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Civil Solutions

Dear John,

DNR has several new general permits now available, including a general permit for wetland fill. We have actually applied for a few under the new rules. I thought I would give an update, since many of you have asked about how the changes may benefit land developers.

I have also been watching changes DNR has been working on regarding shoreland zoning. It seems these changes have been stalled, at least for now. But I will continue to watch.

If you have a suggestion on subjects you'd like to know more about, contact us, and we'd be glad to cover it here.

John R. Davel, P.E.
President

New General Permits

A General Permit is one that comes with presumptive approval. In other words, as long as your project meets all the permit conditions, your permit is automatically approved in 30 days. The DNR is working on General Permits for many different activities and has had some available for storm water ponds and culverts for example. Recently they announced a statewide general permit for wetland discharges that are a part of development for industrial, commercial or residential purposes. The proposed statewide general permit is valid for 5 years and will allow applicants to apply for coverage under the permit for wetland impacts up to 10,000 square feet if the impact meets all of the eligibility criteria and conditions of the general permit.

The general permit will streamline the process for projects that meet the general requirements and hopefully save some time in processing the permit, which is the primary benefit. The rules still require the developer to



first avoid wetland impacts and then to minimize impacts. The permit which would allow impacts up to 10,000 square feet, matches the Army Corp of Engineers nationwide permit. If the project doesn't qualify for a General Permit, the DNR can issue an Individual permit. All Individual permits for wetlands fill require mitigation. Mitigation means that wetland to be lost, must be replaced with new wetland. Depending on the type and quality of wetland, the amount of new wetland will vary between 1.2 and 1.5 times the amount lost. Mitigation credits can be purchased from Wetland Mitigation Banks. However currently there are no credits available for our area of the state.

Shoreland Zoning

Below is a brief history of the events regarding changes to the State Shoreland Zoning code.

- The State approved changes to NR 115 (County Shoreland Zoning) in 2009
- The State required Counties to adopt/amend their shoreland zoning ordinances by February 2012
- In September of 2011, the DNR Secretary signed an executive order extending the February 2012 deadline until February 2014.
- To date, eight counties have adopted new ordinances to address some or all of the changes in NR 115, most have not.
- In February 2012, the Governor approved a Scope Statement, which allows the department to further amend specific areas of the rules in response to Counties concerns for implementation. April of 2013 is estimated to be the soonest the amended rules would take effect.
- In April of 2012, the Legislature passes Act 170, which affects non-conforming structures and requires that Counties' ordinances cannot be more restrictive than NR 115 in the regulation of non-conforming structures. The Act also affects the construction of all structures on substandard lots to be no more restrictive than NR115 standards. Guidance is expected to be issued soon from the Department to the counties as to how this new law will affect Shoreland Zoning.

Bottom line is there is more work to do before the rules are finally revised, there are some unintended consequences resulting from Act 170 which need to be recognized. Counties will likely begin amending SL ordinances to include the ACT 170 provisions. However, it is expected that most will hold off on adopting the NR115 provisions until NR115 is again revised (approximately April 2013).

I hope this important news update is relevant to your business. If you'd like to learn more information about our firm or services, please give me a call at 920-560-6563, or visit our website at www.davel.pro.

Sincerely,

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