

## Proposed revisions to the Marlboro Zoning Regulations

### Changes made to 10/26/2016 Draft since December 6, 2016, Public Hearing

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#### KEY TO PROPOSED REVISIONS:

**Text in gray highlight:** Proposed additions or changes.

~~Strikethrough text:~~ Proposed deletions.

***Text in italics, within heavy box:*** **Changes made since the December 6, 2016, PC public hearing.**

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*Changes made since the December 6, 2016, public hearing are in the following Sections:*

Section 343  
Section 345 & 345.1  
Section 353  
Section 355 & 355.1  
Section 382  
Section 383.1.a  
Section 383.1.b  
Section 383.2  
Section 383.3.a  
Section 384 - Summary Table  
Section 384.1  
Section 384.2.f  
Section 384.3c  
Section 390  
Definitions: Mast Stand, Silviculture, Vernal Pool

Proposed Regulations begin on next page >>

that require a great deal of space to meet their daily life needs, including food and mating needs. Protecting wildlife road crossings will aid in preserving wildlife travel ways and the connections between wildlife habitats. The broader ecological value of connecting habitats is to facilitate travel between large tracts of habitat, thereby reducing the harmful effects of habitat fragmentation and population isolation. Linking small or otherwise isolated habitat patches reduces the risk of local population extinctions by enabling migration, reproduction, and exchange of genes for many plant and animal species.

**Section 341 - Establishment of District Boundaries**

The Town of Marlboro has identified a number of wildlife road crossings as being critically threatened resources. The Wildlife Road Crossing Overlay District includes all lands identified as Wildlife Road Crossings on the Zoning Map - 2 of 4, Wildlife Overlays, adopted as part of these Regulations. All Wildlife Road Crossings extend 500 feet back from both sides of the road in the crossing areas. It is not the Town's intention to prevent development in these areas but rather to require that any such development will minimize impacts on sensitive wildlife resources and habitat.

Where the boundary of the Wildlife Road Crossing Overlay District divides a lot of record such that part of the lot falls within the Wildlife Road Crossing Overlay District and part of the lot falls outside of it, the provisions of this Article shall apply to only that portion of the lot that falls within the Wildlife Road Crossing Overlay District. This supersedes Section 411 of these Regulations.

**Section 342 - Use Regulations and Land Development Subject to Review**

The following uses and land development activities are subject to review under the Wildlife Road Crossing Overlay District:

1. The Wildlife Road Crossing Overlay District Standards (Section 344) shall apply to all uses in this district with the exception of "Exempted Uses" (Section 343). These standards shall be applied concurrently with the standards in the underlying district. In all cases, the more restrictive requirement(s) shall apply.
2. Within the Wildlife Road Crossing Overlay District, all changes of use and new construction shall require a Conditional Use Permit, including Conservation Commission review in accordance with Section 345.

**Section 343 - Exemptions**

The following development activities are exempted from review under the Wildlife Road Crossing Overlay District:

1. *Repairs or* alterations to a structure existing prior to the effective date of these Regulations that do not expand the total *building footprint floor area* of the structure by greater than 50% of the *building footprint floor area*.
2. *Repairs or minor alterations to non-structural items (including but not limited to the following examples: septic systems, wells, driveways, patios, utility lines, fences, gardens, yard areas, ponds, etc.) existing prior to the effective date of these Regulations.*
3. *A project required to comply with existing state or local health, sanitary, or safety code specifications that are solely necessary to assure safe living conditions.*
4. New *small* accessory structures *(see Section 202.4.a) the closest point of which is that are located* not more than 25 feet from a principal structure.
5. Farming, silvaculture, or forestry operations. See definitions for all three categories.

**Section 344 - Standards and Special Requirements for Development**

All development within the Wildlife Road Crossing Overlay District not exempted under Section 343 shall meet the following standards. In granting approval of a Conditional Use Permit, the Development Review Board may consider and impose appropriate conditions to ensure that the development complies with these standards.

Conditions may be imposed with regard to development siting (road location, building coverage and envelopes), density, setbacks, land uses, and the intensity and operation of the use.

1. Where the boundary of the District divides the lot such that part lies within the Wildlife Road Crossing Overlay District, development shall be located on that part of the lot not within the Wildlife Crossing Overlay District if a practical (i.e., capable of being developed) development site is available.
2. Development shall be located as far away from the center of the Wildlife Road Crossing as possible, unless wildlife travel conditions or paths within an individual Wildlife Road Crossing dictate otherwise (as determined by the Marlboro Conservation Commission, Vermont Fish & Wildlife Department, or other qualified professionals or sources). However, if development exists in a Wildlife Road Crossing, new development may be allowed in close proximity to the existing development if the result is less disruptive than locating new development close to a Wildlife Road Crossing. The goal is to keep the greatest contiguous land area within a Wildlife Road Crossing undisturbed to facilitate wildlife travel.
3. Development shall be designed to minimize the disruption and fragmentation of the identified crossing to ensure that the development will not prevent the continued use by wildlife species identified as being dependent on the crossing to travel between areas of core habitat. To this end, development shall:
  - a. Be designed to minimize forest fragmentation through careful placement of individual structures and clustering of multiple structures as close to other development sites and disturbed areas as is practical given the development suitability of the site;
  - b. Be located within defined development envelope(s) as shown on the Site Plan, to ensure that clearing, accessory structures, and other site development is limited to a defined area;
  - c. Be designed so that the extension of roads, driveways, and infrastructure is minimized and, where practical, shared by multiple uses;
  - d. Avoid any placement of fences, walls or substantial changes in grade that would disrupt the movement of wildlife within the crossing. Where fences are necessary, they shall be no higher than 4.5 feet and shall have at least 16 inches of clearance between the lowest horizontal part of the fence and the ground.
  - e. Avoid bright exterior lighting within or adjacent to the WRC. Any necessary exterior lighting shall be as dim as possible and directed downward and away from the center of the WRC, especially avoiding illumination that shines horizontally.
4. In the event that a distinct habitat supporting one or more specific species is located on the site (e.g., deer wintering area, mast stands, vernal pool), a naturally vegetated buffer that is adequate to protect that habitat from the impacts of development and associated activities may be required as a condition of approval.
5. The portions of parcels located outside of development envelopes shall remain naturally vegetated to facilitate wildlife travel.

#### **Section 345 - Consultation with the Marlboro Conservation Commission**

Before issuing a Conditional Use Permit in the Wildlife Road Crossing Overlay District, the Development Review Board shall consult with the Marlboro Conservation Commission and receive input on the proposed project's adherence to the district standards, as ~~follows:~~ *listed in the following items 1-2 of this Section. It is strongly recommended that anyone contemplating work within a Wildlife Road Crossing Overlay District contact the Marlboro Conservation Commission at the earliest possible time to informally review the proposed work. It is not necessary to have filed any applications with the town in order to request Conservation Commission input.*

*Prior to the Conservation Commission beginning their review of the proposed work, the applicant shall have the major components of the work staked out on the ground.*

1. If proposed development is located within the Wildlife Habitat Overlay District, upon receipt of a completed Conditional Use Permit application acceptable to the Zoning Administrator, the Zoning Administrator shall immediately notify the Conservation Commission of receipt of the application and shall provide the Conservation Commission with a copy of the application. The Conservation Commission shall complete its review of the application (paragraph 2., below) within 21 days of the date of receipt of the application **or**

*within 21 days of receiving notification that major components have been staked out, whichever comes*

*later*, and shall submit a report of its review (paragraph 2.d. below) to the Development Review Board and the applicant a minimum of five (5) days before the hearing on the application. Failure to so act within the above 21 day period shall be deemed approval by the Conservation Commission.

2. The Conservation Commission shall review the application to determine whether it is in accord with the standards in Section 344. To accomplish this, the Conservation Commission shall:
  - a. Determine what natural resources are present on the project site (for example, rare, threatened or endangered species, significant wildlife habitat, streams, wetlands, vernal pools, etc.).
  - b. Evaluate whether the proposed development is in accord with all standards set forth in Section 344. This may include meeting as a Commission, a site visit (with the property owner when possible), meetings and/or discussions with the landowner, map/document review, and consultation with the Vermont Fish & Wildlife Department or other qualified professionals.
  - c. Meet with the applicant at his or her option to review the comments and recommendations, preferably before the hearing.
  - d. Present a written report to the Development Review Board stating clearly how the proposed land development meets or fails to meet the standards set forth in Section 344. The report shall include all comments and recommendations relative to achieving compliance with the relevant standards. The report shall be submitted to the Development Review Board and the applicant a minimum of five (5) days before the hearing on the project.

#### **Section 346 - Review and Decision by the Development Review Board**

1. As part of the public hearing under Section 203.3.a. Conditional Use Permit-Application, the Development Review Board shall review and consider the Conservation Commission's recommendations, along with other application materials as required by Section 202 - Zoning Permits and/or Section 204 - Site Plan Review as applicable, and testimony of the applicant and other interested persons.
2. The applicant shall have the primary responsibility of presenting the application to the Development Review Board and shall have the burden of proof to establish that the proposed development complies with all applicable standards.
3. Giving due weight to the recommendations of the Conservation Commission, the Development Review Board shall determine whether the proposed development is in compliance with all standards set forth in Section 203 and Section 344 and issue a written decision granting or denying the application. The decision may be issued with or without conditions, pursuant to Section 203. The Development Review Board shall render its decision within 45 days from the adjournment of the final public hearing, per Section 203.

#### **Section 350 - Wildlife Habitat Overlay District (WH)**

*District Description, Authority and Purpose:* Pursuant to Section 4414(2) of the Act, there is hereby established a Wildlife Habitat Overlay District for the Town of Marlboro. The purpose of establishing a Wildlife Habitat Overlay District is to encourage landowners to locate structures and development near roads rather than extending development into core forest blocks, to guide development in a manner that preserves large tracts of undeveloped interior land across property lines, and to thus accommodate the life requirements and movement of wildlife across a broad landscape. The ecological value of maintaining large areas of connected habitat is to reduce the harmful effects of habitat fragmentation and population isolation and to reduce the risk of local population extinctions by enabling migration, reproduction, and exchange of genes for many plant and animal species. The prevention of forest fragmentation is particularly important for wide-ranging animals, such as bobcats, moose, and black bears, or for animals that require a great deal of space to meet their daily life needs, including food and mating needs.

**Section 351 - Establishment of District Boundaries**

The Wildlife Habitat Overlay District includes all areas more than 500 feet from a State Highway or Class 2, or 3 town road. Areas within the Wildlife Habitat Overlay District are shown as Wildlife Habitat Overlay on the Zoning Map - 2 of 4, Wildlife Overlays.

Where the boundary of the Wildlife Habitat Overlay District divides a lot of record such that part of the lot falls within the Wildlife Habitat Overlay District and part of the lot falls outside of it, the provisions of this Article shall apply to only that portion of the lot that falls within the Wildlife Habitat Overlay District. This supersedes Section 411 of these Regulations.

**Section 352 - Use Regulations and Development Subject to Review**

The following uses and development activities are subject to review under the Wildlife Habitat Overlay District:

1. The Wildlife Habitat Overlay District Standards (Section 354) shall apply to all development activities and construction listed under subparagraph 2, following, in this district with the exception of those listed under "Exemptions" (Section 353). These standards shall be applied concurrently with the standards in the underlying district. In all cases, the more restrictive requirement(s) shall apply.
2. Within the Wildlife Habitat Overlay District, the following development activities shall require a Conditional Use Permit, including Conservation Commission review (Section 355): the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure; any mining, excavation, or land fill; and any change in the use of any building or other structure, with the exception of those listed under "Exemptions" (Section 353).

**Section 353 - Exemptions**

The following development activities are exempted from review under the Wildlife Habitat Overlay District:

1. *Repairs or* alterations to a structure existing prior to the effective date of these Regulations that do not expand the total *building footprint floor area* of the structure by greater than 50% of the *building footprint floor area*.
2. *Repairs or minor alterations to non-structural items (including but not limited to the following examples: septic systems, wells, driveways, patios, utility lines, fences, gardens, yard areas, ponds, etc.) existing prior to the effective date of these Regulations.*
3. *A project required to comply with existing state or local health, sanitary, or safety code specifications that are solely necessary to assure safe living conditions.*
4. New *small* accessory structures *(see Section 202.4.a) the closest point of which is that are located* not more than 25 feet from a principal structure.
5. Farming, silvaculture, or forestry operations. See definitions for all three categories.
6. Primitive camps.
7. Sugar houses.

**Section 354 - Standards and Special Requirements for Development Activities in the Wildlife Habitat Overlay District**

All development within the Wildlife Habitat Overlay District not exempted under Section 353 shall meet the following standards. In granting approval of a Conditional Use Permit, the Development Review Board may consider and impose appropriate conditions to ensure that the development complies with these standards. Conditions may be imposed with regard to development siting (road location, building coverage and envelopes), density, setbacks, land uses and the intensity and operation of the use.

1. Development should be located as close as possible to the State Highway or Class 2, or 3 town road unless a less disruptive option is available, such as locating development in close proximity to existing development

- in the Wildlife Habitat Overlay District. Development should be located to leave the greatest contiguous land area within the District as undisturbed forest to provide wildlife habitat.
2. Development shall be designed to minimize forest fragmentation and disruption. To this end, development shall:
    - a. Be designed to minimize forest fragmentation and minimize penetration into large forest blocks through careful placement of individual structures and clustering of multiple structures as close to other development sites and disturbed areas as is practical given the development suitability of the site.
    - b. Be located within defined development envelope(s) as shown on the Site Plan to ensure that clearing, accessory structures, and other site development is limited to a defined area;
    - c. Be designed so that the extension of roads, driveways, utility corridors, and infrastructure is minimized and, where practical, shared by multiple uses. Where sites include linear features such as existing roads, tree lines, stone walls, and/or fence lines, consider following these features to minimize the fragmentation of forestland parcels.
    - d. Avoid bright exterior lighting or noise-creating equipment. Any necessary exterior lighting shall be as dim as possible and directed downward, especially avoiding illumination that shines horizontally, and, if adjacent to a WRC, shall be directed away from the WRC.
    - e. If immediately adjacent to a Wildlife Road Crossing, be designed, sited, and undertaken in a manner compatible with the continued viability of the adjacent Wildlife Road Crossing and the wildlife corridors that connect to the crossing.
    - f. Be configured, if forestland is being subdivided, to allow for ongoing forest management of the resultant parcels after subdivision, to the extent feasible. Lot boundaries and development envelopes shall be laid out to avoid the unnecessary fragmentation of productive timber stands. Provision for forest management access (e.g., existing or potential timber landing areas and logging roads) shall be a consideration of the final plan if active management is taking place.
    - g. Avoid disruptions of connectivity between wildlife road crossings.
  3. A naturally vegetated buffer that is adequate to protect the following habitats from the impacts of development and associated activities may be required as a condition of approval. Buffer standards shall be as follows:
    - a. From rivers, streams, lakes, ponds, and wetlands: 300 feet
    - b. From deer wintering areas: 300 feet and a state biologist review
    - c. From mast stands: 1,320 feet and a state biologist review
    - d. From vernal pools: 600 feet

If the strict application of adequate buffer standard for a particular type of habitat would deny a landowner a reasonable use of their property, the Development Review Board may allow the minimum encroachment into the buffer area needed to allow for the reasonable use of the parcel. In allowing such an encroachment, the Development Review Board may place conditions on the use or management of the area of the parcel within the buffer to maintain ecological values.

### Section 355 - Consultation with the Marlboro Conservation Commission

Before issuing a Conditional Use Permit in the Wildlife Habitat Overlay District, the Development Review Board shall consult with the Marlboro Conservation Commission and receive input on the proposed project's adherence to the district standards, as follows: ~~listed in the following items 1-2 of this Section. It is strongly recommended that anyone contemplating work within a Wildlife Habitat Overlay District contact the Marlboro Conservation Commission at the earliest possible time to informally review the proposed work. It is not necessary to have filed any applications with the town in order to request Conservation Commission input.~~

*Prior to the Conservation Commission beginning their review of the proposed work, the applicant shall have the major components of the work staked out on the ground.*

1. If proposed development is located within the Wildlife Habitat Overlay District, upon receipt of a completed

Conditional Use Permit application acceptable to the Zoning Administrator, the Zoning Administrator shall immediately notify the Conservation Commission of receipt of the application and shall provide the Conservation Commission with a copy of the application. The Conservation Commission shall complete its review of the application (paragraph 2., below) within 21 days of the date of receipt of the application **or within 21 days of receiving notification that major components have been staked out, whichever comes later**, and shall submit a report of its review (paragraph 2.d. below) to the Development Review Board and the applicant a minimum of five (5) days before the hearing on the application. Failure to so act within the above 21 day period shall be deemed approval by the Conservation Commission.

2. The Conservation Commission shall review the application to determine whether it is in accord with the standards in Section 354. To accomplish this, the Conservation Commission shall:
  - a. Determine what natural resources are present on the project site (for example, rare, threatened or endangered species, significant wildlife habitat, streams, wetlands, vernal pools features, etc.).
  - b. Evaluate whether the proposed development is in accord with all standards set forth in Section 354. This may include meeting as a Commission, a site visit (with the property owner when possible), meetings and/or discussions with the landowner, map/document review, and consultation with the Vermont Fish & Wildlife Department or other qualified professionals.
  - c. Meet with the applicant at his or her option to review the comments and recommendations, preferably before the hearing.
  - d. Present a written report to the Development Review Board stating clearly how the proposed development meets or fails to meet the standards set forth in Section 354. The report shall include all comments and recommendations relative to achieving compliance with the relevant standards. The report shall be submitted to the Development Review Board and the applicant a minimum of five (5) days before the hearing on the project.

#### **Section 356 - Review and Decision by the Development Review Board**

1. As part of the public hearing under Section 203.3.a. Conditional Use Permit-Application, the Development Review Board shall review and consider the Conservation Commission's recommendations, along with other application materials as required by Section 202 - Zoning Permits and/or Section 204 - Site Plan Review as applicable, and testimony of the applicant and other interested persons.
2. The applicant shall have the primary responsibility of presenting the application to the Development Review Board and shall have the burden of proof to establish that the proposed development complies with all applicable standards.
3. Giving due weight to the recommendations of the Conservation Commission, the Development Review Board shall determine whether the proposed development is in compliance with all standards set forth in Section 203 and Section 354 and issue a written decision granting or denying the application. The decision may be issued with or without conditions, pursuant to Section 203. The Development Review Board shall render its decision within 45 days from the adjournment of the final public hearing, per Section 203.
4. In the event that seasonal site conditions (e.g., heavy snow cover) prevent the Development Review Board and/or the Conservation Commission from completing their review and determining what natural resources are present on the project site, the Development Review Board shall recess the hearing until such time as the site analysis may be completed.

#### **Section 360 - Shoreland Overlay District (SL)** ~~Moved from: ARTICLE VI - SHORE LAND AREA OVERLAY REGULATIONS~~

##### ~~Section 600 - Statutory Authorization~~

*District Description, Authority and Purpose:* As provided for in the Act and to effect the purpose of Chapter 49 of Title 10 and to promote the public health, safety and general welfare in accord with criteria set forth in Sections 1423 and 1425 thereof, there are hereby established Shoreland zoning regulations for the Town of Marlboro.

4. Manage all Flood Hazard areas designated pursuant to 10 V.S.A. Chapter 32 § 753, the municipal hazard mitigation plan; and make the Town of Marlboro, its citizens, and businesses eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds as may be available.
5. Other Provisions
  - a. Precedence of these Flood and Fluvial Erosion Hazard Regulations:

The provisions of these Flood and Fluvial Erosion Hazard Regulations shall not in any way impair or remove the necessity of compliance with any other local, state, or federal laws or regulations. Where this Article imposes a greater restriction, the provisions of this Section shall take precedence.
  - b. Validity and Severability:

If any portion of these regulations is held unconstitutional or invalid by a competent court, the remainder of these regulations shall not be affected.
  - c. Warning of Disclaimer of Liability:

These regulations do not imply that land outside of the Flood and Fluvial Erosion Hazard Area Overlay District will be free from flood or erosion damages. These Flood and Fluvial Erosion Hazard Regulations shall not create liability on the part of the Town of Marlboro, or any municipal official or employee thereof, for any flood or erosion damages that result from reliance on these Flood and Fluvial Erosion Hazard Regulations, or any administrative decision lawfully made hereunder.

### **Section 382 - Applicability**

The Flood and Fluvial Erosion Hazard Area (FFEHA) Overlay District shall be superimposed over any other zoning districts. All lands to which the FFEHA Overlay District applies shall meet the requirements of the underlying zoning district(s) and the FFEHA Overlay District. Where there is a conflict between the underlying zoning or other overlay districts and the FFEHA Overlay District, compliance with **the most restrictive** guidelines shall be required for land development under these Regulations.

### **Section 383 - Flood and Fluvial Erosion Hazard Area Overlay District**

District Description and Authority: Pursuant to Section 4414(2) of the Act, there is hereby established a Flood and Fluvial Erosion Hazard Area Overlay District for the Town of Marlboro.

1. The Flood and Fluvial Erosion Hazard Area (FFEHA) Overlay District.

The FFEHA Overlay District shall consist of the River Corridors, Special Flood Hazard Areas, and Town-Identified Fluvial Erosion Areas in the Town of Marlboro, Vermont as described below. The FFEHA Overlay District includes:

  - a. **River Corridors**, shown on the Zoning Map - 3 of 4, Flood and Fluvial Erosion Hazard Overlays, and/or shown on maps published by the Vermont Agency of Natural Resources, specifically the Statewide River Corridor (SRC) map layer on the Vermont Natural Resource Atlas (<http://tinycloud.com/vt-floodmap>), when published (<http://anrmaps.vermont.gov/websites/anra5/>), and refinements to that data based on field-based assessments, which are hereby adopted by reference and declared to be part of these Regulations. Where River Corridors are not mapped **by ANR**, the River Corridor shall be defined as the area measured as seventy-five (75) feet from the top of each stream bank or slope, and the Development Standards in 612.c shall apply. See Sections 370-373 for additional requirements along River Corridors.
  - b. **Special Flood Hazard Areas** (SFHA) shown on the Zoning Map - 3 of 4, Flood and Fluvial Erosion Hazard Overlays, and/or shown in and on the most current Flood Insurance Rate Maps **dated September 28, 2007** (FIRMs) and Flood Insurance Studies (FIS) and maps published by the Department of Homeland Security, Federal Emergency Management Agency (FEMA), National Flood Insurance Program, as provided by the Secretary of the Vermont Agency of Natural Resources pursuant to 10 V.S.A. Chapter 32 § 753, which are hereby adopted by reference and declared to be part of these

- Regulations. Digital Flood Insurance Rate Maps may be found at the Vermont Agency of Natural Resources website: <http://tinyurl.com/vt-floodmap>; <http://anrmaps.vermont.gov/websites/anra5/>.
- c. Town-Identified Fluvial Erosion Areas shown on the Zoning Map - 3 of 4, Flood and Fluvial Erosion Hazard Overlays, are hereby adopted and declared to be a part of the FFEHA Overlay District. These Town-Identified Fluvial Erosion Areas were designated using the best available topographic data and locally derived information such as fluvial flooding on record, and historic high water marks.
  - d. The Zoning Map - 3 of 4, Flood and Fluvial Erosion Hazard Overlays, is based on a combination of the current above map references and on-ground experience by town officials after flooding events. These regulations shall apply to the FFEHA in Marlboro, and are the minimum standards that must be met before meeting the additional standards applicable in the underlying district.
2. Base Flood Elevations ~~and Floodway limits~~ in Special Flood Hazard Areas.
- Where available, Base Flood Elevations ~~and Floodway limits~~ provided by the National Flood Insurance Program and in the Flood Insurance Study and accompanying maps shall be used to administer and enforce these Regulations. In Special Flood Hazard Areas where Base Flood Elevations ~~and/or Floodway limits~~ *have not* been provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps, it is the applicant's responsibility to develop the necessary data. Where available, the applicant shall use data provided by FEMA, or State or Federal agencies.
3. Interpretation.
- The information presented on any maps, or contained in any studies, adopted by reference, is presumed accurate.
- a. If uncertainty exists with respect to the boundaries of the Special Flood Hazard Area ~~or the Floodway~~, the location of the boundary shall be determined by the Zoning Administrator. If the applicant disagrees with the determination made by the Zoning Administrator, *an appeal may be made to the DRB.* A Letter of Map Amendment from FEMA shall constitute final determination.
  - b. If uncertainty exists with respect to the boundaries of the River Corridor, the location of the boundary shall be determined by the Zoning Administrator. If the applicant disagrees with the determination made by the Zoning Administrator, he/she may appeal to the Development Review Board. A letter of determination from the Vermont Agency of Natural Resources shall constitute final determination.
  - c. If uncertainty exists with respect to the boundaries of the Town-identified Fluvial Erosion Area, the location of the boundary shall be determined by the Zoning Administrator. If the applicant disagrees with the determination, he/she may appeal to the Development Review Board. The burden of proof shall be on the appellant. A letter of determination from a third party licensed surveyor or engineer shall constitute proof.

#### **Section 384 - Development Review in the Flood and Fluvial Erosion Hazard Area Overlay District**

Permitted uses in the FFEHA Overlay District are allowed with the approval of the Zoning Administrator provided that any repair, relocation, or enlargement is required for the continued economically feasible operation of a nonresidential enterprise and will not increase flood levels, risk of other hazards in the area, or threaten health, safety and welfare of the public or other property owners. The areas within the FFEHA Overlay District are not appropriate sites for new structures nor for development that increases the elevation of the base flood or obstructs the ability of streams to establish and maintain geomorphic equilibrium.

Summary Table: Development in the Flood and Fluvial Erosion Hazard Area Overlay District				
#	Development P Permitted C Conditional Use Permit X Prohibited E Exempted	Hazard Area		
		Special Flood Hazard Area	Town-identified Fluvial Erosion Area	River Corridor
1	New structures	X	X	X
2	Storage	X	X	X
3	Improvements to existing structures	C	C	C
4	Accessory Structures	C	C	C
5	At grade parking	P	P	C
6	Replacement water supply or septic systems	C	C	C
8	Fill as needed to elevate existing structures	C	C	C
9	Fill	X	X	X
12	Grading	C	C	C
13	Road maintenance	E	E	E
14	Road improvements	C	C	C
15	Bridges and culverts	C	C	C
16	Channel management	C	C	C
17	Parking or storage of recreational vehicles (180 days)	P	P	P
18	Open space, recreation	E	E	E
19	Forestry	E	E	E
20	Agriculture	E	E	E
21	Removal of a structure	E	E	E
22	Replacement of residential homes	C	C	C

Development in the Flood and Fluvial Erosion Hazard Area Overlay District

1. Permit

A permit **approval** is required from the Zoning Administrator for all development in the FFEHA Overlay District. These Regulations shall be administered and enforced according to the provisions of Article II, in addition to the requirements of this Article. Development that requires a Conditional Use Permit, nonconforming use approval, or a Variance from the Development Review Board under these Regulations, must have such approvals prior to the issuance of a Zoning Permit by the Zoning Administrator. Any development subject to municipal jurisdiction in the FFEHA Overlay District shall meet the criteria in Sections 611 and 612. A permit may be issued only following receipt of comments from the Vermont Agency of Natural Resources, or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner. The Development Review Board should consider comments from the NFIP Coordinator at ANR. For development within the SFHA, no permit shall be issued until all other necessary government permits required by state and federal laws have been obtained.

2. Development

The following development activities in the FFEHA Overlay District, if located in a Special Flood Hazard Area where outside of the Town-identified Fluvial Erosion Area and outside of the River Corridors, and meeting the Development Standards in Section 612, require a Zoning Permit from the Zoning Administrator if required elsewhere in these Regulations:

- a. Non-substantial improvements, provided the improvements do not decrease the pre-existing distance between the unaltered structure and the top of the bank;
- b. Accessory structures;

- c. Development related to on-site septic or water supply systems;
  - d. Building utilities;
  - e. At-grade parking for existing buildings; and,
  - f. Parking or storage of recreational vehicles (*see definition*).
3. Prohibited Development in the Regulated Flood Hazard Areas
- a. New residential or non-residential structures (including the placement of manufactured homes);
  - b. Storage or junk yards;
  - ~~c. Accessory structures in the Floodway;~~
  - c. New fill, except as necessary to elevate structures above the Base Flood Elevation;
  - d. Critical facilities; and,
  - e. All development not exempted, permitted, or conditionally permitted.
4. Conditional Use Permit
- A Conditional Use Permit issued by the Development Review Board is required prior to the issuance of a Zoning Permit by the Zoning Administrator for the following proposed development:
- a. Replacement of residential homes that do not result in a decrease of the former setback from any stream.
  - b. 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.
  - c. Substantial improvement, elevation, relocation, or flood proofing of existing structures;
  - d. New or replacement storage tanks for existing structures;
  - e. Improvements to existing structures in the Floodway;
  - f. Grading, excavation; or the creation of a pond;
  - g. Improvements to existing roads;
  - h. Bridges, culverts, channel management activities, or public projects which are functionally dependent on stream access or stream crossing;
  - i. Public utilities;
  - j. Improvements to existing primary structures in the River Corridors that do not expand the footprint of the existing structure more than 500 square feet;
  - k. Accessory structures in the River Corridors, of 200 square feet or less in area and 16 feet or less in height.
  - l. Building utilities in the River Corridors; and,
  - m. At-grade parking for existing buildings in the River Corridors.
5. Exempted Activities
- The following are exempt from regulation under these Flood and Fluvial Erosion Hazard Regulations:
- a. The removal of a building or other structure in whole or in part;
  - b. Maintenance of existing roads and storm water drainage;
  - c. Silvicultural (forestry) activities conducted in accordance with the Vermont Department of Forests and Parks Acceptable Management Practices; and,
  - d. Agricultural activities conducted in accordance with the Vermont Department of Agriculture's Accepted Agricultural Practices (AAP). Prior to the construction of farm structures the farmer must notify the Zoning Administrator in writing of the proposed activity. The notice must contain a sketch of the proposed structure including setbacks.
6. Variances
- If compliance with any of the requirements of this regulation would result in an exceptional hardship to a prospective builder, developer or landowner, the town of Marlboro may, upon request, grant relief from the strict application of the requirements. Variances may be granted in writing by the Development Review Board only in accordance with all the criteria in 24 V.S.A. § 4469, § 4424, and 44 CFR Section 60.6, and after public notice and hearing. If granted, a variance shall involve only the least modification necessary to provide relief. In granting any variance, the Town of Marlboro shall attach whatever reasonable conditions

customarily related to the principal structure or use. For residential uses these include, but may not be limited to garages, garden and tool sheds, and playhouses.

**ANR:** The Vermont Agency of Natural Resources.

**Area of Special Flood and Fluvial Hazard:** Synonymous in meaning with the phrase "Special Flood and Fluvial Hazard Area" for the purposes of these Regulations. See "Special Flood Hazard Area."

**Base Flood:** The flood having a one percent chance of being equaled or exceeded in any given year (also referred to as the "100-year flood" or one-percent (1%) annual chance flood).

**Base flood discharge:** The volume of water resulting from a Base Flood as it passes a given location within a given time, usually expressed in cubic feet per second (cfs).

**Base Flood Elevation (BFE):** The elevation shown on the Flood Insurance Rate Map (FIRM) for Zones AE, AH, A1-30 that indicates the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.

**Basement:** Any area of the building having its floor sub grade (below ground level) on all sides.

**Buffer:** An undisturbed area consisting of trees, shrubs, ground cover plants, duff layer, and generally uneven ground surface that extends a specified distance horizontally across the surface of the land from the mean water level of an adjacent lake or from the top of the bank of an adjacent river or stream.

**Channel:** An area that contains continuously or periodically flowing water that is confined by banks and a streambed.

**Channel width** (or bankfull width): The width of a stream channel when flowing at a bankfull discharge. The bankfull discharge is the flow of water that first overtops the natural banks. This flow occurs, on average, once every 1 to 2 years.

**Common plan of development:** Where a structure will be refurbished over a period of time. Such work might be planned unit by unit.

**Critical facilities:** Include police stations, fire and rescue facilities, hospitals, shelters, schools, nursing homes, water supply and waste treatment facilities, and other structures the community identifies as essential to the health and welfare of the population and that are especially important following a disaster. For example, the type and location of a business may raise its status to a Critical Facility, such as a grocery or gas station

**Designated center:** A downtown, village center, new town center, growth center, or neighborhood development area designated pursuant to 24 V.S.A. Chapter 76A.

**Digital Flood Insurance Rate Map (DFIRM):** The official Flood Insurance Rate Map (FIRM) of a community, in digital Geographic Information System (GIS) format. This map is available at the Vermont Agency of Natural Resources website: <http://tinyurl.com/vt-floodmap> <http://anrmaps.vermont.gov/websites/anra5/>. See also Flood Insurance Rate Map (FIRM).

**Existing manufactured home park or subdivision:** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**Expansion to an existing manufactured home park or subdivision:** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**Fill:** Any placed material that changes the natural grade, increases the elevation, or diminishes the flood storage capacity at the site.

**FIRM:** See Flood Insurance Rate Map.

**Flood:** (a) A general and temporary condition of partial or complete inundation of normally dry land areas from: the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and mudslides which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current. (b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an

**Junkyard:** Land or building used for the collection, storage or sale of waste paper, rags, scrap metal or discarded material, or for the collection, wrecking, dismantling, storage, salvaging and sale of machinery parts or vehicles.

**Kennel:** A commercial establishment in which four or more dogs, cats, and/or other domesticated animals, which are not owned by the owner or occupant of the premises, are housed, boarded, groomed, bred, trained, or sold.

**Land Development:** see Development

**Land Disturbance:** Any activity involving the clearing, cutting, excavation, grading, filling, storing, transporting of land or any activity which causes land to be exposed to the danger of erosion and sedimentation. See also Section 475.2.

**Landscape:** A broad area or portion of the earth.

**Light Industry:** The manufacture, processing, fabrication or storage of products not employing more than twenty (20) employees and occupying not more than six (6) thousand square feet.

**Lot:** A parcel of land, with or without structures, that conforms to all the requirements for minimum area and depth for the particular zoned area in which such land is situated and having the required frontage on a street, or other permanent means of access.

**Lot Depth:** The mean distance measured perpendicularly from the property line nearest the road to its opposite rear line.

**Lot Frontage:** Distance measured across that portion of a lot which is adjacent to and parallel to a public street; or if access to the lot is by right of way or private road the lot frontage shall be the distance measured across the width of the lot at the building front line or the proposed building front line.

**Manufactured Home:** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term "manufactured home" does not include a "recreational vehicle."

**Mast Stand:** ~~An area of woody plants, such as oak, hickory, and beech, maple, and various pines,~~ **Stands of oak and beech,** that produce dry fruit (mast), which is a food source for a variety of mast dependent wildlife such as deer, turkey, and squirrels.

**Mobile Home:** A prefabricated dwelling unit which

1. is designed for long term and continuous residential occupancy; and
2. is designed to be moved on wheels, as a whole or in sections.

The provisions hereof shall also be applicable to any motor vehicle or trailer which is designed or added to so as to permit its use and occupancy for human habitation.

**Mobile Home Park:** A Parcel of land under a single or common ownership or control which contains, or is designed, laid out or adapted to accommodate two (2) or more mobile homes.

**Motel:** See Hotel.

**Multi-unit Dwelling:** See Dwelling, Multi-unit.

**Municipal Facility:** A structure or use owned and operated by the Town of Marlboro, Vermont.

**Museum/Gallery:** A room or group of rooms wherein objects of historical, cultural, scientific, or aesthetic interest are offered for exhibition and/or retail sale to the general public.

~~**Non-complying Non-conforming Building or Structure:** A building or structure or part of a building or structure that does not conform to these Regulations but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present Regulations. A building, the location, size, height, or construction of which does not conform to all the applicable provisions of these Regulations, but which legally existed at the effective date hereof, or of any pertinent amendment.~~

~~**Non-conforming Use:** Use of land that does not conform to the present Regulations but did conform to all applicable laws, ordinances, and regulations prior to the enactment of the present Regulations. A use of land, premises, or building which is not a use permitted by the provisions of these Regulations for the district in which such land, premises, or building is situated, but which was legally existing at the effective date hereof, or of any pertinent amendment.~~

**Normal Mean High Water Mark:** The average annual high water level of a surface water, discounting unusually high or low conditions.

**Shorelands:** See Section 362. ~~The lands between the normal mean water mark of lakes or ponds exceeding 20 acres and a line not less than 500 feet nor more than 1,000 feet from such mean high watermark. Shorelands include lands around Sunset Lake, South Pond, Hidden Lake, and Marlboro Millpond.~~

**Significant Wildlife Habitat:** Those natural features that contribute to the survival and/or reproduction of the native wildlife of Marlboro. This shall include, but is not limited to, (1) deer wintering areas (i.e. deeryards); (2) habitat for rare, threatened and endangered species (state or federally listed); (3) concentrated black bear feeding habitat (mast stands); (4) riparian areas and surface waters; (5) wetlands and vernal pools; (6) wildlife travel corridors; (7) high elevation bird habitat (8) ledge, talus, and cliff habitat; and (9) habitat identified by the Vermont Department of Fish and Wildlife as either significant wildlife habitat or necessary wildlife habitat in accordance with 10 V.S.A. Sec. 6086(a)(8)(A).

**Signs:** See Town ordinance.

~~**Externally Illuminated Sign:** A sign with an external light source arranged to shine on the surface of the sign to render it visible in darkness.~~

~~**Fluorescent Sign:** Any sign in which fluorescent (e.g., "Day Glo") dyes or pigments are used, in ink, paint, or other medium.~~

~~**Internally Illuminated Sign:** Any sign presenting its message on a translucent surface, illuminated from behind that surface. Transparent surfaces are expressly excluded from this definition.~~

~~**Neon Sign:** Shall include signs containing all forms of gas discharge tubing, and all sources of fluorescent and phosphorescent light emission, when these light sources are directly visible to the public.~~

~~**Reflective Sign:** Any sign in which the normal reflectiveness of a painted or printed surface is enhanced by reflective beads or chips, faceted reflectors, or other artificial reflective devices.~~

~~**Sign, On premise:** A sign directing attention to a business, profession, commodity, service, or entertainment carried on, sold, or offered on the same premises as those on which the sign is erected.~~

***Silviculture:** The theory and practice of controlling the establishment, composition, and growth of stands of trees for any of the goods and benefits that they may be called upon to produce.*

**Site Plan:** See Section ~~203~~ 204.

**State Facility:** State-owned and operated institutions and facilities.

**Street:** See "Road."

~~**Structure:** Any construction, erection, assemblage or other combination of materials upon the land, including but not limited to, any building, mobile home or trailer, billboard, wall or fence (except on an operating farm), swimming pool, tennis court, tower, satellite dish antenna, sign, accessory building exceeding one hundred (100) square feet in floor area.~~

**Structure:** Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground. A parking space is considered a structure.

**Structure Height:** The vertical distance from the average finished grade surrounding the structure to the highest point of the structure.

**Steep slopes:** See Section 475.

**Subdivision:** Any division of land into two or more lots. It includes re-subdivision and the division of a lot or parcel held in common ownership and subsequently divided into parts among the owners

**Substantial Improvement:** Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that are solely necessary to assure safe living conditions, or (2) any alteration of a "Historic Structure," provided that the alteration will not preclude the structure's continued designation as a "Historic Structure."

**Temporary Structure:** Any structure standing for six months or less in any twelve month period.

**Trailer:** Includes any vehicle, used as sleeping or camping or living quarters, mounted on wheels, or a camper body designed to be mounted on a truck; and any vehicle which is customarily towed by a motor vehicle and used for carrying goods, equipment, machinery, boats, or as an office.

**Use:** The specific purpose for which land, or a building and land, is designed, arranged, intended, or for which it is or may be occupied or maintained.

**Vehicle Services:** The repair, servicing, alteration, restoration, towing, painting, cleaning, or finishing of automobiles, trucks, recreational vehicles, boats, and other vehicles. Does not include vehicle parking or sales. (See also Section 430.)

**Vernal Pool:** A natural confined basin depression that is covered by shallow water usually or at least two months in the late winter, spring, and summer, but may be dry during much of the year, that is used by vernal pool obligate species such as but not limited to spotted salamanders, wood frogs, fingernail clams, Jefferson salamander.

**Veterinary Clinic:** A building whose primary use will be the medical or surgical treatment of mammals, reptiles, or birds. Patients may be boarded on the premises not longer than twenty (20) days. The building shall not be used for breeding purposes.

**Waste Management Facilities:** Regional solid waste management facilities certified under 10 V.S.A. Chapter 159, and hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. § 6606a. See Section 403.

**Wetland:** An area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs and similar areas.

~~**Wildlife Refuge:** An area set aside for the conservation of plants, animals, and their general habitat.~~

**Wildlife Travel Corridor:** A route that permits the direct travel or spread of animals or plants from one area or region to another, either by the gradual spread of a species’ population along the route or by the movement of individual members of the species. Generally, such areas are characterized by undeveloped forested corridors, including forest cover reaching to road rights-of-way, which serve to link large tracts of unfragmented forest habitat.

**Yard:** An open space on a lot not occupied by a building or structure or portion of a structure from the ground upward, provided, however, that fences and walls may be permitted in any yard subject to height limitations (see Section 459) as indicated herein. Porches, whether enclosed or unenclosed, shall be considered as part of the main building.

~~**Zoning Administrator-Administrative Officer:** That person recommended by the Appropriate Municipal Panel Planning Commission and appointed by the Board of Selectmen-Select Board in accordance with section 4442 of the Act to administer the Zoning Regulations, as provided for in the Act.~~

✧ ✧ ✧ END OF ARTICLE VII ✧ ✧ ✧