



# Wetlands Rulemaking Initial Proposal

NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES

## Streamlined/Improved Process

Current Process	Proposed Process	Change
<p><b>Permit By Notification (PBN)</b></p> <ul style="list-style-type: none"> <li>Processed in <b>10 days</b></li> </ul>	<ul style="list-style-type: none"> <li>PBNs processed in <b>5 days</b>.</li> <li>Aligns with Shoreland PBN and eliminates Conservation Commission (CC) review and abutter notice.</li> </ul>	<ul style="list-style-type: none"> <li>Reduces cost and processing time for all minimum-impact projects.</li> <li>Twelve additional project types qualify for PBN.</li> </ul>
<p><b>Standard Minimum-Impact projects</b> (up to 3,000 ft<sup>2</sup>, single-family, non-commercial)</p> <ul style="list-style-type: none"> <li>Processed in <b>75 days</b>.</li> </ul>	<ul style="list-style-type: none"> <li>Projects qualifying for PBN processed in <b>5 days</b>.</li> <li>PBN for new residential (up to 3-lot subdivision).</li> <li>PBN for new commercial access.</li> </ul>	<ul style="list-style-type: none"> <li>Reduces cost and processing time.</li> <li>Increases streamlining for small subdivision and commercial projects.</li> <li>Increases number of qualifying project types.</li> </ul>
<p><b>Expedited Process</b> (<i>any</i> minimum-impact project)</p> <ul style="list-style-type: none"> <li>Processed in <b>30 days</b> with CC review and waiver of intervention.</li> </ul>	<ul style="list-style-type: none"> <li>Processed in <b>10 days</b>.</li> <li>New project types: restoration, wildlife ponds, living shorelines.</li> </ul>	<ul style="list-style-type: none"> <li>Reduces cost and processing time.</li> <li>Increases number of qualifying project types.</li> </ul>
<p><b>Agriculture</b> (up to 3 acres)</p> <ul style="list-style-type: none"> <li><i>Standard</i> projects process in <b>75 days</b>.</li> <li><i>Expedited</i> (only when submitted by NRCS) processed in <b>30 days</b>.</li> <li>Road access not allowed.</li> </ul>	<ul style="list-style-type: none"> <li><b>New PBN</b> with Natural Resource Conservation Service (NRCS) OR certified wetland scientist (CWS) processed in <b>5 days</b>.</li> <li>Minimum-access road associated with agriculture allowed under PBN.</li> </ul>	<ul style="list-style-type: none"> <li>Reduces cost and processing time.</li> <li>Increases number of qualifying projects.</li> </ul>
<p><b>Forestry, Trails and Routine Roadway</b> (and projects sized as minimum impact)</p> <ul style="list-style-type: none"> <li>With protected species or habitat, requires standard dredge and fill application, and CWS delineation.</li> </ul>	<ul style="list-style-type: none"> <li><b>All minimum impact projects eligible for Statutory Permit by Notification (SPN) or PBN</b> with Natural Heritage Bureau (NHB) and New Hampshire Fish and Game Department (NHFG) recommendations.</li> </ul>	<ul style="list-style-type: none"> <li>Increases the number of projects that can be processed using SPN and PBN.</li> </ul>
<p><b>Utility</b></p> <ul style="list-style-type: none"> <li>With protected species or habitat, requires standard dredge and fill application and CWS delineation.</li> </ul>	<ul style="list-style-type: none"> <li><b>Eligible for SPN</b> with NHB and NHFG recommendations.</li> <li>Unlimited temporary maintenance if best management practices (BMPs) are followed.</li> </ul>	<ul style="list-style-type: none"> <li>Increases the number of projects that can be processed using SPN.</li> </ul>



Current Process	Proposed Process	Change
<b>Shoreland and Shoreline Structures</b> <ul style="list-style-type: none"> <li>Each application is processed separately.</li> </ul>	<ul style="list-style-type: none"> <li><b>Allows for consolidation</b> of lakefront and coastal projects processed under one application.</li> </ul>	<ul style="list-style-type: none"> <li>Streamlines process by allowing multiple projects to have a single application, plan and point of contact.</li> <li>Simplifies review process.</li> <li>Reduces application and consulting costs.</li> </ul>
<b>Bank/stream Impacts</b> (up to 50 linear feet) <ul style="list-style-type: none"> <li>Qualifies for <b>Standard Minimum-Impact, Expedited or SPN</b>.</li> </ul>	<ul style="list-style-type: none"> <li><b>Qualifies for PBN</b>.</li> <li>Up to 200 linear feet of impact or alteration will qualify for PBN if using bioengineering.</li> </ul>	<ul style="list-style-type: none"> <li>Reduces cost and processing time.</li> <li>Increases number of qualifying projects.</li> </ul>
<b>Stream Crossings</b> <ul style="list-style-type: none"> <li>Projects in impaired or Tier 3 waters, or designated rivers automatically classified as “major” and requires standard application</li> <li>Limited repair allowed for Tier 3.</li> <li>Minimum-impact Routine Roadway allowed under SPN.</li> </ul>	<ul style="list-style-type: none"> <li><b>Prevents elevation of projects</b> to “major” unless it is within 250 feet and has a direct surface water connection to a Tier 2 or 3 crossing.</li> <li><b>Allows for repair</b> of Tier 3 under minimum-impact PBN. Headwall repair and culvert/inlet maintenance <b>will now qualify</b> for Routine Roadway Notification.</li> </ul>	<ul style="list-style-type: none"> <li>Increases number of projects that will qualify for PBN.</li> <li>Allows more projects to proceed with minimal fee, fewer consulting fees and no technical review.</li> </ul>
<b>Coastal</b> <ul style="list-style-type: none"> <li>Full standard dredge and fill application for many projects.</li> </ul>	<ul style="list-style-type: none"> <li>Creates <b>new PBNs</b> for maintenance of docks, developed upland tidal buffer zone, sand dune restoration and living shorelines bank stabilization projects.</li> </ul>	<ul style="list-style-type: none"> <li>Reduces cost and processing time.</li> <li>Increases number of qualifying projects.</li> </ul>
<b>Aquaculture</b> <ul style="list-style-type: none"> <li>Both a standard wetlands permit and a NHFG license required.</li> </ul>	<ul style="list-style-type: none"> <li><b>No NHDES permit required</b> if NHFG license has been obtained (for projects up to 4.5 acres – no fin-fish).</li> </ul>	<ul style="list-style-type: none"> <li>Reduces cost and processing time.</li> <li>Streamlines process with single application versus two applications.</li> <li>Increases number of qualifying projects.</li> </ul>
<b>Abutter Setbacks</b> <ul style="list-style-type: none"> <li>Abutter setback is <b>20 feet</b> for all projects.</li> </ul>	<ul style="list-style-type: none"> <li>Abutter setback is <b>10 feet</b> for wetland projects.</li> </ul>	<ul style="list-style-type: none"> <li>Increases design flexibility and number of projects that can be processed without abutter permission.</li> </ul>

### Projects that do not require a notice or permit

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|---|--|--|
| <ul style="list-style-type: none"> <li>Drilling of test wells by a public agency for public water supplies or hazardous waste materials.</li> </ul> | <ul style="list-style-type: none"> <li>Drilling of drinking water wells for public or private use.</li> <li>Geotechnical borings for boathouse basin design.</li> <li>Installing wells to investigate or monitor soil or groundwater contamination.</li> <li>Undertaking site remediation activities provide by <a href="#">Env-Or 600</a>.</li> </ul> | <ul style="list-style-type: none"> <li>Increases the number of projects that require neither permit nor notification.</li> <li>Reduces cost for homeowners, municipalities and State agencies.</li> <li>Streamlines projects that require site assessments and remediation.</li> </ul> |
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# Enhanced Requirements

Current Process	Proposed Process	Change and Reason
<b>Threshold for “major” impact changed</b>		
<ul style="list-style-type: none"> <li>Wetlands impact of <b>20,000 ft<sup>2</sup></b> unless Project Type Exception (PTE), SPN or maintenance project exists.</li> </ul> <p>However, <b>current practice is impacted by existing rule/law:</b></p> <ul style="list-style-type: none"> <li><a href="#">RSA 482-A:11</a> (abutter impacts)</li> <li><a href="#">RSA 428-A:17</a> and <a href="#">Env-Wt 300</a> (alteration of terrain and flood storage displacement).</li> <li><a href="#">Env-Wq 1500</a> (flooding, water quality)</li> </ul>	<ul style="list-style-type: none"> <li>Wetlands impact of <b>10,000ft<sup>2</sup></b> to match mitigation threshold.</li> <li>New resource elevation is located in <i>floodplain wetland contiguous to a Tier 3 or higher watercourse</i> and only in non-maintenance PTE.</li> </ul>	<ul style="list-style-type: none"> <li>Simplifies mitigation major thresholds (no impact to applicant).</li> <li>Addresses increased <b>flooding, erosion</b> to downstream properties and potential for <b>public safety</b> impacts.</li> <li><b>Codifies current practice</b> and brings rules into alignment with existing NHDES rules and law.</li> <li>Review of all applications (9,000+) over a five-year period found only two projects that changed project classification based on this change.</li> </ul>

## Public Hearing threshold requirements

<ul style="list-style-type: none"> <li>When a “major” project has important physical component of a wetland or coastal zone ecosystem.</li> <li>When resource impacts have special value from a local, regional or state perspective and issues are raised pursuant to <a href="#">RSA 482-A:1</a> (Fill and Dredge in Wetlands).</li> </ul>	<ul style="list-style-type: none"> <li>When there is “significant environmental impact” where a project will dredge or fill more than 1 acre of wetland, 1/2 mile of watercourse, or impact more than 1/2 acre of tidal wetland.</li> <li>When there is “substantial public interest,” meaning that NHDES has been contacted by individuals <b>and</b> town or county officials, or govt. instrumentality who have voiced concerns documenting flood storage, hydrologic integrity or habitat from local, state or regional perspective.</li> </ul>	<p><b>Objective criteria recommended by LBA Audit:</b></p> <ul style="list-style-type: none"> <li>Increases the number of public hearings for large-scale projects.</li> <li>Increases consistency and objectivity in public hearing process.</li> </ul>
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## Data Screening

- | Current Process  | Proposed Process  | Change and Reason  |
|--|---|--|
| <ul style="list-style-type: none"> <li>• <b>Rule:</b> <a href="#">Env-Wt 300</a> Projects in a wetland that is identified by NHB as an “exemplary natural community” and/or has documented occurrences of state- or federally-listed endangered or threatened species are categorized as major.</li> <li>• <b>Statute:</b> <a href="#">RSA 212-A</a>; <a href="#">482-A</a>, federal <a href="#">Endangered Species Act</a></li> <li>• Army Corps of Engineers (ACE) <a href="#">State General Permit (SGP)</a>: Requires protected species/habitat review (p. 13 – General Condition 13)</li> <li>• Current Practice: <a href="#">Natural Heritage Bureau (NHB) Data-Check tool</a> used by applicants to screen for protected species or habitat.</li> </ul> | <ul style="list-style-type: none"> <li>• NHB Data-Check Identification number and recommendation must be received for SPN.</li> <li>• <b>All projects sized as minimum impact are eligible for SPN or PBN</b> with NHB and NHFG recommendations.</li> </ul>   | <ul style="list-style-type: none"> <li>• <b>Ensures consistency</b> with sister state agencies and federal process.</li> <li>• Enhances transparency to process.</li> </ul>  |
| <p>The following layers are <b>currently screened by GIS</b>:</p> <ul style="list-style-type: none"> <li>• Designated Rivers (<a href="#">RSA 483</a>)</li> <li>• Floodplains (<a href="#">Env-Wt 300</a> and <a href="#">900</a>)</li> <li>• Impaired Waters (<a href="#">RSA 485-A</a>)</li> <li>• Prime Wetlands (<a href="#">RSA 482-A</a>)</li> <li>• Fish Survey (<a href="#">RSA 482-A</a>)</li> <li>• Protected Species and Habitat (<a href="#">RSA 212-A</a>)</li> <li>• Stream-Stats to determine watershed size (done by applicant) (<a href="#">Env-Wt 900</a>)</li> </ul>  | <p><b>Additional GIS links</b> referenced for all projects:</p> <ul style="list-style-type: none"> <li>• Peatlands (Bogs) and marsh scrub-shrub wetlands.</li> <li>• Class A waters.</li> <li>• Hydric soils.</li> <li>• Contaminated layers.</li> <li>• Sanitary protective radii (drinking water).</li> <li>• Outstanding resource waters.</li> </ul> | <ul style="list-style-type: none"> <li>• <b>Enhances process</b> and project impact assessment.</li> <li>• <b>Improves evaluation</b> of known information about resources, <b>compliance and consistency with water quality standards, and risks to public health and safety.</b></li> <li>• <b>Ensures consistency</b> with sister state agencies and federal process.</li> <li>• Enhances transparency to process.</li> </ul> |

# Consistency with Current Practice

Current Process	Proposed Process	Change and Reason
<p><b>Avoidance and minimization</b></p> <ul style="list-style-type: none"> <li>Not defined in State rules, use federal definitions.</li> </ul>	<ul style="list-style-type: none"> <li>Use federal definitions and new BMPs.</li> </ul>	<ul style="list-style-type: none"> <li>Provides transparency and predictability.</li> <li><b>Captures existing permit practices and ensures consistency</b> with federal rules.</li> </ul>
<p>A <b>wetland assessment</b> is required for minor and major projects.</p>	<p>A <b>wetland functional assessment</b> is required for all standard applications.</p>	<ul style="list-style-type: none"> <li><b>Ensures consistency</b> with New England ACE Highway Methodology.</li> </ul>
<p><b>References existing rules</b> with impacts to water quality in design evaluation, BMPs and conditions.</p>	<p><b>Adds references</b> to New Hampshire Stormwater Manual and other technical guides.</p>	<ul style="list-style-type: none"> <li><b>Captures existing permit practices and ensures consistency</b> with federal SGP.</li> </ul>

## Coastal

<ul style="list-style-type: none"> <li>Requires flood, erosion or sedimentation assessment.</li> </ul>	<ul style="list-style-type: none"> <li>Requires a vulnerability assessment to address sea level rise (SLR) projection.</li> <li>Requires a structural integrity assessment under SLR scenarios (requires a PE).</li> </ul>	<ul style="list-style-type: none"> <li><b>Aligns</b> rule with the legislative New Hampshire Coastal Risk and Hazards Commission (2016) <a href="#">Preparing New Hampshire for Projected Storm Surge, Sea-Level Rise and Extreme Precipitation</a>, and <a href="#">Senate Bill 452</a> (Chapter 195, Laws of 2016).</li> </ul>
<ul style="list-style-type: none"> <li>Limited rules for Tidal Docks.</li> <li>Guidance on limits derived from systematic review of all permitted docks over 20-year period.</li> </ul>	<ul style="list-style-type: none"> <li>PE required for design of large-scale piers in commercial and industrial tidal docks.</li> <li>Maximum length set to 200 feet.</li> </ul>	<ul style="list-style-type: none"> <li>Length and design requirements set for <b>channel navigation</b> and <b>public safety</b>.</li> </ul>