

## River Corridor Background

### A. National Flood Insurance Program (NFIP); Flood Hazard Areas

- The Federal Emergency Management Agency (FEMA) administers the NFIP under which affordable, government-backed flood insurance is provided to property owners.
- Under FEMA's rules, NFIP flood insurance may only be provided where an appropriate public body has adopted adequate floodplain management laws that meet FEMA's standard. An appropriate public body can be a state, county, or municipality.
- Under the NFIP, public body must regulate all development in an area of special flood hazard.<sup>1</sup>
- FEMA defines "development" as "any man-made change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials." (44 C.F.R. § 59.1).
- Vermont municipalities are the participating appropriate public body for purposes of issuance of NFIP insurance in Vermont. Vermont municipalities are authorized to regulate "land development" including land development in shorelands. Land development is defined as:
  - The division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation, or landfill, and any change in the use of any building or other structure, or land, or extension of use of land. 24 V.S.A. § 4303(10).
- Vermont municipalities are prohibited from regulating certain types of land development, most notably: 1) state or municipally owned facilities; 2) construction of schools; 3) churches; 4) hospitals; 5) solid waste management facilities; 6) hazardous waste facilities; 7) farming; 8) forestry; and 9) public utility generating plants and transmission facilities. 24 V.S.A. § 4413.
- In 2011/2012, FEMA threatened to rescind approval of the NFIP program in Vermont because municipalities could not regulate all "development" under State law.
- In 2012, the General Assembly enacted Act 138 to regulate "development" exempt from municipal regulation. Under Act 138, ANR was required to adopt a rule under which it would issue permits for development exempt from municipal regulation.
  - ANR may delegate to other state agencies authority to regulate certain types of municipally exempt development in a flood hazard area.
- Act 138 required to create and make available a model flood hazard area bylaw or ordinance that provides the minimum necessary to meet the NFIP.
- ANR was also required to provide technical assistance to municipalities with no flood hazard area bylaw in order to encourage adoption of NFIP eligible flood hazard area bylaws.

---

<sup>1</sup> "Special flood hazard area" or Area of special flood hazard" is the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHB. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1-30, VE, or V. For purposes of these regulations, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard". (44 C.F.R. § 59.1).

*B. River Corridor Protection; Fluvial Erosion*

- The FEMA NFIP regulates inundation flooding—the slow rise of flood waters. FEMA NFIP maps generally only map inundation hazards.
- Vermont is subject to inundation flooding, such as the 2011 Lake Champlain spring flooding, but Vermont also is subject to fluvial erosion flooding—when high rainfall events or mass snowmelt causes rivers to rise quickly and scour or erode streambanks and adjacent land.
- FEMA does not provide fluvial erosion hazard maps. ANR has issued some fluvial erosion maps in certain parts of the State, but more are needed.
- Act 138 required ANR to assess the geomorphic condition and sensitivity of rivers and identify those that pose a probable risk of harm to life, property, or infrastructure.
  - River sensitivity is a river’s potential to be subject to a high rate of fluvial erosion and other river channel adjustments, including erosion, sediment deposit, and flooding.
- Act 138 required ANR to delineate and map river corridors based on river sensitivity assessments ANR was required to conduct.
- Upon completing a river sensitivity assessment, ANR was required to provide a map of the river or river segment to the municipalities and regional planning commission where the river is located.
  - The map shall identify floodplains, river corridor protection areas, and FEMA map areas and zones and shall recommend best management practices, such as vegetated buffers.
  - The maps and ANR’s recommendations are advisory and have no regulatory effect unless a municipality adopts a bylaw to regulate activity in a river corridor protection area.
- No later than February 1, 2013, the Secretary of Administration was required to establish financial incentives for municipalities to adopt and implement river corridor protection areas.

*C. Municipal Zoning*

- Act 138 also amended municipal zoning authority to make conforming amendments consistent with amendments to bring the state into compliance with the NFIP program and make technical changes to flood hazard area authority in statute.
- Act 138 authorized municipalities to adopt special zoning districts for river corridor protection.
- Act 138 clarified municipal authority to adopt bylaws to address hazard areas, provided the bylaws conform with a town plan, or, for a flood hazard bylaw, a local hazard mitigation plan.
- A flood hazard area or river corridor protection area bylaw may regulate all development consistent with the NFIP definition in a flood hazard area or similar hazard area, except for development exempt from municipal regulation, which is regulated by ANR.