

# The Vermont Statutes Online

The statutes were updated in November, 2018, and contain all actions of the 2018 legislative session.

## Title 10: Conservation And Development

### Chapter 32: Flood Hazard Areas

#### § 751. Purpose

The purpose of this chapter is to minimize and prevent the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public service that result from flooding; to ensure that the development of the flood hazard areas of this State is accomplished in a manner consistent with the health, safety and welfare of the public; to coordinate federal, State, and local management activities for flood hazard areas; to encourage local government units to manage flood hazard areas and other flood-prone lands; to provide State assistance to local government units in management of flood-prone lands; to comply with National Flood Insurance Program requirements for the regulation of development; to authorize adoption of State rules for management of uses exempt from municipal regulation in a flood hazard area; to maintain the agricultural use of flood-prone lands consistent with the National Flood Insurance Program; to carry out a comprehensive statewide flood hazard area management program for the State in order to ensure eligibility for flood insurance under the requirements of the National Flood Insurance Program. (Added 1973, No. 263 (Adj. Sess.), § 2, eff. 30 days from April 16, 1974; amended 2011, No. 138 (Adj. Sess.), § 1, eff. May 14, 2012.)

#### § 752. Definitions

For the purpose of this chapter:

- (1) "Agency" means the Agency of Natural Resources.
- (2) "Development," for the purposes of flood hazard area management and regulation, shall have the same meaning as "development" under 44 C.F.R. § 59.1.
- (3) "Flood hazard area" shall have the same meaning as "area of special flood hazard" under 44 C.F.R. § 59.1.
- (4) "Flood proofing" shall have the same meaning as "flood proofing" under 44 C.F.R. § 59.1.
- (5) "Floodway" shall have the same meaning as "regulatory floodway" under 44 C.F.R. § 59.1.
- (6) "Legislative body" means the selectboard, trustees, mayor, city council, and alderboard of a municipality.
- (7) "Municipality" means any town, city, or incorporated village.

(8) "Uses exempt from municipal regulation" means land use or activities that are exempt from municipal land use regulation under 24 V.S.A. chapter 117.

(9) "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.

(10) "Regional planning commission" means the regional planning commission of which a municipality is a member or would be a member based upon its location.

(11) "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, as that term is defined in section 1422 of this title, and for minimization of fluvial erosion hazards, as delineated by the Agency of Natural Resources in accordance with river corridor protection procedures.

(12) "Secretary" means the Secretary of Natural Resources or the Secretary's duly authorized representative. (Added 1973, No. 263 (Adj. Sess.), § 2, eff. May 16, 1974; amended 1987, No. 76, § 18; 2003, No. 115 (Adj. Sess.), § 15; 2011, No. 138 (Adj. Sess.), § 1, eff. May 14, 2012.)

### **§ 753. Flood hazard areas; cooperation; mapping**

(a) Cooperation to secure flood insurance. The Secretary and all municipalities, regional planning commissions, and departments and agencies of State government shall mutually cooperate to achieve the purposes of this chapter and to secure flood insurance for municipalities and the State of Vermont. All correspondence sent to a municipality pursuant to this chapter shall be sent to the municipal clerk, the municipal manager, if one exists, the legislative body, the planning commission, and the conservation commission, if one exists. Copies of this correspondence shall be sent to the regional planning commission and the Agency of Commerce and Community Development.

(b) Notice of designation of flood hazard areas; maps. The Secretary shall, as the information becomes available, provide each municipality with a designation of flood hazard areas. The designation shall include a map or maps.

(c) Procedure to authorize review of municipal permit applications. The Secretary shall establish a procedure for authorizing a representative of a municipality or a regional planning commission to conduct the review required under 24 V.S.A. § 4424(a)(2)(D), including eligibility requirements for authorization to conduct permit application review and an approved process or list of approved certifications that the Secretary shall accept as proof of expertise in the field of floodplain management. (Added 1973, No. 263 (Adj. Sess.), § 2, eff. May 16, 1974; amended 1977, No. 200 (Adj. Sess.), §§ 1-3, 5, eff. April 5, 1978; 1981, No. 222 (Adj. Sess.), § 42; 1983, No. 249 (Adj. Sess.), § 3; 1995, No. 190 (Adj. Sess.), § 1(a); 2011, No. 138 (Adj. Sess.), § 1, eff. May 14, 2012.)

### **§ 754. Flood hazard area rules; uses exempt from municipal regulation**

(a) Rulemaking authority.

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

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

(ii) State-owned and -operated institutions and facilities that are located within a flood hazard area or river corridor.

(2) The Secretary shall not adopt rules under this subsection that regulate agricultural activities without the consent of the Secretary of Agriculture, Food and Markets, provided that the Secretary of Agriculture, Food and Markets shall not withhold consent under this subdivision when lack of such consent would result in the State's noncompliance with the National Flood Insurance Program.

(3) The Secretary shall seek the guidance of the Federal Emergency Management Agency in developing and drafting the rules required by this section in order to ensure that the rules are sufficient to meet eligibility requirements for the National Flood Insurance Program.

(b) Required rulemaking content. The rules shall:

(1) set forth the requirements necessary to ensure uses exempt from municipal regulation are regulated by the State in order to comply with the regulatory obligations set forth under the National Flood Insurance Program.

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

(3) [Repealed.]

(c) Discretionary rulemaking. The rules may establish requirements that exceed the requirements of the National Flood Insurance Program for uses exempt from municipal regulation, provided that any rules adopted under this subsection that exceed the minimum requirements of the National Flood Insurance Program shall be designed to prevent or limit a risk of harm to life, property, or infrastructure from flooding.

(d) General permit. The rules authorized by this section may establish requirements for a general permit to implement the requirements of this section, including authorization under the general permit to conduct a specified use exempt from municipal regulation without notifying or reporting to the Secretary or an agency delegated under subsection (g) of this section.

(e) Consultation with interested parties. Prior to submitting the rules required by this section to the Secretary of State under 3 V.S.A. § 838, the Secretary shall solicit the recommendations of and consult with affected and interested persons and entities such as: the Secretary of Commerce and Community Development; the Secretary of Agriculture, Food and Markets; the Secretary of Transportation; the Commissioner of Financial

Regulation; representatives of river protection interests; representatives of fishing and recreational interests; representatives of the banking industry; representatives of the agricultural community; representatives of the forest products industry; the regional planning commissions; municipal interests; and representatives of municipal associations.

(f) Permit requirement. A person shall not commence or conduct a use exempt from municipal regulation in a flood hazard area or 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.

(g) Delegation.

(1) The Secretary may delegate to another State agency the authority to implement the rules adopted under this section, to issue a permit under subsection (f) of this section, and to enforce the rules and a permit.

(2) A memorandum of understanding shall be entered into between the Secretary and a delegated State agency for the purpose of specifying implementation of requirements of this section and the rules adopted under this section, issuance of a permit or coverage under a general permit under this section, and enforcement of the rules and permit required by this section.

(3) Prior to entering a memorandum of understanding, the Secretary shall post the proposed memorandum of understanding on its website for 30 days for notice and comment. When the memorandum of understanding is posted, it shall include a summary of the proposed memorandum; the name, telephone number, and address of a person able to answer questions and receive comments on the proposal; and the deadline for receiving comments. A final copy of a memorandum of understanding entered into under this section shall be sent to the chairs of the House Committees on Energy and Technology and on Natural Resources, Fish, and Wildlife, the Senate Committee on Natural Resources and Energy, and any other committee that has jurisdiction over an agency that is a party to the memorandum of understanding.

(h) Municipal authority. This section and the rules adopted under it shall not prevent a municipality from adopting substantive requirements for development in a flood hazard area bylaw or ordinance under 24 V.S.A. chapter 117 that are more stringent than the rules required by this section, provided that the bylaw or ordinance shall not apply to uses exempt from municipal regulation. (Added 2011, No. 138 (Adj. Sess.), § 1, eff. May 14, 2012; amended 2013, No. 107 (Adj. Sess.), § 1, eff. April 18, 2014; 2015, No. 150 (Adj. Sess.), § 8, eff. Jan. 1, 2018; 2017, No. 113 (Adj. Sess.), § 44a.)

## **§ 755. Municipal education; model flood hazard area bylaw or ordinance**

(a) Education and assistance. The Secretary, in consultation with regional planning commissions, shall provide ongoing education, technical assistance, and guidance to municipalities regarding the requirements under 24 V.S.A. chapter 117 necessary for compliance with the National Flood Insurance Program.

(b) Model flood hazard area bylaw or ordinance. The Secretary shall create and make available to municipalities a model flood hazard area bylaw or ordinance for potential adoption by municipalities pursuant to 24 V.S.A. chapter 117 or 24 V.S.A. § 2291. The model bylaw or ordinance shall set forth the minimum provisions necessary to meet the requirements of the National Flood Insurance Program. The model bylaw may include alternatives that exceed the minimum requirements for compliance with the National Flood Insurance Program in order to allow a municipality to elect whether it wants to adopt the minimum requirement or an alternate requirement that further minimizes the risk of harm to life, property, and infrastructure from flooding.

(c) Assistance to municipalities with no flood hazard area bylaw or ordinance. The Secretary, in consultation with municipalities, municipal organizations, and regional planning commissions, shall provide education and technical assistance to municipalities that lack a flood hazard area bylaw or ordinance in order to encourage adoption of a flood hazard area bylaw or ordinance that qualifies the municipality for the National Flood Insurance Program. (Added 2011, No. 138 (Adj. Sess.), § 1, eff. May 14, 2012.)