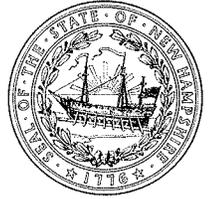


The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner



*Celebrating 25 Years of Protecting
New Hampshire's Environment*

January 24, 2012

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

Re: HB 1540, relative to conservation easements on public land

Dear Chairman Renzullo:

Thank you for the opportunity to comment on HB 1540, relative to conservation easements on public land. If enacted, HB 1540 would prohibit any local, county or state government entity from selling or granting to any nonprofit organization a conservation easement on land, irrespective of the reason for the easement transfer. The Department of Environmental Services (DES) does not support HB 1540.

When state and federal wetlands permits are required for projects that have significant wetlands impacts, compensatory mitigation must be provided to compensate for wetlands loss. Compensatory mitigation is specifically required under the New Hampshire State Programmatic General Permit (SPGP) issued by the United States Army Corps of Engineers under which DES implements a streamlined permitting process for federal wetlands permits. The SPGP allows compensatory mitigation by four possible options: land preservation, wetlands restoration, wetlands creation, or payment into the New Hampshire Aquatic Resource Mitigation (ARM) Fund. If enacted, HB 1540 would eliminate the option for a government entity to satisfy compensatory mitigation requirements by land preservation involving easement transfer to a nonprofit organization. The elimination of this option would increase costs to government entities when this could be the low cost alternative. The potential cost impacts of HB 1540 are demonstrated by the following examples of actual projects in which easements granted by municipalities to nonprofit organizations enabled cost savings as compared with the next lowest cost alternative:

- In 2005, the Town of Conway School District received a wetlands permit to construct a new high school facility that required compensatory mitigation, which was addressed by a seven acre conservation easement on town-owned land deeded to the Tin Mountain Conservation Center. The savings to the Conway School District were approximately \$52,000.
- In 2008, the Town of Bedford received a wetlands permit for construction of a public recreational pond and park area. An 8.0 acre conservation easement on town-owned land was deeded to the Bedford Land Trust for compensatory mitigation. The savings to the Town of Bedford were approximately \$130,000.

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- In 2010, the City of Lebanon School District received a wetlands permit for the construction of a school and associated facilities. Compensatory mitigation included a conservation easement on 41 acres of City-owned land that was deeded to the Upper Valley Land Trust. This property is known as the *Forest of Life* for its highly diverse wetland systems and wooded trail areas. It has significant ecological and recreational value. The savings to the City of Lebanon was over \$300,000.

In each of these cases, the availability of the option to transfer easements to a nonprofit organization provided substantial cost savings for important municipal projects and ensured the long term preservation of important properties that have environmental and recreational value. If HB 1540 were enacted, municipalities would no longer have this option available and, as a result, compensatory mitigation for some municipal construction projects would become more expensive and some significant lands would not be preserved.

Finally, in the fiscal note, the New Hampshire Association of Counties and the New Hampshire Municipal Association stated that county and local revenues would decrease if HB 1540 were enacted because this would preclude the selling of conservation easements to nonprofit organizations. For the reasons discussed above, we recommend that the fiscal note be amended to also reflect the negative cost impacts to state, county and local governments that would occur if government easements to nonprofit organizations were no longer allowed for wetlands compensatory mitigation even when this option would result in cost savings.

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

Very truly yours,



Thomas S. Burack
Commissioner

cc: Representative Cartwright
Representative McGuire