[Londonderry Conservation Commission Letterhead]

Mary Ann Tilton
Water Pollution Division
NH Department of Environmental Services
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095

Dear Ms. Tilton,

This letter provides Londonderry Conservation Commission (LCC) comments on the proposed changes to the rules governing permits to alter and impact wetlands.

Permit by Notification—Local Input

Notwithstanding the requirement for local notification, the proposed changes eliminate Conservation Commission input to DES for 14 project types, subject to certain conditions. As proposed, there is no way for the local commission to become aware of an applicant's PBN submission, if the applicant fails timely to notify the local Conservation Commission. Furthermore, there is no way for DES to determine whether or not the local Conservation Commission was timely notified—"silence is presumed consent."

Recommended change: Require the Town Clerk's signature on the application affirming receipt of the town's copy of the PBN application.

Permit by Notification—Project Types

The proposed projects eligible for PBN include project types that have the potential for significant wetland impacts, depending on the linear or volumetric extent, or the time duration of the proposed activity. One cannot assume that, because DES routinely approves 99% of projects of these types *under the current rule*, that many other "bad ideas" are amended at the local level, before DES sees them.

Recommended change: Each and every one of the 14 project types, if ultimately included, should include strict linear, volumetric or time duration limits on the extent of disturbance. Wetland scientists should recommend these limits to ensure de minimis impact from the proposed activity, even if the activity proceeds without DES intervention.

The projects eligible for PBN include commercial and residential development access. Such projects nearly always include significant other environmental

impacts, whether to wetlands or other natural resources. Such projects should be evaluated within the wider context of the development project as a whole.

Recommended change: Do not include residential and commercial access projects among those eligible for PBN.

Permits by Notification—Review Timelines

The proposed rule reduces the time to review a PBN application from 30-75 days to just five days. Since most Conservation Commissions meet only once or twice a month, this change effectively removes them from the PBN process. As noted above, the commissions now act as a "first stage filter" that eliminates or modifies inappropriate applications. Thus, this effort to reduce the DES workload may actually increase it.

The proposed five-day review period is alleged to make the PBN process "lean" in an effort better to accommodate applicants' development project timelines. We are not aware of **hard data** that demonstrates applicants cannot reasonably continue project development during the 30-day review period; as DES has noted, these applications normally are approved, albeit at times with conditions designed to limit impacts. Thus, applicants can confidently proceed with projects during the 30-day period in which their applications are under review.

Nothing prevents a PBN applicant from approaching the local Conservation Commission prior to submitting an application to DES. This would allow commissions to include their recommendation on an application prior to submittal to DES and would allow DES to process the application (assuming adequate staffing at DES) in the proposed five-day timeframe. Depending on the Conservation Commission's meeting schedule, this would require an applicant to "plan ahead" by as little as one to as many as 30 days. "Planning ahead" might include the applicant becoming familiar with the commission's meeting schedule.

In the unlikely event that a Conservation Commission is unable or unwilling to timely act on a PBN application, or in the event an applicant simply is unwilling to engage with the Conservation Commission, an applicant could work directly with DES, as proposed, but on the current 30-day timeline, to ensure that the Conservation Commission has the opportunity to comment.

Recommended change: Require the PBN application to include a prior recommendation from the local Conservation Commission. In the event the applicant chooses to proceed without a recommendation from the Conservation Commission, extend the approval timeline to 30 days.

Permit by Notification—DES Notification to Towns

As noted above, the proposed rule relies on applicants to notify towns of their submission to DES, with no requirement for DES to ensure such notification has taken place. Consistent with the recommended change in the previous section, DES should implement a system timely to notify towns when a PBN application is received that lacks a town recommendation. Posting received applications on the One-Stop web site would require scores of Conservation Commission to check the web site on a near daily basis; this is inefficient and unnecessary. Such a list serve would eliminate up to a week of processing and snail mailing time, thus supporting the effort to make DES processes "lean."

Recommended change: DES should create a "push" style list serve, similar to Plan Link or DES' own Eco-Link that publishes a daily compendium of applications received. Conservation Commission members, or any individual or organization, would have the option of opting in to this list serve.

Priority Resource Areas

The proposed rule uses the NHNHB data base to increase the scrutiny of projects that may impact certain uncommon species or exemplary natural communities. This is a necessary, but not sufficient, measure, because the data base only includes species and community locations that have already been discovered and documented; it does not include an unknown number of locations that are present on the ground, but not yet discovered and/or documented. As discussed above, the way to mitigate these potential lacunae is to involve the "local eyes and ears of DES," the Conservation Commissions. If the above recommendations facilitating the inclusion of Conservation Commission input in all wetland decisions is adopted, the likelihood of missing an important species or community will be reduced.

Recommended change: Ensure local Conservation Commissions are notified of and have the opportunity to comment on all wetland applications.

Priority Resource Areas should rely not only on the NHNHB data base but the NH WAP and designated prime wetlands; these most highly valued areas deserve additional scrutiny—indeed, state and local governments have gone to a great deal of trouble to identify them.

Recommended change: Include all records within the NHNHB data base as well as designated prime wetlands and all areas designated as Tier 1 or 2 terrestrial or aquatic habitat in the NH Wildlife Action Plan.

Public Health and Safety

Development impacting wetlands may affect wetland functions and values with a direct tie to public health and safety, such as flood storage and water quality. These

functions and values greatly depend on the physical context in which the projects are embedded. Once again, it is local knowledge that is best relied upon to surface these larger, contextual issues.

Recommended change: Ensure local Conservation Commissions are notified of and have the opportunity to comment on all wetland applications.

Thank you for considering these comments. We look forward to reading the final rule and working with our Londonderry legislators and other members of the conservation community during the review by the Joint Legislative Committee on Administrative Rules.

Sincerely,

Marge Badois
Chair, Londonderry Conservation Commission