

Vermont Model Flood Hazard Bylaws

Frequently Asked Questions

1. Do the regulations need to apply on a municipal-wide scale or can specific waterbodies be targeted for application of these regulations?

Generally, towns have the discretion to regulate specific water bodies since hazard regulation is voluntary. These regulations are crafted to help towns meet and exceed federal minimum requirements under the National Flood Insurance Program (NFIP) and qualify for enhanced state cost share under the Emergency Relief and Assistance Fund.

For the ~90% of Vermont communities enrolled in the NFIP, or to be eligible to enroll in the NFIP, the inundation hazard regulations found in Section E must apply to all federally mapped Special Flood Hazard Areas as shown on the NFIP Flood Insurance Rate Map published for the community. However, communities do have the option to develop regulations that may apply in a certain flood zone that better addresses certain types of flooding. For example, a community can adopt standards for lake shore flood hazard areas that better address lake flooding issues like wave action.

With respect to river corridors, communities interested in obtaining the full 17.5% cost share under the Emergency Relief & Assistance Fund (ERAF), River Corridors need to be adopted for all perennial streams with more than 0.5 square miles of watershed.

2. Why are there provisions for “designated centers” in the models? Do we have other options?

Model bylaw Section D contains provisions for infill and redevelopment in designated centers recognizing that these are areas of significant pre-existing investment, are important to municipal growth and redevelopment plans, and areas where significant channel management activity will be pursued to protect those investments.

Communities may define their own urban overlay boundaries where the same river corridor infill/redevelopment provisions may apply. However, the State of Vermont encourages communities to utilize the designated center process because these programs work together to provide incentives, align policies and give communities the technical assistance needed to encourage new development and redevelopment in our compact, designated areas. The program's incentives are for both the public and private sector within the designated area, including tax credits for historic building rehabilitations and code improvements, permitting benefits for new housing, funding for transportation-related public improvements and priority consideration for other state grant programs.

More information on state designation programs may be found here:

<http://accd.vermont.gov/sites/accdnew/files/documents/CD/CPR/DHCD-Planning-Manual-Module2.pdf>

3. The State is promoting higher regulatory standards via the model bylaws, but how do we know what the minimum requirements are, so we can decide what is appropriate for our community?

We have created a cross-walk that provides a side by side comparison of the significant higher standards contained in the model bylaws against the federal minimum standards. The cross-walk is available at the Municipal Assistance webpage:

<http://dec.vermont.gov/watershed/rivers/river-corridor-and-floodplain-protection/municipal-assistance>

4. What sections of the model bylaw must be adopted to qualify for enhanced state cost share under the Emergency Relief & Assistance Fund (ERAF)?

a. For the 12.5% ERAF cost share, communities must adopt and enforce National Flood Insurance Program minimum standards for their federally mapped Special Flood Hazard Areas. Section E. contains recommended standards that exceed federal minimum standards and will qualify. A model bylaw containing federal minimum standards is available upon request. Note, there are additional requirements that need to be met to be fully eligible for the 12.5% ERAF cost share:

http://floodready.vermont.gov/find_funding/emergency_relief_assistance

b. Section D – River Corridors must be adopted and enforced to qualify for the maximum 17.5% ERAF cost share. Alternatively, communities can enroll in the Community Rating System and adopt a standard that largely prohibits new buildings in flood hazard areas. More information on the 17.5% criteria are found here:

http://floodready.vermont.gov/sites/floodready/files/documents/ERAF_Criteria_17%20-%25_June2018.pdf

5. Why is there not an option to adopt “river corridor protection areas” (RCPAs) as referenced in statute and already regulated by many municipalities?

The option exists but is no longer encouraged by the ANR. The River Corridor Protection Area (RCPA) is a relic of the past, which the Agency now recognizes as being inconsistent with State policy to achieve stable, least erosive, equilibrium conditions in our streams and rivers. The primary objective of River Corridor protection, as defined in Vermont Statute, is to provide enough lateral space for a river to achieve a stable slope (meander geometry) and minimize fluvial erosion hazards. The RCPA is a partial river corridor, as defined, lacking the 50-foot setback provision required to protect the full meander belt of a River Corridor. Thus, ANR does not promote the RCPA via the state model bylaws since it will not maximize hazard mitigation and water quality objectives.

Communities that adopt and regulate the River Corridor Protection Area (RCPA) will not be eligible for the 17.5% ERAF cost share since protecting the RCPA does not provide enough lateral space to reduce erosion hazards over time. Towns opting to regulate the RCPA should be aware that support from ANR

will be largely unavailable since the agency is dedicating all of its resources to mapping and protection of the full River Corridor, consistent with state policy.

Early Adopter communities that adopted partial River Corridor protection standards or protective flood inundation regulations prior to the ERAF rule going into effect on October 23, 2014 have taken important steps toward minimizing stream erosion, reducing exposure to flood hazards and ensuring public safety and will remain eligible for the 17.5% ERAF cost share under the current ERAF rule. However, it is anticipated that future amendments to the ERAF Rule will change the cost-share rate and/or the various qualifying activities for these communities to reduce their exposure to flooding.

6. The River Corridor Section D references refinements to the statewide river corridor layer. What is the notification process to towns and RPCs when River Corridor map changes are being proposed?

Generally speaking, notifications of proposed technical map updates will not be sent out. These changes are a result of improved data and done in accordance with [Flood Hazard Area & River Corridor Protection Procedure](#).

When the statewide river corridor is changed to reflect new data on river sensitivity or administrative changes, effected communities, RPCs, and Natural Resources Board District Commissions will be notified and provided the opportunity to view the changes between the old and updated river corridor layer. Both layers will be posted for a period of 60 days on the Flood Ready Atlas before being transferred to the Statewide Layer on the ANR Atlas.

Anyone that believes the river corridor information is in error, may submit information to correct the error any time in accordance with the above-referenced procedure.

7. What is the difference between a Letter of Map Amendment (LOMA) and a Letter of Map Revision(LOMR)?

A LOMA is an official amendment, by letter, to an effective NFIP flood hazard area map. A LOMA establishes a property's location in relation to the flood hazard area. FEMA typically issues LOMAs when a property has been inadvertently mapped as being in the flood hazard area and is located on natural high ground above the base flood elevation.

LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing FEMA-designated floodway, the effective base flood elevations (BFEs), or the mapped flood hazard area. The LOMR officially revises the flood hazard area, and sometimes the flood insurance study (FIS) report, and when appropriate, includes a description of the modifications. The LOMR is generally accompanied by an annotated copy of the affected portions of the flood hazard area map or FIS report.

More information on LOMAs and LOMRs may be found here: <https://www.fema.gov/letter-map-changes>

8. Can a 50-foot buffer setback suffice in place of the 50-foot River Corridor setback for small streams?

Yes, so long as the 50-foot buffer set-back regulations largely restrict new encroachments within the setback, since the intent is to provide space for lateral stream adjustments. Your regional floodplain manager can review existing buffer regulations to verify whether they are sufficiently restrictive.

9. If a municipality does not have zoning (and therefore does not currently have any land use regulations), how do we identify an administrative officer (AO) and an appropriate municipal panel (AMP) to regulate the proposed bylaws.

While there are some provisions in Section C [Administration] that describe how to appoint an AO and AMP, there are resources available to help provide guidance and details. The following guidebook is a great resource for towns:

<http://vpic.info/Publications/Reports/ManualOfProcedures.pdf>

In addition, your Regional Planning Commission can provide additional technical assistance:

<https://www.vapda.org/>

10. If a municipality does not currently issue permits is ANR providing a mechanism for this to occur without the municipality establishing the regulatory component locally to issue permits?

No. To be eligible to participate in the NFIP and ERAF benefits, communities must regulate their adopted hazard areas. Vermont statute enables communities to adopt freestanding hazard area bylaws (see [24 V.S.A. § 4424](#)). Section C provides the administrative framework for communities to issue and enforce permits.

11. I live in a small town with part-time/volunteer staff. We are very concerned with the complexity of these regulations and our ability to administer them. Can these regulations be simplified?

Flood hazard regulation is complex, especially given the requirements of the National Flood Insurance Program. The simplest way to reduce the complexity of the bylaw, is to reduce the number of activities that are permitted within the flood hazard area and river corridor. However, this may or may not be an option depending on pre-existing settlement patterns and planned growth patterns.

Technical resources exist to assist municipalities in flood hazard bylaw administration.

- The regional planning commissions have Certified Floodplain Managers on staff.
- The DEC River Corridor & Floodplain Protection Program offers Certified Floodplain Manager training and exams annually. The certification is highly recommended for

municipal administrative officers. More information is available here:

<http://www.floods.org/index.asp?menuid=426>

- Vermont statute requires communities to send hazard area permit applications to the DEC River Corridor & Floodplain Protection Program for review and comment prior to issuing a permit (<https://legislature.vermont.gov/statutes/section/24/117/04424>). Permit application technical review and written comments provided by DEC Regional Floodplain Managers help communities navigate the complexities of hazard area bylaw administration. Regional Floodplain Manager contact information is found here:
<http://dec.vermont.gov/watershed/rivers/river-corridor-and-floodplain-protection/floodplain-managers>

12. The models require a lot of activities to go through Conditional Use review. Do we have the option to permit more activities administratively?

Yes. The model bylaws offer a starting point. We made every effort to create provisions for lower risk activities to be permitted through administrative review. Towns can certainly permit more activities administratively, based on their expertise and capacity to ensure compliance and enforcement.

13. Why can't the State regulate floodplains and river corridors, similar to other natural resources such as lake shorelands and wetlands?

Currently, the state has limited authority and only regulates activities exempt from municipal regulation and activities that are jurisdictional under Act 250. Vermont statute would have to be amended to expand the State's authority to regulate all development in flood hazard areas and river corridors.

14. The standards in these model bylaws appear to be consistent with the standards in the DEC FHARC Protection Procedure applied to Act 250 projects under Criterion 1D – Floodways. Our town has adopted zoning and subdivision bylaws so proposed development under 10 acres or 10 residential units will only be regulated under our local flood hazard bylaws – correct?

Not necessarily. Specific conditions need to be met to qualify as a "10 acre" town versus a "1 acre" town, with respect to triggering Act 250 jurisdiction. The following Jurisdictional Opinion provides more detail on the requirements:

<http://nrb.vermont.gov/sites/nrb/files/documents/5-20.pdf>

We encourage communities to contact their regional planning commission to get further guidance: <https://www.vapda.org/>