

James R. Loeb  
Richard J. Drake  
Glen L. Heller\*  
Marianna R. Kennedy  
Gary J. Gogerty  
Stephen J. Gaba  
Adam L. Rodd  
Dominic Cordisco

Jeanne N. Tully  
Timothy P. McElduff, Jr.  
Jennifer E. Wright  
Stuart L. Kossar  
Michael J. Vatter

\*L.L.M. in Taxation

October 21, 2009

**BY EMAIL AND HAND DELIVERY**

Senator Antoine M. Thompson, Chair  
Standing Committee on Environmental Conservation  
New York State Senate  
Legislative Office Building, Room 902  
Albany, New York 12247

Attention: Rashied McDuffie  
[rashied\\_mcduffie@yahoo.com](mailto:rashied_mcduffie@yahoo.com)

Re: Wetlands Public Hearing // Written Comments  
Our File No.: 8521-62766

To the Honorable Senator Thompson and Senators on the Committee:

I offer this letter as written comments for the Committee's October 27 public hearing on the proposed new wetlands regulation, and in particular Senate Bill S4956.

I submit this letter on behalf of the Orange County Partnership (OCP), the Orange County Chamber of Commerce (OCCOC), and the Sullivan County Partnership (SCP) -- each of which has formalized its opposition to Senate Bill S4956, for the reasons discussed below. Copies of each organization's resolutions proclaiming their opposition to S4956 are enclosed.

I have practiced in the area of wetlands regulation since 1998. I have had the benefit of various perspectives in this area due to my own experience, first as Natural Resources Enforcement Counsel for the New York State Department of Environmental Conservation (NYSDEC), which included wetlands enforcement throughout the State, then as Regional Attorney for NYSDEC Region 3, and now as counsel to various municipalities and private clients in the mid-Hudson valley. As a result of this varied experience, I have participated in wetland policy and permitting issues on a state-wide, regional and local level. Quite literally, I have worked on policies and issues and then went on to see their real impact on individual projects.

I currently serve as co-chair to the Alliance for Balanced Growth (ABG), a standing committee of the OCP. The OCP and ABG's mission is to support balanced, sustainable economic growth while concurrently promoting a high quality of life for Orange County residents. Both the OCP and ABG closely monitor wetland regulation issues, and successfully advocated for additional staffing at the United States Army Corps of Engineers (USACOE) when many projects were delayed by the lengthy review

times associated with the then-short staffed USACOE. The issue was not the extent of wetland regulation, but rather delays in processing applications that resulted in increased carrying costs and lost opportunities for our members.

Delay and duplication of permitting jurisdiction -- and the resultant costs to project sponsors and the community as well -- is a significant cause of concern for the OCP, the OCCOC, the SCP, the ABG, and all of their members. We believe that 4956 would add unnecessary delay and duplication of permitting jurisdiction without any benefit to the State of New York and its residents.

Currently NYSDEC primarily regulates wetlands that are 12.4 acres in size or larger. S4956 would, if enacted, enlarge the NYSDEC's jurisdiction to include wetlands 1 acre in size or larger. However, there would be no change to the regulated adjacent area, which is currently a 100 foot buffer around NYSDEC wetlands. The 100 foot buffer would now be extended around these smaller wetlands. This increase is substantial: including a 100 foot adjacent area around a 1 acre wetland results in 4 acres of regulated area. Any disturbance in that 4 acre regulated area would require a permit from the NYSDEC. However, all of these wetlands that would fall under the new regulation are currently regulated by the USACOE. S4956 would create the need to obtain permits from both the USACOE and the NYSDEC for the same disturbance. This would double the regulation of the same resource -- with no appreciable benefit to the State. Indeed, this would only add another layer of bureaucracy to an existing regulatory framework.

If the goal is to protect wetlands that are presumably unregulated, S4956 is unnecessary. Disturbances to nearly all wetlands in New York -- regardless of size -- requires a joint application to the USACOE and NYSDEC for their approval. In addition to the USACOE's approval, all disturbances to federally regulated wetlands trigger the need to obtain a 401 water quality certificate from the NYSDEC. The NYSDEC treats and issues 401 water quality certificates as though they are actual permits. See 6 NYCRR § 621.1(e). The 401 water quality certificate process already gives the NYSDEC oversight of wetland disturbances where the wetland is less than 12.4 acres in size. There is no minimum size requirement, so even disturbances to the smallest federally regulated wetland require a 401 water quality certificate from the NYSDEC. Thus, in a very real sense, the NYSDEC already regulates wetlands that are less than 12.4 acres in size.

If the goal is to provide NYSDEC with the ability to impose a 100 foot buffer around wetlands less than 12.4 acres in size, S4956 is likewise unnecessary. NYSDEC currently regulates wetlands that are less than 12.4 acres in size when it finds that such wetlands are of unusual local importance (ULI). See ECL § 24-0301(1). ULI wetlands include the regulated 100 foot buffer. Thus, in instances where there is important upland habitat associated with a sub-12.4 acre wetland, NYSDEC can regulate and protect that resource. As a result, the NYSDEC already has the tools it needs to extend the 100 foot buffer when circumstances warrant.

If the goal is to avoid the additional loss of wetlands, then S4956 is not necessary to achieve that goal. The NYSDEC's jurisdiction is based on promulgated and filed wetland maps that were created in the 1970s and early 1980s. In most cases these maps have not been updated or revised since that time. This is changing, however: NYSDEC Region 3 is currently preparing a new county-wide wetland map.

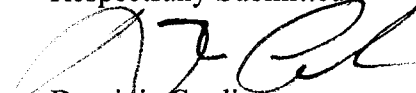
In doing so, NYSDEC has preliminarily identified "thousands" of acres of wetlands, according to NYSDEC staff, that will, once the map is finalized and filed, be directly regulated by both the NYSDEC and USACOE. What the State needs to protect its wetland resources is not an additional layer of permitting, but rather more accurate mapping. This effort will result in not only the protection of wetlands, but more predictability for project sponsors who currently have to contend with maps that are decades out of date.

Last but not least, a significant concern regarding S4956 is that, if passed into law, it would become "effective immediately". There is no grandfathering language that would exempt pending projects from the need to comply -- even though the regulatory scheme would change drastically. This would have a devastating effect on projects that are winding their way through the approval process and those that are approved but not yet under construction. Approved projects that are "shovel ready" are an important part of New York's economic growth engine; they supply opportunities for quick development because the lengthy approval process was completed previously. Given that nearly every developable property has some wetlands on site, S4956 would certainly place most shovel ready projects in jeopardy of having to re-enter the approval process for no real purpose. There is simply no rationale that would support such an upending of the regulatory framework.

As a result, and on behalf of the Orange County Partnership, the Orange County Chamber of Commerce, the Sullivan County Partnership and the Alliance for Balanced Growth, we ask the Standing Committee and the Senate to not support S4956 or any other proposal that adds additional and unnecessary jurisdictional layers to the existing wetland regulatory framework.

Thank you for the opportunity to submit these comments.

Respectfully Submitted,



Dominic Cordisco

Enclosures  
DRC/rd/112345

cc:

Senator William J. Larkin, Jr.  
Senator John J. Bonacic  
Senator Thomas P. Morahan

Maureen Halahan, President & CEO, Orange County Partnership  
John D'Ambrosio, Ed. D., President, Orange County Chamber of Commerce  
Carol Smith, Vice President of Government Initiatives, Orange County Chamber of Commerce  
Josh Sommers, Chairman, Sullivan County Partnership  
John Lavelle, Co-Chair, Alliance for Balanced Growth  
(all above by email and first class mail)



**BOARD OF DIRECTORS  
Resolution #2009-05**

October 19, 2009

**Whereas**, the New York State Senate is currently considering the passage of an amendment to Article 24 of the Environmental Conservation Law to increase the State's regulation of wetlands, which are currently regulated by the New York State Department of Environmental Conservation (NYSDEC) for wetlands that are 12.4 acres or larger;

**Whereas**, NYSDEC-regulated wetlands also include a 100-foot regulated adjacent area, or buffer;

**Whereas**, Senate Bill S4956, the specific proposal, would increase NYSDEC's jurisdiction to regulate wetlands down to one acre in size;

**Whereas**, the current 100-foot buffer regulation would continue to apply;

**Whereas**, the regulation of a one-acre wetland with a 100-foot buffer can result in four acres of regulated lands;

**Whereas**, Senate Bill S4956, if enacted, would create the need to obtain permits from both the NYSDEC and the U.S. Army Corps of Engineers for the same activities, thus doubling the regulatory scheme for the same resource;

**Whereas**, Senate Bill S4956, if enacted, would be effective immediately, with no grandfathering of pending applications;

**Whereas**, Senate Bill S4956 has the potential to have a far-reaching impact on both commercial and residential growth in New York State;

**Whereas**, this is a matter of significant concern to the Orange County Chamber of Commerce and its 2,000 members;

**Whereas**, the New York State Senate's Standing Committee on Environmental Conservation will hold a public hearing on October 27, 2009 in Albany on Senate Bill S4956;

**Whereas**, the Orange County Chamber of Commerce wishes to formally express its objection to the proposed amendment to Article 24 of the Environmental Conservation Law;

**NOW, THEREFORE, BE IT RESOLVED** that the Executive Committee on behalf of the Board of Directors of the Orange County Chamber of Commerce hereby express its unanimous opposition to the proposed amendment to Article 24 of the Environmental Conservation Law to increase the State's regulation of wetlands and directs that a copy of this resolution be transmitted to the New York State Senate's Standing Committee on Environmental Conservation with the request that it be made a part of that committee's record of the public hearing scheduled to be held on October 27, 2009 on Senate Bill S4956.

*Passed unanimously by the Executive Committee of the Board of Directors  
10/19/09*



**For Immediate Release –**

*For more information contact:*

Tim McCausland, President

(845) 794-1110

tim@scpartnership.com

**SULLIVAN PARTNERSHIP CONDEMNS STATE WETLANDS BILL**

***Leaders fear new wetlands legislation will harm latest economic development advancements in Sullivan County***

**October 20, 2009 – Bridgeville, N.Y.** – The Sullivan County Partnership for Economic Development Board of Directors today passed a resolution unanimously condemning a New York State Senate bill that calls for increased regulation of state wetlands. The amendment to the current Environmental Conservation Law could create more barriers to present and future economic development in Sullivan County.

The resolution stated:

“The Sullivan County Partnership for Economic Development is dedicated to creating jobs in Sullivan County through meaningful economic development all while protecting and preserving the environment for all the inhabitants of our community. Wetlands are important natural resources that need to be protected, but the additional, redundant regulation proposed by Senate Bill S.848 will negatively impact economic development in New York – with no appreciable benefit to the State. Reducing the regulated wetlands from 12.4 acres to 1 acre with no change in the 100-foot buffer requirement will result in a 4 acre regulated area. This significant expansion of government regulation will not only limit new development, it will impact the expansion of current projects and will inevitably lead to higher costs for developers. In light of the fact that the Army Corps of Engineers and many municipalities currently regulate most, if not all, of the subject wetlands, Senate Bill S.848 simply doubles the regulation of the same resource. The Senate Bill and corresponding Assembly Bill (A.6363) are unnecessary.”

The amendment calls for any wetland sized one acre or more that abuts a body of water to be regulated by the NYS Department of Environmental Conservation. The current law only allows NYSDEC to regulate parcels 12.4 acres or more.

The State Assembly approved their version of the bill, A.6363, in May and passed it to the Senate for approval, where it still sits. Assemblywoman Aileen Gunther voted against the bill and Senator John Bonacic has vowed to vote against the Senate’s version.

The Partnership, founded in 1994, is a non-profit organization focused on the marketing of Sullivan County, leading to job creation and investment in the county. Over the years, The Partnership has worked to solidify its organizational structure, develop and strengthen relationships with its partners, the County of Sullivan, the Sullivan County Industrial Development Association, the business community and other service organizations. Through leadership in both the government and private sector, successful strategies were developed that worked to create an environment that makes investing in Sullivan County viable. Due to its balanced approach to assisting small and large business, The Partnership plays a pivotal role in providing facilitative services and carrying the message of a positive outlook for the future of Sullivan County.

WHEREAS, the New York State Senate is currently considering the passage of an amendment to Article 24 of the Environmental Conservation Law to increase the State's regulation of wetlands, which are currently regulated by the New York State Department of Environmental Conservation (NYSDEC) for wetlands that are 12.4 acres or larger;

WHEREAS, NYSDEC-regulated wetlands also include a 100 foot regulated adjacent area, or buffer;

WHEREAS, Senate Bill 4956 the specific proposal, would increase NYSDEC's jurisdiction to regulate wetlands down to 1 acre in size;

WHEREAS, the current 100 foot buffer regulation would continue to apply;

WHEREAS, the regulation of a 1 acre wetland with a 100 foot buffer can result in 4 acres of regulated lands;

WHEREAS, Senate Bill 4956, if enacted, would create the need to obtain permits from both the NYSDEC and the U.S. Army Corps of Engineers for the same activities, thus doubling the regulatory scheme for the same resource;

WHEREAS, Senate Bill 4956 if enacted, would be effective immediately, with no grandfathering of pending applications;

WHEREAS, Senate Bill 4956 has the potential to have a far-reaching impact on both commercial and residential growth in New York State;

WHEREAS, this is matter of significant concern to the Partnership and its investors;

WHEREAS, the New York State Senate's Standing Committee on Environmental Conservation will hold a public hearing on October 27, 2009 in Albany on Senate Bill 4956;

WHEREAS, the Partnership wishes to formally express its objection to the proposed amendment to Article 24 of the Environmental Conservation Law;

NOW, THEREFORE, the Orange County Partnership Board of Directors does hereby express its unanimous opposition to the proposed amendment to Article 24 of the Environmental Conservation Law to increase the State's regulation of wetlands and directs that a copy of this resolution be transmitted to the New York State Senate's Standing Committee on Environmental Conservation with the request that it be made a part of that Committee's record of the public hearing scheduled to be held on October 27, 2009 on Senate Bill S848.

MOTION CARRIED:

AYES:	<u>10</u>
NAYS:	<u>0</u>
ABSTENTIONS:	<u>0</u>