

Effective December 15, 2019, Env-Wt 500 reads as follows:

CHAPTER Env-Wt 500 PROJECT-SPECIFIC REQUIREMENTS

Statutory Authority: RSA 482-A:11, I

PART Env-Wt 501 RESERVED

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PART Env-Wt 509 PURPOSE; APPLICABILITY; ABBREVIATIONS AND ACRONYMS

Env-Wt 509.01 Purpose. The purpose of this chapter is to establish clear project-specific requirements so that persons proposing projects in jurisdictional areas will know in advance what requirements apply.

Env-Wt 509.02 Applicability.

(a) This chapter shall apply as specified in Env-Wt 305.02, provided that “this chapter” shall mean Env-Wt 500.

(b) Except as provided for boardwalks, restoration/enhancement, and public roadways, this chapter shall apply to projects in areas that are not coastal areas, which are subject to Env-Wt 600.

(c) Projects not specifically listed shall be subject to all qualifying criteria established in:

(1) RSA 482-A and RSA 483-B; and

(2) Env-Wt 300, Env-Wt 400, and Env-Wt 600 through Env-Wt 900.

Env-Wt 509.03 Abbreviations and Acronyms. Abbreviations and acronyms used throughout this chapter shall have the meaning assigned in Env-Wt 100, as summarized in Appendix E.

PART Env-Wt 510 AQUATIC VEGETATION CONTROL

Env-Wt 510.01 Applicability.

(a) This part shall apply to projects for the removal of native aquatic vegetation (NAV) and exotic aquatic weeds (EAW), as defined in RSA 487:16 and reprinted in Appendix C, and Env-Wq 1302.06, that:

(1) Do not qualify for a conditional exemption under Env-Wt 309.02(c); and

(2) Are required for continued access to a legally established navigable frontage associated with an inland waterbody.

(b) This part shall not apply to those projects that require removal or disturbance of the underlying substrate that would constitute dredging covered under Env-Wt 523.

Env-Wt 510.02 Approval Criteria for EAW Control Projects. In addition to meeting the applicable conditions established in Env-Wt 300, and subject to Env-Wt 510.03, the department shall not approve a project to remove or otherwise control EAW unless the following criteria are met:

(a) The project is conducted in accordance with a long-term management plan designed pursuant to Env-Wq 1305.03;

(b) In flowing waters, harvesting is initiated only at the most upstream location of the infestation, where practicable;

(c) The vegetation control is done in a manner that avoids impacts that would be deleterious to fish and wildlife habitat or cause degradation of water quality;

(d) The project:

(1) Minimizes the removal of NAV where such vegetation provides:

a. Spawning, nursery, or nesting habitat for fish, zooplankton, macroinvertebrates, fish, or waterfowl; or

b. Food for zooplankton, macroinvertebrates, fish, waterfowl, moose, and other water-dependent species;

(2) Complies with RSA 487:15 through 25, the New Hampshire Clean Lakes Program; and

(3) Uses a construction sequence that minimizes impacts to any adjacent PRAs;

(e) The project is not located in:

(1) A PRA; or

(2) A diverse habitat that provides nesting or foraging habitat for fish or wildlife that would be negatively impacted by vegetation removal; and

(f) All vegetation removed will be disposed of outside of jurisdictional areas using an acceptable means of disposal as listed in Env-Wq 1303.06.

Env-Wt 510.03 Hand Removal of EAW Without a Permit. No permit shall be required for hand removal of EAW or the installation and maintenance of benthic barriers on the bottom of a surface water to control the growth of EAW, as authorized by RSA 487:17, provided:

(a) The work is conducted by divers who have received training in EAW control diving from a diving instructor that is registered and confirmed with the department's invasive species coordinator;

(b) The project is conducted in accordance with a long-term management plan designed pursuant to Env-Wq 1305.03;

(c) The project is not located in a PRA;

(d) In flowing waters, harvesting will be initiated only at the most upstream location of the infestation, where practicable; and

(e) The project does not qualify as a major project under Env-Wt 400.

Env-Wt 510.04 Approval Criteria for NAV Removal Projects. In addition to meeting the applicable conditions established in Env-Wt 300, the department shall not approve a project to control or eradicate NAV unless the following criteria are met:

(a) The project:

(1) Is necessary to maintain access to an existing legal beach, docking facility, public boat ramp, or community swim area because the NAV is:

a. Negatively affecting private or public access to the waterbody;

- b. Interfering with the applicant's ability to reasonably use watercraft or to engage in other recreational uses; or
- c. Interfering with the normal outflow or flushing of the waterbody;
- (2) Minimizes potential water quality impacts where disturbance to soft bottom substrates could result in turbidity or changes to the cross-section of the bottom if aquatic plants are disturbed or removed; and
- (3) Protects critical habitats, nesting sites, and spawning fishery locations; and
- (b) The project will not:
 - (1) Remove a protected species or habitat;
 - (2) Remove or disturb root systems or substrate materials or grades that would constitute dredging;
 - (3) Be located in:
 - a. A PRA; or
 - b. A diverse habitat that provides nesting or foraging habitat for fish or wildlife that would be negatively impacted by the removal of vegetation;
 - (4) Cause removal of NAV that is part of a floating island; or
 - (5) Cause removal of NAV from an area exceeding 1,000 square feet (SF) total, with a maximum width of 15 feet.

Env-Wt 510.05 Application Requirements for NAV Removal and EAW Control Projects.

- (a) For projects to remove NAV or to remove or otherwise control EAW that are not exempt under Env-Wt 510.03, the project-specific information required by Env-Wt 310.01(c)(1) or Env-Wt 311.03(b)(11), as applicable, shall be as follows:
 - (1) A brief summary of the proposed project, including:
 - a. A concise statement of what the project is intended to accomplish;
 - b. A list of each task to be undertaken as part of the project and for each, who will do it and how it will be done;
 - c. The location of the proposed project and the name of each owner of property adjacent to the project;
 - d. The proposed start date and end date of the project;
 - e. A description of each target plant species for removal; and
 - f. An estimate of the total footprint area in square feet (SF) and volume of vegetation in cubic yards (CY) to be removed and non-target species in the vicinity;
 - (2) For any EAW removal project proposing more than 10,000 SF in surface area, more than 5% of the surface area of a waterbody, or any impact to a PRA, an aquatic vegetation management plan for the impacted area of the lake or pond that:
 - a. Addresses long-term and cumulative impacts from the proposed project; and
 - b. Identifies:
 - 1. The functional value of the vegetation to be removed; and

2. Known circumstances that caused the increase in sediments or nutrients to the proposed impact area;
- (3) A plan showing the proposed areas for NAV or EAW removal, as applicable, with a listing and annotation showing information on species abundance and coverage including:
 - a. Description of plant species to be removed and description of the plant community;
 - b. The extent of areal coverage;
 - c. The potential impact on native plant communities, if applicable, and the distance of those native plant community from existing docking facilities;
 - d. Detailed dimensions showing the existing vegetative cover and the proposed removal area of NAV or EAW removal; and
 - e. The depth of removal;
- (4) A description of the proposed control methods, such as hydroraking or mechanical harvesting for NAV, and the justification for the method selected, including:
 - a. Methods to contain, control, and minimize water quality impacts;
 - b. Methods to transfer vegetation that is removed without dispersing it;
 - c. Method(s) and location(s) for dewatering removed vegetation;
 - d. Methods to minimize impacts to fishery and wildlife habitats based on the time of year the project will occur; and
 - e. Method of disposal of EAW, consistent with Env-Wq 1303.06 relative to acceptable means of disposal; and
- (5) For projects that propose mechanical harvesting of EAW from areas less than 2 meters deep, equivalent to 6.6 feet deep, or for which an aquatic vegetation management plan is required by (2), above, a wetland delineation, wetland assessment, and characterization of emergent aquatic bed wetlands.

(b) The applicant shall provide copies of the plan required by (a)(2) to the local lake association and conservation commission(s).

Env-Wt 510.06 Design Requirements for EAW Control Projects. In addition to meeting applicable design requirements established in Env-Wt 307, a proposed project to remove or otherwise control EAW shall be:

- (a) Designed to comply with all applicable requirements of RSA 487 and Env-Wq 1300; and
- (b) Developed in consultation with the department's invasive species coordinator and watershed bureau.

Env-Wt 510.07 Construction Requirements for NAV Removal and EAW Control Projects. In addition to meeting all applicable construction standards specified in Env-Wt 307, the following shall apply to projects to remove NAV and to remove or otherwise control EAW:

- (a) The project shall be supervised by:
 - (1) A certified wetland scientist; or
 - (2) For EAW control projects, a certified wetland scientist having experience in identifying and controlling EAW;

(b) Where protected species or habitat has been identified, the permittee shall coordinate with NHF&G and NHB, as applicable;

(c) For EAW control projects, all reasonable precautions shall be taken within riparian areas to prevent unnecessary removal of native vegetation during access to and transfer of removed EAW;

(d) Any riparian area in which native vegetation that is not the target vegetation of the project has been damaged or removed shall be revegetated with like native species within 3 days of the completion of the disturbance;

(e) Upland and bank areas landward of the project area shall not be disturbed by regrading or filling;

(f) All persons undertaking the work shall take precautions in accordance with Invasive Plant BMPs, available as noted in Appendix B, to prevent the import or transport of seed stock containing nuisance or invasive species such as Purple Loosestrife, Knotweed, and Phragmites; and

(g) Within 60 days of final site stabilization, the permittee shall submit a follow-up report to the department that includes a summary of the project and photographs of all stages of construction.

Env-Wt 510.08 Classification of NAV Removal and EAW Control Projects. Except for hand removal of EAW pursuant to Env-Wt 510.03, projects to remove NAV or control EAW that do not qualify for an LSA under Env-Wt 309.01(b) shall be classified as follows:

(a) An aquatic vegetation control project shall be classified as a minimum impact project if:

- (1) The project is not located in a PRA;
- (2) The project is not located in a watercourse;
- (3) If an EAW project, the maximum area disturbed does not exceed one acre in area; and
- (4) If a NAV project:
 - a. The maximum area disturbed does not exceed 1,000 SF with a maximum width of 15 feet; and
 - b. The project is associated with navigable non-tidal waterfront property and is required to continue access to existing legal beach, docking facility, swim area, or community launch area;

(b) An aquatic vegetation control project shall be classified as minor impact if the project exceeds any of the criteria or conditions specified in (a), above, and:

- (1) If a NAV project, the maximum area of disturbance is less than 10,000 SF; or
- (2) If an EAW project, the maximum area of disturbance is less than 5 acres; and

(c) An aquatic vegetation control project shall be classified as major impact if the project exceeds any of the minimum impact criteria in (a), above, and:

- (1) If a NAV project, the maximum area of disturbance is 10,000 SF or greater; or
- (2) If an EAW project, the maximum area of disturbance is 5 acres or greater.

PART Env-Wt 511 CONSTRUCTION OF WATER ACCESS STRUCTURES AND BEACH
REPLENISHMENT

Env-Wt 511.01 Applicability; Definitions.

- (a) This part shall apply to any person who wishes to:
 - (1) Construct or expand any combination of water access structures;
 - (2) Replenish a beach; or
 - (3) Repair, replace, or maintain a water access structure.
- (b) The following definitions shall apply to this part:
 - (1) “Stairs” means a structure made from wood or a wood substitute that is constructed over the surface of a bank to facilitate moving between different levels; and
 - (2) “Steps” means a structure made from stone, concrete, or similar materials that is dug into a bank to facilitate moving between different levels.

Env-Wt 511.02 Approval Criteria for Water Access Structures. In addition to meeting the applicable conditions established in Env-Wt 300, the department shall not approve an application to construct or install a water access structure unless the following criteria are met:

- (a) The project is not listed as a prohibited activity in Env-Wt 306;
- (b) The applicant demonstrates that:
 - (1) The water access structure will not contribute sand or sediment to the adjacent surface water;
 - (2) Any new water access structure, exclusive of stairs, will not impact a wetland; and
 - (3) Any new water access structure, or modification of an existing structure, proposed within protected shorelands will comply with RSA 483-B and Env-Wq 1400.

Env-Wt 511.03 Water Access Structure Project-Specific Application Requirements. The following project-specific information shall be provided as required by Env-Wt 310.01(c)(1) or Env-Wt 311.03(b)(11), as applicable, for a water access structure project on the drawing required by Env-Wt 310.01(c) or the plans required by Env-Wt 311.03(b)(4), as applicable:

- (a) The normal high water line;
- (b) The limits of the bank(s);
- (c) The amount of shoreline frontage for the subject property;
- (d) For a beach, the volume, in cubic yards, of sand to be used;
- (e) All temporary impact areas;
- (f) Stormwater diversion methods to be used; and
- (g) A cross section showing the following information:
 - (1) The difference in elevation between the lowest point of the shoreline slope to be impacted by the structure and the highest point of the shoreline slope to be impacted;
 - (2) The linear distance across the proposed project area as measured along a straight line between the lowest point of the shoreline slope to be impacted by the structure and the highest point of the shoreline slope to be impacted;

- (3) If a retaining wall is proposed as part of the project:
 - a. The proposed height and width of the wall to be constructed;
 - b. The type and materials of construction; and
 - c. Any stormwater diversion methods and drainage associated with the proposed wall; and
- (4) Design details and specifications of any pervious surface to be employed.

Env-Wt 511.04 Water Access Structure Design Requirements. In addition to meeting applicable design requirements established in Env-Wt 307, the following design requirements shall apply to water access structures:

- (a) Wherever hardened shorelines exist, whether due to naturally-occurring stones, installed rip-rip, or constructed retaining walls, construction of a water access structure shall be landward and above the hardened shoreline;
- (b) Hardened shorelines shall remain intact with the exception of material that must be removed for the installation of steps to access the water;
- (c) Where hardened shorelines do not exist, water access surfaces shall be located at an elevation at least 12 inches above the normal high water line or ordinary high water mark, as applicable;
- (d) Beaches shall be designed such that the beach surface has zero slope;
- (e) All water access structures other than beaches shall be sloped away from the adjacent surface water;
- (f) Steps for access to and from a beach shall:
 - (1) Not exceed 6 feet in width; and
 - (2) Be constructed or installed such that all portions of the steps are landward of the normal high water line or ordinary high water mark, as applicable;
- (g) Stairs constructed to and from decks or patios shall:
 - (1) Not exceed 6 feet in width; and
 - (2) If installed or constructed to provide access to the water, be removed from the lakebed prior to ice-in and not be re-installed until ice-out;
- (h) Water access structures shall be located to avoid and minimize removal of vegetation as required by RSA 483-B:9,V(a);
- (i) Water access structures within protected shorelands shall meet the spatial limits prescribed for the frontage as specified in Env-Wq 1400;
- (j) No work shall be conducted in a wetland or PRA;
- (k) No new water access structures and no combination of existing and proposed structures shall use more than 20 percent of the applicant's contiguous shoreline, up to a maximum of 50 feet; and
- (l) Appropriate devices for diversion of stormwater away from the water access structure shall be installed immediately upslope of the structure.

Env-Wt 511.05 Water Access Structure Construction Requirements. In addition to meeting all applicable construction standards established in Env-Wt 300, the following shall apply to water access structure projects:

- (a) The water access structure shall be constructed as shown in the approved plans and specifications;
- (b) Revegetation of the disturbed area by planting trees, shrubs, and ground covers shall:
 - (1) Represent the density and species diversity of the existing stand of vegetation removed for the project; and
 - (2) Begin at a distance no greater than 5 feet landward from the water access structure's footprint; and
- (c) Appropriate methods for the diversion of stormwater away from the beach and deck shall be installed immediately upslope of the structure.

Env-Wt 511.06 Water Access Structure Construction Project Classifications.

- (a) Construction of a water access structure shall be a minimum impact project only if all of the following criteria are met:
 - (1) The water access structure serves one privately-owned single family residence only;
 - (2) No construction surface area, filling, or dredging occurs below the normal high water line or ordinary high water mark, as applicable;
 - (3) No work is done in a wetland or PRA;
 - (4) The combination of existing and proposed water access structures does not use more than 20 percent of the applicant's contiguous shoreline up to a maximum of 50 feet;
 - (5) A maximum of 10 CY of sand is used; and
 - (6) The total area impacted by the structures does not exceed 250 SF.
- (b) Construction of a beach shall be a minor impact project if the project complies with (a)(1) through (4), above, and either:
 - (1) The project uses more than 10 CY of sand but not more than 20 CY of sand; or
 - (2) The aggregate area impacted by water access structures is 250 SF or greater but does not exceed 500 SF.
- (c) Construction of a deck shall be a minor impact project if:
 - (1) The project complies with (a)(1) through (5), above; and
 - (2) The aggregate area impacted by water access structures is 250 SF or greater but does not exceed 500 SF.
- (d) Construction of a water access structure shall be a major project if the project does not meet the criteria for a minimum impact project specified in (a), above, or for a minor impact project specified in (b) or (c), above.

Env-Wt 511.07 Beach Replenishment Project Classifications.

- (a) Replenishment of sand on an existing beach shall be a minimum impact project only if all of the following criteria are met:
 - (1) The beach is an existing legal structure as defined in Env-Wt 102;

- (2) No sand is placed below the normal high water line or ordinary high water mark, as applicable;
- (3) No work is done in a wetland or PRA;
- (4) No more than 10 CY of sand is used; and
- (5) The beach is not replenished more frequently than once in any 6-year period.

(b) Replenishment of a beach shall be a minor impact project if the project meets the criteria in (a)(1)-(3), above, and either:

- (1) The beach is replenished more frequently than once in a 6-year period; or
- (2) More than 10 CY of sand but not more than 20 CY of sand will be used.

(c) Replenishment of a beach shall be a major impact project if the project does not meet the criteria for a minimum impact project specified in (a), above, or for a minor impact project specified in (b), above.

Env-Wt 511.08 Deck or Patio Repair Project Classifications.

(a) Repair of an existing deck or patio shall be a minimum impact project only if all of the following criteria are met:

- (1) The deck is an existing legal structure; and
- (2) No work is done in a wetland or PRA.

(b) Repair of an existing deck or patio shall be a minor impact project if the criteria of (a), above, are not met.

PART Env-Wt 512 BREAKWATERS

Env-Wt 512.01 Applicability. This part shall apply to any person who wishes to construct or maintain a breakwater.

Env-Wt 512.02 Approval Criteria for Breakwaters.

(a) In addition to meeting the applicable conditions established in Env-Wt 300, the department shall not approve a project to construct a breakwater unless the applicant establishes that:

- (1) The structure is proposed to be located in Lake Winnepesaukee;
- (2) The proposed site for the structure meets one of the criteria specified in (b), below;
- (3) The structure is located in an area that:
 - a. Does not have accumulations of sand, such as deltas or sand bars; and
 - b. Is not between 2 or more areas where sand migrates from one area to another;
- (4) The property associated with the structure has 100 feet or more of shoreline frontage;
- (5) The design of the structure meets all design criteria specified in Env-Wt 512.04;
- (6) The application for the structure contains the additional information specified in Env-Wt 512.03; and
- (7) The structure will be constructed as specified in Env-Wt 512.05.

(b) To qualify for a breakwater, the applicant shall demonstrate, as specified in (c) or (d), below, as applicable, that the site for the proposed structure is exposed to:

- (1) A single radial fetch of at least 4 miles between compass headings 300 and 330 degrees as measured from true north; or
- (2) Waves that are at least 2 feet high, measured from trough to crest, in water at least 3 feet deep, on at least 4 separate occasions, lasting at least 4 hours each, between May 15 and October 15 of the same year.

(c) To demonstrate that the site meets the criterion specified in (b)(1), above, the applicant shall provide a copy of the map of Lake Winnepesaukee found in Appendix D, which shows areas that meet the location requirements, with the location of the proposed structure marked clearly. In lieu of a copy of the map in Appendix D, the applicant may provide a portion of a larger copy of the map obtained from the department or the department's website.

(d) To demonstrate that the site meets the criterion specified in (b)(2), above, the applicant shall provide either:

- (1) Dated photographs or video recording and a summary of the wave heights measured, the dates measured, and the frequency of measurement during each 4-hour period, which frequency shall be sufficient to show, in conjunction with the photographs, that the wave activity is essentially continuous throughout each 4-hour period; or
- (2) Written site measurements and photographs completed during the relevant period and supported by a scientifically-accepted wave propagation model using regional wind data.

Env-Wt 512.03 Application Requirements for Breakwaters.

(a) The project-specific information required by Env-Wt 311.03(b)(11) for a breakwater application shall be as specified in (b) and (c), below.

(b) The following information shall be shown on the plan required by Env-Wt 311.03(b)(4):

- (1) Dimensions of the structure, including dimensions at the toe of slope;
- (2) The dimensions visible at normal high water level;
- (3) The direction of prevailing wave activity;
- (4) A line representing the 50-foot distance from the shoreline within which a breakwater may be constructed pursuant to Env-Wt 512.04(e)(1);
- (5) All docking structures on the subject property or otherwise associated with the subject property; and
- (6) The construction sequence that will be followed.

(c) The applicant also shall provide:

- (1) Cross-sections showing the height and slope of the structure and the normal high water line; and
- (2) A complete list of all construction materials.

Env-Wt 512.04 Breakwater Design Requirements. In addition to meeting all applicable design requirements established in Env-Wt 300, the following design requirements shall apply to breakwaters:

(a) The height of the breakwater shall not exceed 3 feet above the normal high water line;

- (b) The width of the breakwater at its highest point shall not exceed 3 feet;
- (c) The side slopes of the breakwater shall be 1:1.5, rise to run, or steeper;
- (d) The sides and top of the breakwater shall have irregular surfaces to diffuse wave activity;
- (e) The breakwater, when measured from the normal high water line, shall have:
 - (1) No point more than 50 feet from the normal high water line;
 - (2) A total length of no more than 70 feet; and
 - (3) A gap of 6 feet or more between the breakwater and shoreline;
- (f) The proposed configuration for the breakwater shall be the least impacting option available for breakwater construction for that site;
- (g) No portion of the breakwater, including any portion underwater, shall be placed within 20 feet of an abutting property line or its imaginary extension into the water; and
- (h) The breakwater shall be constructed of stone, concrete, wood, or other inert materials, consistent with the individual conditions of each site.

Env-Wt 512.05 Breakwater Construction Requirements. In addition to meeting all applicable construction standards established in Env-Wt 307, the following shall apply to breakwater construction projects:

- (a) The breakwater shall be constructed as shown in the approved plans and specifications;
- (b) No rocks shall be stockpiled in any jurisdictional area unless the applicant:
 - (1) Specifically requests authorization for such stockpiling in the application and receives such authorization in the permit; and
 - (2) Documents in the application that the limited and difficult access to the site precludes stockpiling outside of jurisdictional areas;
- (c) Any rocks stockpiled in jurisdictional areas shall be removed:
 - (1) As soon as practicable; and
 - (2) In every case, by the conclusion of construction on the breakwater; and
- (d) Rocks from the frontage of the subject property shall be used as a source of breakwater material only if:
 - (1) The applicant specifically requests authorization for such use in the application and receives such authorization in the permit; and
 - (2) The rocks are removed from another structure on the frontage for the purpose of constructing the breakwater and are not dug or blasted out of the ground.

Env-Wt 512.06 Breakwater Construction Project Classification.

- (a) Breakwater construction shall be a major project, regardless of the size of the breakwater.
- (b) Classification as a major project pursuant to (a), above, shall:
 - (1) Take precedence over any lower classification; and
 - (2) Not be subject to a waiver.

Env-Wt 512.07 Breakwater Maintenance and Repair Project Classification.

(a) A breakwater may be maintained or repaired without obtaining a permit only if all of the following conditions are met:

- (1) The breakwater was originally constructed prior to permit jurisdiction or was installed pursuant to a permit and in compliance with all permit terms and conditions;
- (2) The work consists only of placing materials that have been dislodged from the breakwater back into their original location; and
- (3) All work is done without the use of machinery.

(b) Breakwater maintenance and repair shall be a minimum impact project only if both of the following conditions are met:

- (1) The breakwater was originally constructed prior to permit jurisdiction or was installed pursuant to a permit and in compliance with all permit terms and conditions; and
- (2) The work consists of replacement of original materials that have been dislodged from the breakwater into their original location using machinery that will be operated from a barge or from a land area outside of any jurisdictional areas.

(c) Breakwater maintenance and repair shall be a minor project only if both of the following conditions are met:

- (1) The breakwater was originally constructed prior to permit jurisdiction or was installed pursuant to a permit and in compliance with all permit terms and conditions; and
- (2) The work consists of placing new materials into locations from which original materials have been dislodged using machinery that will be operated from a barge or from a land area outside of any jurisdictional area.

(d) Breakwater maintenance and repair shall be a major project if the project does not meet the criteria for a permit-exempt project as specified in (a), above, a minimum impact project as specified in (b), above, or a minor project as specified in (c), above.

Env-Wt 512.08 Required Modification or Removal of Breakwaters.

(a) Subject to (b), below, the owner of a breakwater that causes significant adverse effects on abutting property owners or on public use of the water, such as by creating or contributing to the formation of sand bars or other navigation hazards, shall modify the breakwater so as to eliminate such adverse effects.

(b) The owner of the breakwater shall remove the breakwater if:

- (1) Modification is not practicable; or
- (2) The modification is ineffective in eliminating the adverse effects.

(c) No modification or removal shall be performed without first obtaining a permit for the modification or removal under Env-Wt 311.

(d) The removal of a breakwater shall be classified as a minor project.

(e) The modification of a breakwater shall be classified as a major project.

PART Env-Wt 513 DOCKING STRUCTURES AND ACCESSORY DOCKING STRUCTURES

Env-Wt 513.01 Purpose. The purpose of this part is to establish standards for seasonal docking structures, commercial docking structures, and accessory docking structures that do not qualify for the statutory permit-by-notification (SPN) established in RSA 482-A:3, IV-a, in order to minimize congestion, improve public safety and navigation, protect neighboring property values, provide sufficient area for construction of docking structures, ensure adequate area for boat maneuvering, and protect health, safety, and general welfare by minimizing construction surface area, encouraging the clustering or merging of docking structures, and minimizing impacts to the banks associated with docking structures.

Env-Wt 513.02 Applicability.

(a) Subject to (b), below, this part shall apply to any person who wishes to construct, modify, repair, or replace a docking structure or an accessory docking structure.

(b) This part shall not apply to:

- (1) Maintenance and repairs undertaken pursuant to the statutory exemption described in Env-Wt 308.01;
- (2) Temporary seasonal docks installed pursuant to the SPN described in Env-Wt 308.04;
- (3) Swim rafts or moorings installed in accordance with applicable state law and rules adopted by the New Hampshire department of safety;
- (4) Aquatherms, circulators, and similar devices for the prevention of ice formation around structures that have been installed in accordance with state law and rules adopted by the New Hampshire department of safety;
- (5) Devices attached solely to the sides or surfaces of a docking structure for the purpose of securing lines for existing boat slips, such as cleats, whips, or tie-posts; and
- (6) Diving boards, slides, and ladders that are not a navigational hazard.

Env-Wt 513.03 Approval Criteria for Docking Structures.

(a) In addition to meeting the applicable approval criteria in Env-Wt 300, the department shall not approve an application for a docking structure unless the applicant demonstrates that the following criteria are met:

- (1) The docking structure will not have an impact to which a reasonable person would object on:
 - a. The ability of abutting owners to use and enjoy their properties; or
 - b. The public's right to navigation, passage, and use of the resource for commerce and recreation;
- (2) The docking structure has been designed, located, and configured to avoid impacts to water quality, aquatic vegetation, and wildlife and finfish habitat;
- (3) The docking structure will not adversely affect shoreline stability; and
- (4) The type of construction proposed is the least intrusive upon the public trust that will insure safe docking on the frontage.

(b) A seasonal dock installed under the SPN or as permitted under Env-Wt 300 shall require no further permitting unless there is a change in size, location, or configuration of the dock.

Env-Wt 513.04 Approval Criteria for Permanent Docking Structures.

- (a) In addition to meeting the conditions established in Env-Wt 300, the department shall not approve an application for a permanent docking structure unless the applicant establishes that:
- (1) The proposed permanent dock will be located on a lake of over 1,000 acres; and
 - (2) The proposed site for the dock is exposed to a design fetch of at least 1 mile between compass headings 245 to 340 degrees, or a design fetch of at least 2 miles between compass headings 341 to 0 or 0 to 244 degrees, as measured from true north.
- (b) When the applicant does not meet the requirements of (a)(2), above, the department shall approve the permanent dock provided the applicant documents the occurrence of waves of at least one foot measured from trough to crest in water at least 3 feet deep, at the location of the proposed dock on at least 4 separate occasions, lasting 4 hours each, between the dates of May 15 and October 15.
- (c) To qualify under (b), above, the applicant shall provide the following:
- (1) Dated photographs and a summary of the wave heights measured, the dates measured, and the frequency of measurement during the 4-hour periods; or
 - (2) Written site measurements completed during the relevant period and verified as accurate by the department.
- (d) The frequency of wave height measurements shall be high enough to show, in conjunction with the pictures, that the wave activity is essentially continuous throughout the 4-hour periods.
- (e) A permanent dock shall be approved regardless of the design fetch when at least one of the following criteria is met:
- (1) The dock will be located on an island accessible only by watercraft;
 - (2) The dock will be subjected to unusually heavy loading where a permanent dock is needed for safety, such as a dock at a commercial facility that is used to convey heavy equipment or freight; or
 - (3) The dock will provide a significant public benefit, such as a docking facility that is open to the general public for transient use.

Env-Wt 513.05 Approval Criteria for Accessory Docking Structures.

- (a) The department shall approve an application for an accessory docking structure, whether an anchoring pad for a seasonal dock, canopy, dolphin, ice cluster, tie-off piling, wave attenuator, or watercraft lift, only if the proposed accessory docking structure is designed and installed so as to comply with:
- (1) The applicable conditions established in Env-Wt 300;
 - (2) Env-Wt 513.10 relative to setbacks;
 - (3) Env-Wt 513.11 relative to dimensions;
 - (4) Env-Wt 513.12 or Env-Wt 513.17, as applicable, relative to frontage;
 - (5) Env-Wt 513.14 relative to navigation space; and
 - (6) The applicable provisions of this part relative to design and construction standards for specific types of accessory docking structures.
- (b) The department shall approve an application for a boathouse located over a dug-in basin within the property of the applicant only if:

- (1) The applicable conditions established in Env-Wt 300;
- (2) Alternative docking and storage solutions with less environmental impact do not exist;
- (3) Applicable design and construction criteria in RSA 483-B and Env-Wq 1400 for accessory structures are met; and
- (4) The proposed construction will:
 - a. Not adversely impact the stability of the shoreline;
 - b. Be sequenced and use such techniques so as to prevent water quality degradation;
 - c. Be performed in such a manner so as to not cause any sedimentation along the shoreline or other adverse impact to the surface water, including existing movements of currents; and
 - d. Not impact wetlands, watercourses, or other jurisdictional areas.

Env-Wt 513.06 Application Requirements for All Docking Structures. The project-specific information required by Env-Wt 310.01(c)(1) or Env-Wt 311.03(b)(11), as applicable, for a docking structure or accessory docking structure application shall be as follows:

(a) On the drawing required by Env-Wt 310.01 or the plan required by Env-Wt 311.03(b)(4), the following:

- (1) The normal high water line for projects on a lake, pond, or marsh;
- (2) The ordinary high water mark for projects on a watercourse;
- (3) The amount of shoreline frontage for the subject property;
- (4) The general shape of the shoreline including the length of frontage;
- (5) The footprint of all existing and proposed structures on the property;
- (6) The intended use of each proposed structure;
- (7) The distance from existing and proposed work to abutting property lines; and
- (8) A cross section showing the proposed height, width, and location of any concrete pad associated with the docking structure construction relative to either:
 - a. The normal high water line for lakes and ponds; or
 - b. The ordinary high water mark for watercourses; and

(b) Any applicant who wants a longer dock than is specified in Env-Wt 513.11(a) shall submit all information needed to show that the project meets one of the criteria in Env-Wt 513.08.

Env-Wt 513.07 Municipal Review of Public or Commercial Docking Structures or Marinas.

(a) The applicant for a permit to construct a new public or commercial docking structure or marina or to expand an existing legal public or commercial docking structure or marina shall:

- (1) Certify that the proposed new or expanded structure, as applicable, complies with all applicable local requirements; and
- (2) Provide documentation to support the certification.

(b) Subject to (c) and (d), below, the documentation required by (a)(2), above, shall be:

- (1) A copy of the local permit or approval; or

(2) A letter from the applicable local land use board or local governing body indicating that a permit or approval is not required under local regulations.

(c) If local approval is required but has not been issued at the time the application is filed with the department, the applicant shall certify that the local application has been filed but a decision has not yet been issued.

(d) Local regulations shall not restrict the sole and exclusive authority of the state to authorize construction over, or dredge and fill in, great ponds or public-owned water bodies. If a municipality denies the local application or does not act on the application in a timely manner, the applicant may request a public hearing to waive the requirement of (a), above.

Env-Wt 513.08 Information Required for Requests for Waivers to Size Requirements. If an applicant wants a permanent docking structure having dimensions greater than those specified in Env-Wt 513.11(a), the applicant shall provide information demonstrating that one or more of the following is true:

(a) Conforming to the specified size would represent a safety hazard due to wind or other typical weather conditions;

(b) The property has a unique physical characteristic that requires a larger deck area and that is not shared generally by nearby properties, such as insufficient water depth;

(c) If the application is for a public docking structure, the number of people or volume of cargo, or both, that is anticipated for the docking structure necessitates larger dimensions; or

(d) Clustering or merging the docking structures in one location would result in less environmental impact to the shoreline and water body than would standard dimensions and installation.

Env-Wt 513.09 Design Requirements for Docking Structures. In addition to meeting the applicable application requirements of Env-Wt 300, all docking structures shall meet the applicable requirements specified in Env-Wt 513.10, Env-Wt 513.11, Env-Wt 513.14, and Env-Wt 513.22.

Env-Wt 513.10 Setback Requirements for Docking Structures.

(a) As required by RSA 482-A:3, XIII(a), and subject to (b) and (c), below, all docking structures shall be located at least 20 feet from an abutting property line and the imaginary extension of the property line over the surface water that is perpendicular to the shoreline.

(b) As specified in RSA 482-A:3, XIII(c), if an applicant wishes to locate a docking structure closer than 20 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.

(c) As specified in RSA 482-A:3, XIII(d), if abutters wish to apply for a common dock on or near their common property line, then:

(1) The application for the common dock shall include a notarized written agreement signed by all property owners; and

(2) If a permit is issued, the permittee shall record the agreement submitted pursuant to (1), above, at the registry of deeds so as to be in the chain of title of each property owner.

(d) Pursuant to RSA 482-A:3, XIII(b), and as clarified by (e), below:

(1) Docking structures may be perpendicular or parallel to the shoreline or extend at some other angle into a water body, depending on the needs of the landowners, factors related to safe navigation, and the difficulty of construction; and

(2) Any boat secured to such a dock shall not extend beyond the extension of the abutter's property line.

(e) The standard configuration for a docking structure in a watercourse shall be parallel to the shoreline. If the applicant wishes to have other than the standard configuration, the application shall include documentation of the need for the proposed alternative based on the factors listed in (d)(1), above.

Env-Wt 513.11 Dimensions of Docking Structures.

(a) Approvable standard dimensions for a dock shall not exceed the following dimensions:

(1) In lakes and ponds of 1,000 acres or more:

a. For seasonal docks, a deck width of 6 feet and deck length of 40 feet, measured from normal high water mark; and

b. For permanent docks, a deck width of 6 feet and deck length of 30 feet, measured from normal high water mark;

(2) In lakes and ponds of less than 1,000 acres, for all docks a deck width of 6 feet and deck length of 30 feet, measured from normal high water mark; and

(3) In watercourses, for seasonal docks a deck width of 6 feet and deck length of 40 feet, measured along the shoreline.

(b) For a property with less than 75 feet of water frontage, the docking structure shall be no larger than 4 feet by 24 feet.

Env-Wt 513.12 Frontage Requirements for Private and Non-commercial Docking Structures.

(a) Except as provided in Env-Wt 513.11(b), a private and non-commercial docking structure with 2 boat slips shall have a minimum of 75 feet of shoreline frontage on the property.

(b) An additional 75 feet of shoreline frontage on the property shall be required for each additional boat slip or securing location on a docking structure for private and non-commercial use.

Env-Wt 513.13 Concrete Pads for Seasonal Docking Structures. Any concrete pad installed to anchor a seasonal pier shall:

(a) Be not more than 7 feet wide as measured along the shoreline;

(b) Not be in prime wetlands or a duly-established 100-foot buffer;

(c) Designed such that any adjacent bank stabilization, such as gravel or rip-rap, will not cause the total impact of the pad to exceed 10 LF along the bank;

(d) For a concrete pad on a pond or lake, be constructed landward of the normal high water line; and

(e) For a concrete pad on a watercourse, installed completely landward of the ordinary high water line.

Env-Wt 513.14 Navigation Space for Docking Structures. The design and construction of docking structures shall allow for a maximum of 2 feet of navigation space between a boat slip and any other boat slip or structure.

Env-Wt 513.15 Design Requirements for Permanent Docking Structures.

- (a) In addition to meeting the applicable design requirements of Env-Wt 300, a permanent docking structure shall be designed to meet the requirements in this part relative to setbacks, navigation space, dimensions, and frontage, and the requirements of this section.
- (b) The standard design for a permanent dock shall be open pile construction.
- (c) Pilings shall be spaced at least 12 feet apart, as measured from the center of each piling.
- (d) The department shall approve a design other than open pile construction only if the applicant demonstrates that:
- (1) Pilings cannot be driven; and
 - (2) The alternate design proposed is the least impacting design for that location.
- (e) The demonstration that pilings cannot be driven shall:
- (1) Be submitted with the application; and
 - (2) Include documentation of trial driving by commercial equipment, probings, or experience in construction of immediately adjacent docks, or any combination thereof.
- (f) If an applicant demonstrates that pilings cannot be driven, an alternate design may be submitted.
- (g) If the alternate design is a crib dock, the crib shall be designed in accordance with the following:
- (1) The maximum size of the crib in water up to 6 feet deep shall not exceed 6 feet long by 6 feet wide, and of such height as is necessary to support the deck above the water level;
 - (2) The side dimensions of the crib shall be increased by not more than one foot for every additional foot of water depth above 6 feet;
 - (3) The minimum clear spacing between cribs shall be 12 feet; and
 - (4) The crib itself shall be of timber, prefabricated concrete, or other approved materials securely fastened together and of such size and spacing necessary to completely contain the stone ballast or other fill material.
- (h) If the alternate design is other than a crib dock, such as caissons, concrete supports, or prefabricated cofferdams, the dock shall be designed in accordance with standard engineering practices for the design proposed.

Env-Wt 513.16 Additional Design Standards and Application Requirements for Marinas.

- (a) In addition to meeting all other applicable requirements, a marina shall be designed to:
- (1) Minimize its visual impact on abutters and users of the surface water;
 - (2) Contain any leakage or spills of fuels, lubricants, waste products, or other pollutants from all marina operations;
 - (3) Not represent a hazard to navigation;
 - (4) Have designated areas for washing or other cleaning of watercraft;
 - (5) Control and treat storm water; and

- (6) Include at least one pump-out facility for the removal of wastes from on-board receptacles that receive and retain wastes from toilets, sinks, showers, and other on-board sources of sewage or graywater.
- (b) On the plans submitted with the application, the applicant shall show:
 - (1) The location and specifications of any abrasive blasting, painting, or hull sanding operations;
 - (2) The locations and specifications of (a)(4) through (6), above; and
 - (3) The location and method for disposing of used oil and other waste products.

Env-Wt 513.17 Frontage Requirements for Public or Commercial Docking Structures.

- (a) The frontage standards established in this section for public and commercial docking structures and marinas shall be for the purpose of minimizing congestion, improving public safety and navigation, protecting neighboring property values, providing sufficient area for construction of docking structures, providing adequate area for boat maneuvering, and protecting health, safety, and general welfare.
- (b) Subject to (c) and (d), below, to support a public or commercial docking structure or a marina, the subject property shall have 25 feet of contiguous shoreline per boat slip.
- (c) If the applicant wishes to have more than one boat slip per 25 feet of frontage, the applicant shall request a waiver in accordance with Env-Wt 203 that includes documentation that:
 - (1) The additional slips will not be contrary to the purpose of the frontage requirement as specified in (a), above; and
 - (2) Allowing additional slips is in the public interest, meaning that the benefit to the public of adding additional slips outweighs the interests of the public in not causing additional adverse impacts to jurisdictional areas, which shall not be established solely by documenting a high demand for boat slips.
- (d) If the department determines that allowing one slip per 25 feet of contiguous frontage would pose a navigational hazard, based on the configuration of the shoreline or the proximity of other waterfront uses, or both, the department shall authorize fewer slips.

Env-Wt 513.18 Design Requirements for Public or Commercial Docking Structures and Marinas. A public or commercial docking structure shall be designed to comply with all applicable requirements of Env-Wt 513.04 and Env-Wt 513.15, above, relative to permanent structures.

Env-Wt 513.19 Design, Construction, and Maintenance Requirements for Canopies. A canopy shall be designed, constructed, and maintained in accordance with the following:

- (a) The canopy shall not interfere with boating safety by obstructing lines of sight necessary to navigation;
- (b) The canopy, including the support frame and cover, shall be designed and constructed to be readily removed at the end of the boating season;
- (c) Installation of a seasonal canopy shall not be justification for installation of a permanent structure such as pilings, but permanent existing legal structures may be used to support a seasonal canopy frame; and
- (d) The canopy shall be installed after ice-out and removed prior to ice-in.

Env-Wt 513.20 Design and Construction Requirements for Dolphins, Ice Clusters, and Tie-Off Piles. In addition to meeting the applicable design and construction requirements of Env-Wt 300, a dolphin, ice cluster,

or tie-off pile shall be designed and constructed so that the structure does not, by its presence alone or in combination with similar proposed structures, add boat slips to an existing docking structure.

Env-Wt 513.21 Design and Construction Requirements for Watercraft Lifts. In addition to meeting the applicable design and construction requirements of Env-Wt 300, a watercraft lift shall be designed and constructed in accordance with the following:

- (a) Subject to (d), below, the lift shall be installed in an existing legal boat slip;
- (b) No additional boat slip shall be created by installation of the lift;
- (c) Any seasonal lift shall be installed and removed the same as a seasonal dock; and
- (d) If a lift is the only structure on the frontage, it shall:
 - (1) Be installed along the shoreline of the subject property; and
 - (2) Meet all requirements for a seasonal docking structure specified in this part.

Env-Wt 513.22 Construction and Maintenance of Docking Structures.

- (a) A docking structure shall be constructed in accordance with the approved plans and specifications.
- (b) A seasonal dock shall be:
 - (1) Installed after ice-out and removed prior to ice-in if on a lake or pond;
 - (2) Installed after May 15 and removed prior to November 15 if on a watercourse;
 - (3) Placed in the water in a way that does not obstruct navigation; and
 - (4) Removed from the water prior to applying any paint, stain, or other preservative coating, and not returned to the water until after such coating is dry.
- (c) If a permanent dock is not maintained so as to be usable for its intended purpose, the owner of the subject property shall remove the dock.

Env-Wt 513.23 Modification of Existing Docking Structures.

- (a) The department shall not approve any change in size, location, or configuration of an existing docking structure unless the applicant demonstrates, and the department finds, that the modification:
 - (1) Is less environmentally-impacting than the existing docking structure; or
 - (2) Provides for fewer boat slips and less deck area over public submerged lands than the existing docking structure.
- (b) Modification of a grandfathered docking structure that results in the same kind of structure in the same or a more conforming location, having the same or smaller surface area, and the same number or fewer boat slips, such that in all material aspects the new structure is no more impacting to the environment or abutting properties than the original structure, shall not remove the structure's grandfathered status.

Env-Wt 513.24 Docking Structure Construction, Repair, or Replacement Project Classifications.

- (a) The construction, repair, or replacement of a dock shall be a minimum impact project only if all of the following criteria are met:
 - (1) The proposed dock is a seasonal dock meeting all applicable criteria specified in Env-Wt 513.03, Env-Wt 513.10 through Env-Wt 513.12, Env-Wt 513.14, and Env-Wt 513.22;

- (2) No more than 2 slips, including previously existing slips, are proposed;
 - (3) Any anchoring pad is designed and installed as specified in Env-Wt 513.13;
 - (4) Any watercraft lift is designed and installed as specified in Env-Wt 513.05(a) and Env-Wt 513.21; and
 - (5) If a replacement, the replacement meets the definition in Env-Wt 104.
- (b) The construction, repair, or replacement of a docking structure shall be a minor project if the project does not meet the criteria specified in (a), above, for minimum impact projects and:
- (1) No more than 4 boat slips, including previously existing boat slips, are proposed; and
 - (2) The proposed docking structure will use no more than 100 feet of waterfront.
- (c) The construction of a new docking structure shall be a major project if:
- (1) The project does not meet the criteria for minimum impact projects specified in (a), above, or for minor projects specified in (b), above;
 - (2) The docking structure is a major docking system; or
 - (3) The dock is proposed to be adjacent to or attached to a breakwater.

Env-Wt 513.25 Docking Structure Modification Project Classifications.

- (a) The modification of a dock shall be a minimum impact project only if all of the following criteria are met:
- (1) The dock is a seasonal dock meeting all applicable criteria specified in Env-Wt 513.10 through Env-Wt 513.12, Env-Wt 513.14, and Env-Wt 513.22, with no waivers;
 - (2) The dock is an existing legal structure; and
 - (3) The project will result in no more than 2 slips, including previously existing slips.
- (b) The modification of a docking structure shall be a minor project if the project does not meet the criteria specified in (a), above, for minimum impact projects and:
- (1) The dock is an existing legal structure;
 - (2) The project will result in no more than 4 boat slips, including previously existing boat slips; and
 - (3) The docking structure uses no more than 100 feet of waterfront.
- (c) The modification of a docking structure shall be a major project if:
- (1) The project does not meet the criteria for minimum impact projects specified in (a), above, or for minor projects specified in (b), above;
 - (2) The docking structure is a major docking system; or
 - (3) The dock is or is proposed to be adjacent to or attached to a breakwater.

Env-Wt 513.26 Accessory Docking Structure Construction or Modification Project Classifications.

- (a) The installation of a new accessory docking structure or the modification of an existing accessory docking structure shall be a minimum impact project if:

- (1) The project meets all of the criteria for approval of the application as stated in Env-Wt 513.05; and
 - (2) If any modification to the associated docking structure is needed, the modification is either permit-exempt or qualifies as a minimum impact project.
- (b) The installation of a new accessory docking structure or the modification of an existing accessory docking structure shall be a minor project if:
- (1) The application includes one or more requests for waivers from the criteria for approval of the application as stated in Env-Wt 513.05; or
 - (2) The construction or modification of the associated docking structure to which the non-lift accessory structure is accessory is a minor project.
- (c) If construction or modification of the associated docking structure is a major project, the installation of a new accessory docking structure or the modification of an existing accessory docking structure shall be part of the major project.

Env-Wt 513.27 Canopy Project Classification.

- (a) The installation of a new canopy shall be a minimum impact project if:
- (1) For surface waters 1,000 acres or larger, the canopy measures a maximum of 14 feet by 30 feet installed over a center slip and is the only canopy on the frontage; or
 - (2) For surface waters 1,000 acres or smaller, the canopy measures a maximum of 12 feet by 25 feet installed over a center slip and is the only canopy on the frontage.
- (b) Any canopy project that exceeds the criteria in (a), above, shall be classified based on the docking structure with which it is associated or to which it is attached.

PART Env-Wt 514 BANK/SHORELINE STABILIZATION: ALL PROJECTS

Env-Wt 514.01 Purpose. The purpose of this part is to establish requirements that apply to all types of bank and shoreline stabilization projects, to maintain or restore healthy and vegetated bank and shoreline system functions that will:

- (a) Hold soils together, stabilize banks and shorelines, and provide structural erosion control;
- (b) Establish stable and sustainable ecosystems to provide high biological diversity and complexity to support fish and wildlife habitats;
- (c) Ensure runoff filtering and effective sediment-trapping functions, so that sediments settle out before nutrients and pollutants are carried into surface waters; and
- (d) Provide flood abatement functions by trapping sediment during floods and slowing velocity of floodwaters.

Env-Wt 514.02 Approval Criteria for All Bank/Shoreline Stabilization Projects.

- (a) In addition to meeting the applicable conditions established in Env-Wt 300, the department shall not approve a hard-scape stabilization proposal such as rip-rap or a retaining wall unless the applicant demonstrates 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 designed to be the least intrusive practicable method in accordance with Chapter 8 of the A/M BMPs, available as noted in Appendix B;
 - (2) Conform to the natural alignment of the bank/shoreline;
 - (3) Not adversely affect the stream course such that water flow will be transported by the stream channel in a manner that the stream maintains its dimensions, general pattern, and slope with no unnatural raising or lowering of the channel bed elevation along the stream bed profile;
 - (4) Not adversely affect the physical stream forms or alter the local channel hydraulics, natural stream bank stability, or floodplain connectivity;
 - (5) Avoid and minimize impacts to shoreline resource functions as described in Env-Wt 514.01 and Chapter 8 of the A/M BMPs, available as noted in Appendix B;
 - (6) If the project is a wall on a great pond or other surface water where the state holds fee simple ownership of the bed, locate the wall on the shoreward side of the normal high water line; and
 - (7) If the project is to install rip-rap, locate the rip-rap shoreward of the normal high water line, where practicable, and extend it not more than 2 feet lakeward of that line at any point.
- (c) The hierarchy of bank stabilization practices shall be as follows:
- (1) Soft vegetative bank stabilization, including regrading and replanting of slopes, in which all work occurs above ordinary high water or normal high water;
 - (2) Bioengineered bank stabilization or naturalized design techniques that uses a combination of live vegetation, woody material, or geotextile matting and may include regrading and replanting of slopes;
 - (3) Semi-natural form design shall be allowed only where the applicant demonstrates that anticipated turbulence, flows, restricted space, or similar factors, render vegetative or soft stabilization methods, bioengineering, and natural process design stabilization methods are physically impractical;
 - (4) Hard-scape or rip-rap design shall be allowed only where anticipated turbulence, flows, restricted space, or similar factors render vegetative, bio-engineering, semi-natural form design and diversion methods physically impractical and where necessary to protect existing infrastructure; and
 - (5) Wall construction shall be allowed as the last available option, only where lack of space or other limitations of the site make alternative stabilization methods of bioengineering, semi-natural, and rip-rap impractical. Wherever sufficient room exists, slopes shall be cut back to eliminate the requirement for a wall.
- (d) Stream bank-stabilization project plans shall be developed in accordance with the following techniques, as applicable:
- (1) Naturalized and semi-natural design techniques where practicable in accordance with “Guidelines for Naturalized River Channel Design and Bank Stabilization” dated February 2007, R. Schiff, J.G. MacBroom, and J. Armstrong Bonin, available as noted in Appendix B and at <https://www.des.nh.gov/organization/commissioner/pip/publications/wd/documents/r-wd-06-37.pdf>;
 - (2) For bioengineering projects, National Engineering Handbook Part 654 (NEH 654), Technical Supplement 141, Streambank Soil Bioengineering, dated August 2007, NRCS,

available as noted in Appendix B and at

<https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=17818.wba>; and

(3) For stream restoration projects, NEH 654, Stream Restoration Design, dated August 2007, NRCS, available as noted in Appendix B and at

<https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/water/manage/restoration/?cid=stelprdb1044707>.

Env-Wt 514.03 Application Requirements for All Bank/Shoreline Stabilization Projects. The project-specific information required by Env-Wt 310.01(c)(1) or Env-Wt 311.03(b)(11), as applicable, for a bank/shoreline stabilization project shall be as follows:

- (a) A narrative and photos that:
 - (1) Describe and illustrate existing conditions and locations where shoreline vegetation currently exists;
 - (2) Identify all known causes of erosion to the bank/shoreline in that location;
 - (3) Identify information and, for minor and major projects, engineering standards used to determine the appropriateness of the proposed bank stabilization treatment or practice;
 - (4) Explain the design elements that have been incorporated to address erosion, by eliminating or minimizing the causes therefor; and
 - (5) For minor and major bank/shoreline stabilization projects or minimum impact bioengineering stream bank projects, identify the flood risk tolerance of the proposed treatment or practice using the appropriate technical guidance or national engineering handbook;
- (b) A cross-section plan that shows:
 - (1) The difference in elevation between the lowest point of the bank/shoreline slope to be impacted by the construction and the highest point of the bank/shoreline slope to be impacted;
 - (2) The linear distance across the proposed project area as measured along a straight line between the highest and lowest point of the bank/shoreline slope to be impacted;
 - (3) The existing and proposed slope of the bank/shoreline; and
 - (4) The normal high water line or ordinary high water mark, as applicable;
- (c) Hard-scape, rip-rap, or unnatural design plans shall include:
 - (1) Designation of minimum and maximum stone size;
 - (2) Gradation;
 - (3) Minimum rip-rap thickness;
 - (4) Type of bedding for stone;
 - (5) Cross-section and plan views of the proposed installation;
 - (6) A description of anticipated turbulence, flows, restricted space, or similar factors that would render vegetation and bioengineering stabilization methods physically impracticable;
 - (7) Stamped engineering plans for rip-rap in excess of 100 LF along the bank or bed of a watercourse, including in-stream revetments; and

(8) If the project proposes rip-rap adjacent to great ponds or other surface waters where the state holds fee simple ownership to the bed, a stamped surveyed plan showing the location of the normal high water line and the footprint of the proposed project; and

(d) Design plans for a wall in non-tidal waters shall include:

(1) Cross-section and plan views of the proposed installation and sufficient plans to clearly indicate the relationship of the project to fixed points of reference, abutting properties, and features of the natural shoreline; and

(2) If the application is for a wall adjacent to a great pond or other surface water where the state holds fee simple ownership to the bed, a surveyed plan, stamped by a licensed land surveyor, showing the location of the normal high water line and the footprint of the proposed project.

Env-Wt 514.04 Design Requirements for All Bank/Shoreline Stabilization Projects. In addition to meeting all applicable requirements in Env-Wt 300, bank/shoreline stabilization shall be designed to:

(a) Incorporate stormwater diversion and retention to minimize erosion;

(b) Retain natural vegetation to the maximum extent possible;

(c) If space and soil conditions allow, cut back unstable banks to a flatter slope and then plant with native, non-invasive trees, shrubs, and groundcover;

(d) Avoid and minimize impacts to adjacent properties and infrastructure;

(e) Avoid and minimize impacts to water quality;

(f) Avoid and minimize impacts to PRAs, avian nesting areas, fish spawning locations, and other wildlife habitat to meet the requirements of Env-Wt 514.02;

(g) Incorporate naturalized and semi-natural design techniques where practicable in accordance with “Guidelines for Naturalized River Channel Design and Bank Stabilization” dated February 2007, R. Schiff, J.G. MacBroom, and J. Armstrong Bonin, available as noted in Appendix B;

(h) For bioengineering projects, be in accordance with NEH 654, Technical Supplement 141, Streambank Soil Bioengineering, dated August 2007, NRCS, available as noted in Appendix B and at <https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=17818.wba>; and

(i) For stream restoration projects, be in accordance with NEH 654, Stream Restoration Design, dated August, 2007, NRCS, available as noted in Appendix B and at <https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/water/manage/restoration/?cid=stelprdb1044707>.

Env-Wt 514.05 Construction Requirements for All Bank/Shoreline Stabilization Projects. In addition to all applicable construction standards specified in Env-Wt 300, the following shall apply to all bank/shoreline stabilization projects:

(a) Materials used to emulate a natural channel bottom shall:

(1) Be consistent with materials identified in the reference reach; and

(2) Not include any angular rip-rap or gravel unless specifically identified on the approved plan;

(b) Bank restoration shall be constructed, landscaped, and monitored in a manner that will create a healthy riparian or lacustrine shoreline system;

- (c) Bank/shoreline stabilization areas shall:
 - (1) Have at least 75% successful establishment of vegetation after 2 growing seasons; or
 - (2) Be replanted and re-established until a functional lacustrine, wetland, or riparian system has been reestablished in accordance with the approved plans;
- (d) Unless otherwise approved, construction shall be performed during low flow or dry conditions;
- (e) No in-stream work shall occur after October 1 unless a waiver of this condition is issued in writing by the department in consultation with NH F&G;
- (f) Work authorized shall be carried out in accordance with Env-Wt 307 such that there are no discharges in or to spawning or nursery areas during spawning seasons;
- (g) Work authorized shall be carried out in accordance with Env-Wt 307 such that controls are in place to protect water quality and appropriate turbidity controls such that no turbidity escape the immediate dredge area and shall remain until suspended particles have settled and water at the work site has returned to normal clarity; and
- (h) Within 60 days of completion of construction, the applicant shall submit a post-construction report that:
 - (1) Has been prepared by a professional engineer, certified wetland scientist, or qualified professional, as applicable, and
 - (2) Contains a narrative, exhibits, and photographs, as necessary to report the status of the project area and restored jurisdictional area.

Env-Wt 514.06 On-Going Requirements for All Bank/Shoreline Stabilization Projects. The owner shall monitor the project and take corrective measures if the area is inadequately stabilized or restored by:

- (a) Replacing fallen or displaced materials without a permit, where no machinery in the channel is required;
- (b) Identifying corrective actions and follow-up plans in accordance with Env-Wt 307; and
- (c) Filing appropriate application and plans where work exceeds (a), above.

Env-Wt 514.07 Bank Stabilization Construction Project Classification.

- (a) The following projects shall be classified as minimum impact:
 - (1) Any bank stabilization project of less than 50 LF, at low flow, and no in-channel work, if designed by a certified wetland scientist or a professional engineer;
 - (2) Any soft vegetative bank stabilization, bioengineered bank stabilization, or semi-natural form of less than 200 LF designed by a professional engineer on any size of watercourse, when the applicant participates in a pre-design submittal meeting with department wetland bureau staff and the application is submitted through the minimum impact expedited review process; and
 - (3) Repair of an existing retaining wall that:
 - a. Is done in the dry;
 - b. Results in no change in height, length, location, or configuration; and
 - c. Adds no more than 6 inches of width.

- (b) The following projects shall be classified as a minor impact:
 - (1) Any project less than 50 LF that exceeds the minimum impact criteria;
 - (2) A bioengineering project that is 200 LF or greater when designed by a professional engineer;
 - (3) Any other bank stabilization project that is 50 LF or more to less than 200 LF in length; and
 - (4) Any semi-natural design bank stabilization project of less than 200 LF in length, where greater than 75 percent of the project is designed using soft bank stabilization components that includes natural plants, dormant stakes, fiber rolls, and native wood logs.
- (c) The following projects shall be classified as a major project:
 - (1) A semi-natural design bank stabilization project of 200 LF or greater or where greater than 25 percent of the project is using hard scape components; and
 - (2) Any other project that exceeds the minor bank stabilization criteria.

PART Env-Wt 515 DUG-IN BASINS AND BOATHOUSES

Env-Wt 515.01 Applicability.

- (a) Subject to (b), below, the rules in this part shall apply to any person who wishes to construct, modify, repair, or replace a dug-in basin or boathouse in, over, or in the bank of non-tidal waters.
- (b) The rules in this part shall not apply to maintenance and repairs undertaken pursuant to the statutory exemption as described in Env-Wt 308.02.

Env-Wt 515.02 Definitions.

- (a) “Dug-in basin” means an area of privately-owned land excavated to allow inundation by adjacent public waters to access a single public water at a single location along that water’s shoreline.
- (b) “Existing dug-in basin” means a dug-in basin that was legally constructed prior to the 2019 effective date of this part.
- (c) “New dug-in basin” means a dug-in basin for which a permit has not been issued as of the 2019 effective date of this part.

Env-Wt 515.03 Approval Criteria for Dug-In Basins and Boathouses. In addition to meeting all applicable criteria in Env-Wt 300 and Env-Wt 513, the department shall not approve a new dug-in basin and boathouse unless the applicant demonstrates that:

- (a) The boathouse will not be located over public submerged lands;
- (b) Alternative docking and storage solutions with less environmental impact are not practicable;
- (c) All design and construction criteria in this part are met; and
- (d) The proposed construction will:
 - (1) Not adversely impact the stability of the shoreline;
 - (2) Be sequenced and use such techniques so as to prevent water quality degradation;
 - (3) Be performed in such a manner so as to not cause any sedimentation along the shoreline or other adverse impact to the surface water, including existing movements of currents;
 - (4) Not impact wetlands, watercourses, or other jurisdictional areas;

- (5) Not result in any violations of applicable requirements in RSA 483-B or Env-Wq 1400; and
- (6) Be the least intrusive upon the public trust necessary to provide safe access to the surface water.

Env-Wt 515.04 Application Requirements for Boathouses Over Dug-In Basins. The project-specific information required by Env-Wt 311.03(b)(11) for a boathouse over a dug-in basin shall be as follows:

- (a) Floor plans showing:
 - (1) The footprints and dimensions of all dock and walkway surfaces;
 - (2) The location and dimensions of all boat slip areas; and
 - (3) The location of any designated storage area(s);
- (b) A plan showing the location and dimensions of the foundation, footings, and all support structures; and
- (c) A profile plan of the proposed boathouse showing the dimensions and elevations of the foundation, footings, all support structures, and the proposed roof height.

Env-Wt 515.05 Construction and Maintenance Requirements for Dug-In Basins and Boathouses.

- (a) All structures shall be constructed as shown in the approved plans and specifications.
- (b) The sides of the dug-in basin shall be stabilized prior to the inundation of the basin.
- (c) Construction impacts shall be limited to areas within 15 feet of the proposed structure's footprint.
- (d) All disturbed areas shall be revegetated with native non-invasive species in accordance with Env-Wq 1412.04 relative to a planting matrix for restoring the waterfront buffer.
- (e) No construction, modification, or maintenance activity that is contrary to RSA 482-A:26 shall be conducted.

Env-Wt 515.06 Dug-In Basins and Boathouse Construction or Modification Project Classification.

- (a) The construction or modification of a boathouse over an existing dug-in basin shall be a minimum impact project only if all of the following criteria are met:
 - (1) The construction or modification is in accordance with Env-Wt 515.05;
 - (2) The boathouse and any associated docking structures are existing legal structures;
 - (3) No portion of the existing boathouse was made suitable for use as a dwelling contrary to RSA 482-A:26 prior to or subsequent to the effective date of the original prohibition, May 28, 1969;
 - (4) No additional boat slips will be provided as a result of the project; and
 - (5) No material will be dredged from areas that were flowed over by public waters prior to the dug-in basin being constructed.
- (b) The modification of a boathouse over public submerged lands shall be a minimum impact project only if all of the following criteria are met:
 - (1) There is no increase in the exterior dimensions of the boathouse;
 - (2) The boathouse and any associated docking structures are existing legal structures;

- (3) No portion of the existing boathouse was made suitable for use as a dwelling contrary to RSA 482-A:26 prior to or subsequent to the effective date of the original prohibition, May 28, 1969;
 - (4) No additional boat slips will be created as a result of the project; and
 - (5) No material will be dredged from areas that were flowed over by public waters prior to the boathouse being constructed.
- (c) The construction or modification of a boathouse over an existing dug-in basin shall be a minor impact project if all of the criteria of (a), above, are met with either of the following exceptions:
- (1) Additional boat slips will be provided as a result of the project but the total number of existing and proposed slips will not exceed 4; or
 - (2) Material will be dredged from areas that were flowed over by public waters prior to the boathouse/basin being constructed, but less than 20 CY of material will be dredged.
- (d) The modification of a boathouse over public submerged lands shall be a minor impact project if all of the criteria of (b), above, are met with one or both of the following exceptions:
- (1) Some portion of the existing boathouse was made suitable for use as a dwelling as defined in RSA 482-A:26 prior to the effective date of the original prohibition, May 28, 1969; or
 - (2) Material will be dredged from areas that were flowed over by public waters prior to the boathouse/basin being constructed, but less than 20 CY of material will be dredged.
- (e) The construction or modification of a dug-in basin or boathouse that does not meet any of the classification criteria of (a) through (d), above, shall be a major project.

Env-Wt 515.07 Dug-In Basins and Boathouse Maintenance and Repair Project Classification.

- (a) The maintenance and repair of any boathouse or dug-in basin shall be a minimum impact project only if all of the following criteria are met:
- (1) There is no change in the height, footprint, location, or configuration of the existing structures;
 - (2) The boathouse and any associated docking structures are existing legal structures;
 - (3) No portion of the boathouse has been made suitable for use as a dwelling as defined in RSA 482-A:26; and
 - (4) No material will be dredged from areas that were flowed over by public waters prior to the dug-in basin being constructed.
- (b) The maintenance and repair of any boathouse or dug-in basin shall be a minor impact project only if all of the criteria of (a), above, are met with the exception that some portion of the boathouse was made suitable for use as a dwelling as defined in RSA 482-A:26 prior to the effective date of the prohibition, May 28, 1969.

PART Env-Wt 516 INTAKE AND OUTFLOW STRUCTURES

Env-Wt 516.01 Applicability. This part shall apply to construction of inflow and outflow structures.

Env-Wt 516.02 Approval Criteria for Intake and Outflow Structures.

(a) In addition to meeting the applicable conditions established in Env-Wt 300, the department shall not approve an application for a permit to construct an intake structure unless the applicant also demonstrates that the following criteria are met:

- (1) Inflow will not lower water levels such that the habitat of finfish, crustacean, or shellfish is harmed;
- (2) Intake design, where intake exceeds 57,600 gallons or more in any 24-hour period at a single property or place of business, has been approved under RSA 485-C:21;
- (3) Inflow will not cause scouring or endanger vegetation, finfish, crustacea, shellfish, or wildlife; and
- (4) The structure will not endanger navigation, recreation, or commerce.

(b) In addition to meeting the applicable conditions established in Env-Wt 300, the department shall not approve an application for a permit to construct an outflow structure unless the applicant also demonstrates that the following criteria are met:

- (1) Outflow will not cause scouring or endanger vegetation, finfish, crustacea, shellfish, or wildlife; and
- (2) The structure will not endanger navigation, recreation, or commerce.

Env-Wt 516.03 Application Requirements for Intake and Outflow Structures. The project-specific information required by Env-Wt 310.01(c)(1) or Env-Wt 311.03(b)(11), as applicable, for an intake or outflow structure shall be as follows:

- (a) Methods of screening to ensure aquatic organism passage;
- (b) Construction sequence of installation, proposed erosion and turbidity controls, and timeframes if there will be temporary impact(s);
- (c) Bank stabilization information pursuant to Env-Wt 514;
- (d) Bed material profile;
- (e) Maintenance and repair schedule with appropriate time of year restrictions to protect fishery and protected species and habitat;
- (f) A copy of the large groundwater withdrawal permit, if applicable;
- (g) A copy of the permit issued under RSA 485-A for outflow structures; and
- (h) Temporary cofferdam design by a professional engineer when the project is proposed to be done in flowing water.

Env-Wt 516.04 Design and Construction Requirements for Intake and Outflow Structures. In addition to meeting the applicable design and construction requirements of Env-Wt 307, an intake or outflow project shall be designed to:

- (a) Include intake screen designs that prevent the entrainment of aquatic organisms such as eggs and larvae;
- (b) Not locate intake or outflow structures along banks steeper than 25% slope;

(c) Direct outflow away from the stream bed or use methods that do not cause stream bed or bank erosion, such as energy dissipation, to mitigate potential scour from concentrated flow at the outflow structure;

(d) Time the project to be done during low flow to no flow conditions where practicable;

(e) Where the project is required to be done in flowing water, require a sheet pile cofferdam and dewatering design during construction;

(f) Limit potential channel constriction;

(g) Incorporate bank stabilization criteria under Env-Wt 514 and shoreland standards for native species revegetation and species composition pursuant to Env-Wq 1412.05; and

(h) Where brook floater mussels or dwarf wedge mussels are identified in the Data Check, provide for specific monitoring during construction as NHF&G may require.

Env-Wt 516.05 Intake and Outflow Structure Construction Project Classification. The construction of an intake or outflow structure shall be classified in accordance with Env-Wt 407.

Env-Wt 516.06 Maintenance and Repair of Intake and Outflow Structures.

(a) The permit holder shall monitor intake and outflow structures for effectiveness, water quality, and stability.

(b) If maintenance or repair of an intake or outflow structure is needed, the project shall be classified in accordance with Env-Wt 407.

PART Env-Wt 517 TRAILS, PATHWAYS, AND BOARDWALKS

Env-Wt 517.01 Applicability. This part shall apply to the construction and maintenance of trails, boardwalks, and paths in jurisdictional areas used to provide access to outdoor recreational pursuits, including hunting, fishing, trapping, camping, horseback riding, bicycling, water sports, winter sports, snowmobiling as defined in RSA 215-C:1, XV, and off-highway recreational vehicle use as defined in RSA 215-A:1, VI.

Env-Wt 517.02 Approval Criteria for Trail, Pathway, and Boardwalk Projects. In addition to meeting the applicable criteria established in Env-Wt 300, the department shall not approve an application for a trail, pathway, or boardwalk project unless the following criteria are met:

(a) The project:

(1) Avoids and minimizes impacts in accordance with Env-Wt 313.03;

(2) Is located away from lakes, rivers, river banks, tidal waters, marshes, and scrub-shrub wetlands to the greatest extent practicable, unless Env-Wt 517.06(a)(6) applies; and

(3) Will be conducted in accordance with the Trail BMPs, available as noted in Appendix B; and

(b) For coastal boardwalk projects:

(1) The project is located at municipal, county, state, or federally owned facilities only; and

(2) The design is consistent with Env-Wt 600 and RSA 482-A:1.

Env-Wt 517.03 Application Requirements for Trail, Pathway, and Boardwalk Projects. The project-specific information required by Env-Wt 310.01(c)(1) or Env-Wt 311.03(b)(11), as applicable, for a trail, pathway, or boardwalk project shall be as follows:

- (a) Boardwalk deck height, board spacing, and SF of impact;
- (b) Location of floodplains, wetlands, and watercourses in relation to the trail, pathway, or boardwalk; and
- (c) Construction sequence for installation of the trail, pathway, or boardwalk.

Env-Wt 517.04 Design and Construction Requirements for Trail and Pathway Projects. A proposed trail or pathway project shall be designed and constructed to:

- (a) Use existing structures and pathways wherever practicable;
- (b) Maintain pathways 3 to 6 feet wide; and
- (c) For trails, comply with the Trail BMPs, available as noted in Appendix B.

Env-Wt 517.05 Design and Construction Requirements for Boardwalks. In addition to meeting the applicable design and construction criteria in Env-Wt 300, boardwalks shall meet the following design and construction requirements:

- (a) Boardwalks shall not be located in or through any PRA if the use associated with the boardwalk would jeopardize the continued existence of protected species or habitat;
- (b) To allow for circulation of air and water and penetration of light, boardwalks shall be designed and constructed:
 - (1) To be elevated not less than 4 feet for tidal wetlands and at least 2 feet for non-tidal wetlands above the ground surface or normal high water line, as applicable; and
 - (2) Of slatted construction using boards no wider than 8 to 10 inches that are placed not less than 0.75 inch apart;
- (c) Boardwalks shall be at least 36 inches wide and no wider than 6 feet;
- (d) Boardwalks crossing wetlands shall be designed and located to:
 - (1) Allow for movement of wildlife and maintain density and vigor of vegetation; and
 - (2) Minimize interference with the natural hydrology of the area;
- (e) Boardwalks shall incorporate features designed to educate users about the importance of wetlands, transition areas, and public waters;
- (f) Boardwalks shall be constructed using top-down construction methods, helical piles, and other methods to limit impacts to sensitive wetlands and surface waters;
- (g) A boardwalk shall not be supported by horizontal support timbers, otherwise known as sleepers, on or in the soil; and
- (h) The root mat and soil under and around the boardwalk shall not be disturbed except to drive pilings.

Env-Wt 517.06 Classification of Trail and Pathway Projects. Trail and path projects shall be classified as follows:

- (a) A trail project shall be minimum impact and so eligible for an SPN if:
 - (1) For wetland crossings:

- a. The project impacts less than 3,000 SF per crossing;
 - b. The trail width at each crossing does not exceed 20 feet;
 - c. The fill width is minimized and, measured at the toe of the trail side slope, does not exceed 50 feet per crossing; and
 - d. The fill length does not exceed 60 feet per crossing, measured along the centerline of the proposed access way;
- (2) No impacts to a bog, marsh, sand dune, tidal wetland, cedar swamp, or undisturbed tidal buffer zone are proposed;
- (3) The proposed crossing will not jeopardize the continued existence of protected species or habitat;
- (4) The proposed crossing is not located within or adjacent to a designated prime wetlands or duly-established 100-foot buffer;
- (5) For proposed culvert installations crossing a perennial or intermittent stream in jurisdictional areas, the streams crossed have a scoured channel no more than 8 feet wide, or the installations meet the bridges criteria in (6), below; or
- (6) The proposed project includes the installation of a new bridge or replacement of an existing bridge where:
- a. No work will be performed in the water or in a wetland;
 - b. No fill will be placed in the water or in a wetland;
 - c. Impacts to the banks of the watercourse, including bridge structural supports, will not exceed 3,000 SF per crossing;
 - d. Bridges are not in a prime wetlands or duly-established 100-foot buffer;
 - e. Bridges are not in a bog, marsh, sand dune, or floodplain wetland adjacent to a tier 3 watercourse; and
 - f. The project site has not been identified by NHB as having occurrences of protected species or habitat;
- (b) A new trail or pathway project shall be a minor impact project if the requirements for minimum impact crossings in (a)(1)b.-c. and (2)-(6), above, are met and the total impact to wetlands is greater than 3,000 SF but does not exceed 10,000 SF;
- (c) A new trail or pathway project shall be a major impact project if:
- (1) The project proposes any crossing of a PRA or cedar swamp;
 - (2) The total crossing impact to wetlands is greater than 10,000 SF; or
 - (3) The project would require a waiver of any approval, design, or construction criteria;
- (d) A project to maintain or repair an existing trail or pathway shall be a minimum impact project only if:
- (1) No change in location, configuration, dimensions, or construction type is proposed; and
 - (2) No work will be done in standing or flowing water;
- (e) A project to maintain, repair, or replace an existing trail or pathway shall be a minor impact project if it does not meet the criteria for either a minimum impact or a major impact project; and

(f) A project to maintain or repair an existing trail or pathway shall be a major impact project if the project would require a waiver of any approval, design, or construction criteria, unless the only waiver needed is for prime wetlands or a duly-established 100-foot buffer and the waiver is obtained pursuant to Env-Wt 706.

Env-Wt 517.07 Classification of Boardwalk Construction Projects.

- (a) A boardwalk construction project shall be classified as minimum impact if the project:
- (1) Will have a total area of not more than 3,000 SF;
 - (2) Disturbs not more than 50 LF of a surface water body, measured along the shoreline of a lake or pond at its bank; and
 - (3) Will have no adverse impacts to a marsh, scrub-shrub wetland adjacent to a surface waterbody, floodplain wetland adjacent to a water course, cedar swamps, or PRAs.
- (b) A boardwalk construction project shall be classified as a minor impact project if the project:
- (1) Will have a total area of more than 3,000 SF but less than 10,000 SF;
 - (2) Disturbs between 50 LF or more but less than 200 LF of a surface water body, measured along the shoreline of a lake or pond at its bank; or
 - (3) Disturbs between 50 LF or more but less than 200 LF of an intermittent or perennial non-tidal watercourse channel or banks, provided that:
 - a. For intermittent streams, the distance shall be measured along the thread of the channel; and
 - b. For perennial streams, the total disturbance shall be calculated by summing the lengths of disturbances to the channel or banks.
- (c) A boardwalk construction project shall be classified as a major impact project if the project:
- (1) Will have a total area of 10,000 SF or more;
 - (2) Disturbs 200 LF or more of a surface water body, measured along the shoreline of a lake or pond at its bank;
 - (3) Alters the course of or disturbs 200 LF or more of an intermittent or perennial non-tidal watercourse channel or banks, provided that:
 - a. For intermittent streams, the distance shall be measured along the thread of the channel; and
 - b. For perennial streams, the total disturbance shall be calculated by summing the lengths of disturbances to the channel or banks;
 - (4) Has any impacts in tidal marsh, tidal waters, tidal flats, or sand dunes; or
 - (5) Creates a pathway across public waters or new access way across surface waters that exceeds Env-Wt 400 criteria.

Env-Wt 517.08 Maintenance and Repair of Boardwalks.

- (a) Out-of-water components of a boardwalk may be repaired or replaced without a permit pursuant to the statutory exemption established in RSA 482-A:3, IV(a).
- (b) Any maintenance or repair of a boardwalk that does not qualify under (a), above, shall be:
- (1) Performed only after obtaining a permit; and

- (2) Classified as specified in Env-Wt 517.06.

Env-Wt 517.09 Removal of Boardwalks. A project to remove a boardwalk shall be classified as a minimum impact project if the work is done to minimize impacts to wetlands and surface waters.

PART Env-Wt 518 OTHER WATER-RELATED NON-DOCKING STRUCTURES

Env-Wt 518.01 Applicability.

(a) This part shall apply to construction of water-related non-docking structures including dikes, dry hydrants, and boat launches.

(b) This part shall not apply to:

- (1) Any structure covered by Env-Wt 900 relative to stream crossings; or
- (2) Any structure specifically covered by another part in Env-Wt 500.

Env-Wt 518.02 Approval Criteria for Dikes. In addition to meeting all applicable criteria established in Env-Wt 300, the department shall not approve an application for a permit to construct a dike unless the applicant demonstrates that:

- (a) Flooding, loss of salinity, or de-watering caused by the dike will not damage or destroy indigenous hydrophytic vegetation or habitat of finfish, crustacean, shellfish, or wildlife;
- (b) Adequate passage and rate of flow will be maintained at appropriate times to allow migration of fish and other marine life;
- (c) The conveyance of runoff and flood water will not be prevented;
- (d) The project will not cause the permanent inundation of tidal wetlands; and
- (e) The project will not interfere with the normal ebb and flow of waters of tidal wetlands.

Env-Wt 518.03 Approval Criteria for Dry Hydrants. An applicant for a permit to construct a dry hydrant shall demonstrate that the project will meet all applicable conditions in Env-Wt 300.

Env-Wt 518.04 Approval Criteria for Boat Launches. In addition to meeting all applicable criteria established in Env-Wt 300, the department shall not approve an application for a permit to construct or modify a boat launch unless the applicant demonstrates that the project will provide a public benefit in terms of navigation, rights of public passage, and the rights of the general public to use the resource accessed by the boat launch for commerce and recreation.

Env-Wt 518.05 Application Requirements for Boat Launches. The project-specific information required by Env-Wt 311.03(b)(11), as applicable, for a boat launch application shall be as follows:

- (a) On the plans required by Env-Wt 311, the following:
 - (1) The normal high water line if the launch will be constructed on a lake, pond, or artificial impoundment;
 - (2) Both the high water and low water lines if the launch will be constructed on a river;
 - (3) Where topography is to be permanently altered, existing and proposed grades;
 - (4) The amount of shoreline frontage for the subject property;
 - (5) The general shape of the shoreline including the length of frontage and either:

- a. The normal high water line for lakes and ponds; or
 - b. The ordinary high water mark for watercourses;
 - (6) The footprint of all existing and proposed structures on the property;
 - (7) The intended use of each proposed structure; and
 - (8) The distance from existing and proposed work to abutting property lines;
- (b) A report explaining the expected use of the launch, including details on the type, size, and number of watercraft expected to use the launch facility and the impact the increased boat traffic may have on navigation; and
- (c) A cross-section showing the following information:
- (1) The slope of the bank and the lakebed or river bed relative to:
 - a. The normal high water line for lakes and ponds; or
 - b. The ordinary high water mark for watercourses;
 - (2) The proposed launch surface including the type and depth of any bedding material placed to receive and support the launch surface;
 - (3) The proposed height, width, and construction type of any proposed rip-rap or retaining wall associated with the stabilization of the bank where it is to be cut or filled to accommodate the launch surface; and
 - (4) Any stormwater diversion methods and drainage associated with proposed launch.

Env-Wt 518.06 Design Requirements for Boat Launches. In addition to meeting applicable design requirements established in Env-Wt 300, the following design requirements shall apply to a project to construct a boat launch:

- (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 at least 50 feet from each abutting property line;
- (b) An applicant may request approval of a smaller set-back if:
- (1) Abutting properties are or will be shielded from typical boat launch activities, such as by using fences or vegetative screening, so as to meet the statutory criteria of RSA 482-A:11, II, relative to a permit not infringing on the property rights or unreasonably affecting the value or enjoyment of property of abutting owners, provided that in no case shall the set-back be less than 25 feet; or
 - (2) The applicant:
 - a. Obtains the written consent of the abutting property owner to a smaller set-back, provided in no case shall the set-back be less than 20 feet; and
 - b. Submits the written consent that has been signed by all parties and notarized with the application;
- (c) 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;
- (d) Boat launches shall be designed such that stormwater is diverted away from the ramp surface;

- (e) Launch surfaces shall be of durable material that is resistant to erosion and corrosion; and
- (f) Launch surfaces used for 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.

Env-Wt 518.07 Classification of Non-Docking Structure Projects.

- (a) Dry hydrant projects shall be processed as:
 - (1) A minimum impact project where the project is within the bed and bank of surface waters and excavation is less than 3,000 SF total area;
 - (2) A minor project for projects impacting 3,000 SF up to 10,000 SF area; and
 - (3) A major project for projects impacting 10,000 SF or greater or located in a PRA.
- (b) All other non-docking structures shall be classified in accordance with Env-Wt 407.

PART Env-Wt 519 PONDS

Env-Wt 519.01 Applicability. This part shall apply to the construction of ponds constructed partially in wetlands that do not directly discharge into wetlands, watercourses, or surface waters.

Env-Wt 519.02 Definition. “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, stormwater detention basins, and legally-constructed ponds on golf courses.

Env-Wt 519.03 Approval Criteria for Ponds. In addition to meeting all applicable criteria established in Env-Wt 300, the department shall not approve an application for a pond unless the applicant demonstrates that:

- (a) No upland location is available for the pond;
- (b) The pond will be constructed in an area that:
 - (1) Contains less than 15% very poorly drained soils; and
 - (2) Will not adversely impact vernal pools or other wetlands with high functions and values;
- (c) The pond will not be created by:
 - (1) Construction of a dam, berm, or dike within a watercourse or other surface water in order to create an impoundment; or
 - (2) Diversion of a watercourse;
- (d) If the pond is proposed to be used for water quality treatment or pre-treatment, the pond will not be constructed in existing wetlands or surface waters;
- (e) If the pond is proposed to be used for stormwater management or if an existing stormwater management pond is proposed to be expanded, the pond or expansion will not be constructed in existing wetlands or surface waters; and
- (f) No discharge from a pond will result in water quality degradation.

Env-Wt 519.04 Application Requirements for Ponds. The project-specific information required by Env-Wt 311.03(b)(11) for a pond application shall be as follows:

- (a) A narrative identifying:
 - (1) The purpose of the pond construction; and
 - (2) How the pond design matches the purpose and topography of the site;
- (b) A hydric soils map, showing the location of any poorly drained soils or very poorly drained soils and their proximity to the location of the proposed project shall be prepared by a certified wetland scientist or certified soil scientist;
- (c) A cross section plan showing the:
 - (1) Existing substrate type;
 - (2) Existing and proposed depth of substrate;
 - (3) Existing vegetative cover;
 - (4) Proposed depth of dredging; and
 - (5) Proposed water depths and cross-section;
- (d) An invasive species control plan including elements for containment, dewatering, and disposal;
- (e) A detailed construction sequence plan identifying:
 - (1) Methods, timing, and sequence of siltation and erosion control;
 - (2) Dewatering methods;
 - (3) Ingress and egress locations; and
 - (4) The upland non-jurisdictional location where dredge material will be stored temporarily for dewatering;
- (f) A description of the material and area to be dredged including the volume of material to be dredged, in cubic yards;
- (g) Square footage of the area to be dredged; and
- (h) The proposed upland disposal site for the dredged material.

Env-Wt 519.05 Design Requirements for Ponds. In addition to meeting applicable design requirements established in Env-Wt 300, the following design requirements shall apply to a pond construction project:

- (a) Wildlife ponds shall be designed to support wildlife and meet the criteria in Env-Wt 519.06;
- (b) Fire ponds shall be designed to provide fire protection and include the following:
 - (1) A letter from the municipal fire chief stating the justification for the fire pond;
 - (2) The location of the dry hydrant;
 - (3) Access for dry hydrant connection intake use and maintenance;
 - (4) The location and access point for pond maintenance; and
 - (5) How the design will meet the fire protection goals;

(c) Agriculture ponds shall be designed to provide water for livestock, irrigate crops, or raise fish for commercial sale and include the following:

(1) How the design meets the criteria for minimum impact agriculture projects in Env-Wt 519.06(a); and

(2) Whether the pond is located within a wet meadow wetland;

(d) Fish ponds shall be designed to:

(1) Support native fish populations;

(2) Contain deep areas with a minimum of 8 to 10 feet in at least 25% to 50% of the pond area;

(3) For ponds supporting cold water species such as trout, maintain cool water temperatures year round and may require more than 10 feet of water depth; and

(4) Comply with NHF&G stocking rules;

(e) Residential, commercial, and industrial ponds shall be designed based on proposed purpose and be reviewed holistically with the criteria in Env-Wt 524;

(f) Pond inlets and outlets shall be sited and stabilized to prevent adverse impacts to adjacent wetlands and surface waters;

(g) Impoundments shall be designed to avoid impacts to surface elevation; and

(h) All ponds shall be designed to protect water quality in accordance with Env-Wt 307.

Env-Wt 519.06 Design Requirements for Wildlife Ponds. In addition to meeting all applicable design requirements established in Env-Wt 300, the following design requirements shall apply to new wildlife ponds:

(a) The pond shall be designed:

(1) By a certified wetland scientist;

(2) To provide nesting and cover habitat for native wildlife species;

(3) To include:

a. At least 2 different wetland classes;

b. At least 35% of shrub layer along the shoreline of the pond;

c. An emergent marsh layer of no less than 10% pond coverage;

d. Shelving;

e. Shallow to deep water wetland types;

f. Interspersion of wetland types; and

g. Woody perching or nesting sites;

(b) The project shall not be located in or require diversion of a watercourse; and

(c) No new dams or berms greater than 2 feet in height shall be erected to create the pond or any portion of the pond.

Env-Wt 519.07 Construction Requirements for Ponds. In addition to all applicable construction requirements in Env-Wt 307, the following shall apply to pond construction projects:

- (a) All construction activities shall be conducted in compliance with applicable requirements of RSA 483-B and Env-Wq 1400;
- (b) The applicant shall notify NHF&G, in accordance with RSA 211:11, prior to performing a drawdown or dewatering a resource; and
- (c) Discharges from dewatering shall be to sediment basins that are:
 - (1) Located in upland areas at least 20 feet from any waterbody; and
 - (2) Lined with hay bales or other sediment-trapping liners.

Env-Wt 519.08 Classification of Pond Construction Projects. A project to construct a pond shall be classified as follows:

- (a) Subject to (b), below, the project shall be a minimum impact project if the following criteria are met:
 - (1) The proposed project will impact less than 3,000 SF of wetlands, except that a fire pond impact up to 10,000 SF of wetlands;
 - (2) The project area contains no very poorly drained soils;
 - (3) No waivers have been granted to any design requirements;
 - (4) The proposed pond will not be fed by or cause outflow to any watercourse; and
 - (5) The project is not located in and will not impact a PRA;
- (b) A new wildlife pond shall be considered a minimum impact project if the following criteria are met:
 - (1) The applicant meets with the technical reviewer in the department's wetlands bureau at least 7 days prior to submitting the application;
 - (2) The pond is designed by a certified wetland scientist;
 - (3) The pond meets all design requirements specified in Env-Wt 519.05; and
 - (4) The project's total wetland impact does not exceed 20,000 SF;
- (c) The project shall be a minor impact project if any of the criteria in (a) or (b), above, as applicable, are not met or if all of the following criteria are met:
 - (1) The project area contains very poorly drained soils but does not contain more than 15% inclusions of very poorly drained soils;
 - (2) The proposed pond will not be fed by or cause outflow to any watercourses;
 - (3) The project is not located in a marsh or scrub-shrub wetland adjacent to a surface water;
 - (4) The project will not impact a PRA; and
 - (5) The project will impact 3,000 SF or greater but less than 10,000 SF of wetlands; and
- (d) The project shall be a major impact project if the proposed project:
 - (1) Will impact 10,000 SF or more of wetlands or surface waters; or
 - (2) Does not meet the criteria to be a minimum impact or minor impact project.

Env-Wt 519.09 Classification of Pond Maintenance and Repair Projects.

(a) Unless exempt pursuant to RSA 482-A:3, IV, a constructed pond shall become a jurisdictional wetland and may be maintained as a minimum impact project if the following conditions are met:

- (1) It is an active man-made pond;
- (2) The entire pond is not located in a PRA;
- (3) The pond does not exceed 20,000 SF;
- (4) The project is within the original footprint of the existing pond; and
- (5) Dredged material will be placed outside of wetlands jurisdiction.

(b) If the criteria of (a), above, are not met, the project shall be classified in accordance with Env-Wt 407.

PART Env-Wt 520 FORESTRY

Env-Wt 520.01 Applicability. This part shall apply to forestry activities in jurisdictional areas, including those that qualify for the SPN established in RSA 482-A:3, V.

Env-Wt 520.02 Approval Criteria for Forestry Projects. In addition to meeting the criteria established in Env-Wt 300, the department shall not approve a forestry project unless the following criteria are met:

- (a) The project is exclusively for the purpose of timber harvesting and forest management;
- (b) Skid trails and truck roads associated with the project are exclusively for the purpose of accessing viable tree stands and conducting forestry projects;
- (c) The project will be conducted in accordance with RSA 227-J, RSA 482-A, RSA 483, RSA 483-B, RSA 485-A, and RSA 212-A; and
- (d) The project will be conducted in accordance with the design and construction requirements specified in Env-Wt 520.04.

Env-Wt 520.03 Forestry Notice and Application Requirements. The project-specific information required by Env-Wt 310.01(c)(1) or Env-Wt 311.03(b)(11), as applicable, shall be as follows:

- (a) A construction sequence, the water quality techniques to be used, and a schedule for the project; and
- (b) A narrative showing how the project meets the water quality techniques and avoidance and minimization techniques of the Forestry BMPs, available as noted in Appendix B.

Env-Wt 520.04 Design and Construction Requirements. In addition to the design and construction requirements specified in Env-Wt 300, the following requirements shall apply to forestry activity projects:

- (a) Impacts to surface waters and wetlands from logging activities shall be planned, designed, constructed, and stabilized in accordance with the Forestry BMPs, available as noted in Appendix B;
- (b) All skid trails, truck roads, and log landings shall be:
 - (1) Avoided and minimized to the maximum extent practicable in accordance with the Forestry BMPs, available as noted in Appendix B;
 - (2) Located far enough away from surface waters and wetlands that waterborne soil particles will settle out before reaching the surface waters or wetlands;

- (3) Laid out and constructed using appropriate erosion control devices and water quality protection techniques as explained in the Forestry BMPs, available as noted in Appendix B, so that grade approaching surface waters or wetlands is broken and surface runoff is dispersed; and
- (4) Culverts, pole fords, or other crossings shall be properly sized and installed on skid trails and truck roads at all stream crossings in accordance with the Forestry BMPs, available as noted in Appendix B; and

(c) Crossings shall be removed when logging is completed in the area serviced by the crossing, except that corduroy crossings at location where there is no defined stream channel may be left in place.

Env-Wt 520.05 Forestry Project Classification.

(a) The following forestry projects shall be minimum impact and so eligible for an SPN, PBN, or EXP in accordance with Env-Wt 300:

- (1) Roadway construction through forested wetlands for the purpose of conducting forest management activities, only if:
 - a. Roads are cleared only by felling timber in the roadway;
 - b. The road base is constructed using no fill other than:
 - 1. Snow pushed onto and frozen over the road base; or
 - 2. Stumps inverted in places where support of the road base is necessary;
 - c. The minimum length and number of ditches necessary to create and maintain adequate drainage are constructed in accordance with the Forestry BMPs, available as noted in Appendix B, and water quality protection measures;
 - d. Each winter road crossing is no more than 15 feet wide;
 - e. Stream crossings incorporate pole fords with no stumping within the stream banks;
 - f. Spring retirement of winter roads includes soil stabilization and drainage, such as water bars, necessary to prevent the roadway from redirecting or channeling surface water runoff; and
 - g. A corduroy skid trail for any single forested wetland crossing does not exceed 1,000 feet in length, measured along the proposed skid trail;
- (2) Installation of a permanent crossing, such as a culvert or stone ford, and associated fill, to permit vehicular access to a parcel for forest management, only if:
 - a. Access is not used for subdivision, development, or other land conversion to non-forestry uses, except that forestry uses may be combined with normal agricultural operations or trail construction or maintenance, or both;
 - b. Roadway width, exclusive of side slopes, at the crossing does not exceed 20 feet;
 - c. Roadway width, measured at the toe of the roadway side slopes, is minimized and does not exceed 50 feet;
 - d. Fill for any single wetland crossing does not exceed 50 feet in length, measured along the proposed access way;
 - e. Wetland crossings are limited to those that:
 - 1. Do not impact any bogs, vernal pools, marshes, sand dunes, tidal wetlands, or undisturbed tidal buffer zone;

2. Are not located in a prime wetlands or duly-established 100-foot buffer unless a prime wetlands waiver has been obtained in accordance with Env-Wt 700;
 3. Only cross a swamp or wet meadow if such swamp or wet meadow has no standing water for 10 months per year or more; and
 4. Are not located in a protected species habitat unless authorized under Env-Wt 407;
- f. The scoured stream width is no wider than 8 feet;
- (3) Construction of a temporary crossing of a non-tidal watercourse of any width for the transportation of forest products, only if the temporary crossing:
- a. Is not in or adjacent to prime wetlands or a duly-established 100-foot buffer unless a prime wetlands waiver has been obtained in accordance with Env-Wt 700;
 - b. Is not located in a protected species habitat unless authorized under Env-Wt 407;
 - c. Is not used for access to property that has been converted to non-forestry uses, except that forestry uses may be combined with normal agricultural operations or trail construction or maintenance or both;
 - d. Incorporates not more than one pier or post per 15 feet of span;
 - e. Incorporates one or more abutments in the bank(s) if necessary; and
 - f. If other than corduroy, is removed within 2 years of the date the SPN, PBN, or EXP is issued by the department, provided that if weather conditions preclude the removal of the crossing when the work is completed, the crossing may remain in place until weather conditions allow its removal; and
- (4) Repair of existing forestry road crossing that:
- a. Crosses a watercourse for which the scoured channel is 8 feet wide or narrower;
 - b. Is not in a prime wetlands or a duly-established 100-foot buffer unless a prime wetlands waiver has been obtained in accordance with Env-Wt 700;
 - c. Is not in a protected species habitat unless authorized under Env-Wt 407;
 - d. Is not used for access to property that has been converted to non-forestry uses, except that forestry uses may be combined with normal agricultural operations or trail construction or maintenance or both; and
 - e. The structure disturbs less than 3,000 SF.
- (b) Forestry projects shall be minor impact projects only if:
- (1) The project exceeds the criteria for a minimum impact project and does not meet the criteria for a major impact project; or
 - (2) The project exceeds 3,000 SF per crossing but does not exceed 10,000 SF per crossing of permanent wetland impacts.
- (c) Forestry projects shall be major impact projects if:
- (1) The project proposes permanent impacts to 10,000 SF or greater of wetlands or 200 LF or greater of watercourses or other surface waters;
 - (2) The project proposes impacts to a bog, sand dune, tidal wetlands, or undisturbed tidal buffer zone; or

- (3) The project is in an area with documented occurrences of a protected species or habitat where the responsible party has not received recommendations from NHB or NHF&G.

Env-Wt 520.06 Maintenance and Repair. Stabilization, maintenance, and repair of forestry projects shall be conducted in accordance with the Forestry BMPs, available as noted in Appendix B.

PART Env-Wt 521 UTILITY PROJECTS; PROJECTS IN PUBLIC RIGHT-OF-WAY

Env-Wt 521.01 Applicability.

- (a) This part shall apply to the following utility projects in jurisdictional areas:

- (1) Minimum impact utility maintenance projects that qualify for a SPN established in RSA 482-A:3, XV;
- (2) Residential utility projects; and
- (3) Any other utility projects within a public right-of-way.

(b) This part shall not apply to a utility project that involves construction of a substation, parking lot, or storage facility on utility property, which shall be reviewed under the standards for commercial projects specified in Env-Wt 524.

Env-Wt 521.02 Utility Project Criteria for Approval.

- (a) Work may be done under utility SPN only if:

- (1) The project meets the minimum impact criteria in Env-Wt 521.06(a);
- (2) The project has only:
 - a. Temporary impacts associated with inspections, maintenance, and repair of existing utility assets and rights of way; and
 - b. Less than 3,000 SF of permanent impacts for replacement of utility assets; and
- (3) The project proponent agrees to follow the Utility BMPs, available as noted in Appendix B.

- (b) Work shall not be done under a utility SPN if the project:

- (1) Establishes one or more new permanent access roads in jurisdictional areas;
- (2) Installs one or more permanent crossings of streams or wetlands, or both;
- (3) Constructs one or more new utility corridors or rights-of-way;
- (4) Installs new utility assets within existing utility corridors or rights-of-way;
- (5) Does not meet the standard conditions in Env-Wt 307; or
- (6) Otherwise exceeds the minimum impact criteria.

Env-Wt 521.03 Approval Criteria for Standard Utility Permits. In addition to meeting the criteria established in Env-Wt 300, the department shall not approve a standard permit for a utility project unless the following criteria are met:

(a) If the project as a whole crosses multiple properties, it is submitted as a single project and is not segmented into multiple proposed projects for the purpose of avoiding eligibility or classification requirements;

(b) The project is, to the greatest extent practicable, within existing rights-of-way and developed areas;

(c) Construction will be undertaken in the least environmentally impactful manner; and

(d) If the project involves greater than one acre of contiguous permanent wetland or watercourse impact, an off-site alternatives analysis is done.

Env-Wt 521.04 Utility Project Application Requirements. The project-specific information required by Env-Wt 310.01(c)(1) or Env-Wt 311.03(b)(11), as applicable, for a utility project shall be as follows:

(a) A plan showing the following:

(1) The extent and location of all wetlands and watercourses within the project area;

(2) A wetland delineation and functional assessment and impact analysis in accordance with Env-Wt 300;

(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 the items specified in (b)(1), 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;

(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; and

(g) The locations of staging areas, off right-of-way access roads, temporary access roads, and new station locations.

Env-Wt 521.05 Utility Design and Construction Requirements. In addition to the design and construction requirements in Env-Wt 300, the following requirements shall apply to utility projects:

(a) The project shall be designed:

(1) To avoid and minimize construction access over, or work in or upon, organic soils; and

(2) In accordance with Env-Wt 313.03;

(b) Construction access or work shall be prohibited in PRAs unless the work:

(1) Is authorized as an SPN or a project type exception under Env-Wt 407; or

(2) Causes only temporary impacts;

(c) All project activities shall be performed, located, constructed, and maintained in accordance with the Utility BMPs;

(d) No project shall cause permanent filling of wetlands in excess of 10,000 SF unless mitigation is provided in accordance with Env-Wt 800; and

- (e) Swamp mats shall be:
 - (1) Used in any area necessary to provide access;
 - (2) Removed as soon as the work is completed; and
 - (3) In no case left in place longer than one growing season.

Env-Wt 521.06 Utility Project Classification.

- (a) A utility project shall be a minimum impact project if:
 - (1) The project meets all applicable Utility BMPs, available as noted in Appendix B, and will have temporary impacts associated with inspection, maintenance, repair, replacement, or removal of existing utility facilities within existing rights-of-way;
 - (2) The project does not include establishing new access roads, installing permanent stream or wetland crossings, constructing new utility corridors or rights-of-way, or establishing new utility assets within existing corridors or rights-of-way;
 - (3) The project does not include any permanent fill in navigable waters;
 - (4) Impacts to any PRA other than prime wetlands and duly-established 100-foot buffers are authorized by following the recommendations provided by NHB, NHF&G, and the department in a pre-notification review meeting;
 - (5) Timber mats are:
 - a. Not used in a tidal marsh; and
 - b. Used in an area other than a tidal marsh only if they are:
 - 1. Necessary to conduct activities;
 - 2. Removed as soon as work is completed; and
 - 3. In place no longer than one growing season;
 - (6) The project does not cause a permanent conversion of more than 3,000 SF in total of forested wetlands to emergent or scrub-shrub wetlands with or without temporary fill; and
 - (7) For private residential utility projects involving the installation of residential utility lines and associated temporary impacts to bring services to a single building lot:
 - a. The total jurisdictional impact will not exceed 3,000 SF;
 - b. Impact width at any wetland crossing will not exceed 20 feet;
 - c. Stream crossing channels will not exceed 8 feet wide measured bank to bank; and
 - d. Only swamps or wet meadows that have no standing water for 10 months of the year will be crossed.
- (b) A utility project shall be a minor impact project if the project:
 - (1) Includes the installation of one or more new permanent crossing(s) of a perennial stream;
 - (2) Establishes a new access road, new utility corridor or right-of-way, or new utility assets;
 - (3) Exceeds the Utility BMPs, available as noted in Appendix B, or any of the minimum impact criteria in (a), above;

- (4) Includes permanent conversion of forested wetlands to emergent or scrub-shrub wetlands with or without temporary fill; or
 - (5) For private residential utility projects, exceeds minimum impact criteria but does not exceed Env-Wt 400 project classification criteria.
- (c) A utility project shall be a major impact project if:
- (1) It does not meet the criteria for a minimum or minor impact project; or
 - (2) It meets the criteria in (a) above, but:
 - a. Is located in a PRA and has impacts that cannot be addressed through recommendations by NHB, NHF&G, or the department, as applicable; or
 - b. Requires mitigation under state or federal law.

Env-Wt 521.07 Maintenance and Repair. Maintenance and repair shall be carried out in accordance with the Utility BMPs, available as noted in Appendix B.

PART Env-Wt 522 AGRICULTURAL ACTIVITIES

Env-Wt 522.01 Applicability.

- (a) This part shall apply to agriculture activities in jurisdictional areas that are associated with maintenance or improvement of existing crop or pasture land for continued agriculture use that is necessary or incidental to a preexisting and ongoing bona fide agricultural operation as defined by RSA 21:34-a.
- (b) This part shall not apply to the following activities, for which no permit shall be required:
 - (1) Cleaning and maintenance of legally constructed man-made non-tidal drainage ditches that have not been abandoned; and
 - (2) Maintenance, repair, replacement, of lawfully constructed ponds on active farms as necessary to preserve the usefulness of such ponds, provided that such ponds are not extended into any undisturbed area of wetlands jurisdiction;
- (c) This part shall not apply to the following activities, which require a separate permit:
 - (1) Construction of drainage ditches in jurisdictional wetlands;
 - (2) Widening, deepening, realigning, or extending the length of existing legally constructed drainage ditches or irrigation ditches in jurisdictional wetlands beyond original function design or original purpose;
 - (3) Except for access roads associated with an agricultural project, placement of new fill in wetlands for agricultural purposes, which shall be subject to permitting as a development project in accordance with Env-Wt 524; or
 - (4) Work in agricultural wetlands that are deemed abandoned as a result of not having been used, managed, mowed, or maintained for agricultural purposes for a period of 5 years, or where the work does not qualify as a new agriculture project, which shall be subject to permitting as a development project in accordance with Env-Wt 524.

Env-Wt 522.02 Approval Criteria for Agricultural Projects. In addition to meeting the criteria established in Env-Wt 300, the department shall not approve a standard permit for an agricultural project unless the following criteria are met:

- (a) The project complies with the design requirements specified in Env-Wt 522.04 and the construction requirements specified in Env-Wt 522.05;
- (b) The project does not include any new non-agricultural uses; and
- (c) Any new road permitted under this part will be for the purpose of providing access to an agricultural facility.

Env-Wt 522.03 Application Requirements for Agricultural Projects. The project-specific information required by Env-Wt 310.01(c)(1) or Env-Wt 311.03(b)(11), as applicable, for an agricultural project shall be as follows:

- (a) A conservation plan prepared by NRCS, a county conservation district or a plan of conservation practices for proposed wetland impacts prepared by a certified wetland scientist;
- (b) Aerial photography with site impact located;
- (c) NRCS soil survey reports for the project area;
- (d) A wetland delineation and impact plan prepared by an NRCS soil scientist or certified wetland scientist;
- (e) A sediment and erosion control plan;
- (f) A construction sequence detailing timing of the work proposed, including dewatering plans, construction of access routes, and temporary impacts; and
- (g) All of the information and documentation specified in Env-Wt 522.06(a).

Env-Wt 522.04 Design Requirements for Agricultural Projects. In addition to meeting the requirements established in Env-Wt 300, the following requirements shall apply to a proposed agricultural project:

- (a) The project shall be designed to comply with the requirements of the Agriculture BMWPs, available as noted in Appendix B;
- (b) The project shall be designed to minimize the number of stream and wetlands crossings;
- (c) The project shall be designed to retain vegetated strips of land between agricultural operations and natural wetlands and surface waters or meets chapter 6 of the Agriculture BMWPs; and
- (d) The project shall not impair the flow and circulation of waters in or adjacent to the project area or to reduce the reach of such waters.

Env-Wt 522.05 Construction Requirements for Agricultural Projects. In addition to all applicable construction standards specified in Env-Wt 307, agricultural projects shall comply with the Agriculture BMWPs, available as noted in Appendix B.

Env-Wt 522.06 Classification of Agricultural Construction Projects.

- (a) An agriculture project shall be a minimum impact project only if:
 - (1) The application includes:
 - a. A complete, executed copy of the county conservation district's cooperator agreement or a conservation practices plan prepared by an applicant's county conservation district or a certified wetland scientist with an accompanying map showing the proposed project and the existing conservation practices; and

- b. An NRCS soils map indicating the project location and the location of poorly drained soils and very poorly drained soils or a certified wetland scientist narrative and plan certifying the project meets Env-Wt 522;
- (2) The applicant provides a written certification from either a certified wetland scientist or the county conservation district in which the work is proposed that the project:
 - a. Meets the requirements of and does not exceed the scope of the Agriculture BMWPs; and
 - b. Is necessary for or incidental to a preexisting and ongoing *bona fide* agricultural operation as defined in RSA 21:34-a;
 - (3) The applicant accepts a permit condition stating that no change in use to a non-agricultural purpose shall occur without obtaining any applicable permits for such use from the department;
 - (4) The project is not in or adjacent to a PRA;
 - (5) The project will cause alteration only to a wet meadow except as specifically described in the Agriculture BMWPs;
 - (6) The improvement portion of the project area does not impact more than 3 acres of wetland area and includes no more than 15% very poorly drained soils; and
 - (7) The project does not impact more than 3,000 SF of wetlands directly adjacent to the improvement which are for access only.
- (b) An agricultural project shall be a minor impact project only if:
 - (1) The project access road impacts greater than 3,000 SF but no more than 5 acres of wet meadow improvements; or
 - (2) If the project involves maintenance of a nonexempt farm pond with a surface area greater than 3,000 SF but no more than 10,000 SF.
 - (c) An agricultural project shall be a major impact project if:
 - (1) The project requires a waiver of any applicable approval, design, or construction criteria;
 - (2) The project requires an individual permit from the Army Corps of Engineers under the Clean Water Act, 33 U.S.C. §§ 1251-1376, as amended; or
 - (3) The project exceeds the minor impact criteria.

PART Env-Wt 523 NON-TIDAL DREDGING

Env-Wt 523.01 Applicability.

- (a) This part shall apply to dredging projects in non-tidal jurisdictional areas.
- (b) Where dredging is part of a larger project, it shall also be reviewed under the appropriate project specific section as follows:
 - (1) Dredging projects for pond construction shall be reviewed under Env-Wt 519;
 - (2) Dredging for residential, commercial, or industrial development shall be reviewed under Env-Wt 524; and
 - (3) Dredging associated with restoration/enhancement activities shall be reviewed under Env-Wt 525.

- (c) This part shall not apply to dredging that:
 - (1) Meets the criteria for small motor mineral dredging under RSA 482-A:3, XI, and complies with Env-Wt 310.04 through Env-Wt 310.08; or
 - (2) Is an integral component of a dam project that meets the criteria of Env-Wt 526.

Env-Wt 523.02 Criteria for Approval of Dredging Projects. In addition to meeting the requirements established in Env-Wt 300, the department shall approve a dredging project only if the dredging project is:

- (a) Necessary to maintain an existing navigable passageway, fire pond, or infrastructure facility;
- (b) Part of a previously-constructed maintenance dredge project that is not abandoned or an active man-made pond; or
- (c) Part of an approved project for a dug-in boathouse.

Env-Wt 523.03 Application Requirements for Dredging Projects. The project-specific information required by Env-Wt 310.01(c)(1) or Env-Wt 311.03(b)(11), as applicable, for a dredge project shall be as follows:

- (a) A description of the material and area to be dredged, including:
 - (1) The volume of material to be dredged, in cubic yards for projects in public waters;
 - (2) The square footage of the area to be dredged for non-public waters or wetlands;
 - (3) The type of material to be dredged; and
 - (4) Whether any invasive species are present;
- (b) The erosion and sediment control measures proposed to be used;
- (c) The methods proposed to dewater the dredged material;
- (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) If potential sources are documented in (g), above, 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; and
- (j) An explanation of the timing of the project and how such timing helps minimize impacts on aquatic resources.

Env-Wt 523.04 Classification of Dredging Projects.

(a) Where not already exempt under RSA 482-A:3, IV, maintenance dredging associated with existing infrastructure, a previously constructed maintenance dredge project, or an active man-made pond, shall be a minimum impact project provided the proposed dredging of public waters does not exceed 20 CY and impacts less than 10,000 SF of wetland.

(b) A dredging project shall be a minor impact project if it otherwise meets the minimum impact criteria but:

- (1) The area to be dredged will exceed the previously-permitted dredge area;
 - (2) The wetland-impacted dredge area is more than 10,000 SF in area;
 - (3) There are aquatic resource impacts based on time-of-year restrictions that require NHF&G authorization; or
 - (4) For public waters, the proposed dredging will be greater than 20 CY but no more than 30 CY.
- (c) A dredging project shall be a major impact project if it:
- (1) Is a new or unmaintained dredging project;
 - (2) Will have greater than 10,000 SF of wetlands impacts;
 - (3) Will dredge more than 30 CY in public waters; or
 - (4) Will be located in a PRA.

PART Env-Wt 524 RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL DEVELOPMENT

Env-Wt 524.01 Applicability. This part shall apply to residential, commercial, and industrial development projects, including associated roadways, in non-tidal wetlands.

Env-Wt 524.02 Approval Criteria for Residential, Commercial, and Industrial Development Projects. In addition to the criteria established in Env-Wt 300, the department shall not approve an application for a residential, commercial, or industrial development project unless the following criteria are met:

- (a) An off-site alternatives analysis is conducted for any project that will result in more than one acre of permanent wetland impacts;
- (b) The project avoids and minimizes impacts to wetlands, watercourses, and sensitive and valuable wetlands in accordance with Env-Wt 313.03;
- (c) The project complies with the design criteria specified in Env-Wt 524.04 and the construction criteria specified in Env-Wt 524.05; and
- (d) Compensatory mitigation is provided for any new residential, commercial, or industrial development in a PRA.

Env-Wt 524.03 Application Requirements for Residential, Commercial, and Industrial Development Projects.

(a) The project-specific information required by Env-Wt 310.01(c)(1) or Env-Wt 311.03(b)(11), as applicable, for a residential, commercial, or industrial development project in non-tidal wetlands shall be as follows:

- (1) If the project includes components that are subject to multiple project-specific requirements in this chapter, a narrative statement and plan that describes:
 - a. How each project-specific component meets the requirements of the applicable part in this chapter; and
 - b. How the project as a whole impacts jurisdictional areas;
- (2) For all projects requiring subdivision approval, a plan prepared and stamped by a land surveyor licensed in the state of New Hampshire pursuant to RSA 310-A showing:
 - a. Existing and proposed topography; and

- b. The location of all proposed lot lines;
- (3) For all projects requiring subdivision approval, the following clearly delineated on the plan required by (2), above:
 - a. The boundaries of all wetlands and surface waters; and
 - b. The footprint of all proposed impacts;
- (4) For minor and major projects requiring subdivision approval, wetlands classifications clearly indicated in accordance with Env-Wt 400 on the plan required by (2), above; and
- (5) For a project that is associated with one or more phases of a multi-phase subdivision, a project impact plan that also shows all wetlands on remaining property proposed for future phases of development.

(b) Permits for subdivisions of 4 or more lots shall not be effective until the permittee records the permit with the appropriate registry of deeds and a copy of the registered permit has been received by the department.

Env-Wt 524.04 Design Requirements for Residential, Commercial, and Industrial Development Projects. In addition to meeting the applicable design requirements established in Env-Wt 300, a residential, commercial, or industrial development project in non-tidal wetlands shall be designed to meet the following criteria:

- (a) The project complies with all applicable requirements of Env-Wt 400, Env-Wt 700, Env-Wt 800, Env-Wt 900, and other applicable project-specific criteria in this chapter;
- (b) The project does not use wetlands or surface waters to serve as stormwater or water quality treatment to mitigate impacts;
- (c) The project provides setbacks and water quality protection measures sufficient to protect private and public drinking water supplies, source water protection areas, and fisheries;
- (d) The project maintains or restores hydrologic connections to maintain flows necessary to preserve adjacent wetland and riparian functions;
- (e) The project maintains the geomorphic condition 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;
- (f) The project maintains existing fishery spawning, feeding, or cover habitat and fish passage necessary to maintain fishery or habitat or populations; and
- (g) The project maintains existing wetland-dependent wildlife habitat and its associated migratory pathways, reproductive sites, and associated wetland complex or wetland community system.

Env-Wt 524.05 Construction Requirements for Residential, Commercial, and Industrial Development Projects. In addition to meeting all applicable construction standards specified in Env-Wt 307 and other applicable project-specific standards in this chapter, the following shall apply to residential, commercial, or industrial development projects in non-tidal wetlands:

- (a) A construction notice shall be filed with the department at least 48 hours prior to commencing work; and
- (b) All work shall be conducted in accordance with the approved plan.

Env-Wt 524.06 Classification of Residential and Commercial or Industrial Development Projects.
Residential and commercial or industrial development projects shall be classified under Env-Wt 407 and as follows:

- (a) A project shall be a minimum impact project only if:
 - (1) All stream-crossing components of the project meet the requirements for minimum impact classification specified in Env-Wt 903;
 - (2) All other components of the project meet the requirements for minimum impact classification specified in Env-Wt 407 and this chapter; and
 - (3) The project is not part of a new subdivision of 4 or more lots;
- (b) A project shall be an expedited minimum impact project only if:
 - (1) It is a minimum impact project to construct a new subdivision of 3 lots or less; and
 - (2) The applicant has attended a pre-design submission meeting with the department at least 7 days prior to application submission and included department feedback in the design plan;
- (c) A project shall be a minor impact project if any of the following apply:
 - (1) Any single stream-crossing component of the project meets the requirements for minor impact classification specified in Env-Wt 903;
 - (2) The project is part of a new subdivision of 4 or more lots;
 - (3) Any single component of the project meets the requirements for minor impact classification specified in Env-Wt 407 or this chapter;
 - (4) No component of the project meets the requirements for major impact classification specified in Env-Wt 407, Env-Wt 903, or this chapter; or
 - (5) Any single component of the project meets the requirements for minor impact classification specified in Env-Wt 407, Env-Wt 903, or this chapter; and
- (d) A project shall be a major impact project if:
 - (1) The project exceeds the minor impact criteria;
 - (2) The project requires mitigation or meets the requirements for major impact classification specified in Env-Wt 407, Env-Wt 903, or any other associated project classification that is part of the overall project; or
 - (3) The project is elevated based on an aggregation undertaken by a developer or is part of a series of developments under Env-Wt 400.

PART Env-Wt 525 RESTORATION/ENHANCEMENT ACTIVITIES

Env-Wt 525.01 Applicability; Definitions.

- (a) This part shall apply to projects solely to restore and/or enhance altered or degraded jurisdictional areas.
- (b) For purposes of this part, the following definitions shall apply:
 - (1) “Restoration/enhancement activity” means a project undertaken to restore or enhance, or both, a wetlands, watercourse, or other jurisdictional area; and

(2) “Wood addition” means adding wood as identified in “Practical Guide to Adding Wood to Streams in NH” dated 2018, published by the NRCS and available as noted in Appendix B, to a watercourse in such a way as to create habitat for aquatic organisms and improve water quality.

Env-Wt 525.02 Approval Criteria for Restoration/Enhancement Activities. In addition to meeting the criteria established in Env-Wt 300, the department shall not approve an application for a restoration/enhancement project unless the project:

- (a) Meets the design and construction requirements specified in Env-Wt 525.04; and
- (b) Does not include unnatural stream channelization or conversion of wetlands to uplands.

Env-Wt 525.03 Application Requirements for Restoration/Enhancement Activities. The project-specific information required by Env-Wt 310.01(c)(1) or Env-Wt 311.03(b)(11), as applicable, shall be as follows:

- (a) A description of the project goals explaining how the project will achieve restoration/enhancement of desired functions and values in accordance with Env-Wt 805.02(d) and Env-Wt 300;
- (b) For wetland restoration/enhancement projects, all the information or documents specified in Env-Wt 805.03 except for a list of activities that will or will not be allowed within the project area;
- (c) For stream restoration/enhancement projects:
 - (1) Subject to (2), below, the information or documents specified in the applicable provisions of Env-Wt 806.04 except for activities that will or will not be allowed within the project area; or
 - (2) For projects that are limited to wood addition, the information specified in Env-Wt 806.04(b) and (d);
- (d) For restoration/enhancement projects that include dam removal:
 - (1) The information and documents specified in the applicable provisions of Env-Wt 806.04 except for a list of activities that will or will not be allowed within the project area;
 - (2) Plans for the project stamped by a professional engineer; and
 - (3) A sediment report that includes:
 - a. An explanation of the known potential for current and historic sources of sediment contamination from upstream sources, including but not limited to wastewater discharges, hazardous waste sites, and existing and former manufacturing facilities and tanneries;
 - b. An estimate of the volume of sediment that will be removed or potentially become mobile as a result of the project;
 - c. If a dam is to be removed, the estimated volume of impounded sediment that could be transported downstream due to dam removal; and
 - d. A description of the physical characteristics of the impounded sediment, including grain size distribution and organic content.
- (e) A restoration/enhancement monitoring plan that identifies:
 - (1) The metrics by which project success will be measured; and
 - (2) A schedule showing anticipated construction phases, timing of plantings, dates of submission of monitoring reports, and a final date of completion;

(f) A description of stakeholder engagement conducted to assist in determining any potential impacts to upstream and downstream property owners, if any;

(g) A description of any on-site features, conditions, or past work that might restrict excavation or access; and

(h) Identification of the source of any hydric soils and plantings to be used.

Env-Wt 525.04 Design and Construction Requirements for Restoration/Enhancement Activities. In addition to the design and construction requirements specified in Env-Wt 300, a restoration/enhancement project shall be designed and constructed to:

(a) Restore or increase wetland function, stream function, water quality, or other functions of resources within jurisdictional areas;

(b) Create hydrologic conditions, organism passage, or land connections that will support or enhance wetland functions and values of the resources proposed to be restored or enhanced;

(c) For stream restoration/enhancement projects, meet as many of the goals specified in Env-Wt 806.02(a) as practicable;

(d) Where applicable, preserve access to the restoration/enhancement areas; and

(e) For wood addition, comply with the “Practical Guide to Adding Wood to Streams in NH” dated 2018, published by the NRCS, available as noted in Appendix B.

Env-Wt 525.05 Restoration/Enhancement Activities Construction Project Classification. A restoration/enhancement project shall be a minimum impact project if the project:

(a) Is not proposed to be used to fulfill the requirements of an administrative order, court order, settlement, or other enforcement proceeding obligating the applicant or another person to perform such restoration/enhancement activities; and

(b) Meets the requirements for a project-type exception specified in Env-Wt 407.04(b).

PART Env-Wt 526 DAMS

Env-Wt 526.01 Applicability; Definitions.

(a) This part shall apply to the construction, reconstruction, modification, repair, or replacement of a dam.

(b) This part shall not apply to activities that are part of the normal operations of a dam, such as opening and closing low level outlets.

(c) For purposes of this part, the following definitions shall apply:

(1) “C/M/R project” means a project to construct, reconstruct, modify, repair, or replace a dam, or any combination thereof;

(2) “Dam” means:

a. “Dam” as defined in RSA 482:2, II, as reprinted in Appendix C; or

b. Any human-made barrier constructed in or on the banks or beds of surface waters or wetlands to hold back water and raise its level; and

(3) “Modification” means a change to the structural components of a dam that is not a significant expansion; and

(4) “Significant expansion” means expansion of the footprint of an existing dam into jurisdictional areas greater than 2 feet in width or depth.

Env-Wt 526.02 Approval Criteria for Dam Projects. In addition to meeting all applicable criteria established elsewhere in subtitle Env-Wt, the applicant for a permit under RSA 482-A for a C/M/R project shall demonstrate that the project meets the following criteria:

- (a) For a project to repair, replace in kind, reconstruct, or modify a dam:
 - (1) The dam is an existing legal structure; and
 - (2) There will be no significant expansion or increase in the level of impounded water as a result of the project;
- (b) No flooding or de-watering associated with the C/M/R project will permanently destroy native hydrophytic vegetation or aquatic habitat of finfish, crustacea, or wildlife;
- (c) Existing aquatic organism passage and stream flow will be maintained during and after construction at appropriate times to allow migration of fish and aquatic organism passage, if practicable;
- (d) Any new dam on a watercourse that is subject to Env-Wq 1900 relative to in-stream flows will be designed and constructed to provide a means of maintaining minimum flows;
- (e) For a project to construct a dam where no dam currently exists, if a permit under RSA 482 and Env-Wr 100 et seq. is required but has not been issued, the application for such permit has been filed; and
- (f) The C/M/R project will not permanently impound, convert, or drain any PRA.

Env-Wt 526.03 Application Requirements for Dam Projects. The project-specific information required by Env-Wt 310.01(c)(1) or Env-Wt 311.03(b)(11), as applicable, for a C/M/R project shall be as follows:

- (a) A description of the status of the existing dam structure, if any, such as whether it currently functions as intended;
- (b) Documentation from the Federal Energy Regulatory Commission or the department’s dam bureau relative to the need to perform the proposed work on the dam;
- (c) Certification that the notice required by RSA 211:11 will be provided if and as required;
- (d) A narrative description of the project that explains the reason for the proposed project;
- (e) The extent of the existing footprint of impacts to wetlands, surface waters, and banks;
- (f) A description of the structure’s design or proposed design, or both if different, and the rationale for the design;
- (g) A description of the methods that will be used to complete the project, including a construction sequence and methods to control in-stream turbidity during the work;
- (h) Plans prepared by a professional engineer showing the design, existing site conditions, and proposed site modifications in an overhead view and a cross-section of the dam for any C/M/R project other than a repair of a low, significant, or high hazard dam as those terms are defined in Env-Wr 100;
- (i) Narrative descriptions of:
 - (1) Direct impacts to the surface water, its adjacent banks, and wetlands from dredging or filling, or both, associated with the C/M/R project, including the work on the dam itself, including

whether the impacts are temporary or permanent and why each impact is necessary to complete the project; and

(2) Overall project impacts on:

- a. Wetlands, including whether existing wetlands could be drained or flooded;
- b. Plants, fish, and wildlife and associated critical habitat or migratory pathways;
- c. Public commerce, navigation, and recreation;
- d. The availability and quality of surface and ground water, including potential impacts to surface water withdrawals and nearby public and private water supply wells;
- e. Abutting property owners, including those abutting the impoundment;
- f. Local fire suppression systems, and whether local fire officials have been contacted to learn if dry hydrants or other fire-fighting supplies may be affected by the project; and
- g. The health, safety, and welfare of the general public, including how the project will alter the aesthetics of the site for the general public;

(j) If sediment will be removed as part of the project, a sediment report that includes:

- (1) An explanation of the known potential for current and historic sources of sediment contamination from upstream sources, including but not limited to wastewater discharges, hazardous waste sites, and existing and former manufacturing facilities and tanneries;
- (2) An estimate of the volume of sediment that will be removed or potentially become mobile as a result of the project; and
- (3) A description of the physical characteristics of the impounded sediment, including grain size distribution and organic content;

(k) An assessment of whether the C/M/R project might cause or increase erosion or sedimentation, including whether downstream or upstream banks could erode as a result of the C/M/R project and what measures will be taken to stabilize exposed sediments; and

(l) An assessment of whether the C/M/R project will reflect or redirect current or wave energy that might cause damage or hazards.

Env-Wt 526.04 Design Requirements for Dam Projects. In addition to meeting applicable design requirements established in Env-Wt 300, the following design requirements shall apply to a dam project:

(a) A dam as defined in RSA 482 2, II shall meet all applicable standards established in Env-Wr 100 et seq.;

(b) Any dam not covered by (a), above, shall be designed in accordance with standard engineering practices; and

(c) If the purpose of the C/M/R project is to provide fire protection, the dam shall be designed and constructed in an area with sufficient base flows to keep the pond filled while maintaining minimum downstream flows even during dry periods.

Env-Wt 526.05 Construction Requirements for Dam Projects.

(a) All work shall comply with the applicable standards in Env-Wt 307.

(b) If applicable, the permittee shall provide notice in accordance with RSA 482:13 and RSA 211:11.

(c) The permittee shall develop and implement a water quality control plan for the construction phase of the project.

(d) Not less than 5 working days prior to starting work authorized by this permit, the permittee shall notify the department and the local conservation commission in writing of the date on which work under this permit is expected to start.

(e) At least 48 hours prior to commencing work on a minor or major impact C/M/R project, the permittee shall meet with the department to review the conditions of the permits issued by the department, including but not limited to those issued under RSA 482-A, RSA 483-B, and RSA 485-A:17. The permittee may request that the meeting be held on-site or at the department offices in Concord or the Pease International Tradeport. The meeting shall be attended by the applicant and the applicant's professional engineer(s), wetlands scientist(s), and contractor(s) responsible for performing the work.

(f) Prior to commencing construction, the applicant shall:

(1) Clearly mark all wetland and surface water boundaries adjacent to the permitted work areas;

(2) Place orange construction fencing at the limits of construction to prevent unintentional encroachment on adjacent jurisdictional areas; and

(3) If the DataCheck shows the potential presence of protected species or habitat, coordinate with NHB and NHF&G regarding the need for any additional species monitoring required before and during construction.

(g) A certified wetland scientist, professional engineer, or CPESC specialist shall:

(1) Verify that all wetland or wetland-related work is done in accordance with the approved plans and narratives; and

(2) Submit a follow-up report including photographs of the stages of construction specified in the permit to the department within 60 days of final site stabilization.

Env-Wt 526.06 Construction Classification for Dam Construction, Reconstruction, or Replacement Projects. Projects shall be classified in accordance with Env-Wt 407 and the following:

(a) In-kind replacement or reconstruction of a dam that meets the size limits specified in Env-Wt 407 shall be a minimum impact project;

(b) In-kind replacement or reconstruction of a dam that exceeds the minimum impact size limits but will impact less than 200 LF of surface water shoreline or banks or less than 10,000 SF of a wetlands shall be a minor impact project;

(c) A significant modification to reconstruct or replace a dam that exceeds (b) above shall be a major project;

(d) New construction regardless of jurisdictional impact size shall be a major project;

(e) Projects that impact a PRA, 200 LF or more of a surface water or banks of surface waters, or 10,000 SF or greater of a wetlands or bed and banks of surface waters shall be major projects; and

(f) Placement of temporary cofferdams or other temporary water control devices constructed in flowing water or adjacent to dams in conjunction with the repair or maintenance of an existing dam shall be minimum impact projects provided they do not create permanent impacts to surface waters, bed or banks of surface waters or wetlands.

Env-Wt 526.07 Classification for Dam Modification, Repair, or Maintenance Projects.

- (a) In-kind repair of a dam in the dry shall be a minimum impact project.
- (b) Repair projects that require work in surface waters, banks of surface waters, or wetlands shall be a minor impact project unless:
 - (1) The project involves removal, replacement, reconstruction, or significant modification of the dam; or
 - (2) The project is classified as major under Env-Wt 407 based on the size of the impacts or impacts to PRAs.
- (c) Maintenance or repairs performed by a dam owner or the owner's authorized agent shall not require a permit if the work does not otherwise require a permit under RSA 482-A and consists of :
 - (1) The removal of woody debris or trash blocking an inlet or outlet structure, including but not limited to beaver dam debris or flotsam such as logs, floats, dock parts, or boats;
 - (2) The filling of cracks on the surface of the dam when the work is done in the dry;
 - (3) The removal and replacement of stop logs, dam flash boards, or gates and valves as part of normal operations, maintenance, safety concerns, or a required dam safety schedule;
 - (4) Repair in kind of any minor structural element such as fasteners or supports that is performed in the dry under normal operating schedule; or
 - (5) Replacement of dislodged rocks in the dry on an existing rip-rap earthen portion of a legally existing permitted dam used to stabilize the structure.

PART Env-Wt 527 PUBLIC HIGHWAYS

Env-Wt 527.01 Applicability.

- (a) Except as noted in (b) through (d), below, this part shall apply to construction and maintenance projects for public highways in jurisdictional areas.
- (b) Activities relating to stream crossings shall be undertaken in accordance with Env-Wt 900.
- (c) Public highway projects that impact tidal resources shall be undertaken in accordance with Env-Wt 600.
- (d) Bank stabilization projects shall be undertaken in accordance with Env-Wt 514.

Env-Wt 527.02 Approval Criteria for Public Highway Projects. In addition to meeting applicable standards established in other chapters of subtitle Env-Wt, the department shall not approve an application for a public highway project unless the following criteria are met, subject to the rebuttable presumption in RSA 482-A:3, I-a that for applications "proposed, sponsored, or administered by the department of transportation", NH DOT "has exercised appropriate engineering judgment in the project's design":

- (a) The project meets the design criteria specified in Env-Wt 527.04;
- (b) The project is consistent with RSA 482-A:1, RSA 483, RSA 483-B, RSA 485-A, and RSA 212-A;
- (c) The purpose of the project is to improve or maintain public safety, consistent with federal and state safety standards;
- (d) The project will not cause displacement of flood storage wetlands or cause diversion of stream flow impacting abutting landowner property; and

- (e) For a project in the 100-year floodplain, the project will not increase flood stages off-site.

Env-Wt 527.03 Application Requirements for Public Highway Projects. The project-specific information required by Env-Wt 310.01(c)(1) or Env-Wt 311.03(b)(11), as applicable, for a C/M project shall be as follows:

- (a) A description of the scope of the project, the size of the impacts to aquatic resources, and the purpose of the project;
- (b) An accurate drawing with existing and proposed structure dimensions clearly annotated to:
 - (1) Document existing site conditions;
 - (2) Detail the precise location of the project and show the impact of the proposed activity on jurisdictional areas;
 - (3) Show existing and proposed contours at 2-foot intervals;
 - (4) Show existing and proposed structure invert elevations on the plans; and
 - (5) Use a scale based on standard measures of whole units, such as an engineering rule of one to 10, provided that if plans are not printed at full scale, a secondary scale shall be noted on the plans that identifies the half scale unit of measurement;
- (c) All easements and right-of-way acquisition area outlines in relation to the project;
- (d) The name of the professional engineer who developed the plans, whether an employee of the applicant or at a consulting firm; and
- (e) An erosion control plan that shows:
 - (1) Existing and proposed contours at 2-foot intervals, with existing contours shown with a lighter line weight and proposed contours shown with a heavier line weight such as a bold font; and
 - (2) The outermost limit of all work areas, including temporary phasing work, with perimeter controls.

Env-Wt 527.04 Design Requirements for Public Highway Projects. In addition to meeting all applicable criteria established in Env-Wt 300, all projects shall:

- (a) Protect significant function wetlands, watercourses, and PRAs;
- (b) Minimize impacts to wetland and riparian function;
- (c) Maintain wetland and stream hydrology and function to the remaining aquatic resources;
- (d) Use on-site measures to compensate for any loss of flood storage where the project proposes:
 - (1) Filling or placement of structures in a 100-year floodplain; or
 - (2) Greater than 0.5 acre-feet of fill volume or a road crossing that affects floodplain conveyance;
- (e) 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 to disperse runoff with no direct discharge to natural wetlands or surface waters; and
- (f) Where temporary impacts will occur, include re-establishment of a similar ecosystem using vegetative species and spacing that are as similar as practicable to what was removed unless the applicant shows that the proposed vegetative composition will provide higher functions and values.

Env-Wt 527.05 Construction Requirements for Public Highway Projects. In addition to complying with all applicable conditions in Env-Wt 307, the following shall apply:

(a) The permit shall be contingent on review and approval by the department of final stream diversion and erosion control plans that detail the timing and method of stream flow diversion during construction and show temporary siltation, erosion, and turbidity control measures to be implemented; and

(b) The contractor responsible for completion of the work shall use techniques described in Env-Wq 1504.06, Env-Wq 1504.16, Env-Wq 1505.02, Env-Wq 1506, and Env-Wq 1508.

Env-Wt 527.06 Maintenance and Repair for Public Highway Projects.

(a) A public highway maintenance project that does not qualify for an SPN because the project exceeds the statutory criteria shall be processed through a registration process under Env-Wt 309.03 if the work meets the criteria for minimum impact projects established in Env-Wt 407.

(b) Replacement of dislodged rocks on an existing rip-rap portion of a legally existing permitted road embankment to stabilize the structure may be done without a permit.

Env-Wt 527.07 Public Highway Projects Project Classification. Public highway projects shall be classified based on the dimensions established in Env-Wt 407, subject to the adjustments and project exceptions established in Env-Wt 407.

APPENDIX A: STATE STATUTES IMPLEMENTED

Rule Section(s)	State Statutes Implemented	Federal Statutes, Regulations Implemented
Env-Wt 500	RSA 482-A:1 - 4, 6, 8 - 34; RSA 483-B; RSA 485-A; RSA 487; RSA 212-A	Clean Water Act, 33 U.S.C. Chapter 26, Subchapter IV, § 1344 (Permits for Dredged or Fill Material); 33 CFR Parts 322 & 323; USACE Gen. Permit No. NAE-2016-02415

APPENDIX B: INCORPORATED REFERENCES

Rule (Env-Wt)	Reference (Date/Edition)	Published by / How to Obtain
510.07 (f)	Best Management Practices for Control of Invasive and Noxious Plant Species (2018)	NH Department of Transportation PO Box 483 7 Hazen Drive Concord, New Hampshire 03302-0483 Phone: (603) 271-3734 Fax: (603) 271-3914 Email: info@dot.nh.gov Download at no charge from: https://www.nh.gov/dot/org/projectdevelopment/environment/units/program-management/documents/FINAL-ENV1Manual1-InvasiveSpecies.pdf
514.02(b)(1) 514.02(b)(5)	Wetlands Best Management Practice Techniques for Avoidance and Minimization (2019)	New England Interstate Water Pollution Control Commission Wannalancit Mills 650 Suffolk Street, Suite 410 Lowell, MA 01854 Phone: (978) 323-7929 Fax: (978) 323-7919 General Email: mail@neiwppcc.org Download at no cost from: http://neiwppcc.org/wp-content/uploads/2019/03/Wetlands-BMP-Manual-2019.pdf
514.02(d)(1); 514.04(g)	Guidelines for Naturalized River Channel Design and Bank Stabilization (February 2007)	Download at no cost from: https://www.des.nh.gov/organization/commissioner/pip/publications/wd/documents/r-wd-06-37.pdf ;
514.02(d)(2); 514.04(h)	Technical Supplement 141 - Streambank Soil Bioengineering, Part 654 National Engineering Handbook (August 2007)	U.S. Department of Agriculture, Natural Resource Conservation Service 1400 Independence Ave., SW, Room 5105-A Washington, DC 20250 Phone: (202) 720-7246 Download at no cost from: https://directives.sc.egov.usda.gov/17818.wba

Rule (Env-Wt)	Reference (Date/Edition)	Published by / How to Obtain
514.02(d)(3); 514.04(i) 525.01(b)(2) 525.04(e)	Stream Restoration Design, National Engineering Handbook 654 (August 2007) Practical Guide to Adding Wood to Streams in NH (2018)	U.S. Department of Agriculture, Natural Resource Conservation Service 1400 Independence Ave., SW, Room 5105-A Washington, DC 20250 Phone: (202) 720-7246 Download at no cost from: https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/water/manage/restoration/?cid=stelprdb1044707 Download at no cost from: https://efotg.sc.egov.usda.gov/references/public/NH/Practical Guide to Wood In Stream 3.23.18.pdf
517.02(a)(3) 517.04(c)	NH Best Management Practices for Erosion Control During Trail Maintenance and Construction (2017)	NH Department of Resources & Economic Development, Division of Parks & Recreation; Bureau of Trails 172 Pembroke Road Concord, NH 03301 Phone: (603) 271-3254 Fax: (603) 271-3553 Email: nhtrails@dncr.nh.gov Download at no cost from: https://www.nhstateparks.org/getmedia/3c45de00-e174-4df0-b678-4670b254290d/Best-Management-Practices-For-Erosion-Control-During-Trail-Maintenance-and-Construction.pdf
520.03(b)(3); 520.04(a), (b)(1), (b)(3); 520.06	New Hampshire Best Management Practices for Erosion Control on Timber Harvesting Operations (2016)	UNH Cooperative Extension Taylor Hall, 59 College Road Durham, NH 03824 Phone: (603)862-1520 Download at no cost from: https://extension.unh.edu/resources/files/Resource000247_Rep266.pdf
521.02(a)(3); 521.04(a)(4) 521.05(c); 521.06(a)(1)	Utility Maintenance in and Adjacent to Wetlands and Waterbodies in New Hampshire - Best Management Practices Manual (March 2019)	NH Dept. of Natural and Cultural Resources Division of Forests and Lands 172 Pembroke Road Concord, NH 03301 Tel: (603) 271-2214 Fax: (603) 271-6488 Download at no cost from: https://www.nhdfi.org/DRED/media/Documents/New Final Utility BMP Manual 3 8 19.pdf

Rule (Env-Wt)	Reference (Date/Edition)	Published by / How to Obtain
522.04(a), (c); 522.05; 522.06(a)(2)a., (a)(5)	Best Management Wetlands Practices for Agriculture (2019)	NH Dept. of Agriculture, Markets, and Food PO Box 2042 25 Capitol Street Concord, NH 03302-2042 Phone: (603) 271-3551 Fax: (603) 271-1109 Download at no cost from: https://www.agriculture.nh.gov/publications-forms/documents/wetlands-bmp-manual.pdf

APPENDIX C: STATUTORY DEFINITION

RSA 482:2

II. (a) “Dam” means any artificial barrier, including appurtenant works, which impounds or diverts water and which has a height of 6 feet or more, or is located at the outlet of a great pond. A roadway culvert shall not be considered a dam if its invert is at the natural bed of the water course, it has adequate discharge capacity, and it does not impound water under normal circumstances. Artificial barriers which create surface impoundments for liquid industrial or liquid commercial wastes, septage, or sewage, regardless of height or storage capacity, shall be considered dams.

(b) An artificial barrier at a storm water detention basin, which impounds 0.5 acre-foot or less of water during normal conditions, shall not be considered a dam unless its height is 10 feet or greater or its maximum storage is 6 acre-feet or greater.

RSA 487:16

II. The term “exotic aquatic weeds” includes only those species of vascular aquatic plants which were not part of New Hampshire's native aquatic flora before 1950. *Cabomba caroliniana* and *Myriophyllum heterophyllum* are examples of exotic aquatic weeds.

APPENDIX D: LAKE WINNIPESAUKEE MAP FOR BREAKWATER LOCATIONS

[to be inserted]

APPENDIX E: SUMMARY OF ABBREVIATIONS AND ACRONYMS

Term	Meaning
Agriculture BMWPs	“Best Management Wetlands Practices for Agriculture” dated 2019, published by the NH Department of Agriculture, Markets, and Food
A/M BMPs	“Wetlands Best Management Practice Techniques For Avoidance and Minimization” dated 2019, published by the New England Interstate Water Pollution Control Commission
CPESC specialist	Certified Professional Erosion and Sediment Control specialist - an individual certified by EnviroCert International, Inc.® as competent to develop and implement erosion and sediment control practices
CY	Cubic Yard
Federal classification method	Method established in “Classification of Wetlands and Deepwater Habitats of the United States”, adapted from Cowardin, Carter, Golet and LaRoe (1979), August 2013, FGDC- STD-004-2013

Term	Meaning
Federal delineation method	Method established in “Wetlands Delineation Manual”, Technical Report Y-87-1, Corps of Engineers, January 1987, and “Regional Supplement to the Corps of Engineers Wetlands Delineation Manual: Northcentral and Northeast Region”, Version 2.0, U.S. Army Corps of Engineers, January 2012
Forestry BMPs	“New Hampshire Best Management Practices for Erosion Control on Timber Harvesting Operations” dated 2016, published by the University of New Hampshire Cooperative Extension
HOTL	Highest Observable Tide Line
Invasive Plant BMPs	“Best Management Practices For the Control of Invasive and Noxious Plant Species” dated 2018, published by the NHDOT
Marina BMPs	“Best Management Practices For New Hampshire Marinas” dated 2001, published by the NHDES Pollution Prevention Program
LAC	Local [River] Advisory Committee
LiDAR	Light Detection and Ranging - A surveying method that measures distance to a target by illuminating the target with pulsed laser light and measuring the reflected pulses with a sensor, with the differences in laser return times and wavelengths then being used to make digital 3-D representations of the target.
LF	Linear Foot
NH Method	“Method for Inventorying and Evaluating Freshwater Wetlands in New Hampshire” dated 2013 and revised 2015 and 2016, available at https://nhmethod.org/
NHB	Natural Heritage Bureau of the NH DNCR
NH DNCR	NH Department of Natural and Cultural Resources
NHF&G	NH Fish and Game Department
NHDOT	NH Department of Transportation
NRCS	Natural Resources Conservation Service of the U.S. Department of Agriculture
PBN	Permit-by-Notification (created in the rules)
PRA	Priority Resource Area - a jurisdictional area that: <ul style="list-style-type: none"> (a) Has documented occurrences of protected species or habitat; (b) Is a bog; (c) Is a floodplain wetlands contiguous to a tier 3 or higher watercourse; (d) Is a designated prime wetlands or a duly-established 100-foot buffer zone; (e) Is a sand dune, tidal wetland, tidal water, or undeveloped tidal buffer zone; or (f) Is any combination of (a) through (e), above.
Professional engineer	RSA 310-A:2, II. “Professional engineer” means a person who by reason of advanced knowledge of mathematics and the physical sciences, acquired by professional education and practical experience, is technically and legally qualified to practice engineering, and who is licensed by the board or otherwise authorized by this subdivision to engage in the practice of engineering.
Routine Roadway BMPs	“Best Management Practices for Routine Roadway Maintenance Activities in New Hampshire” dated 2019, published by the NHDOT
SF	Square Foot
SPN	Statutory Permit-by-Notification (established in RSA 482-A)
Subject property	<ul style="list-style-type: none"> (a) For projects in surface water for which any kind of permit is required, the parcel(s) of land adjacent to and associated with the area in which the project will occur or has occurred; or (b) For all other projects for which any kind of permit is required, the parcel(s) of land on which the project will occur or has occurred.

Trail BMPs	“New Hampshire Best Management Practices for Erosion Control During Trail Maintenance and Construction” dated 2017, published by the NH DNCR
US ACE	U.S. Army Corps of Engineers
USGS	United States Geological Survey
Utility BMPs	“Best Management Practices Manual, Utility Maintenance in and Adjacent to Wetlands and Waterbodies in New Hampshire” dated 2019, published by the NH DNCR
WAP	Wildlife Action Plan prepared and published by NHF&G
Water Quality BMPs	Recommended practices for minimizing or preventing the direct or indirect discharge of sediment or other pollutants into surface waters and wetlands, including those listed in Env-Wt 307 and the Agriculture BMPs, Forestry BMPs, Marina BMPs, Invasive Plant BMPs, Roadway Maintenance BMPs, Trail BMPs, and Utility BMPs, as applicable
WPPT	Wetlands Permit Planning Tool - a GIS tool that provides access to data for planning projects near or in jurisdictional areas, available at http://des3.sr.unh.edu/Html5Viewer/Index.html?configBase=http://jointagencyvm.sr.unh.edu/Geocortex/Essentials/des3.sr.unh.edu/REST/sites/NH_DES/viewers/gvh/virtualdirectory/Resources/Config/Default