

**No. 16. An act relating to municipal and regional planning and flood resilience.**

(H.401)

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

Sec. 1. 24 V.S.A. § 4302 is amended to read:

§ 4302. PURPOSE; GOALS

(a) General purposes. It is the intent and purpose of this chapter to encourage the appropriate development of all lands in this ~~state~~ State by the action of its constituent municipalities and regions, with the aid and assistance of the ~~state~~ State, in a manner which will promote the public health, safety against fire, floods, explosions, and other dangers; to promote prosperity, comfort, access to adequate light and air, convenience, efficiency, economy, and general welfare; to enable the mitigation of the burden of property taxes on agricultural, forest, and other open lands; to encourage appropriate architectural design; to encourage the development of renewable resources; to protect residential, agricultural, and other areas from undue concentrations of population and overcrowding of land and buildings, from traffic congestion, from inadequate parking and the invasion of through traffic, and from the loss of peace, quiet, and privacy; to facilitate the growth of villages, towns, and cities and of their communities and neighborhoods so as to create an optimum environment, with good civic design; to encourage development of a rich cultural environment and to foster the arts; and to provide means and methods for the municipalities and regions of this ~~state~~ State to plan for the prevention, minimization, and future elimination of such land development problems as

may presently exist or which may be foreseen and to implement those plans when and where appropriate. In implementing any regulatory power under this chapter, municipalities shall take care to protect the constitutional right of the people to acquire, possess, and protect property.

\* \* \*

(c) In addition, this chapter shall be used to further the following specific goals:

\* \* \*

(14) To encourage flood resilient communities.

(A) New development in identified flood hazard, fluvial erosion, and river corridor protection areas should be avoided. If new development is to be built in such areas, it should not exacerbate flooding and fluvial erosion.

(B) The protection and restoration of floodplains and upland forested areas that attenuate and moderate flooding and fluvial erosion should be encouraged.

(C) Flood emergency preparedness and response planning should be encouraged.

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Sec. 2. 24 V.S.A. § 4303(8) is amended to read:

(8) “Flood hazard area” for purposes of ~~section~~ sections 4348a, 4382, 4411, 4424, and 4469 of this title shall have the same meaning as “area of special flood hazard” under 44 C.F.R. § 59.1. Further, with respect to flood, river corridor protection area, and other hazard area regulation pursuant to this chapter, the following terms shall have the following meanings:

(A) “Floodproofing” shall have the same meaning as “flood proofing” under 44 C.F.R. § 59.1.

(B) “Floodway” shall have the same meaning as “regulatory floodway” under 44 C.F.R. § 59.1.

(C) “Hazard area” means land subject to landslides, soil erosion, fluvial erosion, earthquakes, water supply contamination, or other natural or human-made hazards as identified within a “local mitigation plan” enacted under section 4424 of this title and in conformance with and approved pursuant to the provisions of 44 C.F.R. § 201.6.

(D) “National Flood Insurance Program” means the National Flood Insurance Program under 42 U.S.C. chapter 50 and implementing federal regulations in 44 C.F.R. parts 59 and 60.

(E) “New construction” means construction of structures or filling commenced on or after the effective date of the adoption of a community’s flood hazard bylaws.

(F) “Substantial improvement” means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. However, the term does not include either of the following:

(i) Any project or improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications that are solely necessary to assure safe living conditions.

(ii) Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.

(G) “Equilibrium condition” means the width, depth, meander pattern, and longitudinal slope of a stream channel that occurs when water flow, sediment, and woody debris are transported by the stream in such a manner that it generally maintains dimensions, pattern, and slope without unnaturally aggrading or degrading the channel bed elevation.

(H) “Fluvial erosion” means the erosion or scouring of riverbeds and banks during high flow conditions of a river.

(I) “River” means the full length and width, including the bed and banks, of any watercourse, including rivers, streams, creeks, brooks, and branches which experience perennial flow. “River” does not mean constructed drainageways, including water bars, swales, and roadside ditches.

(J) “River corridor” means the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel and that is necessary for the natural maintenance or natural restoration of a dynamic equilibrium condition and for minimization of fluvial erosion hazards, as delineated by the ~~agency of natural resources~~ Agency of Natural Resources in accordance with river corridor protection procedures.

(K) “River corridor protection area” means the area within a delineated river corridor subject to fluvial erosion that may occur as a river establishes and maintains the dimension, pattern, and profile associated with its dynamic equilibrium condition and that would represent a hazard to life, property, and infrastructure placed within the area.

Sec. 3. 24 V.S.A. § 4348a is amended to read:

§ 4348a. ELEMENTS OF A REGIONAL PLAN

(a) A regional plan shall be consistent with the goals established in section 4302 of this title and shall include but need not be limited to the following:

\* \* \*

(11)(A) A flood resilience element that:

(i) identifies flood hazard and fluvial erosion hazard areas, based on river corridor maps provided by the Secretary of Natural Resources pursuant to 10 V.S.A. § 1428(a) or maps recommended by the Secretary, and designates those areas to be protected, including floodplains, river corridors,

land adjacent to streams, wetlands, and upland forests, to reduce the risk of flood damage to infrastructure and improved property; and

(ii) recommends policies and strategies to protect the areas identified and designated under subdivision (11)(A) of this subsection and to mitigate risks to public safety, critical infrastructure, historic structures, and public investments.

(B) A flood resilience element may reference an existing regional hazard mitigation plan approved under 44 C.F.R. § 201.6.

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Sec. 4. 24 V.S.A. § 4382 is amended to read:

§ 4382. THE PLAN FOR A MUNICIPALITY

(a) A plan for a municipality may be consistent with the goals established in section 4302 of this title and compatible with approved plans of other municipalities in the region and with the regional plan and shall include the following:

\* \* \*

(12)(A) A flood resilience plan that:

(i) identifies flood hazard and fluvial erosion hazard areas, based on river corridor maps provided by the Secretary of Natural Resources pursuant to 10 V.S.A. § 1428(a) or maps recommended by the Secretary, and designates those areas to be protected, including floodplains, river corridors,

land adjacent to streams, wetlands, and upland forests, to reduce the risk of flood damage to infrastructure and improved property; and

(ii) recommends policies and strategies to protect the areas identified and designated under subdivision (12)(A)(i) of this subsection and to mitigate risks to public safety, critical infrastructure, historic structures, and municipal investments.

(B) A flood resilience plan may reference an existing local hazard mitigation plan approved under 44 C.F.R. § 201.6.

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Sec. 5. 24 V.S.A. § 4412 is amended to read:

§ 4412. REQUIRED PROVISIONS AND PROHIBITED EFFECTS

Notwithstanding any existing bylaw, the following land development provisions shall apply in every municipality:

(1) Equal treatment of housing and required provisions for affordable housing.

\* \* \*

(E) ~~No~~ Except for flood hazard and fluvial erosion area bylaws adopted pursuant to section 4424 of this title, no bylaw shall have the effect of excluding as a permitted use one accessory dwelling unit that is located within or appurtenant to an owner-occupied single-family dwelling. An accessory dwelling unit means an efficiency or one-bedroom apartment that is clearly subordinate to a single-family dwelling, and has facilities and provisions for

independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:

(i) The property has sufficient wastewater capacity.

(ii) The unit does not exceed 30 percent of the total habitable floor area of the single-family dwelling.

(iii) Applicable setback, coverage, and parking requirements specified in the bylaws are met.

(F) Nothing in subdivision (1)(E) of this section shall be construed to prohibit:

(i) a bylaw that is less restrictive of accessory dwelling units;

(ii) a bylaw that requires conditional use review for one or more of the following that is involved in creation of an accessory dwelling unit:

(I) a new accessory structure;

(II) an increase in the height or floor area of the existing dwelling; or

(III) an increase in the dimensions of the parking areas.

\* \* \*

Sec. 6. 24 V.S.A. § 2291(25) is amended to read:

(25) To regulate by means of an ordinance or bylaw development in a flood hazard area, river corridor protection area, or other hazard area consistent with the requirements of section 4424 of this title and the National Flood

Insurance Program. Such an ordinance or bylaw may regulate accessory dwelling units in flood hazard and fluvial erosion areas.

Sec. 7. 10 V.S.A. § 1427 is amended to read:

§ 1427. RIVER CORRIDORS AND BUFFERS

(a) River corridor and floodplain management program. The ~~secretary of natural resources~~ Secretary of Natural Resources shall establish a river corridor and floodplain management program to aid and support the municipal adoption of a flood resilience plan under 24 V.S.A. § 4382 and of river corridor, floodplain, and buffer bylaws. Under the river corridor and floodplain management program, the ~~secretary~~ Secretary shall:

(1) assess the geomorphic condition and sensitivity of the rivers of the ~~state~~ State and identify where the sensitivity of a river poses a probable risk of harm to life, property, or infrastructure.

(2) delineate and map river corridors based on the river sensitivity assessments required under subdivision (1) of this subsection according to a priority schedule established by the ~~secretary~~ Secretary by procedure; and

(3) develop recommended best management practices for the management of river corridors, floodplains, and buffers.

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Sec. 8. EFFECTIVE DATES

(a) This section and Secs. 5 (required provisions and prohibited effects) and 6 (regulation of accessory dwelling units) of this act shall take effect on passage.

(b) Secs. 1 (purpose; goals), 2 (flood hazard area), 3 (elements of a regional plan), 4 (the plan for a municipality), and 7 (river corridors and buffers) of this act shall take effect on July 1, 2014.

Date the Governor signed the bill: May 6, 2013