

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred
3 House Bill No. 526 entitled “An act relating to the establishment of lake
4 shoreland protection standards” respectfully reports that it has considered the
5 same and recommends that the Senate propose to the House that the bill be
6 amended by striking all after the enacting clause and inserting in lieu thereof
7 the following:

8 Sec. 1. LEGISLATIVE FINDINGS AND LEGISLATIVE INTENT

9 The General Assembly finds and declares that:

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

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

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

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

20 (5) Vermont’s lakes are among the State’s most valuable and fragile
21 economic and natural resources, and the protection of naturally vegetated

1 shorelands adjacent to lakes is necessary to prevent water quality degradation,
2 maintain healthy habitat, and promote flood resilience.

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

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

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

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

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

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

14 (7) Healthy lakes and adjacent shorelands:

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

17 (B) support property values and tax base; and

18 (C) reduce human health risks.

19 (8) According to the Agency of Natural Resources Water Quality
20 Remediation, Implementation, and Funding Report in 2013, review of the

1 development, protection, and stabilization of shorelands is necessary because
2 of the importance of shorelands to the health of lakes.

3 (9) A lake or pond of more than 10 acres is located in 184 of the State's
4 251 municipalities. However, only 48 municipalities have shoreland zoning
5 that requires vegetative cover. Scientifically based standards for impervious
6 surface and cleared area adjacent to lakes are necessary to protect and maintain
7 the integrity of water quality and aquatic and shoreland habitat, while also
8 allowing for reasonable development of shorelands.

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

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

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

2 CHAPTER 49A. LAKE SHORELAND PROTECTION STANDARDS

3 § 1441. PURPOSE

4 The purposes of this chapter shall be to:

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

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

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

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

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

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

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

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

1 § 1442. DEFINITIONS

2 As used in this chapter:

3 (1) “Agency” means the Agency of Natural Resources.

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

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

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

14 (5) “Expansion” means an increase or addition of impervious surface or
15 cleared area.

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

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

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

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

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

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

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

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

11 (14) “Project” means an act or activity that results in cleared area or the
12 creation of impervious surface in a protected shoreland area.

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

15 (16) “Secretary” means the Secretary of Natural Resources or the
16 Secretary’s duly authorized representative.

17 (17) “Slope” means the vertical rise divided by the horizontal run of a
18 place expressed as a percentage.

19 (18) “Stormwater runoff” means precipitation and snowmelt that does
20 not infiltrate into the soil, including material dissolved or suspended in it, but

1 does not include discharges from undisturbed natural terrain or wastes from
2 combined sewer overflows.

3 (19) “Vegetative cover” means mixed vegetation within the protected
4 shoreland area, consisting of trees, shrubs, groundcover, and duff. “Vegetative
5 cover” shall not mean grass lawns, noxious weeds designated by the Secretary
6 of Agriculture, Food and Markets under 6 V.S.A. chapter 84, or nuisance
7 plants, such as poison ivy and poison oak, designated by the Secretary of
8 Natural Resources.

9 § 1443. INDIVIDUAL PERMIT REQUIREMENT FOR IMPERVIOUS
10 SURFACE OR CLEARED AREA IN A PROTECTED
11 SHORELAND AREA

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

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

19 (c) Permit process.

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

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

5 (3) The Secretary shall provide an opportunity for written comment,
6 regarding whether an application complies with the requirements of this
7 chapter or any rule adopted by the Secretary, for 30 days following receipt of
8 the application.

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

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

19 (f) Recording. A permit or registration issued under this chapter shall, for
20 the purposes of having the permit or registration run with the land, be recorded

1 in the land records of the municipality in which the impervious surface or
2 cleared area is located.

3 § 1444. PERMIT STANDARDS

4 (a) Permit standards; generally. Except for permits issued under section
5 1445 of this title, the Secretary shall issue a permit under this chapter if the
6 permit applicant demonstrates that:

7 (1) cleared area or impervious surface shall be located at least 100 feet
8 from the mean water level, except for a public recreational access when
9 compliance with this subdivision (1) would be inconsistent or in conflict with
10 applicable federal requirements for the management of the parcel;

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

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

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

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

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

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

4 (B) the permit applicant shall demonstrate that best management
5 practices will be used to provide erosion control, bank stability, and wildlife
6 habitat functionally equivalent to that which would be provided by clearing
7 less than 40 percent of the shoreland protection area;

8 (5) within 100 feet of the mean water level, vegetative cover shall be
9 managed according to the requirements of section 1447 of this title.

10 (b) Repair of highway or private road. When the repair, emergency repair,
11 or replacement of a private road or highway, as that term is defined in
12 19 V.S.A. § 1(2), results in the construction, creation, or expansion of
13 impervious surface or cleared area on a property adjacent to the private road or
14 highway, the impervious surface or cleared area constructed or created on the
15 adjacent property shall not be calculated as square footage of impervious
16 surface or cleared area for purposes of permitting or registration under this
17 chapter.

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

1 § 1445. NONCONFORMING PARCELS; PERMIT STANDARDS

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

6 (1) parcel size;

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

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

11 (b) Permit standards for nonconforming parcels.

12 (1) For a parcel on which there is no habitable structure, the cleared area
13 or impervious surface shall be as far as possible from the mean water level, and
14 at a minimum shall be no less than 25 feet from the mean water level.

15 (2) For a parcel on which a habitable structure is located, the expansion
16 of any portion of the structure within 100 feet of the mean water level shall be
17 on the side of the structure farthest from the lake, unless the Secretary
18 determines that:

19 (A) expansion on the side of the structure farthest from the lake is not
20 possible due to site characteristics, site limitations, or limitations under a
21 municipal bylaw in existence on July 1, 2014;

1 (B) expansion on an alternate side of the structure will not negatively
2 impact water quality; and

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

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

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

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

9 (4)(A) No more than 20 percent of the protected shoreland area of the
10 parcel shall consist of impervious surface.

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

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

18 (B) The permit applicant shall demonstrate that best management
19 practices will be used to provide erosion control, bank stability, and wildlife
20 habitat functionally equivalent to that which would be provided by clearing
21 less than 40 percent of the protected shoreland area.

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

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

9 § 1446. REGISTERED PROJECTS; EXEMPTIONS FROM PERMITTING

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

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

14 (i) the owner of the property on which the impervious surface or
15 cleared area is created registers with the Secretary, on a form provided by the
16 Secretary that contains the name of the property owner, the address of the
17 property, and a certification that the project meets the requirements of this
18 subdivision (a)(2);

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

1 (iii) vegetative cover in the protected shoreland area shall be
2 managed according to the requirements of section 1447 of this title.

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

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

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

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

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

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

19 (A) 100 square feet of impervious surface or cleared area within
20 100 feet of the mean water level; and

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

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

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

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

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

15 (2) Removal of vegetation for recreational purposes. The cutting or
16 removal of no more than 250 square feet of the existing vegetation under three
17 feet in height within 100 feet of the protected shoreland area to allow for
18 recreational use in the protected shoreland area, provided that:

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

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

3 (3) Maintenance of lawns. The maintenance, but not the enlargement,
4 of lawns, gardens, landscaped areas, and beaches in existence as of July 1,
5 2014.

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

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

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

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

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

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

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

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

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

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

15 (B) A private road that does not require a permit under section 1264
16 of this title, provided that emergency repair, repair, and replacement of the
17 private road shall comply with the applicable water quality best management
18 practices approved by the Secretary under 19 V.S.A. § 996 and incorporated
19 within the Vermont Agency of Transportation town road and bridge standards
20 for controlling stormwater runoff and direct discharges to State waters. The
21 requirement to comply with the water quality best management practices shall

1 apply even if the municipality in which the private road is located has not
2 adopted the town road and bridge standards. Under this subdivision, expansion
3 of a private road in order to allow for passage of emergency vehicles shall be
4 considered repair that does not require a permit under section 1443 of this title.

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

7 (10) Parcel intersected by public highway. The creation or expansion of
8 impervious surface or cleared area on a parcel within the protected shoreland
9 area when the parcel is intersected by a public highway, as that term is defined
10 in 19 V.S.A. § 1, and the impervious surface or cleared area is created or
11 expanded on that portion of the parcel on the side of the highway away from
12 the mean water level.

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

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

20 (13) Utility projects and utility lines.

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

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

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

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

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

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

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

3 (i) urban or industrial in nature;

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

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

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

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

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

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

19 (c) Application of vegetative cover requirements. Activities authorized
20 under subdivisions (b)(2)–(13) of this section shall not be required to comply

1 with the requirements for the management of vegetative cover under section
2 1447 of this title.

3 § 1447. LAKE SHORELAND VEGETATION PROTECTION
4 STANDARDS

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

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

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

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

1 (A) 25-foot by 25-foot plots shall be established within 100 feet of
2 the mean water level for vegetation management purposes.

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

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

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

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

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

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

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

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

3 § 1448. MUNICIPAL DELEGATION

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

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

11 (2) the municipal bylaw or ordinance is at least as stringent as the
12 permitting requirements and exemptions of this chapter, upon a determination
13 by the Secretary that the bylaw or ordinance is functionally equivalent to the
14 requirements under sections 1444, 1445, 1446, and 1447 of this title.

15 (b) Delegation agreement.

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

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

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

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

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

7 (B) take timely and appropriate enforcement actions;

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

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

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

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

21 § 1449. COORDINATION OF AGENCY OF NATURAL RESOURCES'

1 PERMITTING OF ACTIVITIES IN PROTECTED SHORELAND

2 AREAS

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

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

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

1 Sec. 6. 10 V.S.A. § 1454 is amended to read:

2 § 1454. TRANSPORT OF AQUATIC PLANTS AND AQUATIC
3 NUISANCE SPECIES

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

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

20 (c) A violation of this section may be brought by any law enforcement
21 officer, as that term is defined in 23 V.S.A. § 4(11), in the Environmental

1 Division of the Superior Court. When a violation is brought by an
2 enforcement officer other than an environmental enforcement officer employed
3 by the Agency of Natural Resources, the enforcement officer shall submit to
4 the Secretary a copy of the citation for purposes of compliance with the public
5 participation requirements of section 8020 of this title.

6 Sec. 7. TRANSITION

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

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

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

20 Sec. 8. EFFECTIVE DATE

21 This act shall take effect July 1, 2014.

1

2

3 (Committee vote: _____)

4

5

Senator [surname]

6

FOR THE COMMITTEE