



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

February 1, 2011

The Honorable Bob Odell, Chairman
Senate Ways and Means Committee
State House, Room 100
Concord, NH 03301

RE: SB 59 relative to fees for terrain alteration permits

Dear Senator Odell:

Thank you for the opportunity to comment on SB 59, which would return terrain alteration permit application fees to the levels that existed prior to July 1, 2007. The Department of Environmental Services (DES) does not support this bill.

If SB 59 were enacted, a sixty percent reduction in annual fee revenues to the Terrain Alteration Program would occur, resulting in the elimination of 4 of the 6 existing program staff positions in order to bring program expenses into line with the lower revenues. As a result, the program would be incapable of meeting permitting and compliance requirements in FY 2012 and future years, especially as the economy improves and construction activity picks up across New Hampshire, resulting in more demand for prompt permit reviews.

Terrain alteration permits from DES are required by RSA 485-A:17 whenever a project is proposed that will disturb more than 100,000 square feet of contiguous terrain (50,000 square feet, if any portion of the project is within the protected shoreland), or an area having a grade of 25 percent or greater within 50 feet of any surface water. Permits by rule are available for smaller projects. The Terrain Alteration Program applies to major earth moving operations, such as industrial, commercial, and residential developments as well as sand pits, gravel pits, and rock quarries. Individual permits are issued by DES after a technical review of the application, which includes the project engineering plans and supporting documents, for compliance with existing statutory requirements and regulations. The terrain alteration permit is intended to reasonably ensure protection of New Hampshire surface waters, drinking water supplies and groundwater by controlling soil erosion during construction and managing stormwater runoff from developed areas. DES has historically issued from just over 100 to almost 400 terrain alteration permits per year depending on economic conditions.

The existing terrain alteration permit application fee structure and several other related changes, including the establishment of the Terrain Alteration Fund, a non-lapsing dedicated fund, were enacted during the 2007 session (chapter 263, section 30) effective July 1, 2007. The other changes adopted at that time included establishment of clear application processing procedures and statutory time frames for both DES reviews and applicant information submittals, the creation of two additional engineering positions at DES to help meet the new statutory review times and a requirement for quarterly reports by DES to the legislature. These changes, as an integrated whole, were developed cooperatively by DES and the regulated community and have resulted in a more effective and efficient terrain alteration program. As of today, this program has a permit application backlog of 13 applications with the oldest application in-house at DES for 36 days, as compared with the statutory requirement for application reviews of 50

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days. DES has continuously met the 50 day statutory review time since it became effective on January 1, 2008.

The Terrain Alteration Fund is the sole funding source for the DES Terrain Alteration Program. Prior to July 1, 2007, this program was supported completely by the state general fund and terrain alteration permit fees were deposited into the state general fund. DES estimates that, prior to FY 2008, general fund expenditures for the Terrain Alteration Program typically exceeded application fee revenues annually by over \$200,000, resulting in a regular net annual loss to the general fund. In contrast, The Terrain Alteration Fund ended each of Fiscal Years 2008, 2009 and 2010 with a positive balance. Therefore, the change to a dedicated fee account had the expected positive impact on the state general fund.

Because of declining revenues caused by the length of the economic slowdown, the Terrain Alteration Fund currently has an operating deficit for FY 2011. We have already made a number of major personnel adjustments to appropriately manage the fiscal situation and we will continue make further necessary adjustments as the year progresses. For example, of the 8 permanent fulltime positions in the Terrain Alteration Bureau, 2 engineering positions are vacant, 2 other engineering positions have been temporarily transferred full time to other bureaus to perform other necessary work, and 2 bureau compliance staff have been partially shifted to other water quality-related compliance program funding. As a result, we fully expect the Terrain Alteration Fund to close FY 2011 with a positive balance while DES still meets all statutory obligations. We further expect that the fund balance will improve as construction activity gradually picks up during 2011 and subsequent years, assuming the current fee rate schedule remains in place.

If SB 59 were enacted, not only would DES find it very difficult to act on permit applications within the statutory timeframes, the agency also would not be able to maintain a reasonable level of compliance assurance for permitted projects. If this were to occur, the United States Environmental Protection Agency (EPA) would no longer be able to rely on DES compliance inspections as a means to help them ensure compliance for projects also covered by the EPA National Pollutant Discharge Elimination System (NPDES) Stormwater Construction General Permit Program. Currently EPA has a very limited presence in New Hampshire except for the most egregious violations. However, if the DES compliance program in the Terrain Alteration Program were substantially reduced or eliminated, EPA would likely increase compliance inspections in New Hampshire, with the likely result of more federal enforcement actions on major construction projects. Typically, EPA fines are also substantially higher for contractors and project owners than those imposed by DES. Therefore, the reductions caused by SB 59 would likely result in higher overall compliance costs for New Hampshire contractors and project owners.

Finally, please note that DES is committed to continuously improving the Terrain Alteration Program as well as our other development permitting programs. As you know, we are currently working to develop an integrated permitting process under a bill that will be heard by the Senate Energy and Natural Resources Committee. We also recognize that there is a need to continue to improve and clarify the terrain alteration rules, particularly with respect to site

The Honorable Bob Odell
Chairman, Ways and Means Committee
February 1, 2011

Page 3 of 3

redevelopment. To this end, we have initiated discussions with stakeholders, including developers and engineers, to develop a new section of the rules in 2011 dedicated to site redevelopment to provide greater clarity and thus streamline permitting for the redevelopment projects. Reductions in fee revenues to the Terrain Alteration Program would further strain limited staff resources, thereby impeding our ability to move forward expeditiously with these important improvements to the program.

Thank you for the opportunity to comment on this legislation. If you have any questions or need additional information, please do not hesitate to call Rene Pelletier at 271- 2951 or me at 271-2958.

Sincerely,



Thomas S. Burack
Commissioner

cc: Senator Gallus
Senator Sanborn
Representative Richardson
Representative Remick
Representative Mirski