DRAFT WQC # 2016-404I-001	FOR PUBLIC REVIEW AND COMMENT
Page 1 of 25	**Public Comment Period Begins 03/01/2016** **Public Comment Period Ends 04/04/2016 at 4 pm** **INSTRUCTIONS FOR SUBMITTING COMMENTS:** Only written comments will be accepted. Comments may be sent by postal mail, email or fax. Please include the project name/number, your name, organization, mailing address, email address and telephone number with your submittal. By Mail: 401 Certification Program NHDES Watershed Management Bureau P.O. Box 95 Concord, NH 03301-0095 Attention: Owen David By FAX: 401 Certification Program (Attention: Owen David) (603) 271-7894 By email: owen.david@des.nh.gov Questions? Please call (603) 271-0699

Elmer A. Pease, II
PD Associates, LLC
68 River Bend Way
Manchester NH 03103

WATER QUALITY CERTIFICATION

In Fulfillment of

NH RSA 485-A:12

WQC # 2016-404I-001

Activity Name	Granite Meadows Development
Activity Location	Raymond, NH
Affected Surface waters	Jones Brook NHRIV600030703-02 Lamprey River NHRIV600030703-07-01
Owner/Applicant	Elmer A. Pease, II PD Associates, LLC 68 River Bend Way Manchester NH 03103
Appurtenant State permit(s) (and any amendments):	DES Wetlands Permit: Pending - File #2008-00205 DES Alteration of Terrain Permit: AoT-0410

Applicable Federal permit(s):	U.S. Army Corps of Engineers Individual Provisional 404 Permit NAE-2011-00862 (Pending approval of 401 Water Quality Certification)
DATE OF APPROVAL (subject to Conditions below)	----------

A. NTRODUCTION

Elmer A. Pease of PD Associates LLC (Applicant) has filed a request for 401 water quality certification for a proposed mixed use development located in Raymond, NH (Activity) near the Exit 4 interchange. The Activity includes the construction of retail buildings, two restaurants, a bank, and 192 multi-family condominiums all with associated parking and infrastructure. A more complete description of the Activity is included in Finding D-1 of this Certification.

This Water Quality Certification (WQC or 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. 401 CERTIFICATION APPROVAL

Based on the facts, findings and conditions noted below, the New Hampshire Department of Environmental Services (DES) has determined that there is reasonable assurance that construction and operation of the Activity will not violate surface water quality standards. DES hereby issues this Certification, subject to the conditions in Section E of this Certification, in accordance with Section 401 of the United States Clean Water Act (33 U.S.C. 1341), RSA 485-A:12,III, and RSA 485-A:12, IV.

C. STATEMENT OF FACTS AND LAW

C-1. Section 401 of the United States Clean Water Act (33 U.S.C. 1341) 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. §401(d) of the CWA provides that: "Any certification provided under this section [401] 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 [enumerated provisions of the CWA]…and with any other appropriate requirement of State law set forth in such certification."

According to EPA 401 Guidance[1], "Under § 401(d) the water quality concerns to consider and the range of potential conditions available to address those concerns, extend to any provision of state or tribal law relating to the aquatic resource. Considerations can be quite broad so long as they relate to water quality. The U.S. Supreme Court has stated that, once the threshold of a discharge is reached (necessary for § 401 certification to be applicable), the conditions and limitations in the certification may address the permitted activity as a whole."[2]

C-4. NH RSA 485-A:12, III, states: "No activity, including construction and operation of facilities, that requires certification under section 401 of the Clean Water Act and that may result in a discharge, as that term is applied under section 401 of the Clean Water Act, to surface waters of the state may commence unless the department certifies that any such discharge complies with the state surface water quality standards applicable to the classification for the receiving surface water body. The department shall provide its response to a request for certification to the federal agency or authority responsible for issuing the license, permit, or registration that requires the certification under section 401 of the Clean Water Act. Certification shall include any conditions on, modifications to, or monitoring of the proposed activity necessary to provide assurance that the proposed discharge complies with applicable surface water quality standards. The department may enforce compliance with any such conditions, modifications, or monitoring requirements as provided in RSA 485-A:22."

C-5. NH RSA 485-A: IV states: "No activity that involves surface water withdrawal or diversion of surface water that requires registration under RSA 488:3, that does not otherwise require the certification required under paragraph III, and which was not in active operation as of the effective date of this paragraph, may commence unless the department certifies that the surface water withdrawal or

[1] *Clean Water Action Section 401 Water Quality Certification: A Water Quality Protection Tool for States and Tribes*. U.S. Environmental Protection Agency, Office of Wetlands, Oceans and Watersheds. 2010.

[2] *PUD No. 1 of Jefferson County v. Washington Department of Ecology*, 511 U.S. 700, 712 (1994).

diversion of surface water complies with state surface water quality standards applicable to the classification for the surface water body. The certification shall include any conditions on, modifications to, or monitoring of the proposed activity necessary to provide reasonable assurance that the proposed activity complies with applicable surface water quality standards."

C-6. NH RSA 485-A:8 and Env-Wq 1700 (Surface Water Quality Regulations), 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-7. 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-8. Env-Wq 1703.01 Water Use Classifications.

(a) State surface waters shall be divided into class A and class B, pursuant to RSA 485-A:8, I, II and III. Each class shall identify the most sensitive use which it is intended to protect.
(b) All surface waters shall be restored to meet the water quality criteria for their designated classification including existing and designated uses, and to maintain the chemical, physical, and biological integrity of surface waters.
(c) All surface waters shall provide, wherever attainable, for the protection and propagation of fish, shellfish and wildlife, and for recreation in and on the surface waters.
(d) Unless the flows are caused by naturally occurring conditions, surface water quantity shall be maintained at levels adequate to protect existing and designated uses.

C-9. Env-Wq 1702.46 defines surface waters as "surface waters of the state" as defined in NH RSA 485-A:2, XIV and waters of the United States as defined in 40 CFR 122.2.

NH RSA 485-A:2, XIV defines "surface waters of the state" 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."

40 CFR 122.2 defines 'waters of the United States' as

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
(b) All interstate waters, including interstate ''wetlands;''
(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, ''wetlands,'' sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
(3) Which are used or could be used for industrial purposes by industries in interstate commerce;
(d) All impoundments of waters otherwise defined as waters of the United States under this definition;
(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;
(f) The territorial sea; and
(g) ''Wetlands'' adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Wetlands are defined in 40 CFR 122.2 as "[t]hose areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. This definition is the same as the definition of jurisdictional wetlands used for State wetland permitting in NH RSA 482-A:2, X (see C-10). 40 CFR 122.2 further states that wetlands generally include swamps, marshes, bogs, and similar areas.

C-10. NH RSA 482-A:2, X. defines "Wetlands'' as "[a]n area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions."

C-11. Env-Wq 1702.17 "Biological Integrity" means the ability of an aquatic ecosystem to support and maintain a balanced, integrated, adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of similar natural habitats of a region.

C-12. Env-Wq 1702.17 "Designated uses" means those uses specified in water quality standards for each water body or segment whether or not such uses are presently occurring.

C-13. 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-14. Env-Wq 1702.23 "Existing uses" means those uses, other than assimilation waste transport, which actually occurred in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.

C-15. 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-16. The term "discharge", as applied under section 401 of the Clean Water Act means the potential for a discharge. It does not need to be a certainty, only that it may occur should the federal license or permit be granted. Further, the discharge does not need to involve the addition of pollutants (such as water released from the tailrace of a dam). As the U.S. Supreme Court has stated "[w]hen it applies to water, 'discharge' commonly means a 'flowing or issuing out'" and an addition of a pollutant is not "fundamental to any discharge" [3].

C-17. Env-Wq 1703.13 entitled "Temperature", states the following:

"(a) There shall be no change in temperature in class A waters, unless naturally occurring.
(b) Temperature in class B waters shall be in accordance with RSA 485-A:8, II, and VIII.

NH RSA-A:8,II states the following for Class B waters "[A]ny stream temperature increase associated with the discharge of treated sewage, waste or cooling water, water diversions, or releases shall not be such as to appreciably interfere with the uses assigned to this class."

NH RSA-A:8,VIII states the following: "In prescribing minimum treatment provisions for thermal wastes discharged to interstate waters, the department shall adhere to the water quality requirements and recommendations of the New Hampshire fish and game department, the New England Interstate Water

[3] Information in this paragraph is from page 4 of the following guidance document: *Clean Water Action Section 401 Water Quality Certification: A Water Quality Protection Tool for States and Tribes.* U.S. Environmental Protection Agency, Office of Wetlands, Oceans and Watersheds. 2010. The Supreme Court case that is referred to is *S.D. Warren Co. v. Maine Board of Environmental Protection et al*, 547 U.S. 370, 126 S. Ct. 1853 (2006).

Pollution Control Commission, or the United States Environmental Protection Agency, whichever requirements and recommendations provide the most effective level of thermal pollution control."

C-18. Env-Wq 1703.14, entitled "Nutrients", states that

"a. Class A waters shall contain no phosphorous or nitrogen unless naturally occurring.
b. Class B waters shall contain no phosphorous or nitrogen in such concentrations that would impair any existing or designated uses, unless naturally occurring.
c. Existing discharges containing either phosphorous or nitrogen which encourage cultural eutrophication shall be treated to remove phosphorus or nitrogen to ensure attainment and maintenance of water quality standards.
d. There shall be no new or increased discharge of phosphorous into lakes or ponds.
e. There shall be no new or increased discharge(s) containing phosphorous or nitrogen to tributaries of lakes or ponds that would contribute to cultural eutrophication or growth of weeds or algae in such lakes and ponds."

C-19. Env-Wq 1703.19, entitled "Biological and Aquatic Community Integrity", states that

"a. The surface waters shall support and maintain a balanced, integrated and adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of similar natural habitats of a region; and
b. Differences from naturally occurring conditions shall be limited to non-detrimental differences in community structure and function."

C-20. 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-21. Env-Wq 1703.07 through 1703.11 contain standards relative to dissolved oxygen, bacteria, benthic deposits, oil and grease, and turbidity.

C-22. Antidegradation provisions are included in Env-Wq 1702 and Env-Wq 1708.

a. Env-Wq 1702.02 states that "Antidegradation" means a provision of the water quality standards that maintains and protects existing water quality and uses.
b. Env-Wq 1708.02 states that "Antidegradation shall apply to: (a) Any proposed new or increased activity, including point source and nonpoint source discharges of pollutants, that would lower water quality or affect the existing or designated uses;(b) Any proposed increase in loadings to a

waterbody when the proposal is associated with existing activities; (c) Any increase in flow alteration over an existing alteration; and (d) Any hydrologic modifications, such as dam construction and water withdrawals."

c. Antidegradation applies to all parameters as evidenced by Env-Wq 1708.08 (a) (Assessing Waterbodies) which states " The applicant shall characterize the existing water quality and determine if there is remaining assimilative capacity for each parameter in question."
d. According to Env-Wq 1708.04 (b), "A proposed discharge or activity shall not eliminate any existing uses or the water quality needed to maintain and protect those uses".
e. Env-Wq 1702.03 states that "Assimilative capacity" means the amount of a pollutant or pollutants that can safely be released to a waterbody without causing violations of applicable water quality criteria or negatively impacting uses.
f. Env-Wq 1708.08 describes the process for assessing waterbodies to determine if there is remaining assimilative capacity for each parameter in question.
g. Env-Wq 1708.09 Significant or Insignificant Determination states :(a) Any discharge or activity that is projected to use 20% or more of the remaining assimilative capacity for a water quality parameter, in terms of either concentration or mass of pollutants, or volume or flow rate for water quantity, shall be considered a significant lowering of water quality. The department shall not approve such a discharge or activity unless the applicant demonstrates that the proposed lowering of water quality is necessary to achieve important economic or social development, in accordance with Env-Wq 1708.10, in the area where the waterbody is located.
h. Env-Wq 1708.01 (b) states: "For significant changes in water quality, where the quality of the surface waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife, and recreation in and on the water, that quality shall be maintained and protected unless the department finds, after full satisfaction of the intergovernmental coordination and public participation provisions that, in accordance with Env-Wq 1708.10, allowing lower water quality is necessary to accommodate important economic or social development in the area in which the surface waters are located. In allowing such degradation or lower water quality, the department shall assure water quality adequate to fully protect existing uses. Further, the department shall assure that the highest statutory and regulatory requirements shall be achieved for all new and existing point sources and that all cost effective and reasonable best management practices for nonpoint source control shall be implemented".
i. Env-Wq 1708.01 (c) states: "For insignificant changes in water quality, where the quality of the surface waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife, and recreation in and on the water, that quality shall be maintained and protected. In allowing such degradation or lower water quality, the department shall assure water quality adequate to protect existing uses fully. Further, the department shall assure that the

highest statutory and regulatory requirements shall be achieved for all new and existing point sources and that all cost effective and reasonable best management practices for nonpoint source control shall be implemented".

C-23. Env-Wq 1708.05 - Protection of Water Quality in ORW.

(a) Surface waters of national forests and surface waters designated as natural under NH RSA 483:7-a, I, shall be considered outstanding resource waters (ORW).
(b) Water quality shall be maintained and protected in surface waters that constitute ORW, except that some limited point and nonpoint source discharges may be allowed providing that they are of limited activity which results in no more than temporary and short-term changes in water quality. "Temporary and short term" means that degradation is limited to the shortest possible time. Such activities shall not permanently degrade water quality or result at any time in water quality lower than that necessary to protect the existing and designated uses in the ORW. Such temporary and short term degradation shall only be allowed after all practical means of minimizing such degradation are implemented.

C-24. Env-Wq 1708.07 Protection of Water Quality in High Quality Waters.

(a) Subject to (b) below, high quality waters shall be maintained and protected, except that insignificant changes in water quality, as determined by the department in accordance with Env-Wq 1708.09, shall be allowed.
(b) Degradation of significant increments of water quality, as determined in accordance with Env-Wq 1708.09, in high quality waters shall be allowed only if it can be demonstrated to the department, in accordance with Env-Wq 1708.10, that allowing the water quality degradation is necessary to accommodate important economic or social development in the area in which the receiving waters are located.
(c) Economic/social benefits demonstration and alternatives analysis shall not be required for authorization of an insignificant lowering of water quality. However, in allowing a lowering of water quality, significant or insignificant, all reasonable measures to minimize degradation shall be used.
(d) If the water body is Class A Water, the requirements of Env-Wq 1708.06 shall also apply.

C-25. Env-Wq 1708.12 entitled "Transfer of Water" defines "transfer" as "[t]he intentional conveyance of water from one surface water to another surface water for the purpose of increasing the volume of water available for withdrawal from the receiving surface water. The term does not include the transfer of stormwater, for the purpose of managing stormwater during construction, between basins created or otherwise lawfully used for stormwater detention or

treatment, or both, and does not include the discharge of stormwater from a detention or treatment basin to surface water."

C-26. Env-Wq 1702.06 states ""Best management practices" means those practices which are determined, after problem assessment and examination of all alternative practices and technological, economic and institutional considerations, to be the most effective practicable means of preventing or reducing the amount of pollution generated by point or nonpoint sources to a level compatible with water quality goals."

C-27. With regards to fertilizers, NH RSA 483:1, XXII defines turf as follows: "Turf'" or "lawn'' means non-agricultural land planted in closely mowed, managed grasses except golf courses, parks, athletic fields, and sod farms."

NH RSA 431:4-a Nitrogen Content of Fertilizer, states the following:

"I. No turf fertilizer sold at retail shall exceed 0.7 pounds per 1,000 square feet of soluble nitrogen per application when applied according to the instructions on the label.
II. No turf fertilizer sold at retail shall exceed 0.9 pounds per 1,000 square feet of total nitrogen per application when applied according to the instructions on the label.
III. No turf fertilizer shall exceed an annual application of 3.25 pounds per 1,000 square feet of total nitrogen when applied according to the instructions on the label.
IV. No enhanced efficiency fertilizer shall exceed a single application rate of 2.5 lbs. per 1,000 square feet of total nitrogen and an annual application rate of 3.25 pounds per 1,000 square feet of total nitrogen nor release at greater than 0.7 pounds per 1,000 square feet per month when applied according to the instructions on the label."

NH RSA 431:4-b Phosphorus Content of Fertilizer, states the following:

"I. No fertilizer sold at retail that is intended for use on turf shall exceed a content level of 0.67% available phosphate unless specifically labeled for establishing new lawns, for repairing a lawn, for seeding, or for use when a soil test indicates a phosphorus deficiency.
II. No fertilizer sold at retail that is intended for use on newly established or repaired lawns, or for lawns testing deficient in phosphorus shall exceed an application rate of one pound per 1,000 square feet annually of available phosphate.
III. No natural organic turf fertilizer shall exceed a per application rate of one pound of available phosphate per 1,000 square feet when applied according to the instructions on the label."

C-28. NH RSA 483:4 defines "interbasin transfer" and "river drainage basin":

XII. "Interbasin transfer" means any transfer of water for use from one river drainage basin to another.

XIX. "River drainage basin" means the Androscoggin, Coastal, Connecticut, Merrimack, Piscataqua, and Saco river basins as delineated on a map compiled by the department.

C-29. NH RSA 483:9 Natural Rivers Protection (at 9-a, 9-aa, and 9-b) states that no interbasin transfers from designated rural, rural-community, or community rivers or their segments shall be permitted.

C-30. NH RSA 488:3 regarding registration of withdrawals and discharges states the following:

I. No person shall withdraw or discharge a cumulative amount of more than 20,000 gallons of water per day, averaged over any 7-day period, or more than 600,000 gallons of water over any 30-day period, at a single real property or place of business without registering the withdrawal or discharge with the department. Transfers of such volume of water shall also be registered. Registration shall be in addition to any required permits.

II. No registration shall be transferred to another person without written notification to the commissioner.

C-31. NH RSA 485:61 regarding Rules for Water Conservation, states the following:

I. The department shall adopt rules, pursuant to RSA 541-A, for water conservation practices for water users. These rules shall strike a reasonable balance between environmental, energy, and economic impacts and be consistent with current industry standards and practices for different types of water users.

II. The water conservation rules in paragraph I of this section shall apply to all new permit applicants and applications for water withdrawals subject to the provisions of RSA 485:3, RSA 485:48, RSA 485-C:21 and section 401 of the Clean Water Act.

III. Water conservation rules shall be consistent with applicable state or federal rules and regulations. Water Conservation Rules were adopted May 14, 2005 codified as Env-Wq 2101.

C-32. Env-Wq 2101.24 entitled Water Conservation Plan Required, states that

"(a) The applicants for approval of a source that would be a conservation source shall submit a water conservation plan that demonstrates compliance with the applicable provisions of Env-Wq 2101.05 through Env-Wq 2101.22 in accordance with the following:"

"(5) For a new withdrawal from a surface water associated with a project requiring a 401 Water Quality Certification, the water

conservation plan shall be submitted prior to or in conjunction with the application for a 401 Water Quality Certification pursuant to Section 401 of the federal Clean Water Act;
(6) For a new withdrawal from a surface water that requires water quality certification pursuant to RSA 485-A:12, IV, the water conservation plan shall be submitted prior to or in conjunction with the certification request".

Env-Wq 2101.23, entitled Waivers, allows DES to grant waivers of certain provisions in Env-Wq 2101 provided the person requesting the waiver submits a written request to DES that includes the information specified in Env-Wq 2101.23(d). On May 11, 2015, the Applicant submitted a written request to waive the deadline for submittal of a water conservation plan (WCP) in Env-Wq 2101.24. On May 12, 2015, DES approved the waiver request with the condition that the Applicant submit a WCP for each phase of the project and receive written approval of the WCP from DES prior to construction of that phase.

C-33. In 2010, DES published guidance (hereinafter called the 2010 instream flow guidance or 2010 ISF guidance) for estimating instream flow requirements for the protection of aquatic life for situations. The guidance is available at: http://des.nh.gov/organization/commissioner/pip/publications/wd/documents/wd-11-3.pdf.

C-34. Section 303(d) of the Clean Water Act (33 U.S.C. 1313(d)) and the regulations promulgated thereunder (40 C.F.R. 130.0 – 40 C.F.R. 130.11) require states to identify and list surface waters that are violating state water quality standards (i.e., Section 303(d) List) that do not have an approved TMDL. For these water quality-impaired waters, states must establish Total Maximum Daily Loads (TMDLs) for the pollutants causing the impairments and submit the list of impaired surface waters and TMDLs to EPA for approval. TMDLs include source identification, determination of the allowable load and pollutant reductions (by source) necessary to meet the allowable load. Once a TMDL is conducted, the pollutant/surface water is transferred to the list of impaired waters with approved TMDLs (known as Category 4A waters). The Section 303(d) List is, therefore, a subset of all impaired waters. The most recent Section 303(d) list of impaired waters is the 2012 Section 303(d) List. A list of all impaired waters is available at http://www.des.state.nh.us/organization/divisions/water/wmb/swqa/2010/index.htm

C-35. On December 20, 2007, EPA approved the Northeast Regional Mercury TMDL[4] which addressed mercury impairments in all New Hampshire fresh surface waters.

[4] Northeast Regional Mercury Total Maximum Daily Load. Connecticut Department of Environmental Protection, Maine Department of Environmental Protection, Massachusetts Department of Environmental Protection, New Hampshire Department of Environmental Services, New York Stated Department of Environmental Conservation, Rhode Island

C-36. When a surface water does not meet water quality standards (i.e., when it is impaired), the addition of pollutants causing or contributing to impairment is prohibited in accordance with the following:

> Env-Wq 1703.03 (a) states that "The presence of pollutants in the surface waters shall not justify further introduction of pollutants from point or nonpoint sources, alone or in any combination".
>
> NH RSA 485-A:12 (I) (Enforcement of Classification) states that "After adoption of a given classification for a stream, lake, pond, tidal water, or section of such water, the department shall enforce such classification by appropriate action in the courts of the state, and it shall be unlawful for any person or persons to dispose of any sewage, industrial, or other wastes, either alone or in conjunction with any other person or persons, in such a manner as will lower the quality of the waters of the stream, lake, pond, tidal water, or section of such water below the minimum requirements of the adopted classification".

C-37. NH Division of Pesticides regulations (Pes 1001.01-Restrictions on Pesticide Use by Residential Property Owners, Private Applicators and Commercial Applicators) states that "[N]o residential property owner, private applicator, or commercial applicator shall apply pesticides within the following distances of the reference line[5]:

> (a) Within 25 feet as it pertains to surface waters; and
> (b) Beyond 25 feet in such a manner or by such methods that would result in the presence of pesticides within 25 feet of the reference line of any lake, pond, river or coastal water."

According to Pes 1001.02 (Pesticide Applications Within 25 Feet of the Reference Line): "[T]he restrictions in Pes 1001.01 shall not apply to the following:

> (a) Pesticide applications inside structures provided there is no soil contact or soil incorporation;
> (b) Pesticide applications to control termites provided the applicator is in possession of a special permit issued by the division in accordance with the provisions of Pes 502.04;
> (c) Pesticide applications which are subject to prior approval of the division through issuance of a special permit where distances from surface water are determined on a case by case basis; and
> (d) Pesticide applications to control vegetation along the embankments of sewage lagoons of wastewater treatment facilities."

Department of Environmental Management, Vermont Department of Environmental Conservation, New England Interstate Water Pollution Control Commission. October 24, 2007.

[5] Reference line is defined in Pes 101.28.

C-38. NH RSA 482-A (Fill and Dredge in Wetlands) requires any person who excavates, removes, fills, dredges or constructs any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state to obtain a wetlands permit from DES [NH RSA 482-A:3 I (a)].

In 2008, the Applicant submitted an application for a DES Wetlands Permit which was assigned the following file number (2008-00205). Issuance of a DES Wetlands Permit is pending.

C-39. The Applicant submitted an application for 401 Water Quality Certification to DES on September 22, 2015 which included supporting information.

C-40. DES issued a draft certification for public comment from ---------, 2016 to ------, 2016.

D. FINDINGS

D-1. The Activity reviewed for this certification is as described in the Applicant's application for 401 certification and supporting documentation. The Activity includes the construction of 221,911 square feet of retail buildings, two restaurants, a bank, and 192 multi-family condominiums all with associated parking and infrastructure. The existing parcel is approximately 40 acres in size and is surrounded by NH Route 101 to the south, Old Manchester Road to the east, Scribner Road to the north and Old Batchelder Road to the west. Approximately 35 acres will be disturbed. The parcel has been disturbed in the past for graveling operation.

D-2. The Activity will impact approximately 4.3 acres of wetlands.

D-3. The New England District of the U.S. Army Corps of Engineers issued a Provisional § 404 Individual Permit (NAE-2011-00862) on October 7, 2015. The 404 permit is provisional based on the Applicant receiving a 401 Water Quality Certification from DES.

D-4. 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.

D-5. The named and unnamed fresh water rivers and streams, lakes and ponds, and wetlands in NH affected by the Activity, are surface waters under Env-Wq 1702.46. DES has assigned Assessment Unit (AU) identification numbers to many, but not all surface waters. Surface waters that do not have an AU number are still considered surface waters of the State in accordance with Env-Wq 1702.46.

D-6. Surface waters that could be potentially affected by this Activity and their associated AU numbers (where available) are shown in the following table.

Table 1

Surface Water Name and AU Numbers
Jones Brook, NHRIV600030703-02
Lamprey River, NHRIV600030703-07-01

D-7. The potentially affected surface waters are Class B waterbodies; therefore Class B New Hampshire surface water quality standards apply to the Activity. Class B waterways are considered suitable for aquatic life, primary and secondary contact recreation, fish consumption, wildlife, and, after adequate treatment, as a water supply[6].

D-8. The potentially affected surface waters do not include Outstanding Resource Waters as defined in Env-Wq 1708.05(a) [see C-23].

D-9. The Lamprey River is a "Designated River" as defined under RSA 483 (the Rivers Management and Protection Act). The Activity is not located within ¼ mile of the Lamprey River[7].

D-10. The Activity does not involve an "interbasin transfer" as defined in RSA 483:4 (see C-28).

D-11. The Activity does not involve a "Transfer of Water" as defined in Env-Wq 1708.12 (see C-25).

D-12. The potentially affected surface waters are considered coldwater and/or diadromous[8] fisheries by the NH Fish and Game Department.

D-13. According to the 2014 list of impaired waters (see C-34), the following surface waters in the vicinity of the proposed Activity are listed as impaired. All impairments, with the exception of those highlighted in bold (which have approved TMDLs), are on the Section 303(d) List:

Table 2: Known waterbody impairments in the vicinity of the Activity

Assessment Unit (AU)	Water Body Name	Cause of Impairment (Designated Use Impaired)
NHRIV600030703-02	Jones Brook	**Mercury (FC)**

6. 2012 Section 305(b) and 303(d) Consolidated Assessment and Listing Methodology. July, 2013. NH Department of Environmental Services. NHDES-R-WD-12-2.

7. If an Activity is located within ¼ mile of a Designated River, a copy of the complete application must be provided to the Local River Management Advisory Committee (RSA 483).

8. "Diadromous" is a general category describing fish that spend portions of their life cycles partially in fresh water and partially in salt water.

Assessment Unit (AU)	Water Body Name	Cause of Impairment (Designated Use Impaired)
NHRIV600030703-07-01	Lamprey River	**Mercury (FC)**

Notes: AL = Aquatic Life, PCR = Primary Recreation, SCR = Secondary Recreation, FC = Fish Consumption, SFC = Shellfish Consumption Impairments highlighted in bold have approved TMDLs. All other impairments are on the Section 303(d) List. All fresh surface waters are impaired for mercury due to concentrations found in fish tissue which have resulted in a statewide fish consumption advisory. The primary source of mercury is atmospheric deposition from in-state and out-of-state emissions.

As stated in section C-36 of this Certification, when a surface water does not meet water quality standards (i.e., when it is impaired), the addition of pollutants causing or contributing to impairment is prohibited. As noted above, all fresh surface water in NH are impaired for mercury due to concentrations found in fish tissue which have resulted in a statewide fish consumption advisory. On December 20, 2007, EPA approved the Northeast Regional Mercury TMDL which addressed mercury impairments in all New Hampshire fresh surface waters (see C-35). The primary source of mercury is atmospheric deposition from in-state and out-of-state emissions. The proposed Activity is not expected to have a significant impact on mercury levels in fish tissue.

D-14. Storm water runoff, including snowmelt, and groundwater flow to surface waters from within the area affected by the Activity during warm and cold-weather conditions are discharges under the definitions of Env-Wq 1702.18.

D-15. The Activity will result in a discharge and, if not properly controlled, may cause the permanent alteration of, or temporary impacts to surface waters.

D-16. The Activity includes dredge and fill of jurisdictional wetlands in New Hampshire and therefore requires a DES Wetlands Permit (or permits) under NH RSA 482-A. This 401 Certification decision relies, in part, on an approved permit (or permits) from the DES Wetlands Bureau for the potential impacts to jurisdictional wetlands. Through its processing and issuance, DES wetlands permits issued for the Activity will address the dredge and fill impacts to jurisdictional wetlands. On February 8, 2008 the Applicant submitted an application for a DES Wetlands Permit which was assigned the file number 2008-00205. A DES Wetlands Permit has not yet been issued.

D-17. The Activity will involve alteration of terrain that will require a DES Alteration of Terrain (AoT) permit issued according to RSA 485-A:17. When AoT permits are required for the Activity, this 401 Certification decision relies, in part, on an approved permit (or permits) from the DES Alteration of Terrain Bureau for the potential construction and/or operation-related impacts of stormwater on surface waters. Through its processing and issuance, DES AoT permits issued

for the Activity will address many of the potential impacts of stormwater from the Activity on receiving surface waters.

DES issued an AoT permit (AoT-0410) for the Activity on May 14, 2012. The AoT permit expires on May 12, 2017.

D-18. Since the Activity could include new discharges of pollutants and increases in flow alteration (i.e., due to increased impervious cover), the antidegradation provisions of Env-Wq 1708 apply (see section C-22).

D-19. If not properly controlled, the Activity could potentially result in increased flow and volume of stormwater runoff and reductions in groundwater recharge due to increases in impervious surfaces, which could trigger antidegradation provisions of the state surface water quality regulations (see C-22). Without proper controls, construction of the Activity could potentially result in water quality violations due to such things as erosion and deposition of settleable and suspended solids associated with stormwater flowing over disturbed areas that have not been stabilized and discharge of construction dewatering activities to surface waters. These concerns can be addressed by preparing and implementing appropriate stormwater pollution prevention measures during construction.

The DES Alteration of Terrain (AoT) permit issued for the Activity in 2012 (see D-17) requires the Applicant to submit a Stormwater Pollution Prevention Plan to DES prior to construction and to employ the services of an environmental monitor to inspect the site during the construction period and until the site is considered stabile. The purpose of the inspections is to determine compliance with the AoT permit. The monitor must inspect the site at least weekly and, if possible, during any ½ inch or greater rain event. The monitor must also submit inspection reports within 24 hours of the inspections. The reports shall describe, at a minimum, whether the project is being constructed in accordance with the approved sequence, identify any deviations from the conditions of the AoT permit and the approved plans, and identify any other noted deficiencies.

In addition to the AoT permit, the Applicant must comply with conditions in the federal National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP)[9].

CGPs are typically reissued by the U.S. Environmental Protection Agency (EPA) every 5 years. The most recent CGP was issued in 2012. Activities must comply with the CGP if they "[d]isturb 1 or more acres of land, or will disturb less than 1 acre of land but is part of a common plan of development or sale that will ultimately disturb 1 or more acres of land". The CGP covers construction related stormwater discharges (including stormwater runoff, snowmelt runoff and

[9] The 2012 Construction General Permit is available at http://water.epa.gov/polwaste/npdes/stormwater/upload/cgp2012_finalpermit.pdf

surface runoff and drainage) as well other discharges, including but not limited to, construction dewatering that has been treated by an appropriate control. The CGP requires development of a Stormwater Pollution Prevention Plan (SWPPP) that describes how the Activity will meet the requirements of the CGP. This includes identification of the stormwater team, a description of the nature of construction activities, emergency-related projects, identification of other site operators, the sequence and estimated dates of construction activities, a site map, identification of construction site pollutants and non-stormwater discharges, buffer documentation, a description of stormwater control measures, pollution prevention procedures, procedures for inspection, maintenance and corrective action, staff training, documentation of compliance with other federal requirements, SWPPP Certification and Post-Authorization Additions to the SWPPP. According to the CGP the SWPPP must be made available to DES upon request. If there are any contaminated discharges resulting from the construction activity, the applicant must comply with the NPDES Remediation General Permit[10].

DES AoT permits address many of the items required in the CGP. It is expected that implementation of the stormwater pollution prevention measures required as part of the CGP and/or AoT permit will prevent water quality violations due to construction related runoff.

D-20. As stated in section C-36 of this Certification, when a surface water does not meet water quality standards (i.e., when it is impaired), the addition of pollutants causing or contributing to impairment is prohibited. That is, existing loadings must be held. Further, as stated in C-34 of this Certification, TMDLs must eventually be conducted for any surface water listed on the Section 303(d) List. The TMDL includes source identification, determination of the allowable load and reductions (by source) necessary to meet the allowable load. For waters with an approved TMDL, pollutant reductions per the TMDL are required. For pollutants causing an impairment without a TMDL, loadings of the pollutant causing impairment must be held such that there are no increased loadings until such time as a TMDL is prepared.

For all other pollutants (i.e., those not known to be causing impairment) which are likely to be discharged from the Activity, Applicants can either hold existing loadings (i.e., no degradation), or request to degrade the water in accordance with the antidegradation provisions of Env-Wq 1708.

To demonstrate no additional loading for pollutants which can be removed by structural BMPs, DES allows Applicant's to submit loading analyses in accordance with the Simple Method guidance and spreadsheet included on the DES

[10] The 2010 Remediation General Permit is available at http://www.epa.gov/region1/npdes/remediation/RGP2010_FinalPermit.pdf.

website[11]. The guidance allows use of the "Simple Method" for calculating loads before and after construction of the proposed Activity. At this time, DES uses total suspended solids (TSS), total nitrogen (TN) and total phosphorus (TP) as surrogates for all other parameters which can be removed by structural BMPs. That is, if the loadings for TSS, TN and TP are held to pre-construction levels, it is assumed that loadings of all other parameters which can be removed by structural BMPs, are held as well. The pollutant loading guidance also assumes that all permanent stormwater practices (i.e., best management practices or BMPs) referenced in the loading analysis are designed and maintained in accordance with current Alteration of Terrain regulations (Env-Wq 1500).

DES approval of a pollutant loading analysis demonstrating no additional loading of pollutants from pre-construction levels is considered adequate to satisfy pollutant related antidegradation requirements for high quality waters and surface waters impaired by pollutants that do not have approved TMDLs as discussed above, as well as requirements for Outstanding Resource Waters (ORWs) which prohibit permanent degradation to surface waters (see C-23).

The Applicant included a pollutant loading analysis with their application for 401 Certification. Stormwater runoff will be collected by a closed system and directed to several permanent best management practices (BMPs) which include three wet ponds, three above ground infiltration basins and one grass treatment swale all of which are designed in accordance with DES Alteration of Terrain requirements (Env-Wq 1500). DES has reviewed the pollutant loading analysis and finds that the proposed permanent stormwater BMPs, combined with the other conditions specified in this Certification, should result in compliance with antidegradation provisions of Env-Wq 1700.

D-21. If not properly controlled, projects involving alteration of terrain can result in discharges to surface waters of nutrients such as phosphorus and nitrogen that can lead to excessive aquatic plant growth and impairment of aquatic life and contact recreational uses such as swimming or wading. Application of fertilizers can be a primary source of nutrients. NH RSA 431:4-a and 431:4-b (see C-27), which became effective January 1, 2014, limits the nitrogen and phosphorus content of fertilizers sold at retail and intended for use on home lawns (i.e., turf). Among other things, these statutes include annual application rates for nitrogen and phosphorus. Other examples of state fertilizer statutes include NH RSA 483-B:9 (d) of the Shoreland Water Quality Protection Act which states the following: "No fertilizer shall be applied to vegetation or soils located within 25 feet of the reference line of any public water. Beyond 25 feet, slow or controlled release fertilizer, as defined by rules adopted by department, may be used."

[11] The Simple Method guidance and spreadsheet are available at http://des.nh.gov/organization/divisions/water/wmb/section401/index.htm.

Submittal of a Fertilizer Minimization plan and implementation of the approved plan, can help address potential nutrient concerns associated with fertilizers. As a minimum, the plan should require the following:

a. Soil testing before seeding a new lawn and at least once every three years following establishment[12] to determine appropriate application rates and use of fertilizers with slow release nitrogen and little to no phosphorus as soils in New Hampshire most likely have sufficient phosphorus. Results of soil tests should be maintained and submitted to DES within 30 days of receiving a request.

b. For areas that meet the definition of turf under RSA 483:1, XXII (see C-27) a description of how the annual application rates under RSA 431:4-a and 431:4-b (see C-27) will be ensured.

c. A prohibition on the application of fertilizer to vegetation or soils located within 25 feet of surface waters.

d. A description of how pesticides in fertilizers used for turf management (as defined above in a.) will be minimized.

e. For areas that do not meet the definition of turf under RSA 483:1, XXII (see C-27) (i.e., such as golf courses, parks, athletic fields, and sod farms), the plan should provide a description of the fertilizer used (including the percent of nitrogen and phosphorus), annual application rates and loadings of nitrogen and phosphorus, and recommendations for minimizing the amount of fertilizer applied each year. Records should be maintained and if requested by DES, submitted to DES within 30 days of receiving a request.

D-22. If not properly controlled, projects involving alteration of terrain can result in water temperature increases due to removal of vegetation adjacent to surface waters that provide natural shading, and stormwater discharges from impervious surfaces (such as pavement and rooftops) and stormwater best management practices such as detention ponds. Significant temperature increases can adversely impact the Biological and Aquatic Community Integrity (Env-Wq 1703.19) of surface waters especially in temperature sensitive cold water fisheries. As mentioned in D-12, the potentially impacted surface waters are considered cold water and/or diadromous fisheries by the NH Fish and Game Department. Temperature concerns can be addressed by requiring the Applicant to submit and implement a DES approved Water Temperature Impact Plan that

[12] From "New Hampshire's Turf Fertilizer Law – What You Should Know". Agriculture Fact Sheet. Spring 2014. University of New Hampshire Cooperative Extension. Available at http://extension.unh.edu/resources/files/Resource004116_Rep5835.pdf

addresses how the Activity will avoid causing increases in surface water temperatures that could adversely impact local fisheries.

D-23. Operation of the Activity during the winter will likely include application of deicing chemicals to roads and other impervious surfaces that contain chloride (i.e. rock salt). Chlorides are conservative substances that persist in the environment and are not treatable by structural BMPs. Frequent application of road salt can result in levels of chloride in surface waters that are harmful to aquatic life. Application of road salt can be minimized by requiring applicators to be properly trained.

Training can be accomplished by requiring applicators to be certified in accordance with the UNH T2 Green SnowPro program (see http://t2.unh.edu/green-snowpro-training-and-certification). Establishment of a certification program was authorized under NH RSA 489-C. The goal of the program is to improve efficiency in salt use, such that the least amount of salt is used to ensure safe conditions for pedestrians and vehicles. Under the new law certified salt applicators (and property owners who hire them) who follow best management practices and keep basic records, are provided with limited liability for damages arising from hazards caused by snow or ice. Certification expires every June.

In addition to maintaining certification, obligations of certified salt applicators also include record keeping and annual reporting of the amount of salt used, the town it was applied, the number of acres of paved surface maintained and the type and amount of each salt alternative used. This information can be reported in the web-based tracking system available at http://www.roadsalt.unh.edu/Salt/.

D-24. Section C-22 h and C-22 i of this Certification includes excerpts from Env-Wq 1708.01 regarding antidegradation which state that "the department shall assure that the highest statutory and regulatory requirements shall be achieved for all new and existing point sources and that all cost effective and reasonable best management practices for nonpoint source control shall be implemented". In addition to being cost effective and reasonable, best management practices must be selected to ensure attainment of water quality standards in receiving waters as evidenced by the following:

a. As stated in section C-26 of this Certification, "Best Management Practices" (BMPs) are defined in Env-Wq 1702.06 as "those practices which are determined, after problem assessment and examination of all alternative practices and technological, economic and institutional considerations, to be the most effective practicable means of preventing or reducing the amount of pollution generated by point or nonpoint sources to a level *compatible with water quality goals"* (italics added).

b. Env-Wq 1708.01 (b) and (c) (see C-22 h and C-22 i) which states "In allowing such degradation or lower water quality, the department shall assure water quality adequate to fully protect existing uses".

Best management practices that are designed, operated and maintained in accordance with the DES Alteration of Terrain regulations (Env-Wq 1500) are considered, in most cases, to be cost effective and reasonable best management practices for nonpoint sources.

D-25. To help ensure that best management practices (BMPs) will always function as intended, development and implementation of a BMP inspection and maintenance plan can be required. The Alteration of Terrain permit issued for the Activity in 2012 (see D-17), requires the Applicant to submit an "Inspection and Maintenance Plan that fully meets the intent of Rule Env-Wq 1507.08" to DES prior to construction.

D-26. Untreated stormwater from galvanized roofs can contain elevated levels of zinc which can be toxic to aquatic life. If galvanized roofs are used, appropriate precautions should be taken to prevent violations of surface water quality standards due to zinc.

D-27. Operation of the Activity could result in application of pesticides such as herbicides and insecticides. Improper application of pesticides can harm aquatic life and result in surface water quality violations. In New Hampshire, pesticides are regulated by the Department of Agriculture Pesticide Division. As stated in Pes 1001.01(see C-37), and unless otherwise allowed per Pes 1001.02 (see C-37), no residential property owners, private applicator, or commercial applicator shall apply pesticides within the 25 feet of the reference line of surface waters or beyond 25 feet in such a manner or by such methods that would result in the presence of pesticides within 25 feet of any lake, pond, river or coastal water. The NH Pesticide regulations also require licensing or permitting of all commercial and private pesticide applicators as well as pesticide dealers. Through this process, only persons demonstrating satisfactory competence in the safe and legal use of pesticides within New Hampshire may apply pesticides. Compliance with the NH Pesticide Division regulations regarding the application of pesticides is expected to prevent water quality standard violations due to pesticides.

D-28. Wastewater from the Activity will be treated on-site by subsurface treatment systems (i.e., septic systems) designed in accordance with DES Subdivision and Individual Sewage Disposal System Design Rules (Env-Wq 1000).

D-29. Confirmation that operation of the Activity does not cause or contribute to surface water quality violations can be determined by development and implementation of a surface water monitoring plan with appropriate quality assurance/ quality control provisions.

E. WATER QUALITY CERTIFICATION CONDITIONS

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

E-1. **Compliance with Water Quality Standards:** The Activity shall not cause or contribute to a violation of surface water quality standards. DES may modify this 401 Certification to include additional conditions to ensure the Activity complies with surface water quality standards, when authorized by law, and after notice and opportunity for hearing.

E-2. **Inspections:** In accordance with applicable laws, the Applicant shall allow DES to inspect the Activity and affected surface waters to monitor compliance with the conditions of this 401 Certification.

E-3. **Proposed Modifications to the Activity:** The Applicant shall consult with DES regarding any proposed modifications to the Activity, including construction or operation, to determine whether this 401 Certification requires modification in the future.

E-4. **Transfer of Certification:** Should this Certification be transferred to a new owner, contact information for the new owner (including name, address, phone number and email) shall be provided to DES within 30 days of the transfer.

E-5. **Compliance with Wetland and Alteration of Terrain Permits:** The Applicant shall comply with conditions in all DES Wetlands permits and all DES Alteration of Terrain permits issued for the Activity including any amendments. The conditions shall become conditions of this 401 Certification. Should any conditions conflict, the certification or permit with the more stringent condition shall apply.

E-6. **Stormwater Best Management Practices (BMPs)**. Temporary and permanent stormwater BMPs shall be designed and constructed in accordance with the DES Alteration of Terrain regulations (Env-Wq 1500).

E-7. **NPDES Construction General Permit and NPDES Remediation Permit.** When applicable, the Applicant shall comply with requirements of the NPDES Construction General Permit and the NPDES Remediation General Permits (see D-19).

E-8. **Galvanized Roofs:** No building shall be constructed with galvanized roofs that could cause or contribute to zinc violations in surface waters. Prior to construction of the Activity the Applicant shall advise DES if galvanized roofs are proposed. If galvanized roofs are proposed, the Applicant shall, prior to construction, provide documentation as to how precipitation coming in contact with the galvanized roofs will be prevented from causing zinc violations in the receiving surface waters and how compliance will be determined. The Applicant shall then implement the DES approved plan.

E-9. **Pesticides (Insecticides and Herbicides):** The Applicant shall minimize use of all pesticides to the maximum extent practicable and shall comply with all applicable state, federal and local laws and regulations regarding application of pesticides, including, but not limited to, Pes 1001.01 and 1001.02 (see C-37 and D-27). If requested by DES, the applicant shall provide DES with a list of pesticides applied, the name of the applicator and their NH pesticide license or permit number within 30 days of receiving the request.

E-10. **Certification of Road Salt Applicators and Tracking of Road Salt:** All applicators of road salt containing chloride that are retained to de-ice impervious surfaces associated with the Activity shall be certified per the Green SnowPro program (see http://t2.unh.edu/green-snowpro-training-and-certification) within two years of the issuance date of this Certification and shall maintain records of road salt use on the web-based tracking system available at http://www.roadsalt.unh.edu/Salt/. If requested by DES the Applicant shall provide the names of all road salt applicators and proof they are certified within 30 days of receiving a request.

E-11. **Fertilizer Minimization Plan:** Prior to construction of the Activity, the Applicant shall submit and receive DES approval of a Fertilizer Minimization Plan. As a minimum, the plan shall address the items in section D-21 of this Certification. The Applicant shall then implement the approved plan.

E-12. **Permanent BMP Inspection and Maintenance Plan:** Prior to construction, the Applicant shall submit, for DES approval, an Inspection and Maintenance Plan for all permanent stormwater Best Management Practices (BMPs) that fully complies with Env-Wq 1507.08. The Applicant shall then implement the approved plan, maintain records of BMP inspection and maintenance and submit such records to DES within 30 days of receiving a request from DES. Any proposed changes to the plan shall not be implemented until approved by DES.

E-13. **Wastewater**: Wastewater shall be treated in accordance with DES approved individual subsurface sewage disposal systems permits and/or via all DES Groundwater Permit(s) issued for the treatment and discharge of wastewater from the Activity.

E-14. **Pre and Post-Construction Water Quality Monitoring Plan:** Prior to construction of the Activity the Applicant shall consult with DES to determine if a Pre and Post-Construction Water Quality Monitoring Plan (WQMP) is necessary. If directed by DES, the Applicant shall submit a WQMP for review and approval prior to construction. The Applicant shall then implement the approved plan.

F. APPEAL

Any person aggrieved by this decision may appeal to the N.H. Water Council ("Council") by filing an appeal that meets the requirements specified in RSA 21-O:14 and the rules adopted by the Council, Env-WC 100-200. The appeal must be filed directly with the Council within 30 days of the date of this decision and must set forth

fully every ground upon which it is claimed that the decision complained of is unlawful or unreasonable. Only those grounds set forth in the notice of appeal can be considered by the Council.

Information about the Council, including a link to the Council's rules, is available at http://nhec.nh.gov/ (or more directly at http://nhec.nh.gov/water/index.htm). Copies of the rules also are available from the DES Public Information Center at (603) 271-2975.

If you have questions regarding this Certification, please contact Owen David at (603) 271-0699 or Owen.David@des.nh.gov

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Eugene J. Forbes, P.E.
Director, DES Water Division

cc: Craig Wheeler, Raymond Town Manager
Carol Henderson, NH Fish and Game