

Regional Planning Commission Thoughts on S.213 River Corridor Elements - An Act Relating to the Regulation of Wetlands, River Corridor Development, and Dam Safety

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- Addressing future development in river corridors is life-safety policy intended to protect life and property from a particularly violent form of flood damage in which the ground literally washes away from beneath homes, businesses, and other structures essential to life and living in Vermont. It is also a type of flood damage that is very difficult and expensive to mitigate against as the forces at work cannot be stopped by solutions like elevating buildings and utilities and other “floodproofing” measures. We’ve seen the catastrophic damage and risks posed to existing development in river corridors. This bill looks ahead to prevent the loss and trauma going forward.
- I serve on our local long-term recovery group that is focused on getting people back into their homes after the recent flooding, and I served on the group formed after Irene. I have served on the Board of the Vermont Disaster Recovery Fund and was Chair. I serve on the Individual and Family Needs Long-Term Recovery Task Force and participate in the regular meetings of all of the long-term recovery groups formed in the wake of the July floods. I serve on the Vermont Hazard Mitigation Grant Program Review Committee which, among other things, approves funding for buyouts. I have seen the costs to individuals, families, and businesses, including the psychological trauma, caused by the movement of rivers and streams in their corridors – sometimes hundreds of feet away from their original channel.
- Vermont adopted its initial river corridor rules in 2014 in response to the experience of Irene. We have now had many flood events in the 12 plus years since. The disconnect between now long-standing state policy to restrict development in river corridors to protect lives, safety, and property and actually restricting development is the way that policy has been implemented. It requires action on the part of each municipality, many or most of which do not have the political or operational capacity to do so. Most river corridors are inherently intermunicipal in nature. They are dependent upon landform and landform evolution – geomorphology – and as such it is incumbent upon the state to regulate river future corridor hazards so all Vermonters, including frontline, climate justice communities, can finally be protected from this known, and growing, existential threat which has been recognized by state policy for more than a decade.
- Vermont has attempted to incentivize towns to adopt river corridor bylaws through the Vermont Emergency Relief and Assistance Fund (ERAF) Rule. Through this rule the state will provide 17.5% of the non-federal match for FEMA Public Assistance reimbursement if municipalities either adopt river corridor bylaws or adopt the FEMA Community Rating System. Not doing so limits ERAF

reimbursement to 12.5%. In our region we have assisted 7 towns with the development of flood hazard bylaws that also include river corridor bylaws. Of those 5 successfully adopted a river corridor bylaw element. Three other towns developed river corridor bylaws on their own, thus 8 of our 27 towns have adopted river corridor bylaws as compared to 24 that have adopted flood hazard bylaws that are National Flood Insurance Program (NFIP) compliant. The incentive that exists for adoption of flood hazard bylaws – for residents to have access to federal flood insurance – does not exist for the adoption of river corridor bylaws.

- Day to day river corridor and flood hazard bylaw administration requires more issuing permits. It requires regular and ongoing outreach so property owners understand when they do and do not need permits. Development activity in the river corridor and floodplain must be monitored. Violations must result in enforcement action. Records must be kept and maintained. I have seen first hand the challenges towns face in effectively administering their flood hazard bylaws and the same is true for river corridor bylaws. Because flood hazard bylaws ultimately reflect the requirements of the National Flood Insurance Program there is deep institutional support originating at the federal level. This does not exist for river corridor bylaw administration. This is a fundamental reason why effective regulation of river corridors is best done by professionals at the state level. I say this from my direct experience as the flood hazard administrator for Calvert County, Maryland and in our experience working with the town floodplain administrators in our region.
- The Climate Action Plan as adopted includes the action that, “Through legislation, authorize ANR to revise the Flood Hazard Area & River Corridor (FHARC) rule to incorporate statewide jurisdiction and permitting authority for river corridors for all kinds of development.” There were no dissenting opinions among Climate Council members related to this action. Equity was to be considered for each Climate Action Plan Action. The equity consideration related this action states:

“Communities that have been underserved and people in a lower income bracket frequently find housing in flood-prone areas. Regulating development in these areas both prevents housing from being developed where it is in harm’s way, protects lives, and also reduces downstream flood damage. Further, because under-resourced towns often are unable to appropriately regulate development and navigate cumbersome federal regulations through the National Flood Insurance Program, communities less resourced to respond to flood-related disasters are more likely to allow development in those hazardous locations. This recommendation provides statewide consistency and equity in providing for Vermonters’ safety.” (Vermont Climate Action Plan, page 196

<https://outside.vermont.gov/agency/anr/climatecouncil/Shared%20Documents/Initial%20Climate%20Action%20Plan%20-%20Final%20-%202012-1-21.pdf>)

- Rulemaking associated with this bill has a solid foundation to build upon. The Vermont Agency of Natural Resources model flood hazard and river corridor bylaws provides an example of what eventual state regulation might look like in terms of effect. The most recent model, released by the Agency in 2022, is available here (<https://dec.vermont.gov/watershed/rivers/river-corridor-and-floodplain-protection/municipal-assistance>). Section D, River Corridors, qualifies communities for enhanced cost share under the aforementioned.

- Similarly, education and outreach can draw upon a wealth of information and experience. Per the bill, the permitting requirement would take effect January 1, 2028. In addition to the public engagement requirements associated with the development of the river corridor permit rule, there would be approximately 3 and a half years to engage Vermonters on all aspects of this bill. The existing very helpful FAQ on the Agency of Natural Resources website (<https://floodready.vermont.gov/RCFAQ>) provides very helpful, plain language information about the behavior of rivers and streams, and why development within river corridors presents a significant hazard. The Agency, regional planning commissions, and other partners conducted outreach and education about river corridors in the wake of Irene and since the Vermont Flood Hazard and River Corridor Rule was adopted. Public engagement around river corridors and any proposed change in regulation could ramp up quickly.
- Regarding RPC experience with river corridors and flood hazards, each has a Certified Floodplain Manager on staff. We are constantly working with towns on applications to state and federal programs to mitigate flood hazards and improve climate resilience. This includes everything from buyouts, to dam removal, to properly sizing and replacing culverts. In this work the WRC often partners with ANR and organizations such as the Connecticut River Conservancy and the Windham County Natural Resources Conservation District. Towns often call upon the RPCs to develop and update their Local Hazard Mitigation Plans, most of which identify river corridor hazards as a primary, if not the primary, hazard along with flooding in general. We are now in the process of working with towns to prepare to develop projects to make use of the \$90 million in hazard mitigation grant funds that must be used by January, 2025. Next week we are hosting one of our regular meetings for the Region's road foremen, and the topic will be working in streams led by ANR River Engineers. We staff the Regional Emergency Management Committees, which provide a regular networking and learning opportunity for Emergency Management Directors (EMDs), Fire Chiefs and those actively involved in the emergency management community. Towns know the risks posed by fluvial erosion to their infrastructure and the property of their residents and ask us to provide technical assistance. What they generally do not want to do is take on the direct regulation of those risks.
- Local education and outreach will be key. Not only to town officials, but the general public. We frequently partner with organizations such as the Windham County Natural Resources Conservation District and the Connecticut River Conservancy in outreach efforts, as well as town conservation commissions. We share a stream table with the District, and recently provided it with grant funding through the High Meadows Foundation to develop "Living with Rivers and Streams" educational information for property owners. We've collaborated on the organization of community watershed groups such as the Saxtons River Collaborative and Green River Watershed Alliance. With the latter we actually coaxed local road foremen to make presentations to town conservation commissions. However, beyond funding to provide limited basin planning support to ANR watershed coordinators and other very small grants, we have no significant or sustained funding to support natural resources work. We patch together what we can.
- Providing the Agency of Natural Resources sufficient resources to do this work is essential. Resourcing regional planning commissions and county natural resource conservation districts to provide ongoing local public outreach and education will help connect state policy to landowners.

- Going forward, headwaters protection is essential to both buffer floodwaters and to recognize the changing dynamic of smaller headwaters streams as intense rainfall events increase in both frequency and intensity. These smaller tributaries are carrying more water and debris, resulting in levels of damage to transportation infrastructure and property that most would have previously said was inconceivable until it happened. Maintaining healthy vegetative buffers within river corridors is essential as it is the root systems that hold the soil, and the vegetation that buffers the erosive effects of rainfall.

*“Such pondering on the facts of gravity and the fluidity of water shows us that the golden rule speaks to a condition of absolute interdependency and obligation. People who live on rivers – or, in fact, anywhere in a watershed – might rephrase the rule in this way: **Do unto those downstream as you’d have those upstream do unto you.**” - Wendell Berry from “Watershed and Commonwealth” in *The Citizenship Papers*.*