

# MODEL FLUVIAL EROSION HAZARD AREA OVERLAY DISTRICT

## (A) PURPOSE

The purpose of the Fluvial Erosion Hazard Area Overlay District is to prevent increases in fluvial erosion resulting from uncontrolled development in identified fluvial erosion hazard areas; minimize property loss and damage due to fluvial erosion; prohibit land uses and development in fluvial erosion hazards areas that pose a danger to health and safety; and discourage the acquisition of property that is unsuited for the intended purposes due to fluvial erosion hazards.

## (B) APPLICABILITY

The Fluvial Erosion Hazard (FEH) District shall be superimposed over any other zoning districts. All lands to which the FEH District applies must meet the requirements of the underlying zoning districts and the FEH District. Where there is a conflict between the underlying zoning district and the FEH District, the more restrictive regulation shall apply.

## (C) FLUVIAL EROSION HAZARD DISTRICT BOUNDARIES

These regulations shall apply in all areas in the Town of \_\_\_\_\_ that are identified as Fluvial Erosion Hazard Areas on the current Fluvial Erosion Hazard Area zoning map, on file at the \_\_\_\_\_ Town Office.

## (D) DEFINITIONS

For the purposes of this overlay district, the following definitions shall apply:

**Accessory Structure:** A structure which is: 1) detached from and clearly incidental and subordinate to the principal use of or structure on a lot, 2) located on the same lot as the principal structure or use, and 3) clearly and customarily related to the principal structure or use. For residential uses these include, but may not be limited to garages, garden and tool sheds, playhouses, and in-ground swimming pools which are incidental to the residential use of the premises and not operated for gain.

**Development:** See Land Development.

**Fluvial Erosion Hazard Area:** The land area adjacent to stream channels subject to fluvial erosion processes or other channel adjustments as delineated on the current Fluvial Erosion Hazards Area Map.

**Land Development:** The construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or any mining, excavation or landfill, or any changes in the use of any building or other structure or land or extension of use of land.

**Minor Improvement:** Any repairs, reconstruction, or improvement of a structure, the cost of which is less than fifty (50) percent of the market value of the structure.

**Substantial Improvement:** Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure either: (a) before the improvement or repair is started, or (b) if the structure has been damaged and restored, before the damage occurred. For the purpose of administering flood hazard area regulations, this definition excludes the improvement of a structure to comply with existing municipal or state health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions.

#### **(E) PERMITTED USES**

1. Existing development.
2. The removal of a structure of building in whole or in part.
3. Silvicultural activities not involving the use of structures and conducted in accordance with Vermont Department of Forest and Parks Acceptable Management Practices.
4. Agricultural activities not involving the use of structures and conducted in accordance with Vermont Department of Agriculture Acceptable Agricultural Practices.
5. Minor residential building improvements to existing structures located within a FEH Area that do not result in a decrease of the existing structure setback from any stream.

#### **(F) CONDITIONAL USES**

1. Residential accessory structures that do not result in a decrease of the existing structure setback from any stream.
2. Substantial improvements to existing structures located within a FEH Area that do not result in a decrease of the existing structure setback from any stream.
3. Construction of driveways and/or access roads
4. Buried utility lines, including power, telephone, cable, sewer, and water
5. Excavation and grading of land associated with any other use or development activity

#### **(G) PROHIBITED USES**

The following activities and uses are prohibited in the FEH District:

1. Storage areas or facilities for floatable materials, chemicals, explosives, flammable liquids, or other hazardous or toxic materials, are prohibited within the FEH District.
2. All development within the FEH Area not specifically allowed by subsections (E) and (F).

#### **(H) DISTRICT STANDARDS**

The following standards and procedures apply to all conditional uses within the overlay district.

## 1. Application Submission Requirements

Application for land development listed in subsection (F) shall be reviewed and approved by the Development Review Board as a conditional use under Section \_\_\_\_\_ prior to the issuance of a zoning permit. In addition to the application requirements set forth in Section \_\_\_\_\_, applications for conditional use approval shall include:

- a. A statement of purpose and need of the proposed development
- b. A description of alternatives considered to proposed development, including alternate locations on site, especially outside of the Fluvial Erosion Hazard Area.
- c. General location map including the relative locations of the existing development, the proposed development, the FEH District, and the nearest public road.
- d. Identification of the shortest horizontal distance from the proposed development to the center line (or top of nearest bank if not possible to measure to the center line) of any stream.
- e. Identification of the horizontal distance from the centerline of the nearest public road to the center line (or top of nearest bank if not possible to measure to the center line) of any stream.
- f. Such other information deemed necessary by the Development Review Board for determining the suitability of the site for the proposed development.

## 2. Application Review Procedures

- a. Referral to Vermont Department of Environmental Conservation (DEC): In reviewing an application for a Conditional Use Permit, the Development Review Board will forward application materials to the River Management Program (RMP) of the Vermont DEC for review and comment. The Development Review Board will schedule a hearing in accordance with Section \_\_\_\_\_, although such hearing shall be scheduled for a date not less than thirty (30) days from the submission of the application materials to the RMP. Failure of the RMP to provide comments within thirty (30) days of submission of the application materials by the Zoning Board of Adjustment shall not be cause for the Board to delay the hearing.
- b. Development Standards: The Development Review Board will consider the application and any comments provided by the RMP to ensure that all development within the FEH Overlay District meets the following standards:
  - i. No reasonable alternative location for the proposed development outside of the FEH area is available on the site.
  - ii. The proposed development will not increase the susceptibility of the property, including existing and proposed, to fluvial erosion damage.
  - iii. The proposed development will not increase the potential for damage to other properties due to fluvial erosion.
  - iv. The proposed development will not increase the potential of materials being swept onto other lands or into the stream and causing damage to others from fluvial erosion.

- v. The proposed development will not cause an undue burden on public services and facilities including roads, bridges, culverts, and emergency service providers during and after fluvial erosion events.
- vi. New development may be allowed within the FEH District if based on a review by the RMP it is determined that the proposed development is not located or should not be located within the FEH area and that the new development complies with all other standards in i. through v. above.

**(I) WARNING AND DISCLAIMER OF LIABILITY**

The provisions of this section do not imply that land outside the designated FEH Overlay District is free from fluvial erosion hazards. Further, these provisions shall not create any liability on the part of the town, or any employee thereof, for damages that result from reliance on these regulations or any administrative decision lawfully made hereunder.