

No. 138. An act relating to regulation of flood hazard areas, river corridors, and stream alteration.

(S.202)

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

Sec. 1. 10 V.S.A. chapter 32 is amended to read:

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 provide state assistance to local government units in management of flood hazard areas;~~ 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 wise 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 ~~make the state and units of local government eligible~~ ensure eligibility for flood insurance under the requirements of the ~~federal department of housing and urban development in administering Title XIII of the Housing and Urban Development Act of 1968~~ National Flood Insurance Program.

§ 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” means an area which would be inundated in a flood of such severity that the flood would be statistically likely to occur once in every hundred years. In appropriate circumstances this might be the 1927 or the 1973 flood. In delineating any flood hazard area for the one hundred year flood based upon prior floods, flood control devices such as, but not limited to dams, canals, and channel work should be considered in the delineation shall have the same meaning as “area of special flood hazard” under 44 C.F.R. § 59.1.

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

~~(5)~~ “Floodway” means the channel of a watercourse and adjacent land areas which are required to carry and discharge the one hundred year flood within a regulated flood hazard area without substantially increasing the flood heights delineation shall have the same meaning as “regulatory floodway” under 44 C.F.R. § 59.1.

~~(4)~~ “Flood proofing” means any combination of structural and nonstructural additions, changes, or adjustments to properties and structures, primarily for the reduction or elimination of flood damage to lands, water and sanitary facilities, structures and contents of buildings delineation.

~~(5)~~(6) “Legislative body” means the ~~board of selectmen~~ selectboard, trustees, mayor, city council, and ~~board of aldermen~~ alderboard of a municipality.

~~(6)~~(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.

~~(7)~~(9) “Obstruction” means any natural or artificial condition including but not limited to, real estate which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or so situated that the flow of the water might carry it downstream to the damage of life or property “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.

~~(8)~~(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.

~~(9)~~(12) “Secretary” means the secretary of ~~the agency of~~ natural resources or the secretary’s duly authorized representative.

§ 753. FLOOD HAZARD AREAS; COOPERATION; MAPPING

(a) Cooperation to secure flood insurance. ~~To meet the objective of this chapter and the requirements of 24 V.S.A. § 4412, the designation and management of flood hazard areas shall adhere to the following procedure and schedule.~~ All The secretary and all municipalities, regional planning commissions, and departments and agencies of state government shall mutually cooperate to these ends achieve the purposes of this chapter and to

secure flood ~~plain~~ 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, ~~and~~ 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, ~~and~~ the state planning office.

(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.

§ 754. FLOOD HAZARD AREA RULES; USES EXEMPT FROM

MUNICIPAL REGULATION

(a) Rulemaking authority.

(1) On or before March 15, 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 uses exempt from municipal regulation that are located within a flood hazard area of a municipality that has adopted a flood hazard bylaw or ordinance under 24 V.S.A. chapter 117.

(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) require that the secretary provide notice to a municipality in which a use exempt from municipal regulation will occur of an application received under this section and a copy of the permit issued, unless a use is authorized to occur without notification of or reporting to the secretary.

(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. Beginning July 1, 2014, no person shall commence or conduct a use exempt from municipal regulation in a flood hazard area in a municipality that has adopted a flood hazard area bylaw or ordinance under 24 V.S.A. chapter 117 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.

(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 and senate committees on natural resources and energy, the house committee on fish, wildlife and water resources, 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.

§ 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.

* * * Stream Alteration; Emergency Activities * * *

Sec. 2. 10 V.S.A. § 1002 is amended to read:

§ 1002. DEFINITIONS

Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

- (1) “Artificial regulation of stream flow” means the intermittent or periodic manipulation of water levels and the intermittent or periodic regulation of discharge of water into the stream below the dam.
- (2) “Banks” means that land area immediately adjacent to the bed of the stream, which is essential in maintaining the integrity thereof.
- (3) “Bed” means the maximum area covered by waters of the stream for not less than 15 consecutive days in one year.
- (4) “Board” means the natural resources board.
- (5) “Cross section” means the entire channel to the top of the banks.
- (6) “Dam” applies to any artificial structure on a stream or at the outlet of a pond or lake, which is utilized for holding back water by ponding or storage together with any penstock, flume, piping or other facility for transmitting water downstream to a point of discharge, or for diverting water from the natural watercourse to another point for utilization or storage.
- (7) “Department” means the department of environmental conservation.
- (8) ~~Repealed.~~ “Instream material” means:

(A) all gradations of sediment from silt to boulders;

(B) ledge rock; or

(C) large woody debris in the bed of a watercourse or within the banks of a watercourse.

(9) “Person” means any individual; partnership; company; corporation; association; unincorporated association; joint venture; trust; municipality; the state of Vermont or any agency, department, or subdivision of the state, any federal agency, or any other legal or commercial entity.

(10) “Watercourse” means any perennial stream. “Watercourse” shall not include ditches or other constructed channels primarily associated with land drainage or water conveyance through or around private or public infrastructure.

(11) “Secretary” means the secretary of the agency of natural resources, or the secretary’s duly authorized representative.

(12) “Berm” means a linear fill of earthen material on or adjacent to the bank of a watercourse that constrains waters from entering a flood hazard area or river corridor, as those terms are defined in subdivisions 752(3) and (11) of this title.

(13) “Large woody debris” means any piece of wood within a watercourse with a diameter of 10 or more inches and a length of 10 or more feet that is detached from the soil where it grew.

Sec. 3. 10 V.S.A. § 1021 is amended to read:

§ 1021. ALTERATION PROHIBITED; EXCEPTIONS

(a) A person shall not change, alter, or modify the course, current, or cross section of any watercourse or of designated outstanding resource waters, within or along the boundaries of this state either by movement, fill, or ~~by~~ excavation of ten cubic yards or more of instream material in any year, unless authorized by the secretary. A person shall not establish or construct a berm in a flood hazard area or river corridor, as those terms are defined in subdivisions 752(3) and (11) of this title, unless permitted by the secretary or constructed as an emergency protective measure under subsection (b) of this section.

(b) ~~This subchapter~~ The requirements of subsection (a) of this section shall not apply to emergency protective measures necessary to preserve life or to prevent severe imminent damage to public or private property, or both. The protective measures shall:

(1) be limited to the minimum amount necessary to remove imminent threats to life or property; ~~shall;~~

(2) have prior approval from a member of the municipal legislative body ~~and shall;~~

(3) be reported to the secretary by the legislative body within ~~72~~ 24 hours after the onset of the emergency; and

(4) be implemented in a manner consistent with the general permit adopted under section 1027 of this title regarding stream alteration during emergencies.

* * *

Sec. 4. 10 V.S.A. § 1023 is amended to read:

§ 1023. INVESTIGATION, PERMIT

(a) Upon receipt of an application, the secretary shall cause an investigation of the proposed change to be made. Prior to making a decision, a written report shall be made by the secretary concerning the effect of the proposed change on the watercourse. The permit shall be granted, subject to such conditions determined to be warranted, if it appears that the change:

(1) will not adversely affect the public safety by increasing flood or fluvial erosion hazards;

(2) will not significantly damage fish life or wildlife;

(3) will not significantly damage the rights of riparian owners; and

(4) in case of any waters designated by the board as outstanding resource waters, will not adversely affect the values sought to be protected by designation.

(b) The reasons for the action taken under this section shall be set forth in writing to the applicant. Notice of the action of the secretary shall also be sent to the selectmen of the town in which the proposed change is located, and to

each owner of property which abuts or is opposite the land where the alteration is to take place.

(c) If the local legislative body and planning commission determine in writing by majority vote of each that ~~gravel~~ instream material in a watercourse is threatening life or property, due to increased potential for flooding, and that the removal of ~~gravel~~ instream material is necessary to prevent the threat to life or property, and if a complete permit application has been submitted to the secretary, requesting authority to remove ~~gravel~~ instream material in the minimum amount necessary to remove threats to life or property, the local legislative body and the planning commission may request an expedited review of the complete permit application by notifying the secretary and providing copies of their respective decisions. If the secretary fails to approve or deny the application within 45 calendar days of receipt of notice of the decisions, the application shall be deemed approved and a permit shall be deemed to have been granted. ~~Gravel~~ Instream material removed shall be used only for public purposes, and cannot be sold, traded, or bartered. The fact that an application for a permit has been filed under this subsection shall not limit the ability to take emergency measures under subsection 1021(b) of this title. For the purposes of section 1024 of this title, if a permit has been deemed to have been granted under this subsection, that permit shall constitute a decision of the secretary.

(d)(1) The secretary shall conduct training programs or seminars regarding how to conduct stream alteration, water quality review, stormwater discharge, fish and wildlife habitat preservation, and wastewater discharge activities necessary during:

(A) a state of emergency declared under 20 V.S.A. chapter 1;

(B) flooding; or

(C) other emergency conditions that pose an imminent risk to life or a risk of damage to public or private property.

(2) The secretary shall make the training programs or seminars available to agency employees in an agency division other than the watershed management division, employees of other state and federal agencies, regional planning commission members and employees, municipal officers and employees, and state, municipal, and private contractors.

(f) The secretary is authorized to enter into reciprocal mutual aid agreements or compacts with other states to assist the secretary and the state in addressing watershed, river management, and transportation system issues that arise when a state of emergency is declared under 20 V.S.A. chapter 1.

Sec. 5. 10 V.S.A. § 1027 is added to read:

§ 1027. RULEMAKING; EMERGENCY PERMIT

(a) The secretary may adopt rules to implement the requirements of this subchapter.

(b) The secretary shall adopt rules regarding the permitting of stream alteration activities under this subchapter during a state of emergency declared under 20 V.S.A. chapter 1 or during flooding or other emergency conditions that pose an imminent risk to life or a risk of damage to public or private property. Any rule adopted under this subsection shall comply with National Flood Insurance Program requirements. A rule adopted under this subsection shall include a requirement that an activity receive an individual stream alteration emergency permit or receive coverage under a general stream alteration emergency permit.

(1) A rule adopted under this subsection shall establish:

(A) criteria for coverage under an individual permit and criteria for coverage under a general emergency permit;

(B) criteria for different categories of activities covered under a general emergency permit, including emergency protective measures under subdivision 1021(b) of this title;

(C) requirements for public notification of permitted activities, including notification after initiation or completion of a permitted activity;

(D) requirements for coordination with state and municipal authorities; and

(E) requirements that the secretary document permitted activity, including, at a minimum, requirements for documenting permit terms,

documenting permit duration, and documenting the nature of an activity when the rules authorize notification of the secretary after initiation or completion of the activity.

(2) A rule adopted under this section may:

(A) establish reporting requirements for categories of activities;

(B) authorize an activity that does not require reporting to the secretary; or

(C) authorize an activity that requires reporting to the secretary after initiation or completion of an activity.

Sec. 6. 10 V.S.A. § 1264 is amended to read:

§ 1264. STORMWATER MANAGEMENT

* * *

(k) The secretary may adopt rules regulating stormwater discharges and stormwater infrastructure repair or maintenance during a state of emergency declared under 20 V.S.A. chapter 1 or during flooding or other emergency conditions that pose an imminent risk to life or a risk of damage to public or private property. Any rule adopted under this subsection shall comply with National Flood Insurance Program requirements. A rule adopted under this subsection shall include a requirement that an activity receive an individual stormwater discharge emergency permit or receive coverage under a general stormwater discharge emergency permit.

(1) A rule adopted under this subsection shall establish:

(A) criteria for coverage under an individual or general emergency permit;

(B) criteria for different categories of activities covered under a general emergency permit;

(C) requirements for public notification of permitted activities, including notification after initiation or completion of a permitted activity;

(D) requirements for coordination with state and municipal authorities;

(E) requirements that the secretary document permitted activity, including, at a minimum, requirements for documenting permit terms, documenting permit duration, and documenting the nature of an activity when the rules authorize notification of the secretary after initiation or completion of the activity.

(2) A rule adopted under this section may:

(A) establish reporting requirements for categories of activities;

(B) authorize an activity that does not require reporting to the secretary; or

(C) authorize an activity that requires reporting to the secretary after initiation or completion of an activity.

Sec. 6a. REPORT ON USE OF VOLUNTARY STORMWATER

MANAGEMENT CREDITS FOR HIGH ELEVATION PROJECTS

(a) ANR report on voluntary stormwater management credits. On or before January 15, 2014, the secretary of natural resources shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy regarding the effectiveness of the use of voluntary stormwater management credits to permit discharges of stormwater from renewable energy projects located at an elevation above 1,500 feet. The report shall:

(1) Summarize available national data regarding the efficacy of alternative stormwater treatment practices similar to the voluntary stormwater management credits;

(2) Evaluate the efficacy of the science and design of the management practices authorized under the voluntary stormwater management credits, including the impact of management practices authorized under the voluntary stormwater management credits on the vegetation and trees, fragile ecosystems, shallow soils, and sensitive streams found in high-elevation settings; and

(3) Recommend whether the voluntary stormwater management credits should be available for the permitting of stormwater discharges from renewable energy project sites located at elevations above 1,500 feet.

(4) Analyze or estimate if financial gains are prevalent to developers who have made use of management practices authorized under the voluntary stormwater management credits.

(5) Estimate the number of acres of soil that have not been disturbed as a result of the application of management practices authorized under the voluntary stormwater management credits.

(6) Recommend whether management practices authorized under the voluntary stormwater management credits should be expanded for discharges below 1,500 feet.

(b) Consultation with interested parties. In developing the report required under subsection (a) of this section, the secretary of natural resources shall consult with interested parties, including environmental groups.

* * * River Corridor Assessment and Planning * * *

Sec. 7. 10 V.S.A. § 1421 is amended to read:

§ 1421. POLICY

To aid in the fulfillment of the state's role as trustee of its navigable waters and to promote public health, safety, convenience, and general welfare, it is declared to be in the public interest to make studies, establish policies, make plans, make rules, encourage and promote buffers adjacent to lakes, ponds, reservoirs, rivers, and streams of the state, encourage and promote protected river corridors adjacent to rivers and streams of the state, and authorize

municipal shoreland and river corridor protection zoning bylaws for the efficient use, conservation, development, and protection of the state's water resources. The purposes of the rules shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish, and aquatic life; control building sites, placement of structures, and land uses; reduce fluvial erosion hazards; reduce property loss and damage; preserve shore cover, natural beauty, and natural stability; and provide for multiple use of the waters in a manner to provide for the best interests of the citizens of the state.

Sec. 8. 10 V.S.A. § 1422 is amended to read:

§ 1422. DEFINITIONS

In this chapter, unless the context clearly requires otherwise:

(1) "Agency" means the agency of natural resources.

* * *

(7) "Secretary" means the secretary of natural resources or the secretary's duly authorized representative.

* * *

(12) "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 to maintain or restore fluvial for the natural maintenance or natural restoration of dynamic equilibrium

conditions and ~~minimize~~ for minimization of fluvial erosion hazards, as delineated by the agency of natural resources in accordance with river corridor protection procedures.

(13) “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.

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

(15) “Flood hazard area” shall have the same meaning as “area of special flood hazard” under 44 C.F.R. § 59.1.

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

(17) “Geomorphic condition” means the degree of departure from the dimensions, pattern, and profile associated with a naturally stable channel representing the unique dynamic equilibrium condition of a river segment.

(18) “Infrastructure” means public and private buildings, roads, and public works, including public and private buildings; state and municipal

highways and roads; bridges; sidewalks and other traffic enhancements; culverts; private roads; public and private utility construction, state and municipal public works, cemeteries, and public parks and fields.

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

(20) “Sensitivity” means the potential of a river, given its inherent characteristics and present geomorphic conditions, to be subject to a high rate of fluvial erosion and other river channel adjustments, including erosion, deposit of sediment, and flooding.

Sec. 9. 10 V.S.A. § 1427 is amended to read:

§ 1427. RIVER CORRIDORS AND BUFFERS

(a) River corridor and floodplain management program. The secretary of natural resources shall establish a river corridor and floodplain management program to aid and support the municipal adoption of river corridor, floodplain, and buffer bylaws. Under the river corridor and floodplain management program, the secretary shall:

(1) ~~upon request, provide municipalities with maps of designated river corridors within the municipality. A river corridor map provided to a~~

~~municipality shall delineate a recommended buffer that is based on site specific conditions. The secretary shall provide maps under this subdivision based on a priority schedule established by the secretary in procedure; and assess the geomorphic condition and sensitivity of the rivers of the state and identify where the sensitivity of a river poses a probable risk of harm to life, property, or infrastructure.~~

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

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

(b) River sensitivity assessment; secretary's discretion. No later than February 1, 2011, the secretary of administration, after consultation with the state agencies of relevant jurisdiction, shall offer financial incentives to municipalities through existing grants and pass through funding programs which encourage municipal adoption and implementation of zoning bylaws that protect river corridors and buffers Notwithstanding the schedule established by the secretary under subdivision (a)(2) of this section, the secretary may complete a sensitivity assessment for a river if, in the secretary's discretion, the sensitivity of a river and the risk it poses to life, property, and infrastructure require an expedited assessment.

(c) ~~No later than February 1, 2011, the agency of natural resources shall define minimum standards for municipal eligibility for any financial incentives established under subsection (b) of this section~~ Municipal consultation during river assessment. Prior to and during an assessment of river sensitivity required under subsection (a) of this section, the secretary shall consult with the legislative body or designee of municipalities and the regional planning commissions in the area in which a river is located.

Sec. 10. 10 V.S.A. § 1428 is added to read:

§ 1428. RIVER CORRIDOR PROTECTION

(a) River corridor maps. Upon completion of a sensitivity assessment for a river or river segment under section 1427 of this title, the secretary shall provide to each municipality and regional planning commission in which the river or river segment is located a copy of the sensitivity assessment and a river corridor map for the municipality and region. A river corridor map provided to a municipality and regional planning commission shall identify floodplains, river corridor protection areas, flood hazard areas, and other areas or zones indicated on a Federal Emergency Management Agency flood insurance rate map, and shall recommend best management practices, including vegetated buffers, based on site-specific conditions. The secretary shall post a copy of the sensitivity assessment and river corridor map to the agency of natural resources' website. A municipality with a mapped river or river segment shall

post a copy of a sensitivity assessment and river corridor map received under this subsection in the municipal offices and on the municipality's website, if the municipality regularly updates its website. A regional planning commission shall post a sensitivity assessment or river corridor map received under this subsection in the commission's offices and on the commission's website. When a sensitivity assessment or a river corridor map is provided to a municipality, provided to a regional planning commission, or posted on the agency website, the agency shall provide all information, including the supportive data, in a digital format.

(b) River corridor protection area bylaw. The secretary shall create and make available to municipalities several alternative model river corridor protection area bylaws or ordinances for potential adoption by municipalities pursuant to 24 V.S.A. chapter 117 or 24 V.S.A. § 2291. The model bylaws or ordinances shall use terminology consistent with the National Flood Insurance Program regulations.

(c) Flood resilient communities program; incentives. No later than February 1, 2013, the secretary of administration, after consultation with the state agencies of relevant jurisdiction, shall offer financial incentives through a flood resilient communities program. The program shall list the existing financial incentives under state law for which municipalities may apply for financial assistance, when funds are available, for municipal adoption and

implementation of bylaws under 24 V.S.A. chapter 117 that protect river corridors and floodplains. The secretary of natural resources shall summarize minimum standards for municipal eligibility for any financial incentives established under this subsection.

* * * Municipal Planning; Flood Hazard and

River Corridor Protection Areas * * *

Sec. 11. 24 V.S.A. § 4303 is amended to read:

§ 4303. DEFINITIONS

The following definitions shall apply throughout this chapter unless the context otherwise requires:

* * *

(8) “Flood hazard area” for purposes of section 4424 of this title ~~means the land subject to flooding from the base flood. “Base flood” means the flood having a one percent chance of being equaled or exceeded in any given year~~ shall have the same meaning as “area of special flood hazard” under 44 C.F.R. § 59.1. Further, with respect to flood, river corridor protection area, and other hazard area regulation pursuant to this chapter, the following terms shall have the following meanings:

(A) “Floodproofing” ~~means any combination of structural and nonstructural additions, changes, or adjustments to properties and structures that substantially reduce or eliminate flood damage to any combination of real~~

~~estate, improved real property, water or sanitary facilities, structures, and the contents of structures~~ shall have the same meaning as “flood proofing” under 44 C.F.R. § 59.1.

(B) ~~“Floodway” means the channel of a river or other watercourse and the adjacent land area that must be reserved in order to discharge the base flood without accumulatively increasing the water surface elevation more than one foot~~ shall have the same meaning as “regulatory floodway” under 44 C.F.R. § 59.1.

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

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

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

~~(E)~~(F) “Substantial improvement” means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent

of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. However, the term does not include either of the following:

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

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

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

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

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

(J) “River corridor” means the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the

naturally stable channel and that is necessary for the natural maintenance or natural restoration of a dynamic equilibrium condition and for minimization of fluvial erosion hazards, as delineated by the agency of natural resources in accordance with river corridor protection procedures.

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

* * *

Sec. 12. 24 V.S.A. § 4411(b) is amended to read:

(b) All zoning bylaws shall apply to all lands within the municipality other than as specifically limited or exempted in accordance with specific standards included within those bylaws and in accordance with the provisions of this chapter. The provisions of those bylaws may be classified so that different provisions may be applied to different classes of situations, uses, and structures and to different and separate districts of the municipality as may be described by a zoning map made part of the bylaws. The land use map required pursuant to subdivision 4382(a)(2) of this title of any municipality may be designated as the zoning map except in cases in which districts are not deemed by the planning commission to be described in sufficient accuracy or detail by the

municipal plan land use map. All provisions shall be uniform for each class of use or structure within each district, except that additional classifications may be made within any district for any or all of the following:

(1) To make transitional provisions at and near the boundaries of districts.

(2) To regulate the expansion, reduction, or elimination of certain nonconforming uses, structures, lots, or parcels.

(3) To regulate, restrict, or prohibit uses or structures at or near any of the following:

* * *

(G) Flood, ~~fluvial erosion~~ or other hazard areas and other places having a special character or use affecting or affected by their surroundings.

(H) River corridors, river corridor protection areas, and buffers, as ~~those terms are~~ the term “buffer” is defined in 10 V.S.A. §§ § 1422 and 1427.

* * *

Sec. 13. 24 V.S.A. § 4424 is amended to read:

§ 4424. SHORELANDS; RIVER CORRIDOR PROTECTION AREAS;

FLOOD OR HAZARD AREA; SPECIAL OR FREESTANDING
BYLAWS

(a) Any municipality may adopt freestanding bylaws under this chapter to address particular hazard areas in conformance with the municipal plan or, for

the purpose of adoption of a flood hazard area bylaw, a local hazard mitigation plan approved under 44 C.F.R. § 201.6, including the following, which may also be part of zoning or unified development bylaws:

(1) Bylaws to regulate development and use along shorelands.

(2) Bylaws to regulate development and use in flood areas, river corridor protection areas, or other hazard areas. The following shall apply if flood or other hazard area bylaws are enacted:

(A) Purposes.

(i) 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, landslides, erosion hazards, earthquakes, and other natural or human-made hazards.

(ii) To ensure that the design and construction of development in flood, river corridor protection, and other hazard areas are accomplished in a manner that minimizes or eliminates the potential for flood and loss or damage to life and property in a flood hazard area or that minimizes the potential for fluvial erosion and loss or damage to life and property in a river corridor protection area.

(iii) To manage all flood hazard areas designated pursuant to 10 V.S.A. § 753.

(iv) To make the state and municipalities eligible for federal flood insurance and other federal disaster recovery and hazard mitigation funds as may be available.

(B) Contents of bylaws. Flood, river corridor protection area, and other hazard area bylaws may:

(i) Contain standards and criteria that prohibit the placement of damaging obstructions or structures, the use and storage of hazardous or radioactive materials, and practices that are known to further exacerbate hazardous or unstable natural conditions.

(ii) Require flood, fluvial erosion, and hazard protection through elevation, floodproofing, disaster preparedness, hazard mitigation, relocation, or other techniques.

(iii) Require adequate provisions for flood drainage and other emergency measures.

(iv) Require provision of adequate and disaster-resistant water and wastewater facilities.

(v) Establish other restrictions to promote the sound management and use of designated flood, river corridor protection, and other hazard areas.

(vi) Regulate all land development in a flood hazard area, river corridor protection area, or other hazard area, except for development that is regulated under 10 V.S.A. § 754.

(C) Effect on zoning bylaws. Flood or other hazard area bylaws may alter the uses otherwise permitted, prohibited, or conditional in a flood or other hazard area under a bylaw, as well as the applicability of other provisions of that bylaw. Where a flood hazard bylaw, a hazard area bylaw, or both apply along with any other bylaw, compliance with the flood or other hazard area bylaw shall be prerequisite to the granting of a zoning permit. Where a flood hazard area bylaw or a hazard area bylaw but not a zoning bylaw applies, the flood hazard and other hazard area bylaw shall be administered in the same manner as are zoning bylaws, and a flood hazard area or hazard area permit shall be required for land development covered under the bylaw.

(D)(i) Mandatory provisions. All flood and other hazard area bylaws shall provide that no permit for new construction or substantial improvement shall be granted for a flood or other hazard area until after both the following:

(i)(I) A copy of the application is mailed or delivered by the administrative officer or by the appropriate municipal panel to the agency of natural resources or its designee.

(ii)(II) Either 30 days have elapsed following the mailing or the agency or its designee delivers comments on the application.

(ii) The agency of natural resources may delegate to a qualified representative of a municipality with a flood hazard area bylaw or ordinance or to a qualified representative for a regional planning commission the agency's

authority under this subdivision (a)(2)(D) to review and provide technical comments on a proposed permit for new construction or substantial improvement in a flood hazard area. Comments provided by a representative delegated under this subdivision (a)(2)(D) shall not be binding on a municipality.

~~(E) Special exceptions. The appropriate municipal panel, after public hearing, may approve the repair, relocation, replacement, or enlargement of a nonconforming structure within a regulated flood or other hazard area, subject to compliance with applicable federal and state laws and regulations, and provided that the following criteria are met:~~

~~(i) The appropriate municipal panel finds that the repair, relocation, or enlargement of the nonconforming structure is required for the continued economically feasible operation of a nonresidential enterprise.~~

~~(ii) The appropriate municipal panel finds that the repair, relocation, or enlargement of the nonconforming structure will not increase flood levels in the regulatory floodway, increase the risk of other hazard in the area, or threaten the health, safety, and welfare of the public or other property owners.~~

~~(iii) The permit so granted states that the repaired, relocated, or enlarged nonconforming structure is located in a regulated flood or other~~

~~hazard area, does not conform to the bylaws pertaining to that area, and will be maintained at the risk of the owner.~~

(b) A municipality may adopt a flood hazard area, river corridor protection area, or other hazard area regulation that meets the requirements of this section by ordinance under subdivision 2291(25) of this title.

Sec. 14. 24 V.S.A. § 4469 is amended to read:

§ 4469. APPEAL; VARIANCES

(a) On an appeal under section 4465 or 4471 of this title or on a referral under subsection 4460(e) of this title in which a variance from the provisions of a bylaw or interim bylaw is requested for a structure that is not primarily a renewable energy resource structure, the board of adjustment or the development review board or the environmental division created under 4 V.S.A. chapter 27 shall grant variances and render a decision in favor of the appellant, if all the following facts are found, and the finding is specified in its decision:

(1) There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.

(2) Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

(3) Unnecessary hardship has not been created by the appellant.

(4) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.

(5) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.

(b) On an appeal under section 4465 or 4471 of this title in which a variance from the provisions of a bylaw or interim bylaw is requested for a structure that is primarily a renewable energy resource structure, the board of adjustment or development review board or the environmental division may grant that variance and render a decision in favor of the appellant if all the following facts are found, and the finding is specified in its decision:

(1) It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with the bylaws.

(2) The hardship was not created by the appellant.

(3) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.

(4) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaws and from the plan.

(c) In rendering a decision in favor of an appellant under this section, a board of adjustment or development review board or the environmental division may attach such conditions to variances as it may consider necessary and appropriate under the circumstances to implement the purposes of this chapter and the plan of the municipality then in effect.

(d) A variance authorized in a flood hazard area shall meet applicable federal and state rules for compliance with the National Flood Insurance Program.

Sec. 15. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

* * *

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

Sec. 16. 10 V.S.A. § 6086(c) is amended to read:

(c) A permit may contain such requirements and conditions as are allowable proper exercise of the police power and which are appropriate within the respect to subdivisions (1) through (10) of subsection (a), including but not limited to those set forth in 24 V.S.A. §§ 4414(4), 4424(a)(2), 4414(1)(D)(i), 4463(b), and 4464, the dedication of lands for public use, and the filing of bonds to insure compliance. The requirements and conditions incorporated from Title 24 may be applied whether or not a local plan has been adopted. General requirements and conditions may be established by rule of the land use panel.

Sec. 17. ANR REPORT ON FINANCIAL INCENTIVES FOR THE FLOOD
RESILIENT COMMUNITIES PROGRAM

As part of the biennial report required by Sec. 8 of No. 110 of the Acts of the 2009 Adj. Sess. (2010), the secretary of natural resources shall identify existing state financing programs or incentives that could be amended so that such programs or incentives could be available to municipalities under the flood resilient communities program for the purpose of flood hazard and river corridor protection planning.

Sec. 18. IMPLEMENTATION; TRANSITION

(a)(1) Prior to the secretary of natural resources' adopting rules under 10 V.S.A. § 754 for the regulation in flood hazard areas of uses exempt from municipal regulation:

(A) state- or community-owned and -operated institutions and facilities shall not be constructed within a flood hazard area, as that term is defined in 10 V.S.A. § 752(3), unless such construction conforms with the development requirements of the National Flood Insurance Program; and

(B) the following new uses or new construction shall not be permitted or certified for construction unless such construction conforms with the development requirements of the National Flood Insurance Program:

(i) a school;

(ii) a hospital;

(iii) a solid waste or hazardous waste facility; or

(v) a power-generating plant or transmission facility regulated under 30 V.S.A. § 248.

(2) Noncompliance with the requirements of this section shall not affect the marketability of title of a property.

(b) The consolidated executive branch fee report and request to be submitted on or before the third Tuesday of January 2013 pursuant to 32 V.S.A. § 605 shall include the agency of natural resources' proposed fee or fees to support the agency's services provided under Sec. 1 of this act in 10 V.S.A. § 754 (flood hazard area rules). The proposed fee shall be sufficient to pay for at least 20 percent of the cost to the agency of natural resources of implementing, administering, and enforcing the rules adopted under 10 V.S.A. § 754.

* * * ANR Report on State Water Quality Programs * * *

Sec. 19. AGENCY OF NATURAL RESOURCES WATER QUALITY

REMEDIATION, IMPLEMENTATION, AND FUNDING REPORT

(a) Findings. The general assembly finds and declares that:

(1) Clean water is a key factor in Vermont's quality of life.

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

(3) Restoring and maintaining river corridor, floodplain, lakeshore, wildlife habitat, and wetland functions serve to protect water quality and reduce the risk of flood hazards.

(4) The state and its regulatory agencies currently are subject to multiple requirements to respond to, remediate, and prevent water quality problems in the state, including the following:

(A) The federal Clean Water Act requires a total maximum daily load (TMDL) plan for impaired waters. Lake Champlain is impaired due to phosphorus pollution that exceeds the Vermont water quality standards. The U.S. Environmental Protection Agency (EPA) recently disapproved the Lake Champlain phosphorus TMDL. Consequently, the state will be required to amend the TMDL implementation plan in order to incorporate additional water quality measures and controls.

(B) The EPA likely will require the state to meet certain pollution control requirements for nitrogen in the Connecticut River as part of the Long Island Sound TMDL.

(C) The state is required to implement federally required TMDLs for 15 stormwater-impaired waters in the state.

(D) All waters of the state are at risk of pollution or impairment, and under state and federal law, the state is required to prevent impairment or degradation of these waters.

(5) Responding to the multiple water quality requirements to which the state is subject will require significant funding, but the state currently lacks the funding necessary to respond adequately and in a timely way to the demands for remediation and water quality protection.

(6) The development of a statewide mechanism, such as a statewide clean water utility, is necessary to address regulatory demands and to prioritize investment in water quality projects throughout the state so that the protection and improvement of water quality is achieved in the most cost-effective manner.

(7) In order to identify how the state should respond to existing and future demands to remediate and protect state surface waters, the secretary of natural resources should submit to the general assembly recommendations for addressing and funding the multiple water quality requirements to which the state is subject.

(b) Report requirement. On or before December 15, 2012, the secretary of natural resources shall report to the house committee on fish, wildlife and water resources, the house and senate committees on natural resources and energy, the house and senate committees on agriculture, and the house and senate committees on transportation with recommendations on how to remediate or improve the water quality of the state's surface waters, how to

implement remediation or improvement of water quality, and how to fund the remediation or improvement of water quality.

(c) Content of report. In the report required by this section, the secretary shall recommend:

(1) Funding. How to fund statewide and localized water quality remediation and conservation efforts. The secretary shall recommend funding sources or a funding mechanism or mechanisms for ongoing water quality efforts in the state. The recommendation shall address whether the state should implement a statewide assessment or fee, such as a clean water utility fee, an impervious surface fee, a Clean Water Act § 401 (33 U.S.C. § 1341) certification fee, impact fees, or other fees or charges.

(2) Administration. How to design, implement, and administer water quality programs in the state, including whether:

(A) a statewide clean water utility or similar statewide mechanism should be established to address water quality in the state;

(B) implementation of a statewide clean water utility or similar statewide mechanism is more suitable for an independent, nongovernmental entity and, if so:

(i) how an independent, nongovernmental entity would be established and administered; and

(ii) whether such an entity would need rulemaking authority in order to effectively operate and implement a water quality program.

(C) water quality programs could be effectively implemented through regional water quality utilities or similar mechanisms currently authorized under 24 V.S.A. chapters 105 and 121.

(3) Priority award. How available water quality funds should be allocated, including:

(A) whether funds should be allocated according to a science-based system that prioritizes awards to projects or programs in areas of high risk of pollution in impaired, unimpaired, or high quality waters.

(B) whether funds should be available for the development, accommodation, or planning of municipal or regional water quality utilities or mechanisms authorized under 24 V.S.A. chapters 105 and 121.

(C) how to best achieve regional equity in the distribution of water quality funds.

(D) whether additional priority points should be awarded to certain water quality projects eligible for funding from the special environmental revolving fund under 24 V.S.A. chapter 120.

(4) Agricultural water quality. After consultation with the secretary of agriculture, food and markets and the agricultural community, how regulation of agricultural runoff and application of water quality standards to agricultural

operations should be implemented, including whether additional requirements, standards, technical assistance, or financial assistance is necessary to increase compliance with AAPs and whether the AAPs should be amended to require all small farms or a subset of small farms to apply nutrients according to a nutrient management plan or at a more stringent soil loss tolerance than is currently required.

(5) Urban water quality. How regulation of stormwater runoff should be managed and enforced in order to meet the Vermont water quality standards and whether additional requirements, standards, technical assistance, or financial assistance are necessary to improve the management of stormwater runoff in the state.

(6) Lake shoreland protection. How the state should work toward the restoration and protection of shorelands of lakes, including how the state should regulate development in shorelands of lakes, including whether the state should enact statewide regulation for activities within shorelands of lakes and whether any regulation of activities within shorelands should be based on site-specific criteria.

(7)(A) Critical source areas. How to respond to and remediate nutrient pollution from critical source areas. The recommendations shall:

(i) address how to define and identify critical source areas statewide, including the Lake Champlain Basin;

(ii) propose a process and provide a cost estimate for developing site-specific implementation plans to reduce discharges from critical source areas and shall summarize how tactical basin planning will be utilized in such a process.

(B) As used in this subdivision (7), “critical source area” means an area in a watershed with high potential for the release, discharge, or runoff of nutrients or pollutants to the waters of the state.

(8) Response plans or mechanism. A plan or mechanism for prioritizing state response to and remediation of water quality concerns or impairments in identified waters or watersheds, such as St. Albans Bay, including how to prioritize available funding or staffing in a manner that allows discrete water quality issues to be addressed and remediated.

(9) Implementation plan. How the recommendations or plans required under subdivisions (1) through (8) of this subsection will be implemented.

(d) Conduct of report; consultation. In developing the recommendations required by subsection (c) of this section, the secretary of the agency of natural resources shall consult with interested parties for guidance, including but not limited to: the secretary of transportation or his or her designee; the secretary of agriculture, food and markets or his or her designee; the chair of the natural resources board or his or her designee; legislators and legislative staff; representatives of environmental groups; representatives of municipalities or

municipal interests; representatives of municipalities subject to the federal Clean Water Act requirements for discharges from municipal separate storm sewer systems; representatives of the agricultural community; representatives of the business community; representatives of municipal stormwater utilities or other municipal stormwater controls; representatives of engineering or consulting firms; and other interested persons or organizations relevant to completion of the report. The secretary shall warn any meeting with interested parties in fulfillment of this section by posting a notice of such a meeting to the website of the agency of natural resources no later than seven days before the meeting.

(e) Format of report to general assembly. The report to the general assembly required by this section shall address each of the report requirements of subsection (c) of this section and may, as part of the report, include recommended draft legislation.

* * * ANR Rulemaking Authority * * *

Sec. 20. 10 V.S.A. § 905b is amended to read:

§ 905b. DUTIES; POWERS

The department shall protect and manage the water resources of the state in accordance with the provisions of this subchapter and shall:

* * *

(18) study and investigate the wetlands of the state and cooperate with municipalities, the general public, other agencies, and the board in collecting and compiling data relating to wetlands, propose to the board specific wetlands to be designated as Class I wetlands, issue or deny permits pursuant to section 6025 of this title and the rules ~~of the panel~~ authorized by this subdivision, issue wetland determinations pursuant to section 914 of this title, issue orders pursuant to section 1272 of this title, and ~~implement the rules adopted by the board governing significant wetlands~~ in accordance with 3 V.S.A. chapter 25, adopt rules to address the following:

(A) the identification of wetlands that are so significant they merit protection. Any determination that a particular wetland is significant will result from an evaluation of at least the following functions and values which a wetland serves:

(i) provides temporary water storage for flood water and storm runoff;

(ii) contributes to the quality of surface and groundwater through chemical action;

(iii) naturally controls the effects of erosion and runoff, filtering silt, and organic matter;

(iv) contributes to the viability of fisheries by providing spawning, feeding, and general habitat for freshwater fish;

(v) provides habitat for breeding, feeding, resting, and shelter to both game and nongame species of wildlife;

(vi) provides stopover habitat for migratory birds;

(vii) contributes to an exemplary wetland natural community, in accordance with the rules of the secretary;

(viii) provides for threatened and endangered species habitat;

(ix) provides valuable resources for education and research in natural sciences;

(x) provides direct and indirect recreational value and substantial economic benefits; and

(xi) contributes to the open-space character and overall beauty of the landscape;

(B) the ability to reclassify wetlands, in general, or on a case-by-case basis;

(C) the protection of wetlands that have been determined under subdivision (A) or (B) of this subdivision (18) to be significant, including rules that provide for the issuance or denial of permits and the issuance of wetland determinations by the department under this chapter; provided, however, that the rules may only protect the values and functions sought to be preserved by the designation. The department shall not adopt rules that restrain agricultural activities without the consent of the secretary of agriculture, food and markets

and shall not adopt rules that restrain silvicultural activities without the consent of the commissioner of forests, parks and recreation;

* * *

Sec. 21. 10 V.S.A. § 1252 is amended to read:

§ 1252. CLASSIFICATION OF WATERS; MIXING ZONES

* * *

(b) The secretary may establish mixing zones or waste management zones as necessary in the issuance of a permit in accordance with this section and criteria established by board rule. ~~The board shall adopt these rules by July 1, 1994.~~ Those waters authorized under this chapter, as of July 1, 1992, to receive the direct discharge of wastes which prior to treatment contained organisms pathogenic to human beings are designated waste management zones for those discharges. Those waters that as of July 1, 1992 are Class C waters into which no direct discharge of wastes that prior to treatment contained organisms pathogenic to human beings is authorized, shall become waste management zones for any municipality in which the waters are located that qualifies for a discharge permit under this chapter for those wastes prior to July 1, 1997.

* * *

(e) ~~The board~~ secretary shall adopt standards of water quality to achieve the purposes of the water classifications. Such standards shall be expressed in

detailed water quality criteria, taking into account the available data and the effect of these criteria on existing activities, using as appropriate:

(1) numerical values, (2) biological parameters; and (3) narrative descriptions.

These standards shall establish limits for at least the following: alkalinity, ammonia, chlorine, fecal coliform, color, nitrates, oil and grease, dissolved oxygen, pH, phosphorus, temperature, all toxic substances for which the United States Environmental Protection Agency has established criteria values and any other water quality parameters deemed necessary by the board.

(f) The ~~board~~ secretary may issue declaratory rulings regarding these standards.

* * *

Sec. 22. 10 V.S.A. § 1253 is amended to read:

§ 1253. CLASSIFICATION OF WATERS DESIGNATED,
RECLASSIFICATION

* * *

(c) On its own motion, or on receipt of a written request that the ~~board~~ secretary adopt, amend, or repeal a reclassification rule, the ~~board~~ secretary shall comply with 3 V.S.A. § 806 and may initiate a rulemaking proceeding to reclassify all or any portion of the affected waters in the public interest. In the course of this proceeding, the ~~board~~ secretary shall comply with the provisions of 3 V.S.A. chapter 25, and may hold a public hearing convenient to the waters

in question. If the ~~board~~ secretary finds that the established classification is contrary to the public interest and that reclassification is in the public interest, ~~it~~ he or she shall file a final proposal of reclassification in accordance with 3 V.S.A. § 841. If the ~~board~~ secretary finds that it is in the public interest to change the classification of any pond, lake or reservoir designated as Class A waters by subsection (a) of this section, ~~it~~ the secretary shall so advise and consult with the department of health and shall provide in its reclassification rule a reasonable period of time before the rule becomes effective. During that time, any municipalities or persons whose water supply is affected shall construct filtration and disinfection facilities or convert to a new source of water supply.

(d) The ~~board~~ secretary shall determine what degree of water quality and classification should be obtained and maintained for those waters not classified by ~~it~~ the board before 1981 following the procedures in sections 1254 and 1258 of this title. Those waters shall be classified in the public interest. The secretary shall revise all 17 basin plans by January 1, 2006, and update them every five years thereafter. On or before January 1 of each year, the secretary shall report to the house committees on agriculture, on natural resources and energy, and on fish, wildlife and water resources, and to the senate committees on agriculture and on natural resources and energy regarding the progress made and difficulties encountered in revising basin plans. By January 1, 1993,

the secretary shall prepare an overall management plan to ensure that the water quality standards are met in all state waters.

(e) In determining the question of public interest, the ~~board~~ secretary shall give due consideration to, and explain ~~its~~ his or her decision with respect to, the following:

* * *

(f) Notwithstanding the provisions of subsection (c) of this section, when reclassifying waters to Class A, the ~~board~~ the secretary need find only that the reclassification is in the public interest.

(g) The ~~board in its~~ secretary under the reclassification rule may ~~direct the secretary to~~ grant permits for only a portion of the assimilative capacity of the receiving waters, or ~~to~~ may permit only indirect discharges from on-site disposal systems, or both.

Sec. 23. 10 V.S.A. § 1424 is amended to read:

§ 1424. USE OF PUBLIC WATERS

(a) The ~~board~~ secretary may establish rules to ~~regulate the use of the public waters by~~ implement the provisions of this chapter, including:

(1) Rules to regulate the use of public waters of the state by:

(A) Defining areas on public waters wherein certain uses may be conducted;

~~(2)~~(B) Defining the uses which may be conducted in the defined areas;

~~(3)(C)~~ (C) Regulating the conduct in these areas, including ~~but not limited to~~ the size of motors allowed, size of boats allowed, allowable speeds for boats, and prohibiting the use of motors or houseboats;

~~(4)(D)~~ (D) Regulating the time various uses may be conducted.

(2) Rules to govern the surface levels of lakes, ponds, and reservoirs that are public waters of the state.

(b) The ~~board~~ secretary in establishing rules under subdivision (a)(2) of this section shall consider the size and flow of the navigable waters, the predominant use of adjacent lands, the depth of the water, the predominant use of the waters prior to regulation, the uses for which the water is adaptable, the availability of fishing, boating, and bathing facilities, the scenic beauty, and recreational uses of the area.

(c) The ~~board~~ secretary shall attempt to manage the public waters so that the various uses may be enjoyed in a reasonable manner, in the best interests of all the citizens of the state. To the extent possible, the ~~board~~ secretary shall provide for all normal uses.

~~(d) If another agency has jurisdiction over the waters otherwise controlled by this section, that other agency's rules shall apply, if inconsistent with the rules promulgated under this section. The board may not remove the restrictions set forth in 25 V.S.A. §§ 320 and 321.~~

(e) On receipt of a written request that the ~~board~~ secretary adopt, amend, or repeal a rule with respect to the use of public waters signed by not less than one person, the ~~board~~ secretary shall consider the adoption of rules authorized under this section and take appropriate action as required under 3 V.S.A.

§ 806.

(f) By rule, the ~~board~~ secretary may delegate authority under this section for the regulation of public waters where:

(1) the delegation is to a municipality which is adjacent to or which contains the water; and

(2) the municipality accepts the delegation by creating or amending a bylaw or ordinance for regulation of the water. Appeals from a final act of the municipality under the bylaw or ordinance shall be taken to the environmental division. The ~~board~~ secretary may terminate a delegation for cause or without cause upon six months' notice to the municipality.

Sec. 24. 10 V.S.A. § 6025 is amended to read:

§ 6025. RULES

* * *

~~(d) The water resources panel may adopt rules, in accordance with the provisions of chapter 25 of Title 3, in the following areas:~~

~~(1) Rules governing surface levels of lakes, ponds, and reservoirs that are public waters of Vermont.~~

~~(2) Rules regarding classification of the waters of the state, in accordance with chapter 47 of this title.~~

~~(3) Rules regarding the establishment of water quality standards, in accordance with chapter 47 of this title.~~

~~(4) Rules regulating the surface use of public waters, and rules pertaining to the designation of outstanding resource waters, in accordance with chapter 49 of this title.~~

~~(5) Rules regarding the identification of wetlands that are so significant that they merit protection. Any determination that a particular wetland is significant will result from an evaluation of at least the following functions and values which a wetland serves:~~

~~(A) provides temporary water storage for flood water and storm runoff;~~

~~(B) contributes to the quality of surface and groundwater through chemical action;~~

~~(C) naturally controls the effects of erosion and runoff, filtering silt and organic matter;~~

~~(D) contributes to the viability of fisheries by providing spawning, feeding, and general habitat for freshwater fish;~~

~~(E) provides habitat for breeding, feeding, resting, and shelter to both game and nongame species of wildlife;~~

~~(F) provides stopover habitat for migratory birds;~~

~~(G) contributes to an exemplary wetland natural community, in accordance with the rules of the panel;~~

~~(H) provides for threatened and endangered species habitat;~~

~~(I) provides valuable resources for education and research in natural sciences;~~

~~(J) provides direct and indirect recreational value and substantial economic benefits; and~~

~~(K) contributes to the open space character and overall beauty of the landscape.~~

~~(6) Rules regarding the ability to reclassify wetlands, in general, or on a case by case basis.~~

~~(7) Rules protecting wetlands that have been determined under subdivision (5) or (6) of this subsection to be significant, including rules that provide for the issuance or denial of permits and the issuance of wetland determinations under chapter 37 of this title by the department of environmental conservation; provided, however, that the rules may only protect the values and functions sought to be preserved by the designation. The panel shall not adopt rules that restrain agricultural activities without the consent of the secretary of the agency of agriculture, food and markets and~~

~~shall not adopt rules that restrain silvicultural activities without the consent of the commissioner of the department of forests, parks and recreation.~~

~~(8) Rules implementing 29 V.S.A. chapter 11, relating to management of lakes and ponds.~~

~~(e) Except for subsection (a) of this section, references to rules adopted by the board shall be construed to mean rules adopted by the appropriate panel of the board, as established by this section.~~

Sec. 25. 29 V.S.A. § 410 is added to read:

§ 410. RULEMAKING; ENCROACHMENTS ON PUBLIC WATERS

The department may adopt rules to implement the requirements of this chapter.

Sec. 26. FORMER WATER RESOURCES PANEL RULES

Rules of the water resources panel of the natural resources board issued pursuant to 10 V.S.A. § 6025(d), as that statute and those rules existed immediately prior to the effective date of this act, shall be deemed rules of the secretary of natural resources, and the secretary may amend those rules in accordance with 3 V.S.A. chapter 25.

Sec. 27. STATUTORY REVISION

To effect the purpose of this act of transferring the rulemaking authority of the water resources panel to the secretary of natural resources, the office of legislative council is directed to revise the existing Vermont Statutes

Annotated and, where applicable, replace the terms “natural resources board,” “water resources panel of the natural resources board,” “water resources panel,” “water resources board,” and similar terms with the term “secretary of natural resources,” “secretary,” “agency of natural resources,” “agency,” “department of environmental conservation,” or “department” as appropriate, including the following revisions:

(1) in 10 V.S.A. §§ 913 and 915, by replacing “panel” with “department”;

(2) in 10 V.S.A. chapter 47, by replacing “board” with “secretary” where appropriate;

(3) in 10 V.S.A. §§ 1422 and 1424, by replacing “board” with “secretary” where appropriate; and

(4) in 29 V.S.A. §§ 401, 402, and 403, by replacing “board” with “department” where appropriate.

Sec. 28. PURPOSE AND INTENT; PUBLIC PARTICIPATION IN

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

RULEMAKING

It is the purpose and intent of the general assembly that, in addition to the public participation requirements of 3 V.S.A. chapter 25 and prior to submitting a proposed rule to the secretary of state under 3 V.S.A. § 838, the department of environmental conservation shall engage in an expanded public

participation process with affected stakeholders and other interested persons in a dialogue about intent, method, and outcomes of a proposed rule for the purpose of resolving concerns and differences regarding proposed rules. The department of environmental conservation is encouraged to use workshops, focused work groups, dockets, meetings, or other forms of communication to meet the participation requirements of this section.

* * * Agricultural Water Quality * * *

Sec. 29. 10 V.S.A. § 303 is amended to read:

§ 303. DEFINITIONS

As used in this chapter:

- (1) “Board” means the Vermont housing and conservation board established by this chapter.
- (2) “Fund” means the Vermont housing and conservation trust fund established by this chapter.
- (3) “Eligible activity” means any activity which will carry out either or both of the dual purposes of creating affordable housing and conserving and protecting important Vermont lands, including activities which will encourage or assist:
 - (A) the preservation, rehabilitation or development of residential dwelling units which are affordable to lower income Vermonters;
 - (B) the retention of agricultural land for agricultural use;

(C) the protection of important wildlife habitat and important natural areas;

(D) the preservation of historic properties or resources;

(E) the protection of areas suited for outdoor public recreational activity;

(F) the protection of lands for multiple conservation purposes, including the protection of surface waters and associated natural resources;

(G) the development of capacity on the part of an eligible applicant to engage in an eligible activity.

(4) “Eligible applicant” means any:

(A) municipality;

(B) ~~department of state government~~ state agency as defined in ~~subsection 6302(a)~~ section 6301a of this title;

(C) nonprofit organization qualifying under Section 501(c)(3) of the Internal Revenue Code; or

(D) cooperative housing organization, the purpose of which is the creation or retention of affordable housing for lower income Vermonters and the bylaws of which require that such housing be maintained as affordable housing for lower income Vermonters on a perpetual basis.

* * *

* * * State Revolving Loan Fund; Stormwater Projects * * *

Sec. 30. 24 V.S.A. § 4752(3) is amended to read:

(3) “Municipality” means any city, town, village, town school district, incorporated school district, union school district or other school district, fire district, consolidated sewer district, consolidated water district ~~or~~, solid waste district, or statewide or regional water quality utility or mechanism organized under laws of the state.

* * * Land Application of Septage * * *

Sec. 31. 10 V.S.A. § 6605(g) is amended to read:

(g)(1) Emergency sludge and septage disposal approval. Notwithstanding any other provision of this section, the secretary may authorize the land disposal or management of sludge or septage by an applicant at any certified site or facility with available capacity, provided the secretary finds:

(A) that the applicant needs to dispose of accumulated sludge or septage promptly, and that delay would likely cause public health, or environmental damage, or nuisance conditions, or would result in excessive and unnecessary cost to the public, and that the applicant has lost authority to use previously certified sites through no act or omission of the applicant; and

(B) that at the certified site or facility to be used:

(i) the certificate holder agrees in writing to allow use of the site or facility by the applicant;

(ii) management of the applicant's sludge or septage is compatible with the site or facility certificate;

(iii) all terms and conditions of the original certification will continue to be met with addition of the applicant's sludge or septage; and

(iv) beginning January 1, 2013, any sludge or septage applied to land shall be applied according to a nutrient management plan approved by the secretary.

(2) The secretary shall, following his or her issuance of approval of emergency sludge or septage disposal under this subsection, provide public notice of that action.

Sec. 32. 10 V.S.A. § 1386 is amended to read:

§ 1386. IMPLEMENTATION PLAN FOR THE LAKE CHAMPLAIN

TOTAL MAXIMUM DAILY LOAD PLAN

(a) ~~On or before January 15, 2010,~~ Within 12 months after the issuance of a phosphorus total maximum daily load plan (TMDL) for Lake Champlain by the U.S. Environmental Protection Agency, the secretary of natural resources shall issue a ~~revised~~ Vermont-specific implementation plan for the Lake Champlain TMDL. ~~Beginning January 15, 2013, and every~~ Every four years ~~thereafter~~ after issuance of the Lake Champlain TMDL by the U.S. Environmental Protection Agency, the secretary of natural resources shall amend and update the Vermont-specific implementation plan for the Lake

Champlain TMDL. Prior to issuing, amending, or updating the implementation plan, the secretary shall consult with the agency of agriculture, food and markets, all statewide environmental organizations that express an interest in the plan, the Vermont League of Cities and Towns, all business organizations that express an interest in the plan, the University of Vermont Rubenstein ecosystem science laboratory, and other interested parties. The implementation plan shall include a comprehensive strategy for implementing the Lake Champlain ~~total maximum daily load (TMDL)~~ TMDL plan and for the remediation of Lake Champlain. The implementation plan shall be issued as a document separate from the Lake Champlain TMDL. The implementation plan shall:

- (1) Include or reference the elements set forth in 40 C.F.R. § 130.6(c) for water quality management plans;
- (2) Comply with the requirements of section 1258 of this title and administer a permit program to manage discharges to Lake Champlain consistent with the federal Clean Water Act;
- (3) Develop a process for identifying critical source areas for non-point source pollution in each subwatershed. As used in this subdivision, “critical source area” means an area in a watershed with high potential for the release, discharge, or runoff of phosphorus to the waters of the state;

(4) Develop site-specific plans to reduce point source and non-point source load discharges in critical source areas identified under subdivision (3) of this subsection;

(5) Develop a method for identifying and prioritizing on public and private land pollution control projects with the potential to provide the greatest water quality benefits to Lake Champlain;

(6) Develop a method of accounting for changes in phosphorus loading to Lake Champlain due to implementation of the TMDL and other factors;

(7) Develop phosphorus reduction targets related to phosphorus reduction for each water quality program and for each segment of Lake Champlain, including benchmarks for phosphorus reduction that shall be achieved. The implementation plan shall explain the methodology used to develop phosphorus reduction targets under this subdivision;

(8) Establish a method for the coordination and collaboration of water quality programs within the state;

(9) Develop a method for offering incentives or disincentives to wastewater treatment plants for maintaining the 2006 levels of phosphorus discharge to Lake Champlain;

(10) Develop a method of offering incentives or disincentives for reducing the phosphorus contribution of stormwater discharges within the Lake Champlain basin.

(b) In amending the Vermont-specific implementation plan of the Lake Champlain TMDL under this section, the secretary of natural resources shall comply with the public participation requirements of 40 C.F.R.

§ 130.7(c)(1)(ii).

(c) ~~On or before January 15, 2010, the secretary of natural resources shall report to the house committee on fish, wildlife and water resources, the senate committee on natural resources, and the house and senate committees on agriculture with a summary of the contents of and the process leading to the adoption under subsection (a) of this section of the implementation plan for the Lake Champlain TMDL. On or before January 15, 2013, and 15 in the year following issuance of the implementation plan under subsection (a) of this section and every four years thereafter, the secretary shall report to the house committee on fish, wildlife and water resources, the senate committee on natural resources, and the house and senate committees on agriculture regarding the execution of the implementation plan. The report shall include:~~

~~(1) with the~~ The amendments or revisions to the implementation plan for the Lake Champlain TMDL required by subsection (a) of this section. Prior to ~~issuing~~ submitting a report required by this subsection that includes amendments to revisions to the implementation plan, the secretary shall hold at least three public hearings in the Lake Champlain watershed to describe the amendments and revisions to the implementation plan for the Lake Champlain

TMDL. The secretary shall prepare a responsiveness summary for each public hearing. ~~Beginning January 15, 2013, a report required by this subsection shall include:~~

~~(1)(2)~~ An assessment of the implementation plan for the Lake Champlain TMDL based on available data, including an evaluation of the efficacy of the implementation plan;

~~(2)(3)~~ An assessment of the hydrologic base period used to determine the phosphorus loading capacities for the Lake Champlain TMDL based on available data, including an evaluation of the adequacy of the hydrologic base period for the TMDL; Recommendations, if any, for amending the implementation plan or for reopening the Lake Champlain TMDL.

~~(3)~~ Recommendations, if any, for amending the implementation plan or reopening the Lake Champlain TMDL.

(d) Beginning February 1, ~~2009~~ 2014 and annually thereafter, the secretary, after consultation with the secretary of agriculture, food and markets, 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 agriculture a ~~clean and clear program~~ summary ~~reporting on~~ of activities and measures of progress ~~for each program supported by funding under the Clean and Clear Action Plan~~ of water quality ecosystem restoration programs.

Sec. 33. REPEAL

10 V.S.A. § 1385 (Lake Champlain TMDL plan) is repealed.

* * * Enforcement, Appeals, Transition; Effective Dates * * *

Sec. 34. 10 V.S.A. § 8003 is amended to read:

§ 8003. APPLICABILITY

(a) The secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes:

(1) ~~[Deleted.]~~ 10 V.S.A. chapter 23, relating to air quality;

(2) 10 V.S.A. chapter ~~23, relating to air quality~~ 32, relating to flood hazard areas;

* * *

(21) 10 V.S.A. chapter 166, relating to collection and recycling of electronic waste; ~~and~~

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

* * *

Sec. 35. 10 V.S.A. § 8503(a) is amended to read:

(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).

* * *

Sec. 36. REPEAL

25 V.S.A. §§ 142–144 (general provisions relating to rivers and streams) are repealed.

Sec. 37. 30 V.S.A. § 34 is added to read:

§ 34. PUBLIC EDUCATION ON PROPANE TANK SAFETY

The general assembly finds that there is a need for a coordinated public safety message on the normal storage and handling of propane tanks and fuel oil tanks, and for the recovery of propane tanks and fuel oil tanks that are displaced by a natural disaster, such as flooding. The department of public service, the division of fire safety, and the agency of natural resources shall cooperate with relevant municipal, professional, and industry organizations to develop a variety of educational materials for distribution to the public to provide information on any special treatment of propane tanks that might be required in the event of a natural disaster, such as flooding.

Sec. 38. EFFECTIVE DATES

This act shall take effect on passage except that:

(1) Sec. 29 (VHCB; conservation easements) of this act shall take effect on July 1, 2012.

(2) Sec. 3 (stream alteration; prohibitions and exceptions) of this act shall take effect on March 1, 2013.

(3) Sec. 34 (ANR enforcement) of this act shall take effect on July 1, 2013.

Approved: May 14, 2012