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H.29

Introduced by Representatives Sheldon of Middlebury and Dolan of Waitsfield

Date:

Subject: Conservation and development; flood hazard areas; mapped river  
corridors; permitting; development

Statement of purpose of bill as introduced: This bill proposes to expand  
jurisdiction under the existing Vermont Flood Hazard Area and River Corridor  
Rule to all development within a flood hazard area or mapped river corridor.  
Mapped river corridors shall be those drawn as part of the statewide River  
Corridor Base Map Layer adopted by the Secretary of Natural Resources.

An act relating to development in mapped river corridors

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The General Assembly finds that:

(1) According to the 2018 National Climate Assessment, the  
northeastern region of the United States has experienced an increase in more  
intense precipitation events, particularly in inland flooding of valleys, where  
persons, infrastructure, and agriculture tend to be concentrated.

(2) The 2021 Vermont Climate Assessment highlights that Vermont has  
seen:

1           (A) a 21 percent increase in average annual precipitation since 1990;

2           and

3           (B) 2.4 additional days of heavy precipitation since the 1960s.

4           (3) Data from the Federal Emergency Management Agency (FEMA)  
5           Public Assistance Program indicate that Vermont received 14 Major Disaster  
6           Declarations due to flooding, amounting to public infrastructure damages  
7           exceeding \$300,000,000.00 between 2010 and 2019. These costs do not  
8           include damages incurred to private property or those experienced in more  
9           localized, severe floods that do not trigger a federal major disaster declaration.

10           (4) According to the Department of Environmental Conservation, 70 to  
11           80 percent of all flood-related damages occur within Vermont’s river corridors.

12           (5) According to the Department of Environmental Conservation, only  
13           10 percent of Vermont municipalities, cities, or incorporated villages have  
14           adopted full river corridor protections through the Department’s model bylaws.

15           (6) Promoting existing compact settlements located along Vermont  
16           waterways will require improved flood resilience efforts as described in the  
17           initial Vermont Climate Action Plan of 2021, such as managing flood and  
18           fluvial erosion hazards to protect Vermont’s compact settlements, which will  
19           be a critical component of a successful climate adaptation response.

20           (7) The State, as recommended in the initial Vermont Climate Action  
21           Plan of 2021, should adopt legislation that would authorize the Agency of

1 Natural Resources to revise the Vermont Flood Hazard Area and River  
2 Corridor rule to provide the Agency with delegable, statewide jurisdiction and  
3 permitting authority for new development taking place in mapped river  
4 corridors.

5 Sec. 2. 10 V.S.A. § 752 is amended to read:

6 § 752. DEFINITIONS

7 ~~For the purpose of~~ As used in this chapter:

8 \* \* \*

9 (2) “Development,” for the purposes of flood hazard area management  
10 and regulation, ~~shall have~~ has the same meaning as “development” under 44  
11 C.F.R. § 59.1.

12 (3) “Flood hazard area” ~~shall have~~ has the same meaning as “area of  
13 special flood hazard” under 44 C.F.R. § 59.1.

14 \* \* \*

15 (8) ~~“Uses exempt from municipal regulation” means land use or~~  
16 ~~activities that are exempt from municipal land use regulation under 24 V.S.A.~~  
17 ~~chapter 117. [Repealed.]~~

18 \* \* \*

19 (13) “Mapped river corridor” means a river corridor drawn and adopted  
20 by the Secretary of Natural Resources as part of the statewide River Corridor  
21 Base Map Layer in accordance with the Flood Hazard Area and River Corridor

1 Protection Procedure for rivers and streams with a watershed area greater than  
2 two square miles.

3 Sec. 3. 10 V.S.A. § 754 is amended to read:

4 § 754. FLOOD HAZARD AREA AND MAPPED RIVER CORRIDOR  
5 RULES; ~~USES EXEMPT FROM MUNICIPAL REGULATION~~

6 (a) Rulemaking authority.

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

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

13 (ii) ~~State owned and operated institutions and facilities that are~~  
14 ~~located within a flood hazard area or river corridor~~ On or before January 1,  
15 2025, the Secretary shall adopt rules pursuant to 3 V.S.A. chapter 25 that  
16 establish requirements for issuing and enforcing permits for development  
17 within a flood hazard area or a mapped river corridor in the State.

18 \* \* \*

19 (b) Required rulemaking content. The rules shall:

20 (1) set forth the requirements necessary to ensure ~~uses exempt from~~  
21 ~~municipal regulation are~~ development is regulated by the State in order to

1 comply with the regulatory obligations set forth under the National Flood  
2 Insurance Program;

3 (2) be designed to ensure that the State and municipalities meet  
4 community eligibility requirements for the National Flood Insurance Program;

5 (3) establish the requirements and process for a municipality to be  
6 delegated the State's permitting authority for development in a flood hazard  
7 area or mapped river corridor that is not exempt from municipal regulation  
8 when the municipality has adopted a flood hazard bylaw or ordinance under 24  
9 V.S.A. chapter 117 that has been approved by the Secretary and that meets or  
10 exceeds the requirements established under State rule; and

11 (4) set forth a process for amending the statewide River Corridor Base  
12 Map to identify areas within designated centers suitable for infill and  
13 redevelopment that will not cause or contribute to increases in fluvial erosion  
14 hazards.

15 (c) Discretionary rulemaking. The rules may establish requirements that  
16 exceed the requirements of the National Flood Insurance Program ~~for uses~~  
17 ~~exempt from municipal regulation~~, including requirements for the maintenance  
18 of existing native riparian vegetation, provided that any rules adopted under  
19 this subsection that exceed the minimum requirements of the National Flood  
20 Insurance Program shall be designed to prevent or limit a risk of harm to life,  
21 property, or infrastructure from flooding.

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\* \* \*

(f) Permit requirement. ~~A Beginning on July 1, 2025, a person shall not commence or conduct a use exempt from municipal regulation development in a flood hazard area or mapped river corridor in a municipality that has adopted a flood hazard area bylaw or ordinance under 24 V.S.A. chapter 117 or commence construction of a State owned and operated institution or facility located within a flood hazard area or river corridor,~~ without a permit issued under the rules required under subsection (a) of this section by the Secretary or by a State agency delegated permitting authority under subsection (g) of this section. When an application is filed under this section, the Secretary or delegated State agency shall proceed in accordance with chapter 170 of this title.

\* \* \*

Sec. 4. TRANSITION; IMPLEMENTATION

(a) The Secretary of Natural Resources shall adopt the rules required in Sec. 3 of this act, 10 V.S.A. § 754, on or before January 1, 2025. The effective date of the rules shall be July 1, 2025.

(b) Prior to the effective date of the rules required in Sec. 3 of this act, 10 V.S.A. § 754, the Secretary of Natural Resources shall continue to implement the Vermont Flood Hazard Area and River Corridor Rule for development that is exempt from municipal regulation.

1        (c) The Secretary of Natural Resources shall not require a permit under  
2        10 V.S.A. § 754 for development in a flood hazard area or mapped river  
3        corridor for development that has the same meaning as “development” under  
4        44 C.F.R. § 59.1 for activities for which:

5            (1) all necessary local, State, or federal permits have been obtained prior  
6        to July 1, 2025 and the permit holder takes no subsequent act that would  
7        require a permit or registration under 10 V.S.A. chapter 32; or

8            (2) a complete application for all applicable local, State, and federal  
9        permits has been submitted on or before July 1, 2025, provided that the  
10       applicant does not subsequently file an application for a permit amendment  
11       that would require a permit under 10 V.S.A. chapter 32 and that substantial  
12       construction of the impervious surface or cleared area commences within two  
13       years following the date on which all applicable local, State, and federal  
14       permits become final.

15       Sec. 5. EFFECTIVE DATE

16       This act shall take effect on passage.