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Title 10: Conservation And Development

Chapter 49: Protection Of Navigable Waters And Shorelands

§ 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, encourage and promote buffers adjacent to lakes, ponds, reservoirs, rivers, and streams of the State, encourage and promote protected river corridors adjacent to rivers and streams of the State, and authorize municipal shoreland and river corridor protection zoning bylaws 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; reduce fluvial erosion hazards; reduce property loss and damage; preserve shore cover, natural beauty, and natural stability; and provide for multiple use of the waters in a manner to provide for the best interests of the citizens of the State. (Added 1969, No. 281 (Adj. Sess.), § 13; amended 2009, No. 110 (Adj. Sess.), § 2; 2011, No. 138 (Adj. Sess.), § 7, eff. May 14, 2012.)

§ 1422. Definitions

In this chapter, unless the context clearly requires otherwise:

- (1) "Agency" means the Agency of Natural Resources.
- (2) "Board" means 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, that 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 level of a lake, pond, or impoundment exceeding 20 acres and a line not less than 500 feet nor more than 1,000 feet from such mean water level.

(9) "Outstanding resource waters" mean waters of the State designated by the Secretary as having exceptional natural, recreational, cultural, or scenic values.

(10) "Buffer" means an undisturbed area consisting of trees, shrubs, ground cover plants, duff layer, and generally uneven ground surface that extends a specified distance horizontally across the surface of the land from the mean water level of an adjacent lake or from the top of the bank of an adjacent river or stream, as determined by the Secretary of Natural Resources.

(11) "Lake" means a body of standing water, including a pond or a reservoir, that may have natural or artificial water level control. Private ponds as defined under section 5210 of this title, and reservoirs specifically constructed for the following purposes shall not be considered lakes: snowmaking storage, golf course irrigation, stormwater management, and fire suppression.

(12) "River corridor" means the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel and that is necessary for the natural maintenance or natural restoration of dynamic equilibrium conditions and for minimization of fluvial erosion hazards, as delineated by the Agency of Natural Resources in accordance with river corridor protection procedures.

(13) "River" means the full length and width, including the bed and banks, of any watercourse, including rivers, streams, creeks, brooks, and branches, which experience perennial flow. "River" does not mean constructed drainageways, including water bars, swales, and roadside ditches.

(14) "Equilibrium condition" means the width, depth, meander pattern, and longitudinal slope of a stream channel that occurs when water flow, sediment, and woody debris are transported by the stream in such a manner that it generally maintains dimensions, pattern, and slope without unnaturally aggrading or degrading the channel bed elevation.

(15) "Flood hazard area" shall have the same meaning as "area of special flood hazard" under 44 C.F.R. § 59.1.

(16) "Fluvial erosion" means the erosion or scouring of riverbeds and banks during high flow conditions of a river.

(17) "Geomorphic condition" means the degree of departure from the dimensions, pattern, and profile associated with a naturally stable channel representing the unique dynamic equilibrium condition of a river segment.

(18) "Infrastructure" means public and private buildings, roads, and public works, including public and private buildings; State and municipal highways and roads; bridges; sidewalks and other traffic enhancements; culverts; private roads; public and private utility construction, State and municipal public works, cemeteries, and public parks and fields.

(19) "River corridor protection area" means the area within a delineated river corridor subject to fluvial erosion that may occur as a river establishes and maintains the dimension, pattern, and profile associated with its dynamic equilibrium condition and that would represent a hazard to life, property, and infrastructure placed within the area.

(20) "Sensitivity" means the potential of a river, given its inherent characteristics and present geomorphic conditions, to be subject to a high rate of fluvial erosion and other river channel adjustments, including erosion, deposit of sediment, and flooding. (Added 1969, No. 281 (Adj. Sess.), § 13; amended 1973, No. 147 (Adj. Sess.), § 1; 1987, No. 67, § 2; 1987, No. 76, § 18; 2003, No. 115 (Adj. Sess.), § 34, eff. Jan. 31, 2005; 2009, No. 110 (Adj. Sess.), § 3; 2011, No. 138 (Adj. Sess.), §§ 8, 27, eff. May 14, 2012.)

§ 1423. Water resources and shoreland use plan

(a) The Secretary shall make studies, establish policies, and make plans for the efficient use, conservation, development, and protection of the State's water resources and:

(1) On the basis of these studies and plans, make recommendations to State agencies relative to their water resources activities.

(2) Locate and maintain information relating to the State's water resources. The Secretary shall collect pertinent data available from State, regional, and federal agencies, the University of Vermont, Vermont State Colleges, local units of government, and other sources.

(3) Public shorelands in which the existing use is exclusively as a public water supply and public shorelands in which the potential use may be as a public water supply shall be classified on that basis.

(4) Serve as a clearinghouse for information relating to water resources including referring citizens and local units of government to the appropriate sources for advice and assistance in connection with particular water use problems.

(b) The Secretary shall prepare a comprehensive plan relating to water resources as a guide for the preparation of a State, regional, or municipal land use or development plan. The plan shall be based on the classification of waters pursuant to chapter 47 of this title. The plan shall to the extent possible give consideration to any existing regional or municipal plans that are compatible with the interests of the State. The primary purpose of the plan shall be for the preventive control of pollution, giving due consideration to necessary development and growth. The plans shall be governed by the following general standards:

(1) Domestic uses shall be generally preferred.

(2) Uses not inherently a source of pollution within an area shall be preferred over uses that are or may be a pollution source.

(3) Areas in which the existing or potential economic value of public, recreational or similar uses exceeds the existing or potential economic value of any other use shall be classified primarily on the basis of the higher economic use value.

(4) Use locations within an area tending to minimize the possibility of pollution shall be preferred over use locations tending to increase that possibility.

(5) Use dispersions within an area shall be preferred over concentrations of uses or their undue proximity to each other.

(6) Particular attention shall be given to safe and healthful conditions for the enjoyment of aquatic recreation; the demands of water traffic, boating, and water sports; the capability of the water resource; requirements necessary to ensure proper operation of septic tank disposal fields near navigable waters; building setbacks from the water; preservation of shore growth and cover; conservancy uses for low lying lands; and shoreland layout for residential and commercial developments.

(c) [Repealed.] (Added 1969, No. 281 (Adj. Sess.), § 13; amended 1973, No. 147 (Adj. Sess.), § 2; 1989, No. 265 (Adj. Sess.), § 2; 1989, No. 265 (Adj. Sess.), § 10(b), eff. March 1, 1994; 2003, No. 115 (Adj. Sess.), § 35, eff. Jan. 31, 2005; 2015, No. 97 (Adj. Sess.), § 22.)

§ 1424. Use of public waters

(a) The Secretary may establish rules to implement the provisions of this chapter, including:

(1) Rules to regulate the use of public waters of the State by:

(A) defining areas on public waters wherein certain uses may be conducted;

(B) defining the uses which may be conducted in the defined areas;

(C) regulating the conduct in these areas, including the size of motors allowed, size of boats allowed, allowable speeds for boats, and prohibiting the use of motors or houseboats;

(D) regulating the time various uses may be conducted.

(2) Rules to govern the surface levels of lakes, ponds, and reservoirs that are public waters of the State.

(b) The Secretary in establishing rules under subdivision (a)(2) of this section shall consider the size and flow of the navigable waters, the predominant use of adjacent lands, the depth of the water, the predominant use of the waters prior to regulation, the uses for which the water is adaptable, the availability of fishing, boating, and bathing facilities, the scenic beauty, and recreational uses of the area.

(c) The Secretary shall attempt to manage the public waters so that the various uses may be enjoyed in a reasonable manner, in the best interests of all the citizens of the State. To the extent possible, the Secretary shall provide for all normal uses.

(d) [Repealed.]

(e) On receipt of a written request that the Secretary adopt, amend, or repeal a rule with respect to the use of public waters signed by not less than one person, the Secretary shall consider the adoption of rules authorized under this section and take appropriate action as required under 3 V.S.A. § 806.

(f) By rule, the Secretary may delegate authority under this section for the regulation of public waters where:

(1) The delegation is to a municipality that is adjacent to or which contains the water; and

(2) The municipality accepts the delegation by creating or amending a bylaw or ordinance for regulation of the water. Appeals from a final act of the municipality under the bylaw or ordinance shall be taken to the Environmental Division. The Secretary may terminate a delegation for cause or without cause upon six months' notice to the municipality. (Added 1969, No. 281 (Adj. Sess.), § 13; amended 1973, No. 147 (Adj. Sess.), § 3; 1979, No. 113 (Adj. Sess.), § 1; 1981, No. 222 (Adj. Sess.), §§ 27, 28; 2003, No. 115 (Adj. Sess.), § 36, eff. Jan. 31, 2005; 2003, No. 115 (Adj. Sess.), § 37; 2011, No. 138 (Adj. Sess.), § 23, eff. May 14, 2012.)

§ 1424a. Outstanding resource waters

(a) The Secretary, on his or her own motion, may hold a public hearing on the question of whether particular waters should be designated as outstanding resource waters, or whether an existing designation should be amended or repealed. On receipt of a signed written request, the Secretary shall consider the adoption, amendment, or repeal of rules regarding outstanding resource water designation and shall take appropriate action as required under 3 V.S.A. § 806. Any hearing shall be held convenient to the waters in question, or in a county where the waters are located.

(b) Any hearing shall be conducted as part of the rulemaking process established under 3 V.S.A. chapter 25.

(c) [Repealed.]

(d) In making its rulemaking decision, the Secretary may consider, but shall not be limited to considering, the following:

(1) existing water quality and current water quality classification;

(2) the presence of aquifer protection areas;

(3) the waters' value in providing temporary water storage for flood water and storm runoff;

(4) the waters' value as fish habitat;

(5) the waters' value in providing or maintaining habitat for threatened or endangered plants or animals;

(6) the waters' value in providing habitat for wildlife, including stopover habitat for migratory birds;

(7) the presence of gorges, rapids, waterfalls, or other significant geologic features;

(8) the presence of scenic areas and sites;

(9) the presence of rare and irreplaceable natural areas;

(10) the presence of known archeological sites;

(11) the presence of historic resources, including those designated as historic districts or structures;

(12) existing usage and accessibility of the waters for recreational, educational, and research purposes and for other public uses;

(13) studies, inventories and plans prepared by local, regional, statewide, national, or international groups or agencies, that indicate the waters in question merit protection as outstanding resource waters;

(14) existing alterations, diversions or impoundments by permit holders under State or federal law.

(e) After consideration of all relevant information, the Secretary shall adopt rules designating the waters as outstanding resource waters if it finds that they have exceptional natural, recreational, cultural, or scenic values. Designation as outstanding resource waters shall not invalidate the terms of existing permits issued by the State or federal government. (Added 1987, No. 67, § 3; amended 1987, No. 74, § 18; 2003, No. 115 (Adj. Sess.), § 38, eff. Jan. 31, 2005; 2011, No. 138 (Adj. Sess.), § 27, eff. May 14, 2012.)

§ 1425. Shoreland protection bylaws

(a) The Secretary of Natural Resources shall establish a shoreland management program to aid and support municipalities in adopting municipal shoreland bylaws that comply with 24 V.S.A. § 4411. The Secretary shall prepare and provide general recommended standards and criteria for shoreland bylaws utilizing the criteria set forth in section 1423 of this title. On or before February 2011, the Secretary shall develop best management practices for the management of shorelands, including buffers within shorelands, and other management techniques designed to protect the quality of public waters. The Secretary shall assist the regional planning commissions in preparing appropriate sample bylaws that conform to the intent of this section.

(b) The Secretary, the municipalities, and all State agencies shall mutually cooperate to accomplish the objectives of this section. To that end, the Secretary shall consult with the governing bodies of municipalities and shall extend all possible assistance. The Secretary shall provide appropriate sample bylaws by September 1, 1974. By September 1, 1974 the Secretary shall also contact every municipality with shorelands:

(1) commenting on their existing shoreland bylaws; and

(2) providing them with a detailed and specific program as to the steps necessary to adopt shoreland bylaws. In contacting municipalities, the Secretary shall send copies of his correspondence by certified mail to the selectboard, town clerk, and planning commission. Copies of this correspondence should also be sent to the regional planning commission for that municipality, the State planning office and the Agency of Commerce and Community Development.

(c) On or before January 15, 1975 and again on or before January 15, 1976 the Secretary shall make a complete and definitive report to the General Assembly on the status of shoreland zoning in Vermont. This report shall contain a municipality-by-municipality analysis of which municipalities have received appropriate sample bylaws and what actions, if any, have been taken thereon by the municipalities.

(d) This section and 24 V.S.A. § 4411 shall be construed together to accomplish the purposes and objectives of this section.

(e) Beginning February 1, 2011, the Secretary of Administration, after consultation with the State agencies of relevant jurisdiction, shall offer financial incentives to municipalities through existing grants and pass-through funding programs that encourage municipal adoption and implementation of zoning bylaws that protect shorelands and buffers. (Added 1969, No. 281 (Adj. Sess.), § 13; amended 1973, No. 147 (Adj. Sess.), §§ 4, 5; 1995, No. 190 (Adj. Sess.), § 1(a); 2009, No. 110 (Adj. Sess.), § 4.)

§ 1426. Penalty

Any person who violates a rule promulgated under this chapter, shall be subject to the civil penalty provision of 23 V.S.A. § 3317(b). (Added 1969, No. 281 (Adj. Sess.), § 13; amended 1989, No. 65, § 15; 1999, No. 42, § 2, eff. May 25, 1999.)

§ 1427. River corridors and buffers

(a) River Corridor and Floodplain Management Program. The Secretary of Natural Resources shall establish a River Corridor and Floodplain Management Program to aid and support the municipal adoption of a flood resilience plan under 24 V.S.A. § 4382 and of river corridor, floodplain, and buffer bylaws. Under the River Corridor and Floodplain Management Program, the Secretary shall:

(1) assess the geomorphic condition and sensitivity of the rivers of the State and identify where the sensitivity of a river poses a probable risk of harm to life, property, or infrastructure;

(2) delineate and map river corridors based on the river sensitivity assessments required under subdivision (1) of this subsection according to a priority schedule established by the Secretary by procedure; and

(3) develop recommended best management practices for the management of river corridors, floodplains, and buffers.

(b) River sensitivity assessment; Secretary's discretion. Notwithstanding the schedule established by the Secretary under subdivision (a)(2) of this section, the Secretary may complete a sensitivity assessment for a river if, in the Secretary's discretion, the sensitivity of a river and the risk it poses to life, property, and infrastructure require an expedited assessment.

(c) Municipal consultation during river assessment. Prior to and during an assessment of river sensitivity required under subsection (a) of this section, the Secretary shall consult with the legislative body or designee of municipalities and the regional planning

commissions in the area in which a river is located. (Added 2009, No. 110 (Adj. Sess.), § 5; amended 2011, No. 138 (Adj. Sess.), § 9, eff. May 14, 2012; 2013, No. 16, § 7, eff. July 1, 2014.)

§ 1428. River corridor protection

(a) River corridor maps. Upon completion of a sensitivity assessment for a river or river segment under section 1427 of this title, the Secretary shall provide to each municipality and regional planning commission in which the river or river segment is located a copy of the sensitivity assessment and a river corridor map for the municipality and region. A river corridor map provided to a municipality and regional planning commission shall identify floodplains, river corridor protection areas, flood hazard areas, and other areas or zones indicated on a Federal Emergency Management Agency flood insurance rate map, and shall recommend best management practices, including vegetated buffers, based on site-specific conditions. The Secretary shall post a copy of the sensitivity assessment and river corridor map to the Agency of Natural Resources' website. A municipality with a mapped river or river segment shall post a copy of a sensitivity assessment and river corridor map received under this subsection in the municipal offices and on the municipality's website, if the municipality regularly updates its website. A regional planning commission shall post a sensitivity assessment or river corridor map received under this subsection in the commission's offices and on the commission's website. When a sensitivity assessment or a river corridor map is provided to a municipality, provided to a regional planning commission, or posted on the Agency website, the Agency shall provide all information, including the supportive data, in a digital format.

(b) River corridor protection area bylaw. The Secretary shall create and make available to municipalities several alternative model river corridor protection area bylaws or ordinances for potential adoption by municipalities pursuant to 24 V.S.A. chapter 117 or 24 V.S.A. § 2291. The model bylaws or ordinances shall use terminology consistent with the National Flood Insurance Program regulations.

(c) Flood Resilient Communities Program; incentives. No later than February 1, 2013, the Secretary of Administration, after consultation with the State agencies of relevant jurisdiction, shall offer financial incentives through a Flood Resilient Communities Program. The Program shall list the existing financial incentives under State law for which municipalities may apply for financial assistance, when funds are available, for municipal adoption and implementation of bylaws under 24 V.S.A. chapter 117 that protect river corridors and floodplains. The Secretary of Natural Resources shall summarize minimum standards for municipal eligibility for any financial incentives established under this subsection. (Added 2011, No. 138 (Adj. Sess.), § 10, eff. May 14, 2012.)