

Town of Bowdoinham
Land Use Ordinance

ARTICLE 11: ADMINISTRATION, ENFORCEMENT, & PENALTIES

A) Administering Agencies

1) Code Enforcement Officer

Unless otherwise provided in this Ordinance, the Code Enforcement Officer (CEO) shall administer and enforce this Ordinance. No permit application shall be approved by the Code Enforcement Officer except in compliance with the provisions of this Ordinance. The Code Enforcement Officer shall have the following duties:

- a) Applications and fees. Review and act upon applications as set forth in this Ordinance. Collect any fees due. Refer/process all applications as required.
- b) CEO Permit approvals. Act upon permit applications that are under the jurisdiction of the CEO as set forth in this Ordinance.
- c) Board of Appeals applications. Refer requests for variances and administrative appeals to the Board of Appeals.
- d) Inspections. Inspect sites where permit applications have been approved to ensure compliance with local ordinances.
- e) Complaints and violations. Investigate complaints and reported violations.
- f) Reports and records. Keep written inspection reports and thorough records.
- g) Appeals. Participate in appeals procedures.
- h) Violation notices. Issue violation notices.
- i) Enforcement. Carry out enforcement procedures as outlined in Section C below and as required by State Statute and State Rules.
- j) Consent agreements. Process or act on consent agreements involving violations of this Ordinance.
- k) Court. Appear and represent the Town in court when necessary.
- l) Permit revocations. Revoke any permit after notice if it was issued in error or if it was based on erroneous information.
- m) Interpretation. Refer matters to the Board of Appeals when there is a question concerning the interpretation of this Ordinance.

2) Local Plumbing Inspector

The Local Plumbing Inspector shall have the following duties:

- a) Applications and fees. Act upon all Subsurface Wastewater Disposal System Applications and Plumbing Applications. Collect any fees due.
- b) Inspections. Inspect sites where permit applications have been approved to ensure compliance with State Rules and Codes.

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- c) Violation notices. Issue violation notices.
- 3) Town Planner
Process and review the applications, which are under the jurisdiction of the Planning Board, as set forth in this Ordinance.
- 4) Planning Board
The Planning Board shall be responsible for reviewing and acting upon applications as set forth in this Ordinance.
- 5) Board of Appeals
 - a) The Board of Appeals shall be responsible for deciding administrative appeals and variances in accordance with the requirements of this Land Use Ordinance.
 - b) The role of the Board of Appeals is limited to ensuring that the Code Enforcement Officer, Road Commissioner, and Planning Board acted in accordance with the required procedures and the criteria set forth in this Ordinance and that variances are granted in strict conformity with the requirements of this Ordinance.
- 6) Road Commissioner
The Road Commissioner shall be responsible for reviewing and acting upon applications as set forth in this Ordinance.
- 7) Select Board
The Select Board shall be responsible for reviewing and acting upon municipal licenses as set forth in this Ordinance. The purpose of the license is to ensure that the applicant is operating within their Planning Board approval and meeting the applicable performance standards within the Land Use Ordinance.

B) Permits Required

- 1) It shall be unlawful, without first obtaining a permit from the appropriate reviewing authority, to:
 - a) engage in any activity or use of land or structure requiring approval in the district in which such activity or use would occur;
 - b) expand, change, or replace an existing use or structure;
 - c) renew a discontinued nonconforming use;
 - d) engage in construction, alteration, relocation, demolition or replacement of any building or part thereof;
 - e) perform plumbing work; or
 - f) create a subsurface wastewater disposal system.
- 2) The change of a business shall not require a permit, if the change of business is not a change of the land use (i.e. retail business, service business, professional office).

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- 3) The following activities are exempt from requiring a building permit, if the property is in compliance with all of the Town of Bowdoinham's Ordinances, as well as all applicable Statutes, Rules, and Regulations of the State of Maine:
 - a) The construction, alteration, addition, relocation, demolition, or replacement of a shed or residential accessory structure that has a total area of one hundred and fifty (150) sq. ft. or less.
 - b) The maintenance, repair, or replacement of a portion of a building that does not involve any change in the building's internal layout or external footprint, which includes any deck area.
- 4) Certificate of Compliance
 - a) A certificate of compliance shall be required and obtained from the Code Enforcement Officer prior to the occupancy or use of any building, structure or any portion thereof for which a building permit was obtained.
 - b) Occupancy or use without the required certificate shall be deemed to be a violation of this Code and subject to enforcement action as provided in Article 12.C of this Ordinance.
 - c) The purpose of the certificate of compliance is to ensure compliance with this ordinance and that the building, structure or any portion thereof was constructed as was permitted
- 5) Installation of Public Utility Service

A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officials and the utility.

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C) Permit Application Review Procedure

- 1) Code Enforcement Officer

The procedure for administering a permit shall be as follows, unless specified elsewhere in this Ordinance:

 - a) Submission of Permit Application
 - (i) Determination of complete application. Within 30 days of the date of receiving a written application the Code Enforcement Officer shall review the application for completeness. If the application is incomplete the Code Enforcement Officer shall notify the applicant in writing and specify the additional material that is needed to make the application complete. Failure to submit the additional information within six months shall be deemed an abandonment of the application.
 - (ii) Action on complete application. Within seven (7) working days of the date of receipt of a complete application the Code Enforcement Officer shall:
 - (A) examine such application to determine whether or not the proposed building, structure or use would be in compliance with this Ordinance; and

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(B) act to deny, to approve, or to approve the application with conditions as are deemed advisable to assure compliance with the ordinance.

b) Applicant Responsibility

- (i) Burden of proof. The applicant shall have the burden of proving that the proposed project, development or land use activity is in conformity with the purposes and provisions of this Ordinance.
- (ii) Posting. Within seven (7) working days of receiving the approval, the applicant shall conspicuously post any approval issued, on the lot where the activity will occur, at a location clearly visible from the public street or road.

c) Expiration of Approval

Permits shall expire one year from the date of issuance if a substantial start is not made in the construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.

- (i) The applicant may request an extension of the completion deadline prior to the expiration of the permit. Such a request must be in writing to Code Enforcement Officer. The Code Enforcement Officer may grant up to two (2), one (1) year extensions to the periods if all federal and state approvals and permits are current.

d) Permit Approval

- (i) An application for a permit shall not be approved prior to the applicant receiving their driveway/entrance permit, if one is required. A driveway/entrance permit is required from:

- (A) the Town's Road Commissioner for access onto a Town roadway; or
- (B) the Maine Department of Transportation for access onto a State roadway.

- (ii) An application for a permit shall not be approved prior to the applicant receiving their Natural Resources Protection Act permit from Maine Department of Environmental Protection, if one is required.

- (iii) An application for a permit shall not be approved prior to the applicant receiving their Site Plan Review permit, if one is required.

- (iv) An application for a permit shall not be approved if the property or the proposed project is not in compliance with the following State of Maine's Statutes:

- (A) Junkyards & Automobile Graveyards Statute
- (B) Dangerous Building Statute

2) Local Plumbing Inspector.

The procedure for administering a permit shall be as required per the Subsurface Wastewater Disposal Rules and the Maine State Internal Plumbing Code.

3) Road Commissioner.

The procedure for administering a permit shall be as follows:

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- a) Submission of Permit Application
 - (i) Determination of complete application. Within 30 days of the date of receiving a written application the Road Commissioner or his/her designee shall review the application for completeness. If the application is incomplete the Road Commissioner or his/her designee shall notify the applicant in writing and specify the additional material that is needed to make the application complete. Failure to submit the additional information within six months shall be deemed an abandonment of the application.
 - (ii) Action on complete application. Within seven (7) working days of the date of receipt of a complete application the Road Commissioner or his/her designee shall:
 - (A) examine the application and complete a site inspection to determine whether or not the proposed entrance is compliance with this Ordinance; and
 - (B) act to deny, to approve, or to approve the application with conditions as are deemed advisable to assure compliance with the ordinance.
- b) Applicant Responsibility
 - (i) Burden of proof. The applicant shall have the burden of proving that the proposed project, development or land use activity is in conformity with the purposes and provisions of this Ordinance.
 - (ii) Posting. Within seven (7) working days of receiving the approval, the applicant shall conspicuously post any approval issued, on the lot where the activity will occur, at a location clearly visible from the public street or road.
- c) Expiration of Approval. If construction is not completed within one (1) year from the date the approval is granted, the approval becomes invalid. The Road Commissioner or his/her designee shall renew the approval within 30 days after the expiration of the approval upon payment of a fee as specified in this Ordinance. Otherwise, the permit becomes invalid, and the application process must begin anew.

4) Planning Board

The procedure for administering a permit shall be as specified in Article 7, Article 9 and Article 10 of this Ordinance, according to the type of permit being requested. For Setback Determinations the following process shall be used:

- a) The complete application form, evidence of payment of the required fees, and the required plans and related information must be submitted to the Town Planner at least twenty-one (21) days prior to the meeting at which it is to be considered.
- b) Within seven (7) days of receipt of the application, the Town Planner shall review the material and make a preliminary determination on whether or not the submission is complete.
 - (i) If the application is determined to be incomplete, the applicant shall be notified in writing of this finding, which shall specify the additional materials required to make the application complete, the applicant shall be advised that the application will not be reviewed until the additional information is submitted, and all additional information must be submitted no later ten (10) days prior to the meeting at which it is to be considered. Failure to submit the additional information within six months shall be deemed an abandonment of the application.

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- (A) As soon as the application is determined to be preliminarily complete, the applicant shall be notified in writing of this finding. and
- (B) notice of the application shall be sent by first class mail to all abutting property owners.
- c) Once the application is placed on the agenda, the Planning Board shall review the material and determine whether or not the submission is complete. If the application is determined to be incomplete, the Board shall notify the applicant in writing of this finding, shall specify the additional materials required to make the application complete and shall advise the applicant that the application will not be considered by the Board until the additional information is submitted to the Board. These steps, except the notification requirements, shall be repeated until the application is found to be complete.
- d) After the Planning Board has determined that a complete application has been filed, it shall begin its substantive review of the application within thirty (30) days of this finding.
- e) The Planning Board may hold an on-site inspection of the site to review the existing conditions, field verify the information submitted and investigate the development proposal. The Board may schedule this visit either before or after the first meeting at which the application is considered. The Board may decide not to hold an on-site inspection when the site is covered in snow.
- (i) If a review is pending during a period when there is more than one foot of snow cover, the deadline by which the Planning Board shall take final action may be extended. This extension shall not exceed thirty (30) days after the site is clear of snow and the Board is able to conduct an on-site inspection.
- f) The Planning Board may hold a public hearing within thirty (30) days of the filing of the completed application. The Planning Board shall give written notice of the date, time, and place of the public hearing at which the application will be considered, to the applicant, and all abutting property owners by first-class mail. The determination of the names and owners shall be based upon the records of the local Assessor's Office.
- g) If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing.
- h) Failure of any property owner to receive notice under this section for any reason shall not necessitate a new hearing and shall not invalidate any action by the Planning Board.
- i) All time limits provided for in this section may be extended by mutual agreement of the applicant and Planning Board.
- j) Procedure for Public Hearing of an Application
- (i) The purpose of the public hearing is to allow the applicant and affected property owners to provide information as part of the record that the **Planning Board** will use in considering its action on the application. Testimony presented at the hearing should be related to factual information about the application and related submissions and the project's compliance with the review standards and other regulations and requirements of this ordinance or other municipal ordinances.
- (ii) The **Planning Board** Chair shall provide the applicant or his/her representative with an opportunity to make any statement or presentations at the beginning of the hearing. The

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Chair shall then allow the members of the Board to ask questions of the applicant and for the applicant to answer those questions. Following Board questions, the Chair shall open the public hearing to the public for statements, information submissions, or questions about the project. At the close of the public comment period, the Chair shall afford the applicant an opportunity to answer any questions raised by the public, rebut any statements or information submitted, and cross-examine anyone offering testimony on the application. The Chair may allow the applicant this opportunity after each member of the public testifies if that is deemed to be desirable. At the conclusion of the applicant's response, the hearing shall be closed.

k) Submission Requirements

- (i) Burden of proof. The applicant shall have the burden of proving that the proposed project, development or land use activity is in conformity with the purposes and provisions of this Ordinance and any applicable State laws and rules.

- l) The applicant shall submit nine (9) copies of the application and all supporting documentation.

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5) Board of Appeals

The procedure for administering a permit shall be as specified in Article 12 of this Ordinance.

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6) Select Board

The procedure for administering a license shall be as follows:

a) Submission of Permit Application

- (i) Determination of complete application. Within thirty (30) days of the date of receiving a written application the Select Board or their designee shall review the application for completeness. If the application is incomplete the Select Board or his/her designee shall notify the applicant in writing and specify the additional material that is needed to make the application complete. Failure to submit the additional information within six months shall be deemed an abandonment of the application.
- (ii) After the Select Board has determined that a complete application has been filed, it shall begin its substantive review of the application.
- (iii) The Select Board may hold an on-site inspection of the site in their review of the application. The Board may decide not to hold an on-site inspection when the site is covered in snow.
 - (A) If a review is pending during a period when there is more than one foot of snow cover, the deadline by which the Select Board shall take final action may be extended. This extension shall not exceed thirty (30) days after the site is clear of snow and Board is able to conduct an on-site inspection.
- (iv) The Select Board shall hold a public hearing within thirty (30) days of the filing of the completed application. The Board shall give written notice of the date, time, and place of the public hearing at which the application will be considered, to the applicant, and all abutting property owners by first-class mail. The determination of the names and owners shall be based upon the records of the local Assessor's Office. For renewal applications the Select Board shall have the option of waving a public hearing.

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- (v) Action on complete application. Within forty-five (45) working days of the date of receipt of a complete application the Select Board or their designee shall act to deny, to approve, or to approve the application with conditions as are deemed advisable to assure compliance with the Ordinance. The reasons as well as conditions shall be stated in writing.
- (vi) All time limits provided for in this section may be extended by mutual agreement of the applicant and Select Board.
- b) License Application Requirements
 - (i) Site Plan Review Permit from the Planning Board, if applicable.
 - (ii) All information and fees detailed in Article 11.D Permit Application Submission Requirements.
 - (iii) All applicable State licenses/registrations and permits.
 - (A) If State licenses/registrations and/or permits have been filed but not yet granted, then the applicant must provide a copy of said application(s).
 - (B) If the applicant's application is approved by the Select Board, their approval will be contingent upon their State approvals, a copy of which must be given to the Town Clerk before business can commence.
 - (iv) No license/permit may be issued until the Bowdoinham Fire Chief indicates that the property and structures are in compliance with applicable sections of the governing edition of the NFPA 101 Life Safety Code.
 - (v) Burden of proof. The applicant shall have the burden of proving that the proposed project, development or land use activity is in conformity with the purposes and provisions of this Ordinance and any applicable State laws and rules.
 - (vi) The applicant shall submit seven (7) copies of the application and all supporting documentation.
- c) License Approval, Revocation or Suspension
 - (i) An applicant's license application shall be approved if the applicant meets all the performance standards set forth in the Land Use Ordinance and/or the conditions of approval set forth in their Site Plan permit.
 - (ii) The Select Board has the right to deny a license renewal if any of the performance standards set forth in the Land Use Ordinance and/or the conditions of approval set forth in their Site Plan permit are not being met, or if the business has a history of noncompliance with said standards and/or conditions.
 - (iii) The Select Board has the right to revoke or suspend a license if a business fails to remedy a violation within thirty (30) days of said violation notice.
 - (iv) The Select Board has the right to revoke or suspend a license without warning if the business is found to be acting in an unsafe or illegal manner

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D) Permit Application Submission Requirements

Submission requirements may be waived if that information is not required to determine compliance with applicable standards. In all instances, the burden of proof shall be upon the applicant to present adequate information to indicate the statutory criteria for approval and performance standards have been or will be met.

1) Written application

Every applicant for a permit shall submit a written application on a form provided by the municipality. The following items, when appropriate, shall be included with the application:

- a) A scaled site plan showing:
 - (i) the shape, size and location of the lot to be built upon and structure(s) to be erected, altered or removed.
 - (ii) any structure(s) already on the lot; and
 - (iii) setbacks of structure(s) from all lot lines.
- b) Statement of intended use.
- c) Statement of how use meets performance standards.
- d) Documentation that the applicant has right, title or interest in the property.
- e) Any other information needed by the Code Enforcement Officer, Road Commissioner, Planning Board, or the Board of Appeals to determine compliance with the provisions of this Ordinance and/or any other information required by this Ordinance.
- f) Signature. All applications shall be signed by the owner of the property or the owner's legal agent, certifying that the information on it is complete and accurate. If the person signing the application is not the owner or lessee of the property, then that person shall submit a letter of authorization from the owner or lessee.
- g) Application to be dated. All applications shall be dated, and the date and time of its receipt shall be noted upon each application.

2) Fees

- a) No permit shall be issued until the application fee(s) are paid. Application fees shall not be nonrefundable, unless noted elsewhere in this Ordinance. Checks are to be made payable to the Town of Bowdoinham.
- b) Code Enforcement Officer.

Application fees for a permit from the Code Enforcement Officer shall be as follows:

- (i) The fee for a building permit shall be as follows:

Additions to single family dwellings and structures accessory thereto	\$0.05/sq. ft.*
1 or 2 family dwellings (not including basement) under 2000 sq. ft	\$0.15/sq. ft.*

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1 or 2 family dwellings (not including basement) 2000 sq. ft and greater	\$0.20 /sq. ft.*
Residential Garages, Barns, storage sheds	\$0.05/sq. ft.*
Commercial structures, multiple family dwellings, and additions to these structures	\$0.20 /sq. ft.*
Demolition Only	\$20.00
Interior work	\$20.00
Any work not fitting into the above categories	\$20.00
Minimum Permit Fee	\$20.00
* New Buildings and additions are measured on the exterior.	

- (ii) Other permits from the Code Enforcement Officer shall be twenty-five (\$25) dollars.
- c) Local Plumbing Inspector
Application fees for a permit from the Local Plumbing Inspector shall be as required by the State of Maine.
- d) Road Commissioner
The application fee for a permit from the Road Commissioner shall be fifty (\$50) dollars.
- e) Planning Board
Application fees for a permit from the Planning Board shall be as specified in the Ordinance. The application fee for a Setback Determination shall be twenty-five (\$25) dollars, plus any and all advertising costs.
- f) Board of Appeals
Application fees for a permit from the Board of Appeals shall be fifty (\$50) dollars, plus any and all advertising costs.
- g) Select Board
License fees shall be as follows, plus any and all advertising costs:
 - (i) Graveyard or Junkyard License: Fifty (\$50) dollars for each license.
 - (ii) Automobile Recycling Business: Two-hundred fifty (\$250) dollars for a five-year license
 - (iii) Liquor License & Application Fees
 - (A) Initial Application fee: Five hundred dollars (\$500)
 - (B) Renewal Application fee: Two hundred and fifty dollars (\$250)
 - (C) Annual Liquor License:
 - (1) Restaurant with on-premises liquor sales: Two hundred dollars (\$200)
 - (2) Catering establishment: Two hundred dollars (\$200)

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- (D) One-time catering liquor license: Fifty dollars (\$50)
- (iv) Cannabis License & Application Fees
 - (A) Initial Application fee: Five hundred dollars (\$500)
 - (B) Renewal application: One hundred and fifty dollars (\$150)
 - (C) Annual Cannabis License:
 - (1) Cannabis Store: \$2,000
 - (2) Cannabis Manufacturing Facility: \$2,000
 - (3) Cannabis Testing Facility: \$2,000
 - (4) Cannabis Cultivation Facility:
 - a. Cultivation Size: up to 500 SF of mature plant canopy: \$500
 - b. Cultivation Size: 501-2000 SF of mature plant canopy: \$2,000
 - c. Cultivation Size: 2001-7000 SF of mature plant canopy: \$5,000
 - d. Cultivation Size: greater than 7,000 SF of mature plant canopy: \$10,000

E) Enforcement

1) Civil Violations

Any violation of this Ordinance shall be deemed to be a civil violation.

2) Violations

It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings, structures, or work being done, removal of illegal buildings or structures, or abatement of nuisance conditions, and penalty. A copy of such notices shall be maintained as a permanent record.

3) Consent Agreements

When the action does not result in the correction or abatement of the violation or nuisance condition, the Code Enforcement Officer, Board of Selectmen, or its authorized agent, may enter into a consent agreement to eliminate violations and to collect civil penalties.

- (a) Only the Board of Selectmen may enter into a consent agreement that would allow an illegal structure or use to continue.
- (b) Within shoreland areas, such consent agreement made by the Board of Selectmen shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that:
 - (i) the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is not evidence that the owner acted in bad faith; or

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(ii) unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in the substantial environmental damage.

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4) Legal Actions

When the above action (subsection 2 and/or 3) does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable, including court proceedings, seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality.

5) Penalty

Any person, including but not limited to a landowner, a landowner's agent or a contractor, who orders or conducts any activity in violation of this Ordinance shall be penalized.

- a) The administrative fee for the first notice of violation shall be twenty-five dollars (\$25.00).
- b) The administrative fee for the second notice of violation shall be one hundred dollars (\$100.00).
- c) The administrative fee for the third notice of violation shall be two-hundred fifty dollars (\$250.00)

In addition to the administrative fees in a-c above, fines shall be assessed in accordance with 30-A M.R.S.A. § 4452. Each day that the violation occurs shall constitute a separate offense, beginning with the day following notification by the Code Enforcement Officer of such violation.

6) Appeals

Appeals from enforcement determinations of the Code Enforcement Office shall be taken directly to Superior Court, pursuant to Rule 80B of the Maine Rules of Civil Procedure.

7) Floodplain Management

In addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, may submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration shall consist of:

- a) the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
- b) a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance;
- c) a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
- d) evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and
- e) a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.