



Long Island Builders Institute and NYS Builders Association address DEC regulations

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According to Long Island Builders Institute (LIBI) CEO Mitchell Pally, at LIBI's request the NYS Builders Association (NYSBA) is preparing an amicus brief in support of the town of Riverhead's lawsuit concerning the impact that sweeping amendments made by the DEC to the state's Endangered and Threatened Species of Fish and Wildlife Part 182 will have on government and private landowners across New York State. "The amendments to Part 182 will cost New York State taxpayers, residents, business owners, and developers millions of dollars and render large areas of property undevelopable," said Pally.

According to the town of Riverhead's March 21, 2011 letter to governor Andrew Cuomo, prior to the adoption of Part 182, if an endangered species was found on a specific parcel of land, the developer would have to mitigate any potential impacts to the listed species. In many cases this involved providing buffers to protect the species in question. The new regulation requires that the developer obtain an "incidental take permit." This is a new DEC permit which will be triggered by a landowner or developer in some way inadvertently modifying any aspect of a listed species habitat to any extent no matter how trivial.

In order to obtain this incidental take permit, a landowner must prepare a mitigation plan that shows a net conservation benefit to the affected listed species. A net conservation benefit is a requirement that the landowner or developer must show how the proposed activity will provide a better habitat than existed prior to the activity. For example, if you had two listed species, the landowner would have to show how the species would multiply to three, four, or more. The landowner additionally has to provide monitoring of compliance forever and has to enter into an implementation agreement with the DEC which will require the posting of bonds and/or escrow deposits in perpetuity.

LIBI, NYSBA, and the town of Riverhead believe the costs of these new regulations would be staggering and will render just about any parcel of land that a listed species lives in or lands on undevelopable. According to the lawsuit brought by the Town of Riverhead, the DEC amendments additionally are ultra vires because it is not permissible for the DEC to introduce a completely new set of regulations requiring new permits, monitor, and bonds under the auspices of just "clarifying existing regulations."

"The Long Island Builders Institute fully supports the importance of protecting endangered and threatened species of fish and wildlife," said Pally. "However, an equitable balance is needed between the need to protect endangered species and the need to create desperately needed jobs and housing for all residents of Long Island and New York State."