

Wetlands

Regulatory Certainty and Permit Streamlining

BACKGROUND

State and Federal rules have been developed to implement the policy of "no net loss" of wetlands, which substantially increases the cost and difficulty of real estate development. In addition, the present system of granting permits for real estate development in wetlands areas contains numerous substantive and procedural defects that make approval of such permits uncertain and untimely.

In May 2000, the US Supreme Court issued the "SWANCC" ruling (Solid Waste Agency of Northern Cook County) which held that the US Army Corps of Engineers had no jurisdiction under the Clean Water Act to regulate "isolated waters." The court defined "isolated waters" as those water bodies that are not navigable and are not adjacent or tributary to navigable waters.

While the SWANCC ruling was helpful, numerous cases claiming that the Corps has grossly overreached in violation of SWANCC are making their way to the Supreme Court. We are hopeful that the Supreme Court will accept at least one for further review.

The complicated nature of wetlands policies coupled with questionable scientific claims have served as an effective tool by no-growth advocates to stymie development in both rural and urban settings.

CBPA POSITION

CBPA supports policies that provide for a balance between environmental sensitivities and the socio-economic well-being of the state.

Clear and understandable wetlands definitions need to be established. Wetlands should be defined as meeting all three criteria of hydro-soils, hydrology and vegetation.

CBPA believes wetlands policy should attain the national goal of "no net loss" of real, viable and quality wetlands, while ensuring approval of projects which provide both environmental and socio-economic benefits. Delays, uncertainties, and inequities in the wetlands permit process should be removed.

CBPA supports procedural reforms to facilitate more timely permit decisions, early economic determinations, and other measures regarding permit review and timetables.

CBPA supports substantive reforms to account for the value and functionality of wetlands, to limit the demands of federal agencies for disproportionate amounts of mitigation based on the value and function of wetlands, and to have Congress define circumstances where the landowner would be entitled to compensation when a permit is not obtained.

CBPA supports certification of nationwide permits, mitigation banking, permit streamlining, and compensation for takings, as well as federal legislation to amend the Clean Water Act in order to prevent the abuse of wetlands regulations to stop development on private property.