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The Uttarakhand Flood Plain Zoning Act, 2012

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THE UTTARAKHAND FLOOD PLAIN ZONING ACT, 2012

[UTTARAKHAND ACT NO. 07 OF 2013]

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No. 31/XXXVI(3)/2013/68(1)/2012
Dated Dehradun, January 28, 2013

NOTIFICATION

Miscellaneous

In pursuance of the provisions of Clause (3) of Article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of '**The Uttarakhand Flood Plain Zoning Act, 2012**' (Adhiniyam Sankhya 07 of 2013).

As Passed by the Uttarakhand Legislative Assembly and assented to by the Governor on 24 January, 2013.

THE UTTARAKHAND FLOOD PLAIN ZONING ACT, 2012

[UTTARAKHAND ACT NO. 07 OF 2013]

An

Act

to provide for the zoning of flood plains of rivers in the State of Uttarakhand.

Be it enacted by the Uttarakhand State Legislative Assembly in the Sixty-third Year of the Republic of India, as follows :--

CHAPTER-I

PRELIMINARY

**Short title,
extent and
commencement**

1. (1) This Act may be called the Uttarakhand Flood Plain Zoning Act, 2012.

(2) It extends to the whole of the State of Uttarakhand.

(3) This section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the State Government may, by notification in the official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act, and for different areas of different rivers.

Definitions

2. In this Act, unless the context otherwise requires:-

(a) "Flood Plain" includes water channel, flood channel and that area of nearly low and which is susceptible to flood by inundation;

(b) "Flood Plain Zoning" means restricting any human activity in the flood plains of a river where the plains are created by overflow of water from the channels of rivers and streams;

(c) "Flood Zone" means the area which is required to carry the flow of the maximum probable floods;

(d) "Flood Zoning Authority" in relation to river, means the authority appointed by the State Government under section 3;

- (e) **"Land"** includes interest in lands, benefits arising out of lands and things attached to the earth or permanently fastened to anything attached to the earth;
- (f) **"Occupier"** in respect of any land, means any person who has an interest in the land and cultivates the land himself or by his servants or by hired labour and includes a tenant;
- (g) **"Owner"** in relation to any land includes any person having interest in such land;
- (h) **"Prescribed"** means prescribed by rules made by the State Government under this Act;
- (i) **"River"** includes its tributaries; and
- (j) **"Water Channel"** means the channel in which the flows of a river are generally confined.

CHAPTER-II

FLOOD ZONING AUTHORITY AND IT'S POWERS

Declaration of flood plain zoning

3. (1) Where the State Government considers it necessary or expedient so to do, it may, by notification in the Official Gazette declare that flood plain zoning shall be made in the manner hereinafter specified.
- (2) The State Government may direct that a survey be made of a river for the purpose of determining the limits within which the provisions of this Act are to be applied and that proper charts and registers be prepared specifying all boundaries and landmarks and any other matter necessary for the purpose of ascertaining such limits.
- (3) The State Government may by notification in the Official Gazette appoint the Collector of the District or such other authority as the Government considers necessary, as the Flood Zoning Authority for the purposes of making a survey of the area as required under sub-section (2) and may specify in such notification, the duties to be discharged by such authority.

Powers and functions of the Flood Zoning Authority

4. The Flood Zoning Authority shall exercise the powers and discharge the duties in accordance with the provisions of this Act and the terms and conditions specified in the notification under sub-section (3) of section 3.

CHAPTER - III

SURVEYS AND DELINEATION OF FLOOD PLAIN AREA

Survey

5. (1) The Flood Zoning Authority shall carry out surveys of flood plains of the rivers and determine the nature and the extent of flood plains of the rivers.
- (2) The Flood Zoning Authority shall, on the basis of the survey carried out under sub-section (1) establish flood plain zones and delineate the areas which are subject to flooding including classification of land with reference to relative risk of flood plain use intended to safeguard the health, safety and property of the general public.
- (3) The Flood Zoning Authority shall prepare charts and registers indicating the areas delineated under sub-section (2).

Power to take up survey

6. It shall be lawful for the Flood Zoning Authority or any of the officers generally or specially authorized by it in this behalf-
- (a) to enter upon and survey and take levels of any land within its or his jurisdiction;
- (b) to mark such levels, boundaries and lines by placing marks or boundary stones;
- (c) to measure the land;
- (d) to do all other acts necessary for the purposes of ascertaining the limits referred to in sub-section (2) of section 3; and
- (e) Where otherwise the survey cannot be completed and the levels taken, to cut down and clear away any part of standing crop, fence or jungle :

Provided that no Flood Zoning Authority or any other officer shall enter into any building or open any enclosed court or garden

attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days notice in writing of its or his intention to do so.

Payment of damages

7. (1) The Flood Zoning Authority or any other officer generally or specially authorized by it in this behalf, who has entered upon any land under section 5 shall, before leaving, tender compensation to the owner or occupier of such land for any damage which may have been caused and in case of dispute as to the sufficiency of the amount so tendered, the Flood Zoning Authority or such officer shall refer the matter to the State Government for its decision.
- (2) The decision of the officer under sub-section (1) shall be final and no suit shall lie in a civil court to have it set aside or modified.

CHAPTER-IV

NOTIFICATION OF LIMITS OF FLOOD PLAINS

Declaration of intention of State Government to demarcate flood plains areas

8. The State Government may on the basis of a report from the Flood Zoning Authority or otherwise, by notification in the Official Gazette, declare its intention to demarcate the flood plain areas and either prohibit or restrict the use of land therein.

Public Notices

9. (1) The Flood Zoning Authority shall, on the issue of notification under section 8, cause public notice of the substance of such notification to be given at convenient places in the area.
- (2) The Flood Zoning Authority shall also give notices individually to the owners of the lands situated in the area.
- (3) The Flood Zoning Authority shall exhibit records, charts, maps, registers and such other document showing the river channel, flood channel and the flood plain area, specifying the nature and extent to which the use of limits of the area is either prohibited or restricted, in the office for inspection by the General public at the timing specified therein.

Objections

10. (1) Any person, who desires to raise any objection to the limits and either the prohibitions or restrictions specified in the public notice referred to in section 9, may within a period of sixty days from the date of publication of the notification in the Official Gazette, forward to the Flood Zoning Authority a statement in the writing setting forth his objections.
- (2) After the expiry of the period aforesaid, the Flood Zoning Authority shall issue a notice in a manner prescribed and consider the objections after giving the party concerned a reasonable opportunity of being heard in the matter.
- (3) The Flood Zoning Authority shall forward to the State Government its or his proposals together with the records referred to in sub-section (3) of section 9.

**Decision of
State
Government**

11. (1) The State Government shall after considering the report of the Flood Zoning Authority, order such alteration in the limits of the area as it considers necessary.
- (2) The decisions of the State Government shall be final.
- (3) The State Government shall by notification in the Official Gazette, declare that the provisions of this Act shall apply to the said river with boundaries and limits as specified :

Provided that the State Government shall also make arrangement for rehabilitation of Colonies already existing in the flood plain.

- (4) The areas delineated and approved by the State Government shall be deemed to be the flood plain and the limits shall, where necessary be marked either by boundary stones or other suitable marks.
- (5) The Flood Zoning Authority shall maintain the charts and registers of such areas so delineated and such charts and registers shall form part of the permanent records of the office.
- (6) The charts and registers maintained under sub-section (5) shall be

furnished to the Collector of the District in which any part of the river is situated and shall be opened for inspection by the general public at such times as may be prescribed.

CHAPTER-V

PROHIBITION OR RESTRICTION OF THE USE OF THE FLOOD PLAINS

Power to prohibit obstruction etc. in flood plain

12. (1) Where the State Government is satisfied that it is necessary to do so in the interest of public health, safety or property or reducing the inconvenience to the general public to prohibit or restrict the activities in the flood plain, the Government may, by notification in the Official Gazette, specify the area where such prohibition or restriction is to be enforced and the nature and extent of such prohibition or restriction :

Provided that no notification under this sub-section shall be issued after the expiry of six months from the date of publication of notification under section 8.

- (2) Upon the publication of a notification under sub-section (1), notwithstanding anything contained in any law, custom, agreement of instrument, for the time being in force, the prohibition or restriction specified in such notification shall prevail.
- (3) No person shall undertake any activity within the prohibited area or restricted area except with the previous permission of Flood Zoning Authority:

Provided that where a person makes an application to the Flood Zoning Authority for permission under this sub-section to undertake any activity and the Flood Zoning Authority does not within a period of ninety days from the date of receipt of such application, communicate to the said person that permission applied for has been refused, it shall be presumed that the Flood Zoning Authority has granted such permission.

Penalty 13. If any person commences or carries on or attempts to carry on any activity in the areas specified in the notification under sub-section (1) of section 12 contrary to the terms and conditions specified in such notifications, he shall be punishable-

- (a) with fine which may extend to five hundred rupees and in default of payment of fine, with simple imprisonment for the term which may extend to two months; and
- (b) with further fine which may extend to one hundred for each day during which the offence continues after the conviction under clause (a).

Power to Compound

14. (1) Subject to such conditions as may be prescribed, any officer authorized by the State Government by a general or special order in this behalf may, either before or after the institution of proceedings under this Act, accept from the person who has committed or is reasonably suspected of having committed an offence, a sum of money not exceeding one thousand rupees.

- (2) On the payment of such sum of money, such person shall be discharged and no further proceedings shall be taken against him in respect of such offence.

Appeal

15. (1) Any person aggrieved by any decision of the Flood Zoning Authority may prefer an appeal to an authority prescribed by the State Government in this behalf, within a period of ninety days from the date on which such decision was communicated to him:

Provided that the prescribed authority may entertain the appeal after the expiry of the said period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

- (2) The prescribed authority may, after giving a reasonable opportunity to the appellant of being heard, pass such orders as it thinks fit and the decision thereof shall be final.

Revision

16. (1) Where no appeal has been preferred under section 15, the State Government may, for the purpose of examining the legality propriety or correctness of any order, inquiry or proceedings of the Flood Zoning Authority, call for the records of any enquiry or proceedings of the Flood Zoning Authority and make such order in the case as it think fit :

Provided that no such record shall be called after the expiry of six months form the date of such order.

- (2) No order of the Flood Zoning Authority shall be varied by the State Government so as to prejudicially effect any person without giving such person a reasonable opportunity of being heard in the matter.

CHAPTER-VI**COMPENSATION****Payment of compensation**

17. (1) Where any permission to undertake any activity in the flood plain has been refused to any person or where as a result of prohibition or restriction imposed on any person under this Act, such person suffers any damage, he shall be entitled to the payment of compensation not exceeding the difference between the value of the land as determined under section 23 or section 24 of the Land Acquisition Act, 1894 (Central Act No. 01 of 1894) and the value which it would have, had the permission for carrying on any activity had been granted or the prohibition or restriction had not been imposed.

- (2) In determining the amount of compensation under sub-section (1) any restriction to which the land is subjected to under any other law for the time being in force in regard to the right of the person claiming compensation to carry on any activity on the land or otherwise to the use of the land shall be taken into consideration.

Determining the compensation and apportionment by consent

18. (1) The person to whom the compensation under section 17 is to be paid and the apportionment of such amount among the persons interested therein shall be determined by agreement between the

Flood Zoning Authority and the person or persons claiming interest therein.

(2) In default of any such agreement, the Flood Zoning Authority shall, after holding such enquiry as it considers necessary, make an award determining :---

- (a) the amount of compensation to be paid under section 17; and
- (b) the apportionment, if any, of such compensation among persons known or believed to be interested therein;

Provided that where the amount of compensation exceeds ten thousands rupees, no award shall be made without the previous approval of the State Government or such other officer as the State Government may authorized in this behalf.

Compensation not admissible 19. (1) No compensation shall be awarded --

- (a) if and in so far as the land is subject to substantially similar restriction in force under some other law in force on the date on which the restrictions were imposed by or under this Act; or
- (b) if compensation in respect of the same restrictions imposed by or under this Act or substantially similar restrictions in force under some other law has already been paid in respect of the land to the claimant or any predecessor in interest of the claim; or
- (c) for removal of any encroachment.

(2) If any person has unauthorized undertaken any activity, then any increase in the land value from such activity shall not be taken into account in estimating the value of land.

Application against award 20. (1) Any person aggrieved by the Award of the Flood Zoning Authority under sub-section (2) of section 18 may, by an application in writing, apply to the State Government or such other officer as the State Government may authorize in this behalf.

(2) Any application under sub-section(1) shall be made in such form

and in such manner as may be prescribed and shall be made within forty five days from the date of communication of the award.

- (3) The application under this section shall be disposed of in such manner as may be prescribed.

Procedure and powers of authorities in deciding applications under section 20

21. (1) An application under section 20 shall be deemed be proceedings within the meaning of section 141 of the Code of Civil Procedure, 1908 (Central Act No. 05 of 1908) and in the trial thereof, the authorities empowered to decide a reference may exercise the powers of a civil court.
- (2) The scope of inquiry shall be restricted to the consideration of the matter referred to the State Government or such other officer as the State Government may authorize in this behalf.

Decision enforceable as decree of civil court

22. The decision under section 21 shall be enforceable as a decree of a civil court.

Payment under award

23. On the determination of the compensation under sub-section (1) of section 18, or on the making of an award under sub-section (2) of Section 18 or, if an application is made under section 20 against such award, after decision of the authority, the compensation shall be paid by Flood Zoning Authority and the provisions of section 31 to 35 of the Land Acquisition Act, 1894 (Central Act No. 01 of 1894), shall apply to such payment.

CHAPTER-VII

POWER TO REMOVE OBSTRUCTIONS AFTER PROHIBITION

Power to remove obstructions

24. (1) The Flood zoning Authority may, in accordance with the provisions of this Act, direct any owner or occupier of land to do any act or to remove any un-authorized obstructions within such time as may be specified by it and such owner or occupier shall do such act or remove the obstructions.

- (2) If owner or occupier fails to comply with the order of the Flood Zoning Authority within the time specified under sub-section (1), the Flood Zoning Authority may cause the act to be performed or cause the obstructions to be removed.
- (3) All expenses incurred by the Flood Zoning Authority under this section shall be recovered from such owner or occupier as arrears of land revenue.

CHAPTER-VIII MISCELLANEOUS

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|---|-------------------|--|
| <p>Preventing Flood Zoning Authority from doing any act to be an offence</p> | <p>25.</p> | <p>Any person who prevents the Flood Zoning Authority in discharging any act imposed on such Authority by or under this Act, shall be deemed to have committed an offence under section 186 of the Indian Penal Code, 1860 (Central Act No. 45 of 1860).</p> |
| <p>Flood zoning Authority other officers to be public servants</p> | <p>26.</p> | <p>The Flood zoning Authority and other officers and employees authorized under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act No. 45 of 1860).</p> |
| <p>Protection of action taken in good faith</p> | <p>27.</p> | <p>(1) No suit, Prosecution or other legal proceeding shall lie against the State Government or any authority or person exercising any power or performing any duty under this Act for anything which is in good faith done or intended to be done in pursuance of this Act or an order made thereunder.</p> <p>(2) No suit, or other legal proceeding shall lie against the State Government for any damage caused or likely to be caused for any thing which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.</p> |
| <p>Recovery of fine</p> | <p>28.</p> | <p>All fines imposed under this Act shall be recovered in the manner provided in the Code of Criminal Procedure, 1973 (Central Act No. 02 of 1974)</p> |

Power of Court 29. A Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or deal with by the Flood Zoning Authority or such other officer as is authorized by the State Government in this behalf.

Power to make rules 30. (1) The State Government may, by notification in the Official Gazette make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for ---

- (a) the manner in which charts and records shall be maintained;
- (b) the form and manner in which application under section 20 shall be made and the manner in which such application shall be disposed of; and
- (c) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the House of the State Legislature while it is in session for a total period of 14 days which may be comprised in one session or two or successive sessions and if before the expiry of the session immediately following the session or the successive session aforesaid the House agrees in making any modification in the rule, or the House agrees that the rule should not be made, the rule shall, thereafter, have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Repeal and Saving 31. (1) The Uttarakhand Flood Plain Zoning Ordinance, 2012 is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

By Order,

D. P. GAIROLA,
Principal Secretary.