



The State of New Hampshire  
**Department of Environmental Services**



**Robert R. Scott, Commissioner**

Ms. April Talon, Town Engineer  
Department of Public Works  
Town of Durham  
100 Stone Quarry Drive  
Durham, NH 03824

May 1, 2020

RE: Mill Pond Dam – D071003

Dear Ms. Talon;

In response to our recent discussions and your request to clarify the New Hampshire Department of Environmental Services, Dam Bureau's (NHDES) expectations regarding the agreement with the owner of the property at the dam's right abutment, I can offer the following information. As stated previously the dam is most appropriately, in accordance with NHDES's regulations, classified as a Low hazard dam (see below). Specifically, part (a) is supported by the modeling performed by Weston & Sampson and (b) applies as failure of the dam in the area of the right abutment would surely cause damage (low economic loss) to property owned by others.

Env-Wr 101.25 "Low hazard structure" means a dam that has a low hazard potential because it is in a location and of a size that failure or misoperation of the dam would result in any of the following:

- (a) No probable loss of life;
- (b) Low economic loss;
- (c) Structural damage to a town or city road or private road accessing property other than the dam owner's which could render the road impassable or otherwise interrupt public safety services;
- (d) The release of liquid industrial, agricultural, or commercial wastes, septage, or contaminated sediment if the storage capacity is less than 2 acre-feet and is located more than 250 feet from a water body or water course; or
- (e) Reversible environmental losses to environmentally-sensitive sites.

Should the Town of Durham choose to request a waiver to reclassify the dam to non-menace, the concession of NHDES to regulate the dam as a non-menace structure relies on the abutting property owner recognizing that dam failure will have a detrimental impact on its property and accepting the consequences associated with such an occurrence. You have indicated to me that the current owners may be willing to enter into an agreement that would absolve the town from any future claim related to the presence of, or damages caused by, the dam. Though somewhat simplistic, in our opinion such an agreement would signify recognition and acceptance on the part of the property owner and would be acceptable to NHDES. Also, so long as said agreement remains in place and is formally connected to the property (duly registered to run with the land and applicable to future owners), the dam will be regulated as a non-menace structure provided that no other conditions arise that necessitate a review of the hazard classification.

As we've discussed; however, it may be prudent that both parties evaluate any potential agreement to ensure that it considers potential occurrences and provides the terms necessary to protect the interests of each. Such concerns, from the town's perspective, could include securing rights of access for maintenance, operation, reconstruction, etc. if they do not currently exist. Access concerns will likely exist even if the removal alternative is chosen. Further, though the current owners may be satisfied with minimal terms, a poorly written or non-descriptive agreement could make it difficult for the town to meet its routine dam related needs or comply with future dam-related directives, if any, issued by NHDES.

[www.des.nh.gov](http://www.des.nh.gov)

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Mill Pond Dam #D071003

May 1, 2020

pg. 2

I hope this information is helpful to you, and please reach out with questions or concerns as needed as the Mill Pond Dam project moves forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve N. Doyon". The signature is stylized and cursive.

Steve N. Doyon, P.E.  
Administrator  
Dam Safety & Inspection Section

cc: Mr. Todd Selig, Durham Town Administrator  
Mr. Michael Lynch, Durham Public Works Director  
Mr. Peter Walker, P.E., VHB  
Ms. April Talon, Town Engineer, DPW, Town of Durham  
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