

# Bill as Introduced

SB 21 - AS INTRODUCED

2011 SESSION

11-0957

06/10

SENATE BILL        *21*

AN ACT            relative to the definition of "wetlands."

SPONSORS:        Sen. Odell, Dist 8; Sen. Morse, Dist 22

COMMITTEE:      Energy and Natural Resources

---

ANALYSIS

This bill modifies the definition of "wetlands."

---

Explanation:     Matter added to current law appears in *bold italics*.  
                     Matter removed from current law appears ~~[in brackets and struckthrough.]~~  
                     Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

AN ACT           relative to the definition of "wetlands."

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1           1 Definitions; Wetlands. Amend RSA 482-A:2, X to read as follows:

2           X. "Wetlands" means an area that is inundated or saturated by surface water or  
3 groundwater at a frequency and duration sufficient to support, and that under normal conditions  
4 does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. *All*  
5 *man-made wetlands, unless specifically created as compensatory mitigation for wetland*  
6 *impacts, shall not be considered jurisdictional wetlands, such as all man-made ponds of*  
7 *less than 10 acres in size, all farm ponds, all roadside ditches, all detention basins, all*  
8 *wetlands made specifically for stormwater treatment or control, all aggregate wash ponds,*  
9 *and all sluice ways.*

10          2 Effective Date. This act shall take effect 60 days after its passage.

SB 21 - VERSION ADOPTED BY BOTH BODIES

02/16/11 0176s  
18May2011... 1845h

2011 SESSION

11-0957  
06/10

SENATE BILL **21**

AN ACT relative to exemptions from excavating and drainage permits.

SPONSORS: Sen. Odell, Dist 8; Sen. Morse, Dist 22

COMMITTEE: Energy and Natural Resources

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AMENDED ANALYSIS

This bill modifies the exemptions from excavating and drainage permits.

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Explanation: Matter added to current law appears in **bold italics**.  
Matter removed from current law appears [~~in brackets and struck through.~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 21 - VERSION ADOPTED BY BOTH BODIES

02/16/11 0176s  
18May2011... 1845b

11-0957  
06/10

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

AN ACT relative to exemptions from excavating and drainage permits.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 Excavating and Dredging Permit; Exemptions. Amend RSA 482-A:3, IV(b) to read as follows:

2 (b) Man-made nontidal drainage ditches, **roadside and railroad ditches** [culverts],  
3 [~~catch~~] **detention** basins, [~~and~~] ponds, **and wetlands** that have been legally constructed to collect,  
4 [~~er~~] convey, **treat, or control** storm water and spring run-off, **legally constructed ponds on**  
5 **active farms, erosional features caused by proximate human activity**, fire ponds and intake  
6 areas of dry hydrants that have been legally constructed to provide water for municipal firefighting  
7 purposes as approved by a local fire chief, and **aggregate wash ponds, sluiceways, and other**  
8 **legally constructed** man-made water conveyance systems that are used for the commercial or  
9 industrial purpose of collecting, conveying, storing, and recycling water, may be [~~cleaned out when~~]  
10 **maintained, repaired, replaced, or modified as** necessary to preserve their usefulness without a  
11 permit [~~from the department. Such drainage facilities, fire ponds, intake areas of any hydrants, or~~  
12 ~~man-made water conveyance systems may be cleaned out by hand or machine~~] **under this chapter**;  
13 provided, that the **exempted facility, area, or feature** is [~~neither enlarged nor~~] **not** extended into  
14 any area of wetlands jurisdiction of the department of environmental services, dredged spoils are  
15 deposited in areas outside wetlands jurisdiction of the department of environmental services, [~~and~~]  
16 wetlands or surface waters outside the limits of the [~~constructed drainage facility, fire pond, intake~~  
17 ~~area of a dry hydrant, or man-made water conveyance system~~] **exempted facility, area, or feature**  
18 are neither disturbed nor degraded, **the exempted facility, area, or feature was not constructed**  
19 **as mitigation under a wetlands permit or as part of a settlement agreement, best**  
20 **management practices are followed, and the work does not infringe on the property rights**  
21 **or unreasonably affect the value or enjoyment of property of abutting owners.**

22 (c) **Legally constructed culverts may be cleaned as necessary to preserve their**  
23 **usefulness without a permit under this chapter provided the conditions of subparagraph**  
24 **(b) are met.**

25 2 Contingent Amendment; Excavating and Dredging Exemptions. Amend RSA 482-A:3, IV(c) to  
26 read as follows:

27 (c) Legally constructed culverts may be cleaned as necessary to preserve their usefulness  
28 without a permit under this chapter provided the conditions of subparagraph (b) are met, **however**  
29 **any repair, replacement or modification of a culvert must be made in accordance with RSA**

SB 21 - VERSION ADOPTED BY BOTH BODIES

- Page 2 -

1 482-A:3, XVI.

2 3 Contingent Amendment; Municipalities; Permit by Notification. Amend RSA 482-A:3, XVI(a)  
3 to read as follows:

4 XVI.(a) Any person or political subdivision that repairs[;] *or* replaces[; ~~or maintains~~  
5 *culverts or stream crossing* structures in accordance with the best management practices for  
6 routine roadway maintenance in New Hampshire published by the department of transportation,  
7 including culverts up to *and including* 48 inches in diameter or the functional hydraulic  
8 equivalent, and files an appropriate notice under subparagraph (b), shall satisfy the permitting  
9 requirements of this section for minimum impact activities, as defined by rules adopted by the  
10 commissioner.

11 4 Contingency.

12 I. If HB 621-FN-LOCAL of the 2011 legislative session becomes law before the effective date  
13 of section 1 of this act, section 2 shall take effect at 12:01 a.m. 60 days after passage of this act. If  
14 HB 621-FN-LOCAL of the 2011 legislative session becomes law after the effective date of section 1 of  
15 this act, section 2 shall take effect on the effective date of HB 621-FN-LOCAL. If HB 621-FN-  
16 LOCAL of the 2011 legislative session does not become law, then section 2 of this act shall not take  
17 effect.

18 II. If HB 621-FN-LOCAL of the 2011 legislative session becomes law, then section 3 of this  
19 act shall take effect at 12:01 a.m. on the effective date of HB 621-FN-LOCAL. If HB 621-FN-LOCAL  
20 of the 2011 legislative session does not become law, then section 3 of this act shall not take effect.

21 5 Effective Date.

22 I. Sections 2 and 3 of this act shall take effect as provided in section 4 of this act.

23 II. The remainder of this act shall take effect 60 days after its passage.

LBAO  
11-0957  
Amended 03/10/11

SB 21 FISCAL NOTE

AN ACT relative to exemptions from excavating and drainage permits.

**FISCAL IMPACT:**

The Department of Environmental Services states this bill, as amended by the Senate (Amendment #2011-0176s), may increase state expenditures by an indeterminable amount in FY 2012 and each fiscal year thereafter. There will be no fiscal impact on county and local expenditures, or state, county, and local revenues.

**METHODOLOGY:**

This bill clarifies certain exemptions from excavating and drainage permits. The Department of Environmental Services states this bill exempts maintenance of existing man made non tidal drainage ditches, culverts, catch basins, and ponds legally constructed to collect or convey storm water and spring runoff, fire ponds and dry hydrant intake areas, and certain commercial water conveyance systems; and modification of man made roadside ditches, gullies, farm ponds, detention basins, wetlands made specifically for storm-water treatment or control, aggregate wash ponds, and sluice ponds from the permit requirements of RSA 482-A provided that certain criteria and conditions are met. The Department states existing routine roadway maintenance activities are currently processed by the Department without fees. The Department states this bill may reduce the number of routine roadway projects currently reviewed by the Department, but would be likely to increase the number of complaints regarding maintenance and modification of drainage facilities that would require investigation. The Department notes this bill may therefore result in more time spent by the Department investigating those claiming to have been exempt to prove whether the work was jurisdictional. The Department notes there may be an indeterminable increase in state expenditures resulting from the shifting of the burden of proof in complaints where a claim of non-jurisdiction is made.

CHAPTER 195  
SB 21 – FINAL VERSION

02/16/11 0176s  
18May2011... 1845h

2011 SESSION

11-0957  
06/10

SENATE BILL        **21**

AN ACT            relative to exemptions from excavating and drainage permits.

SPONSORS:        Sen. Odell, Dist 8; Sen. Morse, Dist 22

COMMITTEE:      Energy and Natural Resources

---

AMENDED ANALYSIS

This bill modifies the exemptions from excavating and drainage permits.

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Explanation:     Matter added to current law appears in *bold italics*.  
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CHAPTER 195  
SB 21 – FINAL VERSION

02/16/11 0176s  
18May2011... 1845h

11-0957  
06/10

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

AN ACT relative to exemptions from excavating and drainage permits.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 195:1 Excavating and Dredging Permit; Exemptions. Amend RSA 482-A:3, IV(b) to read as  
2 follows:

3 (b) Man-made nontidal drainage ditches, *roadside and railroad ditches* ~~(culverts),~~  
4 ~~[catch]~~ *detention* basins, ~~[and]~~ ponds, *and wetlands* that have been legally constructed to collect,  
5 ~~[or]~~ convey, *treat, or control* storm water and spring run-off, *legally constructed ponds on*  
6 *active farms, erosional features caused by proximate human activity*, fire ponds and intake  
7 areas of dry hydrants that have been legally constructed to provide water for municipal firefighting  
8 purposes as approved by a local fire chief, and *aggregate wash ponds, sluiceways, and other*  
9 *legally constructed* man-made water conveyance systems that are used for the commercial or  
10 industrial purpose of collecting, conveying, storing, and recycling water, may be ~~(cleaned out when)~~  
11 *maintained, repaired, replaced, or modified as* necessary to preserve their usefulness without a  
12 permit ~~[from the department. Such drainage facilities, fire ponds, intake areas of any hydrants, or~~  
13 ~~man-made water conveyance systems may be cleaned out by hand or machine]~~ *under this chapter;*  
14 provided, that the *exempted facility, area, or feature* is ~~(neither enlarged nor)~~ *not* extended into  
15 any area of wetlands jurisdiction of the department of environmental services, dredged spoils are  
16 deposited in areas outside wetlands jurisdiction of the department of environmental services, ~~[and]~~  
17 wetlands or surface waters outside the limits of the ~~[constructed drainage facility, fire pond, intake~~  
18 ~~area of a dry hydrant, or man-made water conveyance system]~~ *exempted facility, area, or feature*  
19 are neither disturbed nor degraded, *the exempted facility, area, or feature was not constructed*  
20 *as mitigation under a wetlands permit or as part of a settlement agreement, best*  
21 *management practices are followed, and the work does not infringe on the property rights*  
22 *or unreasonably affect the value or enjoyment of property of abutting owners.*

23 (c) *Legally constructed culverts may be cleaned as necessary to preserve their*  
24 *usefulness without a permit under this chapter provided the conditions of subparagraph*  
25 *(b) are met.*

26 195:2 Contingent Amendment; Excavating and Dredging Exemptions. Amend RSA 482-A:3,  
27 IV(c) to read as follows:

28 (c) Legally constructed culverts may be cleaned as necessary to preserve their usefulness

CHAPTER 195  
SB 21 - FINAL VERSION

- Page 2 -

1 without a permit under this chapter provided the conditions of subparagraph (b) are met, *however*  
2 *any repair, replacement or modification of a culvert must be made in accordance with RSA*  
3 *482-A:3, XVI.*

4 195:3 Contingent Amendment; Municipalities; Permit by Notification. Amend RSA 482-A:3,  
5 XVI(a) to read as follows:

6 XVI.(a) Any person or political subdivision that repairs[,] *or* replaces[~~,-or-maintains~~]  
7 *culverts or stream crossing* structures in accordance with the best management practices for  
8 routine roadway maintenance in New Hampshire published by the department of transportation,  
9 including culverts up to *and including* 48 inches in diameter or the functional hydraulic  
10 equivalent, and files an appropriate notice under subparagraph (b), shall satisfy the permitting  
11 requirements of this section for minimum impact activities, as defined by rules adopted by the  
12 commissioner.

13 195:4 Contingency.

14 I. If HB 621-FN-LOCAL of the 2011 legislative session becomes law before the effective date  
15 of section 1 of this act, section 2 shall take effect at 12:01 a.m. 60 days after passage of this act. If  
16 HB 621-FN-LOCAL of the 2011 legislative session becomes law after the effective date of section 1 of  
17 this act, section 2 shall take effect on the effective date of HB 621-FN-LOCAL. If HB 621-FN-  
18 LOCAL of the 2011 legislative session does not become law, then section 2 of this act shall not take  
19 effect.

20 II. If HB 621-FN-LOCAL of the 2011 legislative session becomes law, then section 3 of this  
21 act shall take effect at 12:01 a.m. on the effective date of HB 621-FN-LOCAL. If HB 621-FN-LOCAL  
22 of the 2011 legislative session does not become law, then section 3 of this act shall not take effect.

23 195:5 Effective Date.

24 I. Sections 2 and 3 of this act shall take effect as provided in section 4 of this act.

25 II. The remainder of this act shall take effect 60 days after its passage.

26  
27 Approved: June 14, 2011

28 Effective Date: I. Sections 2 and 3 shall take effect as provided in section 4.

29 II. Remainder shall take effect August 13, 2011.

# Amendments

Amendment to SB 21

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to exemptions from excavating and drainage permits.

4

5 Amend the bill by replacing section 1 with the following:

6

7 1 Excavating and Dredging Permit; Exemptions. Amend RSA 482-A:3, IV(b)

8 to read as follows:

9 (b) *Maintenance of existing* man-made nontidal drainage ditches, culverts, catch  
10 basins, and ponds that have been legally constructed to collect or convey storm water and spring  
11 run-off, fire ponds and intake areas of dry hydrants that have been legally constructed to provide  
12 water for municipal firefighting purposes as approved by a local fire chief, and man-made water  
13 conveyance systems that are used for the commercial or industrial purpose of collecting, conveying,  
14 storing, and recycling water, may be cleaned out when necessary to preserve their usefulness  
15 without a permit from the department. Such drainage facilities, fire ponds, intake areas of any  
16 hydrants, or man-made water conveyance systems may be cleaned out by hand or machine; provided,  
17 that the facility is neither enlarged nor extended into any area of wetlands jurisdiction of the  
18 department of environmental services, dredged spoils are deposited in areas outside wetlands  
19 jurisdiction of the department of environmental services, and wetlands or surface waters outside the  
20 limits of the constructed drainage facility, fire pond, intake area of a dry hydrant, or man-made  
21 water conveyance system are neither disturbed nor degraded.

22 (c) *Any modification to man-made roadside and railroad ditches, gullies, farm*  
23 *ponds, fire ponds, detention basins, wetlands made specifically for stormwater treatment*  
24 *or control, aggregate wash ponds, or sluice ways shall be exempt from a permit under RSA*  
25 *482-A. No such modification shall be extended into any area of wetlands jurisdiction of the*  
26 *department or to wetlands or surface waters outside of the limits of the constructed*  
27 *drainage facility, roadside or railroad ditches, gullies, farm ponds, fire ponds, or man-*  
28 *made water conveyance system.*



2011-0156s

AMENDED ANALYSIS

This bill modifies the exemptions from excavating and drainage permits.

Amendment to SB 21

1 Amend the title of the bill by replacing it with the following:

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3 AN ACT relative to exemptions from excavating and drainage permits.

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9 basins, and ponds that have been legally constructed to collect or convey storm water and spring  
10 run-off, fire ponds and intake areas of dry hydrants that have been legally constructed to provide  
11 water for municipal firefighting purposes as approved by a local fire chief, and man-made water  
12 conveyance systems that are used for the commercial or industrial purpose of collecting, conveying,  
13 storing, and recycling water, may be cleaned out when necessary to preserve their usefulness  
14 without a permit from the department. Such drainage facilities, fire ponds, intake areas of any  
15 hydrants, or man-made water conveyance systems may be cleaned out by hand or machine; provided,  
16 that the facility is neither enlarged nor extended into any area of wetlands jurisdiction of the  
17 department of environmental services, dredged spoils are deposited in areas outside wetlands  
18 jurisdiction of the department of environmental services, and wetlands or surface waters outside the  
19 limits of the constructed drainage facility, fire pond, intake area of a dry hydrant, or man-made  
20 water conveyance system are neither disturbed nor degraded.

21 (c) *Any modification to man-made roadside and railroad ditches, gullies, farm*  
22 *ponds, fire ponds, detention basins, wetlands made specifically for stormwater treatment*  
23 *or control, aggregate wash ponds, or sluice ways shall be exempt from a permit under RSA*  
24 *482-A. No such modification shall be extended into any area of wetlands jurisdiction of the*  
25 *department or to wetlands or surface waters outside of the limits of the constructed*  
26 *drainage facility, roadside or railroad ditches, gullies, farm ponds, fire ponds, or man-*  
27 *made water conveyance system.*

2011-0176s

AMENDED ANALYSIS

This bill modifies the exemptions from excavating and drainage permits.

# Committee Minutes



**SENATE CALENDAR NOTICE  
ENERGY AND NATURAL RESOURCES**

- ✓ Senator Bob Odell Chairman
- ✓ Senator John Gallus V Chairman
- ✓ Senator Jeb Bradley
- ✓ Senator Gary Lambert
- ✓ Senator Amanda Merrill

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

**Date: January 5, 2011**

**HEARINGS**

**Thursday**

**1/13/2011**

**ENERGY AND NATURAL RESOURCES**

**LOB 102**

**10:15 AM**

(Name of Committee)

(Place)

(Time)

**EXECUTIVE SESSION MAY FOLLOW**

- |            |      |   |
|------------|------|---|
| 10:15 AM   | SB19 | relative to the definition of "prime wetlands." |
| 10:30 AM   | SB20 | relative to shoreland protection permits.       |
| ✓ 10:45 AM | SB21 | relative to the definition of "wetlands."       |

**Sponsors:**

**SB19**

Sen. Bob Odell

Sen. Jim Rausch

**SB20**

Sen. Bob Odell

**SB21**

Sen. Bob Odell

Sen. Chuck Morse

START: 11:19 AM

END: 11:46 AM

# Energy and Natural Resources Committee

## Hearing Report

**TO:** Members of the Senate

**FROM:** Richard Parsons, Legislative Aide

**RE:** Hearing report on SB 21 – relative to the definition of "wetlands."

**HEARING DATE:** 01/13/2011

**MEMBERS OF THE COMMITTEE PRESENT:** Senators Odell, Gallus, Bradley, Lambert, Merrill

**MEMBERS OF THE COMMITTEE ABSENT:** No one

**Sponsor(s):** Sen. Odell, Dist 8; Sen. Morse, Dist 22

**What the bill does:** This bill modifies the definition of "wetlands."

**Who supports the bill:** Kendall Buck, Home Builders Association of NH; Donna Gamache, PSNH; Jim Gove; Gary Abbott, AGC of NH; Deb Hale, National Grid; Erik Stevenson, Brox Industry, Inc.; Robert Johnson, II, Farm Bureau; Jasen Stock, NHTOA; Senator Chuck Morse, District 22

**Who opposes the bill:** Michele Tremblay, New Hampshire Rivers Council; Jean Eno, Winnicut River Watershed Coalition; Larry Sunderland, Audubon Society of NH; Collis Adams, DES; Chris Albert, NHANRS; Stephen Wood; Jane Beaulieu, Manchester Conservation Commission; Representative Judith Spang, District 7; Phil Cassista

### **Summary of testimony received:**

Senator Bob Odell, District 8 – Prime Sponsor

- Hearing called to order at 11:19am
- This bill adds language to the definition of "wetlands."
  - The addition will allow maintenance corrective actions on man-made wetlands created for various purposes including detention basins and roadside ditches.
  - Many of these have taken on the characteristics of a wetland but they were created to safely and securely hold water.

- Having to get a permit to remove or make changes to these man-made wetlands is an unnecessary burden.
  - For example, the City of Claremont had a situation with railroad right-of-ways that some have conveyed into being wetlands and that has prevented the city from using that land for economic development.

Collis Adams, DES

- The Department is in opposition to the bill as written.
- Understands the intent, but don't believe that the carve out in language belongs in the definition of wetlands.
- In New Hampshire we have enjoyed the State Programmatic General Permits since 1992.
  - It allows applicants to get a state permit and a federal permit at the same time which helps to greatly expedite the process.
- The definition of wetlands on the books is the same as the federal language right now.
  - Changing that may put the SPGP at risk.
  - Richard Roach, from the Army Corp of Engineers, had concerns to how it relates the federal definition.
- Suggest that it is better handled in the statute that deals with exemptions instead.
  - The exemption statute, which cannot be cited at the moment, is very similar but the difference is it states those activities are not subject to permitting by the Department.
    - That is a very important distinction.
  - Senator Odell stated that this would have a secondary impact that would be unfortunate and looks forward to working with the Department to correct this.

Kendall Buck, Executive VP Homebuilders and Remodelers Association

- In support
- Many contractors and homeowners are moving toward "green" building and on-property projects that this would help as long as it doesn't trigger permits.
- Willing to work with Department's to carve out what might be an exemption.

Jim Gove, Gove Environmental Services, Inc.

- In support
- It is a great idea but it is in the wrong spot.
- Man-induced wetlands shouldn't be subject to permitting.

Gary Abbott, Associate of General Contractors of NH

- In support
- This is an attempt to make it clear and that is why we support it.
  - We are in support if it needs to be put into a new section to clarify that.

Larry Sunderland, Audubon Society of NH

- In opposition
- The bill excludes all man-made wetlands from the definition of jurisdictional wetlands, and would therefore affect the status of any wetlands created or enlarged by a dam.
- Regardless of their size, New Hampshire's man-made wetlands serve the State's citizens by providing flood control, ground water recharge, water quality improvement, wildlife habitat, and, in many cases, recreational opportunities.
  - Eliminating jurisdictional authority over these wetlands opens the door to activities that would reduce or destroy their ability to provide flood storage and groundwater recharge in the future.

Chris Albert, NHANRS

- 482-A:3 was legislation that was referred to earlier.
- A lot of the man-made wetlands were originally constructed in existing wetlands, and to give it a specific definition wouldn't do it justice.
- Would be willing to work to improve this.

Rep. Judith Spang, District 7

- In opposition
- Working with Water Quality Standards Advisory Committee and this issue of what is a wetland has come up.
- Some man-made wetlands have become valuable wetlands now. Very highly functional wetlands.
- Very strongly believes we need to separate those that have become fully functioning

Michelle Tremblay, NH Rivers Council

- In opposition
- Wondering if a study committee would be the best solution to talk about this holistically.

Stephen Wood

- In opposition
- The wetland that he owns, man-made, destroyed other wetlands but took on their functions.
- Should be addressing intent not terminology in the law.

Phil Cassista,

- The man-made wetlands in his area have also become very functional and necessary.

Hearing closed at 11:46 am.

**Funding:** None

**Future Action:** None taken.

RMP

[file: SB 21 report]

Date: 1/14/11



# Speakers

# Senate Energy and Natural Resources Committee: Sign-In Sheet

Date: 1/13/2011

Time: 10:45 AM

Public Hearing on SB 21

SB 21

relative to the definition of "wetlands."

Name	Representing	Support	Oppose	Speaking?	Yes	No
✓ Randall Buck	Home Builders Assn. of NH	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Donna Gamache	PSNH	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
✓ Tim Cove	himself	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Gary Abbott	AG of NH	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Deb Hale	National Grid	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
✓ Myrtle L. Venable	New Hampshire Rivers Council	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Jean Eno	Winnicot River-watershed coalition	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Larry Sunderland	Audubon Society of NH	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Erik Steensen	BOXX Int., Inc	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
✓ Collis Adams	DBS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Chris Albert	NHANRS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Robert Johnson, II	Farm Bureau	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>
✓ Jason Stock	NH ToA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>
✓ STEPHEN WOOD	SELF	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Jane Beaulieu	Manchester Conservation Com.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
✓ Rep Judith Spang	District 7	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Sen. Chuck Morse	Dist. 22	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
✓ Phil Casata		<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>





# Testimony

FOR REGISTRY USE ONLY

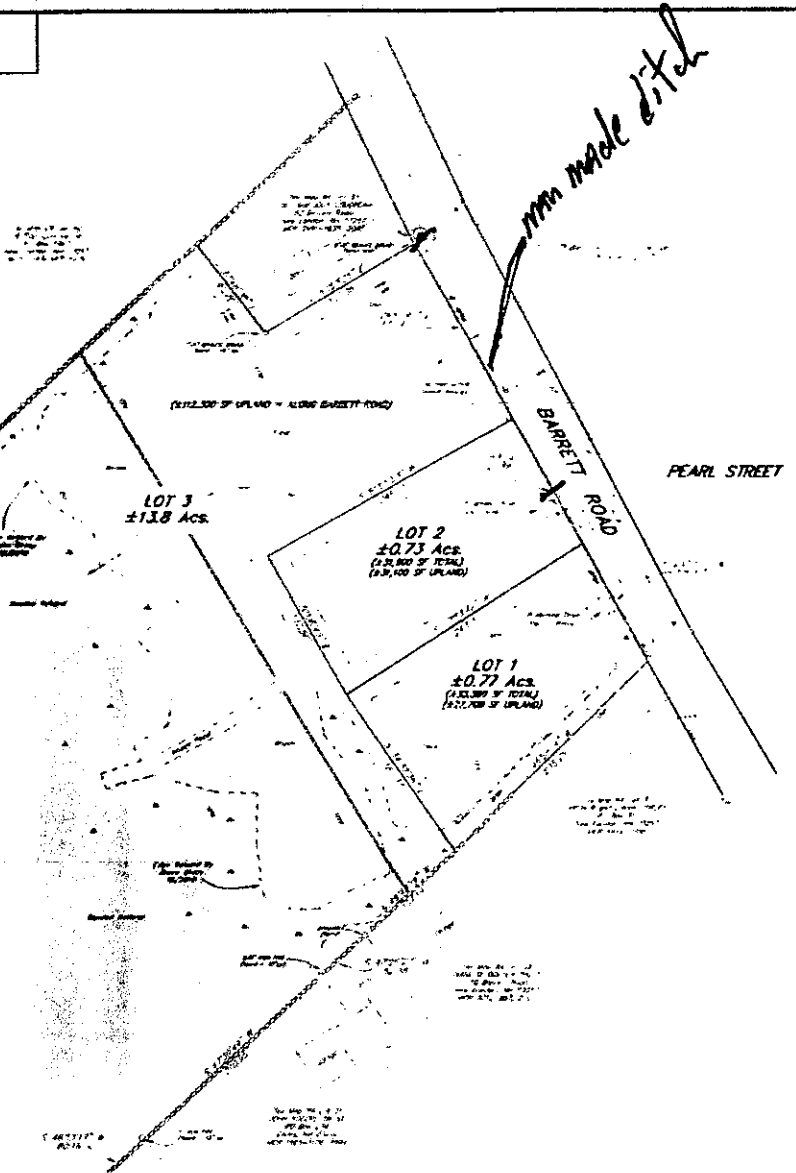


Tax Map 84 Lot 38  
±15.31 Acres Total

Any or all portions of any lot of the locus are part of the parcel shown on the map & are part of the operation of all portions of any subdivision operation.

APPROVED BY THE NEW LONDON, N.H. PLANNING BOARD

Approval signature lines for the Planning Board.



KEY

- Legend for symbols used on the map, including lot lines, easements, and other features.



LOCUS

NOTES

Notes detailing specific conditions, easements, and survey information for the subdivision.

REFERENCE PLANS

References to other maps and documents used in the preparation of this plan.

CONCEPTUAL SUBDIVISION PLAN  
TAX MAP 84 LOT 38 - BARRETT ROAD  
PLAN OF MINOR SUBDIVISION  
PROPERTY OF  
**THOMAS R. LITTLE**  
LOCATED IN  
NEW LONDON, N.H.

SCALE = 1" = 50'

NOVEMBER 5, 2010

REVISIONS

HANCOCK Hill Land Services & Survey LLC  
CREATED & PLOTTED BY: CHRISTOPHER W. BIRD  
418 Pearl Street, Concord, NH 03302, USA, 603-228-1000



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS  
696 VIRGINIA ROAD  
CONCORD, MASSACHUSETTS 01742-2751

January 12, 2011

Regulatory Division  
Permits and Enforcement Branch C  
CENAE-R-PEC-01

Mr. Collis Adams  
NH DES Wetlands Bureau  
Concord, NH 03301

SUBJECT: Response to Proposed Changes in NH DES Wetlands Bureau Jurisdiction

Dear Mr. Adams:

This is in response to your inquiry regarding proposed changes to the jurisdiction of the Wetlands Bureau. While we have great respect for the NH Legislature and they are at liberty to change the definition or limit the waters they choose to regulate, we have some serious concerns with the proposed changes. Any divergence between what NH regulates and what the Corps regulates is liable to cause confusion in the minds of the regulated public and may result in consternation when NH citizens find out that the activity that they thought was not regulated by the state is in fact regulated by the Corp. Increased enforcement actions by the Army Corps or the U.S. Environmental Protection Agency might be set off by these changes.

The Corps jurisdiction is set and some of the areas mentioned in the proposed changes (Yours, incidentally, would be less troublesome than those initially proposed.) would not be in our jurisdiction. However, a number of the areas excluded would remain in Corps jurisdiction and we would need to continue to require authorization for them. The NH SPGP only applies to activities that NH DES regulates. If these activities were not regulated by DES, and they continue to be by the Corps, the applicant would have to come to the Corps and obtain standard permit. I doubt this situation would be appreciated by the citizenry of New Hampshire. We think it would be better to have the state continue to review these activities and let them be covered by the NH SPGP if they are permitted by the Wetlands Bureau. We would be willing to discuss this with your department or the appropriate Legislators, if that would be of any assistance.

Please contact Mr. Richard Roach at 978-318-8211 if you would like to arrange a meeting to discuss the matter further or you may contact me directly.

Sincerely,  
Richard Roach

For Frank J. Delgiudice  
Chief Permits and Enforcement Branch

[Home Page](#) > [Executive Branch](#) > [Code of Federal Regulations](#) > [Electronic Code of Federal Regulations](#)

## Electronic Code of Federal Regulations

e-CFR

TM

**e-CFR Data is current as of January 5, 2011**

### **Title 40: Protection of Environment**

#### **PART 230—SECTION 404(b)(1) GUIDELINES FOR SPECIFICATION OF DISPOSAL SITES FOR DREDGED OR FILL MATERIAL**

##### **Subpart A—General**

[Browse Previous](#) | [Browse Next](#)

### **§ 230.3 Definitions.**

For purposes of this part, the following terms shall have the meanings indicated:

(a) The term *Act* means the Clean Water Act (also known as the Federal Water Pollution Control Act or FWPCA) Pub. L. 92–500, as amended by Pub. L. 95–217, 33 U.S.C. 1251, *et seq.*

(b) The term *adjacent* means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes, and the like are "adjacent wetlands."

(c) The terms *aquatic environment* and *aquatic ecosystem* mean waters of the United States, including wetlands, that serve as habitat for interrelated and interacting communities and populations of plants and animals.

(d) The term *carrier of contaminant* means dredged or fill material that contains contaminants.

(e) The term *contaminant* means a chemical or biological substance in a form that can be incorporated into, onto or be ingested by and that harms aquatic organisms, consumers of aquatic organisms, or users of the aquatic environment, and includes but is not limited to the substances on the 307(a)(1) list of toxic pollutants promulgated on January 31, 1978 (43 FR 4109).

(f)–(g) [Reserved]

(h) The term *discharge point* means the point within the disposal site at which the dredged or fill material is released.

(i) The term *disposal site* means that portion of the "waters of the United States" where specific disposal activities are permitted and consist of a bottom surface area and any overlying volume of water. In the case of wetlands on which surface water is not present, the disposal site consists of the wetland surface area.

(j) [Reserved]

(k) The term *extraction site* means the place from which the dredged or fill material proposed for discharge is to be removed.

(l) [Reserved]

(m) The term *mixing zone* means a limited volume of water serving as a zone of initial dilution in the immediate vicinity of a discharge point where receiving water quality may not meet quality standards or

other requirements otherwise applicable to the receiving water. The mixing zone should be considered as a place where wastes and water mix and not as a place where effluents are treated.

(n) The term *permitting authority* means the District Engineer of the U.S. Army Corps of Engineers or such other individual as may be designated by the Secretary of the Army to issue or deny permits under section 404 of the Act, or the State Director of a permit program approved by EPA under section 404(g) and section 404(h) or his delegated representative.

(o) The term *pollutant* means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials not covered by the Atomic Energy Act, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. The legislative history of the Act reflects that "radioactive materials" as included within the definition of "pollutant" in section 502 of the Act means only radioactive materials which are not encompassed in the definition of source, byproduct, or special nuclear materials as defined by the Atomic Energy Act of 1954, as amended, and regulated under the Atomic Energy Act. Examples of radioactive materials not covered by the Atomic Energy Act and, therefore, included within the term "pollutant", are radium and accelerator produced isotopes. See *Train v. Colorado Public Interest Research Group, Inc.*, 426 U.S. 1 (1976).

(p) The term *pollution* means the man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of an aquatic ecosystem.

(q) The term *practicable* means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

(q-1) *Special aquatic sites* means those sites identified in subpart E. They are geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region. (See §230.10(a)(3))

(r) The term *territorial sea* means the belt of the sea measured from the baseline as determined in accordance with the Convention on the Territorial Sea and the Contiguous Zone and extending seaward a distance of three miles.

(s) The term *waters of the United States* means:

(1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) All interstate waters including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(iii) Which are used or could be used for industrial purposes by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as waters of the United States under this definition;

(5) Tributaries of waters identified in paragraphs (s)(1) through (4) of this section;

(6) The territorial sea;

(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (s)(1) through (6) of this section; waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States.

Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

(t) The term *wetlands* means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

[45 FR 85344, Dec. 24, 1980, as amended at 58 FR 45037, Aug. 25, 1993]

[Browse Previous](#) | [Browse Next](#)

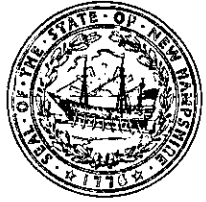
For questions or comments regarding e-CFR editorial content, features, or design, email [ecfr@nara.gov](mailto:ecfr@nara.gov).

For questions concerning e-CFR programming and delivery issues, email [webteam@gpo.gov](mailto:webteam@gpo.gov).

[Section 508 / Accessibility](#)



The State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner  
January 13, 2011

The Honorable Bob Odell, Chairman  
Energy and Natural Resources Committee  
Legislative Office Building, Room 102  
Concord, NH 03301

**RE: SB 21 relative to the definition of wetlands**

Dear Senator Odell:

Thank you for the opportunity to comment on SB 21, which would amend RSA 482-A:2 (X) by modifying the definition of "wetlands" to exclude man-made wetlands. The Department of Environmental Services (DES) does not support this bill as drafted, primarily because it would cause permitting delays for projects in federal jurisdictional wetlands that would no longer be covered by the state program. However, we believe that modifications to the bill that narrow the coverage of the proposed exemptions could be developed that would maintain consistency with federal requirements and address most of the concerns that the bill seeks to address.

Since 1992, the US Army Corps of Engineers (ACOE) has issued a State Programmatic General Permit (SPGP) to the State of New Hampshire every 5 years. Under the SPGP, projects that propose wetlands impacts may receive federal approval through an expedited review process that essentially involves a concurrent review by DES for state and federal requirements, with subsequent audit by the ACOE. If, as proposed by SB 21, the state review were based on criteria that are less stringent than federal law, then the SPGP would be at risk. Without the SPGP, applicants would be required to apply separately for both state and federal permits to two separate agencies, DES and the ACOE, for all projects located in federal jurisdiction. Based on the experience of New Hampshire prior to 1992 and other states that do not have a SPGP, this would likely cause a delay of many months in the issuance of wetlands permits decisions. Such delays would have detrimental effects not only on applicants but also on the New Hampshire economy as a whole.

Thank you for the opportunity to comment on this legislation. If you have any questions or need additional information, please do not hesitate to call Collis Adams at 271-4054 or me at 271-2958.

Sincerely,

Thomas S. Burack  
Commissioner

cc: Senator Morse



#### STATEWIDE OFFICES

84 Silk Farm Road  
Concord, N.H. 03301  
PHONE 603-224-9909  
FAX 603-226-0902  
nha@nhaudubon.org  
www.nhaudubon.org

#### REGIONAL CENTERS

##### AMOSKEAG FISHWAYS LEARNING CENTER

Fletcher Street  
P.O. Box 330  
Manchester, N.H. 03105  
PHONE 603-626-3474  
FAX 603-644-4386

*Managed by NHA in partnership  
with PSNH, the N.H. Fish and  
Game Department, and the U.S.  
Fish and Wildlife Service.*

##### MASSABESIC AUDUBON CENTER

26 Audubon Way  
Auburn, N.H. 03032  
PHONE 603-668-2045  
FAX 603-668-3796

##### McLANE CENTER

84 Silk Farm Road  
Concord, N.H. 03301  
PHONE 603-224-9909  
FAX 603-226-0902

##### NEWFOUND AUDUBON CENTER

North Shore Road  
East Hebron, N.H. 03222  
PHONE 603-744-3516  
FAX 603-744-1090

## Testimony of the Audubon Society of New Hampshire To the Senate Energy and Natural Resources Committee Regarding SB 21 13 January 2011

I am here to testify on behalf of the Audubon Society of New Hampshire, a statewide, non-governmental, conservation organization, in strong opposition to SB 21, which would change the definition of wetlands. Our concerns are enumerated below.

>

The bill, as currently written, excludes all man-made wetlands from the definition of jurisdictional wetlands, and would therefore affect the status of any wetlands created or enlarged by a dam. Such wetlands include those associated with Lake Umbagog, Pontook Reservoir, the First and Second Connecticut lakes, and numerous other significant wetlands throughout the State. If, as some have suggested, the intent is for the exclusion to apply only to man-made wetlands less than 10 acres in area, the wording needs to be revised to read "*All man-made wetlands less than 10 acres in size, unless specifically created....*"

Regardless of their size, New Hampshire's man-made wetlands serve the State's citizens by providing flood control, ground water recharge, water quality improvement, wildlife habitat, and, in many cases, recreational opportunities. While all these values are important to our membership, we particularly call your attention to flood control and groundwater recharge, which affect local economies as well as the public welfare. Eliminating jurisdictional authority over these wetlands opens the door to activities that would reduce or destroy their ability to provide flood storage and groundwater recharge. As weather extremes in the past few years have demonstrated, wetland functions are critical to New Hampshire's environment both in times of flood and times of drought. Actions that increase the vulnerability to drought of New Hampshire citizens who depend on private wells for their water supply, and increase the vulnerability of private property and public infrastructure to damaging floods, are extremely ill-advised.

We therefore strongly urge the Committee to find SB 21 "Inexpedient to Legislate."



*New Hampshire Association of Natural Resource Scientists*

*Post Office Box 110 • Concord, NH 03302*



January 13, 2011

Senator Robert Odell, Chair  
Committee on Energy and Natural Resources  
107 N. Main Street, Room 302 - State House  
Concord, NH 03301

**RE: SB 21, AN ACT relative to the definition of "wetlands."**

Dear Senator Odell and Fellow Members of the Committee:

The NH Association of Natural Resource Scientists ("NHANRS") is a state-wide non-profit professional organization whose membership includes wetland scientists, soil scientists, and wildlife biologists from the consulting community, as well as from the academic and public sectors. Our Legislative Committee has considered SB 21, and wishes to offer our comments.

SB 21 proposes to modify the statutory definition of the term "wetlands" as it relates to the authority delegated to the NH Department of Environmental Services under RSA 482-A. The bill as written would eliminate all "man-made wetlands" from regulation by the state of New Hampshire.

NHANRS is supportive of efforts to clarify the reasonable limits of RSA 482-A jurisdiction. Exemption of man-made drainage basins and ditches, wash ponds, etc. is certainly reasonable and consistent with the original intent of RSA 482-A. While the existing statute was amended a few years ago to allow for maintenance of these structures without a permit from NHDES [see RSA 482-A:3, IV(b)], that provision clearly implies that NHDES has jurisdiction over these structures for any purpose other than maintenance. This seems unwarranted in many cases.


However, NHANRS believes that SB 21 as written provides for too broad an exemption. It is important to recognize that many man-made wetlands and ponds are components of larger wetland systems including perennial stream systems or were originally constructed in jurisdictional areas. There is a significant difference between a drainage swale that was built in uplands and only conveys ephemeral stormwater and a large excavated pond which is located within a larger wetland system or stream system and which may contain a variety of fish and wildlife. Under the current language, filling of this latter type of resource area could occur without regulation, which would lead to adverse environmental impacts that we believe RSA 482-A is intended to prevent or limit. In addition the language of this bill fails to recognize that many of the areas intended to be exempted, in fact, fall under the jurisdiction of RSA 482-A as "surface waters", as defined by RSA 485-A, and not as wetlands.

We are also concerned that changes in the definition of the term "wetland" could impact New Hampshire's existing streamlined permitting program with the US Army Corps of Engineers. The current RSA 482-A wetland definition is purposefully consistent with the definition used by the Corps in administering the federal Clean Water Act. Currently, most projects in New Hampshire are permitted by the US Army Corps of Engineers at the federal level through a "Statewide Programmatic General Permit" ("SPGP") – a process that is greatly expedited and simplified over the alternative "Individual Permit." This federal SPGP is directly related to the fact that the NHDES has historically maintained an effective state wetlands regulatory program. Opening the state's definition to changes could lead to inconsistencies between the state and federal programs, which could ultimately lead the Corps to determine that fewer and fewer NH project's will qualify for the simplified federal SPGP process, which would increase project costs and take additional time.

If the bill is to move forward, NHANRS is prepared to work with the Committee, the bill's sponsors and its proponents to help provide reasonable and clear language to address the policy and technical issues intended to be addressed by the bill. In the meantime, we can be contacted through our lobbyist, Dana Bisbee, Devine Millimet & Branch, at 226-1000.

We thank the Committee for your time and consideration in hearing our comments.

Sincerely,



Christopher Albert, Legislative Chair  
NHANRS Board of Directors

# NEW HAMPSHIRE RIVERS COUNCIL

Rivers in New Hampshire!

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Special Programs

**Mission**  
Ecologically sound  
management of New  
Hampshire's rivers,  
watersheds and related  
natural resources.

January 12, 2011

The Honorable Robert Odell, Chair  
Senate Energy and Natural Resources Committee  
Legislative Office Building Room 102  
Concord NH 03301  
RE: SB21 relative to the definition of "wetlands"

Dear Chair Odell,

The New Hampshire Rivers Council is concerned about the proposed change to RSA 482-A:2 X, which would remove certain types of areas from the definition of "wetlands."

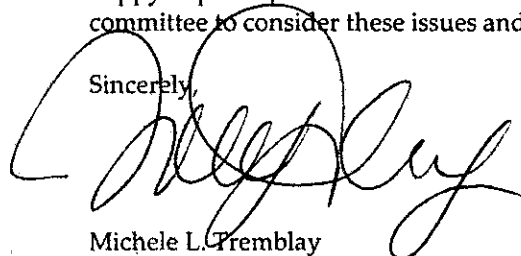
The Council believes that these many of these areas are serving a valuable function for **groundwater re-charge, rainfall storage to avert flooding, natural treatment of runoff, and wildlife habitat**. In an increasingly urbanizing state with a growing fragmentation of larger areas, the values and functions of smaller areas become more important. Many of the areas listed in this bill for exemption are precisely the type that are found in urbanized areas and are fulfilling important functions. Even these small areas **allow snowmelt and rain to percolate through the soil and into groundwater vs. it flowing along with pollutants in large quantities and great velocity into the nearest stream or river**.

In the past several years, our state has seen unprecedented changes—and disasters—from flooding. Our citizens **have been displaced and been harmed when their homes and business have been affected by floods**. Millions of dollars of damage has occurred in areas where there are no natural storage areas for rainfall.

In a state that depends on **transportation for its manufacturing and natural resources for its tourism industries**, protection and conservation of water resources is the most inexpensive and effective management option<sup>1</sup>. Most industries agree that a stable—not an overly permissive and volatile—regulatory environment<sup>2</sup> is best for their businesses.

This bill proposes large and sweeping changes that are best considered in an all-encompassing study of related statutes. A study committee that includes stakeholders from diverse interests who would be affected by these proposed changes is desirable. The Rivers Council would be happy to participate and assist with such a process. I urge you and the members of the committee to consider these issues and vote against passage of SB 21.

Sincerely,



Michele L. Tremblay  
President

<sup>1</sup> What's Our Water Worth? <http://www.nhrivers.org/documents/Econ%20Study%20Brochure.pdf>

<sup>2</sup> Industry Seeks Certainty, Not GOP Attacks <http://insideepa.com/Inside-EPA-General/Inside-EPA-Public-Content/industry-desire-for-regulatory-certainty-may-blunt-gop-assault-on-epa/menu-id-565.html>



**Bill:** SB21 – relative to the definition of “wetlands.”

**Intent:** Adds to definition “All man-made wetland, unless specifically created as compensatory mitigation for wetland impacts, shall not be considered jurisdictional wetlands, such as man-made ponds of less than 10 acres in size, all farm ponds, all roadside ditches, all detention basins, all wetlands made specifically for stormwater treatment or control, all aggregate wash ponds, and all sluice ways.”

The addition will allow maintenance, corrective actions, filling or dredging of areas that were constructed for the purposes of detaining or conveying water, and to be able to do so without the need for obtaining a wetland permit. While some of these areas have taken on the characteristics of a wetland, they were originally constructed for the purpose of safely controlling and conveying water. This should not lead to an expansion of jurisdictional areas on a parcel of land.

In looking at the definitions of Wetlands (482-A:2, X.), Waters of the State (482-A:4, I and II.) or Waters of the United States (Section 404, Clean Water Act), it seems that the intent was to regulate natural wetland areas and natural streams.

In the wetland identification manual that we use (Corps of Engineers Wetlands Delineation Manual) these areas have a separate section titled “Man-Induced Wetlands”. They make it clear that not all man-induced wetlands should be considered under regulation. Some man-induced wetlands are exempted. In fact, if a man-induced wetland would no longer exist if man’s activity was terminated, the area should not be considered a wetland.

These man-made or man-induced wetlands were created in uplands. They were created to control or store water. Roadside ditches were constructed for vehicle safety. Ponds were dug to irrigate crops or water cows or just for recreation like skating. Highways, railroads, utilities all created wetlands in areas that were upland. There was no attempt to make wetlands. The activities were to control and direct water. Even erosion ditches from roadside culverts could be considered a “waters of the state”.

It just seems a shame that activities that have minimal environmental impact, like crossing a ditch or filling in a shallow skating pond, would need a wetland permit.

Prepared by: James Gove, President, Gove Environmental Services, Inc.

**From:** palmeag@nu.com [mailto:palmeag@nu.com]  
**Sent:** Thursday, January 06, 2011 6:36 PM  
**To:** Odell, Bob  
**Subject:** "Wetlands"

Senator Odell, I was pleased to read the language you crafted in Senate Bill 21 today. As someone who deals routinely with wastewater/stormwater management and wetlands, the specific jurisdictional clarifications you offer make much sense. I thought you might also be interested in some federal wording from Army Corps dredge & fill guidelines found at 40 CFR Part 230.3. The regulation specifically states that "wastewater treatment ponds or lagoons designed to meet the requirements of the CWA" are not waters of the U.S. (and hence, can not be wetlands). Similar language to exempt wetland-like areas specifically created to comply with the Clean Water Act or NH statute, e.g., RSA 485-A, might also be useful in SB 21.

The exact reference can be found at: <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=d18c34a647636ec537a67296eeb6b373&rqn=div8&view=text&node=40:24.0.1.3.24.1.17.3&idno=40>

I appreciate your efforts to reign in the over regulation of wetland-type facilities that were built for other purposes such as farming or were required by state and federal regulation to manage the flow of wastewater and stormwater. Thank you, Allan Palmer.

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# Committee Report

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE

Date: February 3, 2011

THE COMMITTEE ON Energy and Natural Resources  
to which was referred Senate Bill 21

AN ACT relative to the definition of "wetlands."

Having considered the same, the committee recommends that the Bill:

**OUGHT TO PASS WITH AMENDMENT**

BY A VOTE OF: 4-0

AMENDMENT # 0176s

Senator Gary E. Lambert  
For the Committee

Richard Parsons 271-3076

## New Hampshire General Court - Bill Status System

**Docket of SB21**

Docket Abbreviations

**Bill Title:** (New Title) relative to exemptions from excavating and drainage permits.*Official Docket of SB21:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
1/4/2011	S	Introduced 1/5/2011 and Referred to Energy and Natural Resources, <b>SJ 1</b> , Pg.20
1/5/2011	S	Hearing: 1/13/2011, Room 102, LOB, 10:45 a.m.; <b>SC6</b>
2/8/2011	S	Committee Report: Ought to Pass with Amendment <b>#2011-0176s</b> , NT, 2/16/2011; <b>SC11</b>
2/16/2011	S	Committee Amendment 0176s, NT, AA, VV, <b>SJ 5</b> , Pg.56
2/16/2011	S	Ought to Pass with Amendment 0176s, NT, MA, VV; OT3rdg, <b>SJ 5</b> , Pg.56
2/16/2011	S	Passed by Third Reading Resolution, <b>SJ 6</b> , Pg.61
2/16/2011	H	Introduced and Referred to Resources, Recreation and Development; <b>HJ 19</b> , Pg. 438
3/22/2011	H	==CANCELLED== Public Hearing: 3/29/2011 2:30 PM LOB 305
3/23/2011	H	==RESCHEDULED== Public Hearing: 4/5/2011 2:30 PM LOB 305
4/26/2011	H	=CANCELLED= Executive Session: 5/3/2011 1:00 PM LOB 305
5/4/2011	H	Executive Session: 5/10/2011 10:30 AM LOB 305
5/12/2011	H	Committee Report: Ought to Pass with Amendment #1845h for May 18 (Vote 13-0; CC); <b>HC 39</b> , PG.1321
5/12/2011	H	Proposed Committee Amendment <b>#2011-1845h</b> ; <b>HC 39</b> , PG.1338-1339
5/18/2011	H	Amendment #1845h Adopted, VV; <b>HJ 44</b> , PG.1535-1536
5/18/2011	H	Ought to Pass with Amendment #1845h: MA VV; <b>HJ 44</b> , PG.1535-1536
6/1/2011	S	Sen. Odell Concurs with House Amendment #1845h, MA, VV; <b>SJ 19</b> , Pg.536
6/8/2011	H	Enrolled; <b>HJ 51</b> , PG.1726
6/8/2011	S	Enrolled
6/14/2011	S	Signed by the Governor on 06/14/10; Chapter 0195 I. Section 2 & 3 Effective as Prov. in Sec. 4 II. Remainder Effective 08/13/11

NH House

NH Senate



# Other Referrals

# COMMITTEE REPORT FILE INVENTORY

SB 0021 ORIGINAL REFERRAL \_\_\_\_\_ RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

- DOCKET (Submit only the latest docket found in Bill Status)
- COMMITTEE REPORT
- CALENDAR NOTICE
- HEARING REPORT
- HANDOUTS FROM THE PUBLIC HEARING
- PREPARED TESTIMONY AND OTHER SUBMISSIONS
- SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 01565 \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_  
 - AMENDMENT # 01765 \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED \_\_\_\_\_ AS AMENDED BY THE HOUSE  
 FINAL VERSION  AS AMENDED BY THE SENATE

\_\_\_\_\_ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes): \_\_\_\_\_

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK 7/22/11

  
BY COMMITTEE AIDE