NHDES
Wetland Program
**Public Input Sessions**
February – March
2018

NEW HAMPSHIRE DEPARTMENT OF
Environmental Services

# Thank you

To all who assisted in the development of the draft rules, provided public comments, participated in workgroups and BMP review and revisions

# Topics Outline

1. Introduction
2. Background on Wetland Rules Process Initiative
3. Roadmap to Rule Changes
4. Next steps
5. Public Questions & Comments

# Wetlands Rules
## *Public Input Sessions*

| Location | Address | Date and Time |
|---|---|---|
| | | |
| Laconia City Hall | 45 Beacon Street East | March 1st<br>6:30-8:30 pm |
| Keene Public Library | 60 Winter Street | March 5th<br>6:30-8:30 |
| Lancaster, North Country Resource Center | 629B Main Street | March 7th<br>5-7 pm |

# Wetlands Program Rulemaking
# Anticipated Schedule

## Overall Schedule

February 2018 – April 20, 2018

Public Input Sessions & Receive Public Comments on draft rules

**We Are Here!**

→

Spring to early summer 2018

NHDES review of comments to determine next steps

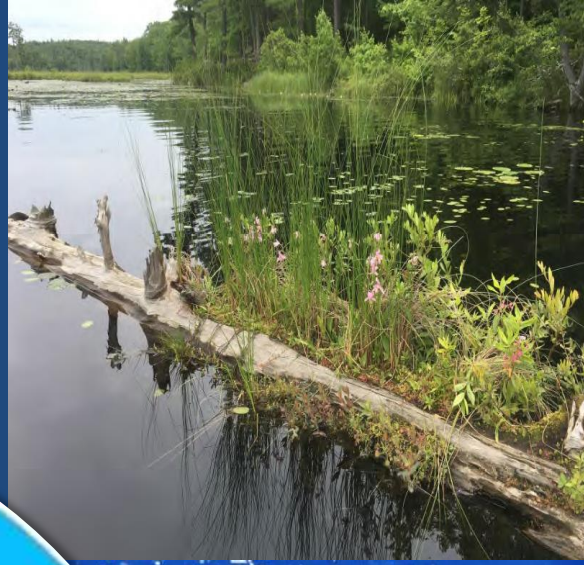
→

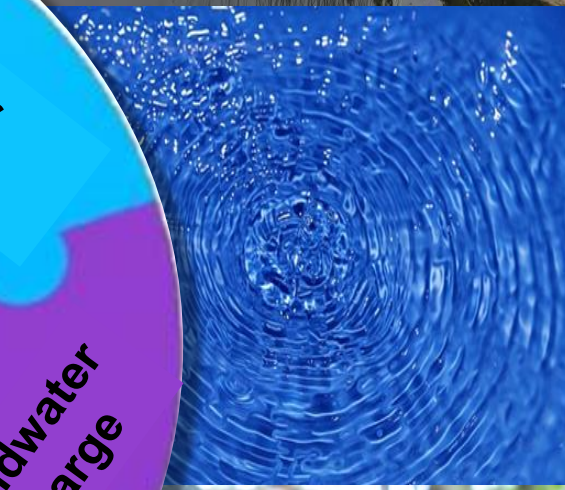
Goal: begin formal rulemaking process in 2018

# RSA 482-A

## public purpose

## Wetland Function

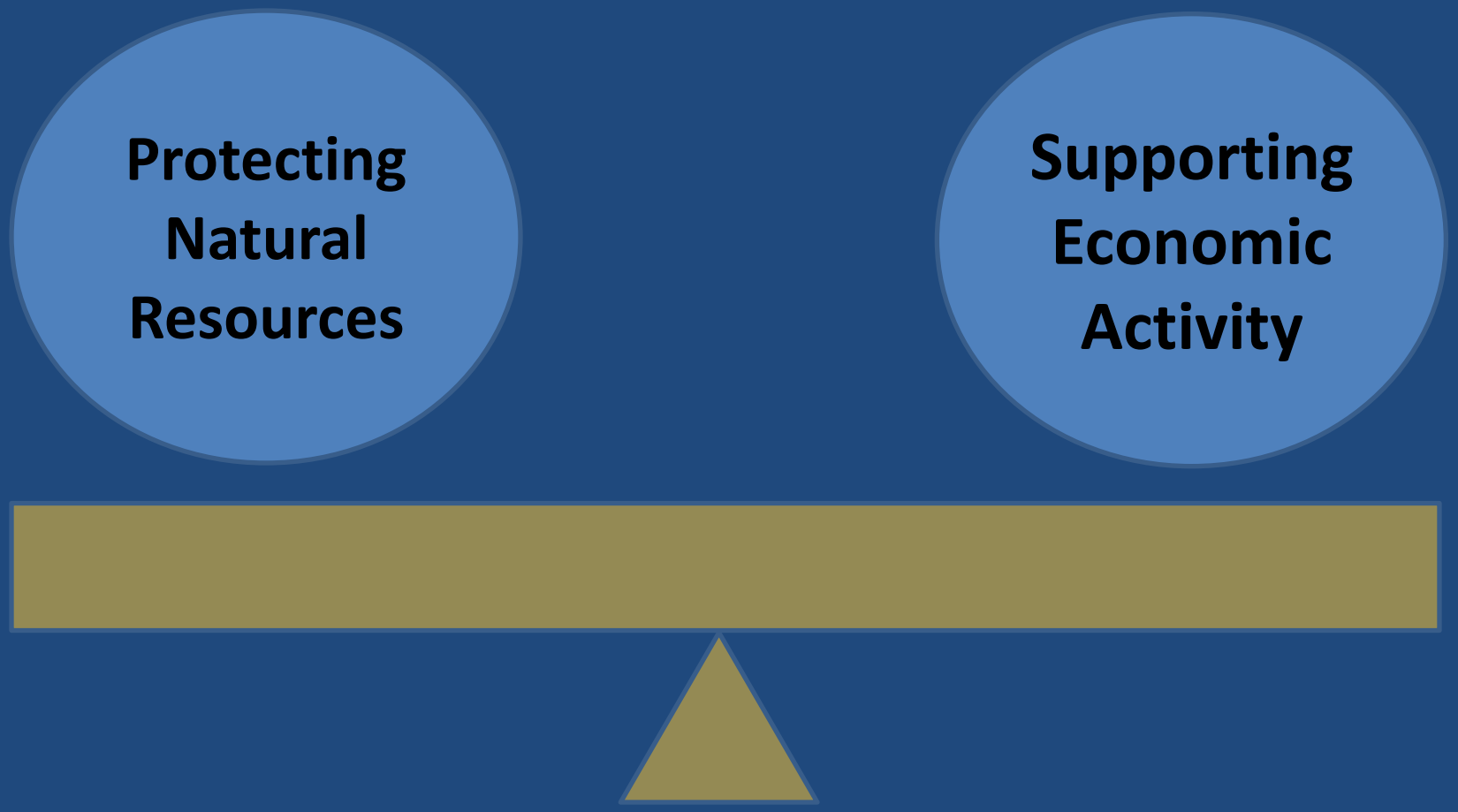




# NHDES Role

- ✓ Over 2,000 applications each year
- ✓ Wide range of applicants & activities
  - ❖ Logger – timber harvesting
  - ❖ Landowner – install a driveway
  - ❖ Road agent – fix a culvert
  - ❖ Hikers – create a new trail
  - ❖ Lake-front owner – install a dock
  - ❖ Developer – create or expand residential or commercial development
  - ❖ NHDOT – widen a public highway

# Striking the Right Balance



# Wetlands Program Rulemaking & Process Improvement Effort

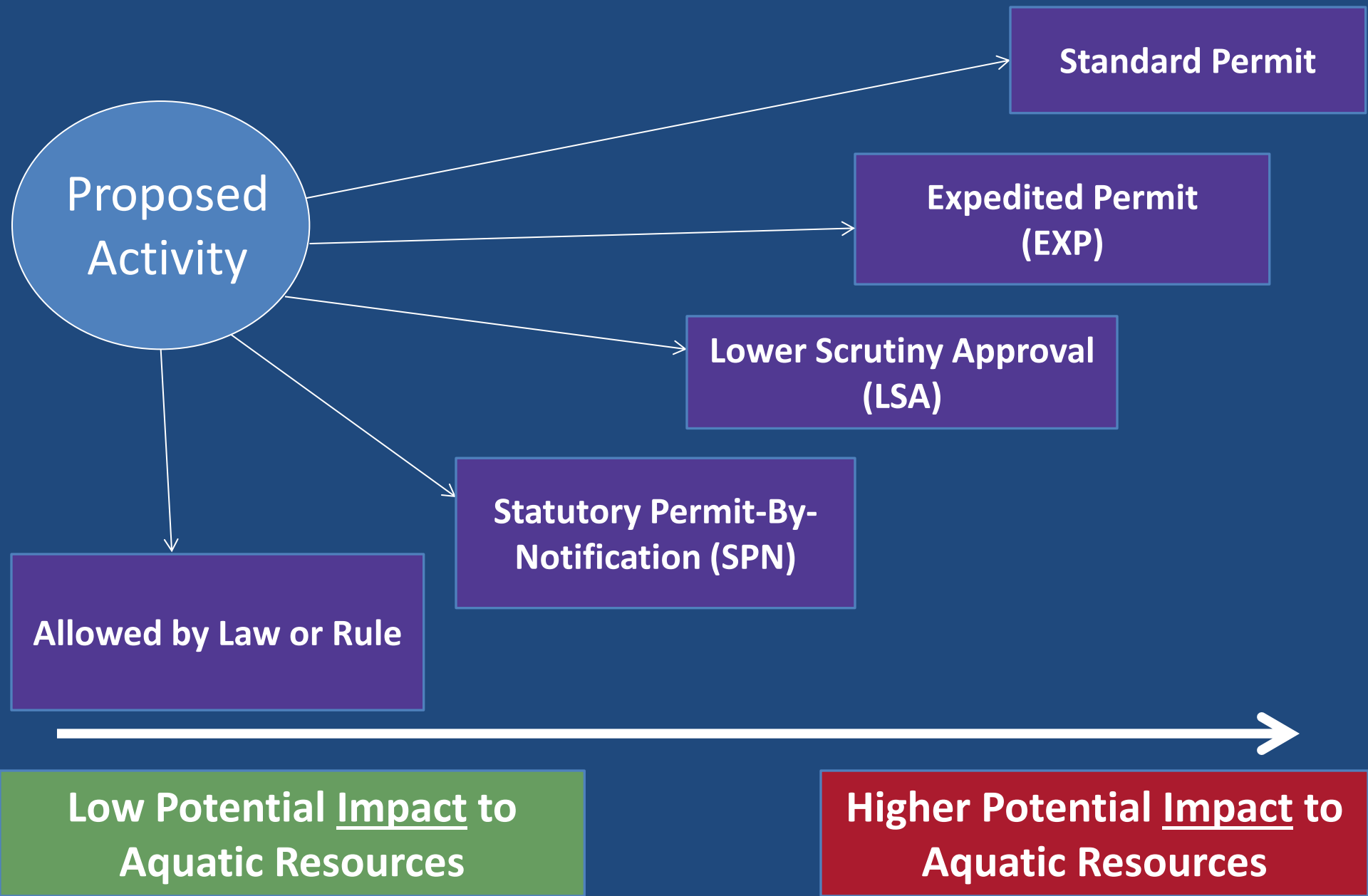
## GOALS

- Enhance predictability and transparency
- Increase consistency and standardization
- Ensure scientifically-based decisions that are protective of New Hampshire's important natural resources

# Levels of Review

- RSA 482-A establishes 6 levels of review:
  - Statutory Permit-By-Notification (SPN)
  - Lower Scrutiny Approval (LSA) – 3 types:
    1. No contact with NHDES needed
    2. Registration required
    3. Permit-By-Notification
  - Expedited Permit (EXP)
  - Standard Permit

# Approvals & Permits



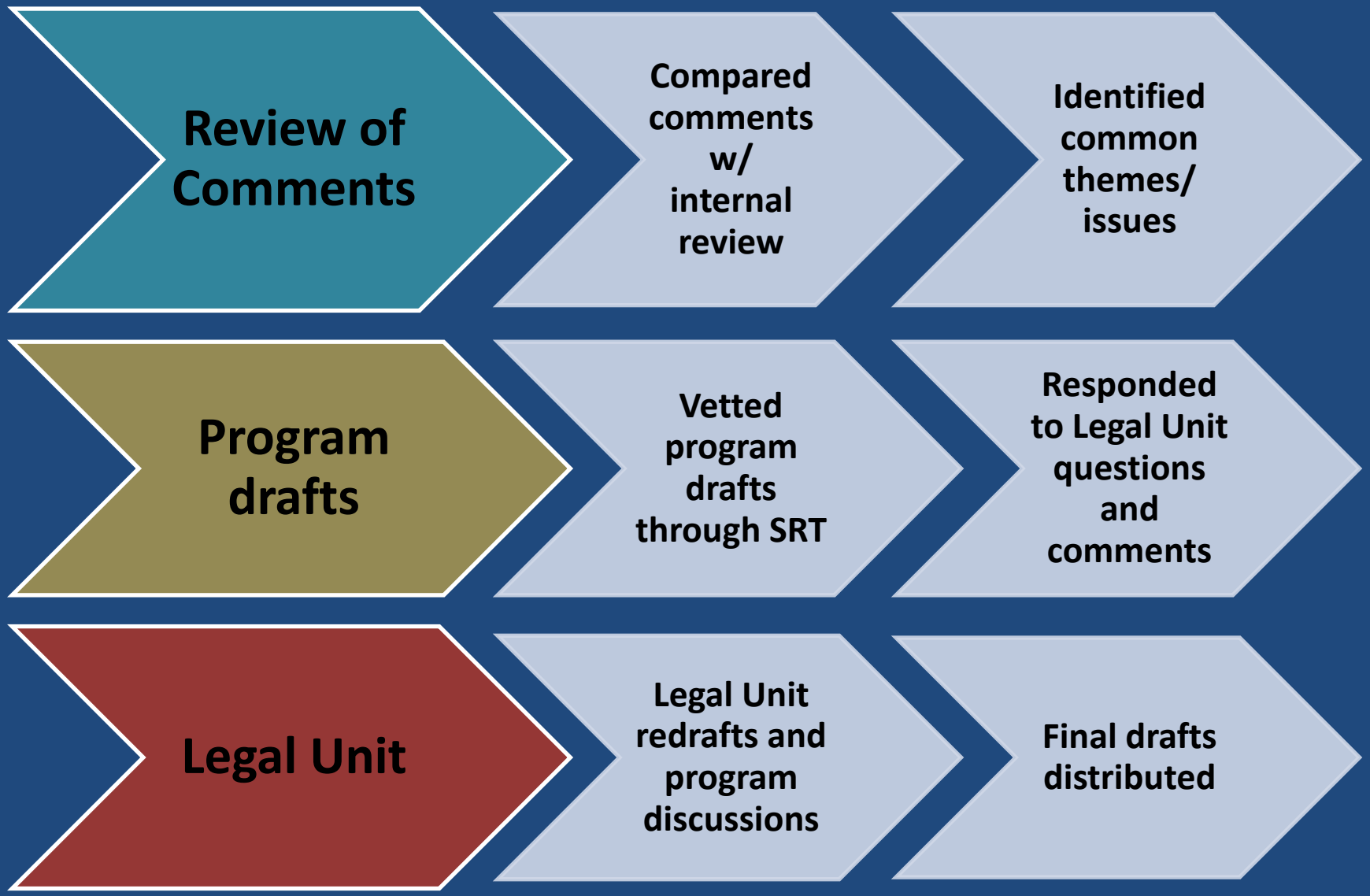
# NHDES Research & Discussion

| | | |
|---|---|---|
| Studied Process | Mapped wetland review process | Mapped new regulatory approach |
| 30 topics | Scientific literature/ current practice/other states & federal | Proposals vetted in Confer as Bureau |
| Confer | Proposals vetted through management | Senior Rules Team (SRT) met monthly since 2013 |

# Stakeholder Input

| | | |
|---|---|---|
| **Listening sessions** | Concepts floated at 30+ sessions | Received public comments |
| **Partner meetings** | Held 24 partner meetings | Received comments from state, federal and DES programs |
| **Workgroup meetings** | Held 24 meetings and 34 BMP meetings | Tidal; Inland; Shoreline structures; Forestry; Utility; Routine Roadway |

# NHDES Review & Rules Drafting



# Roadmap for Navigating the Proposed Rules

# Goal: Increase Clarity

## DEFINITIONS

**102 - General**

**602 - Tidal**

**701 - Primes**

**902 - Stream Crossings**

# Key *New* definitions Env-Wt 100

- 102.12 “Avoidance”
- 102.24 – 102.26 “CAT1”, “CAT2”, “CAT 3”
- 102.37 “Datacheck tool”
- 102.56 “Expedited permit” (EXP)
- 102.82 “Lower scrutiny approval” (LSA)
- 103.05 “Minimization”
- 103.06 “Minimization measures”

# “Avoidance” (Env-Wt 102.12)

“not impacting jurisdictional areas if there is a practicable alternative” (Also see 313.04)

# “Minimization Measures” (Env-Wt 103.06) & new BMP

“design techniques that address unavoidable adverse impacts based on the scale, location, and design of the proposed project, the function and values of the impacted resources, and practicability.”

# *Key New* definitions Env-Wt 100

- 103.10 “Need” (Also see Env-Wt 313)
- 103.28 “Protected species or habitat”
- 103.29 “Public docking structure”
- 103.33 “Public trust surface waters”
- 103.37 “Rehabilitation”

# “Need” 103.10 & 313.03 Standard permits

For standard permits, presumption of no need to impact:

- ✓ Tidal wetlands & waters
- ✓ Bog and freshwater marshes &
- ✓ Special resource areas

*Unless by clear & convincing evidence– balancing alternatives, reasonable use & practicability, consistency with RSA 482-A:1*

# Key new definitions Env-Wt 100

- 103.54 “Significant function wetland”
- 103.54 “Special resource area”
- 103.59 “Standard permit”
- 103.68 “Top of bank”
- 103.74 “Water quality measures”

# "Special Resource Area" 103.58

- Means a jurisdictional area that:

(a) Is an Exemplary natural community (NHB)

(b) Documented rare, protected species or habitat

*(c) Marsh with one acre or larger*

*(d) Very poorly drained scrub shrub wetland*

(e) Peatlands or bog

*(f) Floodplain wetlands on alluvial very poorly drained soils*

(g) Designated Prime Wetlands

(h) Sand dune, tidal wetland, tidal water or undeveloped TBZ

(i) Tier 3 stream *with cold water fishery*

(j) Combination of a – i above

# “Top of bank” (103.68)

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

# “Water quality measures” (103.74)

“methods, practices, and devices that are designed and implemented to prevent or minimize erosion, siltation, or turbidity, or any combination thereof. The term includes but is not limited to phased construction, vegetated filter strips, geotextile silt fences, stormwater detention and infiltration systems, sediment detention basins, and other method, practice or device identified in Env-Wq 1506 – 1508. ”

# *Key New* Tidal Definitions Env-Wt 602

602.01 “Accessory structure”

602.03 “Beach nourishment”

602.05 “Coastal erosion”

602.06 “Coastal functional assessment”

602.07 “Coastal hazards”

602.08 “Coastal lands”

602.10 “Developed upland” (*REVISED*)

# *Key New* Tidal Definitions Env-Wt 602

602.14 “Extraordinary seaweed event”
602.15 “Federal navigation project” (FNP)
602.21 “Impervious surface”
602.23 “In-fill lot”
602.25 “Landscaping”
602.26 “Line of encroachment”
602.28 “Natural condition”

# *Key New* Tidal Definitions 602

602.33 “Qualified coastal professional”

602.35 “Seaweed removal season”

602.36 “Sequential dredging”

602.49 “Transient public use access points”

602.50 “Working waterfront”

602.51 “Unaltered state”

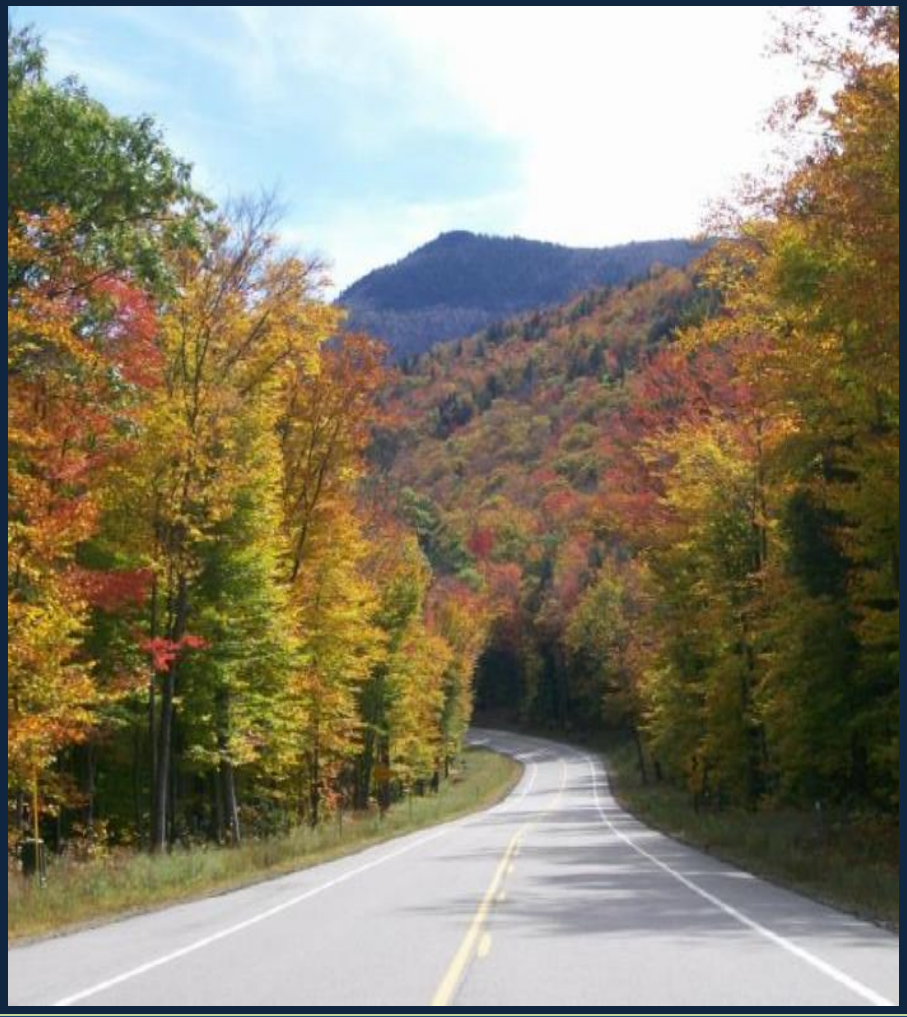
# Key new Stream Crossing Definitions Env-Wt 900

- 902.03 “Bankfull depth”
- 902.07 “Connectivity” (Revised)
- 902.08 “Design Storm”
- 902.10 “Entrenchment ratio”
- 902.12 “Flood-prone width”
- 902.13 “Geomorphic compatibility”
- 902.15 “Hydraulic capacity”

# Key new Stream Crossing Definitions Env-Wt 900

- 902.16 “Longitudinal profile”
- 902.20 “Reference reach”
- 902.21 “Rehabilitation”
- 902.22 “Repair”
- 902.24 “Replacement”
- 902.25 “Self-mitigating”
- 902.26 “Sinuosity”

# Goal: Standardize Conditions to Protect …



**Water Quality 307.03**

**Fisheries & Breeding areas 307.04**

**Threatened/endangered species, critical habitat 307.06**

**Designated Prime Wetlands 307.08**

# Protect Water Quality 307.03

| Surface Water Quality Standards | |
|---|---|
| RSA 485-A, & A:8,- C | Env-Wq 1700 |

| Shoreland Water Quality Protection Act | |
|---|---|
| RSA 483-B | Env-Wq 1400 |

| **NH Stormwater Manual, Vol 3 (2008)** | |
|---|---|
| Silt controls Env-Wq 1506 | Env-Wq 1508 |

# Protect Fisheries & Breeding Areas 307.04

## Avoid discharge in spawning or nursery areas

| | |
|---|---|
| Time construction | To avoid spawning/ breeding impacts |

## Maintain cold water fisheries

| | |
|---|---|
| Dissolved Oxygen Concentrations | Env-Wq 1703.07 |

## Maintain temperatures – Env-Wq 1703.11

| | |
|---|---|
| Protect high quality waters | Env-Wq 1708.06 |

# Protect Rare, Threatened, Endangered Species & Critical Habitat 307.06

**No impact to a threatened or endangered species, a proposed listing or proposed critical habitat**

| | |
|---|---|
| **Federal Endangered Species Act** | **16 USC Sec 1531** |

## State Endangered Species Conservation Act

**RSA 212-A**

## See data-check screening planning tool

| | |
|---|---|
| **NHB & Fish & Game & NHDES** | **for protected species & habitat** |

# Goal: Streamline Processes

**Statutory Permit by Notification (SPN) 308.04**

**Lower Scrutiny Approval (LSA) 309**

**Expedited Permit (EXP) 310**

**Standard Permit 311**

# Statutory Permit by Notification (SPN)

SPN

- **Temporary Seasonal Dock**
- **Timber Harvesting (CAT1/low impact)**

SPN

- **Panning for gold or minerals**
- **Recreational Trails (CAT1/low impact)**

SPN

- **Utility maintenance & repair (CAT1)**
- **Routine Roadway up to 48” culvert**

# Lower Scrutiny Approvals (LSA)

LSA

- Work Authorized by Rule or Registration
- **Routine Roadways beyond SPN**

LSA

- **CAT 1 projects – low/minimum impact**

LSA

- **DES to process within 5 business days**
- **DES to post permit to One-Stop**

# Goal – Streamline Review

**Current PBN**

Conservation Commission Review

NHDES technical review

NHDES review in 10 days

**Proposed process**

Submitted to Town Clerk

No Conservation Commission review

NHDES review in 5 work days

# *New* Streamlined projects (CAT1)

LSA

- **Agriculture (≤ 3 acres)**

LSA

- **< 3,000 SF driveway access**

LSA

- **Pond construction < 3 K SF**

# *New* Streamlined projects (CAT1)

LSA

- < **10 cubic yard Beach-deck**

LSA

- **Vegetative & Bio-engineered Bank Stabilization < 50 LF**

LSA

- **Boardwalk Construction < 3 K SF**

# *New* Streamlined projects (CAT1)

LSA

- **Tier 3 stream crossing *repairs***

RR-5

- **In-kind headwall *repair***

RR-8

- **Culvert inlet/outlet *Maintenance***

# *New* Streamlined *Tidal* projects (CAT1)

LSA

- **In-kind maintenance of Tidal shoreline stabilization projects**

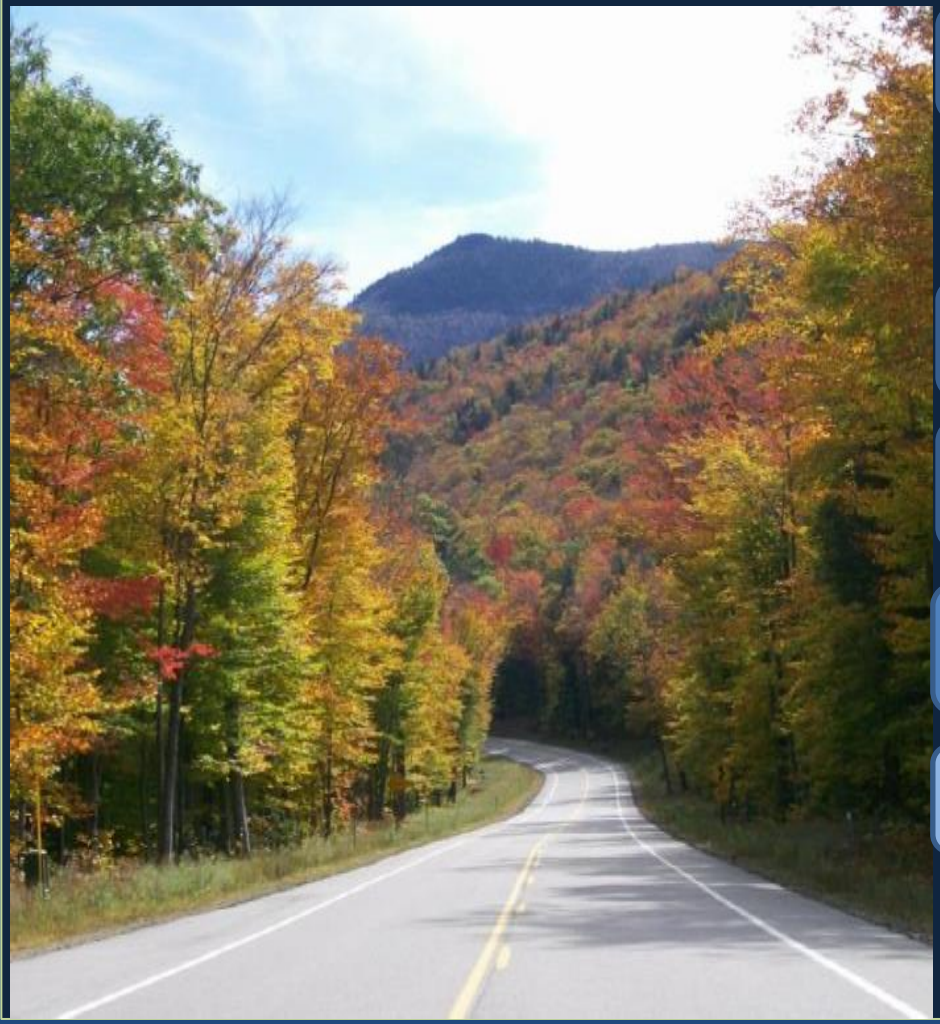
LSA

- **Sand Dune restoration projects**

LSA

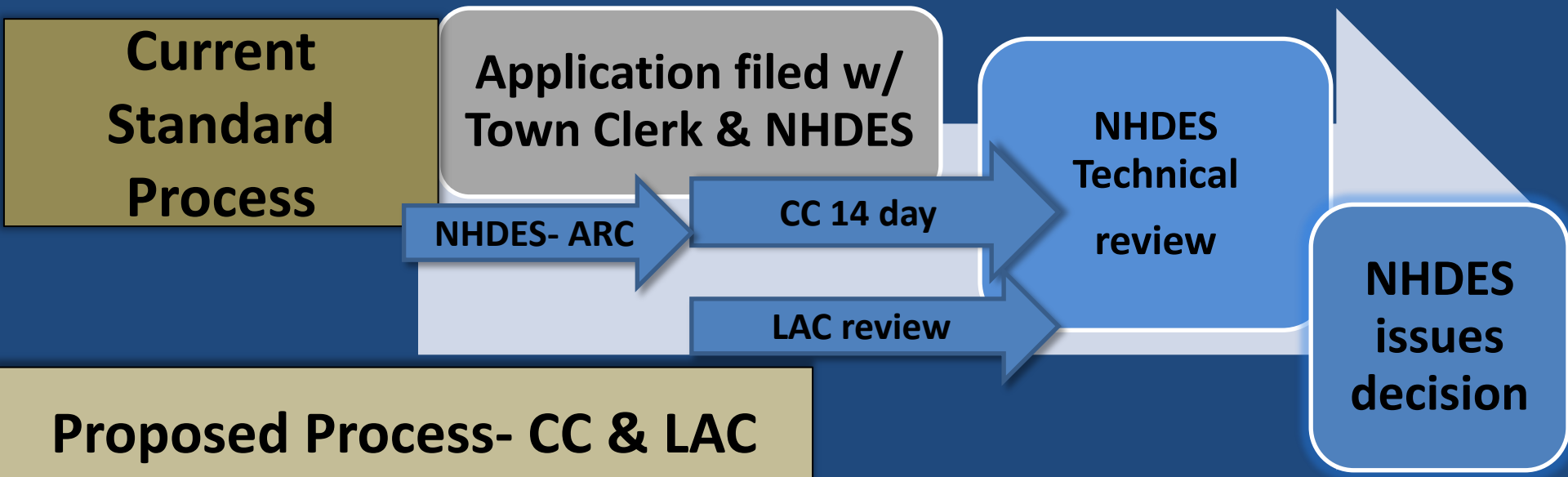
- **Structure construction in in-fill lots**

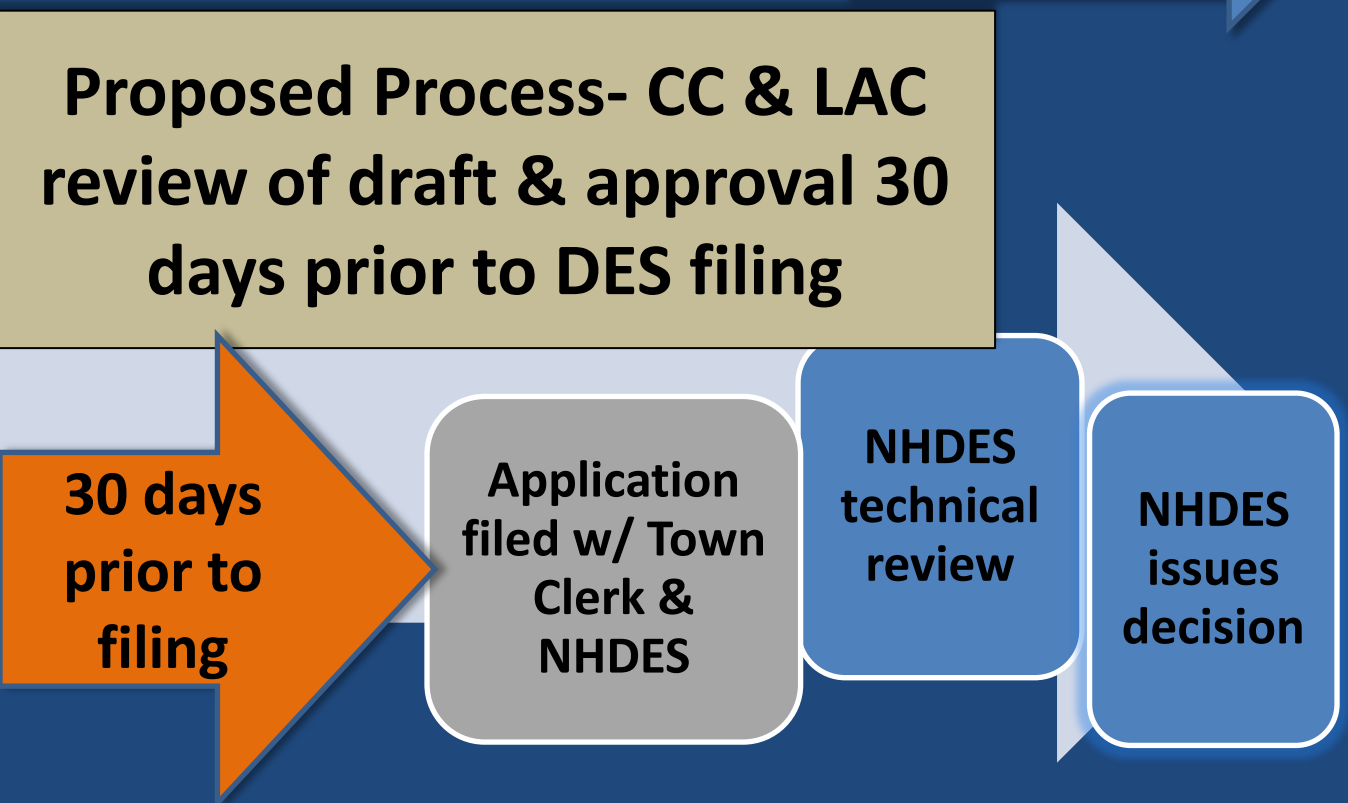
# Goal: Streamline Review
# Data Screening – 311, Standard Permit



- **Designated Rivers**
- **Floodplains**
- **Hydric Soils**
- **Impaired Waters**
- **Peatlands & marsh/scrub**
- **NHB data-check/ WAP**
- **Watershed size**

# Streamline Review



# Goal: Standardize Process Env-Wt 300 rules

- **Functional Assessment (311.10)**
- **Application Amendment (311.13)**
- **Completeness (312.02)**
- **Evaluation Criteria (313.01)**
- Demonstration of Need (313.03)
- **Extensions, Transfers (314.05-.06)**
- **Permit Amendment (314.07)**
- **Emergencies (315)**

# Standard Evaluation Criteria 313

- Demonstrate need (313.03)
- Avoid, minimize, mitigate (313.03)
- Acknowledge standard conditions (307)
- Resource-specific criteria met
- Project-specific criteria met (500, 600, 900)
- No adverse impact on abutting property

  (RSA 482-A:11, II)

# Env-Wt 313.04 A/M/Mitigation

- Sequencing of avoidance, minimization, & mitigation clarified
- Impacts to special resource areas require mitigation

# Standard Application Evaluation 313.05 (*new criteria or amended* listed)

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

# Goal: Standardize Delineation & Classification

**Wetland Delineation & Classification 406**

**Basis for Project Classification 407**

**Resource Disqualifications 407.02**

**Size Thresholds 407.03**

**Project Type Exceptions 407.04**

**Projects in Special Resources 408**

# Delineation Boundary & Plans

406.01 Delineation plan validity

406.02 Boundary references updated

406.03 Delineation exemptions

406.04 Delineation of streams

406.06 Classifications updated

# Basis for Project Classification

**Resource Disqualifications**

**Flood Protection wetlands**

**Water Quality wetlands**

**Special resource areas**

**10 acre 50 % VPD forested wetlands**

# Project Classification

**Resource Disqualifications**

**Size Thresholds**

**Project Type Exceptions**

# Project-Oriented standards

- Nontidal Projects – Env-Wt 500
- Tidal projects – Env-Wt 600
- Stream Crossings – Env-Wt 900

# Goal – Standardize plans & increase objectivity in reviews

## Standardize plan requirements

Delineation methods

Assessment methods

### Resource specific analysis

Non-tidal wetlands & streams

Coastal resources

#### Project specific criteria

Information required

Approval Criteria

Design Criteria & project classification

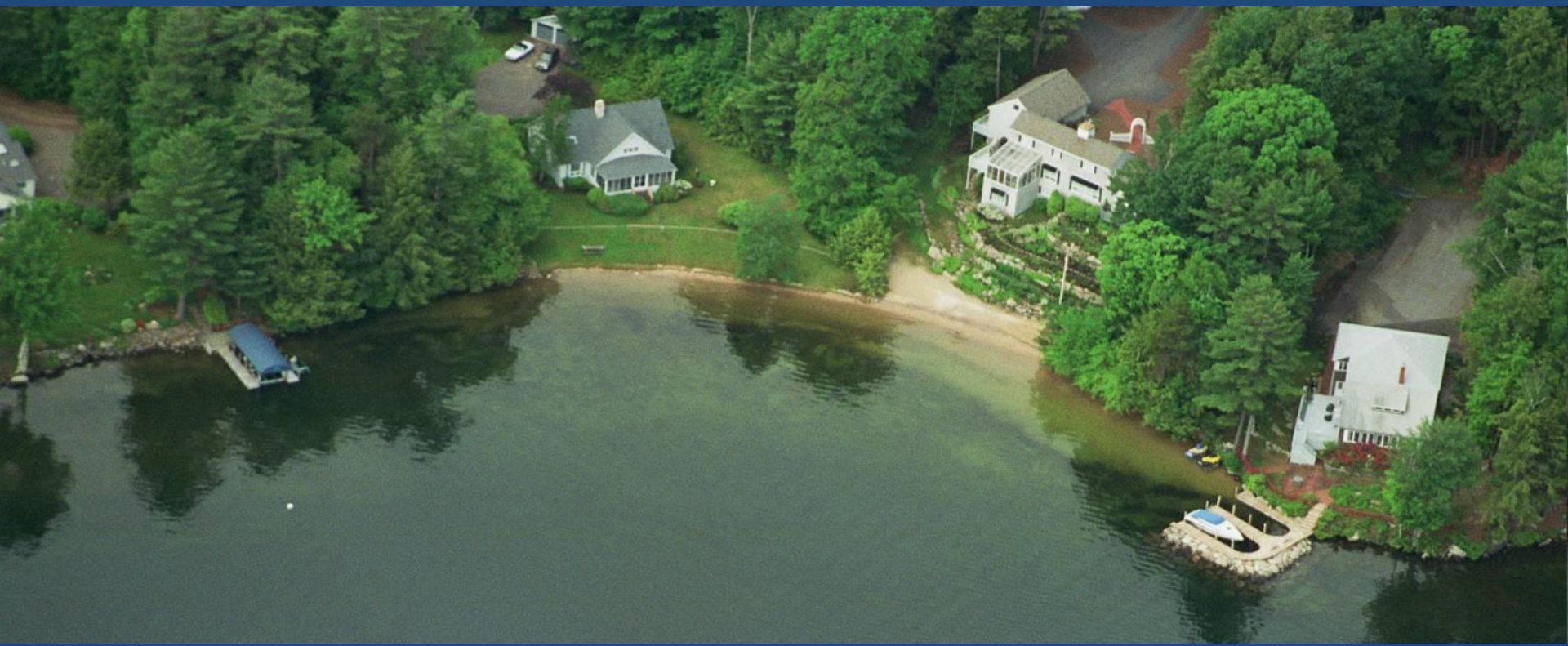
# Goal: Standardize Criteria
# Project-Specific Criteria, Env-Wt 500

| | |
|---|---|
| Beach/Deck | 511 |
| Breakwaters | 512 |
| Docks | 513; 514; 515 |
| Bank Stabilization | 516-518 |
| Boathouses | 519 |
| Boat Launches | 522 |

# Significant Changes to Shoreline Structures

- **Dock rules are no longer one size fits all.**
  - **Separate standards for Single Family Residential as opposed to Commercial, Public, and Marina structures.**

- **Approvable water access structures have been expanded to <u>allow decks</u>. No longer limited to just beaches and stairs.**



# Docking Structures Changes –
# Single family residential Env-Wt 513 and 515

**Dock size is still linked to amount of frontage but:**

- **Baseline frontage amount is reduced from 75 to 50 feet.**
- **Dock size based square feet of structure surface allowed / feet of frontage instead of # of slips / feet of frontage.**
- **Maximum dock width increased from 6 feet to 8 feet.**
- **Minimum dock width set at 4 feet.**
- **More flexibility on configuration.**

## Docking Structures Changes – Commercial, Public, and Marinas Env-Wt 514 and 515

- May still need to be based upon slips based criteria
- Seeking input on the feasibility of permitting size based on square feet of dock area to frontage ratios
- Seeking input on maximum incursion into public waters that should be allowed.

# Water Access Structures Env-Wt 511

- **Allow deck construction as an alternative to beach construction**
  - **Lower cost and impact**
- **Fully incorporates existing Shoreland Protection accessory structure requirements**
  - **Slope criteria already applied. Size criteria to be added.**

## ***Shoreland Accessory Structure rulemaking is necessary***

**Suggestions on new Shoreland Accessory structure area to linear feet of frontage ratio would be appreciated.**

# Goal: Standardize Project Criteria

| | |
|---|---|
| Ponds | 523 |
| Forestry | 524 |
| Utility | 525 |
| Agriculture | 526 |
| Trails & Paths | 527 |
| Residential/Commercial | 529 |
| Restoration/Enhancement | 530 |

# Goal: Consolidate Tidal Requirements

Data screen/assessment/plan 603

Demonstrated Need 604

Avoid/Minimization/Mitigation 605

Overwater Structures 607

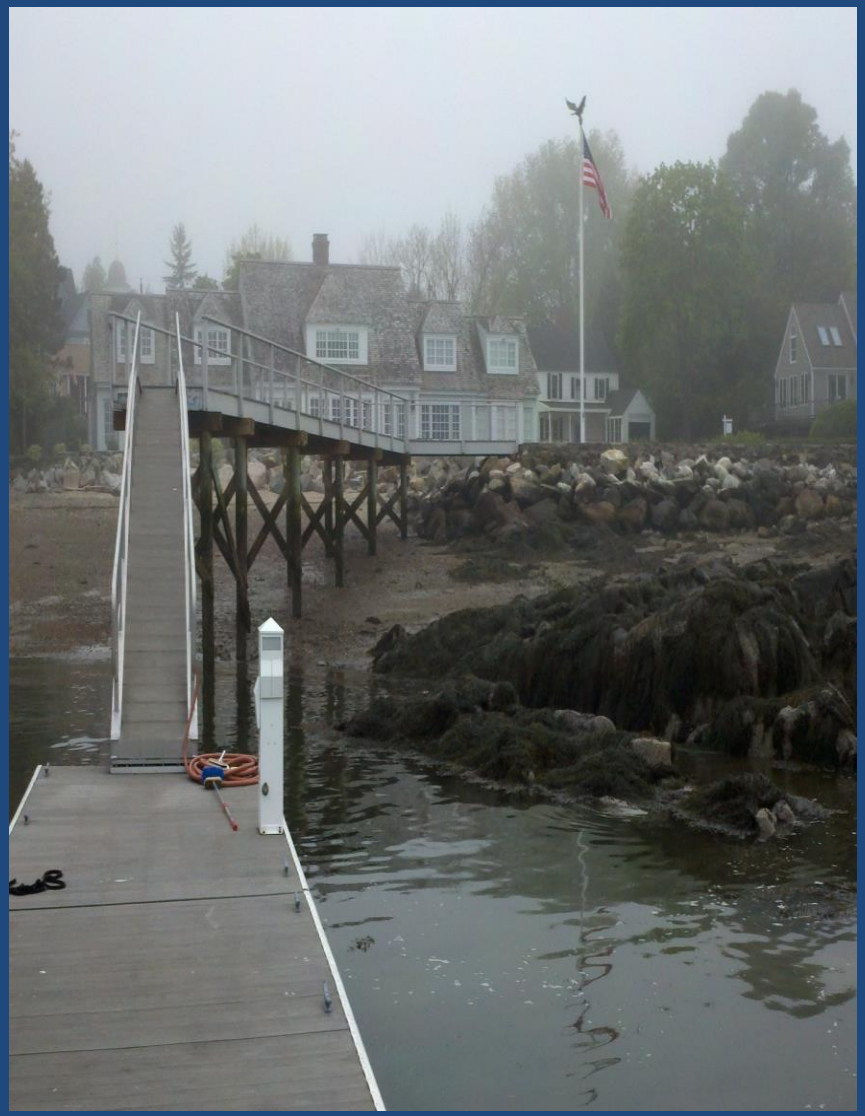
Dredge 608 Tidal beach 609

Tidal buffer zone/Shoreland 611

# Env-Wt 600 Demonstration of Need Tidal Waters & Wetlands

- Optimize tidal wetland function & *self-sustaining stability* to storm surge
- Be designed & intended to protect upland infrastructure from *coastal hazards*
- Be limited to public infrastructure or restoration projects in the public interest

# *NEW* - OVERWATER STRUCTURES - 607



**Tidal Docks**

**Designed to avoid and minimize natural resources as identified in the coastal function assessment (CFA)**

**(Essential Fish Habitat, Shellfish & Eelgrass bed)**

**TYPES**

- **RESIDENTIAL**
- **COMMERCIAL**
- **INDUSTRIAL**

# *NEW* - TIDAL DREDGING - 608

- ❖ **Pre-application meeting required for dredge projects**
- ❖ **No Dredging allowed in High Resource Value areas**

**<u>Standard Applicability:</u>**

- ✓ **Federal Navigation Project (FNP)**
- ✓ **Commercial / Industrial**
- ✓ **To remediate contaminated sites**
- ✓ **Maintenance of intake/outflow infrastructure**
- ✓ **In direct interest of commerce for well-being of general public**

# See *New* Tidal mitigation rule

## Table 605-1: Preferred Forms of Compensatory Mitigation for Projects in Coastal Areas

| Type of Project | Preferred Forms of Compensatory Mitigation |
|---|---|
| **Overwater Structures >2,000 SF total coverage** | Permittee-responsible mitigation |
| **Dredge - new tidal dredge or FNP expansion** | Permittee-responsible mitigation |
| **Tidal Buffer Zone (TBZ)**<br>**- undeveloped lots**<br>**- developed upland lot, in-fill lot if any impacts within 75 feet of a salt marsh**<br>**- impacts >10,000 SF in developed TBZ not adjacent to salt marsh** | Permittee-responsible on-site mitigation |
| **Sand Dunes** | Permittee responsible on-site mitigation |

# Goal: Reflect Statutory Changes Env-Wt 700 Prime Wetlands

| | |
|---|---|
| Definitions | 701 |
| Criteria/ Procedures | 702 |
| Maps & documents | 703 |
| Criteria for approval | 704 |
| Notice & appeal | 705 |
| Prime Wetland Waivers | 706 |

# Statutory History of Prime Wetlands – Table 701-1

| Session Law | Effective Date | Statutory Parameters |
|---|---|---|
| **1979, 431:5-6** | Aug. 22, 1979 | • Municipalities authorized to designate prime wetlands<br>• NH Wetlands Board must notify local authority prior to issuing a permit for a project "in or adjacent to" designated prime wetlands<br>• Board adopts rules to implement, establish criteria (OLS document #1825, eff. 10-5-81; see OLS Revision Notes for subsequent history)<br>• No fixed buffers for prime wetlands, but rules establish requirements that apply to proposed work/activities that may impact prime wetlands, including no significant net loss of wetland function<br>• "Adjacent" not defined |
| **2007, 211, 2** | Aug. 24, 2007 | • "in or adjacent to" changed to "in or within 100 feet of" |
| **2009, 185:2** | Sept. 11, 2009 | • Department must notify local authority prior to issuing a permit for projects "in or within 100 feet of" a designated prime wetlands<br>• Waivers authorized for forest management work |
| **2012, 235:2** | Aug. 17, 2012 | • Requirements established for a prime wetlands to be at least 2 acres in size; to not consist of a water body only; to have at least 4 primary wetland functions, one of which must be wildlife habitat; and to be at least 50 feet wide at its narrowest point<br>• Department must notify local authority prior to issuing a permit for projects in a designated prime wetlands or within 100 feet of any prime wetland where a 100 foot buffer was required at the time of designation (i.e., on or after Sept. 11, 2009 but before Aug. 17, 2012) |

# New: Prime Wetlands Waivers

PART Env-Wt 706 WAIVERS FOR ACTIVITIES ASSOCIATED WITH PRIME WETLANDS/BUFFERS

Env-Wt 706.01 Availability of Waivers for Forestry Activities

Env-Wt 706.02 Requirements for Waiver Requests for Forestry Activities

Env-Wt 706.03 Issuance of Waivers for Forestry Activities

Env-Wt 706.04 Availability of Waivers for Other Activities in Duly-Established 100-Foot Buffers

Env-Wt 706.05 Requirements for Waiver Requests for Other Activities in Buffers

Env-Wt 706.06 Issuance of Waivers for Other Activities in Prime Wetlands Buffers

Env-Wt 706.07 Waiver Term; Extensions

# Goal: Clarify & Streamline Env-Wt 900 Stream Crossing rules

**Project classification 903.02**

**Info Required 903.04-.06**

**Tier 4 - Tidal crossings 904.06**

**Repair, Rehabilitation, Replacement 904.08-.09**

**Alternative Design 904.10**

# Stream Crossing Classification

| Type of Surface Water | Size of Contributing Watershed | Other Factors | Tier | Compensatory Mitigation Required? |
|---|---|---|---|---|
| **Non-tidal** | ≤ 200 acres | None | 1 | No |
| **Non-tidal** | > 200 acres but < 640 acres | None | 2 | No, unless alternative design or waiver of criteria |
| **Non-tidal** | ≥ 640 acres | None | 3 | Yes, unless self-mitigating |
| **Non-tidal** | All | Within designated river corridor<br>Within 100-year flood plain<br>Within fluvial erosion zone | 3 | Yes, at least for impacts to resources other than stream |
| **Tidal** | All | None | 4 | Yes, unless self-mitigating |

# Stream Crossing Project Classifications

| Project Classification → | Low Impact / CAT1 | Minor / CAT2 | Major / CAT3 |
|---|---|---|---|
| **Size of impact** | < 50 linear feet (LF) EXCEPT Repair of existing legal structures with no waivers can be ≥ 50 LF | Single crossing or multiple crossings with total impact of ≥ 50 LF but < 200 LF | Single crossing or multiple crossings with total impact of ≥ 200 LF <u>or</u> classified as major based on resource |
| **Type of Project ↓** | | | |
| **New Crossing** | Tier 1 with no waivers | Tier 1 with waivers/ alternate design; Tier 2 with no waivers | All other new crossings |
| **Repair** | Tier 1 or Tier 2 with no waivers to 904.08; Tier 3 with no waivers to 904.09 | Tier 1 or Tier 2 repairs needing waiver(s) to 904.08; Tier 4 that meets 904.09 | All other repairs |
| **Replacement** | Tier 1 with no waivers to 904.08 | Tier 2 with no waivers to 904.08 | All other replacements |
| **Rehabilitation** | none | Tier 1 or Tier 2 with no waivers to 904.08 | All other rehabilitations |
| **Temporary Crossing** | Tier 1 or Tier 2 with no waivers | none | All other temporary crossings |

# Hydraulic Capacity Report - 903.07

Hydraulic capacity report required if:

- Application for a standard permit for a stream crossing requires plans stamped by a P.E.

**and**

- Existing stream crossing structure cannot convey the design storm flow

Report must include drainage calculations and a narrative to demonstrate that the proposed stream crossing has sufficient hydraulic capacity to meet the applicable design standard.

# Self-Mitigating Stream Crossings

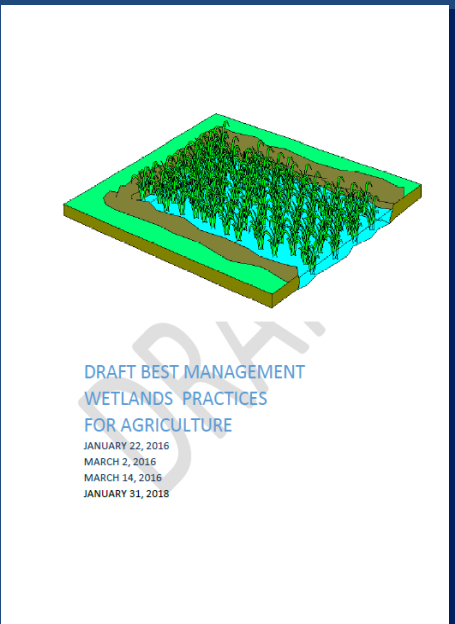
Design of the stream crossing incorporates measures or features to offset the loss of the affected resource's functions and values in an area where the new functions and values are sustainable.

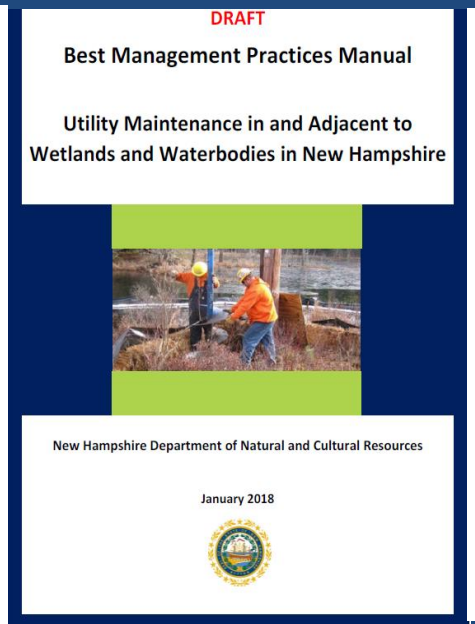
Examples of self-mitigating measures or features include, but are not limited to:

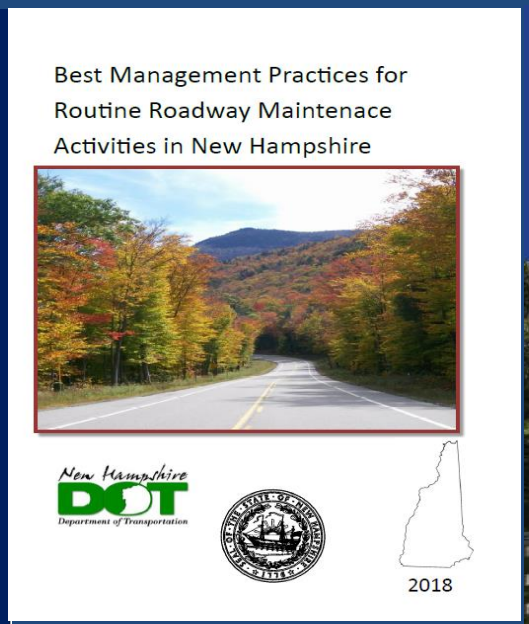
- Eliminating a barrier to aquatic organism passage
- Improving the hydraulic capacity of an under-sized crossing
- Improving geomorphic compatibility.

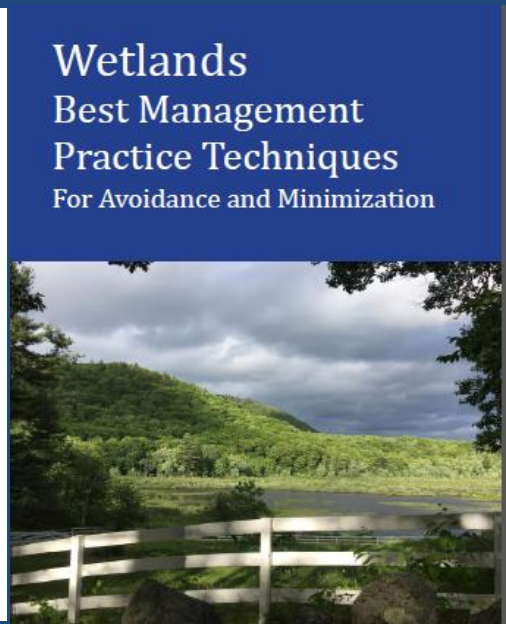
# Check out the new BMPs

- Agriculture – Dept of Agriculture
- Utility – NHDES w/ Utility Workgroup
- Routine Roadway – DOT
- Avoidance & Minimization Techniques



# BMP Review

- *All NEW* - Avoidance & Minimization BMP and review Project chapters http://neiwpcc.org/2018/01/31/nh-des-seeking-public-input-wetlands-best-management/

- See *new Planning and nutrient management sections* in Agriculture BMP manual. https://www.agriculture.nh.gov/publications-forms/documents/draft-wetland-bmp.pdf

- DOT Routine Roadway manual (*See new activities & proposed new forms)* https://www.nh.gov/dot/org/projectdevelopment/environment/units/program-management/documents/Draft_V.3.pdf

- See new plans, BMPs, & photos in Utility manual http://www.nhdfl.org/library/pdf/Planning/Utility%20BMP%20Manual%20Draft%20_012618.pdf

# Where do we go from here?

- NHDES needs your feedback
- Comment deadline – April 20, 2018
- Written comments are encouraged
- Next steps – to be determined based on comments

# Any Comments?

Submit anonymously at:

https://www.surveymonkey.com/r/draft-wetlands-rules

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