



New Hampshire Association of Conservation Commissions

SERVING NEW HAMPSHIRE'S COMMUNITIES SINCE 1970

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Commission Members:

As you are aware, the NHACC has been heavily involved with the wetland rule change process. We participated in numerous stakeholder groups throughout the summer. Despite our continued comments on suggested edits, many were not incorporated and we feel the current version falls short of protecting our state's wetlands. DES has stated that they do not have the staff or resources to continue the review process they currently have. The intention was to allow more minimum impacts to be permitted quickly so that staff could focus on wetland functions and values impacted by standard permits. Our members have concerns about the cumulative impacts of speedy approval of minor projects. We wanted to take this opportunity to share our concerns in the event you wish to provide comments during the public hearing and/or through reaching out to your local representatives. Please review the talking points below and consider adding any of your experience with wetland permits to the concerns below. The comment period is scheduled to end on January 18, 2019.

The following are a list of our major areas of concern:

- 1) The proposed process does not require conservation commission review on Lower Scrutiny Approval (LSA) permits. Our concern is that NHDES has only 5 day timeframe for review/approval. LSA eligibility will be determined not only by impact based on square and/or linear footage, but also on the type of resource impacted as described in the Priority Resource Areas.
- 2) Without a review role for the commission in these lower threshold permits, you will not be informed about activities that have been permitted in your own community. It was suggested that commissions could rely on the [NHDES one-stop](#) to stay up-to-date on permits. To stay informed, a commission would constantly need to be checking this database to know if something had been permitted in their community. We feel commissions informed about permits are able to provide early reporting of unauthorized activities to NHDES. This critical role saves NHDES staff field inspection time, establishes commissions as an information resource in their community, and most importantly allows for intervention before resource impacts become costly to restore.
- 3) 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 revised during the draft review. The original draft included Priority Resource Areas with a list of critical habitat and unique wetlands like fens and

peatlands. The current list is more limited, and at a minimum, this section should be revised to include marsh of one acre or larger and exemplary Natural Communities identified by NH Natural Heritage Bureau. We feel special consideration for Prime Wetlands is important 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.

- 4) DES staff will rely on a series of map layers including NH Heritage Bureau and NH Fish and Game data checks to evaluate LSA applications. As you know these data sets are reliant upon existing records. There has been numerous times where commissions shared information about local resources that were missing from these data sets and therefore provided a significant contribution to resource protection.
- 5) It is our concern that the 5-day review timeframe is a very short period of time to determine administrative completeness and accuracy and are concerned it will result in poor decisions under pressure to meet the reduced deadlines. Development is permanent and lasting. The decision to fill wetlands should not be taken lightly or in haste.
- 6) We are concerned about some of the new project categories added to the Permit By Notification permits such as commercial access and residential access. We feel 5 days does not afford time to adequately screen these projects. We should not rush decision making when it has detrimental and lasting impacts on wetlands, aquatic habitat, and public health and safety. It strikes us that the review timeframe for these categories is the same as activities such as the establishment of a living shoreline which has beneficial impacts to a resource. Let DES know how important it is to your commission to review commercial and residential access that impacts wetlands. If possible, provide examples of projects that were improved because of your CC input and intervention.
- 7) There is a new process which establishes a role for the conservation commissions to be a part of a pre-application process prior to application submission to DES. This was changed during the review to a voluntary process with no time frame. If your commission would like to see a pre-application process required, you should provide comments. 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 provide any detail regarding this process including allowing access to the property for site visits or how any concerns should be addressed. 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. Additionally, it should also be clear that the pre-approval process does not forfeit the ability for commissions to participate in the 40-day review period as defined by RSA 482-A.

We do not want this revised permit process to result in unintended consequences detrimental to our water resources and wetlands. We all work hard to protect and restore the environment and public health in New Hampshire, and feel the current rule does not do this. NHACC is taking the position of opposing these portions of the draft Rules.

If you have any questions about this process or our position, please let us know.

Sincerely,

Barbara Richter
NHACC Executive Director