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**VIA EMAIL**

*MaryAnn.Tilton@des.nh.gov*

January 11, 2019

New Hampshire Department of Environmental Services  
Attention: Ms. Mary Ann Tilton  
29 Hazen Drive  
Concord, NH 03301

RE: 2018 Draft Wetlands Administrative Rules Comments

Dear Ms. Tilton:

Thank you for the opportunity to comment on the 2018 Draft Wetlands Rules (the "proposed Rules") to the NH Department of Environmental Services (DES) on behalf of my client, the New Hampshire Home Builders Association. Upon review of the proposed rules, we have concerns about potentially unintended and deleterious consequences for builders, remodelers, developers and others in New Hampshire. Some of the new rules appear likely to increase costs associated with preparing, planning, and applying for new projects, in addition to creating the potential for undue delays and challenges from other interested parties.

For example, Rule 311.07, Avoidance and Minimization Narrative, appears to greatly increase the demands for projects, including those not requiring mitigation, by requiring applicants to undertake detailed analysis of multiple hypothetical alternative proposals in situations involving both permanent and temporary impacts. In essence, each applicant would be required to prepare "applications" within their "application" and then advocate for their preferred solution in a self-serving and circular manner. Such a requirement would delay not only the applicant, who must initially develop the competing proposals, but would also delay the processing of applications, which would now require DES to conduct separate reviews of multiple proposals within each request. This problem could be compounded depending on the level of detail that is

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anticipated and/or required for the analysis of required items including “alternative designs or techniques, such as different layouts, different construction sequencing, or alternative technologies” and their potential impacts. If applicants are required to investigate several options and create multiple, competing assessments with the help of professionals, such costs could rapidly become prohibitive or lead to absurd results ripe for challenge.

In addition, Rule 313.01(c)(addressing Standard Permit Applications) requires that “for any major or minor project, the applicant shall demonstrate by plan and example...” 11 different criteria. These criteria include, among others, the requirement that “[t]here is no practicable alternative that would have a less adverse impact on the area and environments under the department’s jurisdiction.” It is unclear how this rule will intersect with the requirements under Rule 311.07 and/or Rule 311.10, Functional Assessment, and whether the criteria in 313.01(c) must be considered in connection with each of the alternatives identified in Rule 311.07.

In short, though the Rules may provide more avenues for certain types of minimal-impact applications, they also create new burdens for applicants. To avoid unnecessary and/or unintended costs and delays, further clarification is needed to limit the consequence of these rule revisions.

Thank you for your anticipated consideration of these comments.

Very truly yours,



Ari B. Pollack

ABP/mla

cc: Clark Freise, Assistant Commissioner, NHDES  
Rene Pelletier, Assistant Director, NHDES Water Division  
Tricia Morin, Interim Chair of the Homebuilder’s Government Affairs  
Committee