



# Wetland Recommendations for DES August 2017

The Associated General Contractors of New Hampshire (AGC of NH), after review by our 2017 Board of Directors and Environmental Committee, is pleased to submit the enclosed packet of recommendations and suggestions to help improve the State of New Hampshire Wetland Process and Alteration of Terrain rules. The AGC of NH has prepared these recommendations and suggestions for ways to improve the permit processes. Our recommendations include a new "Permit by Professionals" and a five-tiered system for categorizing wetlands. The AGC of NH believes these recommendations and suggestions provide a framework for promoting the State of New Hampshire's goal of improving the balance between the State's environment and its economy. We look forward to working with the Department further on this issue to improve both the state's Wetlands process and Alteration of Terrain program.

**For questions, contact:**

Associated General Contractors of New Hampshire  
48 Grandview Road  
Bow, NH 03304  
Phone: 603-225-2701



# “Permits by Professionals”

## Making Use of Certified/Licensed Professionals

**Recommendation:** Utilize professionals to permit minimis areas of wetland impact.

**Benefits:** Expedites process for applicant and reduces DES staff time & effort.

While all wetland delineations have to be performed by a Certified Wetland Scientist, permit applications can be prepared by others. The State has Certified Soil Scientists, Certified Wetland Scientists, Licensed Septic Designers, Licensed Surveyors, and Licensed Professional Civil Engineers. All have codes of ethics, continuing education requirements, and boards that oversee their work. There is a presumption of competence in the certified/licensed professional that extends throughout the professions. If a certified/licensed professional prepares the Professionally Prepared PBN and signs the application (along with the landowner), confirming that the project has met all the conditions of the notification, including review of the impacts to insure avoidance and minimization, then the Wetlands Bureau should accept their findings.

Here are some of the current issues with Permit by Notification:

- Small wetland impacts take too long in the permitting process.
- Staff time of inspectors is primarily consumed with small wetland impacts that have negligible effects on the overall wetland resources.
- Applications on small wetland impacts often lack plans or clear descriptions. (Professional submissions would correct this.)
- Applications on small wetland impacts clog the permitting system and take time away from the review of larger and more complicated projects.

### **Make All Minimum Impact Permits Prepared by a Professional**

Wetland impacts of less than 3,000 square feet are very de minimis areas of wetland impact. Conditions can be applied to avoid areas of endangered or threatened species and other sensitive areas. Conditions can also be applied to basically cover needed impacts, like crossings of wetlands to buildable uplands, and avoid unnecessary impacts, like building tennis courts or swimming pools in the wetlands. This would include expedited permits, agricultural permits, and other notification projects.

### **Segregate the Minimum Impact Projects**

Permits that are prepared by professionals should be segregated from the current list of Permits by Notification (PBN). Those permits prepared by non-professionals would go through a standard process, with a standard review by a wetlands inspector. The Professionally Prepared PBN would have a quick turnaround (see below) that would be automatic and not subject to review by wetland inspectors.

### **Professionally Prepared PBNs Should be Approved Administratively**

Wetland inspectors' time is better spent on significant impact projects rather than minimum impact projects. They should be focused on the minor and major projects. Administrative staff can send out an acceptance of the Professionally Prepared PBN or a hold on the Professionally Prepared PBN. With the exception of compliance checks, the inspectors should be spending their time on the bigger and more complicated projects.

### **Avoidance and Minimization Workshops**

Along with giving responsibility to the professionals, there should be training in what constitutes avoidance and minimization. DES already has a working draft of an avoidance and minimization guidance document. Train the professionals to properly craft an application that meets the requirements of the Department.

### **Allow Electronic Submissions of Wetland Applications**

With the advent of electronic submissions for septic system designs, it only makes sense that wetland applications be saved and processed digitally. All plans, mailing receipts, application forms, DNR and DHR response letters, etc., can be scanned and sent in digitally.



# Developing a New Tier Assessment

## For larger impact projects and those that require compensatory mitigation

**Recommendation:** A new tier assessment for permits that would establish the level of importance of any particular wetland impact.

**Benefits:** DES can develop consistent mitigation alternatives & recommendations to meet the assessment level, thus reducing the time for professionals and the Department.

### Simplified Five-Tier Wetland Assessments

There is plenty of information about functions and values of wetlands. There are also numerous complicated wetland assessment methods. What is needed is a simplified assessment method that ranks the wetlands into 5 levels, with Level 1 having the least function and value, and Level 5 having the most functions and values. Impacts to Level 1 and Level 2 wetlands should not require much review. Level 3 wetlands need to be scrutinized in more detail. Level 4 and Level 5 wetlands need a complete alternatives analysis, regardless of the square footage of impact. This simplified assessment will make the system less subjective and more consistent, while also making it easier to understand for both the applicant and the professional.

### Wetland Tiers:

**Level 1** - Wetlands that were created by man. These would include roadside ditches, railroad ditches, agricultural ditches, stormwater conveyance features, wash ponds, agricultural ponds, recreational ponds, golf course ponds, fire ponds, detention basins, erosional gullies, sluice ways, wetlands that developed in gravel pits, agricultural wet meadows, etc. Would not include open water bodies of greater than 10 acres in size, regardless of the origin.

**Level 2** - Natural wetlands that are less than 20,000 SF in total size. These wetlands can be forested, scrub-shrub, or emergent. They can have any water regime from seasonally saturated to permanently flooded.

**Level 3** - Forested wetlands, scrub-shrub wetlands or wet meadow wetlands of greater than 20,000 SF in total size. Would not include emergent wetlands or scrub-shrub wetlands that are permanently flooded. Also would not include active forested floodplain wetlands.

**Level 4** - Intermittent streams, perennial streams, permanently flooded emergent wetlands or scrub-shrub wetlands, marshes, active floodplain wetlands, tidal wetlands, and open waterbodies greater than 10 acres in size.

**Level 5** - Bogs, wetlands with threatened or endangered plants, wetlands that have documented occurrence of threatened or endangered water-dependent wildlife, wetlands with a rare or unique plant community as documented by the Natural Heritage Bureau.

*These level descriptions are in no way an attempt to change, expand, or reduce the current statutory requirements, but rather to clarify the environmental importance for each permit submitted to the Department.*



# Reevaluating Current Processes

## Additional recommendations for Wetlands and Alteration of Terrain

### **Alteration of Terrain Redevelopment Rules**

The standards in the Alteration of Terrain permit were predicated on new development. Issues have come up over the years on how to interpret those rules on redevelopment sites. In 2010 and 2011, the Home Builders, the Realtors, Associated General Contractors, and others presented recommendations to standardizing how Alteration of Terrain would be interpreted consistently for all applicants. Every year since then, AGC has asked when these changes would be put into the DES rules. The specific changes to the rules were drafted but never implemented. These changes would have clarified how redevelopment sites would be treated and added consistent interpretations from one project to another. The Department has instituted taking recommendations on a case-by-case basis, but these options are not available to any party who may not be aware of these alternatives when applying for a permit.

### **In-Lieu Fee or ARM Fund Changes**

The participation in the ARM Fund should be voluntary for the applicant. One of the major causes of time delays is the requirement to search for alternative mitigation, since applicants are only allowed to use the ARM Fund after exhausting all alternatives. This change in the law would be beneficial to the state in many ways. First, the length of time a permit is handled by the staff would be greatly reduced. Also, the ARM Fund could develop rules and procedures to work with local communities in a more detailed, comprehensive manner to make sure the funds help the environment in a long-term plan approach as opposed to the current project-by-project patchwork. We believe that the DES should review the ARM Fund calculator and evaluate how the funds are spent. The ARM Fund program could coordinate the local communities and consider ways of reissuing the funds for an overall benefit to the state environment.

### **Changing the Wetland Appeals Process**

The statute requires any applicant who wants to appeal a denial to be reheard by the same individuals who made the denial. This process has long been considered flawed and in need of a more expedited process. If an applicant today appeals a decision, this usually adds months to a year to the process. This has an impact on applicants as well as the overall impact on the division. From the applicant side, we have always envisioned a system similar to a planning or zoning board, which would be more effective and timely. A number of organizations representing applicants would be happy to work with the department on fixing this procedure.

There are many additional topics the association is interested in, including the DES reorganization plan, Instream Flow rule changes, air emission fees, and federal changes to the Waters of the US definitions.