

Wetland Permit Guidance for LACs – Version 1.1

December 2019

Disclaimer: This document is intended to help local river management advisory committees (LACs), including the subcommittees of the Connecticut River Joint Commission, determine the process and timeframes for reviewing each type of wetlands permit application or notification submitted to NHDES on or after December 15, 2019. This document should NOT be used by applicants to determine the appropriate type of application for a proposed project.

SUMMARY:

There are five types of Wetlands Dredge and Fill permits:

1. Statutory Permit-by-Notification (SPN)
2. Lower Scrutiny Approval (LSA)
3. Expedited Permit (EXP)
4. Standard Permit (STD)
5. Emergency Authorizations

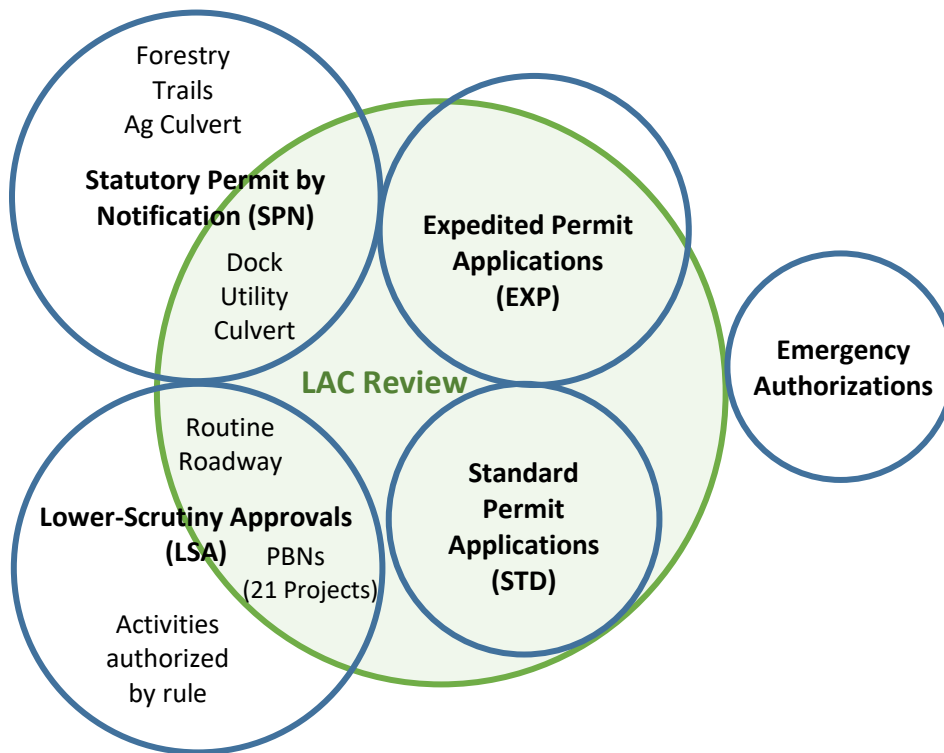


Figure 1. Diagram of wetlands permit types. Permit types inside the green, shaded circle are reviewed by LACs when located within a designated river corridor. For example, LACs are asked to review most EXP applications, but never Emergency Authorizations.

Projects are identified as Minimum, Minor, or Major based on the level of impact they are expected to have on the wetlands. Only minimum impact projects can be done under an SPN, LSA, or EXP. Major and minor impact projects may only be permitted under a Standard Permit, with a few exceptions not covered in this document.

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LACs have the opportunity to review all Standard Permit applications within the designated river corridor. Standard permit review responses are sent as comment letters or emails to the applicant, NHDES, or both.

Most minimum impact projects within a designated river corridor require the LAC to waive its right of intervention by signing the notification, registration, or application form in order for the project to be approved under that process. Waiving the right to intervene means that the LAC is satisfied with the project as proposed. If the LAC does not sign an SPN or LSA, the notification application will be disqualified by NHDES. If the LAC does not sign an EXP, it will continue to be processed, but under the timeframe of a standard permit. A few minimum impact projects do not require LAC review.

Emergency authorizations are issued without LAC review, but any permanent wetland impacts require the applicant to also submit a regular permit application after the emergency has passed, which the LAC will have the opportunity to review under the normal process for that permit type.

PERMIT TYPE: Statutory Permits-by-Notification (SPN)

The following project types are allowed by statute as long as the appropriate notification application is submitted to NHDES and the project meets the requirements. If the following projects are within LAC jurisdiction,¹ the notification application must be signed by the LAC indicating that the LAC waives its right to intervene and finds the project acceptable as proposed. LAC jurisdiction for projects conducted under an SPN vary based on the type of project.

1. Seasonal Dock SPNs and Utility Maintenance SPNs

PROJECT AREA FOR LAC REVIEW:	Designated River Corridor
LAC REVIEW RESPONSE:	Sign off on SPN application prior to submission to NHDES. No LAC signature: Application rejected.
NHDES COMPLETENESS REVIEW TIME:	Within 5 Working Days.
NHDES DECISION:	Approved if Complete.

- Seasonal Dock Notification: To install a temporary seasonal dock on a *lake or pond*. Temporary seasonal docks cannot be installed on a river under an SPN.
- Utility Maintenance Notification: Utility maintenance for minimum impact activities.

2. Culvert Repair and Replacement Notifications

PROJECT AREA FOR LAC REVIEW:	Must meet both criteria: 1) Within 250 feet of a Tier 2 or Tier 3 designated river (contributing watershed is greater than 200 acres); 2) The structure conveys a direct surface water or hydrologic connection to the designated river.
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LAC REVIEW RESPONSE:	Sign off on SPN application prior to submission to NHDES. No LAC signature: Application rejected.
NHDES COMPLETENESS REVIEW TIME:	Within 5 Working Days.
NHDES DECISION:	Approved if Complete.

- Routine Roadway projects for repair or replacement of culverts up to 48” diameter, that are *not on land used for agricultural purposes*. [Note that some Routine Roadway culvert repair and replacement projects can be done either under the SPN process or under the Lower Scrutiny Approval (LSA) Routine Roadway process.]
- LACs must be sent notice at least five days prior to the start of any routine roadway project *in the designated river corridor*, whether or not the LAC was required to sign off on the project.

3. Forestry SPNs, Trails SPNs, and Routine Roadway SPNs for Projects on Land Used for Agriculture

Minimum impact forestry projects, trail projects, and routine roadway *projects on land used for agricultural purposes* are exempted by statute from LAC review (RSA 483:12-a 1).

PROJECT AREA FOR LAC REVIEW:	None.
LAC REVIEW RESPONSE:	None.
NHDES COMPLETENESS REVIEW TIME:	Within 5 Working Days.
NHDES DECISION:	Approved if Complete.

- Forestry Notification: Timber harvesting that meets the requirements for minimum impact activities.
- Trails Notification: Recreational trail construction and maintenance.
- Culvert Repair-Replacement Notification: Routine Roadway projects, including repair or replacement of culverts up to 48” diameter, on land used for agricultural purposes.

PERMIT TYPE: Lower Scrutiny Approval (LSA)

There are three types of LSAs:

1. Activities authorized by rule – No notification, registration, or permit required:

PROJECT AREA FOR LAC REVIEW:	None
LAC REVIEW RESPONSE:	None
NHDES DECISION:	None

- Mowing and cutting vegetation in a wet meadow or some forested swamps when ground is frozen or dry.

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- Installation of boat mooring, swim raft or swim lines (Department of Safety permit may be required).
- Temporary fabric barriers less than 10,000 sq. ft. in a lake or pond.
- Stream crossing installation on an ephemeral stream.
- Use of piezometers, staff gages, flow meters, or hand augurs for certain purposes.
- Hand raking of shoreline or lake bed when lake bed is exposed, up to 900 sq. ft.
- Planting non-invasive species by hand.
- Stream crossings not impacting wetlands or stream (i.e. bridge extending top-of-bank to top-of-bank).
- Drilling geotechnical borings, within certain limitations.
- Digging test pits.
- Site remediation activities approved by NHDES.

2. Routine roadway maintenance (Env-Wt 309.03)

Registration is required for routine roadway maintenance activities that do not qualify for SPNs but that are qualified activities under the Routine Roadway Best Management Practices Manual. **Only those projects which meet the Project Area requirements below are subject to LAC review.**

PROJECT AREA FOR LAC REVIEW:	Must meet both criteria: 1) Within 250 feet of a Tier 2 or Tier 3 designated river (contributing watershed is greater than 200 acres); 2) The structure conveys a direct surface water or hydrologic connection to the designated river.
LAC REVIEW RESPONSE:	Sign off on SPN application prior to submission to NHDES. No LAC signature: Application rejected.
NHDES COMPLETENESS REVIEW TIME:	Within 5 Working Days.
NHDES DECISION:	Approved if Complete.

- Work must be done in accordance with the Routine Roadway Maintenance BMP manual.
- There are 9 project types that qualify for a Routine Roadway Maintenance registration. Each has a different registration form.
 - Culvert Replacement or Repair
 - Culvert Extension
 - Culvert Relocation
 - Embankment Stabilization
 - In-kind Headwall Repair Only; any size culvert
 - Headwall Construction, Repair or Replacement
 - Roadside Ditch Maintenance
 - Culvert Inlet and Outlet Maintenance
 - Temporary Scaffolding

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- LACs must be sent notice at least five days prior to the start of any routine roadway project in the designated river corridor, whether or not the LAC was required to sign off on the project.
- Some Routine Roadway culvert repair and replacement projects can also be done under the SPN process.

Note that stream crossing projects in designated river corridors cannot be completed under the Certified Culvert Maintainer Program (Env-Wt 905.05 (b)(1)c.).

3. Minimum impact activities that meet the standards of a Permit-by-Notification (PBN).

Lower Scrutiny Approval Permits-by-Notification are allowed for minimum impact activities that meet certain conditions. If they fall in an LAC's jurisdiction,¹ they require a signature from the LAC to be eligible for the PBN.

Minimum Impact Activities:

- 1) [Exotic Aquatic Weed Control Activities](#)
- 2) [Replenishment of an Existing Beach](#)
- 3) [Repair of a Deck or Patio](#)
- 4) [Installation of a New Non-Tidal Seasonal Dock](#)
- 5) [Repair of an Existing Legal Docking Structure](#)
- 6) [Installation of a Dock Anchoring Pad](#)
- 7) Installation of a Watercraft Lift (or Boatlift)
- 8) [Installation of a New Canopy](#)
- 9) [Repair of an Existing Retaining Wall](#)
- 10) [Maintenance or Repair of a Legally-Existing Boathouse](#)
- 11) [Installation of a Dry Hydrant](#)
- 12) [Forestry Activities](#)
- 13) [Utility Activities](#)
- 14) [Installation of Residential Utilities to a Single-Family Home](#)
- 15) [Agricultural Activities](#) (maintenance dredging of man-made ditches and ponds)
- 16) [Construction of a Temporary Cofferd Dam](#)
- 17) [Maintenance of a Tidal Docking Structure](#)
- 18) [Repair of a Legally-Existing Tier 1 \(up to 200-acre watershed\) or Tier 2 \(200 – 640-acre watershed\) Stream Crossing](#)
- 19) Repair of a Legally-Existing Tier 3 (640 acre or more watershed) Stream Crossing
- 20) [Replacement of a Tier 1 Stream Crossing](#)
- 21) [Installation of a Temporary Tier 1 or Tier 2 Stream Crossing](#)

Projects 1 – 17, Non-Stream Crossing Projects

PROJECT AREA FOR LAC REVIEW:	Designated River Corridor
LAC REVIEW RESPONSE:	Sign off on PBN application prior to submission to NHDES. No LAC signature: Application rejected.

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NHDES COMPLETENESS REVIEW TIME:	Within 2 Working Days.
NHDES DECISION:	Within 5 Working Days.

Projects 18 – 21, Stream Crossing Projects

PROJECT AREA FOR LAC REVIEW:	Must meet both criteria: 1) Within 250 feet of a Tier 2 or Tier 3 designated river (contributing watershed is greater than 200 acres); 2) The structure conveys a direct surface water or hydrologic connection to the designated river.
LAC REVIEW RESPONSE:	Sign off on PBN application prior to submission to NHDES. No LAC signature: Application rejected.
NHDES COMPLETENESS REVIEW TIME:	Within 5 Working Days.
NHDES DECISION:	Approved if Complete.

PERMIT TYPE: Expedited Permit (EXP)

An EXP application is allowed for minimum impact activities. If the proposed project lies within an LAC's jurisdiction,¹ an EXP requires a signature from the LAC indicating the right to intervene has been waived. If the EXP is not signed by the LAC, the review timeframe becomes the same as for a standard permit application [Env Wt-310.02 (h) as proposed in Final Proposal 2019-167 dated 11-25-19].

PROJECT AREA FOR LAC REVIEW <i>Non-Stream Crossing Projects:</i> <i>Stream Crossing Projects:</i>	Designated River Corridor Must meet both criteria: 1) Within 250 feet of a Tier 2 or Tier 3 designated river (contributing watershed is greater than 200 acres); 2) The structure conveys a direct surface water or hydrologic connection to the designated river.
LAC REVIEW RESPONSE (all EXPs):	LAC Sign off on EXP application prior to submission to NHDES. No LAC signature: The application will be processed under the timeframe of a Standard Permit application.
NHDES COMPLETENESS REVIEW TIME:	With LAC signature: Within 30 Calendar Days of receipt. No LAC signature: 10 Days ³
NHDES DECISION:	With LAC Signature: Within 1 Working Day of Completeness. No LAC signature: 50 Days (projects under 1 acre) 75 Days (projects 1 acre or more)

- Minimum Impact Activity provisions are described for specific project types in Env-Wt 500, 600, and 900.

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- LACs must be notified five days prior to start of work of any EXP routine roadway maintenance project within the designated river corridor.

Small motor mineral dredging is a minimum impact activity that requires a permit, but has its own permit requirements and fee. The permit application is sent directly to NHDES with no municipal or LAC review. The permit is only valid for the calendar year in which it is issued.

PERMIT TYPE: Standard Permit

PROJECT AREA FOR LAC REVIEW:	Designated River Corridor
LAC REVIEW RESPONSE:	<ol style="list-style-type: none"> 1. Submit comments to applicant prior to submission to NHDES if the applicant sends it early enough for the LAC to review. 2. If the LAC notifies NHDES within 14 days of municipal filing that they wish to investigate the proposed project, the LAC will have 40 days from municipal filing to submit comments to NHDES. During this time NHDES may not approve the permit [RSA 482-A:11 III(a)].² LAC must contact town or NHDES for municipal clerk signature date. 3. LAC may submit comments to NHDES within the normal NHDES decision review time, but NHDES is not required to hold the permit approval until LAC comments are received.
NHDES COMPLETENESS REVIEW TIME:	10 Days.
NHDES DECISION:	50 Days (projects under 1 acre). 75 Days (projects 1 acre or more).

- Rules require that a copy of the final STANDARD PERMIT application and plans are provided to the LAC prior to filing with NHDES [Env-Wt 311.01(e)]. The application fulfills the requirement for notice of the proposed project to the LAC.

Step 4: Determine whether the following apply to the subject property (Env-Wt 306.05(a)(4); RSA 482-A:3, I(d)(2)):

<p>1. Is the property within a <u>Local River Management Advisory Committee (LAC)</u> jurisdiction?</p> <p>If yes, please provide the following information:</p> <ul style="list-style-type: none"> • The project is within ¼ mile of: <input type="text" value="My Favorite River"/> • A copy of the application was sent to the LAC on Month: <input type="text" value="12"/> Day: <input type="text" value="16"/> Year: <input type="text" value="2019"/>. <input type="checkbox"/> N/A (Env-Wt 311.01(e)) 	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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- Wetlands statute, as well as Rivers Program statute, requires the LAC to comment on the project. The application must include a statement as to whether the applicant has received comments from the LAC and how those comments have been addressed.

For projects in LAC jurisdiction, a statement of whether the applicant has received comments from the LAC and, if so, how the applicant has addressed the comments (Env-Wt 311.06(i))

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- There is no requirement for the applicant to wait for an LAC's comments before submitting their application to NHDES.
- Rivers Program staff recommends that for any wetlands permit application received, the LAC immediately contact the NHDES Wetlands Bureau and let them know that you intend to investigate the proposed project, and at the same time request the date that the municipal clerk signed the application. The LAC then has 40 days from the municipal clerk signature to submit comments to NHDES.
- Rivers Program staff also recommends that LACs copy NHDES on any comment sent to the applicant.
- Outstanding Resource Waters (ORWs) must be identified in a Standard Permit application [Env-Wt 306.05(a)(7)]. ORWs include designated rivers classified as Natural.
- If an applicant submits a wetlands application and a shoreland application at the same time with a request to process the applications together, the longer of the two permitting deadlines applies.
- If the LAC is reviewing a standard permit application after submission to NHDES under RSA 482-A:11 III(a), including having sent NHDES written notification of the LAC's intention to investigate the application within 14 days of the date the notice is filed with the municipal clerk, the LAC may request a 40-day extension of the investigation timeline for good cause.
- NHDES is required to consider the LAC's recommendation.

PERMIT TYPE: Emergency Authorization

LAC REVIEW RESPONSE:	None.
NHDES REVIEW TIME:	3 Working Days from receipt of written request.

Work conducted under an Emergency Authorization must be limited to site stabilization, mitigation of immediate threat, or prevention of additional damage. Repairs cannot result in additional impacts to wetland areas. If permanent repairs or impacts are required, a regular notification or permit application must be submitted as appropriate for the work that was done.

ACTIVITIES THAT DO NOT REQUIRE ANY WETLANDS PERMIT or NOTIFICATION:

(See Env-Wt 308 for additional details.)

- Culvert cleaning.
- Maintenance of man-made drainage, roadside, and railroad ditches.
- Maintenance of stormwater detention, fire, and farm ponds.
- Repair of erosional features cause by human activity.
- Maintenance of man-made water conveyance systems for commercial or industrial use.
- Removal blown-in sand from lawns, walkways, boat ramps, etc.
- Installation of a bench.

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- Installation of a landing up to 10' x 10' (with no shoreline regrading).
 - Installation of stairs up to 6' wide (with no shoreline regrading).
 - Gold panning (without mechanized equipment).
 - Removal of a beaver dam or installation of beaver fencing/pipes, as long as no machinery enters the water.
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DEFINITIONS:

¹LAC Jurisdiction (Env-Wt 103.27): “LAC jurisdiction” means the authority conferred by RSA 483:8-a. III upon a local river management advisory committee relative to activities within a designated river or river corridor, provided that for purpose of routine roadway maintenance activities conducted under an SPN, registration, PBN, or EXP, LAC jurisdiction shall be limited to activities in or within 250 feet of a Tier 2 or Tier 3 designated river that have a direct surface water connection to the designated river.

²RSA 482-A:11 III(a): Upon written notification to the department by a municipal conservation commission, a local river management advisory committee, or the New Hampshire Rivers Council that it intends to investigate any notice received by it pursuant to RSA 482-A:3, the department shall not make its decision on the application that is the subject of the notice until it has received and acknowledged receipt of a written report from such commission, local river management advisory committee, or the council, or until 40 days from the date of filing with the municipal clerk of such notice, whichever occurs earlier, subject to an extension of up to 40 days, as permitted by the commissioner, for good cause shown. ...

³Day versus Working Day: Throughout this document, working days refers to Monday through Friday on non-holiday days. Reference to ‘day’ without a qualifier means calendar days, including weekends and holidays.