

Senate Natural Resources & Energy
H.53 Testimony
February 15, 2017

Good Morning Chairman Bray and Committee Members,

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

In addition to our regulatory work, my program collaborates with a myriad of internal and external partners focused on the conservation and restoration of river corridors and floodplains, and riparian tree planting projects are an essential component of that work. There are many sister programs in the Agency of Natural Resources with an interest in restoring forested floodplains. As such the Agency fully supports this bill.

Ron Rhodes will be providing testimony on the numerous benefits of planting trees in floodplains, so I will focus on the regulatory awkwardness that currently exists, which this bill seeks to remedy.

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 1968; it is an insurance program and thus, 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 was neither intended, nor structured, to regulate 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. The planting of tree saplings certainly falls into the category of having a very minor impact on flood flows. Trees are extremely beneficial for slowing down floodwaters and enhancing natural and beneficial floodplain function. However, towns are reluctant to exempt anything for fear a regulatory slippery-slope or simply lack staff with confidence to exempt very minor activities. The result can be an overly onerous permitting process to plant trees.

This bill 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.