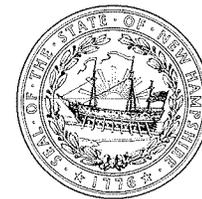




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

February 4, 2014

The Honorable Shannon Chandley, Chair
Resources, Recreation and Development Committee
Legislative Office Building, Room 305
Concord, NH 03301

RE: HB 1258; An act relative to fill and dredge permitting applications.

Dear Chair Chandley and Members of the Committee:

Thank you for the opportunity to testify on House Bill 1258. This bill would modify two aspects of the process for submitting wetlands fill and dredge applications: how the application is submitted and proof of abutter notification. The Department of Environmental Services (DES) supports this bill. We offer the attached amendment to provide minor clarifications to the bill.

Under current law (RSA 482-A:3, I(a)), applicants must submit the original and four copies of an application to the municipal clerk (of the community in which a proposed project would be undertaken), who then must forward the original application to DES via certified mail and distribute the copies locally (i.e., to the municipalities governing body, planning board, conservation commission, and for public review). Under this bill, applications would instead be filed directly with DES, while retaining the requirement for the municipal clerk to sign an acknowledgement of receipt of the application and of the receipt of four copies for distribution locally. Also under current law (RSA 482-A:3, I(d)(1)), the applicant is required to notify abutters by certified mail. This bill would retain this requirement but provide that DES is not obligated to independently verify the identity of abutters or their receipt of notice. Moreover, the bill would provide that an abutter who has actual notice cannot challenge an issued permit based on a technicality related to the certified mail notice.

Having applications submitted directly to DES will streamline the application process and align it with all other DES permit application processes. This change is expected to result in savings to applicants, agents, consultants, and municipalities. Retaining the requirements for the application to be signed by the municipal clerk prior to filing with DES and for the applicant to provide four copies for local distribution will ensure that the municipality remains "in the loop" about the application.

Having the applicant be responsible for proving abutter notification and preventing abutters from having a permit invalidated based on a technicality relating to the certified mail notice when they have actual notice will result in less uncertainty and eliminate the expectation that DES will independently verify that all abutters received certified mail notice. Too often, DES decisions are challenged based upon improper notification of abutters, and some of those challenges have been upheld even when the abutters received actual notice. There are many reasons for improper notifications, most of which do not stem from negligence or intent on the part of the applicant.

DES Web site: www.des.nh.gov

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For example, local tax map and parcel information may not be accurate, parcels may be held by more than one individual or a trust whose trustees or beneficiaries are not known, or notifications to owners may be undeliverable, such as for those who are out of state for long durations. DES does not have the resources necessary to verify the accuracy and completeness of abutter notification, nor does DES think it is reasonable to expend limited State resources to track down this information. The statute already puts the burden of notifying abutters on the applicant, so it is reasonable that the applicant should be responsible for accurately identifying abutters. DES also believes that the statutory requirement should not provide that an abutter who had actual notice of an application can have the permit invalidated simply because co-owners whose names do not appear in the public record did not receive direct certified mail notice.

Thank you for your consideration in this matter. If you have questions or need additional information please contact either Collis Adams, Wetlands Bureau Administrator (collis.adams@des.nh.gov, 271-4054) or me (thomas.burack@des.nh.gov, 271-2958).

Sincerely,



Thomas S. Burack
Commissioner

cc: Sponsors of HB 1258