

Table 2.16
Fluvial Erosion Hazard Overlay District

Unanimously Approved by the Warren Planning Commission November 12th, 2012

(A) PURPOSE

The purposes of the Fluvial Erosion Hazard (FEH) Area Overlay District are to: 1) Implement related goals, policies, objectives, and recommendations of the current municipal plan, hazard mitigation plan, and supporting river corridor management plans; 2) Avoid and minimize the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures that result from flood-related erosion; 3) Avoid and minimize the undue adverse effect on public services and facilities, including roads, bridges, culverts, and emergency services, during and after fluvial erosion events; 4) Protect mapped fluvial erosion hazard areas that are highly subject to erosion due to naturally occurring stream channel migration and adjustment; 5) Limit new development within fluvial erosion hazard areas to protect public safety and to minimize property loss and damage due to fluvial erosion; and 6) Allow rivers and streams to maintain or re-establish their natural equilibrium, thereby avoid the need for costly and environmentally degrading stream channelization and bank stabilization measures.

(B) APPLICABILITY

- 1) The Fluvial Erosion Hazard Overlay District is depicted on the most current Fluvial Erosion Hazard (FEH) maps on file at the municipal office. These maps, prepared for the Town of in accordance with state-accepted stream geomorphic assessment and mapping protocols, are hereby adopted by reference and declared to be part of these regulations. If uncertainty exists with respect to the location of a district boundary, the location shall be determined by the Administrative Officer [Zoning Administrator] from the map, in consultation with the Vermont River Management Program.
- 2) New development may be allowed within the FEH District if, based on a review by the River Management Program (RMP) of the Vermont Agency of Natural Resources, it is determined that the proposed development is not located or should not be located within the FEH area due to an error in delineating the FEH boundary. A letter of determination from the RMP shall constitute proof of that adjustment.
- 3) The Fluvial Erosion Hazard (FEH) District shall be superimposed over any other zoning districts. Where there is a conflict between the underlying zoning district and the FEH District, the more restrictive regulation shall apply.

(C) PERMITTED USES

The following uses, if so allowed within the underlying zoning district, are allowed in the FEH Area Overlay District upon meeting the District Development Standards in Section (H) and District Application Requirements in Section (I) and upon receiving the issuance of a zoning permit. The zoning permit shall be issued following receipt of written comments from the State, which will be incorporated under associated conditions of approval or reasons for denial.

- 1) Improvements to an existing structure (including rebuilding within an existing structural footprint) that cumulatively do not increase the structural footprint by more than 500 square feet, and do not decrease the structure's existing setback distance from the stream channel, as measured horizontally from the nearest point of the structure to the top of the bank.
- 2) Accessory structures to an existing principal structure that:
 - a) In total have a combined footprint area of no more than 500 square feet.
 - b) At a minimum, do not decrease the setback distance from the stream channel established by existing structures on the lot.
 - c) Are located within 50 feet of the existing primary building.
- 3) Recreational vehicles.

(D) PROHIBITED USES

The following uses and activities are specifically prohibited within the FEH Area Overlay District:

- 1) All new development, including new structures, dwellings, septic systems, and other infrastructure and utilities, except as specified under Sections (C), (E), and (F).
- 2) Junk or salvage yards.

- 3) The storage of floatable materials, chemicals, fertilizers, pesticides, explosives, flammable liquids, and other toxic or hazardous materials.
- 4) Fill, except as necessary to elevate existing structures above base flood elevation.

(E) CONDITIONAL USES

The following uses, if allowed within the underlying zoning district, are also allowed in the FEH Area Overlay District subject to conditional use review and approval by the Development Review Board prior to the issuance of a zoning permit:

- 1) Fill, only to elevate existing structures above base flood elevation as required within Special Flood Hazard Areas or as otherwise authorized by the State.
- 2) Infrastructure and utility improvements necessary to serve existing structures and uses that do not decrease the structure's existing setback distance from the stream channel, as measured horizontally from the nearest point of the structure to the top of bank.
- 3) At-grade parking for existing structures and uses.
- 4) New or replacement storage tanks for existing structures.
- 5) Grading and excavation.
- 6) Stream crossings and stream channel management activities, as authorized by the State.
- 7) Improvements to existing driveways, roads, bridges and culverts.
- 8) Public facilities which are functionally dependent upon their proximity to water.
- 9) New driveways and access roads.
- 10) Improvements to existing flood and stormwater management facilities, as authorized by the State River Management Program [RMP].
- 11) Outdoor recreation facilities, excluding structures.

(F) EXEMPT ACTIVITIES

The following activities are exempt from the requirements of this overlay district:

- 1) The removal of a structure of building in whole or in part.
- 2) Normal maintenance and repair of existing utilities and infrastructure (e.g., water and wastewater systems, driveways, roads, bridges and culverts, water impounded systems for the primary purpose of snow making and stormwater drainage systems).
- 3) Normal maintenance and repair of existing structures that involve no additions, expansions or relocations.
- 4) Lawns and gardens located outside of any required riparian buffer area, excluding grading, fill, terracing and structures.
- 5) Forestry (silviculture) activities, excluding structures, conducted in accordance with Vermont Department of Forests, Parks and Recreation Accepted Management Practices (AMPs).
- 6) Agricultural activities conducted in accordance with Vermont Agency of Agriculture, Food, and Markets Accepted Agricultural Practices (AAPs); however, no new or expanded farm structures, or manure, fertilizer or pesticide storage structures shall be constructed within the FEH overlay district, in accordance

with Section 4.07 the AAPs. Prior to the construction of any farm structure, written notification, including a sketch of the proposed structure and any required setbacks, must be filed with the municipality.

- 7) Power generation, transmission and telecommunications facilities regulated by the Vermont Public Service Board under 30 V.S.A. §248.

(G) DISTRICT DEVELOPMENT STANDARDS

- 1) All development within this district, unless specifically exempt from regulation under Section (F) above, shall meet the following standards, as applicable to the proposed use or activity:
 - a) Improvements to existing structures shall not decrease the distance between the structure and the stream channel as measured horizontally from the top of bank.
 - b) Fill is allowed within this district only as required to elevate existing structures above base flood elevation, or as otherwise authorized by the State in association with stream crossings, channel management activities, or other allowed activities within this District. Fill shall not decrease the existing distance between the structure and the top of bank.
 - c) New stream crossings by transportation and utility corridors shall be allowed only if it is determined by the Development Review Board that a new crossing is justified for routing, public or emergency vehicle access, and that there are no other viable routes or locations for a crossing outside the FER Overlay District or within an existing utility or road crossing. Stream crossings shall be located and designed in accordance with state guidelines, and to minimize fluvial erosion and flooding hazards both up- and downstream from the crossing area.
 - d) Bridges and culverts shall be located, designed, sized, and regularly inspected and maintained to minimize erosion as well as flooding hazards.
 - e) In this District all new and/or replaced utility lines, including water, sewer, power, telephone, and cable lines, shall be buried.
 - f) Recreational vehicles on the site will be fully licensed and ready for highway use.
- 2) In addition to other requirements for conditional uses under Section (E) of these regulations, the DRB , in consultation with the River Management Program (RMP), must find that conditional uses within this district shall not:
 - a) Increase the susceptibility of the property or other properties to fluvial erosion damage.
 - b) Increase the potential for materials to be swept into the stream channel or onto other land and cause damage from fluvial erosion.

(H) APPLICATION REQUIREMENTS

- 1) In addition to other required application materials and fees, applications for development within the FEH Overlay District shall include the following:
 - a) A project description, including the type and purpose of development, a description of alternatives considered to proposed development, including alternate locations on site, especially outside of the Fluvial Erosion Hazard Area, and why it must be located within, rather than outside of, the FEH Overlay District.
 - b) A general location map showing the location of the proposed development in relation to existing development, the FEH District boundaries, and the nearest public road.
 - c) A site plan of the property, drawn to scale, that shows all water bodies, the district boundaries; pre- and post-development grades and drainage; the location of existing structures, infrastructure, utilities and rights-of-way; and the shortest horizontal distance of the proposed development to the center line (or measured to the top of the nearest bank if not possible to measure to the center line) of any of the mapped stream channels.

- d) A state project review sheet that identifies required state permits and approvals.
 - 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) Other information as deemed necessary to determine project conformance with district requirements. This may include an impact or other assessment of the site, prepared by a qualified professional.
- 2) The Administrative Officer [Zoning Administrator] shall refer complete applications for all development proposed within the FEH Overlay District to the RMP at the Vermont Agency of Natural Resources. No municipal permit or approval shall be issued until comments have been received from the State, or 30 days have elapsed from the date of referral, whichever is sooner.

(I) DECISIONS

Agency comments shall be incorporated as applicable in municipal findings and determinations. The Development Review Board (DRB) may recess the proceedings on any application pending submission of additional information.

(J) CERTIFICATES OF OCCUPANCY

Prior to the issuance of a certificate of occupancy by the Administrative Officer [Zoning Administrator] for development within this district, the applicant shall document that development has been completed as approved by the municipality, and that all applicable municipal and state permits have been obtained.

(K) WARNING AND DISCLAIMER OF LIABILITY

This Overlay District has been established based on the best available scientific data available to the Agency of Natural Resources (ANR) as well as an overall on-site analysis performed at the river's edge by the ANR. In the event an individual property owner presents engineering evidence of bedrock not visible from the river's edge which establishes the evidence of a valley wall not previously defined or recorded by the ANR, the property owner may request further review of the limits as defined by this Overlay District by the Planning Commission. Individual property review and possible subsequent boundary adjustments will be treated as administrative adjustments only. All engineering evidence must be certified by a licensed professional civil engineer and be further reviewed and certified by the River Management Program at the Vermont Department of Natural Resources under the requirements of Article 2.16, Section H of the Town of Warren Land Use & Development Regulations, as amended.