

## Proposal – Addressing River Corridors in Neighborhood Development Areas

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*The following proposal was presented to the Senate Committee on Economic Development, Housing, and General Affairs on February 25, 2020. All changes were made except those highlighted in yellow below. VNRC is respectfully requesting that the additional changes be made*

### 1) Clarify the meaning of “undeveloped” as follows:

*Language in draft 3.1 of S.237, p. 19:*

(5) The proposed neighborhood development area consists of those portions of the neighborhood planning area that are appropriate for new and infill housing, excluding ~~identified~~ undeveloped flood hazard and fluvial erosion areas.

*Change to:*

(5) The proposed neighborhood development area consists of those portions of the neighborhood planning area that are appropriate for new and infill housing, including only areas containing pre-existing development and areas suitable for infill development as defined in §29-201 of the Vermont Flood Hazard Area and River Corridor Rule<sup>1</sup>.

*Why make this change?*

In attempting to define “undeveloped,” it was difficult to find a definition that excluded most raw land, but included raw land that could be suitable for infill. This is an attempt to address that.

### 2) Provide additional specificity, and ensure more comprehensive protection of the settled area, with the following changes to S. 237, draft 3.1, p. 20, starting on line 6 (VNRC’s suggestions in red).

(c)(5)(A) ... If the neighborhood development area includes flood hazard areas or river corridors, the local bylaws must contain provisions ~~deemed adequate by~~ consistent with Agency of Natural Resources rules required under sub-section (a) of 10 V.S.A. §754(a)<sup>2</sup> to ensure that new infill development within the neighborhood development area ~~an existing settlement~~ occurs outside the floodway, new development is elevated

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<sup>1</sup> <https://dec.vermont.gov/sites/dec/files/documents/wsmd-fha-and-rc-rule-adopted-2014-10-24.pdf>

<sup>2</sup> Flood hazard area rules; uses exempt from municipal regulation. The rule itself can be found here: <https://dec.vermont.gov/sites/dec/files/documents/wsmd-fha-and-rc-rule-adopted-2014-10-24.pdf>

or flood proofed at least two feet above Base Flood Elevation, or otherwise reasonably safe from flooding, and will not exacerbate ~~cause or contribute to~~ fluvial erosion hazards within the river corridor. **If the neighborhood development area includes flood hazard areas or river corridors, local bylaws must also contain provisions to protect river corridors outside of the neighborhood development area consistent with the ANR model river corridor bylaws.**

*Why make this change?*

This change provides a reference point for what standards must be met for a local bylaw to be deemed sufficient. It references the state's Flood Hazard Area Rules, which say how development can happen safely in built up areas; and also specifies that a community must have river corridor protections outside of its downtowns and neighborhood development areas if it wants to include river corridors within Neighborhood Development Areas. Outside river corridor protections are important because upstream river corridor management helps minimize flooding downstream. It also removes the term "existing settlement," which has a specific meaning under Act 250 that should not be invoked here, because it may cause confusion.

- 3) If flood hazard areas and river corridors will be included in NDAs, they should be highlighted in the same section as "important natural resources."<sup>3</sup> Update p. 20, draft 3.1, line 2, to read:**

"(A) Avoids or that minimizes to the extent feasible the inclusion of "important natural resources" as defined in subdivision 2791(14) of this title, **and flood hazard areas and river corridors.**

*Why make this change?*

This is not essential, but does a few things. One, it emphasizes that inclusion of these areas should be avoided or minimized as a first step. Two, it serves to highlight that they are not included in the "important natural resources" definition (it has 'floodways,' but not the others). Three, it introduces these concepts in the natural resources section before laying out the standard (local bylaws) for protecting them. This is not essential but provides some clarity.

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<sup>3</sup> Per 24 VSA §2971(14), "important natural resources" means headwaters, streams, shorelines, floodways, rare and irreplaceable natural areas, necessary wildlife habitat, wetlands, endangered species, productive forestlands, and primary agricultural soils, all of which are as defined in 10 VSA chapter 151."