

## CHAPTER Env-Wt 800 COMPENSATORY MITIGATION

Statutory Authority: RSA 482-A:31

## PART Env-Wt 801 PURPOSE; APPLICABILITY; DETERMINATION OF APPROPRIATE MITIGATION

Env-Wt 801.01 Purpose. The purpose of this chapter is to establish the criteria and procedures for submission and review of compensatory mitigation proposals that compensate for the loss of wetland functions and values resulting from permitted permanent impacts to jurisdictional areas, including permanent impacts to stream banks and stream channels.

Env-Wt 801.02 Applicability. This chapter shall apply to all compensatory mitigation proposals required by Env-Wt 302.03.

Env-Wt 801.03 Determination of Type of Compensatory Mitigation Required.

(a) The applicant shall first consider permittee-responsible mitigation opportunities by determining whether on-site mitigation is practicable and, if not, obtaining a list of local mitigation projects from the municipality in which the project is proposed. If permittee-responsible mitigation is practicable, the applicant shall propose such mitigation.

(b) If on-site mitigation is not practicable for permanent wetlands impacts and the municipality does not have a list of local mitigation projects or if none of the projects on the list are appropriate mitigation for the applicant's proposed project, the applicant shall provide an explanation and documentation relative to:

- (1) Why preservation of an aquatic resource buffer as specified in Env-Wt 803.10(b) is not practicable;
- (2) Why restoration, enhancement, or creation of wetlands on the property, as applicable, as specified in Env-Wt 803.10 (c) is not practicable; and
- (3) Calculation of an in-lieu mitigation payment as specified in RSA 482-A:30.

(c) If permittee-responsible mitigation is not practicable for permanent stream crossing impacts and the municipality does not have a list of local mitigation projects or if none of the projects on the list are appropriate mitigation for the applicant's proposed project, the applicant shall provide an explanation and documentation relative to:

- (1) Why preservation of aquatic resource buffers as specified in Env-Wt 803.10(b) is not practicable;
- (2) Why stream restoration and enhancement activities as specified in Env-Wt 803.10(d) on the property and within the same Hydrologic Unit Code 12 (HUC-12) watershed as the impacts is not practicable; and
- (3) Calculation of an in-lieu payment as specified in RSA 482-A:30-a.

## PART Env-Wt 802 DEFINITIONS

Env-Wt 802.01 "Conservation easement" means a legal agreement between a landowner and a land trust or governmental agency that permanently limits uses of the land in order to protect its conservation values.

Env-Wt 802.02 "Conservation interest" means:

- (a) The fee simple ownership of a parcel of land where the land is to be protected from development in perpetuity; or
- (b) A conservation easement.

Env-Wt 802.03 “HUC 12 watershed” means the hydrologic unit code 12 watershed as developed by the U. S. Geological Survey (USGS).

Env-Wt 802.04 “In-lieu mitigation payment” means a form of compensatory mitigation where funds are provided as contemplated by RSA 482-A:28 in lieu of completing permittee-responsible mitigation.

Env-Wt 802.05 “Permittee-responsible mitigation” means a form of compensatory mitigation where an aquatic resource restoration or creation project in accordance with Env-Wt 805 or Env-Wt 806 or a preservation project in accordance with Env-Wt 804 is undertaken by the permittee, for which the permittee retains full responsibility.

Env-Wt 802.06 “Qualified professional” means an individual with a combination of education and experience, such as a fluvial geomorphologist or hydrologist, who has knowledge of stream systems that is sufficient to enable the individual to evaluate stream systems and to develop appropriate mitigation.

Env-Wt 802.07 “Stewardship plan” means a plan for undertaking the responsibilities described in Env-Wq 808.15.

#### PART Env-Wt 803 COMPENSATORY MITIGATION PROPOSALS

Env-Wt 803.01 Plan and Report Required for All Mitigation Proposals. With each mitigation proposal, the applicant shall submit a plan and report prepared by a certified wetland scientist or qualified professional, as applicable, that:

- (a) Identifies the size of the proposed project’s impact to each jurisdictional area;
- (b) Identifies each type of jurisdictional area to be impacted, with wetlands being classified by a certified wetland scientist in accordance with US Fish and Wildlife Service Manual FWS/OBS-79/31 Classification of Wetlands and Deepwater Habitats of the United States, Cowardin et al, 1979, reprinted 1992, available as noted in Appendix B;
- (c) Includes a detailed account of the compensatory mitigation recommendations provided by the conservation commission or governing body, such as a copy of the meeting minutes, from the town in which the project is located, if any;
- (d) For a project having impacts within a designated river corridor as defined by RSA 483:4, XVIII, includes a detailed account of the recommendations provided by the local river management advisory committee established pursuant to RSA 483:8-a; and
- (e) When permittee-responsible mitigation will be proposed, includes a proposed monitoring plan as described in Env-Wt 803.04.

Env-Wt 803.02 Additional Information for Wetland Impact Projects and Wetland Restoration, Enhancement, or Creation Mitigation Proposals.

(a) For a wetland impact project, the plan and report submitted pursuant to Env-Wt 803.01 also shall include a functional assessment of each impacted jurisdictional area using:

- (1) The U.S. Army Corps of Engineers New England District highway methodology workbook supplement, 1999 edition (1999 US ACE Highway Workbook Supplement), available as noted in Appendix B, or the Method for Inventorying and Evaluating Freshwater Wetlands in New Hampshire, 2013 edition (2013 NH Method), available at <http://nhmethod.org>; and

- (2) Data on the surrounding area including, but not limited to:

- a. Land use;

- b. Soils;
- c. Habitat information from the WAP, including critical habitats and populations of the state's species of conservation and management concern;
- d. Natural community and natural community system classifications in accordance with “Natural Communities of New Hampshire”, second edition, 2012, available as noted in Appendix B, and “Natural Community Systems of New Hampshire”, second edition, 2011, available as noted in Appendix B, prepared by the NH department of natural and cultural resources, natural heritage bureau (DNCR-NHB) (NH Classification Methods);
- e. Whether there are any rare, special concern, or state or federally listed threatened or endangered species present, including any flora, fauna, or migratory species; and
- f. Exemplary natural communities and natural community systems identified by the DNCR-NHB.

(b) For permittee-responsible wetlands restoration, enhancement, or creation, the plan and report submitted pursuant to Env-Wt 803.01 also shall:

- (1) Include a functional assessment as described in (a), above, of each proposed mitigation site;
- (2) Identify the location of the mitigation site relative to other protected lands with an explanation of how the site meets the selection criteria stated in Env-Wt 805.02; and
- (3) Explain why the mitigation project will result in a resource with a functional value equal to or greater than the jurisdictional area(s) impacted by the project.

Env-Wt 803.03 Additional Information for Stream Impact Projects and Stream Restoration or Enhancement Mitigation Proposals.

(a) For a stream impact project, the plan and report prepared pursuant to Env-Wt 803.01 shall include the following information for each impact area:

- (1) Stream order;
- (2) Stream type;
- (3) Geography in and condition of the project area;
- (4) Bed material;
- (5) Channel form, including channel width and depth for a distance of the channel width multiplied by 15, both upstream and downstream of the project site;
- (6) Position within the surrounding landscape;
- (7) Data on the surrounding area as specified in Env-Wt 803.02(a)(2);
- (8) Floodplains within the project area; and
- (9) Dominant adjacent vegetation.

(b) For a permittee-responsible stream restoration or enhancement mitigation project, the plan and report submitted pursuant to Env-Wt 803.01 also shall:

- (1) Identify the location of the mitigation project;
- (2) Provide the information specified in (a), above; and
- (3) Explain how the project meets the goals stated in Env-Wt 806.02(a) and how the mitigation proposal will result in added value to the aquatic resource.

Env-Wt 803.04 Mitigation Project Monitoring.

(a) For each permittee-responsible restoration, enhancement, or creation mitigation project, the applicant shall prepare a proposed monitoring plan that:

- (1) Establishes the performance standards for the mitigation project;
- (2) Describes the monitoring that will be conducted following construction of the mitigation project, by identifying how the monitoring will be accomplished, how many growing seasons the monitoring will span, and whether and how the monitoring will change as the project begins to achieve the established performance standards;
- (3) Provides the name, daytime telephone number, and email address, if any, of the certified wetland scientist or qualified professional, as applicable, who will be responsible for conducting the monitoring and assessing whether the mitigation project has met the specified performance standards;
- (4) Describes the measures that will be taken during construction and after completion of the project for which the permit is being sought to promote success of the mitigation project; and
- (5) Explains how the department will be informed of the condition of the mitigation project over time, which shall include not less than annual written reports.

(b) Unless modified pursuant to Env-Wt 807.04, monitoring shall span no fewer than 5 growing seasons.

Env-Wt 803.05 Proposal for In-Lieu Mitigation Payment. For a project for which compensatory mitigation is proposed as an in-lieu mitigation payment, the plan and report prepared pursuant to Env-Wt 803.01 also shall include:

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

Env-Wt 803.06 Compensatory Mitigation Site Location.

(a) For a project for which permittee-responsible mitigation is proposed, the applicant shall give preference to any mitigation site that:

- (1) Is located in the same HUC 12 watershed as the impacted jurisdictional area(s); and
- (2) Abuts land that already is subject to a conservation interest.

(b) If a stream crossing project is not a replacement for an existing tier 3 stream crossing, the applicant may propose, as mitigation, upgrading a similar tier 2 or tier 3 stream crossing within the same watercourse or in the same town as the project.

Env-Wt 803.07 Compensation Amount.

(a) The applicant may propose a combination of the types of compensatory mitigation listed in Table 800-1 to meet the requirements of this section.

(b) For a project for which permittee-responsible mitigation is proposed, the department shall not require the applicant to propose mitigation ratios exceeding the ratios as listed in Table 800-1 for approval of any project under this chapter, provided, however, that nothing herein shall prevent the department from accepting a proposal that exceeds the mitigation ratios listed in Table 800-1.

(c) As required by RSA 482-A:30, the department shall calculate the amount of an in-lieu mitigation payment for wetland impact projects by summing the following items:

- (1) The cost that would have been incurred if a wetland of the same type was constructed at the ratios listed in Table 800-1 based on a price of \$65,000 per acre of wetland created, adjusted according to the annual simple rate of interest on judgments established by RSA 336:1, II;
- (2) The area of wetlands that would need to be constructed, at the ratios established in Table 800-1, times the cost of land where the impact is occurring as calculated by the assessed land values determined by the NH department of revenue administration which are equalized and divided by the number of acres in each municipality to yield a per acre equalized land value; and
- (3) The administrative assessment authorized by RSA 482-A:30, III.

(d) For permittee-responsible stream mitigation, the applicant shall demonstrate that the amount of compensatory mitigation meets or exceeds the total amount of impacted stream area that may include the stream bottom and associated stream banks as calculated according to Env-Wt 303.02(i).

(e) As required by RSA 482-A:30-a, the department shall calculate the amount of an in-lieu mitigation payment for stream or shoreline resource losses by summing the following items:

- (1) The cost that would have been incurred if a stream of the same type were restored at the ratios established in Table 800-1, based on a price of \$200 per linear foot of channel or bank impacts or both, adjusted according to the annual simple rate of interest on judgments established by RSA 336:1, II; and
- (2) The administrative assessment authorized by RSA 482-A:30-a, II.

(f) For a project that would have both wetland impacts and stream impacts, the department shall calculate the amount of an in-lieu mitigation payment as follows:

- (1) For wetland impacts and stream impacts that can be distinguished from each other, by summing the payments calculated pursuant to (c) and (e), above; and
- (2) For wetland impacts and stream impacts that cannot be distinguished from each other, by calculating the amount of an in-lieu mitigation payment for the impact that would result in the greater environmental loss pursuant to (c) or (e), above, as applicable.

(g) For a project for which the applicant proposes a combination of permittee-responsible mitigation and an in-lieu mitigation payment, the department shall not require the applicant to propose a combined total that exceeds the mitigation ratios listed in Table 800-1, provided, however, that nothing herein shall prevent the department from accepting a proposal that exceeds those mitigation ratios.

Env-Wt 803.08 Compensatory Mitigation Ratios.

(a) For permittee-responsible mitigation, other than for stream impacts, the applicant shall demonstrate that the compensatory mitigation plan meets or exceeds the ratios listed in Table 800-1, relative to the amount of impacted jurisdictional areas:

Table 800-1: Minimum Compensatory Mitigation Ratios

Resource Type	Creation	Restoration	Enhancement		Aquatic Resource Buffer Preservation
			Hydrologic	Vegetative	
Bog or Fen	N/A	2:1	5:1	10:1	15:1
Tidal Wetlands	3:1	2:1	5:1	10:1	15:1
Forested	1.5:1	1.5:1	5:1	10:1	10:1
Undeveloped Tidal Buffer Zone	N/A	2:1	5:1	10:1	3:1

Resource Type	Creation	Restoration	Enhancement		Aquatic Resource Buffer Preservation
			Hydrologic	Vegetative	
All Other Jurisdictional Areas	1.5:1	1:1	5:1	10:1	10:1

(b) For permittee-responsible mitigation for stream impacts, the applicant shall demonstrate that the total amount of compensatory mitigation area meets or exceeds the total amount of impacted stream area, including the stream bottom and associated stream banks.

(c) For any project that also requires a federal permit from the US Army Corps of Engineers (US ACE) under section 404 of the Clean Water Act, the applicant shall consult with the US ACE relative to whether additional mitigation will be required in order to satisfy federal mitigation requirements.

Env-Wt 803.09 Alternative Compensatory Mitigation Proposals.

(a) An applicant may propose permittee-responsible compensatory mitigation that does not meet or exceed the ratios listed in Table 800-1 if the alternative will have greater benefit to water quality, wildlife, aquatic life, habitat(s) for wildlife or aquatic life, or other functions and values of wetlands and surface waters identified in RSA 482-A:1 or to one or more of the following:

- (1) Exemplary natural communities as identified by the DRED-NHB;
- (2) Habitat that supports rare, threatened, or endangered species, or species of concern, as identified by the natural heritage bureau or by the WAP; or
- (3) Ecologically important lands as designated or similarly identified by the local river management advisory committee, municipality or other state or federal agencies for protection of biodiversity values such as those listed in (1) or (2), above.

(b) If the applicant proposes alternative compensatory mitigation for a project for which a federal permit from the US ACE under section 404 of the Clean Water Act is also required, the applicant shall consult with the US ACE relative to whether additional mitigation will be required.

(c) Alternative compensatory mitigation allowed under (a) or (b), above, shall meet all other applicable requirements of Env-Wt 800.

Env-Wt 803.10 Criteria for Acceptance of In-Lieu Mitigation Payments.

(a) An in-lieu mitigation payment shall not substitute for the requirement to avoid or minimize impacts established in Env-Wt 302.03.

(b) An applicant wishing to make an in-lieu mitigation payment shall evaluate available aquatic resource buffer preservation opportunities in accordance with Env-Wt 804 and provide documentation and an explanation of how aquatic resource buffer preservation is not practicable based on the following:

- (1) The property has upland and wetland areas remaining after the development has been designed, but does not meet or exceed the ratios in Table 800-1 or cannot meet the buffer requirement in Env-Wt 804.02;
- (2) Preservation was discussed by the municipal conservation commission and acceptance of the easement was declined as an option, as demonstrated by minutes from the meeting(s) at which the proposal was considered or a letter signed by the conservation commission; and
- (3) Acceptance of the easement was declined by other conservation organizations as cited in Env-Wt 501.06(b)(3), as demonstrated by written responses from such organizations.

(c) An applicant for a project that will have permanent impacts to a wetland shall evaluate available wetland restoration, enhancement, and creation opportunities in accordance with Env-Wt 805 and provide documentation and an explanation of what was considered and why restoration, enhancement, or creation will not produce a valuable and sustainable jurisdictional area.

(d) An applicant for a project that will have permanent impacts to a stream shall evaluate available stream restoration and enhancement opportunities in accordance with Env-Wt 806 and provide documentation and an explanation of what was considered and why restoration or enhancement will not produce a valuable and sustainable jurisdictional area.

(e) The department shall accept a proposal for an in-lieu mitigation payment if the proposal meets the requirements of (b), above, and of (c) or (d), above, as applicable, and the mitigation type or combination of mitigation types listed in Table 800-1 that are available in the same watershed as the impacts for compensating jurisdictional area losses are not practicable.

#### Env-Wt 803.11 Notification of Decision on a Proposed In-Lieu Mitigation Payment.

(a) The department shall determine whether it is appropriate for an applicant proposing a dredge or fill activity to provide an in-lieu mitigation payment instead of providing permittee-responsible mitigation by reviewing the functional assessment and alternatives provided and applying the criteria specified in Env-Wt 803.10.

(b) The department shall notify the applicant and the town in which the project is located in writing of its decision on the proposal.

(c) If the project meets the criteria for an in-lieu mitigation payment, the notice issued pursuant to (b), above, shall include:

(1) A calculation of the amount the applicant must pay prior to issuance of a permit as specified in Env-Wt 807.06; and

(2) A statement that if the in-lieu mitigation payment is not paid as specified in Env-Wt 807.06, the department will deny the permit.

(d) If the project does not qualify for an in-lieu mitigation payment, the notice issued pursuant to (b), above, shall specify the reason(s) and a date by which the applicant must submit a revised mitigation proposal.

(e) If an applicant who has been notified that a revised mitigation proposal is required does not submit a revised mitigation proposal by the deadline specified in the notice or such longer time period as agreed to by the applicant and the department, the department shall deny the application.

#### PART Env-Wt 804 AQUATIC RESOURCE BUFFER PRESERVATION

Env-Wt 804.01 Location and Value. An upland buffer preservation area offered for compensatory mitigation shall:

(a) Be adjacent to a jurisdictional area that meets or exceeds the function and values of the jurisdictional areas to be impacted by the project, as determined through a functional assessment;

(b) Benefit the resource to be protected by maintaining water quality, wildlife habitat, or other functions and values of wetlands and surface waters; and

(c) Be consistent with the local and regional land use conservation goals and any applicable river corridor management plans developed per RSA 483:10.

#### Env-Wt 804.02 Dimensions.

(a) Subject to (b), below, an upland buffer shall be a minimum of 100 feet wide and contiguous with the protected resource(s).

(b) For permittee-responsible stream mitigation, an upland riparian buffer shall be a minimum of 300 feet in length, as measured parallel to the centerline of the stream, and 100 feet in width, as measured from the top of bank, on both sides of the watercourse.

Env-Wt 804.03 Incorporated Jurisdictional Areas.

(a) An area subject to preservation may incorporate a jurisdictional area provided:

(1) The aquatic resource buffer partly or entirely surrounds the jurisdictional area or at least surrounds those undeveloped upland portions on the preservation parcel; and

(2) Uplands comprise 50% or more of the minimum total compensatory mitigation area required under Env-Wt 803.08.

(b) Jurisdictional areas on the same site as the project that are left undisturbed as part of meeting the avoidance and minimization requirements shall not be considered preservation.

Env-Wt 804.04 Criteria for Evaluation of an Aquatic Resource Buffer. To propose compensatory mitigation based on aquatic resource buffer preservation, the applicant shall:

(a) Submit a functional assessment of each jurisdictional area to be impacted;

(b) Describe how the property proposed for preservation will be legally protected in perpetuity;

(c) If protective measures already exist on the mitigation site(s), identify the existing protective measures and describe how the proposed additional measures would provide greater protection of the aquatic resources on the site(s);

(d) Delineate all wetlands within the proposed compensatory mitigation area and all contiguous wetlands and surface waters as follows:

(1) For compensatory mitigation areas comprising 10 acres or more, delineation shall be completed:

a. By a certified wetland scientist in accordance with Env-Wt 301.01; or

b. By interpretation of aerial photography, published soil surveys, U.S. Fish and Wildlife Service National Wetland Inventory maps, or other available information; and

(2) For compensatory mitigation areas comprising less than 10 acres, delineation shall be completed by a certified wetland scientist in accordance with Env-Wt 301.01;

(e) Identify the property or portion of property on a tax map and USGS quad map;

(f) Identify the legal entity that will hold the easement, which shall not be the owner in fee of the property;

(g) Submit a property survey plan in accordance with Env-Wt 808.11 that identifies the boundaries of the compensatory mitigation area;

(h) Submit a draft legal description of the compensatory mitigation area;

(i) Submit the items required by Env-Wt 501.02(a)(6) or (a)(7);

(j) Submit color photographs to illustrate important site features with location(s) noted on the property survey plan, including the location(s) of:

- (1) Significant ecological features;
  - (2) Existing impervious surfaces, including but not limited to buildings, structures, and trails;
  - (3) Wells;
  - (4) Power lines or pipelines;
  - (5) Historic resources; and
  - (6) Other improvements that will be in place at the time of the establishment of the compensatory mitigation area; and
- (k) Submit a stewardship plan for the property.

#### PART Env-Wt 805 WETLAND RESTORATION, ENHANCEMENT, OR CREATION

##### Env-Wt 805.01 Choice of Wetland Restoration, Enhancement, or Creation.

- (a) A compensatory mitigation proposal based on wetland restoration, enhancement, or creation shall replace the types of wetlands to be impacted and the functions affected and, where practicable, include a contiguous aquatic resource buffer.
- (b) Wetland restoration, enhancement or creation proposals shall not be accepted as compensatory mitigation for sites at which remediation is required to correct unpermitted activities in jurisdictional areas.
- (c) When considering compensatory mitigation based on wetland restoration, enhancement, or creation, the applicant shall:
- (1) Give preference to wetland restoration over wetland enhancement and wetland creation;
  - (2) Consider wetland creation only with input from the US ACE and EPA where:
    - a. Impacts to upland forest for wetland creation is minimized and avoided, except where necessary to establish appropriate landscape context such as vernal pool creation;
    - b. The specific area of creation is not also being used as part of the project, such as for construction of a stormwater detention feature; and
    - c. The area is not directly adjacent to developed areas; and
  - (3) Consider vernal pool creation only with input from the US ACE and EPA where:
    - a. The hydrology of the proposed creation site includes both short and intermediate hydroperiods;
    - b. Inoculation of created vernal pool areas with vernal pool organisms from impact areas is possible;
    - c. The use of natural substrate and plant structure from impacted locations is used to provide appropriate pool structure, egg attachment sites, and seed sources; and
    - d. Non-breeding habitat is located adjacent to created vernal pool areas for the long-term viability of potential pools as described in the US ACE Vernal Pool Best Management Practices (BMPs), January 2015, available at <http://www.nae.usace.army.mil/Portals/74/docs/regulatory/VernalPools/VPBMPsJan2015.pdf>.

Env-Wt 805.02 Selection Criteria. To propose compensatory mitigation based on wetland restoration, enhancement, or creation, the applicant shall:

- (a) Submit the report and plan required by Env-Wt 803.01;

- (b) Include connections to wetlands, surface waters, or associated upland wildlife and vegetated corridors to enhance the wetland or surface water use and colonization by native flora and fauna;
- (c) Identify the source of wetland hydrology for the proposed mitigation area to confirm that the site has a suitable geomorphic setting for aquatic resource restoration, enhancement, or creation;
- (d) Explain how the proposal creates hydrologic conditions or land connections that will produce the desired wetland functions and values to be restored, enhanced, or created;
- (e) Provide wetland micro and macro topography in the proposal to achieve hydrologic diversity;
- (f) Identify the relationship of the proposed mitigation site to any jurisdictional area(s) in the immediate vicinity, the proximity to existing infrastructure and adjacent properties, and whether any lands are protected in the vicinity of the mitigation site(s);
- (g) Provide documentation on how the proposed wetland restoration, enhancement, or creation site will not be affected by anticipated secondary and cumulative impacts from the construction site; and
- (h) For restoration and enhancement proposals, explain the history of the mitigation project area, to the extent known.

Env-Wt 805.03 Plans for Wetland Restoration, Enhancement, or Creation Projects. The applicant shall include the following in the plans required by Env-Wt 803.01:

- (a) Existing and proposed grades, with typical and unique cross sections with specific locations where clarity is needed showing:
  - (1) Predicted water fluctuations; and
  - (2) Proposed wetland cover types for the mitigation area;
- (b) Construction procedures, sequence, and timing;
- (c) A planting proposal, with preference given to native wetland plants and natural communities as follows:
  - (1) Plant species with scientific names and quantities provided;
  - (2) Source of planting materials or whether the plan relies on natural re-vegetation;
  - (3) Plant stock size and zones of predicted plant occurrence;
  - (4) Plant survival goals;
  - (5) The proposed locations of native plant stock and the rate and type of seeding;
  - (6) When and where seeding or planting will take place; and
  - (7) Notation of dead snags, tree stumps, or logs per acre, where appropriate, to provide structure and cover for wildlife and food chain support;
- (d) Documentation of existing and proposed soils as follows:
  - (1) The existing soils on the proposed mitigation site;
  - (2) The source of soils to be placed on the site;
  - (3) The likely seed bank composition of soils;
  - (4) The depth of proposed growing medium; and

- (5) The soil properties such as texture and organic content;
- (e) Erosion control notes and details to minimize or prevent sediment from entering adjacent, undisturbed wetlands or surface waters;
- (f) Invasive species in the vicinity;
- (g) If applicable, an invasive species control plan; and
- (h) Activities that will be allowed and not allowed within the mitigation area.

#### PART Env-Wt 806 STREAM RESTORATION OR ENHANCEMENT

##### Env-Wt 806.01 Stream Restoration or Enhancement.

- (a) A compensatory mitigation proposal based on stream restoration or enhancement shall consider the types of stream(s) impacted and, where practicable, include a contiguous upland buffer.
- (b) Stream restoration or enhancement proposals shall not be accepted as compensatory mitigation for sites at which remediation is required to correct unpermitted activities in jurisdictional areas.

##### Env-Wt 806.02 Goals; Types of Projects.

- (a) Any proposed compensatory mitigation based on stream restoration or enhancement shall be designed to meet as many of the following goals as practicable:
  - (1) Increase or restore native ecosystem productivity and biodiversity;
  - (2) Increase or restore sediment, nutrient, and particulate transport and retention/recycling dynamics;
  - (3) Restore the natural hydrologic regime;
  - (4) Support or improve migration and movement of aquatic biota;
  - (5) Increase or restore the availability or accessibility of upstream aquatic habitats;
  - (6) Increase habitat complexity of the stream ecosystem;
  - (7) Increase sediment and nutrient retention in riparian areas and floodplains;
  - (8) Improve thermal regimes, such as adding riparian vegetation to provide shade;
  - (9) Improve water quality;
  - (10) Improve access to refuge and reproductive habitat for aquatic organisms;
  - (11) Reduce the likelihood of water surges and flash flooding; and
  - (12) Restore a dynamic channel boundary so as to allow a natural migration of the channel within the floodplain.
- (b) The applicant shall consider the following types of projects:
  - (1) Upgrading or removing existing culverts;
  - (2) Restoring or enhancing riparian and floodplain vegetation;
  - (3) Re-establishing connections to floodplains and side channels;
  - (4) Removing dams or culverts that are effectively functioning as dams;

- (5) Removing riprap and concrete banks and channels and revegetate;
- (6) Improving stormwater storage and processing;
- (7) Enhancing or restoring riparian buffers;
- (8) Installing coarse woody material in the stream or along its banks, or both;
- (9) Using low impact development (LID) technology such as pervious surfaces, rain gardens, and filter strips; and
- (10) Removing pavement and other impervious surfaces.

Env-Wt 806.03 Information Required for Proposed Stream Mitigation Project. An applicant proposing a stream restoration or enhancement mitigation project shall submit the following, as applicable, in the plan and report required by Env-Wt 803:

- (a) The length of the stream channel to be restored or enhanced, in linear feet;
- (b) Information on the location of the stream impact or mitigation plan in relation to critical habitats and populations identified in the WAP, and whether any lands are protected in the vicinity of the mitigation site(s);
- (c) Information on the suitability of the mitigation site for coldwater fisheries habitat, access to feeding, spawning or natural dispersal for fisheries or wildlife;
- (d) Proposed improvements for aquatic organism passage, geomorphic compatibility, or hydraulic capacity;
- (e) Proposed improvements to restore or enhance riparian or associated aquatic resource function(s), including the percent of the area within 100 feet laterally in an outward direction from each stream bank along the length of stream bank that will be restored or otherwise improved;
- (f) A description of the hydrology necessary to support the desired stream type, including stream flow, location in the watershed, watershed size, water source, and salinity for tidal water; and
- (g) A description of the proposed substrate type, source material, and material size.

Env-Wt 806.04 Plans for Stream Restoration and Enhancement Projects. The applicant shall include the following in the report and plan required by Env-Wt 803:

- (a) Existing and proposed channel forms, including both cross section and profile;
- (b) Channel width and length of reach;
- (c) Sediment transport model and the reference reach;
- (d) Construction procedures, sequence, and timing;
- (e) A planting proposal, with preference given to native plants and natural communities as required in Env-Wt 805.03(c);
- (f) Information on the floodplain, including the level of connectivity between the stream and the floodplain, the permanence of coarse woody material in the floodplain, and the width of the floodplain;
- (g) Erosion control specifications to prevent sediment from entering adjacent, undisturbed wetlands or surface waters;
- (h) If any invasive plant species are within 100 feet of each stream bank, identification of the type and location of the species and an invasive species control plan;

- (i) Photographs of the channel, banks, and side slopes; and
- (j) A list of activities that will be allowed and not allowed within the mitigation area.

#### PART Env-Wt 807 REQUIREMENTS UPON APPROVAL OF MITIGATION PLAN

Env-Wt 807.01 Notification of Construction Completion. Within 60 days of completing a mitigation project that included restoration, enhancement, or creation of wetlands or the restoration or enhancement of a stream, or both, the applicant shall:

- (a) Submit a signed letter specifying the date of completion and the anticipated dates of submittal of the annual monitoring reports; and
- (b) Submit a post-construction monitoring report, documenting the conditions of the restored, enhanced, or constructed wetland or restored or enhanced stream.

#### Env-Wt 807.02 Monitoring Report.

- (a) The permittee responsible for a mitigation project shall submit monitoring reports to the department as specified in the mitigation monitoring plan.
- (b) The permittee also shall submit a final monitoring report.

#### Env-Wt 807.03 Implementation of Remediation Plan.

- (a) Upon being notified by the certified wetlands scientist who is monitoring the mitigation project that the mitigation project is not likely to achieve its objectives after the number of growing seasons specified in the monitoring plan, the permittee shall:
  - (1) Submit a remediation plan to the department within 45 days of the notification; or
  - (2) Request the department to accept an in lieu mitigation payment to compensate for the portions of the project that failed to meet the performance standards.
- (b) A remediation plan submitted pursuant to (a)(1), above, shall identify:
  - (1) The problem(s) limiting the success of the mitigation site;
  - (2) Measures which need to be taken to address the problem(s); and
  - (3) A time schedule on which the permittee will implement the corrective measures.
- (c) The department shall approve the proposed remediation plan if the department determines that the plan has a reasonable probability, within 3 full growing seasons following implementation of the remediation plan, of resolving the problem(s) that have caused the mitigation project to be unsuccessful.
- (d) Following department approval of the remediation plan, the permittee shall implement the plan and submit reports following each of the next 3 full growing seasons to demonstrate the success of the remedial measures.

#### Env-Wt 807.04 Adjustments to Mitigation Monitoring Plan.

- (a) If the mitigation project has met or exceeded its performance standards in fewer than 5 growing seasons, the permittee may request the department to waive subsequent monitoring by submitting the following to the department in writing:
  - (1) A statement that all performance standards have been met; and

(2) Documentation to support the statement, including photo documentation and certification from the certified wetlands scientist who conducted the monitoring that the mitigation project has met its performance standards.

(b) The department shall waive implementation of the remaining monitoring plan if the information provided by the permittee pursuant to (c), above, demonstrates that the performance standards have been met or exceeded and that continued monitoring is not needed.

(c) The permittee may request the department to reduce subsequent monitoring if the mitigation project has achieved some performance standards sooner than anticipated, by submitting the following to the department in writing:

(1) An explanation, including photo documentation, of the extent to which the performance standards have been met;

(2) A description of the proposed revised monitoring plan; and

(3) Certification from the certified wetlands scientist who is conducting the monitoring that the mitigation project has met some of its performance standards sooner than anticipated and that the revised monitoring proposal is sufficient to ensure that the remaining performance standards are likely to be met.

(d) The department shall approve a reduced monitoring plan if the information provided by the permittee pursuant to (e), above, demonstrates that based on the extent to which the mitigation project has exceeded its performance standards, the reduced plan appears sufficient to ensure that all performance standards will be met.

(e) If all performance standards have not been met within the time period specified in the monitoring plan, the permittee shall extend the monitoring.

#### Env-Wt 807.05 Notification of Recorded Conservation Interest.

(a) After the department has issued a permit in accordance with Env-Wt 500 and prior to work commencing on a project for which the mitigation plan requires a conservation interest to be acquired, the permittee shall:

(1) If the conservation interest is an easement, obtain the signature of the grantee on the document conveying the interest for each parcel to be preserved;

(2) Record each document that conveys a conservation interest for each parcel to be preserved at the registry of deeds for the county in which the parcel is located;

(3) Submit a copy of each recorded document to the department; and

(4) Submit a digitized polygon file, if available, to be incorporated into the department's geographic information system (GIS) conservation lands layer for the location of compensatory mitigation parcels.

(b) Within 60 days after issuance of the permit, the permittee shall submit verification that the compensatory mitigation area has been marked by permanent monuments and signs indicating the location of the area.

#### Env-Wt 807.06 Submittal of In-Lieu Mitigation Payment.

(a) For a project for which the department has notified the applicant of the acceptance of a proposed in-lieu mitigation payment as specified in Env-Wt 803.11(c), the department shall not issue the permit until the applicant has remitted the full amount of the in-lieu mitigation payment as specified in the notice.

(b) If the applicant does not remit the full amount of the in-lieu mitigation payment within 120 days of the date of the notice or such longer time as is agreed to by the applicant and the department, the department shall deny the application.

(c) The department shall deposit all in-lieu mitigation payments into the aquatic resource compensatory mitigation fund established by RSA 482-A:29 as follows:

- (1) For each payment deposited, the department shall credit the payment to the service area that contains the jurisdictional area(s) impacted by the project;
- (2) The department shall account for payments made for stream impact projects separately from payments made for wetland impact projects;
- (3) For a project that impacts jurisdictional area(s) in more than one service area, the department shall allocate the payment among the service areas in proportion to impacts; and
- (4) For a project having both stream impacts and wetland impacts, the department shall allocate the payment to wetland impacts and stream impacts in proportion to impacts.

#### PART Env-Wt 808 AQUATIC RESOURCE COMPENSATORY MITIGATION FUND

Env-Wt 808.01 Use of Aquatic Resource Compensatory Mitigation Fund. Costs that are eligible under RSA 482-A:29, I, for funding from the aquatic resource compensatory mitigation fund ("ARM Fund") shall be as follows:

- (a) Development of final restoration, enhancement, or creation plans;
- (b) Construction costs for restoration, enhancement, or creation such as site clearing and excavation, construction management, consulting fees, permit costs, grading and soil augmentation, disposal costs of excavated materials, planting, and monitoring and maintenance of restoration, enhancement, or creation sites to reduce risk of failure;
- (c) Acquisition of land for the protection of mitigation sites in perpetuity and associated costs including property surveys, appraisals, closing costs, and subdivision fees;
- (d) Acquisition of conservation interests after a qualified grantee has been identified;
- (e) Acquisition of legal services related to the protection of land(s) in perpetuity;
- (f) Stewardship of a conservation interest in accordance with Env-Wt 808.15, including development of a stewardship plan for the land that is subject to the conservation interest; and
- (g) Other aquatic resource improvement or protection projects, such as water quality improvement projects, tidal wetland restoration projects, dam removal projects, stream or river restoration projects, or activities that provide habitat improvement including culvert replacement or removal.

#### Env-Wt 808.02 Identification of Eligible Projects.

- (a) The department shall announce a request for pre-proposals for proposed projects in a service area, in consultation with the site selection committee per Env-Wt 808.17 (b)(4), at least once every 2 years.
- (b) Any person wishing to obtain funding for a project from the ARM Fund shall complete and submit a pre-proposal as specified in Env-Wt 808.03.
- (c) The department shall:
  - (1) Review each pre-proposal received to determine whether the proposed project is eligible for funding and in which service area(s) the proposed project is located;

- (2) Consult with the U.S. Army Corps of Engineers relative to the proposed projects; and
- (3) Notify the applicant of whether the proposed project is eligible for funding and provide comments to the applicant to consider prior to submitting an ARM Fund application.

(d) To have a project considered for funding, an applicant who has been notified pursuant to (c)(3), above, that the proposed project is an eligible project shall complete an ARM Fund application in accordance with Env-Wt 808.04 and submit it to the department for review.

Env-Wt 808.03 Requirements for ARM Fund Pre-Proposals. Any person who wishes to request funding from the ARM Fund shall submit to the department:

- (a) The following information on an ARM Fund pre-proposal form obtained from the department that has been signed as specified in Env-Wt 808.05:
  - (1) A short title for the proposed project;
  - (2) The location of the proposed project by street address, municipality, and service area;
  - (3) Contact information, including the name of the applicant and the name, daytime telephone number, and email address, if any, of a contact individual for the applicant;
  - (4) The name and role of each other entity that will participate in or otherwise contribute to the proposed project; and
  - (5) The total grant amount requested, the amount and source of matching funds, and the estimated total project cost;
- (b) A USGS topographic map on which the following areas are clearly marked:
  - (1) The property or portion(s) of the property to be acquired or otherwise protected through a conservation interest with the requested funds, if applicable;
  - (2) The property or portions of the property to be considered for wetland restoration, enhancement, or creation, or for stream restoration or enhancement if applicable; and
  - (3) Any other protected lands within one mile of the outer boundaries of the area identified pursuant to (1) or (2), above;
- (c) A description of the project in not more than 1,000 words that includes:
  - (1) The project's objectives;
  - (2) A brief summary of how the project meets the ARM Fund criteria specified in Env-Wt 808.07;
  - (3) The tasks required to complete the project;
  - (4) The proposed budget to complete the project; and
  - (5) The proposed results to be achieved; and
- (d) A second plan or map of the areas identified pursuant to (b), above, such as one from the WAP, on which critical habitats and populations of the state's species of conservation and management concern are clearly delineated.

Env-Wt 808.04 Requirements for ARM Fund Applications. To request funding for an eligible project, the applicant shall submit the following information to the department on or with an ARM Fund application form obtained from the department that has been signed as specified in Env-Wt 808.05:

- (a) Information to identify the project and applicant, as follows:

- (1) A name for the proposed project;
  - (2) The location of the proposed project by street address, municipality, and service area;
  - (3) The name and mailing address of the applicant and the name, daytime telephone number, and email address, if any, of a contact individual for the applicant; and
  - (4) The total grant amount requested, the amount and source of matching funds, and the estimated total project cost;
- (b) A USGS topographic map marked as required by Env-Wt 808.03(b);
- (c) A description of the property(ies) that includes:
- (1) The location and type of all structures;
  - (2) Existing impoundments, if any;
  - (3) Existing disturbances, if any; and
  - (4) Known or potential contamination sources as identified in the department's GIS, if any;
- (d) A functional assessment or a description of the aquatic resource functions and values of the property(ies) and overall conservation value and identification of the specific primary functions and values and how these functions and values are being protected, restored, enhanced, or constructed by the proposed project;
- (e) A table summarizing the information provided pursuant to (d), above, which for each aquatic resource lists the resource type, size, and functions;
- (f) A map, at a scale that ensures that all details are legible, on which are identified all developed and undeveloped parcels within one-half mile of the outer boundaries of the area that would be restored, enhanced, created, or protected by the proposed project;
- (g) A map of the property, at a scale that ensures that all details are legible, on which are identified the following:
- (1) Wetlands, surface waters, fields, and forest;
  - (2) Any structures;
  - (3) All utilities and wells;
  - (4) All roads or trails;
  - (5) All easements or rights-of-way; and
  - (6) Gravel pits or other disturbed areas;
- (h) For both the proposed project property and the mitigation property, the number of confirmed vernal pools and the number of potential vernal pools;
- (i) For a wetlands restoration, enhancement, or creation project:
- (1) A description of the work to be completed;
  - (2) The total area, in acres, proposed for restoration;
  - (3) The total area, in acres, proposed for enhancement;
  - (4) The total area, in acres, proposed for creation;
  - (5) The total area, in acres, of upland enhancement proposed, if any; and

- (6) A written explanation of how the project meets the criteria specified in Env-Wt 808.07;
- (j) For a stream restoration or enhancement project:
  - (1) A description of the work to be completed;
  - (2) The total linear feet of stream on the property;
  - (3) The total linear feet of in-stream restoration or enhancement proposed;
  - (4) The percent of the length of stream that has a 100-foot wooded zone on both sides of the stream and the percent of each area that is upland; and
  - (5) A written explanation of how the project meets the criteria specified in Env-Wt 808.07;
- (k) For an upland preservation project:
  - (1) The total acreage of the land proposed for protection and the acreage of any included jurisdictional area(s); and
  - (2) A written explanation of how the project meets the criteria specified in Env-Wt 808.08;
- (l) For other projects, an explanation of why the project is eligible under Env-Wt 808.01;
- (m) A signed and dated statement from each landowner that:
  - (1) Affirms the landowner's willingness to have the restoration, enhancement, or creation work performed or willingness to negotiate the acquisition of the properties, as applicable;
  - (2) Commits the landowner(s) to not selling or otherwise conveying or committing to sell or otherwise convey the property covered by the application except to the applicant for 120 days;
  - (3) Commits the landowner(s) to allowing inspection, survey, and appraisal of the property within 120 days from the date of receipt of a copy of the application by the department;
  - (4) Specifies the price at which the landowner will sell the property, which information shall be treated as confidential under the provisions of RSA 91-A:5, IV and subject to disclosure only with the consent of the landowner until the department has selected the application for funding; and
  - (5) Identifies all liens and encumbrances; and
- (n) A budget that includes a complete list of itemized costs and an anticipated time line for expenditures.

Env-Wt 808.05 Signatures Required for Pre-Proposals and Applications.

- (a) If the applicant is an individual, the applicant shall sign and date the pre-proposal and the application.
- (b) If the applicant is an organization or other legal entity, the official of the applicant who has been authorized to sign the pre-proposal or application shall sign and date the document and print or type his or her name and title on the document.
- (c) A signature provided under (a) or (b), above, shall constitute certification that:
  - (1) The information contained in or otherwise submitted with the application is true, complete, and not misleading to the best of the applicant's knowledge and belief;
  - (2) The applicant understands that:

- a. The submission of false, incomplete, or misleading information is grounds for denying the application or revoking any award of ARM funds that is made based on such information; and
- b. The applicant is subject to the penalties for making unsworn false statements specified RSA 641:3 or any successor New Hampshire statute.

Env-Wt 808.06 Processing of ARM Fund Applications.

(a) The department shall review each application for conformance with Env-Wt 808.04 and to determine whether the project meets the criteria of Env-Wt 808.07 or Env-Wt 808.08, as applicable.

(b) The department shall notify the applicant and the municipality(ies) in which the land is located in writing of its decision on the application. If the application is determined to not be acceptable for funding, the notice shall specify the reason(s) for the determination.

Env-Wt 808.07 Eligibility Criteria for Wetland Restoration, Enhancement, or Creation Projects and Stream Restoration or Enhancement Projects. A project to restore, enhance, or create wetlands or to restore or enhance a stream shall be eligible for funding from the ARM Fund when all of the following conditions are met:

(a) The applicant demonstrates that:

- (1) Rights to access the mitigation project site have been or will be acquired;
- (2) The mitigation project site is undeveloped land and free of known and potential contamination sources; and
- (3) All needed local, state, and federal authorizations or permits to conduct the mitigation work have been applied for, will be applied for, or have already been acquired; and

(b) The applicant presents a budget to accomplish the proposed project's stated objectives in the projected time frame, including long-term management expenses, using good-faith, realistic estimates of costs.

Env-Wt 808.08 Eligibility Criteria for Land Protection Projects. A project to acquire a conservation interest shall be eligible for funding from the ARM Fund when all of the following conditions are met:

(a) The applicant is a political subdivision, a governmental agency, or a non-profit, 501(c)(3) organization having land conservation as a principal mission, or provides a signed and dated statement from such an entity stating the willingness of the entity to negotiate the proposed acquisition;

(b) The conservation interest to be acquired meets the criteria specified in Env-Wt 804.01 and Env-Wt 804.03;

(c) The conservation interest to be acquired is in undeveloped land that is free of known contamination;

(d) The conservation interest to be acquired is in land that is not already permanently protected and is not currently owned by the applicant;

(e) The resources within the conservation interest area are under threat of destruction or adverse modifications by reasonably foreseeable activities; and

(f) The conservation interest to be acquired will be held by a grantee that meets the criteria specified in Env-Wt 501.06(c).

Env-Wt 808.09 Requirements upon Determination of Eligibility.

(a) If a project is selected to receive funding for the restoration, enhancement, or creation of wetlands or the restoration or enhancement of a stream, the applicant shall submit the following to the department prior to the funds being awarded:

- (1) An environmental site assessment prepared in accordance with Env-Wt 808.10(b) through (d), if required pursuant to Env-Wt 808.10(a);
  - (2) A property survey prepared in accordance with Env-Wt 808.11;
  - (3) Detailed plans on the mitigation project site in accordance with Env-Wt 805 or Env-Wt 806, as applicable; and
  - (4) A detailed schedule for mitigation work to be carried out.
- (b) If a project to conduct wetland restoration, enhancement, or creation or stream restoration or enhancement is awarded funding, the applicant shall:
- (1) Select a qualified contractor using the procurement process prescribed by RSA 21-I:22, IV-VII;
  - (2) Execute the mitigation plan in accordance with the schedule approved by the department;
  - (3) Adhere to ARM Fund contract conditions;
  - (4) Provide ongoing monitoring reports in accordance with Env-Wt 807.02; and
  - (5) Provide a plan for the on-going maintenance or management of the mitigation area(s), if needed.
- (c) If a project is selected to receive funding to acquire a conservation interest, the applicant shall submit the following to the department prior to the funds being awarded:
- (1) An environmental site assessment prepared in accordance with Env-Wt 808.10(b) through (d), if required pursuant to Env-Wt 808.10(a);
  - (2) A property survey prepared in accordance with Env-Wt 808.11;
  - (3) An appraisal prepared in accordance with Env-Wt 808.12;
  - (4) A title examination and, if necessary, an opinion of title prepared in accordance with Env-Wt 808.13; and
  - (5) Baseline documentation in accordance with Env-Wt 808.15(c)(1).
- (d) If a project to acquire a conservation interest is awarded funding, the applicant shall:
- (1) Execute the land transaction in accordance with Env-Wt 808.16;
  - (2) Record the deed and survey, if applicable, in accordance with Env-Wt 808.16;
  - (3) Adhere to ARM Fund contract conditions; and
  - (4) Provide a stewardship plan for the property in accordance with Env-Wt 808.15.

Env-Wt 808.10 Environmental Site Assessment Requirements.

- (a) The applicant shall submit an environmental site assessment for any property that is the subject of a request for funding from the ARM Fund and that, based on information in the department's GIS or a site walk performed by the department, contains known or potential sources of contamination.
- (b) An environmental site assessment shall be performed by an environmental consultant who has at least 5 years' experience in preparing site assessments.
- (c) An environmental site assessment shall include the following:
  - (1) A history of land usage;

- (2) A description of the site inspection;
  - (3) A review of all department records relating to site investigations or other environmental assessments for all properties located within 1,000 feet of the property;
  - (4) A description of the review conducted pursuant to (3), above, including the date of the review and who conducted the review;
  - (5) A description of the findings from any files reviewed pursuant to (3), above; and
  - (6) An opinion by the consultant that there are no contamination concerns for the property(ies) proposed for protection.
- (d) The applicant shall submit the environmental site assessment to the department upon completion.

Env-Wt 808.11 Survey Requirements.

(a) If an accurate survey does not already exist for property that is the subject of a request for funding from the ARM Fund, the applicant shall obtain a property survey after the applicant receives notification from the department that the applicant's application for funding has been selected and prior to the funding being provided.

(b) The applicant shall provide the department with 2 paper copies, a mylar copy suitable for recording at the registry of deeds, and a digitized polygon file of the standard property survey for the property that is the subject of the proposed project.

(c) A New Hampshire licensed surveyor shall perform a standard property survey in accordance with the standards specified in Lan 503.03 – Lan 503.10.

(d) The turning points of the boundaries shall be marked with permanent monuments and the boundary lines shall be blazed or painted so that they can be located in the field.

(e) The survey plan shall include:

- (1) The property boundaries and acreage; and
- (2) The method and accuracy of the survey.

Env-Wt 808.12 Appraisal Requirements.

(a) The applicant requesting funding from the ARM Fund for acquisition of a conservation interest shall obtain an appraisal or an updated appraisal after the applicant has received notification from the department that the applicant's application for funding has been selected and prior to the funding being provided.

(b) If an appraisal has not been completed within 120 days of the notification, the money shall revert back to the ARM fund.

(c) An appraisal shall be conducted for each property included in the proposed project, based on the terms of the proposed conservation interest instrument and the survey performed in accordance with Env-Wt 808.11.

(d) In order for the appraisal to be accepted as a determination of the fair market value of the conservation interest, the appraisal shall be conducted in accordance with the Uniform Standards of Professional Appraisal Practice established by The Appraisal Foundation.

(e) The applicant shall submit the appraisal to the department.

Env-Wt 808.13 Title Examination Requirements.

(a) The applicant for funding from the ARM Fund for acquisition of a conservation interest shall obtain a title examination or an updated title examination after the applicant has received notification from the department that the applicant's application for funding has been selected and prior to the funding being provided.

(b) The title examination shall be conducted for each property included in the proposed project.

(c) In order for the title examination to be accepted as determinative that there is clear and marketable title to the property, the title examination shall be conducted in accordance with the "New Hampshire Title Examination Standards" of the New Hampshire Bar Association.

Env-Wt 808.14 Conservation Interest Instrument Requirements.

(a) Each conservation interest instrument shall:

- (1) Uphold the conservation purposes of the transaction in perpetuity;
- (2) Protect the quality of wetlands and surface water resources associated with the property;
- (3) Safeguard the environmental values of the property that are dependent on aquatic resources; and
- (4) Convey an interest to the State of New Hampshire that allows the state to enforce the conditions and restrictions of the easement and to recover the costs of such enforcement from the easement holder or property owner, or both.

(b) Each conservation interest instrument shall contain, at a minimum, the following restrictions:

- (1) No industrial or commercial activities or improvements shall occur on the property except in conjunction with any water supply, agricultural, forestry, or outdoor recreational activities that are allowed by the instrument, subject to such conditions as are specified in the instrument;
- (2) No land surface alterations shall occur on the property, such as filling, excavation, mining, and dredging, except to the extent that they do not degrade the aquatic resource for which the project was funded and do not pose a risk of such degradation;
- (3) No wastes generated off the property shall be disposed of, stored, or discharged on the property;
- (4) No substances that would be hazardous waste if discarded or abandoned shall be disposed of on the property, and no such substances shall be stored or applied on the property except in conjunction with any allowed water supply, agricultural, forestry, or outdoor recreational activities, and provided the storage and use do not threaten aquatic resource protection and are specifically allowed by the instrument, subject to such conditions as are specified in the instrument;
- (5) No acts or uses shall occur on the property that would:
  - a. Degrade wetlands or water quality;
  - b. Cause an unsustainable quantity of water to be withdrawn; or
  - c. Harm state or federally recognized rare, threatened, or endangered species; and
- (6) Activities specifically allowed by the instrument, such as community drinking water supply, agriculture, forestry and outdoor recreation, shall be conducted in accordance with a plan, best management practices, or conditions as set forth in the instrument, subject to such conditions as are specified in the instrument.

(d) In the case of a conservation easement, the owner of the fee shall retain all other customary rights and privileges of ownership including the right to privacy and to carry out all regular agricultural and forestry practices that are not prohibited by the restrictions in the easement.

Env-Wt 808.15 Stewardship Requirements.

- (a) The grantee shall be responsible for ongoing stewardship of each conservation interest acquired.
- (b) The grantee shall determine the financial and management implications of each conservation interest and establish that it has or can obtain funds to monitor and enforce the interest.
- (c) To fulfill its obligations under (a), above, the grantee shall:
  - (1) Prior to acquisition of the conservation interest, prepare and submit to the department a baseline documentation report that describes, in writing and with photographs, the condition of the property(ies) that will be subject to the interest at the time of acquisition, including aquatic resource functions and values;
  - (2) Prepare and submit to the department an annual property inspection that confirms that boundaries are being maintained and land is being appropriately protected according to the terms of the conservation interest;
  - (3) For conservation easements, contact landowners annually to inform the landowners of their obligations under the easement;
  - (4) Prepare and submit an annual stewardship report to the department that contains the following:
    - a. A description of the site inspection conducted;
    - b. A description of any physical changes to the property;
    - c. A description of any landowner contact conducted;
    - d. A description of any conditions that violate or may violate the intent of the conservation interest; and
    - e. A description, including current status, of any violations witnessed and remedial steps taken.

Env-Wt 808.16 Final Approval, Execution, and Deed Recordation.

- (a) The department shall approve the acquisition of a conservation interest if, for each property to be included in the conservation interest, the applicant:
  - (1) Confirms that the property is not contaminated in accordance with Env-Wt 808.10;
  - (2) Confirms the property boundaries and acreage in accordance with Env-Wt 808.11;
  - (3) Negotiates a price not to exceed the fair market value determined in accordance with Env-Wt 808.12;
  - (4) Confirms that there is clear and marketable title for the property determined in accordance with Env-Wt 808.13;
  - (5) Submits a deed that conforms to the requirements of Env-Wt 808.14; and
  - (6) Submits the baseline documentation prepared in accordance with Env-Wt 808.15 (c)(1).
- (b) Final execution, payment of acquisition cost, and recording of the necessary instruments of transfer shall be conducted after final approval.

Env-Wt 808.17 Site Selection Committee.

- (a) The site selection committee for the ARM Fund shall be as specified in RSA 482-A:32.

(b) As specified in RSA 482-A:32, I, the purpose of the site selection committee is to identify projects to be funded from the ARM Fund. To accomplish this purpose, the site selection committee shall:

- (1) Participate in meetings coordinated by the department to develop operating procedures for the committee and discuss operation of the ARM Fund;
- (2) Provide guidance on the application ranking and selection criteria that will be used to rank parcels considered for funding;
- (3) Provide contact information to the department for individuals or organizations that may be knowledgeable on issues or priorities within the service areas for which requests for eligible projects were made pursuant to Env-Wt 808.02(a);
- (4) Assist the department in determining dates to request pre-proposals and applications to be submitted with specified deadlines for submittal;
- (5) Oversee the ARM Fund to ensure that funds deposited are considered for disbursement as specified in Env-Wt 808.03;
- (6) Evaluate and rank applications in accordance with Env-Wt 808.18 and Env-Wt 808.19;
- (7) Select the project(s) that will be recommended to the Wetlands Council for funding;
- (8) Recommend an amount to be disbursed for each project selected; and
- (9) Review the annual report prepared by the department pursuant to RSA 482-A:33.

Env-Wt 808.18 Application Ranking and Selection by the Site Selection Committee.

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

(j) Applications for ARM funds shall be evaluated based on the criteria and points specified in Env-Wt 808.19.

Env-Wt 808.19 Project Evaluation.

(a) The department and site selection committee shall:

- (1) Evaluate a wetlands mitigation project using the criteria in (b) through (f), below; and
- (2) Evaluate a stream passage improvement using the criteria in (c) through (g), below.

(b) A maximum of 27 points shall be assigned based on the potential the project has to restore, enhance, or retain similar wetland functions and values lost within the service area, and those that have been identified by the site selection committee as priorities for the application cycle, as follows:

- (1) The project shall receive 20 to 27 points if the application clearly demonstrates that the project will:
  - a. Restore, enhance, or retain more than two-thirds of the wetland types or natural community lost by the impacts that generated the funds; or
  - b. Is located in an area of significant habitat value with high likelihood of success and the work will result in improved habitat functions;
- (2) The project shall receive 13 to 19 points if the application clearly demonstrates that the project will:
  - a. Restore, enhance, or retain less than two-thirds of the wetland types or natural community by improving the ecological integrity function of the wetland and/or other functions lost in the service area; or
  - b. Provides an improvement in the functions that were impaired in the service area as identified in the compensation planning framework;
- (3) The project shall receive 6 to 12 points if the application clearly demonstrates that the project will:
  - a. Restore, enhance or retain less than two-thirds of the wetland types or natural community other than by improving the ecological integrity function of the wetland and/or other functions lost in the service area; or
  - b. Provides an improvement in the functions that were impaired in the service area as identified in the compensation planning framework; or
- (4) The project shall receive one to 5 points if the application credibly asserts but does not clearly establish that the project will restore, enhance, or retain some of the wetland types or natural community or functions previously impaired in the service area.

(c) A maximum of 27 points shall be assigned based on the overall environmental significance the project provides, with the project receiving one to 9 points for each of the following that apply:

- (1) The project is located within a source water protection area or overlays a high-yield stratified drift aquifer;
- (2) The project will protect endangered, threatened, or special concern species or exemplary natural communities documented to occur on the property; and
- (3) The project is located in or in close proximity to NH Wildlife Action Plan highest quality wildlife habitat or NH Wildlife Action Plan conservation focal areas.

(d) A maximum of 19 points shall be assigned based on the project's proximity and connectivity to the following resources, with the project receiving the points noted for each of the following that apply:

- (1) If the project is adjacent to lands protected in perpetuity, the project shall receive 4 points;
- (2) If the project provides a connection between lands that are currently unconnected and which are protected in perpetuity, the project shall receive one to 4 points;
- (3) If the project will protect linkages or over-land connections among and between 1 or more aquatic resource areas, the project shall receive one to 4 points;
- (4) If the project will protect lands within a large unfragmented block of land, relative to the service area, the project shall receive one to 4 points; and
- (5) If the project is located within the same sub-watershed as the impact area(s), the project shall receive 3 points.

(e) A maximum of 19 points shall be assigned based on the overall mitigation potential for the project to address the considerations noted below, with the project receiving the points noted for each of the following that apply:

- (1) The project shall receive one to 6 points if it will protect most or all of the aquatic resource;
- (2) The project shall receive one to 6 points if it will provide an upland buffer that protects an aquatic resource identified as a prime wetland by a municipality or recognized in a municipal or regional wetland or natural resource study;
- (3) The project shall receive one to 4 points if it will protect, at a minimum, a 200 foot upland buffer around most or all of the aquatic resource; and
- (4) The project shall receive one to 3 points if it will protect most or all of the HUC 12 watershed of the aquatic resource.

(f) A maximum of 8 points shall be assigned based on the cost-effectiveness of the project and partnership potential, with the project receiving the points noted for each of the following that apply:

- (1) The project shall receive 3 points if it will provide a cash or in-kind donation match of at least 30%;
- (2) The project shall receive one to 3 points if the project area is identified in a federal, or state environmental priority plan other than the Wildlife Action Plan; and
- (3) The project shall receive 3 points if it is supported by the host municipality.

(g)<sup>1</sup> A maximum of 27 points shall be assigned based on the potential the project has to provide a stream passage improvement for stream resources in the service area that were impaired, and those that have been identified by the site selection committee as priorities for the application cycle.

Env-Wt 808.20 Annual Report. The annual report prepared pursuant to RSA 482-A:33 shall include the following for the reporting period covered by the report:

(a) A summary that details the sources of all payments received and all fund expenditures on a per-service area basis;

(b) A description of each project funded and information on the progress or completion of those projects;

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<sup>1</sup> Work still in progress to further delineate.

(c) The acreage and type of aquatic resources restored, enhanced, created, or otherwise protected in each service area by the projects described pursuant to (b), above; and

(d) The functions gained by the projects described pursuant to (b), above.

#### APPENDIX A: STATE STATUTES & FEDERAL STATUTES/REGULATIONS IMPLEMENTED

Rules	State Statute(s) Implemented	Federal Statutes/Regulations Implemented
Env-Wt 800	RSA 482-A:3, I; RSA 482-A:11; RSA 482-A:28-33	Clean Water Act, Section 404; 33 CFR Parts 325 & 332

#### Appendix B: Incorporation By Reference Information for Env-Wt 800

Rule (Env-Wt)	Title	Dated	Obtain at:
803.01(b)	Classification of Wetlands and Deepwater Habitats of the United States, FWS/OBS-79/31, Cowardin et al.	1979, reprinted 1992	US Fish and Wildlife Service Northeast Region 300 Westgate Center Dr. Hadley, MA 01035  Download at no cost from: <a href="http://www.fws.gov/wetlands/Documents/Classification-of-Wetlands-and-Deepwater-Habitats-of-the-United-States.pdf">http://www.fws.gov/wetlands/Documents/Classification-of-Wetlands-and-Deepwater-Habitats-of-the-United-States.pdf</a>
803.02(a)(1)	Highway methodology workbook supplement  Method for Inventorying and Evaluating Freshwater Wetlands in New Hampshire	1999 edition  2013 edition	U.S. Army Corps of Engineers New England District 696 Virginia Road Concord, MA 01742  Download at no cost from: <a href="http://www.nae.usace.army.mil/Portals/74/docs/regulatory/Forms/HighwaySupplement6Apr2015.pdf">http://www.nae.usace.army.mil/Portals/74/docs/regulatory/Forms/HighwaySupplement6Apr2015.pdf</a>  Download at no cost from: <a href="http://nhmethod.org">http://nhmethod.org</a>

Rule (Env-Wt)	Title	Dated	Obtain at:
803.02(a)(2)d.	“Natural Communities of New Hampshire”, second edition	2012	NH Department of Resources and Economic Development, Natural Heritage Bureau 172 Pembroke Road Concord, NH 03301 Download at no cost from: <a href="http://www.nhdf.org/library/pdf/Natural%20Heritage/WebVersion_Tech%20Manual.pdf">http://www.nhdf.org/library/pdf/Natural%20Heritage/WebVersion_Tech%20Manual.pdf</a>
	“Natural Community Systems of New Hampshire”, second edition	2011	<a href="http://www.nhdf.org/library/pdf/Natural%20Heritage/Web%20Version%20-%20Systems%20Report.pdf">http://www.nhdf.org/library/pdf/Natural%20Heritage/Web%20Version%20-%20Systems%20Report.pdf</a>

### APPENDIX C: STATUTORY DEFINITION

#### RSA 310-A:76:

II-a. “Certified wetland scientist” means a person who, by reason of his or her special knowledge of hydric soils, hydrophytic vegetation, and wetland hydrology acquired by course work and experience, as specified by RSA 310-A:84, II-a and II-b, is qualified to delineate wetland boundaries and to prepare wetland maps; to classify wetlands; to prepare wetland function and value assessments; to design wetland mitigation; to implement wetland mitigation; to monitor wetlands functions and values; and to prepare associated reports, all in accordance with standards for identification of wetlands adopted by the New Hampshire department of environmental services or the United States Army Corps of Engineers or their successors, and who has been duly certified by the board.

### APPENDIX D: STATUTORY PROVISIONS ESTABLISHING THE CERTIFIED CULVERT INSTALLATION PROGRAM

[Not relevant to this chapter]

### APPENDIX E: ADDITIONAL APPLICABLE STATUTE

**RSA 641:3 Unsworn Falsification.** – A person is guilty of a misdemeanor if:

I. He or she makes a written or electronic false statement which he or she does not believe to be true, on or pursuant to a form bearing a notification authorized by law to the effect that false statements made therein are punishable; or

II. With a purpose to deceive a public servant in the performance of his or her official function, he or she:

- Makes any written or electronic false statement which he or she does not believe to be true; or
- Knowingly creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading; or
- Submits or invites reliance on any writing which he or she knows to be lacking in authenticity; or
- Submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he or she knows to be false.

III. No person shall be guilty under this section if he or she retracts the falsification before it becomes manifest that the falsification was or would be exposed.