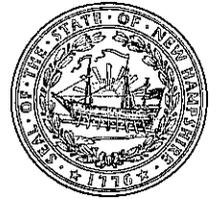




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

February 4, 2010

The Honorable Martha Fuller Clark, Chairman
Senate Energy, Environment and Economic Development Committee
LOB, Room 102
Concord, New Hampshire 03301

Subject: SB 335, an act relative to wetland impact assessments in construction permit applications

Dear Chairman Fuller Clark:

This letter is to inform you of the Department of Environmental Services (DES) position with respect to SB 335, an act relative to wetland impact assessments in construction permit applications. DES does not support SB 335 in its current form for reasons that are briefly outlined below. Should SB 335 be tabled or sent to interim study, we believe that a pathway forward to make improvements has been established through recent discussions with the bill's primary sponsor, Senator Janeway, and Chairman Judith Spang of the House Resources, Recreation and Development (RR&D) Committee and we are committed to working with the RR&D Committee, Senate Energy, Environment and Economic Development (EEED) Committee and previously established legislative commissions to this end.

DES recognizes that changes are necessary to the regulatory processes related to land development to improve the protection of not only New Hampshire's wetlands, but of all of the state's water bodies, including ponds, lakes, streams and rivers. Water quality and upland habitat for sensitive species are affected by stormwater runoff, development patterns and other factors, and their protection should be addressed in a comprehensive manner, not solely in the context of projects requiring wetlands permits. DES strongly believes that long-term protection of the State's water resources, including its wetlands, must be rooted in a broad regulatory framework and not just considered in the context of the wetlands statute.

SB 335 would amend RSA 482-A, Fill and Dredge in Wetlands, to require a detailed assessment of impacts to wetlands reasonably likely to be caused by the construction and post-construction use and operation of a project. It would constitute a significant expansion of DES review of development projects that affect wetlands. The bill's language raises many unanswered questions about how DES would be expected to implement new authority to review not only the construction impacts to wetlands for a project, but impacts from the post-construction operation and use of a site. The bill does not provide any additional staff resources and would not extend the statutory timeframes within which DES must act on applications.

We have recently had several very productive meetings and conversations with Senator Janeway, Chairman Spang and other members of the RR&D Committee. If SB 335 is tabled or sent to interim study, DES is committed to a course of action that we believe will lead to a broad consensus on regulatory reform. DES is fully committed to working, with my direct personal involvement, with the RR&D Committee, the EEED Committee and the two commissions that

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have been tasked by the legislature with assessing the impacts of development on water quality, uplands habitat, and wetlands, namely the Commission to Study Land Development Regulations and the Effects of Land Development within Upland Areas that may Affect Wetlands and Surface Water of the State (the "Land Use Commission") and the Commission to Study the Issue of Stormwater Management (the "Stormwater Commission").

The Land Use and Stormwater Commissions, which are respectively chaired by Representatives Gottling and Spang of the RR&D Committee, and are charged with issuing their final reports by November 2010, are the keys to building consensus relative to the regulation of uplands development that ensures greater consideration of important issues such as habitat fragmentation and the impacts of stormwater on the environment, including wetlands. To move this process forward, I have suggested convening one or more joint meetings of the Commissions to establish a clear, integrated framework for both that will lead to the necessary statutory improvements in a timely fashion. These are complicated issues, and there are many interests and interest groups that should appropriately be involved in identifying solutions that are durable and constructive. While it is possible that consensus could be reached on some narrow issues before the end of the current legislative session, we believe it is more realistic to expect that the work this year of the Commissions and the RR&D and Senate EEED Committees will lay a solid foundation for enactments in subsequent sessions of the legislature.

We look forward to working with the Legislature and the two commissions, and with all of the other interested parties to ensure that legislation will be crafted that will stand the test of time and that provides an understandable and predictable regulatory approach to the protection of New Hampshire's environment and natural resources as our population and economy continue to grow.

Thank you for considering our concerns with SB 335. If you have any questions, please feel free to contact me at 271-2958 or Rene Pelletier, Assistant Director of the Water Division, at 271-2951.

Sincerely yours,



Thomas S. Burack
Commissioner

cc Senator Janeway
Senator Merrill
Representative Spang
Representative Gottling