

1 H.323

2 Introduced by Representative Deen of Westminster

3 Referred to Committee on

4 Date:

5 Subject: Conservation; water resources; riparian buffers

6 Statement of purpose: This bill proposes to require, beginning July 1, 2014,  
7 the establishment of 50-foot buffer zones adjacent to the navigable waters of  
8 the state. A municipality that adopts fluvial erosion hazard areas and  
9 associated bylaws or its own riparian buffer bylaw would be exempt from the  
10 50-foot buffer requirement. Prior to July 1, 2014, the bill proposes to provide  
11 municipalities with incentives to adopt fluvial erosion hazard maps and  
12 associated bylaws. Beginning July 1, 2014, the agency of natural resources  
13 would enforce the buffer zone requirements in any municipality that had not  
14 adopted a fluvial erosion hazard map and associated bylaws or a riparian buffer  
15 bylaw.

16 An act relating to establishing buffer zones adjacent to rivers of the state

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

18 Sec. 1. FINDINGS

19 The general assembly finds that:

1           (1) The surface waters of Vermont are an invaluable resource to the  
2           state and its citizens.

3           (2) The navigable surface waters of the state are held in trust by the state  
4           for its citizens, and, thus, the state is bound to protect and conserve these  
5           waters.

6           (3) The land adjacent to the navigable surface waters of the state harbor  
7           some of the most valuable natural resources in the state and serve important  
8           functions related to the health and quality of the state's navigable surface  
9           waters.

10          (4) The lands adjacent to the state's navigable surface waters are often  
11          fragile natural resources, and their protection in the face of increasing  
12          development pressure is necessary to maintain the vitality and health of the  
13          state's navigable surface waters.

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

17          (6) The agency of natural resources' river management corridor program  
18          has worked successfully with municipalities to identify and map flood hazard  
19          zones, and the agency's river management corridor program should continue  
20          and be supported. However, additional protection of land adjacent to state's  
21          navigable surface waters is necessary.

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

8           Sec. 2. 10 V.S.A. chapter 50 is added to read:

9                           CHAPTER 50. RIPARIAN BUFFER ZONES

10           § 1451. DEFINITIONS

11           In this chapter, unless the context clearly requires otherwise:

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

13                   (2) "Board" means the water resources panel of the natural resources  
14           board.

15                   (3) "Department" means the department of environmental conservation.

16                   (4) "Navigable water" or "navigable waters" means Lake Champlain,  
17           Lake Memphremagog, the Connecticut River, all natural inland lakes within  
18           Vermont, and all streams, ponds, flowages, and other waters within the  
19           territorial limits of Vermont, including the Vermont portion of boundary  
20           waters, which are boatable under the laws of this state.

1           (5) “Nonconforming lots or parcels” means lots or parcels in existence  
2 on July 1, 2014 that do not conform to the requirements in section 1452 of this  
3 title regarding riparian buffer size and uses within a riparian buffer but were in  
4 conformance with all applicable laws, ordinances, and regulations prior to the  
5 enactment of section 1452 of this title, including a lot or parcel improperly  
6 authorized as a result of error by the administrative officer.

7           (6) “Nonconforming structure” means a structure or part of a structure  
8 that does not conform to the requirements in section 1452 of this title regarding  
9 riparian buffer size and uses within a riparian buffer but were in conformance  
10 with all applicable laws, ordinances, and regulations prior to the enactment of  
11 section 1452 of this title, including a structure improperly authorized as a result  
12 of error by the administrative officer.

13           (7) “Nonconforming use” means use of land that does not conform to  
14 the requirements in section 1452 of this title regarding riparian buffer size and  
15 uses within a riparian buffer but did conform to all applicable laws, ordinances,  
16 and regulations prior to the enactment of section 1452 of this title, including a  
17 use improperly authorized as a result of error by the administrative officer.

18           (8) “Nonconformity” means a nonconforming use, structure, lot, or  
19 parcel.

1           (9) “Public waters” means navigable waters excepting those waters in  
2 private ponds and private preserves as set forth in sections 5204, 5205, 5206,  
3 and 5210 of this title.

4           (10) “Riparian buffer” means the width of land measured horizontally  
5 across the surface of the land from the mean water level for lakes and from top  
6 of bank or top of slope for streams to the edge of other land uses. Riparian  
7 buffers are typically undisturbed areas, consisting of trees, shrubs, groundcover  
8 plants, duff layer, and a naturally vegetated uneven ground surface.

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

11           (12) “Shorelands” means “shorelands” as that term is defined in section  
12 1422 of this title.

13           (13) “Stream” means the full length and width, including the bed and  
14 banks, of any navigable watercourse, including rivers, creeks, brooks, and  
15 branches. “Stream” does not mean constructed drainageways, including water  
16 bars, swales, and roadside ditches.

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

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

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

10           § 1452. MINIMUM RIPARIAN BUFFER

11           (a) Minimum buffer zone. Beginning July 1, 2014, a riparian buffer of at  
12           least 50 feet shall be established along the navigable waters of the state unless:

13           (1) A municipality in which a stream is located has adopted fluvial  
14           erosion hazard maps and associated bylaws that comply with the requirements  
15           of section 1453 of this title, provided that a riparian buffer of at least 50 feet  
16           shall be established adjacent to a navigable water that is not included on a  
17           fluvial erosion hazard map adopted in a bylaw by a municipality;

18           (2) A municipality in which a navigable water is located adopts a  
19           riparian buffer zoning bylaw under 24 V.S.A. § 4428; or

1           (3) The municipality in which a navigable water is located adopted a  
2           riparian buffer bylaw prior to July 1, 2014 and that bylaw, as determined by  
3           the agency of natural resources:

4           (A) Is consistent with the purposes and the requirements of 24 V.S.A.  
5           § 4428;

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

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

10           (4) The municipality updates its riparian buffer bylaw to be  
11           consistent with the requirements of 24 V.S.A. § 4428 subsequent to the next  
12           revision of its municipal plan.

13           (b) Allowed uses. The following uses are allowed in the riparian buffer  
14           zone and are not subject to the requirements of subsection (a) of this section:

15           (1) Vegetation maintenance and planting within a riparian buffer,  
16           including the cutting of dead or dangerous leaning or broken trees and pruning  
17           of branches and small underbrush for view maintenance and air movement.

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

1           (3) Nonconformities, including repair, renovation, or maintenance, of a  
2           nonconforming structure provided that the result of any repair, renovation, or  
3           maintenance is a functionally equivalent use; and

4           (4) Reconstruction, repair, or maintenance of:

5           (A) linear public transportation facilities; improvements directly  
6           related to providing transportation enhancements; and safety features on or  
7           adjacent to linear public transportation facilities;

8           (B) pollution abatement facilities permitted under section 1263 of  
9           this title;

10           (C) utility lines and poles, including vegetation maintenance in utility  
11           line corridors, in a manner that minimizes adverse impacts and is in response  
12           to an emergency or in accordance with a plan approved by the agency of  
13           natural resources.

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

16           (6) Railroad activities and facilities within the jurisdiction of federal  
17           law.

18           (7) Stormwater treatment facilities or practices existing within a riparian  
19           buffer as of July 1, 2014, including repair or maintenance under a permit  
20           issued under section 1264 of this title.

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

3           (9) Development or a subdivision permitted under or subject to chapter  
4           151 of this title.

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

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

10          (c) Regulated uses. Except as authorized under subsections (a) and (b) of  
11          this section, no person shall commence construction, excavation, or filling  
12          activities within a riparian buffer without obtaining a permit from the secretary  
13          of natural resources. The secretary of natural resources may issue a permit for  
14          the following as regulated uses within a riparian buffer subject to the standards  
15          and conditions adopted by the secretary of natural resources for each use:

16               (1) New development within a riparian buffer, provided that:

17                   (A) the new development must impact the buffer in order to fulfill the  
18                   purpose of the development;

19                   (B) the applicant shall retain in its natural condition the portion of the  
20                   buffer that is not impacted out of necessity by the development;

1           (C) the applicant shall retain or provide vegetation which, when  
2 relevant to the allowed use, screens the development from the surface of a lake  
3 or stream;

4           (D) the applicant shall stabilize the bank of the stream or lake from  
5 erosion when necessary with vegetative cover;

6           (E) the applicant shall take reasonable steps to minimize the impact  
7 on the riparian buffer; and

8           (F) the applicant shall mitigate any impact to the riparian buffer  
9 according to the rules adopted by the secretary of natural resources under  
10 subsection (e) of this section so that no net loss of acreage to the riparian buffer  
11 occurs.

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

14           (3) Maintenance of existing access to public waters.

15           (4) Use and storage of hazardous materials, as that term is defined in  
16 section 6602 of this title, provided that any requirements adopted under this  
17 section are consistent with and at least as stringent as state and federal law.

18           (5) Use or storage of other materials that could impair water quality,  
19 provided that any requirements adopted under this section are consistent with  
20 and at least as stringent as state and federal law.

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

3           (7) The construction of new utility lines, except as otherwise provided in  
4           this section, to the extent necessary to cross or encroach into the riparian buffer  
5           where there is no feasible alternative for providing or extending utility  
6           services.

7           (8) New stormwater treatment facilities or practices that are permitted  
8           by the agency of natural resources and that comply with the agency of natural  
9           resources stormwater management manual.

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

12          (10) Construction of new alignment linear public transportation  
13          facilities.

14          (11) Private crossings of riparian buffers, including driveways and other  
15          access roads, necessary to gain access to land on the opposite side of the  
16          buffer, or for purposes of providing safe access to an allowed use, in cases  
17          where there is no feasible alternative for providing safe access.

18          (12) Construction, expansion, or alteration of seawalls, retaining walls,  
19          or shoreline stabilization.

20          (13) Construction of fences, walls, or signs.

1           (14) Encroachment necessary for providing for or improving public  
2 facilities, provided that:

3           (A) the encroachment must impact the buffer in order to provide for  
4 or improve the relevant public facility;

5           (B) the applicant shall retain in its natural condition the portion of the  
6 buffer that is not impacted out of necessity by the development;

7           (C) the applicant shall retain or provide vegetation which, when  
8 relevant to the allowed use, screens the development from the surface of a lake  
9 or stream;

10           (D) the applicant shall stabilize the bank of the stream or lake from  
11 erosion when necessary with vegetative cover;

12           (E) the applicant shall take reasonable steps to minimize the impact  
13 on the riparian buffer; and

14           (F) the applicant shall mitigate any impact to the riparian buffer  
15 according to the rules adopted by the secretary of natural resources under  
16 subsection (e) of this section so that no net loss of acreage to the riparian buffer  
17 occurs.

18           (d) Change in nonconformity. Any conformity may be expanded, altered,  
19 or reconstructed, provided that:

20           (1) If the expansion, alteration, or reconstruction involves a structure,  
21 the structure was originally constructed on or before July 1, 2014;

1           (2) The nonconformity shall not be changed to another nonconforming  
2 use.

3           (3) A nonconformity that is discontinued for two years or abandoned  
4 shall not be resumed.

5           (4) A nonconformity that is replaced by an allowed or an authorized  
6 regulated use may not revert to a nonconforming use.

7           (5) If a structure associated with a nonconformity is damaged or  
8 destroyed over 75 percent of its market value by floodwater inundation or  
9 fluvial erosion, the structure shall not be rebuilt within the riparian buffer  
10 unless authorized by the agency of natural resources.

11           (6) Enlargement or reconstruction of a structure associated with a  
12 nonconformity within a riparian buffer shall be permitted if the agency of  
13 natural resources determines that the development activity will not decrease  
14 the existing structure setback from the waterbody or increase the encroachment  
15 within the riparian buffer, and the total building footprint area of the expanded  
16 or reconstructed structure is no more than 50 percent larger than the footprint  
17 of the structure lawfully existing on or before the effective date of this act.

18           (7) New accessory structures appurtenant to a nonconformity within a  
19 riparian buffer shall only be permitted if it is determined that the accessory  
20 structure does not extend into the buffer any further than the existing structure,

1 and the total building footprint area of the new accessory structure is no more  
2 than 50 percent of the footprint of the preexisting structure.

3 (e) Mitigation. The secretary of natural resources shall adopt by rule  
4 requirements for the mitigation of the impact of a regulated use authorized  
5 under subsection (c) of this section, including mitigation offsets and mitigation  
6 banking. Mitigation may include off-site mitigation or some combination of  
7 on-site and off-site mitigation of the impact to the riparian buffer when on-site  
8 mitigation alone is not reasonable or appropriate. Mitigation shall not be  
9 required when a new use within the buffer would mitigate existing impacts to  
10 the buffer.

11 (f) General permit authority. In order to implement the rules required  
12 under this section, the secretary of natural resources may, after notice and  
13 opportunity for a public hearing, issue and enforce a general permit for any  
14 category of uses or activities within the riparian buffer, provided that the uses  
15 or activities in such category are similar in nature.

16 § 1453. FLUVIAL EROSION HAZARD AREAS

17 (a) The agency of natural resources shall establish a fluvial erosion hazard  
18 area program to assist municipalities in developing and adopting fluvial  
19 erosion hazard maps that delineate the river corridors of the streams of the  
20 state.

1       (b) Fluvial erosion hazard maps shall include a riparian buffer zone  
2       adjacent to all navigable waters other than lakes. The size of the buffer zone  
3       included on a fluvial erosion hazard map shall be determined by site-specific  
4       conditions.

5       Sec. 3. 3 V.S.A. § 2822(o) is added to read:

6       (o)(1) For riparian buffer use permits issued under 10 V.S.A. chapter 50 the  
7       permit application fee shall be \$100.00 plus \$0.10 per square foot of area  
8       affected by the proposed activities, with a maximum fee as follows:

9               (A) For projects of 0-9,999 square feet, \$750.00;

10              (B) For projects of 10,000-24,999 square feet, \$1875.00;

11              (C) For projects of 25,000 square feet or more, \$3,750.00.

12       (2) Fees collected under this subsection shall be credited to a special  
13       fund and shall be available to the agency to offset the cost of providing  
14       services required to implement and operate the riparian buffer program under  
15       10 V.S.A chapter 50.

16       Sec. 4. 10 V.S.A. § 687 is amended to read:

17       § 687. ALLOCATION SYSTEM

18       The secretary, with the advice and assistance of the board, shall establish a  
19       system for the allocation of community development program funds.

20              (1) The allocation system shall be based on the intent, purpose, goal, and  
21       objectives of this subchapter.

1           (2) The allocation system shall be competitive and shall provide the  
2 opportunity for any eligible municipality or municipalities to compete for  
3 funding for community development projects.

4           (3) The system shall insure that a wide range of community  
5 development activities shall be eligible for funding. These may include but are  
6 not limited to:

7                   (A) the acquisition, rehabilitation, or expansion of housing;

8                   (B) the creation, expansion, or retention of employment through the  
9 stimulation of private investment and community revitalization;

10                  (C) the installation, rehabilitation, or replacement of public facilities;

11                  (D) activities that test the feasibility of innovative approaches to  
12 community development;

13                  (E) activities that provide timely responses to unpredictable  
14 circumstances or special development opportunities.

15           (4) The allocation system shall include a method through which the need  
16 for, and impact of, the projects proposed by municipalities shall be measured  
17 and shall establish a process for evaluation of the applications.

18           (5) The allocation system shall give priority to municipalities that have  
19 completed fluvial erosion hazard maps and adopted associated bylaws that  
20 comply with the requirements of section 1453 of this title.



1 (18) 10 V.S.A. chapter 164, relating to comprehensive mercury  
2 management; and

3 (19) 10 V.S.A. chapter 50, relating to riparian buffers.

4 Sec. 7. 10 V.S.A. § 8503(a)(1) is amended to read:

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

9 (1) The following provisions of this title:

10 \* \* \*

11 (O) chapter 50 (relating to riparian buffers).

12 Sec. 8. 18 V.S.A. § 309b is amended to read:

13 § 309b. LOCAL MATCH; CERTAIN TOWN HIGHWAY PROGRAMS

14 (a) Notwithstanding subsection 309a(a) of this title, grants provided to  
15 towns under the town highway structures program shall be matched by local  
16 funds sufficient to cover 20 percent of the project costs, unless the town has  
17 adopted fluvial erosion hazard mapping that complies with the requirements of  
18 section 1453 of Title 10 or has adopted road and bridge standards and has  
19 completed a network inventory, in which event the local match shall be  
20 sufficient to cover 10 percent of the project costs. The secretary may adopt  
21 rules to implement the town highway structures program. Town highway

1 structures projects receiving funds pursuant to this subsection shall be the  
2 responsibility of the applicant municipality.

3 (b) Notwithstanding subsection 309a(a) of this title, grants provided to  
4 towns under the class 2 town highway roadway program shall be matched by  
5 local funds sufficient to cover 30 percent of the project costs, unless the town  
6 has adopted fluvial erosion hazard mapping that complies with the  
7 requirements of section 1453 of Title 10 or has adopted road and bridge  
8 standards and has completed a network inventory, in which event the local  
9 match shall be sufficient to cover 20 percent of the project costs. The secretary  
10 may adopt rules to implement the class 2 town highway roadway program.  
11 Class 2 town highway roadway projects receiving funds pursuant to this  
12 subsection shall be the responsibility of the applicant municipality, and a  
13 municipality shall not receive a grant in excess of \$175,000.00.

14 (c) Notwithstanding subsections 309a(a), (b), and (c) of this title, a  
15 municipality may use a grant awarded under the town highway structures  
16 program or the class 2 town highway roadway program to provide the  
17 nonfederal matching funds required to draw down a federal earmark. In all  
18 such cases, the grant shall be matched by local funds as provided in this  
19 section. The intended use of a town highway grant as matching funds for a  
20 federal earmark shall not entitle a municipal grant applicant to any priority for  
21 a grant award in any fiscal year. When grants awarded under the town

1 highway structures program or the class 2 town highway roadway program are  
2 used to satisfy nonfederal matching requirements for federal earmarks, the  
3 term "project costs" in subsections (a) and (b) of this section shall refer only to  
4 the nonfederal match for the federal earmark.

5 Sec. 9. 24 V.S.A. § 4424 is amended to read:

6 § 4424. ~~SHORELANDS; FLOOD OR HAZARD AREA; SPECIAL OR~~  
7 FREESTANDING BYLAWS REGULATION OF HAZARD AREAS

8 ~~Any municipality may adopt freestanding bylaws under this chapter to~~  
9 ~~address particular areas in conformance with the plan, including the following,~~  
10 ~~which may also be part of zoning or unified development bylaws:~~

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

12 ~~(2) Bylaws to regulate development and use in flood or other hazard~~  
13 ~~areas. The following shall apply if flood or other hazard area bylaws are~~  
14 ~~enacted:~~

15 ~~(A) Purposes.~~

16 ~~(i) To minimize and prevent the loss of life and property, the~~  
17 ~~disruption of commerce, the impairment of the tax base, and the extraordinary~~  
18 ~~public expenditures and demands on public service that result from flooding,~~  
19 ~~landslides, erosion hazards, earthquakes, and other natural or human-made~~  
20 ~~hazards.~~

1           ~~(ii) To ensure that the design and construction of development in~~  
2 ~~flood and other hazard areas are accomplished in a manner that minimizes or~~  
3 ~~eliminates the potential for flood and loss or damage to life and property.~~

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

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

9           ~~(B) Contents of bylaws. Flood and other hazard area bylaws may:~~

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

14           ~~(ii) Require flood and hazard protection through elevation,~~  
15 ~~floodproofing, disaster preparedness, hazard mitigation, relocation, or other~~  
16 ~~techniques.~~

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

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

1           ~~(v) Establish other restrictions to promote the sound management~~  
2 ~~and use of designated flood and other hazard areas.~~

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

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

16           ~~(i) A copy of the application is mailed or delivered by the~~  
17 ~~administrative officer or by the appropriate municipal panel to the agency of~~  
18 ~~natural resources.~~

19           ~~(ii) Either 30 days have elapsed following the mailing or the~~  
20 ~~agency delivers comments on the application.~~

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

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

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

14                   ~~(iii) The permit so granted states that the repaired, relocated, or~~  
15 ~~enlarged nonconforming structure is located in a regulated flood or other~~  
16 ~~hazard area, does not conform to the bylaws pertaining to that area, and will be~~  
17 ~~maintained at the risk of the owner~~

18           (a) Purpose. The purpose of this section is to allow municipalities with or  
19 without comprehensive municipal plans to adopt hazard area regulations in  
20 order to:

1           (1) Prevent or minimize water pollution from stormwater runoff, soil  
2           erosion, and sedimentation.

3           (2) Protect shorelands and river corridors that are highly subject to  
4           erosion due to naturally occurring wave action or stream channel migration,  
5           modification, and adjustment, and to thereby avoid the need for costly and  
6           environmentally degrading channelization and bank stabilization measures.

7           (3) Preserve and protect shoreland, riparian, and aquatic habitat;

8           (4) Provide access to public waters of the state;

9           (5) Avoid or minimize the loss of life and property, the disruption of  
10          commerce, the impairment of the tax base, and the extraordinary public  
11          expenditures and demands on public service that result from flooding, stream  
12          bank and shoreland erosion, and other known hazards.

13          (6) Ensure that the design and construction of development within  
14          designated flood areas or other hazard areas is accomplished in a manner that  
15          eliminates or minimizes the potential for damage to public and private  
16          property, including public facilities and infrastructure.

17          (7) Encourage municipal management of flood areas and other hazard  
18          areas so that municipalities, citizens, and businesses are eligible for federal  
19          flood insurance, federal disaster recovery funds, and hazard mitigation funds as  
20          may be available.

1        (b) Authority to adopt. A municipality may adopt regulations under this  
2        section as part of a zoning bylaw or unified development bylaw, or as a  
3        separate, freestanding bylaw, to regulate land development and associated  
4        activities within:

5            (1) Shorelands as defined in section 1422 of Title 10;

6            (2) Riparian buffers as defined in section 1451 of Title 10;

7            (3) Flood hazard areas designated pursuant to section 753 of Title 10;

8            (4) Fluvial erosion hazard areas mapped in accordance with section  
9        1453 of Title 10 and other state standards; or

10          (5) Other hazard areas identified by the municipality in an adopted  
11        municipal plan or a local mitigation plan.

12        (c) Mandatory requirements. Bylaws under this section shall:

13            (1) Conform to the municipal plan or to a local mitigation plan approved  
14        by the Federal Emergency Management Agency.

15            (2) Be adopted, amended, administered, and enforced in the same  
16        manner as other municipal bylaws authorized under this chapter except as may  
17        otherwise be required to meet federal program requirements.

18            (3) Be submitted to the agency of natural resources at least 30 days prior  
19        to adoption by the municipality to be reviewed for consistency with minimum  
20        federal and state program requirements, including state riparian buffer zone  
21        requirements, recommended shoreland and fluvial erosion hazard area

1 regulations, and minimum requirements for community participation in the  
2 national flood insurance program. Municipalities that adopt bylaws that are  
3 inconsistent with these recommendations and requirements may forfeit or limit  
4 their eligibility for participation in federal and state hazard mitigation and  
5 disaster recovery programs.

6 (d) Content of hazard area bylaws.

7 (1) Municipalities are encouraged to meet or exceed minimum federal  
8 and state program requirements, and to consider both regulatory and  
9 nonregulatory measures to prevent or mitigate known hazards. Hazard area  
10 bylaws may contain standards and criteria that:

11 (A) Regulate allowed uses and activities, site disturbance, structures,  
12 infrastructure, setback distances and riparian buffers within designated hazard  
13 areas to minimize hazards and protect water quality.

14 (B) Prohibit the placement of damaging obstructions or structures,  
15 the use and storage of hazardous materials, and practices that are known to  
16 exacerbate hazardous or unstable natural conditions.

17 (C) Require hazard protection through disaster preparedness, hazard  
18 mitigation, relocation, elevation, floodproofing, or other accepted mitigation  
19 practices.

20 (D) Promote the sound management and use of designated hazard  
21 areas and access to public waters.

1           (E) Impose other requirements authorized by this chapter.

2           (2) All hazard area bylaws shall require the administrative officer to  
3           submit a copy of an application for development within designated hazard  
4           areas to the agency of natural resources for review and comment prior to the  
5           issuance of a municipal land use permit. No permit shall be issued until  
6           comments have been received or 30 days have elapsed from the date of  
7           referral, whichever is sooner.

8           (3) Notwithstanding limitations on municipal bylaws under section 4413  
9           of this title, flood hazard area bylaws as required for community participation  
10          in the national flood insurance program shall incorporate and meet minimum  
11          federal requirements for flood plain management regulations pursuant to 44  
12          C.F.R. 60, including federal:

13               (A) Program definitions;

14               (B) Flood plain management criteria;

15               (C) Administration and enforcement requirements;

16               (D) Requirements for the issuance of permits and variances for  
17          development within designated flood hazard areas; and

18               (E) Notification and recordkeeping requirements.

19          (e) Effect on other bylaws. Hazard area regulations may alter uses or  
20          activities that are otherwise allowed or prohibited under a zoning or unified  
21          development bylaw within designated hazard areas, as well as the applicability

1 of other bylaw provisions. Where hazard area regulations and other zoning  
2 bylaw provisions both apply, compliance with hazard area regulations shall be  
3 a prerequisite to the granting of a permit or approval.

4 Sec. 10. 24 V.S.A. § 4428 is added to read:

5 § 4428. RIPARIAN BUFFER BYLAWS

6 (a) In order to qualify for the exemption from minimum riparian buffer size  
7 along public waters required under subsection 1452(a) of Title 10, a  
8 municipality may adopt freestanding bylaws or amend zoning or unified  
9 development bylaws according to the requirements of this section in order to  
10 regulate development and use of riparian buffers along public waters. As used  
11 in this section, “riparian buffer” and “public waters” shall be defined as those  
12 terms are defined in section 1451 of Title 10.

13 (b) Bylaws adopted under this section shall include:

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

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

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

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

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

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

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

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

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

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

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

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

20            (4) Authorize allowed or conditional uses within the buffer. In adopting  
21 allowed or conditional uses under this subsection, a municipality may regulate

1 a use allowed under section 1452 of Title 10, provided that the municipality is  
2 not prohibited from regulating such a use under section 4413 of this title or  
3 other provisions of state or federal law.

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

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

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

13 Sec. 11. 24 V.S.A. § 4753a is amended to read:

14 § 4753a. AWARDS FROM REVOLVING LOAN FUNDS

15 (a) Pollution control. The general assembly shall approve all categories of  
16 awards made from the special funds established by section 4753 of this title for  
17 water pollution control facility construction, in order to assure that such awards  
18 conform with state policy on water quality and pollution abatement, and with  
19 the state policy that, except as provided in subsection (c) of this section,  
20 municipal entities shall receive first priority in the award of public monies for  
21 such construction, including monies returned to the revolving funds from

1 previous awards. To facilitate this legislative oversight, the secretary of  
2 natural resources shall annually no later than January 15 report to the house  
3 and senate committees on institutions and on natural resources and energy on  
4 all awards made from the relevant special funds during the prior and current  
5 fiscal years, and shall report on and seek legislative approval of all the types of  
6 projects for which awards are proposed to be made from the relevant special  
7 funds during the current or any subsequent fiscal year. Where feasible, the  
8 specific projects shall be listed.

9 (b) Water supply. The secretary of natural resources shall no later than  
10 January 15, 2000 recommend to the house and senate committees on  
11 institutions and on natural resources and energy a procedure for reporting to  
12 and seeking the concurrence of the legislature with regard to the special funds  
13 established by section 4753 of this title for water supply facility construction.

14 (c) Wastewater system and potable water supply loans. Notwithstanding  
15 other priorities established in law, the secretary may award up to \$500,000.00  
16 of the funds from the Vermont environmental protection agency control fund  
17 and the Vermont pollution control revolving fund, combined, to a state agency,  
18 the Vermont housing finance agency, or a municipality for the administration  
19 of loans to households with income equal to or less than 200 percent of the  
20 state average median household income for the repair or replacement of failed  
21 wastewater systems and failed potable water supplies, as those terms are

1 defined in section 1972 of Title 10. Upon award of funds under this section,  
2 the state agency, Vermont housing finance agency, or municipality shall agree,  
3 pursuant to a memorandum of understanding with the secretary of natural  
4 resources, to repay the funds awarded to the special fund from which they were  
5 drawn.

6 (d) Fluvial erosion hazard mapping loans. Notwithstanding other priorities  
7 established in law, the secretary shall annually award up to \$250,000.00 of the  
8 funds from the Vermont environmental protection agency control fund and the  
9 Vermont pollution control revolving fund, combined, to municipalities for the  
10 completion of fluvial erosion hazard mapping under section 1453 of Title 10.  
11 Upon the award of funds under this subsection, the municipality shall agree,  
12 pursuant to a memorandum of understanding with the secretary of natural  
13 resources, to repay the funds awarded to the special fund from which they were  
14 drawn.

15 Sec. 12. 24 V.S.A. § 4758 is amended to read:

16 § 4758. LOAN PRIORITIES

17 (a) Periodically, and at least annually, the secretary shall prepare and  
18 certify to the bond bank a project priority list of those municipalities whose  
19 publicly owned projects, or privately owned wastewater systems, are eligible  
20 for financing or assistance under this chapter. In determining financing

1 availability for wastewater projects under this chapter, the secretary of the  
2 agency having jurisdiction shall apply the following criteria:

3 (1) the probable public benefit to be gained or preserved by the project  
4 to be financed;

5 (2) the long-term costs and the resulting benefits to be derived from the  
6 project. In determining benefits, induced growth from a project that is not  
7 consistent with a town, city, or village plan, duly adopted under chapter 117 of  
8 this title, will not be considered;

9 (3) the cost of comparable credit or financing alternatives available to  
10 the municipality;

11 (4) the existence of immediate public health, safety and welfare factors,  
12 and compliance therewith;

13 (5) the existence of an emergency constituting a threat to public health,  
14 safety and welfare; and

15 (6) the current area and population to be served by the proposed project.

16 (b) In determining financing availability for stormwater projects under this  
17 chapter, the secretary of the agency having jurisdiction shall apply the  
18 following criteria:

19 (1) that the project is specifically or generally described in Vermont's  
20 nonpoint source management plan;



1       Sec. 14. REPORT OF AGENCY OF NATURAL RESOURCES; RIPARIAN  
2                    BUFFER RULES

3           (a) On or before January 15, 2010, and annually thereafter, the agency of  
4           natural resources shall report to the house committee on fish, wildlife and  
5           water resources and the senate committee on natural resources and energy with  
6           a status report on the rules required by 10 V.S.A. § 1452 regarding uses of  
7           riparian buffers adjacent to the navigable waters of the state.

8           (b) Beginning January 15, 2010 and biennially thereafter, the agency of  
9           natural resources shall report to the house committee on fish, wildlife and  
10           water resources and the senate committee on natural resources and energy  
11           regarding the status of riparian buffer zoning within Vermont. The report shall  
12           include:

13           (1) A summary of the municipalities that have adopted riparian buffer  
14           zoning or riparian buffer bylaws;

15           (2) a summary of municipalities that have adopted fluvial erosion hazard  
16           area maps and associated bylaws;

17           (3) an analysis, based on information available to the agency, of the  
18           impact of fluvial erosion hazard maps and associated bylaws and riparian  
19           buffer zoning on the waters of the state; and

20           (4) any recommendations from the agency or municipalities regarding  
21           the regulation of uses within riparian buffers in the state.

1       Sec. 15. EFFECTIVE DATE

2           (a) This section and Secs. 1 (findings), 4 (community development grant  
3           allocation system), 5 (water supply aid priorities), 8 (town highway local  
4           match), 9 (regulation of hazard areas), 10 (riparian buffer bylaws), 11 (awards  
5           from revolving loan funds), 12 (state revolving loan fund priorities), 13 (ANR  
6           outreach and education related to riparian buffers), 14 (ANR riparian buffer  
7           report), and 16 (sunset; reversion) of this act shall take effect upon passage.

8           (b) Sec. 2 (riparian buffer zones) shall take effect July 1, 2014, except that  
9           10 V.S.A. § 1453 shall take effect upon passage.

10          (c) Secs. 3 (riparian buffer zone permit fee), 6 (ANR enforcement  
11          authority), and 7 (appeal of ANR actions) shall take effect July 1, 2014.

12       Sec. 16. SUNSET; REVERSION

13          Secs. 4 (community development grant allocation system), 5 (water supply  
14          aid priorities), 8 (town highway local match), 11 (awards from revolving loan  
15          funds), 12 (state revolving loan fund priorities) shall expire on July 1, 2014.  
16          On July 1, 2014, 10 V.S.A. § 687, 10 V.S.A. § 1628, 18 V.S.A. § 309b, 24  
17          V.S.A. § 4753a, and 24 V.S.A. § 4758, as amended by Secs. 4, 5, 8, 11, and 12  
18          of this act, respectively, shall revert to the language each section contained  
19          before passage of this act.