

New Hampshire Association of Natural Resource Scientists

Post Office Box 110 • Concord, NH 03302



January 18, 2019

Attention: Mary Ann Tilton
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095

Re: **New Hampshire Association of Natural Resource Scientists**
Subject: **Comments on Revised Draft Wetland Rules**

Dear Ms. Tilton:

The New Hampshire Association of Natural Resource Scientists (NHANRS) is submitting this document outlining our more general comments regarding the recently released revised draft 'Wetland Rules'. Our association first would like to thank the NH Department of Environmental Services (NHDES) for recognizing and hearing our comments and concerns resulting from the first release of the draft rules. This includes reconvening the Wetland Rules Committee and reviewing most of the chapters as time allowed. We feel that this comprehensive review of the draft resulted in more productive discussion of problems and issues which generated better working solutions for the permitting process. We do wish that we had enough time to comprehensively review all the chapters.

We understand this is a process that the NH Department of Environmental Services (NHDES) embarked on quite a long time ago and an extensive update and overhaul of the rules is necessary. The time of review needs to match the magnitude of the proposed changes which are significant. This makes for a better product, more collaboration, understanding, consensus and better support especially in implementation. It begins with the blunt recognition that some things are wrong or not working and how do we fix it with unanimous support amongst all the stakeholders. No small task, and as part of the rules committee since the beginning NHANRS salutes and thanks the NHDES on its sincere effort during the recent reactivation of the rules committee to take the time to really hear the issues and try to address them. We think the process is getting close to an end but we also feel there are still a few items and concepts that need to be laid out in the 'stake holder forum' before going to final rule making.

The following items summarize the comments from NHANRS. They are presented in bullet form below.

- 1 As a previous participant in the original Governor's Shoreland Commission, NHANRS fully supports what was originally the intent of the commission: Combined Shoreland & Wetland Applications.
- 2 NHANRS supports removing the confusing acronyms for project classifications Minimum, Minor and Major as noted in our letter from April 20, 2018. However, these rules are very complex and do still require a lot of cross referencing, but the reclassification of some easy minimum impact projects to Permit By Notification's with 5 day review times helps offset the complexity of the permitting for multifaceted larger projects which by the nature of the project are more complex.

- 3 NHANRS supports the revisions to the list identifying Priority Resource Areas (PRA). We also support the removal portion of the rule that eliminated the ability to impact any of these PRA's under any circumstances.
- 4 NHANRS supports the addition of allowing a simple Tier 1 Stream Crossing for homeowner access to be processed as a minimum impact project that can be applied for as a PBN.
- 5 The addition of time limits for review for after-the-fact applications is an excellent addition for which there is no time limit for review currently.
- 6 Adding the ability to permit and construct wildlife ponds is supported by NHANRS.

Summary of draft rule items that may need additional review and thought before adopting:

- 1 Env-Wt 311.05 (a)(9) Under Required Project Plans: Any Impacts proposed to a right-of-way over another's land. This should also be true for the opposite. Right now a property owner with a right-of-way does not need to show the right-of-way. This should be required if the proposed impact is in the right-of-way as the proposed impact may impede on whatever rights are imparted to the right-of-way easement holder.
- 2 Abutter Notification of potentially impacted right-of-way easement holders. Clarification of whether notification to abutting right-of-ways, for example state highways and municipal roads is necessary.
- 3 Channel Bank. The term is not defined and is a new addition that may cause additional confusion arising from top of bank and jurisdiction. NHANRS looks forward to the stake holders group to be tasked with identifying and defining the term top of bank and the extent of jurisdiction after this phase is complete.
- 4 A major concern to NHANRS stems from the marked increase of coordination that will be required in the new rules with NH Fish & Game (NHFG). Presently there is no guidance, time limits for review and no clear pathway to procuring sign off from NHFG on projects. These issues currently exist in other DES programs as well. NHANRS suggests that NHFG have clear "written" guidelines, time limits and perhaps a BMP style manual that serves as a base to guide mitigation of potential impacts in a project. Based on the extent of input and review that is happening and what is anticipated, perhaps a fee program should be developed that assists in ensuring the staff is available along with guidelines and time limits. The NHIB program is an example where reviews are completed on a timely basis and positive communication takes place to develop a plan to reduce endangered plant/community potential impacts. This is imperative to the success of actually implementing these wetland rules.

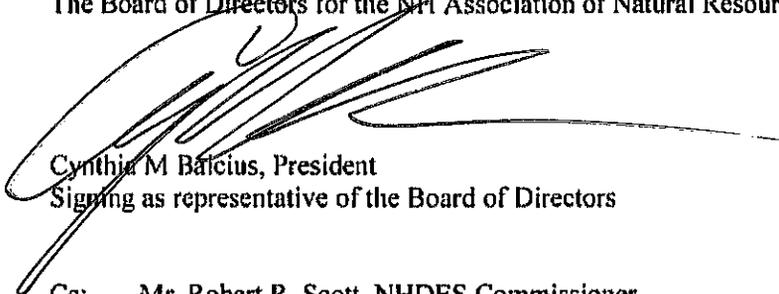
Further, thoughts from our membership have highlighted the need to have opportunities to meet with NHFG to coordinate or reduce time of year restrictions as construction times based on this draft can be limited to upwards of 6 months.

- 5 Coordination with the NH River Advisory Committee application review timelines and wetland permitting review times are confusing. Clarification on this process needs to happen in order to successfully implement the rules.
- 6 NHANRS agrees with the basic requirements under Env-Wt 524 Residential and Commercial Development, including the one acre threshold for alternatives analysis. However, NHANRS observes that Commercial and Industrial Development is very different than Residential Development and site requirements are not synonymous. The different requirements cannot fit into one cookie cutter between the two project types. Separating the project types and requirements will increase clarity and time of review all directly related to the important New Hampshire Economy.
- 7 Prime Wetlands. The rule re-write offers an opportunity to clarify delineation issues associated with using large scale remotely sensed maps, applying buffers and applying regulations to these very rough maps. During this time of updates to the rules and statute, the DES should fix this issue to an otherwise successful high value wetland protection tool.
- 8 Amendments to applications. NHANRS suggests separating small administrative corrections to an application undergoing review versus larger corrections involving increased impacts, change in wetlands to be impacted or other significant change to the application. Often these small administrative tweaks are minimal and not really pertinent to the overall intent of the application and can be fixed in minutes allowing for issuance of the permit. These types of corrections should not have to go through the entire noticing process again and slow up the entire review.
- 9 NHANRS would like clarification between conducting a Functional Assessment and a relative functional assessment. What is a relative functional assessment?
- 10 Policy. Through the rules committee process, policy issues were a constant source of much conversation and confusion. It was unclear and unknown to NHANRS that existing NHDES policy can be construed as rule if it is not challenged. From that point of knowledge, we suggest that the NHDES develop a way to communicate policy changes and a way to receive feedback. Some states post policy changes for input and transparency on-line.

NHANRS looks forward to working further with the NHDES to finalize these new rules. We feel that the last nine months have been very productive and the progress made is reflected in the rules to date. Our organization has appreciated the opportunity to have two listening sessions with the NHDES where we were able to discuss the details of permitting of which our members are entrenched in and use on a daily basis.

Sincerely,

The Board of Directors for the NH Association of Natural Resource Scientists

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Cynthia M Balcius, President
Signing as representative of the Board of Directors

Cc: Mr. Robert R. Scott, NHDES Commissioner