

1 H.526

2 Introduced by Committee on Fish, Wildlife and Water Resources

3 Date:

4 Subject: Conservation and development; lakes; shorelands; impervious surface

5 Statement of purpose of bill as introduced: This bill would require the Agency
6 of Natural Resources (ANR) to adopt by January 1, 2015 rules establishing
7 shoreland protection standards for areas—known as protected shoreland
8 areas—within 250 feet of the mean water level of a lake. Beginning January 1,
9 2015, a permit would be required from ANR for new or expanded impervious
10 surface or cleared area in a protected shoreland area. Municipalities with a
11 shoreland protection bylaw or ordinance in existence on January 1, 2015 shall
12 be delegated authority to permit new or expanded impervious surface or
13 cleared area if certain conditions are met. A municipality that has not adopted
14 a shoreland protection bylaw or ordinance by January 1, 2015 may be
15 delegated authority for the permitting of construction, creation, or expansion of
16 impervious surface or cleared area within a protected shoreland area if the
17 municipality adopts a shoreland protection bylaw or ordinance after January 1,
18 2015 and meets certain conditions. Agricultural activities, silvicultural
19 activities, transportation activities, electric utility activity, and specified
20 activities permitted by the Agency of Natural Resources would not be required
21 to obtain a lake shoreland permit if certain conditions are met.

1 An act relating to the establishment of lake shoreland protection standards

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

3 Sec. 1. LEGISLATIVE FINDINGS AND LEGISLATIVE INTENT

4 The General Assembly finds and declares that:

5 (1) Vermont's lakes are among the State's most valuable and fragile
6 economic and natural resources, and the protection of naturally vegetated
7 shorelands adjacent to lakes is necessary to prevent water quality degradation,
8 maintain healthy habitat, and promote flood resilience.

9 (2) Naturally vegetated shorelands and implementation of best
10 management practices in lands adjacent to lakes function to:

11 (A) intercept and infiltrate surface water runoff, wastewater, and
12 groundwater flows from upland sources;

13 (B) remove or minimize the effects of nutrients, sediment, organic
14 matter, pesticides, and other pollutants;

15 (C) moderate the temperature of shallow water habitat;

16 (D) maintain the conditions that sustain the full support of aquatic
17 biota, wildlife, and aquatic habitat uses; and

18 (E) promote stability and flood resilience by protecting shoreline
19 banks from erosion.

20 (3) Healthy lakes and adjacent shorelands:

21 (A) support Vermont's tourism economy and promote widespread
22 recreational opportunities, including swimming, boating, fishing, and hunting;

1 ~~(B) support property values and tax base; and~~

2 ~~(C) reduce human health risks.~~

3 ~~(4) According to the Agency of Natural Resources Water Quality~~

4 ~~Remediation, Implementation, and Funding Report in 2013, review of the~~

5 ~~development, protection, and stabilization of shorelands is necessary because~~

6 ~~of the importance of shorelands to the health of lakes.~~

7 ~~(5) A lake or pond of more than 10 acres is located in 184 of the State's~~

8 ~~251 municipalities. However, only 48 municipalities have shoreland zoning~~

9 ~~that requires vegetative cover. Scientifically based standards for impervious~~

10 ~~surface and cleared area adjacent to lakes are necessary to protect and maintain~~

11 ~~the integrity of water quality and aquatic and shoreland habitat, while also~~

12 ~~allowing for reasonable development of shorelands.~~

~~(6) The shorelands of the state owned by private persons remain private~~
~~property, and this act does not extend the common-law public trust doctrine to~~

~~private shoreland that is not currently public trust land.~~ The State has an

~~interest in protecting lakes and adjacent shorelands in a manner that respects~~

~~existing rights of property owners to control access to land they own in lake~~

~~shorelands, and the regulation of the creation of new impervious surface or~~

~~cleared area in the shoreland areas should not and does not affect the ability of~~

~~property owners to control access to their lands.~~

13 ~~(7) In order to fulfill the State's role as trustee of its waters and promote~~

14 ~~public health, safety, and the general welfare, it is in the public interest for the~~

1 ~~General Assembly to establish lake shoreland protection standards for~~
2 ~~impervious surface and cleared area in the shorelands adjacent to the State's~~
3 ~~lakes.~~

4 Sec. 2. 10 V.S.A. chapter 49A is added to read:

5 CHAPTER 49A. LAKE SHORELAND PROTECTION STANDARDS

6 § 1441. PURPOSE

7 The purposes of this chapter shall be to:

8 (1) provide clear and adaptable standards for the creation of impervious
9 surface or cleared area in lands adjacent to lakes;

10 (2) prevent degradation of water quality in lakes and preserve natural
11 stability of shoreline;

12 (3) protect aquatic biota and protect habitat for wildlife and aquatic life;

13 (4) mitigate, minimize, and manage any impact of new impervious
14 surface and new cleared area on the lakes of the State;

15 (5) mitigate the damage that floods and erosion cause to development,
16 structures, and other resources in the lands adjacent to lakes;

17 (6) protect shoreland owners' access to, views of, and use of the State's
18 lakes; and

19 (7) preserve and further the economic benefits and values of lakes and
20 their adjacent shorelands.

21 § 1442. DEFINITIONS

22 As used in this chapter:

- 1 ~~(1) "Agency" means the Agency of Natural Resources.~~
- 2 ~~(2) "Best management practices" means approved activities,~~
3 ~~maintenance procedures, and other practices to prevent or reduce the effects of~~
4 ~~impervious surface or cleared area on water quality and natural resources.~~
- 5 ~~(3) "Cleared area" means an area where existing vegetative cover, soil,~~
6 ~~or duff is permanently removed or altered.~~
- 7 ~~(4) "Disturbance" means the removal or alteration of existing~~
8 ~~vegetation, soil, or duff in a protected shoreland area.~~
- 9 ~~(5) "Duff" means leaf litter plus small fragments of plants and organic~~
10 ~~debris that provide a spongy substrate that absorbs the energy of falling water~~
11 ~~and allows runoff to infiltrate soil.~~
- 12 ~~(6) "Expansion" means an increase or addition of impervious surface or~~
13 ~~cleared area.~~
- 14 ~~(7) "Impervious surface" shall have the same meaning as in section~~
15 ~~1264 of this title.~~
- 16 ~~(8) "Lake" means a body of standing water, including a pond or a~~
17 ~~reservoir, which may have natural or artificial water level control. Private~~
18 ~~ponds shall not be considered lakes.~~
- 19 ~~(9) "Mean water level" means the mean water level of a lake as defined~~
20 ~~in the Mean Water Level Rules of the Agency of Natural Resources adopted~~
21 ~~under 29 V.S.A. § 410.~~
- 22

~~(10) “Off site mitigation” means a practice or activity that:~~

~~(A) mitigates the adverse impacts of construction, creation, or expansion of impervious surface or cleared area on the water quality of lakes or on protected shoreland areas; and~~

~~(B) occurs on property other than the property where the construction, creation, or expansion of impervious surface or cleared area is proposed.~~

1 ~~(10) (11)~~ “Private pond” means a body of standing water that is a natural
2 water body of not more than 20 acres located on property owned by one person
3 or an artificial water body of any size located on property owned by one
4 person. A “private pond” shall include a reservoir specifically constructed for
5 one of the following purposes: snowmaking storage, golf course irrigation,
6 stormwater management, or fire suppression.

~~(11) (12) “Private road” means a road or street other than a highway, as that term is defined in 19 V.S.A. § 1(12), that is owned by one or more persons and that is used as a means of travel from a highway to more than one parcel of land.~~

~~(11) (12) (13) “Protected shoreland area” means all land located within 250 feet of the mean water level of a lake that is greater than 10 acres in surface area.~~

7 ~~(12) (13) (14)~~ “Secretary” means the Secretary of Natural Resources or
8 the Secretary’s duly authorized representative.

1 ~~(13) (14) (15)~~ “Stormwater runoff” shall have the same meaning as in
2 section 1264 of this title.

3 ~~(14) (15) (16)~~ “Vegetative cover” means mixed vegetation within the
4 protected shoreland area, consisting of trees, shrubs, groundcover, and duff.

5 § 1443. IMPERVIOUS SURFACE OR CLEARED AREA IN A

6 PROTECTED SHORELAND AREA; PERMIT REQUIRED

7 (a) Permit required.

8 (1) Except as provided under section 1445 or 1446 of this title,
9 beginning January 1, 2015, a person shall not conduct any of the following
10 activities in a protected shoreland area without a permit from the Secretary:

11 (A) construct more than 500 square feet and less than one acre of
12 new impervious surface;

13 (B) create more than 500 square feet of new cleared area; and

14 (C) expand impervious surface or cleared area if the expansion of
15 existing impervious surface or cleared area in the protected shoreland area
16 results in an increase of more than 500 square feet of impervious surface or
17 cleared area. Impervious surface or cleared area may be expanded by up to
18 500 square feet without obtaining a permit, provided that the aggregate amount
19 of all expansion shall not exceed 20 percent of the protected shoreland area of
20 the lot on which it is located.

21 (2) The Secretary shall issue a permit under this section if the proposed
22 impervious surface or cleared area does not negatively impact water quality

1 ~~and complies with the lake shoreland protection standards adopted under~~
2 ~~section 1444 of this title.~~

~~*(3) When the emergency repair, repair, and replacement of a private road or highway, as that term is defined in 19 V.S.A. § 1(2), results in the construction, creation, or expansion of impervious surface or cleared area on a property adjacent to the private road or highway, the impervious surface or cleared area constructed or created on the adjacent property shall not be calculated as square footage of impervious surface or cleared area for purposes of permitting under subdivision (a)(1) of this subsection.*~~

~~*(4) Under this chapter, the area of constructed, created, or expanded impervious surface or cleared area shall be the square footage as measured on a horizontal plane.*~~

3 (b) General permit.

4 (1) The Secretary shall adopt a general permit under which a person
5 who requires a permit under this section may seek coverage. The general
6 permit shall be available to classes or categories of construction of impervious
7 surface or creation of cleared area that present low risk of harm to the water
8 quality of surface waters or protected shoreland areas.

9 (2) The general permit adopted under this section shall be consistent
10 with the lake shoreland protection standards adopted under this chapter and
11 shall include terms and conditions appropriate for the construction of

1 impervious surface or creation of cleared area that requires a permit under this
2 section.

3 (3) Each general permit adopted by the Agency shall have a term of no
4 more than five years. Prior to the expiration of each general permit, the
5 Secretary shall review the terms and conditions of the general permit and may
6 adopt subsequent general permits with the same or different conditions as
7 necessary to carry out the purposes of this chapter.

8 (4) Coverage under the general permit shall be for an indefinite term,
9 provided that the person granted coverage under the general permit complies
10 with the terms of the general permit and takes no action for which a permit is
11 required under this section. A permit holder's coverage under the general
12 permit shall not expire every five years.

13 (5) An applicant for coverage under the general permit shall provide
14 notice, on a form provided by the Secretary, to the municipal clerk of the
15 municipality in which the construction of impervious surface or creation of
16 cleared area is located at the time the application is filed with the Secretary.

17 (6) The Secretary shall provide an opportunity for written comment,
18 regarding whether an application for coverage under the general permit
19 complies with the terms and conditions of the general permit, for 10 days
20 following receipt of the application.

21 (7) The Secretary may require any applicant for coverage under the
22 general permit to submit any additional information that the Secretary

1 ~~considers necessary and may refuse to grant coverage under the general permit~~
2 ~~until the requested information is furnished and evaluated.~~

3 (c) Individual permit.

4 (1) The Secretary shall adopt by rule requirements or conditions for an
5 individual permit for the construction of impervious surface or creation of
6 cleared area regulated under this section.

7 (2) The Secretary may require a person who applies for coverage under
8 a general permit to obtain an individual permit for construction of impervious
9 surface or creation of cleared area regulated under this section if the proposed
10 activity presents a significant risk of harm to protected shoreland areas or the
11 water quality of a lake adjacent to a protected shoreland area.

12 (3) The individual permit shall be issued for an indefinite term, provided
13 that the person granted coverage under the individual permit complies with the
14 terms of the general permit and takes no subsequent action for which a permit
15 is required under this chapter.

16 (d) Recorded permits. Coverage under a general permit or an individual
17 permit issued under this section shall, for purposes of having the permit run
18 with the land, be recorded in the land records of the municipality in which the
19 impervious surface or cleared area is located.

20 § 1444. LAKE SHORELAND PROTECTION STANDARDS; RULES

21 (a) Lake shoreland protection standards; adoption. On or before January 1,
22 2015, the Secretary shall adopt by rule standards for the construction of

1 ~~impervious surface or the creation of cleared area in a protected shoreland area.~~

2 The lake shoreland protection standards shall be designed to achieve the
3 purposes of this chapter set forth in section 1441 of this title, while also
4 accommodating construction, creation, or expansion of impervious surface or
5 cleared area in protected shoreland areas.

6 (b) Content of lake shoreland protection standards. The standards required
7 under subsection (a) of this section shall:

8 (1) establish best management practices for the construction of
9 impervious surfaces or the creation of cleared area in a protected shoreland
10 area, including standards for:

11 (A) managing vegetative cover that may be required as a best
12 management practice in order to ensure that some level of the required
13 vegetative cover is maintained in the protected shoreland area;

14 (B) allowing reasonable use of the protected shoreland area subject to
15 a vegetative cover requirement for construction, creation, or expansion of
16 impervious surface or cleared area;

17 (C) minimizing and mitigating the creation of impervious surface or
18 cleared area in a protected shoreland area;

(D) authorizing off-site mitigation as a best management practice
when compliance with vegetative cover or other best management practices is
not technically feasible on a property within a protected shoreland area,
provided that any authorized mitigation shall be conducted within the

~~watershed of the lake in which the proposed construction, creation, or expansion of impervious surface or cleared area will occur. If, within one year of the proposed construction, creation, or expansion of impervious surface or cleared area, the applicant cannot identify a suitable off-site mitigation project within the watershed of the lake where construction, creation, or expansion will occur, the Secretary shall authorize completion of the off-site project in an alternative lake watershed.~~

1 ~~(D)~~ (E) minimizing and mitigating the impacts from impervious
2 surfaces or cleared areas on water quality, aquatic biota, wildlife and aquatic
3 habitat, or protected shoreland areas; and

4 ~~(E)~~ (F) designing and maintaining driveways, patios, and similar
5 impervious surfaces so that stormwater runoff is minimized;

6 (2) authorize the establishment and maintenance of paths and
7 recreational space in a protected shoreland area, provided that the path or
8 recreational space is designed and managed to minimize stormwater runoff;

9 (3) authorize the establishment and maintenance of gardens in protected
10 shoreland areas, provided that the gardens are designed and managed to
11 minimize stormwater runoff;

12 (4) authorize the construction and maintenance of accessory structures
13 in a protected shoreland area subject to size requirements established by the
14 Secretary;

~~(5) for areas of the State where mosquito populations create a public health hazard, as that term is defined in 18 V.S.A. § 2, physical practices or activities that create cleared area or remove vegetative cover in order to reduce mosquito breeding habitat, provided that any activity authorized under this subdivision shall comply with the Vermont wetlands rules;~~

~~(5) (6) establish criteria for evaluating applications for a permit under this chapter;~~

1 ~~(6) (7) establish the requirements for the processing of applications for a~~
2 ~~permit under this chapter, including public notice and comment periods.~~

3 § 1445. MUNICIPAL DELEGATION

4 (a) Municipalities with existing shoreland bylaws or ordinances. The
5 Secretary shall delegate to a municipality authority to permit the construction,
6 creation, or expansion of impervious surface or cleared area under this chapter
7 if the municipality adopted a bylaw or ordinance on or before January 1, 2015,
8 that:

9 (1) requires vegetative cover or other best management practices
10 designed to prevent degradation of water quality in lakes; to minimize or
11 mitigate impervious surface and cleared areas in protected shoreland areas
12 adjacent to lakes; or to minimize or mitigate damage from floods and erosion;

13 (2) sets forth conditions on the construction and expansion of existing
14 impervious surface or cleared area; and

1 ~~(3) provides for administration and enforcement of the bylaw or~~
2 ~~ordinance.~~

3 ~~(b) Municipalities that adopt shoreland bylaws or ordinances after~~
4 ~~January 1, 2015. The Secretary may delegate authority to permit the~~
5 ~~construction, creation, or expansion of impervious surface or cleared area~~
6 ~~under this chapter to a municipality that has not adopted a shoreland bylaw or~~
7 ~~ordinance as of January 1, 2015 if:~~

8 ~~(1) the municipality adopts a bylaw or ordinance regulating construction~~
9 ~~of impervious surface or creation of cleared area in a protected shoreland area~~
10 ~~after January 1, 2015; and~~

11 ~~(2) the Secretary determines that the municipality adopted a municipal~~
12 ~~bylaw or ordinance that is at least as stringent as the shoreland protection~~
13 ~~standards adopted by the Secretary under section 1444 of this title.~~

14 ~~(c) Delegation agreement.~~

15 ~~(1) Delegation under subsection (a) or (b) of this section shall be by~~
16 ~~agreement between the Secretary and the delegated municipality. The~~
17 ~~delegation agreement shall set the terms for revocation of delegation.~~

18 ~~(2) Under the delegation agreement, the Secretary and the municipality~~
19 ~~may agree, in instances where a delegated municipality does not or cannot address~~
20 ~~noncompliance, that the Secretary, after consultation with the municipality, may~~
21 ~~institute enforcement proceedings under 10 V.S.A chapter 201 for failure to~~
22 ~~comply with the lake shoreland protection standards.~~

- 1 (3) The delegation agreement shall require the municipality to:
- 2 (A) have or establish a process for accepting, reviewing, and
- 3 processing applications and issuing permits for construction of impervious
- 4 surface or creation of cleared area in protected shoreland areas;
- 5 (B) take timely and appropriate enforcement actions;
- 6 (C) commit to reporting annually to the Secretary on a form and date
- 7 determined by the Secretary;
- 8 (D) comply with all other requirements of the rules adopted under
- 9 this chapter; and
- 10 (E) cure any defects in such bylaw or ordinance or in the
- 11 administration or enforcement of such bylaw or ordinance upon notice of a
- 12 defect from the Secretary.
- 13 (4) A municipality that seeks delegation under subsection (a) or (b) of
- 14 this section shall be presumed to satisfy the requirements of this subsection for
- 15 a permit process and enforcement if the municipality has designated a
- 16 municipal zoning administrator or other municipal employee or official as
- 17 responsible for the permitting and enforcement of the construction, creation, or
- 18 expansion of impervious surface or cleared area within the municipality.
- (d) Historic and urban development. ~~A municipality that does not qualify~~
- ~~for delegation under subsection (a) or (b) of this section shall not require a~~
- ~~permit under section 1443 of this title for construction, creation, or expansion~~
- ~~of impervious surface or cleared area within all or a portion of a protected~~

~~shoreland area within the municipality's boundaries if~~ In a municipality that
does not qualify for delegation under subsection (a) or (b) of this section,
construction, creation, or expansion of impervious surface or cleared area
within a protected shoreland area shall not require a permit under this chapter

if:

1 (1) the area in which the impervious surface or cleared area will be
2 constructed, created, or expanded has been designated by municipal bylaw for:

3 (A) development according to historic development patterns; or

4 (B) redevelopment of land that has been subject to construction of
5 impervious surface or to disturbance prior to the July 1, 2013 by industrial or
6 urban development; and

7 (2) the municipality has adopted a shoreland bylaw or ordinance or has
8 implemented best management practices intended to prevent degradation of
9 water quality in lakes; to minimize or mitigate disturbances in lands adjacent to
10 lakes; or to minimize or mitigate damage from floods and erosion.

11 § 1446. AGRICULTURE; SILVICULTURE; TRANSPORTATION; AND

12 ELECTRIC UTILITY PROJECTS; DEVELOPMENT AND

13 SUBDIVISION

14 The following activities in a protected shoreland area do not require a
15 permit under section 1443 of this title:

16 (1) Silvicultural activities. Silvicultural activities in a protected
17 shoreland area if the silvicultural activities are in compliance with:

1 (A) a forest management plan, approved by the Commissioner of
2 Forests, Parks and Recreation, for the land in the protected shoreland area in
3 which the silvicultural activities occur;

4 (B) the rules adopted by the Secretary under section 754 of this title
5 for silvicultural activities in a flood hazard area; and

6 (C) the accepted management practices adopted by the Commissioner
7 of Forests, Parks and Recreation under section 2622 of this title.

8 (2) Agricultural activities. Agricultural activities in protected shoreland
9 areas if:

10 (A) the agricultural activities comply with the Secretary's rules under
11 section 754 of this title for agricultural activities in a flood hazard area;

12 (B) the agricultural activities comply with the rules adopted by the
13 Secretary of Agriculture, Food and Markets under 6 V.S.A. chapter 215
14 regarding agricultural water quality, including accepted agricultural practices,
15 best management practices, medium and small farm operation, and large farm
16 operation; and

17 (C) any proposed expansion or modification to a farm structure, as
18 that term is defined in the accepted agricultural practices, in a protected
19 shoreland area shall be reviewed by the Secretary of Agriculture, Food and
20 Markets in coordination with the Secretary of Natural Resources under a
21 memorandum of understanding.

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~~(3) State and municipal transportation infrastructure. The routine maintenance, emergency repair, repair, and replacement of transportation infrastructure by the Vermont Agency of Transportation or by a municipality.~~

(3) Transportation infrastructure and private roads. The maintenance, emergency repair, repair, and replacement of:

(A) transportation infrastructure by the Vermont Agency of Transportation or by a municipality; or

(B) a private road that does not require a permit under section 1264 of this title, provided that emergency repair, repair, and replacement of the private road shall comply with the applicable water quality best management practices within the Vermont Agency of Transportation town road and bridge standards for controlling stormwater runoff and direct discharges to state waters. The requirement to comply with the water quality best management practices shall apply even if the municipality in which the private road is located has not adopted the town road and bridge standards. Under this subdivision, expansion of a private road in order to allow for passage of emergency vehicles shall be considered repair that does not require a permit under section 1443 of this title.

(4) Wastewater systems and potable water supplies. Installation, maintenance, repair, or replacement of a wastewater system or potable water supply permitted by the Agency of Natural Resources under chapter 64 of this title.

1 ~~(5) Stormwater treatment. Discharges of stormwater, stormwater~~
2 ~~treatment facilities or practices, including repair or maintenance, permitted by~~
3 ~~the Agency of Natural Resources under section 1264 of this title.~~

4 ~~(6) Electric utility projects and utility lines.~~

5 ~~(A) The construction of electric utility projects that are subject to~~
6 ~~30 V.S.A. § 248 or chapter 151 of this title.~~

7 ~~(B) The routine repair and maintenance of utility lines and structures~~
8 ~~including vegetation maintenance in utility line corridors, in a protected~~
9 ~~shoreland area that are subject to 30 V.S.A. § 248, chapter 151 of this title, or a~~
10 ~~vegetation management plan approved by the Agency in a protected shoreland~~
11 ~~area. Vegetation management practices in a protected shoreland area shall be~~
12 ~~performed in accordance with a vegetation management plan approved by the~~
13 ~~Agency of Natural Resources.~~

14 ~~(C) The emergency repair of utility lines and poles in protected~~
15 ~~shoreland areas, provided that such repair minimizes adverse impacts to~~
16 ~~vegetation in the protected shoreland area.~~

17 ~~(7) Dredge and fill. Dredge or fill activities operating under a permit~~
18 ~~issued by the U.S. Army Corps of Engineers under 33 U.S.C. § 1344.~~

19 ~~§ 1447. COORDINATION OF AGENCY OF NATURAL RESOURCES'~~

20 ~~PERMITTING OF ACTIVITIES IN PROTECTED SHORELAND~~

21 ~~AREAS~~

1 ~~(a) Coordination of permitting in protected shoreland area. During~~
2 ~~technical review of a permit application for a wastewater system, potable water~~
3 ~~supply, stormwater discharge, or stormwater treatment facility that is proposed~~
4 ~~to be located in a protected shoreland area and that does not require a permit~~
5 ~~under this chapter, the Agency division issuing the wastewater system, potable~~
6 ~~water supply, stormwater discharge, or stormwater treatment facility permit~~
7 ~~shall consult with the Agency's Lakes and Ponds Section regarding practices~~
8 ~~or activities that could reduce the impact of the proposed activity on the~~
9 ~~protected shoreland area or water quality of lakes adjacent to the protected~~
10 ~~shoreland area.~~

11 ~~(b) Agency guidance or procedure. The Agency may formalize the~~
12 ~~consultation process required by this section in a guidance document or~~
13 ~~internal agency procedure.~~

~~*(c) Agency lands. All lands held by the Agency within a protected*~~
~~*shoreland area shall be managed according to the requirements of this chapter*~~
~~*when consistent and not in conflict with applicable federal requirements for*~~
~~*the management of a parcel of land held by the Agency.*~~

14 ~~§ 1448. MUNICIPAL ZONING BYLAW OR ORDINANCE~~

15 ~~(a) Construction of impervious surface or creation of cleared area occurring~~
16 ~~outside protected shoreland areas. Construction of impervious surface or~~
17 ~~creation of cleared area occurring outside a protected shoreland area shall~~
18 ~~conform to duly adopted municipal zoning bylaws and applicable municipal~~

1 ~~ordinances and shall not be subject to regulation by the Secretary of Natural~~
2 ~~Resources under this chapter.~~

3 ~~(b) Existing municipal bylaws and ordinances. The shoreland protection~~
4 ~~standards adopted by the Secretary of Natural Resources under section 1444 of~~
5 ~~this title are in addition to existing municipal bylaws and ordinances, and~~
6 ~~proposed construction of impervious surface or creation of cleared area within~~
7 ~~the protected shoreland area shall comply with all relevant, existing municipal,~~
8 ~~state, and federal requirements.~~

9 Sec. 3. 10 V.S.A. § 6086(d) is amended to read:

10 (d) The ~~land use panel~~ Land Use Panel may by rule allow the acceptance of
11 a permit or permits or approval of any state agency with respect to subdivisions
12 (a)(1) through (5) of this title or a permit or permits of a specified municipal
13 government with respect to subdivisions (a)(1) through (7) and (9) and (10) of
14 this title, or a combination of such permits or approvals, in lieu of evidence by
15 the applicant. A district commission, in accordance with rules adopted by the
16 ~~land use panel~~ Land Use Panel, shall accept determinations issued by a
17 development review board under the provisions of 24 V.S.A. § 4420, with
18 respect to local Act 250 review of municipal impacts. The acceptance of such
19 approval, positive determinations, permit, or permits shall create a presumption
20 that the application is not detrimental to the public health and welfare with
21 respect to the specific requirement for which it is accepted. In the case of
22 approvals and permits issued by the ~~agency of natural resources~~ Agency of

1 ~~Natural Resources, technical determinations of the agency Agency shall be~~
2 accorded substantial deference by the commissions. The acceptance of
3 negative determinations issued by a development review board under the
4 provisions of 24 V.S.A. § 4420, with respect to local Act 250 review of
5 municipal impacts shall create a presumption that the application is detrimental
6 to the public health and welfare with respect to the specific requirement for
7 which it is accepted. Any determinations, positive or negative, under the
8 provisions of 24 V.S.A. § 4420 shall create presumptions only to the extent
9 that the impacts under the criteria are limited to the municipality issuing the
10 decision. Such a rule may be revoked or amended pursuant to the procedures
11 set forth in 3 V.S.A., chapter 25, the Vermont Administrative Procedure Act.
12 The rules adopted by the ~~land use panel~~ Land Use Panel shall not approve the
13 acceptance of a permit or approval of such an agency or a permit of a
14 municipal government unless it satisfies the appropriate requirements of
15 subsection (a) of this section. A district commission shall accept a lake
16 shoreland protection permit issued by the Agency of Natural Resources under
17 chapter 49A of this title. The acceptance of a lake shoreland protection permit
18 shall create a presumption that the permitted activity satisfies the requirements
19 of subdivision (a)(1)(F) of this section for shorelines in a protected shoreland
20 area, as that term is defined in section 1442 of this title.

1 ~~Sec. 4. 10 V.S.A. § 8003(a) is amended to read.~~

2 (a) The ~~secretary~~ Secretary may take action under this chapter to enforce
3 the following statutes:

4 * * *

5 (22) 10 V.S.A. chapter 164A, collection and disposal of
6 mercury-containing lamps; ~~and~~

7 (23) 24 V.S.A. § 2202a, relating to a municipality's adoption and
8 implementation of a solid waste implementation plan that is consistent with the
9 state solid waste plan; and

10 (24) 10 V.S.A. chapter 49A, relating to lake shoreland protection
11 standards.

12 Sec. 5. 10 V.S.A. § 8503 is amended to read:

13 § 8503. APPLICABILITY

14 (a) This chapter shall govern all appeals of an act or decision of the
15 ~~secretary~~ Secretary, excluding enforcement actions under chapters 201 and 211
16 of this title and rulemaking, under the following authorities and under the rules
17 adopted under those authorities:

18 (1) The following provisions of this title:

19 * * *

20 (R) chapter 32 (flood hazard areas).

21 (S) chapter 49A (lake shoreland protection standards).

22 * * *

1 ~~Sec. 6. PUBLIC PARTICIPATION IN DEVELOPMENT OF LAKE~~

2 ~~SHORELAND PROTECTION STANDARDS; REPORT~~

3 ~~(a) In addition to the public participation requirements of 3 V.S.A.~~
4 ~~chapter 25 and prior to submitting a proposed rule to the Secretary of State~~
5 ~~under 3 V.S.A. § 838, the Secretary of Natural Resources shall engage in an~~
6 ~~expanded public participation process with affected stakeholders and other~~
7 ~~interested persons in a dialogue about intent, method, and content of rules~~
8 ~~required under 10 V.S.A. § 1443 regarding construction, creation, or expansion~~
9 ~~of impervious surface or cleared area in protected shoreland areas of lakes.~~

10 ~~The Secretary of Natural Resources is encouraged to use workshops, focused~~
11 ~~work groups, dockets, meetings, or other forms of communication to meet the~~
12 ~~participation requirements of this section.~~

13 ~~(b) On or before September 1, 2013, the Secretary of Natural Resources~~
14 ~~shall commence rulemaking to establish standards for the construction,~~
15 ~~creation, or expansion of impervious surface or cleared area in protected~~
16 ~~shoreland areas of lakes.~~

17 ~~(c) On or before April 15, 2014, the Secretary of Natural Resources shall~~
18 ~~submit to the House Committee on Fish, Wildlife and Water Resources and the~~
19 ~~Senate Committee on Natural Resources and Energy a copy of the rules~~
20 ~~required under 10 V.S.A. § 1443 regarding the regulation of construction,~~
21 ~~creation, or expansion of impervious surface or cleared area in protected~~
22 ~~shoreland areas of lakes. The report shall include a summary of the process~~

1 followed by the Secretary of Natural Resources in developing the rules,
2 including a summary of how the Secretary complied with the requirements of
3 subsection (a) of this section.

Sec. 6a. AGENCY OF NATURAL RESOURCES REPORT ON LAKE

SHORELAND PROTECTION

On or before December 15, 2013, the Secretary of Natural Resources shall submit to the House Committee on Fish, Wildlife and Water Resources, the Senate Committee on Natural Resources and Energy, and the House and Senate Committees on Appropriations a report regarding implementation of pending or proposed Agency of Natural Resources' water quality initiatives.

The report shall include:

(1) a summary of how the regulation of construction, creation, or expansion of impervious surface or cleared area in protected shoreland areas will be coordinated with other Agency of Natural Resources water quality initiatives;

(2) a proposal for how the Agency will quantify the contribution to improved water quality in the State from the regulation of construction, creation, or expansion of impervious surface or cleared area in a protected shoreland area; and

(3) a recommendation for a prioritized plan on how to fund water quality initiatives in the State, including an estimate of how much regulation

~~would cost and any revenue source, such as permit fees, that would be used to pay for the cost.~~

1 Sec. 7. EFFECTIVE DATE

2 ~~This act shall take effect on July 1, 2013.~~

Sec. 1. LEGISLATIVE FINDINGS AND LEGISLATIVE INTENT

The General Assembly finds and declares that:

(1) Clean water is essential in Vermont's quality of life.

(2) Preserving, protecting, and restoring the water quality of all lakes, ponds, rivers, and streams are necessary for the clean water, recreation, economic opportunity, wildlife habitat, and ecological value that such waters provide.

(3) Currently, there are multiple pressures on the protection of the water quality of the State's surface waters.

(4) The State has responded to the multiple pressures on water quality by implementing regulatory programs for stormwater, wastewater, and agricultural runoff, but water quality issues remain that need addressing.

(5) Vermont's lakes are among the State's most valuable and fragile economic and natural resources, and the protection of naturally vegetated shorelands adjacent to lakes is necessary to prevent water quality degradation, maintain healthy habitat, and promote flood resilience.

(6) Naturally vegetated shorelands and implementation of best management practices in lands adjacent to lakes function to:

(A) intercept and infiltrate surface water runoff, wastewater, and groundwater flows from upland sources;

(B) remove or minimize the effects of nutrients, sediment, organic matter, pesticides, and other pollutants;

(C) moderate the temperature of shallow water habitat;

(D) maintain the conditions that sustain the full support of aquatic biota, wildlife, and aquatic habitat uses; and

(E) promote stability and flood resilience by protecting shoreline banks from erosion.

(7) Healthy lakes and adjacent shorelands:

(A) support Vermont's tourism economy and promote widespread recreational opportunities, including swimming, boating, fishing, and hunting;

(B) support property values and tax base; and

(C) reduce human health risks.

(8) According to the Agency of Natural Resources Water Quality Remediation, Implementation, and Funding Report in 2013, review of the development, protection, and stabilization of shorelands is necessary because of the importance of shorelands to the health of lakes.

(9) A lake or pond of more than 10 acres is located in 184 of the State's 251 municipalities. However, only 48 municipalities have shoreland zoning that requires vegetative cover. Scientifically based standards for impervious surface and cleared area adjacent to lakes are necessary to protect and

maintain the integrity of water quality and aquatic and shoreland habitat, while also allowing for reasonable development of shorelands.

(10) The shorelands of the State owned by private persons remain private property, and this act does not extend the common-law public trust doctrine to private shoreland that is not currently public trust land. The State has an interest in protecting lakes and adjacent shorelands in a manner that respects existing rights of property owners to control access to land they own in lake shorelands, and the regulation of the creation of new impervious surface or cleared area in the shoreland areas should not and does not affect the ability of property owners to control access to their lands.

(11) In order to fulfill the State's role as trustee of its waters and promote public health, safety, and the general welfare, it is in the public interest for the General Assembly to establish lake shoreland protection standards for impervious surface and cleared area in the shorelands adjacent to the State's lakes.

Sec. 2. 10 V.S.A. chapter 49A is added to read:

CHAPTER 49A. LAKE SHORELAND PROTECTION STANDARDS

§ 1441. PURPOSE

The purposes of this chapter shall be to:

(1) provide clear and adaptable standards for the creation of impervious surface or cleared area in lands adjacent to lakes;

(2) prevent degradation of water quality in lakes and preserve natural stability of shoreline;

(3) protect aquatic biota and protect habitat for wildlife and aquatic life;

(4) mitigate, minimize, and manage any impact of new impervious surface and new cleared area on the lakes of the State;

(5) mitigate the damage that floods and erosion cause to development, structures, and other resources in the lands adjacent to lakes;

(6) accommodate creation of cleared areas and impervious surfaces in protected shoreland areas in a manner that allows for reasonable development of existing parcels;

(7) protect shoreland owners' access to, views of, and use of the State's lakes; and

(8) preserve and further the economic benefits and values of lakes and their adjacent shorelands.

§ 1442. DEFINITIONS

As used in this chapter:

(1) "Agency" means the Agency of Natural Resources.

(2) "Best management practices" means approved activities, maintenance procedures, and other practices to prevent or reduce the effects of impervious surface or cleared area on water quality and natural resources.

(3) "Cleared area" means an area where existing vegetative cover, soil, tree canopy, or duff is permanently removed or altered. Cleared area shall not mean management of vegetative cover conducted according to the requirements of section 1447 of this title.

(4) "Duff" means leaf litter plus small fragments of plants and organic debris that provide a spongy substrate that absorbs the energy of falling water and allows runoff to infiltrate soil.

(5) "Expansion" means an increase or addition of impervious surface or cleared area.

(6) "Grass lawn" means land maintained in continuous plant coverage of grasses and similar plants that are closely and regularly mowed, including meadow or pasture on nonagricultural land. "Grass lawn" does not include pasture cropland, land used to grow sod, or similar land used for agricultural production.

(7) "Habitable structure" means a permanent assembly of materials built for the support, shelter, or enclosure of persons, animals, goods, or property, including a dwelling, a commercial or industrial building, and driveways, decks, and patios attached or appurtenant to a dwelling or commercial or industrial building. "Habitable structure" shall not mean a motor home, as that term is defined under 32 V.S.A. § 8902, tents, lean-tos, or other temporary structures.

(8) "Highway" shall have the same meaning as in 19 V.S.A. § 1(12).

(9) “Impervious surface” means those manmade surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates.

(10) “Lake” means a body of standing water, including a pond or a reservoir, which may have natural or artificial water level control. Private ponds shall not be considered lakes.

(11) “Management road” shall have the same meaning as in 19 V.S.A. § 1(13).

(12) “Mean water level” means the mean water level of a lake as defined in the Mean Water Level Rules of the Agency of Natural Resources adopted under 29 V.S.A. § 410.

(13) “Parcel” means a portion of land or a tract of land with defined boundaries created by dividing the land by sale, gift, lease, mortgage foreclosure, court-ordered partition or decree, or filing of a plat, plan, or deed in the records of the municipality where the act of division occurred.

(14) “Private pond” means a body of standing water that is a natural water body of not more than 20 acres located on property owned by a person or an artificial water body of any size located on property owned by one person. A “private pond” shall include a reservoir specifically constructed for one of the following purposes: snowmaking storage, golf course irrigation, stormwater management, or fire suppression.

(15) "Private road" means a road or street other than a highway, as that term is defined in 19 V.S.A. § 1(12), that is owned by one or more persons and that is used as a means of travel from a highway to more than one parcel of land.

(16) "Project" means an act or activity that results in cleared area or the creation of impervious surface in a protected shoreland area.

(17) "Protected shoreland area" means all land located within 250 feet of the mean water level of a lake that is greater than 10 acres in surface area.

(18) "Secretary" means the Secretary of Natural Resources or the Secretary's duly authorized representative.

(19) "Slope" means the vertical rise divided by the horizontal run of a plane expressed as a percentage.

(20) "State forest highway" shall have the same meaning as in 19 V.S.A. § 1(19).

(21) "Stormwater runoff" means precipitation and snowmelt that does not infiltrate into the soil, including material dissolved or suspended in it, but does not include discharges from undisturbed natural terrain or wastes from combined sewer overflows.

(22) "Vegetative cover" means mixed vegetation within the protected shoreland area, consisting of trees, shrubs, groundcover, and duff. "Vegetative cover" shall not mean grass lawns, noxious weeds designated by the Secretary of Agriculture, Food and Markets under 6 V.S.A. chapter 84, or

nuisance plants, such as poison ivy and poison oak, designated by the Secretary of Natural Resources.

§ 1443. INDIVIDUAL PERMIT REQUIREMENT FOR IMPERVIOUS SURFACE OR CLEARED AREA IN A PROTECTED

SHORELAND AREA

(a) Permit requirement. A person shall not create cleared area or impervious surface in a protected shoreland area without a permit from the Secretary issued under this section, except for activities authorized to occur without a permit under section 1446 of this title.

(b) Permit issuance. The Secretary shall issue a permit under this section if the proposed impervious surface or cleared area meets the requirements of section 1444 or 1445 of this title.

(c) Permit process.

(1) A person applying for a permit shall do so on a form provided by the Secretary. The application shall be posted on the Agency's website.

(2) A person applying for a permit shall provide notice, on a form provided by the Secretary, to the municipal clerk of the municipality in which the construction of impervious surface or creation of cleared area is located at the time the application is filed with the Secretary.

(3) The Secretary shall provide an opportunity for written comment, regarding whether an application complies with the requirements of this

chapter or any rule adopted by the Secretary, for 30 days following receipt of the application.

(d) Permit condition. A permit issued under this section may include permit conditions, including authorizing a permittee, no more frequently than two times per year, to clear vegetative cover within three feet of both sides of a footpath within the protected shoreland area in order to allow access to the mean water level for maintenance or repair of recreational structures or for other activity approved by the Secretary.

(e) Permit term. Individual permits issued under this section shall be for an indefinite term, provided that the permittee complies with the requirements of the permit and takes no additional action for which an individual permit is required.

(f) Recording. A permit or registration issued under this chapter shall, for the purposes of having the permit or registration run with the land, be recorded in the land records of the municipality in which the impervious surface or cleared area is located.

(g) Public recreational areas. Notwithstanding the requirements of sections 1444 and 1445 of this title, the Secretary shall issue a permit under this chapter for a public recreational area project if the permit applicant demonstrates and the Secretary finds that:

(1) the recreational activity provides access to the water for the general public and promotes the public trust uses of the water;

(2) the impervious surface or cleared area is necessary to achieve the recreational purpose of the project, and the project must be constructed within the protected shoreland area to achieve its recreational function; and

(3) the project conforms with best management practices approved by the Secretary that protect the habitat and water quality of the lake while achieving the public recreational purposes.

§ 1444. PERMIT STANDARDS

(a) Permit standards; generally. Except for permits issued under section 1445 of this title, the Secretary shall issue a permit under this chapter if the permit applicant, including the State of Vermont, demonstrates that:

(1) cleared area or impervious surface shall be located at least 100 feet from the mean water level, except for for shoreland stabilization measures designed to repair or prevent erosion or flood risks and approved by the Secretary;

(2) cleared area or impervious surface within the protected shoreland area shall be located on a site:

(A) with a slope of less than 20 percent; or

(B) that will have a stable slope with minimal erosion and minimal negative impacts to water quality;

(3)(A) no more than 20 percent of the protected shoreland area of the parcel shall consist of impervious surface; or

(B) best management practices will be used to manage, treat, and control erosion due to stormwater runoff from that portion of impervious surface that exceeds 20 percent of the protected shoreland area;

(4)(A) no more than 40 percent of the protected shoreland area of the parcel shall consist of cleared area, including area cleared for the purposes of creating impervious surface; or

(B) best management practices will be used to provide erosion control, bank stability, and wildlife habitat functionally equivalent to that which would be provided by clearing less than 40 percent of the protected shoreland area; and

(5) vegetative cover shall be managed according to the requirements of section 1447 of this title.

(b) Repair of highway, State forest highway, management road, or private road. Under this chapter, when the repair, emergency repair, or replacement of a highway, management road, State forest highway, or private road results in the construction, creation, or expansion of impervious surface or cleared area on a property adjacent to the highway, management road, State forest highway, or private road, the impervious surface or cleared area constructed or created on the adjacent property shall not be calculated as square footage of impervious surface or cleared area for purposes of permitting or registration under this chapter.

(c) Calculation of area. Under this chapter, the area of constructed, created, or expanded impervious surface or cleared area shall be the square footage as measured on a horizontal plane.

§ 1445. NONCONFORMING PARCELS; PERMIT STANDARDS

(a) Permit for nonconforming parcels. A permit applicant shall comply with the requirements of subsection (b) of this section if the applicant cannot meet the standard required under subdivision 1444(a)(1) of this title on a parcel of land in existence on July 1, 2014, due to one of the following limitations:

(1) parcel size;

(2) the site characteristic or site limitations of the parcel, including presence of highway or rights of way and soil type; or

(3) application of municipal setback requirement in a municipal bylaw adopted on or before July 1, 2014.

(b) Permit standards for nonconforming parcels.

(1) For a parcel on which there is no habitable structure, the cleared area or impervious surface shall be as far as possible from the mean water level, and at a minimum shall be no less than 25 feet from the mean water level, except for shoreland stabilization measures designed to repair or prevent erosion or flood risks and approved by the Secretary.

(2) For a parcel on which a habitable structure is located, the expansion of any portion of the structure within 100 feet of the mean water level shall be

on the side of the structure farthest from the lake, unless the Secretary determines that:

(A) expansion on an alternate side of the structure will have an impact on water quality that is equivalent to or less than expansion of the structure on the side farthest from the lake; and

(B) the structure is not expanded toward the mean water level.

(3) Cleared area or impervious surface within the protected shoreland area shall be located on a site:

(A) with a slope of less than 20 percent; or

(B) that the permit applicant demonstrates will have a stable slope with minimal erosion and minimal negative impacts to water quality.

(4)(A) No more than 20 percent of the protected shoreland area of the parcel shall consist of impervious surface; or

(B) The permit applicant shall demonstrate that best management practices will be used to manage, treat, and control erosion due to stormwater runoff from that portion of impervious surface that exceeds 20 percent of the protected shoreland area.

(5)(A) No more than 40 percent of the protected shoreland area of the parcel shall consist of cleared area, including area cleared for the purposes of creating an impervious surface; or

(B) The permit applicant shall demonstrate that best management practices will be used to provide erosion control, bank stability, and wildlife

habitat functionally equivalent to that which would be provided by clearing less than 40 percent of the protected shoreland area.

(c) Vegetation maintenance on nonconforming parcels. A permit issued under this section for creation of cleared area or impervious surface on a nonconforming parcel shall not require compliance with the requirements of section 1447 for the management of vegetative cover.

(d) Application process. An applicant for a permit under this section shall submit to the Secretary a form that identifies the basis of the nonconformity on the parcel. The Secretary may issue a permit under this section to an applicant who meets the requirements of subsection (b) of this section.

§ 1446. REGISTERED PROJECTS; EXEMPTIONS FROM PERMITTING

(a)(1) Registered projects. The following projects in a protected shoreland area do not require a permit under section 1444 or 1445 of this title:

(A) The creation of no more than 100 square feet of impervious surface or cleared area, or a combination of impervious surface or cleared area, within 100 feet of the mean water level, provided that:

(i) the owner of the property on which the impervious surface or cleared area is created registers with the Secretary, on a form provided by the Secretary that contains the name of the property owner, the address of the property, and a certification that the project meets the requirements of this subsection (a);

(ii) the impervious surface or cleared area is located at least 25 feet from the mean water level; and

(iii) vegetative cover shall be managed according to the requirements of section 1447 of this title.

(B) The creation of 500 square feet or less of impervious surface, cleared area, or a combination of impervious surface and cleared area, provided that:

(i) the owner of the property on which the impervious surface or cleared area is created registers with the Secretary a form provided by the Secretary that contains the name of the property owner, the address of the property, and a certification that the project meets the requirements of this subsection;

(ii) the impervious surface or cleared area is at least 100 feet from the mean water level;

(iii) any proposed cleared area or area within the protected shoreland area where an impervious surface shall be sited has a slope of less than 20 percent;

(iv) after the completion of the project, the protected shoreland area shall consist of no more than 20 percent impervious surface; and

(v) after the completion of the project, the protected shoreland area shall consist of no more than 40 percent cleared area, including any area cleared for the purposes of creating impervious surface.

(2) Limit on registration per parcel. A person shall not use the registration process under this subsection to create more than a maximum total per parcel of:

(A) 100 square feet of impervious surface or cleared area within 100 feet of the mean water level; and

(B) 500 square feet of impervious surface or cleared area within the protected shoreland area that is at least 100 feet from the mean water level.

(3) Effect of registration. A registration shall take effect 15 days after being filed with the Secretary, unless the Secretary requests that the person registering submit additional information that the Secretary considers necessary or the Secretary notifies the person registering that an individual permit is required.

(4) Term. Registrations shall be for an indefinite term, provided that the person complied with the requirements of this subsection and takes no action for which an individual permit is required.

(b) Exemptions. The following activities in a protected shoreland area do not require a permit under section 1444 or 1445 of this title:

(1) Management of vegetative cover. Management of vegetative cover conducted in compliance with section 1447 of this title.

(2) Removal of vegetation for recreational purposes. The cutting or removal of no more than 250 square feet of the existing vegetation under three

feet in height within 100 feet of the mean water level to allow for recreational use in the protected shoreland area, provided that:

(A) the cutting or removal of vegetation occurs at least 25 feet from the mean water level; and

(B) other ground cover, including leaf litter and the forest duff layer, shall not be removed from the area in which cutting occurs.

(3) Maintenance of lawns. The maintenance, but not the enlargement, of lawns, gardens, landscaped areas, and beaches in existence as of July 1, 2014.

(4) Creation of footpaths. The creation of one footpath per parcel with a width of no greater than six feet that provides access to the mean water level. Under this subdivision, a footpath includes stairs, landings, or platforms within the authorized six-foot width.

(5) Construction within footprint. Construction within the footprint of an impervious surface, existing as of July 1, 2014, that does not result in a net increase in the amount of impervious surface on a parcel.

(6) Silvicultural activities. Silvicultural activities in a protected shoreland area if the silvicultural activities are in compliance with:

(A) a forest management plan, approved by the Commissioner of Forests, Parks and Recreation, for the land in the protected shoreland area in which the silvicultural activities occur; and

(B) the accepted management practices adopted by the Commissioner of Forests, Parks and Recreation under section 2622 of this title.

(7) Agricultural activities. Agricultural activities on land in agricultural production on July 1, 2014, provided that:

(A) no impervious surface shall be created or expanded in a protected shoreland area except: when no alternative outside the protected shoreland area exists, the construction of a best management practice is necessary to abate an agricultural water quality issue, and the best management practice is approved by the Secretary of Agriculture, Food and Markets under 6 V.S.A. chapter 215; and

(B) the agricultural activities within the protected shoreland area comply with the rules adopted by the Secretary of Agriculture, Food and Markets under 6 V.S.A. chapter 215 regarding agricultural water quality, including accepted agricultural practices, best management practices, medium and small farm operation, and large farm operation.

(8) Transportation infrastructure and private roads. The maintenance, emergency repair, repair, and replacement of:

(A) Transportation infrastructure by the Vermont Agency of Transportation or by a municipality.

(B) A private road that does not require a permit under section 1264 of this title, provided that emergency repair, repair, and replacement of the

private road shall comply with the applicable water quality best management practices approved by the Secretary under 19 V.S.A. § 996 and incorporated within the Vermont Agency of Transportation town road and bridge standards for controlling stormwater runoff and direct discharges to State waters. The requirement to comply with the water quality best management practices shall apply even if the municipality in which the private road is located has not adopted the town road and bridge standards. Under this subdivision, expansion of a private road in order to allow for passage of emergency vehicles shall be considered repair that does not require a permit under section 1443 of this title.

(9) Railroad activities. Railroad activities and facilities within the jurisdiction of federal law.

(10) Parcel intersected by public highway. The creation or expansion of impervious surface or cleared area on a parcel within the protected shoreland area when the parcel is intersected by a highway and the impervious surface or cleared area is created or expanded on that portion of the parcel on the side of the highway away from the mean water level.

(11) Wastewater systems and potable water supplies. Installation, maintenance, repair, or replacement of a wastewater system or potable water supply permitted by the Agency of Natural Resources under chapter 64 of this title.

(12) Stormwater treatment. Discharges of stormwater, stormwater treatment facilities or practices, including repair or maintenance, permitted by the Agency of Natural Resources under section 1264 of this title.

(13) Utility projects and utility lines.

(A) The construction of projects that require a certificate of public good under 30 V.S.A. § 248 subject to the Agency of Natural Resources Riparian Buffer Guidance for Act 250 and Section 248 projects.

(B) The routine repair and maintenance of utility lines and structures including vegetation maintenance in utility line corridors, in a protected shoreland area that are subject to 30 V.S.A. § 248, chapter 151 of this title, or a vegetation management plan approved by the Agency in a protected shoreland area. Vegetation management practices in a protected shoreland area shall be performed in accordance with a vegetation management plan approved by the Agency of Natural Resources.

(C) The emergency repair of utility lines and poles in protected shoreland areas, provided that such repair minimizes adverse impacts to vegetation in the protected shoreland area.

(14) Act 250 permit. Projects which have received a permit pursuant to chapter 151 of this title.

(15) Designated downtowns and village centers. Projects in downtowns and village centers designated pursuant to 24 V.S.A. chapter 76A.

(16) Urban and industrial redevelopment. Construction, creation, or expansion of impervious surface or cleared area within a protected shoreland area, provided that:

(A) the area in which the impervious surface or cleared area will be constructed, created, or expanded is:

(i) urban or industrial in nature;

(ii) contains as of July 1, 2014 impervious surface or cleared area; and

(iii) has been designated by municipal bylaw for redevelopment.

(B) the municipality has adopted a shoreland bylaw or ordinance that:

(i) is at least as stringent as the permitting requirements and exemptions of this chapter; or

(ii) requires best management practices or other controls that are, as determined by the Secretary, functionally equivalent to compliance with the permitting requirements and exemptions of this chapter.

(17) Mosquito control. Where mosquito populations create a public health hazard, as that term is defined in 18 V.S.A. § 2, physical practices or activities approved by the Secretary that create cleared area or remove vegetative cover in order to reduce mosquito breeding habitat, provided that any activity authorized under this subdivision shall comply with the Vermont Wetlands Rules.

(c) Application of vegetative cover requirements. Activities authorized under subdivisions (b)(2)–(17) of this section shall not be required to comply with the requirements for the management of vegetative cover under section 1447 of this title.

§ 1447. LAKE SHORELAND VEGETATION PROTECTION

STANDARDS

(a) Within 100 feet of the mean water level, cutting of trees is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. Vegetation management that occurs within the protected shoreland area and that is conducted according to the requirements of this section shall not be counted toward the cleared area on a parcel.

(b) A “well-distributed stand of trees” shall be defined as maintaining a minimum rating score of 12, in each 25-foot by 25-foot area within 100 feet of the mean water level, as determined by the following rating system.

<u>(1) Diameter of tree at 4-1/2 feet above</u>	<u>Points</u>
<u>ground level (inches)</u>	
<u>2–< 4 in.</u>	<u>1</u>
<u>4–< 8 in.</u>	<u>2</u>
<u>8–< 12 in.</u>	<u>4</u>
<u>12 in. or greater</u>	<u>8</u>

(2) The following shall govern in applying this point system:

(A) 25-foot by 25-foot plots shall be established for vegetation management purposes.

(B) Each successive plot must be adjacent to but not overlap a previous plot.

(C) Any plot not containing the required points must have no vegetative cover removed unless the removal is allowed pursuant to a registration or individual permit.

(D) Any plot containing the required points may have trees removed down to the minimum points allowed.

(E) Existing vegetative cover under three feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or as allowed pursuant to a registration or individual permit.

(F) Pruning of tree branches on the bottom one-third of a tree's height is allowed.

(G) Removal of dead, diseased, or unsafe trees shall be allowed regardless of points.

(c) As used in this section, "other natural vegetation" means retaining existing vegetation under three feet in height and other ground cover and retaining at least five saplings less than two inches in diameter at four and one-half feet above ground level for each 25-foot by 25-foot area. If five

saplings do not exist, no woody stems less than two inches in diameter can be removed until five saplings have been planted or rooted in the plot.

§ 1448. MUNICIPAL DELEGATION

(a) Municipal shoreland bylaws or ordinances. The Secretary shall delegate authority to permit the construction, creation, or expansion of impervious surface or cleared area under this chapter to a municipality that has adopted a shoreland bylaw or ordinance if:

(1) the municipality adopts a bylaw or ordinance regulating construction of impervious surface or creation of cleared area in a protected shoreland area;

(2) the municipal bylaw or ordinance is, as determined by the Secretary, functionally equivalent to the requirements under sections 1444, 1445, 1446, and 1447 of this title; and

(3) the Secretary determines that the municipality provides adequate resources for administration and enforcement of the bylaw or ordinance.

(b) Delegation agreement.

(1) Delegation under subsection (a) of this section shall be by agreement between the Secretary and the delegated municipality. The delegation agreement shall set the terms for revocation of delegation.

(2) Under the delegation agreement, the Secretary and the municipality may agree, in instances where a delegated municipality does not or cannot address noncompliance, that the Secretary, after consultation with the

municipality, may institute enforcement proceedings under chapter 201 of this title.

(3) The delegation agreement shall require the municipality to:

(A) have or establish a process for accepting, reviewing, and processing applications and issuing permits for construction of impervious surface or creation of cleared area in protected shoreland areas;

(B) take timely and appropriate enforcement actions;

(C) commit to reporting annually to the Secretary on a form and date determined by the Secretary;

(D) comply with all other requirements of the rules adopted under this chapter; and

(E) cure any defects in such bylaw or ordinance or in the administration or enforcement of such bylaw or ordinance upon notice of a defect from the Secretary.

(4) A municipality that seeks delegation under subsection (a) of this section shall be presumed to satisfy the requirements of this subsection for a permit process and enforcement if the municipality has designated a municipal zoning administrator or other municipal employee or official as responsible for the permitting and enforcement of the construction, creation, or expansion of impervious surface or cleared area within the municipality.

§ 1449. COORDINATION OF AGENCY OF NATURAL RESOURCES'

PERMITTING OF ACTIVITIES IN PROTECTED SHORELAND

AREAS

(a) Coordination of permitting in protected shoreland area. During technical review of a permit application for a wastewater system, potable water supply, stormwater discharge, or stormwater treatment facility that is proposed to be located in a protected shoreland area and that does not require a permit under this chapter, the Agency division issuing the wastewater system, potable water supply, stormwater discharge, or stormwater treatment facility permit shall consult with the Agency's Lakes and Ponds Section regarding practices or activities that could reduce the impact of the proposed activity on the protected shoreland area or water quality of lakes adjacent to the protected shoreland area.

(b) Agency guidance or procedure. The Agency may formalize the consultation process required by this section in a guidance document or internal agency procedure.

§ 1450. MUNICIPAL ZONING BYLAW OR ORDINANCE

(a) Construction of impervious surface or creation of cleared area occurring outside protected shoreland areas. Construction of impervious surface or creation of cleared area occurring outside a protected shoreland area shall conform to duly adopted municipal zoning bylaws and applicable municipal ordinances and shall not be subject to regulation by the Secretary of Natural Resources under this chapter.

(b) Existing municipal bylaws and ordinances. The requirements of this chapter are in addition to existing municipal bylaws and ordinances, and proposed construction of impervious surface or creation of cleared area within the protected shoreland area shall comply with all relevant, existing municipal, State, and federal requirements.

§ 1451. RULEMAKING

The Secretary may adopt rules necessary for the purposes of implementing, administering, or enforcing the requirements of this chapter, including best management practices for the construction of impervious surfaces or the creation of cleared area in a protected shoreland area, including standards for:

(1) managing vegetative cover that may be required as a best management practice in order to ensure that some level of the required vegetative cover is maintained in the protected shoreland area;

(2) allowing reasonable use of the protected shoreland area subject to a vegetative cover requirement for construction, creation, or expansion of an impervious surface or cleared area;

(3) minimizing and mitigating the creation of an impervious surface or cleared area in a protected shoreland area.

§ 1452. EDUCATION AND OUTREACH; CITIZEN'S GUIDE

The Secretary shall conduct ongoing education and outreach to assist Vermont citizens with understanding and complying with the requirements of

this chapter. The education and outreach activities shall include publication on or before January 1, 2015 of a Citizen's Guide to Shoreland Protection, which shall provide easily understood instructions on the requirements of this chapter, how to apply for a permit or registration, and the activities that are exempt from or otherwise not subject to the requirements of this chapter.

Sec. 3. 10 V.S.A. § 8003(a) is amended to read:

(a) ~~The secretary~~ Secretary may take action under this chapter to enforce the following statutes:

* * *

(22) 10 V.S.A. chapter 164A, collection and disposal of mercury-containing lamps; ~~and~~

(23) 24 V.S.A. § 2202a, relating to a municipality's adoption and implementation of a solid waste implementation plan that is consistent with the State Solid Waste Plan; and

(24) 10 V.S.A. chapter 49A, relating to lake shoreland protection standards.

Sec. 4. VOLUNTARY SHORELAND EROSION CONTROL

CERTIFICATION

(a) Voluntary certification. Beginning on January 1, 2016, the Agency of Natural Resources, in consultation with the Associated General Contractors of Vermont, shall offer an optional shoreland erosion control certification program. The program shall include training related to development activities

in a shoreland area, including best management practices for erosion control, clearance of vegetation, and construction of impervious surfaces in shoreland areas. The voluntary certification program shall be offered until January 1, 2018.

(b) Report. On or before January 1, 2018, the Secretary of Natural Resources shall report to the House and Senate Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife and Water Resources regarding the voluntary shoreland erosion control certification program created in subsection (a) of this section. The report shall include:

(1) a general summary and evaluation of the program's success, including an overview of the number of persons certified by the program and the projects constructed by certified persons;

(2) a recommendation of whether the State and the Associated General Contractors of Vermont should continue the shoreland erosion control certification program, including whether to make the erosion control certification program mandatory and whether to allow certified persons to certify compliance with the shoreland protection standards in this chapter in lieu of obtaining the permit required under 10 V.S.A. § 1444 or 1445; and

(3) any other recommendations for improving the program.

Sec. 5. 10 V.S.A. § 8503 is amended to read:

§ 8503. APPLICABILITY

(a) This chapter shall govern all appeals of an act or decision of the Secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:

(1) The following provisions of this title:

** * **

(R) chapter 32 (flood hazard areas).

(S) chapter 49A (lake shoreland protection standards).

** * **

Sec. 6. 3 V.S.A. § 2822(j)(32) is added to read:

(32) For projects taking place in a protected shoreland area that require:

(A) a registration under 10 V.S.A. § 1446: \$100.00.

(B) a permit under 10 V.S.A. §§ 1443, 1444, and 1445: \$125.00 plus \$0.50 per square foot of impervious surface.

*Sec. 7. REPORT ON PROGRESS OF LAKE SHORELAND PROTECTION
PROGRAM*

On or before January 15, 2016, the Secretary of Natural Resources shall submit to the Senate Committee on Finance, the House Committee on Ways and Means, the Senate Committee on Natural Resources and Energy, and the House Committee on Fish, Wildlife and Water Resources a report regarding

implementation by the Agency of Natural Resources of the Lake Shoreland Protection Program under 10 V.S.A. chapter 49A. The report shall include:

(1) the number of lake shoreland protection registrations and permits issued by the Agency;

(2) the number of lots, if any, denied a shoreland protection registration or permit and the rationale for the denial of each application;

(3) an evaluation of the performance of the Lake Shoreland Protection Program, including the time frame for issuance of permits and landowner compliance;

(4) a list of the towns the Secretary delegated to implement the Lake Shoreland Protection Program, and a list of the towns that were denied delegation, including the rationale for denial;

(5) an evaluation of whether implementation of the Lake Shoreland Protection Program has achieved or is achieving the purposes of the Program set forth under 10 V.S.A. § 1441, including preventing degradation of water quality, preserving natural shoreline stability, protecting aquatic biota, protecting habitat for wildlife and aquatic life, and mitigating sediment and nutrient runoff to surface waters;

(6) the permit and registration fees collected by the Agency;

(7) the cost to the Agency of implementing the Lake Shoreland Protection Program; and

(8) any recommendations to improve the Lake Shoreland Protection Program, including how and whether to allow the use of off-site mitigation to offset the adverse impacts of creation or expansion of an impervious surface or cleared area on the water quality of lakes or on protected shoreland areas.

Sec. 8. 10 V.S.A. § 1454 is amended to read:

§ 1454. TRANSPORT OF AQUATIC PLANTS AND AQUATIC

NUISANCE SPECIES

(a) No person shall transport an aquatic plant or aquatic plant part, zebra mussels (*Dreissena polymorpha*), quagga mussels (*Dreissena bugensis*), or other aquatic nuisance species identified by the ~~secretary~~ Secretary by rule to or from any Vermont waters on the outside of a vehicle, boat, personal watercraft, trailer, or other equipment. This section shall not restrict proper harvesting or other control activities undertaken for the purpose of eliminating or controlling the growth or propagation of aquatic plants, zebra mussels, quagga mussels, or other aquatic nuisance species.

(b) The ~~secretary~~ Secretary may grant exceptions to persons to allow the transport of aquatic plants, zebra mussels, quagga mussels, or other aquatic nuisance species for scientific or educational purposes. When granting exceptions, the ~~secretary~~ Secretary shall take into consideration both the value of the scientific or educational purpose and the risk to Vermont surface waters posed by the transport and ultimate use of the specimens. A letter from the

~~secretary~~ Secretary authorizing the transport must accompany the specimens during transport.

(c) A violation of this section may be brought by any law enforcement officer, as that term is defined in 23 V.S.A. § 4(11), in the Environmental Division of the Superior Court. When a violation is brought by an enforcement officer other than an environmental enforcement officer employed by the Agency of Natural Resources, the enforcement officer shall submit to the Secretary a copy of the citation for purposes of compliance with the public participation requirements of section 8020 of this title.

Sec. 9. TRANSITION

A permit or registration under 10 V.S.A. chapter 49A for the creation of impervious surface or cleared area within a protected shoreland area shall not be required on a parcel of land for a project for which:

(1) all necessary State, local, or federal permits have been obtained prior to the effective date of this act and the permit holder takes no subsequent act that would require a permit or registration under 10 V.S.A. chapter 49A;
or

(2) a complete application for all applicable local, State, and federal permits has been submitted on or before the effective date of this act, provided that the applicant does not subsequently file an application for a permit amendment that would require a permit under 10 V.S.A. chapter 49A and substantial construction of the impervious surface or cleared area commences

within two years of the date on which all applicable local, State, and federal permits become final.

Sec. 10. EFFECTIVE DATE

This act shall take effect on July 1, 2014.