IN MY VIEW

November 2011
Gove Environmental Services, Inc.

"In My View" will be an opinion article that will be emailed to you once a month. It will be my view of wetland and other environmental issues that will or may affect your business or organization. It will sometimes give you updates on new rules or legislation that has recently passed. In other cases, I will discuss legislation that is "in the works" at our state capital. As the name would imply, it is my view of what this rule, legislation or change means to you. I am constantly meeting with clients and associates who are asking me what this rule means or what that piece of legislation does. For that reason, I am sending this out to friends of GES who might care to have this information. I will not be political, but I do reserve the right to be opinionated. If you do not wish to receive further articles, let us know by a "reply to", and we will delete your name. If you know of someone who might want to receive future articles, just send this on to them and copy us. We will add them to the distribution list. If in the coming months there is a topic, law, rule or regulation that you would like me to discuss, let us know. If I feel that I am competent to say something about it, I will discuss it in the future.

November Topic: Changes to the Comprehensive Shoreland Protection Act (CSPA).
As you may know by now, the name of the act was changed to the Shoreland Water Quality Protection Act (SWQPA). This piece of legislation underwent perhaps one of the most circuitous routes to enactment I have ever seen. At the beginning of the last legislative session, a number of bills had been introduced to modify the 2008 CSPA, including complete removal. Senator Bradley worked tirelessly to save the act and to forge a compromise with the folks who felt the CSPA went too far. However, to the bill was attached a rider, which caused the Governor to veto the bill. In order to save the bill, it was attached to HB (House Bill) 2, which was the general funding bill. So if you wish to see the actual text, look to 2011 passed HB 2, 224:382.

What is protected? Tidal waters, all lakes and ponds greater than 10 acres in area, all fourth order and larger streams and rivers, and designated rivers including segments less than or smaller than fourth order. The setback zones of the SWQPA remain the same, with a 50-foot primary building setback/waterfront buffer, the 150-foot woodland buffer, and the 250-foot protected shoreland.

However, within the waterfront buffer, stumps and rock can be removed and replaced with pervious surfaces, new trees or other woody vegetation. Also within the waterfront buffer, the 50 points of vegetation within each 50-foot x 50-foot grid segment may include shrubs and natural ground cover. There is also a change in the scoring for the trees and saplings. The result is that it is much easier to maintain the 50 points per grid segment and allows for more trees to be removed.

The term "unaltered state" has also changed, allowing for cutting, limbing, trimming, pruning, mowing or similar activities as needed for plant health, normal maintenance and renewal.

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Further, the vegetation no longer needs to be native and allows greater freedom to modify existing "unaltered areas". This term specifically refers to the vegetation between 50-feet and 150-feet. Regardless of lot size, 25% of this zone must remain in an unaltered state. Just to be clear, a lawn is not an unaltered state, but rather considered an "altered area". Exposed ledge is also not considered an altered area.

Perhaps the largest change is to the limitation on impervious area. It is now allowable to exceed 30% of impervious surface area if a stormwater water management system is designed and certified by a professional engineer. This is true provided the 50 points per grid is still met for the entire waterfront buffer.

It is allowable under a permit to convert existing decks into living space on nonconforming structures (those within the waterfront buffer), but it is no longer allowed to construct decks or expand existing decks on nonconforming structures.

There is also a new Permit by Notification process (PBN) for small projects. No more than 1,500-square feet of total disturbance and no more than 900-square feet of new impervious surface.

Even the term "impervious surface" has changed somewhat. It now includes roofs – unless designed to effectively adsorb or infiltrate water – decks, patios, and paved, gravel, or crushed stone driveways, parking areas and walkways.

So to summarize, the changes were to the limits on impervious surfaces, removal of vegetation to a limited extent in the waterfront buffer, protection to the designated rivers, unaltered state definitions and requirements, and the creation of a PBN process for small projects in the protected shoreland.

Of course, there are nuances to the above, and this was only to give you an overview of the changes to the CSPA (now the SWQPA). As most of you are aware, individual projects may trigger these nuances. It should further be noted the local zoning of the shoreland area maybe more restrictive than the SWQPA, and will need to be checked and complied with before work can be started on a lot.

That concludes this Months article. Each past article will be stored on our website at www.gesinc.biz or Google: Gove Environmental Services, Inc. I hope this will be of value to you.

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