



# 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. 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.

In response to our concerns, DES coordinated a meeting with local conservation commissions members to listen directly to their comments. This meeting was well attended considering the snowy mix and bad road conditions. More than 18 towns were represented at this meeting and several recommendations were made. We hope DES will consider making changes to the draft Wetland Rules in response to these recommendations.

**Recommendations from conservation commissions include:**

**Permit-by-Notification** application should require a signed statement certifying that *conservation commissions and abutters* have been notified. Commissions can help DES with verification of information to ensure that the applicant has provided accurate information.

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. 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.

**Permit-by-Notification should allow for a review time of 15 days, not 5 days.** With proper planning 15 days is a reasonable amount of time to expect a permit review, especially for minimum impact projects.

**DES should remove the following projects from the proposed list of new PBN:**

1. Aquatic Vegetation Removal
2. Bank Stabilization
3. Board Walk Construction
4. Residential Access
5. Commercial Access
6. Culvert invert/outlet maintenance

Historically, commissions have provided input to these types of projects and in many cases, have helped to minimize impact on wetlands. Commissions believe these projects warrant a more complete review to ensure they meet the qualifications for minimum impact projects.

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.

**Expedited Permits** should be reviewed in 30 days, which is still a significant decrease from current 75 days. In addition to the more reasonable time frame, the criteria for review of wildlife pond creation should prohibit impacts to vernal pools, especially expedited process impacts for pond creation.

**Wetlands BMP Manual for Avoidance and Minimization**

The reference to the Wetland BMP Manual for Avoidance and Minimization will likely help conservation commission members and applicants support projects that are sensitive to wetland impacts and provide tips to lessen impacts to critical areas. We feel this is a great improvement for wetland permit review and we hope that DES will provide training to conservation commissions to ensure they have the knowledge required to implement BMPs.

### **Pre-application Review Process**

The discussion did not fully address the concerns regarding the pre-application process. Generally, it was felt that applicants need more of an incentive to meet with CCs prior to submitting their projects. The current language does not address the process or steps in a pre-application meeting, nor does it address the issue of site visits and access to the property. Without permission or a permit application from the landowner, a commission member is not allowed to visit a site. How can commission members gain access to the site during the pre-application process?

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. Additionally, the rules should 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.

### **Priority Resource Area**

We support the idea of creating a Priority Resource Area to serve as a check and balance to the Lower Scrutiny Approval 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 and not the size of impact. However, the definition of Priority Resource Area was limited to a few areas and it does not offer the same protection of critical habitat as the original draft. Priority Resource Area should protect critical habitat identified by the State Natural Heritage Bureau, NH Fish & Game and NH DES. State agencies should be working together and the draft rules should be supporting this cooperation.

#### **The definition of a Priority Resource Area should include:**

- (a) Is an exemplary wetland natural communities based on criteria established by the Natural Heritage Bureau (NHB).*
- (b) Is a marsh/scrub-shrub wetland with a minimum contiguous area of 1 acre or more;*
- (c) Is a peatlands fen or bogs;*
- (d) Is a wetland that contains threatened or endangered species habitat for a state-listed wildlife species of greatest conservation concern as defined and published by the NH Department of Fish & Game.*
- (e) Is a Tier 3 or larger stream, as defined in rules of the Department of Environmental Services containing a cold water fishery documented by NH Department of Fish & Game.*
- (f) Is a wetland within the active floodplain characterized by frequently flooded soils contiguous to a watercourse.*
- (g) Is a designated prime wetland or a duly established 100-foot buffer zone;*
- (h) Is a sand dune, tidal wetland, tidal water, or undeveloped buffer zone;*
- (i) Is an Outstanding Resource Water as identified by NHDES Watershed Management Bureau*
- (j) Is any combination of (a) through (i) above.*

### **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.

Overall, conservation commissions stressed the importance of working together with DES to protect NH's wetlands. 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.

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, and the opportunity for commissions to meet directly with DES staff. 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 sufficient wetland protection.

Respectfully Submitted,

*Barbara Richter*

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