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Report of Committee of Conference

H.526

TO THE SENATE AND HOUSE OF REPRESENTATIVES:

The Committee of Conference, to which were referred the disagreeing votes of the two Houses upon House Bill, entitled:

H.526. An act relating to establishment of lake shoreland protection standards.

Respectfully reports that it has met and considered the same and recommends that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. LEGISLATIVE FINDINGS AND LEGISLATIVE INTENT

The General Assembly finds and declares that:

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

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

(3) Vermont's lakes are among the State's most valuable and fragile economic and natural resources, and the protection of naturally vegetated

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

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

(A) intercept and infiltrate surface water runoff and groundwater flows from upland sources;

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

(C) moderate the temperature of shallow water habitat;

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

(E) promote stability and flood resilience.

(7) Healthy lakes and adjacent shorelands:

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

(B) support property values and tax base; and

(C) reduce human health risks.

**(8)** A lake or pond of more than 10 acres is located in 184 of the State's 251 municipalities. However, only 48 municipalities have shoreland zoning that requires vegetative cover. Scientifically based standards for impervious

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surface and cleared area adjacent to lakes are necessary to protect and maintain water quality and aquatic and shoreland habitat, while also allowing for reasonable development of shorelands.

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

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

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

CHAPTER 49A. LAKE SHORELAND PROTECTION

§ 1441. PURPOSE

The purposes of this chapter shall be to:

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

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

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

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

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

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

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

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

§ 1442. DEFINITIONS

As used in this chapter:

(1) "Agency" means the Agency of Natural Resources.

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

(3) “Cleared area” means an area where existing vegetative cover, soil, or duff is permanently removed or altered.

(4) “Duff” means leaf litter plus small fragments of plants and organic debris.

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

(6) “Impervious surface” shall have the same meaning as in section 1264 of this title.

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

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

(9) “Off-site mitigation” means a practice or activity that:

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(A) mitigates the adverse impacts of construction, creation, or expansion of impervious surface or cleared area on the water quality of lakes or on protected shoreland areas; and

(B) occurs on property other than the property where the construction, creation, or expansion of impervious surface or cleared area is proposed.

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

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

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

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

(14) “Protected shoreland area” means all land located within 100 feet of the mean water level of a lake that is greater than 20 acres in surface area.

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

(16) “Stormwater runoff” shall have the same meaning as in section 1264 of this title.

(17) “Vegetative cover” means mixed vegetation within the protected shoreland area, consisting of trees, shrubs, groundcover, and duff.

§ 1443. IMPERVIOUS SURFACE OR CLEARED AREA IN A

PROTECTED SHORELAND AREA; CERTIFICATION

REQUIRED

(a) Certification required. Beginning January 1, 2015, a person conducting one of the following projects in a protected shoreland area shall certify that the project complies with the shoreland standards adopted under section 1444 of this title or, when applicable, municipal shoreland standards under section 1447 of this title:

(1) construction of more than 500 square feet of new impervious surface;

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(2) creation of more than 500 square feet of new cleared area; or

(3) expansion of impervious surface or cleared area if the expansion of existing impervious surface or cleared area in the protected shoreland area results in an increase of more than 500 square feet of impervious surface or cleared area. Impervious surface or cleared area may be expanded by up to 500 square feet without **submission of a certification**, provided that the aggregate amount of all expansion shall not exceed 20 percent of the protected shoreland area of the parcel on which it is located.

**(b) Notice of proposed project. A person proposing a project that requires certification under subsection (a) of this section shall, prior to construction or creation of the project, submit notice of the proposed project to the Secretary and the municipality in which the project is located. The notice shall be provided on a form provided by the Secretary, and the form shall include:**

**(1) the location and size of the parcel on which the project will be constructed or created;**

**(2) a plan of the proposed project that, as proposed, an approved shoreland consultant certified complies with the shoreland standards adopted under section 1444 of this title or municipal shoreland standards when applicable under section 1447 of this title;**

**(3) the name and contact information of the property owner;**



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(4) the name and contact number of the shoreland consultant certifying the project; and

(5) any other information that the Secretary, by rule, deems necessary for proper notice.

(c) Submission of certification of complete project. Upon completion of the projects, an approved shoreland consultant shall submit to the Secretary and the municipality in which the project is located a statement that:

(1) the information submitted in the notice of proposed project is true and correct; and

(2) the proposed project as constructed or created complies with the shoreland standards adopted under section 1444 of this title or, when applicable, municipal shoreland standard under section 1447 of this title.

(d) Recording of certification. A copy of the certification of complete project, a copy of the notice of proposed project, and all documents required by the rules adopted under this chapter shall be recorded in the land records of the municipality in which the project is located.

(e) Failure to submit certification. Failure to submit a notice of proposed project or a certification of complete project for a project requiring certification under subsection (a) of this section shall be an encumbrance on title of the parcel where the project occurred.

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(f) Calculation of impervious surface or cleared area.

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

(2) When the emergency repair, repair, and replacement of a private road or highway, as that term is defined in 19 V.S.A. § 1(2), results in the construction, creation, or expansion of impervious surface or cleared area on a parcel adjacent to the private road or highway, the impervious surface or cleared area constructed or created on the adjacent parcel shall not be calculated as square footage of impervious surface or cleared area for purposes of certification under subsection (a) of this section.

§ 1444. LAKE SHORELAND PROTECTION STANDARDS; RULES

(a) Lake shoreland protection standards; adoption. On or before January 1, 2015, the Secretary shall adopt by rule standards for the construction of impervious surface or the creation of cleared area in a protected shoreland area. The lake shoreland protection standards shall be designed to achieve the purposes of this chapter set forth in section 1441 of this title, while also accommodating construction, creation, or expansion of impervious surface or cleared area in protected shoreland areas.

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(b) Content of lake shoreland protection standards. The standards required under subsection (a) of this section shall:

(1) establish best management practices for the construction of impervious surfaces or the creation of cleared area in a protected shoreland area, including standards for:

(A) managing vegetative cover that may be required as a best management practice in order to ensure that some level of the required vegetative cover is maintained in the protected shoreland area;

(B) allowing reasonable use of the protected shoreland area subject to a vegetative cover requirement for construction, creation, or expansion of impervious surface or cleared area;

(C) minimizing and mitigating the creation of impervious surface or cleared area in a protected shoreland area;

(D) authorizing off-site mitigation as a best management practice when compliance with vegetative cover or other best management practices is not technically feasible on a property within a protected shoreland area, provided that any authorized mitigation shall be conducted within the watershed of the lake in which the proposed construction, creation, or expansion of impervious surface or cleared area will occur. If, within one year of the proposed construction, creation, or expansion of impervious surface or

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cleared area, the applicant cannot identify a suitable off-site mitigation project within the watershed of the lake where construction, creation, or expansion will occur, an approved shoreland consultant may certify completion of an off-site project in an alternative lake watershed.

(E) minimizing and mitigating the impacts from impervious surfaces or cleared areas on water quality, aquatic biota, wildlife and aquatic habitat, or protected shoreland areas; and

(F) designing and maintaining driveways, patios, and similar impervious surfaces so that stormwater runoff is minimized;

(2) authorize the establishment and maintenance of paths and recreational space in a protected shoreland area, provided that the path or recreational space is designed and managed to minimize stormwater runoff;

(3) authorize the establishment and maintenance of gardens in protected shoreland areas, provided that the gardens are designed and managed to minimize stormwater runoff;

(4) authorize the construction and maintenance of accessory structures in a protected shoreland area, provided that the construction of the structure complies with:

(A) size requirements, when present, established by the municipality in which the project is located; and

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(B) the shoreland standards adopted under this section.

(5) for areas of the State where mosquito populations create a public health hazard, as that term is defined in 18 V.S.A. § 2, physical practices or activities that create cleared area or remove vegetative cover in order to reduce mosquito breeding habitat, provided that any activity authorized under this subdivision shall comply with the Vermont wetlands rules.

§ 1445. SHORELAND CONSULTANT; APPROVAL

(a) The Secretary shall establish and implement a process to approve and periodically renew the approval of shoreland consultants.

(b) Beginning January 1, 2015, no person shall certify a project that requires certification under this chapter without first obtaining a shoreland consultant approval from the Secretary, except that a professional engineer or a landscape architect who is licensed in Vermont shall be deemed to have a valid designer license under this chapter if the engineer or landscape architect is practicing within the scope of his or her engineering specialty.

(c) The Secretary may review, on a random basis, or in response to a complaint, or on his or her own motion, the projects certified by a shoreland consultant.

(d) After a hearing conducted under chapter 25 of Title 3, the Secretary may suspend, revoke, or impose conditions on the approval of a shoreland

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consultant, except for one held by a professional engineer or a landscape architect. This proceeding may be initiated on the Secretary's own motion or upon a written request which contains facts or reasons supporting the request for imposing conditions, for suspension, or for revocation. Cause for imposing conditions, suspension, or revocation shall be conduct specified under 3 V.S.A. § 129a as constituting unprofessional conduct by an approved shoreland consultant.

(e) If a person who signs a design or installation certification submitted under this chapter certifies a project as a result of the person's failure to exercise reasonable professional judgment, submits project or certification information that is untrue or incorrect, or constructs or creates a project that does not comply with the shoreland standards adopted under section 1444 of this title, the person who signed the certification may be subject to penalties and required to take all actions to remediate the affected project in accordance with the provisions of chapter 201 of this title.

(f) In response to a complaint, or on his or her own motion, the Secretary shall refer deficiencies in design or installation performed under this chapter by a professional engineer to the Board of Professional Engineering and by a landscape architect to the Office of Professional Regulation for further investigation and potential disciplinary action. When the Secretary refers a

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professional engineer or a landscape architect for further investigation under this section, the referred professional engineer or landscape architect shall not conduct a certification under section 1443 of this title until the resolution of the investigation by the relevant disciplinary board.

§ 1446. AGENCY LANDS

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

§ 1447. MUNICIPAL ZONING BYLAW OR ORDINANCE

(a) Municipal bylaw or ordinance control. A municipal bylaw or ordinance that is functionally equivalent to or more stringent than the shoreland standards adopted under section 1444 of this title shall apply and control construction or creation of a project in the protected shoreland area in the municipality. An approved shoreland consultant shall determine if the municipal bylaw or ordinance is functionally equivalent to or more stringent than the shoreland standards adopted under section 1444 of this title. When a municipal bylaw or ordinance applies under this section, the approved shoreland consultant shall comply with all requirements under section 1443 of this title for notifying the Secretary and for filing the certification in the land records of the municipality.

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(b) Construction of impervious surface or creation of cleared area occurring outside protected shoreland areas. Construction of impervious surface or creation of cleared area occurring outside a protected shoreland area shall conform to duly adopted municipal zoning bylaws and applicable municipal ordinances and shall not be subject to regulation by the Secretary of Natural Resources under this chapter.

(c) Existing municipal bylaws and ordinances. The shoreland protection standards adopted by the Secretary of Natural Resources under section 1444 of this title are in addition to existing municipal bylaws and ordinances, and proposed construction of impervious surface or creation of cleared area within the protected shoreland area shall comply with all relevant, existing municipal, state, and federal requirements.

§ 1448. ALLOWED ACTIVITIES IN PROTECTED SHORELAND AREA

The following activities in a protected shoreland area are not required to be certified under section 1443 of this title:

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

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



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

(2) Agricultural activities. Agricultural activities in protected shoreland areas if:

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

(B) any proposed expansion or modification to a farm structure, as that term is defined in the accepted agricultural practices, in a protected shoreland area shall be reviewed by the Secretary of Agriculture, Food and Markets in coordination with the Secretary of Natural Resources under a memorandum of understanding.

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

(A) transportation infrastructure by the Vermont Agency of Transportation or by a municipality; or

(B) a private road that does not require a permit under section 1264 of this title, provided that emergency repair, repair, and replacement of the

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private road shall comply with the applicable water quality best management practices within the Vermont Agency of Transportation town road and bridge standards for controlling stormwater runoff and direct discharges to state waters. The requirement to comply with the water quality best management practices shall apply even if the municipality in which the private road is located has not adopted the town road and bridge standards. Under this subdivision, expansion of a private road in order to allow for passage of emergency vehicles shall be considered repair that does not require a certification under section 1443 of this title.

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

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

(6) Electric utility projects and utility lines.

(A) The construction of electric utility projects that are subject to 30 V.S.A. § 248 or chapter 151 of this title.

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

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

(7) Dredge and fill. Dredge or fill activities operating under a permit issued by the U.S. Army Corps of Engineers under 33 U.S.C. § 1344, provided that the Secretary shall retain authority under the federal Clean Water Act, 33 U.S.C. § 1341, to certify that dredge or fill permitted by the U.S. Army Corps of Engineers complies with the Vermont Water Quality Standards.

§ 1449. COORDINATION OF AGENCY OF NATURAL RESOURCES'

PERMITTING OF ACTIVITIES IN PROTECTED SHORELAND

AREAS

(a) Coordination of permitting in protected shoreland area. During technical review of a permit application for a wastewater system, potable water

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supply, stormwater discharge, or stormwater treatment facility that is proposed to be located in a protected shoreland area and that does not require a permit under this chapter, the Agency division issuing the wastewater system, potable water supply, stormwater discharge, or stormwater treatment facility permit shall consult with the Agency's Lakes and Ponds Section regarding practices or activities that could reduce the impact of the proposed activity on the protected shoreland area or water quality of lakes adjacent to the protected shoreland area.

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

§ 1450. ENFORCEMENT

(a) Municipalities with a shoreland bylaw or ordinance functionally equivalent to or more stringent than the shoreland standards adopted under section 1444 of this title shall have primary enforcement authority for projects requiring certification under section 1443 of this title.

(b) Upon notice of an alleged violation of this chapter in a municipality with primary enforcement authority, the Secretary shall notify the municipality of the alleged violation.

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(c) If, within 90 days of receipt of notice of a violation under subsection (b) of this section, a municipality with primary enforcement fails to initiate an enforcement action or fails to remedy the alleged violation, the Secretary may initiate enforcement under chapter 201 of Title 10.

Sec. 3. 10 V.S.A. § 8003(a) is amended to read:

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

\* \* \*

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

(23) 24 V.S.A. § 2202a, relating to a municipality's adoption and implementation of a solid waste implementation plan that is consistent with the state solid waste plan; and

(24) 10 V.S.A. chapter 49A, relating to lake shoreland protection.

Sec. 4. 10 V.S.A. § 8503 is amended to read:

§ 8503. APPLICABILITY

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

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(1) The following provisions of this title:

\* \* \*

(R) chapter 32 (flood hazard areas).

(S) chapter 49A (lake shoreland protection).

\* \* \*

Sec. 5. PUBLIC PARTICIPATION IN DEVELOPMENT OF LAKE  
SHORELAND PROTECTION STANDARDS; REPORT

(a) In addition to the public participation requirements of 3 V.S.A. chapter 25 and prior to submitting a proposed rule to the Secretary of State under 3 V.S.A. § 838, the Secretary of Natural Resources shall engage in an expanded public participation process with affected stakeholders and other interested persons in a dialogue about intent, method, and content of rules required under 10 V.S.A. § 1444 regarding construction, creation, or expansion of impervious surface or cleared area in protected shoreland areas of lakes. The Secretary of Natural Resources is encouraged to use workshops, focused work groups, dockets, meetings, or other forms of communication to meet the participation requirements of this section.

(b) On or before September 1, 2014, the Secretary of Natural Resources shall commence rulemaking to establish standards for the construction,

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creation, or expansion of impervious surface or cleared area in protected shoreland areas of lakes.

(c) On or before April 15, 2015, the Secretary of Natural Resources shall submit to the House Committee on Fish, Wildlife and Water Resources and the Senate Committee on Natural Resources and Energy a copy of the rules required under 10 V.S.A. § 1444 regarding the regulation of construction, creation, or expansion of impervious surface or cleared area in protected shoreland areas of lakes. The report shall include a summary of the process followed by the Secretary of Natural Resources in developing the rules, including a summary of how the Secretary complied with the requirements of subsection (a) of this section.

Sec. 6. REPORT ON COSTS OF LAKE SHORELAND PROTECTION PROGRAM

On or before January 15, 2016, the Secretary of Natural Resources shall submit to the Senate Committee on Finance, the House Committee on Ways and Means, the Senate Committee on Natural Resources and Energy, and the House Committee on Fish, Wildlife and Water Resources a report regarding the costs to the Agency of Natural Resources of administering the Lake Shoreland Protection Program under 10 V.S.A. chapter 49A. The report shall include:

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(1) the number of lake shoreland protection registrations and permits issued by the Agency; and

(2) the cost to the Agency of implementing the Lake Shoreland Protection Program.

Sec. 7. 10 V.S.A. § 1454 is amended to read:

§ 1454. TRANSPORT OF AQUATIC PLANTS AND AQUATIC  
NUISANCE SPECIES

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

(b) The ~~secretary~~ Secretary may grant exceptions to persons to allow the transport of aquatic plants, zebra mussels, quagga mussels, or other aquatic nuisance species for scientific or educational purposes. When granting exceptions, the ~~secretary~~ Secretary shall take into consideration both the value of the scientific or educational purpose and the risk to Vermont surface waters



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posed by the transport and ultimate use of the specimens. A letter from the ~~secretary~~ Secretary authorizing the transport must accompany the specimens during transport.

(c) A violation of this section may be brought by any law enforcement officer, as that term is defined in 23 V.S.A. § 4(11), in the Environmental Division of the Superior Court. When a violation is brought by an enforcement officer other than an environmental enforcement officer employed by the Agency of Natural Resources, the enforcement officer shall submit to the Secretary a copy of the citation for purposes of compliance with the public participation requirements of section 8020 of this title.

Sec. 8. TRANSITION

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

(1) all necessary State, local, or federal permits have been obtained prior to January 1, 2015 and the permit holder takes no subsequent act that would require a certification under 10 V.S.A. chapter 49A; or

(2) a complete application for all applicable local, State, and federal permits has been submitted on or before January 1, 2015, provided that the applicant does not subsequently submit notice of a proposed project under 10

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V.S.A. chapter 49A and substantial construction of the impervious surface or  
cleared area commences within two years of the date on which all applicable  
local, State, and federal permits become final.

Sec. 9. EFFECTIVE DATE

This act shall take effect July 1, 2014.

COMMITTEE ON THE PART OF  
THE SENATE

COMMITTEE ON THE PART OF  
THE HOUSE

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