



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



AVERY T. DAY
ACTING COMMISSIONER

TESTIMONY OF
MARK BERGERON, DIRECTOR
BUREAU OF LAND RESOURCES
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING NEITHER FOR NOR AGAINST
L.D. 1478 - AN ACT TO REESTABLISH RECREATIONAL USE OF A HISTORIC
TROLLEY LINE IN THE TOWN OF GRAY

BEFORE THE JOINT STANDING COMMITTEE
ON
ENVIRONMENT AND AND NATURAL RESOURCES

DATE OF HEARING: January 14th, 2016

Senator Saviello, Representative Welsh, and members of the Committee, I am Mark Bergeron, director of the Bureau of Land Resources at the Department of Environmental Protection, speaking Neither for Nor Against L.D. 1478, an Act to Reestablish Recreational Use of a Historic Trolley Line in the Town of Gray.

The Town of Gray proposes a new museum near the Gray Plaza on Route 26, and a narrow gauge railroad would be re-established from Gray Plaza to Long Hill Road on an existing rail bed constructed in the early 1900's. Since the rail corridor was abandoned in the 1930's, the rail bed has been used as a recreational trail that runs through an area known as Gray Meadows. Gray Meadows is defined as a "wetland of special significance" by the Natural Resources Protection Act (NRPA) Chapter 310 Rules because it contains large areas of open-water and emergent marsh vegetation, streams, significant wildlife habitat, and is located in the 100-year flood plain. Further, Gray Meadows is mapped by the Department of Inland Fisheries and Wildlife as an Inland Waterfowl and Wading Bird Habitat, and a portion of the corridor is mapped as New England Cottontail habitat. Inland Waterfowl and Wading Bird Habitat is defined as a Significant Wildlife Habitat in the NRPA and is afforded special protection in terms of permitted activities, which would include vegetation removal and/or filling. Being designated as a Significant Wildlife Habitat confers more value to this wetland.

The proposed bill seeks to allow the Town of Gray the ability to do two things:

1. Adopt a Shoreland Zoning Ordinance that allows for the exemption from setback requirements and vegetation clearing standards applicable under Title 38, Section 439-A, subsections 4 and 6 of the Mandatory Shoreland Zoning Act; and,
2. To be exempt from permitting for wetland alteration for the purpose of vegetation clearing under NRPA associated with the operation of the Maine Narrow Gauge Railroad and Museum. The relevant statutory section of NRPA, Title 38 Section 480-C, prohibits the alteration of freshwater wetland, including vegetation removal, without first obtaining a permit from the Department.

My staff has been in contact with the Town of Gray since 2013 on this project, and although the Department is not opposed to this particular proposal, the Department is concerned that this bill may be setting a precedent for future exemptions. Even though the proposed bill limits the scope to a defined area of land parcels in Gray, other towns

or applicants could seek similar exemptions to the law for their projects, which we view as an ineffective way to administer environmental laws.

If passed as written the current bill will not have the desired effect of exempting the project from all required NRPA permitting. It is our understanding that the existing rail bed would have to be widened to accommodate both the proposed railroad and the recreational trail. If this were the case, fill would need to be placed in the wetland of special significance, and a permit would be required. I will also note that the exemption proposed in this bill would not apply to impacts to significant wildlife habitats or streams. And perhaps most importantly, regardless of any exemptions from state permitting requirements that may be received, review and approval for wetland fill and vegetation removal will be required by the US Army Corps of Engineers.

My staff regularly works with non-profit groups and other state agencies to help them obtain permits to work in protected natural resources to construct roads, trails, and other linear developments. My licensing staff works with applicants to plan developments that can be built responsibly with minimal impacts to natural resources, water quality, and wildlife habitat. The Department continues to offer our assistance to the Town of Gray on the permitting aspects of their proposal.

I appreciate the opportunity to provide you with our comments and I would be happy to answer any questions you may have on this bill.