

House Natural Resources, Fish & Wildlife Committee
H.53 Testimony
January 25, 2017

Good Morning Chairman Deen and Committee Members,

My name is Rob Evans, I manage the River Corridor & Floodplain Protection Program in the Agency of Natural Resources.

What follows does not constitute official Agency position on H.53, as the bill has yet to be fully vetted. However, I will articulate why this bill could be very helpful in facilitating tree planting projects. While half of my program is focused on regulatory work, the other half of my program is focused on the conservation and restoration of river corridors and floodplains, and thus, supporting the restoration of forested floodplains is an essential piece of our program's work.

Since you have a couple of experts that will be providing testimony on the importance of planting trees in floodplains, I will focus on the regulatory awkwardness that currently exists.

90% of Vermont Cities and Towns are enrolled in the National Flood Insurance Program. In exchange for the availability of federal flood insurance, towns agree to adopt and enforce National Flood Insurance Program land use regulations. As a base requirement, towns are required to issue permits for development in their federally mapped Flood Hazard Areas. The regulations are complex and resource limited small towns are often challenged to administer and enforce their regulations.

Particularly challenging is the definition of "development" - the NFIP definition of development is essentially any human-made change to improved or unimproved real estate. Unfortunately, that can lead to a very rigid interpretation of activities that trigger a permit.

It's important to note that the NFIP has been around since 1968; it is an insurance program and thus, it is focused on the regulation of insurable buildings and development activities that could

increase flood hazards. As such, the federal flood insurance program regulatory scheme never envisioned river and floodplain restoration activities.

So what is the implication for tree planting projects? Given the all-encompassing definition of "development," towns certainly have a legal basis to require permits for planting projects in flood hazard areas. On the other hand, federal guidance clearly affords local officials discretion to exempt very minor activities that would not obstruct flood flows. In my professional opinion, the planting of tree saplings certainly falls into the category of having a very minor impact on flood flows. Moreover, I would argue the trees are extremely beneficial for slowing down floodwaters. However, some towns are reluctant to exempt anything for fear a regulatory slippery-slope. Other towns simply lack staff with confidence to make such judgement calls. The result can be an overly onerous permitting process to plant trees.

The bill, as introduced, creates a simple permit pathway by way of a blanket "Permit by Operation." This would create a uniform and streamlined permit for tree planting projects that should benefit project proponents and town governments alike, not to mention the river and floodplain resource they are intended to restore and protect.