

## DELEGATION AGREEMENT



**THIS DELEGATION AGREEMENT** (“Agreement”) is made and entered into as of the \_\_\_\_\_ day of August, 2014, by and between the Vermont Agency of Natural Resources (“Agency”), acting through its Secretary, Deborah Markowitz (“Secretary”), and the Town of Greensboro, acting through its Selectboard (“Municipality”).

### RECITALS

**WHEREAS**, Municipality has made application to the Agency pursuant to the municipal delegation provisions set forth in 10 V.S.A. Chapter 49A for delegation of authority to permit the construction, creation, or expansion of impervious surface or cleared area;

**WHEREAS**, pursuant to 24 V.S.A. Chapter 117, Municipality has adopted zoning bylaws (“Bylaws”), regulating the construction of impervious surface or creation of cleared area in a protected shoreland area (See the bylaws attached as Exhibit A);

**WHEREAS**, the Secretary has determined that Municipality’s Bylaws are functionally equivalent to the standards for construction of impervious surface or creation of cleared area and the standards for vegetation protection in a protected shoreland area set forth in 10 V.S.A. §§ 1444, 1445, 1446, and 1447; and

**WHEREAS**, the Secretary has determined that Municipality provides adequate resources for the administration and enforcement of its Bylaws.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, and agreements contained herein, the Agency and Municipality agree as follows:

### AGREEMENT

1. Delegation of Authority. Pursuant to 10 V.S.A. § 1448, the Agency hereby delegates to Municipality authority to permit the construction of impervious surface and the creation of cleared area in the shoreland areas found around Caspian Lake, on the west shore of Lake Eligo, and around Long Pond according to the processes set forth in Municipality’s Bylaws, subject to the limitations and requirements set forth herein. All permits issued by Municipality pursuant to this grant of delegation shall have the same force and effect as if issued by the Agency under 10 V.S.A. Chapter 49A.
2. Special Conditions.
  - (a) The Agency retains jurisdiction over the areas within 250 feet of the mean water level for the following lakes:
    - (i) The east shore of Lake Eligo;
    - (ii) Horse Pond; and
    - (iii) Little Eligo Pond.

- (b) Municipality shall inform landowners proposing projects in the areas listed in subsection (a) that the creations of new cleared areas or impervious surfaces in those areas will also require a permit under the state's Shoreland Act, in addition to whatever town permits may be required.
  - (c) To maintain delegation under 10 V.S.A. Chapter 49A, Municipality shall adopt the following changes to its Bylaws by June 30, 2016:
    - (i) Include the eastern side of Lake Eligo and the shoreland of Little Eligo Pond in the Shoreland Protection District; and
    - (ii) Expand the Shoreland Buffer Resource Zone around Horse Pond to a width of 100 feet.
  - (d) Once Municipality has satisfied the requirements of subsection (c), the Agency and Municipality may enter into a revised delegation agreement.
3. Concurrent Enforcement Authority. If Municipality has the resources to do so, Municipality shall take timely and appropriate enforcement actions pursuant to its Bylaws for violation of its Bylaws or violation of a permit issued pursuant to the Bylaws. Notwithstanding the delegation of authority granted herein, following consultation with Municipality, the Agency may initiate enforcement proceedings, pursuant to the Agency's authority under 10 V.S.A. Chapter 201, to address noncompliance with the Bylaws in any instance where Municipality is unable to or lacks authority or resources to do so.
  4. Intent. The sole purpose of this Agreement is to set forth the terms and conditions for the delegation of authority herein. No section of this Agreement shall be interpreted in such a way as to violate or create any conflict with the statutory basis for this delegation.
  5. Term. This Agreement shall commence as of the date first set forth above and shall continue in effect until terminated in accordance with Section 5 or 6 of this Agreement.
  6. Termination by Municipality. Municipality may terminate this Agreement upon 90 days' written notice to the Agency.
  7. Termination by the Agency. The Agency may terminate the Agreement following notice of defect, a meeting with Municipality to discuss such defect, and a reasonable opportunity for Municipality to cure the defect, which shall not be less than 30 days. For the purpose of this Section, "defect" includes any violation of Municipality's obligations under the Agreement or the Bylaws; any amendment or revision to the Bylaws so that it is no longer functionally equivalent, as determined by the Agency, to the standards set forth in 10 V.S.A. §§ 1444 – 1447; any amendment to 10 V.S.A. Chapter 49A, which results in the Bylaws no longer being functionally equivalent, as determined by the Agency, to the standards set forth in 10 V.S.A. §§ 1444 – 1447; or failure to provide adequate resources for administration and enforcement of the Bylaws. The Agency may terminate the Agreement on or after June 30, 2016 if the Conditions in section 2 of this Agreement ("Special Conditions") are not met.
  8. Other Laws in Effect. This Agreement does not relieve Municipality from compliance with all other applicable state and federal laws and regulations.
  9. Fees and Fines. Municipality shall collect and retain all permit review fees and enforcement related fines associated with Municipality's administration and enforcement of the Bylaws

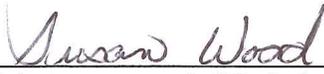
for projects reviewed, permitted, and enforced by Municipality under the Agreement. The Agency shall retain enforcement fines resulting from enforcement cases undertaken, pursuant to Section 2 of this Agreement, by the Agency or the Vermont Office of the Attorney General on behalf of the Agency.

10. Costs. Municipality shall be responsible for all costs of administering the Bylaws, including staff salaries and benefits, transportation costs, and internal administrative expenses; provided, however, that the Agency shall be responsible for its own costs incurred in the administration of this Agreement or as a result of enforcement proceedings undertaken by the Agency pursuant to Section 2 of this Agreement.
11. Amendment. This Agreement may be modified by the Agency following 30 days' notice to Municipality of a change in Agency's delegation authority under 10 V.S.A. § 1448; otherwise, this Agreement may be modified only in a writing signed by Municipality and the Agency.
12. Municipal Records; Reporting. (a) A copy of this Agreement and all records of permits, denials of permit applications, revocations of permits, and other decisions made by Municipality pursuant to this Agreement shall be retained for public inspection in Municipality's main office, located at ~~781 Blakely Road~~, Greensboro, VT; (b) Such records shall be provided to the Agency by electronic copy on a routine basis not less than quarterly, or else made available for inspection by the Agency on a website accessible to the public. *81 Lauredon Ave SW 8/19/24*
13. Project Review. Municipality shall encourage applicants to contact Agency permit specialists and complete a project review sheet in order to determine whether other Agency permits are needed before beginning construction of impervious surface or creation of cleared area pursuant to a permit issued under this Agreement.
14. Annual Report. Municipality shall submit an annual report by February 15 each year, on a form provided by the Agency, summarizing all permits, permit denials, revocations, and other information relevant to the Agreement.
15. Audit. The Agency may perform audits for quality control, information gathering, or in response to a complaint. Municipality shall give representatives of the Agency the authority to enter Municipality's property during normal working hours, to review documents related to Municipality's responsibilities under this Agreement. Municipality shall maintain all records so that such an audit will not be delayed.

*Signature Page Follows*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

For the Town of Greensboro

  
\_\_\_\_\_  
Print name and title below  
Susan Wood  
Select Board Chair

Date 8/13/14

For the Agency of Natural Resources

  
\_\_\_\_\_  
David K. Mears, Commissioner  
Department of Environmental Conservation  
Agency of Natural Resources

Date 8/21/14

**EXHIBIT A**  
**MUNICIPAL BYLAWS / ORDINANCES**

**SUBMITTED:**

Greensboro Zoning By-Law (Adopted 12/12/72, last revised 3/4/14)

## **Findings of Functional Equivalency - Town of Greensboro**

**August 8, 2014**

Section 1448 of title 10 of the Vermont statutes requires the Secretary of Natural Resources to delegate to a requesting municipality the authority to permit the creation of impervious surface and cleared area in the protected shoreland area, as provided by the Shoreland Protection Act (10 V.S.A. § 1441 *et seq.*), if the Secretary finds that the municipality has bylaws or ordinances providing functionally equivalent protections to 10 V.S.A. §§ 1444, 1445, 1446, and 1447 and the municipality provides adequate resources for the administration and enforcement of the bylaw(s) or ordinance(s).

On May 8, 2014 the Town of Greensboro requested delegation and on June 26, 2014 submitted:

1. Responses to Questions of Functional Equivalency
2. Greensboro Zoning By-Law (adopted December 12, 1972, last amended March 4, 2014) (referred to below as GZB)

### **Findings and Analysis**

The following findings address shoreland standards in Greensboro as they apply to Caspian Lake, the west shore of Lake Eligo, and Long Pond. The east shore of Lake Eligo, Horse Pond, and Little Eligo Pond are considered separately on page 7 in Section 9.

#### **1. General – Jurisdiction**

##### **Width of shoreland district**

The width of the Shoreland Protection District in the Town of Greensboro covers the entire area between the town roads encircling Caspian Lake and the mean water level of Caspian Lake (GZB, pages 90-91). It generally includes entire parcel areas on the majority of shoreland parcels. The width of the District varies between an estimated 77 feet and 2400 feet, with all but 1000 feet of shoreline equaling or exceeding 250 feet in width. Due to the presence of the town road within 250 feet of mean water level, these parcels would only be covered out to the town road under the Shoreland Act (10 V.S.A. § 1446(b)(10)). On Lake Eligo the district width is 300 feet on the west side of the Lake, (GZB, pages 92-93). The shoreland district widths for Caspian Lake and the west shore of Lake Eligo exceed those found in the Shoreland Act.

Long Pond is within the Town's Resource District and has no specific shoreland district surrounding it (GZB, pages 94-95). While Long Pond is not included in a shoreland district, protections through buffers and setbacks are in place for lake resource protection.

**All >10 acre lakes in town covered by the shoreland bylaws/ordinances**

Caspian Lake (789 acres), Eligo Lake (174 acres), and Long Pond (99 acres) are the lakes in Greensboro over 10 acres included in either the Shoreland Protection District (GZB, Section 2.7) or that have resource protection requirements found in other parts of the Greensboro Zoning (GZB, Section 3.9).

**2. Section 1444 – Permit Standards**

**Width of protected naturally vegetated area**

Caspian Lake and the west shore of Lake Eligo have a 100 foot protected vegetated area (Shoreland Buffer Resource Zone) (GZB, Sections 8.4, 8.5, and 8.6), Long Pond has a 100 foot wide buffer (GZB, Section 3.9(B) and (C)(2)(b)).

The width of the protected vegetated area on Caspian Lake, the west shore of Lake Eligo, and Long Pond are equivalent to that in the Shoreland Act.

Greensboro Lakes' District Coverage and Vegetated Buffer Widths				
Lake or Pond	District	District width	Setback	Buffer width
Caspian	Shoreland	Variable (77-2400 ft.)	150 ft.	100 ft. (Shoreland Buffer Resource Zone)
Eligo (west shore)	Shoreland	300 ft.	150 ft.	100 ft. (Shoreland Buffer Resource Zone)
Long	Resource	n/a	300 ft.	100 ft.

**Limits on overall parcel impervious coverage**

The Greensboro Shoreland Protection District includes a 150 foot setback for new structures and other impervious areas (GZB, Section 2.7). New structures in the District may not exceed 2500 sq. ft. of total habitable floor area, nor can an addition to an existing house make the total square footage exceed 2500 sq. ft. The District has a minimum lot size of one acre and a minimum lakeshore frontage of 100 feet. In a preexisting lot (created before the one acre minimum lot size in the Greensboro Bly-laws) that is 100' x 250', the impervious coverage of the dwelling would be 10% of the parcel area. While the size of other impervious surfaces such as driveways is not included in the allowed coverage of the lot, there is still an area of 1500 sq. ft. that can be developed before the Shoreland Act 20% maximum coverage of impervious surface is reached.

In the Resource District, where Long Ponds is located, minimum lot size is 25 acres and the minimum pond frontage is 500 feet. There are no specific limits on building or impervious area coverage, but the District is intended to “encompass lands with unique and important Greensboro natural resources” (GZB, Section 2.6). The required lot size is

large to “lessen development pressures on these lands and to preserve the natural features and habitats” (GZB, Section 2.6).

The Shoreland Protection District has a setback for new impervious area that exceeds the requirements of the Shoreland Act by 50 ft., has minimum lot sizes, and has limits on the size of houses. These limits on impervious surface result in similar protections in the Shoreland Protection District around Caspian Lake and the west shore of Lake Eligo as those found in the Shoreland Act. Since the 300 ft. setback around Long Pond is wider than the protected shoreland area of the Shoreland Act, the Greensboro zoning exceeds the impervious surface requirements of the Act in this instance. For Long Pond, the large lot size in the Resource District and the purpose of the district provide similar protections to the limits on impervious surface in the Shoreland Act.

#### **Limits on overall parcel clearing**

Neither the Shoreland Protection District nor the Resource District include limits on clearing above the vegetated buffer zone. However, Section 8.11, applicable to the Shoreland Protection District, includes erosion prevention and sediment control standards for new construction, reconstruction, and relocation and states that, “[d]evelopment of a lot or site shall require the least possible amount of vegetation clearing, soil disturbance, exposure time, soil compaction and topography change.” Additionally, Section 8.10, applicable to the Shoreland Protection District, authorizes the Zoning Administrator to require development in the District as a whole to manage stormwater in accordance with best management practices identified in the “Vermont Low Impact Development Guide for Residential and Small Sites.” This Section also specifies that runoff from the District shall not enter the Buffer Resource Zone in a channelized form, and the Section contains road and driveway standards aimed at reducing erosion and runoff. Finally, Section 8.10 also requires the submission of “an existing condition site assessment” designed to allow the Zoning Administrator the ability to review grades, site features, and stormwater runoff aspects of proposals. The provisions in Sections 8.10 and 8.11 provide protections similar to the cleared area standard found in the Shoreland Act. However, as stated above, in the Resource District, clearing is regulated in the buffer, but there is no limit on overall parcel clearing.

#### **Limits on buildable slope**

In the Shoreland Protection District if the slope exceeds 15%, the width of the Shoreland Buffer is widened to include the entire slope that is over 15% or meets the definition of a bluff. This wider buffer also includes an additional 25 foot setback from the top of the steep slope or bluff (GZB, Section 8.7). This provision combined with the 150 foot setback of new buildings and impervious surface exceeds the standards in the Shoreland Act.

The Resource Protection District for Long Pond does not include any considerations of steep slope. However, the pond has no significant areas of slopes over 20% up to the

water's edge according to the online VTANR Natural Resources Atlas. Therefore, Long Pond meets the slope requirement in the Shoreland Act.

Greensboro's Zoning By-laws meet or exceed the standards in the Shoreland Act with respect to slope around Caspian Lake, on the west shore of Lake Eligo, and around Long Pond.

### **3. Section 1445 – Nonconforming Parcels Permit Standards**

#### **Process for addressing non-conformance or existing non-conforming parcels**

In the Shoreland Protection District, normal maintenance and repair is allowed as long as it does not increase the degree of non-conformity (GZB, Section 8.9). Any expansion, including decks or patios, requires a Conditional Use permit, and shall not extend closer to the lake edge (GZB, Section 8.9). If a conditional use expansion of an existing non-conforming structure is allowed, the degree of non-conformance cannot increase or mitigating measures will be required, such as the return of a lawn or cleared area to a "naturally vegetated state" (GZB, Sections 8.9 and 5.4).

In the Resource District, where Long Pond is located, a non-conforming structure or existing use in the vegetation buffer may be maintained, but may not be expanded (GZB, Section 3.9). Work on a non-conforming structure requires DRB review and approval. (GZB, Sections 3.9 and 5.4).

The Greensboro Zoning By-laws also include a waiver process (GZB, Section 5.6) that allows waivers for certain setbacks and lot frontage, but such waivers can include mitigation requirements and must be the minimum necessary to "afford relief."

Greensboro's Zoning bylaws meet the standards in the Shoreland Act with respect to addressing non-conforming uses.

### **4. Section 1446 – Registered Projects; Exemptions from Permitting**

#### **Defined uses in the protected vegetated area**

Within the Shoreland Protection District's Shoreland Buffer Resource Zone, no new impervious areas or clearing is allowed (GZB, Section 8.7). Exception is made for one "Boat House" per "tax lot," permitted by conditional use (GZB, Section 8.8). A boat house shall be for the purpose of boat storage only and may not have plumbing, decks, or porches (GZB, Section 8.8). Any trees cut during construction of the boat house must have their stumps left in the ground and provisions for adequate control of stormwater runoff shall be made (GZB, Section 8.8). Boat houses are exempt from the setback, but must be behind the Natural Berm, if one exists (GZB, Section 8.8). Construction of stairways is allowed, as are landings, lifts, and other ADA accessibility (GZB, Section 8.8). Stairs shall not exceed 4 feet in width (GZB, Section 8.8).

In the Resource District around Long Pond access paths no wider than 5 feet are allowed in the vegetation buffer (GZB, Section 3.9). The use of fertilizer is prohibited in the

buffer (GZB, Section 3.9). These allowed uses are more restrictive than those in the Shoreland Act.

The allowance in the Shoreland Buffer Resource Zone of one boat house is equivalent to the Shoreland Act "Registration" process allowing one 100 sq. foot impervious area within the first 100 feet from mean water level (10 V.S.A. § 1446(a)) and the provision in the Shoreland Act allowing for the removal of up to 250 sq. ft. of low vegetation within 100 ft. of the mean water level for recreation (10 V.S.A. § 1446(b)(2)). The exemptions and allowed uses in the Greensboro Zoning By-laws provide similar protections to those found in the Shoreland Act.

## **5. Section 1447 – Lake Shoreland Vegetation Protection Standards**

### **Vegetation management standards**

The Shoreland Buffer Resource Zone within the Shoreland Protection District covers the area within 100 feet from the mean water level (GZB, Section 8.4). In this area no new lawns are allowed and the Bylaw encourages the return of existing lawns to natural vegetation (GZB, Section 8.7). Existing healthy trees and other vegetation including groundcover may be "maintained and enhanced" through selective cutting without a permit (GZB, Section 8.6). All stumps are to be left intact in the ground, and cutting and removal must be done in a manner that prevents damage to surrounding trees, minimizes damage to groundcover, and avoids erosion and sedimentation to the lake (GZB, Section 8.6). Dead or dangerous trees can be removed, but proof may be required that the removed trees or limbs were unsafe (GZB, Section 8.5). If vegetation is found to have been removed in violation of Sections 8.5 or 8.6, the Town can levy a fine and require replanting.

Vegetation management standards for the vegetation buffer areas around Long Pond are similar, with the added protection on Long Pond that any cutting within 100 feet of the water requires Development Review Board approval (GZB, Section 3.9).

Additional protections found in the Greensboro Zoning By-Laws include:

- Prohibition on new roads or driveways in the Shoreland Buffer Resource Zone (GZB, Section 8.7)
- Use of fertilizers is prohibited in the vegetation buffer zone (GZB, Section 3.9)
- All new plantings in either zone shall be non-invasive appropriate native species (GZB, Section 3.9 and Art. 8)

The vegetation management standards in the Greensboro Zoning By-laws provide similar protections to those in the Shoreland Act, and in some cases exceed the Act's standards.

## **6. Administration**

The Town of Greensboro has a Zoning Administrator who reviews and permits 30-50 applications a year town-wide. The Development Review Board (DRB) meets as needed, up to weekly. Most projects in the Shoreland Protection District require a conditional use

permit, so are reviewed by the DRB. Most often such project reviews include site visits by both the Zoning Administrator and later the DRB. Greensboro has had protective shoreland standards in their zoning for many years, and therefore, has experience regulating shoreland areas.

Greensboro has a Zoning Enforcement Policy incorporated in the Zoning Bylaw. The Town reports that most issues are resolved verbally with the landowner. Formal intervention is authorized by the Select Board and a fine of \$100.00 a day may be levied. The Town reports that site visits and education before permit issuance result in few violations.

The Town of Greensboro has adequate resources to administer its shoreland standards.

## **7. Additional Measures**

Section 8.11, applicable to the Shoreland Protection District, sets forth requirements for erosion prevention and sediment control standards for the construction phase of development. It includes such requirements as disturbing the “least possible” amount of the site; interception of runoff and directing to undisturbed vegetated areas; use of swales, sediment traps, and silt fences; defining the construction area and avoidance of disturbance and soil compaction outside of it; immediate seeding and mulching as each phase of construction is completed; and a prohibition on development, clearing, and grading on slopes greater than 15%. The Bylaw requires that a construction site plan be submitted prior to work and it references consideration and incorporation of the concepts and practices found in “*Vermont Low Impact Development Guide for Residential and Small Sites*” and “*The Low Risk Handbook for Erosion Prevention and Sediment Control.*” The inclusion of erosion prevention and sediment control standards exceeds the standards in the Shoreland Act.

## **Conclusions**

### **8. Finding of Functional Equivalency**

The Secretary has come to the following conclusions based upon the foregoing findings and analysis:

- (a) General: The Greensboro Zoning By-laws are considered functionally equivalent to the Shoreland Act for the purpose of inclusion of lakes and ponds greater than 10 acres in size with respect to Caspian Lake, the west shore of Lake Eligo, and Long Pond.
- (b) Section 1444:
  - (1) The Secretary finds that the Greensboro By-laws are functionally equivalent to the Shoreland Act for the purpose of width of the protected vegetated area for the shoreland of Caspian Lake, the west shore of Lake Eligo, and Long Pond.

- (2) The Secretary finds that the Greensboro By-laws are functionally equivalent to the Shoreland Act for the purpose of limiting overall impervious coverage for the shoreland of Caspian Lake, the west shore of Lake Eligo, and Long Pond.
- (3) The Secretary finds that the Greensboro By-laws are functionally equivalent to the Shoreland Act for purposes of limiting overall clearing for the shoreland of Caspian Lake, the west shore of Lake Eligo, and Long Pond.
- (4) The Secretary finds that the Greensboro By-laws provide functionally equivalent protection for avoiding development on steep slopes for the shoreland of Caspian Lake, the west shore of Lake Eligo, and Long Pond.
- (c) Section 1445: The Secretary finds that the Greensboro By-laws pertaining to non-conforming parcels are functionally equivalent to the Shoreland Act.
- (d) Section 1446: The Secretary finds that the exemptions from permitting are functionally equivalent to the Shoreland Act for the shoreland of Caspian Lake, the west shore of Lake Eligo, and Long Pond.
- (e) Section 1447: The Secretary finds that the Greensboro By-laws are considered functionally equivalent to the Shoreland Act for the purpose of vegetation management standards for the shoreland of Caspian Lake, the west shore of Lake Eligo, and Long Pond.
- (f) Administration: The Secretary finds that the Town of Greensboro provides adequate resources for the administration and enforcement of their By-laws.

The Secretary of Natural Resources finds that the Town of Greensboro has bylaws and ordinances that in total provide functional equivalency to the standards and requirements of Act 172 (2014), the Shoreland Protection Act for the shoreland of Caspian Lake the west shore of Lake Eligo, and Long Pond. The Agency therefore delegates the authority to implement the shoreland protection standards in these areas.

The Agency retains jurisdiction over the creation of new cleared areas or impervious surfaces in areas within 250 feet of the mean water level along the east side of Lake Eligo, Horse Pond, and Little Eligo Pond.

#### **9. Exceptions to Functional Equivalency**

For Horse Pond, Little Eligo Pond, and the eastern shore of Lake Eligo, the Greensboro By-laws are not functionally equivalent to the Shoreland Act.

The Greensboro By-law covering Horse Pond is not considered functionally equivalent to the Shoreland Act because the protected vegetated area (buffer) around Horse Pond is 50 feet instead of 100 feet wide.

Little Eligo Pond is located almost entirely within Hardwick, but the northern tip is in Greensboro. Little Eligo Pond is not identified as a lake or pond under the Greensboro By-laws. The town considers it a “wetland” and defers protection of it, including the protected vegetated area, to the Vermont Wetland Rules under which it is identified as a Class II Wetland. The Agency considers Little Eligo Pond both a wetland and a

pond/lake and therefore finds that the Greensboro By-laws do not provide functionally equivalent shoreland protection.

The east shore of Lake Eligo is not included in the Shoreland Protection District. Therefore, the eastern shore does not have shoreland protections functionally equivalent to the Shoreland Act.