

Emergency Relief & Assistance Fund Eligibility Criteria – 17.5% State Share

BACKGROUND:

The [Emergency Relief and Assistance Fund \(ERAF\) rule](#) was amended in September 2012, which created a sliding scale framework for cost share on the non-federal match requirements for [FEMA Public Assistance Grants](#). The new ERAF rule took effect in October 2014. To qualify for the maximum state cost share of 17.5%¹ of the non-federal match, municipalities have two options; 1) Enroll in the National Flood Insurance Program Community Rating System and adopt a bylaw that prohibits new structures in the Flood Hazard Area, or 2) Adopt River Corridor protection standards that meet Agency of Natural Resources (ANR) criteria.

DEFINITIONS:

Administrative Officer means a person appointed by the community's legislative body for a term of three years to administer the bylaws literally and shall not have the power to permit any land development that is not in conformance with the community's bylaws. Please see 24 V.S.A. §4448 for the appointment and powers of administrative officer.

Appropriate Municipal Panel means a planning commission performing development review, a board of adjustment, a development review board, or a legislative body performing development review, as that term is defined in 24 V.S.A. §4303

Flood Hazard Area means the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year and shall have the same meaning as "area of special flood hazard" under 44 C.F.R. § 59.1

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.

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 10 V.S.A. §1422, and for minimization of fluvial erosion hazards, as delineated by the Agency in accordance with the ANR Flood Hazard Area and River Corridor Protection Procedures².

¹ To qualify for at the 17.5% state match level, communities must adopt one of the 17.5% options in this document, in addition to the [four basic ERAF mitigation measures](#) to qualify at the 12.5% level.

² Available at: http://dec.vermont.gov/sites/dec/files/documents/DEC_FHARCP_Procedure.pdf

*River Corridor Protection Area*³ means the area within a delineated river corridor subject to fluvial erosion that may occur as a river establishes and maintains the dimensions, pattern, and profile associated with its dynamic equilibrium condition and that would represent a hazard to life, property, and infrastructure placed within the area. The river corridor protection area is the meander belt portion of the river corridor without an additional allowance for riparian buffers.

Streams/Rivers: The state will use the most current “Vermont Hydrography Dataset” (VHD) for defining streams/rivers within a community.

Option 1 - Community Rating System

Eligibility to receive the 17.5% state share under this option has 2 requirements: Enrollment in the Community Rating System (CRS), as well as specific CRS Activity requirements.

Enrollment in the [Community Rating System \(CRS\)](#) is done through FEMA Region I. As a first step, communities need to conduct a [CRS quick check](#) self-assessment and close out a successful Community Assistance Visit (CAV) with FEMA Region 1. [ANR Regional Floodplain Managers](#) are available to assist communities and serve as a liaison with FEMA. Please note that enrollment in the CRS program typically takes 12-18 months to complete.

In addition to enrollment in CRS, communities must be receiving some credit under Activity 430 (Higher Regulatory Standards) for having a flood hazard bylaw that prohibits new structures in at least some parts of their FEMA-mapped Flood Hazard Areas. Model bylaws prohibiting new structures in the Flood Hazard Area are available here: <http://dec.vermont.gov/watershed/rivers/river-corridor-and-floodplain-protection/municipal-assistance#Bylaws>

Option 2 – River Corridor Protection

- A. To qualify under the River Corridor Protection option, a community must:
 - i. Adopt a River Corridor or River Corridor Protection Area overlay for all streams and rivers draining greater than two square miles.
 - ii. Adopt a river corridor setback for small streams as part of their flood hazard/river corridor bylaws. The setback must be a minimum of 50’ from top of bank for streams with a watershed area between 0.5 and 2 square miles⁴. The setback shall be regulated as the River Corridor for streams draining between 0.5 and 2 square miles⁵.

³ The River Corridor Protection Area is synonymous with Fluvial Erosion Hazard (FEH) Area

⁴ Streams draining less than half a square mile have a higher likelihood of being intermittent or ephemeral. For ERAF purposes, ANR requires river corridor protection for streams draining at least half a square mile, in an effort to minimize the need to determine whether streams are perennial and reduce the sheer number of stream miles regulated.

⁵ ANR has created a GIS layer depicting streams draining between 0.5 and 2 square miles.

- iii. Adopt a minimum regulatory requirement for River Corridors or River Corridor Protection Areas consistent with the [Flood Hazard Area & River Corridor Protection Procedure](#)⁶ or be at least as restrictive as those outlined in the [ANR Model bylaws](#) in effect at the time of adoption.
- B. Communities that adopted partial⁷ River Corridor Protection Area standards prior to the ERAF rule going into effect on October 23, 2014 have enjoyed an early adopter status. To retain the 17.5% state share, communities will need to do the following within two years of ANR publishing a statewide river corridor map updated to include existing phase 2 Stream Geomorphic Assessment (SGA) data⁸ for their watershed(s).
- i. Adopt a River Corridor or River Corridor Protection Area overlay for all streams and rivers draining greater than two square miles;
 - ii. Adopt a river corridor setback for small streams as part of their flood hazard/river corridor bylaws. The setback must be a minimum of 50' from top of bank for streams with a watershed area between 0.5 and 2 square miles. The setback shall be regulated as the River Corridor for streams draining between 0.5 and 2 square miles.
 - iii. Adopt a minimum regulatory requirement for River Corridors or River Corridor Protection Areas consistent with the [Flood Hazard Area & River Corridor Protection Procedure](#) or be at least as restrictive as those outlined in the [ANR Model bylaws](#) in effect at the time of adoption.

Towns should have Option 1 or Option 2 requirements in effect before the date of the disaster to be eligible for the increased ERAF cost share. Towns that have been in process to adopt Option 1 or Option 2 requirements prior to the date of the disaster, will have 30 days⁹ from the date of the federal disaster declaration to adopt the requirements.

⁶ The Flood Hazard Area & River Corridor Protection Procedure provides exceptions to the No Adverse Impact river corridor requirement and accommodates infill, redevelopment, and existing development within river corridors – see section VII(2)(B): http://dec.vermont.gov/sites/dec/files/documents/DEC_FHARCP_Procedure.pdf The infill/redevelopment river corridor exceptions shall also apply to the river corridor setback area for small streams.

⁷A number of communities have adopted regulations for a subset of their watercourses (based on SGA, Phase 2 data generated FEH overlays or avoidance-based Flood Hazard Areas) prior to the ERAF Amendments taking effect in October, 2014.

⁸ Upon written request from the Select Board, ANR may allow for an extension to accommodate the municipal planning cycle. ANR anticipates that it will begin publishing statewide river corridor layer updates toward the end of 2017.

⁹ Communities have 30 days from the date of a federal disaster declaration to register for public assistance with Vermont Emergency Management: <http://vem.vermont.gov/funding/pa>

Communities interested in adopting river corridor protection standards should contact the ANR Regional River Scientist to determine data availability, applicability of existing municipal regulations, and options available to the community. ANR, VLCT, and regional planning commission staff will provide technical assistance to interested towns in qualifying for increase state cost share under the new ERAF rule under the River Corridor criterion.

Regional River Scientist Contact Information:

http://dec.vermont.gov/sites/dec/files/wsm/river/docs/rv_River_Scientist_Regions.pdf

Milly Archer, Vermont League of Cities and Towns; marcher@vlct.org

Regional Planning Commission Contacts: <http://www.vapda.org/>

Additional Resources:

ERAF:

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

CRS:

<https://www.fema.gov/national-flood-insurance-program-community-rating-system>

<http://crsresources.org/>

River Corridors:

http://floodready.vermont.gov/flood_protection/river_corridors_floodplains

http://floodready.vermont.gov/flood_protection/river_corridors_floodplains/river_corridors

<http://floodready.vermont.gov/RCFAQ>

River Corridor Mapping:

http://floodready.vermont.gov/assessment/vt_floodready_atlas

<http://anrmaps.vermont.gov/websites/anra5/>