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# ORD 2026-01 TOWN OF CUMBERLAND

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**An Ordinance:**            **Amending Sections of the Code of Ordinances Relating to Stormwater Management, Flood Hazards, Soil Erosion and Sediment Control, and Utilities**

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The Town of Cumberland ordains:

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**Section 1.** Article V of Chapter 14 of the Code of Ordinances entitled “Stormwater” is hereby amended as follows:

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**Article V        ~~Stormwater~~Illicit Discharge Detection and Elimination**

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**§ 14-121. Purpose.**

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Increased and contaminated stormwater runoff is a major cause of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and flooding. Regulation of illicit connections and illicit discharges to the municipal storm drain system is necessary for the protection of the Town's water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment. The objectives of this article are to:

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- (1) Prevent (or reduce to the maximum extent practicable) pollutants entering the Town's municipally owned separate storm sewer system (MS4);
  - (2) Prohibit illicit connections and unauthorized discharges to the Town's MS4;
  - (3) Require the removal of all such illicit connections and discharges;
  - (4) Comply with state law and federal statutes and regulations relating to stormwater discharges; and
  - (5) Set forth the legal authority and procedures to carry out all inspection, monitoring and enforcement activities necessary to ensure compliance with this article.

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**§ 14-122. Authority.**

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This article is promulgated pursuant to the Rhode Island Department of Environmental Management's ("DEM") General Permit Rhode Island Pollutant Discharge Elimination System Stormwater Discharge from Small Municipal Separate Storm Sewer Systems and from Industrial Activity at Eligible Facilities Operated by Regulated Small MS4s and in accordance with the provisions of R.I.G.L. § 45-6-1 and the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), both as amended.

36 § 14-123. Definitions.

37 As used in this article, the following terms shall have the meanings indicated:

38 ALLOWABLE NONSTORMWATER DISCHARGES — Discharges not comprised of  
39 stormwater are allowed under the MS4 general permit but are limited to ~~the~~ following those  
40 specifically provided in this ordinance, provided these are not significant contributors of pollutants  
41 to the MS4. ~~Discharges which result from the washdown of vehicles at retail dealers selling~~  
42 ~~new and used automobiles where no detergents are used and individual residential car washing;~~  
43 ~~external building washdown where no detergents are used; the use of water to control dust;~~  
44 ~~firefighting activities; fire hydrant flushings; natural springs; uncontaminated groundwater;~~  
45 ~~dechlorinated pool discharges; air conditioning condensate; lawn watering; potable water sources,~~  
46 ~~including waterline flushings; irrigation drainage; pavement washwaters where spills or leaks of~~  
47 ~~toxic or hazardous materials have not occurred (unless all spilled materials have been removed)~~  
48 ~~and where detergents are not used; discharges from foundation or footing drains where flows are~~  
49 ~~not contaminated with process materials such as solvents, or contaminated by contact with soils~~  
50 ~~where spills or leaks of toxic or hazardous materials have occurred; uncontaminated utility vault~~  
51 ~~dewatering; dechlorinated waterline testing water; hydrostatic test water that does not contain any~~  
52 ~~treatment chemicals and is not contaminated with process chemicals.~~

53 AUTHORIZED ENFORCEMENT AGENCY — Employees of the Public Works Department or  
54 other designees of the Director of Public Works of the Town of Cumberland.

55 BEST MANAGEMENT PRACTICES (~~BMPS~~BMPs) — Schedules of activities, prohibitions of  
56 practices, general good housekeeping practices, pollution prevention and educational practices,  
57 maintenance procedures, and other management practices to prevent or reduce the discharge  
58 of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance  
59 systems. BMPs also include treatment practices, operating procedures, and practices to control site  
60 runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

61 CLEAN WATER ACT (CWA) — The federal Water Pollution Control Act (33 U.S.C. § 1251 et  
62 seq.), and any subsequent amendments thereto.

63 CONSTRUCTION ACTIVITY — ~~Any activity~~ Activities subject to the Rhode Island Pollutant  
64 Discharge Elimination System (RIPDES) General Permit for Stormwater Discharge Associated  
65 with construction ~~Construction permits~~ Activity, as amended. As of March 2003, RIPDES  
66 Stormwater Phase II permits are required for construction projects resulting in land disturbance of  
67 one acre or more. Such construction activities include but are not limited to clearing and  
68 grubbing, grading, excavating, filling, and demolition.

69 DISCHARGE OF POLLUTANTS – The addition from any source of any pollutant or combination  
70 of pollutants in the municipal storm drain system or into any waters of the United States or State of  
71 Rhode Island from any source.

72 DISCHARGER — Any person who causes, allows, permits, or is otherwise responsible for a  
73 discharge of pollutants, including, without limitation, any operator of a construction site or  
74 industrial facility.

75 HAZARDOUS MATERIAL — Any material, including any substance, waste, or combination  
76 thereof, which, because of its quantity, concentration, or physical, chemical, or infectious  
77 characteristics, may cause, or significantly contribute to, a substantial present or potential hazard

78 to human health, safety, property, or the environment when improperly treated, stored, transported,  
79 disposed of, or otherwise managed.

80 ILLICIT CONNECTION — Either of the following:

- 81 (1) Any drain or conveyance, whether on the surface or subsurface, which allows an ~~illegal~~  
82 illicit discharge to enter the storm drain system, including but not limited to any  
83 conveyances which allow any nonstormwater discharge, including sewage, process  
84 wastewater, and wash water to enter the storm drain system and any connections to the  
85 storm drain system from indoor drains and sinks, regardless of whether said drain or  
86 connection had been previously allowed, permitted, or approved by an authorized  
87 enforcement agency; or
- 88 (2) Any drain or conveyance connected from a commercial or industrial land use to the storm  
89 drain system which has not been documented in plans, maps, or equivalent records and  
90 approved by an authorized enforcement agency.

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92 ILLICIT DISCHARGE — Any discharge to a municipal separate storm sewer that is not  
93 composed entirely of stormwater except discharges pursuant to a RIPDES permit (other than  
94 the RIPDES permit for discharges from the municipal separate storm sewer) and ~~discharges-~~  
95 ~~resulting from firefighting activities~~ allowable non-stormwater discharges defined in § 14-  
96 124(a)(2).

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98 MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) — A conveyance or system of  
99 conveyances (including roads with drainage systems, municipal streets, catch basins, curbs,  
100 gutters,  
101 ditches, man-made channels, or storm drains):

- 102 (1) Owned or operated by a city or town or the state district association, or other public body  
103 (created by or pursuant to state law) having jurisdiction over disposal of sewage,  
104 industrial wastes, stormwater, or other wastes, including special districts under state law  
105 such as a sewer district, flood control district or drainage district, or similar entity, or an  
106 Indian tribe or an authorized Indian tribal organization, or a designated and approved  
107 management agency under Section 208 of the CWA that discharges to waters of the  
108 state;
- 109 (2) Designed or used for collecting or conveying stormwater;
- 110 (3) Which is not a combined sewer; and
- 111 (4) Which is not part of a "publicly owned treatment works (POTW)" as defined in the  
112 Department of Environmental Management Office of Water Resources Regulations for  
113 the Rhode Island Pollutant Discharge Elimination System.

114 NONSTORMWATER DISCHARGE — Any discharge to the municipal storm drain system that is  
115 not  
116 composed entirely of stormwater.

117 OPERATOR — The party or parties that either individually or taken together have the day-to-day  
118 operational control over the facility activities and the ability to make modifications to such

119 activities.

120 OWNER — The party or parties that either individually or taken together has legal title to any  
121 premise.

122 PERSON — Any individual, association, organization, partnership, firm, corporation or other  
123 entity recognized by law and acting as either the owner or as the owner's agent.

124 POLLUTANTS — Any element, constituent, or property of waste, or of agricultural, industrial,  
125 manufacturing, or commercial process waste, or leachate, or any other substance which causes  
126 the  
127 alteration of the chemical, physical, biological, or radiological integrity of water through its  
128 introduction therein. ~~Anything which causes or contributes to pollution.~~ Pollutants may include,  
129 but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids;  
130 nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other  
131 discarded or abandoned objects, ordinances, and accumulations, so that same may cause or  
132 contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and  
133 wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes;  
134 wastes and residues that result from constructing a building or structure; and noxious or offensive  
135 matter of any kind.

136 RIPDES PERMITS – Any permit authorized by the Rhode Island Department of Environmental  
137 Management (RIDEM) under the Rhode Island Pollutant Discharge Elimination System  
138 (RIPDES).

139 STORMWATER — Any surface flow, runoff, and drainage consisting entirely of water from any  
140 form of natural precipitation and resulting from such precipitation.

141 UNAUTHORIZED DISCHARGE — A discharge of stormwater not authorized by a RIPDES  
142 permit, or an allowable stormwater discharge found to be a significant contributor of pollutants to  
143 the MS4.  
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145 WATERCOURSE — A natural or man-made surface drainage channel or body of water  
146 (including a lake or pond) through which a water flow occurs, either continuously or  
147 intermittently.

148 WATERS OF THE STATE — Surface waters and groundwaters within the boundaries of the  
149 State of Rhode Island and subject to its jurisdiction.  
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152 **§ 14-124. Discharge prohibitions.**

153 (a) Prohibition of unauthorized discharges.

- 154 (1) No person shall discharge or caused to be discharged into the municipal separate storm  
155 sewer system (MS4) or watercourses any pollutant or nonstormwater discharge unless  
156 such a nonstormwater discharge is outlined below at § 14-124(a)(2) in Part I.B.3 of the  
157 MS4 general permit. The allowable non-stormwater discharges (described below) are  
158 permitted if deemed not to be a significant contributor of pollutants to the municipal  
159 separate storm sewer system.

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- 161 (2) Allowable nonstormwater discharges:
- 162 a. Discharges which result from the washdown of vehicles at retail dealers selling
- 163 new and used automobiles where no detergents are used;
- 164 b. Discharges from individual residential car washing;
- 165 c. External building washdown where no detergents are used;
- 166 d. The use of water to control dust;
- 167 e. Firefighting activities;
- 168 f. Fire hydrant flushings;
- 169 g. Natural springs;
- 170 h. Uncontaminated groundwater;
- 171 i. ~~d~~Dechlorinated pool discharges;
- 172 j. Air conditioning condensate;
- 173 k. Lawn watering;
- 174 l. ~~p~~Potable water sources, including waterline flushings;
- 175 m. Irrigation drainage;
- 176 n. Pavement washwaters where spills or leaks of toxic or hazardous materials have
- 177 not occurred (unless all spilled materials have been removed) and where detergents
- 178 are not used;
- 179 o. Discharges from foundation or footing drains where flows are not contaminated
- 180 with process materials such as solvents, or contaminated by contact with soils
- 181 where spills or leaks of toxic or hazardous materials have occurred;
- 182 p. Uncontaminated utility vault dewatering;
- 183 q. ~~d~~Dechlorinated waterline testing water; and
- 184 r. Hydrostatic test water that does not contain any treatment chemicals and is not
- 185 contaminated with process chemicals.

186 (b) Prohibition of illicit connections.

- 187 (1) The construction, use, maintenance, or continued existence of illicit connections to the
- 188 municipal separate storm sewer system is prohibited. This prohibition expressly
- 189 includes, without limitation, illicit connections made in the past, regardless of whether
- 190 the connection was permissible under law or practices applicable or prevailing at the
- 191 time of connection.
- 192 (2) A person is considered to be in violation of this article if the person ~~connects~~ makes an
- 193 illicit connection~~line conveying sewage~~ to the MS4, or allows such a connection to
- 194 continue and must provide corrective action.

195 **§ 14-125. Suspension of MS4 access.**

- 196 (a) Suspension due to illicit discharges in emergency situations. The Director of Public Works
- 197 may, without prior notice, suspend MS4 discharge access to a person when such suspension is
- 198 necessary to stop an actual or threatened non-stormwater discharge which presents or may
- 199 present imminent and substantial danger to the environment, or to the health or welfare of
- 200 persons, or to the MS4 or waters of the state. If the violator fails to comply with a suspension

201 order issued in an emergency, the authorized enforcement agency may take such steps as  
202 deemed necessary to prevent or minimize damage to the MS4 or waters of the state, or to  
203 minimize danger to persons, including but not limited to those actions defined in § 14-131  
204 Enforcement.

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- 206 (b) Suspension due to the detection of illicit discharge. Any person discharging to the MS4 in  
207 violation of this article may have his or her MS4 access terminated if such termination would  
208 abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator  
209 of the proposed termination of its MS4 access. The violator may petition the authorized  
210 enforcement agency for reconsideration and a hearing. A person commits an offense if the  
211 person reinstates MS4 access to premises terminated pursuant to this section, without the prior  
212 approval of the authorized enforcement agency.
- 213 (c) Entry to perform duties under this article. To the extent permitted by state law, or if authorized  
214 by the owner or other party in control of the property, the authorized enforcement agency, its  
215 agents, officers, and employees may enter upon privately owned property for the purpose of  
216 performing their duties under this article and may make or cause to be made such  
217 examinations, surveys or sampling as the authorized enforcement agency deems reasonably  
218 necessary.  
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220 **§ 14-126. Industrial and construction activity discharge.**

221 Any person subject to an industrial or construction activity RIPDES stormwater ~~discharge~~ permit  
222 shall comply with all provisions of such permit. Proof of compliance with said permit may be  
223 required in a form acceptable to the authorized enforcement agency prior to the allowing of  
224 discharges to the MS4.

225 **§ 14-127. Inspections and monitoring.**

226 The authorized enforcement agency shall be permitted, upon the presentation of credentials and  
227 other documents as may be required by law, to:

- 228 (1) Enter the discharger's premise(s) where a regulated activity is conducted, or where records  
229 must be kept as required under the conditions of this permit;  
230 (2) Have access to and copy, at reasonable times, any records that must be kept as required  
231 under the conditions of the permit;  
232 (3) Inspect at reasonable times any equipment, practices, or operations regulated or required  
233 under this permit; and  
234 (4) Sample or monitor any substances or parameters at any location, at reasonable times, for the  
235 purposes of assuring permit compliance or as otherwise authorized by the CWA or Rhode  
236 Island law.

237 **§ 14-128. Requirement to prevent, control and reduce stormwater pollutants.**

238 In an ~~attempt~~ order to prevent, control, and reduce stormwater pollutants, any person engaged in

239 activities or operations, or owning facilities or property which, through illicit discharge or illicit  
240 connection will or may result in pollutants entering stormwater, the storm sewer system or waters  
241 of the state shall either remove said connection or discharge or implement Best Management  
242 Practices ~~best management practices~~ (BMPs) to the extent they are technologically achievable to  
243 prevent and reduce such pollutants. The owner or operator of a commercial or industrial  
244 establishment shall provide reasonable protection from accidental discharge of prohibited materials  
245 or other wastes into the municipal storm drain system or watercourses. Facilities to prevent  
246 accidental discharge of prohibited materials or other wastes shall be provided and maintained at the  
247 owner or operator's expense.

248 **§ 14-129. Watercourse protection.**

249 Every person owning property through which a watercourse passes, or such person's lessee, shall  
250 keep and maintain that part of the watercourse within the property reasonably free of trash,  
251 debris,  
252 ~~excessive vegetation,~~ and other obstacles that would pollute, contaminate, or significantly  
253 ~~retard~~ alter the flow of water through the watercourse. In addition, the owner or lessee shall  
254 maintain existing privately owned structures within or adjacent to a watercourse, so that such  
255 structures will not become a hazard to the use, function, or physical integrity of the  
256 watercourse. The owner or lessee shall not remove healthy bank vegetation beyond ~~that~~  
257 ~~actually~~ what is necessary for maintenance, nor remove said vegetation in such a manner as to  
258 increase the vulnerability of the watercourse to erosion. The property owner or lessee shall be  
259 responsible for maintaining and stabilizing any physical improvements or alterations to the  
260 landscape that are pre-existing or were performed by the owner for that portion of the  
261 watercourse that is within ~~his or her~~ the subject property lines in order to protect against  
262 erosion and degradation of the watercourse originating or contributed from ~~his or her~~ the  
263 subject property. Nothing in this section shall preclude any owner/lessee from compliance with  
264 relevant provisions of the Rhode Island Freshwater Wetlands Act, R.I.G.L. § 2-1-18 et seq., or  
265 other applicable laws or regulations.

266 **§ 14-130. Notification of spills.**

267 Notwithstanding other requirements of law, as soon as any person responsible for a facility or  
268 operation, or responsible for emergency response for a facility or operation, has information of any  
269 known or suspected release of materials which are resulting or may result in unauthorized  
270 discharges or pollutants discharging into stormwater, the storm drain system, or waters of the state  
271 from said facility, said person shall take all necessary steps to ensure the discovery, containment,  
272 and cleanup of such release. In the event of such a release of a hazardous material, said person  
273 shall immediately notify emergency response officials of the occurrence via emergency dispatch  
274 services (911). In the event of a release of nonhazardous materials, said person shall notify the  
275 authorized enforcement agency no later than the next business day. Notifications in person or by  
276 phone shall be confirmed by written notice addressed and mailed to the authorized enforcement  
277 agency within five business days of the phone notice. If the discharge of prohibited materials

emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years. Nothing in this section shall preclude any owner/lessee from compliance with relevant provisions of the Rhode Island Clean Water Act, R.I.G.L. § 46-12-1 et seq., or other applicable laws or regulations.

**§ 14-131. Enforcement.**

- (a) Notice of violation. Whenever the authorized enforcement agency finds that any person has violated a prohibition or failed to meet a requirement of this article, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:
- (1) The performance of monitoring, analyses, and reporting;
  - (2) The elimination of illicit connections or discharges;
  - (3) That violating discharges, practices, or operations shall cease and desist;
  - (4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and
  - (5) Payment of a fine to cover administrative and remediation costs; and
  - (6) The implementation of source control or treatment BMPs.
- (b) If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor, and the expense thereof shall be charged to the violator.

**§ 14-132. Appeal of notice of violation.**

Any person receiving a notice of violation may appeal the determination of the authorized enforcement agency. The notice of appeal must be filed with the Municipal Court of the Town of Cumberland within 14 days from the date of the receipt of the notice of violation. The notice of appeal shall be in writing and contain a detailed basis upon which the appeal was taken. Jurisdiction of said court is conferred by § 11-15(a) of the Town of Cumberland Code of Ordinances.

**§ 14-133. Settlements of appeal of notice of violation.**

In lieu of enforcement proceedings, penalties, and remedies authorized by this article, the authorized enforcement agency may enter into a negotiated settlement to resolve the appeal of the notice of violation. Such settlement may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, or creek cleanup, etc as mutually agreed upon by the authorized enforcement agency and the appellant. If no mutually

316 agreed upon settlement can be reached, the authorized enforcement agency shall retain the  
317 authority to pursue those enforcement actions defined in § 14-131, enforcement measures  
318 defined in § 14-134, and administrative orders defined in § 14-135.

319 **§ 14-134. Enforcement measures after appeal.**

320 If no timely appeal of a notice of violation has been taken and the violation has not been  
321 corrected  
322 pursuant to the requirements set forth in the notice of violation or, in the event of an appeal,  
323 within 30 days of the decision of the municipal authority upholding the decision of the authorized  
324 enforcement agency, then representatives of the authorized enforcement agency shall undertake  
325 all necessary actions, including requesting injunctive relief through the Municipal Court or  
326 Superior Court, to enter upon the subject private property and take any and all measures  
327 necessary to abate the violation and/or restore the property.

328 **§ 14-135. Administrative orders.**

329 The authorized enforcement agency is authorized to issue the following administrative orders at  
330 any time it deems such action appropriate to secure timely and effective compliance with this  
331 article or a discharge permit or order issued pursuant to this article, whether or not any  
332 previous notifications of violation have been provided to the user:

- 333 (1) Cease-and-desist order. The authorized enforcement agency may issue an order to cease and  
334 desist a violation or an action or inaction which threatens a violation and to direct the user to  
335 comply forthwith or to take such appropriate remedial or preventive action as may be needed  
336 to properly address the violation or threatened violation, including halting operations and  
337 terminating the discharge.
- 338 (2) Compliance order. The authorized enforcement agency may issue an order requiring a user to  
339 provide, within a specified period of time, such treatment, pretreatment or discharge control  
340 facilities or related appurtenances as are necessary to correct a violation or to prevent a  
341 threatened violation. A compliance order may also direct that a user provide improved  
342 operation and maintenance of existing discharge facilities, conduct additional self-monitoring  
343 or submit appropriate reports or management plans.
- 344 (3) Show-cause order. The authorized enforcement agency may issue an order to show cause why  
345 a proposed enforcement action should not be taken. Notice shall be served on the user  
346 specifying the time and place for a meeting, the proposed enforcement action and the reasons  
347 for such action, and a request that the user show cause why the proposed enforcement action  
348 should not be taken. Whether or not a duly notified user appears as noticed, additional  
349 enforcement action may be initiated.
- 350 (4) Consent order. The authorized enforcement agency may enter into consent orders, assurances  
351 of voluntary compliance, or other similar documents establishing an agreement with a user.  
352 Such orders shall include specific actions to be taken by the user and specific time frames to  
353 correct a violation or to remove the threat of a violation.

354 **§ 14-136. Cost of abatement of violation.**

355 Within 30 days after abatement of the violation, by or under the direction of the authorized  
356 enforcement agency, the owner of the property will be notified by the authorized enforcement  
357 agency or ~~municipality~~ Town of the cost of abatement, including administrative costs. If the amount  
358 due is not paid within a timely manner as determined by the enforcement agency or municipality,  
359 the charges shall become a special assessment against the property and shall constitute a lien on  
360 the property for the amount of the assessment. Any person violating any of the provisions of this  
361 section shall become liable to the Town by reason of such violation. The liability shall be paid in  
362 not more than 12 equal payments. Interest at the rate of 12% per annum shall be assessed on the  
363 balance beginning on the 60<sup>th</sup> day following discovery of the violation.

364 **§ 14-137. Injunctive relief.**

365 It shall be unlawful for any person to violate any provision or fail to comply with any of the  
366 requirements of this article. If a person has violated or continues to violate the provisions of this  
367 article, the authorized enforcement agency may petition for a temporary, preliminary or permanent  
368 injunction restraining the person from activities which would create further violations or  
369 compelling the person to perform abatement or remediation of the violation.

370 **§ 14-138. Violations deemed public nuisance.**

371 In addition to the enforcement processes and penalties provided, any condition caused or  
372 permitted to exist in violation of any of the provisions of this article is a threat to public health,  
373 safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or  
374 restored at the violator's expense, and/ or a civil action to abate, enjoin, or otherwise compel the  
375 cessation of such nuisance may be taken.

376 **§ 14-139. Criminal prosecution.**

377 Any person that has violated or continues to violate this article shall be liable to criminal  
378 prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of \$500 per  
379 violation per day and/or imprisonment for a period of time not to exceed 30 days. The authorized  
380 enforcement agency may recover all attorneys' fees, court costs, and other expenses associated  
381 with enforcement of this article, including sampling and monitoring expenses.

382 **§ 14-140. Remedies not exclusive.**

383 The remedies listed in this article are not exclusive of any other remedies available under any  
384 applicable federal, state, or local law and it is within the discretion of the authorized enforcement  
385 agency to seek cumulative remedies.

386 **§ 14-141. Severability**

387 If any section, provision, or portion of this article is judged unconstitutional or invalid by a court,  
388 the remainder of the article shall control.  
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**Section 2.** Article III of Chapter 20 of the Code of Ordinances entitled “Soil Erosion and Sediment Control” is hereby repealed in its entirety and replaced with the following:

**Article III Soil Erosion and Sedimentation Control**

**DIVISION 1**

**Generally**

**§ 20-61. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

APPLICANT — Any person, corporation or public or private organization proposing a development which would involve disturbance to the natural terrain.

BEST MANAGEMENT PRACTICES (BMPs) – Schedules of activities, prohibitions of measures, general good housekeeping measures, pollution prevention and educational measures, maintenance procedures, and other management measures to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment measures, operating procedures, and measures to control site runoff, spillage or leaks, sludge or water disposal, solid waste disposal, or drainage from raw materials storage.

CONSTRUCTION WASTES – Solid and/or liquid wastes generated from the construction and/or site development process. This includes, but is not limited to, asphalt, chemicals, concrete, concrete truck washout, demolition debris, discarded building materials, litter, and sanitary wastes.

CUT — An excavation; the difference between a point on the original ground and a designed point of lower elevation on the final grade; also, the material removed in excavation.

DEVELOPMENT PROJECT — Any construction, reconstruction, demolition or removal of structures, roadway, parking or other paved areas, utilities or other similar facilities, including any action requiring a building permit by the Town.

DISTURBED AREA – An area in which the natural vegetative soil cover has been removed or altered and, therefore, is susceptible to erosion.

EROSION — The removal of mineral and organic matter by the action of wind, water and gravity.

EXCAVATE — Any act by which earth, sand, gravel, rock or any other similar material is dug into, cut, quarried, uncovered, removed, displaced, relocated or bulldozed and includes the condition resulting therefrom.

FILL — Any act by which earth, sand or other material is placed or moved to a new location aboveground. The fill is also the difference in elevation between a point of existing undisturbed ground and a designated point of higher elevation of the final grade.

LAND DISTURBING ACTIVITY — Any physical land development activity which includes such actions as clearing vegetation, moving or filling land, or excavating soil or mineral resources or similar activity.

LIMIT OF DISTURBANCE – Line delineating the boundary of the area to be disturbed during a development or redevelopment project. Area outside this boundary shall not be touched.

RUNOFF — The surface water discharge or rate of discharge of a given watershed after a fall of rain or snow and including seepage flows that do not enter the soil but run off the surface of the land; also, the portion of water that is not absorbed by the soil, but runs off the land surface.

SEDIMENT — Solid material, both mineral and organic, that is in suspension, is being transported or has been moved from its site of origin by wind, water or gravity as a product of erosion.

SOIL AMENDMENT – Any material, such as compost, lime, animal manures, and/or crop residues, that is worked into the soil. Generally pertains to materials other than chemical fertilizers.

SOIL EROSION AND SEDIMENT CONTROL PLAN — A plan that shows the location and construction detail(s) of the erosion and sediment control measures to be utilized during and after construction. The plan serves as the approved document required before any person may cause a disturbance to the natural terrain within the Town; also referred to as erosion and sediment control plan or approved plan.

SPECIAL RESOURCE PROTECTION WATERS (SRPW) – High quality surface waters identified as having significant recreational or ecological uses. SRPWs are identified within Rhode Island's Water Quality Regulations.

STORMWATER POLLUTION PREVENTION PLAN (SWPPP) – A site-specific document or collection of documents that identifies the potential sources of stormwater pollution, describes stormwater control measures, such as Best Management Practices (BMPs), to reduce or eliminate the identified pollutants, and identifies procedures operators will implement to comply with specific

permit conditions.

TOTAL MAXIMUM DAILY LOAD (TMDL) – A calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant’s sources, including a margin of safety. Waterbodies having at least one impairment requiring a TMDL are identified in Rhode Island’s most recent Section 303(d) List of Impaired Waters report.

VEGETATION AND SOILS — The same as defined by the United States Geological Services of the United States Department of Commerce.

WATERCOURSE — Any tidewater or coastal wetland at its mean high-water level, and any freshwater at its seasonal high-water level, including but not limited to any river, stream, brook, pond, lake, swamp, marsh, bog, fen, wet meadow or any other standing or flowing body of water. The edge of the watercourse shall be used for delineation purposes.

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**§ 20-62. Findings and purpose.**

- (a) The Town Council finds that excessive quantities of soil and other erodible materials are eroding from certain areas that are undergoing development for certain nonagricultural uses such as housing developments, industrial areas, gravel removal operations, recreation facilities, commercial facilities, and roads. Erosion occurring in these areas makes costly repairs necessary to gullies, washed-out fills, infrastructure, roads, and embankments. The resulting sediment clogs storm sewers, road ditches, roils streams, and deposits silt in ponds and reservoirs. In some of the Town's waters, silt resulting from erosion has become a major water pollutant and threatens the water supply as well as the recreational, aesthetic, and wildlife habitat values associated with these waters. The Town finds that certain agricultural lands also experience extensive erosion and sedimentation.
- (b) The purpose of this article is to control the discharge of construction waste and prevent soil erosion and sedimentation from occurring as a result of development activities within the Town by requiring proper provisions for water disposal, construction waste management, and the protection of soil surfaces during and after construction, in order to promote the safety, public health and general welfare of the residents of the Town.

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**§ 20-63. Permit process – general overview**

- (a) Any property owner seeking to disturb any existing vegetation, grade and contour of land in a manner which may increase the potential for soil erosion must first file an application for determination with the Building Official to determine whether the provisions of this article apply.
- (b) If the provisions of this article apply, the applicant must provide a soil erosion and sediment control plan for review by the Building Official or appointed designee. Where a SWPPP is required as part of another permitting process, the SWPPP may be submitted to fulfill this requirement.
- (c) Depending on the nature of the development activity, the review of a soil erosion or sediment control plan may occur independently or as part of a more comprehensive development application under the Land Development and Subdivision Regulations.
- (d) Site development shall not begin unless the soil erosion and sediment control plan is approved by

the Building Official or appointed designee.

- (e) Planned soil erosion and sediment control measures and facilities shall be installed and functional as scheduled according to the approved plan. Inspections of these measures may occur in accordance with the provisions of this article.

**§ 20-64. Authority of Building Official.**

The Town Council authorizes the Building Official to administer the provisions of this article under G.L. 1956, §§ 45-46-1, 45-46-4 and 45-46-5. The Building Official may also designate other staff under the Building Official's supervision for all enforcement responsibilities.

**§ 20-65. Qualifications of Building Official.**

- (a) The Building Official or appointed designee reviewing soil erosion and sediment control plans shall have the following qualifications:
- (1) Be a registered engineer, surveyor or landscape architect or Soil and Water Conservation Society certified erosion and sediment control specialist; or
  - (2) Shall have attended a soil erosion and sediment control training session sponsored by the United States Department of Agriculture Soil Conservation Service and Conservation Districts.
- (b) The Building Official or appointed designee shall be granted the authority necessary to administer this article, including entry onto private property when necessary for periodic inspections to ensure compliance with provisions of the approved soil erosion and sediment control plan.

**§ 20-66. Severability**

If any section, provision, or portion of this article is judged unconstitutional or invalid by a court, the remainder of the article shall control.

**DIVISION 2**

**Applicability**

**§ 20-67. Applicability of article.**

This article shall be applicable to any situation involving any disturbance of the terrain, topsoil or vegetative ground cover upon any property within the Town, after determination of applicability by the Building Official or appointed designee, based upon criteria outlined in § 20-70. Compliance with the requirements as described in this article shall not be construed to relieve the owner or applicant of any obligations to obtain necessary state, Town or federal permits otherwise required by appropriate statute or regulation appertaining thereto.

**§ 20-68. Determination of applicability required.**

It shall be unlawful for any person to disturb any existing vegetation, grade and contour of land in a manner which may increase the potential for soil erosion without first applying for a determination of applicability from the Building Official or appointed designee. The following activities are automatically subject to the requirements of this article:

- (a) All activities disturbing a total area equal to or greater than one acre, including disturbances less than one acre if part of a larger common plan of development; and
- (b) Any land disturbance activity that requires permit approval by either the Rhode Island Department of Environmental Management or Coastal Resources Management Council.

**§ 20-69. Exemptions.**

No determination of applicability shall be required for the following:

- (a) Construction, alteration or use of any additions to single-family or duplex homes or related structures, provided:
  - (1) The ground coverage of such addition is less than 1,000 square feet;
  - (2) Construction, alteration and use does not occur within 100 feet of any watercourse or wetland;
  - (3) The slopes at the site of land disturbance do not exceed 10%.
- (b) Use of a home garden as permitted in a residential use zone by the provisions of the zoning ordinance and certified by the Building Official or appointed designee in association with on-site residential use.
- (c) Accepted agricultural soil disturbing practices associated with active or fallow agricultural lands such as seasonal tilling and harvest activities associated with property utilized for private or commercial agricultural or silvicultural purposes, except within drinking water watersheds.
- (d) Excavations for an improvement other than those described in Subsection (a) of this section which exhibit all of the following characteristics:
  - (1) Does not result in total displacement of more than 50 cubic yards of material;
  - (2) Has no slope steeper than 10 feet vertical in 100 feet horizontal or approximately 10%; and
  - (3) Has all disturbed surface areas promptly and effectively protected to prevent soil erosion and sedimentation as determined by the Building Official or appointed designee in the best interest of the public.
- (e) Grading, as a maintenance measure, or for landscaping purposes on existing developed land parcels or lots, provided that all bare surface is immediately seeded, sodded or otherwise protected from erosive action and all of the following are met:
  - (1) The aggregate area of such activity does not exceed 2,000 square feet;
  - (2) The change of elevation does not exceed two feet at any point; and
  - (3) The grading does not involve a quantity of fill greater than 18 cubic yards, except where fill is excavated from another portion of the same parcel and the quantity does not exceed 50 cubic yards.
- (f) Grading, filling, removing or excavating activities and operations undertaken by the Town under

the direction and supervision of the Director of Public Works for work on streets, roads or rights-of-way dedicated to public use; provided, however, that adequate and acceptable erosion and sediment controls are incorporated in engineering plans and specifications as employed. Appropriate controls shall apply during construction as well as after the completion of these activities. All such work shall be undertaken in accordance with the performance principles provided for in § 20-82 and such standards and definitions as may be adopted to implement such performance principles.

**§ 20-70. Application; considerations for making determination.**

Where a land disturbance activity is not automatically subject to the provisions of this article per § 20-68 or exempt per § 20-69, the Building Official or appointed designee shall determine whether the provisions of this article shall apply and an approved plan is required. The activity shall be subject to the provisions of this article where the Building Official or appointed designee finds that erosion resulting from the land disturbing activity is significant and represents a threat or nuisance or damage to adjacent properties or to the quality of any habitat, watercourse, wetland, or drinking water source. The application for determination of applicability shall describe the location, nature, character and time schedule of the proposed land disturbing activity in sufficient detail to allow the Building Official or appointed designee to determine the potential for soil erosion and sedimentation resulting from the proposed project. The Building Official may request access to the site as part of the determination review.

The following factors will be considered in the determination of applicability:

- (a) The proposed scale of disturbance, the sensitivity of downstream resources, the condition of existing drainage infrastructure on or adjacent to the site, the presence of any illicit discharges or illicit connections, soil types, site topography, the proposed duration of soil exposure, and drainage patterns as they relate to adjacent properties
- (b) The current *Rhode Island Soil Erosion and Sediment Control Handbook*, prepared by the U.S. Department of Agriculture Soil Conservation Service, Rhode Island Department of Environmental Management, and Rhode Island State Conservation Committee, shall also be consulted in making a determination of applicability, and content from this publication may be cited in support of such decision.
- (c) The sensitivity of the waterbody to which the site drains. A waterbody and its watershed will be considered sensitive if:
  - (1) A Total Maximum Daily Load or Special Area Management Plan is written or under development for it; or
  - (2) It is included on the Rhode Island Department of Environmental Management's 303(d) list; or
  - (3) It is included on the Rhode Island Department of Environmental Management's list of Special Resource Protection Waters; or
  - (4) It has been specifically identified by the Town to be of special concern in the Comprehensive Plan.

**DIVISION 3**

## Procedures

### § 20-71. Preparation.

The erosion and sediment control plan and/or SWPPP shall be prepared by a registered Professional Engineer or Landscape Architect or Certified Professional in Erosion and Sediment Control (CPESC, Inc.).

### § 20-72. Fee schedule for applications.

An application for review of soil erosion and sediment control plans or SWPPPs submitted under this division shall require a nonrefundable filing fee paid to the Town. Such fees shall be according to the schedule established from time to time by the Town Council and on file in the Town Clerk's office.

### § 20-73. Soil Erosion and Sediment Control Plans and SWPPPs.

- (a) To obtain approval for a land disturbing activity as found applicable by the Building Official or appointed designee under § 20-68, an applicant shall first file a soil erosion and sediment control plan if the site is less than one (1) acre in size, or if the site is a total of one (1) acre or greater in size they shall submit a Stormwater Pollution Prevention Plan (SWPPP) signed by the owner of the property or authorized agent, on which property the work subject to approval is to be performed. The plan or drawings, as described in this division, shall include proposed erosion and sediment control and waste management measures to be employed by the applicant or the applicant's agent;
- (b) Where any portion of a proposed development requires approval under the Rhode Island Freshwater Wetlands Act (G.L. 1956, § 2-1-15 et seq.), and where the approval contains provisions for soil erosion and sediment control, that approved plan shall be a component of the overall soil erosion and sediment control plan or SWPPP required under this article for the development.
- (c) In those cases where a SWPPP is submitted, the applicant will also submit a copy of the Notice of Intent to the Building Official.

### § 20-74. Review.

- (a) The Building Official or appointed designee may waive the procedural requirements and timelines under this subsection where the proposed activity will be reviewed through the submittal of a Soil Erosion and Sediment Control Plan (or SWPPP) as part of an application under the Land Development and Subdivision Regulations. The purpose of said waiver will be to allow the procedures and timelines for those permit processes to govern. All other requirements under this article shall remain in effect including, but not limited to, the need for the issuance of an approved plan from the Building Official or appointed designee before any site disturbance begins. The responsibility of coordinating the determination of applicability, any reviews under the Land Development and Subdivision Regulations, and plan approval from the Building Official or appointed designee lies with the applicant.
- (b) Notwithstanding § 20-74(a), the following procedural requirements and timelines apply:
  - (1) Within 60 days of a positive determination of applicability, the owner or applicant shall submit five copies of a soil erosion and sediment control plan or SWPPP for approval by

- the Building Official or appointed designee. Failure to submit required plans in the 60-day timeframe will result in the need for a new determination of applicability.
- (2) Within 10 working days of the receipt of a completed soil erosion and sediment control plan or SWPPP, the Building Official or appointed designee shall send a copy of the plan to the public works department, Planning Board, department of planning and community development, and conservation commission, for the purpose of review and comment. The Building Official or appointed designee may also, within the time frame established in this division, submit copies of the plan to other local departments or agencies, including the conservation district that services the county, in order to better achieve the purpose of this article. Failure of such reviewing authorities to respond within 21 days of their receipt of the plan shall be deemed as no objection to the plan as submitted.
  - (3) The submittal of plans for review shall amount to acknowledgement and authorization from the applicant for municipal officials to enter upon and inspect private property where work is proposed for the purpose of reviewing site conditions as they relate to soil erosion, surface water runoff, and sediment control.
  - (4) The Building Official or appointed designee shall take action, in writing, either approving or disapproving the soil erosion and sediment control plan or SWPPP with reasons stated within 14 days after the Building Official or appointed designee has received the written opinion of the review authorities mentioned in subsection (2).

**§ 20-75. Approval.**

In approving a plan, the Building Official or appointed designee may attach such conditions deemed reasonably necessary by such review authorities to further the purposes of this article. The conditions pertaining to erosion and sediment control measures and devices may include, but are not limited to, restoration; the erection of walls, dams and structures; planting vegetation, trees and shrubs; furnishing necessary easements and specifying a method of performing various kinds of work and the sequence or timing thereof. The applicant or owner shall notify the Building Official or appointed designee at least 72 hours in advance of the applicant or owner's intent to begin clearing and construction work described in the soil erosion and sediment control plan or SWPPP on the site during grading and construction. The applicant shall have a copy of the soil erosion and sediment control plan or SWPPP located at the development site for the duration of the construction process.

**§ 20-76. Expiration of approval; renewal.**

- (a) Every approval granted in this article shall expire at the end of the time period set forth in the conditions of the approval. The developer shall fully perform and complete all the work required within the specified time period.
- (b) If the developer is unable to complete the work within the designated time period, the developer shall, at least 30 days prior to the expiration date, submit a written request for an extension of time to the Building Official or appointed designee, setting forth the reasons underlying the requested time extension. The Building Official or appointed designee may grant an extension of time up to a maximum of one year from the date of the original deadline. Subsequent extensions under the same conditions may be granted at the discretion of the Building Official or appointed designee.

**§ 20-77. Maintenance of measures.**

Maintenance of all erosion and sediment control measures and construction waste management measures under this article shall be the responsibility of the owner. The erosion and sediment control measures and construction waste management measures shall be maintained in good condition and working order on a continuing basis. Watercourses originating and located completely on private property shall be the responsibility of the owner to their point of open discharge at the property line or at a communal watercourse within the property.

**§ 20-78. Liability.**

Neither approval of a soil erosion and sediment control plan or SWPPP nor compliance with any condition of this article shall relieve the owner or applicant from any responsibility for damage to persons or property or impose any liability upon the Town for damages to persons or property.

**§ 20-79. Inspections.**

The provisions of this article shall be administered and enforced by the Building Official or appointed designee.

The owner or designated agent shall make regular inspections of all control measures in accordance with the inspection schedule outlined on the approved erosion and sediment control plan or SWPPP. The purpose of such inspections will be to determine the overall effectiveness of the control plan and the need for additional control measures. All inspections shall be conducted by a properly trained professional recognized as registered engineers, registered landscape architects, or Certified Erosion, Sediment and Storm Water Inspector (CESSWI), or other appropriately trained and qualified individuals. All inspections shall be documented in written form and submitted to the building official as requested.

The Building Official or appointed designee will perform a minimum of two (2) inspections: one during construction and one after final stabilization of the site. The developer or owner shall notify the Building Official or appointed designee of the installation of erosion and sediment control measures in order for an inspection to be performed during the construction phase of the project. The Building Official or appointed designee will confirm that wastes are controlled and that the erosion and sediment control measures are installed as planned, meet the needs of the site, and conform with the *Rhode Island Soil Erosion and Sediment Control Handbook*.

- (a) Periodic inspection. All work shall be subject to periodic inspections by the Building Official or appointed designee. All work shall be performed in accordance with an inspection and construction control schedule approved by the Building Official or appointed designee, who shall maintain a permanent file on all inspections.

Upon completion of the work, the developer or owner shall notify the Building Official or appointed designee that all grading, drainage, erosion and sediment control measures and devices and vegetation and ground cover planting have been completed in conformance with the approval, all attached plans, specifications, conditions and other applicable provisions of this article.

- (b) Final inspection.

- (1) Upon notification of the completion by the owner, the Building Official or appointed designee shall make a final inspection of the site in question and shall prepare a final summary inspection report of all findings which shall be retained in the department of inspections and in the permanent inspection file of the department of public works. A copy of such report shall be sent to the developer and property owner.
- (2) The applicant or owner may request the release of the performance bond from the Building Official or appointed designee 12 months or two growing seasons after the final site inspection has been completed and approved. If the performance bond has been posted with the recording of a final subdivision, the bond shall be released a minimum of 12 months after the Building Official or appointed designee has been notified by the Planning Board of successful completion of all plat improvements by the applicant or owner.

**§ 20-80. Notice of noncompliance.**

If, at any stage, the work in progress or work completed under the terms of an approved erosion and sediment control plan does not conform to the plan, a written notice from the Building Official or appointed designee to comply shall be transmitted by certified mail to the owner. The notice shall set forth the nature of the temporary and permanent corrections required and the time limit within which corrections shall be completed as set forth in § 20-85. Failure to comply with the required corrections within the specified time limit shall be considered in violation of this article, in which case the performance bond or cash or negotiable securities deposit shall be subject to notice of default in accordance with § 20-84.

**§ 20-81. Appeals.**

(a) Administrative procedures.

- (1) If the ruling on the soil erosion and sediment control plan or SWPPP by the Building Official or appointed designee is unsatisfactory to the applicant or owner, the applicant or owner may file a written appeal. The appeal of soil erosion and sediment control plans and SWPPPs shall be to the Planning Board.
- (2) Appeal procedures shall follow the requirement for appeal to the Planning Board.
- (3) During the period in which the request for appeal is filed and until such time as a final decision is rendered on the appeal, the decision of the Building Official or appointed designee shall remain in effect.

(b) Expert opinion. The Building Official or appointed designee or the Planning Board may seek technical assistance on any soil erosion and sediment control plan or SWPPP. The expert opinion must be made available in the office of the Building Official or appointed designee as a public record prior to the appeal hearing. The cost of securing such expert opinion shall be borne equally by the Town and the developer proposing the alteration.

## **DIVISION 4**

### **Soil Erosion and Sediment Control Plan**

#### **§ 20-82. Performance principles.**

The contents of the soil erosion and sediment control plan or SWPPP shall clearly demonstrate how the performance principles, outlined as follows, have been met in the design and are to be accomplished by the proposed development project:

- (a) The area selected for disturbance shall show due regard for natural drainage characteristics, topography and vegetation.
- (b) The area of disturbance shall be kept to a minimum and that disturbed areas remaining idle for more than fourteen (14) days shall be stabilized with hydroseeding or other appropriate stabilization measure(s).
- (c) To the extent possible, disturbing existing steep slopes shall be avoided.
- (d) The grade of newly created slopes shall be minimized.
- (e) Original boundaries, alignment, and slope of watercourses within the project locus shall be preserved to the greatest extent feasible.
- (f) In general, drainage shall be directed away from structures intended for human occupancy, municipal or utility use, or similar structures.
- (g) Selection of soil erosion and sediment control measures shall be consistent with the *Rhode Island Erosion and Sediment Control Handbook*. Measures shall be selected and installed in a manner that accounts for the volume and makeup of sediment, and the volume and flow rate of runoff at a specific location. Any drainage calculations or considerations shall include runoff from tributary upstream areas which may be outside the locus of the project. Where deemed necessary by the Building Official or appointed designee, stormwater flow calculations shall be provided for the 10-year, 24-hour Type III rain event.
- (h) Clearing and grading for sites greater than three (3) acres in size shall be phased to the extent practicable.
- (i) Drainage facilities shall be installed as early as feasible during construction, prior to site clearance if possible.
- (j) No stockpiles of soil or other erodible materials shall be located within 50 feet of a watercourse. Stockpile side slopes shall not be greater than 2:1.
- (k) Silt fencing, temporary vegetation, and/or mulching shall be used to protect bare areas and stockpiles from erosion during construction; the smallest areas feasible shall be exposed at any one time; disturbed areas shall be protected during the nongrowing months, November through March.
- (l) Permanent vegetation shall be placed immediately following final grading.
- (m) Permanent seeding be undertaken in the spring (from March through June) or in the late summer

and early fall (from August 1st to October 15th). During the peak summer months and in the fall after October 15th, when seeding is found to be impractical, an appropriate temporary mulch or sod shall be applied. Permanent seeding may be undertaken during the summer if plans provide for adequate mulching and irrigation.

- (n) Trees and other existing vegetation shall be retained whenever feasible; the area within the dripline shall be fenced or roped off to protect trees from construction equipment.
- (o) Dust control measures shall be used during construction.
- (p) Construction wastes will be managed to reduce the potential for stormwater runoff to mobilize these wastes and subsequently contaminate surface or groundwater. The storage, disposal, or use as fill of material containing asphalt, concrete, construction debris or stumps, even if determined to be non-hazardous, is prohibited.
- (q) All areas damaged during construction shall be resodded, reseeded or otherwise restored. Where soil compaction has occurred through storage of materials or use of equipment, soil infiltration shall be restored through use of soil amendments or other means. Monitoring and maintenance schedules, where required, shall be predetermined.

#### **§ 20-83. Contents.**

To allow the Building Official or appointed designee to determine whether the performance principles listed in § 20-82 are met, the erosion and sediment control plan or SWPPP shall include the following information. Withholding or delaying such information may be reason for the Building Official or appointed designee to judge the application as incomplete and grounds for disapproval.

- (a) The soil erosion and sediment control plan or SWPPP shall include sufficient information about the proposed activities and land parcels to form a clear basis for discussion and review and to ensure compliance with all applicable requirements of this article.
- (b) The soil erosion and sediment control plan for proposed activities disturbing a total of one (1) acre or greater shall be prepared in conformance with the requirements for a SWPPP, as provided in the *Rhode Island Department of Environmental Management's General Permit for Stormwater Discharge Associated with Construction Activity*.
- (c) For sites disturbing less than one (1) acre, the soil erosion and sediment control plan shall be consistent with the data collection, data analysis and plan preparation guidelines in the current *Rhode Island Soil Erosion and Sediment Control Handbook*, prepared by the United States Department of Agriculture Natural Resources Conservation Service, Rhode Island Department of Environmental Management, and Rhode Island State Conservation Committee. Site plans and associated descriptive notes shall contain the following unless the permitting authority waives any of these requirements at the request of the applicant as part of the submission:
  - (1) Locations of the proposed limits of land disturbance on the site, with provisions that the limits must be marked with tape, signs, or construction fence by the developer at the site prior to commencing any land disturbance activities and shall be inspected by the owner or authorized designated agent.
  - (2) Location and technical description of appropriate erosion and sediment control measures.

- (3) Location and means of diversion of offsite runoff from highly erodible soils and steep slopes to more stable areas.
- (4) Location of soil stockpiles and provision to stabilize exposed soils within five (5) business days of completion of construction of a given area.
- (5) Location and description of vehicle tracking pad(s) to be constructed at all entrance/exit points of the site to reduce the amount of soil carried onto roadways and off the site.
- (6) Location and description of proposed dust controls to be employed on the site, minimizing soil disturbance through applying mulch and establishing vegetation, water spraying, surface roughening, and/or applying polymers, spray-on tackifiers, chlorides, and barriers.
- (7) Notes describing provisions to ensure that temporary sediment trapping devices are not removed until permanent stabilization is established in all contributory drainage areas, as well as provisions to ensure that stabilization is established prior to converting sediment traps/basins into permanent (post-construction) stormwater management facilities.
- (8) Notes describing provisions to ensure that all facilities used as temporary measurers shall be cleaned prior to being put into final operation and are inspected by the Building Official or appointed designee, and indicating that areas to be used as post-construction infiltration practices should be protected during construction to prevent compaction.
- (9) A program for vegetative stabilization of exposed soil through the establishment of permanently growing vegetation.
- (10) Notes that specify permanent seeding will be undertaken in the spring (from March through June) or in the late summer and early fall (from August 1st to October 15th). During the peak summer months and in the fall after October 15th, when seeding is found to be impractical, an appropriate temporary mulch or sod shall be applied. Permanent seeding may be undertaken during the summer if plans provide for adequate mulching and irrigation.
- (11) The plan must specify that all slopes steeper than 3:1, as well as perimeter dikes, sediment basins or traps, and embankments must, upon completion, be immediately stabilized with sod, seed, anchored straw mulch, or other approved stabilization measures; areas outside of the perimeter sediment control system must not be disturbed.
- (12) Notes that specify the cut side of roads and ditches shall be stabilized immediately with rock rip-rap or other non-erodible erosion control liners, or where appropriate, vegetative measures such as sod.
- (13) Location and description of proposed controls and procedures to properly handle, store, and/or contain all construction and waste materials, such as but not limited to demolition debris, discarded building materials, concrete truck wash out, chemicals, litter, and sanitary wastes.
- (14) A schedule showing the sequence of construction, inspection, and maintenance of erosion and sediment control and waste control measures.
- (15) Other information or construction plans and details as deemed necessary by the Building Official or appointed designee for thorough review of the plan prior to action being taken as prescribed in this article.

1 **Section 3.** Chapter 17 of the Code of Ordinances entitled “Special Flood Hazard Areas and  
2 Flood Fringe Areas” is hereby amended as follows:

3  
4 **Chapter 17**  
5 **~~SPECIAL-FLOOD HAZARD AREAS AND FLOOD FRINGE AREAS~~**

6 **§ 17-1. Purpose. [Ord. No. 09-09, § 2, 3-4-2009<sup>1</sup>]**

7 The purpose of this chapter is to ensure public safety; minimize hazards to persons and property from  
8 flooding, to protect watercourses from encroachment and to maintain the capability of floodplains to  
9 retain and carry off floodwaters. ~~The Special Flood Hazard Area (SFHA) as designated by the Federal~~  
10 ~~Emergency Management Agency (FEMA) is also used to inform land use decisions, development~~  
11 ~~regulations, and mandatory flood insurance requirements for properties located within the SFHA~~  
12 ~~through compliance and participation in FEMA’s National Flood Insurance Program (NFIP). Also part~~  
13 ~~of the purpose is to maintain eligibility to purchase flood insurance through compliance and~~  
14 ~~participation in FEMA’s National Flood Insurance Program.~~

15 ~~The Town of Cumberland (hereinafter “The Town”) elects to comply with the requirements of the~~  
16 ~~National Flood Insurance Act of 1968 (P.L. 90-488, as amended). The NFIP, established in the~~  
17 ~~aforsaid Act, provides that areas of the town having a special flood hazard be identified by FEMA and~~  
18 ~~that floodplain management measures be applied in such flood hazard areas.~~

19 **§ 17-2. Limitations and Relationship to Other Regulations.**

- 20 (a) Disclaimer of liability. The degree of flood protection required by this chapter is considered  
21 reasonable but does not imply total flood protection.  
22 (b) Severability. If any section, provision, or portion of this chapter is adjudged unconstitutional  
23 or invalid by a court, the remainder of the chapter shall not be affected.  
24 (c) Abrogation and Greater Restriction. This chapter shall not in any way impair/remove the  
25 necessity of compliance with any other applicable laws, ordinances, regulations, etc. Where  
26 this chapter imposes a greater restriction, the provisions of this chapter shall control.

27 **§ 17-23. Applicability. [Ord. No. 09-09, § 2, 3-4-2009; Ord. No. 13-25, § 1, 9-18-2013]**

28 ~~The Town of Cumberland (hereinafter "the Town") elects to comply with the requirements of the~~  
29 ~~National Flood Insurance Act of 1968 (P.L. 90-488, as amended). The National Flood Insurance Program,~~  
30 ~~established in the aforesaid Act, provides that areas of the town having a special flood hazard be identified~~  
31 ~~by the Federal Emergency Management Agency and that floodplain management measures be applied in~~  
32 ~~such flood hazard areas. The Special Flood Hazard Area and Other Areas of Flood Hazard are herein~~  
33 ~~established as floodplain overlay districts. The requirements of this chapter shall apply to any~~  
34 ~~construction or other development which lies wholly or partly within these areas. Said construction or~~  
35 ~~development activities shall require a flood hazard area permit, an area of special flood hazard, as identified~~  
36 ~~as zone A, AE, AH, AO, A1-30, A99, V, V1-30, VE on the Flood Insurance Rate Map (FIRM) prepared~~  
37 ~~by Federal Emergency Management Agency as dated September 18, 2013, and revised on October 2,~~

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<sup>1</sup> Editor’s Note: This ordinance also provided for the repeal of former Ch. 17, which contained provisions on flood damage prevention, adopted 9-7-1994 by Ord. No. 94-12

1 2015. Said flood map, including any amendments adopted after the date hereof, is hereby made part of this  
2 chapter. The exact boundaries of the district may be defined by the one hundred year base flood  
3 elevations shown on the FIRM and further defined by the Flood Insurance Study Booklet dated  
4 September 18, 2013, and revised on October 2, 2015. ~~[Amended 9-23-2015 by Ord. No. 15-16]~~ The  
5 SFHA is also called the area of special flood hazard or 100-year floodplain. The area is identified as zone  
6 A, AE, AH, AO, A1-30, A99, V, V1-30, or VE on the Flood Insurance Rate Map (FIRM) prepared by  
7 FEMA effective June 23, 2026. The map panels of the Providence County FIRM that are wholly or  
8 partially within the Town are panel numbers 44007C0089H, 4407C0095H, 4407C0176H, 44007C0177H,  
9 44007C0179H, 44007C0183H, 44007C0185H, and 4407C0192H effective June 23, 2026, and  
10 44007C0191J and 44007C0194K effective June 23, 2026. The exact boundaries of the district may be  
11 defined by the base flood elevations shown on the FIRM and further defined by the Providence County  
12 Flood Insurance Study (FIS) effective June 23, 2026.

13  
14 (a) The boundaries of the SFHA as defined in this ordinance may be changed through the  
15 issuance of a Letter of Map Amendment (LOMA), Letter of Map Revision (LOMR), or  
16 Letter of Map Revision-Based on Fill (LOMR-F) from FEMA. The degree of flood  
17 protection required by [this chapter] is considered reasonable but does not imply total flood  
18 protection. If any section, provision or portion of this chapter is adjudged unconstitutional or  
19 invalid by a court, the remainder of the chapter shall control.

20 (b) This chapter shall not in any way impair/remove the necessity of compliance with any other  
21 applicable laws, ordinances, regulations, etc. Where this chapter imposes a greater  
22 restriction, the provisions of this chapter shall control.

23 (c) For the purposes of this section, "other development" shall be defined as any action  
24 exclusive of that which requires the issuance of a building permit under the Rhode Island  
25 State Building Code. Such other development shall include, but not necessarily be limited  
26 to, the following:

- 27 a. Earth, gravel or mineral removal or extraction.
- 28 b. Alteration of the topography by cutting, filling or grading.
- 29 c. Storage of bulk materials outside of a structure.
- 30 d. Construction or placement of facilities or improvements not normally requiring a  
31 building permit.
- 32 e. Overlay of Pavement: The placement of pavement on top of an existing impervious surface.  
33 The underlying surface is sometimes milled (partially ground down in thickness) before the  
34 overlay is placed.
- 35 f. Reclamation of Pavement: A procedure whereby existing pavement is broken and pounded  
36 into small fragments.

37 (d) The requirements set forth in this chapter shall be in addition to any applicable requirements  
38 ~~in this chapter and in any other regulation which may be applicable.~~

1 **§ 17-34. Definitions. [Ord. No. 09-09, § 2, 3-4-2009]**

2 Unless specifically defined below, words and phrases used in this chapter pertain to floodplain  
3 management, have the same meaning as they have in common usage and to give this chapter it's most  
4 reasonable application.

5 ACCESSORY STRUCTURE — A structure which is on the same parcel of property as the principal  
6 structure to be insured and the use of which is incidental to the use of the principal structure.

7 AREA OF SHALLOW FLOODING (FOR A COMMUNITY WITH AO OR AH ZONES ONLY) — A  
8 designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM)  
9 with a 1% or greater annual chance of flooding to an average depth of one to three feet where a clearly  
10 defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may  
11 be evident. Such flooding is characterized by ponding or sheet flow.

12 AREA OF SPECIAL FLOOD HAZARD — See definition for "~~Special flood~~Flood hazard~~Hazard~~  
13 ~~area~~Area".

14 BASE FLOOD — The flood having a 1% chance of being equaled or exceeded in any given year, also  
15 referred to as the 1% annual chance flood and one hundred100-year flood, as published by the Federal  
16 Emergency Management Agency (FEMA) as part of a Flood Insurance Study (FIS) and depicted on a  
17 Flood Insurance Rate Map (FIRM).

18 BASE FLOOD ELEVATION (BFE) — The elevation of the crest of the base flood ~~or one hundred-~~  
19 ~~year flood. The height in relation to mean sea level expected to be reached by the waters of the base~~  
20 ~~flood at pertinent points in the floodplains of coastal and riverine areas, relative to the North American~~  
21 Vertical Datum (NAVD) of 1988 or other datum as specified on the Flood Insurance Rate Map (FIRM).

22 BASEMENT — Any area of the building having its floor subgrade (below ground level) on all  
23 sides.

24 BUILDING — See definition for "Structure".

25 COST — As related to substantial improvements, the cost of any reconstruction, rehabilitation,  
26 addition, alteration, repair or other improvement of a structure shall be established by a detailed written  
27 contractor's estimate. The estimate shall include, but not be limited to: the cost of materials (interior  
28 finishing elements, structural elements, utility and service equipment); sales tax on materials, building  
29 equipment and fixtures, including heating and air conditioning and utility meters; labor; built-in  
30 appliances; demolition and site preparation; repairs made to damaged parts of the building worked on  
31 at the same time; contractor's overhead; contractor's profit; and grand total. Items to be excluded include:  
32 cost of plans and specifications, survey costs, permit fees, out-side improvements such as septic systems,  
33 water supply wells, landscaping, sidewalks, fences, yard lights, irrigation systems, and detached  
34 structures such as garages, sheds, and gazebos.

35 DEVELOPMENT — Any man-made change to improved or unimproved real estate, including but not  
36 limited to the construction of buildings or structures; the construction of additions, alterations or  
37 substantial improvements to buildings or structures; the placement of buildings or structures; mining,  
38 dredging, filling, grading, paving, excavation or drilling operations or storage of equipment; the storage,  
39 deposition, or extraction of materials; and the installation, repair or removal of public or private sewage  
40 disposal systems or water supply facilities.

41 DRY FLOODPROOFING — Any combination of structural and nonstructural protection measures  
42 incorporated in a building that is not elevated above the base flood elevation that keeps water from  
43 entering the building to prevent or minimize flood damage. Note: For insurance purposes, a dry

1 floodproofed, nonresidential structure is rated based on the elevation of its lowest floor unless it is  
2 floodproofed to one foot above the BFE.

3 ELEVATION (MEASURED) – The height, in relation to the North American Vertical Datum (NAVD)  
4 of 1988.

5 ELEVATION CERTIFICATE – FEMA Form FF-206-22-152 (formerly 086-0-33), October 2022, or  
6 subsequent revisions. An elevation certificate is an official record primarily used to document compliance  
7 with NFIP floodplain management regulations for new or substantially improved structures in designated  
8 Special Flood Hazard Areas. An elevation certificate documents important features of a property, including  
9 property location, flood hazard zone, characteristics of on-site buildings, and elevation of the lowest floor  
10 of on-site buildings, including elevation above the flood hazard elevation.

11 ENCROACHMENT – Any activity or construction within the floodway including fill, new construction,  
12 substantial improvements, and other development.

13 EXISTING MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION — A  
14 manufactured home park or manufactured home subdivision for which the construction of facilities for  
15 servicing the lots on which the manufactured home are to be affixed (including, as a minimum, the  
16 installation of utilities, the construction of streets, and either final site grading or the pouring of concrete  
17 pads) is completed before the effective date of the floodplain management regulations adopted by a  
18 community.

19 EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR EXISTING  
20 MANUFACTURED HOME SUBDIVISION — The preparation of additional sites by the construction  
21 of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the  
22 installation of utilities, the construction of streets, and either final site grading or the pouring of concrete  
23 pads).

24 FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) — The federal agency that  
25 administers the National Flood Insurance Program (NFIP).

26 ~~FINISHED LIVING SPACE — Fully enclosed areas below the base flood elevation (BFE) that are not~~  
27 ~~considered a basement cannot have finished living space and needs to be designed to be exposed to~~  
28 ~~flood forces. These spaces can only to be used for parking, building access or limited storage.~~ Finished  
29 living space can include, but is not limited to, a space that is heated and/or cooled, contains finished  
30 floors (tile, linoleum, hardwood, etc.), has sheetrock walls that may or may not be painted or  
31 wallpapered, and other amenities such as furniture, appliances, bathrooms, fireplaces and other items  
32 that are easily damaged by floodwaters and expensive to clean, repair or replace.

33 FLOOD or FLOODING — A general and temporary condition of partial or complete inundation of  
34 normally dry land areas from either:

- 35 (1) ~~¶~~The overflow of inland or tidal waters; or
- 36 (2) ~~¶~~The unusual and rapid accumulation or runoff of surface waters from any source; or
- 37 (3) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined above and are  
38 akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when  
39 earth is carried by a current of water and deposited along the path of the current; or
- 40 (4) Collapse or subsidence of land along the shore of a lake or similar body of water as a result of  
41 erosion or undermining caused by waves or currents of water exceeding anticipated cyclical  
42 levels that result in a flood as defined above.

- 1 FLOOD BOUNDARY AND FLOODWAY MAP (FBFM) — The official map of a community on  
2 which the Federal Emergency Management Agency (FEMA) has delineated the limits of the regulatory  
3 floodway and one-hundred-year floodplain.
- 4 FLOOD INSURANCE RATE MAP (FIRM) — The official map of a community on which the Federal  
5 Emergency Management Agency (FEMA) has delineated both the Special Flood Hazard Areas ~~special~~  
6 ~~flood hazard areas (one-hundred~~100-year floodplain) and the insurance risk premium zones applicable to  
7 a community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map  
8 (DFIRM). FIRMs published after January 1990 may also show the limits of the regulatory floodway.
- 9 FLOOD INSURANCE STUDY (FIS) — The official study of a community in which the Federal  
10 Emergency Management Agency (FEMA) has conducted a technical engineering evaluation and  
11 determination of local flood hazards, flood profiles and water surface elevations. The flood insurance  
12 rate maps (FIRM), which accompany the FIS, provide both flood insurance rate zones and base flood  
13 elevations, and may provide the regulatory floodway limits.
- 14 FLOODPROOFING — Any combination of structural and nonstructural additions, changes or adjustments  
15 to structures which reduce or eliminate flood damage to real estate or improved real property, water and  
16 sanitary facilities, structures and their contents
- 17 FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be  
18 reserved in order to discharge the base flood without cumulatively increasing the water surface elevation  
19 more than one foot. For the purposes of these regulations, the term "regulatory floodway" is synonymous  
20 ~~in meaning~~ with the term "floodway".
- 21 FUNCTIONALLY DEPENDENT USE OR FACILITY — A use or facility that cannot perform its  
22 intended purpose unless it is located or carried out in close proximity to water. The term includes only  
23 docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers,  
24 and ship building and ship repair facilities. The term does not include seafood processing facilities, long-  
25 term storage, manufacturing, sales or service facilities.
- 26 HIGHEST ADJACENT GRADE (HAG) (ONLY FOR COMMUNITY WITH AO/AH ZONES) — The  
27 highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
- 28 HISTORIC STRUCTURE — Any structure that is:
- 29 a. Listed individually in the National Register of Historic Places (a listing maintained by  
30 the Department of the Interior) or preliminarily determined by the Secretary of the  
31 Interior ~~secretary of the interior~~ as meeting the requirements for individual listing on  
32 the National Register;
- 33 b. Certified or preliminarily determined by the Secretary of the Interior ~~secretary of the~~  
34 ~~interior~~ as contributing to the historic significance of a registered historic district or a  
35 district preliminarily determined by the ~~secretary~~ Secretary to qualify as a registered  
36 historic district;
- 37 c. Individually listed on a state inventory of historic places in states with historic  
38 preservation programs which have been approved by the Secretary of the Interior  
39 ~~secretary of the interior~~; or
- 40 d. Individually listed on a local inventory of historic places in communities with historic  
41 preservation programs that have been certified either:
- 42 i. By an approved state program as determined by the Secretary of the Interior ~~secretary~~  
43 ~~of the interior~~; or

- 1           ii.       Directly by the Secretary of the Interior ~~secretary of the interior~~ in states without  
2                    approved programs.

3 LETTER OF MAP AMENDMENT (LOMA) – An official amendment, by letter, to an effective NFIP map.  
4 A LOMA establishes a property’s location in relation to the Special Flood Hazard Area (SFHA). LOMAs  
5 are usually issued because a property has been inadvertently mapped as being in the floodplain but is  
6 actually on natural high ground above the base flood elevation.

7 LETTER OF MAP REVISION (LOMR) – An official modification, by letter, to an effective Flood  
8 Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM) or both. LOMRs are generally  
9 based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of  
10 a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base  
11 Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The LOMR officially revises the  
12 Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM), and sometimes the  
13 Flood Insurance Study (FIS) report, and when appropriate, includes a description of the modifications. The  
14 LOMR is generally accompanied by an annotated copy of the affected portions of the FIRM, FBFM, or FIS  
15 report.

16 LETTER OF MAP REVISION BASED ON FILL (LOMR-F) – An official modification, by letter, to the  
17 Special Flood Hazard Area shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill  
18 outside the existing regulatory floodway.

19 **LOWEST FLOOR** — The lowest floor of the lowest enclosed area (including basement).

20 **MANUFACTURED HOME** — A structure, transportable in one or more sections, which is built on a  
21 permanent chassis and is designed for use with or without a permanent foundation when attached to the  
22 required utilities. The term does not include park trailers, travel trailers, recreational vehicles and other  
23 similar vehicles or transportable structures placed on a site for 180 consecutive days or longer and  
24 intended to be improved property. **[Amended 9-23-2015 by Ord. No. 15-16]**

25 **MANUFACTURED HOME PARK or MANUFACTURED HOME SUBDIVISION** — A parcel or  
26 contiguous parcels of land divided into two or more manufactured home lots for rent or sale.

27 **MARKET VALUE** — Market value is the price of a structure that a willing buyer and seller  
28 agree upon. This can be determined by an independent appraisal by a professional appraiser; the  
29 property's tax assessment, minus land value; the replacement cost minus depreciation of the structure;  
30 the structure's actual cash value.

31 **MEAN SEA LEVEL (MSL)** — Average height of the sea for all stages of the tide usually determined  
32 from hourly height observations over a nineteen-year period on an open coast or in adjacent waters  
33 having free access to the sea. The National Geodetic Vertical Datum (NGVD) of ~~1929~~ 1988 (or other  
34 datum where specified) to which base flood elevations shown on a community flood insurance rate  
35 map (FIRM) are referenced.

36 **NEW CONSTRUCTION** — Structures for which the "start of construction" commenced on or  
37 after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes  
38 any subsequent improvements to such structures. For floodplain management purposes, new  
39 construction means structures for which the "start of construction" commenced on or after effective  
40 date of floodplain regulations and includes any subsequent improvements to such structures.

41 **NEW MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION** — A  
42 manufactured home park or manufactured home subdivision for which the construction of facilities for  
43 servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the

1 installation of utilities, the construction of streets, and either final site grading or the pouring of concrete  
2 pads) is completed on or after the effective date of floodplain regulations adopted by the community.

3 NON-COMPLIANT STRUCTURE – A building located within a flood-prone area that does not meet the  
4 required elevation of construction standards set by FEMA.

5 OTHER AREAS OF FLOOD HAZARD – Additional land beyond the designated Special Flood Hazard  
6 Area that may be subject to flooding. Land designated as Other Areas of Flood Hazard are:

- 7 (1) Lands shown as zone X (shaded) on a FIRM. Zone X is an area of moderate flood hazard and is  
8 the land within the floodplain subject to a 0.2% chance of flooding in any given year, also  
9 referred to as the 500-year floodplain.

10 RECREATIONAL VEHICLE — A vehicle which is:

- 11 (1) Built on a single chassis;  
12 (2) Four hundred square feet or less when measured at the largest horizontal projection;  
13 (3) Designed to be self-propelled or permanently towable by a light duty truck; and  
14 (4) Designed primarily not for use as a permanent dwelling but as a temporary living  
15 quarters for recreational, camping, travel, or seasonal use.

16 REPETITIVE LOSS PROPERTY – Any NFIP-insured building that has incurred flood-related damages  
17 on two occasions during a ten-year period ending on the date of the event for which a second claim is made,  
18 in which the cost of repairing the flood damage, on average, equaled or exceed 25% of the market value of  
19 the building at the time of each such flood event.

20 SEVERE REPETITIVE LOSS PROPERTY – Any NFIP-insured single-family or multi-family residential  
21 building that has had at least one of the following paid flood loss criteria occur since 1978:

- 22 (1) The building has incurred flood-related damage for which four or more separate claims payments  
23 have been made, with the amount of each claim (including building and contents payments)  
24 exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000;  
25 or  
26 (2) There have been at least two separate claims payments (building payments only) have been made  
27 under such coverage for the building, with the cumulative amount of such claims exceeding the  
28 market value of the building at the time of each such flood event leading to the claim payments.

29 REGULATORY FLOODWAY — See definition for "Floodway".

30 SAND DUNES — Naturally occurring accumulations of sand in ridges or mounds landward of the  
31 beach.

32 SHEET FLOW AREA (FOR COMMUNITY WITH AO, AH, OR VO ZONES ONLY) — See  
33 definition for "Area of shallow flooding".

34 SPECIAL FLOOD HAZARD AREA (SFHA) — The land in the floodplain within a community subject  
35 to a 1% or greater chance of flooding in any given year. SFHAs are determined utilizing the base flood  
36 elevations (BFE) provided on the flood profiles in the flood insurance study (FIS) for a community.  
37 BFEs provided on flood insurance rate map (FIRM) are only approximate (rounded up or down) and  
38 should be verified with the BFEs published in the FIS for a specific location. ~~SFHAs include, but are~~  
39 ~~not necessarily limited to, the land shown as zones A, A1-30, AE, AO, AH, and the coastal high hazard~~  
40 ~~areas shown as zones V, V1-30, and VE on a FIRM.~~ The SFHA is also called the area of special flood

1 hazard or 100-year floodplain. The area is identified as zone A, AE, AH, AO, A1-30, A99, V, V1-30,  
2 or VE on the Flood Insurance Rate Map (FIRM) prepared by FEMA effective June 23, 2026, as dated  
3 September 18, 2013, and revised on October 2, 2025. The map panels of the Providence County FIRM  
4 that are wholly or partially within the Town are panel numbers 44007C0089G, 4407C0095G,  
5 4407C0176G, 44007C0177G, 44007C0179G, 44007C0183G, 44007C0185G, and 4407C0192G dated  
6 March 2, 2009, and 44007C0191H and 44007C0194J dated October 2, 2015. The exact boundaries of  
7 the district may be defined by the base flood elevations shown on the FIRM and further defined by the  
8 Providence County Flood Insurance Study (FIS) dated September 18, 2013, and revised on October 2,  
9 2015.

10 START OF CONSTRUCTION — For other than new construction or substantial improvements under  
11 the Coastal Barrier Resources Act (P.L. 97-348), includes substantial improvement and means the date  
12 the building permit was issued, provided the actual start of construction, repair, reconstruction,  
13 rehabilitation, addition placement substantial improvement or other improvement was within 180 days  
14 of the permit date. The actual start means either the first placement of permanent construction of a  
15 structure on a site, such as the pouring of slab or footings, the installation of piles the construction of  
16 columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a  
17 foundation. Permanent construction does not include land preparation, such as clearing, grading and  
18 filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for  
19 a basement footings, piers, or foundations or the erections of temporary forms; not does it include the  
20 installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling  
21 units or not part of the main structure. For a substantial improvement, the actual start of construction  
22 means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not  
23 that alteration affects the external dimensions of the building.

24 STRUCTURE — A walled and roofed building which is principally above ground, including a  
25 manufactured home, a gas or liquid storage tank, or other manmade facilities or infrastructures.

26 SUBMIT TO RATE STRUCTURE – An application for flood insurance on a building for which no  
27 risk rate is published in the NFIP Flood Insurance Manual. Insurance coverage can be obtained only  
28 after the insurer has approved the application and has established the risk premium rate.

29 SUBSTANTIAL DAMAGE — Damage of any origin sustained by a structure, whereby the cost of  
30 restoring the structure to its pre-damaged condition would equal or exceed 50% of the market value of  
31 the structure before the damage occurred.

32 SUBSTANTIAL IMPROVEMENT — Any combination of repairs, reconstruction, rehabilitation,  
33 alterations, additions or other improvements to a structure, taking place during a ten-year period, in  
34 which the cumulative cost equals or exceeds 50% of the market value of the structure as determined at  
35 the beginning of such ten-year period. This term includes structures that have incurred "substantial  
36 damage", regardless of the actual repair work performed. For purposes of this definition, "substantial  
37 improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other  
38 structural part of the building commences, whether or not that alteration affects the external dimensions  
39 of the structure. The term does not, however, include either:

- 40 (1) Any project for improvement of a structure to correct existing violations of state or  
41 local health, sanitary, or safety code specifications which have been identified by the  
42 local code enforcement official and which are the minimum necessary to assure safe  
43 living conditions; or
- 44 (2) Any alteration of a "historic" structure, provided that the alteration will not preclude  
45 the structure's continued designation as a "historic structure".

1 VARIANCE — A grant of relief by a community from the terms of the floodplain management  
2 ordinance that allows construction in a manner otherwise prohibited and where specific enforcement  
3 would result in unnecessary hardship.

4 VIOLATION — Failure of a structure or other development to be fully compliant with the community's  
5 floodplain management ordinance. A structure or other development without required permits, lowest  
6 floor elevation documentation, floodproofing certificates or required floodway encroachment  
7 calculations is presumed to be in violation until such time as that documentation is provided.

8 WATER SURFACE ELEVATION — The height, in relation to the ~~National Geodetic~~ North American  
9 Vertical Datum (NGVD/NAVD) of 1929-1988 (or other datum, where specified), of floods of various  
10 magnitudes and frequencies in the floodplains of coastal or riverine areas.

11 WET FLOODPROOFING — Measures designed to minimize damage to a structure or its contents by  
12 water that is allowed into a building.

13 **§ 17-45. Permit required. [Ord. No. 09-09, § 2, 3-4-2009]**

14 (a) All proposed construction and other development within a Special Flood Hazard Area  
15 ~~special flood hazard area~~ or Other Areas of Flood Hazard shall require the issuance of a flood  
16 hazard development permit by the Building Official or designee. Said permit shall be in a  
17 form authorized by the Town Council. 14 - 36

18 (b) The application for a flood hazard development permit shall be submitted to the ~~code-~~  
19 ~~enforcement officer~~ Town Building & Zoning Department and shall include the following  
20 items as applicable. Applicants are encouraged to consult with the Building Official before  
21 submitting to determine which items are required:

22 (1) The name and address of the applicant;

23 (2) An address or a map indicating the location of the construction site;

24 (3) A list of any other municipal, state, or federal permits required for the proposed  
25 development;

26 (4) A site plan showing location of existing and proposed structures, sewage disposal  
27 facilities, water supply facilities, areas to be cut and filled, and the dimensions of the  
28 lot;

29 (5) Two-foot contours for the site either from an onsite survey or readily available GIS  
30 data;

31 (6) A statement of the intended use of ~~the~~ any structures;

32 (7) A statement as to the type of sewage system proposed;

33 (8) Specification of dimensions of the proposed structures;

34 (9) The elevation (~~in relation to mean sea level~~) of the lowest floor, including basement,  
35 and if the lowest floor is below grade on one or more sides, the elevation of the floor  
36 immediately above;

37 (10) Base flood elevation data for all new, relocated or substantially improved structures;

- 1           (11) ~~The elevation (in relation to mean sea level)~~ to which the structures ~~structure~~ will be  
2 floodproofed;
- 3           (12) ~~The description of the extent to which any watercourse will be altered or relocated as a~~  
4 ~~result of the proposed development.~~ results of any hydraulic and hydrologic model  
5 analyses used to determine the level to which flood waters may or may not be affected  
6 by any encroachment into Special Flood Hazard Areas of Other Areas of Flood  
7 Hazards;
- 8           (13) A description of materials and construction practices used to ensure compliance with  
9 the provisions of this ordinance;
- 10          (14) A description of the materials/items to be stored in any outdoor storage areas and,  
11 where such storage may be allowed, the measures taken to secure and/or elevate  
12 materials in accordance with the requirements of this ordinance;
- 13          (15) A description of any alteration to, or installation of, utilities;
- 14          (16) Application permit fee and engineering review fee.
- 15          (c) Prior to the issuance of a building or development permit, the applicant shall submit  
16 evidence that all necessary permits and approvals have been received from all government  
17 agencies from which approval is required by federal or state law.

18 **§ 17-56. Permit fee. [Ord. No. 09-09, § 2, 3-4-2009]**

19 A permit fee (based on the cost of the construction) may be required to be paid to the Town and a  
20 copy of a receipt for the same shall accompany the application. An additional fee may be charged if the  
21 code enforcement officer and/or board of appeals needs the assistance of a professional engineer.

22 **§ 17-67. Review of flood hazard development permit applications. [Ord. No. 09-09, § 2, 3-4-2009]**

23 (a) The Building Official or designee shall:

- 24          (1) Review all applications for flood hazard development permits to determine that all  
25 pertinent requirements as described in § 17-7-5 have been or will be met:
- 26          (2) Utilize, in the review of all flood hazard development permit applications, the base  
27 flood data contained in the "Flood Insurance Study — the Town of Cumberland, Rhode  
28 Island, Providence County," as defined in this article ~~described in § 17-2.~~
- 29          (3) Make interpretations of the location of boundaries of Special Flood Hazard Areas or  
30 Other Areas of Flood Hazard ~~special flood hazard areas shown on maps as defined in §~~  
31 17-4 ~~described in § 17-2.~~

32 In A zones, in the absence of FEMA BFE data and floodway data, obtain, review, and  
33 reasonably utilize other BFE and floodway data as a basis for elevating residential  
34 structures to or above the base flood level, and for floodproofing or elevating  
35 nonresidential structures to or above the base flood level.

- 36          (4) In Other Areas of Flood Hazard, in the absence of FEMA flood elevation data, obtain,  
37 review, and reasonably utilize best available federal, state, local, or other flood  
38

1 elevation data as a basis for elevating residential structures to or above the flood  
2 elevation level, and for floodproofing or elevating nonresidential structures to or above  
3 the flood elevation data.

- 4 (5) In review of flood hazard development permit applications, determine that all necessary  
5 permits have been obtained from those federal, state and local government agencies  
6 from which prior approval is required;
- 7 (6) Notify adjacent municipalities, the ~~state department of environmental management and~~  
8 ~~the state bureau of civil emergency preparedness~~ Rhode Island Department of  
9 Environmental Management, the Rhode Island Emergency Management Agency, and  
10 the Rhode Island Division of Statewide Planning prior to any alteration or relocation of  
11 a watercourse and submit copies of such notifications to the Federal Emergency  
12 Management Agency and maintain carrying capacity of altered watercourse; and
- 13 (7) Where base flood elevation data are utilized within zone A on the FIRM, obtain the  
14 elevation (in relation to mean sea level) of the lowest floor (including basement) of all  
15 new and substantially improved structures, and obtain, if the structure has been  
16 floodproofed in accordance with these regulations, the elevation (in relation to mean  
17 sea level) to which the structure was floodproofed, and maintain a record of all such  
18 information with the official designed by the community.
- 19 (8) Where flood elevation data are utilized within zone X (shaded) on the FIRM, obtain  
20 the elevation (in relation to mean sea level) of the lowest floor (including basement) of  
21 all new and substantially improved structures, and obtain, if the structure has been  
22 floodproofed in accordance with these regulations, the elevation (in relation to mean  
23 sea level) to which the structure was floodproofed, and maintain a record of all such  
24 information with the official designed by the community.

25 **§ 17-78. Development standards. [Ord. No. 09-09, § 2, 3-4-2009]**

26 The following standards shall apply to any construction or other development located wholly or partly  
27 within ~~an area of special flood hazard~~ the Special Flood Hazard Area or Other Areas of Flood Hazard  
28 as defined in § 17-4. Please also refer to the current Rhode Island State Building Code, ~~One- and two-~~  
29 ~~family dwelling code, plumbing code, Mechanical code, and electrical code~~ for state standards. ~~The~~  
30 ~~Coastal Resource Management Council (CRMC) may also require special permits for development on~~  
31 ~~the coastal feature.~~ Other state agency regulations may also apply.

- 32 (a) No watercourse may be altered in a manner which will, in the opinion of the Building  
33 Official or designee, result in any decrease in the capacity of the watercourse, and no land  
34 shall be graded or altered in such a manner as to increase the base flood elevation within the  
35 Town. Where any alteration is permitted, the Building Official or designee will notify the  
36 adjacent communities, the Rhode Island Department of Environmental Management, the Rhode  
37 Island Emergency Management Agency, the Rhode Island Statewide Planning  
38 ~~Program~~ Division of Statewide Planning and the Federal Emergency Management Agency.
- 39 (b) In a designated regulatory floodway, ~~any no encroachment is prohibited which would cause~~  
40 ~~any increase in the base flood level~~ shall be permitted unless hydrologic and hydraulic  
41 analyses performed in accordance with standard engineering practice demonstrate ~~prove~~ that  
42 the proposed encroachment would not increase flood levels in the regulatory floodway  
43 during the base flood discharge.

1 (c) ~~In areas without a designated floodway, no new~~ Require until a regulatory floodway is designated, ~~that no new~~  
2 ~~construction, substantial improvements, or other development (including fill) encroachment~~  
3 shall be permitted within zones A1-30 and AE on the community's FIRM, unless it is  
4 demonstrated through hydraulic and hydrologic analyses performed in accordance with  
5 standard engineering practice demonstrate that the cumulative effect of the proposed  
6 development, when combined with all other existing and anticipated development on that  
7 site, will not increase the water surface elevation of the base flood more than ~~one~~ 0.1 foot at  
8 any point within the community.

9 (d) No outdoor bulk storage of hazardous materials, hazardous substances, or hazardous waste  
10 as defined by the Rhode Island Department of Environmental Management shall be allowed  
11 in a Special Flood Hazard Area or Other Areas of Flood Hazard.

12 (e) In addition to subsection 17-8.d, No no outdoor storage of materials or equipment which is  
13 likely to cause damage to property, create a potential obstruction to floodwaters, create a  
14 potential fire hazard or pollute the waters during flood periods shall be permitted in any  
15 Special Flood hazard Area special flood hazard area.

16 (f) In addition to 17-8.d, no outdoor storage of materials or equipment is permitted in Other  
17 Areas of Flood Hazard unless elevated to or above one foot above the 500-year flood  
18 elevation level. Storage materials shall be secured in a manner that would preclude the  
19 contents from washing away or being dissolved into flood waters. Such materials or  
20 equipment shall include but not necessarily be limited to: lumber and other buoyant materials,  
21 ~~water soluble materials, volatile or flammable materials, acids or poisons~~ water soluble  
22 materials.

23 (g) In all cases where outdoor storage or the location of vehicles or accessory facilities occurs in  
24 a Special Flood Hazard Area of Other Areas of Flood Hazard, provision Provision shall be  
25 made for anchoring facilities, equipment or yard features which are capable of movement or  
26 flotation in floodwaters. Such items shall include but shall not necessarily be limited to:  
27 fences, sheds, animal shelters, tanks, storage boxes, planters, vehicles, boats and other items  
28 normally positioned or stored on a site outside of a structure.

29 (h) ~~The use of flood-resistant materials shall be used for all structures within an area of special~~  
30 ~~flood hazard as defined in § 17-3.~~

31 (i) Construction methods and practices shall be used that minimize flood damage.

32 (j) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service  
33 facilities shall be designed and/or located to prevent water entry to accumulation.

34 (k) Onsite waste disposal systems shall be designed to avoid impairment or contamination  
35 of the floodway.

36 (l) New and replacement water supply and sanitary sewage systems shall be designed to  
37 minimize or eliminate infiltration.

38 **§ 17-89. Specific construction standards. [Ord. No. 09-09, § 2, 3-4-2009]**

39 (a) Construction standards in Special Flood Hazard Areas special flood hazard areas (SFHA), Zones  
40 A, A1-30, AE.

- 1 (1) Residential construction. All new construction, substantial improvements, and repair to  
2 structures that have sustained substantial damage shall have the bottom of the lowest  
3 floor, including basement, elevated to or above one foot above the base flood elevation  
4 (BFE).
- 5 (2) Nonresidential construction. All new construction, substantial improvements, and  
6 repair to structures that have sustained substantial damage which are commercial,  
7 industrial or nonresidential structures shall:
- 8 a. Have the bottom of the lowest floor, including basement, elevated to or above  
9 one foot above the base flood elevation (BFE); or
- 10 b. In lieu of being elevated, nonresidential structures may be dry floodproofed to  
11 one foot above the BFE provided that together with all attendant utilities and  
12 sanitary facilities the areas of the structure below the required elevation are  
13 watertight with walls substantially impermeable to the passage of water, and  
14 provided that such structures are composed of structural components having the  
15 capability of resisting hydrostatic and hydrodynamic loads and the effects of  
16 buoyancy. A Rhode Island registered professional engineer or architect shall  
17 review and/or develop structural design specifications and plans for the  
18 construction, and shall certify that the design and methods of construction are in  
19 accordance with acceptable standards of practice or meeting the provisions of this  
20 section. Such certification shall be provided to the Building Official or designee.
- 21 (3) Fully enclosed areas below the base flood elevation of elevated buildings. All new  
22 construction, substantial improvements, or repair of substantial damage to residential  
23 or nonresidential structures that include fully enclosed areas formed by a foundation  
24 and other exterior walls below the base flood elevation (BFE) of an elevated building,  
25 shall be designed to preclude finished living space and be designed to allow for the  
26 entry and exit of flood waters to automatically equalize hydrostatic flood forces on  
27 exterior walls (wet floodproofing). Designs for complying with this requirement must  
28 either be certified by a Rhode Island registered professional engineer or architect, or  
29 meet the following minimum criteria listed in Subsections (a) — (g) below:
- 30 a. Provide a minimum of two openings (hydraulic flood vents) having a total net  
31 area of not less than one square inch for every one square foot of enclosed area  
32 subject to flooding. These hydraulic openings must be located on at least two  
33 different walls. Only the area (square footage) that lies below the BFE can be  
34 used in the calculation of net area of vents required.
- 35 b. The bottom of all openings shall be no higher than one foot above grade. At least  
36 one side of the structure's fully enclosed area must be at or above grade. Fill  
37 placed around the foundation walls must be graded so that the elevation inside  
38 the enclosed area is equal to or higher than the adjacent outside elevation on at  
39 least one side of the building. The foundation slab of a residential structure,  
40 including the slab of a crawlspace, must be set equal to the outside finished grade  
41 on at least one side of the building.
- 42 c. The openings may be equipped with screens, louvers, valves or other coverings or  
43 devices provided they permit the automatic entry and exit of flood waters in both  
44 directions without any external influence or control such as human intervention,

1 including the use of electrical and other non-automatic mechanical means. Other  
2 coverings may be designed and certified by an engineer or approved by the  
3 Building Official or designee.

4 d. The area cannot be used as finished living space. Use of the enclosed area shall  
5 be the minimum necessary and shall only be used for the parking of vehicles,  
6 building access or limited storage. Access to the enclosed area shall be the  
7 minimum necessary to allow for the parking of vehicles (garage door) or limited  
8 storage of maintenance equipment used in connection with the premises (standard  
9 exterior door) or entry to the living area (stairway or elevator). The enclosed area  
10 shall not be used for human habitation or partitioned into separate rooms.

11 e. All interior walls, floor, and ceiling materials located below the BFE shall be  
12 unfinished and resistant to flood damage.

13 f. Electrical, plumbing, machinery or other utility equipment that service the  
14 structure (furnaces, oil or propane tanks, air conditioners, heat pumps, hot water  
15 heaters, ventilation, washers, dryers, electrical junction boxes, circuit breaker  
16 boxes and food freezers) are prohibited in the fully enclosed area below the BFE.  
17 Utilities or service equipment located in this enclosed area, even if elevated above  
18 the BFE in the space, will subject the structure to increased flood insurance rates.

19 g. A residential building with a structurally attached garage having the floor slab  
20 below the BFE is considered an enclosed area below the BFE and must meet  
21 the standards of §§ 17-45, 17-67, 17-78 and 17-82. A garage attached to a  
22 residential structure, constructed with the garage floor slab below the BFE, must  
23 be designed to allow for the automatic entry and exit of floodwaters in both  
24 directions. Flood openings or events are required in the exterior walls of the  
25 garage or in the garage doors. The human intervention necessary to open garage  
26 doors when flooding occurs is not an acceptable means of meeting the openings  
27 requirements. In addition to the automatic entry of floodwaters, the areas of the  
28 garage below BFE must be constructed with flood resistant materials. Garages  
29 attached to nonresidential structures must also meet the aforementioned  
30 requirements or be dry floodproofed as per the requirements of this chapter.

31 (4) Manufactured (mobile) homes and recreational vehicles (RVs).

32 a. In all Special Flood Hazard Areas ~~special flood hazard areas~~ (SFHA), any  
33 manufactured (mobile) homes to be newly placed, substantially improved or  
34 repaired as a result of substantial damage, shall be elevated so that the bottom of  
35 the lowest floor is at or above the base flood elevation (BFE). This includes  
36 SFHAs outside a manufactured home park or subdivision, in a new manufactured  
37 home park or subdivision, in an expansion to an existing manufactured home  
38 park or subdivision, or on a site in an existing park which a manufactured home  
39 has incurred substantial damage as a result of a flood.

40 b. All manufactured (mobile) homes within a SFHA shall be placed on a permanent  
41 foundation which itself is securely anchored and to which the structure is  
42 securely anchored so that it will resist flotation, lateral movement and hydrostatic  
43 pressures. Anchoring may include, but not be limited to, the use of over-the-top  
44 or frame ties to ground anchors.

- 1 c. All manufactured (mobile) homes within a SFHA shall be installed using  
2 methods and practices which minimize flood damage. Adequate access and  
3 drainage should be provided. Elevation construction standards include piling  
4 foundations placed no more than 10 feet apart and reinforcement is provided for  
5 piers more than six feet above ground level.
- 6 d. Recreational vehicles placed on sites within a SFHA shall either:
- 7 i. Be on the site for fewer than 180 consecutive days; and
- 8 ii. Be fully licensed and ready for highway use; or
- 9 iii. Be elevated and anchored.

10 A recreational vehicle is ready for highway use if it is on its wheels or jacking system,  
11 is attached to the site only by quick disconnect type utilities and security devices, and  
12 has no permanently attached additions.

- 13 e. Public utilities and facilities in manufactured (mobile) homes or subdivisions with  
14 a SFHA shall be constructed so as to minimize flood damage.

- 15 (5) Subdivisions. All subdivision proposals and other development, including  
16 manufactured home parks or subdivisions, shall be reviewed to determine whether such  
17 proposals will be reasonably safe from flooding. If a subdivision or other development  
18 proposal is in a flood-prone area, the following standards apply:

- 19 a. Subdivision proposals shall minimize flood damage.
- 20 b. Public utilities and facilities shall be constructed so as to minimize flood damage.
- 21 c. Adequate drainage shall be provided for such proposals.
- 22 ~~d. Base flood elevation data is required for subdivision proposals or other~~  
23 ~~development greater than 50 lots or five acres. In accordance with the Town's~~  
24 Land Development and Subdivision Regulations. These provisions are consistent  
25 with state law and exceed the thresholds set by FEMA, which call for base flood  
26 elevation data for development proposals with greater than 50 lots or five acres.

- 27 (6) Accessory structures. Detached accessory structures in zones A, AE, A1-30, AO, and  
28 AH (i.e. garages, sheds) do not have to meet the elevation or dry floodproofing  
29 requirement if the following standards are met:

- 30 a. The structure is no more than 500 square feet and has a value less than \$3,000.
- 31 b. The structure has unfinished interiors and must not be used for human habitation.  
32 An apartment, office or other finished space over a detached garage is  
33 considered human habitation and would require the structure to be elevated.
- 34 c. The structure is used solely for parking of vehicles and/or limited storage.
- 35 d. The accessory structure must be wet floodproofed and designed to allow for the  
36 automatic entry and exit of flood water.
- 37 e. The accessory structure shall be firmly anchored to prevent flotation, collapse  
38 and lateral movement.

- 1 f. Service facilities such as electrical, mechanical and heating equipment must be  
2 elevated or floodproofed to or above the base flood elevation.
- 3 g. The structure must comply with the floodway encroachment provision in this chapter.

4 (b) Construction standards in Other Areas of Flood Hazard.

5 (1) Residential construction. All new construction, substantial improvements, and repair to  
6 structures that have sustained substantial damage shall have the bottom of the lowest  
7 habitable floor, including basement, elevated to or above one foot above the 0.2% annual  
8 chance flood elevation at the site, as identified by the Providence County Flood Insurance  
9 Study effective June 23, 2026dated July 19, 2023. In the absence of flood elevation data,  
10 the Building Official shall determine the appropriate elevation in accordance with the  
11 powers granted by this ordinance.

12 (2) Nonresidential construction. All new construction, substantial improvements, and repair to  
13 structures that have sustained substantial damage which are commercial, industrial, or  
14 nonresidential structures shall:

15 a. Have the bottom of the lowest floor, including basement, elevated to or above  
16 one foot above the 0.2% annual chance flood elevation at the site, as identified  
17 by the Providence County Flood Insurance Study effective June 23, 2026,dated  
18 July 19, 2023. In the absence of flood elevation data, the Building Official shall  
19 determine the appropriate elevation in accordance with the powers granted by  
20 this ordinance.

21 b. In lieu of being elevated, nonresidential structures may be dry floodproofed to  
22 one foot above the 0.2% annual chance flood elevation at the site, as identified  
23 by the Providence County Flood Insurance Study effective June 23, 2026,dated  
24 July 19, 2023, provided that together with all attendant utilities and sanitary  
25 facilities the areas of the structure below the required elevation are watertight  
26 with walls substantially impermeable to the passage of water, and provided that  
27 such structures are composed of structural components having the capability of  
28 resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A  
29 Rhode Island registered professional engineer or architect shall review and/or  
30 develop structural design specifications and plans for the construction, and shall  
31 certify that the design and methods of construction are in accordance with  
32 acceptable standards of practice or meeting the provisions of this section. Such  
33 certification shall be provided to the Building Official or designee.

34 (3) Fully enclosed areas below the 0.2% annual chance flood elevation of elevated buildings.  
35 All new construction, substantial improvements, or repair of substantial damage to  
36 residential or nonresidential structures that include fully enclosed areas formed by a  
37 foundation and other exterior walls below the 0.2% annual chance flood elevation of an  
38 elevated building, shall be designed to preclude finished living space and be designed to  
39 allow for the entry and exit of flood waters to automatically equalize hydrostatic flood  
40 forces on exterior walls (wet floodproofing). Designs for complying with this requirements  
41 must either be certified by a Rhode Island registered professional engineer or architect, or  
42 meet the following minimum criteria listed in Subsections (a) – (g) below:

- 1 a. Provide a minimum of two openings (hydraulic flood vents) having a total net area  
2 of not less than one square inch for every one square foot of enclosed area subject  
3 to flooding. These hydraulic openings must be located on at least two different  
4 walls. Only the area (square footage) that lies below the 0.2% annual chance flood  
5 elevation can be used in the calculation of net area of vents required.
- 6 b. The bottom of all openings shall be no higher than one foot above grade. At least  
7 one side of the structure's fully enclosed area must be at or above grade. Fill placed  
8 around the foundation walls must be graded so that the elevation inside the  
9 enclosed area is equal to or higher than the adjacent outside elevation on at least  
10 one side of the building. The foundation slab of a residential structure, including  
11 the slab of a crawlspace, must be set equal to the outside finished grade on at least  
12 one side of the building.
- 13 c. The openings may be equipped with screens, louvers, valves or other coverings or  
14 devices provided they permit the automatic entry and exit of flood waters in both  
15 directions without any external influence or control such as human intervention,  
16 including the use of electrical and other non-automatic mechanical means. Other  
17 coverings may be designed and certified by an engineer or approved by the  
18 Building Official or designee.
- 19 d. The area cannot be used as finished living space. Use of the enclosed area shall be  
20 the minimum necessary and shall only be used for the parking of vehicles, building  
21 access or limited storage. Access to the enclosed area shall be the minimum  
22 necessary to allow for the parking of vehicles (garage door) or limited storage of  
23 maintenance equipment used in connection with the premises (standard exterior  
24 door) or entry to the living area (stairway or elevator). The enclosed area shall not  
25 be used for human habitation or partitioned into separate rooms.
- 26 e. All interior walls, floor, and ceiling materials located below the 0.2% annual  
27 chance flood elevation shall be unfinished and resistant to flood damage.
- 28 f. Electrical, plumbing, machinery or other utility equipment that service the  
29 structure (furnaces, oil or propane tanks, air conditioners, heat pumps, hot water  
30 heaters, ventilation, washers, dryers, electrical junction boxes, circuit breaker  
31 boxes and food freezers) are prohibited in the fully enclosed area below the 0.2%  
32 annual chance flood elevation. Utilities or service equipment located in this  
33 enclosed area, even if elevated above the 0.2% annual chance flood elevation in  
34 the space, will subject the structure to increased flood insurance rates.
- 35 g. A residential building with a structurally attached garage having the floor slab  
36 below the 0.2% annual chance flood elevation in the space is considered an  
37 enclosed area below the 0.2% annual chance flood elevation in the space and must  
38 meet the standards of §§ 17-5, 17-7, 17-8 and 17-9. A garage attached to a  
39 residential structure, constructed with the garage floor slab below the 0.2% annual  
40 chance flood elevation in the space, must be designed to allow for the automatic  
41 entry and exit of floodwaters in both directions. Flood openings or events are  
42 required in the exterior walls of the garage or in the garage doors. The human

1 intervention necessary to open garage doors when flooding occurs is not an  
2 acceptable means of meeting the openings requirements. In addition to the  
3 automatic entry of floodwaters, the areas of the garage below 0.2% annual chance  
4 flood elevation in the space must be constructed with flood resistant materials.  
5 Garages attached to nonresidential structures must also meet the aforementioned  
6 requirements or be dry floodproofed as per the requirements of this chapter.

7 **§ 17-910. Variance. [Ord. No. 09-09, § 2, 3-4-2009]**

- 8 (a) ~~The permitting authority Zoning Board of Review~~ may hear and grant a variance as  
9 prescribed in this section subject to the prerequisites contained therein.
- 10 (b) The Town will forward a copy of the variance request to the Rhode Island State Floodplain  
11 Coordinator. The permitting authority may consider written letters of support or no support  
12 from the State Floodplain Coordinator when making its determination whether to grant a  
13 variance.
- 14 (c) ~~The permitting authority~~In addition to applying the criteria and requirements of said section,  
15 ~~the board~~ shall undertake the following in granting a variance from the provisions of this  
16 chapter:
- 17 (1) Describe in its decision the exact extent of the variance granted.
- 18 (2) ~~The Zoning Board of Review~~permitting authority will notify the applicant in writing  
19 over the signature of a community official that:
- 20 a. The issuance of a variance to construct a structure below the BFE ~~will~~may result  
21 in increased premium rates for flood insurance ~~up to amounts as high as \$25 for~~  
22 \$100 of insurance coverage, which shall be the responsibility of the applicant;  
23 and
- 24 b. Such construction below the BFE level increases risks to life and property.
- 25 Such notification shall be maintained with a record of all variance actions.
- 26 (3) Forward a copy of its written decision and findings to the applicant, the Building  
27 Official or designee, the Rhode Island Statewide Planning Program, the Rhode Island  
28 Emergency Management Agency, and the Federal Insurance Administration in the  
29 annual report of the Town to the administration.
- 30 (d) Variances shall not be issued by ~~the permitting authority~~ for any development activity that  
31 would~~a community within any designated regulatory floodway if any increase in~~ flood  
32 levels in the regulatory floodway during the base flood discharge would result~~unless such~~  
33 development activity is required to protect human health and safety beyond any damage that  
34 would occur due to rising flood waters.
- 35 (e) Variances may be issued by the ~~Zoning Board of Review~~permitting authority for new  
36 construction and substantial improvements to be erected on a lot of 1/2 acre or less in size  
37 contiguous to and surrounded by lots with existing structures constructed below the BFE.
- 38 (f) In addition to the other criteria and restrictions in this section, ~~V~~variances shall only be  
39 issued upon showing of good and sufficient cause, such that the permitting authority determines  
40

1 ~~- determination~~ that failure to grant the variance would result in exceptional hardship to the  
2 applicant.

3 **§ 17-1011. Enforcement. [Ord. No. 09-09, § 2, 3-4-2009]**

4 (a) It shall be the duty of the Building Official or designee to enforce the provisions of this  
5 chapter. If the code enforcement officer finds that any provisions of this chapter are being  
6 violated, the officer shall notify, in writing, the person responsible for such violation  
7 indicating the nature of the violation and ordering the action necessary to correct it.

8 (b) When the above action does not result in the correction or abatement of the violation, the  
9 municipal officers, upon notice from the code enforcement officer, are hereby authorized  
10 and directed to institute any and all actions, whether legal or equitable, necessary to the  
11 enforcement of this chapter. Any person who continues to violate any provision of this  
12 chapter after receiving notice of such violation shall be guilty of a violation of this chapter  
13 and subject to a fine of \$500 for each violation. Each day such a violation is continued is a  
14 separate offense.  
15

16 **Section 4.** Articles II and III of Chapter 40 of the Code of Ordinances are hereby amended as  
17 follows:

18  
19 **§ 40-32 Water service tie-in fee.**

20  
21 (a) There is established a water service tie-in fee for any and all buildings that tie in to any  
22 water line in the Town after the effective date of the ordinance from which this section  
23 derives. To avoid public side tie-ins of more than twenty-five (25) feet, main extensions  
24 approved by the Water or Public Works Departments will be required. As a condition of  
25 approval, any such extension must minimally span the entire street frontage of the  
26 property or properties anticipated to be connected. The owner shall indemnify the Town  
27 from any loss or damage that may directly or indirectly be occasioned by his installation  
28 of the water main.  
29

30 (b) The water service tie-in fee shall be as established from time to time by the Town Council  
31 and is on file in the Town Clerk's office and shall be paid at the time of the application  
32 for the water service. The fee shall be in addition to a meter deposit.

33 **§ 40-91 Permits; building sewers.**

34  
35 (a) No person shall uncover, make any connections with or opening into, use, alter or disturb  
36 any public sewer, storm drain and appurtenance thereof without first obtaining a written  
37 permit from the Town Engineer, the director of public works or a designated  
38 representative.  
39

40 (b) There shall be two classes of building sewer permits as follows:  
41 (1) For residential and commercial service; and

1 (2) For service to establishments producing industrial wastes.

2  
3 No permits shall be issued unless approved by the state department of health, the Blackstone  
4 Valley Sewer Commission and the Town public works department.

5  
6 (c) All costs and expenses incident to the installation and connection of the building sewer,  
7 except where originally installed by the Town, shall be borne by the owner. Requested  
8 service connections shall be required to be six (6) inch diameter for single family  
9 structures and a minimum of eight (8) inch diameter for all other structures. Work to  
10 provide requested service connections shall be inclusive of main line extensions needed  
11 to bring sewer service where none is presently available. As a condition of approval, any  
12 such extension shall be required to span the entire street frontage of the property  
13 anticipated to be connected. The owner shall indemnify the Town from any loss or  
14 damage that may directly or indirectly be occasioned by his installation of the building  
15 sewer.

16  
17 (d) A separate and independent building sewer, if practical, shall generally be provided for  
18 every building.

19  
20 (e) Old building sewers may be used in connection with new buildings only when they are  
21 found, on examination and test by the Town Engineer or designated agents, to meet all  
22 requirements of this article.

23  
24  
25 **Section 5.** This Ordinance should take effect immediately upon passage and all ordinances  
26 inconsistent herewith are hereby repealed.

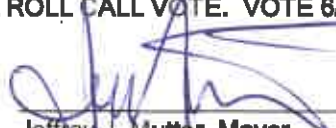
27  
28  
29 **LEGISLATIVE EXPLANATION**

30  
31 This ordinance amends the Code of Ordinances to comply with state statutes and best  
32 planning practices, specifically relating to Stormwater Management, Flood Hazards, Soil Erosion  
33 and Sediment Control, and Utilities.

34  
ON A MOTION BY COUNCILOR BEAULIEU, SECONDED BY COUNCILOR SHAW, AND IT WAS UNANIMOUSLY VOTED  
TO APPROVE THE ORDINANCE AS AMENDED BY A ROLL CALL VOTE. VOTE 6/1. Councilor Bradley voted nay.

DATE ADOPTED: April 15, 2026

A true copy. ATTEST:

  
Jeffrey J. Mutter, Mayor

  
Michael E. Kinch, President

  
Sandra M. Giovanelli, Town Clerk

**CODE OF ORDINANCES – CHAPTER 14 ENVIRONMENT  
ARTICLE V. ILLICIT DISCHARGE DETECTION AND ELIMINATION  
EXPLANATION OF REVISIONS**

*Minor changes that have no substantive impact on process are not listed below*

Part	Page	Line	Reason for Revision
<b>Chapter 17 – Title</b>			
	1	4	Article has been retitled as “Illicit Discharge Detection and Elimination” to better reflect the focus of the article. Other components of stormwater management (i.e., construction and post-construction performance standards) are found elsewhere in the Town’s regulations.
<b>§ 14-123. Definitions</b>			
	1	31-40	Removes the list of allowable non-stormwater discharges from the general definition of <b>Allowable Non-stormwater Discharges.</b> This list is now enumerated at §14-124(a)(2).
	2	1-2	
	2	3-4	Clarifies who an <b>Authorized Enforcement Agency</b> may be (DPW employees or other designees of the DPW Director).
	3	1	Clarifies that non-stormwater discharges as defined at §14-124(a)(2) are not considered <b>Illicit Discharges.</b>
	3	2-32	Provides a more specific definition of <b>Pollutants</b> to also reference impacts of pollutants.
<b>§ 14-124. Discharge prohibitions</b>			
(b)(2)	5	10-11	Clarifies that any illicit connection to the MS4 is considered a violation of the article. This replaces more narrowly written language that just includes connections that convey sewage to the MS4.
<b>§ 14-125. Suspension of MS4 access</b>			
(a)	5	21-22	Clarifies that the Town may pursue enforcement actions as defined in § 14-131 in cases of suspension of MS4 access due to illicit discharges in emergency situations.
<b>§ 14-128. Requirement to prevent, control and reduce stormwater pollutants</b>			
	6	14-18	Clarifies that this section applies specifically to illicit discharges and illicit connections.  Note that while the language at § 14-128 is commonly used by Rhode Island municipalities, it is not “well-placed” in this article. This provision is broad and could be interpreted as allowing the Town to force changes in behavior or drainage system improvements wherever it is possible illicit discharges or illicit connections from a property “result in pollutants entering stormwater, the storm sewer system or waters of the state” by implementing best management practices.

Part	Page	Line	Reason for Revision
<b>§ 14-129. Watercourse protection</b>			
	6	27-37	Narrows the scope of this section slightly. Note that while the language at § 14-129 is commonly used by Rhode Island municipalities, it is not "well-placed" in this article. The current language is very broad and could be interpreted as asking property owners to actively stabilize stream banks, which could lead to environmental damaging activity.
<b>§ 14-133. Settlements of appeal of notice of violation</b>			
	8	5-9	Clarifies authority of authorized enforcement agency to pursue enforcement actions, enforcement measures, and administrative orders as defined at § 14-131, § 14-134, § 14-135, respectively, in the event that a mutually agreed upon settlement cannot be reached.
<b>§ 14-141. Severability</b>			
	9	33-35	Adds general severability language.

**CODE OF ORDINANCES – CHAPTER 17 SPECIAL FLOOD HAZARD AREAS AND FLOOD FRINGE AREAS  
EXPLANATION OF REVISIONS**

*Minor changes that have no substantive impact on process are not listed below*

Part	Page	Line	Reason for Revision
<b>Chapter 17 – Title</b>			
	1	3	Chapter has been retitled as “Flood Hazard Areas” to reflect the proposed geographic expansion of this chapter’s applicability. This phrasing also better acknowledges that certain areas outside of the mapped FEMA Special Flood Hazard Area (SFHA) (the 1% annual chance floodplain, also known as the 100-year floodplain) are also susceptible to flooding in Cumberland.
<b>§ 17-1. Purpose</b>			
	1	7-12	Slightly reworded to clarify this chapter’s use of the SFHA as required for compliance and participation in FEMA’s National Flood Insurance Program (NFIP).
	1	13-16	Moves this paragraph from its original location in the Applicability section.
<b>§ 17-2. Limitations and Relationship to Other Regulations</b>			
(a)-(c)	1	17-24	Reorganizes existing liability disclaimer and abrogation/greater restriction language under a new section. Added general severability language to the ordinance.
<b>§ 17-3. Applicability</b>			
(a)	1	30-31	Other Areas of Flood Hazard, which encompasses the FEMA-delineated 0.2% annual chance floodplain (also known as the 500-year floodplain) has been added. See the definition at § 17-3. This expands the reach of this ordinance geographically, which is consistent with discussion with Town staff to date but still represents a relatively small amount of land concentrated along the Blackstone River. Standards are generally less strict in Other Areas of Flood Hazard (see § 17-9).
	2	5-13	Moved here under Applicability rather than in definitions section as directed by RIEMA. Updated FIRM panel suffixes/effective dates.
(b)	2	11 - 13	Language added to acknowledge that the SFHA boundaries are subject to change through official amendments/revisions from FEMA (in the form of a letter), which would in turn change the geographic scope of this chapter.
(c)(e) (c)(f)	2	33-37	Overlay and reclamation paving activities have been added to the list of “other development” to which this ordinance applies. This is consistent with discussions with Town staff, who noted an interest in better oversight of repaving activities in parking areas.
<b>§ 17-4. Definitions</b>			

Part	Page	Line	Reason for Revision
	3	16	Updates language in the <b>Base Flood</b> definition to include reference to “1% annual chance flood.” This aligns with best practices about how to refer flood risks/scenarios.
	3	19-22	<u>Clarifies that the <b>Base Flood Elevation</b> is relative to the <b>North American Vertical Datum (NAVD)</b> of 1988 or other datum as specified on the applicable <b>Flood Insurance Rate Map (FIRM)</b>.</u>
	4	7-8	Adds definition for <b>Elevation</b> and specifies elevation datum, as there are several places throughout the chapter that require the applicant to provide an elevation measurement or the Town to determine an elevation measurement. This definition captures all these occurrences.
	4	9-14	Adds definition for <b>Elevation Certificate</b> . There is no mandated form for keeping building elevation records, but FEMA strongly recommends using its standard <b>Elevation Certificate</b> form.
	4	15-16	Adds definition for <b>Encroachment</b> , as there are several places throughout the chapter that pertain to preventing encroachments in the floodplain and/or measuring their impacts. This definition captures all these occurrences.
	4 5	37 – 40 1-6	Updates definition of <b>Flood or Flooding</b> to align with FEMA’s definition of “flood.”
	6	10 - 25	Adds definitions for <b>Letter of Map Amendment</b> , <b>Letter of Map Revision</b> , and <b>Letter of Map Revision Based on Fill</b> . These letters are records of FEMA’s official amendment/revision to the boundaries of the SFHA.
	7	11-12	Adds definition of <b>Non-Compliant Structure</b> .
	7	13-17	<b>Other Areas of Flood Hazard</b> has been added to the definitions list. Land designated as <b>Other Areas of Flood Hazard</b> is currently limited to the 0.2% annual chance floodplain (also known as the 500-year floodplain and noted as <b>Zone X</b> (shaded) on FEMA Flood Insurance Rate Maps).  HW notes that URI is expanding its Coastal STORMTOOLS modeling to inland areas, including the Blackstone River watershed, to identify flood risk areas under current and future expected precipitation scenarios. The Inland STORMTOOLS modeling may identify additional areas of flood risk that the Town could consider adding to the definition of <b>Other Areas of Flood Hazard</b> . URI’s Inland STORMTOOLS project is expected to conclude in 2026.
	7	24-27	Adds definition for <b>Repetitive Loss Property</b> .
	7	28-36	Adds definition for <b>Severe Repetitive Loss Property</b> .
	8	3-11	Language referencing the applicable FEMA Flood Insurance Rate Map is reorganized under <b>Section 17-3 Applicability</b> . Most communities list all FIRM panels within their boundaries—this definition has been updated to include the relevant FIRM panels for Cumberland, effective June 23, 2026.
	8	35-37	Adds definition for <b>Submit to Rate Structure</b> .

Part	Page	Line	Reason for Revision
	9	18-20	Updates the definition of Water Surface Elevation to reference the North American Vertical Datum of 1988.
<b>§ 17-5. Permit required</b>			
(a)	9	24-27	Expands requirement to obtain a flood hazard development permit to include proposed construction and other development activities within Other Areas of Flood Hazard, in addition to the existing requirement for activities within a Special Flood Hazard Area to obtain a permit.
(b)	9	28-31	Clarifies that flood hazard development permits are to be submitted to the Town Building & Zoning Department.
(b)(3)	9	34-35	Adds responsibility of applicant to provide a list of any other municipal, state, or federal permits required for the proposed development.
(b)(5)	10	1-2	Adds responsibility of applicant to provide two-foot contours for the proposed site. The Rhode Island Geographic Information Systems (RIGIS) website has two-foot contours available for the entirety of the state.
(b)(12)	10	12-16	Clarifies that the flood hazard development permit application must include the results of any hydraulic and hydrologic analyses used to determine the change in expected flood elevation levels caused by encroachments that are part of the proposed project. FEMA prohibits encroachments in the regulatory floodway (part of the Special Flood Hazard Area) unless it has been demonstrated through hydraulic and hydrologic analyses that the proposed encroachment would not result in any increase in flood levels. Also see § 17-8(b) and (c) for the development standards related to encroachments.
(b)(13)	10	17-18	Adds responsibility of applicant to describe proposed materials and construction practices.
(b)(14)	10	19-21	Adds responsibility of applicant to describe any outdoor storage areas, including materials/items to be stored and methods to secure/elevate said materials/items.
(b)(15)	10	22	Adds responsibility of applicant to describe any alteration to or installation of utilities.
(b)(16)	10	23	Adds responsibility of applicant for application permit fee and engineering review fee.
<b>§ 17-7. Review of flood hazard development permit applications</b>			
(a)(3)	11	4-6	Adds Other Areas of Flood Hazard to this provision—the Town Building Official or designee is responsible for making interpretations of the location of boundaries as flood hazard areas as defined in this chapter.
(a)(4)	11	11-15	Paralleling § 17-7(a)(3), adds responsibility of the Town Building Official to obtain flood elevation data for permit applications in Other Areas of Flood Hazard.
(a)(6)	11	19-24	Clarifies relevant state agencies (RIDEM, RIEMA, and RI Division of Statewide Planning) that the Town Building Official is responsible for notifying prior to any alteration or relocation of a watercourse.
(a)(8)	11	31-36	Paralleling § 17-7(a)(7), adds responsibility of the Town Building Official to obtain elevation of lowest floor and floodproofed areas for permit applications in Other Areas of Flood Hazard.

Part	Page	Line	Reason for Revision
<b>§ 17-8. Development standards</b>			
	11	39	Adds Other Areas of Flood Hazard as regulated area.
(a)	12	3-9	Clarifies relevant state agencies (RIDEM, RIEMA, and RI Division of Statewide Planning) that the Town Building Official is responsible for notifying prior to any alteration or relocation of a watercourse to be consistent with § 17-7(a)(6).
(c)	12	15-22	In areas without a designated regulatory floodway, reduces the permissible rise in water surface elevation of the base flood caused by encroachments from one foot to 0.1 foot. This is in accordance with floodplain regulations best practices, though some communities go further and implement a “no-rise” requirement. Functionally, this change does not affect how the Town implements its ordinance in the regulatory floodway present along the Blackstone River. The Town’s ordinance complies with 44 CFR 60.3(d)(3), which prohibits encroachments within the regulatory floodway unless the applicant can demonstrate through hydrologic and hydraulic analyses that the encroachment will not result in a rise in flood levels during the base flood. See § 17-8(b).
(d)	12	23-25	Prohibits outdoor bulk storage of hazardous materials within designated flood hazard areas.
(f)	12	30-36	Prohibits outdoor storage of materials or equipment in Other Areas of Flood Hazard unless materials are secured and elevated to or above one foot above the 500-year flood elevation level.
(g)	12	37-42	Clarifies that all properties in designated flood hazard areas with outdoor storage, vehicles, or accessory facilities must provide for anchoring and/or secure storage of any materials/structures that are capable of movement or flotation in floodwaters.
<b>§ 17-9. Specific construction standards</b>			
(a)(1)	13	15	Expands requirement for residential construction to elevate the bottom of the lowest floor to or above one foot above the base flood elevation. This is a floodplain regulation best practice.
(a)(2)	13	20-21	Expands requirement for nonresidential construction to elevate the bottom of the lowest floor to or above one foot above the base flood elevation. This is a floodplain regulation best practice.
(a)(5)	16	2-6	Clarifies this requirement as applicable in LDSR that subdivision proposals or other development greater than 50 lots or five acres provide base flood elevation data. This language was not well connected to the existing subdivision thresholds in the Town’s Land Development and Subdivision Regulations (LDSR). HW recommends placing this requirement within the LDSR Article E. Preliminary Plats and Plans checklist requirements instead.
(b)	16 17 18	22-38 1 - 41 1-29	Adds construction standards in Other Areas of Flood Hazard. The standards (b)(1)-(3) align with standards (a)(1)-(3) applicable in the Special Flood Hazard Area.

Part	Page	Line	Reason for Revision
<b>§ 17-10. Variance</b>			
(a)	18	31-32	Updates references from "Zoning Board of Review" to "permitting authority" given the Unified Development Review process. <del>This update is carried throughout the rest of this section.</del>
(b)	18	33-36	Adds responsibility of the Town to forward variance requests to the State Floodplain Coordinator (RIEMA). Note that the State Floodplain Coordinator has no enforcement powers but has requested that they be notified. The State Floodplain Coordinator is prepared to provide letters of support/no support in response to variance requests to help provide additional guidance to municipalities.
(c)(3)	19	11-12	Adds RIEMA to the list of agencies that the Town shall notify in its annual report, which includes record of all variance action.
(d)	19	14-18	Rewrites the "stock language" to be more descriptive as to why variances shall not be issued for development in the regulatory floodway that may increase flood levels during the base flood discharge (to be protective of human health and safety, unless such development is required itself to protect human health and safety).

1 **TOWN OF CUMBERLAND**

2 **Chapter 17**  
3 **SPECIAL-FLOOD HAZARD AREAS AND FLOOD FRINGE AREAS**

4 **§ 17-1. Purpose. [Ord. No. 09-09, § 2, 3-4-2009<sup>1</sup>]**

5 The purpose of this chapter is to ensure public safety; minimize hazards to persons and property from  
6 flooding, to protect watercourses from encroachment and to maintain the capability of floodplains to  
7 retain and carry off floodwaters. ~~The Special Flood Hazard Area (SFHA) as designated by the Federal  
8 Emergency Management Agency (FEMA) is also used to inform land use decisions, development  
9 regulations, and mandatory flood insurance requirements for properties located within the SFHA  
10 through compliance and participation in FEMA's National Flood Insurance Program (NFIP). Also part  
11 of the purpose is to maintain eligibility to purchase flood insurance through compliance and  
12 participation in FEMA's National Flood Insurance Program.~~

13 ~~The Town of Cumberland (hereinafter "The Town") elects to comply with the requirements of the  
14 National Flood Insurance Act of 1968 (P.L. 90-488, as amended). The NFIP, established in the  
15 aforesaid Act, provides that areas of the town having a special flood hazard be identified by FEMA and  
16 that floodplain management measures be applied in such flood hazard areas.~~

17 **§ 17-2. Limitations and Relationship to Other Regulations.**

- 18 (a) ~~Disclaimer of liability. The degree of flood protection required by this chapter is considered  
19 reasonable but does not imply total flood protection.~~  
20 (b) ~~Severability. If any section, provision, or portion of this chapter is adjudged unconstitutional  
21 or invalid by a court, the remainder of the chapter shall not be affected.~~  
22 (c) ~~Abrogation and Greater Restriction. This chapter shall not in any way impair/remove the  
23 necessity of compliance with any other applicable laws, ordinances, regulations, etc. Where  
24 this chapter imposes a greater restriction, the provisions of this chapter shall control.~~

25 **§ 17-2~~3~~. Applicability. [Ord. No. 09-09, § 2, 3-4-2009; Ord. No. 13-25, § 1, 9-18-2013]**

26 ~~The Town of Cumberland (hereinafter "the Town") elects to comply with the requirements of the  
27 National Flood Insurance Act of 1968 (P.L. 90-488, as amended). The National Flood Insurance Program,  
28 established in the aforesaid Act, provides that areas of the town having a special flood hazard be identified  
29 by the Federal Emergency Management Agency and that floodplain management measures be applied in  
30 such flood hazard areas. The Special Flood Hazard Area and Other Areas of Flood Hazard are herein  
31 established as floodplain overlay districts. The requirements of this chapter shall apply to any  
32 construction or other development which lies wholly or partly within these areas. Said construction or  
33 development activities shall require a flood hazard area permit, an area of special flood hazard, as identified  
34 as zones A, AE, AH, AO, A1-30, A99, V, V1-30, VE on the Flood Insurance Rate Map (FIRM) prepared~~

<sup>1</sup> Editor's Note: This ordinance also provided for the repeal of former Ch. 17, which contained provisions on flood damage prevention, adopted 9-7-1994 by Ord. No. 94-12

1 by Federal Emergency Management Agency as dated September 18, 2013, and revised on October 2,  
2 2015. Said flood map, including any amendments adopted after the date hereof, is hereby made part of this  
3 chapter. The exact boundaries of the district may be defined by the one-hundred-year base flood  
4 elevations shown on the FIRM and further defined by the Flood Insurance Study Booklet dated  
5 September 18, 2013, and revised on October 2, 2015. ~~[Amended 9-23-2015 by Ord. No. 15-16]~~ The  
6 SFHA is also called the area of special flood hazard or 100-year floodplain. The area is identified as zone  
7 A, AE, AH, AO, A1-30, A99, V, V1-30, or VE on the Flood Insurance Rate Map (FIRM) prepared by  
8 FEMA effective June 23, 2026. The map panels of the Providence County FIRM that are wholly or  
9 partially within the Town are panel numbers 44007C0089H, 44007C0095H, 44007C0176H, 44007C0177H,  
10 44007C0179H, 44007C0183H, 44007C0185H, and 44007C0192H effective June 23, 2026, and  
11 44007C0191J and 44007C0194K effective June 23, 2026. The exact boundaries of the district may be  
12 defined by the base flood elevations shown on the FIRM and further defined by the Providence County  
13 Flood Insurance Study (FIS) effective June 23, 2026.

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14 (e)

15 ~~(e)(a)~~ The boundaries of the SFHA as defined in this ordinance may be changed through the  
16 issuance of a Letter of Map Amendment (LOMA), Letter of Map Revision (LOMR), or  
17 Letter of Map Revision-Based on Fill (LOMR-F) from FEMA. The degree of flood  
18 protection required by ~~[this chapter]~~ is considered reasonable but does not imply total flood  
19 protection. ~~If any section, provision or portion of this chapter is adjudged unconstitutional or~~  
20 ~~invalid by a court, the remainder of the chapter shall control.~~

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21 ~~(e)(b)~~ This chapter shall not in any way impair/remove the necessity of compliance with  
22 any other applicable laws, ordinances, regulations, etc. Where this chapter imposes a greater  
23 restriction, the provisions of this chapter shall control.

24 (c) For the purposes of this section, "other development" shall be defined as any action  
25 exclusive of that which requires the issuance of a building permit under the Rhode Island  
26 State Building Code. Such other development shall include, but not necessarily be limited  
27 to, the following:

- 28 a. Earth, gravel or mineral removal or extraction.
- 29 b. Alteration of the topography by cutting, filling or grading.
- 30 c. Storage of bulk materials outside of a structure.
- 31 d. Construction or placement of facilities or improvements not normally requiring a  
32 building permit.
- 33 e. Overlay of Pavement: The placement of pavement on top of an existing impervious surface.  
34 The underlying surface is sometimes milled (partially ground down in thickness) before the  
35 overlay is placed.
- 36 f. Reclamation of Pavement: A procedure whereby existing pavement is broken and rounded  
37 into small fragments.

38 (d) The requirements set forth in this chapter shall be in addition to any applicable requirements

1 ~~in this chapter and in any~~ other regulation which may be applicable.

2 **§ 17-34. Definitions. [Ord. No. 09-09, § 2, 3-4-2009]**

3 Unless specifically defined below, words and phrases used in this chapter pertain to floodplain  
4 management, have the same meaning as they have in common usage and to give this chapter it's most  
5 reasonable application.

6 ACCESSORY STRUCTURE — A structure which is on the same parcel of property as the principal  
7 structure to be insured and the use of which is incidental to the use of the principal structure.

8 AREA OF SHALLOW FLOODING (FOR A COMMUNITY WITH AO OR AH ZONES ONLY) — A  
9 designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM)  
10 with a 1% or greater annual chance of flooding to an average depth of one to three feet where a clearly  
11 defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may  
12 be evident. Such flooding is characterized by ponding or sheet flow.

13 AREA OF SPECIAL FLOOD HAZARD — See definition for "~~Special flood~~ Flood hazard-Hazard  
14 area".

15 BASE FLOOD — The flood having a 1% chance of being equaled or exceeded in any given year, also  
16 referred to as the ~~1% annual chance flood and one-hundred~~ 100-year flood, as published by the Federal  
17 Emergency Management Agency (FEMA) as part of a Flood Insurance Study (FIS) and depicted on a  
18 Flood Insurance Rate Map (FIRM).

19 BASE FLOOD ELEVATION (BFE) — The elevation of the crest of the base flood ~~or one-hundred-~~  
20 ~~year flood. The height in relation to mean sea level expected to be reached by the waters of the base~~  
21 ~~flood at pertinent points in the floodplains of coastal and riverine areas relative to the North American~~  
22 Vertical Datum (NAVD) of 1988 or other datum as specified on the Flood Insurance Rate Map (FIRM).

23 BASEMENT — Any area of the building having its floor subgrade (below ground level) on all  
24 sides.

25 BUILDING — See definition for "Structure".

26 COST — As related to substantial improvements, the cost of any reconstruction, rehabilitation,  
27 addition, alteration, repair or other improvement of a structure shall be established by a detailed written  
28 contractor's estimate. The estimate shall include, but not be limited to: the cost of materials (interior  
29 finishing elements, structural elements, utility and service equipment); sales tax on materials, building  
30 equipment and fixtures, including heating and air conditioning and utility meters; labor; built-in  
31 appliances; demolition and site preparation; repairs made to damaged parts of the building worked on  
32 at the same time; contractor's overhead; contractor's profit; and grand total. Items to be excluded include:  
33 cost of plans and specifications, survey costs, permit fees, out-side improvements such as septic  
34 systems, water supply wells, landscaping, sidewalks, fences, yard lights, irrigation systems, and  
35 detached structures such as garages, sheds, and gazebos.

36 DEVELOPMENT — Any man-made change to improved or unimproved real estate, including but not  
37 limited to the construction of buildings or structures; the construction of additions, alterations or  
38 substantial improvements to buildings or structures; the placement of buildings or structures; mining,  
39 dredging, filling, grading, paving, excavation or drilling operations or storage of equipment; the storage,  
40 deposition, or extraction of materials; and the installation, repair or removal of public or private sewage

- 1 disposal systems or water supply facilities.
- 2 DRY FLOODPROOFING — Any combination of structural and nonstructural protection measures  
3 incorporated in a building that is not elevated above the base flood elevation that keeps water from  
4 entering the building to prevent or minimize flood damage. Note: For insurance purposes, a dry  
5 floodproofed, nonresidential structure is rated based on the elevation of its lowest floor unless it is  
6 floodproofed to one foot above the BFE.
- 7 ELEVATION (MEASURED) – The height, in relation to the North American Vertical Datum (NAVD)  
8 of 1988.
- 9 ELEVATION CERTIFICATE – FEMA Form FF-206-22-152 (formerly 086-0-33), October 2022, or  
10 subsequent revisions. An elevation certificate is an official record primarily used to document compliance  
11 with NFIP floodplain management regulations for new or substantially improved structures in designated  
12 Special Flood Hazard Areas. An elevation certificate documents important features of a property, including  
13 property location, flood hazard zone, characteristics of on-site buildings, and elevation of the lowest floor  
14 of on-site buildings, including elevation above the flood hazard elevation.
- 15 ENCROACHMENT – Any activity or construction within the floodway including fill, new construction,  
16 substantial improvements, and other development.
- 17 EXISTING MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION — A  
18 manufactured home park or manufactured home subdivision for which the construction of facilities for  
19 servicing the lots on which the manufactured home are to be affixed (including, as a minimum, the  
20 installation of utilities, the construction of streets, and either final site grading or the pouring of concrete  
21 pads) is completed before the effective date of the floodplain management regulations adopted by a  
22 community.
- 23 EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR EXISTING  
24 MANUFACTURED HOME SUBDIVISION — The preparation of additional sites by the construction  
25 of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the  
26 installation of utilities, the construction of streets, and either final site grading or the pouring of concrete  
27 pads).
- 28 FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) — The federal agency that  
29 administers the National Flood Insurance Program (NFIP).
- 30 ~~FINISHED LIVING SPACE — Fully enclosed areas below the base flood elevation (BFE) that are not~~  
31 ~~considered a basement cannot have finished living space and needs to be designed to be exposed to~~  
32 ~~flood forces. These spaces can only to be used for parking, building access or limited storage. Finished~~  
33 ~~living space can include, but is not limited to, a space that is heated and/or cooled, contains finished~~  
34 ~~floors (tile, linoleum, hardwood, etc.), has sheetrock walls that may or may not be painted or~~  
35 ~~wallpapered, and other amenities such as furniture, appliances, bathrooms, fireplaces and other items~~  
36 ~~that are easily damaged by floodwaters and expensive to clean, repair or replace.~~
- 37 FLOOD or FLOODING — A general and temporary condition of partial or complete inundation of  
38 normally dry land areas from either:
- 39 (1) ~~the overflow of inland or tidal waters, or~~  
40 (2) ~~the unusual and rapid accumulation or runoff of surface waters from any source, or~~

- 1 (3) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined above and are  
2 akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when  
3 earth is carried by a current of water and deposited along the path of the current; or  
4 (4) Collapse or subsidence of land along the shore of a lake or similar body of water as a result of  
5 erosion or undermining caused by waves or currents of water exceeding anticipated cyclical  
6 levels that result in a flood as defined above.

7 FLOOD BOUNDARY AND FLOODWAY MAP (FBFM) — The official map of a community on  
8 which the Federal Emergency Management Agency (FEMA) has delineated the limits of the regulatory  
9 floodway and one-hundred-year floodplain.

10 FLOOD INSURANCE RATE MAP (FIRM) — The official map of a community on which the Federal  
11 Emergency Management Agency (FEMA) has delineated both the Special Flood Hazard Areas special  
12 flood hazard areas (one-hundred-year floodplain) and the insurance risk premium zones applicable to  
13 a community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map  
14 (DFIRM). FIRMs published after January 1990 may also show the limits of the regulatory floodway.

15 FLOOD INSURANCE STUDY (FIS) — The official study of a community in which the Federal  
16 Emergency Management Agency (FEMA) has conducted a technical engineering evaluation and  
17 determination of local flood hazards, flood profiles and water surface elevations. The flood insurance  
18 rate maps (FIRM), which accompany the FIS, provide both flood insurance rate zones and base flood  
19 elevations, and may provide the regulatory floodway limits.

20 FLOODPROOFING — Any combination of structural and nonstructural additions, changes or adjustments  
21 to structures which reduce or eliminate flood damage to real estate or improved real property, water and  
22 sanitary facilities, structures and their contents

23 FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be  
24 reserved in order to discharge the base flood without cumulatively increasing the water surface elevation  
25 more than one foot. For the purposes of these regulations, the term "regulatory floodway" is synonymous  
26 ~~in meaning~~ with the term "floodway".

27 FUNCTIONALLY DEPENDENT USE OR FACILITY — A use or facility that cannot perform its  
28 intended purpose unless it is located or carried out in close proximity to water. The term includes only  
29 docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers,  
30 and ship building and ship repair facilities. The term does not include seafood processing facilities, long-  
31 term storage, manufacturing, sales or service facilities.

32 HIGHEST ADJACENT GRADE (HAG) (ONLY FOR COMMUNITY WITH AO/AH ZONES) — The  
33 highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

34 HISTORIC STRUCTURE — Any structure that is:

- 35 a. Listed individually in the National Register of Historic Places (a listing maintained by  
36 the Department of the Interior) or preliminarily determined by the Secretary of the  
37 Interior ~~secretary of the interior~~ as meeting the requirements for individual listing on  
38 the National Register;
- 39 b. Certified or preliminarily determined by the Secretary of the Interior ~~secretary of the~~  
40 ~~interior~~ as contributing to the historic significance of a registered historic district or a  
41 district preliminarily determined by the ~~secretary~~ Secretary to qualify as a registered  
42 historic district;

- 1 c. Individually listed on a state inventory of historic places in states with historic  
2 preservation programs which have been approved by the Secretary of the Interior  
3 secretary-of-the-interior; or
- 4 d. Individually listed on a local inventory of historic places in communities with historic  
5 preservation programs that have been certified either:
- 6 i. By an approved state program as determined by the Secretary of the Interior ~~secretary~~  
7 ~~of-the-interior~~; or
- 8 ii. Directly by the Secretary of the Interior ~~secretary-of-the-interior~~ in states without  
9 approved programs.

10 LETTER OF MAP AMENDMENT (LOMA) – An official amendment by letter to an effective NFIP map.  
11 A LOMA establishes a property's location in relation to the Special Flood Hazard Area (SFHA). LOMAs  
12 are usually issued because a property has been inadvertently mapped as being in the floodplain but is  
13 actually on natural high ground above the base flood elevation.

14 LETTER OF MAP REVISION (LOMR) – An official modification by letter to an effective Flood  
15 Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM) or both. LOMRs are generally  
16 based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of  
17 a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base  
18 Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The LOMR officially revises the  
19 Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM), and sometimes the  
20 Flood Insurance Study (FIS) report, and when appropriate, includes a description of the modifications. The  
21 LOMR is generally accompanied by an annotated copy of the affected portions of the FIRM, FBFM, or FIS  
22 report.

23 LETTER OF MAP REVISION BASED ON FILL (LOMR-F) – An official modification by letter to the  
24 Special Flood Hazard Area shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill  
25 outside the existing regulatory floodway.

26 **LOWEST FLOOR** — The lowest floor of the lowest enclosed area (including basement).

27 **MANUFACTURED HOME** — A structure, transportable in one or more sections, which is built on a  
28 permanent chassis and is designed for use with or without a permanent foundation when attached to the  
29 required utilities. The term does not include park trailers, travel trailers, recreational vehicles and other  
30 similar vehicles or transportable structures placed on a site for 180 consecutive days or longer and  
31 intended to be improved property. [Amended 9-23-2015 by Ord. No. 15-16]

32 **MANUFACTURED HOME PARK or MANUFACTURED HOME SUBDIVISION** — A parcel or  
33 contiguous parcels of land divided into two or more manufactured home lots for rent or sale.

34 **MARKET VALUE** — Market value is the price of a structure that a willing buyer and seller  
35 agree upon. This can be determined by an independent appraisal by a professional appraiser; the  
36 property's tax assessment, minus land value; the replacement cost minus depreciation of the structure;  
37 the structure's actual cash value.

38 **MEAN SEA LEVEL (MSL)** — Average height of the sea for all stages of the tide usually determined  
39 from hourly height observations over a nineteen-year period on an open coast or in adjacent waters  
40 having free access to the sea. The National Geodetic Vertical Datum (NGVD) of 1929 1988 (or other  
41 datum where specified) to which base flood elevations shown on a community flood insurance rate map  
42 (FIRM) are referenced.

1 NEW CONSTRUCTION — Structures for which the "start of construction" commenced on or  
2 after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes  
3 any subsequent improvements to such structures. For floodplain management purposes, new  
4 construction means structures for which the "start of construction" commenced on or after effective  
5 date of floodplain regulations, and includes any subsequent improvements to such structures.

6 NEW MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION — A  
7 manufactured home park or manufactured home subdivision for which the construction of facilities for  
8 servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the  
9 installation of utilities, the construction of streets, and either final site grading or the pouring of concrete  
10 pads) is completed on or after the effective date of floodplain regulations adopted by the community.

11 NON-COMPLIANT STRUCTURE — A building located within a flood-prone area that does not meet the  
12 required elevation of construction standards set by FEMA.

13 OTHER AREAS OF FLOOD HAZARD — Additional land beyond the designated Special Flood Hazard  
14 Area that may be subject to flooding. Land designated as Other Areas of Flood Hazard are:

- 15 (1) Lands shown as zone X (shaded) on a FIRM. Zone X is an area of moderate flood hazard and is  
16 the land within the floodplain subject to a 0.2% chance of flooding in any given year, also  
17 referred to as the 500-year floodplain.

18 RECREATIONAL VEHICLE — A vehicle which is:

- 19 (1) Built on a single chassis;  
20 (2) Four hundred square feet or less when measured at the largest horizontal projection;  
21 (3) Designed to be self-propelled or permanently towable by a light duty truck; and  
22 (4) Designed primarily not for use as a permanent dwelling but as a temporary living  
23 quarters for recreational, camping, travel, or seasonal use.

24 REPETITIVE LOSS PROPERTY — Any NFIP-insured building that has incurred flood-related damages  
25 on two occasions during a ten-year period ending on the date of the event for which a second claim is made,  
26 in which the cost of repairing the flood damage, on average, equaled or exceed 25% of the market value of  
27 the building at the time of each such flood event.

28 SEVERE REPETITIVE LOSS PROPERTY — Any NFIP-insured single-family or multi-family residential  
29 building that has had at least one of the following paid flood loss criteria occur since 1978:

- 30 (1) The building has incurred flood-related damage for which four or more separate claims payments  
31 have been made, with the amount of each claim (including building and contents payments)  
32 exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000;  
33 or  
34 (2) There have been at least two separate claims payments (building payments only) have been made  
35 under such coverage for the building, with the cumulative amount of such claims exceeding the  
36 market value of the building at the time of each such flood event leading to the claim payments.

37 REGULATORY FLOODWAY — See definition for "Floodway".

38 SAND DUNES — Naturally occurring accumulations of sand in ridges or mounds landward of the  
39 beach.

1 SHEET FLOW AREA (FOR COMMUNITY WITH AO, AH, OR VO ZONES ONLY) — See  
2 definition for "Area of shallow flooding".

3 SPECIAL FLOOD HAZARD AREA (SFHA) — The land in the floodplain within a community subject  
4 to a 1% or greater chance of flooding in any given year. SFHAs are determined utilizing the base flood  
5 elevations (BFE) provided on the flood profiles in the flood insurance study (FIS) for a community.  
6 BFEs provided on flood insurance rate map (FIRM) are only approximate (rounded up or down) and  
7 should be verified with the BFEs published in the FIS for a specific location. ~~SFHAs include, but are  
8 not necessarily limited to, the land shown as zones A, A1-30, AE, AO, AH, and the coastal high hazard  
9 areas shown as zones V, V1-30, and VE on a FIRM. The SFHA is also called the area of special flood  
10 hazard or 100-year floodplain. The area is identified as zone A, AE, AH, AO, A1-30, A99, V, V1-30,  
11 or VE on the Flood Insurance Rate Map (FIRM) prepared by FEMA effective June 23, 2026 as dated  
12 September 18, 2013, and revised on October 2, 2025. The map panels of the Providence County FIRM  
13 that are wholly or partially within the Town are panel numbers 44007C0089G, 4407C0095G,  
14 4407C0176G, 44007C0177G, 44007C0179G, 44007C0182G, 44007C0185G, and 4407C0192G dated  
15 March 2, 2009, and 44007C0191H and 44007C0194J dated October 2, 2015. The exact boundaries of  
16 the district may be defined by the base flood elevations shown on the FIRM and further defined by the  
17 Providence County Flood Insurance Study (FIS) dated September 18, 2013, and revised on October 2,  
18 2015.~~

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19 START OF CONSTRUCTION — For other than new construction or substantial improvements under  
20 the Coastal Barrier Resources Act (P.L. 97-348), includes substantial improvement and means the date  
21 the building permit was issued, provided the actual start of construction, repair, reconstruction,  
22 rehabilitation, addition placement substantial improvement or other improvement was within 180 days  
23 of the permit date. The actual start means either the first placement of permanent construction of a  
24 structure on a site, such as the pouring of slab or footings, the installation of piles the construction of  
25 columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a  
26 foundation. Permanent construction does not include land preparation, such as clearing, grading and  
27 filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for  
28 a basement footings, piers, or foundations or the erections of temporary forms; not does it include the  
29 installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling  
30 units or not part of the main structure. For a substantial improvement, the actual start of construction  
31 means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or  
32 not that alteration affects the external dimensions of the building.

33 STRUCTURE — A walled and roofed building which is principally above ground, including a  
34 manufactured home, a gas or liquid storage tank, or other manmade facilities or infrastructures.

35 SUBMIT TO RATE STRUCTURE — An application for flood insurance on a building for which no  
36 risk rate is published in the NFIP Flood Insurance Manual. Insurance coverage can be obtained only  
37 after the insurer has approved the application and has established the risk premium rate.

38 SUBSTANTIAL DAMAGE — Damage of any origin sustained by a structure, whereby the cost of  
39 restoring the structure to its pre-damaged condition would equal or exceed 50% of the market value of  
40 the structure before the damage occurred.

41 SUBSTANTIAL IMPROVEMENT — Any combination of repairs, reconstruction, rehabilitation,  
42 alterations, additions or other improvements to a structure, taking place during a ten-year period, in  
43 which the cumulative cost equals or exceeds 50% of the market value of the structure as determined at  
44 the beginning of such ten-year period. This term includes structures that have incurred "substantial

1 damage", regardless of the actual repair work performed. For purposes of this definition, "substantial  
2 improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other  
3 structural part of the building commences, whether or not that alteration affects the external dimensions  
4 of the structure. The term does not, however, include either:

- 5 (1) Any project for improvement of a structure to correct existing violations of state or  
6 local health, sanitary, or safety code specifications which have been identified by the  
7 local code enforcement official and which are the minimum necessary to assure safe  
8 living conditions; or
- 9 (2) Any alteration of a "historic" structure, provided that the alteration will not preclude  
10 the structure's continued designation as a "historic structure".

11 VARIANCE — A grant of relief by a community from the terms of the floodplain management  
12 ordinance that allows construction in a manner otherwise prohibited and where specific enforcement  
13 would result in unnecessary hardship.

14 VIOLATION — Failure of a structure or other development to be fully compliant with the community's  
15 floodplain management ordinance. A structure or other development without required permits, lowest  
16 floor elevation documentation, floodproofing certificates or required floodway encroachment  
17 calculations is presumed to be in violation until such time as that documentation is provided.

18 WATER SURFACE ELEVATION — The height, in relation to the ~~National Geodetic~~North American  
19 Vertical Datum (NGVD/NAVD) of 1929-1988 (or other datum, where specified), of floods of various  
20 magnitudes and frequencies in the floodplains of coastal or riverine areas.

21 WET FLOODPROOFING — Measures designed to minimize damage to a structure or its contents by  
22 water that is allowed into a building.

23 **§ 17-45. Permit required. [Ord. No. 09-09, § 2, 3-4-2009]**

- 24 (a) All proposed construction and other development within a Special Flood Hazard Area  
25 ~~special flood hazard area or Other Areas of Flood Hazard~~ shall require the issuance of a flood  
26 hazard development permit by the Building Official or designee. Said permit shall be in a  
27 form authorized by the Town Council. 14 - 36
- 28 (b) The application for a flood hazard development permit shall be submitted to the ~~code~~  
29 ~~enforcement officer~~ Town Building & Zoning Department and shall include the following  
30 items as applicable. Applicants are encouraged to consult with the Building Official before  
31 submitting to determine which items are required:
  - 32 (1) The name and address of the applicant;
  - 33 (2) An address or a map indicating the location of the construction site;
  - 34 (3) A list of any other municipal, state, or federal permits required for the proposed  
35 development;
  - 36 (4) A site plan showing location of existing and proposed structures, sewage disposal  
37 facilities, water supply facilities, areas to be cut and filled, and the dimensions of the  
38 lot;

- 1       (5) Two-foot contours for the site either from an onsite survey or readily available GIS
- 2       data;
- 3       (6) A statement of the intended use of ~~the~~ any structures;
- 4       (7) A statement as to the type of sewage system proposed;
- 5       (8) Specification of dimensions of the proposed structures;
- 6       (9) The elevation (~~in relation to mean sea level~~) of the lowest floor, including basement,
- 7       and if the lowest floor is below grade on one or more sides, the elevation of the floor
- 8       immediately above;
- 9       (10) Base flood elevation data for all new, relocated or substantially improved structures;
- 10      (11) The elevation (~~in relation to mean sea level~~) to which the structures ~~structure~~ will be
- 11      floodproofed;
- 12      (12) ~~The description of the extent to which any watercourse will be altered or relocated as a~~
- 13      ~~result of the proposed development results of any hydraulic and hydrologic model~~
- 14      ~~analyses used to determine the level to which flood waters may or may not be affected~~
- 15      ~~by any encroachment into Special Flood Hazard Areas of Other Areas of Flood~~
- 16      ~~Hazards;~~
- 17      (13) A description of materials and construction practices used to ensure compliance with
- 18      the provisions of this ordinance;
- 19      (14) A description of the materials/items to be stored in any outdoor storage areas and
- 20      where such storage may be allowed, the measures taken to secure and/or elevate
- 21      materials in accordance with the requirements of this ordinance;
- 22      (15) A description of any alteration to, or installation of, utilities;
- 23      (16) Application permit fee and engineering review fee.
- 24      (c) Prior to the issuance of a building or development permit, the applicant shall submit
- 25      evidence that all necessary permits and approvals have been received from all government
- 26      agencies from which approval is required by federal or state law.

27 **§ 17-56. Permit fee. [Ord. No. 09-09, § 2, 3-4-2009]**

28 A permit fee (based on the cost of the construction) may be required to be paid to the Town and a  
 29 copy of a receipt for the same shall accompany the application. An additional fee may be charged if the  
 30 code enforcement officer and/or board of appeals needs the assistance of a professional engineer.

31 **§ 17-67. Review of flood hazard development permit applications. [Ord. No. 09-09, § 2, 3-4-2009]**

- 32      (a) The Building Official or designee shall:
  - 33          (1) Review all applications for flood hazard development permits to determine that all
  - 34          pertinent requirements as described in § 17-7-5 have been or will be met:

1 (2) Utilize, in the review of all flood hazard development permit applications, the base  
2 flood data contained in the "Flood Insurance Study — the Town of Cumberland, Rhode  
3 Island, Providence County," as defined in this article described in § 17-2.

4 (3) Make interpretations of the location of boundaries of Special Flood Hazard Areas or  
5 Other Areas of Flood Hazard ~~special flood hazard areas~~ shown on maps as defined in §  
6 17-4 described in § 17-2.

7 In A zones, in ~~the~~ absence of FEMA BFE data and floodway data, obtain, review, and  
8 reasonably utilize other BFE and floodway data as a basis for elevating residential  
9 structures to or above the base flood level, and for floodproofing or elevating  
10 nonresidential structures to or above the base flood level.

11 (4) In Other Areas of Flood Hazard, in the absence of FEMA flood elevation data, obtain,  
12 review, and reasonably utilize best available federal, state, local, or other flood  
13 elevation data as a basis for elevating residential structures to or above the flood  
14 elevation level, and for floodproofing or elevating nonresidential structures to or above  
15 the flood elevation data.

16 (5) In review of flood hazard development permit applications, determine that all necessary  
17 permits have been obtained from those federal, state and local government agencies  
18 from which prior approval is required;

19 (6) Notify adjacent municipalities, ~~the state department of environmental management and~~  
20 ~~the state bureau of civil emergency preparedness~~ Rhode Island Department of  
21 Environmental Management, the Rhode Island Emergency Management Agency, and  
22 the Rhode Island Division of Statewide Planning prior to any alteration or relocation of  
23 a watercourse and submit copies of such notifications to the Federal Emergency  
24 Management Agency and maintain carrying capacity of altered watercourse; and

25 ~~(7)~~ Where base flood elevation data are utilized, within zone A on the FIRM, ~~obtain~~  
26 the elevation (in relation to mean sea level) of the lowest floor (including basement) of all  
27 new and substantially improved structures, and obtain, if the structure has been  
28 floodproofed in accordance with these regulations, the elevation (in relation to mean  
29 sea level) to which the structure was floodproofed, and maintain a record of all such  
30 information with the official designed by the community.

31 ~~(7)(8)~~ Where flood elevation data are utilized within zone X (shaded) on the FIRM, obtain  
32 the elevation (in relation to mean sea level) of the lowest floor (including basement) of  
33 all new and substantially improved structures, and obtain, if the structure has been  
34 floodproofed in accordance with these regulations, the elevation (in relation to mean  
35 sea level) to which the structure was floodproofed, and maintain a record of all such  
36 information with the official designed by the community.

37 ~~§ 17-28.~~ Development standards. [Ord. No. 09-09, § 2, 3-4-2009]

38 The following standards shall apply to any construction or other development located wholly or partly  
39 within ~~an area of special flood hazard~~ the Special Flood Hazard Area or Other Areas of Flood Hazard  
40 as defined in § 17-34. Please also refer to the current Rhode Island State Building Code, ~~One-~~  
41 two-family dwelling code, plumbing code, ~~Mechanical~~ code, and electrical code for state standards.

1 ~~The Coastal Resource Management Council (CRMC) may also require special permits for development~~  
2 ~~on the coastal feature. Other state agency regulations may also apply.~~

- 3 (a) No watercourse may be altered in a manner which will, in the opinion of the Building  
4 Official or designee, result in any decrease in the capacity of the watercourse, and no land  
5 shall be graded or altered in such a manner as to increase the base flood elevation within the  
6 Town. Where any alteration is permitted, the Building Official or designee will notify the  
7 adjacent communities, the Rhode Island Department of Environmental Management, the Rhode  
8 Island Emergency Management Agency, the Rhode Island Statewide Planning  
9 Program, Division of Statewide Planning, and the Federal Emergency Management Agency.
- 10 (b) ~~In a designated regulatory floodway, any no encroachment is prohibited which would cause~~  
11 ~~any increase in the base flood level shall be permitted unless hydrologic and hydraulic~~  
12 ~~analyses performed in accordance with standard engineering practice demonstrate~~  
13 ~~that the proposed encroachment would not increase flood levels in the regulatory floodway~~  
14 ~~during the base flood discharge.~~
- 15 (c) ~~In areas without a designated~~ Require until a regulatory floodway is designated, that no new  
16 construction, substantial improvements, or other development (including fill) encroachment  
17 shall be permitted within zones A1-30 and AE on the community's FIRM, unless it is  
18 demonstrated through hydraulic and hydrologic analyses performed in accordance with  
19 standard engineering practice demonstrate that the cumulative effect of the proposed  
20 development, when combined with all other existing and anticipated development on that  
21 site, will not increase the water surface elevation of the base flood more than one 0.1 foot at  
22 any point within the community.
- 23 (d) ~~No outdoor bulk storage of hazardous materials, hazardous substances, or hazardous waste~~  
24 ~~as defined by the Rhode Island Department of Environmental Management shall be allowed~~  
25 ~~in a Special Flood Hazard Area or Other Areas of Flood Hazard.~~
- 26 (e) ~~In addition to subsection 17-8.d, No no outdoor storage of materials or equipment which is~~  
27 ~~likely to cause damage to property, create a potential obstruction to floodwaters, create a~~  
28 ~~potential fire hazard or pollute the waters during flood periods shall be permitted in any~~  
29 ~~Special Flood hazard Area special flood hazard area.~~
- 30 ~~(e)(f) In addition to 17-8.d, no outdoor storage of materials or equipment is permitted in Other~~  
31 ~~Areas of Flood Hazard unless elevated to or above one foot above the 500-year flood~~  
32 ~~elevation level. Storage materials shall be secured in a manner that would preclude the~~  
33 ~~contents from washing away or being dissolved into flood waters. Such materials or~~  
34 ~~equipment shall include but not necessarily be limited to: lumber and other buoyant materials,~~  
35 ~~water-soluble materials, volatile or flammable materials, acids or poisons or water soluble~~  
36 ~~materials.~~
- 37 ~~(e)(g) In all cases where outdoor storage or the location of vehicles or accessory facilities occurs in~~  
38 ~~a Special Flood Hazard Area or Other Areas of Flood Hazard, provision~~ Provision shall be  
39 made for anchoring facilities, equipment or yard features which are capable of movement or  
40 flotation in floodwaters. Such items shall include but shall not necessarily be limited to:  
41 fences, sheds, animal shelters, tanks, storage boxes, planters, vehicles, boats and other items  
42 normally positioned or stored on a site outside of a structure.

1 ~~(e)(h)~~ The use of flood-resistant materials shall be used for all structures ~~within an area of~~  
2 ~~special flood hazard as defined in § 17-3.~~

3 ~~(f)(i)~~ Construction methods and practices shall be used that minimize flood damage.

4 ~~(f)(i)~~ Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service  
5 facilities shall be designed and/or located to prevent water entry to accumulation.

6 ~~(f)(k)~~ Onsite waste disposal systems shall be designed to avoid impairment or contamination  
7 of the floodway.

8 ~~(e)(l)~~ New and replacement water supply and sanitary sewage systems shall be designed to  
9 minimize or eliminate infiltration.

10 § 17-82. Specific construction standards. [Ord. No. 09-09, § 2, 3-4-2009]

11 (a) Construction standards in Special Flood Hazard Areas ~~special flood hazard areas (SFHA), Zones~~  
12 ~~A, A1-30, AE.~~

13 (1) Residential construction. All new construction, substantial improvements, and repair to  
14 structures that have sustained substantial damage shall have the bottom of the lowest  
15 floor, including basement, elevated to or above one foot above the base flood elevation  
16 (BFE).

17 (2) Nonresidential construction. All new construction, substantial improvements, and  
18 repair to structures that have sustained substantial damage which are commercial,  
19 industrial or nonresidential structures shall:

20 a. Have the bottom of the lowest floor, including basement, elevated to or above  
21 one foot above the base flood elevation (BFE); or

22 b. In lieu of being elevated, nonresidential structures may be dry floodproofed to  
23 one foot above the BFE provided that together with all attendant utilities and  
24 sanitary facilities the areas of the structure below the required elevation are  
25 watertight with walls substantially impermeable to the passage of water, and  
26 provided that such structures are composed of structural components having the  
27 capability of resisting hydrostatic and hydrodynamic loads and the effects of  
28 buoyancy. A Rhode Island registered professional engineer or architect shall  
29 review and/or develop structural design specifications and plans for the  
30 construction, and shall certify that the design and methods of construction are in  
31 accordance with acceptable standards of practice or meeting the provisions of this  
32 section. Such certification shall be provided to the Building Official or designee.

33 (3) Fully enclosed areas below the base flood elevation of elevated buildings. All new  
34 construction, substantial improvements, or repair of substantial damage to residential  
35 or nonresidential structures that include fully enclosed areas formed by a foundation  
36 and other exterior walls below the base flood elevation (BFE) of an elevated building,  
37 shall be designed to preclude finished living space and be designed to allow for the  
38 entry and exit of flood waters to automatically equalize hydrostatic flood forces on  
39 exterior walls (wet floodproofing). Designs for complying with this requirement must

1 either be certified by a Rhode Island registered professional engineer or architect, or  
2 meet the following minimum criteria listed in Subsections (a) — (g) below:

- 3 a. Provide a minimum of two openings (hydraulic flood vents) having a total net  
4 area of not less than one square inch for every one square foot of enclosed area  
5 subject to flooding. These hydraulic openings must be located on at least two  
6 different walls. Only the area (square footage) that lies below the BFE can be  
7 used in the calculation of net area of vents required.
- 8 b. The bottom of all openings shall be no higher than one foot above grade. At least  
9 one side of the structure's fully enclosed area must be at or above grade. Fill  
10 placed around the foundation walls must be graded so that the elevation inside  
11 the enclosed area is equal to or higher than the adjacent outside elevation on at  
12 least one side of the building. The foundation slab of a residential structure,  
13 including the slab of a crawlspace, must be set equal to the outside finished grade  
14 on at least one side of the building.
- 15 c. The openings may be equipped with screens, louvers, valves or other coverings or  
16 devices provided they permit the automatic entry and exit of flood waters in both  
17 directions without any external influence or control such as human intervention,  
18 including the use of electrical and other non-automatic mechanical means. Other  
19 coverings may be designed and certified by an engineer or approved by the  
20 Building Official or designee.
- 21 d. The area cannot be used as finished living space. Use of the enclosed area shall  
22 be the minimum necessary and shall only be used for the parking of vehicles,  
23 building access or limited storage. Access to the enclosed area shall be the  
24 minimum necessary to allow for the parking of vehicles (garage door) or limited  
25 storage of maintenance equipment used in connection with the premises (standard  
26 exterior door) or entry to the living area (stairway or elevator). The enclosed area  
27 shall not be used for human habitation or partitioned into separate rooms.
- 28 e. All interior walls, floor, and ceiling materials located below the BFE shall be  
29 unfinished and resistant to flood damage.
- 30 f. Electrical, plumbing, machinery or other utility equipment that service the  
31 structure (furnaces, oil or propane tanks, air conditioners, heat pumps, hot water  
32 heaters, ventilation, washers, dryers, electrical junction boxes, circuit breaker  
33 boxes and food freezers) are prohibited in the fully enclosed area below the BFE.  
34 Utilities or service equipment located in this enclosed area, even if elevated above  
35 the BFE in the space, will subject the structure to increased flood insurance rates.
- 36 g. A residential building with a structurally attached garage having the floor slab  
37 below the BFE is considered an enclosed area below the BFE and must meet  
38 the standards of §§ 17-45, 17-67, 17-78 and 17-89. A garage attached to a  
39 residential structure, constructed with the garage floor slab below the BFE, must  
40 be designed to allow for the automatic entry and exit of floodwaters in both  
41 directions. Flood openings or events are required in the exterior walls of the  
42 garage or in the garage doors. The human intervention necessary to open garage  
43 doors when flooding occurs is not an acceptable means of meeting the openings

1 requirements. In addition to the automatic entry of floodwaters, the areas of the  
2 garage below BFE must be constructed with flood resistant materials. Garages  
3 attached to nonresidential structures must also meet the aforementioned  
4 requirements or be dry floodproofed as per the requirements of this chapter.

5 (4) Manufactured (mobile) homes and recreational vehicles (RVs).

- 6 a. In all Special Flood Hazard Areas ~~special-flood-hazard-areas~~ (SFHA), any  
7 manufactured (mobile) homes to be newly placed, substantially improved or  
8 repaired as a result of substantial damage, shall be elevated so that the bottom of  
9 the lowest floor is at or above the base flood elevation (BFE). This includes  
10 SFHAs outside a manufactured home park or subdivision, in a new manufactured  
11 home park or subdivision, in an expansion to an existing manufactured home  
12 park or subdivision, or on a site in an existing park which a manufactured home  
13 has incurred substantial damage as a result of a flood.
- 14 b. All manufactured (mobile) homes within a SFHA shall be placed on a permanent  
15 foundation which itself is securely anchored and to which the structure is  
16 securely anchored so that it will resist flotation, lateral movement and hydrostatic  
17 pressures. Anchoring may include, but not be limited to, the use of over-the-top  
18 or frame ties to ground anchors.
- 19 c. All manufactured (mobile) homes within a SFHA shall be installed using  
20 methods and practices which minimize flood damage. Adequate access and  
21 drainage should be provided. Elevation construction standards include piling  
22 foundations placed no more than 10 feet apart and reinforcement is provided for  
23 piers more than six feet above ground level.
- 24 d. Recreational vehicles placed on sites within a SFHA shall either:
- 25 i. Be on the site for fewer than 180 consecutive days; and
- 26 ii. Be fully licensed and ready for highway use; or
- 27 iii. Be elevated and anchored.

28 A recreational vehicle is ready for highway use if it is on its wheels or jacking system,  
29 is attached to the site only by quick disconnect type utilities and security devices, and  
30 has no permanently attached additions.

- 31 e. Public utilities and facilities in manufactured (mobile) homes or subdivisions with  
32 a SFHA shall be constructed so as to minimize flood damage.

33 (5) Subdivisions. All subdivision proposals and other development, including  
34 manufactured home parks or subdivisions, shall be reviewed to determine whether such  
35 proposals will be reasonably safe from flooding. If a subdivision or other development  
36 proposal is in a flood-prone area, the following standards apply:

- 37 a. Subdivision proposals shall minimize flood damage.
- 38 b. Public utilities and facilities shall be constructed so as to minimize flood damage.

1 c. Adequate drainage shall be provided for such proposals.

2 d. ~~Base flood elevation data is required for subdivision proposals or other~~  
3 ~~development greater than 50 lots or five acres. In accordance with the Town's~~  
4 ~~Land Development and Subdivision Regulations. These provisions are consistent~~  
5 ~~with state law and exceed the thresholds set by FEMA, which call for base flood~~  
6 ~~elevation data for development proposals with greater than 50 lots or five acres.~~

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7 (6) Accessory structures. Detached accessory structures in zones A, AE, A1-30, AO, and  
8 AH (i.e. garages, sheds) do not have to meet the elevation or dry floodproofing  
9 requirement if the following standards are met:

10 a. The structure is no more than 500 square feet and has a value less than \$3,000.

11 b. The structure has unfinished interiors and must not be used for human habitation.  
12 An apartment, office or other finished space over a detached garage is  
13 considered human habitation and would require the structure to be elevated.

14 c. The structure is used solely for parking of vehicles and/or limited storage.

15 d. The accessory structure must be wet- floodproofed and designed to allow for the  
16 automatic entry and exit of flood water.

17 e. The accessory structure shall be firmly anchored to prevent flotation, collapse  
18 and lateral movement.

19 f. Service facilities such as electrical, mechanical and heating equipment must be  
20 elevated or floodproofed to or above the base flood elevation.

21 g. The structure must comply with the floodway encroachment provision in this chapter.

22 (b) Construction standards in Other Areas of Flood Hazard.

23 (1) ~~Residential construction. All new construction, substantial improvements, and repair to~~  
24 ~~structures that have sustained substantial damage shall have the bottom of the lowest~~  
25 ~~habitable floor, including basement, elevated to or above one foot above the 0.2% annual~~  
26 ~~chance flood elevation at the site, as identified by the Providence County Flood Insurance~~  
27 ~~Study effective June 23, 2026 dated July 19, 2023. In the absence of flood elevation data,~~  
28 ~~the Building Official shall determine the appropriate elevation in accordance with the~~  
29 ~~powers granted by this ordinance.~~

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30 (2) Nonresidential construction. All new construction, substantial improvements, and repair to  
31 structures that have sustained substantial damage which are commercial, industrial, or  
32 nonresidential structures shall:

33 a. ~~Have the bottom of the lowest floor, including basement, elevated to or above~~  
34 ~~one foot above the 0.2% annual chance flood elevation at the site, as identified~~  
35 ~~by the Providence County Flood Insurance Study effective June 23, 2026 dated~~  
36 ~~July 19, 2023. In the absence of flood elevation data, the Building Official shall~~  
37 ~~determine the appropriate elevation in accordance with the powers granted by~~  
38 ~~this ordinance.~~

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b. ~~In lieu of being elevated, nonresidential structures may be dry floodproofed to one foot above the 0.2% annual chance flood elevation at the site, as identified by the Providence County Flood Insurance Study effective June 23, 2026 dated July 19, 2023, provided that together with all attendant utilities and sanitary facilities the areas of the structure below the required elevation are watertight with walls substantially impermeable to the passage of water, and provided that such structures are composed of structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A Rhode Island registered professional engineer or architect shall review and/or develop structural design specifications and plans for the construction, and shall certify that the design and methods of construction are in accordance with acceptable standards of practice or meeting the provisions of this section. Such certification shall be provided to the Building Official or designee.~~

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(3) ~~Fully enclosed areas below the 0.2% annual chance flood elevation of elevated buildings. All new construction, substantial improvements, or repair of substantial damage to residential or nonresidential structures that include fully enclosed areas formed by a foundation and other exterior walls below the 0.2% annual chance flood elevation of an elevated building, shall be designed to preclude finished living space and be designed to allow for the entry and exit of flood waters to automatically equalize hydrostatic flood forces on exterior walls (wet floodproofing). Designs for complying with this requirements must either be certified by a Rhode Island registered professional engineer or architect, or meet the following minimum criteria listed in Subsections (a) – (g) below:~~

- a. ~~Provide a minimum of two openings (hydraulic flood vents) having a total net area of not less than one square inch for every one square foot of enclosed area subject to flooding. These hydraulic openings must be located on at least two different walls. Only the area (square footage) that lies below the 0.2% annual chance flood elevation can be used in the calculation of net area of vents required.~~
- b. ~~The bottom of all openings shall be no higher than one foot above grade. At least one side of the structure's fully enclosed area must be at or above grade. Fill placed around the foundation walls must be graded so that the elevation inside the enclosed area is equal to or higher than the adjacent outside elevation on at least one side of the building. The foundation slab of a residential structure, including the slab of a crawlspace, must be set equal to the outside finished grade on at least one side of the building.~~
- c. ~~The openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic entry and exit of flood waters in both directions without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means. Other coverings may be designed and certified by an engineer or approved by the Building Official or designee.~~
- d. ~~The area cannot be used as finished living space. Use of the enclosed area shall be~~

1 the minimum necessary and shall only be used for the parking of vehicles, building  
2 access or limited storage. Access to the enclosed area shall be the minimum  
3 necessary to allow for the parking of vehicles (garage door) or limited storage of  
4 maintenance equipment used in connection with the premises (standard exterior  
5 door) or entry to the living area (stairway or elevator). The enclosed area shall not  
6 be used for human habitation or partitioned into separate rooms.

7 e. All interior walls, floor, and ceiling materials located below the 0.2% annual  
8 chance flood elevation shall be unfinished and resistant to flood damage.

9 f. Electrical, plumbing, machinery or other utility equipment that service the  
10 structure (furnaces, oil or propane tanks, air conditioners, heat pumps, hot water  
11 heaters, ventilation, washers, dryers, electrical junction boxes, circuit breaker  
12 boxes and food freezers) are prohibited in the fully enclosed area below the 0.2%  
13 annual chance flood elevation. Utilities or service equipment located in this  
14 enclosed area, even if elevated above the 0.2% annual chance flood elevation in  
15 the space, will subject the structure to increased flood insurance rates.

16 g. A residential building with a structurally attached garage having the floor slab  
17 below the 0.2% annual chance flood elevation in the space is considered an  
18 enclosed area below the 0.2% annual chance flood elevation in the space and must  
19 meet the standards of §§ 17-5, 17-7, 17-8 and 17-9. A garage attached to a  
20 residential structure, constructed with the garage floor slab below the 0.2% annual  
21 chance flood elevation in the space, must be designed to allow for the automatic  
22 entry and exit of floodwaters in both directions. Flood openings or vents are  
23 required in the exterior walls of the garage or in the garage doors. The human  
24 intervention necessary to open garage doors when flooding occurs is not an  
25 acceptable means of meeting the openings requirements. In addition to the  
26 automatic entry of floodwaters, the areas of the garage below 0.2% annual chance  
27 flood elevation in the space must be constructed with flood resistant materials.  
28 Garages attached to nonresidential structures must also meet the aforementioned  
29 requirements or be dry floodproofed as per the requirements of this chapter.

30 **§ 17-910. Variance. [Ord. No. 09-09, § 2, 3-4-2009]**

31 (a) The permitting authority Zoning Board of Review may hear and grant a variance as  
32 prescribed in this section subject to the prerequisites contained therein.

33 (a)(b) The Town will forward a copy of the variance request to the Rhode Island State  
34 Floodplain Coordinator. The permitting authority may consider written letters of support or  
35 no support from the State Floodplain Coordinator when making its determination whether to  
36 grant a variance.

37 (b)(c) The permitting authority In addition to applying the criteria and requirements of said  
38 section, the board shall undertake the following in granting a variance from the provisions  
39 of this chapter:

- 1 (1) Describe in its decision the exact extent of the variance granted.
- 2 (2) ~~The Zoning Board of Review~~ permitting authority will notify the applicant in writing  
3 over the signature of a community official that:
- 4 a. The issuance of a variance to construct a structure below the BFE ~~will~~ may result  
5 in increased premium rates for flood insurance ~~up to amounts as high as \$25 for~~  
6 \$100 of insurance coverage, which shall be the responsibility of the applicant;  
7 and
- 8 b. Such construction below the BFE level increases risks to life and property.

9 Such notification shall be maintained with a record of all variance actions.

- 10 (3) Forward a copy of its written decision and findings to the applicant, the Building  
11 Official or designee, the Rhode Island Statewide Planning Program, the Rhode Island  
12 Emergency Management Agency, and the Federal Insurance Administration in the  
13 annual report of the Town to the administration.

14 ~~(e)(d)~~ Variances shall not be issued by the permitting authority for any development activity  
15 that would be community within any designated regulatory floodway if any increase in flood  
16 levels in the regulatory floodway during the base flood discharge would result unless such  
17 development activity is required to protect human health and safety beyond any damage that  
18 would occur due to rising flood waters.

19 ~~(e)(c)~~ Variances may be issued by the Zoning Board of Review permitting authority for new  
20 construction and substantial improvements to be erected on a lot of 1/2 acre or less in size  
21 contiguous to and surrounded by lots with existing structures constructed below the BFE.

22 ~~(e)(f)~~ In addition to the other criteria and restrictions in this section, variances shall only be  
23 issued upon showing of good and sufficient cause, such that the permitting authority determines  
24 the determination that failure to grant the variance would result in exceptional hardship to the  
25 applicant.

26 **§ 17-1011. Enforcement. [Ord. No. 09-09, § 2, 3-4-2009]**

- 27 (a) It shall be the duty of the Building Official or designee to enforce the provisions of this  
28 chapter. If the code enforcement officer finds that any provisions of this chapter are being  
29 violated, the officer shall notify, in writing, the person responsible for such violation  
30 indicating the nature of the violation and ordering the action necessary to correct it.
- 31 (b) When the above action does not result in the correction or abatement of the violation, the  
32 municipal officers, upon notice from the code enforcement officer, are hereby authorized  
33 and directed to institute any and all actions, whether legal or equitable, necessary to the  
34 enforcement of this chapter. Any person who continues to violate any provision of this  
35 chapter after receiving notice of such violation shall be guilty of a violation of this chapter  
36 and subject to a fine of \$500 for each violation. Each day such a violation is continued is a  
37 separate offense.

**CODE OF ORDINANCES – CHAPTER 20 LAND DISTURBING ACTIVITIES  
ARTICLE III. SOIL EROSION AND SEDIMENTATION CONTROL  
EXPLANATION OF REVISIONS**

*Minor changes that have no substantive impact on process are not listed below. Proposed revisions are focused on updating this article to the current model ordinance language within the Rhode Island Soil Erosion and Sediment Control Handbook to ensure compliance with the Rhode Island Pollutant Discharge Elimination System (RIPDES) Stormwater Discharge from Small Municipal Separate Storm Sewer Systems (MS4s) and from Industrial Activity at Eligible Facilities Operated by Regulated Small MS4s General Permit requirements.*

*The proposed revisions include significant reorganization of the article to improve readability. A table tracking these organization changes is included at the end of this document. Given the extent of the proposed revisions and reorganization, a "clean" version of the article has been prepared for review and adoption.*

Part	Page	Line	Reason for Revision
<b>Division 1 – Generally</b>			
<b>§ 20-61. Definitions</b>			
	NA	NA	Removes Coastal Features definition not relevant to Cumberland. (See page 1, line 13-14 for definition)
	11	12-17	Suggested example Best Management Practices language from model ordinance added.
	11	26-27	Adds Disturbed Area definition from model ordinance.
	11	37-38	Adds Limit of Disturbance definition from model ordinance.
	11	44	Adds Soil Amendment definition from model ordinance.
	11	46-49	Edits Soil Erosion and Sediment Control Plan definition to add detail.
	2	1-11	Adds definitions for terms used within the article (Special Resource Protection Waters, Stormwater Pollution Prevention Plan (SWPPP), Total Maximum Daily Load).
<b>§ 20-62. Findings and purpose</b>			
(b)	12	29-31	Adds suggested example language and language for MS4 compliance from model ordinance to specifically reference the control of discharges of construction wastes. The MS4 General Permit Minimum Control Measure (MCM) 4 requires permittees to have an ordinance or other regulatory mechanism to require sediment/erosion control and control of other wastes at construction sites.
<b>§ 20-63. Permit process – general overview</b>			
	12	35-49	Adds section to provide readers with a general overview of the article as applied.

Part	Page	Line	Reason for Revision
<b>§ 20-64. Authority of Building Official</b>			
	13	3-4	Clarifies that the Building Official has the authority to designate other staff for all enforcement responsibilities of this article. The previous language was ambiguous as to who (Town Council or Building Official) is authorized to designate responsibilities to other staff. Language throughout the article has been updated to reference the "Building Official or appointed designee."
<b>§ 20-66. Severability</b>			
	13	17-19	Adds general severability language.
<b>Division 2 - Applicability</b>			
<b>§ 20-68. Determination of applicability required</b>			
(a)-(b)	14	14-20	Adds language of (a) and (b) from model ordinance. The MS4 General Permit MCM 4 identifies certain land disturbing activities that permittees must regulate through a construction site stormwater runoff control program. Revised language specifically references those identified land disturbing activities that must be subject to the soil erosion and sedimentation control review process.
<b>§ 20-69. Exemptions</b>			
(c)	7	39-40	Updates language to add more specificity to the nature of agricultural practices that may be exempted from the article (soil disturbing practices associated with active or fallow agricultural lands).
<b>§ 20-70. Application; considerations for making determination</b>			
	15	15+	Generally, the existing language (formerly § 20-87 Application; considerations for making determination) is consistent with the model ordinance but was reorganized for readability. Notable revisions are documented in the following rows in this section.
	15	28-31	This sentence has been reframed to identify activities that <i>shall be</i> subject to the provisions of this article:  <i>The activity shall be subject to the provisions of this article where the Building Official or appointed designee finds that erosion resulting from the land disturbing activity is significant and represents a threat or nuisance or damage to adjacent properties or to the quality of any habitat, watercourse, wetland, or drinking water source.</i>  The previous language (formerly within § 20-87(b)) was framed to identify activities that <i>shall not be</i> subject to the article.
(a)	15	29-32	Additional considerations (e.g., scale of disturbance, sensitivity of downstream resources) have been added to existing list of factors that will be considered in the determination of applicability.
(b)	15	33-37	Language was updated to clarify reference to the current <i>Rhode Island Soil Erosion and Sediment Control Handbook</i> .

Commented [KK1]: See 20-69 Exemptions sections. Starts with (b) rather than (a).

Part	Page	Line	Reason for Revision
(c)	15	38-47	Adds language from model ordinance. Note that (c)(4) is reworded slightly from the model ordinance language to state that a waterbody and its watershed can be considered of special concern if identified as such within the Town's Comprehensive Plan.
<b>Division 3 - Procedures</b>			
<b>§ 20-71. Preparation</b>			
	16	4-6	Slightly rewords sentence based on model ordinance to add. Adds reference to Stormwater Pollution Prevention Plans (SWPPPs), which some applicants may be required to prepare.
<b>§ 20-72. Fee schedule for applications</b>			
	16	9	Adds reference to SWPPPs.
<b>§ 20-73. Soil Erosion and Sediment Control Plans and SWPPPs</b>			
(a)	16	17-21	Adds language from model ordinance referencing SWPPPs and waste management measures.
(b)	16	26	Adds language from model ordinance referencing SWPPPs.
(c)	16	28-29	Adds language from model ordinance. When a land disturbing activity is 1-5 acres, operators of stormwater discharges associated with construction activity must submit a Notice of Intent to RIDEM to comply with the RIPDES General Permit for Stormwater Discharge Associated with Construction Activity. For activities that are more than 5 acres, the operator must also submit the SWPPP to RIDEM. The updated language requires the applicant to provide a copy of the Notice of Intent to the Town Building Official, which is consistent with requirements in the RIPDES General Permit for Stormwater Discharge Associated with Construction Activity.
<b>§ 20-74. Review</b>			
(a)	16	32-41	Adds provision allowing the Town to waive the procedural requirements and timelines in this section where the proposed activity is already submitting an SESC plan or SWPPP for review as part of an application under the Land Development and Subdivision Regulations. This provision allows the procedures and timelines for those permit process to govern, though all other requirements under this article will remain in effect.
(b)(1)	16 17	44-46 1-2	Adds provision to establish a 60-day timeframe for the owner/applicant to submit an SESC plan or SWPPP to the Town following a positive determination of applicability.
(b)(2)	17	4	Adds reference to SWPPPs.
(b)(3)	17	13-16	Adds provision establishing that an applicant's submittal of plans for review to the Town provides authority to the Town to enter and inspect said property for the purpose of enforcing this article. Language taken from suggested model ordinance language (not required for MS4 compliance)
(b)(4)	17	17-20	This language was formerly in § 20-107 Approval. The timeframe for the Town to approve or disapprove plans has been extended to 14 days from 10 days after the receipt of written opinions from review authorities mentioned in (b)(2).

Part	Page	Line	Reason for Revision
<b>§ 20-75. Approval</b>			
	17	30-33	Adds references to SWPPPs. Also adds language requiring the applicant to keep a copy of the SESC plan or Stormwater Pollution Prevention Plan on-site (this follows existing model ordinance language that was not included in Cumberland's article).
<b>§ 20-76. Expiration of approval; renewal</b>			
(b)	17	39-45	Revisions in this section are limited to updating references to "the Building Official or appointed designee." Language referencing Building Official or appointed designee added. Building Official's appointed designee is also empowered to grant time extensions on the completion of work.
<b>§ 20-77. Maintenance of measures</b>			
	18	2-7	References to responsibility to maintain construction waste management measures added.
<b>§ 20-78. Liability</b>			
	18	10	Adds reference to SWPPPs.
<b>§ 20-79. Inspections</b>			
	18	18-33	Adds language from model ordinance requiring the owner to conduct regular inspections of the property and establishes minimum number of inspections (and their timing) to be performed by the Town.
	18-19		Revisions in this section are limited to updating references to "the Building Official or appointed designee" and minor formatting updates.
<b>§ 20-80. Notice of noncompliance</b>			
	19		Revisions in this section are limited to updating references to "the Building Official or appointed designee" and internal section references.
<b>§ 20-81. Appeals</b>			
(a)-(b)	19	24-39	Revisions in this section are limited to updating references to "the Building Official or appointed designee" and adding Adds references to SWPPPs.
<b>Division 4 – Soil Erosion and Sediment Control Plan</b>			
<b>§ 20-82. Performance principles</b>			
(a)	20	8-9	Revises reference to "site" to "area selected for disturbance" to increase specificity.
(b)	20	10-12	(b) is a new performance principle. This requires stabilization measures for disturbed areas after a certain amount of time left idle and requires that the area of disturbance be kept to a minimum.
(c)	20	13	Clarifies best practice language to note that <i>disturbing</i> existing steep slopes should be avoided.
(d)	20	14	Clarifies best practice language to note that applicants, if creating new slopes, are to minimize grades.
	NA	NA	Deletes pre-/post-development runoff rate performance principle (formerly (4)). This language is not well suited to this article's focus on soil erosion and sediment control at development sites. Stormwater design

Commented [K12]: Deletes given earlier reference to building official or appointed designee language updated throughout.

Commented [K13]: Starts at (c)

Commented [K14]: Starts at (a)

Commented [K15]: Starts at (c)

Part	Page	Line	Reason for Revision
			standards are found within the Land Development and Subdivision Regulations (primarily in Section 7 and 8) and In Zoning (Section 8).
(g)	20	19-25	Updates drainage provision pre-/post-development runoff rate performance principle (formerly (7)). the existing language suggests calculations might be required for the 10-, 25-, and 100-year storm. This is certainly possible, but it is rare. Both Massachusetts and Rhode Island use the 10-year storm as a design standard. Revised language points applicants to the <i>Rhode Island Erosion and Sediment Control Handbook</i> for selecting appropriate soil erosion and sediment control measures and retains reference to the 10-year design storm.
(h)	20	26-27	Adds best practice language to require applicants to phase clearing and grading at sites greater than 3 acres to the extent practicable.
(i)	20	30-31	Clarifies best practice language related to the stockpiling of materials in proximity to waterbodies.
(m)	20	37-41	Adds best practice language to guide timing of permanent seeding at development sites.
(o)	20	44	Adds best practice language requiring implementation of dust control measures during construction activity.
(p)	20	45-46	Adds model ordinance language requiring management of construction wastes.
	21	1-2	
(q)	21	3-6	Adds model ordinance language to require restoration of areas where soil compaction has occurred.
<b>§ 20-83. Contents</b>			
	21	10	Adds references to SWPPPs language specifying
(a)	21	14	Adds reference to SWPPPs.
(b)	21	17-20	Adds language from model ordinance requiring SWPPPs to be prepared in accordance with the RIPDES General Permit for Stormwater Discharge Associated with Construction Activity.
(c)	21 22	21-43 1-35	Updates language for activities requiring and SESC plan to clarify references to the Rhode Island Soil Erosion and Sediment Control Handbook. Provides the permitting authority with ability to waive requirements, as requested and appropriate.
(c)(1)-(15)	21 22	30-46 1-35	(c)(1)-(15) has been substantially updated. Existing article language was based on a previous iteration of the model ordinance language, which could provide greater specificity to better guide applicants in preparing SESC plans and more clearly incorporate best practices. Language in (c)(1)-(15) has also been reformatted to better present a "checklist" of required contents for applicants.
(c)(13)	22	27-30	Adds new language from the model ordinance requiring SESC plans to identify the locations of construction waste management measures.
(c)(14)	22	31-32	Adds new language from the model ordinance requiring SESC plans to include a schedule showing the sequencing of construction, inspection, and maintenance of erosion and sediment control measures and waste control measures.

Part	Page	Line	Reason for Revision
<b>Division 5 - Enforcement</b>			
<b>§ 20-84. Performance bond</b>			
(a)-(d)	23-24		Revisions in this section are limited to adding a reference to SWPPPs and updating references to different Town entities that may be involved in performance bond filings.
<b>§ 20-85. Penalties</b>			
(a)-(b)	24		Revisions in this section are limited to updating references to "the Building Official or appointed designee" and "applicant or owner" where necessary.

Commented [KK6]: Starts at (e)

**ARTICLE III – SOIL EROSION AND SEDIMENTATION CONTROL  
PROPOSED REORGANIZATION**

Proposed Reorganization	Revision	Old Division & Section
<b>Division 1 – Generally</b>		<b>Division 1</b>
§ 20-61. Definitions		Division 1, § 20-61
§ 20-62. Findings and purpose		Division 1, § 20-62
§ 20-63. Permit process – general overview	Added this section.	NEW
§ 20-64. Authority of Building Official		Division 1, § 20-63
§ 20-65. Qualifications of Building Official		Division 1, § 20-64
§ 20-66. Severability	Added this section.	NEW
<b>Division 2 – Applicability</b>	Renamed. Division was previously titled “Determination of Applicability.”	<b>Division 2</b>
§ 20-67. Applicability of article	Moved from Division 1.	Division 1, § 20-65
§ 20-68. Determination of applicability required	Renamed. Section was previously titled “Required.”	Division 2, § 20-86
§ 20-69. Exemptions	Reordered within Division 2.	Division 2, § 20-88
§ 20-70. Application; considerations for making determinations	Reordered within Division 2.	Division 2, § 20-87
<b>Division 3 – Procedures</b>	Renamed. Division was previously titled “Plans.”	<b>Division 3</b>
§ 20-71. Preparation	Renamed. Section was previously titled “Preparation, submission.”	Division 3, § 20-102
§ 20-72. Fee schedule for applications		Division 3, § 20-105
§ 20-73. Soil Erosion and Sediment Control Plans and SWPPPs	Added this section.	NEW
§ 20-74. Review		Division 3, § 20-106
§ 20-75. Approval		Division 3, § 20-107
§ 20-76. Expiration of approval; renewal	Moved from Division 1.	Division 1, § 20-68
§ 20-77. Maintenance of measures	Moved from Division 1. Renamed. Section was previously titled “Maintenance of devices.”	Division 1, § 20-69
§ 20-78. Liability	Moved from Division 1.	Division 1, § 20-70
§ 20-79. Inspections	Moved from Division 1.	Division 1, § 20-71
§ 20-80. Notice of noncompliance		Division 3, § 20-108

Proposed Reorganization	Revision	Old Division & Section
§ 20-81. Appeals		Division 3, § 20-109
<b>Division 4 – Soil Erosion and Sediment Control Plan</b>	<b>Added this division.</b>	<b>NEW</b>
§ 20-82. Performance principles	Moved from Division 3.	Division 3, § 20-104
§ 20-83. Contents	Moved from Division 3.	Division 3, § 20-103
<b>Division 5 – Enforcement</b>	<b>Added this division.</b>	<b>NEW</b>
§ 20-84. Performance bond	Moved from Division 1.	Division 1, § 20-66
§ 20-85. Penalties	Moved from Division 1.	Division 1, § 20-67

1 **TOWN OF CUMBERLAND**

2  
3 **ARTICLE III**  
4 **Soil Erosion And Sedimentation Control**

5  
6 **DIVISION 1**  
7 **Generally**

8 ~~§ 20-61. Definitions. [Ord. No. 92-4, art. IX, § 1, 3-18-1992]~~

9 ~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them~~  
10 ~~in this section, except where the context clearly indicates a different meaning:~~

11 ~~APPLICANT—Any person, corporation or public or private organization proposing a development which~~  
12 ~~would involve disturbance to the natural terrain.~~

13 ~~COASTAL FEATURES—Includes but is not limited to coastal beaches and dunes, barrier beaches, coastal~~  
14 ~~wetlands, coastal cliffs, bluffs and banks, rocky shores and manmade shorelines.~~

15 ~~CUT—An excavation; the difference between a point on the original ground and a designed point of lower~~  
16 ~~elevation on the final grade; also, the material removed in excavation.~~

17 ~~DEVELOPMENT PROJECT—Any construction, reconstruction, demolition or removal of structures,~~  
18 ~~roadway, parking or other paved areas, utilities or other similar facilities, including any action requiring a~~  
19 ~~building permit by the Town.~~

20 ~~EROSION—The removal of mineral and organic matter by the action of wind, water and gravity.~~

21 ~~EXCAVATE—Any act by which earth, sand, gravel, rock or any other similar material is dug into,~~  
22 ~~cut, quarried, uncovered, removed, displaced, relocated or bulldozed and includes the condition resulting~~  
23 ~~therefrom.~~

24 ~~FILL—Any act by which earth, sand or other material is placed or moved to a new location aboveground.~~  
25 ~~The fill is also the difference in elevation between a point of existing undisturbed ground and a designated~~  
26 ~~point of higher elevation of the final grade.~~

27 ~~LAND-DISTURBING ACTIVITY—Any physical land development activity which includes such actions~~  
28 ~~as clearing vegetation, moving or filling land, or excavating soil or mineral resources or similar activity.~~

29 ~~RUNOFF—The surface water discharge or rate of discharge of a given watershed after a fall of rain or~~  
30 ~~snow and including seepage flows that do not enter the soil but run off the surface of the land; also, the~~  
31 ~~portion of water that is not absorbed by the soil, but runs off the land surface.~~

32 ~~SEDIMENT—Solid material, both mineral and organic, that is in suspension, is being transported or has~~  
33 ~~been moved from its site of origin by wind, water or gravity as a product of erosion.~~

34 ~~SOIL EROSION AND SEDIMENT CONTROL PLAN—The approved document required before any~~  
35 ~~person may cause a disturbance to the natural terrain within the Town; also referred to as erosion and~~  
36 ~~sediment control plan or approved plan.~~

37 ~~VEGETATION AND SOILS—The same as defined by the United States Geological Services of the~~  
38 ~~United States Department of Commerce.~~

39 ~~WATERCOURSE—Any tidewater or coastal wetland at its mean high water level, and any freshwater at~~  
40 ~~its seasonal high water level, including but not limited to any river, stream, brook, pond, lake, swamp,~~  
41 ~~marsh, bog, fen, wet meadow or any other standing or flowing body of water. The edge of the watercourse~~  
42 ~~shall be used for delineation purposes.~~

1 ~~§ 20-62. Findings and purpose. [Ord. No. 92-4, art. I, § 1, 3-18-1992]~~

2 ~~(a) The Town Council finds that excessive quantities of soil are eroding from certain areas that are~~  
3 ~~undergoing development for certain nonagricultural uses such as housing developments, industrial~~  
4 ~~areas, gravel removal operations, recreation facilities, commercial facilities and roads. Erosion~~  
5 ~~occurring in these areas makes costly repairs necessary to gullies, washed out fills, roads and~~  
6 ~~embankments. The resulting sediment clogs storm sewers, road ditches, roils streams, and deposits~~  
7 ~~silt in ponds and reservoirs. In some of the Town's waters, silt resulting from erosion has become a~~  
8 ~~major water pollutant and threatens the water supply as well as the recreational, aesthetic and wildlife~~  
9 ~~habitat values associated with these waters. The Town finds that certain agricultural lands also~~  
10 ~~experience extensive erosion and sedimentation.~~

11 ~~(b) The purpose of this article is to prevent soil erosion and sedimentation from occurring as a result of~~  
12 ~~nonagricultural development within the Town by requiring proper provisions for water disposal and~~  
13 ~~the soil surfaces during and after construction, in order to promote the safety, public health and general~~  
14 ~~welfare of the residents of the Town.~~

15 ~~§ 20-63. Authority of Building Official. [Ord. No. 92-4, art. I, § 2, 3-18-1992]~~

16 ~~The Town Council authorizes the Building Official to administer the provisions of this article under G.L.~~  
17 ~~1956, §§ 45-46-1, 45-46-4 and 45-46-5, and may designate all enforcement responsibilities to the Building~~  
18 ~~Official's designee.~~

19 ~~§ 20-64. Qualifications of Building Official. [Ord. No. 92-4, art. II, § 1, 3-18-1992]~~

20 ~~(a) The Building Official or his appointed agent reviewing soil erosion and sediment control plans shall~~  
21 ~~have the following qualifications:~~

22 ~~(1) Be a registered engineer, surveyor or landscape architect or Soil and Water Conservation~~  
23 ~~Society certified erosion and sediment control specialist; or~~

24 ~~(2) Shall have attended a soil erosion and sediment control training session sponsored by the United~~  
25 ~~States Department of Agriculture Soil Conservation Service and Conservation Districts.~~

26 ~~(b) The Building Official or his appointed agent shall be granted the authority necessary to administer~~  
27 ~~this article, including entry onto private property when necessary for periodic inspections to ensure~~  
28 ~~compliance with provisions of the approved soil erosion and sediment control plan.~~

29 ~~§ 20-65. Applicability of article. [Ord. No. 92-4, art. II, § 2, 3-18-1992]~~

30 ~~This article shall be applicable to any situation involving any disturbance to the terrain, topsoil or vegetative~~  
31 ~~ground cover upon any property within the Town, after determination of applicability by the Building~~  
32 ~~Official or his appointed agent, based upon criteria outlined in § 20-87. Compliance with the requirements~~  
33 ~~as described in this article shall not be construed to relieve the owner or applicant of any obligations to~~  
34 ~~obtain necessary state, Town or federal permits otherwise required by appropriate statute or regulation~~  
35 ~~appertaining thereto.~~

36 ~~§ 20-66. Performance bond. [Ord. No. 92-4, art. VI, § 1, 3-18-1992]~~

37 ~~(a) Required.~~

38 ~~(1) Before approving an erosion and sediment control plan, the Building Official or his appointed~~  
39 ~~agent shall require the applicant or owner to file a surety company performance bond or a~~  
40 ~~deposit of money or negotiable securities or other method of surety, as specified by the Building~~  
41 ~~Official or his appointed agent. This may be waived by the Building Official or his agent~~  
42 ~~for good cause. When any land disturbing activity is to take place within 100 feet of any~~  
43 ~~waterecourse or coastal feature or within an identified hazard district or on slopes in excess of~~

1 10%, the filing of a performance bond shall be required. The amount of the bond, as determined  
2 by the public works department or, in its absence, the Building Official or his appointed agent,  
3 shall be sufficient to cover the cost of implementing all erosion and sediment control measures  
4 as shown on the plan. The performance bond shall be reviewed and may be required to be  
5 increased by the Building Official or his agent on the annual anniversary date thereof.

6 ~~(2) The bond or negotiable security filed by the applicant shall be subject to approval of the form,  
7 content, amount and manner of execution by the public works director.~~

8 ~~(3) A performance bond for an erosion sediment control plan for a subdivision may be included in  
9 the performance bond of the subdivision. The posting of the bond, as part of the subdivision  
10 performance bond does not, however, relieve the owner of any requirement of this article.~~

11 ~~(b) Notice of default on performance secured by bond.~~

12 ~~(1) Whenever the Building Official or his appointed agent shall find that a default has occurred in  
13 the performance of any term or condition of the bond or in the implementation of measures  
14 secured by the bond, written notice thereof shall be made to the applicant and to the surety of  
15 the bond by the Town Solicitor. The notice shall state the nature of the default, work to be done,  
16 the estimated cost thereof and the period of time deemed by the Building Official or his  
17 appointed agent to be reasonably necessary for the completion of the work.~~

18 ~~(2) Failure of the applicant to acknowledge a default notice within five days and to comply with the  
19 provisions and deadlines outlined in such notice of default shall mean the institution, by the  
20 Town Solicitor, without further notice of proceedings whatever, of appropriate measures to  
21 utilize the performance bond to cause the required work to be completed by the Town, by  
22 contract or by other appropriate means as determined by the Town Solicitor.~~

23 ~~(c) Notice of default on performance secured by cash or negotiable securities deposits. If a certified check  
24 or negotiable securities deposit has been posted by the applicant, notice and procedure shall be the  
25 same as provided in Subsection (b) of this section.~~

26 ~~(d) Release from performance bond conditions. The performance bond shall remain in full force and  
27 effect for 12 months following completion of the project or longer if deemed necessary by the  
28 Building Official or his appointed agent. The Building Official shall consider the appropriateness of  
29 growing seasons as a time frame.~~

30  
31 **§ 20-67. Penalties. [Ord. No. 92-4, art. VIII, § 2, 3-18-1992]**

32 ~~(a) Revocation or suspension of approval. The approval of an erosion and sediment control plan under  
33 this article may be revoked or suspended by the Building Official and all work on the project halted  
34 for an indefinite time period by the Building Official or his appointed agent after written notification  
35 is transmitted by the Building Official or his appointed agent to the developer for one or more of the  
36 following reasons:~~

37 ~~(1) Violation of any condition of the approved plan or specifications pertaining thereto.~~

38 ~~(2) Violation of any provision of this article or any other applicable law, ordinance, rule or  
39 regulation related to the work or site of work.~~

40 ~~(3) The existence of any condition or the performance of any act constituting or creating a nuisance,  
41 hazard or endangerment to human life or the property of others or contrary to the spirit or intent  
42 of this article.~~

43 ~~(b) Other penalties; lien. In addition to the penalties in Subsection (a) of this section, whenever there is a  
44 failure to comply with the provisions of this article, the Town shall have the right to notify the~~

1 applicant or owner that he has 10 days from receipt of notice to temporarily correct the violation and  
2 30 days from receipt of notice to permanently correct the violation. Should the applicant or owner fail  
3 to take the temporary corrective measures within the ten-day period and the permanent corrective  
4 measures within the thirty-day period, the Town shall have the right to take whatever actions it deems  
5 necessary to correct the violation and to assert a lien on the subject property in an amount equal to the  
6 costs of remedial actions. The lien shall be enforced in the manner provided or authorized by law for  
7 the enforcement of common law liens on personal property. The lien shall be recorded with the  
8 records of land evidence of the Town in the office of the Town Clerk, and the lien shall incur legal  
9 interest from the date of recording. The imposition of any penalty shall not exempt the offender from  
10 compliance with the provisions of this article, including revocation of the performance bond or  
11 assessment of a lien on the property by the Town.

12  
13 ~~§ 20-68. Expiration of approval; renewal. [Ord. No. 92-4, art. VI, § 2, 3-18-1992]~~

14 (a) ~~Every approval granted in this article shall expire at the end of the time period set forth in the~~  
15 ~~conditions of the approval. The developer shall fully perform and complete all of the work required~~  
16 ~~within the specified time period.~~

17 (b) ~~If the developer is unable to complete the work within the designated time period, he shall, at least 30~~  
18 ~~days prior to the expiration date, submit a written request for an extension of time to the Building~~  
19 ~~Official or his appointed agent, setting forth the reasons underlying the requested time extension. If~~  
20 ~~the extension is warranted, the Building Official or his appointed agent may grant an extension of~~  
21 ~~time up to a maximum of one year from the date of the original deadline. Subsequent extensions~~  
22 ~~under the same conditions may be granted at the discretion of the Building Official.~~

23  
24 ~~§ 20-69. Maintenance of devices. [Ord. No. 92-4, art. VI, § 3, 3-18-1992]~~

25 ~~Maintenance of all erosion and sediment control devices under this article shall be the responsibility of~~  
26 ~~the owner. The erosion and sediment control devices shall be maintained in good condition and working~~  
27 ~~order on a continuing basis. Watercourses originating and located completely on private property shall~~  
28 ~~be the responsibility of the owner to their point of open discharge at the property line or at a communal~~  
29 ~~watercourse within the property.~~

30  
31 ~~§ 20-70. Liability. [Ord. No. 92-4, art. VI, § 4, 3-18-1992]~~

32 ~~Neither approval of an erosion and sediment control plan nor compliance with any condition of this article~~  
33 ~~shall relieve the owner or applicant from any responsibility for damage to persons or property or impose~~  
34 ~~any liability upon the Town for damages to persons or property.~~

35  
36 ~~§ 20-71. Inspections. [Ord. No. 92-4, art. VII, § 1, 3-18-1992]~~

37 (a) ~~Periodic inspection. The provisions of this article shall be administered and enforced by the Building~~  
38 ~~Official or his appointed agent. All work shall be subject to periodic inspections by the Building~~  
39 ~~Official or his appointed agent. All work shall be performed in accordance with an inspection and~~  
40 ~~construction control schedule approved by the Building Official or his appointed agent, who shall~~  
41 ~~maintain a permanent file on all of his inspections. Upon completion of the work, the developer or~~  
42 ~~owner shall notify the Building Official or his appointed agent that all grading, drainage, erosion~~  
43 ~~and sediment control measures and devices and vegetation and ground cover planting have been~~  
44 ~~completed in conformance with the approval, all attached plans, specifications, conditions and other~~  
45 ~~applicable provisions of this article.~~

46 (b) ~~Final inspection.~~

47 (1) ~~Upon notification of the completion by the owner, the Building Official or his appointed agent~~  
48 ~~shall make a final inspection of the site in question and shall prepare a final summary inspection~~

1 report of his finding which shall be retained in the department of inspections and in the  
2 permanent inspection file of the department of public works. A copy of such report shall be sent  
3 to the developer and property owner.

4 ~~(2) The applicant or owner may request the release of his performance bond from the Building~~  
5 ~~Official or his appointed agent 12 months or two growing seasons after the final site inspection~~  
6 ~~has been completed and approved. If the performance bond has been posted with the recording~~  
7 ~~of a final subdivision, the bond shall be released a minimum of 12 months after the Building~~  
8 ~~Official or his appointed agent has been notified by the Planning Board of successful completion~~  
9 ~~of all plat improvements by the applicant or owner.~~

10 ~~§ 20-72. through § 20-85. (Reserved)~~  
11

**DIVISION 2**  
**Determination of Applicability**

**~~§ 20-86. Required. [Ord. No. 92-4, art. III, § 1(I), 3-18-1992]~~**

~~It shall be unlawful for any person to disturb any existing vegetation, grade and contour of land in a manner which may increase the potential for soil erosion without first applying for a determination of applicability from the Building Official or his appointed agent. Upon determination of applicability, the owner or applicant shall submit within 60 days a soil erosion and sediment control plan for approval by the Building Official or his appointed agent, as provided in § 20-101.~~

**~~§ 20-87. Application; considerations for making determination. [Ord. No. 92-4, art. III, § 1(I), 3-18-1992]~~**

~~The application for determination of applicability shall describe the location, nature, character and time schedule of the proposed land disturbing activity in sufficient detail to allow the Building Official or his appointed agent to determine the potential for soil erosion and sedimentation resulting from the proposed project. In determining the applicability of this article to a particular land disturbing activity, the Building Official or his appointed agent shall consider site topography, drainage patterns, soil types according to the United States Geological Service, proximity to watercourses or wetlands and other such information as deemed appropriate by the Building Official or his appointed agent. A particular land disturbing activity shall not be subject to the requirements of this article if the Building Official or his appointed agent finds that erosion resulting from the land disturbing activity is insignificant and represents no threat to adjacent properties or to the quality of any coastal feature, watercourse wetland or drinking water source. The current Rhode Island Soil Erosion and Sediment Control Handbook, prepared by the U.S. Department of Agriculture Soil Conservation Service, state department of environmental management and state conservation committee, shall be consulted in making this determination.~~

**~~§ 20-88. Exemptions. [Ord. No. 92-4, art. III, § 1(II), 3-18-1992]~~**

~~No determination of applicability shall be required for the following:~~

- ~~(1) Construction, alteration or use of any additions to single family or duplex homes or related structures, provided the ground coverage of such addition is less than 1,000 square feet, and such construction, alteration and use does not occur within 100 feet of any watercourse or wetland and the slopes at the site of land disturbance do not exceed 10%.~~
- ~~(2) Use of a home garden as permitted in a residential use zone by the provisions of the zoning ordinance and certified by the Building Official in association with on site residential use.~~
- ~~(3) Accepted agricultural management practices such as seasonal tilling and harvest activities associated with property utilized for private or commercial agricultural or silvicultural purposes, except within drinking water watersheds.~~
- ~~(4) Excavations for an improvement other than those described in Subsection (1) of this section which exhibit all of the following characteristics:
  - ~~(a) Does not result in total displacement of more than 50 cubic yards of material;~~
  - ~~(b) Has no slope steeper than 10 feet vertical in 100 feet horizontal or approximately 10%; and~~
  - ~~(c) Has all disturbed surface areas promptly and effectively protected to prevent soil erosion and sedimentation as determined by the Building Officials in the best interest of the public.~~~~
- ~~(5) Grading, as a maintenance measure, or for landscaping purposes on existing developed land parcels or lots, provided that all bare surface is immediately seeded, sodded or otherwise protected from erosive action and all of the following are met:
  - ~~(a) The aggregate area of such activity does not exceed 2,000 square feet;~~
  - ~~(b) The change of elevation does not exceed two feet at any point; and~~~~

- 1           ~~(e) The grading does not involve a quantity of fill greater than 18 cubic yards, except where fill is~~  
2           ~~excavated from another portion of the same parcel and the quantity does not exceed 50 cubic~~  
3           ~~yards.~~
- 4   ~~(6) Grading, filling, removing or excavating activities and operations undertaken by the Town under the~~  
5   ~~direction and supervision of the director of public works for work on streets, roads or rights of way~~  
6   ~~dedicated to public use; provided, however, that adequate and acceptable erosion and sediment controls are~~  
7   ~~incorporated in engineering plans and specifications as employed. Appropriate controls shall apply during~~  
8   ~~construction as well as after the completion of these activities. All such work shall be undertaken in~~  
9   ~~accordance with the performance principles provided for in § 20-104 and such standards and definitions as~~  
10   ~~may be adopted to implement such performance principles.~~
- 11   ~~§ 20-89. through § 20-100. (Reserved)~~

**DIVISION 3**  
**Plans**

**§ 20-101. Filing procedures. [Ord. No. 92-4, art. IV, § 1(a), 3-18-1992]**

- (a) ~~Generally. To obtain approval for a land disturbing activity as found applicable by the Building Official or his appointed agent under § 20-86, an applicant shall first file an erosion and sediment control plan signed by the owner of the property or authorized agent, on which property the work subject to approval is to be performed. The plan or drawings, as described in this division, shall include proposed erosion and sediment control measures to be employed by the applicant or the applicant's agent;~~
- (b) ~~State freshwater wetlands permit. Where any portion of a proposed development requires approval under the state Freshwater Wetlands Act (G.L. 1956, § 2-1-15 et seq.), and where the approval contains provisions for soil erosion and sediment controls, that approved plan shall be a component of the overall soil erosion and sediment control plan required under this article for the development.~~

**§ 20-102. Preparation, submission. [Ord. No. 92-4, art. V, § 1(a), 3-18-1992]**

~~The erosion and sediment control plan shall be prepared by a registered engineer or landscape architect or a Soil and Water Conservation Society certified erosion and sediment control specialist, and five copies of the plan shall be submitted to the Building Official or his appointed agent.~~

**§ 20-103. Contents. [Ord. No. 92-4, art. V, § 1(b), 3-18-1992]**

~~The erosion and sediment control plan shall include sufficient information about the proposed activities and land parcel to form a clear basis for discussion and review and to ensure compliance with all applicable requirements of this article. The plan shall be consistent with the data collection, data analysis and plan preparation guidelines in the current Rhode Island Soil Erosion and Sediment Control Handbook, prepared by the United States Department of Agriculture Soil Conservation Service, state department of environmental management and state conservation committee, and at a minimum shall contain the following:~~

- (1) ~~A narrative describing the proposed land disturbing activity and the soil erosion and sediment control measures and stormwater management measures to be installed to control erosion that could result from the proposed activity. Supporting documentation, such as a drainage area map, existing site map and soil maps shall be provided as required by the Building Official or his appointed agent. Recent photographs of the site are very helpful.~~
- (2) ~~Construction drawing illustrating in detail existing and proposed contours, drainage features and vegetation; limits of clearing and grading, the location of soil erosion and sediment control and stormwater management measures, detail drawing of measures; stockpiles and borrow areas; sequence and staging of land disturbing activities; cross sections; and other such information needed for construction.~~
- (3) ~~Other information or construction plans and details as deemed necessary by the Building Official or his appointed agent for thorough review of the plan prior to action being taken as prescribed in this article such as locus maps. Withholding or delaying such information may be reason for the building inspector or his appointed agent to judge the application as incomplete and grounds for disapproval.~~

**§ 20-104. Performance principles. [Ord. No. 92-4, art. V, § 1(c), 3-18-1992]**

~~The contents of the erosion and sediment control plan shall clearly demonstrate how the performance principles, outlined as follows, have been met in the design and are to be accomplished by the proposed development project:~~

- (1) ~~The site selected shall show due regard for natural drainage characteristics, topography and vegetation.~~
- (2) ~~To the extent possible, steep slopes shall be avoided.~~

- 1 ~~(3) The grade of slopes created shall be minimized.~~
- 2 ~~(4) Postdevelopment runoff rates shall not exceed predevelopment rates, consistent with other~~  
3 ~~stormwater requirements which may be in effect. Any increase in stormwater runoff shall be~~  
4 ~~retained and recharged as close as feasible to its place of origin by means of detention ponds or~~  
5 ~~basins, seepage areas, subsurface drains or similar techniques.~~
- 6 ~~(5) Original boundaries, alignment and slope of watercourses within the project locus shall be~~  
7 ~~preserved to the greatest extent feasible.~~
- 8 ~~(6) In general, drainage shall be directed away from structures intended for human occupancy or~~  
9 ~~municipal or utility use or similar structures.~~
- 10 ~~(7) All drainage provisions shall be of such a design and capacity to adequately handle stormwater~~  
11 ~~runoff, including runoff from tributary upstream areas which may be outside the locus of the~~  
12 ~~project. Plans shall also identify the storm level being addressed in the plan, i.e., ten-year storm,~~  
13 ~~twenty five-year storm or one hundred year storm as a minimum.~~
- 14 ~~(8) Drainage facilities shall be installed as early as feasible during construction, prior to site clearance~~  
15 ~~if possible.~~
- 16 ~~(9) No fill shall be located adjacent to a watercourse.~~
- 17 ~~(10) Temporary vegetation or mulching shall be used to protect bare areas and stockpiles from erosion~~  
18 ~~during construction; the smallest areas feasible shall be exposed at any one time; disturbed areas~~  
19 ~~shall be protected during the nongrowing months, November through March.~~
- 20 ~~(11) Permanent vegetation shall be placed immediately following final grading.~~
- 21 ~~(12) Trees and other existing vegetation shall be retained whenever feasible; the area within the dripline~~  
22 ~~shall be fenced or roped off to protect trees from construction equipment.~~
- 23 ~~(13) All areas damaged during construction shall be resodded, reseeded or otherwise restored.~~  
24 ~~Monitoring and maintenance schedules, where required, shall be predetermined.~~

25  
26 **§ 20-105. Fee schedule for applications. [Ord. No. 92-4, art. IV, § 1(b), 3-18-1992]**

27 ~~An application for review of soil erosion and sediment control plans submitted under this division~~  
28 ~~shall require a nonrefundable filing fee paid to the Town. Such fees shall be according to the schedule~~  
29 ~~established from time to time by the Town Council and on file in the Town Clerk's office.~~

30 **§ 20-106. Review. [Ord. No. 92-4, art. IV, § 1(c), 3-18-1992]**

- 31 ~~(a) Within 10 working days of the receipt of a completed soil erosion and sediment control plan, five~~  
32 ~~copies of which shall be submitted, the Building Official or his appointed agent shall send a copy~~  
33 ~~of the plan to the reviewing authorities which may include the public works department, Planning~~  
34 ~~Board, department of planning and community development and conservation commission, for the~~  
35 ~~purpose of review and comment. The Building Official or his appointed agent may also, within the~~  
36 ~~time frame established in this division, submit copies of the plan to other local departments or~~  
37 ~~agencies, including the conservation district that services the county, in order to better achieve the~~  
38 ~~purpose of this article. Failure of such reviewing authorities to respond within 21 days of their~~  
39 ~~receipt of the plan shall be deemed as no objection to the plan as submitted.~~
- 40 ~~(b) The time allowed for plan review shall be commensurate within the proposed development project~~  
41 ~~and shall be done simultaneously with other reviews.~~

1 ~~§ 20-107. Approval. [Ord. No. 92-4, art. IV, § 1(d), 3-18-1992]~~

2 ~~(a) The Building Official or his appointed agent shall take action, in writing, either approving or~~  
3 ~~disapproving the soil erosion and sediment control plan with reasons stated within 10 days after the~~  
4 ~~Building Official or his appointed agent has received the written opinion of the review authorities~~  
5 ~~mentioned in § 20-106.~~

6 ~~(b) In approving a plan, the Building Official or his appointed agent may attach such conditions deemed~~  
7 ~~reasonably necessary by such review authorities to further the purposes of this article. The conditions~~  
8 ~~pertaining to erosion and sediment control measures and devices may include but are not limited to~~  
9 ~~restoration; the erection of walls, dams and structures; planting vegetation, trees and shrubs; furnishing~~  
10 ~~necessary easements and specifying a method of performing various kinds of work and the sequence~~  
11 ~~or timing thereof. The applicant or owner shall notify the Building Official or his appointed agent at~~  
12 ~~least 72 hours in advance of his intent to begin clearing and construction work described in the erosion~~  
13 ~~and sediment control plan on the site during grading and construction.~~

14 ~~§ 20-108. Notice of noncompliance. [Ord. No. 92-4, art. VIII, § 1(a), 3-18-1992]~~

15 ~~If, at any stage, the work in progress or work completed under the terms of an approved erosion and~~  
16 ~~sediment control plan does not conform to the plan, a written notice from the Building Official or his~~  
17 ~~designee to comply shall be transmitted by certified mail to the owner. The notice shall set forth the nature~~  
18 ~~of the temporary and permanent corrections required and the time limit within which corrections shall be~~  
19 ~~completed as set forth in § 20-67. Failure to comply with the required corrections within the specified time~~  
20 ~~limit shall be considered in violation of this article, in which case the performance bond or cash or~~  
21 ~~negotiable securities deposit shall be subject to notice of default in accordance with § 20-66.~~

22 ~~§ 20-109. Appeals. [Ord. No. 92-4, art. IV, § 1(e), 3-18-1992]~~

23 ~~(a) Administrative procedures:~~

24 ~~(1) If the ruling on the soil erosion and sediment control plan by the building inspector or his~~  
25 ~~appointed agent is unsatisfactory to the applicant or owner, the applicant or owner may file a~~  
26 ~~written appeal. The appeal of plans for soil erosion and sediment control shall be to the Planning~~  
27 ~~Board.~~

28 ~~(2) Appeal procedures shall follow the requirement for appeal to the Planning Board.~~

29 ~~(3) During the period in which the request for appeal is filed and until such time as a final decision~~  
30 ~~is rendered on the appeal, the decision of the Building Official or his appointed agent shall~~  
31 ~~remain in effect.~~

32 ~~(b) Expert opinion. The Building Official or his appointed agent or the Planning Board may seek technical~~  
33 ~~assistance on any erosion and sediment control plan. The expert opinion must be made available in~~  
34 ~~the office of the Building Official or his appointed agent as a public record prior to the appeal hearing.~~  
35 ~~The cost of securing such expert opinion shall be borne equally by the Town and the developer~~  
36 ~~proposing the alteration.~~  
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**ARTICLE III**  
**Soil Erosion and Sedimentation Control**

**DIVISION 1**  
**Generally**

**§ 20-61. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

APPLICANT — Any person, corporation or public or private organization proposing a development which would involve disturbance to the natural terrain.

BEST MANAGEMENT PRACTICES (BMPs) – Schedules of activities, prohibitions of measures, general good housekeeping measures, pollution prevention and educational measures, maintenance procedures, and other management measures to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment measures, operating procedures, and measures to control site runoff, spillage or leaks, sludge or water disposal, solid waste disposal, or drainage from raw materials storage.

CONSTRUCTION WASTES – Solid and/or liquid wastes generated from the construction and/or site development process. This includes, but is not limited to, asphalt, chemicals, concrete, concrete truck washout, demolition debris, discarded building materials, litter, and sanitary wastes.

CUT — An excavation; the difference between a point on the original ground and a designed point of lower elevation on the final grade; also, the material removed in excavation.

DEVELOPMENT PROJECT — Any construction, reconstruction, demolition or removal of structures, roadway, parking or other paved areas, utilities or other similar facilities, including any action requiring a building permit by the Town.

DISTURBED AREA – An area in which the natural vegetative soil cover has been removed or altered and, therefore, is susceptible to erosion.

EROSION — The removal of mineral and organic matter by the action of wind, water and gravity.

EXCAVATE — Any act by which earth, sand, gravel, rock or any other similar material is dug into, cut, quarried, uncovered, removed, displaced, relocated or bulldozed and includes the condition resulting therefrom.

FILL — Any act by which earth, sand or other material is placed or moved to a new location aboveground. The fill is also the difference in elevation between a point of existing undisturbed ground and a designated point of higher elevation of the final grade.

LAND DISTURBING ACTIVITY — Any physical land development activity which includes such actions as clearing vegetation, moving or filling land, or excavating soil or mineral resources or similar activity.

LIMIT OF DISTURBANCE – Line delineating the boundary of the area to be disturbed during a development or redevelopment project. Area outside this boundary shall not be touched.

RUNOFF — The surface water discharge or rate of discharge of a given watershed after a fall of rain or snow and including seepage flows that do not enter the soil but run off the surface of the land; also, the portion of water that is not absorbed by the soil, but runs off the land surface.

SEDIMENT — Solid material, both mineral and organic, that is in suspension, is being transported or has been moved from its site of origin by wind, water or gravity as a product of erosion.

SOIL AMENDMENT – Any material, such as compost, lime, animal manures, and/or crop residues, that is worked into the soil. Generally pertains to materials other than chemical fertilizers.

SOIL EROSION AND SEDIMENT CONTROL PLAN — A plan that shows the location and construction detail(s) of the erosion and sediment control measures to be utilized during and after construction. The plan serves as the approved document required before any person may cause a disturbance to the natural terrain within the Town; also referred to as erosion and sediment control plan or approved plan.

1 SPECIAL RESOURCE PROTECTION WATERS (SRPW) – High quality surface waters identified as  
2 having significant recreational or ecological uses. SRPWs are identified within Rhode Island’s Water  
3 Quality Regulations.

4 STORMWATER POLLUTION PREVENTION PLAN (SWPPP) – A site-specific document or collection  
5 of documents that identifies the potential sources of stormwater pollution, describes stormwater control  
6 measures, such as Best Management Practices (BMPs), to reduce or eliminate the identified pollutants, and  
7 identifies procedures operators will implement to comply with specific permit conditions.

8 TOTAL MAXIMUM DAILY LOAD (TMDL) – A calculation of the maximum amount of a pollutant that  
9 a waterbody can receive and still meet water quality standards, and an allocation of that amount to the  
10 pollutant’s sources, including a margin of safety. Waterbodies having at least one impairment requiring a  
11 TMDL are identified in Rhode Island’s most recent Section 303(d) List of Impaired Waters report.

12 VEGETATION AND SOILS — The same as defined by the United States Geological Services of the  
13 United States Department of Commerce.

14 WATERCOURSE — Any tidewater or coastal wetland at its mean high-water level, and any freshwater at  
15 its seasonal high-water level, including but not limited to any river, stream, brook, pond, lake, swamp,  
16 marsh, bog, fen, wet meadow or any other standing or flowing body of water. The edge of the watercourse  
17 shall be used for delineation purposes.

18  
19 **§ 20-62. Findings and purpose.**

- 20 (a) The Town Council finds that excessive quantities of soil and other erodible materials are eroding from  
21 certain areas that are undergoing development for certain nonagricultural uses such as housing  
22 developments, industrial areas, gravel removal operations, recreation facilities, commercial facilities,  
23 and roads. Erosion occurring in these areas makes costly repairs necessary to gullies, washed-out fills,  
24 infrastructure, roads, and embankments. The resulting sediment clogs storm sewers, road ditches, roils  
25 streams, and deposits silt in ponds and reservoirs. In some of the Town's waters, silt resulting from  
26 erosion has become a major water pollutant and threatens the water supply as well as the recreational,  
27 aesthetic, and wildlife habitat values associated with these waters. The Town finds that certain  
28 agricultural lands also experience extensive erosion and sedimentation.
- 29 (b) The purpose of this article is to control the discharge of construction waste and prevent soil erosion  
30 and sedimentation from occurring as a result of development activities within the Town by requiring  
31 proper provisions for water disposal, construction waste management, and the protection of soil  
32 surfaces during and after construction, in order to promote the safety, public health and general welfare  
33 of the residents of the Town.

34  
35 **§ 20-63. Permit process – general overview**

- 36 (a) Any property owner seeking to disturb any existing vegetation, grade and contour of land in a manner  
37 which may increase the potential for soil erosion must first file an application for determination with the  
38 Building Official to determine whether the provisions of this article apply.
- 39 (b) If the provisions of this article apply, the applicant must provide a soil erosion and sediment control plan  
40 for review by the Building Official or appointed designee. Where a SWPPP is required as part of another  
41 permitting process, the SWPPP may be submitted to fulfill this requirement.
- 42 (c) Depending on the nature of the development activity, the review of a soil erosion or sediment control  
43 plan may occur independently or as part of a more comprehensive development application under the  
44 Land Development and Subdivision Regulations.
- 45 (d) Site development shall not begin unless the soil erosion and sediment control plan is approved by the  
46 Building Official or appointed designee.
- 47 (e) Planned soil erosion and sediment control measures and facilities shall be installed and functional as  
48 scheduled according to the approved plan. Inspections of these measures may occur in accordance with  
49 the provisions of this article.

1 **§ 20-64. Authority of Building Official.**

2 The Town Council authorizes the Building Official to administer the provisions of this article under G.L.  
3 1956, §§ 45-46-1, 45-46-4 and 45-46-5. The Building Official may also designate other staff under the Building  
4 Official's supervision for all enforcement responsibilities.  
5

6 **§ 20-65. Qualifications of Building Official.**

7 (a) The Building Official or appointed designee reviewing soil erosion and sediment control plans shall  
8 have the following qualifications:

9 (1) Be a registered engineer, surveyor or landscape architect or Soil and Water Conservation  
10 Society certified erosion and sediment control specialist; or

11 (2) Shall have attended a soil erosion and sediment control training session sponsored by the United  
12 States Department of Agriculture Soil Conservation Service and Conservation Districts.

13 (b) The Building Official or appointed designee shall be granted the authority necessary to administer this  
14 article, including entry onto private property when necessary for periodic inspections to ensure  
15 compliance with provisions of the approved soil erosion and sediment control plan.  
16

17 **§ 20-66. Severability**

18 If any section, provision, or portion of this article is judged unconstitutional or invalid by a court, the remainder  
19 of the article shall control.

**DIVISION 2**  
**Applicability**

**§ 20-67. Applicability of article.**

This article shall be applicable to any situation involving any disturbance of the terrain, topsoil or vegetative ground cover upon any property within the Town, after determination of applicability by the Building Official or appointed designee, based upon criteria outlined in § 20-70. Compliance with the requirements as described in this article shall not be construed to relieve the owner or applicant of any obligations to obtain necessary state, Town or federal permits otherwise required by appropriate statute or regulation appertaining thereto.

**§ 20-68. Determination of applicability required.**

It shall be unlawful for any person to disturb any existing vegetation, grade and contour of land in a manner which may increase the potential for soil erosion without first applying for a determination of applicability from the Building Official or appointed designee. The following activities are automatically subject to the requirements of this article:

- (a) All activities disturbing a total area equal to or greater than one acre, including disturbances less than one acre if part of a larger common plan of development; and
- (b) Any land disturbance activity that requires permit approval by either the Rhode Island Department of Environmental Management or Coastal Resources Management Council.

**§ 20-69. Exemptions.**

No determination of applicability shall be required for the following:

- (a) Construction, alteration or use of any additions to single-family or duplex homes or related structures, provided:
  - (1) The ground coverage of such addition is less than 1,000 square feet;
  - (2) Construction, alteration and use does not occur within 100 feet of any watercourse or wetland;
  - (3) The slopes at the site of land disturbance do not exceed 10%.
- (b) Use of a home garden as permitted in a residential use zone by the provisions of the zoning ordinance and certified by the Building Official or appointed designee in association with on-site residential use.
- (c) Accepted agricultural soil disturbing practices associated with active or fallow agricultural lands such as seasonal tilling and harvest activities associated with property utilized for private or commercial agricultural or silvicultural purposes, except within drinking water watersheds.
- (d) Excavations for an improvement other than those described in Subsection (a) of this section which exhibit all of the following characteristics:
  - (1) Does not result in total displacement of more than 50 cubic yards of material;
  - (2) Has no slope steeper than 10 feet vertical in 100 feet horizontal or approximately 10%; and
  - (3) Has all disturbed surface areas promptly and effectively protected to prevent soil erosion and sedimentation as determined by the Building Official or appointed designee in the best interest of the public.
- (e) Grading, as a maintenance measure, or for landscaping purposes on existing developed land parcels or lots, provided that all bare surface is immediately seeded, sodded or otherwise protected from erosive action and all of the following are met:

- 1 (1) The aggregate area of such activity does not exceed 2,000 square feet;
- 2 (2) The change of elevation does not exceed two feet at any point; and
- 3 (3) The grading does not involve a quantity of fill greater than 18 cubic yards, except where fill is
- 4 excavated from another portion of the same parcel and the quantity does not exceed 50 cubic
- 5 yards.

- 6
- 7 (f) Grading, filling, removing or excavating activities and operations undertaken by the Town under the
- 8 direction and supervision of the Director of Public Works for work on streets, roads or rights-of-way
- 9 dedicated to public use; provided, however, that adequate and acceptable erosion and sediment
- 10 controls are incorporated in engineering plans and specifications as employed. Appropriate controls
- 11 shall apply during construction as well as after the completion of these activities. All such work shall
- 12 be undertaken in accordance with the performance principles provided for in § 20-82 and such
- 13 standards and definitions as may be adopted to implement such performance principles.
- 14

15 **§ 20-70. Application; considerations for making determination.**

16 Where a land disturbance activity is not automatically subject to the provisions of this article per § 20-68

17 or exempt per § 20-69, the Building Official or appointed designee shall determine whether the provisions

18 of this article shall apply and an approved plan is required. The activity shall be subject to the provisions

19 of this article where the Building Official or appointed designee finds that erosion resulting from the land

20 disturbing activity is significant and represents a threat or nuisance or damage to adjacent properties or to

21 the quality of any habitat, watercourse, wetland, or drinking water source. The application for determination

22 of applicability shall describe the location, nature, character and time schedule of the proposed land

23 disturbing activity in sufficient detail to allow the Building Official or appointed designee to determine the

24 potential for soil erosion and sedimentation resulting from the proposed project. The Building Official may

25 request access to the site as part of the determination review.

26

27 The following factors will be considered in the determination of applicability:

28

- 29 (a) The proposed scale of disturbance, the sensitivity of downstream resources, the condition of existing
- 30 drainage infrastructure on or adjacent to the site, the presence of any illicit discharges or illicit
- 31 connections, soil types, site topography, the proposed duration of soil exposure, and drainage patterns
- 32 as they relate to adjacent properties
- 33 (b) The current *Rhode Island Soil Erosion and Sediment Control Handbook*, prepared by the U.S.
- 34 Department of Agriculture Soil Conservation Service, Rhode Island Department of Environmental
- 35 Management, and Rhode Island State Conservation Committee, shall also be consulted in making a
- 36 determination of applicability, and content from this publication may be cited in support of such
- 37 decision.
- 38 (c) The sensitivity of the waterbody to which the site drains. A waterbody and its watershed will be
- 39 considered sensitive if:
- 40
- 41 (1) A Total Maximum Daily Load or Special Area Management Plan is written or under
- 42 development for it; or
- 43 (2) It is included on the Rhode Island Department of Environmental Management's 303(d) list; or
- 44 (3) It is included on the Rhode Island Department of Environmental Management's list of Special
- 45 Resource Protection Waters; or
- 46 (4) It has been specifically identified by the Town to be of special concern in the Comprehensive
- 47 Plan.

**DIVISION 3**  
**Procedures**

**§ 20-71. Preparation.**

The erosion and sediment control plan and/or SWPPP shall be prepared by a registered Professional Engineer or Landscape Architect or Certified Professional in Erosion and Sediment Control (CPESC, Inc.).

**§ 20-72. Fee schedule for applications.**

An application for review of soil erosion and sediment control plans or SWPPPs submitted under this division shall require a nonrefundable filing fee paid to the Town. Such fees shall be according to the schedule established from time to time by the Town Council and on file in the Town Clerk's office.

**§ 20-73. Soil Erosion and Sediment Control Plans and SWPPPs.**

- (a) To obtain approval for a land disturbing activity as found applicable by the Building Official or appointed designee under § 20-68, an applicant shall first file a soil erosion and sediment control plan if the site is less than one (1) acre in size, or if the site is a total of one (1) acre or greater in size they shall submit a Stormwater Pollution Prevention Plan (SWPPP) signed by the owner of the property or authorized agent, on which property the work subject to approval is to be performed. The plan or drawings, as described in this division, shall include proposed erosion and sediment control and waste management measures to be employed by the applicant or the applicant's agent;
- (b) Where any portion of a proposed development requires approval under the Rhode Island Freshwater Wetlands Act (G.L. 1956, § 2-1-15 et seq.), and where the approval contains provisions for soil erosion and sediment control, that approved plan shall be a component of the overall soil erosion and sediment control plan or SWPPP required under this article for the development.
- (c) In those cases where a SWPPP is submitted, the applicant will also submit a copy of the Notice of Intent to the Building Official.

**§ 20-74. Review.**

- (a) The Building Official or appointed designee may waive the procedural requirements and timelines under this subsection where the proposed activity will be reviewed through the submittal of a Soil Erosion and Sediment Control Plan (or SWPPP) as part of an application under the Land Development and Subdivision Regulations. The purpose of said waiver will be to allow the procedures and timelines for those permit processes to govern. All other requirements under this article shall remain in effect including, but not limited to, the need for the issuance of an approved plan from the Building Official or appointed designee before any site disturbance begins. The responsibility of coordinating the determination of applicability, any reviews under the Land Development and Subdivision Regulations, and plan approval from the Building Official or appointed designee lies with the applicant.
- (b) Notwithstanding § 20-74(a), the following procedural requirements and timelines apply:
- (1) Within 60 days of a positive determination of applicability, the owner or applicant shall submit five copies of a soil erosion and sediment control plan or SWPPP for approval by the Building Official or appointed designee. Failure to submit required

1 plans in the 60-day timeframe will result in the need for a new determination of  
2 applicability.

- 3 (2) Within 10 working days of the receipt of a completed soil erosion and sediment  
4 control plan or SWPPP, the Building Official or appointed designee shall send a  
5 copy of the plan to the public works department, Planning Board, department of  
6 planning and community development, and conservation commission, for the  
7 purpose of review and comment. The Building Official or appointed designee may  
8 also, within the time frame established in this division, submit copies of the plan to  
9 other local departments or agencies, including the conservation district that services  
10 the county, in order to better achieve the purpose of this article. Failure of such  
11 reviewing authorities to respond within 21 days of their receipt of the plan shall be  
12 deemed as no objection to the plan as submitted.
- 13 (3) The submittal of plans for review shall amount to acknowledgement and  
14 authorization from the applicant for municipal officials to enter upon and inspect  
15 private property where work is proposed for the purpose of reviewing site conditions  
16 as they relate to soil erosion, surface water runoff, and sediment control.
- 17 (4) The Building Official or appointed designee shall take action, in writing, either  
18 approving or disapproving the soil erosion and sediment control plan or SWPPP with  
19 reasons stated within 14 days after the Building Official or appointed designee has  
20 received the written opinion of the review authorities mentioned in subsection (2).

21  
22 **§ 20-75. Approval.**

23 In approving a plan, the Building Official or appointed designee may attach such conditions deemed  
24 reasonably necessary by such review authorities to further the purposes of this article. The  
25 conditions pertaining to erosion and sediment control measures and devices may include, but are  
26 not limited to, restoration; the erection of walls, dams and structures; planting vegetation, trees and  
27 shrubs; furnishing necessary easements and specifying a method of performing various kinds of  
28 work and the sequence or timing thereof. The applicant or owner shall notify the Building Official  
29 or appointed designee at least 72 hours in advance of the applicant or owner's intent to begin  
30 clearing and construction work described in the soil erosion and sediment control plan or SWPPP  
31 on the site during grading and construction. The applicant shall have a copy of the soil erosion and  
32 sediment control plan or SWPPP located at the development site for the duration of the construction  
33 process.

34  
35 **§ 20-76. Expiration of approval; renewal.**

- 36 (a) Every approval granted in this article shall expire at the end of the time period set forth in the  
37 conditions of the approval. The developer shall fully perform and complete all the work  
38 required within the specified time period.
- 39 (b) If the developer is unable to complete the work within the designated time period, the developer  
40 shall, at least 30 days prior to the expiration date, submit a written request for an extension of  
41 time to the Building Official or appointed designee, setting forth the reasons underlying the  
42 requested time extension. The Building Official or appointed designee may grant an extension  
43 of time up to a maximum of one year from the date of the original deadline. Subsequent  
44 extensions under the same conditions may be granted at the discretion of the Building Official  
45 or appointed designee.

1 **§ 20-77. Maintenance of measures.**

2 Maintenance of all erosion and sediment control measures and construction waste management  
3 measures under this article shall be the responsibility of the owner. The erosion and sediment  
4 control measures and construction waste management measures shall be maintained in good  
5 condition and working order on a continuing basis. Watercourses originating and located  
6 completely on private property shall be the responsibility of the owner to their point of open  
7 discharge at the property line or at a communal watercourse within the property.

8  
9 **§ 20-78. Liability.**

10 Neither approval of a soil erosion and sediment control plan or SWPPP nor compliance with any  
11 condition of this article shall relieve the owner or applicant from any responsibility for damage to  
12 persons or property or impose any liability upon the Town for damages to persons or property.

13  
14 **§ 20-79. Inspections.**

15 The provisions of this article shall be administered and enforced by the Building Official or appointed  
16 designee.

17  
18 The owner or designated agent shall make regular inspections of all control measures in accordance  
19 with the inspection schedule outlined on the approved erosion and sediment control plan or SWPPP.  
20 The purpose of such inspections will be to determine the overall effectiveness of the control plan and  
21 the need for additional control measures. All inspections shall be conducted by a properly trained  
22 professional recognized as registered engineers, registered landscape architects, or Certified Erosion,  
23 Sediment and Storm Water Inspector (CESSWI), or other appropriately trained and qualified  
24 individuals. All inspections shall be documented in written form and submitted to the building official  
25 as requested.

26  
27 The Building Official or appointed designee will perform a minimum of two (2) inspections: one during  
28 construction and one after final stabilization of the site. The developer or owner shall notify the Building  
29 Official or appointed designee of the installation of erosion and sediment control measures in order for  
30 an inspection to be performed during the construction phase of the project. The Building Official or  
31 appointed designee will confirm that wastes are controlled and that the erosion and sediment control  
32 measures are installed as planned, meet the needs of the site, and conform with the *Rhode Island Soil*  
33 *Erosion and Sediment Control Handbook.*

34  
35 (a) Periodic inspection. All work shall be subject to periodic inspections by the Building Official  
36 or appointed designee. All work shall be performed in accordance with an inspection and  
37 construction control schedule approved by the Building Official or appointed designee, who  
38 shall maintain a permanent file on all inspections.

39 Upon completion of the work, the developer or owner shall notify the Building Official or  
40 appointed designee that all grading, drainage, erosion and sediment control measures and  
41 devices and vegetation and ground cover planting have been completed in conformance with  
42 the approval, all attached plans, specifications, conditions and other applicable provisions of  
43 this article.

44 (b) Final inspection.

45  
46 (1) Upon notification of the completion by the owner, the Building Official or appointed

1 designee shall make a final inspection of the site in question and shall prepare a final  
2 summary inspection report of all findings which shall be retained in the department of  
3 inspections and in the permanent inspection file of the department of public works. A  
4 copy of such report shall be sent to the developer and property owner.

- 5 (2) The applicant or owner may request the release of the performance bond from the  
6 Building Official or appointed designee 12 months or two growing seasons after the final  
7 site inspection has been completed and approved. If the performance bond has been  
8 posted with the recording of a final subdivision, the bond shall be released a minimum  
9 of 12 months after the Building Official or appointed designee has been notified by the  
10 Planning Board of successful completion of all plat improvements by the applicant or  
11 owner.

12  
13 **§ 20-80. Notice of noncompliance.**

14 If, at any stage, the work in progress or work completed under the terms of an approved erosion  
15 and sediment control plan does not conform to the plan, a written notice from the Building Official  
16 or appointed designee to comply shall be transmitted by certified mail to the owner. The notice shall  
17 set forth the nature of the temporary and permanent corrections required and the time limit within  
18 which corrections shall be completed as set forth in § 20-85. Failure to comply with the required  
19 corrections within the specified time limit shall be considered in violation of this article, in which  
20 case the performance bond or cash or negotiable securities deposit shall be subject to notice of  
21 default in accordance with § 20-84.

22  
23 **§ 20-81. Appeals.**

- 24 (a) Administrative procedures.

- 25  
26 (1) If the ruling on the soil erosion and sediment control plan or SWPPP by the Building  
27 Official or appointed designee is unsatisfactory to the applicant or owner, the applicant  
28 or owner may file a written appeal. The appeal of soil erosion and sediment control plans  
29 and SWPPPs shall be to the Planning Board.  
30 (2) Appeal procedures shall follow the requirement for appeal to the Planning Board.  
31 (3) During the period in which the request for appeal is filed and until such time as a final  
32 decision is rendered on the appeal, the decision of the Building Official or appointed  
33 designee shall remain in effect.

- 34  
35 (b) Expert opinion. The Building Official or appointed designee or the Planning Board may seek  
36 technical assistance on any soil erosion and sediment control plan or SWPPP. The expert  
37 opinion must be made available in the office of the Building Official or appointed designee  
38 as a public record prior to the appeal hearing. The cost of securing such expert opinion shall  
39 be borne equally by the Town and the developer proposing the alteration.

1 **DIVISION 4**

2 **Soil Erosion and Sediment Control Plan**

3 **§ 20-82. Performance principles.**

4 The contents of the soil erosion and sediment control plan or SWPPP shall clearly demonstrate how the  
5 performance principles, outlined as follows, have been met in the design and are to be accomplished  
6 by the proposed development project:

- 7
- 8 (a) The area selected for disturbance shall show due regard for natural drainage characteristics,  
9 topography and vegetation.
- 10 (b) The area of disturbance shall be kept to a minimum and that disturbed areas remaining idle for  
11 more than fourteen (14) days shall be stabilized with hydroseeding or other appropriate  
12 stabilization measure(s).
- 13 (c) To the extent possible, disturbing existing steep slopes shall be avoided.
- 14 (d) The grade of newly created slopes shall be minimized.
- 15 (e) Original boundaries, alignment, and slope of watercourses within the project locus shall be  
16 preserved to the greatest extent feasible.
- 17 (f) In general, drainage shall be directed away from structures intended for human occupancy,  
18 municipal or utility use, or similar structures.
- 19 (g) Selection of soil erosion and sediment control measures shall be consistent with the *Rhode*  
20 *Island Erosion and Sediment Control Handbook*. Measures shall be selected and installed in  
21 a manner that accounts for the volume and makeup of sediment, and the volume and flow rate  
22 of runoff at a specific location. Any drainage calculations or considerations shall include  
23 runoff from tributary upstream areas which may be outside the locus of the project. Where  
24 deemed necessary by the Building Official or appointed designee, stormwater flow  
25 calculations shall be provided for the 10-year, 24-hour Type III rain event.
- 26 (h) Clearing and grading for sites greater than three (3) acres in size shall be phased to the extent  
27 practicable.
- 28 (i) Drainage facilities shall be installed as early as feasible during construction, prior to site  
29 clearance if possible.
- 30 (j) No stockpiles of soil or other erodible materials shall be located within 50 feet of a watercourse.  
31 Stockpile side slopes shall not be greater than 2:1.
- 32 (k) Silt fencing, temporary vegetation, and/or mulching shall be used to protect bare areas and  
33 stockpiles from erosion during construction; the smallest areas feasible shall be exposed at any  
34 one time; disturbed areas shall be protected during the nongrowing months, November  
35 through March.
- 36 (l) Permanent vegetation shall be placed immediately following final grading.
- 37 (m) Permanent seeding be undertaken in the spring (from March through June) or in the late  
38 summer and early fall (from August 1st to October 15th). During the peak summer months  
39 and in the fall after October 15th, when seeding is found to be impractical, an appropriate  
40 temporary mulch or sod shall be applied. Permanent seeding may be undertaken during the  
41 summer if plans provide for adequate mulching and irrigation.
- 42 (n) Trees and other existing vegetation shall be retained whenever feasible; the area within the  
43 dripline shall be fenced or roped off to protect trees from construction equipment.
- 44 (o) Dust control measures shall be used during construction.
- 45 (p) Construction wastes will be managed to reduce the potential for stormwater runoff to mobilize  
46 these wastes and subsequently contaminate surface or groundwater. The storage, disposal, or

1 use as fill of material containing asphalt, concrete, construction debris or stumps, even if  
2 determined to be non-hazardous, is prohibited.

- 3 (q) All areas damaged during construction shall be resodded, reseeded or otherwise restored.  
4 Where soil compaction has occurred through storage of materials or use of equipment, soil  
5 infiltration shall be restored through use of soil amendments or other means. Monitoring and  
6 maintenance schedules, where required, shall be predetermined.

7  
8 **§ 20-83. Contents.**

9 To allow the Building Official or appointed designee to determine whether the performance principles  
10 listed in § 20-82 are met, the erosion and sediment control plan or SWPPP shall include the following  
11 information. Withholding or delaying such information may be reason for the Building Official or  
12 appointed designee to judge the application as incomplete and grounds for disapproval.

- 13  
14 (a) The soil erosion and sediment control plan or SWPPP shall include sufficient information  
15 about the proposed activities and land parcels to form a clear basis for discussion and review  
16 and to ensure compliance with all applicable requirements of this article.

- 17 (b) The soil erosion and sediment control plan for proposed activities disturbing a total of one  
18 (1) acre or greater shall be prepared in conformance with the requirements for a SWPPP, as  
19 provided in the *Rhode Island Department of Environmental Management's General Permit*  
20 for Stormwater Discharge Associated with Construction Activity.

- 21 (c) For sites disturbing less than one (1) acre, the soil erosion and sediment control plan shall  
22 be consistent with the data collection, data analysis and plan preparation guidelines in  
23 the current *Rhode Island Soil Erosion and Sediment Control Handbook*, prepared by the  
24 United States Department of Agriculture Natural Resources Conservation Service, Rhode  
25 Island Department of Environmental Management, and Rhode Island State Conservation  
26 Committee. Site plans and associated descriptive notes shall contain the following unless the  
27 permitting authority waives any of these requirements at the request of the applicant as part of  
28 the submission:

- 29  
30 (1) Locations of the proposed limits of land disturbance on the site, with provisions that  
31 the limits must be marked with tape, signs, or construction fence by the developer at  
32 the site prior to commencing any land disturbance activities and shall be inspected by  
33 the owner or authorized designated agent.  
34 (2) Location and technical description of appropriate erosion and sediment control  
35 measures.  
36 (3) Location and means of diversion of offsite runoff from highly erodible soils and steep  
37 slopes to more stable areas.  
38 (4) Location of soil stockpiles and provision to stabilize exposed soils within five (5)  
39 business days of completion of construction of a given area.  
40 (5) Location and description of vehicle tracking pad(s) to be constructed at all  
41 entrance/exit points of the site to reduce the amount of soil carried onto roadways and  
42 off the site.  
43 (6) Location and description of proposed dust controls to be employed on the site,  
44 minimizing soil disturbance through applying mulch and establishing vegetation, water  
45 spraying, surface roughening, and/or applying polymers, spray-on tackifiers, chlorides,  
46 and barriers.

- 1 (7) Notes describing provisions to ensure that temporary sediment trapping devices are not  
2 removed until permanent stabilization is established in all contributory drainage areas,  
3 as well as provisions to ensure that stabilization is established prior to converting  
4 sediment traps/basins into permanent (post-construction) stormwater management  
5 facilities.
- 6 (8) Notes describing provisions to ensure that all facilities used as temporary measurers  
7 shall be cleaned prior to being put into final operation and are inspected by the  
8 Building Official or appointed designee, and indicating that areas to be used as post-  
9 construction infiltration practices should be protected during construction to prevent  
10 compaction.
- 11 (9) A program for vegetative stabilization of exposed soil through the establishment of  
12 permanently growing vegetation.
- 13 (10) Notes that specify permanent seeding will be undertaken in the spring (from March  
14 through June) or in the late summer and early fall (from August 1st to October 15th).  
15 During the peak summer months and in the fall after October 15th, when seeding is  
16 found to be impractical, an appropriate temporary mulch or sod shall be applied.  
17 Permanent seeding may be undertaken during the summer if plans provide for adequate  
18 mulching and irrigation.
- 19 (11) The plan must specify that all slopes steeper than 3:1, as well as perimeter dikes,  
20 sediment basins or traps, and embankments must, upon completion, be immediately  
21 stabilized with sod, seed, anchored straw mulch, or other approved stabilization  
22 measures; areas outside of the perimeter sediment control system must not be  
23 disturbed.
- 24 (12) Notes that specify the cut side of roads and ditches shall be stabilized immediately with  
25 rock rip-rap or other non-erodible erosion control liners, or where appropriate,  
26 vegetative measures such as sod.
- 27 (13) Location and description of proposed controls and procedures to properly handle, store,  
28 and/or contain all construction and waste materials, such as but not limited to  
29 demolition debris, discarded building materials, concrete truck wash out, chemicals,  
30 litter, and sanitary wastes.
- 31 (14) A schedule showing the sequence of construction, inspection, and maintenance of  
32 erosion and sediment control and waste control measures.
- 33 (15) Other information or construction plans and details as deemed necessary by the  
34 Building Official or appointed designee for thorough review of the plan prior to action  
35 being taken as prescribed in this article.  
36

**DIVISION 5**  
**Enforcement**

**§ 20-84. Performance bond.**

(a) **Required.**

- (1) **Before approving a soil erosion and sediment control plan or SWPPP, the Building Official or appointed designee shall require the applicant or owner to file a surety company performance bond or a deposit of money or negotiable securities or other method of surety, as specified by the Building Official or appointed designee. This may be waived by the Building Official or appointed designee for good cause. When any land disturbing activity is to take place within 100 feet of any watercourse or coastal feature or within an identified hazard district or on slopes in excess of 10%, the filing of a performance bond shall be required. The amount of the bond, as determined by the public works department or, in its absence, the Building Official or appointed designee, shall be sufficient to cover the cost of implementing all erosion and sediment control measures as shown on the plan. The performance bond shall be reviewed and may be required to be increased by the Building Official or appointed designee on the annual anniversary date thereof.**
- (2) **The bond or negotiable security filed by the applicant shall be subject to approval of the form, content, amount and manner of execution by the Public Works Director and the Town Solicitor.**
- (3) **A performance bond for a soil erosion sediment control plan for a subdivision may be included in the performance bond of the subdivision. The posting of the bond, as part of the subdivision performance bond does not, however, relieve the owner of any requirement of this article.**

(b) **Notice of default on performance secured by bond.**

- (1) **Whenever the Building Official or appointed designee shall find that a default has occurred in the performance of any term or condition of the bond or in the implementation of measures secured by the bond, written notice thereof shall be made to the applicant and to the surety of the bond by the Town Solicitor. The notice shall state the nature of the default, work to be done, the estimated cost thereof and the period of time deemed by the Building Official or appointed designee to be reasonably necessary for the completion of the work.**
- (2) **Failure of the applicant to acknowledge a default notice within five days and to comply with the provisions and deadlines outlined in such notice of default shall mean the institution, by the Town Solicitor, without further notice of proceedings whatever, of appropriate measures to utilize the performance bond to cause the required work to be completed by the Town, by contract or by other appropriate means as determined by the Town Solicitor.**

(c) **Notice of default on performance secured by cash or negotiable securities deposits.**

- (1) **If a certified check or negotiable securities deposit has been posted by the applicant, notice and procedure shall be the same as provided in Subsection (b) of this section.**

1  
2 (d) Release from performance bond conditions.  
3

- 4 (1) The performance bond shall remain in full force and effect for 12 months following  
5 completion of the project or longer if deemed necessary by the Building Official or  
6 appointed designee. The Building Official or appointed designee shall consider the  
7 appropriateness of growing seasons as a time frame.  
8

9 **§ 20-85. Penalties.**

- 10 (a) Revocation or suspension of approval. The approval of an erosion and sediment control plan  
11 under this article may be revoked or suspended by the Building Official or appointed designee  
12 and all work on the project halted for an indefinite time period by the Building Official or  
13 appointed designee after written notification is transmitted by the Building Official or  
14 appointed designee to the developer for one or more of the following reasons:  
15

- 16 (1) Violation of any condition of the approved plan or specifications pertaining thereto.  
17 (2) Violation of any provision of this article or any other applicable law, ordinance, rule or  
18 regulation related to the work or site of work.  
19 (3) The existence of any condition or the performance of any act constituting or creating a  
20 nuisance, hazard or endangerment to human life or the property of others or contrary to  
21 the spirit or intent of this article.  
22

- 23 (b) Other penalties; lien. In addition to the penalties in Subsection (a) of this section, whenever  
24 there is a failure to comply with the provisions of this article, the Town shall have the right to  
25 notify the applicant or owner that the applicant or owner has 10 days from receipt of notice to  
26 temporarily correct the violation and 30 days from receipt of notice to permanently correct the  
27 violation. Should the applicant or owner fail to take the temporary corrective measures within  
28 the ten-day period and the permanent corrective measures within the thirty-day period, the  
29 Town shall have the right to take whatever actions it deems necessary to correct the violation  
30 and to assert a lien on the subject property in an amount equal to the costs of remedial actions.  
31 The lien shall be enforced in the manner provided or authorized by law for the enforcement  
32 of common law liens on personal property. The lien shall be recorded with the records of land  
33 evidence of the Town in the office of the Town Clerk, and the lien shall incur legal interest  
34 from the date of recording. The imposition of any penalty shall not exempt the offender from  
35 compliance with the provisions of this article, including revocation of the performance bond  
36 or assessment of a lien on the property by the Town.  
37

1 **TOWN OF CUMBERLAND**

2 **§ 40-91 Permits; building sewers.**  
3

4 (a) No person shall uncover, make any connections with or opening into, use, alter or disturb any  
5 public sewer, storm drain and appurtenance thereof without first obtaining a written permit from  
6 the Town Engineer, the director of public works or a designated representative.  
7

8 (b) There shall be two classes of building sewer permits as follows:

- 9 (1) For residential and commercial service; and  
10 (2) For service to establishments producing industrial wastes.  
11

12 No permits shall be issued unless approved by the state department of health, the Blackstone  
13 Valley Sewer Commission and the Town public works department.  
14

15 (c) All costs and expenses incident to the installation and connection of the building sewer,  
16 except where originally installed by the Town, shall be borne by the owner. Requested service  
17 connections shall be required to be six (6) inch diameter for single family structures and a  
18 minimum of eight (8) inch diameter for all other structures. Work to provide requested service  
19 connections shall be inclusive of main line extensions needed to bring sewer service where none  
20 is presently available. As a condition of approval, any such extension shall be required to span  
21 the entire street frontage of the property anticipated to be connected. The owner shall indemnify  
22 the Town from any loss or damage that may directly or indirectly be occasioned by his  
23 installation of the building sewer.  
24

25 (d) A separate and independent building sewer, if practical, shall generally be provided for every  
26 building.  
27

28 (e) Old building sewers may be used in connection with new buildings only when they are found,  
29 on examination and test by the Town Engineer or designated agents, to meet all requirements of  
30 this article.  
31

32 **§ 40-32 Water service tie-in fee.**  
33

34 (a) There is established a water service tie-in fee for any and all buildings that tie in to any water  
35 line in the Town after the effective date of the ordinance from which this section derives. To  
36 avoid public side tie-ins of more than twenty-five (25) feet, main extensions approved by the  
37 Water or Public Works Departments will be required. As a condition of approval, any such  
38 extension must minimally span the entire street frontage of the property or properties anticipated  
39 to be connected. The owner shall indemnify the Town from any loss or damage that may directly  
40 or indirectly be occasioned by his installation of the water main.  
41

1 (b) The water service tie-in fee shall be as established from time to time by the Town Council  
2 and is on file in the Town Clerk's office and shall be paid at the time of the application for the  
3 water service. The fee shall be in addition to a meter deposit.  
4

# NATIONAL FLOOD INSURANCE PROGRAM COMMUNITY FLOODPLAIN MANAGEMENT REGULATIONS REVIEW CHECKLIST

Community \_\_\_\_\_ C.I.D. \_\_\_\_\_ State \_\_\_\_\_

Reviewed by: \_\_\_\_\_ Date of Review: \_\_\_\_\_

Community Floodplain Management Regulations Reviewed by (circle one): FEMA State Other: (Agency Name) \_\_\_\_\_

Reviewer's Determination:  /  The floodplain management regulations are compliant.  
 /  The floodplain management regulations are not compliant.

Approved by: \_\_\_\_\_ (FEMA only) Date of Approval: \_\_\_ / \_\_\_ / \_\_\_

The "Item Description" is a synopsis of the regulatory requirement and should not be construed as a complete description. Refer to the actual language contained in the National Flood Insurance Program Floodplain Management Regulations at Title 44 Code of Federal Regulations (CFR) Part 59 and 60 for the complete description of the required minimum criteria. Below the "Level of Regulations" column, you can indicate whether the community ordinance meets or exceeds the respective provision in the non-shaded areas.

Item Description (Section reference to the NFIP Regulations follows)	Level of Regs					Applicable Ordinance Section/Comments
	a	b	c	d 1	e <sup>1</sup>	
<b>ORDINANCES MUST CONTAIN THE FOLLOWING PROVISIONS:</b>						
1. Citation of Statutory Authority						Section 17-1, page 1: lines 13-14
2. Framework for administering the ordinance (including permit system, establishment of the office for administering the ordinance, record keeping, etc.).						Section 17-5, page 9: lines 24 - 38, page 10: lines 1 - 23
3. Adequate enforcement provisions (including a violation and penalty section specifying actions the community will take to assure compliance).						Section 17-11, page 19: lines 26 - 37
4. Variance section with evaluation criteria and insurance notice. [60.6(a)]						Section 17-10, page 18: lines 30 - 39, page 19: lines 1 - 25
5. Effective Date: June 23, 2026 Adoption Date:						.....
6. Signature of Appropriate Official and Certification Official.						.....
<b>OTHER PROVISIONS AND ACTIONS THAT MAY BE NECESSARY TO MAKE THE ORDINANCE LEGALLY ENFORCEABLE AND ENSURE THAT IT CAN BE PROPERLY ADMINISTERED:</b>						
7: Purpose section citing health, safety, and welfare reasons for adoption.						Section 17-1, page 1: lines 5 - 10

<sup>1</sup> If a community has both floodways and coastal high hazard areas, it must meet the requirements of both level 60.3(d) and 60.3(e).

# NATIONAL FLOOD INSURANCE PROGRAM COMMUNITY FLOODPLAIN MANAGEMENT REGULATIONS REVIEW CHECKLIST

Community \_\_\_\_\_ C.I.D. \_\_\_\_\_ State \_\_\_\_\_

Reviewed by: \_\_\_\_\_ Date of Review: \_\_\_\_\_

Item Description <i>(Section reference to the NFIP Regulations follows)</i>	Level of Regs					Applicable Ordinance Section/Comments
	a	b	c	d 1	e <sup>1</sup>	
8: Disclaimer of Liability section advising that the degree of flood protection required by the ordinance is considered reasonable but does not imply total flood protection.						Section 17-2, page 1: lines 18 - 19
9. Abrogation and Greater Restriction section. (e.g., This Ordinance shall not in any way impair/remove the necessity of compliance with any other applicable laws, ordinances, regulations, etc. Where this Ordinance imposes a greater restriction, the provisions of this Ordinance shall control.)						Section 17-2, page 1: lines 22 - 24
10. Severability section. (e.g., If any section, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court, the remainder of the ordinance shall not be affected.)						Section 17-2, page 1: lines 20 – 21...also fixed this fragment based on NFIP checklist
11. Public hearing (State/local laws may require hearings)						
12. Publication (State/local laws may require public notices)						
<b>MINIMUM NFIP CRITERIA:</b>						
13. Definitions: [59.1] __ Base Flood; __ Base Flood Elevation; __ Development; __ Existing manufactured home park or subdivision; __ Expansion to an existing manufactured home park or subdivision; __ Flood Insurance Rate Map; __ Flood Insurance Study; __ Floodway; __ Lowest Floor; __ Manufactured Home; __ Manufactured Home Park or Subdivision; __ New Construction; __ New Manufactured Home Park or Subdivision; __ Recreational Vehicle; __ Special Flood Hazard Area; __ Start of Construction; __ Structure; __ Substantial Damage; __ Substantial Improvement; __ Violation;  Other Definitions as appropriate such as __ Floodproofing; __ Highest adjacent grade for community's with mapped AO Zones; __ Historic Structures						Section 17-4, page 3: lines 2 - 40, page 4: lines 1 – 40, page 5: lines 1 – 42, page 6: lines 1 – 42, page 7: lines 1 – 39, page 8: lines 1 – 44, page 9: lines 1 – 22

# NATIONAL FLOOD INSURANCE PROGRAM COMMUNITY FLOODPLAIN MANAGEMENT REGULATIONS REVIEW CHECKLIST

Community \_\_\_\_\_ C.I.D. \_\_\_\_\_ State \_\_\_\_\_

Reviewed by: \_\_\_\_\_ Date of Review: \_\_\_\_\_

Item Description (Section reference to the NFIP Regulations follows)	Level of Regs					Applicable Ordinance Section/Comments
	a	b	c	d i	e <sup>1</sup>	
14. Adopt or reference correct Map and date. [60.3(b)] (If the community has an automatic adoption provision in its ordinance, is it a valid provision?)						Section 17-3, page 1: lines 26 – 34, page 2: lines 1 - 13
15. Adopt or reference correct Flood Insurance Study and date. [60.3(c), (d), and/or (e)] (If the community has an automatic adoption provision in its ordinance, is it a valid provision?)						Section 17-3, page 2: lines 11 – 13, Section 17-9, page 16: line 27, page 16: line 35, page 17: line 3
16. Require permits for all proposed construction or other development including placement of manufactured homes to determine whether such construction or development is in a floodplain. [60.3(a)(1)]						Section 17-9, page 15: lines 33 – 38, page 16: line 1 - 6
17. Require permits for all proposed construction and other development within SFHAs. [60.3(b)(1)]						Section 17-3, page 1: lines 26 – 34, Section 17-5, page 9: lines 1 - 13
18. Assure that all other State and Federal permits are obtained. [60.3(a)(2)]						Section 17-7, page 11: lines 16 - 18
19. Review permits to assure sites are reasonably safe from flooding and require for new construction and substantial improvements in flood-prone areas [60.3(a)(3)]: (a) Anchoring (including manufactured homes) to prevent flotation, collapse, or lateral movement of the structure. [60.3(a)(3)(i)]						Section 17-9, page 15: lines 33 – 38, page 16: lines 1 - 6  Section 17-9, page 15: lines 14 - 18
(b) Use of flood-resistant materials. [60.3(a)(3)(ii)]						Section 17-8, page 13: line 1
(c) Construction methods and practices that minimize flood damage. [60.3(a)(3)(iii)]						Section 17-8, page 13: line 3
(d) Electrical, heating, ventilation, plumbing, air						Section 17-8, page

# NATIONAL FLOOD INSURANCE PROGRAM COMMUNITY FLOODPLAIN MANAGEMENT REGULATIONS REVIEW CHECKLIST

Community \_\_\_\_\_ C.I.D. \_\_\_\_\_ State \_\_\_\_\_

Reviewed by: \_\_\_\_\_ Date of Review: \_\_\_\_\_

Item Description (Section reference to the NFIP Regulations follows)	Level of Regs					Applicable Ordinance Section/Comments
	a	b	c	d 1	e <sup>1</sup>	
conditioning equipment, and other service facilities designed and/or located to prevent water entry to accumulation. [60.3(a)(3)(iv)]						13: lines 4 - 5,
20. Review subdivision proposals and other development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding [60.3(a)(4)]. If a subdivision or other development proposal is in a flood-prone area, assure that: (a) Such proposals minimize flood damage. [60.3(a)(4)(i)]						Section 17-9, page 15: lines 33 - 38
(b) Public utilities and facilities are constructed so as to minimize flood damage. [60.3(a)(4)(ii)]						Section 17-9, page 15: line 38
(c) Adequate drainage is provided. [60.3(a)(4)(iii)]						Section 17-9, page 16: line 1
21. Require new and replacement water supply and sanitary sewage systems to be designed to minimize or eliminate infiltration. [60.3(a)(5) and 60.3(a)(6)]						Section 17-8, page 13: lines 8 - 9
22. Require onsite waste disposal systems be designed to avoid impairment or contamination. [60.3(a)(6)(ii)]						Section 17-8, page 13: lines 6 - 7
23. Require base flood elevation data for subdivision proposals or other developments greater than 50 lots or 5 acres. [60.3(b)(3)]						Section 17-9, page 16: lines 2 - 6
24. In A Zones, in the absence of FEMA BFE data and floodway data, obtain, review, and reasonably utilize other BFE and floodway data as a basis for elevating residential structures to or above the base flood level, and for floodproofing or elevating non-residential structures to or above the base flood level. [60.3(b)(4)]						Section 17-7, page 11: lines 7 - 10
25. Where BFE data are utilized in Zone A, obtain and maintain records of the lowest floor and floodproofing elevations for new and substantially improved						Section 17-7, page 11: lines 25 - 30

# NATIONAL FLOOD INSURANCE PROGRAM COMMUNITY FLOODPLAIN MANAGEMENT REGULATIONS REVIEW CHECKLIST

Community \_\_\_\_\_ C.I.D. \_\_\_\_\_ State \_\_\_\_\_

Reviewed by: \_\_\_\_\_ Date of Review: \_\_\_\_\_

Item Description (Section reference to the NFIP Regulations follows)	Level of Regs					Applicable Ordinance Section/Comments
	a	b	c	d 1	e <sup>1</sup>	
construction. [60.3(b)(5)]						
26. In riverine areas, notify adjacent communities of watercourse alterations and relocations. [60.3(b)(6)]						Section 17-7, page 11: lines 19 - 24
27. Maintain the carrying capacity of an altered or relocated watercourse. [60.3(b)(7)]						Section 17-7, page 11: lines 19 - 24
28. Require all manufactured homes to be elevated and anchored to resist flotation, collapse, or lateral movement. [60.3(b)(8)]						Section 17-9, page 15: lines 14 - 18
29. Require all new and substantially improve <u>residential</u> structures within A1-30, AE, and AH Zones have their lowest floor (including basement) elevated to or above the Base Flood Elevation. [60.3(c)(2)]						Section 17-9, page 13: lines 13 - 16
30. <sup>2</sup> In AO Zones, require that new and substantially improved <u>residential</u> structures have their lowest floor (including basement) to or above the highest adjacent grade at least as high as the FIRM's depth number. [60.3(c)(7)]						Section 17-9, page 13: lines 13 - 16
31. Require that new and substantially improved <u>non-residential</u> structures within A1-30, AE, and AH Zones have their lowest floor elevated or floodproofed to or above the Base Flood Elevation. [60.3(c)(3)]						Section 17-9, page 13: lines 17 - 28
32. <sup>2</sup> In AO Zones, require new and substantially improved <u>non-residential</u> structures have their lowest floor elevated or completely floodproofed above the highest adjacent grade to at least as high as the depth number on the FIRM. [60.3(c)(8)]						Section 17-9, page 13: lines 17 - 28

<sup>2</sup> Item 30 and 32 are not required if the community has no AO Zones.

# NATIONAL FLOOD INSURANCE PROGRAM COMMUNITY FLOODPLAIN MANAGEMENT REGULATIONS REVIEW CHECKLIST

Community \_\_\_\_\_ C.I.D. \_\_\_\_\_ State \_\_\_\_\_

Reviewed by: \_\_\_\_\_ Date of Review: \_\_\_\_\_

Item Description (Section reference to the NFIP Regulations follows)	Level of Regs					Applicable Ordinance Section/Comments
	a	b	c	d	e <sup>1</sup>	
33. Require that for floodproofed non-residential structures, a registered professional engineer/architect certify that the design and methods of construction meet requirements at 60.3(c)(3)(ii). [60.3(c)(4)]						Section 17-9, page 13: lines 28 - 32
34. Require, for all new construction and substantial improvements, that fully enclosed areas below the lowest floor that are used solely for parking of vehicles, building access or storage in an area other than a basement and which is subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing the entry and exit of floodwaters in accordance with the specifications in 60.3(c)(5). (Openings requirement)						Section 17-9, page 13: lines 33 – 39, page 14: lines 1 – 43, page 15: lines 1 - 4
35. <sup>3</sup> Until a regulatory floodway is designated, no encroachment may increase the Base Flood level more than 1 foot. [60.3(c)(10)]						Section 17-8, page 12: lines 15 - 22
36. <sup>4</sup> In Zones AO and AH, require drainage paths around structures on slopes to guide water away from structures. [60.3(c)(11)]						Section 17-9, page 15: lines 19 - 21
37. Require that manufactured homes placed or substantially improved within A1-30, AH, and AE Zones, which meet one of the following location criteria, to be elevated such that the lowest floor is to or above the Base Flood Elevation and be securely anchored: (i) outside a manufactured home park or subdivision; (ii) in a new manufactured home park or subdivision;						Section 17-9, page 15: lines 6 - 13

<sup>3</sup> Item 35 is not required if all streams have floodways designated.

<sup>4</sup> Item 36 is not required if the community has no AO or AH Zones.

# NATIONAL FLOOD INSURANCE PROGRAM COMMUNITY FLOODPLAIN MANAGEMENT REGULATIONS REVIEW CHECKLIST

Community \_\_\_\_\_ C.I.D. \_\_\_\_\_ State \_\_\_\_\_

Reviewed by: \_\_\_\_\_ Date of Review: \_\_\_\_\_

Item Description (Section reference to the NFIP Regulations follows)	Level of Regs					Applicable Ordinance Section/Comments
	a	b	c	d 1	e <sup>1</sup>	
(iii) in an expansion to an existing manufactured home park or subdivision; iv) on a site in an existing park which a manufactured home has incurred substantial damage as a result of a flood. [60.3(c)(6)]						
38. In A-1-30, AH, and AE Zones, require that manufactured homes to be placed or substantially improved in an <u>existing</u> manufactured home park to be elevated so that (i) the lowest floor is at or above the Base Flood Elevation; OR (ii) the chassis is supported by reinforced piers no less than 36 inches in height above grade and securely anchored. [60.3(c)(12)]						Section 17-9, page 15: lines 5 – 9  Section 17-9, page 15: lines 19 - 23
39. In A1-30, AH, and AE Zones, all recreational vehicles to be placed on a site must watercourse (i) be elevated and anchored; OR (ii) be on the site for less than 180 consecutive days; OR (iii) be fully licensed and highway ready. [60.3(c)(14)]						Section 17-9, page 15: lines 24 - 27
40. Designate a regulatory floodway which will not increase the Base Flood level more than 1 foot. [60.3(d)(2)]						Section 17-8, page 12: lines 15 - 22
41. In a regulatory floodway, prohibit any encroachment, which would cause any increase in the Base Flood level unless hydrologic and hydraulic analyses prove that the proposed encroachment would not increase flood levels during the Base Flood discharge. [60.3(d)(3)]						Section 17-8, page 12: lines 10 - 14
42. In V1-30, VE, and V Zones, obtain and maintain the elevation of the bottom of the lowest horizontal structural member of the lowest floor of all new and substantially improved structures. [60.3(e)(2)]						NA

# NATIONAL FLOOD INSURANCE PROGRAM COMMUNITY FLOODPLAIN MANAGEMENT REGULATIONS REVIEW CHECKLIST

Community \_\_\_\_\_ C.I.D. \_\_\_\_\_ State \_\_\_\_\_

Reviewed by: \_\_\_\_\_ Date of Review: \_\_\_\_\_

Item Description <i>(Section reference to the NFIP Regulations follows)</i>	Level of Regs					Applicable Ordinance Section/Comments
	a	b	c	d 1	e <sup>1</sup>	
43. In V1-30, VE, and V Zones, require that all new construction and substantial improvements:						NA
(a) Are elevated and secured to anchored pilings or columns so that the bottom of the lowest horizontal structural member is at or above the Base Flood Elevation. [60.3(e)(4)]						NA
(b) A registered professional engineer/architect certify that the design and methods of construction meet elevation and anchoring requirements at 60.3(e)(4)(i) and (ii). [60.3(e)(4)]						NA
(c) Have the space below the lowest floor either free of obstruction or constructed with breakaway walls. Any enclosed space shall be used solely for parking, building access, or storage. [60.3(e)(5)]						NA
(d) All new construction is landward of mean high tide. [60.3(e)(3)]						NA
(e) Prohibit use of fill for structural support. [60.3(e)(6)]						NA
(f) Prohibit alteration of sand dunes and mangrove stands, which would increase potential flood damage. [60.3(e)(7)]						NA
44. Require that manufactured homes placed or substantially improved within V1-30, VE, and V Zones, which meet one of the following location criteria, meet the V Zone standards in 60.3(e)(2) through (e)(7):						NA
(i) outside a manufactured home park or subdivision;						
(ii) in a new manufactured home park or subdivision;						
(iii) in an expansion to an existing manufactured home park or subdivision;						
(iv) on a site in an existing park which a manufactured home has incurred substantial damage as a result of a flood. [60.3(e)(8)]						



1 **TOWN OF CUMBERLAND**

2 **ARTICLE V**

3 **Stormwater Illicit Discharge Detection and Elimination**

4 **§ 14-121. Purpose.**

5 Increased and contaminated stormwater runoff is a major cause of impairment of water quality and  
6 flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water  
7 supplies; alteration or destruction of aquatic and wildlife habitat; and flooding. Regulation of illicit  
8 connections and illicit discharges to the municipal storm drain system is necessary for the protection  
9 of the Town's water bodies and groundwater, and to safeguard the public health, safety, welfare and  
10 the environment. The objectives of this article are to:  
11

- 12 (1) Prevent (or reduce to the maximum extent practicable) pollutants entering the Town's
- 13 municipally owned separate storm sewer system (MS4);
- 14 (2) Prohibit illicit connections and unauthorized discharges to the Town's MS4;
- 15 (3) Require the removal of all such illicit connections and discharges;
- 16 (4) Comply with state law and federal statutes and regulations relating to stormwater discharges; and
- 17 (5) Set forth the legal authority and procedures to carry out all inspection, monitoring and
- 18 enforcement activities necessary to ensure compliance with this article.

19 **§ 14-122. Authority.**

20 This article is promulgated pursuant to the Rhode Island Department of Environmental  
21 Management's ("DEM") General Permit Rhode Island Pollutant Discharge Elimination System  
22 Stormwater Discharge from Small Municipal Separate Storm Sewer Systems and from Industrial  
23 Activity at Eligible Facilities Operated by Regulated Small MS4s and in accordance with the  
24 provisions of R.I.G.L. § 45-6-1 and the federal Water Pollution Control Act (33 U.S.C. § 1251 et  
25 seq.), both as amended.

26 **§ 14-123. Definitions.**

27 As used in this article, the following terms shall have the meanings indicated:

28 **ALLOWABLE NONSTORMWATER DISCHARGES** — Discharges not comprised of  
29 stormwater are allowed under the MS4 general permit but are limited to ~~the following~~those  
30 specifically provided in this ordinance, provided these are not significant contributors of pollutants  
31 to the MS4: ~~discharges which result from the washdown of vehicles at retail dealers selling new~~  
32 ~~and used automobiles where no detergents are used and individual residential car washing; external~~  
33 ~~building washdown where no detergents are used; the use of water to control dust; firefighting~~  
34 ~~activities; fire hydrant flushings; natural springs; uncontaminated groundwater; dechlorinated pool~~  
35 ~~discharges; air conditioning condensate; lawn watering; potable water sources, including waterline~~  
36 ~~flushings; irrigation drainage; pavement washwaters where spills or leaks of toxic or hazardous~~  
37 ~~materials have not occurred (unless all spilled materials have been removed) and where detergents~~  
38 ~~are not used; discharges from foundation or footing drains where flows are not contaminated with~~  
39 ~~process materials such as solvents, or contaminated by contact with soils where spills or leaks of~~  
40 ~~toxic or hazardous materials have occurred; uncontaminated utility vault dewatering; dechlorinated~~

1 ~~waterline testing water, hydrostatic test water that does not contain any treatment chemicals and is~~  
2 ~~not contaminated with process chemicals.~~

3 AUTHORIZED ENFORCEMENT AGENCY — Employees of the Public Works Department or  
4 other designees of the Director of Public Works of the Town of Cumberland.

5 BEST MANAGEMENT PRACTICES (~~BMP~~BMPs) — Schedules of activities, prohibitions of  
6 practices, general good housekeeping practices, pollution prevention and educational practices,  
7 maintenance procedures, and other management practices to prevent or reduce the discharge  
8 of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance  
9 systems. BMPs also include treatment practices, operating procedures, and practices to control site  
10 runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

11 CLEAN WATER ACT (CWA) — The federal Water Pollution Control Act (33 U.S.C. § 1251 et  
12 seq.), and any subsequent amendments thereto.

13 CONSTRUCTION ACTIVITY — ~~Any activity~~ Activities subject to the Rhode Island Pollutant  
14 Discharge Elimination System (RIPDES) General Permit for Stormwater Discharge Associated  
15 with construction ~~Construction permits~~ Activity, as amended. As of March 2003, RIPDES  
16 ~~Stormwater Phase II permits are required for construction projects resulting in land disturbance of~~  
17 ~~one acre or more.~~ Such construction activities include but are not limited to clearing and grubbing,  
18 grading, excavating, filling, and demolition.

19 DISCHARGE OF POLLUTANTS — The addition from any source of any pollutant or combination  
20 of pollutants in the municipal storm drain system or into any waters of the United States or State of  
21 Rhode Island from any source.

22 DISCHARGER — Any person who causes, allows, permits, or is otherwise responsible for a  
23 discharge of pollutants, including, without limitation, any operator of a construction site or  
24 industrial facility.

25 HAZARDOUS MATERIAL — Any material, including any substance, waste, or combination  
26 thereof, which, because of its quantity, concentration, or physical, chemical, or infectious  
27 characteristics, may cause, or significantly contribute to, a substantial present or potential hazard  
28 to human health, safety, property, or the environment when improperly treated, stored, transported,  
29 disposed of, or otherwise managed.

30 ILLICIT CONNECTION — Either of the following:

- 31 (1) Any drain or conveyance, whether on the surface or subsurface, which allows an ~~illegal~~  
32 illicit discharge to enter the storm drain system, including but not limited to any  
33 conveyances which allow any nonstormwater discharge, including sewage, process  
34 wastewater, and wash water to enter the storm drain system and any connections to the  
35 storm drain system from indoor drains and sinks, regardless of whether said drain or  
36 connection had been previously allowed, permitted, or approved by an authorized  
37 enforcement agency; or
- 38 (2) Any drain or conveyance connected from a commercial or industrial land use to the storm  
39 drain system which has not been documented in plans, maps, or equivalent records and  
40 approved by an authorized enforcement agency.

41 ILLICIT DISCHARGE — Any discharge to a municipal separate storm sewer that is not composed  
42 entirely of stormwater except discharges pursuant to a RIPDES permit (other than the RIPDES  
43 permit for discharges from the municipal separate storm sewer) and ~~discharges resulting from~~

1 ~~firefighting activities~~ allowable non-stormwater discharges defined in § 14-124(a)(2).

2 MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) — A conveyance or system of  
3 conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters,  
4 ditches, man-made channels, or storm drains):

5 (1) Owned or operated by a city or town or the state district association, or other public body  
6 (created by or pursuant to state law) having jurisdiction over disposal of sewage,  
7 industrial wastes, stormwater, or other wastes, including special districts under state law  
8 such as a sewer district, flood control district or drainage district, or similar entity, or an  
9 Indian tribe or an authorized Indian tribal organization, or a designated and approved  
10 management agency under Section 208 of the CWA that discharges to waters of the  
11 state;

12 (2) Designed or used for collecting or conveying stormwater;

13 (3) Which is not a combined sewer; and

14 (4) Which is not part of a "publicly owned treatment works (POTW)" as defined in the  
15 Department of Environmental Management Office of Water Resources Regulations for  
16 the Rhode Island Pollutant Discharge Elimination System.

17 NONSTORMWATER DISCHARGE — Any discharge to the municipal storm drain system that is not  
18 composed entirely of stormwater.

19 OPERATOR — The party or parties that either individually or taken together have the day-to-day  
20 operational control over the facility activities and the ability to make modifications to such  
21 activities.

22 OWNER — The party or parties that either individually or taken together has legal title to any premise.

23 PERSON — Any individual, association, organization, partnership, firm, corporation or other  
24 entity recognized by law and acting as either the owner or as the owner's agent.

25 POLLUTANTS — Any element, constituent, or property of waste, or of agricultural, industrial,  
26 manufacturing, or commercial process waste, or leachate, or any other substance which causes the  
27 alteration of the chemical, physical, biological, or radiological integrity of water through its  
28 introduction therein. ~~Anything which causes or contributes to pollution.~~ Pollutants may include,  
29 but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids;  
30 nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other  
31 discarded or abandoned objects, ordinances, and accumulations, so that same may cause or  
32 contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and  
33 wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes;  
34 wastes and residues that result from constructing a building or structure; and noxious or offensive  
35 matter of any kind.

36 RIPDES PERMITS — Any permit authorized by the Rhode Island Department of Environmental  
37 Management (RIDEM) under the Rhode Island Pollutant Discharge Elimination System (RIPDES).

38 STORMWATER — Any surface flow, runoff, and drainage consisting entirely of water from any  
39 form of natural precipitation and resulting from such precipitation.

40 UNAUTHORIZED DISCHARGE — A discharge of stormwater not authorized by a RIPDES  
41 permit, or an allowable stormwater discharge found to be a significant contributor of pollutants to  
42 the MS4.

1 WATERCOURSE — A natural or man-made surface drainage channel or body of water  
2 (including a lake or pond) through which a water flow occurs, either continuously or  
3 intermittently.

4 WATERS OF THE STATE — Surface waters and groundwaters within the boundaries of the  
5 State of Rhode Island and subject to its jurisdiction.

6 **§ 14-124. Discharge prohibitions.**

7 (a) Prohibition of unauthorized discharges.

8 (1) No person shall discharge or caused to be discharged into the municipal separate storm  
9 sewer system (MS4) or watercourses any pollutant or nonstormwater discharge unless  
10 such a nonstormwater discharge is outlined below at § 14-124(a)(2) ~~in Part I.B.3 of the~~  
11 ~~MS4 general permit.~~ The allowable non-stormwater discharges (described below) are  
12 permitted if deemed not to be a significant contributor of pollutants to the municipal  
13 separate storm sewer system.

14 (2) Allowable nonstormwater discharges:

- 15 a. Discharges which result from the washdown of vehicles at retail dealers selling  
16 new and used automobiles where no detergents are used;
- 17 b. Discharges from individual residential car washing;
- 18 c. External building washdown where no detergents are used;
- 19 d. The use of water to control dust;
- 20 e. Firefighting activities;
- 21 f. Fire hydrant flushings;
- 22 g. Natural springs;
- 23 h. Uncontaminated groundwater;
- 24 i. ~~d~~Dechlorinated pool discharges;
- 25 j. Air conditioning condensate;
- 26 k. Lawn watering;
- 27 l. ~~p~~otable water sources, including waterline flushings;
- 28 m. Irrigation drainage;
- 29 n. Pavement washwaters where spills or leaks of toxic or hazardous materials have  
30 not occurred (unless all spilled materials have been removed) and where detergents  
31 are not used;
- 32 o. Discharges from foundation or footing drains where flows are not contaminated  
33 with process materials such as solvents, or contaminated by contact with soils  
34 where spills or leaks of toxic or hazardous materials have occurred;
- 35 p. Uncontaminated utility vault dewatering;

1           g. ~~d~~Dechlorinated waterline testing water; and

2           r. Hydrostatic test water that does not contain any treatment chemicals and is not  
3           contaminated with process chemicals.

4       (b) Prohibition of illicit connections.

5           (1) The construction, use, maintenance, or continued existence of illicit connections to the  
6           municipal separate storm sewer system is prohibited. This prohibition expressly  
7           includes, without limitation, illicit connections made in the past, regardless of whether  
8           the connection was permissible under law or practices applicable or prevailing at the  
9           time of connection.

10          (2) A person is considered to be in violation of this article if the person ~~connects~~ makes an  
11          ~~illicit connectionline conveying sewage to the MS4,~~ or allows such a connection to  
12          continue and must provide corrective action.

13   § 14-125. Suspension of MS4 access.

14          (a) Suspension due to illicit discharges in emergency situations. The Director of Public Works  
15          may, without prior notice, suspend MS4 discharge access to a person when such suspension is  
16          necessary to stop an actual or threatened non-stormwater discharge which presents or may  
17          present imminent and substantial danger to the environment, or to the health or welfare of  
18          persons, or to the MS4 or waters of the state. If the violator fails to comply with a suspension  
19          order issued in an emergency, the authorized enforcement agency may take such steps as  
20          deemed necessary to prevent or minimize damage to the MS4 or waters of the state, or to  
21          minimize danger to persons, including but not limited to those actions defined in § 14-131  
22          Enforcement.

23          (b) Suspension due to the detection of illicit discharge. Any person discharging to the MS4 in  
24          violation of this article may have his or her MS4 access terminated if such termination would  
25          abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator  
26          of the proposed termination of its MS4 access. The violator may petition the authorized  
27          enforcement agency for reconsideration and a hearing. A person commits an offense if the  
28          person reinstates MS4 access to premises terminated pursuant to this section, without the prior  
29          approval of the authorized enforcement agency.

30          (c) Entry to perform duties under this article. To the extent permitted by state law, or if authorized  
31          by the owner or other party in control of the property, the authorized enforcement agency, its  
32          agents, officers, and employees may enter upon privately owned property for the purpose of  
33          performing their duties under this article and may make or cause to be made such  
34          examinations, surveys or sampling as the authorized enforcement agency deems reasonably  
35          necessary.

36   § 14-126. Industrial and construction activity discharge.

37          Any person subject to an industrial or construction activity RIPDES stormwater ~~discharge~~-permit  
38          shall comply with all provisions of such permit. Proof of compliance with said permit may be  
39          required in a form acceptable to the authorized enforcement agency prior to the allowing of  
40          discharges to the MS4.

1    **§ 14-127. Inspections and monitoring.**

2       The authorized enforcement agency shall be permitted, upon the presentation of credentials and  
3       other documents as may be required by law, to:

- 4       (1) Enter the discharger's premise(s) where a regulated activity is conducted, or where records  
5       must be kept as required under the conditions of this permit;
- 6       (2) Have access to and copy, at reasonable times, any records that must be kept as required  
7       under the conditions of the permit;
- 8       (3) Inspect at reasonable times any equipment, practices, or operations regulated or required  
9       under this permit; and
- 10      (4) Sample or monitor any substances or parameters at any location, at reasonable times, for the  
11      purposes of assuring permit compliance or as otherwise authorized by the CWA or Rhode  
12      Island law.

13    **§ 14-128. Requirement to prevent, control and reduce stormwater pollutants.**

14       In ~~an attempt to~~ order to prevent, control, and reduce stormwater pollutants, any person engaged in  
15       activities or operations, or owning facilities or property which, through illicit discharge or illicit  
16       connection will or may result in pollutants entering stormwater, the storm sewer system or waters  
17       of the state shall either remove said connection or discharge or implement Best Management  
18       Practices best management practices (BMPs) to the extent they are technologically achievable to  
19       prevent and reduce such pollutants. The owner or operator of a commercial or industrial  
20       establishment shall provide reasonable protection from accidental discharge of prohibited materials  
21       or other wastes into the municipal storm drain system or watercourses. Facilities to prevent  
22       accidental discharge of prohibited materials or other wastes shall be provided and maintained at the  
23       owner or operator's expense.

24    **§ 14-129. Watercourse protection.**

25       Every person owning property through which a watercourse passes, or such person's lessee, shall  
26       keep and maintain that part of the watercourse within the property reasonably free of trash, debris,  
27       ~~excessive vegetation,~~ and other obstacles that would pollute, contaminate, or significantly  
28       ~~retard~~ alter the flow of water through the watercourse. In addition, the owner or lessee shall maintain  
29       existing privately owned structures within or adjacent to a watercourse, so that such structures will  
30       not become a hazard to the use, function, or physical integrity of the watercourse. The owner or  
31       lessee shall not remove healthy bank vegetation beyond ~~that actually~~ what is necessary for  
32       maintenance, nor remove said vegetation in such a manner as to increase the vulnerability of the  
33       watercourse to erosion. The property owner or lessee shall be responsible for maintaining and  
34       stabilizing any physical improvements or alterations to the landscape that are pre-existing or were  
35       performed by the owner for that portion of the watercourse that is within his or her the subject  
36       property lines in order to protect against erosion and degradation of the watercourse originating  
37       or contributed from ~~his or her~~ the subject property. Nothing in this section shall preclude any  
38       owner/lessee from compliance with relevant provisions of the Rhode Island Freshwater Wetlands  
39       Act, R.I.G.L. § 2-1-18 et seq., or other applicable laws or regulations.

40    **§ 14-130. Notification of spills.**

41       Notwithstanding other requirements of law, as soon as any person responsible for a facility or

1 operation, or responsible for emergency response for a facility or operation, has information of any  
2 known or suspected release of materials which are resulting or may result in unauthorized  
3 discharges or pollutants discharging into stormwater, the storm drain system, or waters of the state  
4 from said facility, said person shall take all necessary steps to ensure the discovery, containment,  
5 and cleanup of such release. In the event of such a release of a hazardous material, said person shall  
6 immediately notify emergency response officials of the occurrence via emergency dispatch services  
7 (911). In the event of a release of nonhazardous materials, said person shall notify the authorized  
8 enforcement agency no later than the next business day. Notifications in person or by phone shall  
9 be confirmed by written notice addressed and mailed to the authorized enforcement agency within  
10 five business days of the phone notice. If the discharge of prohibited materials emanates from a  
11 commercial or industrial establishment, the owner or operator of such establishment shall also retain  
12 an on-site written record of the discharge and the actions taken to prevent its recurrence. Such  
13 records shall be retained for at least three years. Nothing in this section shall preclude any  
14 owner/lessee from compliance with relevant provisions of the Rhode Island Clean Water Act,  
15 R.I.G.L. § 46-12-1 et seq., or other applicable laws or regulations.

16 **§ 14-131. Enforcement.**

17 (a) Notice of violation. Whenever the authorized enforcement agency finds that any person has  
18 violated a prohibition or failed to meet a requirement of this article, the authorized  
19 enforcement agency may order compliance by written notice of violation to the responsible  
20 person. Such notice may require without limitation:

- 21 (1) The performance of monitoring, analyses, and reporting;
- 22 (2) The elimination of illicit connections or discharges;
- 23 (3) That violating discharges, practices, or operations shall cease and desist;
- 24 (4) The abatement or remediation of stormwater pollution or contamination hazards  
25 and the restoration of any affected property; and
- 26 (5) Payment of a fine to cover administrative and remediation costs; and
- 27 (6) The implementation of source control or treatment BMPs.

28 (b) If abatement of a violation and/or restoration of affected property is required, the notice shall  
29 set forth a deadline within which such remediation or restoration must be completed. Said  
30 notice shall further advise that, should the violator fail to remediate or restore within the  
31 established deadline, the work will be done by a designated governmental agency or a  
32 contractor, and the expense thereof shall be charged to the violator.

33 **§ 14-132. Appeal of notice of violation.**

34 Any person receiving a notice of violation may appeal the determination of the authorized  
35 enforcement agency. The notice of appeal must be filed with the Municipal Court of the Town of  
36 Cumberland within 14 days from the date of the receipt of the notice of violation. The notice of  
37 appeal shall be in writing and contain a detailed basis upon which the appeal was taken.  
38 Jurisdiction of said court is conferred by  
39 § 11-15(a) of the Town of Cumberland Code of Ordinances.

1    **§ 14-133. Settlements of appeal of notice of violation.**

2       In lieu of enforcement proceedings, penalties, and remedies authorized by this article, the  
3       authorized enforcement agency may enter into a negotiated settlement to resolve the appeal of the  
4       notice of violation. Such settlement may impose upon a violator alternative compensatory actions,  
5       such as storm drain stenciling, attendance at compliance workshops, ~~or creek cleanup, etc~~ as  
6       mutually agreed upon by the authorized enforcement agency and the appellant. If no mutually  
7       agreed upon settlement can be reached, the authorized enforcement agency shall retain the authority  
8       to pursue those enforcement actions defined in § 14-131, enforcement measures defined in § 14-  
9       134, and administrative orders defined in § 14-135.

10   **§ 14-134. Enforcement measures after appeal.**

11       If no timely appeal of a notice of violation has been taken and the violation has not been corrected  
12       pursuant to the requirements set forth in the notice of violation or, in the event of an appeal,  
13       within 30 days of the decision of the municipal authority upholding the decision of the authorized  
14       enforcement agency, then representatives of the authorized enforcement agency shall undertake  
15       all necessary actions, including requesting injunctive relief through the Municipal Court or Superior  
16       Court, to enter upon the subject private property and take any and all measures necessary to abate  
17       the violation and/or restore the property.

18   **§ 14-135. Administrative orders.**

19       The authorized enforcement agency is authorized to issue the following administrative orders at  
20       any time it deems such action appropriate to secure timely and effective compliance with this article  
21       or a discharge permit or order issued pursuant to this article, whether or not any previous  
22       notifications of violation have been provided to the user:

- 23       (1) Cease-and-desist order. The authorized enforcement agency may issue an order to cease and  
24       desist a violation or an action or inaction which threatens a violation and to direct the user to  
25       comply forthwith or to take such appropriate remedial or preventive action as may be needed  
26       to properly address the violation or threatened violation, including halting operations and  
27       terminating the discharge.
- 28       (2) Compliance order. The authorized enforcement agency may issue an order requiring a user to  
29       provide, within a specified period of time, such treatment, pretreatment or discharge control  
30       facilities or related appurtenances as are necessary to correct a violation or to prevent a  
31       threatened violation. A compliance order may also direct that a user provide improved  
32       operation and maintenance of existing discharge facilities, conduct additional self-monitoring  
33       or submit appropriate reports or management plans.
- 34       (3) Show-cause order. The authorized enforcement agency may issue an order to show cause why  
35       a proposed enforcement action should not be taken. Notice shall be served on the user  
36       specifying the time and place for a meeting, the proposed enforcement action and the reasons  
37       for such action, and a request that the user show cause why the proposed enforcement action  
38       should not be taken. Whether or not a duly notified user appears as noticed, additional  
39       enforcement action may be initiated.
- 40       (4) Consent order. The authorized enforcement agency may enter into consent orders, assurances  
41       of voluntary compliance, or other similar documents establishing an agreement with a user.  
42       Such orders shall include specific actions to be taken by the user and specific time frames to  
43       correct a violation or to remove the threat of a violation.

1    **§ 14-136. Cost of abatement of violation.**

2       Within 30 days after abatement of the violation, by or under the direction of the authorized  
3       enforcement agency, the owner of the property will be notified by the authorized enforcement  
4       agency or ~~municipality-Town~~ of the cost of abatement, including administrative costs. If the amount  
5       due is not paid within a timely manner as determined by the enforcement agency or municipality,  
6       the charges shall become a special assessment against the property and shall constitute a lien on  
7       the property for the amount of the assessment. Any person violating any of the provisions of this  
8       section shall become liable to the Town by reason of such violation. The liability shall be paid in  
9       not more than 12 equal payments. Interest at the rate of 12% per annum shall be assessed on the  
10      balance beginning on the 60<sup>th</sup> day following discovery of the violation.

11    **§ 14-137. Injunctive relief.**

12      It shall be unlawful for any person to violate any provision or fail to comply with any of the  
13      requirements of this article. If a person has violated or continues to violate the provisions of this  
14      article, the authorized enforcement agency may petition for a temporary, preliminary or permanent  
15      injunction restraining the person from activities which would create further violations or compelling  
16      the person to perform abatement or remediation of the violation.

17    **§ 14-138. Violations deemed public nuisance.**

18      In addition to the enforcement processes and penalties provided, any condition caused or permitted  
19      to exist in violation of any of the provisions of this article is a threat to public health, safety, and  
20      welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the  
21      violator's expense, and/ or a civil action to abate, enjoin, or otherwise compel the cessation of such  
22      nuisance may be taken.

23    **§ 14-139. Criminal prosecution.**

24      Any person that has violated or continues to violate this article shall be liable to criminal  
25      prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of \$500 per  
26      violation per day and/or imprisonment for a period of time not to exceed 30 days. The authorized  
27      enforcement agency may recover all attorneys' fees, court costs, and other expenses associated with  
28      enforcement of this article, including sampling and monitoring expenses.

29    **§ 14-140. Remedies not exclusive.**

30      The remedies listed in this article are not exclusive of any other remedies available under any  
31      applicable federal, state, or local law and it is within the discretion of the authorized enforcement  
32      agency to seek cumulative remedies.

33    **§ 14-141. Severability**

34      If any section, provision, or portion of this article is judged unconstitutional or invalid by a court,  
35      the remainder of the article shall control.