

1 H.542

2 Introduced by Representatives Dolan of Waitsfield, Anthony of Barre City,
3 Austin of Colchester, Brumsted of Shelburne, Campbell of
4 St. Johnsbury, and Satcowitz of Randolph

5 Referred to Committee on

6 Date:

7 Subject: Conservation and development; water resources; riparian protection
8 areas

9 Statement of purpose of bill as introduced: This bill proposes to require
10 establishment of a riparian protection area adjacent to each stream in the State.
11 A riparian protection area would be required to be at least 50 feet from the top
12 of bank or top of slope of a stream with 0.25 or less square miles in drainage
13 area and at least 100 feet from the top of bank or top of slope for a stream with
14 greater than 0.25 square miles in drainage area. A person would be prohibited
15 from creating cleared area or constructing impervious surface within a riparian
16 protection area unless permitted by the Secretary of Natural Resources or
17 allowed as a use under the act.

18 An act relating to establishing riparian protection areas in the State

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

2 Sec. 1. FINDINGS

3 The General Assembly finds that:

4 (1) The surface waters of Vermont, including rivers, streams, lakes, and
5 wetlands, are an invaluable resource to the State and its citizens. Surface
6 waters provide drinking water, support recreation and tourism, provide
7 residential and commercial uses that include agriculture and industrial uses,
8 and support wildlife habitat.

9 (2) The rivers and streams of the State are held in trust by the State for
10 its citizens, and, thus, the State is committed to protect and conserve these
11 waters for current citizens and future generations.

12 (3) According to the State of Vermont Lake Champlain Total Maximum
13 Daily Load (TMDL) Phase I Plan, over 20 percent of the phosphorus pollutant
14 load delivered to Lake Champlain comes from erosion due to unstable streams
15 and loss of river corridor and floodplain function. Additionally, according to
16 the State Hazard Mitigation Plan, Vermont is experiencing increased frequency
17 of severe precipitation events brought about by a changing climate.

18 (4) Restoring and protecting river corridors, floodplains, wetlands, and
19 adjacent woody vegetated riparian areas are among the State's principal and
20 cost-effective clean water restoration priorities of the Lake Champlain TMDL.

21 (5) According to the Lake Champlain TMDL Phase I Plan, woody
22 vegetated riparian areas improve water quality by filtering and absorbing

1 nutrient pollution in runoff and by supporting the integrity of stream banks to
2 help guard against erosion. Healthy woody vegetated riparian areas offer
3 additional benefits such as supporting fish habitat function and providing
4 habitat and movement corridors for wildlife.

5 (6) River corridors, floodplains, and wetlands with woody vegetated
6 riparian areas:

7 (A) Dampen flood energy and soil erosion by moderating stream
8 flow velocities when floodwaters spill onto them.

9 (B) Allow for sediment deposition on floodplains during floods,
10 which account for the greatest volumes of sediment over time.

11 (C) Moderate streambank failures due to the root strength, root depth,
12 and root density of the vegetated buffer. This role of river corridors,
13 floodplains, and wetlands with woody vegetated riparian areas in attenuating
14 flood impacts is an important climate resiliency strategy, benefiting
15 landowners and communities statewide.

16 (7) River corridors, floodplains, wetlands, and woody vegetated riparian
17 areas are vulnerable to encroachment and piecemeal development that could
18 result in significant increases in water quality degradation from runoff and
19 erosion as well as increases in vulnerability of flood impacts for communities,
20 particularly those communities downstream.

21 (8) One of the functions of the Agency of Natural Resources is to work
22 with municipalities to protect public safety and infrastructure and encourage

1 municipal adoption of enhanced floodplain and river corridor land use bylaws
2 to minimize encroachment of development in river corridors and floodplains.

3 (9) With respect to woody vegetated riparian areas, the State has in
4 place water quality-based programs that require protection of riparian areas
5 adjacent to wetlands, lakes, and ponds but not adjacent to rivers and streams.
6 Moreover, the State of Vermont, in partnership with the University of
7 Vermont, is developing tools to aid in the restoration and protection of the
8 State's rivers, wetlands, and floodplains, referred to as the Functioning
9 Floodplains Initiative. Additional protection of woody vegetated riparian areas
10 along rivers and streams is necessary.

11 (10) Riparian protection areas consisting of trees and other vegetation
12 adjacent to the State's rivers and streams function to intercept and infiltrate
13 snowmelt and precipitation-driven surface water runoff; filter and minimize the
14 effects of runoff containing pollutants, including nutrient pollution, sediment,
15 organic matter, pesticides, and other pollutants; help minimize erosion of the
16 stream channel and streambank; contribute to the role of river corridors and
17 floodplains, which slow down and attenuate the impacts of floodwaters on
18 floodplain; and contribute to improving community resilience to flooding.
19 Riparian protection areas also moderate water temperatures, promote open
20 space, and preserve and protect the habitat of terrestrial and aquatic wildlife.

1 Sec. 2. 10 V.S.A. chapter 52 is added to read:

2 CHAPTER 52. RIPARIAN PROTECTION AREAS

3 § 1491. DEFINITIONS

4 As used in this chapter:

5 (1) “Cleared area” means an area where existing vegetative cover, soil,
6 or tree canopy is permanently removed or altered. “Cleared area” does not
7 mean management of vegetative cover conducted according to requirements
8 adopted by the Secretary by rule.

9 (2) “Ephemeral stream” means a stream that does not have defined
10 channels formed by scour and that flows only in response to localized
11 precipitation or snowmelt events.

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

15 (4) “Intermittent stream” means a stream with a well-defined channel,
16 with evidence of sediment transport, and that regularly experiences periodic
17 interruption of surface water flow throughout its length.

18 (5) “Nonconforming lot or parcel” means a lot or parcel that does not
19 conform to the riparian protection area requirements of this chapter but were in
20 conformance with all applicable laws, ordinances, and regulations prior to the
21 enactment of this chapter, including a lot or parcel improperly authorized due
22 to an error by a municipal administrative officer.

1 (6) “Nonconforming structure” means a structure or part of a structure
2 that does not conform to the riparian protection area requirements of this
3 chapter but was in conformance with all applicable laws, ordinances, and
4 regulations prior to the enactment of this chapter, including a structure
5 improperly authorized as a result of an error by a municipal administrative
6 officer.

7 (7) “Nonconforming use” means use of land that does not conform to
8 the riparian protection area requirements of this section but did conform to all
9 applicable laws, ordinances, and regulations prior to the enactment of the
10 present bylaws, including a use improperly authorized as a result of an error by
11 a municipal administrative officer.

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

14 (9) “Perennial stream” means a watercourse or portion, segment, or
15 reach of a watercourse, generally exceeding one-half square mile in watershed
16 size, in which surface flows are not frequently or consistently interrupted
17 during normal seasonal low flow periods. Perennial streams that begin flowing
18 subsurface during low flow periods due to natural geologic conditions remain
19 defined as perennial. All other streams or stream segments of significant
20 length shall be termed intermittent. A perennial stream does not include the
21 standing waters in wetlands, lakes, and ponds.

1 (10) “Riparian protection area” means all land within an Agency of
2 Natural Resources determined river corridor that is located within 50 feet of
3 the top of bank or top of slope of a stream. A riparian protection area is a
4 largely undisturbed area consisting of trees, shrubs, groundcover plants, duff
5 layer, and a naturally vegetated uneven ground surface.

6 (11) “Secretary” means the Secretary of Natural Resources.

7 (12) “Stream” means the full length and width, including the bed and
8 banks, of any watercourse, including rivers, creeks, brooks, ephemeral streams,
9 intermittent streams, and branches. “Stream” does not include constructed
10 drainageways.

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

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

19 (15) “Vegetative cover” means mixed vegetation within the protected
20 shoreland area consisting of trees, shrubs, groundcover, and duff. “Vegetative
21 cover” does not mean grass lawns; noxious weeds designated by the Secretary
22 of Agriculture, Food and Markets under 6 V.S.A. chapter 84; or nuisance

1 plants, such as poison ivy and poison oak, designated by the Secretary of
2 Natural Resources.

3 § 1492. ESTABLISHMENT OF RIPARIAN PROTECTION AREA;
4 VEGETATIVE COVER AREA

5 (a) Unless otherwise provided in this chapter, a riparian protection area
6 shall be established on lands adjacent to each stream in the State.

7 (b) A riparian protection area shall be at least 50 feet from the top of bank
8 or top of slope of a stream with 0.25 or less square miles in drainage area and
9 at least 100 feet from the top of bank or top of slope for a stream with greater
10 than 0.25 square miles in drainage area.

11 (c) The boundary of the riparian protection areas shall be measured
12 horizontally across the surface of the land from the top of bank or top of slope
13 of a stream.

14 (d) A vegetative cover area shall be established within the riparian
15 protection area on all lands at least 35 feet from the top of bank or top of slope
16 of a stream. A use of land in the vegetative cover area may occur only when
17 permitted by the Secretary or otherwise allowed under this chapter. The
18 vegetative cover area shall be managed according to standards established by
19 the Secretary of Natural Resources by rule.

20 (e) Land in the riparian protection area located beyond the vegetative cover
21 area shall be known as the flexible area. A person can create cleared area or
22 impervious surface within the flexible area, provided that:

1 (1) the activity is permitted by the Secretary or is otherwise allowed
2 under this chapter;

3 (2) not less than 70 percent of the flexible area is covered by forested
4 crown cover;

5 (3) not more than 20 percent of the flexible area is covered in
6 impervious surface; and

7 (4) the functions and values of the riparian protection area are
8 maintained.

9 § 1493. PROHIBITION; PERMIT; REGULATED USES

10 (a) A person shall not create cleared area or construct impervious surface
11 within a riparian protection area unless permitted by the Secretary of Natural
12 Resources or allowed as a use under this chapter.

13 (b) The Secretary of Natural Resources may issue a permit for one or more
14 of the following activities that create cleared area, construct impervious
15 surface, or engage in other uses within a riparian protection area subject to the
16 standards and conditions adopted by the Secretary by rule:

17 (1) new cleared area or impervious surface created or constructed within
18 a riparian protection area, provided that:

19 (A) encroachment into the riparian protection area is necessary in
20 order to fulfill the purpose of the cleared area or impervious surface;

1 (B) the applicant shall retain in its natural condition the vegetative
2 cover area of the riparian protection area that is not affected by the cleared area
3 or impervious surface;

4 (C) the applicant shall retain or provide vegetative cover that screens
5 the cleared area or impervious surface from the surface of a stream;

6 (D) the applicant shall stabilize the bank of the stream from erosion
7 with vegetative cover when required by rule or by the Secretary as a permit
8 condition;

9 (E) the applicant shall take reasonable steps to minimize the impact
10 of the cleared area or impervious surface on the riparian protection area; and

11 (F) the applicant shall mitigate any impact to the riparian protection
12 area;

13 (2) new access to streams that are public waters subject to conditions in
14 a permit;

15 (3) use or storage of hazardous materials, as that term is defined in
16 section 6602 of this title, provided that any standards adopted by the Secretary
17 shall be consistent with and at least as stringent as State and federal law;

18 (4) use of storage of other materials that could impair water quality,
19 provided that any requirements adopted by the Secretary shall be consistent
20 with and at least as stringent as State and federal law;

21 (5) recreational uses, including docks, decks, piers, access areas, landing
22 areas, and beaches;

1 (6) construction of new utility lines to the extent necessary to cross or
2 encroach into the riparian protection area where there is no feasible alternative
3 for providing or extending utility services;

4 (7) new stormwater treatment facilities or practices permitted by the
5 Secretary of Natural Resources and compliant with the Agency of Natural
6 Resources Stormwater Management Manual;

7 (8) river or stream conservation or restoration projects approved by the
8 Secretary of Natural Resources;

9 (9) construction of new alignment linear public transportation facilities;

10 (10) private crossings of riparian protection areas, including driveways
11 and other access roads, necessary to gain access to land on the opposite side of
12 the protection area, or for purposes of providing safe access to an allowed use,
13 in cases where there is no feasible alternative for providing safe access;

14 (11) construction of fences, walls, or signs; or

15 (12) encroachment necessary for providing for or improving public
16 facilities, provided that:

17 (A) the encroachment on the riparian protection area is necessary in
18 order to provide for or improve the public facility;

19 (B) the applicant shall retain vegetative cover in the portion of the
20 riparian protection area that is not subject to the encroachment;

1 (C) the applicant shall retain or provide vegetative cover that screens
2 the cleared area, impervious surface, or other allowed use from the surface of a
3 stream;

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

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

8 (F) the applicant shall mitigate any impact to the riparian protection
9 area according to the rules adopted by the Secretary of Natural Resources
10 under section 1496 of this title.

11 (c) Change in nonconformity. Any conformity may be expanded, altered,
12 or reconstructed, provided that all of the following requirements are met:

13 (1) If the expansion, alteration, or reconstruction involves a structure,
14 the structure was originally constructed on or before July 1, 2023.

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

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

19 (4) A nonconformity that is replaced by a use authorized under this
20 chapter may not revert to a nonconforming use.

21 (5) If a structure associated with a nonconformity is damaged or
22 destroyed by over 75 percent of its market value by floodwater inundation or

1 fluvial erosion, the structure shall not be rebuilt within the riparian protection
2 area unless authorized by the Secretary of Natural Resources.

3 (6) Enlargement or reconstruction of a structure associated with a
4 nonconformity within a riparian protection area shall be permitted if the
5 Secretary of Natural Resources determines that the new cleared area or
6 impervious surface does not decrease the existing structure setback from the
7 stream or increase the encroachment within the riparian protection area, and
8 the total building footprint area of the expanded or reconstructed structure is
9 not more than 50 percent or 1,000 square feet larger than the footprint of the
10 structure lawfully existing on or before the effective date of this act.

11 (7) New accessory structures appurtenant to a nonconformity within a
12 riparian protection area shall only be permitted if it is determined that the
13 accessory structure does not extend into the riparian protection area any farther
14 than the existing structure, and the total building footprint area of the new
15 accessory structure is not more than 50 percent of the footprint of the
16 preexisting structure or 1,000 feet larger.

17 § 1494. ALLOWED USES

18 The following uses are allowed in the riparian protection area and shall not
19 require a permit under section 1493 of this title:

20 (1) maintenance of vegetative cover and planting within a riparian
21 protection area, including the cutting of dead or dangerous leaning or broken

1 trees and pruning of branches and small underbrush for view maintenance and
2 air movement;

3 (2) silvicultural activities conducted in compliance with the most recent
4 acceptable management practices as defined by the Commissioner of Forests,

5 Parks and Recreation;

6 (3) farming conducted in compliance with the requirements of 6 V.S.A.
7 chapter 215;

8 (4) nonconformities, including repair, renovation, or maintenance, of a
9 nonconforming structure, provided that the result of any repair, renovation, or
10 maintenance is a functionally equivalent use and does not increase the footprint
11 or encroachment toward the stream;

12 (5) maintenance of access to public waters existing on the effective date
13 of this act;

14 (6) reconstruction, repair, or maintenance of existing:

15 (A) linear public transportation facilities, improvements directly
16 related to providing transportation enhancements, and safety features on or
17 adjacent to linear public transportation facilities;

18 (B) pollution abatement facilities permitted by the Secretary; or

19 (C) utility lines and poles, including vegetation maintenance in utility
20 line corridors, in a manner that minimizes adverse impacts and is in response
21 to an emergency or in accordance with a plan approved by the Secretary of
22 Natural Resources;

1 (7) the control of non-native, invasive species of plants;

2 (8) railroad activities and facilities within the jurisdiction of federal law;

3 (9) stormwater treatment facilities or practices permitted by the

4 Secretary and existing within a riparian protection area as of July 1, 2023,

5 including repair or maintenance;

6 (10) construction of electric transmission projects that are subject to

7 30 V.S.A. § 248;

8 (11) trail construction and maintenance conducted in conformance with

9 applicable management standards recommended by the Commissioner of

10 Forests, Parks and Recreation;

11 (12) stairways or paths of not more than six feet in width that lead to a

12 stream;

13 (13) stream and river restoration work that requires regrading of slope

14 and establishment of a vegetated riparian area; and

15 (14) construction, expansion, or alteration of seawalls, retaining walls,

16 or shoreline stabilization as part of a shoreland encroachment permit issued

17 under 29 V.S.A. § 403.

18 § 1495. MUNICIPAL DELEGATION

19 (a) Delegation. The Secretary may delegate authority to permit the cutting

20 of woody vegetation, construction, excavation, or filling activities within a

21 riparian protection area under this chapter to a municipality that has adopted a

22 riparian protection bylaw or ordinance if:

1 (1) the municipality adopts a bylaw or ordinance regulating cutting of
2 woody vegetation, construction, excavation, or filling activities within a
3 riparian protection area;

4 (2) the municipal bylaw or ordinance is, as determined by the Secretary,
5 functionally equivalent to the requirements under sections 1492, 1493, and
6 1494 of this title; and

7 (3) the Secretary determines that the municipality provides adequate
8 resources for administration and enforcement of the bylaw or ordinance.

9 (b) Delegation agreement.

10 (1) Delegation under subsection (a) of this section shall be by agreement
11 between the Secretary and the municipality. The delegation agreement shall
12 set the terms for revocation of delegation.

13 (2) Under the delegation agreement, the Secretary and the municipality
14 may agree, in instances where a delegated municipality does not or cannot
15 address noncompliance, that the Secretary, after consultation with the
16 municipality, may institute enforcement proceedings under chapter 201 of this
17 title.

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

19 (A) have or establish a process for accepting, reviewing, and
20 processing applications and issuing permits for cutting of woody vegetation,
21 construction, excavation, or filling activities within a riparian protection area;

22 (B) take timely and appropriate enforcement actions;

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

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

5 (E) cure any defects in such bylaw or ordinance or in the
6 administration or enforcement of such bylaw or ordinance upon notice of a
7 defect from the Secretary.

8 (4) A municipality that seeks delegation under subsection (a) of this
9 section shall be presumed to satisfy the requirements of this subsection for a
10 permit process and enforcement if the municipality has designated a municipal
11 zoning administrator or other municipal employee or official as responsible for
12 the permitting and enforcement of the cutting of woody vegetation,
13 construction, excavation, or filling activities within a riparian protection area.

14 § 1496. RULEMAKING

15 The Secretary of Natural Resources shall adopt rules to implement the
16 requirements of this chapter. The rules shall include all of the following:

17 (1) Requirements for the mitigation of the impact of a regulated use or
18 allowed use on a riparian buffer area, including mitigation offsets and
19 mitigation banking, including a policy of not-net loss. Mitigation may include
20 off-site mitigation or some combination of on-site and off-site mitigation of the
21 impact to the riparian protection area when on-site mitigation alone is not
22 reasonable or appropriate. Mitigation shall not be required when a new use

1 within the protection area would mitigate existing impacts to the protection
2 area.

3 (2) Standards for vegetative cover, including standards for removal of
4 vegetative cover when authorized under the chapter.

5 (3) Other standards necessary for implement of the requirements of this
6 chapter.

7 Sec. 3. IMPLEMENTATION; TRANSITION

8 (a) A permit shall be required under 10 V.S.A. chapter 52 beginning on
9 July 1, 2023.

10 (b) A permit under 10 V.S.A. chapter 52 for the riparian protection area
11 shall not be required on a parcel of land for a project for which:

12 (1) all necessary State, local, or federal permits have been obtained prior
13 to July 1, 2023, and the permit holder takes no subsequent act that would
14 require a permit or registration under 10 V.S.A. chapter 52; or

15 (2) a complete application for all applicable local, State, and federal
16 permits has been submitted on or before the effective date of this act, provided
17 that the applicant does not subsequently file an application for a permit
18 amendment that would require a permit under 10 V.S.A. chapter 52, and
19 substantial construction of the impervious surface or cleared area commences
20 within two years of the date on which all applicable local, State, and federal
21 permits become final.

1 Sec. 4. EFFECTIVE DATE

2 This act shall take effect on July 1, 2022.