

Rationale and Policy Support for Revisions to Act 250 Criterion 1(D) Vermont DEC Rivers Program

Executive Summary

The ANR determination of flood and fluvial erosion hazards has become well-established science and state policy, and proposed statutory revisions to update criterion 1(D) terminology are consistent with current Act 250 state land use regulation. The protection of fluvial erosion hazard areas, now called river corridors, from piecemeal development has become:

- public policy as expressed in four separate acts of the Vermont General Assembly;
- a consistent recommendation in review of Act 250 criterion 1(D) compliance since 2003 (across three administrations), upon examining repetitive flood damages and the unbearable ongoing costs of doing otherwise;
- a key component of ANR Act 250 criterion 1(D) determinations made with established Agency procedures that provide due process and rise above the bar of “arbitrary and capricious” as confirmed by the Vermont Supreme Court in three separate cases (spanning 2003 to 2018).

River Corridor Legislation passed by the Vermont General Assembly

Act 110. (2010) *An act relating to establishment of an agency of natural resources’ river corridor management program*: established public policy that, where possible, human structures should be placed outside of the river corridor to avoid future conflicts, and the State shall manage rivers towards dynamic equilibrium.

Act 138. (2012) *An act relating to regulation of flood hazard areas, river corridors, and stream alteration*: established the Agency’s authority to regulate flood-prone lands for uses exempt for municipal regulation in order to comply with the NFIP and establish standards that exceed the NFIP minimum requirements in order to prevent or limit the risk of harm to life, property or infrastructure from flooding. The Act also directed the state to establish a river corridor and floodplain management program to map and promote river corridor protection and to provide aid and support the municipal adoption of river corridor, floodplain and buffer bylaws.

Act 16. (2013) *An act relating to municipal and regional planning and flood resilience*: established a flood resiliency planning element requirement for regional & municipal plans to include consideration of river corridor and flood hazard area protection.

Act 107. (2014) *An act relating to regulation of land uses within flood hazard areas*: updated the language of Chapter 117 §4413 and amended statutory rulemaking requirement to include authorization for river corridor regulation, in addition to flood hazard area regulation.

Supreme Court rulings affirming ANR authority and inclusion of fluvial erosion and river corridors in Act 250 hazard determinations

- **Woodford Packers, Inc. (2003)**
- **Zaremba (2015)**
- **Korrow Real Estate (2018)**

Section 1: Introduction

The following paper explains the proposed changes to the statutory language of Act 250 Criterion 1(D) "Floodways." The need is based primarily on the fact that the developers and regulators are no longer served by the existing, outdated terminology. Time and money would be saved if all parties were using the modern terms at the onset of the 1(D) determination process. The proposed changes are followed by separate chronologies of how ANR's technical (peer-reviewed) use of river corridors for identifying fluvial erosion hazards was incorporated into publicly vetted procedures and supported by all three branches of Vermont State government. These histories are provided to assure that the ANR determination of flood and fluvial erosion hazards has become well-established science and state policy, and that proposed statutory revisions to update terms is consistent with current state land use regulation.

Section 2: Proposed revisions to Criterion 1(D) statutory language

§ 6086. Issuance of permit; conditions and criteria

(a) Before granting a permit, the district commission shall find that the subdivision or development:

(1) Will not result in undue water or air pollution. In making this determination it shall at least consider: the elevation of land above sea level; and in relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable health and environmental conservation department regulations.

(D) ~~Floodways~~ Flood hazard areas; river corridors. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision of lands within a ~~floodway~~ flood hazard area or river corridor will not restrict or divert the flow of flood waters; cause or contribute to fluvial erosion; and will not endanger the health, safety, and welfare of the public or of riparian owners during flooding; ~~and~~

~~(ii) the development or subdivision of lands within a floodway fringe will not significantly increase the peak discharge of the river or stream within or downstream from the area of development, and endanger the health, safety, or welfare of the public or riparian owners during flooding.~~

10 V.S.A. § 6001. Definitions

When used in this chapter:

(6) ~~"Floodway" means the channel of a watercourse which is expected to flood on an average of at least once every 100 years and the adjacent land areas which are required to carry and discharge the flood of the watercourse, as determined by the secretary of natural resources with full consideration given to upstream impoundments and flood control projects.~~ "Flood Hazard Area" means the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year as determined by the Secretary of Natural Resources. The term has the same meaning as "area of special flood hazard" under 44 C.F.R. § 59.1.

(7) ~~"Floodway fringe" means an area which is outside a floodway and is flooded with an average frequency of once or more in each 100 years as determined by the secretary of natural resources with full consideration given to upstream impoundments and flood control projects.~~ "River Corridor" means the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel and that is necessary for the natural maintenance or natural restoration of a dynamic equilibrium condition and for minimization of fluvial erosion hazards, as delineated by the Agency in accordance with river corridor protection procedures. (10 V.S.A. § 1422(12)).

Section 3: Administrative Acts and Procedures

1999 – Vermont ANR/DEC’s river corridor protection began with the initiation of its Fluvial Erosion Hazard (FEH) program, which was established in response to Act 137 (passed by the 1997-98 General Assembly). The Act 137 Report to the General Assembly identified fluvial erosion related to river dynamics as a major driver of flood damage. Act 137 required the State to develop appropriate flood hazard mitigation and avoidance measures in consideration of flood inundation and fluvial erosion.

2003 – The Vermont Supreme Court affirmed that the Secretary may include a fluvial erosion hazard (FEH) area in his/her Act 250 floodway determination that soundly applies fluvial geomorphology and supported with evidence, whether or not the use of FEH was first promulgated by rule (see SCOV Woodford-Packer order below). Following this decision, the Douglas Administration adopted the “*Vermont ANR Procedure on Floodway Determinations in Act 250 Proceedings*” which defined the technical process for delineating fluvial erosion hazard areas in floodway determinations. This procedure has remained largely unchanged and consistently used in Act 250 for the past 15 years.

2009 – The Agency amended the 2003 Procedure with the “*ANR Technical Guidance for Determining Floodway Limits Pursuant to Act 250 Criterion 1(D)*.” The guidance provided greater clarity to ensure consistency in decision-making, described opportunities for both public and expert involvement, set a standard for flood hazard avoidance, and rendered clear, consistent, and broadly accepted floodways determinations. The Technical Guidance also identified specific opportunities for project proponents and municipalities to participate in the Agency’s determination process and the implementation of the ANR Floodway Procedure. Opportunities involved conducting technical studies, design work, and municipal planning to achieve conformance with the Agency floodway determination or to determine and/or modify the initial floodway determinations. This procedure has remained largely unchanged and consistently used in Act 250 for the past 10 years.

2010 – The Douglas Administration proposed legislation that would later become Act 110 in which the General Assembly found that protecting a river corridor was a means to “*reduce fluvial erosion hazards*” and “*sustain the social, economic, and ecological sustainability of Vermont communities*” (see Act 110 below).

2014 – In response to Act 138 (see below), the State adopted the Flood Hazard Area and River Corridor Rule. The Rule is to “*ensure that the selection, design, creation, and use of development exempt from municipal regulation and located in flood hazard areas and river corridors is safe and accomplished in a manner that is consistent with the public health, safety, and welfare, and does not impair stream equilibrium, floodplain services, or the river corridor.*” The Rule does not apply to Act 250 projects that are subject to municipal regulation but does use the same adopted procedures for delineating river corridors as those applied in Act 250 determinations. The importance of the Rule in this discussion is that standards for delineating and protecting river corridors were vetted and approved by the Vermont legislature in the rulemaking process.

2015 – As directed by the Vermont General Assembly in Act 110 and 138 (see below), the Agency adopted *Flood Hazard Area and River Corridor Protection Procedures*. These Procedures are used in Act 250 floodway determinations and in the issuance of permits under the Rule. They replace the 2003/2009 *ANR Procedure and Technical Guidance on Floodway Determinations in Act 250 Proceedings*.

2017 – The *Flood Hazard Area and River Corridor Protection Procedures* were revised under the current administration to include a drainage area threshold of 0.25 square miles as a means for deciding stream perennality. The change clarifies that the Agency will not make Act 250 floodway determinations for intermittent streams, consistent with the state policy to regulate stream alterations on perennial stream for the minimization of flood and fluvial erosion hazards (10 V.S.A. §1023).

2007-2018 – State Hazard Mitigation Planning – In addition to ANR and the Environmental Board, other agencies and departments have become increasingly mindful of the state river corridor policy, incorporating protections into their hazard mitigation planning, funding policies, and/or project siting criteria, including: Commerce and Community Development; VTrans; Agriculture, Foods, and Markets; Public Service; Buildings and General Services; and Emergency Management. The last four triennial State Hazard Mitigation Plans developed by state agencies, publicly vetted, and signed by the Governor have placed the highest priority on addressing fluvial erosion hazards and protecting river corridors.

Flood Hazard Areas and River Corridor Policy

(copied directly from Section §29-102 of the Flood Hazard Area & River Corridor Rule - adopted by the State in 2014 through the legislature's rulemaking process)

(a) Flood events are Vermont's most frequent and costly type of natural disaster. Historic floodplain encroachments and flood mitigation approaches have either maintained or increased the State's flood vulnerability over time. The Vermont Agency of Natural Resources (Agency or ANR) provides municipalities and agencies of state government regulatory technical assistance in evaluating land development proposals in designated flood hazard areas and river corridors.

NFIP minimum standards seek to reduce the risk to new structures in the flood hazard area, but do not provide an adequate means of protecting the beneficial functions of the floodplain resource or development that is already located within floodplains. In addition, NFIP maps and standards do not recognize the dynamic processes that take place within the river corridor that are essential to maintain floodplain function. Undeveloped floodplains and river corridors provide a suite of social, economic, and ecological benefits.

(b) It is the policy of the state of Vermont to balance the need to protect new and existing investments from flood hazards with the need to protect natural and beneficial floodplain functions to reduce property loss and damage. (10 V.S.A. § 751, 10 V.S.A. § 1421). Improvements on property within flood hazard areas and river corridors are highly vulnerable to flood damage. Encroachments in flood hazard areas and river corridors result in cumulative degradation of natural floodplain function leading to increased flood elevations, velocities, and river instability.

The State recognizes that flood hazard vulnerability is due to loss of natural and beneficial floodplain functions and it is in the interest of the State to protect and restore floodplain function to the maximum extent possible. Floodplain functions that reduce flood hazards include attenuation of flood flows, storage of sediment and debris, water quality protection, and groundwater infiltration.

Over the last two centuries, humans have attempted to secure investments located in floodplains by employing channel management practices, such as riverbank armoring, straightening, dredging, and berming. Combined with the effects of changing land uses, these practices have created a degraded condition in many Vermont rivers and streams where flows are largely kept within the channel, resulting in increased stream power and reduced access to floodplains. Loss of floodplain access can trigger physical instability in a river system and lead to greater sensitivity to erosion hazards such as bank failures, dramatic changes in stream path, enlargement of the channel, and severe flood damages. NFIP maps and (the minimum) regulations (to protect floodways and the flood fringe) fail to consider loss of floodplain access, which exacerbates the problem. Protection of the river corridor provides rivers and streams with the lateral space necessary to maintain or reestablish floodplain access and stability through natural, physical processes.

(c) It is in the interest of the State to promote and encourage infill and redevelopment of designated centers and to discourage encroachments in undeveloped flood hazard areas and river corridors.

Section 4: River Corridor Legislation passed by the Vermont General Assembly

Act 110. (2010) An act relating to establishment of an agency of natural resources' river corridor management program: established public policy that, where possible, human structures should be placed outside of the river corridor to avoid future conflicts, and the State shall manage rivers towards dynamic equilibrium.

Act 138. (2012) An act relating to regulation of flood hazard areas, river corridors, and stream alteration: established the Agency's authority to regulate flood-prone lands for uses exempt for municipal regulation in order to comply with the NFIP and establish standards that exceed the NFIP minimum requirements in order to prevent or limit the risk of harm to life, property or infrastructure from flooding. The Act also directed the state to establish a river corridor and floodplain management program to map and promote river corridor protection and to provide aid and support the municipal adoption of river corridor, floodplain and buffer bylaws.

Act 16. (2013) An act relating to municipal and regional planning and flood resilience: established a flood resiliency planning element requirement for regional & municipal plans to include consideration of river corridor and flood hazard area protection.

Act 107. (2014) An act relating to regulation of land uses within flood hazard areas: updated the language of Chapter 117 §4413 and amended statutory rulemaking requirement to include authorization for river corridor regulation, in addition to flood hazard area regulation.

The following paragraphs have been excerpted from the statutory changes, created by one of these four Acts, to clearly demonstrate that the technical definition and benefits of protecting river corridors were fully and publicly vetted, and that revising Act 250 language would serve to align state land use regulation with existing practice and policy (underlining added in places for emphasis).

FINDINGS (Act 110)

The general assembly finds that:

- (1) The surface waters of Vermont are an invaluable resource to the state and its citizens.
- (2) The shorelands and floodplains adjacent to the waters of the state harbor some of the most valuable natural resources in the state and serve important functions related to the health and quality of the state's surface waters and to public safety.
- (3) The shorelands adjacent to the state's surface waters are often fragile natural resources, and their protection is necessary to maintain the vitality and health of the state's surface waters.
- (4) Under current law, the potential exists for uncoordinated, unplanned, and piecemeal development along the state's surface waters, which could result in significant negative impacts on the waters of Vermont and upon public welfare and safety.
- (5) Buffers consisting of trees and other vegetation adjacent to the lakes of the states and protected river corridors consisting of vegetated buffers and undeveloped lands along rivers and streams help sustain the social, economic, and ecological sustainability of Vermont communities.

10 V.S.A. § 1421. POLICY (Acts 110 and 138)

To aid in the fulfillment of the state's role as trustee of its navigable waters and to promote public health, safety, convenience, and general welfare, it is declared to be in the public interest to make studies, establish policies, make plans, make rules, encourage and promote buffers adjacent to lakes, ponds, reservoirs, rivers, and streams of the state, encourage and promote protected river corridors adjacent to rivers and streams of the state, and authorize municipal shoreland and river corridor protection zoning bylaws for the efficient use, conservation, development, and protection of the state's water resources. The purposes of the rules shall be to further the maintenance of safe and healthful conditions; prevent and control water

pollution; protect spawning grounds, fish, and aquatic life; control building sites, placement of structures, and land uses; reduce fluvial erosion hazards; reduce property loss and damage; preserve shore cover, natural beauty, and natural stability; and provide for multiple use of the waters in a manner to provide for the best interests of the citizens of the state.

10 V.S.A. § 1422. DEFINITIONS (Act 110 and 138)

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

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

(17) “Geomorphic condition” means the degree of departure from the dimensions, pattern, and profile associated with a naturally stable channel representing the unique dynamic equilibrium condition of a river segment.

(20) “Sensitivity” means the potential of a river, given its inherent characteristics and present geomorphic conditions, to be subject to a high rate of fluvial erosion and other river channel adjustments, including erosion, deposit of sediment, and flooding.

10 V.S.A. § 1427. RIVER CORRIDORS AND BUFFERS (Act 110 and 138)

(a) River corridor and floodplain management program. The secretary of natural resources shall establish a river corridor and floodplain management program to aid and support the municipal adoption of river corridor, floodplain, and buffer bylaws. Under the river corridor and floodplain management program, the secretary shall:

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

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

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

10 V.S.A. § 754. FLOOD HAZARD AREA RULES; USES EXEMPT FROM MUNICIPAL REGULATION (Acts 138 and 107)

(a) Rulemaking authority.

(1) On or before March 15, 2014 November 1, 2014, the Secretary shall adopt rules pursuant to 3 V.S.A. chapter 25 that establish requirements for the issuance and enforcement of permits applicable to:

(i) uses exempt from municipal regulation that are located within a flood hazard area or river corridor of a municipality that has adopted a flood hazard bylaw or ordinance under 24 V.S.A. chapter 117; and

(ii) State-owned and -operated institutions and facilities that are located within a flood hazard area or river corridor.

24 V.S.A. § 4348a. ELEMENTS OF A REGIONAL PLAN (Act 16)

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

* * *

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

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

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

24 V.S.A. § 4382. THE PLAN FOR A MUNICIPALITY (Act 16)

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

* * *

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

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

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

Section 5: Supreme Court rulings regarding ANR hazard determinations

The importance of reviewing court decisions in the context of an Act 250 criterion 1(D) statutory revision proposal is not to further review the solidity of river corridor protection policy, but rather to demonstrate that ANR hazard area (“floodway”) determinations, including river corridors, have been challenged and upheld by the Supreme Court on several occasions. Language and procedures that have been in place for 15 years, based on well-established science, and consistently used in hundreds on Act 250 proceedings over that time period, is being proposed in an update of Act 250 law.

Before examining the findings of the Court, it is worth reviewing the two-part review process of development projects under Criterion 1(D):

1. A determination as to whether the proposed project is within the “floodway.”

The determination of what constitutes the floodway was expressly placed within ANR statutory purview. Absent a violation of due process or evidence that the agency’s floodway determination was arbitrary and capricious, the District Commissions and courts shall defer to the agency’s interpretation (SCOV, Korow decision, 2018). The agency provides due process and avoids arbitrary and capricious decisions by consistently applying an established complex methodology within its area of expertise per an agency adopted Procedure.

2. Projects within a floodway are then reviewed for compliance (i.e., as to whether it will restrict or divert the flow of flood waters; and will not endanger the health, safety, and welfare of the public or of riparian owners during flooding). Here, the burden of proof is on the applicant, the ANR makes recommendations, and the District Commissions determine compliance. They usually defer to ANR expertise, but they are not obligated to do so.

The proposed statutory changes to replace the terms “floodway” and “flood fringe” with “flood hazard area” and “river corridor” and add the test of “fluvial erosion” to that of “restrict or divert the flow of flood water” does not change the two-step determination and review process outlined above. In the Korrow decision, the Supreme Court examined the record using the two-step process and found that, while the development was in the ANR determined floodway (negating the lower court finding), there was not sufficient evidence to show an error in the lower court judgement that flood waters would not be restricted or diverted.

Similarly, the addition of “cause and contribute to fluvial erosion” does not expand the technical test for compliance, rather the phase adds clarity to how, in fact, the Act 250 process evaluates dangers to the health, safety and welfare of the public or of riparian owners during flooding. Fluvial erosion is one of the primary outcomes of stream flow being restricted or diverted from its natural course.

Woodford Packers, Inc. (excerpt from SCOV order, 2003)

“The plain language of the statute states that the Secretary of ANR is authorized to make determinations as to what constitutes a floodway or a floodway fringe.

In essence, WPI (Woodford Packers, Inc.) contends that the Secretary of ANR is without authority to implement the "floodway" and "floodway fringe" determinations without promulgating a rule pursuant to VAPA. We disagree. An agency is not required to adopt rules or regulations to carry out what its authorizing statute specifically directs it to do.

WPI's claim that ANR's application of its floodway determination on a case-by-case basis is without legal authority must also fail. The statutory authority enabling the Secretary of ANR to determine floodways and floodway fringes does not compel the determination be made by rules promulgated pursuant to VAPA. Standardless alteration of ANR's practice of determining floodways may give rise to a violation of due process if arbitrarily and capriciously applied, but in the matter before us the Environmental Board's finding that the Secretary's application of fluvial geomorphology was soundly grounded and supported by the evidence was not error.”

Zaremba (excerpt from SCOV order, 2015)

“Criterion 1(D) requires the applicant to show, and the environmental division to find, the project’s impacts on floodways will not endanger the public. That provision addresses two distinct flooding hazards: (i) inundation flooding, resulting from diversion or restriction of floodwaters; and (ii) erosion hazards caused by “significantly increase(ing) the peak discharge” of the waterway. See 10 V.S.A. 6086(a)(1)(D). ANR also plays an important role in cases involving Criterion 1(D). ANR has authority, pursuant to Act 250, to determine whether a particular project will fall within a Floodway. In re Woodford Packers, Inc. 2003 VT 60, ¶13, 175 Vt.579,830 A.2d 100 (mem.) (interpreting 10 V.S.A §§6001(6) and (7)).”

Korrow Real Estate (excerpt from SCOV order, 2018)

“Determining whether a project triggers analysis under Criterion 1(D) requires a preliminary finding that the project is located within a “floodway” or “floodway fringe.” Notably, the ANR has specific statutory authority to determine the area comprising a “floodway” or “floodway fringe” pursuant to 10 V.S.A. § 6001(6) and (7), and thus whether a project falls within those areas.

Even when conducting an evidentiary hearing, the court owes deference to agency interpretations of policy or terms when: (1) that agency is statutorily authorized to provide such guidance; (2) complex methodologies are applied; or (3) such decisions are within the agency’s “area of expertise.”

Here, the Legislature granted the ANR express authority to construe “floodway” under the relevant Act 250 provisions, this task is within the ANR’s area of expertise, and the ANR measured the project’s compliance with Criterion 1(D) using complicated methodologies for determining the “floodway” that are established practice within the agency. Absent a violation of due process or evidence that the agency decision was arbitrary and capricious, the court should have deferred to the agency’s interpretation of the terms at issue and applied them when assessing the project. There is no such violation or evidence here. The court’s failure to afford deference to the ANR’s interpretation of terms that the Legislature expressly placed within the agency’s statutory purview, were within the ANR’s area of expertise, and required complex methodologies to discern, was error. Accordingly, we apply the ANR definitions of “floodway” and “floodway fringe” on appeal

Here, the ANR’s methodology for calculating the FEH area was an established practice—it was not arbitrarily or capriciously applied to the Korrow project. Moreover, the ANR provided ample support, including testimony, maps, and exhibits, to support its interpretation of the Act 250 “floodway.” The ANR was well within its statutory bounds when calculating the “floodway” here, and its authority should not have been usurped by the court.”

Section 6: Conclusion

The protection of fluvial erosion hazard areas, now called river corridors, from piecemeal development has become:

- public policy as expressed in four separate acts of the Vermont General Assembly;
- a consistent recommendation in review of Act 250 criterion 1(D) compliance since 2003 (across three administrations), upon examining repetitive flood damages and the unbearable ongoing costs of doing otherwise;
- a key component of ANR Act 250 criterion 1(D) determinations made with established Agency procedures that provide due process and rise above the bar of “arbitrary and capricious” as confirmed by the Vermont Supreme Court in three separate cases (spanning 2003 to 2018).

While continued use of the outdated terms would not impact current flood hazard area and river corridor policy, nor change the long-established procedures for Act 250 1(D) determinations and compliance reviews, the terms obfuscate the regulatory process, especially for first time applicants, wasting both time and money.