

SUPPORT

LD 1797 – Major Substantive Rules for Development near Moderate Value Inland Waterfowl and Wading Bird Habitat

Sponsor: Representative HAMPER of Oxford.

Co-Sponsors: There are no cosponsors. This is a major substantive rule returning to the Legislature for approval.

Summary: These rules allow some development to occur within the 250-foot zones of Inland Waterfowl and Wading Bird Habitat (IWWH) wetlands through an expedited permit-by-rule (PBR) process rather than through the full permit process under the Natural Resources Protection Act (NRPA). Although the rules will allow for streamlined permitting, and NRCM would ideally prefer stronger protection, these rules are an acceptable compromise because they still provide significant protection for the IWWH wetlands—of which there are approximately 400,000 acres in Maine.

IWWH wetlands serve as important habitat for many species of birds, including some of Maine’s most spectacular species – such as great blue herons and wood ducks. Some of the species that utilize these wetlands (such as teal) are very sensitive to disturbance. Thus, protecting large amount of intact forest around wetlands is essential for them to reproduce and raise their young successfully.

Explanation: In the 2011 session, the Legislature directed DEP to come up with a PBR process for IWWH to streamline smaller-scale development in the 250-foot zones around IWWH. The Legislature told DEP to develop the PBR as major substantive rules (which means they must come back to the Legislature for final adoption). The Board of Environmental Protection (BEP) oversees the development of major substantive rules and must approve them. At the time, NRCM was comfortable with this proposal because there is a PBR process for vernal pools that works reasonably well.

However, NRCM opposed DEP’s initial draft proposal because it would have allowed for too much development to occur in areas that are too close to waterfowl wetlands. We worked hard to strengthen the proposal, and generally succeeded. We gave strong testimony in front of the BEP, as did many others. There was particularly compelling testimony from a retired Inland Fisheries and Wildlife biologist and a world renowned ornithologist on the importance of maintaining large, undisturbed buffers around wetlands so that waterfowl and wading birds can nest and rear their young successfully.

The BEP listened to this testimony and significantly increased the setback required for any PBR project (from an initial proposal of 100 feet, to a better distance of 150 feet). The BEP also required that the Department of Inland Fish and Wildlife have an opportunity to comment on any projects built between April 15 and July 31, when breeding and nesting birds are especially sensitive to disturbance. NRCM would have liked to see restrictions on the type of development allowed under PBR, we believe the rules represent a fair compromise based on scientific information.

NRCM supports LD 1797.