

Warner River Local Advisory Committee
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January 18, 2019

Mary Ann Tilton
Wetland Bureau
NH Dept. of Environmental Services
29 Hazen Drive.
Concord, NH 03302

Dear Ms. Tilton,

Thank you for this opportunity to comment on the newly proposed wetland rules. The Warner River Local Advisory Committee is composed of representatives from the towns of Bradford, Sutton, Warner, Webster and Hopkinton to advise on matters pertaining to the protection of the valuable resources within the newly designated Warner River Corridor.

We respect the efforts of the Department of Environmental Services for making several positive improvements to the wetlands rules and related Best Management Practices manuals. We also appreciate the effort the Department has made over the last year to gain input on such an extensive revision. Despite such advances, however we strongly oppose these rules as written. Our primary concern is that numerous permits for smaller, more frequent projects will no longer provide an opportunity for our municipal boards, conservation commissions and local advisory committee to comment due to so many of these permits turning into *permit by notification* processes with drastically reduced turnaround time periods for Department 'completeness' review only.

New Hampshire Local Advisory Committees are responsible to fulfill the duties assigned by RSA 483:8-a:

'(a) To advise the commissioner, the advisory committee, the municipalities through which the designated river or segment flows, and municipalities within tributary drainage areas on matters pertaining to the management of the river or segment, tributary drainage areas, and disposal of state-owned lands. Municipal officials, boards, and agencies shall inform such committees of actions which they are considering in managing and regulating activities within designated river corridors.

(b) To consider and comment on any federal, state, or local governmental plans to approve, license, fund, or construct facilities or applications for permits, certificates, or licenses, that may alter the resource values and characteristics for which the river or segment is designated.

and,

(d) To report biennially to the advisory committee and the commissioner, and annually to municipalities on the status of compliance with federal and state laws and regulations, local ordinances, and plans relevant to the designated river or segment, its corridor, tributary drainage areas, and the activities of the local river management advisory committee including, but not limited to, committee volunteer hours, permit applications reviewed, corridor management plans and their implementation, and education and outreach efforts.'

We are the local riparian water quality specialists that are obligated to consider and advise beyond our town boundaries at the watershed scale in order to protect our river and its valuable resources. Removing our consultation with applicants and notification of these Department permit filings will result in diminishing our awareness of what is occurring in our watershed and very effectively prevent us from fulfilling the requirements of RSA 483:8-a. Reducing Department completeness review time to five days for such permits is *unreasonable* because a Committee serving in an advisory capacity such as ours has to accommodate five different town boards and commission calendars *and* we all have to fulfill the requirements of the Right to Know in doing so. We believe that this will result in a complete inability our municipalities and our committee from protecting our river.

The second reason we object to the proposed rules focusses on how the Department redefines Abutter.

Env-Wt 102.04 "Abutting property" means: [underlined and provided in red type for emphasis]

(a) For a subject property other than a utility right-of-way (ROW), any property immediately contiguous to the property on which a project will take place that *has occurred or is proposed*, provided that:

(1) The term does not include any property that is separated by a public road or surface water from the property on which a project has occurred or is proposed, or that is more than ¼-mile from the limits of the work or proposed work; and

(2) If an abutting property is owned in whole or in part by the person who underook the work or is proposing to undertake the work or is necessary to meet a frontage requirement, the term includes the next contiguous property, subject to the ¼-mile limitation; or...

This definition by use of 'contiguous' in (a) and 'public road or surface water' in (1) is not compatible with the intent of NH RSA 672:3 abutter definition – or numerous town definitions and accordingly will cause many issues when put in the context of rivers and streams (and even roads). Public waters flow over privately-owned river bottoms and property boundaries meet mid-channel, so such parcels separated by river and stream surface water are actually immediately contiguous, but by (1) would not be abutters. The use of public road may also conflict as Class VI roads that are public Rights of Way over private land.

Here is RSA 672:3 definition of Abutter [underlined and provided in red type for emphasis] :

2015 New Hampshire Revised Statutes
Title LXIV - PLANNING AND ZONING
Chapter 672 - GENERAL PROVISIONS
Section 672:3 - Abutter.
Universal Citation: [NH Rev Stat § 672:3 \(2015\)](#)

672:3 Abutter. – "Abutter" means any person whose property is located in New Hampshire and adjoins or is directly

across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXIII. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a manufactured housing park form of ownership as defined in RSA 205-A:1, II, the term "abutter" includes the manufactured housing park owner and the tenants who own manufactured housing which adjoins or is directly across the street or stream from the land under consideration by the local land use board.

Source. 1983, 447:1. 1986, 33:2. 2002, 216:1, eff. July 15, 2002 <http://www.gencourt.state.nh.us/rsa/html/lxiv/672/672-3.htm>

There are numerous situations where what is proposed across a river/stream has direct and/or indirect consequences for the across stream abutter. Bank stabilization projects and overly aggressive forestry operations within the riparian corridor can have a direct impact on opposite banks, especially in flood zones. Such impacts can be seen immediately or take many years to notice. Smaller projects no longer receiving local and Department permit scrutiny will, with the best of intentions result in such damage. Across-stream abutters should absolutely be notified of any such projects that could result in damage or loss of value to their land.

Env-Wt 102.04 "Abutting property" (cont)

(b) For utility ROWs, properties directly adjacent to the utility ROW easement and within 200 feet of a ROW corridor.

Struck text: 'If the project is located on waterfront or another area which by its configuration would cause the project to affect non-contiguous properties, owners of these properties are considered abutters.'

The above struck text was deleted from the previous rules version; however, should be reinstated as this is reasonable and fair to such affected properties and reflects the intent of NH law to provide protections and opportunities to abutters to speak against a proposal that would result in loss of value or enjoyment of their property.

If a commercial property development is proposed along a section of Designated River classified as 'Natural' or 'Rural', all of the abutters, the local conservation commission and the local river advisory committee should be informed and be provided a reasonable amount of time to comment on the proposal for the purposes of protecting the resource.

The combination of our primary concerns coupled with the *Abutter* and *Abutting Property* definition changes combine to severely reduce our communities' local ability to protect their valuable resources.

Third, we fully support the NHACC's comments in their letter dated January 19, 2019. Relative to the definition of a Priority Resource Area. We add that the application of this definition or the items currently listed in the proposed rules are not applied in a uniform manner across the rules and the BMP manuals. Exceptions do not include the definition or include only a few of the items listed, but there does not seem to be a reason for omitting one or two. Compare the current definition with exceptions within *Best Management Practices for Routine Roadway Maintenance*.

Fourth, we encourage the Department to use scientific basis when apply setbacks, buffers or limits to rivers and streams. Although we understand DOTs request for relief from permitting costs to replace

culverts beyond 250' of a designated river, the 250' leaves important Tier 1 and other streams with reduced protections regardless of their function or value.

From our Stream Crossing Manual:

From Stream crossing guidelines:

“This growing network of stream crossings, if designed or replaced without consideration for river and stream ecology and geomorphology, has the potential to degrade aquatic habitats throughout New Hampshire.”

“...To understand the potential impacts of an improperly designed stream crossing, one must first consider the geomorphic and ecological processes that are essential to a healthy river or stream ecosystem. Preserving these system processes, rather than focusing on the needs of individual “target” species or passing a certain volume of water, is the most effective way to address both the structural integrity of the road and the needs of all species present in a watershed. However, it must be stressed that stream crossings also have to be sized appropriately to achieve conveyance objectives, that is to pass a given flow of water and expected sediment, wood and ice during storm events) with desired hydraulics for both public safety and aquatic organism passage. The geomorphic and ecological processes described below have the potential to be impacted by stream crossings.

In closing, we thank you again for this opportunity to comment on these wetland rules. We offer our support and time moving forward to work out these issues.

Respectfully submitted,

Chris Connors, Acting Chair, on behalf of the
Warner River Local Advisory Committee