The State of New Hampshire
Department of Environmental Services

Michael P. Nolin
Commissioner

Begin Homes, LLC
Will Begin
P.O. Box 473
Warner, NH 03278

Re: Wetlands Bureau File # 2006-1029
Messer Road, Sunapee

ADMINISTRATIVE ORDER
No. WD 06-039

August 17, 2006

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to pursuant to RSA 482-A:6 and RSA 485-A:22. This Administrative Order is effective immediately upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 29 Hazen Drive, Concord, New Hampshire.

2. Begin Homes LLC is a limited liability company having a mailing address of PO Box 473, Warner, NH. Will Begin is the managing member of Begin Homes.

C. STATEMENT OF FACTS AND LAW

1. RSA 482-A authorizes DES to regulate dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.

2. RSA 482-A:3, I states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."

3. RSA 482-A:14, III provides that "[f]ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A."

4. Begin Homes LLC is the owner of land located on Messer Road, more particularly described on Town of Sunapee Tax Map 239 as Lot 0010-0000 ("the Property").

5. On May 3, 2006, DES received a complaint that wetlands had been excavated on the Property during the site work and construction of a new home. Included with the complaint was a copy of the septic plan approved by DES and a copy of a wetland delineation. The copy of the wetland delineation showed more extensive wetlands than what was represented on the septic plan.

6. On June 29, 2006, DES personnel inspected the Property and found the following:

a. Approximately 3,500 square feet of wetland had been dredged and filled;

b. An interception trench constructed on the east side of the Property conveyed water and sediment into a forested wetland, filling approximately 3,650 square feet of forested wetland with sediment measuring 6 inches deep;

c. The interception trench was approximately 50' longer than shown on the septic plan;

d. The silt fence observed on the Property was improperly installed, rendering it ineffective and non-functioning.

7. DES records indicate that a wetlands permit was not issued for the Property.

D. DETERMINATION OF VIOLATIONS

1. Begin Homes LLC has violated RSA 482-A:3, I by filling and dredging approximately 3,500 square feet of wetland without a permit from DES.

2. Begin Homes LLC has violated RSA 482-A:3, I by filling approximately 3,650 square feet of forested wetland without a permit from DES.

3. Begin Homes LLC has violated NH Admin. Rule Env-Wt 304.06 by failing to properly install and maintain erosion controls.

E. ORDER

Based on the above findings, DES hereby orders the Responsible Parties have as follows:

1. **Immediately cease and desist** all activities on the Property, except as necessary to stabilize the Property pursuant to this Order.

2. **By September 15, 2006,** submit a restoration plan to DES for review and approval. Have the restoration plan prepared and stamped by a certified wetland scientist. The plan should include provisions for removal of the sediment from the forested wetland, the restoration of all excavated wetlands, including the stabilization of the interception trench. Include the following:

a. Existing conditions and land topography with dimensions drawn to scale including wetland boundaries delineated in accordance with Section F the 1987 Army Corps of Engineers Wetland Delineation Manual;

b. The location of the property boundary in relation to the unpermitted impacts.
c. Proposed conditions after re-establishing the jurisdictional area;

d. A detailed description of the proposed means of erosion control (silt fence, hay bales, *etc.*) and stabilization of the restoration area;

e. A detailed description of the proposed planting plan for the stabilization and re-vegetation of the restoration area and of the method of control of invasive species such as purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*);

f. A description of the proposed restoration sequence detailing the methods for accomplishing restoration and including an anticipated restoration compliance date;

g. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include, at a minimum, monitoring progress reports for two successive growing seasons following completion of the restoration project. The monitoring reports should be submitted to DES no later than November 1, 2006 and September 1, 2007.

3. Retain a qualified wetland scientist to supervise the implementation of the restoration plan and to submit the restoration progress reports.

4. Implement the restoration plan after receiving written approval from and as conditioned by DES, in accordance with the proposed schedule.

5. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Linda Magoon, Compliance Specialist
DES Water Division
29 Hazen Drive - P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
e-mail: *lmagoon@des.state.nh.us*

F. APPEAL

Any person aggrieved by this Order may request that DES reconsider this determination within 20 days of the date of the Order. The request for reconsideration must comply with Env-Wt 203.01(d) (copy attached), and will be processed in accordance with Env-Wt 203.01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note that under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

Filing an appeal or request for reconsideration of the Order will not automatically relieve Begin Homes LLC of its obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485-A:22 and RSA 482-A:13 and 482-A:14 provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Begin Homes LLC obligated to comply with all applicable requirements. DES will continue to monitor Begin Homes LLC compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Sullivan County Registry of Deeds so as to run with the land.

COPY

Harry T. Stewart, P.E., Director
Water Division

COPY

Michael P. Nolin, Commissioner
Department of Environmental Services

CERTIFIED MAIL #7005 1820 0005 8303 0309

cc: Gretchen R. Hamel, Legal Unit Administrator
James P. Martin, Public Information Officer, DES
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Linda Magoon, DES Wetlands Bureau
Richard de Seve, DES Subsurface Bureau
Town of Sunapee Board of Selectmen and Conservation Commission
Paul Semple, Registered Agent