SHORELAND BILL ISSUES

These comments on some of the issues regarding the H. 526 LAKE SHORELAND PROTECTION STANDARDS Bill as passed by the Vermont Senate are based on my understanding of what appears would or could be the case given what it says. The Bill is proposed to go into effect July 1, 2014.

The Bill has no exemption stating habitable structures and other impervious surfaces can be maintained. The Bill has a "Construction within footprint" exemption allowing for the "Construction within the footprint of an impervious surface, existing as of July 1, 2014". But it does not have an exemption stating habitable structures and other impervious surfaces can be maintained and it should have one.

Not all existing open areas are allowed to be maintained under the Bill.

The "Maintenance of Lawns" exemption is only for the "maintenance, but not the enlargement, of lawns, gardens, landscaped areas, and beaches in existence as of July 1, 2014." This is much more restrictive than the Maine and New Hampshire shoreland laws. In Maine, "Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance" (provision 15.P.(4) of Chapter 1000 of Maine's Guidelines for Municipal Shoreland Zoning Ordinances). In New Hampshire's Title L, Chapter 483-B, Section 483-B:9,V, in part (a)(2)(D)(vi) "Owners of lots and holders of easements on lots that were legally developed prior to July 1, 2008 may maintain but not enlarge cleared areas" and in part (b)(2)(A) "Owners of lots legally developed or landscaped prior to July 1, 2008 that do not comply with this standard are encouraged to, but shall not be required to, increase the percentage of area to be maintained in an unaltered state." The Bill does not define landscaped areas, but one Webster's definition of landscaped is "to change the natural features of (a plot of ground) so as to make it more attractive, as by adding lawns, trees, bushes, etc." This exemption should be changed to allow for the maintenance of all open areas in existence as of July 1, 2014.

Let's assume the following example: A landowner on July 1, 2014, has on a part of their land within the protected shoreland area of 250 feet from mean water level, a house and open area from it to the lake that is their only view of the lake from the house. In the open area, there is lawn, landscaping and a garden near the house and then there is an unmowed area down to the beach. The unmowed area consists of grasses and maybe some woody vegetation like shrubs or trees but so few that the area is still considered to be an open area. From time to time, the landowner may have entirely removed or trimmed woody vegetation; whether to maintain their view of the lake or for other reasons. The unmowed area does not come within the "Maintenance of Lawns" exemption and is located partly within 100 feet of mean water

level, which I may refer to as the 100 foot zone, and the rest in the other 150 feet of the protected shoreland area, which I may refer to as the 150 foot zone.

The part of the unmowed area within the 100 foot zone would be subject to the vegetative cover management requirements of the proposed section 1447. Since said part is presumed not to meet the minimum required points regarding certain numbers and sizes of trees for any 25-foot by 25-foot plot therein, the requirement concerning "Any plot not containing the required points must have no vegetative cover removed" applies; except presumably for being able to prune tree branches on the bottom one-third of a tree's height and removal of dead, diseased or unsafe trees.

Without any other relief, this would mean the landowner would need to let any shrub, tree or other vegetative cover grow up over the years and/or decades at least until any such plot therein met the minimum required points. At that time, the landowner presumably could remove vegetative cover three or more feet in height while maintaining the minimum required points, including a 5-sapling requirement. Said presumption is at least in part arrived at because of what the Bill says you still can't do ("Existing vegetation under three feet in height and other ground cover...shall not be cut, covered, or removed") versus a lack of the Bill stating what you can do, other than concerning trees.

There are no vegetative cover management requirements or standards for the 150 foot zone in the Bill.

It is my understanding from at least one State person this was not planned and that there are intended to be vegetative cover management requirements for the 150 foot zone. From the landowner's point of view, it is hard to tell whether this is good or bad. A lot depends on what the requirements are and on what is included within the definition of a "cleared area". The first sentence of its definition says it "means an area where existing vegetative cover, soil, tree canopy, or duff is permanently removed or altered." I'm afraid it could be interpreted fairly broadly and inclusively, such as possibly even including the removal of a tree limb, a tree or a shrub as at least a permanent alteration of the tree or shrub (both being at least a part of the existing vegetative cover) in an area.

Unless the State agrees to issue a permit relaxing it because of best management practices, the Bill says "no more than 40 percent of the protected shoreland area of the parcel shall consist of cleared area". On February 19, 2014, Atty. William L. Martin, III of the Vermont Department of Environmental Conservation presented witness testimony to the House Fish, Wildlife and Water Resources Committee, which has the Bill, that included a set of guidelines on "Best Management Practices for Lakeshore Vegetation" that says "within 100 to 250 feet of shore there should not be more than 40 percent of

cleared native vegetation." If this is an example of one of the vegetative cover management requirements to be imposed for the 150 foot zone, then it appears to be in direct contradiction to the Bill's provision of no more than 40 percent being cleared area that applies to the entire protected shoreland area of a parcel. In other words, the more the 100 foot zone contains less than 40 percent of cleared area - the more the 150 foot zone could contain more than 40 percent of cleared area and still meet the Bill's "no more than 40 percent of the protected shoreland area of the parcel shall consist of cleared area".

There could be little relief provided in the Bill by its "Removal of vegetation for recreational purposes" exemption. This recreational exemption only applies to an area of no more than 250 square feet within the 100 foot zone and only allows for the removal "of the existing vegetation under three feet in height" located at least 25 feet from mean water level. If the location is in a plot not having the minimum number of points, then the existing vegetation having a height of three or more feet would still be subject to the vegetative cover management requirement prohibiting removal thereof under the proposed section 1447. The recreational exemption should be changed to also allow for vegetation three or more feet in height to be removed. The "Creation of footpaths" exemption is limited to "one footpath per parcel with a width of no greater than six feet that provides access to the mean water level".

The ability to install a rock toe or rip rap is limited by the Bill. The Vermont Department of Environmental Conservation's "Resloping, Rock Toe and Rip Rap" pamphlet recognizes that rock toes along the water's edge of a shoreline "often occur naturally along many Vermont lakeshores and are man made as a structural reinforcement of the bank, when wave action is the primary cause of the loss of bank material." The installation of such rock toes is not a part of the allowed vegetative cover management requirements under proposed section 1447 and would presumably involve the creation of cleared area or impervious surface. At least if the location where the rock toe wants to be installed is within 25 feet of mean water level, the provisions of the Bill appear to generally prohibit such installation and it should be changed to allow therefore.

Any relief for the unmowed area that could be provided by an activity coming within the definition of a "cleared area", would depend upon both the activity being a management of vegetative cover not conducted according to the requirements of proposed section 1447 (presently concerning the 100 foot zone and concerning the 150 foot zone if vegetative cover management requirements for it are added to said section) so that it is not excluded from said definition AND the activity otherwise coming within said definition. Again, the need to find out what activities come within the definition of "cleared area" is very important.

The following is a general review of what relief for the unmowed area might be available and of what the prohibitions on such rock toe installation are, under the Bill's provisions on creation of cleared area or impervious surface: cleared area or impervious surface can't be located within 100 feet of mean water level under the regular permit standards; even assuming a parcel could qualify as nonconforming, at least if it had no habitable structure, the cleared area or impervious surface has to be located as far as possible and at least 25 feet from mean water level, and it would seem like it might be difficult even being able to obtain nonconforming parcel status for cleared area relief for the unmowed area or relief for such rock toe installation; creation of cleared area or impervious surface is limited to not more than 100 square feet within 100 feet of mean water level and must be located at least 25 feet from mean water level under the registration provisions; creation of cleared area or impervious surface is limited to not more than 500 square feet within the 150 foot zone under the registration provisions; and then there are the more general limitations under proposed sections 1444, 1445 and 1446: for cleared area or impervious area being located on a slope of less than 20 percent, no more than 20 percent of the protected shoreland area can be impervious surface, and no more than 40 percent of the protected shoreland area can be cleared area (except to the extent they are allowed to be modified by best management type practices).

The Bill lacks and should at least have provisions allowing the State to issue a permit for requested modifications of the applicable vegetative cover management requirements and of restrictions otherwise against creation of cleared area or impervious surface if, and upon such conditions as, the State determines the result would be functionally equivalent to that otherwise provided for. This would at least add the potential for providing more flexibility to the presently proposed mostly one size fits all approach.

The Bill does not state that its exemptions apply to everything that they should. Although I assume they are intended to, the wording in the Bill saying what all of the exemptions in proposed subdivision 1446(b)apply to, does not say they apply to either the vegetative cover management requirements of proposed section 1447 or to the registration provisions concerning creation of cleared areas or impervious surfaces. The Bill should be changed so that the exemptions apply thereto.

In my opinion, the Bill fails to fulfill its stated purpose that restrictions are to be imposed "in a manner that allows for reasonable development of existing parcels" and needs to be changed if it is to pass at all.

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