

**Review of draft rules proposed by the New Hampshire Wetlands Bureau.
All of the sections that will be identified stat with ENV–WT as part of the administrative rules.
By: Jim Gove, Chairman of the AGC Environment Committee**

Env-Wt 100

102.02

DES Draft Rules

“Abandoned” means a structure has not been maintained for 5 years in a functional and intact condition for its original intended use.

Comments/Concerns

102.02 ‘abandoned’ means a structure has not been maintained to five years in a functional and intact condition for original intended use. This definition is virtually impossible to administer, there should be a structural element that is part of this definition. Suggestion would be abandoned means a structure that has been neglected to the point that only 25% of the structure remains intact.

102.06

DES Draft Rules

“Active man-made pond” means a man-made pond that is necessary for or incidental to a preexisting or ongoing bona fide operation that has been maintained in an intact and functional condition for its original intended use. The term includes but is not limited to agricultural ponds, ponds to provide water for fire-fighting, aggregate wash ponds, and stormwater detention basins.

Comments/Concerns

102 .06 ‘active man-made pond’ should include golf course ponds. However, where is active man-made pond used in the rules or found in the law? Is it even used in the rules?

102.14

DES Draft Rules

“Bank” means the transitional slope adjacent to the ordinary high water mark of a surface water or wetland, the upper limit of which is usually defined by a break in slope at the top of a stream channel or shore for a surface water body, or a line delineated in accordance with Env-Wt 400 that indicates a change from wetland to upland for a wetland. The term includes “shoreline”.

Comments/Concerns

102.14 ‘bank’ needs to be better defined. – see “top of bank”

Is “shoreline” limited to bank? It is not clear that bank is an upland area to be protected.

102.24, .25, .26

DES Draft Rules

102.24 “CAT 1 project” means a project that, by virtue of its size and nature as described in Env-Wt 400 through Env-Wt 600 and Env-Wt 900, as applicable, is likely to have a negligible impact on jurisdictional areas by itself or in the aggregate so long as measures are employed to protect the environment, or a project for which design and implementation is supervised by a public resource agency. The term includes minimum impact project.

102.25 “CAT2 project” means a project that, virtue of its size and nature as described in Env-Wt 400 through Env-Wt 600 and Env-Wt 900, as applicable, has the potential to cause more than a negligible

impact on jurisdictional areas unless adequate measures are employed to protect the environment. The term includes minor project and minor impact project.

102.26 “CAT3 project” means a project that, by virtue of its size and nature as described in Env-Wt 400 through Env-Wt 600 and Env-Wt 900, as applicable, has the potential to significantly impact jurisdictional areas unless adequate measures are employed to protect the environment. The term includes major project and major impact project.

Comments/Concerns

CAT1, CAT2, CAT3

102.24 and 102.25 and 102.26. What was the reason for creating ‘CAT1’, ‘CAT2’ and ‘CAT3’ to replace minimum, minor and major. There seems to be no difference between the definitions of ‘CAT’ and project type. There seems to be no difference in requirements between ‘CAT2’ and ‘CAT3’ for most permitting. The introduction of the term ‘CAT’ these rules appears to be nothing but confusing.

Alternative would be to redefine minor as being 3,000 to 10,000 SF and major as greater than 10,000 SF of direct impact. While the terms CAT would separate the old rules from the new, the use of the older terms of minimum, minor and major will be more readily accepted, even if minor is redefined.

Further, there is no coordination with the Corps SPGP that was reauthorized in August of 2017. The project types are listed by the Corps as either SV (self-verification/minimum) or PCN (pre-construction notice/minor/major). There is no mention of CAT in any of the SPGP. CAT appears to be needless.

102.47

DES Draft Rules

“Drainage swale” means a shallow man-made trough through or in which stormwater runoff flows where the flows are insufficient to create a defined channel or maintain wetlands vegetation.

Comments/Concerns

102.47 ‘drainage swale’ should be identified as being non-jurisdictional and as being not a watercourse.

102.52

DES Draft Rules

“Ephemeral stream” means a watercourse that is located above the water table year-round and is not fed by groundwater, such that runoff from rainfall and snowmelt is the primary source of stream flow and so the stream has flowing water only during, and for a short duration after, precipitation or spring thaw events.

Comments/Concerns

102.52 ‘ephemeral stream’ needs to be further defined such as having a maximum drainage area. Suggestion – 10 acre drainage area. (Based upon Soil Conservation Service - NRCS recommendations to Town of Windham). The difficulty is that there is no clear dividing line between ephemeral and intermittent streams. Further, the Corps does not recognize a jurisdictional difference between ephemeral and intermittent streams.

102.57

DES Draft Rules

“Erosional features caused by proximate human activity” as used in RSA 482-A:3. IV (b) means scouring caused by stormwater runoff from developed areas. The term includes gullies, rills and other ephemeral

features that do not meet the definition of a watercourse and that re characterized by flows that are low volume, infrequent, and of short duration.

Comments/Concerns

102.57 ‘erosional features caused by proximate human activity’ needs to be further defined as non-jurisdictional.

102.74

DES Draft Rules

“Intermittent stream” means a watercourse that is fed by groundwater but is not in the groundwater table throughout the year, with runoff from rainfall and snowmelt as a supplemental source of water or flow, such that it typically does not have flowing water during dry portions of the year.

Comments/Concerns

102.74 ‘intermittent stream’ needs to be further distinguished from an ephemeral stream and can be distinguished if we include a minimum drainage area. Suggestion – greater than 10 acre drainage area. If not by drainage area, then by duration of flow during the spring or even a volume measurement.

103.17

DES Draft Rules

“Perennial stream” means a watercourse that is in the groundwater table for most of the year and so has groundwater as its primary source of water for stream flow, with runoff from rainfall and snowmelt as a supplemental source of water, so that it contains flowing water year-round during a typical year.

Comments/Concerns

103.17 ‘perennial stream’ needs to be further identified by using solid stream lines in USGS maps. Given the potential for repeated and prolonged droughts in the summer, there needs to be something other than visual observation of flows to determine perennial versus intermittent.

Poorly Drained

Comments/Concerns

Between 103.22 and 103.23 need to add the definition of poorly drained soil.

103.50

DES Draft Rules

“Self-mitigating” means that the environmental or public health benefits provided by a proposed project will be equal to or greater than the adverse impacts to jurisdictional areas caused by the proposed project.

Comments/Concerns

Is this definition consistent with use in 902.25?

103.54

“Significant function wetland” means a wetland:

- a. Having moderate to high characteristics as determined by a recognized and scientifically-defensible functional wetland assessment method or best available science; or
- b. Providing significant public benefit due to hydrologic integrity, water quality, or habitat functions, or any combination thereof,

Comments/Concerns

Where is this used in the rules? The term “significant wetland function” is used in the rules, but is not defined in section 101.

SPECIAL RESOURCE AREAS

103.58

DES Draft Rules

“Special resource area” means a jurisdictional area that:

- a. Is an exemplary natural community identified by the department of natural and cultural resources, natural heritage bureau (NHB);
- b. Has documented occurrences of rare or protected species or habitat for such species;
- c. Is a marsh with an area of one acre or larger;
- d. Is a scrub shrub wetland on very poorly drained soils,
- e. Is peatlands or bogs;
- f. Is flood plain wetlands on alluvial very poorly drained soils;
- g. Is a designated prime wetland or a duly established 100 foot buffer zone;
- h. Is a sand dune, tidal wetland, tidal water, or undeveloped tidal buffer zone;
- i. Is a tier 3 stream containing a cold water fishery; or
- j. Is any combination of (a) through (i), above.

Comments/Concerns

103.58 **Special resource area**: the term special resource area is not found in the RSA and has only been utilized under high-value wetland in the NHANRS report. This report has not been vetted by other organizations or agencies. It is also a mis-use of the information because it was to be used as a GIS vetting tool and not as a permitting tool. In addition the term special resource area has not been taken directly from the report, and has been modified. With no jurisdictional definition in the RSA of special resource area, my suggestion would be to remove it. If it is not removed then needs to be modified as noted below.

Special resource areas is similar to creating something akin to Prime Wetlands, but without the statutory support to do so. It creates a set of special wetlands, like Prime Wetlands, but does not have support under the RSA.

If the identification of special resource areas is retained, then “low value resource areas” should be added. These would identify resources areas that have low function and value and would require less scrutiny to be impacted. These low resource areas could be used to better define the minor projects and areas that would be allowed to be impacted without a full avoidance and minimization analysis.

Further, the Corps SPGP has its own definition of Special Resources that does not match the definition of Special Resource Areas. There should be consistency with the SPGP, or the term Special Resource Area needs to be changed.

103.58 Needs to be better defined. The issue is that D, E and F need to have size requirements placed upon them. Small inclusions of these types of wetlands should not make the entire wetland a special resource area. With the current definition of special resource area, a large portion of the wetland area in the state would be included.

103.68

DES Draft Rules

“Top of bank” means the first break in slope above the ordinary high water mark of a surface water or wetland, usually identified by physical characteristics such as a change in topography or a change in vegetation type.

Comments/Concerns

103.68 ‘Top of bank’ needs to be better define because it is difficult to administer. Suggestions: (1) the first slope above the OHWM where the slope is 8% or less, measured over a 25-foot span, at right angles to the OHWM boundary, or (2) just make the OHWM the top of bank, or (3) the point on the bank where the vegetation is not dominantly hydrophytic. Without a better definition, the conflicts over what is the bank will continue.

103.73

DES Draft Rules

“Vernal pool” means a surface water or wetland, including an area intentionally created for purposes of compensatory mitigation that provides breeding habitat for amphibians and invertebrates that have adapted to the unique environments provided by such pools and that:

- a. Is not result of on-going anthropogenic activities that are not intended to provide compensatory mitigation, including but not limited to:
 1. Gravel pit operations in a pit that has been mined at least every other year; and
 2. Logging and agricultural operations conducted in accordance with all applicable New Hampshire statutes and rules; and
- b. Typically has the following characteristics:
 1. Cycles annually from flooded to dry conditions, although the hydroperiod, size, and shape of the pool might vary from year to year;
 2. Forms in a shallow depression or basin;
 3. Has no permanently flowing outlet;
 4. Holds water for at least 2 continuous months following spring ice-out;
 5. Lacks a viable fish population; and
 6. Supports one or more primary vernal pool indicators, or 3 or more secondary vernal pool indicators.

Comments/Concerns

103.73 ‘Vernal pool’ needs to have an additional parameter providing viability of said pool. One wood frog or one amphibian or one invertebrate should not identify such an area as a viable vernal pool.

Suggestion is to add (b) (7) must have five more egg masses or more in a typical season.

Also, vernal pools need to be defined as being a water body and not a wetland.

Suggestion is to add (b) (7) Does not require hydric soil or dominance of hydrophytic vegetation and may not meet the criteria to be a vegetated wetland.

103.75

DES Draft Rules

“Watercourse” means any surface water that:

- a. Develops and maintains a defined scoured channel, with evidence of sediments transport, that:
 1. Is greater than 75 ft in length; or
 2. Is of any length and connected to another jurisdictional area at one or both ends; and
- b. Is not a drainage swale.

Comments/Concerns

103.75 ‘Watercourse’ add (C) is a jurisdictional area the boundaries of which is determined by the ordinary high water mark. Remove arbitrary 75 ft length, replace with “continuous channel that flows to a wetland area”.

Env-Wt 300

A general comment is that section 307 would be better as a best management practices manual rather than administrative rules. Utilization of the term ‘shall’ is not in keeping with Best Management Practices.

307.07

DES Draft Rules

Protection and Restoration of Vegetated Shorelines.

- a. Natural vegetated shorelines along nontidal and tidal surface waters and wetlands shall be maintained to the maximum extent practicable to protect water course stability, flood storage areas, water quality, wildlife breeding areas, fishery spawning areas, and critical habitat.
- b. Any shoreline vegetation disturbed during a project shall be re-established as specified in Env-Wq 1400 relative to a planting matrix for shore land restoration.

Comments/Concerns

Is shoreline limited to areas below top of bank? If above top of bank, then is not supported by RSA or case law.

307.13

DES Draft Rules

Property Line Setback

- a. As required by RSA 482-A:3, XIII(A), all boat docking facilities shall be at least 20 feet from the abutting property line, whether in tidal or in non-tidal waters.
- b. Subject to (c), below, no dredging, filling, or construction activity that is not covered by (a), above, that is covered by an LSA or for which an EXP or permits is required shall occur within 10 feet of an abutting property line.
- c. Subject to (d), below, if an applicant wishes to extend an activity that is covered by (b), above, closer than 10 feet to an abutting property line, the applicant shall obtain written consent from the affected abutter.

Comments/Concerns

307.13 ‘Property line setbacks’ (b) (c) remove within 10 feet of abutting property line. This is not supported by the RSA. The setback property lines is for temporary seasonal docks only under the RSA.

308.01

DES Draft Rules

Activities Exempted By Statutes from Permit Requirements. A permit under RSA 482-A shall not be required prior to undertaking any of the following activities in any jurisdictional area:

- a. As specified in RSA 482-A: 3, IV (a) and as clarified in Env-Wt 308.02(a) and (b), the replacement or repair of existing structures in or adjacent to any waters of the state that does not involve excavation, removal, filling, or dredging in any waters or of any bank, flat, marsh, or swamp;
- b. As specified in RSA 482-A:3, IV (b), subject to the conditions listed in (c), below, the maintenance, repair, replacement, or modification so as to preserve usefulness of:
 1. Man- made non-tidal drainage ditches;
 2. Roadside and railroad ditches;
 3. Detention basins, ponds, and wetlands that have been legally constructed to collect convey, treat, or control storm water and spring run-off;
 4. Legally constructed ponds on active farms;
 5. Erosional features caused by proximate human activity;
 6. Fire ponds and intake areas of dry hydrants that have been legally constructed to provide water for municipal firefighting purposes as approved by a local fire chief; and
 7. Aggregate wash ponds, sluiceways, and other legally constructed man-made water conveyance systems that are used for the commercial or industrial purpose of collecting, conveying, storing, and recycling water;
- c. As specified in RSA 482-A:3, IV(b), the activities listed in (b), above, shall be undertaken without a permit only if:
 1. The exempted facility, area, or feature was not constructed as mitigation under a wetlands permit or as part of a settlement agreement;
 2. The exempted facility, area, or feature is not extended into any jurisdictional area;
 3. Dredged materials are deposited outside of all jurisdictional areas;
 4. Best management practices are followed; and
 5. The work does not infringe on the property rights or unreasonably affect the value or enjoyment of property of abutting owners.
- d. As specified in RSA 482-A:3, IV (c), the cleaning of legally constructed culverts as necessary to preserve their usefulness, provided:
 1. The conditions stated in (c), above, are met; and
 2. Any repair, replacement, or modification of a culvert is in accordance with RSA 482-A:3, XVI;
- e. As specified in RSA 482-A:3, VII and as clarified in Env-Wt 308.02(c), the removal of sand that has blown or drifted onto any lawn, driveway, walkway, parking or storage area, or boat ramp, or that has blown or drifted in, on, or around buildings or other structures owned by the person;
- f. As provided in the definition of “structure” in RSA 482-A:2, IX, the construction or installation of a bench, a landing with dimensions no larger than 10 feet wide by 10 feet long, or stairs with a width not exceeding 6 feet, provided that:
 1. The construction or installation is done without regarding or recontouring the shoreline; and
 2. No portion of the bench, landing, or stairs is over water; and
- g. As provided in RSA 201:9, II, the destruction or removal of a beaver dam or the installation of beaver pipes or beaver fences as defined in RSA 201:9, II-a by a landowner, the landowner’s agent, or any town or municipal or state official or employee on property under that person’s control to protect property, public highways, or bridges from damage or submersion, subject to the following conditions:
 1. Removal of the dam shall be done in a gradual manner such that it does not allow a sudden release of impounded water so as to cause erosion, siltation, or a safety hazard downstream;

2. No machinery shall enter the water or otherwise create any disturbance by filling or dredging in or adjacent to surface waters, wetlands, or the banks thereof; and
3. All dredged materials shall be placed out of jurisdictional areas.

Comments/Concerns

308.01 ‘activities exempted by statute for permitting requirements’: add under (b) golf course ponds.
Add: (h) borings and excavation for the purpose of wetland delineation or geologic sampling.
Add: (i) borings and excavation for the purpose of maintenance of utility lines.

308.02

DES Draft Rules

Clarification of Statutory Exemptions

- a. If a structure that will be repaired or replaced pursuant to RSA 482-A:3, IV (a) has a portion located below the water surface at time of such repair or replacement and the below-water portion will also be repaired or replaced, a permit shall be obtained prior to undertaking any work on the below- water portion.
- b. If a permit is required by (a), above, the applicant shall submit, with the application for the permit, proof that the structure the applicant is proposing to repair or replace is an existing legal structure as defined in Env-Wt 101
- c. Sand that has blown or drifted from a sand dune onto a lawn, driveway, walkway, parking area, storage area, or boat ramp, or that has blown or drifted into, onto, or around any structure may be removed by the owner without a permit pursuant RSA 482-A:3, VII.
- d. A structure shall qualify for a statutory exemption only if the structure:
 1. Was legally constructed; and
 2. Has been maintained so as to continue its intended use when originally constructed, and not abandoned or overgrown.
- e. An erosional feature, such as a small erosion gully or rill, may be smoothed and filled and stabilized as necessary to protect water quality where adjacent to developed area, provided that the erosional feature is within the area approved to be impacted by a permit, the work shall comply with the approved plans and permit.
- f. A legally-constructed ditch may be cleaned out and maintained to remove deposited silt or sediment, but shall not be lowered to drain or dewater adjacent wetland or surface waters.
- g. All exempt activities shall be done in accordance with all applicable conditions in Env-Wt 307.

Comments/Concerns

308.02 ‘Clarification of statutory exemptions’: add work in a drainage swale.

308.06

DES Draft Rules

Post-Notification Requirements for SPNs.

- a. Prior to commencing the work covered by the SPN, the person responsible for the project shall post at the site:
 1. A copy of the SPN posted by the department; and

2. If applicable, the notice for forestry projects.
- b. Within 10 days following completion of the work covered by the SPN, the person responsible for the project shall submit to the department confirmation of completion of the project, wither by paper copy or electronically, with dated, labeled, photograph(s), mounted on 8 ½” x 11” sheets if submitted in paper copy, or digital photo(s) if submitted electronically, depicting each area impacted by the work.

Comments/Concerns

308.06 Post – notification requirements for SPN’s:-- these requirements are not supported by the RSA for utility providers.

309.01

DES Draft Rules

Applicability. This part shall apply to those activities that can be undertaken without an EXP or a standard permit.

Comments/Concerns

By rule vs by statute? Permit by Rule vs not needed by permit? Still activities in wetlands that do not require a permit?

309.02

DES Draft Rules

Projects Conditionally Authorized By Rule. As authorized by RSA 482-A:11, VII, the following activities may be undertaken without obtaining a standard permit or an EXP and without notifying the department or registering the activity with the department, provided the conditions stated in Env-Wt 307 and the conditions stated below are met:

- a. Mowing or other cutting of vegetation in a wet meadow, re maple swamp, hemlock swamp, or white pine swamp, subject to the following conditions:
 1. The roots of the vegetation shall not be disturbed;
 2. The ground shall be frozen or sufficiently dry to avoid making ruts;
 3. If the work is done when the ground is frozen, all disturbed area shall be stabilized once thawed; and
 4. The project shall not be located in an area having very poorly drained soils or in a special resource area;
- b. B. placement of a boat mooring, swim raft, or swim line in waters of the state, provided that the mooring, raft, or line has a permit from the department of safety or the harbor master, as applicable;
- c. Contemporary placement of a fabric barrier on the bottom of the lake or pond by or under the direction of the department for the control of exotic aquatic weeds as authorized by RSA 487:17, subject to the following conditions:
 1. The area shall not exceed 10,000 SF; and
 2. The project shall not be located in a marsh of any size or a special resource area as defined in Env-Wt 100;
- d. Installation of a stream crossing in an ephemeral stream that is not connected to any jurisdictional area;
- e. Use of piezometers, staff gauges, flow meters, or hand tools such as augers or tile spades for:
 1. Determining limits of jurisdictional wetlands;

2. Determining stability of shoreline for data to be included in a wetlands application;
 3. Educational purposes; or
 4. Monitoring hydrology;
- f. Hand raking of leaves or other organic debris from the shoreline or lake bed, subject to the following conditions:
1. All raking shall be done in an area exposed by drawdown or other low-water conditions;
 2. The raking shall not disturb vegetative roots; and
 3. The raking shall be limited to an area no larger than 900 SF;
- g. The planting of non-invasive vegetation to enhance wetlands using hand-held, non-motorized tools; and
- h. Any stream crossing built landward of the top of one bank to landward of the top of the opposite bank so as not to impact jurisdictional areas.

Comments/Concerns

309.02 (d) is an expansion of stream crossing guidelines by saying that a crossing of ephemeral stream that is not connected to any jurisdictional area. This restriction is not currently in place before. The jurisdictional expansion is saying that the stream cannot be connected to a jurisdictional area. What ephemeral stream does not eventually drain to another jurisdictional area?

309.03

DES Draft Rules

Activity Registrations for Below-Surface Work.

- a. As authorized by RSA 482-A:11, VII, the activities specified in (b), below, may be undertaken after registering as specified in Env-Wt 309.05 provided:
 1. The conditions listed in Env-Wt 309.03 are met, together with any project-specific conditions or limitations specified in (b), below;
 2. The entity undertaking the project provides the landowner, the local governing body, and the municipal conservation commission, if any, with written notification of the general location and the type of work to be conducted not less than 5 working days prior to commencing the work; and
 3. If the entity undertaking the project does not own the property on which the work will take place, the entity provides the department and the local governing body with a copy of the written access agreement signed by the landowner or the landowner's authorized agent or the court order granting access.
- b. The registrations established by this section shall apply to the following activities:
 1. Drilling geotechnical borings during the design of a public project or for a dug-in basin for a boathouse as provided in Env-Wt 519;
 2. Test pitting by backhoe or other heavy equipment in the banks of surface waters or in the upland tidal buffer zone for the purpose of gathering geotechnical information for the design of a public project;
 3. Drilling test wells or installing monitoring wells for purposes of exploring for public water supplies or soil or groundwater contamination;
 4. Drilling drinking water wells for public or private use; and
 5. Undertaking site remediation activities approved by the department pursuant to Env-Or 600, subject to the following additional conditions:
 - a) The information submitted to the department on which the approval for the activities was issued shall have:
 1. Clearly identified all jurisdictional areas; and
 2. Clearly described the activities that will occur within jurisdictional areas; and

- b)The entity undertaking the activities shall provide the department’s wetlands bureau and the local governing body with written notification of the commencement of work as soon as practicable, but in no event later than 5 working days after commencing work.

Comments/Concerns

309.03 What RSA specifies that there be notification to the landowner, local governing body, and the municipal conservation commission five working days prior to commencing the work?

Why are borings only allowed for public projects? If borings are required for environmental determinations or are required by other regulations, why shouldn’t they be allowed? One does not install test wells on a whim. These are typically required by regulation or by the need to monitor for specific reasons. Privately installed wells for monitoring should be allowed under this section.

309.05

DES Draft Rules

Registrations for Activities Covered by Env-Wt 309.03. The person responsible for undertaking an activity covered by Env-Wt 309.03 shall registered the activity by providing the following to the department in writing:

- a. The name, mailing address, and website URL, if any, of the person responsible for the activity and, if the person is other than an individual, the name, daytime telephone number, and email address of an individual who will serve as the person’s point of contact for the activity;
- b. The type to be undertaken;
- c. The location of the activity; and
- d. The estimated start date for the activity and the anticipated length of time the activity will take to complete.

Comments/Concerns

309.05 What RSA specifies the registering of an activity? Is it a permit or is it allowed without a permit? It is not clear what a registration is and if it constitutes an approval of an activity.

310.01

DES Draft Rules

EXP Submission Requirements. To obtain an EXP, the applicant shall submit to the department the following, on or with an application from:

- a. The applicant’s name, mailing address, and daytime telephone number;
- b. Information on the proposed project location, including:
 1. The location of proposed project by street address and tax map and lot number;
 2. A copy of town tax map showing the location of the proposed project in relation to abutters;
 3. A list of abutters’ names and mailing addresses to cross-reference with the tax map;
 4. A copy of the appropriate US geological survey map with the property and project located;
 5. Name of water body, wetland, or other jurisdictional area where work is proposed;
 6. Original photos, clearly showing the area to be impacted, mounted on 8 1/2” x 11” paper and annotated to explain impact;
 7. Whether the proposed project location is in a special resource area; and
 8. The results and identification number of the NHB DataCheck;
- c. Information on the proposed project, including:
 1. Identification of the applicable CAT1 provision in Env-Wt 500;

2. A brief description of the project, outlining the scope of work to be performed, including the detailed dimensions of the size of the impacts in jurisdictional areas;
3. Identification of the type of landform to be affected, including the type of wetland and type of soils, from the list in Env-Wt [insert xref when available];
4. An accurate drawing with detailed dimensions clearly annotated to document existing site conditions and to show the impact of the proposed activity on jurisdictional areas detailing the precise location of the project;
5. The number of linear feet of shoreline frontage for projects located on water bodies;
6. The linear distance of the project from abutting property boundaries;
7. As applicable:
 - a. The type of dock construction;
 - b. The diameter of culvert(s) to be used for road or driveway crossings;
 - c. The additional information specified in Env-Wt [insert xref] for low impact agricultural applications;
 - d. Plans for maintenance of retaining walls, as specified in Env-Wt [insert xref]
 - e. Specifications and plans for maintenance of rip-rap, as required by Env-Wt [insert xref];
- d. A signed statement by the applicant certifying that:
 1. The proposed project meets the conditions and limits of the applicable low impact project rule;
 2. All abutters have been notified;
 3. If the project is to repair or replace a docking structure, the docking structure is an existing legal structure;
 4. The proposal is the alternative with the least adverse impact to jurisdictional areas, as required by Env-Wt [insert xref];
 5. The project is not located in a special resource area; and
 6. The applicant is aware of the limits of the EXP and understands and will comply with all conditions in the EXP and all applicable conditions in Env-Wt 307;
- e. The application fee for minimum impact projects as required by RSA 482-A:3, I;
- f. A signed statement by the county conservation district or certified wetland scientists, where required by the appropriate CAT1 project rule, certifying compliance with all conditions of that rule; and
- g. A signed statement by the municipal conservation commission certifying that the commission:
 1. Waives its right to intervene per RSA 482-A:11, III;
 2. Recommends approval of the application; and
 3. Believes that the application and the submitted plans accurately represent the proposed project.

Comments/Concerns

310.01 Expedited permits submission requirements: what the provisions if the conservation commission does not sign a statement or the applicant does not wish to go the municipal conservation commission? These requirements raise the level of an expedited application to the level of a standard application. The expedited permit application has not been simplified at all. What if there is no conservation commission? Does this mean that all expedited permits not signed by a conservation commission go to standard review?

310.03 (a)

What is the duration of an expedited permit? Can it be amended? Where does the 12 month limit come from? Is it supported by RSA?

311.01

Original Text

Pre-Application for All Projects. Prior to finalizing the details of a proposed project for which a standard permit is needed, the applicant shall: ³

- a. Have all jurisdictional areas delineated and classified by a certified wetland scientists, who also shall identify the predominant resource function of each jurisdictional area;
- b. Use the links provided in table 311-1 to identify protected species and habitat, designated rivers, prime wetlands, impaired waters, floodplains, and stream crossings on the subject property:
Table inserted here (pg 23)
- c. If the NHB DataCheck Tool identifies any areas of concern, determine how to avoid and minimize project-related impacts on the resource by coordinating with:
 1. The NH fish and game department (NHF&G) for rare or protected animal species and habitat; and
 2. The department of natural and cultural resources, natural heritage bureau (NHB) for protected plants or exemplary natural communities;
- d. If the proposed activity impacts very poorly drained soils or a special resource area, then:
 1. Review and complete the standard application criteria and design requirements and provide and additional minimization and avoidance design features; or
 2. Propose compensatory mitigation in accordance with Env-Wt 800
- e. Consult with the local conservation commission, if any, by providing a draft copy of the application and plans to the local conservation commission at least 30 days prior filing an application with the department, and address any comments or concerns raised;
- f. For work proposed within ¼ mile of the designated river corridor, consult with the LAC, if applicable, by providing a draft copy of the application and plans to the LAC at least 30 days prior filing an application with the department, and address any comments or concerns raised;
- g. Review the requirements for establishing need as specified in Env-Wt 313.03; and
- h. Ensure that impacts have been avoided and minimized to the greatest extent practicable, as specified in Env-Wt 313.04 and “Best Management Practices for Avoidance and Minimization...”, published by NEIWPC and dated 2018.

Comments/Concerns

311.01 The inclusion of proposed activities that impact very poorly drained soils or a special resource area that must provide compensatory mitigation as an expansion of jurisdiction. Further very poorly drained soils are not defined in the rules. Very poorly drained soils by themselves do not make a special resource area. Very poorly drained soils are relatively common in the center of the larger wetland areas. What is the statutory basis for requiring 30 days prior notice to CC and LaC? This particular section expands the criteria for mitigation and for length of permitting time.

311.02

DES Draft Rules

Pre-Application Requirements for Projects Requiring Compensatory Mitigation. Prior to finalizing the details of a proposed project that is required by Env-Wt 313.04 to provide compensatory mitigation, the applicant shall:

- a. Undertake the reviews and responses required by Env-Wt 311.01;
- b. Evaluate permittee-responsible mitigation as defined in Env-Wt 802.05;
- c. If permittee-responsible mitigation is not feasible, prepare:

1. An explanation of what was considered and why restoration, enhancement, or creation of wetlands on the subject property as specified in Env-Wt 803.10(c) and Env-Wt 803.10(d) is not a feasible alternative; and
 2. A statement that an in-lieu mitigation payment that can be pooled with similar payments from other projects as contemplated by RSA 482-A:28 is the chosen form of mitigation, with the amount to be calculated in accordance with RSA 482-A:30 or RSA 482-A:30-a, as applicable;
- d. At least 30 days but not more than 90 days before submitting the application schedule and attend a pre-application meeting with the department to discuss the proposed project and all applicable requirements and to coordinate the review of the compensatory mitigation proposal;
- e. Bring all information collected or otherwise prepared pursuant to Env-Wt 311.01 and (a)-(c), above, to the meeting; and
- f. Provide the following information to the department at or prior to the meeting, as applicable to the type of mitigation proposed:
1. The location of the proposed project site and whether the project is located in any area designated in the New Hampshire Fish & Game Department Wildlife Action Plan (WAP) as highest-ranked habitat based on ecological conditions;
 2. If impacts is to wetland resources, the wetland classification as identified on the national wetland inventory maps available from New Hampshire statewide geographic information system clearinghouse, NH GRANIT, accessible at <http://www.granit.unh.edu/>;
 3. The location of the proposed mitigation project, including whether the project is located in any area designated in the WAP;
 4. The type of compensatory mitigation proposed;
 5. Aerial photographs of the proposed project site and compensatory mitigation site and surrounding areas, if available;
 6. Historic information regarding the compensatory mitigation site, if available;
 7. A brief narrative explaining the project impacts and how the proposed compensatory mitigation will offset the loss of functions and values of the wetlands that would be impacted by the project for which the permit is sought; and
 8. An estimated date for submitting a complete mitigation proposal.

Comments/Concerns

311.02 The suggestion is that the payment into the ARM fund is the preferred alternative mitigation. The functions and values lost by the impacts will be used to determine the amount of payment into the ARM fund, with less valuable wetland having a lower payment per square foot into the fund versus more valuable wetlands having a higher payment per square foot into the fund. The proposed ARM fund payment will be reserved for use by the municipality in which the impacts occur for the duration of one year after payment into the fund, which the municipality has exclusive rights to access the funds if the project meets the criteria of the selection committee. After one year, the funds become available in the general ARM fund.

311.03 (b) (9)

What is the purpose of requiring a functional assessment of all wetlands on the project site? If it is not being impacted, why are they being assessed? Avoidance should mean that time and money is not spent on a wetland that is being avoided. Beyond adding to some scientific data base, what is the permitting purpose of assessing the functions of a wetland that will not be impacted?

311.05

DES Draft Rules

Required Project Plans.

- a. The applicant shall provide the following information on one or more plan sheets that conform to (c), below:
 1. The name of the applicant, and if the applicant has not yet acquired an enforceable proprietary interest in the property, each owner of the subject property as of the date the application is prepared;
 2. The tax map, block, unit, and lot number of each parcel in the subject property;
 3. The date each plan was originally prepared and the date of each revision, if any;
 4. The name and professional license number of the individual responsible for each portion of the plan, such as the wetland delineation, the survey, and the engineering;
 5. An overview of the property and proposed impact areas in relation to property lines;
 6. All existing and proposed easement boundaries, including drainage and maintenance access easements, in relation to the property lines;
 7. Roadway stations shown every 100 feet;
 8. Any impacts proposed to a right of way over another's land;
 9. The footprint and vertical dimensions of each existing structure, each proposed structure, and all other relevant features necessary to clearly define the project;
 10. A leveled north pointing arrow that points true north to indicate orientation;
 11. A legend that clearly identifies all symbols, line types, and shading used on the plan;
 12. The location of jurisdictional areas delineated in accordance with Env-Wt 406, and whether any have been designated as prime wetlands in accordance with RSA 482-A:15;
 13. The name and professional license number of the individual responsible for the delineation of jurisdictional areas, including but not limited to wetlands, streams, vernal pools, and top of bank, on the property, if other than the individual identified as being responsible for the plan pursuant to (4), above;
 14. All shorelines and surface waters on or within 100 feet of the subject and, if applicable, all coastal features as described in Env-Wt 6XX including but not limited to all sand dunes and all areas within 100 feet of the highest observable tideline;
 15. The location of the 100-year floodplain, if on or within 100 feet of the subject property;
 16. If the topography is to be permanently altered, existing and proposed final contours at intervals not greater than 2 feet in all areas to be disturbed and within 250 feet thereof, and all reference elevation referenced to the North American Datum of 1983 (NAD 83) or its successor;
 17. Labeled and lightly shaded or stippled areas indicating limits of all temporary and permanent impacts in jurisdictional areas;
 18. Proposed methods of erosion, siltation, sedimentation, and turbidity control and management, indicated graphically and labeled with the type of control and the contractor responsible for monitoring the controls if known at the time of the application;
 19. If the project proposes the subdivision of land, the location of all proposed lot lines on one or more plans stamped by a land surveyor or a professional engineer licensed pursuant to RSA 310-A;
 20. If the project involves construction of vegetative stabilization, bioengineering, rip-rap slope, retaining wall, or other bank stabilization structure, the information required by Env-Wt 500 or Env-Wt 600, as applicable; and
 21. All information necessary to clearly delineate and describe the project, including any project-specific information specified in Env-Wt 500 or Env-Wt 600, as applicable.
- b. Plans depicting wetland boundaries that are submitted with an application for a standard permit shall:
 1. Show the location of any wetland delineation observation plots if required by the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, January 1987, or

the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region, US Army Corps of Engineers, 2012;

2. Show the location of the individual wetland boundary flags or other markings, as located by a NH licensed land surveyor;
 3. Be stamped by the NH-licensed land surveyor who located the flags or other markings;
 4. If prepared by a certified wetland scientist, be stamped by the certified wetlands scientist who prepared the plan(s) or who oversaw the wetland boundary delineation if done by an apprentice or an associate who is not a certified wetlands scientist;
 5. If not prepared by a certified wetlands scientist, be accompanied by a report that includes an existing conditions plan that has been prepared and stamped by a certified wetlands scientists;
 6. If prepared by a homeowner acting on his or her own behalf for the development of the homeowner's primary residence, be signed by the homeowner in accordance with Env-Wt 311.11;
 7. Include notes that specify:
 - a. The date(s) the wetland boundary flags or other markings were placed on the site;
 - b. The date(s) on which the wetlands delineation was performed;
 - c. The method of delineation; and
 - d. The location of any wetland delineation observation plots identified pursuant to (1), above; and
 8. Be accompanied by:
 - a. a report of existing conditions, if the jurisdictional areas have not been disturbed; or
 - b. US Army Corps of Engineers data sheets, if disturbed conditions exist.
- c. Each plan sheet shall:
1. Include a title block in the lower right-hand corner that contains:
 - a. The information specified in (a)(1)-(3), above; and
 - b. The scale of the plan as specified in (3), below, with a graphical scale bar;
 2. Be white paper that is either 8.5x11 inches or 22x34 inches;
 3. Be at a scale of inch equals 50 feet for subdivisions, otherwise at a scale of one inch equals 400 feet or a scale that provides greater detail;
 4. Be numbered consecutively and include an index sheet if more than one sheet; and
 5. If on paper that is larger than 8.5 inches by 11 inches, be folded to that size with the title block facing up.

Comments/Concerns

311.05 Under (a) (4) add professional license or certification number of the individual responsible.

311.05 (a) (7) Is this level of detail needed?

311.05 (b) (1) & (2) showing every data plot and each individual boundary flag is going to create very cluttered plans that will be difficult to read. If data plots are required, they can be shown on one plan, as can the wetland boundary flags. But to have them on every plan will make the plans hard to read.

311.05 (a) (16) add: and within 250 feet "on site". Cannot be responsible for off-site areas that would result in trespass.

311.05 (b) (1) Remove the requirement for wetland delineation observation plots, or make it clear when and where plots are to be collected. Suggestion: at areas of direct impact. There is no clear reference to the number or extent of wetland delineation plots required in the manual.

(b) (6) the preparation of wetland delineation plan by a homeowner acting on his or her own behalf is not allowed by law.

There is no allowance for electronic submissions. There is no allowance for ledger sized paper which can be folded to 8.6 x 11.

311.06 (b) (1) & (2) these are relic suggestions on how photos are to be “mounted”. They are scanned or printed directly from the digital format.

311.07

DES Draft Rules

Avoidance and Minimization Narrative.

- a. The applicant shall submit with the application a written narrative that explains how all probable impacts to functions and values of all jurisdictional areas have been avoided and minimized to the maximum extent practicable, as required by Env-Wt 313.04(a).
- b. The explanation required by (a), above, shall include the following:
 1. Whether the primary purpose of the proposed project is water-dependent or requires access through wetlands to reach a buildable lot or portion thereof;
 2. For commercial development, whether any other properties reasonably available to the applicant, whether already owned or controlled by the applicant or not, could be used to achieve the project’s purpose without altering the functions and values of any jurisdictional area, in particular wetlands, streams, and special resource areas;
 3. Whether alternative designs or techniques, such as different layouts, different construction sequencing, or alternative technologies could be used to avoid impacts to jurisdictional areas or their functions and values on the subject property or on other property that is reasonably available to the applicant; and
 4. Whether the feasible alternatives that would not alter the functions and values of any jurisdictional area on the subject property or on property that is reasonably available, if incorporated in the proposed project, would adversely affect public health, public safety, or the environment.

Comments/Concerns

311.07 Avoidance and minimization narrative: this is a high bar for all Standard projects, especially for minor projects with no mitigation. It is reasonable that this level of detail used for projects that are major or over 10,000 ft.² of direct impact. But, for projects that are minor and less than 10,000 ft.² should be a lesser standard for avoidance and minimization.

311.08

DES Draft Rules

Required Information for Projects with Compensatory Mitigation. For any project for which compensatory mitigation is required, the applicant shall submit the following as part of the application:

- a. The type of compensatory mitigation to be proposed by the applicant and, if permittee-responsible mitigation will be proposed, the following preliminary information:
 1. If preservation of an upland buffer is being proposed as compensatory mitigation:

- a. A draft baseline documentation report that describes current property conditions and includes photographs that have been taken in the absence of snow cover that clearly and accurately show the nature and condition of the buffer area; and
- b. A summary of the conservation values and goals for the proposed preservation area that will be incorporated into the final conservation easement;
- 2. If wetland restoration, enhancement, or creation is being proposed as compensatory mitigation, a draft plan noting the location of the project and a summary of the proposed measures to achieve wetland restoration, enhancement, or creation; and
- 3. If restoration or enhancement of a stream is being proposed as compensatory mitigation, a draft plan showing the location of the project and a summary of the proposed measures to achieve stream restoration or enhancement; or
- b. A complete mitigation proposal as specified in Env-Wt 312.04.

Comments/Concerns

311.08 Required information for projects with the compensatory mitigation: remove the term creation since it is not allowed. The Corps has made it clear that creation will not be approved.

311.11

DES Draft Rules

Required Signatures and Certifications. Any notice, registration, or application required to be filed under this chapter shall be signed, dated, and certified as follows:

- a. If the applicant is an individual, the applicant shall sign and date the application;
- b. If the applicant is an organization or other legal entity, the official of the applicant who has been authorized to sign the application shall sign and date the application and print or type his or her name and title on the application;
- c. If the applicant has an authorized agent, the authorized agent also shall sign and date the application and print or type his or her name and title on the application;
- d. Each signature provided pursuant to (a)-(c), above, shall constitute certification by the signer that:
 - 1. To the best of the signer's knowledge and belief, all required notifications have been provided;
 - 2. The information submitted on or with the application is true, complete, and not misleading to the best of the signer's knowledge and belief; and
 - 3. The signer understands that:
 - a. The submission of false, incomplete, or misleading information constitutes grounds for the department to:
 - 1. Deny the application;
 - 2. Revoke any approval that is granted based on the information;
 - 3. If the signer is a certified wetlands scientist, licensed surveyor, or professional engineer licensed to practice in New Hampshire, refer the matter to the joint board of licensure and certification establishment by RSA 310-A:1; and
 - b. The signer is subject to the penalties specified in New Hampshire law for falsification in official matters, currently RSA 641; and
- e. Each signature provided pursuant to (a) or (b), above, shall constitute authorized for the municipal conservation commission and the department to inspect the site of the proposed project.

Comments/Concerns

311.11 Required signatures and certification: remove the term "incomplete" in (d) (3) (a). While the terms false and misleading would constitute grounds for the department to notify the board of natural

scientists being” incomplete” would not be. Incomplete may include information (such as vernal pool assessments) that were not done, or was the wrong time of year. Incomplete could be a simple error. How many times are the applications incomplete before the joint board is involved? Incomplete is not an acceptable reason for a complaint to the joint board.

311.13

DES Draft Rules

Amendments to Applications.

- a. Subject to (b), below, an applicant may amend the application by submitting the information required by Env-Wt 311.03 for the revised project prior to the department’s issuance of a final decision on the application. The applicant shall provide notice to each person to whom notice of the original application was sent prior to filling the amended application with the department.
- b. As established in RSA 482-A:3, XIV€, the following shall require a new application, not an amendment to an existing application:
 1. A change in the proposed acreage of the permitted fill or dredge area by 20% or more;
 2. A relocation of the proposed footprint of the proposed fill or dredge area; and
 3. Any revision that includes
 - a. A prime wetland or surface water of the state;
 - b. A wetland of a different classification; or
 - c. Non-wetland areas requiring permits for filling and dredging.

Comments/Concerns

311.13 Amendments to applications: this section should be removed completely. It is typical for applications to be amended during the course of review and to limit amendments in the way that is listed does not allow for the communication that should take place between the applicant and the department. Further there is nothing in the law that talks about limiting amendments to applications. Even reductions of impacts by more than 20% or moving the impacts to less valuable by is a different classification would result in a new permit being required. If the department decided that an increase of more than 20% wetland impact would be better for the overall environment because the impacts are being directed to less valuable wetlands, that two would trigger a new permit.

311.13 (b) (3) (c) the term non-wetland areas requiring permits for filling and dredging does not appear to make sense, nor is it in the RSA.

312.03 Completeness Determination of Compensatory Mitigation Proposals

Who will be making this determination? Is this an administrative review or a technical review? Should this be located in section 800?

312.04

DES Draft Rules

Complete Mitigation Proposal Components. The applicant shall provide the following information in order for a compensatory mitigation proposal to be deemed a complete mitigation proposal:

- a. Where preservation of an upland buffer is being proposed, information showing that the proposal meets the criteria specified in Env-Wt 804 together with the following:
 1. A final baseline documentation report that describes current property conditions and includes photographs that have been taken in the absence of snow cover that clearly and accurately show the nature and condition of the buffer area;

2. A copy of the proposed conservation easement language or language noting conveyance of fee simple ownership which protects the conservation values in perpetuity, in accordance with Env-Wt 808.14;
 3. A surveyed plan, in accordance with Env-Wt 808.11, showing the location of the proposed conservation area boundaries; and
 4. A statement from the proposed grantee indicating that the proposed grantee will accept the easement or fee simple deed;
- b. For any proposal calling for a transfer of easement or fee simple ownership, documentation showing that the proposed grantee is one of the following:
1. A state of natural resource agency such as the fish and game department or the department of resources and economic development;
 2. A municipality with a conservation commission in the town where the property is located; or
 3. A conservation organization such as a state-wide, regional, or local conservation organization that can provide documentation from the United States Internal Revenue Service stating that it is an income tax exempt, publicly supported corporation, pursuant to 501 (c)(3) of the United States Internal Revenue Code;
- c. For any proposal calling for a transfer of easement or fee simple ownership to a conservation organization, documentation showing that the conservation organization has:
1. Accepted the Land Trust Alliance (LTA) standards and practices as specified in “LTA Standards and Practices”, revised 2004, or adopted equivalent standards and practices; or
 2. A record of holding easements and managing them in a manner that is consistent with that purposes of the easements;
- d. Where restoration, enhancement, or creation is being proposed as compensatory mitigation, information showing that the proposal meets the criteria specified in Env-Wt 805 or Env-Wt806, as applicable, together with all required plans and proposals; and
- e. For an applicant who has determined that permittee-responsible mitigation is not feasible as specified in Env-Wt ???, the information required by Env-Wt ??? and a preliminary estimate of the in-lieu mitigation payment.

Comments/Concerns

312.04 Complete mitigation proposal components: remove the term creation as is never allowed and the ARM fund should be the first choice. Town where impact will occur should have first chance to apply for a mitigation project.

313.03

Original Text

Demonstration of Need for Impacts to Jurisdictional Areas.

- a. The department shall not approve any alteration of any jurisdictional areas unless the applicant has demonstrated the need, as described in (f), below, for the proposed impacts to such areas.
- b. There shall be a presumption that there is no need for any impacts to the following jurisdictional areas:
 1. Salt marshes and other tidal wetlands, due to their high productivity and rarity and the difficulty in restoring the functions and values of such areas, and due to the ability of the tidal buffer area to enhance habitat values in the adjoining tidal wetland and to protect tidal environments from potential sources of pollution;
 2. Bogs and fresh water marshes, due to the rarity of such areas and the difficulty in restoring the functions and values of such areas; and

3. Other special resource areas, due to their high value and public benefit, and the difficulty in restoring the functions and values of such areas.
- c. There shall be a presumption that there is no need for any impact to surface waters, except for:
 1. The limited right of a shoreline property owner to wharf out or to stabilize the property's shoreline;
 2. The need to cross a stream that is not a special resource to access developable upland; and
 3. A request proposed, sponsored, or administered by the New Hampshire department of transportation as provided in RSA 482-A:3, I-a.
- d. To overcome the presumption established in (b) or (c), above, the applicant shall demonstrate need, as described in (f), below, by clear and convincing evidence.
- e. In areas not covered by the presumption established in (b) or (c), above, the applicant shall demonstrate need, as described in (f), below, by a preponderance of the evidence.
- f. Need for the proposed impact shall be found only if the applicant demonstrates that:
 1. No less-impacting alternative for using the subject property exists that:
 - a. Is consistent with applicable zoning and planning requirements;
 - b. Allows the applicant a reasonable use of the subject property; and
 - c. Is practicable; and
 2. Either:
 - a. The proposed impacts are consistent with the interests of the public as described in RSA 482-A:1 and would provide no degradation or loss of any part of a wetland or jurisdictional area that would be incompatible with the public health and welfare; or
 - b. To the extent the proposed impacts are not consistent with the interests of the public as described in RSA 482-A:1, the public benefit of the proposed project outweighs the detriment to be caused to the interest of the public as described in RSA 482-A:1.
- g. In determining whether either of the criteria stated in (f)(2) is met, the applicant shall address, and the department shall consider:
 1. The size of the proposed impacts to jurisdictional areas, including the surface area of the wetlands that will be impacted if applicable;
 2. The type and classification of the jurisdictional areas proposed to be impacted;
 3. The rarity of the jurisdictional areas proposed to be impacted;
 4. The relationship of the jurisdictional areas proposed to be impacted to nearby wetlands and surface waters;
 5. The extent to which the jurisdictional areas;
 - a. Contribute to flood control or pollution mitigation, or both;
 - b. Serve as a habitat reproduction area, or source of nutrients for finfish, crustacea, shellfish, and wildlife;
 - c. Support public commerce, recreation, navigation, and aesthetic enjoyment; and
 - d. Contribute to maintaining groundwater quality and quantity; and
 6. The cumulative impact that would result if all persons owning or abutting a portion of the affected jurisdictional area were also allowed to alter the jurisdictional area in proportion to the extent of their property rights.

Comments/Concerns

313.03 demonstration of the need for impacted jurisdictional areas: (a) should to be modified given that any jurisdictional area might in fact to be either a man-made ditch or other low value wetland. Special resource areas need to be removed, since there has not been evidence that these areas as currently defined, have unusually high functions or values.

(b)(c) The presumptions that there is no need for any of the impacts does not allow for any type of extenuating circumstances or does it provide a waiver. Further the law does not have a category of wetland resources which are either no need or no touch regarding impacts. Presumption of no need to impact should be found in the RSA before it is used in the rules. There are no such “presumptions” in the law.

313.03 Demonstration of need for impacts to jurisdictional areas :(g) (6) remove the cumulative impact statement from this requirement. Based upon the numerous workshops that were conducted at the department prior to the issuance of these rules that statement was stricken from the list of questions to be asked because it is nonsensical and because it asked the applicant to have a crystal ball.

313.03 (f) and (g). Many of the other questions were in what was called the “20 questions” do not have enough specificity to get answers that are not cook book. If you want to ask what wetland functions will be lost, then say “what wetland functions will be lost?” if you want to ask to what extent that function will be lost, then say “the loss of this function will be to how many SF, or how many cubic feet (volume), or how much overall habitat loss in acres”?

313.04 (c) If the stance is the temporary impacts will not require compensatory mitigation, then say so. If the concept is that permanent conversion will take place and requires a reduced ARM fund payment, then say so. Temporary impacts versus conversion impacts are not addressed anywhere, but it is clear that payments for conversion of one resource type to another is talking place, and the department is accepting the payments, despite having nothing in the rules allowing for a payment into the ARM fund for conversion.

313.05

DES Draft Rules

Standard Permit Application Evaluation. For any project that requires a standard permit, the department shall not approve any alteration of any jurisdictional area unless the applicant demonstrates that each of the following has been avoided or minimized as required by Env-Wt 313.04:

- a. Adverse impacts on plants, fish, and wildlife and their habitats including but not limited to :
 1. Rare, special concern species;
 2. Special resource areas;
 3. Species at the extremities of their ranges;
 4. Migratory fish and wildlife; and
 5. Vernal pools;
- b. Interference with the aesthetic interests of the general public, meaning that where an applicant proposes construction in an area that is visible to the public, that materials to be used and the overall size of the project shall be in keeping with the general aesthetics of the community;
- c. Interference with, or obstruction of, the right of the public to passage or access, whether for public commerce, navigation, or recreation;
- d. Adverse impacts on abutters’ property rights, including the value and enjoyment of their property as provided in RSA 482-A:11, II;
- e. The extent to which a project that is located in surface waters reflects or redirects current or wave energy that might cause damage or hazards;
- f. Adverse impacts of the proposed project on the functions and values of the overall jurisdictional area, the overall wetland complex, and the associated native plant community;
- g. Adverse impacts on the value of sites included in the latest published edition of the National Register of Natural Landmarks, or sites eligible for such publication;
- h. Adverse impacts on the value of areas named in acts of congress or presidential proclamations as national rivers, national wilderness areas, to national lakeshores, and such areas as may be established under federal, state, or municipal laws for similar and related purposes such as estuarine and marine sanctuaries; and
- i. The degree to which a project redirects water from one watershed to another;

- j. Whether the project would displace floodwaters from floodplain wetland or other areas known to flood onto adjacent properties;
- k. Whether the project proposes stormwater treatment or detention in wetlands or surface waters or would contribute additional loading to impaired waters such that the surface water quality standards established in RSA 485-A or Env-Wq 1700 would not be met; and
- l. Whether the project is designed to maintain wetland and stream hydrological connectivity, aquatic organism passage, and plant community features necessary to retain or restore wetland and aquatic resource functions.

Comments/Concerns

313.05 standard permit application evaluation; remove special resource areas that have not been adequately vetted and remove vernal pools because they do not have any special protection under the RSA. Remove interference with aesthetic interests of the general public because there is no way to measure.

Interference with the right-of-way of the public needs to be identified for only public lands or public right of ways. Remove adverse impacts on abutter’s property rights because there is no way to evaluate the value and enjoyment of the property. Remove the adverse impacts of the proposed project on the overall jurisdictional areas, on the overall wetland complex, and the associated native plant community because you cannot be affectively evaluated those areas that are off-site. Further the evaluation cumulative impacts offsite is not part of the RSA. Remove the statement the degree of which a project redirects water from one watershed to another. Many of these questions were removed in the working groups that were held by the department prior to the issuance of these rules. For those of us who spent considerable amount of time on those working groups we would like to know if there was any consideration to the efforts that we put it all the determinations we made.

314.03

DES Draft Rules

Notification Required Prior to Indicating Construction.

- a. The permittee shall notify the department in writing at least one week prior to commencing any work under the permit.
- b. The project shall be constructed in accordance with the approved plans and specifications.

Comments/Concerns

314.03 Notification require prior to initiating construction: remove the sentence that the permittee under the permit. This requirement is not found in the RSA. No where in the law does it specify the department must be notified before beginning work.

314.04

DES Draft Rules

Permit Duration.

- a. As specified in RSA 482-A:3, XIV-a(a), a permit shall be valid for 5 years except as specified in (b) through (e), below.
- b. As specified in RSA 482-A:3, XIV-a(b), a permit issued to repair or replace shoreline structures to maintain the integrity and safety or such structures including, but not limited to docks, sea walls, breakwaters, riprap, access ramps and stairs, that are damaged by storm or ice, shall expire 10 years from the date the permit was issued as long as any work performed after the initial permitted work complies with the following:

1. The work is not in violation of the original permit or RSA 482-A:3, XIV-a(a)(1)-(4);
 2. All structures are repaired or replaced to the original permitted location and configuration; and
 3. All significant work is reported to the department in accordance with the reporting requirements for the original permit.
- c. Public transportation projects that exceed the limits of the SPGP shall receive one permit extension, to a total of 10 years, provided the permittee:
1. Receives an individual federal permit from the US Army Corps of Engineers; and
 2. Requests such an extension in writing from the department prior to the expiration of the original permit.
- d. As specified in RSA 482-A:3, V(a), a minimum impact forestry notification submitted as specified in RSA 482-A:3, V shall be valid for 2 years from date of the completeness letter issued by the department; and
- e. As specified in RSA 482-A:3, XI, a permit for small motor mineral dredging issued in accordance with RSA 482-A:3, XI shall expire at the end of the calendar year in which it is issued.

Comments/Concerns

314.04 Permit duration: request that second permit extension may be requested and allowed. As we have seen, economic downturns have a way of extending for long periods of time. The most common example is the work on Rte 93 from Salem to Manchester. This has extended for more than 10 years and it is a waste of time and money to require and new application be submitted.

314.07

DES Draft Rules

Permit amendments.

- a. Subject to (b), below, a permittee may request an amendment to an issued permit by submitting the information required by Env-Wt 311.03 for the revisited project. The applicant shall provide notice to all who received notice of the original application prior to filing the amended application with the department.
- b. As established in RSA 482-A:3, XIV e, the following shall require a new application, not an amendment to an existing permit:
 1. A change in the proposed acreage of the permitted fill or dredge area by 20% or more;
 2. A relocation of the proposed footprint of the proposed fill or dredge area; and
 3. Any revision that includes:
 - a. A prime wetland or surface water of the state;
 - b. A wetland of a different classification; or
 - c. Non-wetland areas requiring permits for filling and dredging.

Comments/Concerns

314.07 Permit amendments: the requirements for a new application are too stringent and not practicable. It is common to request amendments for the relocation of the proposed footprint of the proposed fill of the dredge and fill area and to impact a wetland of a different classification. These changes may actually be a benefit to the environment, but will be required to file a new application. Further it makes no sense the statement that non-wetland areas required premise for dredging and filling. There is no jurisdiction of the department in non-wetland areas. If the intent is tidal buffer zones or prime wetland buffers, than say so.

314.08

DES Draft Rules

Notice of Completion and Certificate of Compliance Required.

- a. The permittee shall file a completed notice of completion and certificate of compliance with the department within 10 working days of completing the work authorized by the permit.
- b. The notice of completion and certificate of compliance shall:
 1. Identify the permit number and the date of permit issuance;
 2. Specify the date the work was completed; and
 3. Be signed and certified by the permittee as specified in Env-Wt 311.11.
- c. In addition to the certifications in Env-Wt 311.11, the permittee's signature also shall constitute certification that the project was completed in compliance with all conditions of the permit.

Comments/Concerns

314.08 Notice of completion certificate of compliance required: Remove the section. There is nothing in the RSA that requires the department to be notified within 10 working days after the completion of work.

Env-Wt 400

406.01

DES Draft Rules

Delineation of Wetlands Boundaries.

- a. For projects for which a wetlands delineation is required, wetlands boundaries shall be delineated by a certified wetlands scientist except in the circumstances listed in RSA 310-A: 79, reprinted in Appendix C.
- b. Wetlands delineations shall remain valid for 5 years, unless:
 1. There is a reasonable basis to believe the original delineation might be incorrect, such as because it was done while the ground was snow covered or during the dry season;
 2. Adjacent property or other areas on the same property have been disturbed in such a way as to increase or decrease stormwater run-off or groundwater flow, or both, to any portion of the property for which the delineation was done;
 3. The individual who did the delineation has submitted other delineations that have been shown to be incorrect; or
 4. Any other information becomes available that warrants a review of the delineation.
- c. If a wetlands delineation is more than 5 years old or if any of the criteria listed in (b), above, are met, the delineation shall be:
 1. Verified through field observations and documentation to be the same as the original delineation; or
 2. Replaced with a new delineation, if the original delineation cannot be verified.

Comments/Concerns

406.01 Delineation of wetlands boundaries: remove (b) (3). There is no guidelines regarding the individual who did the delineation has submitted other delineations that have been shown to be incorrect. How many times has this been done and to what extent was a delineation incorrect? Who review the delineation? Is a CWS reviewing the wetland boundary? Has the individual been reported to the Board? Without guidelines this is incredibly arbitrary. Without guidelines that should be removed.

406.01 delineation of wetland boundaries: provide guidance to the delineation of vernal pools. The presence of a single wood frog or the presence of a single fairy shrimp should not trigger the area to be

identified as a viable vernal pool. At a minimum they should be an egg mass requirement: suggestion would be five eggs masses of any species

406.03

DES Draft Rules

Wetlands Delineation Not Required for Certain Projects.

- a. Delineation of wetlands, including vernal pools, shall not be required for the following projects:
 1. Any project that qualifies for a statutory permit by notification (SPN);
 2. Low impact exotic weed control projects;
 3. Agriculture projects impacting less than 3 acres of wet meadow, provided the application and plan are prepared by the NRCS or a certified wetland scientist;
 4. Access to a single-family dwelling under the exemption in RSA 310-A:79, V; and
 5. Low impact projects at the shoreline of open water, such as a seasonal dock or beach.
- b. Delineation of wetlands, including vernal pools, shall not be required outside the limits of impact if:
 1. No work is done prior to a complete and accurate notification being submitted for the activity; and
 2. The activity covered by the notification is:
 - a. Timber harvesting undertaken in compliance with RSA 227-J where:
 1. No development or other change in land use will occur;
 2. The project qualifies as a low impact project under the criteria in Env-Wt 407 and Env-Wt408; and
 3. The notification includes the location(s) and type(s) of wetlands crossed on a USGS map and an NRCS soils drainage map, and ensures that the wetland dimensions and project impacts meet the CAT1 thresholds;
 - b. Agriculture that falls outside of the parameters of (a)(3), above, only because:
 1. The area of impact exceeds 3 acres;
 2. Alteration will occur to other than wet meadows only; or
 3. A combination of a. and b.; or
 4. A combination of timber harvesting and agriculture as described in a. and b., above.

Comments/Concerns

406.03 wetland delineation not required for certain projects: add utility notification

406.06

DES Draft Rules

Classification of Wetlands.

- a. Each wetland shall be classified by the applicant in accordance with “Classification of Wetlands and Deepwater Habitats of the United States, Adapted from Cowardin, Carter, Golet and LaRoe (1979), Wetlands Subcommittee, Federal Geographic Data Committee and US Fish and Wildlife Service, Washington DC (August 2013), available as noted in Appendix B.
- b. The wetland classification of each wetland shall be identified on plans submitted with an application for a standard permit.
- c. Each watercourse shall be classified in accordance with Applied River Morphology, 2nd edition, 1996, available as noted in Appendix B.
- d. Each natural community and natural community system shall be mapped and identification on plans submitted with an application for a standard permit in accordance with the following

publications of the New Hampshire department of cultural and natural resources, natural heritage bureau, available as noted in Appendix B:

1. "Natural Communities of New Hampshire", 2nd edition, 2012; and
2. "Natural Community Systems of New Hampshire", 2nd edition, 2011.

Comments/Concerns

406.06 classification of wetlands: remove that each watercourse should be classified in accordance with applied river morphology. This is not a classification system that has been utilized in the past nor does it apply to every watercourse.

Why are all the natural communities being shown on a plan? These are typically upland areas. What part of the RSA requires that upland communities be mapped and classified for a wetland application. This is a section on wetland classification, not upland classification.

407.02

DES Draft Rules

Resource Disqualifications (RDQs). A project that impacts one or more of the following resource types and that does not qualify for a project-type exception (PTE) under Env-Wt 407.04 shall be classified as a CAT3 project regardless of the size of the impact:

- a. Exemplary natural community or S1 or S2 rare community systems as defined by DNCR-NHB, including but not limited to:
 1. Bog or fen peat or calcareous systems; and
 2. Atlantic white cedar or silver maple peat, calcareous systems;
- b. Floodplain wetland systems;
- c. Riverine wetlands;
- d. Salt marsh, salt pond, tidal flat system, or tidal surface water;
- e. Undisturbed tidal buffer zone or developed tidal buffer zone areas within 75 feet of salt marsh;
- f. Sand dunes;
- g. Nontidal marsh of one acre or more in size or a very poorly drained scrub shrub wetland of any size;
- h. Designated prime wetland or duly-established 100-foot buffer;
- i. Designated river corridor, except if the project is routine roadway maintenance covered by an SPN or EXP;
- j. Tier 3 stream, including any wetland that is hydrologically connected to a tier 3 stream;
- k. Habitat for any:
 1. Species of special concern;
 2. Threatened or endangered species; or
 3. Species of greatest conservation need (SGCN) as determined by the New Hampshire fish and game department;
- l. Forested wetland of 10 acres or more in size where at least 50% of the wetland is very poorly drained soils;
- m. Any wetland that provides at least one of the following functions:
 1. Protection of life and property from flooding and flood flows, due to flood storage or flood abatement functions;
 2. Coastal storm surge protection;
 3. Protection in the form of a development-free groundwater recharge zone immediately adjacent to a private or public drinking water supply, wellhead protection area, or associated aquifer;

4. Maintenance of water quality to protect fisheries, water supplies, or source water protection areas through retention of sediment or transformation or retention of pollutants, or both; or
5. Protection of wildlife habitat and ecological diversity by providing diverse wetland types and structural vegetation diversity and size;
- n. Any project for which at least one of the wetlands proposed for impact achieves the highest score based on certified wetland scientist wetland assessment in accordance with Env-Wt 406 or Env-Wt6??; and
- o. Any stream that has a riparian woody corridor, diversity of riffle and pool substrate and coarse woody material.

Comments/Concerns

407.02 resource disqualifications: what is the basis for including any wetland that is hydrologically connected to a tier 3 stream? Further what does it mean to be hydrologically connected? Is this a surface connection or is this a subsurface connection? If this cannot be defined it should be removed.

Remove (m) because the criteria is both arbitrary and subject to different interpretation.

Remove (n) & (o) because the current wetland assessments do not always provide a score and the context of any stream what include small watercourses.

What is the basis for flood plain and riverine systems being disqualified from minimum and minor projects? Does this mean all wetland crossings of streams are automatically major projects?

Forested wetland of over 10 acres are common, as are marshes of over 1 acre. There is no basis for resource disqualifications for minimum and minor projects. Virtually all streams have the riparian features noted above. How is habitat determined? What is the jurisdiction of the department in areas that are not wetlands?

407.03

DES Draft Rules

Size Thresholds; Stream Length Measurements.

- a. Projects shall be classified based on size as shown in table 407-1, below, unless the project is subject to an RDQ pursuant to Env-Wt 407.02 or qualifies for a PTE pursuant to Env-Wt 407.04.
Table inserted here.
- b. Watercourse length measurements shall be made as follows:
 1. For intermittent watercourses, the distance shall be measured along the thread of the channel; and
 2. For perennial watercourses, the total distance shall be calculated by summing the lengths of the disturbance to the channel and the banks.

Comments/Concerns

407.03 size thresholds: Stream length measurements: why bother to have cat2 and cat3 given that the permitting requirements is virtually the same. I have always wondered about how it came to pass that perennial streams of any size get the triple distance treatment. What was the basis for calculating the impacts in this way? What was the rationale that promoted this policy?

408.05

DES Draft Rules

Aggregation of Projects: Same Wetlands Complex.

- a. A project shall be classified as CAT3 if the totality of the proposed impacts, the impacts of all projects on the same wetlands area or wetlands complex within the last 10 years, and all impacts to the same wetlands complex proposed in other pending applications meets any of the criteria for a CAT3 project listed in Env-Wt 407.02 or Env-Wt 407.03.
- b. Classification as a CAT3 project based on (a), above, shall:
 1. Take precedence over any lower classification; and
 2. Not be eligible for a waiver.

Tables inserted here.

Comments/Concerns

408.05 Aggregation of projects: same wetland complex:

Remove entirely because to attempt to evaluate the past and future of a wetlands area or wetlands complex is both arbitrary and nonsensical. Where in the RSA does it address cumulative impacts? How is one suppose to know what an abutter has done at the other end of a wetland complex. And why should they be penalized with compensatory mitigation when their project is below the threshold for mitigation. There is a basic unfairness to this aggregation of projects. While the argument may be death by a thousand cuts, the aggregation of projects such that the last folks applying get the burden of all that has occurred before is not supported by the fairness doctrine.

Env-Wt 500

511.04

DES Draft Rules

B/D Structure Design Requirements.

- a. A B/D structure shall not extend within 10 feet of the side boundaries of the subject property, unless:
 1. The structure is proposed to serve abutting properties and the property owners agree to have contiguous structures, in which case each application shall include a statement signed by the abutting property owner agreeing to the proposed placement of the structure; or
 2. The abutting property owner does not object, in which case the application shall include a statement signed by the abutting property owner agreeing to the proposed placement of the structure.
- b. A new B/D structure shall be located
 1. On or in a slope of less than 25%; and
 2. So as to minimize the removal of vegetation;
- c. If the proposed location for the B/D structure is a hardened shoreline, whether from naturally-occurring stone or installed rip-rap or retaining walls, then:
 1. The B/D structure shall be landward of and higher than the hardened shoreline; and
 2. The hardened shoreline shall remain intact except for such material that is to be removed to install steps to access the water;
- d. If the proposed location for the B/D structure is not a hardened shoreline, the top surface of the B/D structure shall be at least 12 inches above the full lake elevation;
- e. The surface of a beach shall not slope in the direction of the water;
- f. Steps for access to and from the B/D structure shall:
 1. Not exceed 6 feet in width; and
 2. Be entirely landward of the normal high water line;
- g. Wooden stairs for access to the water shall:

1. Not exceed 6 feet in width;
 2. Be removed from the lakebed prior to ice in; and
 3. Not be re-installed until ice out;
- h. Because B/D structures are accessory structures as defined in RSA 483-B:4, II, the total area of the B/D structure shall meet the spatial limits allowed for the available frontage as specified in Env-Wq 1400; and
- i. The work shall not alter more than the smaller of 20% of the applicant's contiguous shoreline or 50 feet.

Comments/Concerns

511.04 (a) Remove requirement that Beach and Dock structure shall not be less than 10 feet to boundary of property. Not supported by RSA.

516.02

DES Draft Rules

Approval Criteria for All Bank/Shoreline Stabilization Projects.

- a. The department shall not approve a hard-scape stabilization proposal such as rip-rap or a retaining wall unless the applicant demonstrates by clear and convincing evidence that the bank or shoreline in that location cannot be stabilized by preserving natural vegetation, landscaping, or bioengineering.
- b. Bank/shoreline stabilization shall:
 1. Be by the least intrusive practicable method;
 2. Conform to the natural alignment of the bank/shoreline;
 3. Restore lost or impaired bank/shoreline functions;
 4. Maintain the natural process functions of the shoreline as a critical transition zone between the riverine, lacustrine, and upland areas; and
 5. Minimize impacts to:
 - a. Wildlife habitat;
 - b. Private property;
 - c. Public infrastructure; and
 - d. Ecosystem processes.

Comments/Concerns

516.02 (b) (5) reclaim upland lost by erosion (new). There needs to be incentives for the use of bio-stabilization of eroding shorelines. Hardscapes are just plain cheaper. But if the owner is allowed to reclaim the lost land by extending the bio-stabilization project, with shallow slopes, out into what has become state waters, this will provide the incentive to invest and maintain these bio-engineered shores.

516.03 (c)

This seems overly burdensome for all bank and shore stabilization projects. If there a need for this extensive information?

516.05 (h) The low flow period in this rule does not compare to other definitions of low flow or the typical dates.

516.05 (h) Why do the applicant have to submit a completion of construction document? Where does the 60 days come from? This is not a restoration of a violation, so why is there a completion document required?

522.11

DES Draft Rules

Design Requirements for Boat Launches. [more stakeholder input needed?]

- a. Subject to (b) and (c), below, in order to minimize congestion, improve navigation, protect neighboring property values, provide adequate area for boat maneuvering, and protect public health, safety, and general welfare, the point of access to the surface water shall be located at least 50 feet from an abutting property line.
- b. If the property line is not perpendicular to the shoreline, the set-back shall not apply to the imaginary extension of the property line over the surface water.
- c. If an applicant wishes to locate a boat launch closer than 50 feet from an abutter's property line, the applicant shall:
 1. Obtain the written consent of the abutting property owner; and
 2. Submit the written consent that has been signed by all parties and notarized with the application;
- d. Boat launches shall be designed such that stormwater is diverted away from the ramp surface.
- e. Launch surfaces shall be of durable, erosion-resistant material.
- f. Launch surfaces used for the launching of trailered, motorized watercraft shall extend a sufficient distance into the waterbody to prevent scouring of the bed of the surface water from power loading of watercraft.

Comments/Concerns

522.11 Design Requirements for Boat Launches: What is basis of 50 feet from abutting property line? Where in RSA?

523.02

DES Draft Rules

Criteria for Approval. In addition to the criteria established in Env-Wt 313, the following criteria shall apply to construction of ponds:

- a. No pond shall be constructed in very poorly drained soils;
- b. A pond shall not be created by:
 1. Construction of a dam, berm, or dike within a stream or other surface water in order to create an impoundment;
 2. Repairing or reconstructing an existing dam, berm, or dike in order to recreate or restore an impoundment, unless a permit is obtained for the work under RSA 482; or
 3. Diversion of a stream;
- c. No pond proposed to be used for water quality treatment or pre-treatment shall be constructed in existing wetlands or surface waters;
- d. No pond proposed to be used for stormwater management shall be constructed in existing wetlands or surface waters; and
- e. No pond shall cause a discharge to existing wetlands or surface waters unless water quality pretreatment is provided.

Comments/Concerns

523.02 Ponds: Criteria for approval: (a) why no very poorly drained soils? Not all are deep organic. What about inclusions in poorly drained areas?

523.04

DES Draft Rules

Design Requirements. A pond construction project shall be designated to:

- a. Meet the requirements specified in United States Department of Agriculture, Natural Resources Conservation Service Agriculture Handbook Number 590, "Ponds- Planning, Design, Construction" published on _____;
- b. Be located at least 100 feet from very poorly drained soils;
- c. Cause only the minimum impact to wetlands necessary to obtain adequate hydrology for the proposed pond;
- d. To the greatest extent practicable, incorporate multiple wetland types and habitat features including but not limited to deep-water, scrub-shrub, shallow marsh, islands, woody material, and nesting areas;
- e. Stabilize and site pond inlets and outlets to prevent adverse impacts to adjacent wetlands and surface waters; and
- f. Meet the requirements specified in [Agriculture BMPs].

Comments/Concerns

523.04 Pond Design Requirements: (b) why located 100 feet from very poorly drained soils? (d) Golf course ponds or irrigation ponds do not want multiple wetland types. Recreation ponds don't want multiple wetland types. Fire ponds want to have the least amount of vegetation. What is basis?

523.06

DES Draft Rules

Construction Project Classification.

- a. Pond construction shall be considered CAT1 if the proposed project will impact less than 3,000 SF of wetlands and all of the following criteria are met:
 1. The project area contains no poorly drained soils;
 2. The proposed pond will not be fed by or cause outflow to any streams; and
 3. The project is not located in and will not impact a special resources area;
- b. Pond construction shall be considered CAT2 if the proposed project will impact 3,000 SF or greater but less than 10,000 SF of wetlands and all of the following criteria are met:
 1. The project area contains no very poorly drained soils;
 2. The proposed pond will not be fed by or cause outflow to any streams; and
 3. The project is not located in and will not impact a special resources area; and
- c. Pond construction shall be considered CAT3 if the proposed project will impact 10,000 SF or more of wetlands or surface waters, and does not meet the criteria of either a CAT1 or CAT2 project.

Comments/Concerns

523.06 Pond: Construction Classification: (a) (1) why no very poorly drained soils? (b) (1) why no outflow to a stream?

NOTE

525 UTILITY PROJECTS IN PUBLIC RIGHT OF WAY

(NOT SEEN IN 308 ACTIVITIES EXEMPTED BY STATUTE EXCEPT FOR 308.04 (E))

More restrictive than has been in past with limitation on Prime Wetland and special resource area. Also require submission of completion of project in 10 days. No such time frames or requirements in the RSA.

525.01

DES Draft Rules

Applicability. This part shall apply to any utility projects or projects in a public right-of-way that do not qualify for the SPN established in RSA 482-A:3, ?? or??, as applicable, and for which the purpose is to provide access to, construct, reconstruct, repair, maintain, or remove a utility facility in or over a wetland or surface water.

Comments/Concerns

525.01 Applicability: appears to cover all maintenance work.

525.03

DES Draft Rules

Application Requirements. In addition to the application requirements in Env-Wt 311 an applicant for a utility project shall submit the following to the department:

- a. A plan showing the following:
 1. The extent and location of all wetlands and streams within the project area;
 2. The extent and location of any poorly drained soils, or very poorly drained soils within the project area;
 3. The location of any existing utility corridors and facilities;
 4. The location of the proposed utility corridors and facilities; and
 5. The location of any proposed impacts, crossings, construction areas, and clearings;
- b. A recent aerial photograph of the project area overlain by a the items specified in (a), above;
- c. A description of the methods, techniques, vehicles, and equipment proposed to access and conduct the project;
- d. An invasive species control plan;
- e. A description of measures proposed to minimize and avoid impacts to wetlands and surface waters; and
- f. A construction sequence plan describing measures proposed to minimize impacts to water quality, impacts to nesting and breeding species, and to prevent compaction of wetlands soils.

Comments/Concerns

525.03 Application Requirements: remove (1) and (2) — not in RSA. Plan requirements are covered in the BMPs. All impacts for maintenance are temporary. All will be restored if impacted as all. All areas are subject to repeated impacts over the course of time due to continuing maintenance. Why this level of detail for what are maintenance activities?

525.04

DES Draft Rules

Design and Construction Requirements. In addition to the requirements in Env-Wt 307, the following requirements shall apply to utility projects:

- a. The project shall be designed to avoid or minimize construction access to work in or upon organic soils;
- b. All project activities shall be performed, located, constructed, and maintained in accordance with [Utility BMPs] and published by [??];
- c. Construction of new roads shall occur only between December 1 and March 1 or during very dry weather conditions at other times of the year;
- d. No project shall cause permanent filling of wetlands in excess of 10,000 SG; and
- e. No project shall cause temporary wetland impact in excess of one acre.

Comments/Concerns

525.04 (c) not practical for construction limitation Dec 1 to Mar 1. (d) and (e) all are temporary impacts.

525.05

DES Draft Rules

Construction Project Classification.

- a. Utility projects causing temporary impacts associated with inspection, maintenance, or repair of existing utility facilities within existing rights-of-way shall be considered to be CAT1 provided that:
 1. Total jurisdictional wetland impact does not exceed 3 acres;
 2. No change in the location, configuration, dimensions, or type of utility facility is proposed;
 3. There are not proposed impacts to:
 - a. Any special resource area;
 - b. Very poorly drained soils; or
 - c. Tier 2 or Tier 3 streams; and
 4. The project will not require any diversion of streams
[need more stakeholder input regarding CAT2 and CAT3 classifications]

Comments/Concerns

525.05 (1) conflicts with (e) above. Remove special resource area and very poorly drained soil and streams.

528.03

DES Draft Rules

Application Requirements for Dredging Projects. In addition to the application requirements of Env-Wt 311, the applicant shall provide the following additional information with an application to dredge:

- a. A description of the material and area to be dredged, including:
 1. The volume of material to be dredged, in cubic yards;

2. The square footage of the area to be dredged; and
3. The type of material to be dredged;
- b. The erosion and sediment control measures proposed to be used;
- c. The methods proposed to dewater the dredge spoils;
- d. The location at which dewatering will occur;
- e. The equipment proposed to perform the dredging;
- f. The proposed disposal site;
- g. Identification of all known potential sources of soil or water contamination;
- h. The method of sampling for contaminants and a plan to manage contaminated materials;
- i. A description of how dredged material will be contained during the dredging process;
- j. Identification of model assumptions for determining the location and dispersal method of dredged material and the likely impact on jurisdictional areas; and
- k. An explanation of the timing of the project and how such timing helps minimize impacts on aquatic resources.

Comments/Concerns

528 Dredging: No new dredging allowed? Limitations of 528.02?

528.03 (g) and (h) is this for ponds and any other dredging?

Very extensive information is not needed for limited and small dredge projects, such as cleaning out clogged inlets.

529 RESIDENTIAL AND COMMERCIAL DEVELOPMENT

529.02

DES Draft Rules

Criteria for Approval of Residential and Commercial Development Projects. In addition to the criteria established in Env-Wt 307 and Env-Wt 313.01, 700, Env-Wt 800, and Env-Wt 900, the following criteria shall apply to residential and commercial development projects in non-tidal wetlands:

- a. The project shall not involve conversion of a wetland to an upland in order to create one or more buildable lots for residential development;
- b. The proposed impacts to wetlands, surface waters, and associated natural resource features shall cause no net loss of significant wetland functions; and
- c. The project shall comply with the design criteria specified in Env-Wt 529.04 and the construction criteria specified in Env-Wt 529.05

Comments/Concerns

529.02 Criteria: (b) remove “no net loss of significant wetland function”. Not possible and arbitrary. Significant wetland function has not been defined.

529.04

DES Draft Rules

Design Requirements for Residential and Commercial Development Projects. A residential or commercial development project in non-tidal wetlands shall be designed to meet the following criteria:

- a. The project shall comply with all applicable requirements of Env-Wt 307 and Env-Wt 313.01, Env-Wt, 700, Env-Wt 800, Env-Wt 900, and other applicable project specific criteria in this chapter;

- b. The project shall avoid impacts to floodplain wetlands, special resources, and riparian wetlands that attenuate peak flood flows;
- c. For a CAT3 project located in a 100 year floodplain, the project shall not increase flood stages off site;
- d. The project shall not use wetlands of surface waters to serve as water quality stormwater or water quality treatment to mitigate impacts;
- e. The project shall provide transition zones, water quality protection zones, and filter strips between the area of disturbance and all wetlands, streams, and vernal pools;
- f. The project shall provide setbacks and water quality protection measures sufficient to protect private and public drinking water supplies, source water protection areas, and fisheries;
- g. The project shall not increase pollutant loading to impaired water;
- h. The project shall maintain wetland functions that reduce the level of contaminants in surface waters that recharge underlying or adjacent groundwater or contribute to the protection or improvement of water quality;
- i. The project shall maintain or restores hydrologic connections to maintain flows necessary to preserve adjacent wetland and riparian functions;
- j. The project shall maintain the geomorphic stability of important habitat for aquatic organisms by attenuating peak flood flows or stormwater runoff or by reducing the scouring and erosion of stream banks, or both;
- k. The project shall maintain or restore fishery spawning, feeding or cover habitat and fish passage necessary to maintain fishery or habitat or populations; and
- l. The project shall maintain or restore wildlife habitat and its associated migratory pathways, reproductive sites, and associated wetland complex or natural community system.

Comments/Concerns

529.04 Design Requirements: (b) Shall avoid impacts to floodplain wetlands, special resources, and riparian wetlands (remove - floodplain wetlands not defined, riparian wetlands not defined, and special resources have not been vetted or approved by RSA).

(e) Project will provide transition zones, water quality protection zones, and filter strips between area of disturbance and all wetlands, streams and vernal pools (remove - not allowed by RSA, extends beyond jurisdiction and establishes de facto buffers)

(h) (l) (l) remove - either can't measure or are outside of jurisdiction.

529.06

DES Draft Rules

Classification of Residential and Commercial Development Projects. Residential and commercial development projects that do not qualify for an LSA under Env-Wt 309.01 © shall be classified as follows:

- a. A project shall be a CAT1 project only if:
 1. All stream-crossing components of the project meet the requirements for CAT1 classification specified in Env-Wt 903; and
 2. All other components of the project meet the requirements for CAT1 classification specified in Env-Wt 407 and this chapter;
- b. A project shall be a CAT2 project if:
 1. Either of the following apply:
 - a. Any single stream-crossing component of the project meets the requirements for CAT2 classification specified in Env-Wt 903; or
 - b. Any single other component of the project meets the requirements for CAT2 classification specified in Env-Wt 407 or this chapter; and

2. No components of the project meets the requirements for CAT3 classification specified in Env-Wt 903, Env-Wt 407, or this chapter; and
- c. Any single component of the project meets the requirements for CAT3 classification specified in Env-Wt 903, Env-Wt 407 or this chapter.

Comments/Concerns

529.06 Construction Requirements:

- (a) Notice to department 48 hours prior to starting work (remove- not in RSA).

532 PUBLIC HIGHWAYS

532.04

DES Draft Rules

Design Requirements. In addition to meeting all applicable criteria established elsewhere in subtitle Env-Wt, all projects shall:

- a. Protect high value wetlands, streams, and special resource areas; and
- b. Reduce impacts to wetland and riparian function;
- c. Provide transition zones and maintain water quality protection zones and filter strips between the area of disturbance and wetlands, streams, and vernal pools;
- d. Maintain wetland and stream hydrology and function to remaining aquatic resources;
- e. Use on-site measures to compensate for any loss of flood storage where the project proposes filling and or placement of structures in a 100 year floodplain where required in the approval criteria or where the project proposes greater than 0.5 acre feet of fill volume or a road crossing that affects floodplain conveyance;
- f. Use on-site minimization and water quality protection measures to prevent direct discharge to surface waters and wetlands including retention of vegetated filter strips between the construction area and the aquatic resource areas and to disperse runoff with no direct discharge to natural wetlands or surface waters and runoff shall sheet flow into vegetated filter strips; and
- g. Where temporary impacts will occur, include re-establishment of a similar ecosystem using the same vegetative species and spacing unless the applicant shows that the proposed vegetative composition will be more beneficial.

Comments/Concerns

532.04 Design Requirements (a) remove protection of high value wetlands, streams and special resource areas - high value wetlands not defined, why all streams of any size, and special resources areas not vetted or in RSA).

Env-Wt 600

600 COASTAL LANDS AND TIDAL WATERS/WETLANDS:

601.03

DES Draft Rules

Resolution of Conflicts. If the requirements of this chapter conflict with any other applicable requirements, whether in subtitle Env-Wt or in any local, state, or federal ordinance, rule, or regulation, the requirements that are more protective of the resource being impacted shall apply.

Comments/Concerns

601.03 RESOLUTION OF CONFLICTS: If the requirements of this chapter conflict t with any other applicable requirements, whether in subtitle Env-Wt or in any local, state, or federal ordinance, rule, or regulation, the requirements that are more protective of the resource being impacted shall apply. (Remove - local is not allowed to modify a state permit).

602.10

DES Draft Rules

“Developed upland” means an upland area on a lot within the tidal buffer zone where:

- a. The natural soil and vegetation characteristics on more than 50% of the lot have been legally altered and have not returned to a natural state; and
- b. At least 2 of the following are true:
 1. The lot has legally been filled or excavated in whole or in part, whether prior to jurisdiction or pursuant to a permit or other authorization;
 2. The lot contains at least one paved or graded area that is, has been, or will be used for vehicular parking or traffic;
 3. One or more residential or commercial buildings has been built on the lot; or
 4. Residentially- or commercially-developed lots abut at least 2 sides of the lot.

Comments/Concerns

602.10 Developed upland - (b) remove - no basis for requiring 2 of the following.

602.33

DES Draft Rules

“Qualified coastal professional” for the purposes of conducting coastal functional assessments means an individual who has knowledge, based on education and experience, of coastal environments and systems that is sufficient to enable the individual to competently evaluate coastal resources.

Comments/Concerns

602.33 - how many qualified coastal professionals are around?

603.08

DES Draft Rules

Project Design Narrative Required. The applicant shall provide a project design narrative that includes the following:

- a. A discussion of how the proposed project:
 1. Use best management practices or industry standard techniques;
 2. Meets all avoidance and minimization requirements; and
 3. Acknowledges or addresses predicted sea level rise;
- b. A construction sequence, erosion/siltation control methods to be used, and a dewatering plan; and
- c. A discussion of how the completed project will be maintained and managed, including maintenance of impervious surfaces, seasonal removal and storage location of docking structures, and planting plans;

Comments/Concerns

603.08 - (a) (3) predicted sea level rise - how high? What is the magic elevation? Are you moving jurisdiction into uplands. This is not allowed by RSA.

603.10

DES Draft Rules

Water Depth Supporting Information Required.

- a. Using current predicted NOAA tidal datum for the location, and tying field measurements to NAVD88, field observations of at least 3 tide events, including at least one minus tide event, shall be surveyed by a licensed land surveyor to document the range of the tide in the proposed location showing the following levels:
 1. Mean lower low water;
 2. Mean low water;

3. Mean high water;
 4. Mean tide level;
 5. Mean higher high water;
 6. Highest observable tide line (HOTL), field-located using predicted tide tables to determine the appropriate date of monthly astronomically high tides; and
 7. Predicted sea level rise as described in “NH Coastal Risk and Hazards Commission: Preparing NH for Projected Storm Surge, Sea-Level Risk, and Extreme Precipitation”, November 5016.
- b. The following data shall be presented in the application project narrative to support how water depths were determined:
1. The date, time of day, and weather conditions when depths were recorded; and
 2. The name and license number of the licensed land surveyor who conducted the field measurements.

Comments/Concerns

603.10 (a) (7) what is the elevation? What range over how many years?

605.01

DES Draft Rules

Avoidance and Minimization Requirements in Coastal Areas. In addition to the avoidance and minimization requirements in Env-Wt 313.04, projects in coastal areas shall:

- a. Not endanger finfish, shellfish, crustacea, or wildlife;
- b. Minimize disturbances of groundwater and surface water flow;
- c. Not impair the navigation, recreation, or commerce of the general public;
- d. Minimize alterations in prevailing currents;
- e. Avoid impacts that could adversely affect fish habitat, wildlife habitat, or both;
- f. Avoid impacts that might cause erosion to shoreline properties;
- g. Acknowledge potential sea level rise by identifying predicted sea level elevations on maps and plans; and
- h. Incorporate municipal and regional adaptation and resilience planning guidelines and ordinances in any design.

Comments/Concerns

605.01 (g) what are the elevations? What are the numbers to be used?

605.04

DES Draft Rules

Requirements for Compensatory Mitigation for Projects in Coastal Areas.

- a. The preferred form of compensatory mitigation for projects in coastal areas shall be as shown in table 605-1:

Comments/Concerns

605.04 COMPENSATORY MITIGATION; no in-lieu fee?

610.02

DES Draft Rules

Hierarchy of Tidal Shoreline Stabilization Methods. Applications for tidal shoreline stabilization projects shall demonstrate that:

- a. The technique or combination of techniques chosen has the highest degree of long term lifespan of all alternatives based on best available scientific and engineering practices; and
- b. The proposed technique or combination of techniques address:
 1. Identifiable causes of erosion;
 2. The degree or extent of erosion;

3. Relative exposure based on shoreline geometry, shore orientation, intensity of boat traffic, influence of adjacent structures, storm surge, and extreme precipitation events;
4. Potential sea level rise; and
5. Potential marsh migration as a result of sea level rise.

Comments/Concerns

610.02 STABILIZATION: Consider allowing restoration of upland lost as an incentive to use bio-stabilization and marsh replacement.

611.17

DES Draft Rules

Plans and Other Information Required. The following plans and other information shall be submitted with applications for work within the protected tidal zone:

- a. Existing and proposed contours at 2-foot intervals measured from the HOTL;
- b. If any portion of the subject parcel is located in a regulatory floodplain, the location of the 100-year flood boundary and water elevation as shown on the effective FEMA Flood Insurance Rate Map;
- c. All other applicable local and state setbacks;
- d. The dimensions and locations of all:
 1. Existing and proposed structures;
 2. Existing and proposed impervious areas;
 3. Existing and proposed disturbed areas;
 4. Areas to remain in an unaltered state;
 5. Existing cleared areas, such as gardens, lawns, and paths;
 6. Proposed temporary impacts associated with completion of the project;
- e. Proposed methods of erosion and siltation controls, identified graphically and labeled on a plan, or otherwise annotated as needed for clarity;
- f. A plan of any planting(s) proposed in the waterfront buffer, showing the proposed location(s) and Latin names or common names of proposed species;
- g. If applicable, the location of an existing or proposed 6-foot-wide foot path to the waterbody or temporary access path;
- h. For any project proposing that the impervious area be at least 15% but not more than 20% within the protected tidal zone, a statement signed by the applicant certifying that the impervious area is not more than 20%;
- i. For any project proposing that the impervious area be greater than 20% within the protected tidal zone, plans for a stormwater management system that will infiltrate increased stormwater from development;
- j. For any project involving pervious surfaces, a plan with specifications of how surfaces will be maintained; and
- k. All other relevant features necessary to clearly define both existing conditions and the proposed project.

Comments/Concerns

611.17 Plans (c) remove “local” ...setbacks. Not in the jurisdiction of the state.

612.06

DES Draft Rules

Design and Plan Requirements.

- a. No structure shall be proposed in sand dunes except for structures on in-fill lots that will be located on the landward side of the fore dune.
- b. Designs for projects in sand dunes shall comply with the following:

1. The standards described in FEMA P-55, Coastal Construction Manual: Principles and Practices of Planning, Siting, Designing, Constructing, and Maintaining Residential Buildings in Coastal Areas, 4th Edition (2011), available as noted in Appendix B;
 2. All local and regional resiliency planning ordinances and guidelines; and
 3. All applicable local building ordinances.
- c. The applicant for a permit for a construction project in sand dunes shall provide the following information on the plans submitted pursuant to Env-Wt 311.06:
1. If any portion of the property is located in the 100-year floodplain, the location of the 100-year floodplain boundary and water elevation as shown on the effective FEMA Flood Insurance Rate Map;
 2. The location of the 2.0-foot elevation contour as measured from mean sea level;
 3. The location, with dimensions, of:
 - a. All impervious areas;
 - b. Areas of existing vegetation, with the vegetation identified on the plan;
 - c. Each rare, threatened, or endangered plant species as reported by NH Natural Heritage Bureau;
 - d. All disturbed areas, including existing lawn, gardens, and paths;
 - e. All areas to remain in an unaltered state;
 - f. All proposed temporary impacts associated with completion of the project, with a description of each temporary impact;
 - g. Proposed methods of erosion and siltation controls indicated graphically and labeled or otherwise annotated as needed for clarity;
 - h. All proposed plantings, including Latin names or common names or propped species; and
 - i. All other relevant features necessary to clearly define both existing conditions and the proposed project.
- d. The applicant for a permit for a construction project in sand dunes shall submit with the application a completed impervious coverage worksheet that includes:
1. The name of the person who completed the worksheet;
 2. The date of the plan on which the worksheet is based;
 3. Square feet of the lot within the sand dune;
 4. Square feet and percentage of the lot area constituting existing impervious surface(s) within the sand dune; and
 5. Total percentage of sand dune area within the lot that will be impervious upon completion of the project.
- e. For any project proposing an impervious area on an in-fill lot of at least 15% but not more than 20% the applicant shall certify in writing that the impervious area is not more than 20%.
- f. For any project proposing an impervious area on an in-fill lot of greater than 20%, the applicant shall submit plans for a stormwater management system that will infiltrate the increased stormwater.
- g. For any project proposing pervious surfaces, the applicant shall submit a plan and specifications for long-term maintenance of the pervious surfaces.

Comments/Concerns

612.06 Design and Plan Requirements: (b) (2) (3) remove that designs of all projects in sand dunes will comply with all local and regional resiliency planning ordinances and guidelines and all applicable local building codes (state permit cannot be modified or controlled by local laws).

Env-Wt 700

700 PRIME WETLANDS: RSA 482-A: 15 “On-site verification of proposed prime wetland boundaries shall be performed where landowner permission is provided.” Need to be cited under 703.02 Map Requirements.

Env-Wt 800

800 COMPENSATORY MITIGATION

801.03

DES Draft Rules

Determination of Type of Compensatory Mitigation Required.

- a. The applicant shall first consider permittee-responsible mitigation opportunities by determining whether on-site mitigation is practicable and, if not, obtaining a list of local mitigation projects from the municipality in which the project is proposed. If the permittee-responsible mitigation is practicable, the applicant shall propose such mitigation.
- b. If on-site mitigation is not practicable for permanent wetlands impacts and the municipality does not have a list of local mitigation projects or if none of the projects on the list are appropriate mitigation for the applicant’s proposed project, the applicant shall provide an explanation and documentation relative to:
 1. Why preservation of aquatic resource buffers as specified in Env-Wt 803.10(b) is not practicable;
 2. Why stream restoration and enhancement activities as specified in Env-Wt 803.10(d) on the property and within the same Hydrologic Unit Code 12 (HUC-12) watershed as the impacts is not practicable; and
 3. Calculation of an in-lieu payment as specified in RSA 482-A:30—a.

Comments/Concerns

801.03 Determination of Type: (a) change: The applicant shall first consider in-lieu payment into the aquatic resources mitigation fund.

803.02

DES Draft Rules

Additional Information for Wetland Impact Projects and Wetland Restoration, Enhancement, or Creation Mitigation Proposals.

- a. For a wetland impact project, the plan report submitted pursuant to Env-Wt 803.01 also shall include a functional assessment of each impacted jurisdictional area using:
 1. The U.S. Army Corps of Engineers New England District highway methodology workbook supplement, 1999 edition (1999 US ACE Highway Workbook Supplement), available as noted in Appendix B, or the Method for Inventorying and Evaluating Freshwater Wetlands in New Hampshire, 2013 edition (2013 NH Method), available at <http://nhmethod.org>; and
 2. Data on the surrounding area including, but not limited to:
 - a. Land use;
 - b. Soils;
 - c. Habitat information from the WAP, including critical habitats and populations of the state’s species of conservation and management concern;
 - d. Natural community and natural community system classifications in accordance with “Natural Communities of New Hampshire”, second edition, 2012, available as noted in Appendix B, and “Natural Community Systems of New Hampshire”, second edition, 2011, available as noted in Appendix B, prepared by the NH department of natural and cultural resources, natural heritage bureau (DNCR-NHB) (NH Classification Methods):

- e. Whether there are any rare, special concern, or state or federally listed threatened or endangered species present, including any flora, fauna, or migratory species; and
 - f. Exemplary natural communities and natural community systems identified by the DNCR-NHB.
- b. For permittee-responsible wetlands restoration, enhancement, or creation, the plan and report submitted pursuant to Env-Wt 803.01 also shall:
- 1. Include a functional assessment as described in (a), above, of each proposed mitigation site;
 - 2. Identify the location of the mitigation site relative to other protected lands with an explanation of how the site meets the selection criteria stated in Env-Wt 805.02; and
 - 3. Explain why the mitigation project will result in a resource with a functional value equal to or greater than the jurisdictional area(s) impacted by the project.

Comments/Concerns

803.02 Remove “Creation” - not allowed by Corps.

803.05

DES Draft Rules

Proposal for In-Lieu Mitigation Payment. For a project for which compensatory mitigation is proposed as an in-lieu mitigation payment, the plan and report prepared pursuant to Env-Wt 803.01 also shall include:

- a. The information required by Env-Wt 803.02 or Env-Wt 803.03, as applicable based on the type of impact; and
- b. The explanations required by Env-Wt 803.10(b) and by Env-Wt 803.10(c) or (d), as applicable.

Comments/Concerns

803.05 Proposal for In-Lieu Mitigation Payment: add - “The municipality in which the impact occurs shall have one year to prepare an acceptable project that utilizes the in-lieu fee payment. If an acceptable project is not forthcoming from the municipality, the in-lieu fee payment is transferred to the general ARM fund.

803.07

DES Draft Rules

Compensation Amount.

- a. The applicant may propose a combination of the types of compensatory mitigation listed in Table 800-1 to meet the requirements of this section.
- b. For a project for which permittee-responsible mitigation is proposed, the department shall not require the applicant to propose mitigation ratios exceeding the ratios as listed in Table 800-1 for approval of any project under this chapter, provided, however, that nothing herein shall prevent the department from accepting a proposal that exceeds the mitigation ratios listed in Table 800-1.
- c. As required by RSA 482-A:30, the department shall calculate the amount of an in-lieu mitigation payment for wetland impact projects by summing the following items:
 - 1. The cost that would have been incurred if a wetland of the same type was constructed at the ratios listed in Table 800-1 based on a price of \$65,000 per acre of wetland created, adjusted according to the annual simple rate of interest on judgements established by RSA 336:1,II;
 - 2. The area of wetlands that would need to be constructed, at the ratios established in Table 800-1, times the cost of land where the impact is occurring as calculated by the assessed land values determined by the NH department of revenue administration which are equalized and divided by the number of acres in each municipality to yield a per acre equalized land value; and
 - 3. The administrative assessment authorized by RSA 482-A:30, III.

- d. For permittee-responsible stream mitigation, the applicant shall demonstrate that the amount of compensatory mitigation meets or exceeds the total amount of impacted stream area that may include the stream bottom and associated stream banks as calculated according to Env-Wt 303.02(i)
- e. As required by RSA 482-A:30-a, the department shall calculate the amount of an in-lieu mitigation payment for stream or shoreline resource losses by summing the following items:
 - 1. The cost that would have been incurred if a stream of the same type were restored at the ratios established in Table 800-1, based on a price of \$200 per linear foot of channel or bank impacts or both, adjusted according to the annual simple rate of interest on judgements established by RSA 336:1, II; and
 - 2. The administrative assessment authorized by RSA 482-A:30-a, II.
- f. For a project that would have both wetland impacts and stream impacts, the department shall calculate the amount of an in-lieu mitigation payment as follows:
 - 1. For wetland impacts and stream impacts that can be distinguished from each other, by summing the payments calculated pursuant to (c) and (e), above; and
 - 2. For wetland impacts and stream impacts that cannot be distinguished from each other, by calculating the amount of an in-lieu mitigation payment for the impact that would result in the greater environmental loss pursuant to (c) or (e), above, as applicable.
- g. For a project for which the applicant proposes a combination of permittee-responsible mitigation and an in-lieu mitigation payment, the department shall not require the applicant to propose a combined total that exceeds the mitigation ratios listed in Table 800-1, provided, however, that nothing herein shall prevent the department from accepting a proposal that exceeds those mitigation ratios.

Comments/Concerns

803.07 Compensation Amount: (c) (2) demonstrate how the equalized land value per town is calculated.
 Table 800-1: Minimum Compensation Mitigation Ratios: Add other wetland types based upon function and value:

Man-created wetlands compensation is 30% of the calculated value.

Natural Wetlands of low value 50% of calculated value.

Wet Meadow 80% of calculated value.

803-10

DES Draft Rules

Criteria for Acceptance of In-Lieu Mitigation Payments.

- a. An in-lieu mitigation payment shall not substitute for the requirement to avoid or minimize impacts established in Env-Wt 302.03.
- b. An applicant wishing to make an in-lieu mitigation payment shall evaluate available aquatic resource buffer preservation opportunities in accordance with Env-Wt 804 and provide documentation and an explanation of how aquatic resource buffer preservation is not practicable based on the following:
 - 1. The property has upland and wetland areas remaining after the development has been designed but does not exceed the ratios in Table 800-1 or cannot meet the buffer requirement in Env-Wt 804.02;
 - 2. Preservation was discussed by the municipal conservation commission and acceptance of the easement was declined as an option, as demonstrated by minutes from the meeting(s) at which the proposal was considered or a letter signed by the conservation commission; and
 - 3. Acceptance of the easement was declined by other conservation organizations as cited in Env-Wt 501.06(b)(3), as demonstrated by written responses from such organizations.
- c. An applicant for a project that will have permanent impacts to a wetland shall evaluate available wetland restoration, enhancement, and creation opportunities in accordance with Env-Wt 805 and

provide documentation and an explanation of what was considered and why restoration, enhancement, or creation will not produce a valuable and sustainable jurisdictional area.

- d. An applicant for a project that will have permanent impacts to a stream shall evaluate available stream restoration and enhancement opportunities in accordance with Env-Wt 806 and provide documentation and an explanation of what was considered and why restoration or enhancement will not produce a valuable and sustainable jurisdictional area.
- e. The department shall accept a proposal for an in-lieu mitigation payment if the proposal meets the requirements of (b), above, and (c) or (d), above, as, applicable, and the mitigation type or combination of mitigation types listed in Table 800-1 that are available in the same watershed as the impacts for compensating jurisdictional area losses are not practicable.

Comments/Concerns

803-10 Criteria for Acceptance of In-Lieu

Remove (b) - preferred in in-lieu fee.

805 Wetland restoration, enhancement or creation (remove creation - not allowed)

808.06

DES Draft Rules

Processing of ARM Fund Applications.

- a. The department shall review each application for conformance with Env-Wt 808.04 and to determine whether the project meets the criteria of Env-Wt 808.07 or Env-Wt 808.08, as applicable.
- b. The department shall notify the applicant and the municipality (ies) in which the land is located in writing of its decision on the application. If the application is determined to not be acceptable for funding, the notice shall specify the reason(s) for the determination.

Comments/Concerns

808.06 Processing of ARM Fund Application: add “Preference will be given to municipalities in which the impacts occurred for one year after the issuance of the permit and payment into the ARM fund.”

808.18

DES Draft Rules

Application Ranking and Selection by the Site Selection Committee.

- a. For each application funding cycle the site selection committee shall, within 120 days of the application deadline, rank each project for which a pre-proposal has satisfied pre-proposal requirements and the request for ARM funding is received.
- b. The ranking shall be based on a review of the applications and site walks conducted by the department.
- c. The site selection committee shall rank the project(s) that are located in the dame service area as the impact areas that paid into the fund.
- d. The site selection committee shall select projects that provide the greatest potential to replace or protect specific functions and values lost by the impacts in the service area.
- e. Where project scores are comparable, preference shall be given to projects that provide the longer term, more beneficial protection mechanism for the project area and its buffer.
- f. The site selection committee shall only consider applications for ARM funds that include a budget that is based on good-faith, realistic estimates of costs to accomplish the proposed project’s stated objectives and time frame.
- g. The site selection committee shall select the highest ranked projects for each application cycle.
- h. If the department announces a watershed account is ready to be spent and the submitted proposals do not address the priorities for the service area, then the funds deposited in that account shall remain to be available in a new application cycle.

- i. Funds that remain in an account after the ARM fund applications have been selected for funding shall be carried over in that service area account to be available for the next application cycle.
- j. Applications for ARM funds shall be evaluated based on the criteria and points specified in Env-Wt 808.19.

Comments/Concerns

808.18 Application Ranking: add “preference will be given to stream and floodplain restoration and enhancements”.