

Conservation Law Foundation

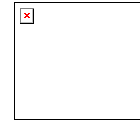
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The Greenland "Falls Way" Project

A Case Study in the Need for Better Wetlands Protection

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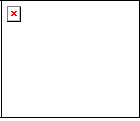


The "Falls Way" Site

- Located in Greenland, in Great Bay watershed
- 212-acre parcel with 85 acres of headwater wetlands
- High-value natural resource
 - Norton Brook »» Winnicut River
 - Atlantic White Cedar community
 - Vernal pools
 - Blandings turtle

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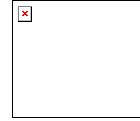




The Project Proposal

- 79-lot residential subdivision
 - Single-family, or duplex
- Extensive roadway
 - 12 wetland crossings
 - Approximately 1-acre of wetlands “fill”
- Upland pockets inaccessible without filling wetlands »» triggered RSA 482-A review

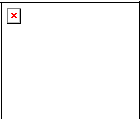
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Major Concerns: Stormwater

- Stormwater impacts caused by the project as a whole
 - Pollution (nutrients, chlorides, metals, sediments, erosion, etc.)
 - Changes to natural hydrology
 - groundwater discharge to wetlands
 - flooding

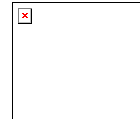
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Major Concerns: Habitat Fragmentation

- Disruption of movements for wetlands-dependant species that also use uplands
 - Vernal pool species
 - Blandings turtles

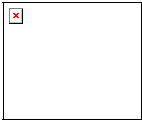
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The Wetlands Permitting Process

- DES grants permit
- DES denies permit following reconsideration requests by Greenland Conservation Comm’n and CLF
- DES grants permit following reconsideration request by project proponent

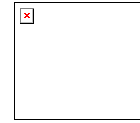
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The Wetlands Appeals Process

- GCC and CLF invoke RSA 482-A appeals process
 - Wetlands Council
 - Superior Court
 - Supreme Court
- DES asserts that impacts of major concern are “indirect impacts” beyond its regulatory review authority

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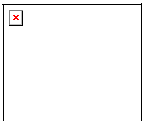


The NH Supreme Court Decision

Major holding regarding geographic scope of DES wetlands authority:

DES has no authority under RSA 482-A to assess the impacts of the project as a whole on wetlands

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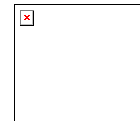


The NH Supreme Court Decision

Major holding regarding *temporal* scope of DES wetlands authority:

DES may only consider impacts of *construction* in wetlands; it may not assess impacts associated with post-construction use/operation of the structure built in wetlands

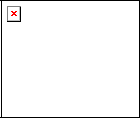
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Current State of NH Wetlands Law

- DES has authority to review impacts caused by direct placement of fill during construction
- DES *lacks* authority to review indirect impacts associated with the project as a whole, and with use/operation of structures built in wetlands
- Absent authority to address total impacts, NH's wetlands resources are at risk

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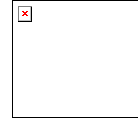


Key Questions

Given the current state of the law

- Can we achieve the stated public purpose underlying the Legislature's establishment of a state wetlands law?
- Can we protect our wetlands resources?

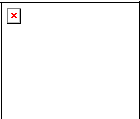
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RSA 482-A:1, Finding of Public Purpose

"It is found to be for the public good and welfare of this state to protect and preserve its . . . wetlands . . . from despoliation and unregulated alteration, because such despoliation and unregulated regulation. . .

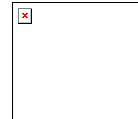
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RSA 482-A:1 Finding of Public Purpose

will adversely affect the value of such areas . . . as sources of nutrients for finfish, crustaceans, shellfish and wildlife of significant value,
will damage or destroy habitats and reproduction areas for plants, fish and wildlife of importance,

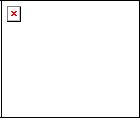
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RSA 482-A:1 Finding of Public Purpose

will eliminate, depreciate or obstruct the commerce, recreation and aesthetic enjoyment of the public,
will be detrimental to adequate groundwater levels,
will adversely affect stream channels and their ability to handle the runoff of waters,

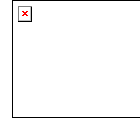
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RSA 482-A:1 Finding of Public Purpose

will disturb and reduce the natural ability of wetlands to absorb flood waters and silt, thus increasing general flood damage and the silting of open waters, and will otherwise adversely affect the interests of the general public.”

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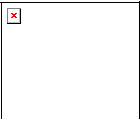


An Invitation to the Legislature

“While it may be argued, based upon principles of wetlands ecology, that the purposes described in RSA 482-A:1 could be better served by the sort of review process the plaintiffs advocate – a matter upon which we offer no opinion – the proper place for making such arguments is before the legislature.”

GCC, CLF v. Wetlands Council, 154 N.H. 529, 535

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For more information...

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