

Proposed Zoning Bylaw Amendment to Section 9.2 *Flood Plain Overlay District* and Section 11, *Definitions*

**Background Information:**

On January 8, 2025, the Federal Emergency Management Agency notified the Town that it had completed final flood hazard determinations for all jurisdictions in Essex County. This includes updates to the Federal Flood Insurance Rate Maps (FIRM). The Town has a six-month window, until July 8, 2025, to amend its Zoning Bylaw to account for the changes and associated requirements to remain part of the Federal Flood Insurance Program. The Massachusetts Department of Conservation & Resources, which administers the Flood Insurance in Massachusetts, has reviewed Hamilton's Flood Plain Overlay District Bylaw (Section 9.2) and recommended a series of amendments to the language. The amended language is included below. New language is shown in bold underline and text proposed for deletion is shown in strike-through.

The Select Board has included this in the Draft Warrant and referred it to the Planning Board for public hearing. Although somewhat late in the process, the Planning Board could schedule a public hearing for its regular meeting on April 1, 2025 in advance of consideration at the April 5, 2025 Town Meeting.

**Proposed Amendments:**

To amend Section 9.2 *Flood Plain Overlay District* and Section 11, *Definitions*, by deleting certain provisions related to the use and location of flood plains and associated requirements and definitions, and adding provisions recommended for inclusion by the Massachusetts Department of Conservation and Resources Flood Management Program, renumbering remaining language, and replacing the existing FEMA Flood Insurance Rate Maps (FIRM) with new maps provided by the Federal Emergency Management Agency (FEMA). Passage of this amendment will ensure that Hamilton remains part of the Federal Flood Insurance Program.

**9.2 FLOOD PLAIN OVERLAY DISTRICT (FPOD).**

**9.2.1 Purpose.** The purpose of the Floodplain Overlay District (FPOD) is:

1. To ensure public safety through reducing the threats to life and personal injury;
2. To eliminate new hazards to emergency response officials;
3. To prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;
4. To avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;

5. To eliminate costs associated with the response and cleanup of flooding conditions; and
6. To reduce damage to public and private property resulting from flooding waters.

**9.2.2 FPOD Boundaries.** ~~The FPOD is herein established as an overlay district. The FPOD includes all Areas of Special Flood Hazard within the Town of Hamilton designated as Zones A and AE on the Essex County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Essex County FIRM that are wholly or primarily within the Town of Hamilton are panel numbers 25009C0267F, 25009C0268F, 25009C0269F, 25009C0286F, 25009C0288F, 25009C0289F, 25009C0293F, 25009C0406F, 25009C0407F, 25009C0426F, 25009C0427F, 25009C0429F, 25009C0431F, and 25009C0433F dated July 3, 2012. The exact boundaries of the FPOD may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Essex County Flood Insurance Study (FIS) report dated July 3, 2012. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Board of Selectmen, Planning Board, and Conservation Commission.~~

**The FPOD is herein established as an overlay district. The District includes all special flood hazard areas within Hamilton designated as Zone A and AE on the Essex County Flood Insurance Rate Map (FIRM) dated July 8, 2025 issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The exact boundaries of the District shall be defined by the 1%-chance base flood elevations shown on the FIRM and further defined by the Essex County Flood Insurance Study (FIS) report dated July 8, 2025. The FIRM and FIS report are incorporated herein by reference and are on file with the Hamilton Town Clerk, Conservation Commission, and the Planning and Building Departments.**

### **9.2.3 Base Flood Elevation and Floodway Data.**

1. *Floodway Data.* In Zones A and AE of FIRM, along watercourses that have not had a Regulatory Floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the Base Flood discharge.
2. *Base Flood Elevation Data.* Base Flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones.

**9.2.4 Use Regulations.** All Development in the district, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with the Massachusetts Wetlands Act (G.L. c. 131, s. 40) and with the following:

1. The section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR 120.G “Flood Resistant Construction and Construction in Coastal Dunes”);
2. The Wetlands Protection Regulations promulgated by the Massachusetts Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
3. The Inland Wetlands Restriction Regulations promulgated by DEP (currently 310 CMR 13.00);
4. The Minimum Requirements for the Subsurface Disposal of Sanitary Sewage promulgated by the DEP (currently 310 CMR 15, Title 5); and
5. The Hamilton Board of Health Regulations, Chapter 6. Satisfactory evidence shall consist of any permit issued by the Board of Health for the project and/or a written statement from the Board of Health or its agent that no such permit is necessary for the project.

#### 9.2.5 Other Requirements.

1. **The Town of Hamilton requires a permit, including a building permit and/or a Storm Water Management Permit (if applicable) for all proposed construction or other development in the Flood Plain Overlay District, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties.**
2. **The applicant is required to obtain all local, state and federal permits that will be necessary in order to carry out the proposed development in the floodplain overlay district. The proponent must acquire all necessary permits, and must demonstrate that all necessary permits have been acquired**
3. Any variances from the provisions and requirements of the above referenced State regulations may only be granted in accordance with the required variance procedures of these State regulations.
4. Within Zones AH and AO of the FIRM, adequate drainage paths must be provided around Structures on slopes to guide floodwaters around and away from proposed Structures.
3. ~~In Zone AE of FIRM, along watercourses within the Town of Hamilton that have a Regulatory Floodway designated on FIRM, encroachments are prohibited in the Regulatory Floodway which would result in any increase in flood levels within the community during the occurrence of the Base Flood discharge.~~

**5. In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the Town's FIRM or Flood Boundary & Floodway Map, encroachments are prohibited, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.**

4. 6. All subdivision proposals must be designed to assure that such proposals minimize flood damage; all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and adequate drainage is provided to reduce exposure to flood hazards.

5. 7. Existing contour intervals of site and elevations of existing structures must be included on the development plan proposal.

6. 8. There shall be established a "routing procedure" which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, Director of Public Works, and Building Commissioner for comments which will be considered by the appropriate permitting board prior to issuing applicable permits.

**9. In A and AE Zones, all recreational vehicles to be placed on a site must be elevated and anchored in accordance with the zone's regulations for foundation and elevation requirements or be on the site for less than 180 consecutive days or be fully licensed and highway ready.**

**10. In A Zones, in the absence of FEMA BFE data and floodway data, the Building Department will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring new construction, substantial improvements, or other development in Zone A and as the basis for elevating residential structures to or above base flood level, for floodproofing or elevating nonresidential structures to or above base flood level, and for prohibiting encroachments in floodways.**

**9.2.6 Permitted Uses.** The following uses of low flood damage potential and causing no obstructions to flood flows are permitted provided they are permitted in the underlying district and they do not require structures, fill, or storage of materials or equipment:

1. Agricultural uses such as farming, grazing, truck farming, horticulture, etc.;
2. Forestry and nursery uses;
3. Outdoor recreational uses, including fishing, boating, **and** play areas, etc.;

4. Conservation of water, plants, wildlife;
5. Wildlife management areas, foot, bicycle, and/or horse paths;
6. Temporary nonresidential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises; and
7. Buildings lawfully existing prior to the adoption of these provisions.

**9.2.7. Designation of Community Flood Plain Administrator. The Town hereby designates the position of *Planning Director* to be the Community Flood Plain Administrator.**

**9.2.87 Notification of Watercourse Alteration. In a riverine situation, the Planning Director shall notify the following of any alteration or relocation of a watercourse:**

Adjacent Communities NFIP State Coordinator  
 ——— Massachusetts Department of Conservation and Recreation  
 ——— 251 Causeway Street, Suite 600-700  
 ——— Boston, MA 02114-2104

——— NFIP Program Specialist  
 ——— Federal Emergency Management Agency, Region I  
 ——— 99 High Street, 6th Floor  
 ——— Boston, MA 02110

1. **Adjacent Communities, especially upstream and downstream;**
2. **Bordering States, if affected;**
3. **NFIP State Coordinator, Massachusetts Department of Conservation and Recreation; and**
4. **NFIP Program Specialist Federal Emergency Management Agency, Region I.**

**9.2.9 Requirement to submit new technical data. If the Town acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the Town will, within 6 months, notify FEMA of these changes by submitting the technical or scientific data that supports the change(s.) Notification shall be submitted to:**

**NFIP State Coordinator Massachusetts, Department of Conservation and Recreation; and**  
**NFIP Program Specialist Federal Emergency Management Agency**

**9.2.10 Variances to building code floodplain standards. The Town will request from the State Building Code Appeals Board a written and/or audible copy of the portion of the hearing related to the variance, and will maintain this record in the community's files. The Town shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering that property, in writing over the signature of a community official that: (i) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood**

**insurance up to amounts as high as \$25 for \$100 of insurance coverage; and (ii) Such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain overlay district.**

**9.2.11. Variances to local Zoning Bylaws related to community compliance with the National Flood Insurance Program (NFIP). A variance from these floodplain bylaws must meet the requirements set out by State law, and may only be granted if:**

- 1.) Good and sufficient cause and exceptional non-financial hardship exist;**
- 2.) The variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and**
- 3) The variance is the minimum action necessary to afford relief.**

**9.2.12. Abrogation and greater restriction section. The floodplain management regulations found in this Floodplain Overlay District section shall take precedence over any less restrictive conflicting local laws, ordinances or codes.**

**9.2.13. Disclaimer of liability. The degree of flood protection required by this bylaw [ordinance] is considered reasonable but does not imply total flood protection.**

**9.2.14. Severability. If any section, provision or portion of this bylaw [ordinance] is deemed to be unconstitutional or invalid by a court, the remainder of the ordinance shall be effective.**

#### **Proposed Amendments to Section 11, Definitions:**

**Floodplain Overlay District:** For the purposes of Section 9.2, the following definitions shall apply:

**Area of Special Flood Hazard:** The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, AI- 30, AE, A99, VI-30, VE, or V.

**Base Flood:** The flood having a one percent chance of being equaled or exceeded in any given year.

**Coastal High Hazard Area:** An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM as Zone V, V 1-30, or VE.

**Development:** Any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

**District:** The Floodplain Protection Overlay District.

**Federal Emergency Management Agency (FEMA):** The agency that administers the national Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

**Flood Insurance Rate Map (FIRM):** An official map of a community on which FEMA has delineated both areas of special flood hazard and the risk premium zones applicable to the community.

**Flood Insurance Study:** An examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

**Floodway:** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

**Functionally Dependent Use: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. [US Code of Federal Regulations, Title 44, Part 59] Also [Referenced Standard ASCE 24-14]**

**Highest Adjacent Grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. [US Code of Federal Regulations, Title 44, Part 59]**

**Historic Structure: Any structure that is:**

**(a.) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;**

**(b.) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;**

**(c.) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or**

**(d.) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (1) By an approved state program as determined by the Secretary of the Interior or (2) Directly by the Secretary of the Interior in states without approved programs. [US Code of Federal Regulations, Title 44, Part 59**

**Lowest Floor:** The lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of NFIP Regulations 60.3.

**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 floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

**Manufactured Home Park or Subdivision:** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**New Construction:** ~~For floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community. For the purpose of determining insurance rates, new construction means structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later.~~

**Structures for which the start of construction commenced on or after the effective date of the first floodplain management code, regulation, ordinance, or standard adopted by the authority having jurisdiction, including any subsequent improvements to such structures. New construction includes work determined to be substantial improvement. [Referenced Standard ASCE 24-14]**

**One Hundred Year Flood:** See Base Flood.

**Recreational Vehicle: A vehicle which is:**

**(a) Built on a single chassis;**

**(b) 400 square feet or less when measured at the largest horizontal projection;**

**(c) Designed to be self-propelled or permanently towable by a light duty truck; and (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.**

**[US Code of Federal Regulations, Title 44, Part 59]**



**Regulatory Floodway:** See Floodway.

**Special Flood Hazard Area:** An area having special flood and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, AI -30, AE, A99, AH, V, V 1-30, VE.

**Start of Construction:** The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns. Permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Base Code, Chapter 2, Section 202]

**Structure:** For floodplain management purposes, a walled and roofed building including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

**Structure:** For insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on foundation. For the latter purpose, the term includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

**Substantial Damage:** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**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 (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

**Substantial Repair of a Foundation: When work to repair or replace a foundation results in the repair or replacement of a portion of the foundation with a perimeter along the base of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in linear feet, or repair or replacement of 50% of the piles, columns or piers of a pile, column or pier supported foundation, the building official shall determine it to be substantial repair of a foundation. Applications determined by the building official to constitute substantial repair of a foundation shall require all existing portions of the entire building or structure to meet the requirements of 780 CMR. [As amended by MA in 9th Edition BC]**

**Variance: A grant of relief by a community from the terms of a flood plain management regulation. [US Code of Federal Regulations, Title 44, Part 59].**

**Violation: The failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §60.3 is presumed to be in violation until such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59]**

**Zone A:** The 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local, or other data.

**Zone AI-30 and Zone AE** (for new and revised maps): The 100-year floodplain where the base flood elevation has been determined.

**Zone AH and Zone AO:** The 100-year floodplain with flood depths of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**Zone A99:** Areas to be protected from the 100-year flood by federal flood protection system under construction. Base flood elevations have not been determined.

**Zones B, C and X:** Areas identified in the community Flood Insurance Study as areas of moderate or minimal flood hazard. Zone X replaces Zones B and C on new and revised maps.

**Zone V:** A special flood hazard area along a coast subject to inundation by the 100-year flood with the additional hazards associated with storm waves. Base flood elevations have not been determined.

**Zone VI-30 and Zone VE** (for new and revised maps): A special flood hazard area along a coast subject to inundation by the 100-year flood with additional hazards due to velocity (wave action). Base flood elevations have been determined.