

## Testimony of David Sutherland – Director of Government Relations Before the Planning and Development Committee – March 18, 2012

### **In Opposition to Bill 460 – AAC COASTAL PROTECTION MEASURES, ROUTINE MAINTENANCE AND REPAIR OF SHORELINE STRUCTURES, STATE-WIDE POLICY CONCERNING WATER RESOURCES AND PROCEDURES OF THE DEEP.**

On behalf of The Nature Conservancy, I would like to express our opposition to certain sections of Bill 460. Among other provisions, this bill would **require** DEEP to issue Certificates of Permission (COP) for activities that were **illegally conducted without required permits** prior to 1995, require the agency to issue a Certificate for maintenance of or minor alterations to structures illegally installed before 1995, and change the date from which properties are "grandfathered" from needing permits for many activities, even some activities which were conducted illegally, from 1939 to 1995.

We have statutes of limitations on prosecuting many illegal activities. These "expiration dates", however, do not require regulatory or enforcement authorities to actively sanction the original illegal activity or permit an expansion of the activity, as Section 2 of this bill would. Even in jurisdictions where we have statutes of limitations on building code violations, for example; are building departments required to actually issue a permit for a past illegal activity?

DEEP has actually been quite lenient with many property owners who have conducted work without proper permits. In recent years, even in cases where people installed structures without getting necessary permits or COP's and DEEP required them to apply for one retroactively, the agency issued permits or COP's in the vast majority of cases. This does not mean the agency should be **required** to **always** grant a permit. They should retain the authority to enforce compliance or at least deny certificates for past violations, certainly for the most egregious ones.

We are opposed, therefore to Section 2 of the bill, but there are some instances in that section, in which we would not oppose changing the "grandfathered" date from 1939 to 1995, provided DEEP is not mandated to issue COP's as this bill currently requires. In general, where DEEP still retains some discretion regarding permits or COP's, such as in items (2) and (5) in Section 2(a), we would not be opposed to such a change of date. In cases where current statutes do not provide such discretion, however, such as in the first sentence of Sec. 2 (a), and the second sentence of Sec. 2(c), we would oppose changing the date.

We are opposed to Section 2 (d) which would give preferential treatment to unauthorized activities and reduce the number of days, from 45 to 30, within which DEEP is required to take action on a COP. The agency and its Long Island Sound Program have made great strides in expediting its permitting in the past several years, but it is again facing serious staffing constraints, so this is not the time to arbitrarily reduce by a third the time it has to act on COP's.