum allowed gross floor area.

4. Accessory structures shall be constructed not less than 15 feet from side and rear lot lines. An accessory shall also be located at or to the rear of the front building line of the principal building(s) on the lot.

Table 2.2 Underhill Flats Village Center District, continued

5. Driveways shall be located not less than 12 feet from side and rear lot lines unless waived by the Development Review Board for shared driveways [see Sections 3.2(D)(8) and 3.7(E)(3)] and lots with limited frontage [see Section 3.2(B)].

6. Public facilities allowed within this district are limited to municipal or other government facilities open to the public and intended for general public access or use (e.g., town office, town hall, post office, public park, playground), or which otherwise serve the public (e.g., fire and ambulance stations, town garage, regulated utility, transfer station, municipal or community water or wastewater facility) and places of worship. Public or private schools or other educational institutions certified by the Vermont Department of Education are allowed as conditional uses. Hazardous and solid waste management facilities, correctional facilities, and other institutional uses that are closed to the general public are specifically prohibited in this zoning district. (See also 4.16.)

7. Planned residential and planned unit developments (PUDs, PRDs) are allowed within this district to provide for the development of affordable housing and to support a compact village development pattern. District dimensional standards may be modified or varied accordingly under Article IX.

Table 2.3 Rural Residential District

A. **Purpose.** The purpose of the Rural Residential District is to accommodate medium density development on land that has access to public roads where traditional development has taken place, where soil cover is thicker than on the hillside. The Rural Residential district allows for the continuation of existing commercial, residential, and public uses and to encourage future development, particularly along Route 15, Poker Hill Road and Irish Settlement Road that is compatible with these historic uses.

B. Permitted Uses:

1. Accessory Structure, Use (to a permitted use)
2. Agriculture (Section 10.2)
3. Camp
4. Dwelling – Accessory (Section 4.2)
5. Dwelling – Single-family
6. Dwelling – Two-family
7. Forestry (see Section 10.2)
8. Group Home (max: 8 residents; Section 4.11)
9. Home Child Care (max: 10 children; Section 4.8)
10. Home Occupation (Section 4.12)

Site Plan Review (see E.2):

11. Bed & Breakfast (max: 5 rooms; Section 4.6)
12. Place of Worship (Section 4.16)
13. Public Facility (E.5, Section 4.16)
14. Wildlife Management Area

C. Conditional Uses:

1. Accessory Structure, Use (to a conditional use)
2. Adaptive Reuse (Section 4.3)
3. Agribusiness
4. Agritourism
5. Campground (Section 4.5)
6. Cemetery
7. Community Center
8. Contractor's Yard (Section 4.7)
9. Cultural Facility
10. Day Care Facility (Section 4.8)
11. Dwelling– Multifamily (max: 8 units)
12. Extraction and Quarrying (see Section 4.9)
13. Funeral Home
14. Garden Center
15. Health Clinic
16. Home Industry (Section 4.12)
17. Inn (max: 24 rooms; Section 4.6)
18. Kennel
19. Mixed Use (Section 4.13)
20. Mobile Home Park (Section 4.14)
21. Nature Center
22. Office
23. Outdoor Market
24. Personal Service
25. Public Facility (see E.5; Section 4.16)
26. Recreation – Outdoor
27. Residential Care Facility (Section 4.11)
28. Restaurant (no drive-through)
29. Retail Store (max: 2,500 square feet)
30. School – Public, Private (see E.5; Section 4.16)
31. Snack Bar
32. Telecommunications Facility (Section 4.18)
33. Transit Facility
34. Veterinary Clinic

Table 2.3 Rural Residential District, continued

C. Conditional Uses, continued:

<u>Allowed only on lots with frontage on Route 15:</u>

35. Gas Station (Section 4.10)
36. Institutional (see E.5, Section 4.16)
37. Light Industry
38. Recreation− Indoor
39. Salvage Yard (Section 4.17)
40. Sawmill
41. Waste Management Facility (E.5, Section 4.16)

D. **Dimensional Standards:**

Minimum Lot Size	3 acres
Minimum Frontage (along road ROW)	250 feet
Minimum Setbacks − Principal Structures**:**	
Front (from road ROW/ front lot line)	30 feet
Side (from side lot lines)	50 feet
Rear (from rear lot line)	50 feet
Minimum Setbacks − Accessory Structures**:**	
Front (from front lot line)	30 feet
Side (from side lot lines)	20 feet
Rear (from rear lot line)	20 feet
Minimum Setback − Surface Waters, Wetlands	See Section 3.19
Minimum Setbacks - Driveways	See E.4
Maximum Building Coverage (all building footprints)	25%
Maximum Lot Coverage (all impervious surfaces)	50%
Maximum Height (see Section 3.6)	35 feet
Planned Development (PUD, PRD)	Allowed

E. **Supplemental District Standards:**

1. All allowed uses within this district must meet applicable general standards for development under Article III. Specified uses are also required to meet applicable use standards under Article IV.

2. Agriculture, forestry, single and two family dwellings, and associated accessory uses including group home, home child care and home occupations do not require site plan review. All other permitted uses are subject to site plan review under Section 5.3. Such uses must receive site plan approval from the Development Review Board prior to the issuance of a zoning permit. Conditional uses are subject to conditional use review under Section 5.4 and must receive conditional use approval from the Development Review Board prior to the issuance of a zoning permit.

Table 2.3 Rural Residential District, continued

3. Maximum square footage (SF) limitations listed above for specified uses within this district refer to the maximum total gross floor area.

4. Driveways shall be located not less than 12 feet from side and rear lot lines unless waived by the Development Review Board for shared driveways [see Sections 3.2(D)(8) and 3.7(E)(3)] and lots with limited frontage [see Section 3.2(B)].

5. Public Facilities (see also 4.16):

    a. Public facilities allowed as permitted uses within this district are limited to places of worship, and municipal facilities owned and operated by the Town of Underhill and are open to the public and intended for general public access or use (e.g., town office, town hall, post office, public park, playground) with the exception of public or private schools or other educational institutions certified by the Vermont Department of Education, which are conditional uses in this district.

    b. Public facilities allowed as a conditional use within this district, in addition to schools, are limited to other facilities that serve the public, but are not intended for unrestricted public access or use (e.g., fire and ambulance stations, town garage, transfer station, public water, regulated utility, wastewater facility or solid or hazardous waste management facility). Institutional uses (e.g., correctional facilities, hospitals) and waste management facilities are allowed in this district only on parcels with frontage on or direct access to Route 15.

6. Planned residential and planned unit developments (PRDs, PUDs) are allowed within this district to protect significant natural resources as identified in the Underhill Town Plan and maps, to promote the development of affordable housing in appropriate locations, and to preserve open space. Dimensional standards may be modified or varied accordingly under Article IX.

7. All structures, with the exception of telecommunications and wind towers and ancillary facilities, and tent platforms and lean-tos are prohibited in this district over 1,500 feet in elevation above mean sea level.

Table 2.4 Water Conservation District

A. **Purpose:** The purpose of the Water Conservation District is to protect the important gravel aquifer recharge area in Underhill Center.

B. **Permitted Uses:**

1. Accessory Structure, Use (to a permitted use)
2. Agriculture (Section 10.2)
3. Camp
4. Dwelling – Accessory (Section 4.2)
5. Dwelling – Single-family
6. Dwelling – Two-family
7. Forestry (Section 10.2)
8. Group Home (max: 8 residents; Section 4.11)
9. Home Child Care (max: 10 children; Section 4.8)
10. Home Occupation (Section 4.12)

Site Plan Review (see E.2):

11. Bed & Breakfast (max: 5 rooms; Section 4.6)
12. Public Facility (see E.5, Section 4.16)
13. Place of Worship (see E.5, Section 4.16)
14. Wildlife Management Area

C. **Conditional Uses:**

1. Accessory Structure, Use (to a conditional use)
2. Adaptive Reuse (Section 4.3)
3. Agribusiness
4. Agritourism
5. Campground (Section 4.5)
6. Cemetery
7. Community Center
8. Contractor's Yard (Section 4.7)
9. Cultural Facility
10. Day Care Facility (Section 4.8)
11. Dwelling – Multifamily (max: 8 units)
12. Extraction and Quarrying (Section 4.9)
13. Funeral Home
14. Garden Center
15. Health Clinic
16. Home Industry (Section 4.12)
17. Inn (max: 24 guest rooms; Section 4.6)
18. Kennel
19. Mixed Use (Section 4.13)
20. Nature Center
21. Office
22. Outdoor Market
23. Personal Service
24. Public Facility (see E.5; Section 4.16)
25. Recreation– Indoor
26. Recreation– Outdoor
27. Residential Care Facility (Section 4.11)
28. Restaurants (max: 90 seats, no drive-through)
29. Retail Store (max: 2,500 SF)
30. School– Public, Private (see E.5, Section 4.16)
31. Snack Bar
32. Telecommunication Facility (Section 4.18)
33. Transit Facility
34. Veterinary Clinic

Table 2.4 Water Conservation District, continued

D. **Dimensional Standards:**

Minimum Lot Size	5 acres
Minimum Frontage (along road ROW)	300 feet
Minimum Setbacks – Principal Structures:	
Front (from road ROW/ front lot line)	30 feet
Side (from side lot lines)	50 feet
Rear (from rear lot line)	50 feet
Minimum Setbacks – Accessory Structures:	
Front (from front lot line)	30 feet
Side (from side lot lines)	20 feet
Rear (from rear lot line)	20 feet
Minimum Setback – Surface Waters, Wetlands	See Section 3.19
Minimum Setbacks – Driveways	See E.4
Maximum Building Coverage (all building footprints)	20%
Maximum Lot Coverage (all impervious surfaces)	30%
Maximum Height (see Section 3.6)	35 feet
Planned Development (PUD, PRD)	Allowed

E. **Supplemental District Standards:**

1. All allowed uses within this district must meet applicable general standards for development under Article III. Specified uses are also required to meet applicable use standards under Article IV.

2. Agriculture, forestry, single and two family dwellings, and associated accessory uses (including group home, home child care, home occupations, and bed and breakfasts) do not require site plan review. All other permitted uses are subject to site plan review under Section 5.3. Such uses must receive site plan approval from the Development Review Board prior to the issuance of a zoning permit. Conditional uses are subject to conditional use review under Section 5.4 and must receive conditional use approval from the Development Review Board prior to the issuance of a zoning permit.

3. Maximum square footage (SF) limitations listed above for specified uses within this district refer to the maximum total gross floor area.

4. Driveways shall be located not less than 12 feet from side and rear lot lines unless waived by the Development Review Board for shared driveways [see Sections 3.2(D)(8) and 3.7(E)(3)] and lots with limited frontage [see Section 3.2(B)].

Table 2.4 Water Conservation District, continued

5. Public Facilities (see also 4.16):

    a. Public facilities allowed as a permitted use within this district are limited to places of worship and municipal facilities owned and operated by the Town of Underhill that are open to the public and intended for general public access or use (e.g., town office, town hall, post office, public park, playground), with the exception of public or private schools or other educational facilities certified by the Vermont Department of Education, which are conditional uses in this district.

    b. Public facilities allowed as conditional uses within this district, in addition to schools, are limited to other facilities that serve the public, but are not intended for general public access or use (e.g., fire and ambulance stations, town garage, transfer station, public water, regulated utility or wastewater facility).

    c. Other institutional uses (e.g., correctional facilities, hospitals) and hazardous and solid waste management facilities are specifically prohibited in this zoning district.

6. Planned residential and planned unit developments (PRDs, PUDs) are allowed within this district to promote clustered development that minimizes the amount of impervious surface and impacts to groundwater recharge areas, to protect other significant natural resources as identified in the Underhill Town Plan and maps, to promote the development of affordable housing in appropriate locations, and to preserve open space. Dimensional standards may be modified or varied accordingly under Article IX.

7. All structures, with the exception of telecommunications and wind towers and ancillary facilities, and tent platforms and lean-tos are prohibited in this district over 1,500 feet in elevation above mean sea level.

Table 2.5 Mt. Mansfield Scenic Preservation District

A. **Purpose:** The purpose of the Scenic Preservation District is to protect the scenic vistas along Pleasant Valley Road. This district includes upland areas with access and/or development constraints, and valley areas with access onto Pleasant Valley Road. The goal of this is achieved by allowing compatible lower densities of development or clustered development that maintains Underhill's rural character while protecting the views along Pleasant Valley Road.

B. Permitted Uses:

1. Accessory Structure, Use (to a permitted use)
2. Agriculture (Section 10.2)
3. Camp
4. Dwelling – Accessory (Section 4.2)
5. Dwelling – Single-family
6. Dwelling – Two-family
7. Forestry (Section 10.2)
8. Group Home (max: 8 residents; Section 4.11)
9. Home Child Care (max: 10 children, Section 4.8)
10. Home Occupation (Section 4.12)

Site Plan Review (see E.2):

11. Bed & Breakfast (max: 5 rooms; Section 4.6)
12. Public Facility (see E.5; Section 4.16)
13. Wildlife Management Area

C. Conditional Uses:

1. Accessory Structure, Use (to a conditional use)
2. Adaptive Reuse (Section 4.3)
3. Agribusiness
4. Agritourism
5. Alpine Ski Facility
6. Campground (Section 4.5)
7. Cemetery
8. Day Care Facility (Section 4.8)
9. Dwelling– Multifamily (max: 5 units)
10. Extraction and Quarrying (Section 4.9)
11. Garden Center
12 Health Clinic
13. Home Industry (Section 4.12)
14. Inn (max: 24 guest rooms; see Section 4.6)
15. Kennel
16. Mixed Use (Section 4.13)
17. Nature Center
18. Nordic Ski Facility
19. Outdoor Market
20. Public Facility (see E.5; Section 4.16)
21. Recreation– Outdoor
22. Restaurant
23. Telecommunications Facility (Section 4.18)
24. Veterinary Clinic

Table 2.5 Mt. Mansfield Scenic Preservation District, continued

D. **Dimensional Standards:**

Minimum Lot Size	10 acres
Minimum Frontage (along road ROW)	400 feet
Minimum Setbacks – Principal Structures:	
Front (from road ROW/front lot line)	30 feet
Side (from side lot lines)	75 feet
Rear (from rear lot line)	75 feet
Minimum Setbacks – Accessory Structures	
Front (from front lot line)	30 feet
Side (from side lot lines)	20 feet
Rear (from rear lot line)	20 feet
Minimum Setback – Surface Waters, Wetlands	See Section 3.19
Minimum Setbacks – Driveways	See E.4
Maximum Building Coverage (all building footprints)	10%
Maximum Lot Coverage (all impervious surfaces)	15%
Maximum Height (see Section 3.6)	35 feet
Planned Development (PUD, PRD)	Allowed

E. **Supplemental District Standards:**

1. All allowed uses within this district must meet applicable general standards for development under Article III. Specified uses are also required to meet applicable use standards under Article IV.

2. Agriculture, forestry, single and two family dwellings, and associated accessory uses including group home, home child care and home occupations do not require site plan review. All other permitted uses are subject to site plan review under Section 5.3. Such uses must receive site plan approval from the Development Review Board prior to the issuance of a zoning permit. Conditional uses are subject to conditional use review under Section 5.4 and must receive conditional use approval from the Development Review Board prior to the issuance of a zoning permit.

3. Maximum square footage (SF) limitations listed above for specified uses within this district refer to the maximum total gross floor area.

4. Driveways shall be located not less than 12 feet from side and rear lot lines unless waived by the Development Review Board for shared driveways [see Sections 3.2(D)(8) and 3.7(E)(3)] and lots with limited frontage [see Section 3.2(B)].

Table 2.5 Mt. Mansfield Scenic Preservation District, continued

5. Public Facilities (see also 4.16):

    a. Public facilities allowed as permitted uses in this district are limited to federal, state, or municipal parks, forests, wildlife management and outdoor recreation areas and associated facilities.

    b. Public facilities allowed as a conditional use within this district are limited to other facilities that serve the public, but are not intended for general public access or use (e.g., fire and ambulance stations, town garage, transfer station, public water, regulated utility, or wastewater facility).

    c. Institutional uses (e.g., hospitals, correctional facilities) and hazardous and solid waste management facilities are specifically prohibited in this zoning district.

6. Planned residential and planned unit developments are allowed within this district to protect significant natural and scenic resources, including scenic vistas along Pleasant Valley Road, as identified in the Underhill Town Plan and maps or from site investigation, to promote the development of affordable housing in appropriate locations, and to preserve open space. Dimensional standards may be modified or varied accordingly under Article IX.

7. All structures, with the exception of telecommunications and wind towers and ancillary facilities, tent platforms and lean-tos, and alpine and Nordic ski facilities, are prohibited over 1,500 feet in elevation above mean sea level.

Table 2.6 Soil and Water Conservation District

A. **Purpose:** The Soil and Water Conservation District includes significant headwater and aquifer recharge areas, unique and fragile natural areas, critical wildlife habitat, and mountainsides and ridges characterized by steep slopes and shallow soils. The purpose of this district is to protect Underhill's more remote and inaccessible forested upland areas from fragmentation, development, and undue environmental disturbance, while allowing for the continuation of traditional uses such as forestry, outdoor recreation, and compatible development.

B. **Permitted Uses:**

1. Accessory Structure, Use (to a permitted use)
2. Agriculture (Section 10.2)
3. Camp
4. Dwelling– Accessory (Section 4.2)
5. Dwelling– Single-family
6. Dwelling– Two-family
7. Group Home (max: 8 residents; Section 4.11)
8. Forestry (Section 10.2)
9. Home Child Care (max: 10 children; Section 4.8)
10. Home Occupation (Section 4.12)

Site Plan Review (see E.2):

11. Bed & Breakfast (max: 5 rooms; Section 4.6)
12. Public Facility (see E.6; Section 4.16)
13. Wildlife Management Area

C. **Conditional Uses:**

1. Accessory Structure, Use (to a conditional use)
2. Adaptive Reuse (see Section 4.3)
3. Agribusiness
4. Agritourism
5. Alpine Ski Facility (see E.5)
6. Campground (primitive, see E.9; Section 4.5)
7. Extraction and Quarrying (Section 4.9)
8. Home Industry (Section 4.12)
9. Kennel
10. Mixed Use (Section 4.13)
11. Nature Center
12. Nordic Ski Facility (see E.5)
13. Recreation– Outdoor
14. Telecommunications Facility (Section 4.18)
15. Veterinary Clinic

D. **Dimensional Standards:**

Minimum Lot Size	15 acres
Minimum Frontage (along road ROW)	400 feet
Minimum Setbacks – Principal Structures:	
Front (from road ROW/front lot line)	30 feet
Side (from side lot lines)	75 feet
Rear (from rear lot line)	75 feet
Minimum Setbacks – Accessory Structures:	
Front (from front lot line)	30
Side (from side lot lines)	20 feet
Rear (from rear lot line)	20 feet
Minimum Setback – Surface Waters, Wetlands	See Section 3.19
Minimum Setbacks – Driveways	See E.7
Maximum Building Coverage (all building footprints)	7 %
Maximum Lot Coverage (all impervious surfaces)	10 %
Maximum Height (see Section 3.6)	35 feet
Planned Development (PUD, PRD)	Allowed

Table 2.6 Soil and Water Conservation District, continued

E. **Supplemental District Standards:**

1. All allowed uses within this district must meet applicable general standards for development under Article III. Specified uses are also required to meet applicable use standards under Article IV.

2. Agriculture, forestry, single and two family dwellings, and associated accessory uses (including group home, home child care, home occupations, and bed and breakfasts) do not require site plan review. All other permitted uses are subject to site plan review under Section 5.3. Such uses must receive site plan approval from the Development Review Board prior to the issuance of a zoning permit. Conditional uses are subject to conditional use review under Section 5.4 and must receive conditional use approval from the Development Review Board prior to the issuance of a zoning permit.

3. For development in this district that is subject to conditional use review under Section 5.4 the Development Review Board, to avoid or mitigate potential adverse impacts to environmental or scenic resources as identified in the Underhill Town Plan and maps or from site investigation, may:

    a. Limit the extent of site clearing and disturbance, including the removal of existing vegetation.
    b. Require screening or reforestation as necessary to minimize the environmental or visual impacts of development.
    c. Require the submission of environmental or visual impact assessments, lighting plans, forest, wildlife habitat, erosion control and /or stormwater management plans for board review and approval.

4. Alpine and Nordic ski facilities allowed in this district as conditional use are limited to trails, ski lifts, warming huts, and ancillary storage and maintenance facilities.

5. Public facilities allowed in this district are limited to federal, state, or municipal parks, forests, wildlife management and outdoor recreation areas and associated facilities. All other types of public facilities are prohibited (see also 4.16).

6. Planned residential and planned unit developments are allowed within this district to protect significant natural resources as identified in the Underhill Town Plan and maps; to promote the development of affordable housing in appropriate locations; and to preserve open space. Dimensional standards may be modified or varied accordingly under Article IX.

Table 2.6 Soil and Water Conservation District, continued

7. Driveways shall be located not less than 12 feet from side and rear lot lines unless waived by the Development Review Board for shared driveways [see E. 8 below and also Sections 3.2(D)(8) and 3.7(E)(3)] and lots with limited frontage [see Section 3.2(B)].

8. To the extent feasible, in addition to the requirements of Section 3.2, access roads and driveways in this district shall be designed and located to:

    a. Share existing rights of way and/or follow existing linear features (e.g. tree or fence lines);
    b. Minimize their visibility as viewed from public vantage points, including public roads;
    c. Minimize the extent and number of stream crossings; and
    d. Avoid the fragmentation of wetlands, significant wildlife habitat, natural areas and timber stands.

9. Campgrounds within this district are limited to designated tenting areas and tent sites. No facilities of structures other than tent or yurt platforms, a central lean-to, composting-type toilets or saunas are allowed (see Section 4.5).

10. New structures, with the exception of telecommunications and wind towers and ancillary facilities, tent platforms and alpine and Nordic ski facilities, are prohibited in this district over 1,500 feet in elevation above mean sea level.

Table 2.7 Flood Hazard Overlay District

A. **Purpose:** The Flood Hazard Overlay District includes all Special Flood Hazard Areas (SFHAs) − 100-year floodplains − identified in and on the most current Flood Insurance Study and Flood Insurance Rate Maps for the Town of Underhill. The purposes of this district and associated regulations under Article VI are to:

1. Promote public health, safety and general welfare;
2. Prevent increases in flooding caused by uncontrolled development of lands in special flood hazard areas;
3. Avoid or minimize loss of life and property, the disruption of commerce, the impairment of the tax base, and extraordinary public expenditures and demands on public services that result from flooding;
4. Minimize flood losses by restricting or prohibiting uses that are dangerous to health, safety or property in times of flooding or cause excessive increase in flood heights or velocities;
5. Ensure that development within flood hazard areas is reasonably safe from flooding, occurs in a manner that minimizes or eliminates potential flood hazards to life and property, and maintains the functional capacity of floodplains to carry flood waters;
6. Implement goals and objectives of adopted municipal and hazard mitigation plans, and related state planning goals under the Act [§4302]; and to
7. Manage flood hazard areas designated by the state (under 10 V.S.A. §753) in accordance with requirements for community participation in the National Flood Insurance Program, and thereby ensure that the Town of Underhill, its residents and businesses are eligible for available federal flood insurance, disaster recovery funds, and hazard mitigation funds.

B. **Allowed Uses:**

As specified for the underlying zoning district, except as limited, conditioned or prohibited under Section 6.4. Note that zoning permits and approvals are required, to the extent authorized under the Act [§§4412, 4424], for all development within Special Flood Hazard Areas as "development" is specifically defined under Section 11.3 for purposes of flood hazard area regulation. Development in this context may include uses or activities that otherwise are exempt from municipal permit requirements under Section 10.2. Allowed uses within the underlying district − including new structures, or additions or improvements to existing structures − generally require conditional use review in the Flood Hazard Overlay District (see Section 6.4).

C. **Dimensional Standards:**

As specified for the underlying zoning district.

Table 2.7 Flood Hazard Overlay District, continued

D. **Supplemental District Standards:**

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

2. Flood hazard area district designations and associated regulations under Article VI do not imply that land outside of mapped Special Flood Hazard Areas will be free from flooding. These regulations shall not create liability on the part of the Town of Underhill, or any municipal official or employee thereof, for any flood damages that result from reliance on these regulations, or any administrative decision lawfully made hereunder.

3. No new development shall be allowed within this district (a Special Flood Hazard Area) if it can be reasonably located, in relation to its function, outside of this overlay district on the parcel to be developed, or on another parcel in common ownership.

4. Mandatory state and federal requirements for continued eligibility in the National Flood Insurance Program including, but not limited to, associated structural standards, definitions, administrative and variance requirements shall be applied to the review of all development in the Flood Hazard Overlay District. Accordingly:

    a. Applications for development in this district must include all information required under Section 6.5, and are subject to state agency referral requirements.

    b. Development in this district must meet all applicable development standards under Section 6.6, in addition to the development standards for the underlying zoning district.

    c. Requests for variances from flood hazard area development standards under Section 6.6 must meet variance requirements of Section 6.8, in addition to general variance requirements under Section 5.5.

    d. Records of permits, approvals, notices, variances, and required certifications for development within this district shall be maintained by the Zoning Administrator in accordance with Section 6.9.

ARTICLE III. GENERAL REGULATIONS

Section 3.1 Abandoned & Damaged Structures

A. **Abandoned Structures**. Structures that are not substantially commenced within one year of the issuance of a zoning permit, or within two years of being substantially damaged or destroyed, shall be considered abandoned for the purposes of these regulations.

B. **Damaged or Destroyed Structures.** No zoning permit shall be required for the stabilization of a damaged structure to prevent hazards to public health and safety, or to adjoining properties, structures or uses; nor for the timely repair or reconstruction of a damaged structure to the extent of its prior condition and use, subject to the following:

1. Repair or reconstruction of a damaged structure must begin within two years and be substantially completed within three years of the date of the event resulting in its damage or destruction.

2. A zoning permit shall be required for any repair or reconstruction that results in changes to pre-existing structural dimensions (e.g., structure height or footprint), densities (e.g., number of dwelling units), or uses under applicable provisions of these regulations.

3. Any repair or restoration of a nonconforming structure that increases the degree of nonconformance is subject to review by the Development Review Board (DRB) under Section 3.9. A repair or restoration that does not increase the former degree of nonconformance does not require DRB review.

4. A zoning permit is required for repairs or improvements to a damaged structure within the Flood Hazard Overlay District (Special Flood Hazard Areas), which must comply with all applicable requirements of these regulations under Article VI.

    a. A substantially damaged or destroyed structure within the Flood Hazard Overlay District may be reconstructed in the same location only if it cannot be relocated to a less hazardous location on the parcel. The lowest floor of the reconstructed structure must be elevated above the base flood elevation, or otherwise conform to district requirements.

C. **Incomplete Structures**. The owner of a structure that is substantially incomplete at the time a zoning permit expires, or three years after being damaged or destroyed, shall:

1. Apply for a zoning permit, or permit extension under Section 10.3 to resume construction, and thereby confirm the owner's intent not to abandon the structure; or

2. Remove all materials from the site, restore the site to surface grade, and establish ground cover sufficient to prevent soil erosion.

D. **Noncompliance**. Failure to comply with this section will be treated as a zoning violation under Section 10.6.

Section 3.2 Access

A. **Access & Frontage Requirements**. In accordance with the Act [§4412], no development except for forestry and agriculture may be allowed on a lot that does not have frontage on a regularly maintained public road (Class I, II or III town or state highway) or public waters or, with the approval of the Development Review Board (DRB), access to a public road or public waters by a Class IV town highway or a permanent easement or right-of-way at least 20 feet in width.

1. Any lot subdivided after the effective date of these regulations shall meet:

    a. minimum road frontage requirements for the district in which it is located, unless modified or waived by the Development Review Board under Section 8.6, or in association with a planned unit development under Article IX; and
    b. relevant access requirements under this section.

B. **Nonconforming Lots.** A lot legally in existence as of the effective date of these regulations that does not meet minimum access and frontage requirements shall be considered a pre-existing nonconforming lot. Access to a nonconforming lot may be approved by the DRB, in consultation with the Selectboard and Underhill-Jericho Fire Department, subject to the following requirements:

1. Access must be provided by a permanent easement or right-of-way, as documented in deed language to be recorded in the land records of the town or, with the written approval of the Selectboard, by a Class IV town highway that is upgraded and maintained by the applicant and successors, in accordance with Subsection D.11 and the town highway ordinance.

2. Development of a nonconforming lot under this section that is accessed by a 20-foot easement or right-of-way shall be limited to one principal use or structure and associated accessory structures and uses as allowed for the district in which it is located. If land subdivision or additional development is proposed, access must be provided in accordance with Subsection D.

3. Access review under this section shall be conducted concurrently by the DRB with site plan, conditional use, or subdivision review as applicable. If no other DRB review is required, access to a nonconforming lot under this section shall be subject to site plan review procedures under Section 5.3.

C. **Highway Access**. Access to town highways is subject to the approval of the Underhill Selectboard and, for properties that front on or directly access state highways, the Vermont Agency of Transportation. Applicants are encouraged to meet with town and state highway

officials to identify and incorporate relevant access management requirements in project design prior to applying for a municipal land use permit under these regulations; however, as a condition of town or state highway access approval, compliance with these regulations is also required. Accordingly:

1. The Zoning Administrator shall refer applications for subdivision or development on town highways to the Selectboard and, for subdivision or development on state highways, to the Vermont Agency of Transportation. No municipal permits or approvals under these regulations shall be issued until written recommendations from state and/or town highway officials have been received or 30 days have elapsed from the date of referral, whichever is sooner. Specific access recommendations may be incorporated in relevant findings and conditions of permit approval.

2. All highway accesses (curb cuts, road intersections) and related improvements shall be designed to meet access requirements under these regulations as well as other applicable state or municipal access management recommendations. Where the requirements of these regulations differ from other town or state access requirements, the more restrictive shall apply.

3. A town or state highway access permit shall be obtained after site plan, conditional use or preliminary subdivision approval is issued by the DRB under Article 5 or Section 7.5 of these regulations.

4. A municipal or state highway access permit must be obtained prior to the issuance of a certificate of occupancy or compliance under Section 10.4. The Zoning Administrator may consult with town or state highway officials in determining whether a proposed access meets all relevant access requirements prior to the issuance of a certificate of occupancy or compliance.

D. **Access Management & Driveway Standards.**

1. **Related Standards**. Accesses to town highways shall at minimum meet the requirements of the town highway ordinance and these regulations. Access to state highways shall meet Vermont Access Management Program Guidelines in effect at the time of application. Where these standards differ, the more restrictive shall apply.

2. **Number**. A lot shall be served by no more than one access (curb cut) onto a town or state highway except for:

    a. A temporary or permanent access used only for farming or forestry purposes, as approved by the Selectboard or state;

    b. A temporary access for use during construction or special events, as authorized by the Selectboard or state; or

c. A lot or use for which it has been demonstrated by the applicant, and determined by the DRB in consultation with town or state highway officials, that an additional access is necessary for vehicular and pedestrian safety, to improve traffic circulation, to reduce traffic congestion or, that because of physical site constraints (e.g., streams, wetlands, or steep slopes), strict compliance with this requirement would result in a less functional site layout.

3. **Subdivisions**. No additional access rights to a public highway shall automatically result from the subdivision or re-subdivision of parcels established after the effective date of these regulations [March 2, 2011], nor for the development or redevelopment of contiguous parcels under common ownership and control as of the effective date of these regulations. Such lots shall be accessed from a shared access and driveway, a cross connection to an adjoining lot, or a development road, unless otherwise approved by the DRB in consultation with state or town highway officials under Subsection D.2.

4. **Redevelopment.** For land subdivision and development subject to review by the Development Review Board − including the re-subdivision, redevelopment or change in use of an existing lot − the DRB may require, in consultation with town or state highway officials, the elimination, consolidation and/or relocation of existing accesses to meet the requirements of these regulations, the town highway ordinance or state access management guidelines.

5. **Width**. The width of an access (curb cut) shall be limited to the width as approved under D.9, and shall not extend along the length of road frontage. The installation of curbing, landscaping, or other edge-defining features may be required by the DRB as needed to physically or visually defined and limit access width.

6. **Zoning Districts**. No access shall be provided to serve a lot located in another zoning district which is to be used for a use that is prohibited within the district in which the access is located.

7. **Corner and Through Lots**. Where a lot has frontage on two roads (e.g., a corner or through lot), access to the lot shall be provided from the secondary (less traveled) road unless otherwise documented by the applicant and determined by the DRB as necessary to improve vehicle and pedestrian safety and traffic circulation onsite or on adjoining roads.

8. **Shared Access**. Shared accesses and driveways serving up to three lots and internal cross-connections to adjoining lots are encouraged and may be required for development subject to DRB review as necessary to minimize the number of access points and intersections along public highways. Shared driveways may be located within side or rear yard setbacks, and shall be maintained under a shared maintenance agreement accepted by the town. The interests of each owner of a shared access and driveway shall be protected by an easement recorded in the deed of each lot.

9. **Driveway Standards**. All new, relocated or upgraded driveways must meet town driveway standards, including Vermont Agency of Transportation B-71 standards for residential and commercial drives, as most recently amended (see Appendix A). In addition:

    a. Driveways shall be located not less than 12 feet from side and rear lot lines unless waived by the Development Review Board for shared driveways [see Subsection D.8 and Section 3.7(E)(3)] and lots with limited frontage [see Subsection B].

    b. Driveways shall be located to avoid, to the extent physically feasible, areas of steep slope (15% or more) (see Section 3.18), primary agricultural soils, and surface waters, wetlands and associated buffer areas (see Section 3.19), and to minimize the number and extent of stream crossings.

    c. The average finished grade of a driveway shall not exceed 12% as measured over any 50-foot section, unless otherwise specifically authorized by the Underhill Selectboard under the town highway ordinance and the Underhill-Jericho Fire Department.

    d. Driveways that exceed 500 feet in length shall include a 10-foot by 30-foot pull-off area every 500 feet and terminate in a "Y" turnaround.

10. **Development Roads**. For the purposes of these regulations, any access driveway or road serving four or more lots shall be considered a private development road which must meet town highway standards, including Vermont Agency of Transportation A-76 standards for development roads as most recently amended (see Appendix B), and the requirements of Section 8.6. Lot frontage along a private development road can be used to meet district frontage requirements. A private road may be accepted and taken over by the town only in accordance with adopted town highway policies and ordinances in effect at the time of application.

11. **Class IV Roads**. If a Class IV road is to be used for development that requires year-round access, the road shall be upgraded and maintained by the applicant and his or her successors in interest to at minimum meet town driveway (B-71) standards. If the development is for more than three lots, the Class IV road must be brought up to town highway (A-76) standards in accordance with Section 8.6 and the town highway ordinance. Public rights-of-way used to access private property shall remain open to the public.

Section 3.3 Conversion or Change of Use

A. A conversion or change in the use of land, existing buildings and other structures is subject to the following requirements:

1. The proposed use must meet all the requirements of these regulations pertaining to such use, including but not limited to any district, access, and parking requirements, as well as any other applicable municipal regulations currently in effect.

2. A conversion or change of use from one permitted use to another permitted use requires a zoning permit issued by the Zoning Administrator in accordance with Section 10.3. Site plan approval also may be required under Section 5.3 depending upon the type of permitted use.

3. A conversion or change in use from a permitted use to a conditional use, or from one conditional use to another conditional use, requires conditional use approval by the DRB under Section 5.4 prior to the issuance of a zoning permit. An approval for one conditional use shall supersede and replace a previously-approved conditional use unless a request is submitted and approved by the DRB to retain the previous approval.

4. A conversion or change of use of a nonconforming use or structure also must meet the requirements of Sections 3.9 (Nonconforming Structures) and 3.10 (Nonconforming Uses).

5. A conversion or change of use that involves the subdivision of land also requires subdivision approval by the DRB under Article VII prior to the issuance of a zoning permit or other approval.

B. Where a conversion or change of use results in increased wastewater generation, including but not limited to the conversion of a seasonal camp or accessory dwelling to a single family dwelling, a single family dwelling to a two-family or multi-family dwelling, or a dwelling to a mixed use, a certificate of occupancy shall not be issued by the Zoning Administrator until an state wastewater system and water supply permit has been submitted in accordance with Section 3.22 and the Act [§4414(13)].

Section 3.4 Equal Treatment of Housing

A. In accordance with the Act [§4412(1)], these regulations shall not have the effect of excluding the following from the Town of Underhill:

1. Mobile homes, modular housing, or other forms of prefabricated housing, except upon the same terms and conditions as conventional housing is excluded.

2. Housing necessary to meet the needs of the local population, as identified in the Underhill Town Plan.

3. Mobile home parks (see Section 4.14).

4. Multi-family dwellings, consisting of three or more dwelling units in a structure.

5. One accessory dwelling per principal single family dwelling, as a permitted use, if it meets the requirements of these regulations (see Section 4.2).

6. A state licensed or registered care home or group home that serves no more than eight persons who have a handicap or disability (see Section 4.8).

B. Provisions have been made for each of the above types of housing within designated zoning districts.

Section 3.5 Fences & Walls

A. Fences and walls are considered accessory structures for purposes of these regulations, subject to the following:

1. Fences and walls are not required to meet minimum district front, side and rear setback distance requirements for accessory structures under Article II.

    a. Fences or walls may be located within town highway rights-of-way, but shall not obstruct public rights-of-way, including travel lanes, shoulders and ditches, bicycle lanes and pedestrian paths and sidewalks, or interfere with corner visibility or site distances for vehicular or pedestrian traffic.

    b. The Town of Underhill assumes no liability for damage to private fences or walls located within town highway rights-of-way, nor any responsibility for their maintenance and repair.

    c. All fences and walls located within state highway rights-of-way require approval from the Vermont Department of Transportation.

2. No zoning permit or approval is required for:

    a. agricultural walls and fences (see Section 10.2),
    b. temporary fencing incidental to an approved construction project,
    c. residential fences or walls less than six feet in height that do not obstruct public rights-of-way, or interfere with corner visibility or sight distances for vehicular or pedestrian traffic, except within the Flood Hazard Area Overlay District.

3. All other fences and walls, including all fences and walls within the Flood Hazard Overlay District (Special Flood Hazard Areas) require a zoning permit.

    a. Fences and walls within the Flood Hazard Overlay District must meet applicable development standards under Article VI.

    b. No zoning permit shall be issued for a fence or wall within a state highway right-of-way without written approval from the Vermont Department of Transportation.

c. For a fence located on a property line, the submission of a signed agreement between the adjoining property owners is required prior to the issuance of a zoning permit.

Section 3.6 Height Requirements

> ***Height**: The distance above ground of a structure as measured vertically from the average finished grade at the base of the structure to the highest point of the structure or roof surface (see Section 11.2).*

A. No structure shall exceed maximum district height requirements except as allowed under Subsection B, and the following structures which are specifically exempted from district height requirements:

1. Farm structures, including barns and silos.

2. Church steeples, spires and belfries.

3. The following accessory structures which, as mounted or installed, do not exceed 50 feet in height as measured from ground level:

   a. wind generators with blades less than 20 feet in diameter,
   b. rooftop solar collectors less than 10 feet high,
   c. chimneys, belvederes, cupolas, weathervanes, and
   d. flag poles.

4. The placement of antennae used to transmit and/or receive communications signals on a property owner's premises if the aggregate of the largest faces of the antennae is not more than eight square feet and if the antennae and any mast support does not extend more than 12 feet above the roof of that portion of the building to which the mast is attached.

5. Structures subject to review by the Vermont Public Service Board, including wind generation, electrical transmission, and certain telecommunications towers which are specifically exempted from municipal regulation (see Sections 4.16, 10.2).

6. Telecommunications towers regulated by the municipality which meet the requirements of Section 4.18.

7. Antennae structures less than 20 feet in height and ski lift towers associated with an approved downhill ski area (alpine ski facility).

B. The Development Review Board may waive district height requirements and approve a structure in excess of the maximum allowed height as a conditional use subject to conditional use review under Section 5.4, only upon finding that:

1. The additional height is necessary to accommodate the proposed use, which is an allowed use within the district in which it is located.

2. The height of the structure does not constitute a hazard to public safety, or to adjoining properties.
3. That portion of the structure above the district height requirement shall remain unoccupied except for normal maintenance and repair activities.

4. Front, side and rear yard setbacks are sufficient to protect adjoining properties and public rights-of-way in the event of structural collapse.

5. The structure is not to be used for advertising purposes.

6. Access to the structure, particularly for climbing, is restricted.

7. The increased height shall not result in an undue adverse visual impact, as viewed from adjoining properties or public rights-of-way. "Undue adverse impact" in this context may be determined by taking into account:

    a. The height of a proposed structure in relation to its overall size and mass;
    b. The height of the proposed structure in relation to the heights of structures in the immediate vicinity; and
    c. Scenic resources in the vicinity, including scenic views or viewsheds that may be impacted.

8. Fencing and screening are provided as necessary to limit public access or to mitigate adverse impacts to adjoining properties or scenic resources.

9. Lighting, if deemed necessary by the DRB in accordance with state and federal regulations, shall be restricted to the minimum required for security and safe operation (also see Section 3.11 "Outdoor Lighting").

C. **Balloon test**. As necessary to determine potential visual impacts under Subsection B, the DRB may require the applicant to fly a four-foot diameter brightly colored balloon at the location and maximum elevation of a proposed structure.

1. If a balloon test is required, the applicant, in consultation with the Zoning Administrator, shall advertise the date, time, and location of this balloon test at least seven days in advance of the test in a newspaper with a general circulation in the Town. The applicant shall also inform the DRB in writing of the date, time, and location of the test at least 15 days in advance of the test.

2. The balloon shall be flown for at least eight consecutive daylight hours on two days. If visibility and weather conditions are inadequate for observers to be able to clearly see the balloon test, further test may be required by the DRB.

Section 3.7 Lot, Yard & Setback Requirements

A. Only one principal use or structure shall be located on a single lot, unless otherwise allowed as an adaptive reuse under Section 4.3, a mixed use under Section 4.13 or, with the approval of the Development Review Board, as part of a planned residential or planned unit development under Article IX.

B. No building lot shall be so reduced in area that it cannot meet area, yard, setback, frontage, coverage and other dimensional requirements for the district in which it is located, except as allowed under Subsection E.

C. District frontage requirements for lots served by private development roads shall be the same as frontage requirements for lots served by public roads.

D. Corner and through lots with frontage on two or more roads must meet frontage and front setback requirements for each adjoining road right-of-way. Access shall be provided from the secondary (least traveled) right-of-way as required under Section 3.2, unless otherwise approved by the DRB to improve site and traffic circulation or limit traffic congestion on adjoining roads.

E. **Waivers**. District dimensional requirements may be reduced by the Development Review Board, after notice and public hearing, only for the following:

1. To allow for limited additions to or enlargements of nonconforming structures, or structures on nonconforming lots (see Sections 3.8, 3.9 and 5.5).

2. As part of a site plan or conditional use review under Sections 5.3 or 5.4, if the DRB finds that a dimensional waiver for a structure can be mitigated through screening, design or other remedy, and the waiver is necessary for structures that provide for:

    a. disability access, fire safety, or other requirements of state or federal law, or for
    b. energy conservation or renewable energy.

3. District lot frontage requirements, in accordance with Section 8.6, for:

    a. minor subdivisions (up to three lots) that are accessed by a shared driveway,
    b. lots that will be maintained in perpetuity as undeveloped open land to be used only for passive outdoor recreation or resource conservation,
    c. lots located on a cul-de-sac or at the end of an existing dead-end road, or
    d. to allow for rear lot (e.g., flag lot) infill development within the Underhill Flats Village Center Zoning District.

4. As part of an approved master plan for a planned residential or planned unit development (see Section 9.1).

5. To allow certain structures that exceed district height requirements, subject to conditional use review under Section 5.4 and the requirements of Section 3.6.B.

F. For development subject to subdivision, site plan or conditional use review, the DRB may also require greater setback and buffer distances and additional landscaping and/or screening within designated setback areas; and may also limit or prohibit the use of setback areas for parking and storage as necessary to protect public health, safety, and welfare, or to avoid or mitigate undue adverse impacts to adjoining properties, rights-of-way, uses or significant natural or scenic resources (see Sections 5.5 and 8.3).

Section 3.8 Nonconforming Lots

A. Any lot in individual, separate and nonaffiliated ownership from surrounding properties legally in existence on the effective date of these regulations may be developed for the purposes allowed in the district in which it is located, even though not conforming to minimum lot size requirements, if the lot is not less than one-eighth (1/8) of an acre in area and has a minimum width or depth dimension of not less than 40 feet, as allowed under the Act [§4412].

B. If, after the effective date of these regulations [March 2, 2011], a nonconforming lot subsequently comes under common ownership with one or more contiguous lots, the lot shall be deemed merged with the contiguous lot(s), for the purposes of these regulations. However, the lots shall not be deemed merged and may be separately conveyed if all of the following are found:

1. the lots are conveyed in their preexisting, nonconforming configuration; and
2. on the effective date of these regulations, each lot had been developed with a water supply and wastewater disposal system; and
3. at the time of transfer, each water supply and wastewater disposal system is functioning in an acceptable manner, as documented by a professional engineer or licensed designer; and
4. the deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems, potable water systems, or both, in case there is a failed system or failed supply as defined in state statutes.

C. The Development Review Board may reduce applicable minimum district, surface water and wetland setback requirements by no more than 50%, subject to conditional use review under Section 5.4 and waiver provisions under Section 5.5, as necessary to allow for the development of a pre-existing nonconforming lot, if the DRB determines that the lot cannot otherwise be developed in conformance with these regulations. Any further reduction in dimensional requirements shall require variance approval under Section 5.5.

D. Lots established under an approved planned residential or planned unit development under Article IX that do not meet minimum district dimensional standards shall not be

considered nonconforming lots for purposes of subsequent merger under Subsection B or development in conformance with an approved plan.

Section 3.9 Nonconforming Structures

A. Any structure, or portion thereof, legally in existence as of the effective date of these regulations which does not meet the requirements of these regulations shall be considered a nonconforming structure. A nonconforming structure may continue to be occupied or used indefinitely in accordance with the Act [§4412(7)], subject to the following:

1. A nonconforming structure may undergo normal maintenance and repair without a zoning permit, provided that such action does not increase the degree of nonconformance.

2. A damaged nonconforming structure may be repaired or reconstructed in accordance with Section 3.1, provided that the repair or reconstruction does not increase the degree of nonconformance.

3. A nonconforming structure may be structurally enlarged, extended, expanded, modified or moved, with the issuance of a zoning permit under Section 10.3, provided that the enlargement, expansion, modification or relocation does not increase the degree of nonconformance, and meets all other applicable requirements of these regulations.

B. In the event that no reasonable alternative exists, the Development Review Board may grant a waiver for nonconforming structure to be structurally enlarged, expanded, extended, modified or relocated in a manner that reduces minimum required district, surface water and wetland setback distances by up to 50%, subject conditional use review under Section 5.4, and waiver provisions under Section 5.5. Any further increase in the degree of nonconformance, or reduction in applicable dimensional requirements, shall require variance approval by the DRB under Section 5.5.

C. Relocations, additions or improvements to nonconforming structures within the Flood Hazard Overlay District also must meet the requirements of Section 6.6.

Section 3.10 Nonconforming Uses

A. Any use of land or a structure legally in existence as of the effective date of these regulations which does not meet the requirements of these regulations shall be considered a nonconforming use. A nonconforming use may be continued indefinitely in accordance with the Act [§4412(7)], subject to the following:

1. A nonconforming use may be changed to another nonconforming use that is of the same or a more restrictive nature only with the approval of the Development Review Board, subject to conditional use review under Section 5.4.

2. A nonconforming use shall not be re-established if it has been changed to or replaced by a conforming use, or it has been discontinued for a period of 18 months, regardless of the intent to resume the nonconforming use.

3. A nonconforming use may be re-established within a structure or portion thereof which has been damaged or destroyed, only if repair or reconstruction of the structure is started within two years of the date of such damage or destruction, and is completed and the use reestablished within three years thereafter in accordance with Section 3.1.

Section 3.11 Outdoor Lighting

A. **Purpose**. The town's rural character is enhanced by the ability to clearly view and enjoy a night sky that is free of light pollution. While limited outdoor lighting may be necessary for safety and security, or desirable to promote nighttime recreational activities; inappropriate, poorly designed or improperly installed outdoor lighting can result in unsafe conditions and nuisances for adjoining property owners and motorists, sky glow which obstructs views of the night sky, and unnecessary power consumption.

B. **General Standards**. To allow for outdoor lighting, while minimizing its undesirable effects, the following standards apply to all outdoor lighting installations in the Town of Underhill, with the exception of temporary holiday light displays and net-metered solar panels which are exempted from these regulations:

1. 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.

2. Permanent outdoor lighting fixtures shall not direct light upward or onto adjacent properties, roads, or public waters, or result in lighting levels that are uncharacteristic of the surrounding neighborhood or area.

3. Outdoor lighting fixtures shall be cast downward or be designed to minimize glare. Such fixtures may include recessed, shielded, or cutoff fixtures, or low luminance lamps.

4. Outdoor lighting fixtures shall include timers, dimmers, and/or sensors to reduce energy consumption and eliminate unnecessary lighting.

5. Reflecting surfaces which may impair the vision of drivers of motor vehicles on nearby roads shall not be permitted.

C. **Specific Standards**. Outdoor lighting installations associated with development that is subject to subdivision, site plan or conditional use review shall meet the following requirements, unless waived by the Development Review Board as not applicable to a particular project:

1. The applicant shall provide information regarding exterior lighting fixtures, including fixture type, mounting locations and heights, illumination levels and distribution, and color, to be submitted as part of the subdivision or development review application.

    a. A lighting plan, prepared by a qualified engineer or lighting expert, may be required by the DRB for projects that include recreation field, parking, street, or security lighting.
    b. The DRB also may require an independent technical analysis of potential lighting impacts and appropriate mitigation measures, prepared by a qualified lighting expert, to be paid for by the applicant.

2. Electrical lines to outdoor lighting fixtures shall be installed underground.

3. Security lighting shall be used only where unusual or hazardous conditions require it. Security lighting, where deemed necessary by the DRB as documented by the applicant, shall be shielded and aimed so that only designated surfaces or areas are illuminated.

4. Timers, dimmers, and/or sensors shall be used to reduce energy consumption and eliminate unnecessary lighting.

5. Street lighting shall not be provided except in the Underhill Flats Village Center District or where it is deemed necessary by the DRB for motorist and pedestrian safety, such as at road intersections or pedestrian crossings.

6. Outdoor lighting, except for approved security lighting, shall be on only during business hours, unless otherwise specifically approved by the DRB.

D. **Waiver**. The Development Review Board may waive or modify the requirements of this section, subject to conditional use review under Section 5.4, if it finds that doing so will not:

1. Jeopardize the stated intent of these provisions under Subsection A; and

2. The modification or waiver is necessary for public safety, or to meet an overriding public purpose, such as the illumination of a public building or monument, or for the nighttime display of the national flag; and

3. Appropriate conditions are attached to minimize adverse impacts to adjoining properties and rights-of-way.

Section 3.12 Outdoor Storage

A. **Solid & Hazardous Wastes**.

1. The accumulation and storage of waste, scrap materials or junk on any property is prohibited except:

a. in an existing or approved salvage yard (Section 4.17) or waste management facility (Section 4.16);
b. within an enclosed building designated and permitted for that purpose (i.e., storage shed, utility building, garage or barn); or
c. in a screened outdoor area approved by the DRB in association with an allowed use.

2. The dumping or outdoor storage of trash, garbage, construction debris, hazardous or corrosive wastes or chemicals, or any refuse is prohibited except in solid or hazardous waste management facilities or salvage yards approved in accordance with these regulations and state law.

3. The disposal and composting of brush, yard, and organic kitchen waste generated as part of the normal operation and maintenance of a household or commercial property, in a manner that meets applicable health and safety regulations, is exempted from these regulations.

B. **Motor Vehicles**. The storage on any lot of more than three unregistered or uninspected junk motor vehicles, other than farm or on-premise utility vehicles, is prohibited except within an approved motor vehicle repair facility or salvage yard. Unregistered vehicles must be stored or screened so that they are not visible from town and state highways, other public rights-of-way, and adjoining properties. No one may discard or abandon any motor vehicle upon the land of another, with or without the permission of the landowner, except in an approved motor vehicle repair facility or salvage yard.

C. **Aboveground Storage Tanks**. The storage of any highly flammable or hazardous liquid or gas in an above ground tank with a unit capacity exceeding 550 gallons must meet all applicable state and federal construction, storage and safety standards, and the following:

1. A tank with a capacity of up to 10,000 gallons must be located at least 100 feet from all lot lines.

2. A tank with a capacity in excess of 10,000 gallons must be located at least 200 feet from all lot lines.

3. Tanks shall be properly retained with dikes having a capacity of not less than 1.5 times the capacity of the tank, or as otherwise required by the state.

4. Where applicable, the applicant shall submit a copy of the permit issued for storage tank installation by the Vermont Department of Public Safety prior to the issuance of a zoning permit.

Section 3.13 Parking, Loading & Service Areas

A. **Parking**. Off-street parking spaces shall be provided on the same lot as the associated use, or on an adjacent lot in the same ownership or under permanent easement, as set forth below:

1. All required parking spaces shall have a minimum width of nine feet, a minimum length of 18 feet, unobstructed access and maneuvering room, and a gravel or paved surface sufficient for year-round use.

2. A minimum number of parking spaces as determined by the proposed use shall be provided in accordance with minimum requirements listed in Table 3.1, unless otherwise modified or waived under Subsection C.

Table 3.1 Minimum Off-Street Parking Requirements

Use	Parking Space
Bed & Breakfast	2 per dwelling, and 1 per guest room
Dwelling – Accessory	1 per dwelling unit
Dwelling – Single, Two Family	2 per dwelling unit
Dwelling – Multi-Family	3 per every 2 dwelling units
Funeral Home	1 per employees and 5 per visiting room
Health Clinic	3 per physician, dentist, or other primary caregiver
Home Child Care	2 per dwelling unit, and 1 per nonresident employee
Home Occupation/Home Industry	2 per dwelling unit, and 1 per nonresident employee
Light Industry	1 per employee for the largest shift
Lodging	1 per guest room
Mixed Use	Total sum required for each use; or as determined from use-specific shared parking analyses
Motor Vehicle Service Station	3 per service bay
Office/Professional/Government/Business	1 per 300 sq ft of gross floor area
Personal Service	1 per employee, and one per customer service area
Private Club	1 per 4 members
Public Assembly	1 per 200 square ft gross floor area, or 1 per 5 seats capacity, whichever is greater
Public Facility [with limited/no public access]	1 per 1,000 sq. ft of gross floor area and 1 per employee
Residential Care Facility	1 per 5 beds, and 1 per employee for the largest shift
Restaurant, Bar	1 per 5 seats, and 1 per employee for the largest shift
Retail Sales & Service	1 per 300 square feet of gross floor area
School/Day Care Facility	3 spaces per 10 children enrolled
Warehouse	1 per 1,000 square feet of gross floor area, and 1 per employee
Unspecified	As determined from accepted parking standards (e.g., Institute for Transportation Engineers standards) or site-specific parking analyses.

3. Parking areas associated with multi-family, public, commercial and industrial uses are to be located to the rear or side of principal buildings, behind the front building line, unless the Development Review Board finds that another location is justified due to physical site constraints, to improve pedestrian and vehicular safety and site circulation, or to accommodate shared parking facilities. In addition:

    a. Parking areas for such uses shall be screened from adjoining residential properties and public rights-of-way by fencing or hedging that does not block vehicular lines of sight.

    b. In addition to the requirements listed in Table 3.1, all multi-family, public, commercial and industrial uses must provide adequate, clearly marked handicapped parking spaces in accordance with state and federal disability (ADA) requirements, and at least one bicycle rack for use by employees, residents, and/or the general public.

4. All off-street parking areas in excess of eight parking spaces shall incorporate landscaped areas which at minimum equal 10% of the total parking area, unless waived by the Development Review Board under C. Landscaped areas shall be integrated into parking lot and stormwater management design, and shall be regularly maintained.

5. For development subject to site plan or conditional use review, shared parking and/or landscaping, screening, lighting, snow removal, pedestrian or transit facilities may be required as a condition of approval as necessary to meet the requirements of this section and applicable development review criteria.

B. **Loading & Service Areas**.

1. Where a proposed development will require the frequent or regular loading or unloading of goods or passengers, on-site loading or transit areas shall be provided.

2. Service areas shall be provided for fire and emergency vehicles, waste and recycling collection, utility boxes, snow storage, and other purposes as necessitated by the proposed use.

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

4. Loading, utility, waste and recycling collection areas, to the extent physically feasible, shall be located to the rear of principal buildings and screened from the view of adjoining public rights-of-way and residential properties.

C. **Waivers**. For development subject to subdivision, site plan or conditional use review, the Development Review Board may waive on-site parking, loading or service area

requirements based on the determination under one or more of the following provisions that, due to circumstances unique to the development, the strict application of these standards is unnecessary to meet the intent and requirements of these regulations:

1. Green areas are to be set aside and maintained as open space for future conversion to parking, loading and/or services areas in the event that the spaces initially permitted are subsequently deemed inadequate to meet demonstrated need.

2. Adequate shared parking, loading, and/or service areas for use by two or more businesses exist on the same or contiguous lots, under common ownership or a long-term lease, as documented by the applicant from a site- and use-specific shared parking analysis.

3. Adequate off-site public parking, including public or on-street parking, exists within reasonable walking distance (up to 1000 feet) of the establishment.

4. The proposal is for the development of affordable or elderly housing as defined under Section 11.2, and it is documented by the applicant that the required number of spaces is not necessary and the cost of meeting the parking requirement would adversely affect the financial viability of the project.

Section 3.14 Performance Standards

A. No land or structure in any zoning district shall be used or occupied in any manner that creates dangerous, injurious, noxious or otherwise objectionable conditions that adversely affect or interfere with the reasonable use of adjoining or nearby properties.

B. The following performance standards, as measured at the property line, must be met and maintained for uses in all districts, except for agriculture and forestry. In determining ongoing compliance, the burden of proof shall fall on the applicant or property owner. No use, under normal conditions, shall cause, create or result in:

1. Noise in excess of 60 decibels (dBA) that is not the result of occasional, customary activities associated with an allowed use (e.g., lawn mowing), or as otherwise specified for a particular use; or noise that represents a significant increase in noise levels in the vicinity of the use so as to be incompatible with the surrounding area.

2. Clearly apparent vibration which, when transmitted through the ground, is discernable at property lines without the aid of instruments.

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

4. Releases of heat, cold, moisture, mist, fog or condensation which are detrimental to neighboring properties and uses, or public health, safety, and welfare.

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

6. Glare, lumen, light or reflection which constitutes a nuisance to other property owners or tenants, which impairs the vision of motor vehicle operators, or which is otherwise detrimental to public health safety and welfare (see Section 3.11);

7. Liquid or solid waste or refuse which cannot be disposed of by available methods without undue burden to municipal or public disposal facilities, which pollutes surface or ground waters, or which is otherwise detrimental to public health, safety and welfare (see also Section 3.12).

8. Undue fire, safety, explosive, radioactive emission or other hazard which endangers the public, public facilities, or neighboring properties, or which results in a significantly increased burden on municipal facilities and services.

9. Agricultural operations shall at minimum observe Accepted Agricultural Practices (AAPs) as defined and administered by the Vermont Agency of Agriculture, Food and Markets.

10. Forestry operations shall at minimum observe Accepted Management Practices (AMPs) as defined and administered by the Vermont Department of Forests, Parks and Recreation.

C. The Zoning Administrator or Development Review Board may consult with state and federal regulatory agencies in determining accepted performance standards for a particular use, activity, or type of equipment.

Section 3.15 Ponds

A. **Intent**. The construction, reconstruction or expansion of any pond requires a zoning permit from the Town. The intent of regulating pond construction is to protect the lives and property of Underhill residents, the infrastructure of the community, and the natural environment by:

1. reducing the possibility of impoundment failure resulting from improper design or construction;
2. minimizing the potential for flood damage to upstream properties by the storage of flood waters; and

3. minimizing damage caused by the sudden release of stored water from impoundment failure or intentional rapid draining of the impoundment.

B. **Application Requirements**. Prior to issuance of a zoning permit, the applicant shall submit the following information, including copies of any permits issued by the Vermont Department of Environmental Conservation and/or the U.S. Army Corps of Engineers, as applicable to a particular project:

1. **Application materials**. In addition to the requirements of Section 10.3, an application for pond construction shall include:
   a. Information regarding pond design and construction, including the identity and qualifications of the person(s) responsible for pond design and installation;
   b. A site plan showing the location of existing drainage, surface waters, wetlands, wells and septic systems;
   c. A sketch of the pond location on either a copy of a survey or a parcel map showing: setbacks, the existing slope of the site, the water source and method of discharge, and the location and size of emergency spillway;
   d. A cross section drawing;
   e. Information regarding maximum pond depth in relation to the water table;
   f. A description and cross section for any dam or form of retention;
   g. The approximate volume of water to be contained; and
   h. A description of the vegetative cover that is planned to control erosion.

2. Applications shall also include required state and federal permits, as identified from state project review sheets. These may include but not be limited to:

   a. A state dam permit for any pond that will impound, or be capable of impounding 500,000 cubic feet or more of water from the VT Department of Environmental Conservation.

   b. A state stream alteration permit for any pond that necessitates work in a stream.

   c. Approval of the Vermont Department of Fish and Wildlife Commissioner for the placement of obstructions in streams that block the passage of fish.

   d. A state wetlands permit for any pond located within or near a wetland (see also Section 3.19).

   e. U.S. Army Corps of Engineers permits.

C. **General Requirements.**

1. A pond shall be considered accessory to the principal use of a property.

2. Natural drainage patterns shall be maintained.

3. No pond shall be located on or extend beyond existing property lines.

4. **Setbacks**. The following setbacks are required for all ponds as measured horizontally from the nearest point of pond excavation or embankment:

a.	Property Line:	25 feet
b.	Leach Field:	100 feet
c.	Drilled Well:	25 feet
d.	Shallow Well:	100 feet
e.	Principal Structure:	25 feet

5. All earth work shall be conducted between June 1st and October 1st.

6. All ponds shall be regularly inspected, repaired and maintained.

D. **Excavated Ponds.** Excavated ponds under 20,000 cubic feet may be issued a permit by the Zoning Administrator. Conditional use review and approval from the Development Review Board under Section 5.4 is required for the construction, reconstruction or expansion of an excavated pond of 20,000 cubic feet or more, which shall be designed by a professional engineer licensed by the state with expertise in pond design and construction. All excavated ponds must meet the following requirements:

1. Clearing limits shall be clearly marked on the ground and confined to the immediate construction area to avoid unnecessary disturbance.

2. During the excavation process, soil will be disposed of in an upland site at least 50 feet from the edge of the pond and other surface waters and wetlands.

3. Pond banks shall not exceed a 3:1 slope (three-foot horizontal distance to one-foot vertical distance).

4. All areas stripped of vegetation, except the ponded area, shall be seeded and mulched immediately following the completion of excavation.

E. **Embankment Ponds**. Embankment ponds that require the construction, reconstruction or installation of water control structures such as earthen dikes, concrete dams, and/or spillways may be allowed as a conditional use subject to conditional use review by the Development Review Board under Section 5.4, and the following requirements:

1. The pond shall be designed by a professional engineer, licensed by the state, with expertise in pond design and construction.

2. The design of all water control structures shall be based on the size of the watershed area that drains into the pond and, at minimum, a 25-year storm event.

3. It shall be demonstrated to the satisfaction of the Board that the pond and associated spillway areas will not adversely affect municipal facilities, adjoining properties, or downstream drainage. Easements from adjoining landowners shall be submitted for impoundment and/or spillway areas that will extend on to or have the potential to flood adjoining properties.

4. An erosion control plan that incorporates appropriate erosion control methods from the Vermont Handbook for Soil Erosion and Sediment Control as most recently amended shall be submitted for review and approval.
5. The pond shall be maintained on a regular basis. As a condition of approval, the Board may require periodic safety inspections by a professional engineer, and the submission of safety reports.

F. **Flood Hazard Areas.** All ponds constructed within the Flood Hazard Area Overlay District (Special Flood Hazard Areas) are subject to conditional use review under Section 5.4 and applicable requirements under Section 6.6. Applications for ponds within this district shall be referred to the state for review and comment.

G. **Discontinuance or Deconstruction**. A zoning permit is also required for the discontinuance, removal or deconstruction of an existing or approved pond to ensure that natural drainage patterns and adjoining surface waters, wetlands and properties will not be adversely affected. The application shall include a description of the methods used to drain and deconstruct the pond, and site restoration.

H. **Liability**. Any municipal approval or zoning permit issued for pond construction or deconstruction shall clearly state that the applicant and his or her successors and assigns is responsible for the pond's safety and retains liability for its failure if the pond is not constructed, maintained, operated, or repaired in a safe and proper manner. The municipality, in approving pond construction, assumes no liability in the event of failure.

Section 3.16 Signs

A. **Purpose**. These sign regulations are established to achieve the following objectives:

1. To ensure businesses, activities, events, or products are provided with sufficient opportunity for identification and promotion.
2. To ensure the safety and well being of the users of streets, roads and highways in the Town of Underhill.
3. To reduce distractions and obstructions from signs which would adversely affect traffic safety, and to alleviate hazards caused by signs projecting over or encroaching upon public ways.
4. To discourage visual competition in signage and ensure that signs aid orientation and adequately identify uses and activities to the public.
5. To protect the natural and historic beauty of Underhill's rural highways and scenic vistas from indiscriminate outdoor signage.

B. **Applicability**. No outdoor sign shall be erected, displayed, moved or modified in size, height or lighting without the issuance of a zoning permit by the Zoning Administrator, except for signs that are exempt from the requirement to obtain a zoning permit (Subsection D) or are otherwise prohibited under these regulations (Subsection E).

C. **General Standards**. All signs, other those specified under Subsection D, shall require a zoning permit issued by the Zoning Administrator in accordance with the following requirements:

1. No outdoor advertising signs shall be permitted in any district except for the purpose of identifying an existing, on-premise use in those districts where such a use is allowed.

2. Signs placed on or which are a part of an awning or canopy are subject to all requirements of these regulations.

3. No sign shall be erected, relocated or maintained so as to prevent free entrance to or exit from any right-of-way, driveway, door, fire escape or public street or road.

4. No sign shall be erected or placed within a municipal right-of-way except with the approval of the Underhill Selectboard or the Vermont Agency of Transportation.

5. No sign shall be permitted which prevents a clear and unobstructed view of official signs or impairs sight distances at intersections.

6. No sign shall be mounted on a roof, or extend above the highest roof eave.

7. No sign shall have more than two faces.

8. Permanent signs, including any sign on display for more than 45 days in any one-year period, with the exception of posted trespassing, hunting and safety zone signs, shall not be erected, attached, drawn or painted on fences, utility poles, trees, rocks, or other natural features.

9. Freestanding signs shall not extend above the roof eave of the business establishment, nor be located within 20 feet of a side or rear property line, or within any right-of-way with the exception of real estate signs. The top of the freestanding sign shall not be more than 15 feet high.

10. No sign shall be erected within or projected into or above any public street or sidewalk right of way.

11. No sign shall be illuminated during hours when premises are unoccupied or are not open for business. Internally illuminated signs are specifically prohibited. Illuminated signs shall not produce undue glare, hazards or distractions. A constant, shielded light source of one color may be used, provided that the light fixture is mounted on the top

or side of the sign, is directed downward onto the sign surface, and does not cast light onto neighboring properties, public rights-of-way, or vehicular traffic. The light source shall not be visible from adjacent properties or roads.

12. Except for the period from Thanksgiving to New Years Day, no sign or display shall contain string lighting, pennants, moving parts, or similar attention gathering devices nor shall they contain or support any device capable of emitting noise.

13. All signs shall be maintained in a safe and secure condition. Nothing in these regulations shall prevent the normal maintenance and repair of an existing sign, including the replacement of broken parts. If the Zoning Administrator determines that a sign is not secure, safe, or in a good state of repair, a written warning and/or notice of violation may be issued under Section 10.6 with a request that any defect be immediately corrected.

D. **Sign Standards for Park Street, Route 15, and that portion of Pleasant Valley Road from Underhill Center Bridge #9 to Stevensville Road**:

1. The total area of all signs, including all freestanding, wall, and projecting signs, shall not exceed 42 square feet per lot or development.

2. No more than one freestanding sign, identifying one or more businesses, is allowed per lot or development.

3. A freestanding sign identifying an individual business shall not exceed 16 square feet in area.

4. Directory signs identifying multiple businesses shall not exceed 24 square feet in area.

E. **Other Areas**. Within all other areas, including other zoning districts:

1. The total area of all signs, including freestanding wall or projecting signs shall not exceed 16 square feet per lot or development.

2. No more than one freestanding sign, identifying one or more businesses is allowed per lot or development.

3. A freestanding sign identifying an individual business shall not exceed eight square feet in area.

4. Directory signs identifying multiple businesses shall not exceed 16 square feet in area.

F. **Measurement**. The sign area shall be defined as the total area of one sign face as measured from the outer edges, excluding any supporting frames or panels. Signs consisting of freestanding characters shall include any intervening spaces (the entire message area) in

the calculation of total sign area. The height of a sign shall be measured from ground level to the highest portion of the supporting structure.

G. **Exempted Signs**. The following signs shall not require a zoning permit, but must meet all applicable requirements of Subsection C:

1. Signs erected and maintained by the town or state on public roads for directional, safety or public service purposes, including tourist information services.

2. Small unlit, directional, warning or informational signs which do not exceed two square feet in area, which are intended to inform the public (e.g., that identify restrooms, public telephones, freight entrances, vacancies) and are located on the premises.

3. One unlit flag or banner used for advertising or informational purposes (e.g., "sale", "open") which does not exceed 16 square feet in area.

4. Legally posted, trespassing, hunting or safety zone signs.

5. One private home identification sign not exceeding two square feet in area.

6. One unlit sign advertising a home-based business (e.g., home child care, home occupation, home industry or bed & breakfast), that does not exceed eight square feet in area.

7. One unlit sign advertising an active farming operation, which does not exceed 16 square feet in area.

8. One unlit residential subdivision sign, placed at the main entrance of a subdivision, which does not exceed 16 square feet in area.

9. One sign or bulletin board incidental to a school, church, library, public park or other government facility, which does not exceed 16 square feet in area.

10. One unlit sandwich board or other moveable sign per business, which does not exceed four feet in height, nor 12 square feet in area, and is displayed only during hours of operation;

11. One temporary real estate “for sale” or “for rent” sign that does not exceed six square feet in area, and is removed immediately following property sale or rental;

12. Temporary on-premise signs for the sale of seasonal agricultural products, not exceeding 16 square feet in area, which are in place for no longer than six months during any one year period;

13. Temporary sign erected for a fair, exposition, or other municipal, philanthropic, or community sponsored special event that does not exceed 16 square feet in area, is installed on the premises or in another off-site location approved by the Selectboard no more than two weeks prior to the event, and is removed immediately following the event;

14. Temporary auction, lawn or garage or similar sale signs, not exceeding six square feet in area per side, which shall be removed immediately following the sale.

15. One temporary, unlit advertising sign, not exceeding 16 square feet, for an approved construction project or residential subdivision, which shall be removed when construction is completed or 75% of residential lots have been transferred into individual ownership.

16. Temporary election signs to be posted and removed in accordance with state law. Such signs may be displayed not more than 30 days prior to an election, and shall be removed within seven days of the vote.

17. One unlit historic or landmark sign per historic property.

18. Decorative, wall-mounted nostalgic or replica signs that are not used for advertising purposes, and do not exceed eight square feet in area.

19. Wall murals intended solely for artistic, non-advertising purposes.

20. Unlit window signs and displays.

H. **Prohibited Signs**. The following signs are specifically prohibited in the Town of Underhill:

1. Signs which impair highway safety.
2. Off-premise signs, except for those that conform to state laws;
3. Signs that are internally illuminated, animated, flashing, oscillating, revolving, or made of reflective material or paint, with the exception of pubic safety signs, time and temperature signs, and barber poles;
4. Signs identifying businesses that are no longer in existence;
5. Signs erected, attached or maintained on any utility pole or government signpost; and
6. Signs mounted on or attached to parked rolling stock (e.g., a motor vehicle or trailer) that is not in active use as a vehicle, but is used primarily as a support or foundation for the sign.

I. **Nonconforming Signs**. Any sign lawfully in place prior to the effective date of these regulations that does not conform to these regulations with respect to area, height, setback, location, number or lighting, shall be considered a nonconforming sign. Such signs may receive normal maintenance and repair; however no nonconforming sign shall be enlarged,

extended, changed in design or altered to advertise a different business or product, unless it is brought into conformance with these standards.

1. A nonconforming sign that has been damaged or destroyed beyond 50% of its appraised value for a period of six months; that has been abandoned for a period of six months or more; or that identifies a business, activity or product that has not existed at that location for six months or more must be removed.

Section 3.17 Source Protection Areas

A. To protect the quality of public water supplies, and associated source protection areas:

1. No development shall be allowed within a 200-foot radius of a well or spring that serves a public water supply, except for activities, structures and uses that directly relate to the water system; and
2. To the extent physically feasible, all on-site septic systems, including leach fields, shall be located outside of a designated source protection area.

B. All development within designated source protection areas, except for agriculture, forestry, single and two family dwellings, associated accessory uses and structures, and uses that are specifically prohibited under Subsection C, shall be subject to conditional use review by the Development Review Board under Section 5.4, to include findings that:

1. The proposed development is consistent with the Source Protection Plan as most recently adopted and approved by the state, does not include a prohibited activity or use under Subsection B, and does not present a threat to the public water supply.

2. There shall be no on-site discharge of hazardous materials from floor drains; all floor drains will drain into holding tanks.

3. All drainage ways and sediment traps shall be regularly maintained in full working order by the owner.

4. Site clearing and disturbance, and on-site paving, roofing, and other impervious surfaces that increase surface runoff and limit water infiltration and recharge, are minimized. All runoff from impervious surfaces shall be diverted to areas covered with vegetation for surface infiltration.

5. The storage and application of fertilizers, pesticides, herbicides and other chemicals shall comply with all state and federal regulations and best management practices.

6. Above ground storage tanks for oil, gasoline or other petroleum products shall be placed in a building or other impervious containment area to prevent spills and leaks from reaching groundwater (also see Section 3.12).

7. The use of sodium chloride for ice control shall be minimized.

C. The DRB, as a condition of approval, may required groundwater monitoring on-site or in the immediate vicinity of the project.

D. The following uses and activities are specifically prohibited within designated source protection areas:

1. Operations, including home based businesses, which manufacture, use, process, store or dispose of hazardous materials or wastes in amounts that could threaten public water supplies, including but not limited to metal plating, chemical manufacturing, wood preserving, photographic processing, motor vehicle service, auto body repair, furniture stripping, and dry cleaning materials.

2. Solid and hazardous waste landfills, storage and transfer facilities, dumps, and salvage yards.

3. Outdoor storage of salt, de-icing materials, snow dumps, pesticides or herbicides.

4. The storage or spreading of sludge from wastewater treatment facilities.

5. Cemeteries.

6. The storage of unregistered vehicles, unless stored in an enclosed structure and parked on an impervious surface or drained of all fluids.

7. Installation of floor drains or sumps that discharge directly to the ground.

8. Underground storage tanks, and above ground storage tanks that lack an adequate impervious containment area.

Section 3.18 Steep Slopes

A. **Purpose.** The purpose of this section is to regulate land subdivision and development to minimize site disturbance and construction on steep slopes (15% to 25%), and to avoid site disturbance on very steep slopes (> 25%) in order to:

1. Maintain existing topography, including natural (pre-development) elevations, grades and drainage patterns.
2. Minimize impervious surfaces, stormwater runoff, channeling, flooding and soil erosion, on steep slopes.
3. Prevent hazards to life and property resulting from slope instability or failure, including rock falls, slides, slumps and other downslope movements of materials or structures.
4. Avoid stream sedimentation and adverse impacts to surface and ground water quality, and aquatic habitat.

5. Maintain and re-establish vegetation on steep slopes to stabilize soils, and to maintain riparian buffers.
6. Minimize the adverse visual impacts of steep slope development, as viewed from public vantage points.
7. Avoid the need for permanent and costly engineered slope stabilization and stormwater management practices on very steep slopes, including excessive long-term management and maintenance costs.
8. Ensure that development on steep slopes is constructed and maintained in conformance with best management practices for construction, stormwater management and erosion control.

B. **Applicability**. The requirements of this section apply to all land subdivision and development including, within the context of this section, site clearing and preparation, grading and excavation, construction, and the installation of driveways, roads, utilities and other infrastructure, on steep or very steep slopes as defined under Section 11.2

1. **Exemptions**. The following are specifically exempted from the requirements of this section:

    a. Agriculture conducted in conformance with Accepted Agricultural Practices (AAPs) as defined by the Secretary of Agriculture, Food and Markets (see Section 10.2).

    b. Forestry (silivculture), conducted in conformance with Accepted Management Practices (AMPs) as defined by the Commissioner of Forests, Parks and Recreation, including logging roads which conform to "Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont" as most recently amended (see Section 10.2).

    c. Utilities, including telecommunications facilities, power generation facilities, and transmission lines regulated by the Vermont Public Service Board (see Sections 4.16, 10.2).

    d. Extraction and quarrying operations which are separately regulated under Section 4.9.

    e. The construction of additions or new accessory structures that, in total, do not increase the pre-existing building coverage of the lot within a steep or very steep slope area, as of March 2, 2011, by more than 500 square feet.

    f. Site disturbance and clearing that is customary and incidental to residential gardening and landscaping activities (see Section 10.2).

    g. Emergency remedial action to stabilize an unstable or failing slope which poses an imminent threat to public health, safety or welfare, provided that the action involves the least necessary disruption of natural features of the site.

h. Unpaved paths or trails incidental a residential use that are maintained for use only by residents of the property and guests (see Section 10.2).

i. Isolated, noncontiguous areas of steep or very slope with a total area of 1,000 square feet or less.

2. All other development on steep and very steep slopes is subject to conditional use review under Section 5.4 or, for the subdivision of land, applicable subdivision standards under Article VII, and the requirements of this section.

3. The DRB may waive one or more standards under this section, and associated application requirements, if it finds that:

a. such requirements and standards are not applicable to a particular project; or

b. it is evident, based on submitted information and a site inspection, that the proposed development involves minimal site disturbance and poses a negligible threat to water quality, public roads and facilities, and to adjoining properties.

C. **Application Requirements**. In addition to application requirements under Section 5.2, applications for development on steep or very steep slopes shall include the following:

1. A copy of the USGS topographic map showing the location of the property in relation to general site topography and drainage.

2. A slope map of the property generally showing areas of steep (15% to 25%) and very steep (>25%) slope, as determined from one or more of the following:

a. USGS topographic maps,
b. Digital elevation data available from the Vermont Center for Geographic Information, or
c. Vermont Soil Survey map units, available from the USDA Natural Resource Conservation Service.

3. A site plan for the property prepared by a licensed professional engineer or surveyor showing:

a. The location of all surface waters, wetlands, and required setback and buffer areas (see Section 3.19).
b. The general location and density of existing vegetation and a tabulation of the type, area and location of vegetation to be removed.
c. The location of rock outcrops and ledges larger than 200 square feet in area.

d. The location of all existing and proposed improvements, including building envelopes or footprints, driveways, roads and other impervious surfaces, and trail and utility corridors.

4. A grading plan for the property prepared by a licensed professional engineer or surveyor showing:

   a. The limits of proposed site disturbance on steep and very steep slopes.
   b. Existing elevation contours at 2-foot intervals (National Geodetic Vertical Datum) within and extending 100 feet beyond all areas of proposed site disturbance.
   c. For linear development (e.g., driveway, road, trail) attached elevation cross-sections (profiles) and slope calculations for each segment identified on the grading plan.
   d. Elevation contours for finished grades within all proposed areas of site disturbance.
   e. The location of existing and proposed erosion control and stormwater management facilities or measures.

5. A stormwater management, erosion prevention and sediment control plan, prepared or certified by a professional engineer, that includes:

   a. A construction narrative and schedule.
   b. Calculations of the volume and velocity of surface runoff from the lot pre- and post-development.
   c. A description of soils within and extending 100 feet beyond all proposed areas of disturbance, including information regarding soil slope, erodability, construction stability, and depth to bedrock.
   d. Temporary and permanent measures to control stormwater runoff and prevent soil erosion during all phases of development, and associated construction details.
   e. Temporary and permanent slope stabilization measures, and associated construction details.
   f. Specifications for site re-vegetation following final construction and grading.

6. For development that involves the construction of structures on steep slopes, an architectural or engineering plan, prepared by a licensed professional, that includes structural elevations and sections, and identifies building construction methods and details.

7. The following also shall be submitted as applicable for development that directs or channels stormwater runoff off-site to adjoining surface waters, properties or public rights-of-way:

   a. Approval from the Underhill Selectboard or Vermont Agency of Transportation for drainage into public road rights-of-way.
   b. Drainage easements for drainage onto adjoining properties.
   c. A hydrologic study prepared by a qualified professional, to be paid for by the applicant, if required by the DRB to determine the effects of proposed development

on surface waters, wetlands, special flood hazard areas and downstream facilities in the vicinity of the project, and recommended mitigation measures.

D. **Steep Slopes (15% to 25%).** Development, including building envelopes or footprints, driveways, parking areas, septic systems, and road and utility corridors shall be sited to minimize site disturbance on steep slopes (15% to 25%), in conformance with the following standards:

1. Existing vegetation and drainage patterns shall be maintained to the maximum extent physically feasible to avoid stream alterations and relocations, and increased stormwater runoff due to vegetation removal, slope disturbance, re-contouring or site compaction. No new drainageways shall be created or additional runoff directed to surface waters, wetlands, public rights-of-way, or adjacent properties unless all necessary state and municipal approvals and drainage easements are obtained.

2. The area(s) of site disturbance shall be limited in extent to that necessary to accommodate proposed development, including access and supporting infrastructure, and shall be stabilized and re-vegetated at the completion of construction and final grading.

    a. Areas of site disturbance shall exclude ridgelines and, to the extent physically feasible, rock outcrops greater than 200 square feet in area.

    b. Areas of site disturbance shall be located outside of required setback areas, including property line and surface water and wetland setbacks. Setback distances shall be increased as necessary to avoid slope instability or surface runoff that could damage surface waters, wetlands or adjoining properties.

    c. Areas of site disturbance and construction, as approved by the DRB, shall be clearly marked (staked or fenced) on the ground during all phases of construction.

    d. Site disturbance and construction shall be phased so that only those areas under active construction are exposed.

    e. Topsoil removed from disturbed areas shall be stockpiled and stabilized for replacement on the site following final construction and grading. Topsoil shall not be stockpiled on slopes greater than 10%.

    f. Temporary measures shall be used to stabilize slopes and soils until final grades are established, in conformance with a DRB-approved construction or phasing schedule.

    g. All disturbed areas shall be stabilized during winter months. Site stabilization measures shall be installed by October 15th. No site disturbance or construction

shall occur between October 15th and April 15th unless specific measures for winter construction, stormwater management and erosion control are approved.

h. Finished grades shall not exceed 3:1 (three-foot horizontal to one-foot vertical) and shall be rounded to eliminate sharp angles and blend into natural land contours, except where retaining walls or other engineered slope-stabilization measures are proposed.

i. Permanent vegetation shall be re-established and maintained following final construction and grading as necessary to stabilize disturbed and graded slopes, to minimize stormwater runoff and erosion, and to screen development as viewed from public vantage points to avoid undue adverse visual impacts.

3. Driveways, roads and utility corridors, to the maximum extent physically feasible, shall be shared and designed and constructed to:

a. Follow natural elevation contours to minimize the amount of cut and fill and slope stabilization required, and the adverse visual impacts of road and utility cuts.
b. Avoid rock outcrops and ledges larger than 200 square feet in area.
c. Minimize the number and extent of stream crossings and buffer area disturbance within steep slope areas.
d. Avoid channeling or directing stormwater runoff to adjoining properties, public rights-of-way, and surface waters and wetlands.
e. Not exceed an average finished grade of 12% as measured over any 50-foot section, in accordance with Sections 3.2 and 8.6.

An existing farm or logging road with a gradient of 25% or less may be converted and upgraded for recreational use or to access development if it meets all applicable requirements of these regulations. However, if an alternative route exists that results in less slope or site disturbance, the DRB may require the installation of a new driveway or access road and the stabilization, re-vegetation and abandonment of the farm or logging road.

4. Structures shall be designed, to the maximum extent physically feasible, to conform to rather than alter steep slope areas.

a. Reduced building footprints, stilts, step-down and similar construction methods shall be used to minimize the need for slope terracing and retaining walls.
b. Excavation for foundations and footings shall be limited to the extent physically feasible to minimize site disturbance and ensure compatibility with surrounding terrain. Footings shall extend to stable rock or soil.
c. Site excavation for building pads is prohibited for detached accessory structures other than garages.
d. Compacted clean fill shall be used as necessary to support proposed structures.

e. Structures shall be set back from the top and bottom of cut and fill slopes an adequate distance (generally six feet plus one-half the height of the cut or fill) necessary to ensure structural safety.
f. Structures on steep slopes shall be screened and constructed of materials that minimize their visibility from public vantage points.

5. Stormwater runoff and erosion shall be managed on-site in conformance with management plans approved by the DRB, through the use of best management practices (BMPs) approved by state which are appropriate for the type of development and site-specific slope, drainage and soil conditions. For the purpose of these regulations, the following publications, as most recently revised, shall serve as official guides and specifications for stormwater management and erosion control. Practices designed and constructed in accordance with these technical documents shall be presumed to meet this standard:

a. Vermont Stormwater Management Manual, Volumes I and II.
b. Vermont Standards & Specifications for Erosion Prevention and Sediment Control.
c. Vermont Erosion Prevention and Sediment Control Field Guide.

State stormwater management and construction permits may serve as documentation that this standard has been met.

E. **Very Steep Slopes (>25%)**. Site disturbance and development, not limited to grading, building construction and the installation of driveways, roads, utilities or other infrastructure, is prohibited on very steep slopes (>25%) except for activities that are exempted under Subsection B, and the following, which must otherwise meet all relevant steep slopes standards under Subsection D.

a. Hiking, rock climbing, snowmobile and mountain-biking trails that are open to the public and are regularly maintained by a public, nonprofit or commercial entity.

b. Ski lifts and trails associated with an existing or permitted alpine or Nordic ski facility, including permitted year-round recreational uses of such facilities.

c. Development on a lot legally in existence as of March 2, 2011 for which the DRB determines that no portion of the lot has a slope of 25% or less and, as such, prohibiting development on very steep slopes would preclude any reasonable use of the property.

d. A driveway or road required to serve proposed development which extends no more than 100 feet into an area of very steep slope, if it is clearly documented that no other means of access can be provided.

F. **Considerations**. Conditions of approval under the standards of this section, as required to meet the intent and purpose of these regulations, may include but are not limited to:

a. Limitations on the total portion of any steep or very steep slope area that may be cleared, regraded, filled, drained, excavated or otherwise modified.

b. Performance bonds or other sureties acceptable to the Underhill Selectoard to ensure that construction, stormwater management and erosion control systems, and slope stabilization and revegetation are completed as approved.

c. Easements or deed restrictions on the future use and subdivision of land as necessary to protect remaining undeveloped steep and very steep slope areas.

d. Maintenance agreements that ensure permanent slope stabilization and stormwater management facilities are properly maintained.

e. Increased setbacks from slopes, property lines, surface waters and wetlands for site disturbance and construction activities, as necessary to maintain slope stability.

f. The submission of monitoring and site inspections reports and professional certifications during and after the completion of construction.

g. Construction materials that minimize the visibility of development on steep slopes.

h. Re-vegetation and screening requirements.

i. Documentation that all required state and federal permits have been obtained prior to the start of site work.

G. **Liability Waiver**. The applicant and subsequent property owners shall assume all liability in the event that changes in topography and drainage result in damage to neighboring or downstream properties. The Town of Underhill shall be held harmless from any claims for damage for approved development on steep and very steep slopes under these regulations.

Section 3.19 Surface Waters & Wetlands

A. **Purpose.** The town's rural character is enhanced by the presence of many streams, rivers, and wetlands. In addition to recreational opportunities and aesthetic benefits, these natural features provide important functions for residents and wildlife. The purpose of this section is to:

1. Protect the beneficial functions of wetlands including retaining stormwater runoff, soil stabilization, pollutant filtering, flood reduction, and protecting groundwater quality and quantity.
2. Prevent soil erosion and river/stream channel instability.
3. Protect and maintain water quality.
4. Protect wetland and riparian wildlife, fish, and rare, threatened or endangered species habitat.

5. Protect human land uses from hazards associated with stream dynamics and shore erosion.
6. Conserve agricultural productivity through the protection of stream and river banks.
7. Preserve public health and safety through the establishment of vegetated riparian buffer zones, which serve to slow and absorb floodwaters.
8. Protect current and future water supplies.

B. **Permits.** No zoning permits or approvals may be issued except in conformance with this section.

C. **Stream Alterations and Crossings**. Applications that include proposed stream alterations or stream crossings shall be referred to the Stream Alteration Engineer at the Vermont Agency of Natural Resources and to the Army Corps of Engineers. Copies of all applicable state and federal permits shall be required prior to the issuance of a municipal certificate of occupancy or compliance under Section 10.4.

D. **Setbacks**. All structures and impervious surfaces, except for allowed encroachments under Subsection E below, shall be set back at least:

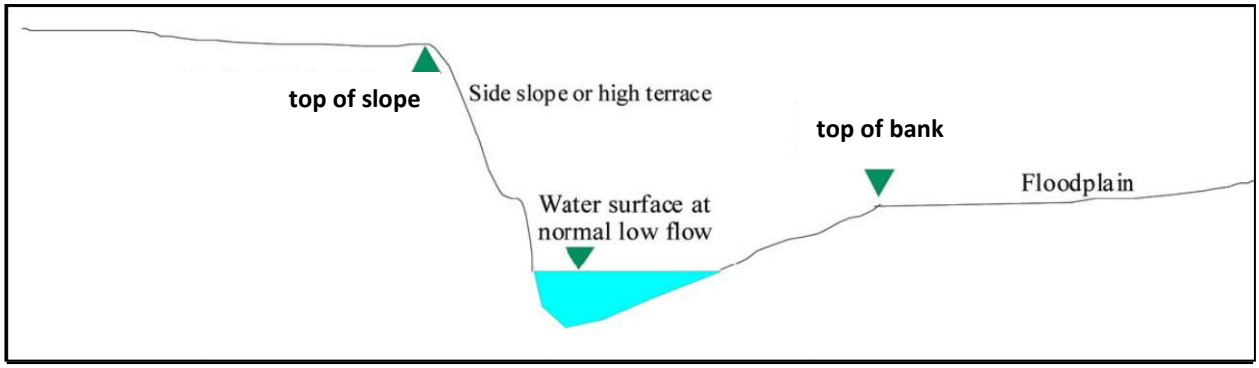
1. 100 feet from the Beaver Brook, Settlement Brook, Crane Brook, the Creek, Roaring Brook, Seymour River, Harvey Brook, Stevensville Brook, Mill Brook, Clay Brook, and Brown's River, as measured horizontally from the top of the bank, or 50 feet if measured from top of slope. See Diagram 3.1 below.

2. 100 feet from all Class I wetlands and 50 feet from Class II wetlands as measured horizontally from a delineated wetland boundary identified initially from Vermont Significant Wetland Inventory (VSWI) maps, and through site documentation if required by the Zoning Administrator or the Development Review Board.

3. In addition, all structures and other impervious surfaces shall be set back at least 25 feet from:

   a. other naturally occurring streams and rivers (as measured horizontally from the top

DIAGRAM 3.1
TOP OF SLOPE/TOP OF BANK



of the bank, or channel centerline where no bank is discernable), as identified on USGS topographic maps, Vermont Base Mapping Program orthophotos, or through site investigation;

b. Class III wetlands identified from Vermont Significant Wetland Inventory (VSWI) maps or through site investigation, as measured horizontally from a delineated wetland boundary.

4. **On-Site Septic Systems**. New on-site septic systems, including septic tanks and leach fields, shall be sited to meet required setback distances from all surface waters and wetlands specified under this subsection.

5. **Riparian Buffer**. At minimum, one-half (50%) of the required setback distance as measured horizontally from the top of a stream bank or top of slope, whichever is applicable, shall be maintained as an undisturbed, naturally vegetated riparian buffer. Excepted from this requirement are limited clearing and site development associated with the encroachments under Subsection E below, which may be permitted subject to conditional use review and approval by the Development Review Board under Section 5.4.

6. **Wetland Buffers**. Wetland buffers shall be established for the same areas covered by the setback requirements under Subsection D above, and shall be maintained as undisturbed, naturally vegetated buffers. The setback distances for Class I and II wetland areas may be reduced in accordance with a wetlands permit issued by the Vermont Agency of Natural Resources Department of Environmental Conservation (DEC) under the Vermont Wetland Rules. In the event that a state permit has been issued, the setback requirements specified by the state shall apply. A state wetlands permit shall be required prior to local approval for permits involving Class I and II buffer/setback reductions. Subject to conditional use review, the Development Review Board may authorize a reduction in the Class III wetland setback and buffer area required under D above and in accordance with the encroachments listed in E below.

E. **Encroachments**. The following encroachments may be allowed within local required riparian and wetland setbacks and buffers under Subsection D above.

1. **Permitted Uses.** The following encroachments are allowed as permitted uses, requiring only a zoning permit from the Zoning Administrator:

a. The control of non-native species of nuisance plants including, but not limited to, Eurasian milfoil, water chestnut, purple loosestrife and reed grass (Phragmites), where such control is by hand pulling of plants or according to a written plan approved by the DEC Water Quality Division and under any applicable state law.

b. Buffer re-establishment projects which use “soft” techniques such as tree revetments and root wads.

c. Encroachments for stream restoration and bank stabilization projects (e.g., armoring, rip-rap) which do not involve dam removal or work within a Special Flood

Hazard Area and that have been approved by the Vermont Agency of Natural Resources, Army Corps of Engineers, and other state and/or federal agencies as required.

d. Encroachments necessary to rectify a natural catastrophe for the protection of the public health, safety and welfare.

2. **Conditional uses**. The Development Review Board may authorize the following encroachments within local riparian and wetland setback and buffer areas, subject to conditional use review and approval under Section 5.4 , upon finding that there is no practical physical alternative to clearing, filling or excavating within the setback or buffer area; and any resulting undue adverse impacts to surface waters, wetlands, water quality and associated functions and values will be mitigated through erosion controls, plantings, protection of existing vegetation, and/or other generally accepted mitigation measures:

a. Encroachments necessary to improve existing public facilities or to allow a new public facility that functionally requires a riparian location.

b. Paved or unpaved public paths, intended for public access and recreation, that are located outside of required riparian and wetland buffer areas. Public access points to surface waters may be allowed but, to the extent physically feasible, shall be limited to areas where a stream or river channel is already confined and/or permanently constrained.

c. Stormwater management and treatment facilities meeting accepted state sizing criteria and best management practices set forth in the Vermont Stormwater Management Manuals Volumes I and II as most recently amended, or for which a state stormwater permit has been issued.

d. Roadways or access drives for purposes of crossing a stream to gain access to land on the opposite side for purposes of providing safe access to an approved use, in cases where there is no physically feasible alternative for providing safe access. A stream crossing for a road or driveway shall occur at a right angle to the stream channel, and be designed to meet state standards and accepted practices, including current Vermont Department of Fish and Wildlife guidelines for the design of stream and road crossings. All applicable state and/or federal permits and approvals, including stream crossing or stream alteration permits, shall be submitted prior to issuance of certificates of occupancy or compliance.

e. Utility lines, including telephone, cable, sewer and water, to the extent necessary to cross or encroach into the buffer where there is no physically feasible alternative for providing or extending utility services.

f. Outdoor recreation and education facilities provided that any building or structure (including parking and driveways) associated with such use is located outside setback and buffer areas.

3. **Prohibitions**. The creation of new lawn areas within buffers is not permitted. Property owners already encroaching within riparian or wetland buffers are encouraged to return mowed areas to their naturally vegetated state. Supplemental planting with native vegetation to restore and enhance the effective filtering and bank stabilization functions of a riparian buffer is encouraged.

F. **Additional DRB Conditions**. For development subject to subdivision, site plan, or conditional use review, the Development Review Board may require increased surface water and wetland setback distances, increased wetland and riparian buffer areas, limited or shared access to surface waters and wetlands, and/or a buffer area management plan as necessary to mitigate adverse impacts to water quality and wetland functions, if it is determined that such measures are necessary due to site-specific slope, soil, or drainage conditions, a lack of natural vegetative cover, or the location and extent of impervious surfaces associated with existing and proposed development on the parcel.

G. **Expansion of an Existing Structure**. The expansion or enlargement within required setback areas of any structure or portion thereof lawfully in existence prior to the effective date of these regulations shall be subject to review as a nonconforming structure under Section 3.9.

Section 3.20 Swimming Pools

A. For purposes of these regulations, In-ground swimming pools are considered a type of accessory structure that requires a zoning permit issued by the Zoning Administrator under Section 10.3.

B. An in-ground swimming pool, and associated deck or patio areas, shall:

1. Meet both minimum setback requirements for accessory structures and maximum lot coverage requirements for the zoning district in which it is located.
2. Be enclosed by a securely gated wall, fence, or other substantial structure at least four feet in height to prevent the uncontrolled access by animals and small children.

Section 3.21 Tennis Courts

For purposes of these regulations, surfaced tennis courts and other paved ball courts shall be considered accessory structures for which a zoning permit issued by the Zoning Administrator under Section 10.3 is required. Tennis courts must meet both minimum setback requirements for accessory structures and maximum lot coverage requirements for the zoning district(s) in which they are located.

Section 3.22 Water Supply & Wastewater Systems

A. **Applicability**. No building or structure intended for human occupancy shall be erected, altered or converted to another use unless adequate water supply and wastewater disposal systems are provided in compliance with all applicable municipal and state regulations. This includes:

1. All new accessory or single family dwellings, multi-family dwellings, commercial, industrial and mixed use buildings.
2. Alterations to existing structures which could result in the addition or expansion of a water system or increased wastewater generation, including but not limited to the addition of bedrooms or accessory apartments.

3. Changes in use that could result in the increased water demand or the generation of wastewater, including but not limited to the conversion of a single family dwelling to a two-family or multi-family dwelling.

B. These provisions shall not apply to the normal maintenance of existing water supply and sewage disposal systems, including periodic pumping and cleaning; nor to structures that are to be connected to approved community water or wastewater treatment systems.

1. Any connection to a public water supply shall be subject to approval by the Underhill-Jericho Water District.

C. **Standards.** Water supply and wastewater disposal systems shall be designed and installed by qualified professionals licensed by the state (i.e., a professional engineer, designer, site technician, installer) in accordance with the following:

1. All new wastewater and potable water supply systems shall meet specifications in the Vermont Department of Environmental Conservation's Environmental Protection Rules as most recently amended and shall be issued a permit from the state.

2. An existing disposal system subject to the provisions of this section shall be inspected by a qualified professional, licensed or registered by the state, to determine whether the system is functioning properly and has the capacity to adequately treat the amount of increased wastewater to be generated. If the system does not have sufficient capacity for the intended use, any addition, replacement or alteration of the system must be upgraded or replaced to comply with the Vermont Environmental Protection Rules as most recently amended and a state permit issued for the upgrade.

3. Wastewater disposal systems located within the Flood Hazard Area Overlay District shall also meet requirements specific to such systems under Section 6.6.

4. Wastewater disposal systems shall meet minimum setback requirements from surface waters and wetlands under Section 3.19.

5. To the extent physically feasible, wastewater systems shall not be located within designated source protection areas, in accordance with Section 3.17.

D. **Off-site Systems**. A lot or use may be served by water supply and/or sewage disposal systems located on an adjoining or noncontiguous parcel. The use of, or connection to, an off-site system shall be secured through an easement or other form of legal conveyance.

E. **Issuance of a Certificate of Occupancy**. In addition to the requirements of Section 10.4, the Zoning Administrator shall not issue a certificate of occupancy for any structure or use that requires new or upgraded potable water supply and/or wastewater disposal systems until copies of state permits and associated certifications have been received.

F. **Warning & Disclaimer of Liability**. The issuance of a zoning permit shall not imply that a state approved water supply or wastewater system will be free of malfunction. The provisions of this section shall not create liability on the part of the municipality or any municipal official or employee for any system malfunction.

G. **Zoning Administrator Duties.**

1. The Zoning Administrator or his or her agent shall have the right under these regulations to:

    a. witness test pits,
    b. require an engineer or designer to stake out a new, expanded or replacement system prior to installation,
    c. inspect a system before it is covered, and
    d. require an engineer or designer to submit a copy of the certificate of compliance sent to the State of Vermont wastewater permit office that certifies that the system was installed according to the permitted plan.

2. Before a Certificate of Occupancy or Compliance is issued under Section 10.4, the Zoning Administrator shall determine that the new, expanded, or replacement system has been installed according to the approved plan, as documented through state permits and certifications under Subsection E.

ARTICLE IV. SPECIFIC USE STANDARDS

Section 4.1 Applicability

The following standards apply to specified uses in all districts in which such uses are allowed under Article II. Specified uses also require site plan review under Section 5.3 or conditional use review under Section 5.4. If a standard under this article differs from another applicable standard under these regulations, the more restrictive shall apply.

Section 4.2 Accessory Dwelling

A. In accordance with the Act [§4412], one accessory dwelling unit which is located within or attached to a principal single family dwelling, or within an existing accessory structure to the principal dwelling, may be allowed as a permitted use in any zoning district in which a single family dwelling is allowed, subject to the issuance of a zoning permit by the Zoning Administrator under Section 10.3, and the following requirements:

1. The single family dwelling or the accessory dwelling must be occupied by the owner of the single family dwelling or a member of the owner's family.

2. The accessory dwelling must be clearly subordinate to the principal dwelling, and shall not exceed 50% of the existing total habitable floor area of the single family dwelling, excluding unfinished attics and basements.

3. The accessory dwelling shall meet all setback, building and lot coverage requirements for the district in which it is located, unless a waiver is granted by the Development Review Board under Section 5.5. If an accessory dwelling is to be located within a pre-existing, nonconforming structure, it shall not increase the degree of nonconformance, except in accordance with Section 3.9.

4. Sufficient water supply and wastewater capacity must exist to serve both the principal and accessory dwellings, as documented by a wastewater and potable water supply permit issued by the state.

5. Shared driveway access, and one additional onsite parking space shall be provided for residents of the accessory dwelling, unless otherwise approved by the Development Review Board under Section 3.13.

B. Conditional use review under Section 5.4 shall be required prior to the issuance of a zoning permit for any accessory dwelling that:

1. Requires the construction of a new accessory structure or the expansion of an existing structure.

2. Results in an increase in the height or total floor area of the existing single family dwelling.

3. Has a floor area greater than 50%, but no more than 75%, of the existing total habitable floor of the single family dwelling, excluding unfinished attics and basements.

4. Requires additional parking spaces under Section 3.13.

C. An existing single family dwelling with a total floor area of no more than 1,000 square feet may be converted to an accessory dwelling in association with the construction of a new principal dwelling on the same lot, subject to conditional use review under Section 5.4 and all other applicable requirements of this section. The new principal dwelling shall have a total habitable floor area that is at least 150% of the total floor area of the existing (converted) dwelling.

D. The zoning permit issued for an accessory dwelling shall clearly state that the accessory dwelling is permitted only as accessory to the principal residential use of the property and as such shall be retained in common ownership. An accessory dwelling may be subdivided and or converted for conveyance or use as a principal dwelling only if it is found to meet all current municipal regulations applying to a two-family dwelling (for an attached unit), or two single family dwellings (for a unit in an accessory structure), including all lot, density and dimensional requirements for the district in which it is located. All applicable municipal permits and approvals shall be obtained prior to conversion to or conveyance as a principal dwelling.

E. Any additional accessory structures to a permitted accessory dwelling that do not include or increase any interior living space do not require conditional use review.

Section 4.3 Adaptive Reuse of Historic Structures

A. Adaptive reuse is intended to allow for the continued, economically viable use of historic structures, such as historic barns, that have outlived their original purpose but contribute to the historic, architectural and/or cultural fabric of the community. Accordingly, in designated zoning districts an alternative use may be allowed within the current dimensions of a historic structure, subject to conditional use review under Section 5.4, and the requirements of this section.

B. Structures eligible for adaptive reuse are limited to those which:

1. Are at least 50 years old and:

   a. are listed, or eligible for listing, on the Vermont Historic Sites and Structures Survey for the Town of Underhill, maintained by the Vermont Division for Historic Preservation; or

b. have historical or architectural significance to the town, as identified in the Underhill Town Plan, or as determined by the Development Review Board based on application information and evidence presented in hearing.

2. Have a minimum habitable floor area of 600 square feet.
3. Can safely house and support the intended use.

C. The Development Review Board may consult with the Vermont Division for Historic Preservation and/or require that the applicant submit an independent evaluation prepared by a qualified architectural historian, to be paid for by the applicant, in order to make a determination regarding the structure's historic or architectural significance and structural integrity.

D. Structures determined to be eligible for adaptive reuse by the DRB may be used for one or more of the following uses in any zoning district, notwithstanding uses listed under Article II, subject to conditional use review under Section 5.4:

1. Accessory dwelling
2. Bed & Breakfast
3. Cultural facility (e.g., theater, museum, nature center, performance space)
4. Mixed Use (of uses allowed under the zoning district, or this section)
5. Multi-family dwelling (maximum: 4 units)
6. Office or Studio
7. Value-added production (e.g., specialty food or wood products)
8. Restaurant
9. Retail sales (limited to agricultural and wood products, antiques, arts and crafts; e.g., a gallery, farmers market, furniture or antiques store)
10. Single family dwelling
11. Small equipment or engine repair
12. Storage facility (limited to enclosed, indoor storage)
13. Two-family dwelling

E. In addition to conditional use requirements under Section 5.4, it shall also be demonstrated, to the satisfaction of the DRB that:

1. adequate water supply capacity, wastewater system capacity, and off-street parking exist to accommodate the proposed use; and

2. any proposed exterior renovations will be compatible with the original architectural design of the structure and maintain its historic integrity in accordance with accepted standards for the treatment of historic properties, as set forth in the most recent edition of the U.S. Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings."

Section 4.4 Camper (Recreation Vehicle, Temporary Shelter)

A. Up to three campers or shelters (e.g. a tent, tepee or yurt) used for vacation or recreational purposes may be stored and used occasionally to house family members or guests on the lot of a single or two-family dwelling, or on an undeveloped parcel, provided that they are:

1. located outside of required setback areas,
2. not occupied on the premises for more than 120 days in any one-year period, and
3. not connected to onsite water or wastewater systems.

    a. A camper used as temporary housing during onsite construction may be sited on a lot for more than 120 days if issued a zoning permit for a temporary structure under Section 4.19).

B. Any camper or temporary shelter that is used for dwelling purposes for more than 120 days in any one-year period, or is connected to an onsite water or wastewater system, shall be deemed an accessory or single family dwelling, and shall be subject to all applicable requirements of these regulations pertaining to an accessory or single family dwelling.

C. Wastewater generated by a camper shall be disposed of only in accordance with all applicable municipal and state regulations.

D. Campers (recreational vehicles) as defined under Section 11.3 which are stored within the Flood Hazard Area Overlay District (Special Flood Hazard Areas) must also meet the requirements of Section 6.6.

Section 4.5 Campground

A. **General Standards**. Any parcel of land occupied by more than three campers, recreational vehicles, travel trailers, cabins, yurts, lean-tos, or tent sites for seasonal occupancy, vacation or recreational use is considered a campground. A new or expanded campground may be allowed in designated zoning districts subject to conditional use review under Section 5.4, and the following provisions:

1. The parcel of land for a campground shall be no less than five acres in area, or the minimum lot size for the district in which it is located, whichever is greater.

2. A minimum of 20% of the total area shall be set aside as open space for outdoor recreation.

3. A campground shall meet minimum setback requirements for the district in which it is located. In addition, vegetated buffer areas at least 50 feet wide along property boundaries, 100 feet wide along public rights-of-way, and as specified for surface waters

and wetlands under Section 3.19 shall be maintained. No building, campsite, parking or service area shall be located within a required buffer area.

4. Landscaping and/or fencing may be required along property boundaries or within designated areas of the campground as necessary to provide security, privacy, and screening from adjoining properties or public rights-of-way.

5. Each campsite shall have adequate vehicular or pedestrian access. Individual or shared parking areas shall be provided.

6. Campgrounds shall provide lavatory facilities sufficient to serve all campsites.

7. Water and wastewater disposal systems shall be designed and installed in accordance with state regulations. An enclosed area for the collection, storage and disposal of trash and recyclables shall be provided.

8. The campground may include as accessory to the campground, subject to conditional use review under Section 5.4, an office, caretaker's residence, communal dining, laundry, indoor recreation, and/or camp store facility, and outdoor recreation facilities for the use of campers.

B. **Primitive Campgrounds**. For substantially undeveloped, primitive camping areas, consisting only of designated tenting areas, tent and yurt platforms or lean-tos, the Development Review Board may waive or modify any or all of the requirements of Subsection A above if it is demonstrated to the DRB's satisfaction that access, total lot area, campsite area, setback distances and buffers are adequate to:

1. support the intended level of use; and
2. avoid any adverse impacts to water quality, critical wildlife habitat, or adjoining properties and uses.

Section 4.6 Commercial Lodging (Bed & Breakfast, Inn)

A. Two types of commercial lodging facilities, limited to bed and breakfasts and inns as defined under Section 11.2, may be allowed in designated zoning districts, subject to site plan review under Section 5.3, or conditional use review under Section 5.4, as specified for a particular zoning district under Article II.

B. A bed and breakfast is allowed in designated zoning districts only as an accessory use of a single family dwelling, carried on by the owner or resident of the single family dwelling, with a maximum of five guest rooms. For purposes of these regulations, all other types of commercial lodging facilities shall be considered inns, representing the principal use of the property.

C. Additional standards for both types of commercial lodging facilities are presented and summarized in Table 4.1:

Table 4.1 Summary of Commercial Lodging Facility Standards		
Standard	**Bed & Breakfast**	**Inn**
Type of use	Accessory Use (single family dwelling)	Principal Use
Number of guest rooms	Maximum: 5	Maximum: 24
Owner/operator must reside on premises	Yes	No
Off-street parking required	Yes (Section 3.13)	Yes (Section 3.13)
On-site dining for guests	Breakfast only	All meals
On-site dining for non-guests (public)	No	As a "Mixed Use" only if a restaurant is also allowed in the zoning district
Exterior appearance	Must maintain residential character of the structure(s) and property	Must be compatible with the character of the area (see Section 5.4)

D. Documentation that all required state permits have been obtained must be submitted to the Zoning Administrator prior to the issuance of a certificate of occupancy for a lodging facility in conformance with Section 10.4.

Section 4.7 Contractor's Yard

A. A contractor's yard may be allowed as a type of home industry, as regulated under Section 4.12, or as a principal use in designated zoning districts subject to conditional use review by the Development Review Board under Section 5.4 and the following additional requirements:

1. The outdoor storage of vehicles, heavy equipment, and materials, including building and construction materials, shall be confined to a designated yard area approved by the Board. Activities associated with the operation of the yard, including the maintenance and repair of vehicles and equipment, shall be allowed only within the designated yard area.

2. The designated yard area shall be set back a minimum of 50 feet from all road rights-of-way and adjoining properties, and meet surface water and wetland setback requirements under Section 3.19.

3. The DRB may require landscaping and/or fencing around one or more yard area boundaries as necessary for public safety, or to screen the yard area year-round from the view of neighboring properties and public rights-of-way.

4. Yard operation shall meet all performance standards under Section 3.14. The DRB may, as a condition of approval, place conditions on the hours of operation to minimize nuisances to neighboring properties and uses.

5. A contractor's yard may include as accessory to the yard, subject to conditional use review, an office or equipment storage and maintenance facility.

6. On-site storage of hazardous materials shall be allowed only in accordance with applicable state and federal regulations. Fuel storage shall be limited to that needed for heating and the operation of equipment and vehicles, in accordance with Section 3.12.

Section 4.8 Day Care Facility (Home Child Care, Day Care Facility)

A. A home child care business, the owner of which is licensed or registered by the state, which serves up to ten children shall be considered to constitute a permitted single family residential use of property. A zoning permit shall be required under Section 10.3 only for purposes of documenting and recording the use in the land records of the town. A home child care business that serves more than ten children shall be subject to site plan review under Section 5.3, prior to the issuance of a zoning permit.

B. A nonresidential child care or adult day care facility may be allowed in designated zoning districts subject to site plan review under Section 5.3 or conditional use review under Section 5.4, depending upon which zoning district the facility is located.

Section 4.9 Extraction & Quarrying

A. **Purpose**. It is the intent of this section to:

1. Provide reasonable opportunities for the extraction of earth resources within designated zoning districts in the Town of Underhill.
2. Protect public health, safety and welfare from known hazards associated with open excavation areas, extraction operations, and the transport of earth resources.
3. Protect against excessive noise, vibration, dust and particulate matter, and other dangerous, toxic, noxious or objectionable hazards and nuisances associated with extraction operations.
4. Minimize the adverse impacts of extraction operations on the town's natural, cultural and scenic resources, including natural drainage patterns and surface and ground water supplies.
5. Minimize the adverse impacts of extraction operations on properties, uses and public infrastructure in the vicinity, including public highways used to transport earth resources.
6. Ensure ongoing and long-term site reclamation that includes slope stabilization and revegetation, and allows for subsequent use of extraction areas.

B. **Applicability**. The extraction or removal of topsoil, sand, gravel, rock, minerals or other similar earth resources for use, off-site transport or sale, unless specifically exempted from these regulations, may be allowed in designated zoning districts subject to conditional use review under Section 5.4 and the requirements of this section.

1. **Exemptions**. The following are exempted from the requirements of this section:

    a. Onsite excavation incidental to accepted agricultural practices (AAPs) and accepted management practices for silviculture (AMPs) as defined by the state (see Section 10.2).
    b. Onsite excavation incidental and limited to permitted construction activities, including the installation of buried utilities, foundations, roads, driveways, and parking areas.
    c. Onsite excavation incidental to normal maintenance, repair and landscaping activities.
    d. Excavations for the installation of approved stormwater management, erosion control flood control and stream stabilization measures.
    e. Stream gravel removal as approved by the Vermont Agency of Natural Resources, including the removal of up to 50 cubic yards annually by riparian landowners for personal use.
    f. The extraction of up to 400 cubic yards of material annually by a property owner for personal use on site or on another property in common ownership.
    g. Cemetery operations.
    h. Extraction associated with an emergency, as declared by the Underhill Selectboard, for the repair of roads and other public infrastructure.

2. **Grandfathered operations**. A pre-existing extraction or quarrying operation legally in existence and continuous operation as of the effective date of these regulations [March 2, 2011] is exempt from the requirements of this section until such time as:

    a. Its grandfathered status or Act 250 permit is revoked by the state.
    b. Operations expand across property lines, public roads or surface waters.
    c. The existing extraction area(s) on the site is increased by more than 50%.
    d. The annual rate of extraction is increased by more than 25% over the average annual rate established for the previous 10-year period, as measured in volume of material (cubic yards) or trip generation rates (truck trips).
    e. Additional onsite processing equipment is added, resulting in measurable increases in offsite impacts.
    f. Extraction operations are discontinued or abandoned for a period of two years.
    g. Existing visual barriers that screen operations from public roads or neighboring properties (e.g., topography, berms, and trees) are removed or altered such that adverse visual (aesthetic) or physical (e.g., noise, dust) impacts are measurably increased.

C. **Application Requirements**. In addition to application information required in Section 5.4 for conditional use review, the applicant shall submit operation, grading, stormwater management and erosion control, and site reclamation plans that describe and depict the following:

1. The location and extent of proposed extraction areas and any of the following located on and within 1,000 feet of the proposed site: existing vegetation and soils; property lines, structures, wells and septic systems, utilities, and road rights-of-way; surface waters, wetlands and required buffers; special flood hazard areas and source protection areas.

2. Existing grades and drainage patterns, mapped at a scale of 1inch=200 feet, including existing elevation contours at intervals of not less than five feet within proposed extraction areas and site cross sections.

3. Site geology and soils information, including bedrock and soil characteristics, and depths to bedrock and seasonal high water tables as determined from at least four test borings that extend to ledge, the seasonal high water table or a maximum of six feet below the lowest proposed extraction limit.

4. An assessment of the impact of proposed extraction areas on surface and groundwater supplies for any extraction area within a source protection area or within 1,000 feet of an existing spring or well.

5. The extent and magnitude of proposed operations, to include a description of the type, amounts and locations of materials to be extracted or quarried, annual extraction limits, the areas to be allocated for onsite storage and processing, the types of processing equipment, the dates and hours of operation, and the proposed phasing and timing of development.

6. A traffic impact analysis, including information regarding site access, the type and weight of vehicles to be used to transport materials, trip generation rates (average and maximum number of truck trips per day at peak operation) and proposed truck routes through town.

7. Stormwater management and erosion control practices to used and installed on and off-site, for all phases of the operation.

8. Fencing, landscaping, screening lighting and sign information.

9. Finished grades at the conclusion of operations, including final elevation contours at 5-foot intervals and site cross-sections.

10. A detailed site restoration plan that includes and describes initial and final grades, slope stabilization measures, site re-vegetation, and an indication of subsequent use(s) of the reclaimed site.

11. State project review sheet identifying required state and federal permits, and a copy of the applicant's Act 250 application.

D. **General Standards.**

1. Extraction and processing areas, as shown on the site plan, shall meet the minimum following setback distances:

a.	Property Lines:	200 feet
b.	Road Rights-of-Way :	200 feet
c.	Residences:	500 feet (unless waived in writing by the owner)
d.	Public Properties:	500 feet (unless waived in writing by the owner)
e.	Surface Waters, Wetlands:	See Section 3.19

The DRB, based on physical site and slope conditions, may require increased setback distances as necessary to avoid or mitigate adverse impacts to adjoining properties and road rights-of-way, or to residences, surface waters and wetlands in the vicinity.

2. No extraction, excavation, dredging or filling activities shall occur within riparian and wetland buffer areas, in accordance with the requirements of Section 3.19, nor within the Flood Hazard Overlay District (Special Flood Hazard Areas) under Article VI. Extraction operations shall not have the effect of extending adjoining flood hazard areas by excavating to or below base flood elevations.

3. Extraction operations shall occur only between March 15th and December 15th, except for special circumstances such as declared emergencies, as approved in writing by the Selectboard.

4. Extraction operations shall be phased so that no more than five acres are in active operation and exposed at any time. Once a phase is completed, the extraction area shall be reclaimed in conformance with an approved reclamation plan that meets the requirements of Subsection F.

5. Extraction operations shall not extend below seasonal groundwater tables. Where physically feasible, a layer of undisturbed material at least two feet in depth shall be maintained above seasonal groundwater tables and underlying bedrock.

6. Extraction and processing operations shall not adversely affect the quantity or quality of existing or permitted surface and ground water drinking supplies. Operations within designated source protection areas shall be allowed only in conformance with approved

source protection plans. The installation of monitoring wells may be required as necessary to monitor groundwater quality in the vicinity of extraction operations.

7. The removal of existing vegetation shall be limited to approved extraction areas in active operation, as clearly marked on the ground. Vegetation and debris shall be properly disposed of in designated locations on- or off-site.

8. No vegetation shall be removed within required surface water and wetland buffer areas, or within 100 feet of a property line or public right-of-way where natural screening is provided. If existing topography and vegetation are not sufficient to screen the extraction site from view year-round, additional screening shall be provided. Screening may include earthen berms and planted vegetated buffers that incorporate of a mix of native tree, shrub and groundcover species suited to site conditions, and shall be maintained through the life of the operation.

9. Topsoil shall be stockpiled and stabilized in designated locations on or off site, for use in site reclamation.

10. Stockpiled materials shall not exceed 35 feet in height, and shall not be visible from adjoining properties or public rights-of-way.

11. All reasonable measures shall be taken to limit the amount of dust and particulates generated from the extraction, processing and transport of materials. At minimum, these shall include:

    a. Temporary stabilization of any materials stockpiled for one year or more with vegetative cover adequate to prevent erosion.
    b. Use of water, calcium chloride or other accepted agents to reduce dust on haul roads.
    c. Use of processing equipment only within active pit areas. No processing equipment with a maximum rating of more than 150 tons per hour shall be used within 1,000 feet of any residence or public property.
    d. Covering trucks carrying materials off site.

12. In addition to applicable performance standards under Section 3.14, extraction and processing operations shall meet the following requirements:

    a. Except under declared public emergencies, extraction, processing, dumping and hauling operations may occur only between the hours of 7 a.m. and 6 p.m. on weekdays, and 8 a.m. and 4 p.m. on Saturdays, and are prohibited on Sundays and federal holidays.

    b. Blasting may occur only during weekdays, from 8 a.m. to 4 p.m., and shall not occur within 1,000 feet of principal structures, unless agreed to in writing by all affected property owners. Blasting protocols shall be submitted to the DRB for review and

approval, and shall include a process to notify all property owners within 1,000 feet of planned blasting schedules. All blasting shall be undertaken by a licensed and insured expert, in conformance with applicable state and federal regulations.

c. Noise levels generated by extraction and processing operations shall not exceed 70 decibels (dBA) for more than 30 minutes in any 24-hour period, and no more than 90 dBA at any time, as measured at the property line. Levels shall not exceed 55 dBA for more than 60 minutes in any 24-hour period at nearby residences and public use areas, unless otherwise agreed to in writing by the property owners. To the extent physically feasible, all crushing and screening equipment shall be located on the pit floor for optimal noise suppression. The applicant is encouraged and may be required by the DRB to use other noise reduction techniques, such as earthen berms or other sound barriers, equipment placement, mufflers, sensored or disengaged vehicle backup alarms, or limited hours of operation as necessary to mitigate noise impacts.

d. The onsite storage of explosives and hazardous materials is prohibited. All reasonable measures shall be taken to prevent the release of fuels, oils or chemicals used on site. Materials may used and stored on site only in accordance with applicable state and federal regulations. Equipment and vehicles shall be fueled, repaired and maintained off site, or on an impervious surface located outside of extraction areas to prevent the release of fuels, oils, or chemicals.

13. The extraction areas shall be served by no more than one highway access, unless otherwise approved by the DRB in consultation with the Selectboard or Vermont Agency of Transportation under Section 3.2. No access shall be located within 500 feet of a residential property unless agreed to in writing by the property owner. Access roads shall be constructed to B-71 standards, and include an apron that will withstand heavy truck traffic and minimize the transport of dust and other particulates from the site.

14. Truck traffic generated by an extraction operation shall not result traffic hazards, reduced traffic speeds on collector or arterial highways, or the accelerated degradation of highway infrastructure. The DRB, in consultation with the Selectboard or the Vermont Agency of Transportation, may limit the type, weight, number, timing, frequency or routing of truck trips generated by the extraction operation as necessary to mitigate the adverse impacts of heavy truck traffic on existing traffic conditions, public highways and affected properties.

15. Entrances shall be gated to generally limit public access to extraction areas. Additional fencing, berms or other barriers at least six feet in height, located at least 15 feet from the edge of excavation, shall be provided as necessary to restrict public access to areas where temporary slopes exceed 2:1 (run:rise) or the depth of the pit exceeds 15 feet.

16. Stormwater management and erosion control measures, as shown on the stormwater management plan, are required during all phases of operation to manage stormwater

on site, and prevent adverse impacts to surface waters, wetlands and adjoining properties. Conditional use approval shall be contingent on the applicant receiving all applicable state stormwater management, erosion control and construction permits, to be filed with the town. The applicant shall also file annual inspection and compliance reports with the town, as required by the state or DRB, that certify that stormwater management and erosion control systems are being managed and maintained in accordance with permit requirements.

E. **Annual Report and Monitoring**. The permit holder shall submit an annual report to the DRB and Selectboard by December 1st that documents the amount of material removed from the site during the previous year, total extraction area and site reclamation acreage, and the results of any ongoing monitoring requirements; and that certifies that extraction, processing and hauling operations comply with these regulations and any conditions of approval. The permit holder shall also allow representatives of the town to access the site at reasonable times for purposes of determining compliance with these regulations and any conditions of approval.

F. **Site Reclamation**. Site reclamation shall occur immediately following each phase of extraction, in accordance with an approved site reclamation plan that incorporates the following standards:

1. All disturbed areas shall be reclaimed so that the land is left in a safe, attractive and usable condition.

2. All stockpiled materials and remaining debris shall be incorporated in or removed from the site.

3. Excavation areas shall be evenly graded and filled as necessary to blend into the natural topography. All slopes, except for exposed bedrock, shall have finished grades that do not exceed 4:1 (run: rise), unless otherwise approved by the DRB based on site specific slope and soil conditions and the intended subsequent use of the property. No final grade, except for exposed bedrock, shall exceed 2:1.

4. All disturbed areas, except for exposed bedrock, shall be spread with a minimum of four inches of topsoil and revegetated and maintained in conformance with current state and federal guidelines (e.g., "Vegetating Vermont Sand and Gravel Pits," USDA Natural Resource Conservation Service, May 2003, as revised).

5. Natural drainage patterns shall be restored so that water draining from the site is directed to natural drainage points at similar rates. Any standing bodies of water that present a hazard to public health and shall be eliminated.

G. **Surety**. A performance bond, escrow account, or other surety acceptable to the Underhill Selectboard shall be submitted prior to the start of each phase of extraction to ensure permit compliance and site reclamation to ensure permit compliance and site

reclamation, to include any re-grading, reseeding, reforestation or other required reclamation activities.

H. **Plan Amendments**.

1. Changes to approved plans that may be administratively approved by the Zoning Administrator with the issuance of a zoning permit include the following:

    a. Changes in the location of structures and equipment to the extent that they comply with all applicable setback requirements and conditions of DRB approval.
    b. Changes in the order of proposed extraction phases.
    c. Substitution of approved plant materials used in landscaping and screening, slope stabilization and site reclamation to the extent that they will adequately serve the same function.
    d. The replacement or addition of equipment used on site upon submission of equipment specifications and documentation that there will be no increase in off-site impacts (e.g., noise, dust, vibration) that exceed limits established by the DRB.

All other changes or modifications to approved plans shall require conditional use review and approval by the DRB under Section 5.4 and the requirements of this section.

Section 4.10 Gas Station

A. A gasoline station may be allowed in designated zoning districts subject to conditional use review under Section 5.4, and the following requirements:

1. All buildings, service, parking and storage areas shall meet all setback requirements, including setback and buffering requirements for streams and wetlands under Section 3.19. No vehicles may be parked or serviced within front, side or rear setback areas. The Development Review Board may require increased setbacks and/or buffers as needed to protect water quality, based on local site and drainage conditions, or to protect adjoining properties and uses.

2. All pumps and other service equipment shall be located at least 30 feet from front, side and rear lot lines.

3. Notwithstanding the requirements of Section 3.2 (Access), there shall be no more than two accesses (curb cuts) providing ingress and egress to adjoining roads. On corner lots, one or both accesses may be limited to the secondary road. The width of each curb cut shall not exceed 40 feet.

4. A vegetated, landscaped area at least 15 feet in depth shall be maintained along all road frontage, excluding designated access (curb cut) areas.

5. Additional setbacks, curbing, landscaping and screening, and pedestrian walkways may be required by the Board as needed to safely manage vehicle and pedestrian circulation on- and off-site, and to minimize adverse impacts to adjoining properties.

6. In addition to the signs allowed under Section 3.16, a gasoline station may have one freestanding pricing sign which does not exceed 12 square feet in area, and/or pump-top pricing signs, each not to exceed two square feet in area.

7. Site layout and building design shall be compatible with the character of the neighborhood in which the gasoline station will be located. Building facades shall not be used for advertising purposes, except as allowed for the placement of wall signs or graphics in accordance with Section 3.16.

8. Station canopies, if determined by the Board to be necessary and appropriate to their context, shall be limited to the minimum area required for adequate pump and apron coverage, and the minimum ceiling height necessary to meet applicable state and federal safety requirements. Canopy scale and design shall be compatible with station design and with surrounding buildings. Corporate logos are specifically prohibited on station canopies. Canopy fascias shall not be illuminated or used for advertising.

9. The Development Review Board may require the submission of an outdoor lighting plan for review and approval in accordance with Section 3.11 (Outdoor Lighting). In addition:

    a. Light fixtures mounted on station canopies shall either be recessed so that the lens cover is flush with the bottom surface (ceiling) of the canopy; or for indirect lighting, mounted and shielded or skirted so that direct illumination is focused exclusively on the underside of the canopy.
    b. Lights shall not be mounted on the top or sides (fascias) of canopies, nor shall canopies be internally illuminated; and
    c. Interior station lighting shall not be used to contribute to or increase outdoor lighting levels, nor for advertising purposes.
    d. All interior and exterior lights, with the exception of approved security lights, shall be on only during hours of operation.

10. All underground storage tanks shall meet all applicable state and federal requirements for design and installation. Monitoring may be required by the Development Review Board as needed to ensure that ground water quality and wells in the vicinity are protected from contamination in the event of a leak.

B. The use of a gasoline station is limited to the retail sale of gasoline, diesel fuel and other automotive fluids and products. The sale of other types of retail items (e.g., food or convenience items), or the provision of other services (e.g., motor vehicle repair, sales or rentals, car washes, towing services or restaurant seating) may be allowed only as a “Mixed Use” (see Section 4.13), as allowed within the zoning district, and as such shall be required to meet applicable standards of these regulations pertaining to each use.

Section 4.11 Group & Residential Care Homes

A. In accordance with the Act [§4412(1)(G)], a state licensed or registered residential care home or group home, serving not more than eight persons who are developmentally disabled or physically handicapped, shall be considered by right to constitute a single family residential use of property, except that no home shall be so considered if it locates within 1,000 feet of another such home. A zoning permit under Section 10.3 shall be required to document and record the use in the land records of the town.

B. Other types of residential care facilities as defined under Section 11.2, may be allowed in designated zoning districts as conditional uses subject to conditional use review under Section 5.4.

Section 4.12 Home Business (Home Occupation, Home Industry)

A. In accordance with the Act [§4412(4)], no provision of these regulations may infringe upon the right of any resident to use a minor portion of a dwelling for an occupation which is customary in a residential area and which does not have an undue adverse impact on the character of the residential area in which the dwelling is located.

B. **Home Office.** No zoning permit shall be required for a home office or studio within a principal dwelling, an attached garage or an accessory structure which is carried on by a resident of that dwelling, and which involves no signs, public access or outdoor storage or displays, as exempted under Section 10.2.

C. **Home Occupation**. For home occupations that meet the following requirements, a zoning permit issued under Section 10.3 shall be required to document and record the use in the land records of the town:

1. **Employees**. The home occupation shall be conducted by residents of the dwelling and up to a maximum of two nonresident employees on-site at any time.

2. **Area**. The home occupation shall be conducted within the principal dwelling, an attached garage or an accessory structure on the same lot, and shall occupy no more than 49% or 1,000 square feet of the gross floor area of the primary residence.

3. **Character.** The home occupation shall not have an undue adverse effect on the character of the neighborhood, nor result in a change in the outward appearance of the dwelling or accessory structure.

4. **Outdoor Storage**. No outdoor storage, displays or equipment associated with a home occupation, other than those that are customarily associated with a residential use, are allowed.

5. **Performance Standards**. The home occupation shall meet all performance standards set forth in Section 3.14.

6. **Traffic**. No traffic shall be generated in substantially greater volumes than would normally be expected from a residential use (a maximum of 10 vehicle trips per day).

7. **Parking**. Off-street parking for residents of the dwelling, employees and customers shall be provided in accordance with Section 3.13. Up to two vehicles (e.g., a car, van, pickup truck), associated with the business may be parked on the premises.

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

9. **Signs**. One sign shall be allowed in accordance with Section 3.16.

10. **Sales & Service**. On-site retail sales or services are limited to goods or services produced on the premises and related products, and shall be available to the public by appointment only.

D. **Home Industry**. Home industry, which includes expanded home-based businesses that exceed the requirements for "home occupations" under Subsection C. above, may be allowed as an accessory to a single family dwelling in designated zoning districts subject to conditional use review under Section 5.4, and the following provisions:

1. **Employees**. The home industry shall be conducted on-site by residents of the dwelling, and up to five nonresident employees routinely on site at any given time.

2. **Outdoor Storage**. Exterior storage of materials and equipment associated with a home industry shall be limited to a clearly designated yard or storage area approved by the Development Review Board, which meets all applicable setbacks for the district in which the property is located. In addition:

    a. The DRB may require greater setbacks as deemed necessary to avoid adverse impacts to neighboring properties or public rights-of way.
    b. The DRB also may require that such areas be adequately screened year-round from public view and neighboring properties, and secured to protect public safety.
    c. Exterior yard or storage areas shall also meet surface water and wetland setbacks and buffers as required under Section 3.19.

3. **Hazardous Materials**. The use and storage of hazardous materials anywhere on the premises shall be limited to those materials necessary for the operation of the home industry and shall be stored in accordance with all applicable state and federal regulations.

4. **Character**. The home industry shall not have an undue adverse effect on the character of the neighborhood, nor result in a change in the outward appearance of the dwelling or the accessory structure.

5. **Traffic.** The home industry shall not generate traffic, including delivery traffic, in excess of traffic volumes generated by other uses on the same road in the vicinity of the home industry.

6. **Parking**. Off-street parking shall be provided for residents, employees, delivery vehicles and customers in accordance with Section 3.13. Commercial vehicles or equipment associated with the home industry shall be parked within designated yard or parking areas approved by the DRB. The DRB may also require that parking areas be adequately screened year-round from public view and adjoining properties.

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

8. **Performance Standards**. A home industry shall meet all applicable performance standards under Section 3.14. In addition to other conditions, the DRB may limit the hours of operation as deemed necessary to minimize adverse impacts to neighboring properties and protect the character of the area.

9. **Signs**. One sign may be allowed in accordance with Section 3.16.

10. **Sales & Service**. Onsite retail sales or services are limited to the sale of goods or services produced on the premises, and related products.

Table 4.2 Summary of Home Occupation & Home Industry Standards

	Home Occupation	**Home Industry**
Zoning Districts	All	All
Type of Review Required	Administrative Review (Zoning Permit)	Conditional Use Review (DRB Conditional Use Approval)
Principal Use	Dwelling	Single Family Dwelling
Business owner must reside on premises	Yes	Yes
Character of Area	Must maintain residential character; no exterior alterations	Must have no undue adverse impact on the character of the neighborhood; no exterior alterations
Maximum Floor Area:		
Principal Dwelling	49% or 1000 sf of gross dwelling floor area	No limit
Accessory Structure	No limit	No limit
Nonresident Employees (on-site at same time)	Maximum: 2	Maximum: 5
Outdoor Storage, Display	None	Within designated yard areas

Hazardous Materials Storage	None	Allowed in conformance with applicable municipal, state and federal regulations
Parking	Parking for residents, employees, and up to two business vehicles	Parking for residents, employees, and for other commercial vehicles and equipment within designated yard or parking areas
Performance Standards	See Section 3.14	See Section 3.14
Traffic Generation	Residential Use (max: 10 vehicle trips per day)	Business Use (volume similar to other uses in vicinity, on the same road)
Sales & Service	Limited to goods, services produced or provided on the premises; open to the public by appointment only	Limited to goods, services produced or provided on the premises
Signs	One (see Section 3.16)	One (see Section 3.16)

Section 4.13 Mixed Use

A. In a zoning district more than one principal use may be allowed within a single building or on a single lot, subject to site plan or conditional use review by the Development Review Board under Sections 5.3 or 5.4 and the following requirements:

1. Each of the proposed uses must be allowed as a permitted or conditional use within the zoning district in which the mixed use is located. For mixed uses that include one or more conditional uses, conditional use review shall be required under Section 5.4; otherwise site plan review under Section 5.3 shall be required.

2. The uses in combination must meet all applicable standards for the district in which the mixed use is proposed, including but not limited to minimum lot, frontage and setback, and maximum lot coverage and height requirements; or the mixed use must be part of a planned unit development (PUD) that has been approved in accordance with Article VIII.

3. The mixed use must meet all applicable general regulations under Article III, including but not limited to access, sign and parking requirements. Shared access and parking to serve all uses shall be required unless it is determined by the Board that a safety hazard may result due to site, traffic or road conditions.

Section 4.14 Mobile Home Park

A. In accordance with the Act [§4412(1)], these regulations shall not have the effect of excluding mobile home parks from the town. New and expanded mobile home parks, as defined under Section 11.2 to include three or more mobile homes on a single parcel, may be allowed in designated districts subject to conditional use review in accordance with Section 5.4 and the following provisions:

1. The parcel of land for a new mobile home park shall have a minimum area of no less than three acres, or the minimum lot area for the district in which it is located, whichever is greater.

2. A minimum of 20% of the total land area in any new mobile home park shall be set aside for common recreational use or open space.

3. Mobile home parks shall meet minimum setback requirements along their perimeter for the district in which they are located. Setback areas shall not be included in the calculation of recreation land or open space required under Subsection A.2. Landscaping along the perimeter of the park is recommended, and may be required by the Board as it deems necessary to screen to the park year round from adjoining residential properties.

4. A mobile home park shall meet all applicable requirements of these regulations, including all applicable general requirements under Article III.

5. Proposed parks shall comply with all applicable state regulations, including regulations pertaining to potable water supply, wastewater disposal systems, and stormwater management systems.

6. Each mobile home shall be located on a dedicated site of not less than 10,000 square feet in area as depicted on the site development plan required under Section 5.4. Each site shall include adequate vehicle and pedestrian access, and shall be landscaped with one or more trees of a native species.

7. Each mobile home, and associated accessory structures, shall be setback a minimum of 20 feet from adjoining mobile home site boundary lines.

8. All roads within a mobile home park shall comply with Section 8.6.

9. Pedestrian paths connecting mobile home sites to common facilities and areas, and to public rights-of-way are required as necessary to provide safe, interconnected pedestrian circulation.

10. Parking shall be provided in accordance with Section 3.13 and may include a combination of individual and shared parking areas.

11. A mobile home park may include as accessory to the park, subject to conditional use review, an office and common laundry, storage, parking and recreation facilities for use by park residents and their invited guests.

B. **Owner/Operator Responsibilities**. The mobile home park owner, or designated operator, as a condition of DRB approval, shall:

1. Maintain all park buildings, roads, parking areas, paths, utilities, infrastructure, landscaping, open space and common areas in good condition.

2. Provide for the regular collection and removal of recyclables, waste and garbage.

3. Remove snow from all park roads, parking and service areas.

Failure to meet these operation and maintenance requirements shall constitute a violation of permit conditions and these regulations, subject to enforcement action under Section 10.6.

C. **Modifications**. Changes, modifications or alterations to park area, design, layout or common facilities are subject to conditional use review by the Development Review Board in accordance with the above provisions.

1. The owner of a mobile home within an existing or approved mobile home park may apply for a zoning permit under Section 10.3 for a replacement home, deck, accessory structure or addition which meets site setback requirements under Subsection A, without approval from the Development Review Board.

D. **Nonconforming Mobile Home Parks**. In accordance with the Act [§4412], if an existing mobile home park does not conform to these regulations, its nonconforming status applies only to the mobile home park as a whole, and not to individual mobile home sites. In the event that an individual site is vacated, it shall not be considered a discontinuance or abandonment of a nonconformity under Sections 3.8 and 3.9. Unless waived by the Development Review Board under Section 5.5 for nonconforming lots, a replacement mobile home must meet site setback requirements under A.7.

E. **Flood Hazard Areas**. Mobile homes and mobile home parks located within the Flood Hazard Area Overlay District (Special Flood Hazard Areas) must also meet all applicable requirements for manufactured (mobile) homes as defined under Section 11.3 and regulated under Section 6.6.

F. **Subdivision**. A mobile home park shall be considered the principal use of a parcel which shall be retained in common ownership and management. Individual mobile home sites may be subdivided from the rest of the park for sale only in accordance with all applicable requirements of these regulations pertaining to subdivisions and single family dwellings.

G. **Mobile Home Sales**. Mobile home sales may be allowed in association with an established or proposed mobile home park only as a “mixed use” subject to conditional use review under Section 5.4.

Section 4.15 Motor Vehicle Sales & Service

A. **Motor Vehicle Sales.** The display of three or more vehicles for sale at any time on a property shall be considered a commercial motor vehicle sales establishment allowed within designated zoning districts subject to conditional use review under Section 5.4, and all other applicable requirements of these regulations. The occasional and temporary display for sale of up to two motor vehicles on a lot, which are owned by the resident or property owner, are exempted from these regulations.

B. In addition to conditional use standards under Section 5.4, commercial motor vehicle sales establishments must also meet the following requirements:

1. No more than ten vehicles for sale or lease may be parked in outdoor display areas at any time.

2. Motor vehicles intended for sale or lease shall be displayed in an enclosed building or within a designated exterior display area approved by the Development Review Board that meets required side and rear setbacks for the district in which it is located. Exterior display areas may be located within the front setback area, however no vehicle shall be parked within a public right-of-way.

3. Parking and display yard areas shall also meet surface water and wetland setback and buffer requirements, as specified under Section 3.19.

4. The DRB may require landscaping and/or fencing as it deems appropriate for public safety, and to screen exterior display areas from adjoining properties.

5. The motor vehicle sales facility and associated display area shall comply with applicable requirements of these regulations, including but not necessarily limited to outdoor lighting standards under Section 3.11, parking requirements under Section 3.13, performance standards under Section 3.14, and sign requirements under Section 3.16.

6. Motor vehicle service and repair may be allowed in association with a motor vehicle sales facility provided that the requirements of Subsection B are met.

C. **Motor Vehicle Service Facility**. A motor vehicle service facility may be allowed as a type of home industry subject to review and associated standards under Section 4.12; or as a principal use in designated zoning districts subject to conditional use review by the Development Review Board under Section 5.4 and the following requirements:

1. Vehicles scheduled for repair shall be parked within an enclosed structure or within a designated yard or parking area approved by the Development Review Board, which meets all setback requirements for the district in which it is located. To the extent physically feasible, yard or parking areas shall be located to the side or the rear of the garage or maintenance building. The Board may require landscaping and/or fencing as it

deems appropriate for public safety, and to screen the yard or parking area year-round from adjoining properties and public rights-of-way.

2. Parking and yard areas shall also meet surface water and wetland setback and buffer requirements, as specified under Section 3.19.

3. No more than three unregistered vehicles shall be stored on-site unless the property also has been approved by the Development Review Board as "mixed use," to also include a salvage yard (see Section 4.17), in districts in which all such uses are allowed.

4. All maintenance and repair work shall be conducted within an enclosed structure which meets all applicable municipal and state regulations for water supply, wastewater and waste disposal.

5. Fuel and hazardous materials stored and used on the premises shall be limited to those materials necessary for the operation of the business, and shall be stored in an enclosed and secure structure in accordance with all applicable state and federal regulations.

6. The motor vehicle service facility and associated yard and display areas shall comply with applicable requirements of these regulations, including but not necessarily limited to outdoor lighting standards under Section 3.11, parking requirements under Section 3.13, performance standards under Section 3.14, and sign requirements under Section 3.16.

7. The sale or lease of new or used vehicles may be allowed in association with a motor vehicle service facility provided that the requirements of Subsection A are met.

Section 4.16 Public Facility

A. In accordance with the Act [§4413], the following public facilities or uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping and screening requirements, and only to the extent that such regulations do not have the effect of excluding, or interfering with their intended use or function:

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

B. Reasonable provision has been made for locating the above public facilities and uses within specified zoning districts under Article II. Such facilities or uses must meet applicable district requirements and may be subject to site plan review under Section 5.3 (as permitted uses) or conditional use review under Section 5.4 (as conditional uses), however associated conditions of approval shall not exceed allowed regulation, as specified in Subsection A.

C. Public utility power generating plants and transmission facilities regulated by the Vermont Public Service Board (under 30 V.S.A. §248) are specifically exempted from municipal land use regulation. This includes wind generation facilities that are "net metered" and connected to the electric grid.

D. Telecommunications facilities as defined in 30 V.S.A. §248a are also exempt from municipal regulation when and to the extent that jurisdiction over such facilities is assumed by the Vermont Public Service Board under §248a.

E. These regulations shall not have the effect of prohibiting the installation of solar collectors, clotheslines, or other energy devices based on renewable energy resources.

Section 4.17 Salvage Yard

A. **Purpose.** Well managed **s**alvage yards provide important services as material salvage and recycling facilities. The purpose of this section is to regulate new and expanded salvage yards within the Town of Underhill in order to:

1. Allow salvage yards that are located and managed under applicable municipal, state and federal regulations to be established within designated zoning districts.
2. Avoid adverse environmental and aesthetic impacts of poorly maintained yards, including discharges into surface and ground waters.
3. Avoid public nuisances and undue adverse impacts to properties and public facilities, including public roads and infrastructure, in the vicinity of yard areas.

B. **Applicability.** This section applies to any place of outdoor storage within the Town of Underhill for depositing, storing, keeping, processing, buying or selling junk, including four or more junk motor vehicles, as these terms are defined under Section 11.2.

1. The requirements of this section specifically do not apply to:

    a. The limited outdoor storage of materials or equipment that is customary and incidental to an allowed use (such as a single family dwelling, an approved home industry or a contractor's yard), as long as such materials or equipment are located outside of required setback areas, do not adversely affect neighboring properties, and do not result in hazards to public health and safety (also see Section 3.12).
    b. Permanent scrap metal processing facilities, which are prohibited in all zoning districts.

c. Approved transfer stations and other solid or hazardous waste management facilities regulated under 10 V.S.A. Chapter 159 (see Section 4.16), or approved motor vehicle sales and service facilities (see Section 4.15).

2. A new or expanded salvage yard, including an outdoor storage area on any property that meets the definition of "salvage yard," may be allowed within designated zoning districts subject to conditional use review under Section 5.4 and the requirements of this section. No zoning permit for a new or expanded yard shall be issued until conditional use approval has been obtained.

3. In addition to these regulations, salvage yards must meet all other applicable municipal, state and federal requirements, and must operate under:

a. A "certificate of approved location" issued by the Underhill Selectboard following public hearing (under 24 V.S.A. Chapter 61) for a period not to exceed five years and subject to renewal thereafter, as filed with the Agency of Natural Resources.

i. No certificate of approved location shall be issued for a new or expanded salvage yard that has not received conditional use approval from the DRB, nor for any approved salvage yard that has been noticed in violation of these regulations or any conditions of approval until the violation has been resolved.

ii. The Selectboard may consider the findings, determinations and conditions of conditional use approval as evidence that a proposed salvage yard meets applicable location and screening requirements, or may impose additional or more restrictive requirements as deemed necessary in accordance with their statutory review authority under Chapter 61. The more restrictive requirements shall apply.

b. A "certificate of registration" issued by the Secretary of the Agency of Natural Resources under applicable state rules, as filed with the town and displayed on site. If current state requirements differ from the requirements of this section, the more restrictive shall apply.

4. Violations of these land use regulations pertaining to salvage yards are subject to enforcement and 15-year statutory limits under Section 10.6; however this limitation specifically does not apply to certificates of approved location issued by the Underhill Selectboard under 24 V.S.A. Chapter 61, in accordance with the Act [§4454(a)].

B. **Application Requirements.** In addition to application requirements under Section 5.4, the application for a new or expanded salvage yard shall include the following, unless waived by the DRB as not applicable to a particular project:

1. A description of existing and proposed salvage and processing operations, including all equipment to be stored and used on site.

2. A description of the type and volume of salvaged materials to be stored on site, including any hazardous materials or pollutants.
3. A site plan that identifies the location and extent in area of existing and proposed salvage yards, including all accessory structures and storage and processing areas, and distances from property boundaries, public streets, wetlands, surface waters and public and private wells on-site and in the vicinity.
4. Test boring results indicating soil types and depths to bedrock and seasonal high water tables within the proposed area of operation, and existing and/or proposed ground water monitoring well locations, if any.
5. A screening and landscaping plan for the perimeter of the salvage yard, particularly for those areas within view of public rights-of-way and adjoining properties.
6. A state project review sheet identifying required state and federal permits.

C. **Standards.** New and expanded salvage yards, including associated storage and processing facilities and functions must meet the following standards, as applicable:

1. Salvage yards are allowed as conditional uses only within designated zoning districts under Article II, and are specifically prohibited within special flood hazard areas (Section 6.4), surface water and wetland setback and buffer areas (Section 3.19), and within water supply source protection areas (Section 3.17)

2. The salvage yard area(s), in total, shall not exceed five acres, the boundaries of which shall be clearly and permanently marked on the ground. All activities associated with the operation of the yard, including the storage and processing of scrap materials, shall be confined to designated yard area(s).

3. A salvage yard shall meet minimum setback requirements under Table 4.3 as measured horizontally from the nearest point of the yard to the listed feature. Where these setback requirements differ from other requirements of these or state regulations, the more restrictive shall apply. Required setback distances may be increased as deemed necessary by the DRB, based on specific site conditions, to protect water quality and adjoining properties.

Table 4.3 Salvage Yard Minimum Setback Requirements

Feature	**Minimum Required Setback**
Property Lines	100 feet
State or Town Highway (right-of-way)	100 feet
Surface Waters (top of bank or slope)	150 feet
Wetland (Class I, II, III?) (delineated boundary)	150 feet
Potable Water Supply (except for that serving the yard)	300 feet
Residential Dwelling (located off-property)	500 feet
School, church or public park	1,000 feet

4. Salvage yard areas shall be screened year-round from view of public rights-of-way and from adjoining properties in conformance with an approved screening and landscaping plan.

    a. Screening materials may include any combination of the following:

        i. existing natural topography and vegetation,
        ii. earthen berms,
        iii. opaque fencing at least six feet in height, supplemented by landscaping under (iv), and
        iv. landscaping that incorporates a mix of native vegetation that includes deciduous and coniferous trees, shrubs and ground cover.

    b. No waste, scrap, parts or materials shall be stacked, piled or stored higher than the fence or screen.

    c. All screening and landscaping shall be maintained in good condition. A performance bond or other form of surety may be required as a condition of approval to ensure that screening and landscaping are installed and maintained as approved.

5. Fencing shall be used as necessary to limit public access to the yard and shall not be used for purposes of advertising. Yard areas shall be gated except during regular business hours.

6. The on-site storage and processing of materials shall not adversely affect surface, ground or drinking water supplies, or other identified natural or cultural features on site, or in the vicinity of the yard. No discharges or releases of hazardous materials, fluids or pollutants into the air, surface waters, wetlands or ground waters shall be allowed.

    a. Salvage yard operations shall incorporate state-accepted best management practices for such yards, for example under "Vermont’s Best Management Practices for the Auto Salvage Outreach Program" as most recently issued by the Vermont Department of Environmental Conservation's Environmental Assistance Division.

    b. Vehicles shall be drained and crushed only within designated yard areas, on impervious surfaces designed to prevent any release or discharge of fluids into surface or ground waters.

    c. Fluids shall be stored on site in conformance with applicable state and federal regulations, in enclosed areas or containers as required.

    d. Stormwater shall be managed on site in conformance with state requirements and best management practices for stormwater management.

e. The DRB may require, as a condition of approval, periodic or occasional site inspections, monitoring, and reporting requirements to ensure that surface and ground waters have not been adversely impacted by yard operations.

7. A salvage yard shall meet all other applicable requirements of these regulations, including but not necessarily limited to outdoor lighting standards under Section 3.11, parking requirements under Section 3.13 performance standards under Section 3.14, and sign requirements under Section 3.16.

D. **Accessory Structures and Uses**. A salvage yard also may include one or more accessory structures for use as office space, equipment and vehicle storage and maintenance, or for the storage and processing of materials within enclosed areas. All accessory structures located on the property outside of the salvage yard area shall meet minimum district setback requirements.

E. **Site Closure**. All materials shall be removed from the site within twelve months of the cessation or abandonment of operations, and the site shall be restored to a safe, usable condition. Site restoration, including the cleanup and disposal of hazardous materials, shall be subject to all applicable state and federal regulations. The submission of a site restoration plan and performance bond or other form of surety, immediately upon closure, abandonment or the cessation of operations, may be required by the DRB as a condition of approval to ensure that the site is properly restored.

Section 4.18 Telecommunications Facility

A. **Purpose**. The purpose of these regulations shall be to regulate the placement, design, construction, removal, and modifications of wireless telecommunications facilities in order to preserve the character and the appearance of the Town of Underhill and protect the scenic, historic, cultural, and natural resources of Underhill while accommodating the telecommunications needs of residents and businesses. The Town's goal is to minimize the number of towers in town while still allowing for adequate coverage. New facilities will be required to co-locate with existing facilities whenever possible.

B. **Consistency with Federal & State Law**. These regulations are intended to be consistent with Section 704 of the Federal 1996 Telecommunications Act and applicable state regulations under the Act [§4412] and 30 V.S.A. §248a. Accordingly:

1. These regulations shall not prohibit or have the effect of prohibiting the provision of personal wireless communication services; shall not unreasonably discriminate among the providers of functionally equivalent services; and shall not regulate personal wireless services based on the environmental effects of radio frequency emissions to the extent that these facilities comply with Federal Communications Commission (FCC) regulations concerning such emissions.

2. Except to the extent required to protect historic landmarks and structures listed on the state or national register of historic places, no municipal permit shall be required for placement of antennae used to transmit and/or receive communications signals on a property owner's premises if the aggregate area of the largest faces of the antennae is not more than eight square feet, and if the antennae and any mast support does not extend more than 12 feet above the roof of that portion of the building to which the mast is attached.

3. Telecommunications facilities as defined in 30 V.S.A. §248a (see Section 11.4) are exempt from municipal regulation when and to the extent that jurisdiction over such facilities is assumed by Vermont Public Service Board under that section of statute.

C. **Applicability**. Wireless telecommunications facilities shall include all facilities subject to licensing or regulation by the FCC, including towers, associated accessory structures, buildings and/or equipment, except as specifically exempted under Subsections B or D.

1. New, modified or expanded wireless telecommunication facilities, except as specified for small scale and temporary facilities under Subsection (H), may be allowed as conditional uses subject to review by the Development Review Board under Section 5.4 and the requirements of this section.

2. A new telecommunications tower shall not be permitted unless it is found by the Board that the equipment planned for the proposed tower cannot be accommodated on an existing or approved tower, or other structure or building.

3. New telecommunications towers intended for speculative purposes are prohibited.

D. **Permit Requirements**. No construction, alteration, modification or installation of a wireless telecommunications facility shall commence without first obtaining all applicable permits and approvals as required under municipal, state and federal regulations. Any alteration or addition to a previously approved telecommunications facility shall require a permit amendment when any of the following are proposed:

1. a change in the number of buildings or facilities permitted on the site;
2. a change in telecommunications technology used on the site; or
3. the addition or change of any equipment resulting in greater visibility or structural wind loading, or additional tower height, to include the profile of additional antennas not specified in the original application.

E. **Exemptions**. The following are specifically exempted from the provisions of this section:

1. Telecommunications facilities as specified under Subsection B.

2. Ground or building mounted radio or television antenna, or satellite dishes not exceeding 36 inches in diameter, which are intended solely for residential use, and

which do not, as mounted, exceed 40 feet in height above the lowest grade at ground level.

3. Single use local business radio dispatch equipment.

4. Citizens band radio antennas operated by federally licensed amateur (ham) radio operators which do not exceed a height of 50 feet above the grade level, whether free standing or mounted, and which meet all setback requirements for the district in which they are located.

5. Police, fire, ambulance, and other emergency dispatch telecommunications facilities.

F. **Application Requirements**. In addition to application requirements for conditional use review under Section 5.4, an application for a new telecommunications facility shall also include the following as applicable:

1. The name and address of the applicant, landowners of record and authorized agents, and contact information for the person(s) authorized to operate, maintain and ensure the safety of the facility.

2. The name and addresses of all adjoining property owners of record.

3. For a facility to be installed on an existing structure, a copy of the applicant's executed contract with the owner of the existing structure.

4. A coverage map (USGS Quadrangle) that shows existing topography, the extent of existing and proposed coverage(s), and the location of other towers, suitable buildings or structures located within at least a five mile radius of the proposed site.

5. Information regarding the feasibility of using antennas, repeaters or microcells on existing structures to achieve desired coverage, including written documentation from other telecommunications facility owners that no other suitable sites are available.

6. A vicinity map showing the entire vicinity within 2,500 feet of the facility site, including topography and steep slopes (equal to or greater than 15%), existing vegetation, surface waters, wetlands, critical habitat areas, structures, roads, driveways, utility corridors, property lines, rights-of-way and easements.

7. A site plan, drawn to a scale of 1 inch = 40 feet, showing the footprint of all existing and proposed facilities, including towers, supporting and accessory structures; access roads and utility corridors, and landscaping, fencing and screening, in relation to existing site features and adjoining properties.

8. A report from a qualified professional which documents:

a. facility height, design, construction and structural capacity, including materials, cross-sections, elevations, antennae and equipment mounting locations, and fall zones;
b. proposed modifications, if any, to existing facilities, sites or structures to achieve desired coverage;
c. the number and type of antennas or other equipment to be accommodated;
d. the output frequency, number of channels and power output per channel for each antenna;
e. the steps that will be taken to avoid interference with any established public safety telecommunications system, to include an intermodulation study that indicates no likely interference problems, and written notification to that effect to appropriate public safety agencies; and
f. that the facility and equipment will operate in compliance with all FCC regulations, standards and requirements regarding both radio frequency interference (RFI) and radio frequency radiation (RFR) at the proposed site, and will agree to unannounced, independent evaluations of compliance with FCC regulations as may be required by the Board as a condition of approval.

9. A written five-year plan for use of the proposed telecommunications facility, including reasons for seeking capacity in excess of immediate need if applicable, as well as plans for additional development and coverage.

10. An indication of the timing and construction sequence for each phase of the entire project.

11. Copies of any state-required Act 250 permit application and/or federally-required draft environmental assessment (EA) or impact statement (EIS) which describe the probable impacts of the proposed facility.

12. A letter of intent committing the facility owner and his/her successors to allow shared use of the facility if an additional user agrees in writing to meet reasonable terms and conditions for shared use, including compliance with all applicable federal, state, and municipal regulations and associated permits and approvals.

13. Any additional information as needed to determine compliance with the provisions of these regulations, including but not limited to visual impact assessments or independent evaluations of the proposed facility, to be paid for by the applicant, as specified under Subsection G.

14. **Independent Review**. The Development Review Board may retain independent consultants whose services shall be paid for by the applicant in accordance with Section 10.7, as necessary to determine project compliance with one or more standards under these regulations. These consultants shall be qualified professionals in telecommunications engineering, structural engineering, monitoring of electromagnetic fields and other such fields as determined by the DRB. The consultants shall work at the

DRB's direction and shall provide the DRB such reports and assistance as the DRB deems necessary to review an application.

G. **Specific Standards**. In addition to meeting conditional use standards under Section 5.4, the Board, in granting conditional use approval, shall also find that the proposed telecommunications facility complies with the following standards:

1. **Collocation**. New towers shall be designed to accommodate the collocation of both the applicant's antennas and comparable antennas for one or more additional users, depending on tower height. Towers must be designed to allow future rearrangement of antennas, and to accept antennas mounted at varying heights. For new towers or for proposed telecommunications equipment that cannot be accommodated on an existing or approved tower or other structure, a licensed professional shall document as applicable that:

    a. There is no existing or approved tower or other suitable structure in the area in which coverage is sought.

    b. Proposed telecommunications equipment exceeds the structural or spatial capacity of an existing tower or structure; and the existing tower or structure cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment, at a reasonable cost, to provide coverage and capacity comparable to that of the proposed facility.

    c. Proposed telecommunications equipment will cause interference which materially impacts the usefulness of other existing or permitted equipment at the site, and such interference cannot be prevented at a reasonable cost.

    d. Proposed telecommunications equipment, either alone or together with other existing equipment, would create RFI or RFR in violation of federal standards or requirements.

    e. Existing or approved towers and structures cannot accommodate the planned equipment at the height needed, or are too far from the area of needed coverage to function reasonably.

    f. Aesthetic or other specific considerations under these regulations make it unreasonable to locate the planned telecommunications equipment on an existing or approved tower or building.

2. **FCC Compliance**. Telecommunications facilities, including tower construction and wiring, shall meet all state and federal requirements, including but not limited to FCC requirements for transmissions, emissions and interference.

a. No telecommunication facility shall be located or operated in such a manner that it poses a potential threat to public health or safety, nor interferes with public safety telecommunications.

b. Prior to the siting of new antennas at existing sites, written certification of FCC compliance shall be provided based on the results of a cumulative RFR emissions study performed by the applicant.

c. The DRB may also require, as a condition of approval, monitoring and the submission of annual reports by an independent, qualified engineer to document ongoing compliance with FCC regulations.

3. **Setbacks**. All telecommunications facilities, including associated support and accessory structures, shall meet the minimum setback requirements for the district in which they are located. In addition, telecommunications towers shall be set back a minimum of:

a. 150 feet from a named river, and 100 feet from all other surface waters and designated wetlands;
b. 500 feet from the habitat of any state listed rare, threatened or endangered species;
c. 500 feet from any property listed on the state register of historic sites and structures survey for the Town of Underhill, and 100 feet from known archaeological sites;
d. 500 feet from a designated scenic road or highway;
e. the fall zone distance from all property lines, at minimum to be calculated as the total vertical height of the tower including all attached equipment, as measured from its base.

4. **Height**. Towers are exempted from district height requirements; however towers shall not extend vertically more than 20 feet above the average height of the adjoining tree canopy, as measured within 200 feet of the highest vertical element of the proposed facility, unless the Board finds that the additional height is necessary to provide adequate coverage to the town or to allow for collocation. The DRB may require the submission of a management plan to maintain average tree height and screening provided by the tree canopy.

5. **Visibility and Aesthetic Impacts**. New telecommunications facilities, including towers, supporting and accessory structures, shall be sited and designed to minimize their visibility. The facility shall not have an undue adverse aesthetic impact. Accordingly:

a. Towers shall not be sited in the middle of open fields or on exposed ridgelines or hilltops in view of public rights-of-way, unless the Board determines the specific location is necessary to provide adequate coverage to the town or to allow for collocation.

b. New or modified towers and antennas shall be designed to blend into the surrounding environment to the greatest extent feasible, through the use of natural topography, existing vegetation, landscaping and screening, the use of compatible materials and colors, and/or other camouflaging techniques.

c. The DRB, to assist in its review, may require that the applicant provide a visual impact assessment of the proposed facility from specified vantage points, to include visual representations (e.g., photographic simulations) and/or field tests (e.g., balloon tests). Such impact assessments shall consider the following:

i. the scenic sensitivity of particular views;
ii. the frequency and length of time the facility would be viewed by the traveling public from a public highway, trail or public body or water;
iii. the degree to which the facility would be screened by existing topography, vegetation and structures;
iv. background features that may emphasize or obscure the facility;
v. the distance of the proposed facility from public vantage points and the degree to which it is visible above the skyline;
vi. the sensitivity or unique value of a particular view affected by the proposed tower; and
vii. any significant disruption of a viewshed that provides context to an important historic or scenic resource.

d. Balloon Tests. The DRB may require the applicant to fly a four-foot diameter brightly colored balloon at the location and maximum elevation of any proposed tower. If a balloon test is conducted:

i. The applicant, in consultation with the Zoning Administrator, shall advertise the date, time, and location of this balloon test at least seven days in advance of the test in a newspaper with a general circulation in the Town. The applicant shall also inform the DRB in writing of the date, time, and location of the test at least 15 days in advance of the test.

ii. The balloon shall be flown for at least eight consecutive daylight hours on two days. If visibility and weather conditions are inadequate for observers to be able to clearly see the balloon test, further test may be required by the DRB.

6. **Fencing**. Towers shall be enclosed by security fencing at least six feet in height and gated, and shall be equipped with anti-climbing devices and warning signs. The use of razor wire is prohibited. The Board may require landscaping or screening adjacent to the security fence to minimize visual impacts as viewed from neighboring properties or public vantage points.

7. **Signs**. No commercial signs, lettering, logos or other advertising shall be placed on telecommunications towers or associated support and accessory structures. Signs shall

be limited to those required under state and federal regulations, and for safety purposes.

8. **Illumination**. Towers shall not be illuminated by artificial means and shall not display strobe lights unless such lighting is specifically required by the Federal Aviation Administration (FAA) or other federal or state authority for a particular tower because of its height. The Board may require tower relocation, or a reduction in tower height to eliminate the need for lighting.

9. **Access**. Access roads or driveways and utility corridors, to the extent feasible, shall be shared, and designed to minimize site disturbance, to follow natural contours and linear features (e.g., tree lines, field edges), and to aesthetically blend in with the surrounding environment. The Board may require closure of access roads to vehicles following facility construction where it is warranted by site conditions and where maintenance personnel can reasonably access the facility site on foot or by air transport.

10. **Utilities**. All utilities proposed to serve a telecommunications site, to the extent feasible, shall be installed under ground. If burial is not feasible, utilities shall be installed at ground level.

11. **Interference**. No new telecommunications facility shall be placed or constructed in such a way as to interfere with public safety communications. The applicant shall certify that all inter-modulation studies accompanying the application have been provided to appropriate public safety officials. Providers also shall notify the municipal and public safety officials at least 10 calendar days in advance of testing a new service, or changes to an existing service, to allow monitoring for potential interference.

12. **Landscaping**. Landscaping shall be provided in a manner that preserves and incorporates existing vegetation onsite and in the immediate vicinity of the facility, and fully screens ground mounted equipment from the view of neighboring properties and public vantage points. The Board may require increased setbacks, landscaping and screening as appropriate to minimize adverse impacts to adjoining properties, and/or the submission of a landscaping plan, to include provisions for long-term maintenance.

13. **Wildlife Habitat**. Telecommunications facilities shall not destroy or have an undue adverse impact on significant wildlife habitat as defined under 11.2. Mitigation measures shall be used as necessary to minimize and mitigate adverse impacts to wildlife and wildlife habitat in the vicinity of the facility.

H. **Small Scale & Temporary Facilities.** Notwithstanding the requirements of Subsections C through G, the following facilities may be issued a zoning permit in any zoning district by the Zoning Administrator without conditional use approval:

1. **Small Scale Facility.** Small scale wireless telecommunications equipment, including antennas, microcells or repeaters, that will be installed on or within approved towers,

utility poles, or other structures; or the installation of ground facilities less than 20 feet in height, provided that:

a. no such device is located within 50 feet of an existing residence;
b. no changes are made to the height or appearance of the structure except as required for mounting;
c. the height of the facility as mounted does not extend the total height of the structure by more than 12 feet, unless otherwise allowed by the DRB for previously approved towers; and
d. any accompanying equipment will be screened from view.

2. **Temporary Wireless Facility**. Wireless communications facilities designed for temporary use, provided that:

a. the temporary facility is permitted for the duration of the intended use or event, not to exceed five days, as specified in the zoning permit, and is removed immediately upon the expiration of the permit,
b. the height of the facility does not exceed 50 feet from grade, and
c. the facility complies with all other applicable provisions of these regulations.

I. **Continuing Obligations**.

1. By January 15th of each year, the owner of a telecommunications facility shall:

a. Certify in writing that the facility is in compliance with FCC standards, and provide the Zoning Administrator with a list of the most recent RFR readings at the site, their distances from the tower or transmitter, dates of the readings, and the name of the person or company who took the readings.

b. Certify in writing that the facility continues to be operated in accordance with all other applicable federal, state and municipal requirements.

c. Provide documentation that adequate insurance coverage is being maintained on all telecommunications facilities.

2. Failure to file required certifications and documentation by January 15th may result in the issuance of a notice of violation by the Zoning Administrator under Section 10.6. If certification of continued operation is not filed within period of time specified in the notice, or by February 15th, whichever is sooner, the telecommunications facility shall be considered abandoned for the purposes of these regulations.

J. **Removal**. All abandoned, unused, obsolete or noncompliant wireless telecommunications facilities, including towers, accessory structures and/or equipment, shall be removed within 180 days of the cessation of operations, and the site shall be restored to its original condition. In the event that facilities are not removed within the 180

period, the municipality may, following notification of the owner, remove the facilities and assess the cost of removal against the property or tower owner.

1. A copy of the relevant portions of any signed lease which requires the applicant to remove the tower and associated facilities shall be submitted at the time of application.
2. A bond or other form of surety acceptable to the Selectboard, in an amount sufficient to cover the costs of tower removal and site reclamation, also may be required as a condition of approval.

Section 4.19 Temporary Structure or Use

A. **Temporary Structure**. Structures used for temporary office or storage space, including construction trailers and shipping containers, temporary housing during home construction, including mobile homes, or for special events requiring a permit under Subsection B, may be allowed as a temporary accessory structure to an existing or permitted use in any zoning district, in accordance with the following:

1. Temporary structures shall not be used for dwelling purposes, except for campers, tents or yurts permitted to house participants at special events, and structures approved for use as temporary housing during the construction of a permanent dwelling, that will be removed from the site when construction is completed.

2. Temporary structures shall meet setback requirements, including minimum zoning district setbacks for accessory structures, and required setbacks from surface waters and wetlands under Section 3.19.

3. A temporary structure requires a zoning permit issued by the Zoning Administrator under Section 10.3 for a specified period of time, not to exceed one year from the date of issuance, with the provision that the structure will be dismantled and/or removed upon expiration of the permit. A one-time administrative extension of the zoning permit for a temporary structure may be issued by the Zoning Administrator for no more than one year, in accordance with Section 10.3.

4. Temporary structures in the Flood Hazard Area Overlay District (Special Flood Hazard Areas) are specifically prohibited within floodway areas, and must meet any applicable requirements for structures within this district under Section 6.6.

B. **Temporary Uses (Special Events)**. Special events (e.g., weddings, receptions, concerts, festivals, fairs and other cultural events, trade and antique shows) may be allowed as a temporary accessory use to an existing use within any zoning district, in accordance with the following:

1. Temporary uses shall require the issuance of a zoning permit by the Zoning Administrator under Section 10.3 for the scheduled period of the event(s). All facilities

associated with the event shall be removed from the premises at the end of the event or the expiration of the zoning permit.

2. The zoning application shall include a description of the type, location and date(s) of the event, the type and number of event facilities including access and parking areas, and the number of anticipated participants and/or attendees.

3. The applicant shall demonstrate that adequate off-street parking and traffic circulation, traffic management, and sanitary and trash collection facilities will be provided based on the number of participants or attendees anticipated.

4. The following uses or activities are specifically exempted from the requirements of this section, and shall not require the issuance of a zoning permit:

    a. Family or household events associated with a residential use (e.g., weddings, reunions, private concerts). Such events may also include temporary shelters on-site, such as campers or tents, to house guests.
    b. Auctions, yard and garage sales, in accordance with Section 10.2 (Exemptions).
    c. Special events that are held within or on municipal, school or church property.

ARTICLE V. DEVELOPMENT REVIEW

Section 5.1 Applicability

A. Development review procedures and related standards under this article apply only to development applications that must be reviewed and approved by the Development Review Board (DRB), following a public hearing, before a zoning permit can be issued by the Zoning Administrator. For land subdivision review procedures, see Article VII. Development review procedures under this article include:

1. **Site Plan Review**. Site plan review under Section 5.3 is required for all "permitted uses" listed by zoning district under Article II, except for farming and forestry, single (one) and two family dwellings, associated accessory structures and accessory dwellings as specified under Section 4.2, home occupations and home child care facilities as specified under Sections 4.8 and 4.12, signs under Section 3.16, and other uses specifically exempted from these regulations under Section 10.2. Uses listed as "conditional uses" under Article II do not require separate site plan review and approval, but must meet applicable site plan review standards as included by reference under Section 5.4.

2. **Conditional Use Review**. Conditional use review under Section 5.4 is required for all "conditional uses" listed by zoning district under Article II, and to other development as specified in these regulations.

3. **Waivers and Variances**. Requests for waivers or variances from the requirements of these regulations may be considered by the DRB in association with site plan or conditional use review, or on appeal from a decision of the Zoning Administrator, only in accordance with Section 5.5 and the Act [§§4414, 4469].

B. **Coordination of Review**. If land subdivision is also proposed, final subdivision approval is required prior to site plan or conditional use review for the development of a subdivided lot; however site plan or conditional use review may be conducted concurrently with final subdivision review under Article VII as long as the application, notice, procedural requirements and review standards for each are met. Flood hazard area review under Article VI also may be conducted concurrently with site plan or conditional use review under this article.

1. For the review of development on a lot that has received prior subdivision approval, the DRB shall consider and incorporate all conditions of subdivision approval applicable to that lot. In the event that a condition of site plan, conditional use or flood hazard area approval is inconsistent with the conditions of subdivision approval, the more restrictive shall apply.

Section 5.2 Development Review Process

A. **Application Requirements.** Applications for site plan or conditional use review shall be submitted to the Zoning Administrator on forms provided by the town.

1. Applications shall also include:

    a. required fees,
    b. two original and twelve 11" x 17" copies of a site development plan,
    c. a copy of the state project review sheet,
    d. draft legal documents,
    e. other required information or supporting documentation identified from application checklists, or as specified by the Zoning Administrator, and
    f. any written requests to waive or modify specific development review standards under Section 5.5.

2. The Zoning Administrator shall refer complete applications to the DRB and copies of application information and public hearing notices to the following for review and comment as appropriate:

    a. Community officials, including the Underhill–Jericho Fire Department, for development that requires or may adversely affect community facilities and services.
    b. Underhill Road Commissioner, for development located on or accessed from a town highways,
    c. Underhill Conservation Commission for development that may adversely affect significant natural, historic or scenic resources as identified in the Underhill Town Plan and any development located over 1500 feet in elevation.
    d. The Vermont Agency of Transportation for development located on or accessed from a state highway, and specifically for development that includes any requested reductions in front setback requirements from state highway rights-of-way.
    e. The State National Flood Insurance (NFIP) Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Program, for development within the Flood Hazard Overlay District (see Article VIII).

3. The applicant is encouraged to contact the above listed officials prior to submitting an application for development review to the DRB, and to incorporate their recommendations in site layout and project design.

4. No DRB approval shall be issued until written comments have been received or thirty days have elapsed from the date of referral. The failure of the Zoning Administrator to notify the above listed parties shall not constitute grounds for appeal.

B. **Hearing.** Within 30 days of receipt of a substantially complete application, the Zoning Administrator, in consultation with the Chair of the DRB, shall schedule a public hearing on the application to be warned in accordance with the Act [§4426] and Section 10.7.

1. If the hearing includes a variance request on appeal to the DRB, it must be held within 60 days of the date of the filing of a notice of appeal, as required under Section 10.5.

2. The DRB may waive one or more required application materials if it determines that such information is unnecessary to make findings under applicable criteria of these regulations. The DRB also may request additional information, including independent technical analyses as provided for under Section 10.7, as needed to determine conformance with these regulations. An application will not be considered complete by the DRB until all necessary materials have been submitted.

3. The Board may recess and continue the hearing to a date and time specified, as necessary to conduct site visits or to allow for the submission of additional information from the applicant or other interested persons. No additional information or comments shall be taken following hearing adjournment.

B. **Decision**. Within 45 days of the date of hearing adjournment, the DRB shall issue written findings and a decision to approve, approve with conditions, or deny the application in accordance with Section 10.7. Failure to act within this 45-day period, as decided on appeal, shall be deemed approval on the 46th day. The DRB may specify as conditions of approval:

a. Modifications or changes to the proposed site layout and project design.
b. The submission of supporting documentation necessary to achieve or monitor compliance with the standards of these regulations and conditions of approval.
c. Documentation to be submitted with the application for a certificate of occupancy that all other required municipal and state approvals have been obtained.
d. Infrastructure improvements and associated easements or other dedications as required to serve the proposed development, or to mitigate off-site impacts resulting from the proposed subdivision, to be installed or paid for by the applicant.
e. The submission of a development agreement, performance bond or other surety acceptable to the Underhill Selectboard.

C. **Appeal**. The applicant or another interested person who participated in the hearing process may either request that the DRB reconsider a decision, or file an appeal of the DRB decision to the Environmental Division of Superior Court, within 30 days of the date of issuance, in accordance with Section 10.5.

1. The DRB may reject a request for reconsideration without hearing and render a decision under Section 10.5, including findings of fact, within 10 days of the date of filing if it considers the issues raised in the request have been decided in an earlier appeal or involve substantially or materially the same facts as presented by or on behalf of the appellant.

Section 5.3 Site Plan Review

A. **Purpose**. Site plan review is intended to ensure that site layout and development design are functional, safe, attractive, and consistent with the purpose and character of the district(s) in which the development is located. Standards specifically relate to the internal layout of the site, its physical design, and the functional and visual integration of the site with adjoining properties, uses and infrastructure.

B. **Standards**. The DRB may consider and impose appropriate safeguards, modifications and conditions relating to the following standards:

1. **Existing Site Features**.

   a. Site layout and design, to the extent physically feasible, shall incorporate and avoid undue adverse impacts to significant natural, historic and scenic resources identified from the Underhill Town Plan, maps and related inventories, or through site investigation. These include but may not be limited to:

      i. existing topography and drainage patterns;
      ii. land above 1500 feet in elevation;
      iii. areas of steep (15%-25%) and very steep (>25%) slope (see Section 3.18);
      iv. surface waters, wetlands, and associated buffers (see Section 3.19);
      v. special flood hazard areas under Article VI;
      vi. delineated source protection areas (see Section 3.17);
      vii. significant wildlife habitat areas and travel corridors;
      viii. scenic resources including scenic viewsheds, open meadows, and prominent hillsides and ridgelines as viewed from public vantage points; and historic sites and structures, including existing cellar holes, stonewalls and fences.

   b. The DRB may require one or more of the following measures as necessary to avoid or mitigate adverse impacts to natural, scenic and historic resources in the vicinity of the proposed development:

      i. Increased setback distances or undisturbed buffer areas between proposed development and identified resources.
      ii. The designation of building envelopes sited to exclude identified resource areas, and to limit the extent of site clearing and disturbance.
      iii. Permanent protection of identified resource areas as designated open space.
      iv. The screening of development as viewed from public vantage points.
      v. The preparation and implementation of management plans for identified resources.

2. **Site Layout & Design**. The location and orientation of structures, and supporting infrastructure on the site shall be compatible with their proposed setting and context, as determined from specific policies of the Underhill Town Plan, zoning district objectives,

existing site conditions and features, adjoining or facing structures in the vicinity, and other applicable provisions of these regulations, including density, setback, height and buffering requirements. To ensure that development is designed in a manner that is consistent with the existing and desired character of the district within which it is located, the following general standards shall apply as specified for particular district:

a. **Underhill Flats Village Center District.** Site design and layout shall reinforce a traditional, compact village settlement pattern characterized by a pedestrian scale and orientation, traditional densities and setbacks, well-defined streetscapes that include sidewalks or paths to facilitate pedestrian circulation, and a well-defined physical and visual edge to the built environment. Principal buildings shall be scaled and oriented in relation to adjoining structures, with principal façades and entrances facing the road or central greens, and shall establish or maintain a consistent front set back distance (building line) from the street in relation to adjoining structures.

b. **Rural Residential and Water Conservation Districts**. Site design and layout shall reinforce the rural character and traditional working landscape of these districts, characterized by wooded hillsides, open fields, and a visual and functional relationship of structures to the surrounding landscape. Buildings shall be sited to minimize, to the extent physically feasible, encroachments on open fields and prominent ridgelines or hilltops, and be oriented and designed in a manner that is compatible with the residential character and scale of adjoining development within these districts.

c. **Mt. Mansfield Scenic Preservation and Soil and Water Conservation Districts**. Site layout and design, to the extent physically feasible, shall avoid adverse impacts to natural and scenic resources and environmentally sensitive areas within these districts, including those resources listed under Subsection B.1. The applicant should consider, and the DRB may require one or more mitigation measures listed under Subsection B.1 as necessary to minimize adverse impacts to identified resources in the vicinity of the proposed development.

3. **Vehicle Access**. Vehicular access, including road intersections shall meet applicable town and state access management and design standards, including those set forth in Section 3.2. Curb cuts and road intersections shall not create hazards to vehicles, pedestrians or bicyclists on site or on adjoining roads, sidewalks and pathways. To ensure safety and manage access in a manner that maintains road capacity the DRB, in consultation with the town or state highway officials may:

a. Limit the number and size of curb cuts in accordance with Section 3.2.
b. Require the reduction, consolidation or elimination of noncomplying curb cuts.
c. For parcels having direct access to more than one road, limit access to a side street or secondary (less traveled) road.

d. Require shared access between adjoining properties with compatible uses, to be installed immediately if similar provision has been made on a contiguous parcel, or to be contingent upon the development or redevelopment of a contiguous parcel(s).

e. Require access and driveway redesign as necessary to allow for emergency vehicle access.

4. **Parking, Loading & Service Areas.** On-site parking, loading and service areas shall be provided in accordance with the requirements of Section 3.13, and the following, with particular attention given to pedestrian and vehicular safety:

a. Parking areas shall be located to the rear or side of the principal building(s), unless otherwise permitted by the DRB due to site constraints that would prevent reasonable use of the property or result in unsafe traffic conditions.

b. Parking areas shall be landscaped to avoid large, uninterrupted paved areas in accordance with Section 3.13, and screened to minimize their visibility from public rights-of-way and neighboring properties.

c. Shared parking and/or driveway connections to parking areas on adjacent properties with compatible uses, or provisions for future shared parking or driveway connections to adjoining parcels contingent upon their development or redevelopment, shall be required where physically feasible. In the event that such connections allow for shared parking between properties, overall parking requirements may be reduced pursuant to Section 3.13.

d. Loading and service areas shall be provided onsite in accordance with Section 3.13, and shall be adequate to meet the anticipated needs of the use in a manner that does not interfere with parking, internal circulation, and landscaping. Such areas shall be located, landscaped, and/or screened to minimize their visibility from public rights-of-way and neighboring properties.

e. The outdoor storage or display of goods, supplies, vehicles, equipment, machinery or other materials is prohibited unless specifically approved by the DRB within a designated area, in accordance with Section 3.12 or as otherwise allowed for a specific use. Secured, covered and screened areas shall be provided for the collection and on-site storage of trash and recyclables generated by the proposed development.

5. **Site Circulation**. Provision shall be made for adequate and safe onsite vehicular and pedestrian circulation, with consideration given to the intended use of the property, the location of accesses, buildings, parking areas, and existing facilities onsite and on adjoining properties.

a. The site plan shall include clearly marked travel lanes, pedestrian crossings, and pedestrian paths or sidewalks that connect buildings, parking areas, and adjoining properties, unless it is determined by the DRB that such facilities are unnecessary to ensure vehicular and pedestrian safety and convenience.

b. The site plan shall incorporate sidewalks, recreation paths, proposed rights-of-way and related infrastructure improvements identified in duly adopted municipal improvement plans (e.g., sidewalk or streetscape plans), capital budgets or programs.

6. **Landscaping and Screening.** Landscaping shall be provided to enhance the overall appearance of the site, to integrate new development into its natural and historic surroundings, and to maintain or establish physical and visual compatibility with neighboring properties. Landscaping and natural screening shall be provided in front and side yards, adjacent to parking areas, and where rear yards abut residential properties or public roads as necessary to lessen and mitigate the physical and visual impacts of development. All proposed landscaping shall be designed in accordance with the following:

a. Existing vegetation shall be incorporated in site design, especially designated landmark, specimen or witness trees that are of special horticultural or cultural value.

b. The use of native species is recommended and may be required as necessary to avoid the introduction and spread of nuisance or exotic species (see List, Appendix D).

c. Landscaped areas, including front and side yard areas, are to include a mix of deciduous and coniferous trees, shrubs and ground cover. Landscaped areas should enhance the general appearance of the site, define planting strips and buffers, and reduce the amount of grass or lawn area. Such beds are not to be considered a substitute for tree plantings or other open space requirements.

d. Screening, including a mix of vegetation and/or fencing shall be provided between nonresidential parking areas and adjoining residential properties. Landscaping and fencing used to screen parking areas from an adjoining right-of-way shall not block sight distances at lot entrances or pedestrian access to the right-of-way.

e. Shade trees, shrubs and planting beds are to be used to interrupt the facades of buildings, break-up expanses of parking, visually reduce the scale and bulk of large buildings, integrate the site with the surrounding landscape and to enhance environmental quality—e.g., for wildlife habitat, soil stabilization, storm water retention, air quality, and energy conservation.

f. Street trees, to include a variety of deciduous, salt resistant, shade trees, are to be planted at regular intervals as necessary to establish or maintain a canopy effect along public roads and highways. In the event that the Town has adopted a street tree plan for a district or road segment, the DRB may require tree plantings that are consistent with that plan.

g. Shade and street trees shall be a minimum of 2.5" caliper (trunk diameter), measured at a height of five feet, or, in the case of coniferous trees, be a minimum of eight feet in height.

h. A landscaping plan, including a three-year maintenance plan, and bonding or other surety may be required by the DRB as necessary to ensure proper installation and maintained in accordance with Section 10.7.

7. **Outdoor Lighting**. Outdoor lighting installations shall meet the requirements of Section 3.11. The DRB may require the submission of an outdoor lighting plan, prepared by a qualified engineer or lighting expert, for projects determined by the DRB to pose a potential for significant off-site lighting impact due to the number, location and/or intensity of proposed lighting fixtures.

8. **Stormwater Management and Erosion Control**. Temporary and permanent stormwater management and erosion control measures shall be used during all phases of development as necessary to minimize surface runoff and erosion, protect water quality, and to avoid damage to downstream properties and infrastructure in conformance with the following requirements.

a. Stormwater management and erosion control systems serving the development shall be designed, installed and maintained in accordance with best management practices accepted by the state, based on the upstream drainage area, size of storm events, soil and slope conditions, the proposed type and density of development, including total lot coverage at build-out.

b. All stormwater management systems shall be designed accommodate existing and anticipated runoff from the site, including anticipated flows from storm events and total runoff generated at build-out and, to the extent physically feasible to:

i. Maximize onsite infiltration and treatment, and minimize surface runoff through the use of "Low Impact Development" (LID) strategies (see Appendix E).
ii. Integrate natural drainage systems in site and stormwater management system design.
iii. Minimize the need for expensive system maintenance.
iv. Integrate stormwater storage and treatment facilities (e.g, retention ponds) in site design.

v. Avoid flooding or damage to adjoining properties and downstream drainage facilities.

c. The applicant shall demonstrate that existing downstream drainage facilities will be able to accommodate any additional runoff from the site. If increased runoff exceeds the capacity of downstream drainage, storage or treatment facilities, the DRB may require that the applicant install:

i. additional onsite stormwater infiltration, retention and treatment facilities and/or

ii. off-site improvements to downstream drainage facilities and infrastructure as necessary to accommodate additional runoff from the site.

d. The DRB may require the submission of a stormwater management and erosion control plan for all phases of development, prepared or certified by a licensed professional engineer, as necessary to determine conformance with these regulations. The plan shall incorporate best management practices as recommended by the state in the most recent editions of the "Vermont Stormwater Management Manual" and the "Vermont Handbook for Soil Erosion and Sediment Control on Construction Sites" or similar state-issued publications.

e. The DRB may also require, as necessary to ensure conformance with these regulations:

i. Project phasing as necessary to minimize the extent of soil disturbance and erosion during each phase of development.

ii. Increased surface water and wetland setback distances and buffer areas (under Section 3.19) and/or the submission and implementation of a buffer management plan to protect surface waters and wetlands from accelerated runoff, soil erosion and sedimentation.

iii. Drainage easements or municipal approvals as necessary to accommodate drainage directed onto adjoining properties or public rights-of-way.

iv. Documentation that state stormwater and construction permits have been obtained, which may also serve as documentation of compliance with applicable requirements of these regulations.

Section 5.4 Conditional Use Review

A. **Purpose**. Conditional use review is intended to ensure compliance with standards addressing the potential impacts of development on adjoining properties, the neighborhood, and/or zoning district in which the development is located, and the community at large. Typically, land uses are subject to conditional use review because their scale, intensity and

potential for off-site impacts warrant more careful scrutiny by the Development Review DRB. Standards and conditions relate to the identification, avoidance and/or mitigation of potential impacts.

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

1. **The capacity of existing or planned community services or facilities**. The applicant and DRB shall consider the demand for community services and facilities resulting from the proposed development in relation to the available capacity of existing and planned community services and facilities. Community facilities and services that may serve a proposed development include schools, emergency services, community water supply and wastewater systems, public parks and trail networks, and public utilities as identified from the Underhill Town Plan, an adopted municipal capital improvement program, or through site investigation.

    a. Available capacity shall be determined through consultation with municipal and state officials having jurisdiction over affected services and facilities, and consideration of any duly adopted municipal capital budget and program in effect.

    b. Conditions will be imposed as necessary to ensure that the demand for community facilities or services does not exceed available capacity. Such conditions may include the phasing of development, the installation of facilities or improvements by the developer as required to serve the proposed development, and the submission of a development agreement, performance bond, or other surety, as approved by the Select Board, for the installation of such facilities or improvements.

2. **The character of the area affected**. The applicant and DRB shall consider the location, scale, type, density and intensity of the proposed development in relation to the character of the area affected, as defined by zoning district purpose statements and specifically stated and relevant policies and standards of the Underhill Town Plan.

    a. Mitigation measures shall be employed by the applicant as necessary to avoid undue adverse impacts to the character of the area. These measures may include site plan or building design modifications; increased setback distances, buffers, or screening; the designation of building envelopes to minimize impacts to significant natural, historic or scenic resources or other measures acceptable to the DRB.

3. **Traffic on roads and highways in the vicinity**. The applicant and DRB shall consider the projected impact of traffic resulting from the proposed development on the condition, capacity, safety, efficiency and use of existing and planned roads, bridges, intersections and associated highway infrastructure in the vicinity of the proposed development; and

shall not approve a project that would result in significant congestion (e.g., a Level of Service below C), or the creation of unsafe conditions for motorists or pedestrians.

a. Commonly accepted transportation standards (e.g., Vermont Agency of Transportation, Institute of Transportation Engineers) shall be used to identify trip generation rates and to evaluate traffic impacts.

b. A traffic impact analysis, prepared by a qualified transportation professional, is required for any project that generates 75 or more peak hour trips, or as otherwise deemed necessary by the DRB to address existing or proposed site, road and traffic conditions. The study shall include directional distributions, levels of service, design considerations and capacity determinations, and recommend appropriate traffic mitigation measures and road improvements.

c. Proposed development shall incorporate planned highway improvements, including planned right-of-way improvements or realignments, in site design and traffic analyses.

d. Conditions shall be imposed as necessary to avoid or mitigate undue adverse impacts to existing and planned road and intersection improvements and levels of service. Such conditions may include the phasing of development in relation to planned highway improvements, traffic management strategies, or physical improvements to the road network required to serve the proposed development, to be paid for and installed by the applicant, and the submission of a development agreement, performance bond, or other surety as approved by the Select Board, for the installation of such improvements.

4. **Bylaws in effect**. The applicant and DRB shall consider whether the proposed development complies with all municipal bylaws and ordinances in effect at the time of application, including other applicable provisions of these regulations. No development shall be approved in violation of existing municipal bylaws and ordinances.

a. Conditions may be imposed by the DRB as necessary to ensure compliance with municipal bylaws and ordinances. Certificates of occupancy for an approved project shall not be issued until all required municipal, state and federal permits have been obtained.

5. **The utilization of renewable energy resources**. The proposed development shall not interfere with the sustainable use of renewable energy resources, including access to, or the direct use or future availability of such resources.

a. Conditions may be imposed as necessary to ensure long-term access, use, and availability of such resources onsite or on adjoining properties.

C. **Site Plan Review Standards**. In addition to the general standards set forth in Section C above, the Development Review DRB shall also apply all applicable site plan review standards set forth in Section 5.3. Compliance with such standards shall be a requirement of conditional use approval.

D. **Specific Standards**. The DRB also may consider the following standards and impose conditions as necessary to reduce or mitigate any identified adverse impacts of a proposed development:

1. **Conformance with the Town Plan**. The proposed development shall conform to specific policies and objectives of the Underhill Town Plan as most recently amended.

2. **Zoning District & Use Standards**. All proposed development shall comply with dimensional, density and associated standards for the district(s) in which the use or development is located as specified in Article II, except as waived under Section 5.5, as modified for planned residential or planned unit developments under Article IX, or as otherwise required for a specific use. The DRB may also require increased setbacks and buffers, or reduced lot coverage or densities of development as necessary to avoid or mitigate adverse impacts to adjoining properties or significant natural, historic or scenic resources in the vicinity of the development.

3. **Performance Standards**. The proposed use shall comply with all performance standards set forth in Section 3.14. In determining compliance, the DRB may consult with state officials and consider accepted industry standards. To ensure compliance, the DRB may as conditions of approval:

    a. Require documentation that proposed uses, processes, or equipment will comply with applicable performance standards.
    b. Require increased setback distances and buffers from property lines.
    c. Reasonably limit hours of operation.

4. **Legal Documentation**. Legal documentation shall be provided as necessary to ensure that that all required improvements, rights-of-way and easements, and other common lands or facilities will be installed and adequately maintained either by the applicant, an owners association, or through other legal means acceptable to the DRB, in accordance with Section 10.7.

Section 5.5 Waivers & Variances

A. **Applications & Review Standards**. The DRB may waive application requirements, and site plan or conditional use review standards under Section 5.3 and 5.4, that it determines are not relevant to a particular application.

B. **Dimensional Waivers**. The DRB, in association with site plan or conditional use review, or on appeal of a Zoning Administrator's determination, may reduce minimum district

setback requirements (under Tables 2.2 – 2.7) or minimum surface water and wetland setbacks (under Section 3.19) in accordance with the Act [§4414] and the following requirements.

1. A waiver request, including information regarding the specific circumstances, need and justification for the waiver shall be submitted in writing with the application for site plan or conditional use review.

2. A waiver under this section may be granted by the DRB only as necessary to:

    a. Allow for the reasonable development and use of a pre-existing nonconforming lot under Section 3.8.
    b. Allow for additions or improvements to a pre-existing nonconforming structure under Section 3.9.
    c. Comply with federal or state public health, safety, access and disability standards.
    d. Allow for the siting of renewable energy structures.

3. The minimum required setback distance shall be reduced by no more than 50% under this provision. Variance approval under Subsection C shall be required for any further reduction in dimensional requirements.

4. In granting a waiver under this section, the DRB shall find, based upon clear and convincing evidence of a specific need and circumstances that:

    a. No reasonable alternative exists for siting the structure, addition or improvement outside of the required setback area.

    b. The reduced setback is not contrary to public health, safety and welfare, stated objectives and policies of the Underhill Town Plan, or the intent of these regulations.

    c. The waiver represents the minimum setback reduction necessary to allow for the proposed development.

    d. Any potential adverse impacts resulting from reduced setbacks on adjoining properties, surface waters or wetlands shall be mitigated through site design, landscaping and screening, or other accepted mitigation measures.

C. **Variances**. In accordance with the Act [§4469], a variance from the provisions of these regulations may be granted by the DRB for a structure only if literal enforcement of these regulations results in undue hardship to the appellant that precludes any reasonable use of the property.

1. The DRB shall hear and decide requests for variances in accordance with the appeal procedures under Section 10.5. Variance requests also may be considered concurrently with site plan or conditional use review. The request for a variance shall include:

    a. Information required under Section 10.5 and the Act [§4466] for a notice of appeal, including:
        i. a copy of the application, or brief description of the property in question for which a variance is being requested,
        ii. a reference to the regulatory provisions from which a variance is requested,
        iii. a description of the relief requested, and
        iv. the grounds why the requested relief is proper, under the circumstances.

    b. Information necessary to make findings under each of the variance criteria specified below.

2. The DRB shall grant a variance, and render a decision in favor of the applicant or appellant, only if *all* of the following facts are found, and the findings are specified in its written decision:

    a. 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.

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

    c. The unnecessary hardship has not been created by the applicant or appellant.

    d. 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.

    e. 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.

3. **Renewable Energy Structures**. Where a variance is requested for a structure that is primarily a renewable energy resource structure (solar structure, wind generator, and

other similar renewable energy structures) the DRB may grant such variance only if *all* of the following facts are found in the affirmative and specified in its written decision:

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

b. The hardship was not created by the applicant or appellant.

c. 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.

d. 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.

4. **Variances within the Flood Hazard Overlay District**. In addition to requirements under Subsection C.2, variances from flood hazard area development standards under Article VI for development within the Flood Hazard Overlay District (Special Flood Hazard Areas) must meet the requirements of Section 6.8.

ARTICLE VI. FLOOD HAZARD AREA REVIEW

Section 6.1 Statutory Authorization & Effect

A. Flood Hazard Area Regulations for the Town of Underhill are hereby incorporated under these unified regulations in accordance with the Act [§§4419, 4424]. Regulations under this article shall be known and cited as the "Underhill Flood Hazard Area Regulations."

B. Flood hazard area regulations under this article shall be amended, administered and enforced in the same manner as other provisions of these regulations, except as specified under this article as necessary to meet minimum requirements for community participation in the National Flood Insurance Program (NFIP). Proposed amendments to these regulations shall be sent to the State National Flood Insurance Program Coordinator at least fifteen days prior to the first public hearing to be reviewed for conformance with federal and state program requirements (see Section 1.5).

C. Previous flood hazard area regulations as adopted by the Town of Underhill on June 23, 1988, and as amended through March 2, 2010, are repealed as of the effective date of these regulations. All permits and approvals issued under previous regulations remain in effect.

D. These regulations shall not in anyway impair or remove the need to comply with other sections of these regulations, or with other municipal, state or federal laws. Where these regulations impose a greater restriction on development, as defined under Section 11.3 for purposes of flood hazard area management and regulation, they shall control.

E. For the purposes of flood hazard area management, National Flood Insurance Program (NFIP) definitions contained in 44 CFR Section 59.1 are adopted by reference and shall be used to interpret and enforce these regulations. Definitions of commonly used terms are provided under Section 11.3 Where NFIP definitions differ from similar definitions under the Act [§4303] or these regulations (under Section 11.2), for purposes of flood hazard area regulation NFIP definitions shall control.

F. In accordance with Section 1.6, if any portion of these regulations is held unconstitutional or invalid by a competent court, the remainder of these regulations shall not be affected.

G. These regulations do not imply that land outside of mapped Special Flood Hazard Areas will be free from flooding. These regulations shall not create liability on the part of the Town of Underhill, or any municipal official or employee thereof, for any flood damages that result from reliance on these regulations, or any administrative decision lawfully made hereunder.

Section 6.2 Statement of Purpose

A. It is the purpose of these flood hazard area regulations to:

1. Promote public health, safety and general welfare.
2. Prevent increases in flooding caused by uncontrolled development of lands in special flood hazard areas.
3. Avoid or minimize loss of life and property, the disruption of commerce, the impairment of the tax base, and extraordinary public expenditures and demands on public services that result from flooding.
4. Minimize flood losses by restricting or prohibiting uses that are dangerous to health, safety or property in times of flooding or cause excessive increase in flood heights or velocities.
5. Ensure that development within flood hazard areas is reasonably safe from flooding, occurs in a manner that minimizes or eliminates potential flood hazards to life and property, and maintains the functional capacity of floodplains to carry flood waters.
6. Implement goals and objectives of adopted municipal and hazard mitigation plans, and related state planning goals under the Act [§4302].
7. Manage flood hazard areas designated by the state (under 10 V.S.A. §753) in accordance with requirements for community participation in the National Flood Insurance Program, and thereby ensure that the Town of Underhill, its residents and businesses are eligible for available federal flood insurance, disaster recovery funds, and hazard mitigation funds.

Section 6.3 Lands to Which These Regulations Apply

A. These regulations shall apply to development in all areas in the Town of Underhill, Vermont identified as Special Flood Hazard Areas (SFHAs) in and on the most current Flood Insurance Study (FIS) and Flood Insurance Rate Maps (FIRMs) published by the Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), National Flood Insurance Program (NFIP), as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. §753. These studies and maps are hereby adopted by reference and declared to be part of these regulations (see Section 2.1).

B. Where available (i.e., Zones A1−A30, AE and AH), base flood elevations and floodway limits provided by the National Flood Insurance Program, in the Flood Insurance Study and accompanying Flood Insurance Rate Maps for the town, shall be used to administer the provisions of these regulations. In areas where base flood elevations and floodway limits have not been provided by the National Flood Insurance Program (i.e. Zone A), it is the applicant's responsibility to develop the necessary data. Where available, the applicant shall use base flood elevation and floodway data provided by the Federal Emergency Management Agency, other federal agencies or the state.

C. Until a regulatory floodway has been designated, no new construction, substantial improvements, or other development shall be permitted in Zones A, A1-30, AE, and AH unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development will not increase the water surface elevation of the base flood more than one (1.00) foot at any point within the community. This demonstration must be supported by technical data that conform to standard hydraulic engineering principles and are certified by a registered professional engineer.

D. If uncertainty exists with respect to the boundary of a Special Flood Hazard Area (SFHA) or floodway, the boundary shall be determined by the Zoning Administrator in consultation with the National Flood Insurance Program Coordinator at the Vermont Agency of Natural Resources. If the applicant disagrees with the determination made by the Zoning Administrator, a Letter of Map Amendment (LOMA) from FEMA shall constitute proof.

Section 6.4 Permit Requirements

A. Municipal zoning permits and approvals are required, to the extent authorized under the Act [§§4412, 4424], for all development allowed within Special Flood Hazard Areas as "development" is defined under Section 11.3 for purposes of flood hazard area management and regulation. Development in this context may include uses or activities that otherwise may be exempt from municipal permit requirements under Section 10.2.

B. **Exemptions**. The following uses or activities are exempt from municipal flood hazard area regulation in accordance with the Act [§4413]:

1. Removal of a structure in whole or part.
2. Maintenance of existing infrastructure, including existing roads, utilities, drainage, and stormwater systems.
3. Silvicultural (forestry) activities conducted in accordance with Vermont Department of Forest, Parks and Recreation Accepted Management Practices (AMPs).
4. Agricultural activities conducted in accordance with Vermont Agency of Agriculture Accepted Agricultural Practices (AAPs); however prior to the construction of a farm structure, the farmer shall notify the Zoning Administrator in writing of proposed construction, to include a sketch plan showing required setbacks.
5. Public utilities regulated by the Vermont Public Service Board, including power generation and transmission facilities.

C. **Prohibited Uses**. The following uses and activities are prohibited within Special Flood Hazard Areas, as specified:

1. All above grade development and encroachments are prohibited within floodway areas unless a registered professional engineer certifies, based on hydrologic and hydraulic analyses conducted in accordance with standard engineering practices, that the proposed development will result in no (0.00 foot) increase in flood levels during the

occurrence of the base flood, and no increased risk to surrounding properties, facilities or structures from flooding or erosion.

2. Public utilities may be placed below grade within floodway areas without the required analyses if a registered professional engineer certifies that there will be no change in grade and the utilities will be adequately protected from scour.

3. Salvage yards and storage facilities for floatable materials, chemicals, explosives, flammable liquids, or other hazardous or toxic materials are prohibited within Special Flood Hazard Areas, including floodway areas.

4. New structures, including accessory structures are prohibited within floodway areas.

5. New critical public facilities, as defined under Section 11.3 for purposes of flood hazard area management and regulation, are prohibited with Special Flood Hazard Areas (mapped 100-year floodplains), including floodway areas, and mapped 500-year floodplains (areas have a 0.2% or greater chance of flooding in any given year).

6. New fill, except as required to elevate structures above the base flood elevation, is prohibited within Special Flood Hazard Areas, including floodway areas.

7. Fully enclosed areas that are below grade on all sides (including below grade crawlspaces and basements) are prohibited within Special Flood Hazard areas, including floodway areas.

D. **Permitted Uses**. For purposes of flood hazard area regulation, the following development activities in Special Flood Hazard Areas that are located outside of floodways may be issued a zoning permit by the Zoning Administrator, following review by the state under Section 6.5, if they meet applicable development standards under Section 6.6:

1. Accessory structures that have a building footprint of no more than 500 square feet.
2. Fuel storage tanks.
3. Minor (non-substantial) improvements to existing structures.
4. Parking, at grade.
5. Recreational vehicles.
6. Stream channel, stormwater and floodplain management activities, as approved by the state.
7. Stream crossings (bridges and culverts) as approved by the state, where applicable.
8. Water supply and wastewater systems, as approved by the state.

E. **Conditional Uses**. For purposes of flood hazard area regulation, conditional use review and approval as prescribed under Section 5.4 shall be required for all other development within Special Flood Hazard Areas prior to the issuance of a zoning permit. This includes, but may not be limited to:

1. Grading and excavation.
2. New structures, including new manufactured (mobile) homes.
3. Relocation, elevation, substantial improvement or replacement of existing structures.
4. Development within floodways, including improvements to existing structures.
5. New or substantially improved roads and utilities regulated by the municipality.
6. Ponds.

F. **Subdivisions**. For purposes of flood hazard area management and regulation, applicable requirements of these flood hazard area regulations also shall apply to the subdivision and development of land under Articles VII and VIII.

Section 6.5 Development Review Procedures

A. **Development Applications**. In addition to other application requirements under these regulations, applications for development within Special Flood Hazard Areas shall include:

1. A site plan that depicts the proposed development in relation to all water bodies, Special Flood Hazard Areas, floodways, existing and proposed drainage, pre- and post development grades, and the elevation of the lowest floor (including basement) as referenced to the same vertical datum as the elevation on current Flood Insurance Rate Maps.

2. Applicable analyses and certifications required under flood hazard area regulations.

3. A project review sheet prepared by a Vermont Agency of Natural Resources Regional Permit Specialist for any development that may require state and federal permits.

B. **Subdivision Applications**. In addition to other application requirements under these regulations, applications under Article VII for new subdivisions within Special Flood Hazard Areas shall include any information required to determine compliance with these regulations, including the location of Special Flood Hazard Areas and floodways in relation to existing and proposed building lots, structures, roads, driveways, utilities and drainage. Applications for subdivisions greater than 50 lots or 5 acres shall include base flood elevation data.

C. **Application Referrals**. Prior to issuing a permit or approval for any development in a Special Flood Hazard Area, a copy of the completed application and supporting information shall be submitted by the Zoning Administrator to the state for review in accordance with the Act [§4424], as specified below. 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 referred to the Agency, whichever is sooner. State recommendations shall be incorporated as applicable in municipal findings, decisions and conditions of approval.

1. Applications for development within Special Flood Hazard Areas shall be submitted to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources.

2. If the applicant proposes to alter or relocate a watercourse, copies of the application also shall be sent to adjacent communities, the Stream Alteration Engineer at the Vermont Agency of Natural Resources and Army Corps of Engineers, as well as the State NFIP Coordinator.

D. **Hearings**. Public hearings required under these regulations shall be noticed in accordance with the Act [§4464] and Section 10.7, and may be conducted concurrently with other hearings required for the proposed development under these regulations. Decisions of the Development Review Board, including findings under these regulations, shall be issued in writing within 45 days of the date of hearing adjournment, as required under the Act and Section 10.7.

E. The Zoning Administrator shall assure that all necessary municipal, state and federal permits have been obtained by the applicant prior to the issuance of a certificate of occupancy or compliance under Section 10.4.

Section 6.6 Flood Hazard Area Development Standards

A. No new development shall be allowed within a Special Flood Hazard Area if it can be located outside of this area on the parcel to be developed, or on another parcel in common ownership that is located outside of this area.

B. All development and building sites within Special Flood Hazard Areas shall be designed to:

1. Be reasonably safe from flooding;
2. Minimize flood damage to the proposed development and to public facilities and utilities; and
3. Provide adequate drainage to reduce exposure to flood hazards.

C. All new construction and substantial improvements within Special Flood Hazard Areas shall be:

1. Designed (or modified), maintained and adequately anchored to prevent flotation, collapse or lateral movement of the structure during the occurrence of the base flood;
2. Constructed with materials resistant to flood damage;
3. Constructed by methods and practices that minimize flood damage; and be
4. 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.

D. The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained, as specified in the conditions of permit approval.

E. New and replacement water supply and sanitary sewer systems, as approved by the state, shall be designed to minimize or eliminate the infiltration of flood waters into the systems and discharges from the systems into flood waters, as documented from state permits.

F. On-site waste disposal systems, as approved by the state, shall be located to avoid impairment to them or contamination from them during flooding, as documented from state permits.

G. The lowest floor, including basement, of all new buildings shall be elevated one foot or more above the base flood elevation, as documented through the submission of a FEMA elevation certificate.

H. Substantial improvements to existing residential buildings shall be elevated to meet the requirements of Subsection G.

I. New, substantially improved and replacement manufactured (mobile) homes, including manufactured homes within existing, expanded or new manufactured (mobile) home parks or subdivisions, shall be elevated on a permanent foundation above the base flood elevation and anchored to resist flotation, collapse or lateral movement. The manufactured home shall be elevated on properly compacted fill such that the top of fill (pad) under the entire manufactured home is above the base flood elevation.

J. Substantial improvements to existing nonresidential buildings shall either:

1. Meet the requirements of Subsection G; or

2. Together with attendant utility and sanitary facilities, be designed so that the structure is watertight below the base flood elevation with walls that are substantially impermeable to the passage of water and structural components that have the capability to resist hydrostatic and hydrodynamic loads and effects of buoyancy. A permit for a building proposed to be floodproofed below the base flood level 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.

K. Fully enclosed areas that are above grade, below the lowest floor, that are subject to flooding (below the base flood elevation) shall be:

1. used only for parking vehicles, storage, or building access, as specified in written conditions of permit approval; and be

2. designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves or other cover coverings or devices provided that they permit the automatic entry and exit of floodwaters.

L. Recreational vehicles shall:

1. be fully licensed and ready for highway use (on wheels, with quick disconnect utilities and no permanently attached additions), or
2. meet elevation and anchoring requirements for manufactured (mobile) homes under Subsection H and 44 CFR 60.3(c)(6).

M. A small accessory structure that has a footprint of 500 square feet or less and represents a minimal investment need not be elevated to the base flood elevation, provided the structure shall be:

1. Used only for parking or the storage of non-hazardous materials, as specified in the written conditions of permit approval. Such structures shall not be used for human habitation.

2. Designed to have low flood damage potential.

3. Constructed with flood-resistant materials, and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.

4. Firmly anchored to prevent flotation, collapse or lateral movement which may result in damage to other structures.

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

6. Constructed so that electrical and heating equipment and other utilities are elevated above the base flood elevation or adequately floodproofed.

N. All subdivisions and planned unit developments within Special Flood Hazard Areas must meet the following requirements:

1. Subdivisions shall be designed to avoid locating building sites, structures, driveways and roads within Special Flood Hazard Areas, and to minimize potential flood damage within these areas.

2. All utilities and facilities, such as sewer, gas, electrical, and water systems serving the subdivision shall be located and constructed to minimize or eliminate flooding.

3. Adequate drainage shall be provided to reduce exposure to flood hazards.

4. The subdivision must be accessible by dry land during base flood occurrences.

O. Bridges and culverts must have a stream alteration permit from the Agency of Natural Resources where applicable.

P. Fuel storage tanks must be elevated at or above the base flood elevation and securely anchored to prevent flotation; or may be placed underground, if securely anchored as certified by a qualified professional.

Section 6.7 Nonconforming Structures

A. The repair, enlargement, replacement or relocation of a nonconforming structure within a Special Flood Hazard Area is subject to conditional use review and must comply with applicable requirements of these regulations in addition to any other requirements for nonconforming structures under Section 3.9.

B. A substantially damaged or destroyed nonconforming structure within a Special Flood Hazard Area may be reconstructed in the same location only if it cannot be relocated to a less hazardous location on the parcel. The lowest floor of the reconstructed structure must be elevated above the base flood elevation, and the structure must otherwise comply with all applicable requirements of these regulations.

C. In accordance with the Act [§4412] and Section 4.14, a vacated manufactured (mobile) home site in an existing, nonconforming mobile home park shall not be considered a discontinuance or abandonment of a nonconformity; however, a replacement mobile home on a site within a Special Flood Hazard Area must meet the requirements of these regulations.

Section 6.8 Variances

A. In addition to hardship criteria for granting variances under Section 5.5 and the Act [§4469(a)], variances from the requirements of flood hazard area regulations (e.g., elevation requirements) shall be granted by the Development Review Board only in accordance with the Act [§4424(2)(E)] and the following:

1. The criteria for granting variances found in 44 CFR, Section 60.6 of the National Flood Insurance Program Regulations.

2. The determination that during the base flood discharge the variance will not result in increased flood levels.

3. The determination that the structure or other development is protected by methods that minimize flood damages during the base flood.

4. The determination that the variance will result in no additional threats to public safety, extraordinary public expense, or nuisances, or fraud or victimization of the public.

5. The determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

B. Variances may be issued for the repair or rehabilitation of an historic structure within a Special Flood Hazard Area upon the determination the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

C. Any variance decision issued for development within a Special Flood Hazard Area shall include, in writing over the signature of a municipal official, the statement that "The issuance of a variance to construct a structure below the base flood elevation increases risks to life and property, and will result in increased premium rates for flood insurance up to amounts as high as $25 for $100 of insurance coverage." A record of all variance decisions, including this written notification, shall be maintained as required under Section 10.7.

Section 6.9 Administration & Enforcement

A. **Certificates of Occupancy and Compliance**. A certificate of occupancy or compliance issued by the Zoning Administrator under Section 10.4 is required prior to the use or occupancy of any land, structure, or part or a structure within a Special Flood Hazard Area for which a zoning permit has been issued under these regulations. The purpose of these certificates is to ensure that the use or structure, as constructed, conforms to these regulations and the conditions of approval. In addition to the requirements of Section 10.4,

1. The applicant shall submit with the application for a certificate of occupancy or compliance, a state project review sheet, and copies of any required state permits and certifications.

2. A certificate of occupancy shall not be issued until the applicant demonstrates that:

    a. All required municipal permits and approvals have been obtained, and the Zoning Administrator determines that the development has been completed in conformance with all such permits and approvals.

b. State and federal permits and approvals, as identified in from the project review sheet, have been obtained including, but not limited to state wastewater and potable water supply system certifications and approvals.
c. The applicant shall also provide certification from an engineer or site designer that all permitted road and driveway improvements have been completed in accord with submitted plans.
d. The Zoning Administrator shall inspect the site or premises to ensure that all work has been completed in conformance with the zoning permit and associated approvals prior to issuing a certificate.

3. The decision of the Zoning Administrator to grant or deny a certificate may be appealed to the Development Review Board within 15 days of the date of the decision, in accordance with the Act (§4465). If a certificate cannot be issued following the appeal, notice will be sent to the applicant, and copied to the State NFIP Coordinator and any lender(s).

B. **Violations and Enforcement**. Any structure or other development in a Special Flood Hazard Area that is not fully compliant with these regulations, or permits and conditions of approval issued under these regulations shall constitute a violation. Violations shall be pursued by the Zoning Administrator in accordance with the Act [§§4451, 4452] and Section 10.6. In addition:

1. A copy of the notice of violation shall be mailed to the State NFIP Coordinator.

2. If the violation remains after all appeals have been resolved, the Zoning Administrator shall submit a declaration of violation to the Administrator of the National Flood Insurance Program requesting denial of flood insurance for the property in violation, pursuant to Section 1316 of the National Flood Insurance Act of 1968 as amended. A valid declaration of a violation shall consist of:

a. The name(s) of the property owner(s) and address or legal description of the property sufficient to confirm its identity and location;
b. A clear and unequivocal declaration that the property is in violation of cited sections of these regulations;
c. A clear statement that the Zoning Administrator has authority to make the declaration under the Act and these regulations;
d. Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and
e. A clear statement that the declaration is being submitted pursuant to section 1316 of the National Flood Insurance Act of 1968, as amended.

3. Violations of state Accepted Agricultural Practices (AAPs) within Special Flood Hazard Areas shall be reported immediately to the Secretary of the Agency of Agriculture for state enforcement under 6 V.S.A. §4812. A copy of the notification shall be mailed to the State NFIP Coordinator.

C. **Recordkeeping Requirements**. In addition to other recording requirements under Section 10.7, the Zoning Administrator also shall maintain a record of:

1. All municipal permits and approvals for development in Special Flood Hazard Areas.
2. Elevation certificates that confirm the elevation in relation to mean sea level (consistent with the elevation datum on current Flood Insurance Rate Maps), of the lowest floor, including basement, of all new or substantially improved buildings.
3. Floodproofing certificates that confirm the elevation, in relation to mean sea level, (consistent with the elevation datum on current Flood Insurance Rate Maps),to which buildings have been floodproofed.
4. All other certifications required under these regulations.
5. All variances and notices of violation, including supporting findings and justification for their issuance.

ARTICLE VII. SUBDIVISION REVIEW

Section 7.1 Purpose

> ***Subdivision**: The division of any parcel of land into two or more parcels for the purpose of offer, transfer, sale, conveyance, long-term lease or land development. The term also includes the re-subdivision of a previously subdivided parcel, amended subdivisions, the division of land held in common among several owners, and planned unit development (see 11.2).*

A. **Purpose.** Subdivision regulations, adopted and incorporated under these unified regulations (Articles VII and VIII) in accordance with the Act [§4418] and Section 1.1 are intended to:

1. Conform to and implement the Underhill Town Plan as most recently adopted, and to further state planning goals under the Act [§4302].
2. Protect and provide for the public health, safety, and general welfare of the Town of Underhill.
3. Guide the future growth and orderly development of the town in conformance with the type, density and pattern of development specified in the Underhill Town Plan, zoning regulations, and other bylaws and ordinances in effect.
4. Prevent environmental degradation, limit development within mapped floodplains and other hazard areas, and avoid undue adverse impacts to the town's natural, cultural and scenic resources as identified in the Underhill Town Plan and related inventories, plans and studies.
5. Ensure the efficient extension of services, facilities, roads, utilities and other infrastructure as land is developed, and that existing or planned facilities will have sufficient capacity to serve the proposed subdivision, in conformance with the town plan, adopted capital and transportation improvement programs and these regulations.

B. Subdivision review and approval by the Development Review Board (DRB) ensures that lots created after the effective date of these regulations [March 2, 2011] meet applicable zoning district requirements and are suited for their intended use; and that the subdivision of land occurs in a manner that serves the interests of the community while respecting the rights of property owners, and does not result in undue adverse impacts to neighboring properties and uses, to significant natural, cultural and scenic resources, or to the capacity of existing and planned community facilities and services.

Section 7.2 Applicability

A. These subdivision regulations supersede all previous subdivision regulations adopted by the Town of Underhill as specified under Section 1.1.

B. These regulations shall apply to all subdivisions of land, as defined under 11.2, that are located within the Town of Underhill. No land shall be subdivided within the town until the applicant has obtained final subdivision approval from the DRB and the approved subdivision plat is recorded in the Underhill land records.

C. Subdivision approval by the DRB is required prior to:

1. The transfer, sale or long-term lease of title to property (as defined under 32 V.S.A. §9601) of any portion of an existing lot.

2. Predevelopment site work, including site clearing, grading, and the construction or installation of infrastructure or other site improvements that are intended to serve more than one lot (excluding forestry, agricultural, and land surveying activities).

3. Recording a subdivision plat or the deed for subdivided lot in the land records of the town.

4. Applying for a zoning permit to develop a subdivided lot.

D. **Exemptions**. The following are exempt from subdivision review under these regulations:

1. A parcel or portion of a parcel of land leased for agriculture or forestry that does not require the sale or transfer of land, or the establishment of permanent roads, infrastructure or structures.

2. Rights-of-way or easements that do not result in the subdivision of land.

3. A boundary (lot line) adjustment between two adjoining parcels legally in existence as of the effective date of these regulations, if the boundary adjustment:

    a. does not result in the creation of new or nonconforming lots under these regulations,
    b. does not alter any prior findings or conditions of subdivision approval (see Section 7.8), and
    c. the adjustment is surveyed by a licensed surveyor, issued a zoning permit in accordance with Section 10.3, and recorded in the town land records under Section 7.7.

> ***Note:*** A boundary adjustment approved administratively under this section does not mean that the adjusted lots are approved for additional development.

E. **Classification of Subdivisions**. For purposes of these regulations, subdivisions of land will be classified by the Zoning Administrator as either "minor" or "major" subdivisions as follows:

1. Minor subdivisions include:

    a. The subdivision of land or the re-subdivision of a previously subdivided lot which results in the creation of no more than three lots including previously subdivided

lots, regardless of any change in ownership; and which does not require the installation or extension of a road or municipal utilities.

b. An amendment to an approved subdivision or subdivision plat that does not substantially or materially alter findings and prior conditions of subdivision approval.

2. Major subdivisions include:

a. The subdivision of land or re-subdivision of a previously subdivided lot which results in a total of four or more lots including previously subdivided lots, or requires the installation or extension of a road right-of-way or municipal utilities.

b. An amendment to a previously approved major subdivision which alters the number of lots, the density of development, the location of building envelopes, rights-of-way or easements, or otherwise substantially or materially alters the findings, terms or conditions of prior subdivision approval.

c. Phased subdivisions developed under master plans, and all planned unit developments under Article IX.

F. **Coordination of Review**. No zoning permit is required for the subdivision of land. Subdivision review and approval by the DRB is required prior to site plan or conditional use review by the DRB or the issuance of zoning permits for the subsequent development of subdivided lots. The conditions of subdivision approval shall apply under subsequent review processes. Site plan or conditional use review may be conducted concurrently by the DRB with final subdivision review. Planned unit developments (PUDs) shall be reviewed as major subdivisions concurrently under Articles VII, VIII and IX.

Section 7.3 Sketch Plan Review

A. **Purpose.** Sketch plan review is an informal, pre-application review process intended to acquaint the Development Review Board (DRB) with a proposed subdivision during the conceptual stage of the design process, before the applicant incurs significant expense in preparing a formal application. This informal review and discussion at a regular meeting of the DRB helps identify the type of subdivision and subdivision layout that will best meet the needs of the subdivider and the requirements of these regulations. At minimum, an applicant is required to submit a sketch plan prior to the submission of a formal application for the DRB and the applicant to:

1. Consider whether the subdivision, as initially proposed, would be classified as a major or minor subdivision, or planned unit development to be reviewed as a major subdivision.

2. Discuss the subdivision review process and any proposed waivers requested by the applicant.

3. Discuss the proposed subdivision's general conformance with the town plan, these regulations, and any other municipal regulations or capital improvement programs currently in effect.

B. **Sketch Plan Submissions.** At least ten business days prior to a regular meeting of the DRB, an applicant shall submit:

1. A sketch of the proposed subdivision,
2. A brief project description that generally addresses applicable sections under Article VIII (Subdivision Review Standards),
3. A description of any proposed modifications or waivers under applicable standards, and
4. A list of abutting property owners, and administrative fees.

C. **Sketch Plan Meetings**. The Zoning Administrator, in consultation with the Chair of the DRB, shall schedule time at the next available regular meeting of the Board to consider the sketch plan, and will notify the applicant and adjoining property owners in writing of the date and time of the meeting.

1. The applicant, or his or her duly authorized representative, shall attend the sketch plan meeting to present and discuss the proposed plan with the DRB.

2. The DRB may request additional meetings with the applicant as needed to fully review the sketch plan, which may include a site visit with the applicant to examine the land proposed for subdivision.

D. **Sketch Plan Letter**. Within 15 days of the date of the final sketch plan meeting, the DRB shall issue a sketch plan letter that, based on available information:

1. Indicates whether the subdivision as proposed would be reviewed as a minor or major subdivision, or planned unit development, and outlines the associated review process.
2. Indicates whether the proposed subdivision generally conforms to these regulations, or will require modifications to conform to the regulations.
3. Identifies specific areas of concern to be addressed in subdivision application, including potential impacts to adjoining property owners, significant natural or scenic resources, municipal roads and infrastructure, and community facilities and services.
4. Recommends additional information, studies or supporting documentation to be submitted with the application for subdivision review.

E. **Effect of Sketch Plan Review.** Sketch plan review is intended to provide guidance to the applicant on a proposed subdivision, based on preliminary information submitted by the applicant. As such, the sketch plan review process and letter do not bind the municipality or the applicant, and are not subject to appeal under Section 10.5. Sketch plan letter recommendations remain in effect for one year from the date of issuance. If an application is not filed within the year, another sketch plan review shall be required.

Section 7.4 Application Requirements

A. **Pre-Application Meeting**

1. All applicants or their authorized agents are encouraged to meet with the Zoning Administrator prior to filing an application for subdivision review. The purpose of this meeting is to provide the applicant with the necessary forms and information needed to file a complete application, and to discuss subdivision review procedures and requirements.

2. At this meeting, the Zoning Administrator will:

    a. Review and discuss the proposed subdivision with the applicant to classify the subdivision under these regulations, and to help identify options for subdivision design that best meet the needs of the applicant and the requirements of these regulations.

    b. Provide application forms and checklists, and identify for the applicant what materials will be needed to file a complete application for referral to the DRB, before site visits and hearings can be scheduled.

    c. Explain the timing requirements for submissions, hearings, decisions, and plat recording.

    d. Identify any other applicable town ordinances and permit requirements that pertain to the subdivision, and recommend that the applicant address these requirements in subdivision design.

    e. Direct the applicant to contact the state's Regional Permit Specialist to complete a state project review sheet that identifies state or federal permits that also may be required.

3. Within 10 business days of the meeting, the Zoning Administrator will issue a written letter to the applicant that:

    a. summarizes the content of the meeting, including issues to be addressed in the application,
    b. classifies the subdivision as a major or minor subdivision, and
    c. outlines the requirements for the submission of a complete application.

B. **Application Requirements.** Applications for preliminary and final subdivision review shall be submitted to the Zoning Administrator on forms provided by the town, as specified for each step of the subdivision review process.

1. Applications shall include required fees, information specified in application checklists and Zoning Administrator correspondence, and any written requests to waive or modify specific subdivision review standards under Section 8.1 of these regulations.

2. The Zoning Administrator shall refer complete applications to the DRB and, for preliminary subdivision review, copies of application information and public hearing notices to the following for review and comment:

    a. Community officials, including but not necessarily limited to the Underhill Selectboard and the Underhill–Jericho Fire Department.
    b. Underhill Conservation Commission.
    c. The clerk of the adjoining municipality for a subdivision located within 500 feet of a municipal boundary.
    d. The Vermont Agency of Transportation for a subdivision located on or accessed from a state highway.
    e. The Vermont Agency of Transportation for any requested reductions in front setback requirements from state highway rights-of-way.
    f. The State National Flood Insurance (NFIP) Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Program, for subdivisions in the Flood Hazard Overlay District.

3. No municipal approval for a subdivision shall be issued until written comments have been received or thirty days have elapsed from the date of referral. The failure of the Zoning Administrator to notify the above listed parties shall not constitute grounds for appeal.

4. The Development Review Board at any time during the hearing process may require the applicant or other interested persons to submit additional information, or an independent technical review to be paid for by the applicant or other interested person, as needed to determine project conformance with the standards of these regulations.

Section 7.5 Preliminary Subdivision Review

A. **Purpose.** The purpose of preliminary subdivision review is to review a draft subdivision plat and supporting documentation to determine preliminary conformance with the municipal plan, these regulations and other municipal ordinances in effect at the time of application; to identify particular issues or concerns associated with a proposed subdivision; to recommend modifications necessary to achieve conformance; and to identify any additional information required for submission for final subdivision review prior to the preparation of a final survey plat, engineering plans and legal documents for the subdivision and related site improvements.

B. **Waiver**. The Development Review Board may waive preliminary subdivision review for minor subdivisions indicated as such and recommended under sketch plan review to expedite the hearing process for small subdivisions.

C. **Application.** The applicant shall submit one original and twelve 11" x 17" copies of the draft subdivision plat, required fees, engineering drawings, a copy of the state project review sheet, draft legal documents, and any other required information or supporting documentation identified from application checklists, or as specified by the Zoning Administrator.

D. **Hearing.** Within 30 days of receipt of a complete preliminary application, the Zoning Administrator, in consultation with the Chair of the DRB, shall schedule a public hearing at its next available meeting, to be warned in accordance with the Act [§4426] and Section 10._. The Board may recess and continue the hearing to a date and time specified, to conduct site visits or to allow for the submission of additional information from the applicant or other interested persons. No additional information or comments will be taken following hearing adjournment.

E. **Decision**. The DRB shall issue written findings and a decision to approve, approve with conditions, or deny the application for preliminary subdivision approval within 45 days of the date of hearing adjournment, in accordance with the Act [§4464] and 10.7. Failure to act within this 45 day period, as decided on appeal, shall be deemed approval on the 46th day. The DRB may specify as conditions of preliminary subdivision approval:

1. Modifications or changes to the preliminary plat or supporting documentation necessary to achieve compliance with the standards of these regulations.

2. Documentation to be submitted with the application for final subdivision review that all other required municipal and state approvals have been obtained.

3. The submission of a master plan for major subdivisions that include phased or planned unit development, and that a final plan and plat be filed for each phase of development.

4. Infrastructure improvements and associated easements or other dedications as required to serve the proposed subdivision, or to mitigate off-site impacts resulting from the proposed subdivision, to be installed or paid for by the applicant.

5. The submission of additional supporting information including, but not limited to impact studies, legal documents, development agreements, performance bonds or other sureties, for consideration under final subdivision review.

F. **Appeal**. The applicant or another interested person must file any request for reconsideration by the DRB, or an appeal of the DRB decision to the Environmental Division of Superior Court, within 30 days of the date of issuance in accordance with Section 10.5.

G. **Effect**. Preliminary subdivision approval is intended to document application and submission requirements for final subdivision review. It does not constitute approval of a subdivision plat for recording in the land records of the town under Section F. A preliminary approval shall remain in effect for one year from the date of issuance.

Section 7.6 Final Subdivision Review

A. **Purpose.** Final subdivision review and approval is required prior to recording a subdivision plat in the land records of the town under Section 7.7. The purpose of final subdivision review is to determine final project conformance with the municipal plan, these regulations, and other municipal ordinances in effect at the time of application. The application for final subdivision review shall be submitted within one year of the date of preliminary approval by the DRB, but not before the initial 30-day appeal period has expired. If an application has not been filed within one year, the applicant will be required to submit a new application for preliminary review under Section 7.5.

B. **Application**. The applicant shall submit required fees and one original and twelve copies of the information specified for final plans and plats, including 11"x17" copies of the final subdivision plat, engineering drawings and other supporting information and documentation as specified in application checklists and the conditions of preliminary subdivision approval.

C. **Hearing.** Within 30 days of receipt of a complete application, the Zoning Administrator, in consultation with the Chair of the Development Review Board, shall schedule a public hearing at its next available meeting to be warned in accordance with the Act [§4426] and Section 10.7. The DRB may recess and continue the hearing to a date and time specified to conduct site visits or to allow for the submission of additional information from the applicant or other interested persons. No additional information or comment will be taken following hearing adjournment.

D. **Decision**. The Development Review Board shall issue written findings and a decision to approve, approve with conditions, or deny the application for final subdivision approval within 45 days of the date of hearing adjournment, in accordance with the Act [§4464] and Section 10.7. Failure to act within this 45 day period, as decided on appeal, shall be deemed approval on the 46th day. The DRB may require as conditions of approval:

1. Measures necessary to mitigate adverse impacts of the subdivision under the standards of these regulations.

2. Subdivision phasing in accordance with an approved master plan, or as required to avoid overburdening the available capacity of existing or planned public facilities and infrastructure, in conformance with specific municipal plan policies and adopted capital or transportation improvement programs, and that additional subdivision plans and plats be filed for each phase of development.

3. Infrastructure improvements and associated easements or other dedications as required to support the proposed subdivision, or to mitigate off-site impacts resulting from the proposed subdivision, to be installed or paid for by the applicant.

4. A performance bond or comparable surety acceptable to the Underhill Selectboard, as specified under Section 10.7, that is sufficient to cover the cost and ensure the installation of required improvements in conformance with the conditions of subdivision approval, and their ongoing maintenance for two years following installation. The term of the bond or surety may be fixed by the DRB for a maximum of three years within which all improvements must be completed or, by mutual consent of the DRB and applicant, may be extended for an additional period not to exceed three years.

5. A certificate of compliance, to be issued by the Zoning Administrator under Section 10.4, based on the submission of as-built plans and certifications that improvements have been installed as approved by the Board. If a certificate of compliance is required, no zoning permit shall be issued for the development of a subdivided lot until the certificate has been issued and recorded in the land records of the town.

E. **Appeal**. The applicant or another interested person must file a request for reconsideration by the DRB, or an appeal of a DRB decision to the Environmental Division of Superior Court, within 30 days of the date of issuance in accordance with Section 10.5.

F. **Effect**. No subdivision plat shall be recorded in the land records of the town until final subdivision approval has been issued by the DRB and recorded in the land records of the town under Section 10.7. Final subdivision approval shall not be construed to constitute acceptance by the Town of Underhill of any street, easement, utility, park, recreation area, or other open space shown on the final plat. A formal resolution of the Underhill Selectboard is required for municipal acceptance of dedications by the applicant, in conformance with adopted town policies, ordinances and state law. Roads shown on an approved plat shall be considered private roads until such time as they may be formally accepted by the Underhill Selectboard.

Section 7.7 Plat Recording Requirements

A. Within 180 days of the date of final subdivision approval by the Development Review Board, or by the courts on appeal, the applicant shall file a Mylar of the approved plat, as signed by the surveyor and the Chair or other appointed agent of the DRB, in the land records of the town in accordance with the Act [§4463(b)] and state plat filing requirements (27 V.S.A. Chapter 17). The applicant shall also submit one paper and one digital copy of the plat, in a format specified by the town, to the Zoning Administrator.

B. All subdivision and recording fees must be paid in full prior to recording a subdivision plat.

C. The plat to be recorded shall:

a. Measure a minimum of 18" x 24" or multiple thereof,
b. Have margins outside border lines of 1.5" on the left for binding, and 0.5" on all other sides.

c. Be certified and signed by the surveyor.

d. Carry the following endorsement, to be signed by the Chair or other authorized representative of the Development Review Board:

> *Approved by decision of the Development Review Board, Town of Underhill, Vermont, issued on the ___ day of (month), (year), subject to all requirements and conditions of subdivision and plat approval. Signed this ___ day of (month), (year), by _____, Chairperson.*

D. The subdivision plan (site plan) as approved by the DRB shall also be submitted on Mylar with the subdivision plat, for recording in the land records of the town.

E. An approved subdivision plat that is not recorded within the 180-day period shall expire, and reapplication shall be required. A recorded plat shall not expire, and may be modified only in conformance with Section 7.8.

Section 7.8 Revisions to an Approved Subdivision

A. Modifications or revisions to an approved subdivision plan, plat or the conditions of subdivision approval require a subdivision amendment approved by the Zoning Administrator or Development Review Board. Any modifications or revisions made to an approved plat without such approval shall be considered null and void, and subject to municipal enforcement as a violation under Section 10.6.

B. **Administrative Amendments**.

1. The following subdivision amendments are eligible for review and administrative approval by the Zoning Administrator, unless the Zoning Administrator determines that the requested amendment may not meet these criteria and should instead be referred to the DRB for review under Subsection C.

   a. Boundary (lot line) adjustments under Section 7.2.D that do not result in the creation of new or nonconforming lots and do not materially or substantially alter the findings and conditions of subdivision approval and are recorded in the land records of the town, in accordance with Section 7.2.

   b. The relocation, modification or expansion of building footprints, parking areas and site improvements within approved building envelopes, as long as such relocations, modifications or expansions comply with the conditions of subdivision approval and other applicable requirements of these regulations.

   c. The relocation or modification of roadways, utilities and related improvements within approved rights-of-way or utility corridors that otherwise comply with the

findings and conditions of subdivision approval and other applicable requirements of these regulations.

d. Approval of as-built plans that deviate from approved plans to the extent that such deviations do not substantially or materially alter the findings and conditions of subdivision approval.

e. Modifications to approved landscaping and screening requirements to allow for the substitution of materials, provided the substitutions meet the conditions of subdivision approval.

f. Modifications specifically authorized for administrative review and approval by the DRB in it written decision and conditions of final subdivision approval.

2. The Zoning Administrator shall issue, post and record administrative subdivision amendments in the same manner that zoning permits are issued under Section 10.3, mail a copy of the amendment to all adjoiners of record and interested parties to the original subdivision proceedings, and forward a copy to the DRB. An administrative subdivision amendment may be appealed within 15 days of the date of issuance to the DRB under Section 10.5.

C. All other subdivision amendment applications shall be classified by the Zoning Administrator under Section 7.2, and referred to the DRB for review.

ARTICLE VIII. SUBDIVISION STANDARDS

Section 8.1 Applicability

A. The Development Review Board (DRB) shall evaluate all subdivision applications under the standards of this article, but may waive those standards that are not relevant to a particular project in accordance with Subsection D.

B. The DRB may require, as necessary to assist in its evaluation and determine project conformance with these standards:

1. Written disclosure of the intended use of land to be subdivided, and general plans for the subsequent development of any land to be retained by the owner or applicant when only a portion of an existing parcel is to be subdivided.

    a. **Master Plan**. For major subdivisions that include phased or planned unit development, the applicant shall submit a master plan for the entire parcel which includes, for land to be retained or developed over time:

        i. The general locations of resources to be protected under Section 8.3.
        ii. The general locations of future land subdivision and development, including road rights-of-way, path networks and utility corridors.
        iii. An estimate of the types, density, and timing of future development, including projected total lot coverage and vehicle trip generation rates at build-out.

2. The submission of additional information or studies under one or more standards of review, including an independent technical review prepared by a qualified professional retained by the DRB and paid for by the applicant, in accordance with Section 10.7.

3. The modification of subdivision lot layout and design, the phasing of development, or other reasonable and necessary measures to avoid or mitigate undue adverse impacts resulting from the proposed subdivision and subsequent development of subdivided lots.

C. **Findings of Fact**. An applicant shall submit to the DRB proposed findings of fact for each relevant subdivision standard enumerated in this article as part of the application for final subdivision review, unless waived by the DRB. The Zoning Administrator shall provide a "Findings Checklist" to assist the applicant in this submission.

D. **Modifications & Waivers**. The DRB may waive any standard under this article that it determines does not apply to a particular subdivision.

1. In accordance with the Act [§4418(2)], the DRB also may modify or waive a standard under this article, subject to conditions if it determines that, due to circumstances specific to a particular application:

a. The standard is not requisite in the interest of the public health, safety and general welfare, or the standard is inappropriate because of the inadequacy or lack of connecting facilities adjacent or in proximity to the subdivision; and

b. The modification or waiver will not nullify the intent and purpose of these regulations, the Underhill Town Plan, or other municipal bylaws and ordinances in effect at the time of application.

2. Requests for modifications or waivers under this section shall be submitted by the applicant in writing with the application for preliminary or final subdivision review. The applicant must provide sufficient information for the DRB to make findings that justify the modification or waiver, with or without conditions.

3. The DRB may require an independent technical review of a proposed modification or waiver, as specified under Subsection B above, that identifies related impacts and mitigation measures that may be incorporated under associated conditions of approval.

4. In granting a modification or waiver, the DRB shall make explicit findings that:

a. Specify the circumstances that justify granting a modification or waiver.
b. State how granting the modification or waiver will not nullify the intent and purpose of these regulations or the Underhill Town Plan, including the plan's stated goals and objectives for the relevant zoning district(s), and other regulations in effect at the time of application.
c. State what conditions, if any, shall be required of the applicant in exchange for granting the modification or waiver, as necessary to mitigate adverse impacts.

Section 8.2 General Standards

A. **Development Suitability**. All land to be subdivided shall be suitable for the intended use and proposed density of development. The subdivision shall not result in undue adverse impacts to public health and safety, the natural environment, neighboring properties and uses, or the character of the area in which it is located. Subdivisions shall set aside as open space and exclude from subsequent development land that is characterized by periodic flooding, poor drainage, very steep slopes (>25%) and other known hazards, or that is otherwise not suitable to support structures or infrastructure.

B. **Development Density**. The allowed density of development within a subdivision shall be calculated by dividing the total land area to be subdivided, excluding existing and proposed road rights-of-way, by the minimum lot size and maximum building densities specified for the zoning district(s) in which the subdivision is located (see Tables 2.1 – 2.7), except as modified for planned unit developments under Article IX.

C. **Existing Site Conditions**. To the extent physically feasible, subdivision layout and design shall integrate and conserve existing site features and natural amenities, including:

1. natural topography (surface contours, grades) and drainage patterns;
2. naturally occurring surface waters, wetlands and vernal pools;
3. mapped flood plains (Special Flood Hazard Areas);
4. natural vegetative cover (e.g., timber and orchard stands, witness and shade trees, copses, hedgerows, and wetland and riparian buffers);
5. unique topographic or geologic features (e.g., outcrops, ledges, visually prominent ridgelines and peaks);
6. primary agricultural soils, as defined by the U.S. Natural Resource Conservation Service and state; and
7. historic sites and structures.

Note: See Section 8.3 for specific resource management and mitigation measures.

D. **Underhill Town Plan & Regulations**. Subdivisions shall conform to clearly stated policies and objectives in the Underhill Town Plan as most recently amended, other provisions of these regulations, adopted capital or transportation improvement programs, and other municipal bylaws, ordinances and regulations in effect at the time of application.

E. **District Settlement Patterns**. A subdivision shall be designed and configured to reflect the desired settlement pattern for the zoning district(s) in which it is located, as defined under Article II and the Underhill Town Plan. To this end, the following standards shall apply to subdivisions within respective zoning districts.

1. **Underhill Flats Village Center District**. Subdivision within this district shall be designed and configured to reinforce a compact, pedestrian scale and pattern of development. Lots and building envelopes shall be sized and located to maintain a consistent building line and streetscape along roads. Subdivisions in this district also shall be designed to incorporate, extend, or connect to existing roads, pedestrian paths and utility corridors. Sidewalks and other pedestrian facilities shall be provided where physically feasible; new roads in these districts shall be designed to maximize pedestrian safety and circulation.

2. **Rural Districts**. Subdivisions within the Rural Residential, Water Conservation, and Scenic Preservation Districts shall be designed and configured to reinforce the rural character and historic working landscape of these districts, characterized by forested hillsides and hilltops, open fields, and moderate to low densities of residential development interspersed with large contiguous tracts of undeveloped land. Lots shall be configured to maintain contiguous tracts of open land between adjoining parcels.

3. **Soil and Water Conservation District**. Subdivisions within the Soil and Water Conservation Districts shall be designed and configured to avoid undue adverse impacts to existing forest resources and environmentally sensitive upland areas, including watersheds and significant wildlife habitat and travel corridors, and to maintain traditional land uses including forestry and outdoor recreation. To the extent physically feasible, fragmentation of productive forest lands and significant wildlife habitat shall be

avoided, and lots shall be configured to maintain contiguous tracts of open land between adjoining parcels. Lots created for the purpose of constructing dwellings or other structures in this district shall not result in the development of environmentally sensitive areas identified in the town plan or through site investigation, as specified in Section 8.3.

F. **Lot Layout**. Lots and lot layouts shall be configured to:

1. be suitable for their intended use, for subsequent development (building lots) or for resource or open space protection (conserved lots);

2. conform to desired district settlement patterns, as required under Subsection E;

3. meet minimum lot size and density requirements under Article II, except as modified for planned residential or planned unit developments under Article IX;

4. conform to lot and yard requirements under Section 3.7; and to

5. avoid irregularly shaped lots (e.g., with curves, jogs, dog-legs, etc.), unless warranted due to topographic or other physical site constraints, or to minimize the fragmentation of natural, scenic or cultural resources under Section 8.3

G. **Building Envelopes**. The designation of building envelopes to limit the location of structures, parking areas, and associated site improvements to one or more portions of a lot shall be required for all subdivided lots, as shown on the subdivision plat. The location, size and shape of each building envelope shall be established in accordance with these regulations, including zoning district requirements under Article II and Subsection E, and resource protection standards under Section 8.3. The DRB also may require the identification of specific building locations (footprints) if, in its judgment, such information is needed to determine conformance with these regulations.

H. **Survey Monuments**. The locations of all proposed permanent surveying monuments and corner markers, as required under the Rules of the Board of Land Surveyors, shall be identified on the final subdivision plat. The DRB may also require that the corner points of designated building envelopes be marked on the ground with iron pins and identified on the final subdivision plat.

I. **Landscaping & Screening**. Landscaping and screening, using native and salt-tolerant species (see Appendix C and Appendix D), shall be provided as necessary to:

1. Preserve existing trees, tree lines, wooded areas of particular natural or aesthetic value to the site, and significant wildlife habitat areas.

2. Provide an undisturbed vegetated buffer between developed and undeveloped portions of the subdivision, as necessary to minimize adverse impacts to surface waters and wetlands (see Section 3.19), or other natural or scenic resources under Section 8.3.

3. Provide physical separation and visual screening as necessary to provide privacy, reduce noise or glare, or to establish a buffer between potentially incompatible land uses.

4. Establish a tree canopy along roads or pedestrian walkways, particularly where proposed road construction and related site improvements will result in the loss of existing tree cover.

For major subdivisions, the DRB may require the submission of a landscaping plan, to be prepared by a certified landscape architect, as required to determine conformance with these regulations.

J. **Energy Conservation**. Subdivision design and layout, to the extent physically feasible, shall incorporate energy efficient design by:

1. Locating and orienting sites (e.g., building lots, envelopes) to maximize southern exposures where available, and solar access for solar energy and heating systems.

2. Clustering development (e.g., building lots, envelopes) to minimize road and utility line extensions and to allow for group net-metering.

3. Incorporating existing topography, natural vegetation and landscaping to provide wind breaks, seasonal shade and solar access, and to reduce building heating and cooling needs.

4. Designating lots or areas within major subdivisions that are suitable for net-metered solar collectors, wind turbines, managed wood lots and other renewable energy facilities and resources for the individual or collective use of subdivision residents.

Section 8.3 Natural & Cultural Resources

A. **Resource Identification & Protection**. All applications for subdivision review shall identify and conserve Underhill's significant cultural and natural features in accordance with these regulations. The following resources under this section may be identified from the Underhill Town Plan, related inventories, studies and maps on file at the Underhill Town Office, and through site investigation, and shall be shown on subdivision plans.

1. The applicant and DRB may consult with the Underhill Conservation Commission, state officials, and/or other qualified professionals to determine the likely impact of a subdivision on one or more of these resources, and appropriate mitigation measures.

B. **Surface Waters, Wetlands & Floodplains**. Subdivision boundaries, lot lines and building envelopes shall be located and configured to avoid adverse impacts to surface waters, wetlands, special flood hazard areas (SFHAs) and designated Source Protection Areas (SPAs). Methods to avoid or mitigate undue adverse impacts include but are not limited to the following:

1. Setback and buffer areas of sufficient width to protect surface waters and wetlands from accelerated surface runoff, soil erosion and sedimentation shall be designated and indicated on the subdivision plan and plat in accordance with Section 3.19. The DRB may require larger setbacks or buffers, and/or buffer management plans as necessary to minimize impacts resulting from site-specific slope and soil conditions.

2. Lot lines shall be configured to minimize the subdivision and fragmentation of surface waters, wetlands and associated setback and buffer areas.

3. Building envelopes shall be located and sized, to the extent physically feasible, to exclude surface waters, wetlands and associated buffer areas.

4. Roads, driveways and utility corridors shall be located, to the extent physically feasible, to minimize the number and extent of surface water and wetland crossings and associated areas of site disturbance, in accordance with Section 3.19.

5. Surface waters, wetlands and associated buffers shall be included as designated open space areas in accordance with Section 8.4.

6. Building envelopes shall be located and configured to avoid development that is prohibited within designated Source Protection Areas under Section 3.17.

7. Subdivisions and associated infrastructure within Special Flood Hazard Areas shall meet the requirements for subdivision and development within flood hazard areas under Article VI.

C. **Rock Outcrops, Steep Slopes, Hillsides & Ridgelines**. Subdivision boundaries, lot lines, and building envelopes shall be located and configured to the extent physically feasible to minimize the adverse impacts of development on steep slopes (15% or more); to avoid site disturbance on very steep slopes (>25%); and to avoid the placement of structures on exposed rock outcrops and ledges and visually prominent hilltops and ridgelines. Methods to avoid or mitigate adverse impacts include but are not limited to the following:

1. Building envelopes, to the extent physically feasible, shall be located to exclude these areas.

2. Building envelopes located in the vicinity of visually prominent ridgelines and hilltops shall be located to minimize the visibility of subsequent development as viewed from public roads or properties.

a. Building envelopes shall be located down-slope of (below) prominent ridgelines and hilltops, and configured so that the height of any structure placed within the envelope will not visually exceed the height of the adjacent tree canopy serving as the visual backdrop to the structure, or the height of land on an exposed ridgeline or hilltop, as viewed from public vantage points.

b. Existing forest cover outside the envelope shall be maintained to provide a forested backdrop to structures, and/or to lessen the visual impact of new development as viewed from public roads and properties. A tree cutting, landscaping and/or forest management plan may be required as necessary to ensure that ridges and hilltops remain wooded. The DRB also may require additional plantings at specific locations within the subdivision or on individual lots to provide screening.

3. Building envelopes shall be sized and configured to minimize the extent of clearing, site disturbance and development in areas of steep slope (15% or more). The applicant shall submit an erosion control plan for building envelopes or subdivision improvements, including roads and other infrastructure improvements in these areas in accordance with Sections 3.18 and 8.5.

4. Driveways, access roads (including logging roads to be converted to private roads or driveways) and utility corridors, to the greatest extent feasible shall share access and rights-of-way, follow existing contours to achieve angled ascents, and be located and designed to minimize surface runoff and erosion, especially in areas of steep slope (15% or more) in conformance with Sections 3.2 and 3.18.

5. Building envelopes, roads, driveways and utility corridors shall be sited, to the greatest extent physically feasible, to avoid site disturbance and development on very steep slopes (over 25%), in accordance with Section 3.18.

6. Land characterized as having very steep slopes (>25%), large rock outcrops or ledge areas (>200 square feet), and visually prominent hilltops and ridgelines shall be included as designated open space in accordance with Section 8.4.

D. **Natural Areas & Wildlife Habitat**. Subdivision boundaries, lot lines, and building envelopes shall be located and configured to avoid the subdivision and fragmentation of, and adverse impacts to natural areas and significant wildlife habitat identified in the town plan and associated maps and inventories, by the Vermont Department of Fish & Wildlife, or through site investigation. Methods to avoid or mitigate adverse impacts include but are not limited to the following:

1. Lot lines shall be located and configured, to the extent physically feasible, to minimize the subdivision and fragmentation of significant wildlife habitat, including identified wildlife travel corridors, and to incorporate these areas as within designated open space areas.

2. Building envelopes shall be located to exclude significant wildlife habitat areas and natural communities, including but not limited to core habitat areas, travel corridors and rare, threatened or endangered plant and animal communities.

3. A buffer area of adequate size, as determined in consultation with the Conservation Commission, state wildlife officials, or qualified professionals, shall be established as needed to protect significant wildlife habitat areas and natural communities.

4. Roads, driveways and utility corridors shall be located to minimize the fragmentation of significant wildlife habitat areas and natural communities.

5. The DRB may require the submission of a management plan prepared by a wildlife biologist, ecologist or other qualified professional as necessary to identify the function and relative value of impacted wildlife habitat, and associated mitigation and management strategies.

6. Significant wildlife habitat areas, natural communities and associated buffers shall be included as designated open space, in accordance with Section 8.4.

E. **Historic & Cultural Resources**. Subdivision boundaries, lot lines, and building envelopes shall be located and configured to minimize adverse impacts to historic and archaeological sites and resources identified in the town plan, by the Vermont Division for Historic Preservation (on state or national registers), or through site investigation. Methods to avoid or minimize adverse impacts include but are not limited to the following:

1. Historic features, including historic structures, stone walls and cellar holes, to the extent physically feasible, shall be preserved and integrated into subdivision design (e.g., driveways following stone walls). Wherever feasible, existing property boundary (lot) lines defined by historic stone walls shall be incorporated in subdivision layout and design to retain their historic context.

2. Building envelopes shall be sited to avoid known archaeological sites. Prior to development on sites that have been identified as being archaeologically sensitive in the town plan or through site investigation, the DRB may require an initial site assessment conducted by a qualified professional, to be paid for by the applicant, as necessary to identify the presence and relative value of archaeological resources on the site, to document archaeological resources and/or recommend strategies for their protection.

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

F. **Farmland**. Subdivision boundaries, lot lines and building envelopes, to the extent physically feasible, shall be located and configured to avoid the fragmentation of and

adverse impacts to primary ("prime" and "statewide") agricultural soils and open fields, orchards, and maple sugar stands in existence at the time of application. Methods for avoiding or mitigating adverse impacts include but are not limited to the following:

1. The subdivision of farmland, to extent physically feasible, shall be configured to allow for continued access to and ongoing management of productive farmland for agricultural use. Lot lines shall be located and configured to minimize farmland fragmentation and, where feasible, to incorporate farmland within separately conserved agricultural lots to be held in common or individual ownership.

2. Building envelopes shall be located at field or orchard edges or, in the event that no other land is practical for development, on the least fertile soils in order to minimize the conversion of productive agricultural land, impacts to existing farm operations, and disruption to the scenic qualities of the site.

3. Vegetated buffer areas may be required by the DRB as necessary to physically separate and visually screen building lots or envelopes from agricultural operations as necessary to minimize land use conflicts.

4. Access roads, driveways and utility corridors, to the extent physically feasible, shall be shared and located along field edges or to follow existing linear features such as roads, tree lines, stone walls, and fence lines, to minimize the fragmentation of open agricultural land and associated visual impacts.

5. Retained farm parcels or open land shall be included as designated open space in accordance with Section 8.4. Conservation easements, limitations on further subdivision, or comparable site protection mechanisms may be required as necessary to ensure their long-term protection and management. Easements may allow for the construction of farm structures that support active farming operations on conserved farmland.

G. **Forestland.** Subdivision boundaries, lot lines and building envelopes shall be located and configured to the extent physically feasible to avoid the fragmentation or development of productive forestland, including large (50+ acre) tracts of forestland, forestland that is contiguous to other large, undeveloped tracts that have either been protected through public or private land conservation initiatives or are subject to use value appraisal contracts, and forestland that includes distinctive timber standards or possesses unique or fragile features, including natural areas, significant wildlife habitat and travel corridors, and/or exceptional outdoor recreational resources. Methods for avoiding or mitigating adverse impacts include but may not be limited to the following:

1. Subdivisions that include forestland, to the extent physically feasible, shall be configured to allow for continued access to and ongoing management of forest resources. Lot lines shall be located to minimize forest fragmentation, and to incorporate forested areas

within separately conserved lots to he held in common or individual ownership and management.

2. Building envelopes, driveways, and road and utility corridors, to the extent physically feasible, shall be laid out to minimize forest fragmentation, and to maintain access to forestland for long-term management.

3. Building envelopes, to the extent physically feasible, shall be located and sized to minimize the extent of forest clearing required for development. Where applicable, the DRB may require that building envelopes be set back and buffered from adjacent forest parcels as needed to protect public recreation areas, conserved open space, and significant wildlife habitat, and to avoid conflicts between new development and existing forest management activities on land that is protected or enrolled in municipal or state tax stabilization (current use) programs. Setbacks and buffer areas shall be included as designated open space, in accordance with Section 8.4.

4. Lots specifically intended for long-term forest management should, to the extent physically feasible, be of sufficient size to qualify for enrollment in state and/or municipal tax stabilization programs, and shall be included as designated open space in accordance with Section 8.4. Easements may allow for the construction of accessory structures (e.g., equipment sheds) that support active forestry operations on conserved forestland.

Section 8.4 Open Space & Common Land

A. **Open Space**. The location, size and shape of lands set aside to be preserved for open space shall be approved by the Development Review Board, in accordance with the following:

1. Open space areas shall include significant natural and cultural features identified and designated for protection in accordance with Section 8.3.

2. Open space areas shall be configured to be contiguous with existing and potential open space lands on adjacent parcels.

3. Designated open space may include a portion of a single lot, or extend over several contiguous lots; however to the extent physically feasible, lot configurations shall minimize the subdivision and fragmentation of contiguous open space areas.

4. The location, shape, size and character of open space areas shall be suitable for their intended purpose and use.

5. Provisions shall be made to allow open space designated for agriculture and forestry (silviculture) to be used for these purposes. Management plans for forests, wildlife

habitat, and farmland may be required by the Development Review Board as necessary to ensure their long-term management.

6. Sewage disposal areas, utility and road rights-of-way or easements, and access and parking areas shall not be included within designated open space areas, unless the applicant can demonstrate to the satisfaction of the DRB that they will in no way disrupt or detract from the purposes or values for which the open space is to be protected.

B. **Common Land**. Land held in common for the preservation and maintenance of open space or the management and maintenance of shared facilities (e.g., community wastewater systems, community water supplies, recreation or community facilities, road and trail rights-of-way) may be held under separate ownership from contiguous parcels and shall be subject to the legal requirements set forth below.

C. **Legal Requirements**. At a minimum, unless waived by the Development Review Board:

1. Designated open space areas and common land shall be indicated on the final subdivision plat.

2. Land held in common shall be subject to deed restrictions and owner agreements that stipulate the permitted and restricted use of such land, and establish the person(s) or entity responsible for its maintenance and long term stewardship.

3. Designated open space and common land areas shall be subject to management agreements that include terms for administration, maintenance, and cost sharing. A draft management agreement shall be submitted with the application for final subdivision approval.

4. Nothing in these regulations shall be construed as indicating that the public has a right to recreate on private property without permission of the landowner.

Section 8.5 Stormwater Management & Erosion Control

A. Temporary and permanent stormwater management and erosion control measures shall be used during all phases of subdivision development as necessary to limit surface runoff and erosion, protect water quality and to avoid damage to downstream properties in conformance with the following:

1. Building envelopes, driveways, road and utility corridors shall be located to minimize site disturbance on steep slopes (15%, or more) and, to the greatest extent feasible, avoid site disturbance on very steep slopes (>25%) in accordance with Sections 3.18 and 8.3.

2. Stormwater management and erosion control measures serving the subdivision shall be designed, installed and maintained in accordance with best management practices

accepted by the state, based on the upstream drainage area, size of storm events, slope and soil conditions, and the proposed type and density of development, including total lot coverage at build-out.

3. Stormwater management systems shall be designed to accommodate existing and anticipated runoff, including anticipated flows from storm events, and total runoff generated at build-out and, to the extent physically feasible, to:

    a. Maximize onsite infiltration and treatment and minimize surface runoff through the use of "Low Impact Development" (LID) strategies (see Appendix E).
    b. Integrate natural drainage systems in stormwater system design.
    c. Minimize the need for expensive system maintenance.
    d. Integrate stormwater storage and treatment areas (e.g., retention ponds) in subdivision design.
    e. Avoid flooding or damage to adjoining properties and downstream drainage facilities.

4. The applicant shall demonstrate that existing downstream drainage facilities will be able to accommodate any additional runoff from the subdivision at build-out. If the increase in runoff exceeds the capacity of downstream drainage facilities, the DRB may require one or more of the following mitigation measures, to be installed or paid for by the applicant:

    a. Additional on-site stormwater infiltration, retention and treatment facilities.
    b. Off-site improvements to downstream drainage facilities and infrastructure as necessary to accomodate increased runoff from the subdivision.

B. For major subdivisions, the DRB may require the submission of a stormwater management and erosion control plan for all phases of subdivision development, prepared or certified by a licensed professional engineer, as necessary to determine conformance with these regulations. The plan shall incorporate best management practices recommended by the state in the most recent editions of the "Vermont Stormwater Management Manual" and the Vermont Handbook for Soil Erosion and Sediment Control on Construction Sites" or similar state-issued publications.

C. The DRB may also require, as conditions of preliminary or final subdivision approval:

1. Project phasing as necessary to minimize the extent of soil disturbance and erosion during each phase of development, in accordance with Section 3.18.

2. Increased surface water and wetland setback distances and buffer areas (under Section 3.19), and/or the submission and implementation of buffer management plans to protect surface waters and wetlands from stormwater runoff and erosion.

3. Drainage easements and/or or municipal approvals as necessary to accommodate drainage directed onto adjoining properties or public rights-of-way.

4. Documentation that state stormwater and construction permits have been obtained, which may also serve as documentation of compliance with applicable requirements of these regulations.

Section 8.6 Transportation Facilities

A. **Access & Driveways.** Access to the subdivision and to individual lots within the subdivision shall at minimum meet the requirements of Section 3.2 (Access Management) and the following:

1. Access to individual lots legally in existence as of the effective date of these regulations that do not have frontage on a public road may be approved by the Development Review Board in accordance with Section 3.2 concurrently with subdivision approval.

2. All lots created after the effective date of these regulations that are intended for development must meet minimum applicable frontage requirements along public and private road rights-of-way for the district(s) in which they are located unless modified or waived by the DRB for planned unit development under Article IX. The DRB may also reduce or waive district lot frontage requirements for:

    a. minor (up to three lot) subdivisions accessed by a shared driveway,
    b. lots that will be maintained in perpetuity as undeveloped open land to be used only for passive outdoor recreation or resource conservation,
    c. lots located on a cul-de-sac or at the end of an existing dead-end road, or
    d. to allow for rear lot (flag lot) infill development within the Underhill Flats Village Center Zoning District.

3. A highway access (curb cut) permit from the Underhill Selectboard (or designee) is required for subdivision access onto town highways, and from the Vermont Agency of Transportation for subdivision access onto state highways, as required under Section 3.2. Applicants are encouraged to meet with local and state highway officials prior to submitting an application for preliminary subdivision review. Access permits are required prior to filing an application for final subdivision review.

    a. Municipal or state access management requirements in effect at the time of application shall be incorporated in subdivision layout and design. These include, but may not be limited to Underhill town highway ordinance standards, and Vermont Access Management Program Guidelines.

4. Access to a subdivision shall conform to adopted state or municipal access management plans and capital or transportation improvement plans. Planned highway and access improvements, including proposed rights-of-way, shall be incorporated in subdivision

design. Right-of-way reservations may be required as necessary to accommodate planned improvements.

5. A subdivision shall be served by no more than one direct access onto a public highway, unless additional access is deemed necessary by the DRB to:

    a. improve traffic circulation or reduce traffic congestion,
    b. facilitate emergency vehicle access, as determined by the Jericho-Underhill Fire Department,
    c. allow connections between adjacent parcels of land, each of which has direct access to a public highway, or to
    d. address physical site constraints, such as the presence of steep slopes, surface waters, wetlands, resource or hazard areas, or other physical site conditions that warrant additional access.

6. Access to newly created parcels, and to existing contiguous parcels under common ownership or control, shall be provided internally from a shared driveway or development road that intersects the public highway, unless otherwise approved by the DRB under Subsection A.5. Additional indirect access via an adjacent parcel to serve part or all of the subdivision is allowed.

    a. No additional access rights to a public highway shall automatically result from the subdivision or re-subdivision parcels established after the effective date of these regulations [March 2, 2011], nor for the development or redevelopment of contiguous parcels under common ownership and control as of the effective date of these regulations.

7. Access to a subdivision from a Class IV town highway must meet minimum requirements for the upgrade and use of Class IV roads under Section 3.2 and the Underhill Highway Ordinance:

    a. A Class IV road serving a minor subdivision (three or fewer lots) must be upgraded to meet minimum driveway (B-71) standards under these regulations and the town highway ordinance.

    b. A Class IV road serving four or more lots must meet minimum road standards (A-76) under these regulations and the town highway ordinance.

    c. The applicant is responsible for the cost of Class IV road upgrades and road maintenance under a maintenance agreement approved by the Selectboard.

8. To improve traffic flow and safety, avoid congestion, and preserve the capacity of public highways the DRB, in consultation with local or state highway officials, may also:

a. further limit access onto public highways by requiring the elimination or relocation of existing accesses;
b. require shared accesses, driveways, or roads to serve multiple lots within a subdivision;
c. require access from a secondary (less traveled) road, if the proposed subdivision has frontage on both primary (arterial or collector) and secondary (local) roads, and access to the secondary road is sufficient and reasonable;
d. require that road rights-of-way extend to property line(s) to allow future access or connections to adjoining parcels; or
e. prohibit the creation of reserved strips of land adjacent to a proposed road which would deny access to adjacent properties.

9. **Driveways**. Driveways serving minor subdivisions of three or fewer lots shall meet the requirements of Section 3.2 and the Underhill Highway Ordinance in effect at the time of application. For the purposes of these regulations, driveways serving four or more lots shall be considered development roads subject to the requirements of Subsection B.

B. **Development Roads**. The following road standards shall apply to all rights-of-way serving major subdivisions or accessing four or more lots. Roads shall be considered private roads until such time as they are accepted by the Town of Underhill. Roads intended for acceptance by the town must also meet standards for proposed public highways under the Town of Underhill Highway Ordinance in effect at the time of application for acceptance. In the event that there is a conflict between the requirements of these regulations and the highway ordinance, the more restrictive shall apply.

1. **System Capacity**. The volume and type of traffic to be generated by the proposed subdivision at build-out shall not result in undue traffic congestion or delay on public highways, or exceed the functional or structural capacity of travel lanes, intersections, bridges, culverts and other highway infrastructure in the vicinity of the proposed subdivision. The Development Review Board may require a traffic impact analysis prepared by a qualified transportation engineer or planner for any subdivision that generates 75 or more peak hour trips, or as otherwise deemed necessary by the DRB to determine whether infrastructure improvements are needed to mitigate traffic impacts from a proposed subdivision. Traffic studies shall reference the Institute of Transportation Engineers' Trip Generation Manual (current edition), or trip generation rates derived from local transportation studies.

2. **Layout**. To promote safety, to facilitate traffic flow and emergency vehicle access, and to protect significant resources, roads shall, to the extent physically feasible, be laid out to:

a. Provide access to lots within the subdivision that are intended for subsequent development.
b. Follow existing linear features where physically feasible (e.g., farm and logging roads, field edges, utility corridors, tree and fence lines, stone walls), and meet

other requirements for the protection of identified resource and hazard areas under Subsection 8.3.

c. Minimize the number and extent of stream and wetland crossings and disturbed areas within associated buffers in accordance with Sections 3.19 and 8.3.

d. Logically relate to topography, following contour elevations, to minimize the amount of cut and fill required and to maintain reasonable finished grades and safe intersections.

e. Extend or connect to existing or planned roads adjoining the subdivision, under joint agreement or in common or public ownership.

f. Provide for road extensions to serve future subdivisions as shown on the subdivision plat.

3. **Design & Construction**. All roads serving the proposed subdivision shall be designed to meet dimensional and geometric design standards contained in the Vermont State Standards for the Design of Transportation Construction, Reconstruction and Rehabilitation on Freeways, Roads, and Streets (Vermont State Standards) as most recently amended; and constructed in accordance with current state "Standards for Town and Development Roads" (Standard Drawing A-76) and the Underhill Highway Ordinance as it applies to new or upgraded roads. Minimum design standards include, but may not be limited to the following:

a. **Rights-of-way**. A road right-of-way must be at least 50 feet wide unless otherwise approved or required by the Underhill Selectboard under the town highway ordinance.

b. **Grades**. The average finished grade of a road shall not exceed 12% over any 50-foot section, unless otherwise approved by the DRB in consultation with the Selectboard and the Underhill-Jericho Fire Department. In no case shall the maximum finished grade exceed 15%.

c. **Drainage**. Drainage from development roads and driveways shall not adversely affect public highway infrastructure or neighboring properties.

i. Road drainage shall be designed, installed and maintained in accordance with best management practices accepted by the state, and as required under the town highway ordinance.

ii. Selectboard approval is required for any road drainage into a town highway right-of-way.

iii. Drainage easements and off-site improvements are required for road drainage directed onto adjoining properties.

d. **Travel Lanes**. The width of travel lanes and shoulders shall be based on average daily traffic (ADT) and design (existing or planned) posted speeds, in accordance with current "Vermont State Standards for Design and Construction" in effect at the

time of application and the town highway ordinance. Design standards for rural development roads are included in Table 8.1.

Table 8.1 Travel Lane and Shoulder Widths for Rural Development Roads

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

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

i. Roads intended for shared use by bicycles or for on-street parking (e.g., within the Underhill Flats Village District) shall incorporate paved shoulder areas that meet minimum recommended width and design standards under Vermont State Standards in effect at the time of application.

e. **Surfacing**. Road surfacing (gravel, paved, other) shall meet applicable requirements under adopted town highway ordinances and polices in effect at the time of application.

f. **Dead Ends**. Dead end roads in excess of 500 feet shall be constructed with a suitable turnaround at the terminus for emergency vehicles. This may consist of a cul-de-sac, or a “T”, “Y” or other configuration that meets town standards and allows emergency vehicles to turn around safely and efficiently. Roads in excess of 800 feet in length shall also have a vehicle turnout at least 12 feet wide and 35 feet in length near the half-way point of every 800-foot section, with a suitable turn-around at the terminus.

4. **Improvements**. The proposed subdivision shall not unduly burden town or state highways, including roads and intersections in the vicinity of the project. Any highway access, drainage, lane, or other infrastructure or traffic control improvements necessitated by the proposed subdivision shall be paid for and installed by the applicant, unless otherwise approved by the DRB in consultation with the Selectboard or state highway officials. The DRB also may require as conditions of approval, as necessary to ensure compliance with these regulations:

a. Performance bonding or other form of surety acceptable to the Selectboard to ensure that required road, intersection and related infrastructure improvements are installed as approved by the DRB.

b. The phasing of development in relation to planned state or municipal transportation infrastructure improvements included in adopted capital or transportation improvement programs.

c. A development agreement approved by the Selectboard governing the timing, installation and any agreed upon cost-sharing arrangements between the subdivider and the town or other affected property owners.

5. **Acceptance**. A road shall be considered private road unless formally dedicated to the town and accepted by the Underhill Selectboard as a public road in accordance with adopted town road policies, ordinances and state statutes.

6. **Names, Signs and 911 Locator Numbers**. Road names shall be approved by the Underhill Selectboard as part of the subdivision process. Approved road names and assigned 911 locator numbers for each parcel shall be clearly depicted on the final plat, and identified on signs approved by the Selectboard.

C. **Parking Facilities**. Common or shared parking areas shall be identified on the subdivision plat, and designed in accordance with Section 3.13. Parking areas for individual lots shall be included within designated building envelopes.

D. **Transit Facilities**. The Development Review Board may require that subdivisions located on existing or planned transit routes, including school bus routes, incorporate a sheltered transit or bus stop in subdivision design.

E. **Pedestrian Access**. The Development Review Board may require one or more of the following as necessary to facilitate pedestrian access from the subdivision to adjoining parcels and roads, or to nearby public schools, playgrounds, or public lands:

1. Sidewalks and curbing or pedestrian or recreation paths that connect the subdivision to existing facilities on adjoining properties and rights-of-way, or as shown on an adopted sidewalk or recreation path plan and improvement program.

2. Sidewalks and curbing along internal subdivision roads, or an internal network of pedestrian paths that provide access common lands and facilities within the subdivision.

3. The installation of pedestrian crosswalks at designated road and path intersections.

4. Unobstructed easements at least 10 feet in width for pedestrian or recreation corridors, as indicated on the final subdivision plat.

Section 8.7 Public Facilities & Utilities

A. **Public Facilities**. The Development Review Board shall find that the proposed subdivision does not create an undue burden on existing and planned public facilities. The applicant and DRB may consult with appropriate municipal and school officials and emergency service providers to determine whether adequate capacity exists to serve the subdivision.

1. For major subdivisions, the DRB may require, as a condition of preliminary subdivision approval, that the applicant submit documentation from appropriate officials, or a fiscal impact analysis to be paid for by the applicant, that identifies potential impacts of the subdivision on public facilities and services and methods for mitigating such impacts, which may include the phasing of development in accordance with a duly adopted capital budget and program.

B. **Fire Protection**. The DRB, in consultation with the Underhill–Jericho Fire Department, may require that the applicant provide adequate water storage and distribution facilities for fire protection in accordance with department specifications. The applicant shall install fire hydrants, dry hydrants, or fire ponds as required by the DRB to serve the subdivision, and shall ensure adequate access to developed lots for emergency response vehicles. The Board may also require that fire ponds be designed by a licensed professional engineer in accordance with Section 3.15.

C. **Water Systems**. The applicant shall demonstrate to the satisfaction of the DRB that adequate potable water supplies exist on-or off-site to serve the subdivision. In addition:

1. Individual or community water supply systems shall be designed in accordance with state regulations as certified by a designer or professional engineer licensed by the state (see also Section 3.22). State permits shall be required where applicable prior to final subdivision approval and the issuance of certificates of compliance under Section 10.4; and may serve as documentation of compliance with relevant standards of this section.

2. All water sources and required isolation distances shall be identified on the final subdivision plat.

3. Where applicable, designated source protection areas (SPAs) for municipal and community water supplies also shall be identified on the final subdivision plat; and shall be managed in accordance with a state approved source protection plan and Section 3.17.

4. Potable water supply systems located within designated flood hazard areas (Flood Hazard Overlay District) shall be sited and designed in accordance with applicable requirements of Section 6.6.

D. **Wastewater Systems**. The applicant shall demonstrate to the satisfaction of the DRB that adequate wastewater system capacities exist on- or off-site to serve the proposed subdivision. In addition:

1. Sewage disposal systems, which may include individual and/or community systems, shall be designed in accordance with all applicable state regulations, as certified by a professional designer or engineer licensed by the state (see also Section 3.22). State permits shall be required where applicable prior to final subdivision approval and the issuance of certificates of compliance under Section 10.4; and may serve as documentation of compliance with relevant standards of this section.

2. Wastewater collection lines and sewage disposal areas including individual on-site septic systems shall be shown on the final engineering drawing, and collection lines and disposal areas shall be shown on the final plat.

3. Where connection to pre-existing wastewater system is proposed, the applicant shall demonstrate that the system is adequate to serve additional connections, and provide legal documentation that ensures system access and allocates system capacity for each connection.

4. A proposed subdivision with adequate on-site capacity for clustered systems may be served by a community wastewater system to allow for increased densities of development or reduced lot sizes, or to protect potable water supply sources.

5. Septic systems located within designated flood hazard areas (Flood Hazard Overlay District) shall be sited and designed in accordance with applicable requirements of Section 6.6.

E. **Utilities**. The location of all existing and proposed utilities, including but not limited to electric, telephone, and cable television utilities, shall be shown on the final plat. In addition:

1. All utilities within the subdivision shall be located underground unless the applicant demonstrates to the satisfaction of the Development Review Board that burial is not reasonable given physical site constraints (e.g., ledge or shallow depth to bedrock); or the Development Review Board determines that burial is not necessary to preserve the scenic character of the area.

2. Utility panels shall be screened from the view of public lands and rights-of-way and adjoining properties.

3. The applicant shall coordinate subdivision design with utility companies to ensure that suitable areas are available for above ground or underground installation, within and adjacent to the proposed subdivision. Utility easements of sufficient width shall be provided to serve both the proposed subdivision, and future service extensions to adjoining properties. Such easements shall be identified on the final subdivision plat.

4. Utility corridors shall be shared with other utility and/or transportation corridors where feasible, and be located to minimize site disturbance, adverse impacts to public health and safety, and to significant natural, cultural and scenic resources, in accordance with Section and 8.3.

5. Areas designated for the installation of solar collectors, wind turbines or other group net-metered renewable energy facilities intended to serve the subdivision, and subject to review and approval by the Vermont Public Service Board shall be shown on the subdivision plat or accompanying subdivision plan, as recorded in the land records of the town.

6. Outdoor lighting shall meet applicable standards under Section 3.11. In the event the applicant proposes parking area or street lighting, lighting fixtures shall be limited to cut-off fixtures and shall be the minimum height necessary to ensure vehicular and pedestrian safety on roads and adjacent sidewalks and paths.

Section 8.8 Legal Requirements

A. Land reserved for the protection of significant natural, cultural, or scenic resources or other open space under Sections 8.4 including conserved lots, shall be classified as designated "open land" and may be held in common ownership or in separate individual ownership from contiguous parcels. At minimum, land designated as protected open space shall be indicated with appropriate notation on the final subdivision plat. In addition, the Development Review Board may consider, as required for long-term protection:

1. A restriction prohibiting the further subdivision of a conserved lot or other protected open space area, as noted on the final plat and in accompanying legal documentation.

2. The dedication of such land, either in fee or through a conservation easement approved by the Development Review Board, to the municipality, an owners' association comprised of all present or future owners of subdivided lots, the applicant, and/or a nonprofit conservation organization with the demonstrated capacity and qualifications to manage conservation easements.

3. Designated open space areas, including conserved lots, may be conveyed to the State of Vermont.

B. The applicant shall provide documentation and assurances that all required improvements, associated rights-of-way and easements, and other common lands or facilities will be adequately maintained in accordance with an approved management plan, either by the applicant, an owners' association, or through other legal means acceptable to the DRB. Draft management plans and documentation must be submitted with the application for final subdivision review, for approval by the DRB. The DRB may forward submitted documentation to the Selectboard and town attorney for review. All legal

documents, as approved by the DRB, shall be filed in the land records of the town in association with recording the final subdivision plat.

C. All required improvements shall be constructed to approved specifications in accordance with a construction schedule approved by the DRB. The DRB may require the issuance of a Certificate of Compliance in accordance with Sections 7.6 and 10.4 to ensure that all such improvements are completed prior to the issuance of zoning permits for the subsequent development of subdivided lots. A performance bond or comparable surety acceptable to the Underhill Selectboard may be required to ensure that all improvements are completed to specification in accordance with Sections 7.6 and 10.7.

ARTICLE IX. PLANNED UNIT DEVELOPMENT

Section 9.1 Purpose

A. For the purposes of these regulations, planned unit developments as authorized under the Act [§4417] include both planned unit developments (PUDs) and planned residential developments (PRDs) as defined in Section 11.2 and these regulations. The purpose of planned unit and planned residential development is to provide for flexibility in the design and layout of lots, structures and infrastructure to promote:

1. Master planning for comprehensive, environmentally-sensitive, integrated subdivision and development.
2. Efficient and economical use of land, resources, facilities, utilities and services.
3. Clustered development that enhances neighborhood character, avoids the fragmentation of and adverse impacts to significant natural resources, and maximizes functional open space for farming, forestry and outdoor recreation.
4. Concentrated, compact, mixed use, pedestrian-scale development that maintains a traditional village character in the Underhill Flats Village Residential District.
5. Affordable and senior housing development.
6. Energy efficiency and the sustainable use of renewable energy resources.

B. To achieve these objectives, the Development Review Board (DRB) may modify the area, density and dimensional requirements of applicable zoning provisions under these regulations concurrently with the approval of a subdivision plan and plat under Article VII.

Section 9.2 Applicability

A. Planned unit developments (PUDs) consisting of mix of development types, are allowed in the Underhill Flats Village, Rural Residential, and Water Conservation Districts. Planned Unit development is prohibited in the Mt Mansfield Scenic Preservation and Soil and Water Conservation Districts.

B. Planned residential developments (PRDs) consisting predominantly of residential development, are allowed in the Underhill Flats Village, Rural Residential, Water Conservation, Mt Mansfield Scenic Preservation, and Soil and Water Conservation Districts.

C. An applicant may apply for PUD or PRD review as allowed by district in association with the submission of an application for subdivision review under Article VII.

D. To encourage integrated master planning, a PRD or PUD may include multiple adjoining properties in common ownership, or in separate ownership if a joint application by all property owners is submitted.

E. PUD or PRD approval shall not exempt subsequent development from site plan or conditional use review under Article V, as applicable under these regulations. Site plan or conditional use review may be conducted concurrently with final subdivision and planned development review.

Section 9.3 Application Requirements

A. In addition to the application requirements for preliminary subdivision review (see Section 7.5), the application for PUD or PRD review also shall include:

1. A survey of the property to be developed.

2. A master plan for any PUD or PRD that includes four or more lots or that will be developed in phases. At minimum the master plan shall include subdivision plans and narratives that depict and describe:

    a. The location and type of existing and proposed structures and uses within the planned development, including the location of existing building footprints and proposed building envelopes (or individual building footprints) designated in accordance with Section 8.2.

    b. The location, extent and existing and proposed use of open space designated in accordance with Sections 8.3 and 8.4, to include natural and cultural resources to be conserved within the project area.

    c. The overall intensity (level) of use at build-out, including the projected number of residents or occupants, trip generation rates, and the maximum design capacity of existing and proposed buildings, infrastructure, facilities and services.

    d. The location of internal and connecting access roads (rights-of-way), parking areas, walkways and paths.

    e. The location and type of any on-site renewable energy, water, wastewater and waste management systems.

    f. Any measures proposed to mitigate or offset adverse impacts resulting from higher densities of development allowed under density bonus provisions.

    g. A development schedule, including a proposed schedule for any phased development.

3. A statement setting forth the nature of all requested modifications, changes or supplementations to the zoning provisions of these regulations including, but not limited to, proposed increases in the allowed density of development and waivers or modifications of district dimensional standards.

4. A description of the number and types of structures and uses to be included in the PUD or PRD, including building elevations and exterior design specifications.

5. Density calculations used to determine the overall density of development within the PRD or PUD, in accordance with the requirements of Section 9.5.C; and density calculations for that portion of the PRD or PUD to be developed.

6. Management plans for any natural areas or open space to be conserved, and for all common areas, facilities and services within the PRD or PUD, to include a description of ownership, use, and long-term maintenance or management, and associated legal agreements, easements or covenants;

7. For projects that include affordable housing, as defined under Section 11.2, associated management plans and legal agreements that ensure the long-term affordability of such units which, at minimum, shall be for 15 years from the date of construction.

8. For projects that incorporate adjoining parcels in separate ownership, evidence of established and proposed ownership and interests in land, and a final master plan, survey plat, and phasing schedule that depict the manner in which adjoining parcels will be developed over time in a unified, cohesive, integrated and environmentally sensitive manner.

Section 9.4 Review Process

A. Applications for PUD or PRD approval shall be reviewed by the Development Review Board concurrently with an application for subdivision review, in accordance with the review process for major subdivisions under Article VII and the following:

1. Approved modifications and other conditions of approval shall be specifically identified in the written decision granting subdivision and planned development approval and noted on or appended to the survey plat and recorded in the land records.

2. If the application of PUD or PRD provisions results in land and/or facilities to be held in common, and/or to be reserved for the preservation of open space, it must meet associated management, legal and recording requirements for such lands and facilities under Sections 8.3, 8.4 and 8.8.

3. The DRB, in approving modifications from zoning density and dimensional requirements, may condition the approval as necessary to mitigate the adverse impacts of higher density development on significant natural, cultural and scenic resources (under Section 8.3), transportation facilities (Section 8.6), public facilities and services (under Section 8.7) and neighboring properties. These may include:

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

b. Increases or decreases in lot sizes, setbacks and building heights near adjoining properties.
c. Landscaping, screening or buffer areas.
d. Other mitigation measures as recommended by the applicant, state or town officials, or other interested persons during the hearing process.

4. The DRB, in accordance with Sections 7.6 and 10.7, may also require the applicant to demonstrate the fiscal ability to install and maintain approved improvements, through the provision of a bond or other surety acceptable to the Underhill Selectboard.

Section 9.5 General Standards

A. In addition to meeting all applicable subdivision review standards under Article VIII, a proposed PUD or PRD shall meet the following standards:

1. The PUD or PRD shall be consistent with the goals and policies of the Underhill Town Plan currently in effect, the purpose of the zoning district(s) in which it is located, and all applicable regulations not modified through PRD or PUD review and approval;

2. The PUD or PRD shall present an environmentally sensitive, effective and unified treatment of the site(s), that:

   a. locates and clusters development on the most developable portions of the site(s), and excludes from development areas of very steep slope (>25%); surface waters, wetlands and associated buffer areas in accordance with Section 8.2 and these regulations;

   b. designates functional open space which meets the requirements of Sections 8.3 and 8.4, and, to the extent physically feasible, is contiguous with such land on adjoining parcels and incorporates significant natural, cultural and scenic resources identified for protection;

   c. establishes or reinforces planned patterns and densities of development for the zoning district(s) in which it is located, including lot size and layout, a pedestrian-scale and orientation; and connections to existing roads, utility corridors, sidewalks and pedestrian paths;

   d. integrates vehicular and pedestrian circulation with neighboring properties and public rights-of-way; and

   e. minimizes site disturbance and infrastructure development costs and, through lot layout, orientation and site design maximizes opportunities for energy efficient design and access to and the sustainable use of renewable energy resources.

3. Development within a PUD or PRD shall be set back, buffered, landscaped and/or screened as required to maintain district character; and to minimize adverse physical or visual impacts to significant natural, cultural and scenic features, and adjoining properties, uses, and public rights-of-way.

B. **Allowed Uses**. PUDs and PRDs may involve the creation of separate building lots and/or development in which multiple buildings or uses are located on a single parcel in common ownership, however allowed uses shall be limited as follows:

1. **PUDs**. PUDs shall be designed to accommodate a mix of residential, commercial or other uses allowed within the zoning district(s) in which it is located. PUDs also may include, as accessory uses or structures, common areas and facilities for use by occupants of the PUD and/or the general public.

2. **PRDs**. PRDs shall be designed for residential use only. Dwelling units may be of varied types, including single family and accessory dwellings, two-family dwellings, multi-family dwellings and associated accessory structures and uses, as allowed within the zoning district(s) in which they are located. PRDs also may include, as accessory structures or uses, common areas or facilities for use by residents of the PRD.

3. Within some zoning districts, specified uses may be allowed only within a PRD or PUD, as specified under Article II.

C. **Density Calculations.**

1. The maximum number of building units or lots within a PRD or PUD shall not exceed the number which could be developed on a parcel under applicable zoning regulations, unless otherwise specifically approved by the Development Review Board under Section 9.6.

2. 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 PRD or PUD is located. This calculation of the site's overall "yield" shall be used to determine the number of building units or lots that may be clustered or grouped at higher densities on those portions of the parcel that are suitable for development.

3. For PRDs or PUDs within two or more zoning districts, the allowed overall density of development shall be sum of the allowed density calculated for each area of the PRD or PUD within a particular zoning district, using the dimensional standards for that district; however building lots or units may be transferred from that portion of the parcel within the lower density zoning district(s) to developable areas of the parcel within the higher density zoning district(s).

4. For PRDs or PUDs on two or more adjoining parcels, the allowed overall density shall be calculated as the sum of the allowed density for each lot, however building lots or units may be transferred from one parcel to developable areas on another parcel.

Section 9.6 Density Bonuses

A. The DRB may, at the request of the applicant, grant one or more density bonuses according to the following schedule for clustered development that meets stated objectives under Section 9.1 and below, if the applicant clearly demonstrates that the developable portion of the parcel(s) and supporting roads, infrastructure, facilities and services can accommodate higher densities of development. Density bonuses, as applied in combination, shall not increase the overall density of development by more than 100%, based on the number of dwelling units for residential development ("yield" density calculated under section 9.5.C), or the maximum building coverage for nonresidential development.

1. **Open Space.** A density bonus of up to 50% may be considered for PUDs or PRDs that retain 60% or more of the total land area as protected, undeveloped open space designated in accordance with Sections 8.3 and 8.4.

2. **Public Dedication**. A density bonus of up to 50% may be considered for PUDs or PRDs that include the permanent dedication of land, interests in land, or facilities (e.g., for public parks, recreation paths, community buildings, resource protection, etc.) to the municipality, the state, or other federal agency or nonprofit organization for public access and use.

3. **Affordable Housing.** A density bonus of up to 50% may be considered for PUDs or PRDs that meet the definition of affordable housing development as defined under Section 11.2, as determined using current federal housing and income data.

4. **Group Net-Metering**. A density bonus of up to 50% may be considered for PUDs or PRDs that incorporate group net-metered renewable energy facilities (e.g., solar collectors, wind turbines) which are designed to provide at least five percent of the average annual energy consumption of each unit within the development, subject to facility approval by the Vermont Public Service Board.

5. **Building Design**. A density bonus of up to 25% may be considered for PUDs or PRDs that incorporate one or more of the following design elements, as certified by a qualified professional architect or engineer licensed by the state:

    a. Energy efficient building design that exceeds minimum state energy efficiency requirements for residential and commercial buildings (e.g., LEED, Energy Star Homes, Vermont Builds Greener Program).

b. Residential development in which single family dwelling units do not exceed 1,500 square feet, and/or two- and multi-family dwelling units do not exceed 1,200 square feet of habitable floor area.

c. 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 American with Disabilities Act accessibility guidelines.

ARTICLE X. ADMINISTRATION & ENFORCEMENT

Section 10.1 Permits & Approvals

A. **Permit Requirements**. No land development or subdivision of land, as defined under Section 11.2, may commence in the Town of Underhill until all applicable municipal land use permits and approvals have been issued as provided for under the Act [§4446] and these regulations, unless the development is specifically exempted from municipal regulation under Section 10.2. Municipal land use permits and approvals under these regulations include:

1. **Zoning permits** issued by the Zoning Administrator under Section 10.3 for all development, including signs under Section 3.16.
2. **Access approval** issued by the Development Review Board under Section 3.2 for access to pre-existing lots that do not have frontage on public roads or public waters.
3. **Site plan approval** issued by the Development Review Board under Section 5.3 for all permitted uses that require site plan review.
4. **Conditional use approval** issued by the Development Review Board under Section 5.4 for all conditional uses listed under Article II zoning district tables, and for other development as specified in these regulations
5. **Subdivision approvals**, issued by the Development Review Board under Sections 7.5 and 7.6 for the subdivision or re-subdivision of land.
6. **Planned residential or planned unit development (PUD or PRD) approval** under Section 9.4 for planned development, in association with subdivision approval.
7. **Certificates of occupancy** issued by the Zoning Administrator under Section 10.4(A), for development for which a zoning permit has been issued prior to occupancy or use; and
8. **Certificates of compliance** issued by the Zoning Administrator under Section 10.4(B), as required by the Development Review Board in association with final subdivision approval, following the completion of required improvements.

B. **Additional Permits and Approvals**. Additional municipal, state and federal permits or approvals may be required for activities associated with land development and subdivision including, but not limited to the following:

1. **Highway Permit**s issued by the Underhill Selectboard to access or work within town highway rights-of-way, or the Vermont Agency of Transportation (VTrans) to access or work within the VT Route 15 right-of-way.

2. Municipal "Certificates of Approved Location" issued by the Selectboard for salvage yards under these regulations (see Section 4.17), and as regulated by the state.

3. A variety of state permits or certifications including but not limited to: wastewater (septic) system and potable water supply permits, construction and stormwater permits,

wetlands permits, stream alteration or crossing permits, public health and safety permits, child care facility licenses and Act 250 permits.

a. As required under the Act [§4449(e)], municipal application forms and municipal land use permits or approvals issued under these regulations shall include a statement, in content and form approved by the Secretary of the Agency of Natural Resources, that state permits may be required and that the applicant or permittee should contact the state's regional permit specialist or individual state agencies to determine which state permits must be obtained before any construction may commence.

b. The Zoning Administrator or Development Review Board may require that an applicant submit a state project review sheet with their application that identifies state and federal permits to be obtained by the applicant.

4. Documentation that state, federal and other municipal permits and approvals have been obtained by the applicant may be required, as applicable, prior to:

a. the issuance of a certificate of occupancy or compliance under Section 10.4;
b. submitting an application for final subdivision review under Section 7.6, unless waived by the Development Review Board; and
c. recording a subdivision plat in the land records of the town under Section 7.7.

C. **Coordinated Review**. The Zoning Administrator will coordinate the development review process on behalf of the Town of Underhill, refer applications to the appropriate board and officials, and provide application forms, checklists, information and assistance to applicants.

1. The Zoning Administrator will direct anyone applying for a municipal land use permit to contact the state's regional permit specialist to ensure timely action on any required state or federal permits. It remains the obligation of the applicant to identify, apply for and obtain state and federal permits.

D. **Revocations**. In accordance with the Act [§4455], on petition by the town the Environmental Division of the Superior Court may revoke a municipal land use permit issued by the town if it determines that the permittee violated the terms of the permit or obtained the permit based on misrepresentation of material fact.

Section 10.2 Exemptions

A. The following uses and structures have been determined to impose no impact or a de minimus impact on the surrounding area and the overall pattern of land development in the town in accordance with the Act [§4446] and, unless otherwise regulated under the Flood Hazard Area Overlay District (Article VI), are exempted from these regulations. Outside of Special Flood Hazard Areas, no municipal permits or approvals shall be required for:

1. The normal maintenance and repair of existing structures, utilities and infrastructure which does not result in any expansion or relocation, including any change to the footprint or height of a structure, or a change in use.

2. Residential entry stairs (excluding decks and porches), handicap ramps, walkways, and fences or walls less than six feet in height which do not obstruct public rights-of-way, or interfere with corner visibility or sight distances for vehicular or pedestrian traffic (see Section 3.5).

3. Exterior patios constructed without a permanent foundation.

4. Minor fill, grading or excavation that is incidental to regular road and driveway maintenance (including culvert replacements and ditching), and to residential lawn and yard maintenance (e.g., for septic systems, gardens or landscaping) and which does not change the existing elevation of land by more than two feet over a total area of no more than 10,000 square feet.

5. Resurfacing an existing driveway, or a road within an existing or approved right-of-way, that does not result in driveway or road widening or relocation.

6. Recreational trails or paths located outside of required stream and wetland buffer areas under Section 3.19 that do not involve or require the development, construction or use of structures or parking areas (e.g., walking, hiking, cross-country skiing and/or snow mobile trails).

7. One accessory structure per lot, with written notification to the Zoning Administrator, provided that the structure does not exceed 200 square feet in floor area and 10 feet in height and meets all setback distances for the district in which it is located.

8. Transit or bus stop shelters approved by the Underhill Selectboard or the Vermont Agency of Transportation, which do not exceed 200 square feet in area and 12 feet in height, are set back at least five feet from edge of the travel lane, and do not otherwise interfere with corner visibility or sight distances for vehicular traffic.

9. Signs specifically exempted from these regulations under Section 3.16.

10. Garage sales, yard sales, auctions or related activities not exceeding three consecutive days, nor more than 12 days in any calendar year.

11. A home office within a principal dwelling or accessory building that is carried on by a resident of that dwelling, and which involves no signs, public access or outdoor storage or displays (see Section 4.12).

12. Certain temporary structures and uses exempted under Section 4.19 of these regulations, with written notification to the Zoning Administrator.

B. The following uses are specifically exempted from local land use and development regulations in accordance with the Act [§§4412, 4413]. No zoning permit or approval shall be required for:

1. Accepted agricultural and best management practices (AAPs, BMPs) as those practices are defined by the Secretary of the Agency of Agriculture, Food and Markets, including farm structures as defined under the Act [§4413]. Written notification, including a sketch plan showing structure setback distances from road rights-of-way, property lines, and surface waters shall be submitted to the Zoning Administrator prior to any construction, as required under AAPs. Such structures shall meet all setback requirements under these regulations, unless waived by the Secretary.

2. Accepted management practices (AMPs) for silviculture (forestry) as defined by the Commissioner of Forests, Parks, and Recreation.

3. Public utility power generating plants and transmission facilities regulated by the Vermont Public Service Board under 30 V.S.A. §248, including net metered renewable energy facilities (e.g., wind generators, solar panels).

4. Telecommunications facilities as defined under 30 V.S.A. §248a, when and to the extent that jurisdiction for such facilities are assumed by the Public Service Board.

5. Hunting, fishing and trapping on public or private land as specified under 24 V.S.A. §2295. This specifically does not include facilities that support such activities, such as firing ranges and rod and gun or fish and game clubs, which are subject to these regulations.

C. Decisions of the Zoning Administrator as to whether a use is exempt from permit requirements under this section may be appealed to the Development Review Board under Section 10.5.

Section 10.3 Zoning Permit

A. **Applicability**. No land development subject to these regulations shall commence in the Town of Underhill until a zoning permit has been issued by the Zoning Administrator, in accordance with the Act [§4449].

B. **Application Requirements**. The application for a zoning permit must be submitted to the Zoning Administrator on forms provided by the town, along with any application fees as established by the Underhill Selectboard. In addition, the following will be required as applicable:

1. Applications for permitted uses shall include a statement describing the existing and intended use of the land and structures and/or any proposed structural changes, and be

accompanied by a copy of a sketch plan, no smaller than 8.5” x 11", drawn to scale, that accurately depicts the following:

a. the dimensions of the lot, including existing and proposed property boundaries;
b. the location, footprint, and height of existing and proposed structures and additions;
c. the location and dimensions of existing and proposed accesses (curb cuts), driveways and parking areas;
d. the location of existing and proposed easements, rights-of-way and utilities;
e. setbacks from property boundaries, road rights-of-way, surface waters, and wetlands;
f. the location of existing and proposed water and wastewater systems; and
g. such other information as may be needed to determine compliance with these regulations as specified on application checklists provided by the Zoning Administrator.

2. For development requiring one or more approvals from the Development Review Board and/or Selectboard prior to the issuance of a zoning permit, application information and fees shall be submitted concurrently with the application for a zoning permit. The Zoning Administrator shall refer the application to the appropriate board or municipal official following submission.

3. Additional copies of applications for development within Special Flood Hazard Areas under Article VI, as provided by the applicant, must be forwarded by the Zoning Administrator to the State Floodplain Coordinator within 10 business days of receipt of the application. All other applications that require referral to a state agency shall be done by the applicant with evidence of that submission provided to the Zoning Administrator prior to the issuance of any zoning permit.

4. The Zoning Administrator or Development Review Board may reject an application that misrepresents any material fact, in accordance with the Act [§4470a].

C. **Issuance of Zoning Permits**. A zoning permit shall be issued by the Zoning Administrator only in accord with the following provisions:

1. No zoning permit shall be issued by the Zoning Administrator for any use or structure that requires approval of the Development Review Board (DRB) until DRB approval has been obtained. DRB decisions, including approvals, may be appealed under Section 10.5; however, administrative zoning permits issued by the Zoning Administrator for DRB-approved development cannot be separately appealed under Section 10.5.

2. No zoning permit shall be issued by the Zoning Administrator for the development of a lot for which subdivision approval is required until subdivision approval has been granted by the DRB and, where also required, a certificate of compliance has been issued in accordance with Section 10.4.

3. For uses requiring state agency referral, no zoning permit shall be issued until a response has been received from the state, or the expiration of 30 days following the submission of the application to the state, whichever is sooner.

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

5. Within 30 days of receipt of a complete application, including all application materials, fees and required approvals, the Zoning Administrator shall act to either issue or deny a zoning permit in writing, or to refer the application to the Development Review Board. If the Zoning Administrator fails to act within the 30-day period, on appeal to the DRB a permit shall be deemed issued on the 31st day.

6. All zoning permits shall include a statement of time within which appeals may be taken under Section 10.5; and shall require the posting of a notice of permit, on a form prescribed by the town, within view of the nearest public right-of-way most nearly adjacent to the subject property until the time for appeal has expired.

7. The Zoning Administrator shall deliver a copy of the permit to the Listers and post a copy of the permit at the town office within three days of the date that the permit is issued. The permit shall be posted for a period of 15 days from the date of issuance.

D. **Effective Dates and Permit Renewals**

1. **Zoning Permits**. No zoning permit shall take effect until the time for appeal under Section 10.5 has passed or, in the event that a notice of appeal is properly filed, until the appeal has been decided. Permits shall remain in effect for one year from the date of issuance, unless the permit specifies otherwise.

   a. Development authorized by a zoning permit shall be substantially commenced within this period or the zoning permit shall become null and void, unless a permit extension is obtained by the permittee.

   b. A one-year administrative extension may be granted by the Zoning Administrator if the extension is requested prior to the permit expiration date and the Zoning Administrator determines that there was reasonable cause for delay in starting development. "Reasonable cause for delay" shall be based on a determination that:

      i. The delay is the result of delays in a state or federal permitting process; or

      ii. The applicant has made a good faith effort to exercise his rights under the permit and, though the use or actual construction of structures authorized

permit has not begun, the permittee is conducting work at the site in furtherance of the permitted project.

c. Only recording fees shall be assessed for an administrative extension.

d. A one-year permit extension granted under this subsection is not renewable. Should the permittee fail to substantially commence the project within the one-year extension period, he or she will be required to submit a new application for development.

2. **DRB Approvals**. Development Review Board approvals shall remain in effect as follows:

a. **Subdivision Approval**. Final subdivision approval by the DRB shall remain in effect and run with the land, and legally recorded subdivision plats, as approved by the DRB, shall not expire; however mandatory lot merger requirements under Section 3.8 may apply to undeveloped lots that become nonconforming under subsequent zoning amendments. For purposes of these regulations, any lot approved by the DRB as part of a planned unit development under Article IX is considered a conforming lot.

b. **Site Plan and Conditional Use Approval**. Site plan and conditional use approval by the DRB shall expire with the expiration of the zoning permit, and may be extended only in accordance with Subsection D.1 above; or as provided for abandoned structures under Section 3.1. Once approved uses or structures are established, site plan and conditional use approvals shall remain in effect and run with the land.

c. **Variance Approval**. Variance approval expires with the expiration of a zoning permit. Variance approval shall remain in effect and run with the land for structures or structural alterations that are constructed in strict compliance with the conditions of variance approval.

Section 10.4 Certificates of Occupancy & Compliance

A. **Certificate of Occupancy**. A certificate of occupancy issued by the Zoning Administrator is required prior to the use or occupancy of land, a principal structure, or part thereof, for which a zoning permit has been issued. The purpose of this certificate is to ensure that the use or structure, as established, conforms to these regulations and the conditions of approval.

Certificates of occupancy shall not be required for certain exterior residential accessory structures, unless those structures are located within a Flood Hazard Overlay District (Special Flood Hazard Areas). Those exterior residential accessory structures, outside of the Flood Hazard Overlay District (Special Flood Hazard Areas), which are exempt from obtaining a certificate of occupancy are: satellite dishes, decks, porches, patios, play structures, tree houses, doghouses, barns, sheds, garages, carports, lean-tos, storage buildings, swimming

pools, tennis courts and other paved ball courts. All exterior residential accessory structures must, however, comply with all other requirements of these regulations and conditions of approval.

1. If required, the application for a certificate of occupancy shall be provided with the zoning permit issued by the Zoning Administrator. The applicant shall submit the application, including as-built drawings where applicable, to the Zoning Administrator upon substantial completion of required improvements, but prior to the use or occupancy of the land or structure.

    a. **Substantially Complete**. A development shall be deemed substantially complete if it meets all applicable permit requirements and conditions, and is habitable or otherwise able to be occupied or used for its intended purpose.

2. A certificate of occupancy shall not be issued until:

    a. The applicant documents that all necessary permits and approvals required by these regulations, including applicable state and federal permits, have been obtained.

    b. The applicant provides certification from a professional engineer or site technician (designer) licensed by the state that wastewater and water supply systems have been installed and tested as approved by the state.

    c. The applicant provides certification from a licensed engineer that all permitted road and driveway improvements have been completed in conformance with approved plans.

    d. The Zoning Administrator determines that the development has been completed in conformance with permits and approvals, from as-built drawings submitted by the applicant and/or site inspection.

3. The Zoning Administrator shall inspect the premises to ensure that all work has been completed in conformance with the zoning permit and associated approvals prior to issuing a certificate.

4. A certificate of occupancy shall be issued or denied by the Zoning Administrator within 14 business days of receipt of the complete application. If the Zoning Administrator fails to either grant or deny the certificate of occupancy within 14 days of the submission of an application, the certificate, on appeal, shall be deemed issued on the 15th day.

5. Certificates of occupancy shall be posted, delivered and recorded in the Underhill land records and in the zoning file for the property in the same manner as zoning permits under Section 10.3.

6. The Zoning Administrator's decision to issue or deny a certificate of occupancy may be appealed to the Development Review Board under Section 10.5.

B. **Certificate of Compliance**. After the effective date of these regulations, the Development Review Board may require, as a condition of final subdivision approval under Section 7.6, that a certificate of compliance be obtained to ensure all required improvements, including road and other infrastructure improvements, have been installed in accordance with the conditions of subdivision approval, prior to any further land development. If an approved subdivision is developed in phases, a certificate of compliance may be issued for each phase of development.

1. The application for a certificate of compliance shall be submitted to the Zoning Administrator with as-built plans prepared by a licensed engineer, drawn to scale, that show the locations of all survey monuments and improvements as constructed or installed. The Zoning Administrator may rely on application information submitted for the subdivision as approved to determine whether as-built drawings conform to the subdivision plat and other conditions of approval.

2. The Zoning Administrator may conduct one or more site inspections to ensure that all improvements have been installed as represented, in conformance with these regulations and the conditions of approval.

3. A certificate of compliance shall be issued or denied in writing by the Zoning Administrator within 14 business days of receipt of the complete application. If the Zoning Administrator fails to either grant or deny the certificate of occupancy within 14 days of the submission of an application, the certificate, on appeal, shall be deemed issued on the 15th day.

    a. If the Zoning Administrator determines that improvements as constructed or installed do not meet specific conditions of subdivision approval, a certificate of compliance shall be denied, and cannot be issued until a subdivision amendment has been applied for and obtained by the applicant under Section 7.8.

Section 10.5 Appeals

A. **Zoning Administrator Decisions.** An applicant or other "interested person" as defined under the Act [§4465] and Section 11.2 may appeal a decision or act of the Zoning Administrator within 15 days of the date of the decision or act by filing a notice of appeal with the Clerk of the Development Review Board, and by filing a copy of the notice with the Zoning Administrator.

1. **Notice of Appeal**. A notice of appeal filed with the Development Review Board 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.

2. **Variances**. A variance request under the Act [§4469] and Section 5.5 may be considered on appeal, or concurrently with site plan or conditional use review, as long as the requirements of this section are met. Applicants or appellants shall submit information sufficient for the DRB to make required findings under all variance criteria under Section 5.5 and, for development within Special Flood Hazard Areas, also under Section 6.8.

3. **Hearing**. The Development Review Board shall hold a public hearing on a notice of appeal within 60 days of its filing. The DRB shall give public notice of the hearing under Section 10.7, and shall mail a copy of the hearing notice to the appellant not less than 15 days prior to the hearing date.

4. In accordance with the Act [§4470], the Development Review Board may reject an appeal without hearing, and render a written decision that includes findings of fact, within 10 days of the filing of the notice of appeal, if the DRB determines that the issues raised by the appellant have been decided in an earlier appeal or are based on substantially or materially the same facts by or on behalf of the appellant.

5. All appeal hearings shall be open to the public. Any interested person or body may appear and be heard in person or be represented by an agent or attorney at the hearing. The hearing may be adjourned and continued by the Board from time to time, provided that the date and place of the adjourned hearing shall be announced at the hearing.

6. A decision on appeal shall be rendered within 45 days after the adjournment of the hearing. The decision shall be sent by certified mail to the appellant within the 45-day period. Copies of the decision also shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Zoning Administrator and the Town Clerk as part of the public records of the municipality, in accordance with Section 10.7.

7. The Selectboard shall set the fee for appeals of Zoning Administrator decisions. All costs incurred by the town in association with the appeal shall be borne by the appellant.

B. **DRB Decisions**. The applicant, appellant, or any other interested person who has participated in an appeal proceeding of the Development Review Board under this section may appeal a decision rendered by the DRB, within 30 days of such decision, to the Vermont Environmental Division of Superior Court in accordance with the Act [§4471].

1. "Participation" in a board proceeding shall consist of offering, through oral or written testimony, evidence of a statement of concern related to the subject of the proceeding.

2. The notice of appeal shall be filed by certified mailing, with fees, to the Environmental Court and by mailing a copy to the Zoning Administrator who shall supply a list of interested persons (including the applicant if not the appellant) to the appellant within five business days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person. If any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.

C. **Reconsiderations**. A request for reconsideration of a DRB decision may be submitted to the DRB by an interested party within 30 days of the date of the decision. The request must include new information that the DRB had not previously considered. In accordance with the Act [§4470], the DRB may reject the request for reconsideration without hearing and render a decision, including findings of fact, within 10 days of the filing of the application if the DRB determines that the issues raised on appeal have been decided in an earlier appeal, or involve substantially or materially the same facts by or on behalf of the appellant.

Section 10.6 Violations & Enforcement

A. **Violations.** In accordance with the Act [§§4451, 4452), the commencement or continuation of any land development, subdivision or use that is not in conformance with the provisions of these regulations shall constitute a violation. All violations shall be pursued. Each day that a violation continues shall constitute a separate offense. The Zoning Administrator shall institute in the name of the Town of Underhill, any appropriate action, injunction or other proceeding to enforce the provisions of these regulations. All fines imposed and collected for violations shall be paid over to the town.

B. **Notice of Violation**. No action may be brought under this section unless the alleged offender has had at least seven days notice by certified mail that a violation exists, as required under the Act [§4451]. The warning notice shall state that:

1. a violation exists;
2. that the alleged offender has an opportunity to cure the violation within the seven days;
3. that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days; and
4. that action may be brought 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.

C. **Limitations on Enforcement**. An action, injunction or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required or duly recorded municipal land use permit may be instituted against the alleged offender if the

action, injunction or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred, and not thereafter, in accordance with the Act [§4454]. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted. No enforcement proceeding may be instituted to enforce an alleged violation of a municipal land use permit unless the permit or a notice of the permit has been recorded in the land records of the municipality in accordance with Section 10.7.

Section 10.7 Administrative Requirements & Procedures

A. **Appointments**. The following appointments shall be made by the Underhill Selectboard in association with the administration and enforcement of these regulations:

1. **Zoning Administrator (Administrative Officer).** The Selectboard shall, from nominations submitted by the Planning Commission, appoint a Zoning Administrator for a term of three years. An acting Zoning Administrator may be appointed by the Selectboard from Planning Commission nominations who shall have the same duties and responsibilities of the Zoning Administrator in the Zoning Administrator's absence. The Zoning Administrator shall literally administer and strictly enforce the provisions of these regulations, and in doing so shall inspect development, maintain records, and perform other related tasks as is necessary and appropriate.

2. **Development Review Board**. Development Review Board (DRB) members and alternates shall be appointed by the Selectboard for specified terms. The DRB shall adopt rules of procedure and rules of ethics with regard to conflicts of interest to guide its official conduct. The DRB shall have all powers and duties as set forth in the law and these regulations.

3. **Conservation Commission**. The Underhill Conservation Commission, in conformance with the Act [§4464] may, at its discretion, serve in an advisory capacity to the applicant and Development Review Board. For purposes of these regulations, the Commission may:

    a. Review applications and prepare recommendations on review standards under these regulations that are within the Conservation Commission's purview for consideration by the DRB at a public hearing on an application.
    b. Meet with applicants, interested parties, or both, attend site visits, and perform other fact finding that allows the Commission to prepare its recommendations.
    c. Inform applicants of any negative Commission recommendations prior to the public hearing, and suggest remedies to correct identified deficiencies in the application.

4. **Planning Commission**. Planning Commission members shall be appointed by the Selectboard. The Commission shall adopt rules of procedure and rules of ethics with regard to conflicts of interest to guide its official conduct. The Commission shall have the following duties in association with these regulations:

a. Prepare proposed amendments to these regulations, and consider proposed amendments submitted by others, include amendments submitted by petition.
b. Prepare and approve written reports on any proposed amendment to these regulations as required.
c. 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.

B. **Fee Schedule**. The Selectboard shall establish a schedule of fees to be charged in administering these regulations, with the intent of covering the town's administrative costs. Such fee schedule may be reviewed and revised periodically.

C. **Technical Review**. Should the Development Review Board or the Zoning Administrator require the assistance of an independent technical review when reviewing applications:

1. The Zoning Administrator or DRB shall prepare a scope for the technical review. The scope shall be strictly limited and relevant to specific review criteria upon which findings and a decision must be made under the regulations.
2. The review shall be conducted in a timely manner.
3. The review shall be conducted by an independent consultant who is clearly qualified and demonstrates necessary expertise in the pertinent field(s), and, where applicable, is licensed by the state.
4. The cost of the review shall be paid for by the applicant.

D. **Public Notice**. In accordance with the Act [§4464(a)], warned public hearings shall be required for site plan and conditional use review, appeals, variances, and preliminary and final subdivision review. Notice shall be the responsibility of the Zoning Administrator and shall be given not less than 15 days prior to the date of the public hearing by all of the following:

1. Publication of the date, place and purpose of the hearing in a newspaper of general circulation in the Town of Underhill.
2. Posting of the same information in the following three public places: the Underhill Town Hall, the Underhill Flats Post office; and the Underhill Center Post Office.
3. Posting of a notice of hearing within view from the public right-of-way nearest to the property for which the application is being made.
4. Written notification, sent by certified mail return receipt requested, to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way, which includes:

   a. a description of the proposed project,
   b. information that clearly informs the recipient where additional information may be obtained, and that
   c. participation in the local proceeding is a prerequisite to the right to take any subsequent appeal.

5. For hearings on subdivision plats located within 500 feet of a municipal boundary, written notification to the clerk of the adjoining municipality.

6. For applications in which a waiver or variance is sought regarding setbacks from a state highway, written notification to the Secretary of the Agency of Transportation.

7. Cost of all required notice shall be borne by the applicant.

E. **Meetings and Hearings**.

1. **Development Review Board**. All meetings and hearings of the Development Review Board, except for deliberative and executive sessions, shall be open to the public. The DRB shall adopt rules of procedure and rules of ethics that at minimum address the following, in accordance with the Act [§4461] and Vermont Open Meeting Law:

    a. The conduct of any meeting and the taking of any action.

    b. Quorums which shall be not less than a majority of the members of the DRB.

    c. The DRB shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating this, and shall keep records of its examinations and other official actions which shall be filed immediately in the Town Office as public zoning records.

    d. Public hearings shall be noticed and warned in accordance with Subsection D. In any regulatory hearing of the DRB there shall be an opportunity for each person wishing to achieve status as an interested person, for purposes of participation or appeal under Section 10.5 to demonstrate that the criteria for achieving such status are met. The Board shall keep a written record of the name, address, and participation of each of these persons.

    e. The DRB may recess the proceedings on any application pending submission of additional information, and should close evidence promptly after all parties have submitted requested information.

    f. No member of the DRB shall communicate on any issue in an application proceeding, directly or indirectly, with any party, party's representative, party's counsel, or any interested person in the outcome of the proceeding while the proceeding is pending without additional notice and opportunity for all parties to participate. All ex parte communications received by DRB members, all written responses to such communications, and the identity of the person making the communication shall be entered into the record.

g. Members of the DRB shall not participate in the decision on an application unless they have heard all the testimony and reviewed all the evidence submitted in the hearing. This may include listening to a recording, or reading the minutes or transcripts of testimony they have missed, and reviewing all exhibits and other evidence prior to deliberation.

2. **Conservation Commission**. Meetings of the Conservation Commission to review an application under these regulations shall comply with Vermont's Open Meeting Law and requirements of the Commission's rules of procedure, but shall not be conducted as public hearings before a quasi-judicial body. Commission recommendations may be presented in writing at or before Development Review Board public hearing on the application, or may be presented orally at the public hearing.

F. **Decisions**. The Development Review Board may recess proceedings on any application pending the submission of additional information. The DRB will close evidence promptly after all parties have submitted requested information, and shall issue a decision within 45 days after the adjournment of the hearing. Failure to issue a decision within the 45-day period, on appeal, shall be deemed approval and shall be effective the 46th day.

1. 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 under Section 10.5.

2. DRB decisions shall also include a statement, in content and form approved by the Secretary of the Agency of Natural Resources, that state permits may be required and that the applicant or permittee should contact the state's regional permit specialist or individual state agencies to determine which state permits must be obtained before certificates of occupancy or compliance are issued, or any construction may commence.

3. In rendering a decision in favor of the applicant, the DRB may attach reasonable conditions and safeguards as it deems necessary to implement the purposes of the law, these regulations, and the town plan currently in effect. These may include, as conditions of approval:

a. The submission of a three-year performance bond, escrow account, or other form or surety acceptable to the Underhill Selectboard, which may be extended for an additional three-year period with the consent of the owner, to assure the completion of a project, adequate stabilization, or protection of public facilities that may be affected by a project.

b. The requirement that no certificate of occupancy or certificate of compliance be issued for an approved development until required improvements have been satisfactorily installed in accordance with the conditions of approval, and all other

applicable municipal, state, and federal permits have been obtained by the applicant.

4. All decisions shall be sent by certified mail, within the required 45-day period, to the applicant or to the appellant on matters of appeal. Copies of the decision also shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Zoning Administrator and Town Clerk as part of the public record of the municipality, in accordance with Subsection G.

5. **Administrative Amendments**. Any decision issued by the Development Review Board may authorize subsequent changes or amendments to an approved project subject to administrative review by the Zoning Administrator, rather than DRB review, in accordance with the following, which shall be specified in the DRB's decision:

   a. The decision shall clearly specify the thresholds and conditions under which administrative review and approval shall be allowed.
   b. The thresholds and conditions shall be structured such that no new development shall be approved that results in substantial impact under the requirements of these regulations, or any of the thresholds or conditions set forth in the decision.
   c. No amendment issued as an administrative review shall have the effect of substantially altering the findings of fact of any DRB approval in effect.

   Any decision of the Zoning Administrator authorized in this manner may be appealed to the DRB in accordance with Section 10.5.

G. **Recording Requirements**.

1. Within 30 days of the issuance of a municipal land use permit or notice of violation, the Zoning Administrator shall deliver either the original, a legible copy, or a notice of the municipal land use permit or notice of violation to the Town Clerk for recording in the land records of the town generally as provided in 24 V.S.A. §1154(c), and file a copy in the Town Office in the zoning files. The applicant shall be charged for the cost of the recording fees.

2. For development within the Flood Hazard Area Overlay District, the Zoning Administrator shall also maintain a record of all permits, elevation certificates, elevations, floodproofing certifications and variance actions issued for development within the district as required under Section 6.9.

3. Approved subdivision plats and plans shall be recorded by the applicant in the town land records in accordance with the requirements of Section 7.7.

H. **Availability & Distribution of Documents**. Copies of these regulations, other related municipal regulations and ordinances, and the town plan shall be made available to the public during normal business hours in the Underhill Town Office.

ARTICLE XI. DEFINITIONS

Section 11.1 Terms & Usage

A. Except where specifically defined herein or in the Act [§4303], or unless otherwise clearly required by the context, all words, phrases and terms in these regulations shall have their usual, customary meanings.

B. In the interpretation of words and terms used, defined, or further described herein, the following shall apply:

1. the particular controls the general;
2. the present tense includes the future tense;
3. the word "shall" is mandatory; the words "may" and "should" are permissive;
4. the word "structure" includes, but is not limited to "building;"
5. the word "road" includes "street;" and
6. the word "lot" includes "parcel."

C. General definitions under Section 11.2 shall apply unless otherwise specified or required under these regulations:

1. For the purposes of flood hazard area management and regulation under Table 2.7 and Article VI, National Flood Insurance Program (NFIP) definitions contained in 44 CFR Section 59.1 are hereby adopted by reference and shall be used to interpret and enforce these regulations. Definitions of some commonly used terms are provided under Section 11.3.

2. For purposes of telecommunications facility regulation under Section 4.18, technical definitions under Section 11.4 shall apply.

3. Where specific definitions under Sections 11.3 and 11.4 differ from similar definitions under the Act [§4303] or these regulations, the more specific or program definitions shall control.

D. Any interpretation of words, phrases or terms by the Zoning Administrator may be appealed to the Development Review Board under Section 10.5. In such cases, the DRB shall base its decision upon the following definitions, state statute, common language, and the need for reasonable and effective implementation of these regulations. The DRB shall publish and update from time to time such written interpretations, to ensure consistent and uniform application of the provisions of these regulations.

Section 11.2 General Definitions

Accepted Agricultural Practices (AAPs): Accepted practices for agriculture, including farm structures other than dwellings, as currently defined by the Secretary of the Vermont Agency of

Agriculture, Food and Markets (see exemptions under Section 10.2). See also Agriculture, Farm Structure.

Accepted Management Practices (AMPs): Accepted practices for silviculture (forestry) as currently defined by the Commissioner of the Vermont Department or Forests, Parks and Recreation (see exemptions under Section 10.2). See also Forestry.

Access: A defined area of ingress and/or egress between a property and an abutting road right-of-way (e.g., a curb cut) or a surface water. See also Driveway, Road.

Accessory Dwelling: See Dwelling, Accessory.

Accessory Structure, Use: A structure or use that is clearly incidental, customary, and subordinate in size and overall appearance (except for barns) to the principal structure or use of land on the same lot. Examples: in-ground pools, ponds, garages, storage sheds, playhouses, tree houses, barns, satellite dishes, residential wind towers, etc. See also Dwelling, Accessory and Structure.

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

Adaptive Reuse: The rehabilitation or renovation of an existing historic structure, as listed on the Vermont Historic Sites and Structures Survey for the Town of Underhill, the National Register of Historic Places, or another list prepared and maintained by the town for this purpose, for another use as specified in these regulations (see Section 4.3).

Administrative Officer: The Underhill Zoning Administrator.

Affordable Housing: Housing that is either: (1) owned by its inhabitants, whose gross annual household income does not exceed 80 percent of the median income for the Burlington Metropolitan Statistical Area, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including principal, interest, taxes and insurance, is not more than 30 percent of the household's gross annual income; or (2) rented by its inhabitants whose gross annual household income does not exceed 80 percent of the median income for the Burlington Metropolitan Statistical Area, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including rent, utilities, and condominium association fees, is not more than 30 percent of the household's gross annual income. "**Perpetually affordable**" shall mean housing that meets the affordability requirements of these regulations for a minimum period of 99 years from the date of first sale or lease.

Affordable Housing Development: A housing development in which at least 20% of the units, or a minimum of five units, whichever is greater, are affordable housing units.

Agribusiness: An enterprise that supplies raw materials, feed, equipment or supporting services to agricultural producers, or engages in the collection, processing, storage and distribution of agricultural commodities. An agribusiness may be established on an operating farm, subject to these regulations.

Agriculture: As defined by the Vermont Secretary of Agriculture, Food and Markets, to include the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; the raising, feeding or management of livestock, poultry, equines, fish or bees; the operation of greenhouses; the production of maple sap; the on-site storage, preparation and sale of agricultural products principally produced on the farm; and the on-site production of fuel or power from agricultural products or wastes produced on the farm. The term shall also include commercial boarding and riding stables. See also Accepted Agricultural Practices, Farm Structure.

Agricultural Products: Products produced, prepared and/or processed from an agricultural operation including but not limited to milk, vegetables, fruits, flowers, potting or bedding plants, soil or compost, trees, shrubs, greens, maple syrup or other sap products, meat, poultry, eggs, fish, honey, and other bee products. This also includes products manufactured from these products, including cheese and other dairy products. See also Agriculture.

Agricultural Structure: See Farm Structure.

Agritourism: Activities conducted on a working farm and offered to the public or invited groups for the purposes of recreation, education, or active involvement in farm operations. Activities must be clearly related and incidental to on-site farming operations, and may include farm tours, hayrides, petting zoos, classes related to agricultural products or skills, tastings, the sale of farm products, and associated facilities. Guest accommodations may be provided on-site in association with a bed and breakfast or inn established under these regulations.

Alpine Ski Facility: An area and facility developed for downhill skiing, with trails and lifts, which may also include associated ticketing, parking, ski equipment sales and rentals, ski instruction, safety, patrol, snowmaking and maintenance facilities, and warming hut facilities to be accessed primarily by ski trails or service roads. Other facilities, such as commercial lodging, indoor recreation, cultural and restaurant facilities, which may support year-round use, may be allowed in association with an alpine ski facility subject to review as a mixed use (see Section 4.13) or a planned unit development (Article IX).

Alteration: Any relocation, structural change, rearrangement, or addition to a building or structure, excluding normal maintenance and repair activities. Alterations shall include any construction that changes the number of dwelling units, or increases the size of a building or structure, including its height, length, width, footprint, or gross floor area. It shall also include any increase in the number of bedrooms or bathrooms. See also Conversion, Improvement, Substantial Improvement.

Applicant: The owner of land or property proposed to be subdivided and/or developed in accordance with these regulations or his or her duly authorized representative. Any party with a legal interest in land subdivision and/or development may apply for a permit in cooperation with the owner of the property. See also Authorized Agent, Interested Person.

Approval: A written decision issued by the Underhill Development Review Board within the statutory time limit, or in the event of the DRB's failure to act within the specified time limit, a certification of such failure to act issued by the Municipal Clerk, as attached to the permit application and recorded in the land records of the municipality.

Authorized Agent: A person or group of persons who is duly authorized in writing by an applicant or subdivider to act on his/her behalf.

Bar: See Restaurant.

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

Bed & Breakfast (B&B): A single family dwelling occupied by the owner or operator, in which no more than five guest rooms accommodating up to ten guests within the dwelling and/or in an accessory structure located on the same lot, are rented out to provide overnight accommodations to transient travelers. Individual cooking and eating facilities shall not be provided; breakfast shall be the only meal served and shall be limited to overnight guests. The bed and breakfast shall function as a private home with house guests. Parking requirements also apply (see Section 4.6). See also Commercial Lodging Facility, Inn.

Board: The Underhill Development Review Board, as established under the Act, unless otherwise specified.

Boundary (Lot Line) Adjustment: A change in the location of lot line(s) between adjoining parcels where no new lot is created, for purposes of transferring land between adjoining properties. A boundary adjustment shall not create a nonconforming lot or use (see Section 7.2). See also Subdivision.

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

Building: A structure having a roof supported by columns or walls and intended for the shelter or accommodation of persons, animals, goods, chattel or equipment. See also Structure.

Building Coverage: As specified by zoning district to mean either (1) that portion (percentage) of a lot area which is covered by buildings and other structures, to be calculated as the sum of all building or structure footprints divided by the lot area: (total building footprint/lot area) x

100 = % building coverage, or (2) the maximum total building footprint allowed per lot, to be calculated based on the sum of all building and structure footprints on that lot.

Building Envelope: Designated area(s) on a lot within which structures, parking and loading areas shall be located; and outside of which structures, parking or loading areas shall not be located. At minimum the building envelope shall be defined by required district setbacks and height limits; but may be also defined, as specified under these regulations, to exclude other portions of the lot (e.g., steep slopes, surface waters, wetlands, required buffer areas, designated open space).

Building Height: See Height.

Building Orientation: The location on a lot of a building or other structure in relation to road rights-of-way and, where present, adjoining and facing structures and/or designated open space areas, such as a common park or green.

Camp: A type of detached, seasonal dwelling unit which is not the primary residence of the owner or occupant, is occupied only on a part-time or seasonal basis, and which is structurally not suited for year-round occupancy. This definition shall include (1) a dwelling which is occupied no more than 180 days during any one (1) year period, and which lacks one or more of the basic amenities, services or utilities required for year-round or all weather occupancy, including but not limited to a winterized water system, insulated walls and roof, heating source, adequate water or wastewater disposal systems, or utility line connection, or (2) a dwelling that has been specifically permitted as a camp. For purposes of these regulations, a dwelling listed on the Underhill Grand List as a single family vacation residence (V1 or V2) as of the effective date of these regulations shall be deemed a seasonally occupied dwelling and may be deemed a camp under this definition, unless it has been permitted as a single family dwelling or it has been documented by the applicant and determined by the Zoning Administrator to be an existing single family dwelling. See also Dwelling, Accessory and Dwelling, Single Family.

Camper (Recreation Vehicle): Any vehicle used as temporary sleeping, camping or living quarters, which is mounted on wheels, a truck or a camper body, or towed by a motor vehicle, and includes a holding tank for the storage of sewage if bathroom facilities are present. This definition includes recreation vehicles such as motor homes and travel trailers, but specifically excludes mobile homes (see Section 4.4). See also Mobile Home, "Recreation Vehicle" as defined for purposes of flood hazard area management and regulation under Section 11.3.

Campground: A parcel of land upon which three or more cabins, lean-tos or yurts, or three or more campsites for occupancy by a camper or tent, are located as temporary, seasonal living quarters for recreation, education, or vacation purposes (see Section 4.5). See also Camper.

Capacity Study: An inventory of available natural and man-made resources (e.g., facilities, services), based on detailed data collection, which identifies the capacities and limits of those resources to absorb land development, as defined under the Act [§4303].

Cemetery: Land used or dedicated to the burial of the dead, including cremains. A cemetery may include as accessory structures an office, a chapel, mausoleums, columbaria, and maintenance facilities. An individual burial site on private land, registered with the Underhill Town Clerk in accordance with state law, is exempted from this definition. See also Funeral Home.

Change of Use: See Conversion.

Character of the Area: For purposes of these regulations, the "character of the area" or character of a neighborhood is the planned type, density and pattern of development for a particular area or neighborhood, as defined by zoning district purpose statements and clearly-stated goals, policies and objectives of the Underhill Town Plan that are specific to that area and/or the physical circumstances of development**.**

Clearing: The removal of existing vegetation, e.g., as part of site preparation for the installation of driveways, septic systems, building sites and construction or yard areas.

Commercial Lodging Facility: For the purposes of these regulations a bed and breakfast or an inn (see Section 4.6). See Bed & Breakfast, Inn.

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

Commission: The Underhill Planning Commission, as established under the Act, unless otherwise specified.

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

Community Center: A building used for recreational, social, and cultural activities which is not operated for profit and is intended primarily to serve the residents of the town or the development in which it is located.

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

Conditional Use: A use, which because of its nature and potential impacts to roads, traffic, community facilities and services, adjoining properties and uses, or the character of the area, may be allowed with conditions only upon approval of the Development Review Board.

Condominium: A form of ownership of real property that includes separate, individual ownership of portions of the property (e.g., units in an apartment building) and undivided or joint ownership of the remainder of the property (e.g., common areas, common land, shared infrastructure). For purposes of these regulations, condominium development must meet the same dimensional and density requirements as other types of land subdivision and development. See also Dwelling, Multi-family.

Conformance with the Plan: A subdivision or development that conforms to or implements specifically stated goals and policies of the Underhill Town Plan currently in effect; i.e., that, under the Act [§4303]:

(1) Makes progress toward attaining, or at least does not interfere with plan goals and policies,
(2) Provides for proposed land uses, densities and intensities of development contained in the municipal plan.
(3) Carries out, as applicable, specific proposals for community facilities, or other proposed actions contained in the municipal plan.

Construction Drawings: Drawings showing the as-built location, profile grades, size and types of drains, sewers, water mains, underground fire alarm ducts, underground power and telephone ducts, pavements, cross sections of streets, miscellaneous structures, etc.

Contiguous Land: (1) A parcel of land contained within a single, unbroken parcel boundary; or (2) two or more parcels which share a common parcel boundary or point. Where one or more existing road rights-of-way bisect an existing parcel, the right(s)-of-way may be considered a boundary dividing the parcel into two or more lots only if all portions of the parcel divided by the right(s)-of-way meet the minimum lot size requirement for the district in which they are located.

Contractor's Yard: A parcel of land with or without buildings thereon to be used for the storage of equipment, materials, and/or vehicles used in the operation of construction and related trades (see Section 4.7). See also Home Industry.

Conversion: A change in the existing use of land or a structure to a different use, with or without structural alteration. This includes but may not be limited to the conversion of camps or accessory dwellings to single family dwellings, or the conversion of a single family dwelling to a two-family or multi-family dwelling (see Section 3.3). See also Adaptive Reuse.

Coverage: See Building Coverage, Lot Coverage.

Cul-de-Sac: A road intersecting another road at one end, and terminated at the other end by a vehicular turnaround.

Cultural Facility: A museum, theater, concert hall, library or other establishment offering programs, performances or exhibits or cultural, educational, historical, or scientific interest, excluding movie theaters as a principal use. See also Recreation, Indoor.

Curb Cut: See Access.

Day Care Facility: An establishment, except as supported in whole by tax funds, operated as a business or service on a regular or continual basis, whether for compensation or not, which provides care, protection, supervision and/or education for children or adults for periods of less than 24 hours. This definition shall include all facilities that are required to be licensed by the State of Vermont as a private kindergarten, nursery school, and/or day care facility except for home child care facilities (see Section 4.8). See also Group Home, Home Child Care, Residential Care Facility.

Deer Yard: An area designated by the Vermont Department of Fish and Wildlife as wintering habitat for white tailed deer.

Degree of Nonconformance: The degree to which a structure, or portion thereof, does not meet required dimensional standards (e.g., minimum setback distances) as specified in these regulations For purposes of these regulations, any enlargement or other structural alteration which extends the footprint, height or volume of a structure within a required setback distance, or above the maximum allowed height (i.e., the amount of encroachment), shall be considered to increase the degree of noncompliance. See also Nonconforming Structure.

Demolition: The razing of more than 50% of a structure.

Density: The maximum number of dwelling units or gross square footage of building per acre of lot area, excluding the land area within existing and proposed road rights-of-way.

Development: See Land Development. Also see DEVELOPMENT as defined for purposes of flood hazard area management and regulation under Section 11.3.

Development Right: The right to build or develop on a specific parcel of land in accordance with these regulations for the district in which the parcel is located.

DRB: Underhill Development Review Board as established under the Act.

Drive-through: An establishment which, by design, physical facilities, and/or service encourages or permits customers to receive services, obtain goods, or be entertained while remaining in their motor vehicles.

Driveway: A private travel way, including an easement or right-of-way serving up to three (3) parcels, which provides vehicular access to a parking area(s) associated with the principal structure or use (see Section 3.2). See also Access, Road.

Dwelling, Accessory: A secondary dwelling unit established in conjunction with and clearly subordinate to a single family dwelling, which is retained in common ownership, is located within, attached to or on the same lot as the primary dwelling, and which otherwise meets applicable requirements of these regulations (see Section 4.2). See also Dwelling, Two-Family.

Dwelling, Seasonal: See Camp.

Dwelling, Multi-Family: A building or portion thereof containing three (3) or more dwelling units. See also Dwelling Unit and Dwelling, Two Family.

Dwelling, Single Family: (1) A detached building containing one (1) principal dwelling unit, and up to one (1) accessory dwelling as allowed under Section 4.2. See also Dwelling, Accessory and Group Home.

Dwelling, Two-Family: A detached building, such as a duplex, that contains two principal dwelling units.

Dwelling Unit: A building, or portion thereof, designed, constructed, or used as separate living quarters for one (1) family, including any domestic employees employed on the premises, which includes food preparation, sleeping and sanitary facilities. This definition specifically excludes boarding or rooming houses, residential care facilities, inns and hotels. See also Family.

Dwelling Unit, Affordable: See Affordable Housing.

Dwelling Unit, Elderly: See Elderly Housing.

Easement: A legal right (such as a right of way) or interest in land owned by another that entitles the holder to limited use or enjoyment of a designated portion(s) of the property for a specified purpose.

Easement, Conservation: A type of easement that restricts land development, including the subdivision or development of land, as necessary to protect specified conservation resources or values.

Elderly Housing: Housing development that meets one or more of the following requirements, in accordance with the Federal Fair Housing Act: (1) Housing specifically designed for and occupied by elderly persons under a federal or state housing program. (2) Housing occupied only by persons who are 62 years or older. (3) A housing development in which 80% or more of the dwelling units are to be occupied by at least one person who is 55 or older, under adopted policies to house persons who are 55 years or older. Elderly housing may include, as accessories, congregate dining and recreational facilities and assisted living services. See also Residential Care Facility.

Elevation Limit: The prohibition of new structures or changes in the use of existing structures above 1500 feet in elevation (from mean sea level).

Enlargement: Any increase in the height or the footprint of a structure, e.g., through extensions or additions.

Extraction: A use involving the on-site removal of surface and subsurface materials, including soil, sand, gravel, and stone. Typical uses include sand and gravel pits and related operations such as the crushing, screening, and temporary storage of materials on-site (see Section 4.9). See also Quarrying.

Family: One or more persons related by blood, marriage, civil union, adoption other form of legal guardianship as recognized by the State of Vermont, or a group of not more than eight unrelated persons, exclusive of domestic servants, living together as a household. See also Group Home.

Farm Structure: (1) In accordance with the Act [§ 4413(d)], 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; but excludes a dwelling for human habitation. (2) As defined by the Vermont Secretary of Agriculture under accepted agricultural practices, a farm structure includes a structure used for agricultural production, which meets one or more of the following: (a) is used in connection with the sale of $1000 or more of agricultural products in a normal year; (b) is used in connection with the raising, feeding and management of the minimum specified number of adult animals: four (4) equines, five (5) cattle or bison, 15 swine, 15 goats, 15 sheep, 15 fallow or red deer, 50 turkeys or geese, 100 laying hens or ducks, 250 broilers, pheasant, Chukar partridge or Coturnix quail, three (3) camelids, four (4) ratites, 30 rabbits, or 1000 pounds of cultured trout; (c) is used by a farmer filing with the Internal Revenue Service a 1040(F) income tax statement in at least one of the past two years; (d) is on a farm with a business and farm management plan approved by the Secretary. See also Agriculture, Accepted Agricultural Practices.

Fence: An assemblage of materials, which may include metal, stone, wood, or any combination, erected and placed on the ground for purposes of limiting visual or physical access, and/or to mark a property boundary. Agricultural and residential fences or walls less than six feet in height which do not obstruct public rights-of-way are specifically exempted from these regulations (see Sections 3.5 and 10.2). For purposes of these regulations, other fences shall be considered a type of accessory structure.

Fill: Deposit or placement of earth, sand, gravel, rock or other similar material.

Financial Institution: A bank, savings and loan, finance, mortgage or investment company.

Floor Area, Gross: The total area of all floors of a building as measured to the outside surfaces of exterior walls, including halls, stairways, elevator shafts, attached garages, enclosed porches and balconies, but excluding interior vehicular parking and loading spaces, or any space where the floor to ceiling height is less than six feet.

Forestry: The use and management of timber land for purposes of conservation and/or wood production and timber harvesting. This definition specifically excludes sawmills, lumber yards and other similar facilities used for the processing and/or manufacturing of wood and wood products, with the exception of portable sawmills and other equipment used on site in

association with timber harvesting activities. See also Accepted Management Practices. Light Industry.

Frequency: The number of cycles completed each second by an electromagnetic wave measured in hertz (Hz).

Front Lot Line: The dividing line between a lot and a public or private road, defined along the edge of the road right-of-way between side lot lines. For purposes of these regulations, a lot without frontage along a road-right-of-way shall have only side lot lines. See also Lot Frontage.

Frontage: See Lot Frontage.

Funeral Home: A building or part thereof used for funeral services. Such building may also contain space and facilities for the preparation of the dead for interment or cremation, crematoriums, the performance of autopsies and associated surgical procedures, the storage and sale of caskets, funeral urns and related funeral supplies, and the storage of funeral vehicles.

Garage Sale: The casual sale or offering at any one time of new, used, or second hand items of tangible personal property to the general public, which is generally advertised by such terms "garage sale," "yard sale," "rummage sale," "attic sale," "lawn sale," "porch sale," "barn sale" or similar phrase (see Exemptions under Section 10.2). See also Outdoor Market.

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

Gas Station: Any lot or area of land including the building or buildings thereon, which is used for the sale of motor vehicle fuels, lubricants, and related motor vehicles products, and/or which has facilities for fueling, washing or servicing motor vehicles (see Section 4.10). This definition includes gas stations and car washes; but specifically excludes automobile and motor vehicle repair services and sales, and the sale of food and unrelated convenience or grocery items. See also Motor Vehicle Sales & Service, Mixed Use.

Grade, Finished: Completed surface of grounds, lawns, walks, paved areas and roads which have been brought to grades as shown in associated plans.

Grade, Natural: The initial, original or pre-development surface of ground within a proposed building or structure footprint, as measured from contour elevations prior to any site clearing, filling or excavation.

Greenhouse: A commercial agricultural business or farm structure for growing flowering and other plants for wholesale or retail sale on the premises. Residential greenhouses, for purposes

of these regulations, are considered accessory structures. See also Accepted Agriculture Practices, Agriculture, Farm Structure, Garden Center.

Grocery Store: A self-service retail establishment with a gross floor area of 4,000 square feet or more that sells primarily food and household goods. For purposes of these regulations, grocery stores of less than 4,000 square feet (e.g., convenience, neighborhood or general stores), shall be separately defined and regulated as retail stores. See also Retail Store.

Group Home: In accordance with the Act [§4412(1)], a residential care home operating under state licensing or registration, which serves not more than eight (8) persons who have a handicap or disability as defined in state statutes (9 V.S.A. 4501), and meets the requirements of Section 4.11. See also Residential Care Facility.

Health Clinic: A building or part thereof operated by physicians, surgeons, dentists, chiropractors, therapists, or other licensed health care professionals for the examination and treatment of patients on an out-patient basis. This definition does not include a public or private hospital, or the professional office of a licensed health care provider located in his or her residence. See also Home Occupation, Health Care Facility.

Height: The distance above ground of a structure as measured vertically from the average finished grade at the base of the structure to the highest point of the structure or roof surface, excluding the chimney (see Section 3.6). See also Grade, Finished.

Historic Resource: A site, structure or other cultural feature that is (1) listed on, or eligible for listing on national or state registers of historic places, or (2) identified as having local historical significance in the Underhill Town Plan, historic resource inventories, or through site investigation. Historic resources include, but may not be limited to buildings, structures and their surroundings (context), historic and prehistoric archaeological sites, and historic landscape features (e.g., witness/survey trees, stone walls, fence lines, foundations and cellar holes).

Home Child Care: A home-based child daycare business, the owner and operator of which is licensed or registered by the state, which is considered to constitute a permitted single family residential use of property in accordance with the Act [§4412(5)] (see Section 4.8). See also Day Care Facility.

Home Occupation: A use conducted entirely within a minor portion of a single family dwelling or accessory structure to the dwelling, by one or more residents of the dwelling and up to two nonresident employees, which is clearly incidental and secondary to the use of the dwelling for dwelling purposes, and which does not change the character thereof (see Section 4.12). See also Bed & Breakfast, Home Child Care, Home Industry.

Home Industry: An expanded home-based business conducted by one or more residents of a single family dwelling and up to five nonresident employees, which is carried on within the principal dwelling, accessory structure and/or designated yard areas, and meets all applicable requirements of these regulations (see Section 4.12). See also Home Occupation.

Improvement: Any physical addition to real property, or any part of such addition, including but not limited to any building, structure, infrastructure, parking facility, wall, fencing, or landscaping (see also Substantial Improvement). See also Public Improvement, Substantial Improvement.

Infrastructure: Facilities and services required to support residential, commercial, industrial and civic land development, which may include but not be limited to roads, sidewalks and other transportation facilities; water, wastewater, and stormwater management systems; communications, electrical and other utilities; and public facilities such as fire houses, parks, and schools. For purposes of these regulations, infrastructure is considered and regulated as land development, which may be principal, accessory or incidental to other types of land development. See also Development, Improvement, Public Facility, Structure.

Inn: A type of commercial lodging facility consisting of a building or group of buildings containing a maximum of 24 guest rooms for occupancy and use by transients on a short-term basis (less than one month on average), and may include common dining, meeting, event, recreation and service facilities for the use of guests (see Section 4.6). Dining, meeting, event, and recreation facilities open to the general public may be allowed as a mixed use, subject to review as a mixed use, in zoning districts in which all such uses are allowed. See also Bed & Breakfast, Commercial Lodging Facility, Mixed Use.

Institutional Facility: A type of public facility, including buildings and land, that for purposes of these regulations is limited to large facilities that may include group housing and that are owned, operated or contracted by a public agency or nonprofit entity for a public purpose. Such institutional facilities may include college campuses, hospitals or prison facilities. See also Cultural Facility, Public Facility, Residential Care Home.

Interested Person: As defined under the Act [§4465], for purposes of appeals:
(1) A person owning title to property, or a municipality or solid waste district empowered to condemn it or an interest in it, affected by these regulations, who alleges that the regulations impose on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.
(2) The Town of Underhill or an adjoining municipality.
(3) A person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under 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 plan or bylaws of the town.
(4) Any 10 persons who may be any combination of voters or real property owners within the town or an adjoining municipality who, by signed petition to the Development Review Board, the plan or regulations of which are at issue in any appeal brought under these regulations, allege that any relief requested by a person under these regulations, if granted, will not be in accord with the policies, purposes or terms of the municipal plan or regulations. The petition to the Board must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal.

(5) Any department and administrative subdivision of the state owning property or any interest in property within the town or an adjoining municipality, and the Agency of Commerce and Community Development.

Junk: Any scrap or waste material which is collected, stored, handled, kept, or intended for salvage, resale or conversion to another use. This includes junk motor vehicles, scrap metal, plastic and rubber debris, rope, rags, batteries, paper, waste, trash or other discarded, dismantled, wrecked, scrapped or ruined items or materials.

Junk Motor Vehicle: A discarded, dismantled, wrecked, scrapped, or ruined motor vehicle or parts thereof, or a motor vehicle, other than an on-premise utility vehicle, which is allowed to remain unregistered or uninspected for a period of 90 days from the date of discovery.

Junk Yard: See Salvage Yard.

Kennel: Any premises in which the care, boarding, breeding, grooming, or training of four (4) or more dogs, cats, or other domestic animals is done for primarily commercial or monetary purposes. See also Veterinary Clinic.

Land Development: The construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining operation, excavation or landfill, and any change in the use of any building or other structure, land or extension of use of land [24 V.S.A. §4303(10)]. See also Subdivision. Also see "Development" as defined for purposes of flood hazard area management and regulation under Section 11.3.

Level of Service (LOS): A measure used by engineers, most commonly to rate transportation infrastructure (highway, intersection) efficiency (e.g., from the *Highway Capacity Manual*, published by the Transportation Research Board). Transportation LOS systems rate performance using the letters A through F, with A being the best rating, C the average rating, and F the worst rating. Highway LOS is determined based on the efficiency of traffic flow; intersection LOS is based on vehicle delays (wait times) at signalized or unsignalized intersections.

Light Industry: A facility not exceeding 10,000 square feet in total gross floor area, used for the manufacture, processing, fabrication, testing and/or assembly of products. This may also include associated research and development, warehousing and shipping activities. A light industry shall meet all applicable requirements of these regulations, including performance standards. The processing of agricultural products produced on the premises where produced shall not be deemed to be manufacturing. See also Home Industry, Sawmill.

Loading Area: One or more spaces logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used. Required off-street loading areas are not to be included as off-street parking spaces in the computation of required off-street parking space (see Section 3.13).

Lot: A parcel of land. For purposes of these regulations, a lot is (1) any parcel of land which has sufficient area to meet the dimensional requirements of these regulations, excluding existing or proposed road rights-of-way; (2) a parcel of land defined by property lines, as shown on a site plan or subdivision plat. See also Contiguous Land; Lot Area; Lot, Existing; and Lot of Record.

Lot Area (Lot Size): The total land area within the boundaries (lot lines) of a lot, exclusive of the area designated for any existing or proposed road rights-of-way as measured within the boundaries of the right-of-way.

Lot, Corner: A lot at the junction of and abutting on two or more intersecting roads where the interior angle of the intersection does not exceed 135 degrees. A lot abutting a curved street shall be deemed a corner lot if the tangents to the curve are the points of intersection of the side lot lines with the street lines intersect at an interior angle of less than 135 degrees.

Lot, Through: A lot that extends between adjoining lots and has frontage on two roads. Through lots have front and side lot lines, but no rear lot line.

Lot Coverage: That portion (percentage) of a lot area which is covered by buildings, structures and other man-made improvements, including parking and loading areas, access roads, service areas, and other impermeable surfaces which prevent the infiltration of storm water.

Lot Depth: The minimum horizontal distance from the street line of the lot to the rear lot line of such a lot, as measured at right angles.

Lot, Existing: Any parcel in individual, separate and non-affiliated ownership from surrounding properties that is legally in existence as of the effective date of these regulations. See also Nonconforming Lot.

Lot Frontage: The front lot line along a public or private road, as measured along the road right-of-way from the intersection of one side lot line to the intersection of the other lot line. See also Front Lot Line.

Lot Line: The boundary line of a parcel of land; a property line.

Lot of Record: Any lot which individually, or as part of a subdivision, has been recorded in the Underhill Town Office.

Lot Size: See Lot Area.

Mean Sea Level: The standard datum to which typical contour elevations are referenced.

Mixed Use: A building or parcel containing two (2) or more principal uses which are otherwise allowed as permitted or conditional uses in the district in which the building or parcel is located (see Section 4.13). Also see Planned Unit Development.

Mobile Home: A prefabricated single family dwelling unit which: (1) is designed for continuous residential occupancy; (2) is designed to be moved on wheels, as a whole or in sections, (3) on arrival at the site, is complete and ready for occupancy except for incidental unpacking, assembly, and placing on supports or a permanent foundation, or installation as a unit in a previously prepared structure; and (4) contains the same water supply and wastewater disposal systems as immovable housing (see Section 3.4). See also Camper; Dwelling, Single Family; Mobile Home Park.

Mobile Home Park: A parcel of land under single or common ownership or control which contains, or is designed, laid out or adapted to accommodate, three (3) or more mobile homes to be occupied for living purposes (see Section 3.4 and 4.14). See also Mobile Home. Also see Manufactured (Mobile) Home Park as defined for purposes of flood hazard area management and regulation under Section 11.3.

Mobile Home Sales: An establishment, including land and/or a building, for which the principal use is the sale of mobile homes. This may include customary accessory structures or uses, such as an office, an enclosed sales room, and a parking area.

Motor Vehicles Sales & Service: An establishment, including land and buildings, for which the principal use is the sale and repair of automobiles or other motor vehicles, to include the sale and/or leasing of motor vehicles and accessory products, general vehicle and engine repair shops, rebuilding and/or reconditioning shops, and body shops. This does not including gasoline stations except as may be allowed a mixed use, or home based repair businesses (see Section 4.15). See also Gas Station, Home Industry, Mixed Use.

Municipal Land Use Permit: As defined in the Act [§4303] to include, as issued by the municipality: (1) final zoning, subdivision, site plan or building permits or approvals relating to subdivision and land development; (2) septic or sewage system permits; (3) final official minutes of meetings which relate to permits or approvals, which serve as the sole evidence of such permits or approvals; (4) certificates of occupancy, compliance or similar certificates; (5) certificates of location for salvage yards; and (6) any amendments to the previously listed, permits, approvals and/or certificates.

Municipal (Town) Plan: The municipal plan for the Town of Underhill as most recently adopted in accordance with the Act. See also "Conformance with the Plan."

Nature Center: A scientific or educational facility open to the public that provides facilities, services, research, materials, educational programs, exhibits and/or displays promoting understanding, sound management and protection of the natural environment.

Nonconforming Lot: A lot lawfully in existence as of the effective date of these regulations, which does not conform within these regulations, including zoning district dimensional, density or coverage requirements, or other applicable dimensional requirements of these regulations (see Section 3.8). See also Nonconforming Structure, Nonconforming Use.

Nonconforming Structure: A structure or part thereof lawfully in existence as of the effective date of these regulations, which does not conform to the provisions of these regulations, but did conform to all applicable laws, ordinances and regulations prior to the enactment of these regulations; and structures improperly authorized in error by the Zoning Administrator (see Section 3.9). See also Nonconforming Use.

Nonconforming Use: The use of a land or structure lawfully in existence as of the effective date of these regulations, which does not conform with these regulations, including but not limited to allowed uses within the district in which it is located, but did conform to all applicable laws, ordinances and regulations prior to the enactment of these regulations; and uses improperly authorized in error by the Zoning Administrator (see Section 3.10). See also Nonconforming Structure.

Nordic Ski Facility: An area and facility developed for cross-country and backcountry skiing and snowshoeing on a maintained trail network, which may also include associated ticketing, parking, ski equipment sales and rentals, ski instruction, safety, patrol, snowmaking and trail maintenance facilities, and warming hut facilities to be accessed primarily by ski trails or service roads. Other facilities, such as camping, commercial lodging, indoor recreation, cultural and restaurant facilities, which may support year-round use, may be allowed in association with a Nordic ski facility subject to review as a mixed use (see Section 4.13) or a planned unit development (Article IX).

Nursery: See Greenhouse.

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

Open Space: Land not occupied by structures, buildings, roads, rights-of-way, and parking lots. Open space may or may not be held in common. "Usable open space" is further characterized as open space which is available and accessible to all occupants of the building or buildings on the lot for purposes of active or passive recreation.

Out Building: See Accessory Structure.

Outdoor Market: An occasional or periodic market held in an open area or structure where groups of individual sellers offer goods for sale to the public, including "farmers" and "flea" markets. See also Garage Sale.

Parking Facility: A separate off-street parking area, garage or similar structure that is the principal use of a lot. See also Transit Facility.

Parking Space: An off-street area which is not less than nine feet in width and 18 feet in depth, exclusive of adequate access or maneuvering area, ramps, columns, etc., which is to be used exclusively as a temporary storage space for a single motor vehicle (see Section 3.13).

Permitted Use: An allowed use within a zoning district which requires the issuance of a zoning permit by the Zoning Administrator and, depending on the type of use, site plan approval from the Development Review Board (Section 2.3). See also Conditional Use.

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

Personal Service: A business which provides services of a personal nature, including but not limited to laundry and dry cleaning, beauty and barber shops, tailoring and shoe repair, photographic studios, and similar businesses. Sales of products must be clearly related and incidental to services provided. See also Funeral Home.

Place of Worship: A building used solely for purposes of assembly and worship by a legally established and recognized religious institution. This definition also includes such customary accessory structures such as parish houses (see Section 4.16). See also Public Facility.

Planned Residential Development (PRD): A type of planned unit development specifically for residential purposes in which an area of land, consisting of one or more parcels, is planned to be developed as a single entity, to include residential dwelling units allowed within a zoning district(s) and associated accessory structures and facilities. In a PRD, zoning district dimensional standards under these regulations (Article II), including lot size, density, coverage, frontage and setback requirements, may be modified or waived to provide flexibility in subdivision and site design in order to promote desired types and patterns of residential development (see Article IX). See also Planned Unit Development.

Planned Unit Development (PUD): One or more lots or parcels of land to be developed as a single entity for one or more uses allowed within a zoning district(s), the plan for which may propose any authorized combination of density transfers or increases, as well as a mix of land uses, as allowed under these regulations. In a PUD, zoning district dimensional standards under these regulations (Article II), including lot size, density, coverage, frontage and setback requirements, may be modified or waived to provide flexibility in subdivision and site design in order to promote desired types and patterns of mixed use development (see Article XI). See also Mixed Use, Planned Residential Development.

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

Post Office: A facility operated by the United States Postal Service for the collection and distribution of mail, and associated mailing and delivery services.

Primary Agricultural Soils: Agricultural soils of federal (prime), state (statewide) or local importance for growing food and forage crops, as defined and mapped for the state by the USDA Natural Resource Conservation Service.

Principal Structure: A structure or building in which the main, primary or principal use of the property is conducted. Attached accessory dwellings, garages, porches or carports, or other structures which share a common wall and/or roof, or are connected by an enclosed breezeway, are considered to part of the principal structure.

Private Club: An establishment operated for social, recreational, educational or cultural purposes that is open only to members and their invited guests, and not the general public.

Public Improvement: Any improvement which shall be owned or maintained by the Town of Underhill or other government entity.

Public Facility: A building or other facility owned, leased, held, used, and/or controlled exclusively for public purposes by a municipality, state or federal government, regulated utility or railroad. Such facilities include, but may not be limited to municipal buildings and garages, public parks and playgrounds, water and wastewater facilities, power generation and transmission facilities, and educational facilities (see Section 4.16).

Quarrying: The removal of rock or minerals by means of open excavation to supply material for construction, industrial or manufacturing purposes (see Section 3.4). See also Extraction.

Reasonable Use: A use of real property which is allowed within the district in which the property is located, which provides some (but not necessarily all) potential benefit to the owner, and which does not lead to unreasonable interference with another's use of property, or with the natural flow of water. Reasonable use does not mean highest and best use; nor does it include accessory uses, structures, or additions which may be customary, but are not necessary, to the existing or intended principal use (e.g., garages, swimming pools).

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

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

Recreation, Outdoor: A facility for outdoor recreation, including but not limited to a stadium, tennis courts, athletic fields, golf courses, swimming pools, and trails for hiking, horseback

riding, bicycling, snowmobiling, and cross-country skiing; except for such facilities which are accessory to an approved educational facility or a residential use, or are otherwise exempted from these regulations under Section 10.2. This definition specifically excludes separately listed, defined and regulated outdoor recreation facilities, including alpine and Nordic ski facilities. See also Alpine Ski Facility, Nordic Ski Facility.

Recreation Vehicle: See Camper**.** See also "Recreational Vehicle" as defined for flood hazard management and regulation under Section 11.3.

Redemption Center: A store or other facility certified by the state [10 V.S.A. §1524] where a person may, during normal business hours, redeem the amount of the deposit for an empty beverage container.

Residential Care Facility: A facility licensed by the state which provides residential care, including rooming, boarding, recreation and personal care services, to elderly or infirmed individuals, on a 24-hour a day basis (see Section 4.11). See also Group Home, Institutional Facility.

Restaurant: An establishment of which the primary function is to serve food and beverages to the public for consumption only at tables or counters on the premises. This definition includes cafes, bakeries with table or counter service, taverns and bars, but specifically excludes night clubs.

Resubdivision: A change to a recorded subdivision plat, including but not limited to changes that affect any lot lines, street or road layouts, areas reserved for public use, or any map or plan that has been legally recorded.

Retail Store: Premises where goods or merchandise are offered for retail sale to the general public for personal, business, or household consumption, and where services incidental to the sale of such goods are provided. This definition excludes the retail sale of gasoline and automobiles and other goods and services that are otherwise more specifically addressed under these regulations. See also Gasoline Station, Mobile Home Sales, Motor Vehicle Sales & Service, Personal Service and Restaurant.

Ridgeline: The uppermost point of a ridge, hill, cliff, slope or face. It may coincide with the top (highest elevation) of a rock cliff or, where the bedrock is not exposed, the most obvious break in slope associated with the underlying bedrock. The term does not include intermediate terraces, steps, or elevations along the face of a slope. A “prominent” ridgeline is a ridgeline characterized by an elevation, slope, orientation, and/or relationship to nearby property so as to be highly visible from distant vantage points.

Right-of-Way: (1) A formally deeded right of passage over another person's property; (2) the width of the traveled and untraveled portion of a public or private road. See also Road.

Road: A public highway, or a private right-of-way serving four or more lots, which is designed and intended for use by motor vehicles. The word "road" shall mean the entire right-of-way. See also Driveway.

Road, Development (Private): Any road or street which is not publicly owned and maintained, excluding private driveways serving up to three lots (see Section 8.6). See also Road, Driveway.

Road, Pent: A town highway that, under written authorization by the Underhill Selectboard, is gated but not locked.

Road, Public: A road which is constructed within the boundaries of an officially deeded and accepted public right-of-way, including municipal, state and federal highways.

Rock Outcrop: Portion of bedrock that protrudes through the soil, including boulders, ledges and cliffs.

Salvage Yard: Any place of outdoor storage or deposit for storing, keeping, processing, dismantling, shredding, salvaging, buying or selling discarded items, material or scrap metal. This definition includes any outdoor area used for storing or keeping four or more junk vehicles, excluding motor vehicle service establishments (garages) where wrecked or disabled motor vehicles are stored for less than 90 days for inspection and repair (see Section 4.17). This definition also does not include scrap metal crushing or processing facilities permanently located on the premises or hazardous or solid waste management facilities under 10 V.S.A. Chapter 159. See also Motor Vehicle Sales & Service, Public Facility, Waste Management Facility.

Sawmill: A wood processing facility, including structures and yard areas, where logs are stored and processed into lumber and other wood products. Portable chippers and sawmills used in conjunction with active logging operations are excluded from this definition. See also Forestry, Light Industry.

Scenic Resource: A landscape element or group of elements that is visually or aesthetically pleasing, as viewed from a public vantage point or while traveling along a public highway, waterway or path. Such elements may include natural and/or man-made landscape features, for example landforms, land cover, water, landscaping, streetscapes, buildings and architectural design elements. Scenic resources may be identified in the Underhill Town Plan, scenic resource inventories, or through specific site analyses.

School: A public, private or parochial institution licensed by the State of Vermont to provide educational instruction to students. Such facilities may also include accessory recreational and dining facilities, and may be used as officially designated temporary emergency shelters (see Section 4.16). See also Institutional Facility, Public Facility.

Setback: The horizontal distance from a road, lot line, boundary or other delineated feature (e.g., a stream bank or channel, shoreline, or wetland area) to the nearest part of a building,

structure or use on a lot. In the case of a public highway, the distance shall be measured from the nearest limit of the highway right-of-way (street line) or 25 feet from the centerline of the highway, whichever is greater. In the case of a private road other than a driveway, the distance shall be measured from the edge of the road right-of-way.

Sign: Any structure, display, device, material, object or representation which is designed or used to advertise, direct or call attention to any property, establishment, business, enterprise, profession, product, or service or other matter from any public right-of-way (see Section 3.16). This definition includes words, lettering, figures, logos, trademarks, phrases, sentences, designs, and other outdoor advertising displayed on natural objects, buildings, exterior walls and windows, banners, canopies, fences or other manmade structures, which are visible from a road right-of-way. For purposes of these regulations, a **"permanent"** sign is a sign that is on display for 45 days or more in any one-year period.

Silviculture: See Forestry.

Site Disturbance: Removal of vegetation, grading, excavation, fill, or any combination thereof, and site conditions resulting from such actions. See also Clearing.

Slope: The topographic gradient of any area of land, whether or not located on a single parcel, as determined by the change in vertical distance or elevation (rise) over a horizontal distance (run) which, for the purposes of these regulations is expressed as a percentage (e.g., 20-ft gain/100-ft distance = 0.20 or 20%). For construction and grading purposes slope also may be expressed as the ratio of the horizontal to vertical distance (e.g., 2:1). For purposes of these regulations, a "**steep slope**" is a slope with a natural (pre-development) grade of 15% to 25%. A "**very steep slope**" is a slope with a natural (pre-development) grade of more than 25% (see Section 3.18).

Snack Bar: A seasonal roadside stand or enclosed structure, operated for a maximum of six (6) months in any calendar year to include the summer months, for the preparation and sale of food and beverages to the general public for consumption on- or off- the premises. A snack bar shall include adequate off-street parking, and may include outdoor seating, as accessory to the use. Indoor restaurant seating, and/or year-round use shall be allowed only as a permitted restaurant. See also Restaurant.

Storage Facility: A building for storing goods as an accessory to a retail store, or for the temporary storage of goods (e.g., household goods) by the general public. Self-storage facilities are prohibited in the Town of Underhill, except as an Adaptive Reuse under Section 4.3. See also Adaptive Reuse, Warehouse.

Story: That part of any building, excluding cellars and basements, between the surface of any floor and the surface of the next floor above it, or if there is no floor above it, then the space between a floor and the ceiling above it. See also Story, Half.

Story, Half: Any space partially within the roof framing, where the clear height of not more than 50% of such space between the top of the floor beams and the structural ceiling level is 7½ feet or more.

Stream: Any surface water course in the Town of Underhill as depicted by the U.S. Geological Survey on topographic maps, the Underhill Zoning Map, Vermont Base Map orthophotos, or as identified through site investigation, but excluding artificially created irrigation and drainage channels. This definition includes any stream channel two feet or more below the elevation of surrounding land, with well defined stream banks, that directs the flow of surface water. See also Stream Channel, Stream Banks.

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

Stream Bank: Physiographic feature that normally contains a stream within a channel. Stream Banks are distinct from the streambed, which is normally wetted and provides a substrate that supports aquatic organisms. For purposes of these regulations (see Section 3.19) **"Top of Bank"** is defined as the point along a stream bank where an abrupt change in slope is evident, and where the stream is generally able to overflow the banks and enter the adjacent floodplain only during flows at or exceeding the average annual high water stage. "**Top of Slope**" is defined as a break in the slope adjacent to steep-banked streams that have little or no floodplain.

Street: See Road.

Street Line: The dividing line between a lot and a public or private road or street, typically defined by the edge of the road right-of-way. See also Front Lot Line.

Structure: An assembly of materials on the land for occupancy or use, including a building, mobile home or trailer, sign, wall or fence. For purposes of these regulations "structure" also includes but may not be limited to: additions to buildings, tennis courts, in-ground swimming pools, telecommunications facilities, gas station canopies, and tanks for the outdoor storage of gas or oil. Infrastructure, such as sidewalks, driveways, roads, parking areas, signs, service lines, and the subsurface components of potable water and sewage disposal systems is specifically excluded from this definition. Structures are exempted from these regulations only in accordance with the Act [§4446] and these regulations (see Section 10.2). See also Accessory Structure, Building, Improvement, Infrastructure. Also see "Structure" as defined for purposes of flood hazard area management and regulation under Section 11.3.

Subdivider: Any person(s) who proposes to subdivide land, including an applicant for subdivision approval. See also Applicant.

Subdivision: The division of any parcel of land into two or more parcels for the purpose of offer, transfer, sale, conveyance, long-term lease or land development (see Section 7.2). The term includes the re-subdivision of a previously subdivided parcel, amended subdivisions, the division of land held in common among several owners, and planned unit development; and any leaseholds equal to or exceeding 30 years or which, by right, may be extended to 30 years or more. See also Boundary (Lot Line) Adjustment.

Subdivision, Major: A subdivision of land resulting in the creation of four (4) or more lots, and all Planned Residential and Planned Unit Developments (see Section 7.2).

Subdivision, Minor: A boundary (lot line) adjustment, amendments to an approved subdivision plan that will not substantially change the nature of the previously approved plan or conditions of approval, or a subdivision which results in the creation of three or fewer lots (see Section 7.2).

Substantially Commenced: For purposes of these regulations, to include initial site preparation, the installation of an access, and the installation of a foundation, water and/or wastewater system on-site, in accordance with these regulations and all permits and approvals.

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

Substantially Destroyed: Fifty percent (50%) or more of the structure has been damaged and/or the damaged structure is no longer structurally sound, habitable or safe for its intended use.

Transfer Station: A facility, including a recycling center, certified by the state that functions as a collection point for solid waste and recyclable material that will subsequently be transported to a state-approved landfill or disposal facility. The facility will include, at minimum, a receiving hopper and compacting equipment (see Section 4.16). See also Public Facility.

Transit Facility: A building, structure, or area designed and intended for use by persons changing transportation modes, including but not limited to bus and train stations. For purposes of these regulations, this shall also include park and ride facilities which may also provide access to other forms of public transportation. See also Parking Facility.

Undue Adverse Effect (Impact): An unnecessary or excessive impact that (1) violates a clear, written community standard, including a provision of these regulations or a specific policy of the municipal plan, or (2) which cannot be avoided through mitigation, alternative design, or conditions of approval.

Use: The specific purpose for which a parcel of land or structure is designated, designed or intended, or for which it may be used and maintained. See also Accessory Use, Structure.

Value-Added Production. Production activities that enhance or improve the overall value of local agricultural or forestry products, including processing, packaging, direct marketing, and related public outreach and educational activities. This may include the limited on-site sale of goods produced on the premises, and directly related products, but shall not include general retail sales.

Veterinary Clinic: A building or part thereof used for the care, diagnosis, treatment and temporary boarding of animals. See also Kennel.

Warehouse Facility: A building used primarily for the storage, wholesale and distribution of manufactured goods and materials, and not as a primary location or outlet for business or retail uses.

Waste Management Facility: A public facility licensed or certified by the state of Vermont for the collection, storage, transfer, shipment or disposal of solid or hazardous waste materials (see Section 4.16), to include transfer stations, landfills, and other types of waste management facilities, except for salvage yards (see Section 4.17). See also Public Facility, Salvage Yard.

Wetland: Those areas of the state 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. The location of wetlands on a particular parcel, as indicated on State Wetland Inventory Maps, shall be confirmed through site investigation unless waived by the Development Review Board.

Wildlife Habitat: An ecological or environmental area that is inhabited by a particular species of animal, plant or other type of organism. For purposes of these regulations, **"significant"** or **"critical"** wildlife habitat includes: (1) "necessary wildlife habitat" as defined by the Vermont Department of Fish and Wildlife (under 10 V.S.A. §6086(a)(8)(a)) to include habitat which is concentrated, identifiable, and is demonstrated to be decisive to the survival of a species of wildlife at any period in its life, including breeding and migration; (2) wildlife habitat identified in the Underhill Town Plan and related maps and inventories as significant to the community; and (3) wildlife habitat determined to be significant to the state, region or town, in consultation with the Underhill Conservation Commission or the Vermont Department of Fish and Wildlife, as identified through site-specific investigation. Applicants should refer to available information on file at the Underhill Town Office and through the Vermont Department of Fish and Wildlife.

Wildlife Refuge: A designated area owned and/or managed by a public or nonprofit entity principally for the purpose of sustaining wildlife habitat and/or wildlife populations, which may also be open to the public for hunting and outdoor recreation. Designated trails and parking areas, and storage and maintenance structures may be allowed as accessory to the principal use.

Yard: An unoccupied area of ground, as defined by required setback distances, in which no structure, building or portion thereof, may be located. See also Setback.

Yard Sale: See garage sale.

Section 11.3 Flood Hazard Area Regulation Definitions

Areas of Shallow Flooding: A designated AO or AH zone on a community's FIRM with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Base Flood: The flood having a one percent (1%) chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE): The elevation of the water surface elevation resulting from a flood that has a one percent (1%) chance of equaling or exceeding that level in any given year. On the Flood Insurance Rate Map the elevation is usually in feet, in relation to the National Geodetic Vertical Datum of 1929, the North American Vertical Datum of 1988, or other datum referenced in the Flood Insurance Study report, or the average depth of the base flood, usually in feet, above the ground surface. Base flood elevations are shown at selected intervals on maps of Special Flood Hazard Areas that are determined by detailed methods. Base flood elevations have not been determined in Zone A where the flood risk has been mapped by approximate methods.

Construction/New: (a) For purposes of determining insurance rates pertaining to flood hazard area regulation, structures that commenced on or after June 15, 1988 (the effective date of the initial FIRM), and includes any subsequent improvements to such structures. (b) For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of the floodplain management regulation adopted by the Town of Underhill and includes any subsequent improvements to such structures.

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

Building: See Structure.

Common Plan of Development: The approved plan or schedule for a structure to be refurbished over a period of time.

Critical Public Facility: A facility critical to the health and safety of the public and the environment, such as hospitals and nursing homes, emergency operations centers (particularly police, fire, and rescue), vital data storage centers, power generation and other utilities (including related infrastructure such as principal points of utility systems) and any facilities that produce, use or store toxic pollutants as defined under the Clean Water Act and other state and

Federal statutes. New critical public facilities are prohibited within floodplains that is subject either to a 1.0% or greater annual chance of flooding (the "100-year" floodplain) or a 0.2% or greater annual chance of flooding (the "500-year" floodplain).

Development: Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials within the Special Flood Hazard Area, identified on the most current Federal Insurance Rate Map (FIRM).

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 of 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 the community, issued by Federal Emergency Management Agency, where the boundaries of the flood, mudslide (i.e., mudflow) and related erosion areas having special hazards have been designated.

Flood Insurance Rate Map (FIRM): An official map of the community on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study (FIS): An examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Floodplain or Flood-prone Area: Any land area susceptible to being inundated by water from any source (also see Flood).

Floodproofed/Floodproofing: Any combination of structural and nonstructural additions, changes or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway (Regulatory in the Town of Underhill): 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, where floodways have been determined, they may be shown on separate map panels from the Flood Insurance Rate Maps.

Fringe Area: The area outside of the floodway as shown on the Flood Insurance Rate Map, which would be inundated by the hundred-year flood.

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

Historic Structure: Any structure that is: (1) 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; (2) 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; (3) individually listed on the state inventory of historic places; or (4) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (a) by an approved state program as determined by the Secretary of the Interior or (b) directly by the Secretary of the Interior in states without approved programs.

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 certified engineer or surveyor. This is used where structures or lots are located above the base flood elevation and have been inadvertently included in the mapped special flood hazard area.

Lowest Floor: 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.

Manufactured (Mobile) Home: A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used as a dwelling unit with or without a permanent foundation when connected to required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar recreational vehicles that are not fully licensed and ready for highway use. For flood insurance purposes, the term "manufactured home" does not include park trailers, travel trailers or other similar recreational vehicles.

Manufactured (Mobile) Home Park or Subdivision: A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Manufactured (Mobile) Home Park or Subdivision/Existing: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is

completed before the effective date of initial floodplain management regulations adopted by the town.

Manufactured (Mobile) Home Park or Subdivision/Expansion: The preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Manufactured (Mobile) Home Park or Subdivision/New: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the initial floodplain management regulations adopted by the town.

Mean Sea Level: For purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD 88) to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

Recreational Vehicle: For purposes of flood hazard area regulation, a vehicle which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

Special Flood Hazard Area (SFHA): The land within a community subject to a one percent or greater chance of flooding in any given year. This area is usually labeled Zone A, AO, AH, AE, A1-30, or A99 in the most current flood insurance studies and on the maps published by the Federal Emergency Management Agency.

Start of Construction: For purposes of flood hazard area regulation, determines the effective maps 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 foundation or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or shed not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other

structural part of a building, regardless whether that alteration affects the external dimensions of the building.

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

Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty 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, over three years, or over the period of a common plan of development, cumulatively equals or exceeds 50% of the market value of the structure either (a) before the improvement or repair is started or (b) if the structure has been damaged, and is being restored, before the damage occurred. The term does not, however, include either (a) any project for improvement of the structure to comply with existing state or local health, sanitary, or safety code specifications which are 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 places.

Violation: The failure of a structure or other development to be fully compliant with these regulations or conditions of permit approval. With respect to the flood hazard regulation, a structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR 60.3 is presumed to be in violation until such time as that documentation is provided.

Section 11.4 Telecommunications Facility Regulation Definitions

Adequate Coverage: Coverage is adequate within that area surrounding a base station where the predicted or measured median field strength of the transmitted signal is such that the majority of the time, transceivers properly installed and operated will be able to communicate with the base station without objectionable noise (or excessive bit-error rate for digital) and without calls being dropped. In the case of cellular communications in a rural environment like Underhill, this would be a signal strength of at least -90 dBm. It is acceptable for there to be holes within the area of adequate coverage, as long as the signal regains its strength farther away from the base station. The outer boundary of the area of adequate coverage, however, is that location past which the signal does not regain.

Affiliate: For the purposes of regulating telecommunications facilities, (1) when used in relation to an operator, an affiliate is another person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or common control with the operator, or an operator's principal partners, shareholders, or owners of some other ownership interest; or (2) when used in relation to the municipality, an affiliate is any agency, board, authority or political subdivision associated with the municipality or other person in which the municipality has legal or financial interest.

Antenna: A device for transmitting and/or receiving electromagnetic signals.

Antenna Height: The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure. If the support structure is on a sloped grade, then the average between the highest and lowest grades at the base of the structure shall be used in calculating the antenna height.

Antenna Support Structure: Any pole, telescoping mast, tower tripod, or any other structure which supports a device used in the transmitting and/or receiving of electromagnetic signals.

Available Space: For purposes of regulating telecommunications facilities, the space on a telecommunications tower or structure to which antennas of a telecommunications provider are both structurally able and electromagnetically able to be attached.

Base Station: The primary sending and receiving site in a telecommunications facility network. More than one base station and/or more than one variety of telecommunications provider can be located on a single tower or structure.

Cellular Telecommunications: A commercial Low Power Mobile Radio Service bandwidth licensed by the FCC to providers in a specific geographical area in which the radio frequency spectrum is divided into discrete channels which are assigned in groups to geographic cells within a service area and which are capable of being reused in different cells within the service area.

Channel: For purposes of regulating telecommunications facilities, the segment of the radiation spectrum to or from an antenna which carries one signal. An antenna may radiate on many channels simultaneously.

Collocation: Locating wireless telecommunications equipment from more than one provider at a single site or structure.

Common Carrier: An entity licensed by the FCC or a state agency to supply local and/or long distance telecommunications services to the general public at established and stated rates.

dBm: Unit of measure of the power level of an electromagnetic signal at the input of a receiver, given its antenna system gain at a particular frequency, expressed as decibels (dB) above one milliwatt. Signal predictions with this measure are applicable at a particular frequency, and may be ambiguous unless all receivers and antenna combinations utilize an identical frequency.

dBu: Unit of measure of the field intensity of an electromagnetic signal, expressed as decibels (dB) above one microvolt per meter, an absolute measure for describing and comparing service areas, independent of the many variables (see dBm) introduced by different receiver configurations. This unit shall be used for coverage prediction plots

FCC: Federal Communications Commission. The federal government agency responsible for regulating telecommunications in the United States.

Hertz: (Hz) One hertz is the frequency of an electric or magnetic field which reverses polarity once each second, or one cycle per second.

Interference: An undesirable effect caused by electromagnetic signals. FCC "Type 1" interference refers to interference regulated by the FCC and affecting other FCC licensees or other entities over which the FCC has jurisdiction. FCC "Type 2" interference refers to electromagnetic disturbances to business, institutional, medical, and home electronic equipment.

Location: For purposes of regulating telecommunications facilities, references to site location shall be the exact longitude and latitude, to the nearest tenth of a second. Bearing or orientation should be referenced to true north.

Modification of an Existing Telecommunications Facility: Any change, or proposed change, in power input or output, number of antennas, change in antenna type(s) or model(s), repositioning of antenna(s), or change in number of channels per antenna above the maximum number approved under an existing permit.

Modification of an Existing Telecommunications Tower or Structure: Any change, or proposed change, in dimensions of an existing and permitted tower or other structure designed to support telecommunications transmission, receiving and/or relaying antennas and/or equipment.

Monitoring: The ongoing observation or measurement of existing conditions, through site inspections and the use of instruments in the field.

Monitoring Protocol: For purposes of regulating and monitoring telecommunications facilities, the testing protocol, such as the Cobbs Protocol , or the FCC Regulations (Title 47, Part 1, Section 1.1307 referenced as IEEE C95.3 1991), or one substantially similar, including compliance determined in accordance with the National Council on Radiation Protection and Measurements, (Reports 86 and 119) which is to be used to monitor the emissions and determine exposure risk from existing and new telecommunications facilities.

Monopole: A single self-supporting vertical pole with no guy wire anchors, usually consisting of a galvanized or other unpainted metal or a wooden pole with below-grade foundations.

Radial Plots: Radial plots are the result of drawing equally spaced lines (radials) from the point of the antenna, calculating the expected signal and indicating this graphically on a map. The relative signal strength may be indicated by varying the size or color at each point being studied along the radial. A threshold plot uses a mark to indicate whether that point would be strong enough to provide adequate coverage i.e., the points meeting the threshold of adequate

coverage. The draw back is the concentration of points close to the antenna and the divergence of points far from the site near the ends of the radials.

Repeater: A small receiver/relay transmitter and antenna of relatively low power output designed to provide service to areas which are not able to receive adequate coverage directly from a base or primary station.

Roof and/or Building Mount Telecommunications Facility: A telecommunications facility in which antennas are mounted to an existing structure on the roof (including rooftop appurtenances) or a building face.

Structurally Able: For purposes of regulating telecommunications facilities, the determination that a tower or structure is capable of safely carrying the load imposed by the proposed new antenna(s) under all reasonably predictable conditions as determined by professional structural engineering analysis including the wind load or any other structural requirements.

Telecommunications Equipment Shelter: A structure located at a base station designed principally to enclose equipment used in connection with telecommunications transmissions including any foundation that may be required.

Telecommunications Facility: (1) As defined under the Act [§4303(29)] for purposes of these regulations: "A tower or other support structure, including antennae, that will extend 20 or more feet vertically, and related equipment; and base structures to be used primarily for communication or broadcast purposes to transmit or receive communication or broadcast signals." (2) If regulated by the Vermont Public Service Board [30 V.S.A. §248a], and therefore exempted from these regulations: "A communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes and any associated support structure that is proposed for construction or installation which is primarily for communications purposes, and any ancillary improvements that are proposed for construction or installation and are primarily intended to serve the communications facilities or support structure."

Telecommunications Facility Site: A property, or any part thereof, which is owned or leased by one or more telecommunications providers and upon which one or more telecommunications facilities and any required landscaping are located. See also Subdivision.

Telecommunications Provider: An entity licensed by the FCC to provide telecommunications services to individuals or institutions.

Telecommunications Tower: A guyed, monopole, or self-supporting tower, constructed as a free-standing structure or in association with a building, other permanent structure or equipment, containing one or more antennas intended for transmitting and/or receiving television, AM/FM radio, digital, microwave, cellular, telephone, or similar forms of electronic communication.

Temporary Wireless Telecommunications Facility: Any tower, pole, antenna, or other facility designed for use while a permanent wireless telecommunications facility is under construction, rehabilitation or restoration.

Tiled Coverage Plots: Tiled plots result from calculating the signal at uniformly spaced locations on a rectangular grid, or tile, of the area of concern. Tiled plots (in comparison to radial plots) (1) provide a uniform distribution of points over the area of interest, (2) usually allow the same grid to be used as different sites are examined, and (3) do not necessitate the transmitter site be within the grid or area of interest. As with radial plots, the graphic display or plot can be either signal strength or adequate threshold. Tile plotting requires more topographic data and longer (computer) execution time than radial plotting, but is preferable for comparative analysis.