

**VPA LEGISLATIVE REPORT #2 – 2008**

The VPA Legislative Cracker Barrel was held on Friday Jan 11<sup>th</sup>. We were fortunate to have several key legislators and State House insiders join us to describe priorities and prospects for legislation of interest to planners this year. These included Senate President Pro Tem Peter Shumlin, Chair of Senate Natural Resources & Energy Sen. Ginny Lyons, Chair of House Natural Resources & Energy Rep. Robert Dostis and member Rep. Tony Klein, Chair of House Housing General & Mil. Affairs Rep. Helen Head, Rep. Jim McCullough of House Fish, Wildlife & Water Resources, and Rep. Sue Minter of House Transportation. We were pleased that each of these legislators expressed genuine interest in having VPA input and we thanked them for inviting our testimony.

Also joining our discussion were Legislative Counsel Al Boright and Legislative Affairs Directors (lobbyists) Karen Horn of VLCT, Erhard Manhke of the Affordable Housing Coalition and Karen LaFayette of the City of Burlington and VT Low Income Advocacy Council. Also attending were Brian Shupe of Smart Growth VT Peter Gregory and Kevin Geiger of VAPDA, Peg Elmer of VT Law School and Faith Ingulsrud of DHCA.

VPA members attending included President Polly Mc Murtry, Dana Farley VPA Legislative Committee Chair, Fred Dunnington and Sharon Murray, VPA Legislative Liaisons, and Leg. Committee members Mike Munson, Deb Sachs, Sarah Hadd, Jeff Arango, Peg Elmer, Brian Shupe and Scott Gustin. Other VPA planners attending included Sue Minter, Faith Ingulsrud, Steve Lotspeich, Lani Ravin, Juli Beth Hinds and others (apologies to those I have not recalled).

Generally, all legislators noted this would be a session where money and funding issues would be extremely tight. President Shumlin felt the funding for local and regional planning and VHCB would be held level, at best. Sen Lyons and others pledged to support planning funding and Sen. Lyons particularly wanted to support finding for the DHCA staff support of the Growth Center program. Other funding needs were noted including the Land Use Training Collaborative, but the State revenue and budget situation is daunting this session.

Legislative concerns / priorities besides budget and health care are led by energy and climate change – Bills S.209 and S. 339 are the vehicles that the Chairs will move. Senator Lyons listed off her sense of priorities below those as water issues, Chapter 117 technical corrections, funding for growth center staff and Act 250 Ag mitigation adjustments. And certainly the Natural Resources Committees will be looking at the regulatory changes associated with any housing / new neighborhoods and riparian buffers and any other Ch117/Act 250 changes. The prospects for the State Planning Coordination bill were thought to be dim, given all the others listed above and the budgetary situation.

More on the status and prospects of individual bills will be reported as the session progresses.

VPA Legislative Committee Members Assignments: Fred Dunnington (VT Legislative Liaison), Sharon Murray (NNECAPA Legislative Liaison) - - and both of us are assigned to particularly follow bills on Housing / 'New Neighborhoods', Chapter 117 Technical Corrections, and Planning Coordination, Sarah Hadd (Prime Ag bills), Scott Gustin (Riparian buffer bill), Greg Brown ('New' Neighborhoods), Brian Shupe and Mike Munson (Growth Centers, 'New' neighborhoods, impact fees), Deb Sachs (Energy and Climate Change), Peg Elmer (Planning Coordination and Chapter 117 Technical Corrections).

In addition, Lani Ravin has volunteered to track stormwater legislation. Thanks, Lani!

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## **NEW BILLS OF NOTE**

(since last report)

### **H.594**

Introduced by Representatives Gilbert of Fairfax, Branagan of Georgia and Deen of Westminster  
Subject: Municipal planning; party status; conservation commission  
Statement of purpose: This bill proposes to provide that a municipal conservation commission shall be entitled to party status in proceedings under the planning and zoning chapter related to development in the municipality.

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/intro/H-594.htm>

### **H.602**

Introduced by Representative Deen of Westminster  
Subject: Conservation and development; public waters; docks and encroachments  
Statement of purpose: This bill would expand the jurisdiction of the agency of natural resources to permit encroachments, such as docks and piers. The bill would expand jurisdiction to include encroachments on all public waters, not just lakes and ponds. Public waters are the navigable waters of the state.

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/intro/H-602.htm>

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## **“Moving” energy bills :**

**S.339 – Climate Change and Energy Efficiency - See VPA Legislative Report #1 - -n Senate Natural Resources & Energy**

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/intro/S-339.htm>

**S.209 - THE VERMONT ENERGY EFFICIENCY AND AFFORDABILITY ACT – as passed Senate – now in House Natural Resources.**

Includes sections on:

Renewable Energy Goal [25 by 25] ; Act 250 exemption for storage, preparation and sale of fuel from Ag products or wastes principally produced on a farm; Commercial Building Energy Standards [CBES]; investigations into Smart Metering and Conservation Rates; expansion of Net Metering and Group Net Metering; 30VSA248 exemptions for Temporary Meteorological Stations; advancement of Renewable Energy Pricing and Portfolio Standards and SPEED Program ; Ombudsman Assistance to communities; taxation of Wind-Powered Electric Generating Facilities; Business Energy Credit; Small Hydro Reports; Outdoor Wood Boilers; Solar Plumbing; Energy Efficiency Services Fund; Existing Efficiency Utility; Energy Planning; Biodiesel; Energy Efficiency Mortgages; Incentives for Efficient Transportation; Right to Conserve Energy; and Green Building, Efficiency, and Renewable Energy Workforce Development;

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/senate/S-209.HTM>

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## COMMITTEE AGENDAS – of note –

### HOUSE FISH, WILDLIFE & WATER RESOURCES

Tuesday, January 15, 2008

11:00AM **H.0549 Establishing Waterfront Buffer Zones**  
*Bill mark up*

2:30PM **H.0549**

Kerrick Johnson, Vice President of External Affairs, VELCO  
Jeff DiSorta, VELCO  
Brian Connaughton, VELCO  
Mark Scarrota, VELCO

3:00PM **H.0549**  
*Bill mark up*

Wednesday, January 16, 2008

8:30AM **H.549**  
*Bill mark up*

Thursday, January 17, 2008

8:30AM **H.549** Robert Stevens, President, American Consulting Engineers of VT

9:00AM **H.549**  
*Bill mark up*

Friday, January 18, 2008

1:00PM-3:15PM **H.549**  
*mark up and vote*

### HOUSE GENERAL, HOUSING & MILITARY AFFAIRS

Wednesday, January 16, 2008

9:30 a.m. **Housing Creation, Land Bank, Urban Homesteading**  
John Hall, Commissioner, Dept. of Housing and Community Affairs  
Molly Dugan, Dept. of Housing and Community Affairs

10:15 a.m. **Housing Preservation**  
John Wood, Division of Fire Safety, Public Safety Department  
Karen Horn, VT League of Cities and Towns  
Dave Burgess, Winooski Fire Department

12:30 p.m. **Break for Lunch**

1:30 p.m. **Housing Preservation**  
Ken Sassorosi, Vice-President, Program Development, Housing Vermont

2:15 p.m. **To Be Announced**

Thursday, January 17, 2008

10:15 a.m. **Housing - to Be Announced**

12:00 p.m. **Break for Lunch**

1:00 - 4:00 p.m. **Housing - To Be Announced**

### HOUSE NATURAL RESOURCES & ENERGY

Tuesday, January 15, 2008

11:00AM **Energy Issues**  
*Strategic Planning & Development*

Robert Ide, Director, Energy Efficiency, Dept. of Public Service

11:30AM **Energy Issues**  
*Allocations & Development to date*  
Lawrence Miller

2:30PM-5:00PM **Energy Issues**  
Chris Dutton, CEO, Green Mt. Power (2:30)  
TBA (3:30)  
Dave Lamont, Power Supply Planner, Dept. of Public Service (4:30)

Wednesday, January 16, 2008

8:30AM-12:00PM **S.209 The Vermont Energy Efficiency and Affordability Act**  
Tim Searles, Executive Director, CVOEO (11:00-11:15AM)  
Avram Patt, General manager, Washington Electric Cooperative (10:30-10:45AM)  
TBA (8:30AM)  
TBA, Efficiency Vermont (11:00AM-12:00PM)

1:00PM **Floor**

2:00PM-3:30PM **S.209 The Vermont Energy Efficiency and Affordability Act**  
*Building Codes*  
TBA, Dept. of Public Safety (3:00PM)  
Richard Smith, Deputy Commissioner, Dept. of Public Service (2:00PM)  
Greg Lord, Director, marketing and Business Development, E.F. Wall & Associates, Inc. (2:30PM)

3:30PM **S.209 The Vermont Energy Efficiency and Affordability Act**  
*Small Hyrdoelectric Power*  
John Warshow, Partner, Springfield Hydroelectric Company  
Student, Twinfield H.S.

Thursday, January 17, 2008

8:45AM-12:00PM **Energy**  
Kerrick Johnson, vice President of External Affairs, VELCO (8:45AM-9:45AM)

**SENATE ECONOMIC DEVELOPMENT, HOUSING & GENERAL AFFAIRS**

Wednesday, January 16, 2008

10:30 a.m. **S.151 - Establishing a Rental Registry (Housing Code Enforcement)**  
Sen. Jim Condos, Sponsor of the Bill  
Meredith Sumner, Legislative Counsel (10:45 a.m.)  
Ted Wimpey, Director, Coordinated Statewide Housing Services, Burlington, 660-3456 (11:00 a.m.)  
Maryellen Griffin, VT Legal Aid (lead attorney on Alger Case) (11:15 a.m.)  
Stuart Bennett, VT Apartment Owners Association, Shelburne, 985-2533 (11:30 a.m.)  
Erhard Mahnke, Executive Director, VT Affordable Housing Coalition, Burlington, 660-9484 (11:45 a.m.)

Thursday, January 17, 2008

9:15 a.m. **Statewide Housing Initiatives**  
*ROOM: 11*  
Brad Worthen, Lake Champlain Regional Chamber of Commerce/Greater Burlington Business Corp., Burlington, 863-3489  
Tayt Brooks, Government Affairs Director, Homebuilders & Remodelers Association of Vermont, Williston, 876-6200 (9:25 a.m.)  
Brian Shupe, Program Director, Smart Growth Vermont, Burlington, 864-6310 (9:35 a.m.)  
Bart Frisbee, Sterling Construction, Burlington, 864-0600 (9:45 a.m.)  
Brenda Torpy, Chief Executive Officer, Champlain Housing Trust, 864-2607 (9:55 a.m.)  
John Hausner, Homestead Design, Essex Junction, 878-3303 (10:05 a.m.)  
Chris Snyder, The Snyder Companies, Essex Junction, 879-6726 (10:15 a.m.)  
Sandra Levine, Conservation Law Foundation, Montpelier, 223-5992 (10:25 a.m.)  
Molly Dugan, Deputy Commissioner, Department of Housing & Community Affairs (10:35 a.m.)  
Andrew Broderick, Housing Vermont/Champlain Housing Trust, Burlington, 863-8424 (10:45 a.m.)  
Karen Horn, Director, Public Policy & Advocacy, Vermont League of Cities & Towns, Montpelier, 229-9111 (10:55 a.m.)

Steve Holmes, Vermont Natural Resources Council, Montpelier, 223-2328 (11:05 a.m.)  
Catherine Dimitruk, Executive Director, NW Regional Planning Commission, 524-5958 (11:15 a.m.)  
Erhard Mahnke, Executive Director, VT Affordable Housing Coalition, Burlington, 660-9484 (11:25 a.m.)

**SENATE NATURAL RESOURCES & ENERGY**

Tuesday, January 15, 2008

10:00 a.m. **FLOOR**

10:30 a.m. **S.339 - Energy Bill**

Al Boright, Leg. Counsel

Wednesday, January 16, 2008

9:00 a.m. **Peak Oil Report**

Carl Etnier

Scott Printz

9:30 a.m. **S.339 - Energy Bill**

Al Boright, Leg. Counsel

Thursday, January 17, 2008

9:00 a.m. **S.304 - Groundwater Withdrawal**

Sen. Diane Snelling, Sponsor of S.304

Jon Groveman, Vt. Natural Resources Council

9:30 a.m. **Free Trade and Water Issues**

Peter Riggs, Forum on Democracy and Trade

10:30 a.m. **BREAK**

10:45 a.m. **S.304 - Groundwater Withdrawal**

Joan Sax, Water First, Randolph

Joan Menson, Citizens for Responsible Growth, Dorset

William Driscoll, Associated Industries of Vermont

11:30 a.m. **FLOOR**

Friday, January 18, 2008

9:00 a.m. **S.304 - Groundwater Withdrawal**

Lee Nellis, Williston Town Planner

Heather Whitley, Danby

Annette Smith, Vermonters for a Clean Environment

Rep., Intl. Bottled Water Assn.

Rep., Vt. Golf Assn.

10:30 a.m.

Jackie Folsom, Pres., Vt. Farm Bureau

Jeff Comstock, Agency of Agriculture

Kinny Perot, Friends of the Mad River

Warren Coleman, ANR Counsel

**Links to VPA's bills of interest:**

**S.317 – Chapter 117 Technical Corrections**

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/intro/S-317.htm>

**S.325 – TIF (Tax Increment Financing) technical corrections bill**

<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/intro/S-325.htm>

**S.267 Potential traffic impact - notice to potential interested parties**  
<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/intro/S-267.htm>

**S.300 - Conservation; Act 250; smart growth principles and state funding**  
<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/intro/S-300.htm>

**S.268 – Act 250 Criterion 9B**  
<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/intro/S-268.htm>

**S.287 -State planning coordination bill**  
<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/intro/S-287.htm>

**S.304 Groundwater protection; groundwater withdrawal**  
<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/intro/S-304.HTM>

**H. 561 - tourism directional / off premises business signs**  
<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/bills/intro/H-561.HTM>

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**ALERT** **H.549 – Riparian buffers**

**Contact Scott Gustin with comments** [SGustin@ci.Burlington.vt.us](mailto:SGustin@ci.Burlington.vt.us)

**Latest draft – scheduled for markup this week:**

Statement of purpose: This bill proposes to require, beginning July 1, 2010, the establishment of 50-foot waterway buffers adjacent to waterways of the state. The bill would also require the water resources panel of the natural resources board to adopt rules regarding the size and use of waterway buffers. The agency of natural resources would enforce the buffer zone requirements. The bill would allow municipalities to adopt municipal waterway buffer bylaws in lieu of the state requirements and to impose a waterways buffer of less than 50 feet in certain situations.

**AN ACT RELATING TO ESTABLISHING BUFFER ZONES ALONG WATERWAYS OF THE STATE**

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

Sec. 1. 10 V.S.A. § 1421 is amended to read:

§ 1421. POLICY

To aid in the fulfillment of the state's role as trustee of its navigable waters and to promote public health, safety, convenience, and general welfare, it is declared to be in the public interest to make studies, establish policies, make plans, make rules, require buffer zones along waterways of the state, and authorize municipal shoreland zoning bylaws, all for the efficient use, conservation, development, and protection of the state's water resources. The purposes of the rules shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish, and aquatic life; control building sites, placement of structures, and land uses; preserve shore cover and natural beauty; and provide for multiple use of the waters in a manner to provide for the best interests of the citizens of the state.

Sec. 2. 10 V.S.A. § 1422 is amended to read:

§ 1422. DEFINITIONS

In this chapter, unless the context clearly requires otherwise:

- (1) "Agency" means the agency of natural resources;
- (2) "Board" means water resources panel of the natural resources board;
- (3) "Department" means department of environmental conservation;
- (4) "Navigable water" or "navigable waters" means Lake Champlain, Lake Memphremagog, the Connecticut River, all natural inland lakes within Vermont, and all streams, ponds, flowages, and other waters within the territorial limits of Vermont, including the Vermont portion of boundary waters, which are boatable under the laws of this state;
- (5) "Public shorelands" means state-owned lands adjacent to navigable waters;
- (6) "Public waters" means navigable waters excepting those waters in private ponds and private preserves as set forth in sections 5204, 5205, 5206, and 5210 of this title;
- (7) "Secretary" means the secretary of natural resources or the secretary's duly authorized representative;
- (8) "Shorelands" means the lands being between the normal mean water-mark level of a lake, pond, or impoundment exceeding ~~twenty~~ 20 acres and a line not less than ~~five hundred~~ 500 feet nor more than ~~one thousand~~ 1,000 feet from such mean water-mark level.
- (9) "Outstanding resource waters" mean waters of the state designated by the board as having exceptional natural, recreational, cultural, or scenic values.
- (10) "Existing use" means the established use, activity, or development occurring within a buffer zone prior to July 1, 2010.
- (11) "Public good" means that which shall be for the greatest benefit of the citizens of the state.
- (12) "Trail" means a recognized part of the Vermont trail system under section 443 of this section or land used for hiking, walking, bicycling, cross-country skiing, snowmobiling, all-terrain vehicle riding, horseback riding, and other similar activities that is regularly maintained by a state or federal agency, a municipality, or incorporated group or association.
- (13) "Waterway" or "waterway of the state" means the full length and width of all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs, and all bodies of natural surface waters which are contained within, flow through, or border upon the state or any portion of it, including intermittent watercourses that do not have continuous surface flow. "Waterways of the state" do not mean stormwater retention ponds, roadside ditches, water bars, or swales.
- (14) "Waterway buffer" means an area adjacent to waterways of the state consisting of permanent, native and long-lived vegetative cover which extends horizontally at least 50 feet from:
  - (A) The mean water level, as determined by the secretary of natural resources, for lakes and ponds; and
  - (B) The top of the bank or top of the slope, as determined by the secretary of natural resources, for rivers and streams.

*[Bold Language = Rep. Jon Anderson's proposal for tiered buffer distances]*

- (14)(A) "Waterway buffer" means an area adjacent to waterways of the state consisting of permanent, long-lived vegetative cover which extends horizontally:**
- (i) at least 50 feet from the mean water level, as determined by the secretary of natural resources, of a lake or pond; and**
  - (ii) for a river or stream as follows:**
    - (I) ? feet from the top of the bank or top of the slope of a river or stream with a drainage area of ? or more acres;**
    - (II) ? feet from the top of the bank or top of the slope of a river or stream with a drainage area of ? or more acres but less than ? acres;**
    - (III) ? feet from the top of the bank or top of the slope of a river or stream with a drainage area of ? or more acres but less than ? acres; or**
  - (B) No waterway buffer shall be required for a river or stream with a drainage area of less than ? acres.**

**\*\*[Buffer distances left unspecified. Will require Committee discussion]\*\***

Sec. 3. 10 V.S.A. § 1427 is added to read:

§ 1427. MINIMUM WATERWAY BUFFER

(a) Beginning July 1, 2010, a waterway buffer of at least 50 feet ~~of at least 50 feet of a size required under subdivision 1422(14) of this title~~ shall be established along the waterways of the state and shall be left in an unmaintained and naturally vegetated condition unless:

(1) The municipality in which a waterway of the state is located has adopted waterway buffer zoning under section 4425 of Title 24; or

(2) The municipality in which the waterway of the state is located adopted a waterway buffer bylaw prior to July 1, 2008 and that bylaw, as determined by the agency of natural resources:

(A) Is designed to prevent and control water pollution; preserve and protect wetlands; maintain and protect, channel, streambank, and floodplain stability; preserve and protect the habitat of terrestrial and aquatic habitat; promote open space; or achieve other similar municipal interests; and

(B) Requires the establishment of a waterway buffer of at least 25 feet or established a waterway buffer based on site specific conditions.

(3) Use of the land is authorized under this section or the rules adopted under subsection (c) of this section.

(b) The following uses are exempt from the requirements of subsection (a) of this section:

(1) Farming, as that term is defined in subdivision 6001(22) of this title, conducted in compliance with accepted agricultural practices.

(2) Forestry conducted in compliance with accepted silvicultural practices as defined by the commissioner of forests, parks and recreation.

(3) Existing uses.

(4) Maintenance or repair of roads, highways, bridges, sidewalks, or trails existing as of July 1, 2010, provided that the any maintenance or repair is conducted in a manner to increase the waterway buffer when feasible, maintain the waterway buffer where possible, or minimize reduction on the waterway buffer when reduction is necessary. Maintenance or repair includes site grading, substantial subsurface excavation, crack sealing, patching, coldplaning, resurfacing, reclaiming, grading treatments, repair or replacement of culverts, and expansion of impervious surface within the existing highway right-of-way.

(5) The control of non-native, invasive species of plants, including Eurasian milfoil, purple loosestrife, Japanese knotweed, and phragmites, where such control is approved by the agency of natural resources or the control consists solely of hand pulling of plants.

(6) Maintenance or repair of pollution abatement facilities, as that term is defined in section 1571 of this title, permitted under section 1263 of this title.

(7) The use, development, construction, alteration, maintenance, repair, replacement or removal of railroad facilities as defined in 49 U.S.C. §§ 10102 and 10501, including nonrailroad-owned facilities actually connected to the railroad facilities and used solely for railroad purposes.

(8) Stormwater treatment facilities or practices existing within a waterway buffer as of July 1, 2010.

(8) Additional exemptions adopted by the board under subsection (c) of this section

(c) The board shall adopt substantive and technical rules that:

(1) regulate the development and use of waterway buffers in order to prevent and control water pollution; prevent and control stormwater runoff; preserve and protect wetlands; maintain and protect channel, streambank, and floodplain stability; preserve and protect the habitat of terrestrial and aquatic wildlife; promote open space and aesthetics; and achieve other municipal, regional, or state conservation and development objectives for waterway buffer. These rules may:

(A) Require the planting and maintenance of vegetation.

(B) Provide for maintenance of existing access to public waters.

(C) Set standards or criteria that regulate development or change of use of buildings or structures within waterway buffers.

(D) Prohibit the use and storage of hazardous materials.

(E) Prohibit the use or storage of other materials or practices that could impair water quality.

(F) Establish other restrictions to promote the sound management and use of waterway buffers.

(2) Authorize conditional uses that may be conducted in a waterway buffer, including standards for:

(A) The development of buildings within the waterway buffer, provided that the development:

- (i) serves the public good;
- (ii) is designed to minimize impact on the waterway and on land and vegetative cover within the waterway buffer;
- (iii) prevents erosion of the bank of the waterway by requiring permanent vegetative cover within the affected waterway buffer; and
- (iv) shall not violate the Vermont water quality standards or threaten the health, safety, and welfare of the public or other property owners.
- (B) Allowing encroachment on a waterway buffer by an existing or new use, provided that such encroachment serves the public good and is without equal or greater benefits to the public, and the encroachment shall not violate the Vermont water quality standards or threaten the health, safety, and welfare of the public or other property owners.
- (C) Change in use of existing nonconforming uses, provided that the change serves the public good; shall not violate the Vermont water quality standards or threaten the health, safety, and welfare of the public or other property owners; and shall not be changed to another nonconforming use.
- (D) Recreational uses, including docks, piers, access areas, landing areas, and beaches, provided that any building or parking area associated with the recreational use is located outside the waterway buffer.
- (E) Utility lines, when there is no feasible alternative for providing or extending utility services than to cross or encroach on the waterway buffer.
- (F) New stormwater treatment facilities or practices, provided that there is no practical alternative to implementing the stormwater treatment or practice in the waterway buffer, the treatment or practice is permitted by the agency of natural resources, or the treatment or practice complies with the current version of the agency of natural resources' stormwater management manual.
- (G) Waterway conservation or restoration projects approved by the agency of natural resources.
- (H) Construction of new transportation infrastructure, including roads, highways, sidewalks, bicycle paths, bridges, and trails.
- (I) Private crossings of waterway buffers, including driveways and other access roads, when crossing the waterway buffer is necessary to gain access to land adjacent to the buffer or to provide access to an approved use within the buffer and no feasible alternative for provide safe access exists. A private crossing or access road shall occur at a right angle to the waterway.
- (3) Exempt certain uses or activities from the requirements of subsection (a) of this section.
- (d) The board shall consult with the Vermont league of cities and towns, the Vermont association of planning and development agencies, the agency of natural resources, the agency of transportation, and other interested parties before proposing the rules required under subsection (c) of this section.

Sec. 4. 10 V.S.A. § 6025(d) is amended to read:

- (d) The water resources panel may adopt rules, in accordance with the provisions of chapter 25 of Title 3, in the following areas:

\* \* \*

- (8) Rules implementing 29 V.S.A. chapter 11, relating to management of lakes and ponds.
- (9) Rules implementing section 1427 of this title, relating to the use and establishment of waterway buffers.

Sec. 5. 10 V.S.A. § 8003(a) is amended to read:

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

\* \* \*

- (17) 10 V.S.A. § 2625, relating to heavy cutting of timber; ~~and~~
- (18) 10 V.S.A. chapter 164, relating to comprehensive mercury management; ~~and~~
- (19) 10 V.S.A. § 1427, relating to minimum waterway buffers.

Sec. 6. 10 V.S.A. § 8503(a)(1) is amended to read:

- (a) This chapter shall govern all appeals of an act or decision of the 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:

- (1) The following provisions of this title:

\* \* \*

(O) section 1427 (relating to minimum waterway buffers).

**Local zoning Chapter 117 changes proposed**

Sec. 7. 24 V.S.A. § 4303(10) is amended to read:

§ 4303. DEFINITIONS

The following definitions shall apply throughout this chapter unless the context otherwise requires:

\* \* \*

(10) “**Land development**” means the division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation, or landfill, **alteration or removal of vegetation or trees within waterway buffers, and any change in the use of any** building or other structure, or land, or extension of use of land.

Sec. 8. 24 V.S.A. § 4411 is amended to read:

§ 4411. ZONING BYLAWS

(a) A municipality may regulate land development in conformance with its adopted municipal plan and for the purposes set forth in section 4302 of this title to govern the use of land and the placement, spacing, and size of structures and other factors specified in the bylaws related to public health, safety, or welfare. Zoning bylaws may permit, prohibit, restrict, regulate, and determine land development, including the following:

- (1) Specific uses of land and shoreland facilities;
- (2) Dimensions, location, erection, construction, repair, maintenance, alteration, razing, removal, and use of structures;
- (3) Areas and dimensions of land to be occupied by uses and structures, as well as areas, courts, yards, and other open spaces and distances to be left unoccupied by uses and structures;
- (4) Timing or sequence of growth, density of population, and intensity of use;
- (5) Uses within a waterway buffer, as that term is defined in section 1427 of Title 10.**

(b) All zoning bylaws shall apply to all lands within the municipality other than as specifically limited or exempted in accordance with specific standards included within those bylaws and in accordance with the provisions of this chapter. The provisions of those bylaws may be classified so that different provisions may be applied to different classes of situations, uses, and structures and to different and separate districts of the municipality as may be described by a zoning map made part of the bylaws. The land use map required pursuant to subdivision 4382(a)(2) of this title of any municipality may be designated as the zoning map except in cases in which districts are not deemed by the planning commission to be described in sufficient accuracy or detail by the municipal plan land use map. All provisions shall be uniform for each class of use or structure within each district, except that additional classifications may be made within any district for any or all of the following:

- (1) To make transitional provisions at and near the boundaries of districts.
- (2) To regulate the expansion, reduction, or elimination of certain nonconforming uses, structures, lots, or parcels.
- (3) To regulate, restrict, or prohibit uses or structures at or near any of the following:
  - (A) Major thoroughfares, their intersections and interchanges, and transportation arteries.
  - (B) Natural or artificial bodies of water.
  - (C) Places of relatively steep slope or grade.
  - (D) Public buildings and public grounds.
  - (E) Aircraft and helicopter facilities.
  - (F) Places having unique patriotic, ecological, historical, archaeological, or community interest or value, or located within scenic or design control districts.
  - (G) Flood or other hazard areas and other places having a special character or use affecting or affected by their surroundings.
  - (H) Waterway buffers, as that term is defined in section 1427 of title 10.**
- (4) To regulate, restrict, or prohibit uses or structures in overlay districts, as set forth in subdivision 4414(2) of this title.

Sec. 9. 24 V.S.A. § 4414(1) is amended to read:

§ 4414. ZONING; PERMISSIBLE TYPES OF REGULATION

Any of the following types of regulations may be adopted by a municipality in its bylaws in conformance with the plan and for the purposes established in section 4302 of this title.

(1) Zoning districts. A municipality may define different and separate zoning districts, and identify within these districts which land uses are permitted as of right, and which are conditional uses requiring review and approval, including the districts set forth in this subdivision (1).

(A) Downtown, village center, new town center, and growth center districts. The definition or purpose stated for local downtown, village center, new town center, or growth center zoning districts should conform with the applicable definitions in section 2791 of this title. Municipalities may adopt downtown, village center, new town center, or growth center districts without seeking state designation under chapter 76A of this title. A municipality may adopt a manual of graphic or written design guidelines to assist applicants in the preparation of development applications. The following objectives should guide the establishment of boundaries, requirements, and review standards for these districts:

\* \* \*

(G) Waterway buffers. In accordance with section 4424 of this title, a municipality may adopt bylaws to regulate waterway buffers, as that term is defined in section 1427 of Title 10, in order to prevent and control water pollution; prevent and control stormwater runoff; preserve and protect wetlands; maintain and protect channel, streambank, and floodplain stability; preserve and protect the habitat of terrestrial and aquatic wildlife; promote open space and aesthetics; and achieve other municipal, regional, or state conservation and development objectives for waterway buffers. Waterway buffer bylaws may regulate the design and location of development, control building location, require the provision and maintenance of vegetation, require provisions for access to public waters for all residents and owners of the development, and impose other requirements authorized by this chapter.

Sec. 10. 24 V.S.A. § 4425 is added to read:

§ 4425. WATERWAY BUFFER BYLAWS

(a) A municipality may adopt freestanding bylaws or amend zoning or unified development bylaws to regulate development and use of waterway buffers, as that term is defined in section 1427 of Title 10.

(b) Bylaws adopted under this section shall include:

- (1) Provisions to promote the sound management and use of waterway buffers.
- (2) A provision barring use or development within a waterway buffer zone unless such use or development is authorized by the bylaws or the appropriate municipal panel.
- (3) Provisions to ensure the timely and appropriate enforcement of the bylaws.

(c) Waterways buffer bylaws adopted under this section may:

- (1) Set a buffer width of greater than 50 feet within the municipality or portions of the municipality.
- (2) Set a buffer width of fewer than 50 feet within the municipality or portions of the municipality, provided that the reduced buffer width:
  - (A) Is necessary to address existing development or existing uses within the municipality; or
  - (B) Applies to property located within a designated growth center, designated downtown development district, designated village center, or new town center, as these terms are defined in section 2791 of this section.
- (3) Contain standards or criteria that regulate the development or change of use of buildings or structures within waterway buffers.
- (4) Prohibit the use and storage of hazardous materials.
- (5) Prohibit the use and storage of other materials or practices that could impair water quality.
- (6) Establish other restrictions to promote the sound management and use of waterway buffers.

(d) The appropriate municipal panel in a municipality adopting a waterways buffer bylaw under this section may, after a public hearing, approve the repair, relocation, replacement, or change of use of a nonconforming structure or use within a waterway buffer, provided that the structure or

use conforms with applicable federal and state laws and regulation and provided that the following criteria are met:

- (1) The appropriate municipal panel finds that the repair, relocation, or change in use of the nonconforming structure serves the public good;
- (2) The appropriate municipal panel finds that the repair, relocation, or change in use of the nonconforming structure shall not violate Vermont water quality standards or threaten the health, safety, and welfare of the public or other property owners; and
- (3) The permit granted under this subsection shall state that the repair, relocation, or change in use of the nonconforming structure is located in a waterway buffer and does not conform to the municipal bylaws pertaining to that area.

(e) A waterway buffer bylaw may alter uses otherwise regulated by a municipal bylaw. Where both a waterway buffer bylaw and a separate municipal bylaw apply to a use within the waterway buffer, compliance with the waterway buffer shall be a prerequisite to the granting of the permit unless the appropriate municipal panel has authorized a nonconforming use under subsection (d) of this section. Where a municipal waterways buffer bylaw applies but a zoning bylaw does not apply, the waterways buffer bylaw shall be administered in the same manner as are zoning bylaws.

#### Sec. 11. AGENCY OF NATURAL RESOURCES OUTREACH AND EDUCATION ON WATERWAY BUFFERS

(a) Prior to January 15, 2009, the agency of natural resources, in consultation with the Vermont league of cities and towns, regional planning commissions, the Vermont planners association, and the Vermont land education and training collaborative, shall develop educational and training programs and conduct public hearings to inform municipalities and municipal planners of the environmental and planning benefits of waterway buffers and the requirements of this act. In developing the education programs required by this section, the agency may utilize various types of media.

(b) In addition to any other funds appropriated to the agency of natural resources in fiscal year 2009, there is appropriated from the general fund to the agency \$50,000.00 in fiscal year 2009 to conduct the activities required under subsection (a) of this section.

#### Sec. 12. REPORT OF NATURAL RESOURCES BOARD; WATERWAY BUFFER RULES

On or before January 15, 2009, the natural resources board shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy with a proposed rule regulating the development and use of waterway buffers along waters of the state as required by 10 V.S.A. § 1427. The house committee on fish, wildlife and water resources and the senate committee on natural resources and energy shall review the proposed rules and recommend whether the proposed rules should be amended and whether a final proposal of the rules should be filed with the secretary of state and the legislative committee on administrative rules under sections 836 and 841 of Title 3.

#### Sec. 13. AGENCY OF NATURAL RESOURCES REPORT

Beginning January 15, 2008, and biennially thereafter, the agency of natural resources shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy regarding the status of waterway buffer zoning with Vermont. The report shall include:

- (1) A summary of the municipalities that have adopted water way buffer zoning or a waterway buffer bylaw;
- (2) a summary of municipalities that have adopted flood hazard area zoning as part of waterway buffer zoning or bylaw;
- (3) an analysis, based on information available to the agency, of the impact of waterway buffer zoning on the waters of the state; and
- (4) any recommendations that the state or municipalities make regarding the regulation of the use of land within waterway buffers.

#### Sec. 14. EFFECTIVE DATES

(a) This section and Secs. 1 (policy), 2 (navigable waters and shorelands definitions), 3 (minimum waterway buffers), 4 (water resources panel rulemaking authority), 7 (municipal and regional planning definitions), 8 (zoning bylaws), 9 (zoning permissible types of regulation), 10 (waterway buffer bylaws), 11 (agency of natural resources outreach and education), 12 (report of natural resources board buffer zone rules), and 13 (agency of natural resources report) of this act shall take effect July 1, 2008.

(b) Secs. 5 (agency of natural resources enforcement authority), and 6 (appeals from agency of natural resources decision) of this act shall take effect July 1, 2010.

**Contact Scott Gustin with comments [SGustin@ci.Burlington.vt.us](mailto:SGustin@ci.Burlington.vt.us)**

**The above bill is scheduled for markup and vote this week.**

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