

**House Natural Resources, Fish, and Wildlife Committee  
Testimony on S.234 and S.226  
March 31, 2022**

Good Morning Chair Sheldon and Committee Members,

I am Rob Evans, Rivers Program Manager within the ANR/DEC Watershed Management Division.

I am only here to speak in very program-centric fashion on the proposed changes related to Neighborhood Development Areas in S234 and S226 and Criterion 1D changes in S234, which ANR has supported in multiple bills in recent years. It is my understanding, however, that ANR does not currently support S.234 in its current form due to other elements in the bill, so encourage you talk to Deputy Secretary Maggie Gendron to get the broader ANR perspective.

**Neighborhood Development Areas**

We worked with Chris Cochran and his team in ACCD a few years back on the Flood Hazard Area & River Corridor language related to Neighborhood Development Areas.

The current language in statute is well-intentioned but can be overly restrictive, which has discouraged some communities from going through the designation process. Specifically, the existing language can require exclusion of areas of existing compact/dense settlements where communities want and need to redevelop and infill with new housing.

The proposed language in S.234 and S.226, still sets the expectation that flood hazard areas and river corridors be excluded from Neighborhood Development Areas, but does add some flexibility to include those areas so long as the town has adopted town-wide standards consistent with ANR model hazard bylaws. ANR Model bylaw standards:

- Ensure new development does not cause adverse impacts to surrounding pre-existing development;
- Ensures flood resilient construction for redevelopment and new infill development; and

- Avoids new encroachments along undeveloped river corridors up and downstream of existing settlements.

Vermont Model Flood Hazard Area Bylaw – Higher Standards Cross-walk:

[rv ModelFloodHazardBylaws HigherStandardsCrosswalk 2018.pdf \(vermont.gov\)](#)

I do want to note that there is minor but significant correction to the language in S.234 and S.226, that I believe is in order. There is a particular sentence that references Neighborhood Development Areas needing to be outside of the flood hazard area. Per the original language worked up with ACCD a couple years back, **flood hazard area** needs to be replaced with **floodway**, else this will result in essentially the same inflexibility as currently in statute. Recall that the floodway is the portion of flood hazard area that is a no fill/no build zone. Flood resilient construction can and does take place in the flood hazard area outside of the floodway (see appended screenshots below for text in question).

### **Criterion 1D Floodways**

With respect to the changes to Criterion 1D floodways, this is overdue modernization of definitions and the standard. The definitions and standards currently in statute are decades old and do not acknowledge the evolution of hazard management in Vermont that promotes and implements standards that far exceed those of the national flood insurance program.

The changes proposed in S.234 bring the criterion 1D definitions into alignment with those in currently in Title 10 Chapter 32, and contained within ANR rules, procedure, and our model hazard bylaws that we offer towns. This is really important to minimize both confusion, game-playing, and resultant time wasted. We are embroiled right now with a developer's consultant on a significant proposal in the valley bottom at the confluence of two rivers, due in large part to the existence of disparate terms and perceived vs. actual regulatory requirements.

S.234 also condenses the standard under Criterion 1 D floodways, by removing the useless *floodway fringe* language and clarifies that flood-related erosion, not just inundation, is

a key consideration when evaluating projects. The reference to erosion is really needed, as so many project proponents believe that they only need to meet the floodway requirements of the national flood insurance program.

**Replace flood hazard area with floodway.** In both S.234 and S.226. Screenshot from both bills below:

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(A) Avoids or ~~that~~ minimizes to the extent feasible the inclusion of “important natural resources” as defined in subdivision 2791(14) of this title. If an “important natural resource” is included within a proposed neighborhood development area, the applicant shall identify the resource, explain why the resource was included, describe any anticipated disturbance to such resource, and describe why the disturbance cannot be avoided or minimized. If the neighborhood development area includes flood hazard areas or river corridors, the local bylaws shall contain provisions consistent with the Agency of Natural Resources’ rules required under 10 V.S.A. § 754(a) to ensure that new infill development within a neighborhood development area occurs outside the flood hazard area and will not 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 shall also contain provisions to protect river corridors outside the neighborhood development area consistent with the Agency of Natural Resources’ rules required under 10 V.S.A. § 754(a).

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1 and River Corridor Rule. In determining what areas are most suitable for new  
2 and infill housing, the municipality shall balance local goals for future land  
3 use, the availability of land for housing within the neighborhood planning area,  
4 and the smart growth principles. Based on those considerations, the  
5 municipality shall select an area for neighborhood development area  
6 designation that:

7 (A) Avoids or ~~that~~ minimizes to the extent feasible the inclusion of  
8 “important natural resources” as defined in subdivision 2791(14) of this title.  
9 If an “important natural resource” is included within a proposed neighborhood  
10 development area, the applicant shall identify the resource, explain why the  
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12 and describe why the disturbance cannot be avoided or minimized. If the  
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18 the river corridor. If the neighborhood development area includes flood hazard  
19 areas or river corridors, local bylaws shall also contain provisions to protect  
20 river corridors outside the neighborhood development area consistent with the