

TO THE HOUSE OF REPRESENTATIVES

The Committee on Fish, Wildlife and Water Resources, to which was referred House Bill H.549, entitled "AN ACT RELATING TO ESTABLISHING BUFFER ZONES ALONG WATERWAYS OF THE STATE"

respectfully report that they have met and considered the same and recommend that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds that:

- (1) The surface waters of Vermont are an invaluable resource to the state and its citizens.
- (2) The navigable surface waters of the state are held in trust by the state for its citizens, and, thus, the state is bound to protect and conserve these waters.
- (3) The shorelands adjacent to the waters of the state harbor some of the most valuable natural resources in the state and serve important functions related to the health and quality of the state's surface waters.
- (4) The shorelands adjacent to the state's surface waters are often fragile natural resources, and their protection in the face of increasing development

pressure is necessary to maintain the vitality and health of the state's surface waters.

(5) Under current law, the potential exists for uncoordinated, unplanned, and piecemeal development along the state's surface waters, which could result in significant negative impacts on the waters of Vermont.

(6) The agency of natural resources' river management corridor program has worked successfully with municipalities to identify and map flood hazard zones, and the agency's river management corridor program should continue and be supported. However, additional protection of the state's shorelands is necessary.

(7) Buffer zones consisting of trees and other vegetation adjacent to the lakes of the states and within the state's river corridors function to control water pollution; control building within the state's shorelands; preserve and protect wetlands; help maintain and protect, channel, streambank, and floodplain stability; preserve and protect the habitat of terrestrial and aquatic wildlife; promote open space; and achieve additional environmental protection for the surface waters of Vermont.

Sec. 2. 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, require buffer zones along the lakes and streams of the state, promote the protection and management of the river corridors of the state, and authorize municipal shoreland zoning bylaws, all 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; preserve shore cover and natural beauty; and provide for multiple use of the waters in a manner to provide for the best interests of the citizens of the state.

Sec. 3. 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;
- (2) "Board" means water resources panel of the natural resources board;
- (3) "Department" means department of environmental conservation;
- (4) "Navigable water" or "navigable waters" means Lake Champlain, Lake Memphremagog, the Connecticut River, all natural inland lakes within Vermont, and all streams, ponds, flowages, and other waters within the

territorial limits of Vermont, including the Vermont portion of boundary waters, which are boatable under the laws of this state;

(5) “Public shorelands” means state-owned lands adjacent to navigable waters;

(6) “Public waters” means navigable waters excepting those waters in private ponds and private preserves as set forth in sections 5204, 5205, 5206, and 5210 of this title;

(7) “Secretary” means the secretary of natural resources or the secretary’s duly authorized representative;

(8) “Shorelands” means the lands being between the normal mean water ~~mark~~ level of a lake, pond, or impoundment exceeding ~~twenty~~ 20 acres and a line not less than ~~five hundred~~ 500 feet nor more than ~~one thousand~~ 1,000 feet from such mean water ~~mark~~ level.

(9) “Outstanding resource waters” mean waters of the state designated by the board as having exceptional natural, recreational, cultural, or scenic values.

(10) “Existing use” means the established use, activity, or development occurring within a buffer zone on July 1, 2010, including:

(A) repair, renovation, or maintenance, provided that the result of any repair, renovation, or maintenance is a functionally equivalent use; and

(B) maintenance of a cleared area, including lawns and beaches, within the buffer, provided that the cleared area is not enlarged and no change in use occurs.

(11) “Lake” means a body of standing water, including ponds and reservoirs that may have natural or artificial water level control. Off-stream reservoirs specifically constructed for the following purposes shall not be considered lakes: snowmaking storage, golf course irrigation, stormwater management, and fire suppression.

(12) “Riparian buffer” means an undisturbed area adjacent to a lake or stream in the state consisting of trees, shrubs, groundcover plants, duff layer, and naturally vegetated, uneven ground surface that extends horizontally across the surface of the land from the mean water level of a lake or from the top of bank or top of slope of a stream.

(13) “River corridor” means an area adjacent to streams, as defined by the agency of natural resources, necessary to accommodate the slope and platform of the stream’s naturally stable channel wherein encroachment and channel management activities that constrain the stream channel from achieving natural stability may increase risks to public safety, fluvial erosion hazards, property loss, and water quality and habitat degradation.

(14) “Stream” means the full length and width, including the bed and banks, of any watercourse, including rivers, creeks, brooks, and branches.

“Stream” does not mean constructed drainageways, including water bars, swales, and roadside ditches.

(15) “Top of bank” means the point along the bank of a stream where an abrupt change in slope is evident, and where the stream is generally able to overflow the banks and enter the adjacent floodplain during flows at or exceeding the average annual high water stage.

(16) “Top of slope” means a break in slopes adjacent to steep-banked streams that have little or no floodplain; or a break in slope where the side slopes adjacent to an incised, or deeply cut, channel meet floodplains that have been abandoned or are undergoing abandonment.

(17) “Trail” means a recognized part of the Vermont trail system under section 443 of this section or land used for hiking, walking, bicycling, cross-country skiing, snowmobiling, all-terrain vehicle riding, horseback riding, and other similar activities that is regularly maintained by a state or federal agency, a municipality, person, or incorporated group or association.

Sec. 4. 10 V.S.A. § 1427 is added to read:

§ 1427. MINIMUM RIPARIAN BUFFER

(a) The agency of natural resources shall continue to develop flood hazard area maps that delineate the river corridors of the streams of the state. In addition, the agency of natural resources shall include on a flood hazard area map a riparian buffer zone along the streams of the state. The size of the

buffer zone included on a flood hazard area map shall be determined by site specific conditions.

(b) Beginning July 1, 2010, a riparian buffer of at least 50 feet shall be established along the lakes and the streams of the state unless:

(1) The municipality in which a stream is located has adopted a flood hazard area map developed by the agency of natural resources under subsection (a) of this section, provided that:

(A) the flood hazard area map adopted by the municipality includes a riparian buffer zone; and

(B) the exemption from the requirements of this section shall only apply to those streams included within the flood hazard area map and shall not apply to lakes located within the municipality; or

(2) The municipality in which a lake or a stream is located has adopted riparian buffer zoning under section 4425 of Title 24; or

(3) The municipality in which a lake or a stream is located adopted a riparian buffer bylaw prior to July 1, 2010 and that bylaw, as determined by the agency of natural resources:

(A) Is consistent with the purposes and the requirements of 24 V.S.A. § 4425;

(B)(i) Requires the establishment of a riparian buffer of at least 50 feet; or

(ii) Establishes a riparian buffer of less than 50 feet that is based on site specific conditions; and

(C) The municipality updates its riparian buffer bylaw to be consistent with the requirements of section 4425 of Title 24 subsequent to the next revision of its town plan.

(4) Use of the land is authorized under this section or the rules adopted under subsection (d) of this section.

(c) The following are allowed in the riparian buffer zone or are subject to environmental review under other provisions of law and are not subject to the requirements of subsection (b) of this section:

(1) Activities by persons subject to the regulatory requirements of chapter 215 of Title 6.

(2) Forestry conducted in compliance with accepted silvicultural practices as defined by the commissioner of forests, parks and recreation under section 2622 of this section.

(3) Existing uses.

(4) Reconstruction, repair, or maintenance of linear public transportation facilities; improvements directly related to providing transportation enhancements; and safety features on or adjacent to linear public transportation facilities.

(5) The control of non-native, invasive species of plants where such control is authorized by law or approved by the agency of natural resources.

(6) Maintenance or repair of pollution abatement facilities permitted under section 1263 of this title.

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

(8) Stormwater treatment facilities or practices existing within a riparian buffer as of July 1, 2010, including repair or maintenance under a permit issued under section 1264 of this title.

(9) Construction of electric transmission projects that are subject to 30 V.S.A. § 248.

(10) Development or a subdivision permitted under or subject to chapter 151 of this title.

(11) The routine repair and maintenance of utility lines and poles, including vegetation maintenance in utility line corridors, in a manner that minimizes adverse impacts and is in accordance with a plan approved by the agency of natural resources.

(12) The emergency repair of utility lines and poles in a manner that minimizes adverse impacts to the riparian buffer.

(13) Trail construction and maintenance conducted in conformance with applicable management standards recommended by the commissioner of forests, parks and recreation.

(14) Stairways or paths of not more than six feet in width that lead to a lake or a stream.

(15) Additional exemptions adopted by the agency of natural resources under subsection (d) of this section

(d) The agency of natural resources shall adopt substantive and technical rules to implement this section , including rules for uses that:

(1) Regulate the development and use of riparian buffers in order to prevent and control water pollution; prevent and control stormwater runoff; preserve and protect wetlands; maintain and protect channel, streambank, and floodplain stability; preserve and protect the habitat of terrestrial and aquatic wildlife; promote open space and aesthetics; and achieve other municipal, regional, or state conservation and development objectives for riparian buffers.

These rules may:

(A) Regulate the planting and maintenance of vegetation.

(B) Regulate maintenance of existing access to public waters.

(C) Set standards or criteria that regulate development or change of use of buildings or structures within riparian buffers.

(D) Regulate the use and storage of hazardous materials, as that term is defined in section 6602 of this title, provided that any requirements adopted under this section are consistent with and at least as stringent as state and federal law.

(E) Regulate practices or the use or storage of other materials that could impair water quality, provided that any requirements adopted under this section are consistent with and at least as stringent as state and federal law.

(F) Establish requirements for the mitigation of the impact of a use allowed under subdivision (d)(3) of this subsection, including mitigation offsets, mitigation banking, and impact fees.

(G) Establish other requirements to promote the sound management and use of riparian buffers.

(2) Authorize uses that may be conducted in a riparian buffer, including standards for:

(A) The development of buildings within the riparian buffer

(B) Allowing encroachment on a riparian buffer by an existing or new use.

(C) Change in use of existing nonconforming uses.

(D) Recreational uses within the buffer, including docks, decks, piers, access areas, landing areas, and beaches.

(E) Except as otherwise provided in this section, utility lines.

(F) New stormwater treatment facilities or practices permitted by the agency of natural resources.

(G) Lake or stream conservation or restoration projects approved by the agency of natural resources.

(H) Construction of new alignment linear public transportation facilities.

(I) Private crossings of riparian buffers, including driveways and other access roads.

(3) Allow a use not set forth under subdivision (c)(2) of this section within a riparian buffer when:

(A) The proposed use must impact the buffer in order to fulfill the purpose of the use and the use will, insofar as possible and reasonable in light of its purpose:

(i) Retain in its natural condition the portion of the buffer that is not impacted by the use out of necessity;

(ii) Retain or provide vegetation which, when relevant to the allowed use, screens the use from the surface of a lake or stream;

(iii) Stabilize the bank of the stream or lake from erosion when necessary with vegetative cover.

(B) The applicant takes reasonable measures to minimize impact on the riparian buffer; and

(C) Suitable mitigation will be provided for any impact to the riparian buffer so that no net loss of acreage to the riparian buffer occurs. The agency of natural resources may approve off-site mitigation or some combination of on-site and offsite mitigation of the impact to the riparian buffer when on-site mitigation alone is not reasonable or appropriate.

(4) Exempt certain uses or activities from the requirements of subsection (b) of this section.

(e) In order to implement the rules issued by the agency of natural resources under subsection (d) of this section, the secretary of natural resources may, after notice and opportunity for a public hearing, issue and enforce a general permit for any category of uses or activities within the riparian buffer provided, that the uses or activities in such category are similar in nature.

Sec. 5. 10 V.S.A. § 8003(a) is amended to read:

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

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(17) 10 V.S.A. § 2625, relating to heavy cutting of timber; ~~and~~

(18) 10 V.S.A. chapter 164, relating to comprehensive mercury management; and

(19) 10 V.S.A. § 1427, relating to minimum riparian buffers.

Sec. 6. 10 V.S.A. § 8503(a)(1) 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:

\* \* \*

(O) section 1427 (relating to minimum riparian buffers).

Sec. 7. 24 V.S.A. § 4303(10) is amended to read:

(10) “Land development” means the division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation, or landfill, alteration or removal of vegetation or trees within riparian buffers, and any change in the use of any building or other structure, or land, or extension of use of land.

Sec. 8. 24 V.S.A. § 4411 is amended to read:

§ 4411. ZONING BYLAWS

(a) A municipality may regulate land development in conformance with its adopted municipal plan and for the purposes set forth in section 4302 of this title to govern the use of land and the placement, spacing, and size of structures and other factors specified in the bylaws related to public health, safety, or

welfare. Zoning bylaws may permit, prohibit, restrict, regulate, and determine land development, including the following:

- (1) Specific uses of land and shoreland facilities;
- (2) Dimensions, location, erection, construction, repair, maintenance, alteration, razing, removal, and use of structures;
- (3) Areas and dimensions of land to be occupied by uses and structures, as well as areas, courts, yards, and other open spaces and distances to be left unoccupied by uses and structures;
- (4) Timing or sequence of growth, density of population, and intensity of use;
- (5) Uses within a riparian buffer, as that term is defined in section 1422 of Title 10.

(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:

(A) Major thoroughfares, their intersections and interchanges, and transportation arteries.

(B) Natural or artificial bodies of water.

(C) Places of relatively steep slope or grade.

(D) Public buildings and public grounds.

(E) Aircraft and helicopter facilities.

(F) Places having unique patriotic, ecological, historical, archaeological, or community interest or value, or located within scenic or design control districts.

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

(H) Riparian buffers, as that term is defined in section 1422 of title 10.

(4) To regulate, restrict, or prohibit uses or structures in overlay districts, as set forth in subdivision 4414(2) of this title.

Sec. 9. 24 V.S.A. § 4414 is amended to read:

§ 4414. ZONING; PERMISSIBLE TYPES OF REGULATION

Any of the following types of regulations may be adopted by a municipality in its bylaws in conformance with the plan and for the purposes established in section 4302 of this title.

(1) Zoning districts. A municipality may define different and separate zoning districts, and identify within these districts which land uses are permitted as of right, and which are conditional uses requiring review and approval, including the districts set forth in this subdivision (1).

(A) Downtown, village center, new town center, and growth center districts. The definition or purpose stated for local downtown, village center, new town center, or growth center zoning districts should conform with the applicable definitions in section 2791 of this title. Municipalities may adopt downtown, village center, new town center, or growth center districts without seeking state designation under chapter 76A of this title. A municipality may adopt a manual of graphic or written design guidelines to assist applicants in the preparation of development applications. The following objectives should

guide the establishment of boundaries, requirements, and review standards for these districts:

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(G) Riparian buffers. In accordance with section 4424 of this title, a municipality may adopt bylaws to regulate riparian buffers, as that term is defined in section 1422 of Title 10, in order to prevent and control water pollution; prevent and control stormwater runoff; preserve and protect wetlands; maintain and protect channel, streambank, and floodplain stability; preserve and protect the habitat of terrestrial and aquatic wildlife; promote open space and aesthetics; and achieve other municipal, regional, or state conservation and development objectives for riparian buffers. Riparian buffer bylaws may regulate the design and location of development, control building location, require the provision and maintenance of vegetation, require provisions for access to public waters for all residents and owners of the development, and impose other requirements authorized by this chapter.

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Sec. 10. 24 V.S.A. § 4425 is added to read:

§ 4425. RIPARIAN BUFFER BYLAWS

(a) A municipality may adopt freestanding bylaws or amend zoning or unified development bylaws to regulate development and use of riparian buffers, as that term is defined in section 1422 of Title 10.

(b) Bylaws adopted under this section shall include:

(1) Provisions to promote the sound management and use of riparian buffers.

(2) A provision barring use or development within a riparian buffer zone unless such use or development is authorized by the bylaws or the appropriate municipal panel.

(3) Provisions to ensure the timely and appropriate enforcement of the bylaws.

(c) Except as otherwise prohibited under section 4413 of this title, riparian buffer bylaws adopted under this section may:

(1) Set a buffer width of greater than 50 feet within the municipality or portions of the municipality.

(2) Set a buffer width of fewer than 50 feet within the municipality or portions of the municipality, provided that the reduced buffer width:

(A) Is necessary to address existing development or existing uses within the municipality, including the repair, maintenance, or renovation of such development or uses;

(B) Applies to property located within a designated downtown development district or designated village center, as these terms are defined in section 2791 of this title; or

(C) Applies to property located within an area that the municipality has designated by bylaw:

(i) for development according to historic development patterns; or

(ii) for redevelopment of land that has been disturbed prior to July 1, 2010, by industrial or urban development.

(3) Contain standards or criteria that regulate the development or change of use of buildings or structures within riparian buffers.

(4) Authorize allowed or conditional uses within the buffer. In adopting allowed uses or conditional uses under this subsection, a municipality may regulate a use allowed under 10 V.S.A. § 1427, provided that the municipality is not prohibited from regulating such a use under section 4413 of this title or other provisions of state or federal law.

(5) Prohibit the use and storage of hazardous materials, as that term is defined in section 6602 of Title 10, provided that any bylaw adopted under this subdivision shall be consistent with and at least as stringent as state and federal law.

(6) Prohibit practices or the use and storage of other materials that could impair water quality, provided that any bylaw adopted under this subdivision shall be consistent with and at least as stringent as state and federal law.

(7) Establish other restrictions to promote the sound management and use of riparian buffers.

Sec. 11. AGENCY OF NATURAL RESOURCES OUTREACH AND  
EDUCATION ON RIPARIAN BUFFERS

Prior to January 15, 2009, the agency of natural resources, in consultation with the Vermont League of Cities and Towns, regional planning commissions, the Vermont planners association, and the Vermont land education and training collaborative, shall develop educational and training programs and conduct public hearings to inform municipalities and municipal planners of the environmental and planning benefits of riparian buffers and the requirements of this act. In developing the education programs required by this section, the agency may utilize various types of media.

Sec. 12. REPORT OF AGENCY OF NATURAL RESOURCES; RIPARIAN  
BUFFER RULES

On or before December 15, 2009, and on or before December 15, 2010, the agency of natural resources shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy with a status report on the rules required by 10 V.S.A. § 1427 regarding the development and use of riparian buffers along lakes and streams of the state.

Sec. 13. AGENCY OF NATURAL RESOURCES REPORT

Beginning January 15, 2009, and biennially thereafter, the agency 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 status of riparian buffer zoning with Vermont. The report shall include:

- (1) A summary of the municipalities that have adopted riparian buffer zoning or a riparian buffer bylaws;
- (2) a summary of municipalities that have adopted flood hazard area zoning as part of riparian buffer zoning or bylaw;
- (3) an analysis, based on information available to the agency, of the impact of riparian buffer zoning on the waters of the state; and
- (4) any recommendations that the state or municipalities make regarding the regulation of the use of land within riparian buffers.

Sec. 14. EFFECTIVE DATE

This act shall take effect July 1, 2008.