



# New Hampshire Association of Conservation Commissions

SERVING NEW HAMPSHIRE'S COMMUNITIES SINCE 1970

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The New Hampshire Association of Conservation Commissions (NHACC) represents the interests of 189 municipal conservation commissions across the state. Our members uniformly oppose the draft Wetland Rules which we see as an effort to favor developers over the legitimate interests of towns to ensure that informed decisions are being made about wetlands within their borders. While we appreciate the professionalism of your agency, your staff does not have the local knowledge which our member commissions have. We particularly oppose the draft Rules which permit smaller projects—the majority of permit applications—to be permitted in Concord without any notice or input from a local conservation commission at all. Given that many of these decisions are irreversible, we believe it is more important to make the right decision than a speedy one. We also oppose the short time deadlines set out in the proposed Rules as unrealistic.

We appreciate the opportunity for NHACC to be part of the stakeholder meetings, but we believe the review of the draft Wetland Rules was an intensive, expedited process, given the changes. We understand that the draft Wetland Rules are an attempt to streamline the process for dredge and fill applications and to balance wetland protection and development. However, despite sharing our concerns through the review process, we believe many of the conservation commission comments and concerns have not been addressed, and therefore NHACC does not support the Wetland Rule in its current status.

As you know, only a **conservation commission has the power to “intervene” or delay consideration** of an application to the Wetland Bureau, allowing time for local review of the proposal. We feel that the majority of conservation commissions take this responsibility very seriously and most towns are active participants in this process. Local conservation commissions are often the most knowledgeable source of wetland information in their towns. They are able to review impacted sites on the ground and they can save NHDES time and money during the dredge and fill review process. This important step in the process should not be limited or taken away from towns.

One of the major changes proposed includes removing conservation commission's ability to review Lower Scrutiny Approval permits (LSA). As we have expressed in early feedback, NHACC is opposed to the addition of a LSA permit process because it does not provide for this important review opportunity. The proposed screening process relies only on NHB and NHF&G data checks which only include existing records of occurrences. There have been numerous times where commissions were knowledgeable of local resources missing from these data sets and their input provided significant contribution to wetland resource protection. A commission's early involvement can provide

recommendations for minimizing and avoidance that may not be obvious using the proposed data screening layers. In addition, commissions informed about existing permits are often early reporters of unauthorized activities and have been able to alert NHDES before significant damage is realized—a role that saves NHDES staff time and money. Local review also benefits those individuals who may be undertaking the activity not knowing they were violating regulations, and most importantly allows for intervention before resource impacts become costlier to restore. NHACC is concerned that reducing the timeline for permit review for both Permit by Notification and Lower Scrutiny Approvals will result in more unpermitted dredge and fill activity due to the absence of local review. Requiring commissions to check One-stop on a daily basis to keep apprised of permitted actions will likely have unintended consequences on wetlands, more significant wetlands impacts and violations that are costly to resolve.

Rushing through the review process will likely result in some poor decisions under pressure to meet the reduced deadlines. The reduced time lines in the new Rules in conjunction with the statutory change that reduces the time frame for NHDES to respond to permit's administrative completeness is an additional stress on staff time. Development is permanent and lasting. The decision to fill wetlands should not be taken lightly or in haste. We have significant concerns about the ability of NHDES to adequately screen a 3-lot subdivision and commercial projects in 5 days.

At the beginning of the draft Rules review process it was noted that the new Rules should not change the jurisdiction of the law, so wetlands protected prior to the Rules change would still be protected. However, the new Rules clearly reduce the protection for many wetland areas with the creation of the LSA permits, removal of conservation commission review from Permit by Notification (PBN) and the additions of new projects eligible for PBN including commercial access and 3 lot subdivision.

NH has excellent water resources and science has confirmed that the protection of wetlands and vegetative buffers are the most economical protection for water quality, flooding impacts and pollution filtration. As you know, development and fill of wetlands has a permanent impact on the land. We should not rush decision making when it has detrimental and lasting impacts on wetlands, aquatic habitat, and public health and safety.

RSA 482 specifically authorizes conservation commission review participation in the regulatory process. The law, **482-A:11 Administrative Provisions**, clearly intends conservation commissions to be part of the review process and outlines the steps for conservations commissions in the permit review process. Additionally, “The commissioner shall adopt reasonable rules, pursuant to the rulemaking provisions of RSA 541-A, to implement the purposes of this chapter.

**482-A:1 Finding of Public Purpose**

It is found to be for the public good and welfare of this state to protect and preserve its submerged lands under tidal and fresh waters and its wetlands, . . . , from despoliation and unregulated alteration, because such despoliation or unregulated alteration will adversely affect the value of such areas as sources of nutrients for . . . wildlife of significant value, will damage or destroy habitats and reproduction areas for plants, fish and wildlife of importance, will eliminate, depreciate or obstruct the commerce, recreation and aesthetic enjoyment of the public, will be detrimental to adequate groundwater levels, will adversely affect stream channels and their ability to handle the runoff of waters, will disturb and reduce the natural ability of wetlands to absorb flood waters and silt, thus increasing general flood damage and the silting of open water channels, and will otherwise adversely affect the interests of the general public.

Is a 5-day review of LSA or PBN sufficient or *reasonable* to determine the lasting implications of changes to our NH landscape? Considering that we have emerging contaminants in our drinking water and more intense storms and flooding, NHACC does not believe this is the appropriate time for

less scrutiny of wetland permits. DES should be increasing scrutiny on proposed dredge and fill projects to help counteract development, pollution and severe weather.

The new Rules remove local control from the process. As you know, for decades, conservation commissions have been the ‘eyes and ears’ for DES. It now appears that DES is moving forward with new Rules both deaf and blind to local concerns. Further, many commissions are deeply involved in development of local buffer protection ordinances to protect wetland functions and values. If permitting impacts to wetlands can occur without local input, what good is a local ordinance protecting the buffer around it? This could have significant impacts on a commission’s authority in local regulations. Lastly, many communities are managing impaired water quality resulting from previously permitted impervious cover. Several of those communities are working under federal and state permits towards storm-water pollution reduction and education. Imposing permit requirements through one arm of State government that require communities to increase water quality protection while another arm of the State government loosens their role in the impact review process places an undue local burden on those communities.

Another major change in the Standard Application process is that the conservation commission could be part of a pre-application process prior to application submission to DES.

*Env-Wt 311.) (e) If an applicant attends a meeting of the local conservation commission to discuss the proposed project prior to filing an application with the department, they shall provide documentation and comments from the meeting as part of their application.*

Ideally the pre-application process would allow the applicant to consult with the local conservation commission and address any comments raised before submitting an application with DES. However, the draft Rules do not go into any detail regarding this process including allowing access to the property for site visits or how any concerns should be addressed. As far as the proposed pre-application process goes, we have some concerns about commissions working directly with landowners when conflicts arise. Currently, commissions can outline their questions and concerns and have DES work with the applicant to resolve issues. If the commission must work directly with the applicant, the draft Rules do not explain how to resolve conflicts or what recourse commissions have if the applicant does not want to entertain suggestions or recommendations.

It seems that the intent of the draft Wetland Rules has attempted to balance the directive to streamline the process while remaining focused on the natural resource values being impacted and how to ensure avoidance and minimization during the permit review process. The addition of the term “Priority Resource Area” provides more guidance to determine the impact to the wetland based on the value of the natural resource but the definition of Priority Resource Area was limited to a few areas and it does not offer the same protection of critical habitat. Originally to the draft Priority Resource Areas included a long list of habitat, unique wetlands and prime wetlands. The current list is more limited, at minimum, this section should be revised to include Prime Wetlands.

NHACC would like to see DES continue to offer special consideration for Prime Wetlands because of their size, unspoiled character, fragility or uniqueness. Commissions work hard with their communities to designate prime wetlands and they should be alerted to any permits that could impact these special areas. We also agree that the department shall not issue a waiver for forestry activities in a prime wetland unless written comments on the application from the Conservation Commission stating that the members have no objections to the requested waiver and that DES determines that there will be no significant net loss of wetland values.

NHACC opposes the current draft of the Wetland Rules. We understand the need to streamline the permit process and encourage efficiency, and appreciate the ability to be part of the stakeholder committee through rule development process, but we feel significant concerns raised by NHACC and

commission members have not been addressed. We believe that DES should be supporting efforts to protect clean water and NH's water resources, not rushing permits through to make it easy on the applicant. We do not want the revised Wetland permit process to result in unintended consequences detrimental to our water resources and wetlands. We encourage DES to continue the critical work of protecting of our state's wetlands and natural resources and to continue to focus on your mission to sustain a high quality of life for all citizens by protecting and restoring the environment and public health in New Hampshire. At this time, we feel the proposed Wetland Rules do not offer protection.

NHACC is here to provide support and collaboration to ensure that NH's water resources are protected and feel the best way to do this is to allow additional time for a complete and thorough amendment to the Rules. We would be interested in partnering with DES to provide assistance with outreach and education to conservation commissions. Please let me know how we can work together to continue to protect NH's wetlands.

Respectfully Submitted,

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