

# **Table 3.22**

## **Fluvial Erosion Hazard Area Overlay District (FEH)**

### **Adopted by Select Board on April 27, 2009**

#### **(A) PURPOSE**

The purpose of the Fluvial Erosion Hazard Area Overlay District (FEH District) is to prevent increases in fluvial (river) erosion resulting from development in identified fluvial erosion hazard areas; minimize property loss and damage due to fluvial erosion; and prohibit land uses and development in fluvial erosion hazards areas that pose a danger to health and safety.

#### **(B) DEFINITIONS**

For the purposes of this FEH District, the following definition shall apply:

**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 Hazard (FEH) Area zoning map.

#### **(C) APPLICABILITY**

The Fluvial Erosion Hazard Area Overlay District shall be superimposed over any other zoning districts. All lands to which the FEH District applies shall 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.

#### **(D) FLUVIAL EROSION HAZARD OVERLAY DISTRICT BOUNDARIES**

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

#### **(E) ALLOWED USES - WITH ZONING PERMIT**

The following uses are allowed in the FEH District with the approval of the Administrative Officer in accordance with Section 10.3:

1. The removal of a structure in whole or in part.
2. Improvements to existing single family or two family residential structures and accessory structures (single family homes and duplexes and their accessory structures) that: i) do not result in a decrease of the existing structure setback from any stream; and ii) do not expand the footprint of the existing structure more than 500 sq. ft.

#### **(F) ALLOWED USES -VERMONT DEPARTMENT OF ENVIRONMENTAL CONSERVATION RIVER MANAGEMENT PROGRAM'S (RMP) REVIEW REQUIRED**

The following uses may be allowed in the FEH District with the approval of the Administrative Officer after referral to the RMP for review and comment in accordance with this Table 3.22:

1. Improvements to existing structures (other than those allowed in subsection E) that do not result in a decrease of the existing structure setback from any stream.
2. New residential accessory structures provided that the setback for such accessory structures is the same or greater than the existing residential primary structure setback from any stream.
3. Construction of driveways and/or access roads.
4. Buried utilities, including power, telephone, cable, sewer, and water.
5. Excavation, filling and/or grading of land.

#### **(G) EXEMPT USES**

In accordance with Section 10.2, the following uses do not require a zoning permit:

1. Silvicultural activities not involving the use of structures and conducted in accordance with Vermont Department of Forest and Parks Acceptable Management Practices.

2. Agricultural activities not involving the use of structures and conducted in accordance with Vermont Department of Agriculture Acceptable Agricultural Practices.

#### **(H) 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.
2. All development not specifically allowed by subsections (E), (F) and (G).

#### **(I) DISTRICT REQUIREMENTS**

The following standards and procedures apply to all uses requiring RMP review within the FEH District:

1. Application Submission Requirements:

In addition to the application requirements set forth in Section 10.3, applications for uses requiring RMP approval within the FEH District 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 RMP for determining the suitability of the site for the proposed development.
2. Application Review Procedures - Referral to the RMP:  
Within ten days after a complete application is submitted to the Administrative Officer, a copy of the application shall be submitted by the Administrative Officer to the RMP for review and comment. The RMP shall have 30 days from the date the application is submitted to the RMP to provide written comments to the Administrative Officer. Within 45 days after a complete application is submitted, the Administrative Officer shall approve, approve with conditions, or deny the application based on compliance with this Table 3.22 and the written comments (if any) of the RMP.
  3. Appeal to DRB of Denial of Application:
    - a. Appeals of any denial by the Administrative Officer shall be made to the Development Review Board pursuant to Section 10.5
    - b. Appeal Standards: The Development Review Board may approve an application for proposed development of an allowed use within the FEH District if, after consideration of the Administrative Officer's denial, testimony submitted by the applicant, and any comments provided by the RMP, the Development Review Board finds the proposed development within the FEH District conforms with all of 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 improvements, 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 or after fluvial erosion events.
- c. An applicant appealing a denial of an application shall submit testimony from a Vermont Licensed Engineer, or similarly qualified expert, that the proposed development conforms with all of the standards set forth in this section based upon the expert's personal observation and study.