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Watershed Management Division

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MEMORANDUM

TO: Hannah Smith, Esq., DEC Associate General Counsel

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FROM: Misha Cetner, Lakes & Ponds Permitting
Lakes & Ponds Management and Protection Program

DATE: December 20, 2019

RE: Shoreland Protection Act – Impervious Surfaces, Decks and Patios

10 V.S.A. § 1442 (9) defines “impervious surface” to mean “those manmade surfaces, including paved and unpaved roads, parking area, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates.”

10 V.S.A. § 1442 (7) "Habitable structure" means a permanent assembly of materials built for the support, shelter, or enclosure of persons, animals, goods, or property, including a dwelling, a commercial or industrial building, and driveways, decks, and patios attached or appurtenant to a dwelling or commercial or industrial building. "Habitable structure" shall not mean a motor home, as that term is defined under 32 V.S.A. § 8902, tents, lean-tos, or other temporary structures.

All decks and patios located within the protected shoreland area and constructed prior to July 1, 2014 shall be presumed to be impervious surface unless an applicant provides the Secretary with evidence to demonstrate that the deck or patio meets infiltration criteria outlined within this memo.

Question 1: Should decks and patios constructed on or after July 1, 2014 be considered impervious surface regulated under the Shoreland Protection Act?

Answer 1: Decks and patios constructed on or after July 1, 2014 are considered impervious surface unless an applicant demonstrates those surfaces are constructed to meet the following pervious deck and patio infiltration criteria:

- a) Gaps between decking boards or patio surface (flagstone, brick, pavers, etc.) allow passage of stormwater to the underlying substrate.
- b) Underlying substrate is not an impervious surface such as concrete, asphalt, compacted dirt/gravel, or compacted crushed stone and allows for infiltration of stormwater (e.g., loose stone bed or vegetation).
- c) Perimeter of deck or patio is managed for water infiltration (e.g., loose stone infiltration trench or vegetation).
- d) The deck or patio is of an open design (i.e., the deck or patio does not have a roof).

If a deck or patio constructed after July 1, 2014 does not meet the above listed criteria it shall be considered a new impervious surface, and its square footage shall be counted as impervious surface when calculating the surface area of impervious surface on a parcel within the protected shoreland

area. Regardless of deck or patio design, construction of a deck or patio involving creation of new cleared area (10 V.S.A. § 1442(3)) may require authorization under a shoreland registration or shoreland permit and the area beneath a deck or patio shall be considered cleared area and counted toward the cleared area on the parcel.

Question 2: Where in the protected shoreland area can an applicant propose to construct a pervious deck or patio that meets the criteria in Answer 1?

Answer 2: An applicant can propose to construct a pervious deck or patio that meets the criteria in Answer 1 provided the project is located in accordance with the conforming or nonconforming parcel permit standards and is constructed on a slope of less than 20% (10 V.S.A. § 1444 or 10 V.S.A. § 1445).

Question 3: How may one apply to construct a pervious deck or patio that meets the criteria in Answer 1?

Answer 3: One may submit a Shoreland Jurisdictional Determination form, or Shoreland Individual Permit Application when the project also involves the construction of jurisdictional impervious surfaces. Constructing a deck or patio without obtaining approval through one of these applications shall be considered the jurisdictional creation of impervious surface within the protected shoreland area.