



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner
February 3, 2011

The Honorable Andrew Renzullo, Chairman
Resources, Recreation and Development Committee
Legislative Office Building, Room 305
Concord, New Hampshire 03301

Re: HB 321, relative to classification of wetlands as contributing or noncontributing

Dear Chairman Renzullo:

Thank you for the opportunity to comment on HB 321, which would require the Department of Environmental Services (DES) to develop criteria for classifying wetlands as contributing or noncontributing and would make noncontributing wetlands exempt from state regulation. DES does not support this legislation for the reasons described below.

HB 321 would require DES to classify non-tidal wetlands as either “contributing” or “noncontributing.” “Contributing wetlands” are defined in the bill as “wetlands that have considerable environmental value or that provide a positive environmental benefit.” The bill requires that DES develop a comprehensive method for classifying wetlands as either contributing or noncontributing, present this method to the legislature for affirmation of compliance with legislative intent and then, upon affirmation, to adopt regulations. The bill then establishes that activities in “noncontributing wetlands” would be unregulated. This would result in a state wetlands classification system that is less stringent than the federal wetlands classification system. The development of noncontributing wetlands would be unregulated under state law, but would still be regulated under federal law, which does not recognize a distinction between contributing and noncontributing wetlands.

If this change were to occur, it would cause a dramatic change in wetlands permitting processes in New Hampshire because the benefits of the United States Army Corps of Engineers State Programmatic General Permit (SPGP) would likely be invalidated for most projects. The SPGP is a permit issued by the US Army Corps of Engineers to the State of New Hampshire to enable streamlined permitting processes. Under the SPGP, DES performs reviews for most projects with wetlands impacts of less than three acres, then issues permits that cover both the state and federal requirements. If the state program were to become less stringent, individual permit applications to the Corps of Engineers would be required for all proposed impacts in federally-regulated wetlands. This would result in substantial delays (often 6 to 9 months) for applicants to receive federal wetlands permits, as well as additional costs for applicants. By way of contrast, DES is currently issuing standard wetlands permits within 30 to 60 days from the date that a complete application is received, well ahead of the maximum 105 day statutory deadline.

DES believes that the existing state wetlands program, in conjunction with the Army Corps of Engineers SPGP for New Hampshire, provides substantial benefit to New Hampshire’s

The Honorable Andrew Renzullo, Chairman
Resources, Recreation and Development Commission
February 3, 2011

Page 2 of 2

valued wetlands resources. The issuance of a state wetlands permit allows citizens and businesses to avoid the additional regulatory burden of obtaining a federal wetlands permit in all but the largest projects. If enacted, HB 321 would reduce the scope of environmental protection for New Hampshire's wetland resources, and it would likely increase the overall regulatory burden on New Hampshire citizens.

Thank you for this opportunity to comment. Please call Collis Adams at 271-4054, Rene Pelletier at 271-2951, or me at 271-2958, if you have any questions or need additional information.

Very truly yours,

A handwritten signature in black ink that reads "Thomas S. Burack". The signature is written in a cursive style with a large, stylized initial "T".

Thomas S. Burack, Commissioner

cc: Representative Mirski
Representative Parison
Representative Avard
Representative LeBrun
Representative Lambert
Representative Huxley
Representative Warden