Empire State Forest Products Association
The people behind New York’s healthy forests and quality wood products
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Memorandum of Opposition

A 3658/S 7366

Honorable Steven Englebright
Member of Assembly
621 LOB
Albany, NY 12248

Honorable Peter Harckham
Senator
612 LOB
Albany, NY 12247

Date: 2/4/2020

Dear Assemblyman Englebright and Senator Harckham:

The Empire State Forest Products Association (ESFPA) has a number of concerns with A. 3658/S. 7366 relating to the definition of freshwater wetlands; the Department of Environmental Conservation’s jurisdiction extending to wetlands over 1 acre; the process for designation and notification of draft wetland areas; and, the regulation of the subdivision of property. With the number of concerns and the regulatory mission creep proposed in this bill, ESFPA cannot support this legislation as drafted.

The Empire State Forest Products Association (ESFPA) represents over 400 member businesses, industries and landowners engaged in forest resource production and stewardship of New York’s 19 million acres of forest. In total, $22.9 billion dollars in annual industry production and nearly 100,000 jobs are attributable to operations of various industries within forest related sectors. There are over 200,000 private landowners who also depend on sound forest and timber management and production to help keep their forests as forests.

ESFPA is not opposed to updating the procedures and scope of regulating wetlands in New York State but it should be done in a more comprehensive fashion reflecting the science, current and dynamic nature of wetland systems, and with an aim toward streamlining wetlands regulation which presently can have as many as three different levels of government regulating the same wetland with varying criteria and standards to be met.
New York State has been a leader in wetland regulation and stewardship for nearly 50 years and has a very comprehensive wetland mapping and regulatory scheme under Article 24 of the Environmental Conservation Law. Article 24 provides for protection of wetlands larger than 12.4 acres (5 hectares) or of unusual importance (less than 12.4 acres) throughout most of the State, wetlands of 1 acre or larger in the Adirondack Park, and authorizes local government wetland regulations so long as the program is at least as protective of freshwater wetlands and so long as their regulation is not contrary to the intent of Article 24 (including exempt or unregulated activities).

In addition, the U.S. Army Corp of Engineers regulates wetlands in New York under section 404 of the Clean Water Act. New York has not elected to assume administrative authority to assume this regulatory jurisdiction as authorized under the CWA, as it has under other delegatory provisions of the CWA (e.g. section 401 of the CWA).

This legislation purports that wetlands are threatened in New York as a result of a recent Supreme Court decision curtailing the federal government’s regulation of wetlands. The basis for this legislation is not founded on science justifying its need or current status of freshwater wetlands in New York. In fact, based on the best available information, New York wetlands are in much better shape and more extensive than when the Freshwater Wetlands Act was enacted. Freshwater wetlands in New York are growing as a result of both natural causes (e.g. the largest being beaver impoundments) and manmade causes (e.g. highway impoundments and wetlands created as part of green infrastructure development). Arguably in New York we have had a largely successful and productive wetlands program for several decades. That’s not to say problems do not exist, but today we plan for, manage, design and regulate freshwater wetlands in a pretty good way.

The proposed legislation does not take any measures to further streamline or consolidate wetland regulation in a manner that would ensure predictability and understanding of wetland regulation on landowners and the regulated community. If New York reduces wetland coverage to one acre or smaller there is an opportunity at the State level to eliminate redundant APA regulation of wetlands in the Adirondack Park. In addition, the Legislature could direct the DEC to assume wetland jurisdiction under section 404 of the CWA (albeit this would require funding to ensure resources for the DEC). Also the legislation does nothing to ensure that local wetland jurisdiction is not just another unbridled regulatory encroachment.

The proposed legislation undermines due process and the value of wetland mapping which would increase the uncertainty of regulation for landowners and land managers/developers alike. Under current law the DEC must map wetlands and notify landowners if there is a proposed mapped wetland on their property, provide an opportunity for the public to comment on the accuracy of such maps, and file maps with the local governments. The proposed changes to the law would eliminate the due process currently provided through the wetland mapping and notification process.

The proposed legislation does nothing to address the differences and regulatory uncertainty of wetland regulation and standards variations between the federal, state and local regulation of wetlands. A
major improvement for both wetlands and the regulated community would be a wetland program which addresses these uncertainties. Coming up with a single definition, delineation criteria, classification and regulatory scheme would be a major improvement welcomed by the regulated community.

Finally, this proposed legislation would add to the list of regulated activities the subdivision of land. Regulation of land subdivision is a land use authority largely regulated by the State to local governments. Further, the mere subdivision of a property does not necessarily lead to development. There are many subdivisions of land for property transactions that do not result in land conversion (e.g. agricultural and silvicultural lots) or are merely speculative and may never lead to actual property transactions or development. In addition, current State law under both local government statutes governing subdivision and State law governing permit administration will create time frame constraints which are not compatible and will only further delay, confuse or conflict in landowners obtaining necessary approvals in a reasonable time frame.

Once again, ESFPA in not wholesale opposed to amending New York’s Freshwater Wetlands Act and regulations but it should be done in a more comprehensive manner reflecting the scientific need for such changes as well as addressing current regulatory redundancies and inconsistencies among federal, state and local jurisdictions.

Cc: Assembly Environmental Conservation Committee Members
    Senate Environmental Conservation Committee Members

For More Information Contact:

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