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1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Fish, Wildlife & Water Resources to which was referred
3 House Bill No. 323 entitled "An act relating to establishing buffer zones
4 adjacent to rivers of the state" respectfully reports that it has considered the
5 same and recommends that the bill be amended by striking out all after the
6 enacting clause and inserting in lieu thereof the following:

7 Sec. 1. FINDINGS

8 The general assembly finds that:

9 (1) The lakes and streams of Vermont are an invaluable resource to the
10 state and its citizens.

11 (2) The lakes and streams of the state are held in trust by the state for its
12 citizens, and, thus, the state is bound to protect and conserve these waters.

13 (3) The land adjacent to the lakes and streams of the state harbor some
14 of the most valuable natural resources in the state and serve important
15 functions related to the health and quality of the state's lakes and streams.

16 (4) The lands adjacent to the state's lakes and streams are often fragile
17 natural resources, and their protection in the face of increasing development
18 pressure is necessary to maintain the vitality and health of the state's lakes and
19 streams.

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1 (5) Under current law, the potential exists for uncoordinated, unplanned,
2 and piecemeal development adjacent to the state's lakes and streams, which
3 could result in significant negative impacts on the lakes and streams of
4 Vermont.

5 (6) The agency of natural resources' river management corridor program
6 has worked successfully with municipalities to identify and map flood hazard
7 zones, and the agency's river management corridor program should continue
8 and be supported. However, additional protection of land adjacent to the
9 state's lakes and streams is necessary.

10 (7) Buffer zones consisting of trees and other vegetation adjacent to the
11 state's lakes and streams function to control water pollution; control building
12 within the state's shorelands; preserve and protect wetlands; help maintain and
13 protect channel, streambank, and floodplain stability; preserve and protect the
14 habitat of terrestrial and aquatic wildlife; promote open space; and achieve
15 additional environmental protection for the lakes and streams of Vermont.

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

17 CHAPTER 49a. RIPARIAN BUFFER ZONES

18 § 1431. DEFINITIONS

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

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

2 (2) "Encroach" means to place or cause to be placed any material or
3 structure in any riparian buffer or to alter or cause to be altered the lands within
4 a riparian buffer.

5 (3) "Lake" means Lake Champlain, Lake Memphremagog, all natural
6 inland lakes within Vermont, and all natural ponds of more than 20 acres.

7 (4) "Nonconforming lots or parcels" means lots or parcels in existence
8 on July 1, 2014 that do not conform to the requirements in section 1433 of this
9 title regarding riparian buffer size and uses within a riparian buffer but were in
10 conformance with all applicable laws, ordinances, and regulations prior to the
11 enactment of section 1433 of this title, including a lot or parcel improperly
12 authorized as a result of error by the administrative officer.

13 (5) "Nonconforming structure" means a structure or part of a structure
14 that does not conform to the requirements in section 1433 of this title regarding
15 riparian buffer size and uses within a riparian buffer but were in conformance
16 with all applicable laws, ordinances, and regulations prior to the enactment of
17 section 1433 of this title, including a structure improperly authorized as a result
18 of error by the administrative officer.

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1 (6) “Nonconforming use” means use of land that does not conform to
2 the requirements in section 1433 of this title regarding riparian buffer size and
3 uses within a riparian buffer but did conform to all applicable laws, ordinances,
4 and regulations prior to the enactment of section 1433 of this title, including a
5 use improperly authorized as a result of error by the administrative officer.

6 (7) “Nonconformity” means a nonconforming use, structure, lot, or
7 parcel.

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

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

15 (10) “Shorelands” means “shorelands” as that term is defined in section
16 1422 of this title.

17 (11) “Stream” means all year-round flowing waters of fourth order or
18 higher as listed and mapped by the secretary of natural resources under 10
19 V.S.A. § 1441 according to the Strahler stream order classification. “Stream”

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1 does not mean constructed drainageways, including water bars, swales, and
2 roadside ditches.

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

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

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

16 § 1432. PURPOSE

17 It is the purpose of this chapter to establish beginning July 1, 2015 a
18 riparian buffer along the lakes and streams of the state. Use or development in
19 a riparian buffer shall be administered and enforced by municipalities that have

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1 adopted qualifying municipal bylaws or ordinances. In municipalities without
2 a qualifying municipal bylaw or ordinance, use or development in a riparian
3 buffer shall be administered and enforced by the secretary of natural resources
4 according to the requirements of this chapter and rules adopted by the secretary
5 to implement the requirements of this chapter.

6 § 1433. MINIMUM RIPARIAN BUFFER

7 (a) Beginning July 1, 2015, a riparian buffer of at least 50 feet shall be
8 established along the lakes and streams of the state unless:

9 (1) A municipality in which a stream is located has adopted fluvial
10 erosion hazard maps and associated bylaws that comply with the requirements
11 of section 1440 of this title, provided that a riparian buffer of at least 50 feet
12 shall be established adjacent to a stream that is not included on a fluvial
13 erosion hazard map adopted in a bylaw or ordinance by a municipality;

14 (2) A municipality in which a lake or stream is located adopts a riparian
15 buffer zoning bylaw under 24 V.S.A. § 4428; or

16 (3) The municipality in which a lake or stream is located adopted a
17 riparian buffer bylaw prior to July 1, 2014 and that bylaw, as determined by
18 the agency of natural resources:

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1 (A) Is consistent with the purposes and the requirements of 24 V.S.A.

2 § 4428;

3 (B)(i) Requires the establishment of a riparian buffer of at least 50

4 feet; or

5 (ii) Establishes a riparian buffer of less than 50 feet that is based

6 on site specific conditions; and

7 (4) The municipality updates its riparian buffer bylaw to be

8 consistent with the requirements of 24 V.S.A. § 4428 subsequent to the next

9 revision of its municipal plan.

10 § 1434. ALLOWED USES

11 The following uses are allowed in a riparian buffer zone and are not subject

12 to the requirements of section 1433 of this title.

13 (1) Vegetation maintenance and planting within a riparian buffer,

14 including the cutting of dead or dangerous leaning or broken trees and pruning

15 of branches and small underbrush for view maintenance and air movement.

16 (2) Forestry conducted in compliance with accepted silvicultural

17 practices as defined by the commissioner of forests, parks and recreation under

18 section 2622 of this title.

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

3 (4) Nonconformities, including repair, renovation, or maintenance, of a
4 nonconforming structure provided that the requirements of section 1 437 of this
5 title are met and the result of any repair, renovation, or maintenance is a
6 functionally equivalent use; and

7 (5) Reconstruction, repair, or maintenance of:

8 (A) linear public transportation facilities; improvements directly
9 related to providing transportation enhancements; and safety features on or
10 adjacent to linear public transportation facilities; or

11 (B) pollution abatement facilities permitted under section 1263 of
12 this title.

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

15 (7) Railroad activities and facilities within the jurisdiction of federal
16 law.

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

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

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

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

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

10 (13) Construction, reconstruction, repair or maintenance of utility lines
11 and poles, including vegetation maintenance in utility line corridors, in a
12 manner that minimizes adverse impacts and is in response to an emergency or
13 in accordance with the utility's vegetation management plan or best
14 management practices approved by the secretary of natural resources.

15 § 1435. REGULATED USES

16 (a) No person shall commence construction, excavation, filling, or any
17 other use within a riparian buffer without obtaining a permit from the secretary
18 of natural resources, except for:

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1 (1) uses within a riparian buffers subject to regulation under a municipal
2 bylaw or ordinance adopted under sections 1433 of this title; or

3 (2) allowed uses set forth under section 1434 of this title.

4 (b) The secretary of natural resources may adopt rules setting forth the
5 standards and conditions for uses within the riparian buffer, including
6 additional allowed uses of the a riparian buffer.

7 § 1436. ENCROACHMENT ON A RIPARIAN BUFFER

8 Encroachment on a riparian buffer may occur in the following
9 circumstances:

10 (1) the encroachment must impact the buffer in order to fulfill its
11 purpose;

12 (2) the applicant shall retain in its natural condition the portion of the
13 buffer that is not impacted out of necessity by the encroachment;

14 (3) the applicant shall retain or provide vegetation which, when relevant
15 to the allowed use, screens the encroachment from the surface of a lake or
16 stream;

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

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1 (5) the applicant shall take reasonable steps to minimize the impact on
2 the riparian buffer; and

3 (6) the applicant shall mitigate any impact to the riparian buffer
4 according to the rules adopted by the secretary of natural resources under
5 section 1438 of this title so that no net loss of acreage to the riparian buffer
6 occurs.

7 § 1437. NONCONFORMITIES IN THE BUFFER

8 Any nonconformity in a riparian buffer may be expanded, altered, or
9 reconstructed, provided that:

10 (1) if the expansion, alteration, or reconstruction involves a structure,
11 the structure was originally constructed on or before July 1, 2015;

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

14 (3) A nonconforming use that is discontinued for two years or
15 abandoned shall not be resumed.

16 (4) A nonconformity that is replaced by an allowed use under section
17 1434 of this title or a regulated use permitted by the secretary under section
18 1435 of this title may not revert to a nonconforming use.

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1 (5) If a structure associated with a nonconformity is damaged or
2 destroyed over 75 percent of its market value by floodwater inundation or
3 fluvial erosion, the structure shall not be rebuilt within the riparian buffer
4 unless authorized by the secretary of natural resources.

5 (6) Enlargement or reconstruction of a structure associated with a
6 nonconformity within a riparian buffer shall be permitted if the secretary of
7 natural resources determines that the development activity will not decrease
8 the existing structure setback from the lake or stream or increase the
9 encroachment within the riparian buffer, and the total building footprint area of
10 the expanded or reconstructed structure is no more than 50 percent larger than
11 the footprint of the structure lawfully existing on or before the effective date of
12 this act.

13 (7) New accessory structures appurtenant to a nonconformity within a
14 riparian buffer shall be permitted if it is determined that the accessory structure
15 does not extend into the buffer any further than the existing structure, and the
16 total building footprint area of the new accessory structure is no more than 50
17 percent of the footprint of the preexisting structure.

18

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1 § 1438. MITIGATION

2 The secretary of natural resources shall adopt by rule requirements for the
3 mitigation of the impact of a regulated use authorized under section 1435 of
4 this title. Mitigation may include off-site mitigation or some combination of
5 on-site and off-site mitigation of the impact to the riparian buffer when on-site
6 mitigation alone is not reasonable or appropriate. Mitigation may include
7 mitigation offsets or mitigation banking. Mitigation shall not be required when
8 a new use within the buffer would mitigate existing impacts to the buffer.

9 § 1439. RULEMAKING; GENERAL PERMIT AUTHORITY

10 (a) The secretary may adopt rules to implement the requirements of this
11 chapter.

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

17 § 1440. FLUVIAL EROSION HAZARD AREAS

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1 (a) The secretary of natural resources shall establish a fluvial erosion
2 hazard area program to assist municipalities in developing and adopting fluvial
3 erosion hazard maps that delineate the corridors of the streams of the state.

4 (b) Fluvial erosion hazard maps shall include a riparian buffer zone
5 adjacent to all streams of the state. The size of the buffer zone included on a
6 fluvial erosion hazard map shall be determined by site-specific conditions.

7 § 1441. RIVER ORDER

8 On or before July 1, 2011, the secretary of natural resources shall identify
9 all streams, as that term is defined in section 1451 of this title, of the state. The
10 secretary shall publish all identified streams of the state as both a list and a
11 map. The secretary shall provide the list and map to any person upon request
12 and shall post the list and map on the Internet website of the agency of natural
13 resources.

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

15 (o)(1) For riparian buffer use permits issued under 10 V.S.A. chapter 49a
16 the permit application fee shall be \$100.00 plus \$0.10 per square foot of area
17 affected by the proposed activities, with a maximum fee as follows:

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

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

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

2 (2) Fees collected under this subsection shall be credited to a special
3 fund and shall be available to the agency to offset the cost of providing
4 services required to implement and operate the riparian buffer program under
5 10 V.S.A chapter 49a.

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

7 § 687. ALLOCATION SYSTEM

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

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

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

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

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

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- 1 (B) the creation, expansion, or retention of employment through the
2 stimulation of private investment and community revitalization;
- 3 (C) the installation, rehabilitation, or replacement of public facilities;
- 4 (D) activities that test the feasibility of innovative approaches to
5 community development;
- 6 (E) activities that provide timely responses to unpredictable
7 circumstances or special development opportunities.
- 8 (4) The allocation system shall include a method through which the need
9 for, and impact of, the projects proposed by municipalities shall be measured
10 and shall establish a process for evaluation of the applications.
- 11 (5) The allocation system shall give priority to municipalities that have
12 completed fluvial erosion hazard maps and adopted associated bylaws that
13 comply with the requirements of section 1440 of this title.

14 Sec. 5. 10 V.S.A. § 1628 is amended to read:

15 § 1628. PRIORITIES

16 The department shall make awards under this chapter to eligible municipal
17 projects on the basis of urgency of need as determined according to a system of
18 priorities adopted by the department and to the extent appropriate funds are
19 available. The department shall assure that projects sponsored by a town

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1 school district, or incorporated school district shall be given increased priority
2 for purposes of the receipt of engineering planning advances awarded under
3 section 1593 of this chapter. The department shall assure that projects in a
4 municipality that has adopted fluvial erosion hazard areas that comply with the
5 requirements of section 1440 of this title shall be given increased priority. The
6 total amount of the engineering planning advances made and still outstanding
7 during a period for this purpose shall not exceed 30 percent of the bond issue
8 or appropriation voted for construction grant funds by the general assembly for
9 the period in which the award is made.

10 Sec. 6. 10 V.S.A. § 8003(a) is amended to read:

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

13 * * *

14 (17) 10 V.S.A. § 2625, relating to heavy cutting of timber; ~~and~~

15 (18) 10 V.S.A. chapter 164, relating to comprehensive mercury
16 management; and

17 (19) 10 V.S.A. chapter 49a, relating to riparian buffers.

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

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

5 (1) The following provisions of this title:

6 * * *

7 (O) chapter 49a (relating to riparian buffers).

8 Sec. ~~8~~. 24 V.S.A. § 4424 is amended to read:

9 § 4424. ~~SHORELANDS; FLOOD OR HAZARD AREA; SPECIAL OR~~

10 ~~FREESTANDING BYLAWS~~ REGULATION OF HAZARD AREAS

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

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

15 ~~(2) Bylaws to regulate development and use in flood or other hazard~~

16 ~~areas. The following shall apply if flood or other hazard area bylaws are~~
17 ~~enacted:~~

18 ~~(A) Purposes.~~

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

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

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

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

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

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

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1 ~~(ii) Require flood and hazard protection through elevation,~~
2 ~~floodproofing, disaster preparedness, hazard mitigation, relocation, or other~~
3 ~~techniques.~~

4 ~~(iii) Require adequate provisions for flood drainage and other~~
5 ~~emergency measures.~~

6 ~~(iv) Require provision of adequate and disaster resistant water and~~
7 ~~wastewater facilities.~~

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

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

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

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

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

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

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

17 ~~(ii) The appropriate municipal panel finds that the repair,~~
18 ~~relocation, or enlargement of the nonconforming structure will not increase~~
19 ~~flood levels in the regulatory floodway, increase the risk of other hazard in the~~

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1 area, or threaten the health, safety, and welfare of the public or other property
2 owners.

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

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

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

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

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

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

18 (5) Avoid or minimize the loss of life and property, the disruption of
19 commerce, the impairment of the tax base, and the extraordinary public

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1 expenditures and demands on public service that result from flooding, stream
2 bank and shoreland erosion, and other known hazards.

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

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

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

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

16 (2) Riparian buffers as defined in section 1431 of Title 10;

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

18 (4) Fluvial erosion hazard areas mapped in accordance with section
19 1440 of Title 10 and other state standards; or

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

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

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

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

9 (3) Be submitted to the agency of natural resources at least 30 days prior
10 to adoption by the municipality to be reviewed for consistency with minimum
11 federal and state program requirements, including state riparian buffer zone
12 requirements, recommended shoreland and fluvial erosion hazard area
13 regulations, and minimum requirements for community participation in the
14 national flood insurance program. Municipalities that adopt bylaws that are
15 inconsistent with these recommendations and requirements may forfeit or limit
16 their eligibility for participation in federal and state hazard mitigation and
17 disaster recovery programs.

18 (d) Content of hazard area bylaws.

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

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

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

11 (C) Require hazard protection through disaster preparedness, hazard
12 mitigation, relocation, elevation, floodproofing, or other accepted mitigation
13 practices.

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

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

17 (2) All hazard area bylaws shall require the administrative officer to
18 submit a copy of an application for development within designated hazard
19 areas to the agency of natural resources for review and comment prior to the

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1 issuance of a municipal land use permit. No permit shall be issued until
2 comments have been received or 30 days have elapsed from the date of
3 referral, whichever is sooner.

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

9 (A) Program definitions;

10 (B) Flood plain management criteria;

11 (C) Administration and enforcement requirements;

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

14 (E) Notification and recordkeeping requirements.

15 (e) Effect on other bylaws. Hazard area regulations may alter uses or
16 activities that are otherwise allowed or prohibited under a zoning or unified
17 development bylaw within designated hazard areas, as well as the applicability
18 of other bylaw provisions. Where hazard area regulations and other zoning

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

3 Sec. 9. 24 V.S.A. § 4428 is added to read:

4 § 4428. RIPARIAN BUFFER BYLAWS

5 (a) In order to qualify for the exemption from minimum riparian buffer size
6 along lakes and streams required under subsection 1433(a) of Title 10, a
7 municipality may adopt freestanding bylaws or amend zoning or unified
8 development bylaws according to the requirements of this section in order to
9 regulate development and use of riparian buffers along lakes and streams. As
10 used in this section, “riparian buffer,” “lakes,” and “streams” shall be defined
11 as those terms are defined in section 1431 of Title 10.

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

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

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

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

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

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

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

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

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

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

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

16 (ii) for redevelopment of land that has been disturbed prior to

17 July 1, 2010, by industrial or urban development.

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

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1 (4) Authorize allowed or conditional uses within the buffer. In adopting
2 allowed or conditional uses under this subsection, a municipality may regulate
3 a use allowed under section 1434 of Title 10, provided that the municipality is
4 not prohibited from regulating such a use under section 4413 of this title or
5 other provisions of state or federal law.

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

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

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

15 Sec. 10. 24 V.S.A. § 4753a is amended to read:

16 § 4753a. AWARDS FROM REVOLVING LOAN FUNDS

17 (a) Pollution control. The general assembly shall approve all categories of
18 awards made from the special funds established by section 4753 of this title for
19 water pollution control facility construction, in order to assure that such awards

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1 conform with state policy on water quality and pollution abatement, and with
2 the state policy that, except as provided in subsection (c) of this section,
3 municipal entities shall receive first priority in the award of public monies for
4 such construction, including monies returned to the revolving funds from
5 previous awards. To facilitate this legislative oversight, the secretary of
6 natural resources shall annually no later than January 15 report to the house
7 and senate committees on institutions and on natural resources and energy on
8 all awards made from the relevant special funds during the prior and current
9 fiscal years, and shall report on and seek legislative approval of all the types of
10 projects for which awards are proposed to be made from the relevant special
11 funds during the current or any subsequent fiscal year. Where feasible, the
12 specific projects shall be listed.

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

18 (c) Wastewater system and potable water supply loans. Notwithstanding
19 other priorities established in law, the secretary may award up to \$500,000.00

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1 of the funds from the Vermont environmental protection agency control fund
2 and the Vermont pollution control revolving fund, combined, to a state agency,
3 the Vermont housing finance agency, or a municipality for the administration
4 of loans to households with income equal to or less than 200 percent of the
5 state average median household income for the repair or replacement of failed
6 wastewater systems and failed potable water supplies, as those terms are
7 defined in section 1972 of Title 10. Upon award of funds under this section,
8 the state agency, Vermont housing finance agency, or municipality shall agree,
9 pursuant to a memorandum of understanding with the secretary of natural
10 resources, to repay the funds awarded to the special fund from which they were
11 drawn.

12 (d) Fluvial erosion hazard mapping loans. Notwithstanding other priorities
13 established in law, the secretary shall annually award up to \$250,000.00 of the
14 funds from the Vermont environmental protection agency control fund and the
15 Vermont pollution control revolving fund, combined, to municipalities for the
16 completion of fluvial erosion hazard mapping under section 1440 of Title 10.
17 Upon the award of funds under this subsection, the municipality shall agree,
18 pursuant to a memorandum of understanding with the secretary of natural

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1 resources, to repay the funds awarded to the special fund from which they were
2 drawn.

3 Sec. 11. 24 V.S.A. § 4758 is amended to read:

4 § 4758. LOAN PRIORITIES

5 (a) Periodically, and at least annually, the secretary shall prepare and
6 certify to the bond bank a project priority list of those municipalities whose
7 publicly owned projects, or privately owned wastewater systems, are eligible
8 for financing or assistance under this chapter. In determining financing
9 availability for wastewater projects under this chapter, the secretary of the
10 agency having jurisdiction shall apply the following criteria:

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

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

17 (3) the cost of comparable credit or financing alternatives available to
18 the municipality;

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

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

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

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

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

11 (2) that the project will remedy or prevent the impairment of waters, and
12 the severity of that existing or prevented impairment; and

13 (3) that the project is consistent with the applicable basin plan for the
14 waters affected by the project.

15 (c) In determining financing availability for wastewater and stormwater
16 projects under this chapter, the secretary shall assure that projects in a
17 municipality that has adopted fluvial erosion hazard areas that comply with the
18 requirements of section 1440 of this title shall be given increased priority.

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1 (b) Beginning January 15, 2011 and biennially thereafter, the secretary of
2 natural resources shall report to the house committee on fish, wildlife and
3 water resources and the senate committee on natural resources and energy
4 regarding the status of riparian buffer zoning within Vermont. The report shall
5 include:

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

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

10 (3) an analysis, based on information available to the secretary, of the
11 impact of fluvial erosion hazard maps and associated bylaws and riparian
12 buffer zoning on the waters of the state; and

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

15 Sec. 14. EFFECTIVE DATE

16 (a) This section and Secs. 1 (findings), 4 (community development grant
17 allocation system), 5 (water supply aid priorities), 8 (regulation of hazard
18 areas), 9 (riparian buffer bylaws), 10 (awards from revolving loan funds), 11
19 (state revolving loan fund priorities), 12 (ANR outreach and education related

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1 to riparian buffers), 13 (ANR riparian buffer report), and 15 (sunset; reversion)
2 of this act shall take effect upon passage.

3 (b) Sec. 2 (riparian buffer zones) shall take effect July 1, 2014, except that
4 10 V.S.A. § 1440 shall take effect upon passage.

5 (c) Secs. 3 (riparian buffer zone permit fee), 6 (ANR enforcement
6 authority), and 7 (appeal of ANR actions) shall take effect July 1, 2015.

7 Sec. 15. SUNSET; REVERSION

8 Secs. 4 (community development grant allocation system), 5 (water supply
9 aid priorities), 11 (awards from revolving loan funds), 12 (state revolving loan
10 fund priorities) shall expire on July 1, 2015. On July 1, 2015, 10 V.S.A. § 687,
11 10 V.S.A. § 1628, 24 V.S.A. § 4753a, and 24 V.S.A. § 4758, as amended by
12 Secs. 4, 5, 10, and 11 of this act, respectively, shall revert to the language each
13 section contained before passage of this act.

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1 (Committee vote: _____)

2 _____ Representative [surname]

3 FOR THE COMMITTEE

4