

1 H.401

2 Introduced by Committee on Fish, Wildlife and Water Resources

3 Date:

4 Subject: Municipal planning and development; municipal plan; regional plan;  
5 flood resilience plan; zoning bylaws; flood hazard areas; accessory  
6 dwellings

7 Statement of purpose of bill as introduced: This bill proposes to require  
8 municipal and regional planning commissions to include flood resilience  
9 elements as a part of their plans. The bill also proposes to allow municipalities  
10 to prohibit the construction of accessory dwelling units in flood hazard and  
11 fluvial erosion areas.

12 An act relating to municipal and regional planning and flood resilience

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 Sec. 1. 24 V.S.A. § 4302 is amended to read:

15 § 4302. PURPOSE; GOALS

16 (a) General purposes. It is the intent and purpose of this chapter to  
17 encourage the appropriate development of all lands in this ~~state~~ State by the  
18 action of its constituent municipalities and regions, with the aid and assistance  
19 of the ~~state~~ State, in a manner which will promote the public health, safety  
20 against fire, floods, explosions, and other dangers; to promote prosperity,

1 comfort, access to adequate light and air, convenience, efficiency, economy,  
2 and general welfare; to enable the mitigation of the burden of property taxes on  
3 agricultural, forest, and other open lands; to encourage appropriate  
4 architectural design; to encourage the development of renewable resources; to  
5 protect residential, agricultural, and other areas from undue concentrations of  
6 population and overcrowding of land and buildings, from traffic congestion,  
7 from inadequate parking and the invasion of through traffic, and from the loss  
8 of peace, quiet, and privacy; to facilitate the growth of villages, towns, and  
9 cities and of their communities and neighborhoods so as to create an optimum  
10 environment, with good civic design; to encourage development of a rich  
11 cultural environment and to foster the arts; and to provide means and methods  
12 for the municipalities and regions of this ~~state~~ State to plan for the prevention,  
13 minimization, and future elimination of such land development problems as  
14 may presently exist or which may be foreseen and to implement those plans  
15 when and where appropriate. In implementing any regulatory power under this  
16 chapter, municipalities shall take care to protect the constitutional right of the  
17 people to acquire, possess, and protect property.

18 \* \* \*

19 (c) In addition, this chapter shall be used to further the following specific  
20 goals:

21 \* \* \*

1           (14) To encourage flood resilient communities.

2           (A) New development in identified flood hazard, fluvial erosion, and  
3       river corridor protection areas should be avoided. If new development is to be  
4       built in such areas, it should be constructed to withstand flooding and fluvial  
5       erosion and should not exacerbate flooding.

6           (B) The protection and restoration of floodplains and upland forested  
7       areas that attenuate and moderate flooding and fluvial erosion should be  
8       encouraged.

9           (C) Flood emergency preparedness and response planning should be  
10      encouraged.

11   \* \* \*

12       Sec. 2. 24 V.S.A. § 4303(8) is amended to read:

13           (8) “Flood hazard area” for purposes of ~~section~~ sections 4348a, 4382,  
14       4411, 4424, and 4469 of this title shall have the same meaning as “area of  
15       special flood hazard” under 44 C.F.R. § 59.1. Further, with respect to flood,  
16       river corridor protection area, and other hazard area regulation pursuant to this  
17       chapter, the following terms shall have the following meanings:

18           (A) “Floodproofing” shall have the same meaning as “flood  
19       proofing” under 44 C.F.R. § 59.1.

20           (B) “Floodway” shall have the same meaning as “regulatory  
21       floodway” under 44 C.F.R. § 59.1.

1           (C) “Hazard area” means land subject to landslides, soil erosion,  
2           fluvial erosion, earthquakes, water supply contamination, or other natural or  
3           human-made hazards as identified within a “local mitigation plan” enacted  
4           under section 4424 of this title and in conformance with and approved pursuant  
5           to the provisions of 44 C.F.R. § 201.6.

6           (D) “National Flood Insurance Program” means the National Flood  
7           Insurance Program under 42 U.S.C. chapter 50 and implementing federal  
8           regulations in 44 C.F.R. parts 59 and 60.

9           (E) “New construction” means construction of structures or filling  
10          commenced on or after the effective date of the adoption of a community’s  
11          flood hazard bylaws.

12          (F) “Substantial improvement” means any repair, reconstruction, or  
13          improvement of a structure, the cost of which equals or exceeds 50 percent of  
14          the market value of the structure either before the improvement or repair is  
15          started or, if the structure has been damaged and is being restored, before the  
16          damage occurred. However, the term does not include either of the following:

17               (i) Any project or improvement of a structure to comply with  
18               existing state or local health, sanitary, or safety code specifications that are  
19               solely necessary to assure safe living conditions.

20               (ii) Any alteration of a structure listed on the National Register of  
21               Historic Places or a state inventory of historic places.

1           (G) “Equilibrium condition” means the width, depth, meander  
2 pattern, and longitudinal slope of a stream channel that occurs when water  
3 flow, sediment, and woody debris are transported by the stream in such a  
4 manner that it generally maintains dimensions, pattern, and slope without  
5 unnaturally aggrading or degrading the channel bed elevation.

6           (H) “Fluvial erosion” means the erosion or scouring of riverbeds and  
7 banks during high flow conditions of a river.

8           (I) “River” means the full length and width, including the bed and  
9 banks, of any watercourse, including rivers, streams, creeks, brooks, and  
10 branches which experience perennial flow. “River” does not mean constructed  
11 drainageways, including water bars, swales, and roadside ditches.

12           (J) “River corridor” means the land area adjacent to a river that is  
13 required to accommodate the dimensions, slope, planform, and buffer of the  
14 naturally stable channel and that is necessary for the natural maintenance or  
15 natural restoration of a dynamic equilibrium condition and for minimization of  
16 fluvial erosion hazards, as delineated by the ~~agency of natural resources~~  
17 Agency of Natural Resources in accordance with river corridor protection  
18 procedures.

19           (K) “River corridor protection area” means the area within a  
20 delineated river corridor subject to fluvial erosion that may occur as a river  
21 establishes and maintains the dimension, pattern, and profile associated with its

1 dynamic equilibrium condition and that would represent a hazard to life,  
2 property, and infrastructure placed within the area.

3 Sec. 3. 24 V.S.A. § 4348a is amended to read:

4 § 4348a. ELEMENTS OF A REGIONAL PLAN

5 (a) A regional plan shall be consistent with the goals established in section  
6 4302 of this title and shall include but need not be limited to the following:

7 \* \* \*

8 (11)(A) A flood resilience element that:

9 (i) identifies flood hazard and fluvial erosion hazard areas, based  
10 on river corridor maps provided by the Secretary of Natural Resources  
11 pursuant to 10 V.S.A. § 1428(a) or maps recommended by the Secretary, and  
12 designates those areas that should be protected, including floodplains, river  
13 corridors, land adjacent to streams, wetlands, and upland forests, to reduce the  
14 risk of flood damage to infrastructure and improved property; and

15 (ii) recommends policies and strategies to protect the areas  
16 identified and designated under subdivision (11)(A) of this subsection and to  
17 mitigate risks to public safety, critical infrastructure, historic structures, and  
18 public investments.

19 (B) A flood resilience element may reference an existing regional  
20 hazard mitigation plan approved under 44 C.F.R. § 201.6.

21 \* \* \*

1 Sec. 4. 24 V.S.A. § 4382 is amended to read:

2 § 4382. THE PLAN FOR A MUNICIPALITY

3 (a) A plan for a municipality may be consistent with the goals established  
4 in section 4302 of this title and compatible with approved plans of other  
5 municipalities in the region and with the regional plan and shall include the  
6 following:

7 \* \* \*

8 (12)(A) A flood resilience plan that:

9 (i) identifies flood hazard and fluvial erosion hazard areas, based  
10 on river corridor maps provided by the Secretary of Natural Resources  
11 pursuant to 10 V.S.A. § 1428(a) or maps recommended by the Secretary, and  
12 designates those areas that should be protected, including floodplains, river  
13 corridors, land adjacent to streams, wetlands, and upland forests, to reduce the  
14 risk of flood damage to infrastructure and improved property; and

15 (ii) recommends policies and strategies to protect the areas  
16 identified and designated under subdivision (12)(A)(i) of this subsection and to  
17 mitigate risks to public safety, critical infrastructure, historic structures, and  
18 municipal investments.

19 (B) A flood resilience plan may reference an existing local hazard  
20 mitigation plan approved under 44 C.F.R. § 201.6.

21 \* \* \*

1 Sec. 5. 24 V.S.A. § 4412 is amended to read:

2 § 4412. REQUIRED PROVISIONS AND PROHIBITED EFFECTS

3 Notwithstanding any existing bylaw, the following land development  
4 provisions shall apply in every municipality:

5 (1) Equal treatment of housing and required provisions for affordable  
6 housing.

7 \* \* \*

8 (E) ~~No~~ Except for flood hazard and fluvial erosion area bylaws  
9 adopted pursuant to section 4424 of this title, no bylaw shall have the effect of  
10 excluding as a permitted use one accessory dwelling unit that is located within  
11 or appurtenant to an owner-occupied single-family dwelling. An accessory  
12 dwelling unit means an efficiency or one-bedroom apartment that is clearly  
13 subordinate to a single-family dwelling, and has facilities and provisions for  
14 independent living, including sleeping, food preparation, and sanitation,  
15 provided there is compliance with all the following:

16 (i) The property has sufficient wastewater capacity.

17 (ii) The unit does not exceed 30 percent of the total habitable floor  
18 area of the single-family dwelling.

19 (iii) Applicable setback, coverage, and parking requirements  
20 specified in the bylaws are met.



1 (F) Nothing in subdivision (1)(E) of this section shall be construed to  
2 prohibit:

3 (i) a bylaw that is less restrictive of accessory dwelling units;

4 (ii) a bylaw that requires conditional use review for one or more of  
5 the following that is involved in creation of an accessory dwelling unit:

6 (I) a new accessory structure;

7 (II) an increase in the height or floor area of the existing  
8 dwelling; or

9 (III) an increase in the dimensions of the parking areas.

10 \* \* \*

11 Sec. 6. 24 V.S.A. § 2291(25) is amended to read:

12 (25) To regulate by means of an ordinance or bylaw development in a  
13 flood hazard area, river corridor protection area, or other hazard area consistent  
14 with the requirements of section 4424 of this title and the National Flood  
15 Insurance Program. Such an ordinance or bylaw may regulate accessory  
16 dwelling units in flood hazard and fluvial erosion areas.

17 Sec. 7. 10 V.S.A. § 1427 is amended to read:

18 § 1427. RIVER CORRIDORS AND BUFFERS

19 (a) River corridor and floodplain management program. ~~The secretary of~~  
20 ~~natural resources~~ Secretary of Natural Resources shall establish a river corridor  
21 and floodplain management program to aid and support the municipal adoption

1 of a flood resilience plan under 24 V.S.A. § 4382 and of river corridor,  
2 floodplain, and buffer bylaws. Under the river corridor and floodplain  
3 management program, the ~~secretary~~ Secretary shall:

4 (1) assess the geomorphic condition and sensitivity of the rivers of the  
5 ~~state~~ State and identify where the sensitivity of a river poses a probable risk of  
6 harm to life, property, or infrastructure.

7 (2) delineate and map river corridors based on the river sensitivity  
8 assessments required under subdivision (1) of this subsection according to a  
9 priority schedule established by the ~~secretary~~ Secretary by procedure; and

10 (3) develop recommended best management practices for the  
11 management of river corridors, floodplains, and buffers.

12 \* \* \*

13 Sec. 8. EFFECTIVE DATE

14 This act shall take effect on July 1, 2014.