

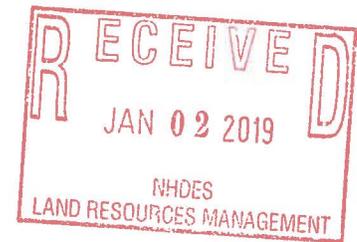
# AGC of New Hampshire

Building Forward. Constructing Change.



December 27, 2018

Ms. Mary Ann Tilton, Administrator  
NH Department of Environmental Services  
Water Division, Wetlands Bureau  
29 Hazen Drive  
PO Box 95  
Concord, NH 03302-0095



RE: Proposed Wetlands Rule Changes

Dear Administrator Tilton,

The Associated General Contractors of New Hampshire (AGC of NH) greatly appreciates this opportunity to comment on the proposed wetlands rules. AGC has been committed to working with the department on this revision since the proposed wetlands rules were released. We believe this update should bring the new rules up to date without imposing new conditions or further complicating the process for applicants. We have identified key issues we would like addressed. Below is a more detailed outline of these key issues.

- I. **Expanding the definition of “major projects” to include what was previously considered “minor projects” (From 20,000 sqft to 10,000 sqft).** The association strongly objects to expanding the definition of major projects to cover these much smaller projects. In years past, minor projects were those considered from 3,000 sqft to 20,000 sqft and applicants were only required to do a *wetland functional assessment of just the impact area*. The assessment of minor projects was less detailed than a major project, which required *functional assessment of the entire site* because the impact was significantly more. Expanding the definition is more difficult and costlier to applicants, and we would like to see the standard practice stay in line with the current rules (minor projects being 3,000 sqft to 20,000 sqft). Note: Some have stated that DES may have already implemented or required this but if the rules were not changed than it was not legally required.
- II. **Expanding off-site impacts from 3-Acres or more to 1-Acre or more.** The department is also expanding the requirement for **off-site impacts analysis** from 3-acre projects or more to all projects over 1 acre. From our perspective, these rule changes will make projects significantly more difficult to complete. That is why the association recommends the existing requirements for minor and major permits stay the same as the previous rules along with the off-site impact analysis.
- III. **Revising the language in the new definition of “priority resource areas”.** In the draft rules, certain wetlands called “priority resource areas” are being elevated to virtual state-wide prime wetland status. This new definition is open to interpretation

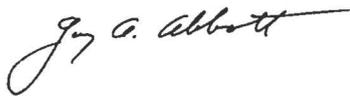
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regarding scope and distance to a proposed impacted area. Clear guidelines should be incorporated into the new rules so that this section cannot be misused in elevating low scrutiny projects and minor projects. For example, an impact of 10,000 sqft should not trigger this special resource definition if it has the potential to impact future or possible habitat. We recommend that this should not affect projects less than 10,000 sqft according to section and add specific language in the definition such as (a) "Has documented occurrence of protected species or habitat for such species **in last 20 years**"; (c) "Is a floodplain wetland contiguous to a tier 3 or higher watercourse **and has a greater than 10,000 sqft of impact.**"

- IV. **The new rules do not offer the applicant the option of utilizing the ARM fund as a mitigation option.** Allowing use of the ARM fund on major projects would give applicants an idea of the total cost of attaining a permit. Currently, the ARM fund is only an option if the DES grants it to the applicant after he/she has already spent considerable money on looking for mitigation alternatives, which can take months or even years to resolve with third parties. The association also believes that when funds are paid into the ARM fund, the local community should have one year to propose a qualified mitigation option to obtain these funds. This creates a win-win for both the developer, whose project doesn't become delayed for extended periods of time, and for the community, which is allowed adequate time to develop sound environmental uses for those funds.
- V. **The new BMP should continue to be guidance and clarified in the new rules as such.** We read the new rules as incorporating Best Management Practices as wetland requirements when each individual site may need some modification particular to that site. This could still be keeping with Best Management Practices for any given site. Currently, some of our members are looking at the rule references to BMP's as permit conditions that have the effect of rules, and that should not be the intent of BMPs.

Again, thank you for the opportunity to present our comments and suggestions during this process. The association looks forward to working further with the DES. Attached is a chart showing how assessments are getting harder for both minor and major projects, as well as a list of the specific rule changes AGC believes must be modified. Unless DES is able to address these recommendations, the association cannot support the rules as proposed.

Sincerely,



Gary Abbott,  
Executive Vice President

CC: Commissioner Robert Scott

## AGC of NH Specific Recommended Changes

- *Adopt Env-Wt 103.52 to read as follows:*

Env-Wt 103.52 “Priority resource area” means a jurisdictional area that:

1. (a) Has documented occurrences of protected species or habitat for such species **within the last 20 years**;
  2. (b) Is a bog;
  3. (c) Is a floodplain wetland contiguous to a tier 3 or higher watercourse **greater than 10,000 SqFt of impact**;
  4. (d) Is a designated prime wetland or a duly established 100-foot buffer zone;
  5. (e) Is a sand dune, tidal wetland, tidal water, or undeveloped tidal buffer zone; or
  6. (f) Is any combination of (a) through (f), above.
- Remove all references to “Priority resource area” for permits less than 10,000 SqFt.
  - Keep the SqFt the same as the current rules.  
  
PBN, etc. up to 3,000 SqFt  
Minor Projects from 3,000 SqFt to 20,000 SqFt  
Major Projects from 20,000 SqFt and larger
  - Keep the Wetland & Functional Assessments the same as current rules.  
  
PBN - no assessment  
Minor Projects – Wetland Functional Assessment of impacted area  
Major Projects – Wetland Functional Assessment of site  
Major Projects over three acres – Functional Assessment with review of off-site impacts
  - Add to the rules that the applicant of a major project has the option to utilize the In-Lieu fee option from the very beginning of the process.
  - Add language to the rules that the Best Management Practices referenced are to be used as guidelines and are not considered a rule or condition.

## DES Rules Comparison Chart

<u>SqFt Impact Area</u>	<u>Current Rules</u>	<u>Proposed Rules</u>
up to 3,000 SqFt	PBN	LSA, PBN, CAP projects* (All can be elevated to Major designation if "Priority resource area" definition triggered)
3,000 SqFt up to 10,000 SqFt	Minor Projects - Only wetland impact functional assessments, not wetlands that are not impacted.	No Change* (All can be elevated to Major if "Priority resource area" definition triggered)
10,000 SqFt up to 20,000 SqFt. <b>(New Requirements Added)</b>	Minor Projects - Only wetland impact functional assessments, not wetlands that are not impacted.	Functional Assessment of all wetlands on the site - <b>NEW (Major Classification)</b> (Functions & Values analysis & mitigation required)
20,000 SqFt up to 43,550 SqFt (1 Acre)	Functional Assessment of all wetlands on the site - (Functions & Values analysis & mitigation required)	
1 Acre up to 3 Acres <b>(New Requirements Added)</b>	Functional Assessment of all wetlands on the site - (Functions & Values analysis & mitigation required)	Off-site impact analysis added - <b>NEW</b> (Treated same as a 3 Acre Site under Army Corp)
3 Acres and above	Army Corp Jurisdiction - must do off-site impacts	