Waterstone Retail Epping, LLC
Attn: Josh Levy
145 Rosemary Street, Building D
Needham, MA 02494

WATER QUALITY CERTIFICATION

In Fulfillment of

Section 401 of the United States Clean Water Act (33 U.S.C 1341)

WQC # 2006-011.1 (modified)

Activity Name	Brickyard Square of Epping
Activity Location	Epping, New Hampshire
Affected Surface Waters	Unnamed tributary to Piscassic River (NHRIV600030708-02), Piscassic River (NHRIV600030708-02), and Unnamed wetlands,
Owner/Applicant	Waterstone Retail Epping, LLC 145 Rosemary Street, Bld. D Needham, MA 02494
Appurtenant Permit(s):	U.S. Army Corps of Engineers Permit #2005-117 (and any amendments) NH DES Wetlands Bureau Permit #2004-01917 (and any amendments) NH DES Alteration of Terrain Permit WPS-6837-A (and any amendments)

DATE OF INITIAL APPROVAL: August 8, 2007
DATE OF MODIFICATION #1: December 21, 2010
(subject to Conditions below)

A. INTRODUCTION

On August 8, 2007, the New Hampshire Department of Environmental Services (DES) issued a 401 Water Quality Certification (WQC # 2006-011) to Drakes Appleton Corporation for the construction and operation of a commercial retail facility on approximately 48 acres of land in Epping, New Hampshire that included two retail buildings and associated access ways, parking, utilities and on-site stormwater infrastructure. The existing land use of the Activity site primarily consisted of upland wooded vegetation and wetlands.

Since 2007, the land has been sold to Waterstone Retail Epping, LLC (Applicant) who has proposed changes to the original site plan, including the addition of a hotel. In accordance with conditions E-4 and E-5 of WQC # 2006-011, DES has determined that the requested revisions require modification of WQC #

2006-011. This document represents the modified 401 Certification and is assigned WQC # 2006-011.1. The Activity covered under this modified 401 Certification is described in section D-1 below.

This modified 401 Certification documents laws, regulations, determinations and conditions related to the Activity for the attainment and maintenance of NH surface water quality standards, including the provisions of NH RSA 485-A:8 and NH Code of Administrative Rules Env-Wq 1700, for the support of designated uses identified in the standards.

B. WATER QUALITY CERTIFICATION APPROVAL

Based on the findings and conditions noted below, the New Hampshire Department of Environmental Services (DES) has determined that any discharge associated with the Activity will not violate surface water quality standards, or cause additional degradation in surface waters not presently meeting water quality standards. DES hereby issues this modified 401 Certification subject to the conditions defined in Section E of this 401 Certification, in accordance with Section 401 of the United States Clean Water Act (33 U.S.C. 1341). This modified 401 Certification (WQC # 2006-011.1) supersedes in its entirety, the original 401 Certification dated August 8, 2007 (WQC # 2006-011).

C. STATEMENT OF FACTS AND LAW

C-1. Section 401 of the United States Clean Water Act (Title 33 U.S. Code, Chapter 26, Subchapter IV, Section 1341(d)) states, in part: "Any applicant for a federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate...that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this title.....No license or permit shall be granted until the certification required by this section has been obtained or has been waived...No license or permit shall be granted if certification has been denied by the State..."

C-2. Section 401 further states, in part "Any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations...and shall become a condition on any Federal license or permit subject to the provisions of this section."

C-3. RSA 485-A:8 and Env-Wq 1700 (Surface Water Quality Regulations, effective May 21, 2008) together fulfill the requirements of Section 303 of the Clean Water Act that the State of New Hampshire adopt water quality standards consistent with the provisions of the Act.

C-4. Env-Wq 1700 provides definitions, narrative water quality standards, and numeric water quality criteria. Among other purposes, Env-Wq 1700 is used by DES Watershed Management Bureau (WMB) for evaluating applications for 401 Water Quality Certification.

C-5. Env-Wq 1701.02, entitled "Applicability", states that:

"(a) These rules shall apply to all surface waters.

(b) These rules shall apply to any person who causes point or nonpoint source discharge(s) of pollutants to surface waters, or who undertakes hydrologic modifications, such as dam construction or water withdrawals, or who undertakes any other activity that affects the beneficial uses or the level of water quality of surface waters."

C-6. Env-Wq 1702.18 defines a discharge as:

"a. The addition, introduction, leaking, spilling, or emitting of a pollutant to surface waters, either directly or indirectly through the groundwater, whether done intentionally, unintentionally, negligently, or otherwise; or

b. The placing of a pollutant in a location where the pollutant is likely to enter surface waters."

C-7. Env-Wq 1702.39 defines a pollutant as: "pollutant" as defined in 40 CFR 122.2. This means "dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water."

C-8. Env-Wq 1702.46 defines surface waters as "perennial and seasonal streams, lakes, ponds and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, water courses and other bodies of water, natural or artificial," and waters of the United States as defined in 40 CFR 122.2."

C-9. Env-Wq 1703.21 (a)(1) states that "Unless naturally occurring or allowed under part Env-Wq 1707, all surface waters shall be free from toxic substances or chemical constituents in concentrations or combinations that injure or are inimical to plants, animals, humans or aquatic life."

C-10. The unnamed tributary to the Piscassic River (assessment unit NHRIV600030708-02), the Piscassic River (NHRIV600030708-02) and the unnamed wetlands, affected by the Activity are surface waters under Env-Wq 1702.46.

C-11. Surface waters are navigable waters for the purposes of certification under Section 401 of the Clean Water Act. Surface waters are jurisdictional wetlands for the purposes of wetlands permitting under RSA 482-A.

C-12. The Applicant for this modified 401 Certification is Waterstone Retail Epping, LLC. The Applicant for the initial 401 Certification approved in 2007 (WQC 2006-011) was Drakes Appleton Corporation. Notification of the change in ownership was submitted to DES in December 2007 (see section C-16).

C-13. The Activity requires a federal wetlands permit under the federal Clean Water Act Section 404. The U.S. Army Corps of Engineers (ACE) provided public notice for the Activity approved under WQC 2006-011 from August 8, 2006 to September 8, 2006. The ACE issued a Section 404 permit (# 2005-117) for the Activity approved under WQC 2006-011. According to an email from Jones and Beach Engineering, Inc. (Applicant's agent) on July 9, 2010, the Activity proposed for this modified 401 Certification is covered by ACE permit 2005-117 since there are no new wetland impacts.

C-14. The Applicant is responsible for the Activity, including construction and operation.

C-15. The Applicant for the 401 Certification issued in 2007 (WQC # 2006-011) submitted documentation for 401 Certification to DES, as follows:

a. An application for 401 Certification under letter dated August 24, 2006, received by DES on August 25, 2006.

b. Additional information and a pollutant loading analysis under letter dated December 1, 2006, pursuant to a request for additional information by DES WMB by letter dated November 14, 2006.

c. A second loading analysis submitted to DES on May 30, 2007 and other correspondence, particularly regarding the loading analysis, via electronic mail during May 2007.

C-16. In accordance with condition E-7 of the 401 Certification issued in 2007 (WQC # 2006-011), the Applicant submitted the following on June 1, 2008:

NHDES Erosion Control Inspection and Maintenance and Turbidity Sampling Plan dated 4/30/2008 by Fraggle Rock Engineering Services. This plan was approved by DES on June 4, 2008.

C-17. In accordance with condition E-8 of the 401 Certification issued in 2007 (WQC # 2006-011), the Applicant submitted the following on June 1, 2008:

NHDES Stormwater / Surface Water Sampling Plan by Fraggle Rock Engineering Services. This plan was approved by DES on June 4, 2008. The plan includes submittal of an annual report to DES and uploading of all data into the DES Environmental Monitoring Database.

C-18. The Applicant submitted the following documentation for this modified 401 Certification:

a. Letter dated December 3, 2007 from the law offices of Wholey and Pelch to formally notify DES that on November 15th, 2007, Epping Retail Holdings, LLC c/o Drakes Appleton Corporation developer of the Brickyard Square project in Epping transferred and assigned its interest to all permits and approvals for the Brickyard Square project to Waterstone Retail Epping, LLC of 145 Rosemary Street, Building D, Needham, MA 02494.

b. Revised plans received via email on July 12, 2010 by Jones and Beach Engineers, Inc., that included a hotel and associated parking as well as revisions to the parking and building layout approved as part of the original 401 Certification (#2006-011), which was issued in 2007. The plans included the following:

DWG. C6; Grading and Drainage Plan; Last revised 1/23/10.

DWG. C7; Grading and Drainage Plan; Last revised 5/12/10.

DWG D6; Details; Last revised 5/12/10.

DWG WQ1; Existing Water Quality; Last revised 1/23/10.

DWG W2; Proposed Watershed; Last revised 6/3/09.

c. A final revised pollutant loading analysis submitted by Jones and Beach Engineers, Inc. on July 1, 2010.

d. Letter dated February 1, 2010 from Jones and Beach Engineers, Inc. to DES responding to questions about whether certain conditions in the initial 401 Certification issued in 2007 still applied to the modified Activity.

e. Email from Jones and Beach Engineers, Inc. dated July 9, 2010 regarding the status of permits.

C-19. The Applicant was issued a DES Wetlands and Non-Site Specific permit (No. 2004-01917) by the DES Wetlands Bureau dated April 13, 2006 for the Activity described in the initial 401 Certification issued in 2007, which did not include the hotel and hotel appurtenances. According to an email from Jones and Beach Engineering, Inc. (Applicant's agent) on July 9, 2010, the Activity proposed for this modified 401 Certification is covered by the existing wetlands permit since there are no new wetland impacts.

C-20. The Applicant for the initial 401 Certification issued in 2007 was issued a DES Alteration of Terrain permit (No. WPS 6837-A) by DES Alteration of Terrain Program dated June 7, 2006 for the Activity described in the initial 401 Certification issued in 2007, which did not include the hotel and hotel appurtenances. According to an email from Jones and Beach Engineering, Inc. (Applicant's agent) on July 9, 2010, the Applicant submitted revised plans and documents to the DES Alteration of Terrain bureau . On December

15, 2010, the DES Alteration of Terrain bureau issued an amended Alteration of Terrain permit for the Activity (No. WPS 6837-D)

C-21. A draft of the original 401 Certification (WQC 2006-011) was issued for public comment from July 5, 2007 through August 6, 2007. No comments were received by DES.

C-22. A draft of this modified Certification (WQC 2006-001.1) was issued for public comment from August 4, 2010 through September 7, 2010. No comments were received by DES.

D. FINDINGS

D-1. The Activity reviewed for this modified 401 Certification is the construction and operation of five separate (unattached) buildings that include retail stores, a restaurant and a hotel and associated access ways, parking, utilities, and on-site stormwater infrastructure as shown on the plans referenced in section C-16 of this Certification. The total impervious area of the Activity due to pavement and buildings is approximately 22 acres.

Compared to the design approved in 2007 (WQC # 2006-011), the layout of the commercial/retail buildings and parking has changed and the hotel and associated parking has been added. With regards to stormwater treatment, the two wet extended detention ponds are the same but a gravel wetland has been added to treat runoff from the hotel and part of the hotel parking lot. As shown in the table below, the net result is about a 0.35 acre (1.4%) increase in impervious area (i.e., building roofs, parking, sidewalks) and a reduction of about 0.49 acres (6.9%) in undisturbed (forested) area.

Table 1

	Total Pavement/ Roof Imp	Total Water/ Wetland	Total Imp	Total Disturbed Pervious	Total Forest Pervious	Total Pervious	Total Area
Original Approved Design Without Hotel (Post Development)	21.70	13.82	35.52	6.09	7.06	13.15	48.67
Proposed Design With Hotel (Post Development)	21.99	13.87	35.86	6.24	6.57	12.81	48.67
Difference (acres)	0.30	0.05	0.35	0.14	-0.49	-0.35	0.00
Difference (%)	1.4%	0.4%	1.0%	2.4%	-6.9%	-2.6%	0.0%

D-2. The Activity may result in a discharge and may cause permanent or temporary impacts to surface waters.

D-3. The Activity requires water quality certification under Section 401 of the federal Clean Water Act.

D-4. The Activity includes dredge and fill of wetlands. DES Wetlands Bureau permitting process addresses dredge and fill impacts to jurisdictional wetlands. The 401 Certification decision relies, in part, on an approved permit from the DES Wetlands Bureau for the potential construction-related impacts to jurisdictional wetlands, including the unnamed tributary to the Piscassic River and the Piscassic River. Through its processing, issuance, and signature, the DES wetlands permit addressed the dredge and fill impacts to jurisdictional wetlands.

D-5. The Activity will temporarily or permanently impact surface hydrologic conditions, such as peak runoff. The 401 Certification decision relies, in part, on an approved permit from the DES Alteration of Terrain Program for the potential construction and operation-related impacts to surface hydrology. Through its issuance, the Alteration of Terrain permit addresses the impacts to surface hydrology.

D-6. The unnamed tributary to the Piscassic River, the unnamed wetlands, and the Piscassic River within and adjacent to the Activity area are the surface waters affected by the Activity. The affected surface waters are Class A waters; Class A New Hampshire surface water quality standards (SWQS) apply to the Activity.

D-7. During construction, the disturbance of earth, such as the placement of fill and installation of culverts on the Activity site, may temporarily increase turbidity levels in surface waters adjacent to and downstream from the area affected by the Activity, particularly during wet weather events, and may contribute to long-term sediment retention in and/or transport through the surface water adjacent to and downstream from the Activity site.

D-8. Proper installation and maintenance of the stormwater Best Management Practices (BMPs) during construction, required through DES Alteration of Terrain and Wetlands permits, are necessary to maximize the effectiveness of the BMPs during construction. Improper installation or failure of the BMPs may cause discharge of pollutants such as sediment to surface waters, which may cause violations of surface water quality standards.

D-9. The original design approved in 2007 under WQC # 2006-011 anticipated a retail home improvement store and outdoor garden center, with retail sales of fertilizers, pesticides, and herbicides. Since exposed stock of fertilizers, pesticides, and herbicides can be mobilized by stormwater runoff DES included the following condition in WQC # 2006-011 to prevent fertilizer and pesticide runoff.

"E-11. At least 120 days prior to construction, the applicant shall submit a plan to DES for preventing potential contaminants such as fertilizers, pesticides and herbicides from the garden center from coming into contact with stormwater and for isolating stormwater from the garden center from the rest of the drainage system, should it accidentally become contaminated.

Unless otherwise allowed by DES, the plan shall show flow from the catch basins within the garden center being directed through a 1,500 gallon isolation tank with a remotely operated gate valve, prior to connection of the garden center catch basins to the site's drainage system. The gate valve shall be closed in the event of any spill within the garden center and shall not be re-opened until the spill is fully mitigated and any contaminated matter within the tank properly removed. The plan shall also require and show all fertilizers, pesticides and herbicides being stored under cover. Operation and maintenance procedures for this system shall be included in the BMP maintenance plan referenced in Condition 9. The Applicant shall then implement the approved plan."

In a letter dated February 1, 2010, the Applicant's agent, Jones and Beach Engineers, Inc., informed DES that this does not apply as there is no longer a garden center and/or home improvement store in the proposal. Consequently, this condition is no longer necessary.

D-10. The original design approved in 2007 under WQC # 2006-011 anticipated use of galvanized roofs which, if not properly treated, can result in elevated concentrations of zinc into stormwater and surface waters. As such, WQC # 2006-011 included the following conditions:

"E-13. At least 120 days prior to construction, the Applicant shall submit a plan to DES for approval for reducing zinc runoff from the galvanized building roofs. Alternatives to be considered shall include application of a membrane to prevent the galvanized material from coming into contact with precipitation (i.e., rain and snow). Unless otherwise allowed by DES, the Applicant shall then implement the approved plan within 15 days after installation of the galvanized roof."

"E-14. At least 120 days prior to construction, the applicant shall submit a plan to DES for approval for reducing zinc in the stormwater discharges to surface waters should implementation of the plan referenced in Condition E-12 not be sufficient to meet water quality standards in the receiving waters. Unless otherwise allowed by DES, this plan shall be implemented within 90 days of the date any zinc violations are identified or DES determines there is reasonable potential for surface water quality violations based on results of the sampling plan referenced in Condition E-7. Prior to preparing the plan the Applicant shall consult with DES."

In a letter dated February 1, 2010, the Applicant's agent, Jones and Beach Engineers, Inc., informed DES that this is no longer applicable as there will be no metal galvanized roofing used on this project. Consequently, these conditions are no longer necessary.

D-11. The Activity includes the creation of approximately 22 acres of impervious surfaces, such as roadways, parking lots, and buildings and corresponding rooftops. The use of roadways by vehicular traffic can cause the deposition of metals including but not limited to copper, lead, and zinc, and petroleum-

based compounds including but not limited to gasoline, PAHs, oil and grease on impervious surfaces. Stormwater runoff can mobilize and transport metals and petroleum-based compounds from impervious surfaces. Stormwater runoff from impervious surfaces also commonly contains elevated concentrations of nitrogen and phosphorus.

D-12. The use of impervious surfaces, particularly the parking lots and sidewalks, during cold-weather months necessitates snow removal and the application of de-icing and/or anti-icing compounds, such as rock salt (sodium chloride). Chlorides are non-reactive forms of chlorine that can be mobilized and transported to surface waters through direct and indirect pathways, including (1) sheet flow during stormwater runoff or meltwater events, (2) flow through culverts and other drainage structures, and (3) groundwater flow during all seasons. The application of chlorides, and subsequent mobilization and transport during runoff events incrementally may contribute to elevated chloride concentrations in surface waters affected by the Activity during some periods of the year. In general, structural BMPs do not currently exist for the removal of chloride from stormwater. Reductions in chloride concentrations in affected surface waters are achievable through a reduction of salt usage (e.g., optimization of salt application), or through dilution by the affected surface water.

D-13. The potential effects of stormwater runoff on surface water quality after construction can be evaluated through a pollutant loading analysis. Specifically, a loading analysis can be used to determine the difference between pre-development and post-development loads for specific pollutants for a typical year. To satisfy antidegradation requirements of Env-Wq 1700, the goal of a pollutant loading analysis is to have post development loads less than or equal to pre-development loads. The development of the loading analysis referenced in C-15 identified and selected appropriate stormwater management measures for compliance with surface water quality standards.

The pollutant loading analysis approved as part of the 401 Certification issued in 2007 (WQC # 2006-011) was prepared in accordance with the DES "Interim Guidance for Estimating Pre and Post Development Stormwater Pollutant Loads" dated October 17, 2005. For reasons discussed in the guidance, total suspended solids (TSS), total phosphorus (TP) and total nitrogen (TN) are used as surrogates for all other pollutants which are treatable by structural stormwater management practices. The analysis indicated the following (see Table 2):

Table 2

Original Loading for WQC 2006-001	TSS	TP	TN
Pre development (lbs / year)	1847.2	17.0	288.7
Post development (lbs / year)	1760.3	16.2	334.0
Post – Pre (lbs / year)	-86.9	-0.8	45.3
Percent (%) over or under Predevelopment	-5%	-5%	16%

As shown, post development TSS and TP loadings were originally predicted to be less than pre-development loadings and post development TN loadings were predicted to be slightly higher than pre-development loadings. The analysis assumed that treatment was provided by two wet extended detention ponds sized according to the Alteration of Terrain (AoT) regulations (Env-Wq 1500). The analysis did not include (because it could not be readily quantified) the additional pollutant reductions that will likely occur due to restrictions on fertilizer and pesticide use (see section D-9), the fact that the wet pond permanent pool volumes are approximately two to three times the size required by the AoT regulations and the fact that some additional treatment will be provided by removal of sediment and associated pollutants in the catch basin sumps of the closed drainage systems discharging to the wet ponds. If these additional pollutant reductions had been considered, and considering the relatively small difference between pre and post development loadings, it was concluded that the Activity would not result in additional pollutant loadings.

Since 2010, DES has gained more experience in conducting pollutant loading analysis. Upon reviewing the 2007 loading model, it was realized that the model could be improved to be more representative. For example, disturbed pervious areas that were previously modeled as forested would be better represented as open space. In addition, Jones and Beach Engineering, Inc. provided more accurate areas for each land use. Results of the reanalysis for WQC 2006-011 loading are provided in Table 3. A similar analysis was then conducted for the modified Activity associated with this 401 Certification (WQC 2006-011.1) with results presented in Table 4.

Table 3

Revised Loading for WQC 2006-001	TSS	TP	TN
Pre development (lbs / year)	1833.2	16.7	283.3
Post development (lbs / year)	2390.7	17.5	352.1
Post – Pre (lbs / year)	557.6	0.8	68.8
Percent (%) over or under Predevelopment	30%	5%	24%

Table 4

Loading for modified 401 WQC 2006.001.1	TSS	TP	TN
Pre development (lbs / year)	1833.2	16.7	283.3
Post development (lbs / year)	2163.7	17.2	338.5
Post – Pre (lbs / year)	330.5	0.5	55.2
Percent (%) over or under Predevelopment	18%	3%	19%

As shown, the loadings for the Activity associated with this modified 401 WQC 2006-001.1 (Table 4) are lower (and more accurate) than the loadings in the revised analysis for the Activity approved in 2007 under WQC 2006-001 (Table 3). This is due to the addition of a gravel wetland to treat the additional stormwater runoff (and associated pollutants) associated with the nominal increase in impervious area (see section D-1). Although lower than the loadings in Table 3, the post development loadings in Table 4 are predicted to be a little higher than pre-development. However, for the previously mentioned reasons (i.e., additional reductions associated with fertilizer restrictions, oversized wet pond permanent pool volumes, and catch basin sumps) and considering the relatively small difference between pre and post development loadings, the proposed Activity for this modified Certification (WQC 2006-011.1) is not expected to result in an increased loading of pollutants that can be treated by structural BMPs. As discussed in section D-12, pollutants such as chloride are not treatable and, therefore, are not addressed in the loading analysis.

D-14. Surface water monitoring is necessary for the Activity to achieve the goals stated in Section E of this 401 Certification, pursuant to Section 401 of the United States Clean Water Act (Title 33 U.S. Code, Chapter 26, Subchapter IV, Section 1341(d)), which provides that "any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations...and shall become a condition on any Federal license or permit subject to the provisions of this section."

E. WATER QUALITY CERTIFICATION CONDITIONS

Unless otherwise authorized by DES, the following conditions shall apply:

E-1. The Activity shall not cause or contribute to a violation of surface water quality standards. If DES determines that surface water quality standards are being violated, DES may modify this 401 Certification to include additional conditions to ensure compliance with surface water quality standards, when authorized by law, and after notice and opportunity for hearing.

E-2. The Applicant shall comply with the conditions of DES Wetlands Bureau Permit 2004-01917 including any amendments and shall comply with DES wetlands rules and regulations. The conditions shall become conditions of this 401 Certification upon issuance of this 401 Certification.

E-3. The Applicant shall comply with the conditions of DES Alteration of Terrain Permit WPS 6837-D for the Activity including any amendments and shall comply with DES alteration of terrain rules and regulations. The conditions shall become conditions of this 401 Certification upon issuance of this 401 Certification.

E-4. Prior to construction, the Applicant shall obtain DES approval of any proposed changes to the plans approved as part of this 401 Certification. If changes are substantial, DES may modify this 401 Certification as discussed in condition E-1.

E-5. The Applicant shall allow DES to inspect the Activity and its effects on affected surface waters at any time to monitor compliance with the conditions of this 401 Certification.

E-6. The Applicant shall conduct erosion control inspect and maintain erosion control BMPs and conduct turbidity sampling in accordance with Erosion Control Inspection and Maintenance and Turbidity Sampling Plan referenced in section C-16 and approved by DES on June 4, 2008. By December 31 of each year that sampling occurs, the Applicant shall submit an annual report to DES that summarizes the sampling results. The Applicant shall maintain records of all erosion control inspection and turbidity monitoring activities, including the results of turbidity measurements and corrective actions taken to mitigate turbidity violations. The Applicant shall notify the DES Watershed Management Bureau of any turbidity violations and corrective actions taken within 48 hours of when the violation occurred. If requested by DES, the Applicant shall submit such information to DES within 48 hours of the request.

E-7. The Applicant shall conduct stormwater/surface water quality sampling during wet and dry weather to determine compliance with surface water quality standards in accordance with the sampling/reporting plan referenced in section C-17 and approved by DES on June 4, 2008. By December 31 of each year (or other date approved by DES) that sampling occurs, the Applicant shall submit an annual report to DES that summarizes the sampling results and shall upload all data into the DES Environmental Database. Should sampling indicate water quality violations, the Applicant may be required to conduct additional sampling.

E-8. Unless otherwise allowed by DES, the Applicant shall:

a. Submit a post-construction stormwater BMP inspection and maintenance plan to DES for approval within 90 days of the effective date of this modified Certification. The inspection and maintenance plan shall include

all of the elements in the Env-Wq 1507.08 of the Alteration of Terrain regulations (Env-Wq 1500- see http://des.nh.gov/organization/commissioner/legal/rules/index.htm)

b. Submit a plan to minimize and track the use of de-icing chemicals (e.g., sodium chloride as road salt) to DES for approval within 90 days of the effective date of this modified 401 Certification.

c. Submit a plan for minimizing and tracking the use of fertilizer to DES for approval within 90 days of the effective date of this modified Certification.. The Applicant shall only use fertilizer with no pesticides or herbicides and no more than 5% nitrogen, 0% phosphorus and 5% potassium by weight. The plan shall include a log for tracking fertilizer usage on a daily and annual basis including the date(s) of use, the brand and specifications for the fertilizer, the application rate, specific location of use, the total weight used (expressed in pounds), and whether the fertilizer was applied in pellet or liquid form. If requested, the tracking log shall be submitted to DES;

d. Construct all approved post-construction stormwater best management practices (BMPs);

e. Maintain all approved post-construction stormwater BMPs in accordance with the DES-approved maintenance plan referenced in Condition E-8a; and

f. Create and retain BMP inspection and maintenance records and submit the records to DES within 48 hours of receiving a request by DES.

E-9. Within 90 days of the effective date of this modified 401 Certification, the Applicant shall submit a plan to DES for approval of measures to capture trash, floatables, and oil and grease in stormwater from the Activity prior to its discharge to any surface water. Inspection and maintenance of approved measures shall be included in the BMP inspection and maintenance plan referenced in Condition E-8a. The Applicant shall implement the approved plan.

E-10. To prevent contamination of stormwater and surface waters, there shall be no outdoor, on-site storage of materials such as fertilizers, pesticides and herbicides without prior written approval from DES.

E-11. Unless otherwise allowed by DES, BMPs shall be designed, constructed and maintained in accordance with the Alteration of Terrain Regulations (Env-Wq 1500.

E-12. All building roofs shall be covered with rubber membrane roofing. No other materials for roof coverings shall be used (including but not limited to galvanized roofing) without prior written approval from DES.

E-13. To ensure that compliance with this 401 Certification will continue even if the property is transferred to a new owner, the Applicant shall, within 120 days of the effective date of this 401 Certification, submit a deed restriction to DES for approval, that in effect states that compliance with all conditions and DES approved plans prepared for this 401 Certification are the responsibility of the owner of the property. All pertinent DES approved plans shall be specifically referenced in the deed restriction. Once approved by DES, the deed restriction shall be recorded at the registry of deeds.

F. APPEAL

If you are aggrieved by this decision, you may appeal the decision to the Water Council. Any appeal must be filed within 30 days of the date of this decision, and must conform to the requirements of Env-WC 200. Inquires regarding appeal procedures should be directed to the DES Council Appeals Clerk, 29 Hazen Drive, PO Box 95, Concord, NH 03302-0095; telephone 603-271-6072.

If you have questions regarding this 401 Certification, please contact Gregg Comstock at (603) 271-2983.

Harry T. Stewart, P.E.
Director, Water Division

cc: Richard Roach, U.S. Army Corps of Engineers
Collis Adams, DES Wetlands Bureau
Ridge Mauck, DES Alteration of Terrain
Paul Currier, DES Watershed Management Bureau
Wayne Morrill, Jones & Beach Engineers, Inc.
Epping Planning Board
Epping Conservation Commission