

NH Department of Environmental Services

***PROPOSED ADMINISTRATIVE RULES
CHAPTER Env-Wq 1400 Shoreland Protection***

Ref. RSA 483-B The Comprehensive
Shoreland Protection Act

The following are the proposed rules reflecting the changes to RSA 483-B The Comprehensive Shoreland Protection Act (CSPA) as developed by NH DES staff.

This copy is current as of 12/17/07.

The rules hearing has been scheduled for January 16, 2008 in rooms 110 and 111 at the NH DES offices in Concord, NH. We encourage your participation.

Copy provided by:

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Readopt with amendment Env-Wq 1400, eff. 04-23-05 (doc. #8329), to read as follows:

CHAPTER Env-Wq 1400 SHORELAND PROTECTION

Statutory Authority: RSA 483-B:17

PART Env-Wq 1401 PURPOSE AND APPLICABILITY

Env-Wq 1401.01 Purpose. The purpose of these rules is to implement RSA 483-B, the comprehensive shoreland protection act.

Env-Wq 1401.02 Applicability. These rules shall apply to all land areas subject to RSA 483-B as specified in RSA 483-B:4, XV and RSA 483-B:4, XVI, namely, all land areas ***within 250 feet, horizontal distance, of:***

(a) ~~Within 250 feet, horizontal distance, of~~ ***The natural mean high water level, for*** ~~of~~ natural fresh water bodies without artificial impoundments listed in the official list of public waters published by the department;

(b) ~~Within 250 feet, horizontal distance, of~~ ***The water line at full pond as determined by the elevation of the top of the impoundment structure of spillway crest, for*** artificially impounded fresh water bodies ***without established flowage rights*** listed in the official list of public waters;

(c) ***The established flowage rights, for artificially impounded fresh water bodies with established flowage rights listed in the official list of public waters;***

(d) ~~Within 250 feet, horizontal distance, of~~ ***The highest observable tide line, for*** ~~of~~ coastal waters; and

(e) ~~Within 250 feet, horizontal distance, of~~ ***The ordinary high water mark, for*** ~~of~~ rivers; ***designated as protected under RSA 483:15 and meaning all year-round flowing waters of fourth order or higher, as specified shown on the current version of the U.S. Geological Survey topographic maps as defined in RSA 483-B:4, XVI(c), excluding those land areas exempted by RSA 483-B:20.***

PART Env-Wq 1402 DEFINITIONS

Env-Wq 1402.01 Statutory Definitions. Any term used in these rules that is defined in RSA 483-B:4 shall have the same meaning as in RSA 483-B:4.

Env-Wq 1402.02 Additional Definitions. In addition to the statutory definitions, the following definitions shall apply:

(a) ***“Construction” for the purpose of RSA 483-B:5-a, I(a), means:***

(1) ***The erection, demolition, or reconstruction or alteration of any building or structure; or***

(2) ***Any activity that increases the impervious area of a property.***

(a-b) ***“Fertilizer” as used in RSA 483-B:9, means any substance containing one or more any recognized plant nutrient(s) which is used primarily for its plant nutrient content and which is designed or intended for use in promoting plant growth or claimed to have value in promoting plant growth, or which***

is used with the intent of prompting plant growth.

(c) ***“Footprint” as used in RSA 483-B:11, I, means the area of land surface that lies directly beneath the limits of the exterior walls of a structure, whether the structure rests directly on the ground or is raised above the ground surface.***

(d) ***“Functionally-equivalent use” means a use for a new or remodeled structure that maintains the use of an existing residential structure as residential and an existing commercial structure as commercial and that does not increase the sewage loading.***

(e) ***“Impervious area” means, for purposes of the impervious surfaces limitation specified in RSA 483-B:9, V(g), the area that is occupied, covered, or over hung by any impervious surface as defined in RSA 483-B:4, VII-a.***

(f) ***“Low phosphate, slow release nitrogen fertilizer” means fertilizer that is guaranteed, as indicated on the package label, to contain:***

(1) ***Not more than 2% phosphorus; and***

(2) ***A nitrogen component that is at least 50% slow release nitrogen components as specified in Agr 1103.02 or successor rule.***

~~(bg) “Non-conforming lot of record” means a parcel of property that does not meet current state or local subdivision, zoning, or other lot size or setback requirements.~~ ***“nonconforming lot of record” as defined in RSA 483-B:4, XI-a, namely “an existing lot which does not conform to the provisions of this chapter.”***

(h) ***“Open porch” means a porch that is supported by pilings or post supports but that does not have permanent foundation walls, insulation, or a heat source. An open porch may be screened but may not be enclosed with glass or any other material designed or intended to provide a weather-proof barrier.***

(ei) ***“Pre-existing nonconforming primary structure” means a primary structure that does not meet current setback requirements and that was built prior to:***

(1) ***July 2, 2002, for properties on the Connecticut River, as provided by RSA 483-B:20;***

(2) ***June 15, 1998, for properties on the Lamprey River, the Swift River, and those portions of the Merrimack River and the Contoocook River designated prior to that date for protection under RSA 483, as provided by Laws of 1998, 182:1; or***

(3) ***July 1, 1994, for all other properties that are subject to RSA 483-B other than those specified in (4), below; and***

(4) ***April 1, 2008, for properties that are included as a result of Laws of 2007, Ch. 267, namely all designated rivers not included in (a) or (b), above, and fourth order streams classified pursuant to RSA 483-B:4, XVI(c) that were not previously classified as fourth order.***

(j) ***“Same degree of protection provided to the public waters” as used in RSA 483-B:11, II, means that:***

(1) ***No portion of the proposed structure will be closer to the reference line than the existing***

structure;

(2) The net effect of the project will not increase the area of impervious surface or diminish the waterfront buffer below the standards specified in RSA 483-B:9, V(a) or diminish the natural woodland buffer below the standards specified in RSA 483-B:9, V(b); and

(3) No adverse environmental impacts, such as permanent removal of native vegetation or the addition of impervious surfaces, will be created unless they are offset by compensatory environmental enhancements designed to promote infiltration, intercept sediment, remove nutrients, shade the shoreline, provide wildlife habitat, or improve sanitation, or any combination thereof, to an extent that at least offsets the expected adverse impacts.

(k) “Shoreland permit” means a permit issued under RSA 483-B:5-a, I(a) other than a permit by notification under Env-Wq 1406.04.

(l) “Stabilized” means conditions under which soils will not erode.

(m) “Unsafe tree” means a tree that has a structural defect and poses an imminent hazard to structures, as certified by an arborist.

PART Env-Wq 1403 ~~ENFORCEMENT-MAINTENANCE OF THE WATERFRONT BUFFER AND~~
~~THE NATURAL WOODLAND BUFFER~~

Env-Wq 1403.01 Maintenance of the Waterfront Buffer.

(a) Within a waterfront buffer, namely land within 50 feet of the reference line, no person shall undertake any activity in violation of RSA 483-B:9, V(a).

(b) The department shall proceed in accordance with RSA 483-B:5 to require the property owner to restore the waterfront buffer if the department determines that any of the provisions of RSA 483-B:9, V(a) have been violated.

Env-Wq 1403.0402 ~~Retention-~~Maintenance of the Natural Woodland Buffer.

~~(a) Pursuant to RSA 483-B:9, V(a)(1) and subject to the prohibitions and limitations identified in RSA 483-B:9, V(a)(2) Within the natural woodland buffer, namely land within 150 feet of the reference line, no person shall undertake any activity in violation of RSA 483-B:9, V(b). remove an existing natural woodland buffer from any property that is subject to RSA 483-B:~~

~~(b) If the department determines that a natural woodland buffer has been removed, tThe department shall proceed in accordance with RSA 483-B:5 to require the property owner to restore the natural woodland buffer if the department determines that any of the provisions of RSA 483-B:9, V(a) have been violated.~~

{Env-Wq 1403.02 has been moved and renumbered as Env-Wq 1412.03}

{Env-Wq 1403.03 has been moved and renumbered as Env-Wq 1412.04}

~~Env-Wq 1403.04 Opening for Construction.~~

~~(a) Subject to (b) below, the opening for construction for primary structures shall be measured on the horizontal plane as the area extending 25 feet from the exterior edge of the footprint of the structure.~~

~~(b) Between the primary building line and the reference line, the opening for construction for~~

primary structures shall be measured on the horizontal plane as the area extending 15 feet from the exterior edge of the footprint of the structure.

~~(c) The opening for construction for an accessory structure or water dependent structure shall be measured on the horizontal plane as the area extending 10 feet from the exterior edge of the footprint of the structure.~~

~~(d) The property owner shall stake the footprint(s) of the structure(s) in the field prior to removal of vegetation.~~

~~(e) The opening for construction shall be delineated on all plans submitted to the department.~~

Env-Wq 1403.03 Construction Within the Protected Shoreland.

(a) All impacts related to construction shall be completely contained within the area of disturbance allowed by RSA 483-B:9, V(b)(2)(A), namely 50% of the area outside of the impervious surfaces.

(b) Within 3 days of final grading or temporary suspension of work in an area that is in the protected shoreland, all exposed soil areas shall be stabilized by:

- (1) Seeding and mulching, if during the growing season;***
- (2) If not within the growing season, by mulching with tack or netting; or***
- (3) With an alternative method of temporary stabilization as specified in Env-Wq 1500.***

~~Env-Wq 1403.05 Trees Outside Construction Opening.~~

~~(a) Any tree located outside the opening for construction shall be counted in the basal area percentage limitation calculations, subject to RSA 483-B:9, V(a)(2)(D).~~

~~(b) For purposes of determining compliance with RSA 483-B:9, V(a)(2)(A), only those areas outside the opening for construction shall be considered.~~

Env-Wq 1403.04 Removal of Dead, Diseased, Or Unsafe Trees.

(a) A property owner may remove, or may cause to have removed, dead, diseased, or unsafe trees or saplings from the waterfront buffer that are not included in the scoring described in RSA 483-B:9, V(a)(2)(D), subject to the conditions specified in (b) and (c), below.

(b) Prior to undertaking any cutting or removal, the property owner shall:

(1) Take photographs of the property which clearly show the dead, diseased, or unsafe trees and saplings proposed to be removed; and

(2) Obtain written certification signed by a forester or arborist that the trees and saplings proposed to be removed are dead, diseased, or unsafe, as applicable.

(c) The cutting and removal shall be conducted so as to:

(1) Prevent damage to surrounding trees and saplings;

(2) Minimize damage to ground cover; and

(2) Prevent soil erosion and sedimentation to the water body.

(d) In any enforcement action against a property owner for removal of trees or saplings in violation of RSA 483-B, the burden of proving that trees or saplings removed pursuant to this section were in fact dead, diseased, or unsafe shall be on the property owner.

(e) Political subdivisions that do not vote to incur the costs associated with (b), above, shall not be required to do so.

Env-Wq 1403.05 Removal of Trees That Are Not Dead, Diseased, Or Unsafe.

(a) A property owner may remove, or may cause to have removed, trees or saplings from the waterfront buffer that are not dead, diseased, or unsafe if the sum of the scores of the remaining trees and saplings in that segment does not total less than allowed by RSA 483-B: 9, V(a)(2)(D), subject to the conditions specified in (b) and (c), below:

(b) Prior to undertaking any cutting or removal, the property owner shall:

(1) Take photographs of the property which clearly show the trees or saplings proposed to be removed; and

(2) Make a sketch of the property showing the location and point scores of the trees and saplings that will remain on the property.

(c) The cutting and removal shall be conducted so as to:

(1) Prevent damage to surrounding trees and saplings;

(2) Minimize damage to ground cover; and

(2) Prevent soil erosion and sedimentation to the water body.

(d) In any enforcement action against a property owner for removal of trees or saplings in violation of RSA 483-B, the burden of proving that the removal of trees or saplings pursuant to this section did not bring the sum of the scores of the remaining trees and saplings in that segment below that allowed by RSA 483-B: 9, V(a)(2)(D) shall be on the property owner.

(e) Political subdivisions that do not vote to incur the costs associated with (b), above, shall not be required to do so.

PART Env-Wq 1404 *STORMWATER AND EROSION AND SEDIMENTATION CONTROL*

Env-Wq 1404.01 Permitting and Protection of Water Quality Requirements.

{¶(a) has been moved and renumbered as Env-Wq 1401.02}

~~(b)~~ No person shall allow construction or other activity to degrade water quality in violation of the water quality standards specified in Env-Ws 1700 or successor rules in ~~sub~~title-Env-Wq 1700.

(b) As provided in RSA 483-B:9, V(d)(3), new structures and all modifications to existing structures within the protected shoreland shall be designed and constructed to prevent the release of surface runoff across exposed mineral soils.

Env-Wq 1404.02 Stormwater Management and Erosion Control.

~~Env-Wq 1404.01(a)~~ Pursuant to RSA 483-B:9, V(~~ed~~)(1), ~~construction, all new structures, modifications to existing structures, and excavation or earth moving, or other significant alteration of the characteristics of the terrain within the protected shoreland shall~~ ***comply be designed and constructed in accordance*** with RSA 485-A:17 and Env-Ws 415 or successor rules in ~~sub~~title-Env-Wq 1500, ***to manage stormwater and control erosion and sediment, before and after construction.***

(b) For projects where a stormwater management system is required by RSA 483-B:9, V(g)(3), the department shall review the proposed stormwater management system as provided in Env-Wq 1500.

PART Env-Wq 1405 ~~ACCESSORY STRUCTURES AND WATER DEPENDENT STRUCTURES~~

Env-Wq 1405.01 Applicability. The requirements of this part shall apply to structures located between the reference line and the primary building line.

Env-Wq 1405.02 Construction of Accessory Structures.

(a) No ~~Accessory structures shall be constructed: (a) Only if~~ ***unless*** allowed by local zoning; ~~and~~

(b) Any accessory structure that is constructed shall be built in accordance with ~~the~~ ***applicable*** local building ~~code~~ ***requirements.***

Env-Wq 1405.03 Limitations on Accessory Structures.

(a) Accessory structures shall: ~~(a) Not exceed 20-12 feet in height;~~

(b) Subject to (c), below, accessory structures shall hHave a footprint:

(1) nNo larger than 150 square feet ***in each 50 foot by 50 foot segment of the waterfront buffer, delineated as specified in RSA 483-B:9, V(a)(2)(D); and-or***

(2) No larger than 900 square feet if authorized by a permit under RSA 482-A but located on the land rather than over the public water, such as a beach or a dug-in boathouse.

(c) One walking path for access, up to 6 feet in width, with stairs over bank, shall not be counted when calculating the area of accessory structures under (b), above.

~~(c) In the aggregate, cover no more than 25% of the property that lies between a line parallel to and 20 feet from the reference line and a line parallel to and 50 feet from the reference line.~~

Env-Wq 1405.04 Setback for Accessory Structures. All accessory structures built after November 26, 1996 shall be set back at least 20 feet from the reference line, ***unless otherwise approved by the department in accordance with RSA 482-A and rules adopted pursuant thereto, Env-Wt 100-800.***

Env-Wq 1405.05 Slope Limitation for Accessory Structures. No accessory structure shall be built on land having greater than 25% slope.

~~Env-Wq 1405.06 Construction of Water Dependent Structures. Water dependent structures shall be constructed:~~

- ~~(a) Only if allowed by local zoning;~~
- ~~(b) Only if permitted under RSA 482-A; and~~
- ~~(c) In accordance with the local building code.~~

~~Env-Wq 1405.07 Size of Water Dependent Structures. If a water dependent structure is allowed under Env-Wq 1405.06, it shall:~~

- ~~(a) Not exceed 20 feet in height; and~~
- ~~(b) Have a footprint no larger than 900 square feet.~~

~~Env-Wq 1405.08 Slope Limitation for Water Dependent Structures. No water dependent structure shall be built on land having greater than 25% slope.~~

PART Env-Wq 1406 ~~REPLACEMENT OR REDEVELOPMENT~~ ***PERMITTING OF PROJECTS***

{ Env-Wq 1406.01 has been moved and renumbered as Env-Wq 1408.01 }
{ Env-Wq 1406.02 has been moved and renumbered as Env-Wq 1408.02 }
{ Env-Wq 1406.03 has been moved and renumbered as Env-Wq 1408.03 }
{ Env-Wq 1406.04 has been moved and renumbered as Env-Wq 1408.04 }

Env-Wq 1406.01 Permit Required. As specified in RSA 483-B:5-a, I(a), no person shall commence construction, excavation, or filling activities within the protected shoreland without obtaining a permit from the department to ensure compliance with RSA 483-B, subject to the exceptions specified in RSA 483-B and established in Env-Wq 1406.03 pursuant to RSA 483-B:17, X.

Env-Wq 1406.02 Statutory Exemptions. The following activities are exempted by statute from the requirements of RSA 483-B:

- (a) Agriculture performed in accordance with best management practices, as specified in RSA 483-B:3, III;***
- (b) Timber harvesting activities as permitted in accordance with RSA 485-A:17, IV, as specified in RSA 483-B:5-a, II; and***
- (c) Impacts that are covered by a permit issued under RSA 482-A, as specified in RSA 483-B:5-a, IV.***

Env-Wq 1406.03 Activities in Protected Shoreland That Do Not Require a Permit. The following activities shall not be required to obtain a permit under RSA 483-B:5-a, I(a) when conducted in the protected shoreland, subject to the conditions noted:

- (a) Trimming, pruning, and thinning of branches to the extent necessary to protect structures, maintain clearances, and provide views, as allowed by RSA 483-B:9, V(a)(2)(D)(vi);***
- (b) Maintenance or repair of an existing structure that does not change the outside dimensions of the structure, provided the work does not disrupt the soils or existing vegetation within the protected shoreland;***
- (c) Modifications to an existing structure that minimally change the outside dimensions of the structure, provided the work does not disrupt the soils or existing vegetation within the protected shoreland, such as adding a skylight or dormer or putting new siding on over old siding;***

(c) Use of hand tools, such as augers or tile spades, to install monitoring wells, piezometers, and flow meters, for:

(1) Evaluating site conditions as necessary for the submittal of information required by a permit application under RSA 482-A relating to wetlands, RSA 485-A:29 relating to subdivisions or septic systems, or RSA 485-A:17 relating to alteration of terrain;

(2) Educational purposes; or

(3) Monitoring hydrology;

(d) Maintenance of a grandfathered open area, such as by mowing a lawn, raking leaves or pine needles, or mulching landscaped areas;

(e) Planting of non-invasive vegetation or maintenance of existing gardens within the allowable disturbed area using hand tools;

(f) Construction or installation of a fence using hand tools;

(g) Digging test pits for the purposes of determining suitability for wastewater disposal under RSA 485-A:29 relating to subdivisions or septic systems, provided there is no disruption of groundcover within 50 feet of the shoreline and no test pits within 75 feet of the shoreline;

(h) Forest management that is not associated with shoreland development or land conversion that is conducted in compliance with RSA 227-J:9; and

(i) Forestry conducted by or under the direction of a water supplier for the purpose of managing a water supply watershed.

Env-Wq 1406.04 Permits by Notification. The activities described in this section may be undertaken in the protected shoreland without submitting an application under Env-Wq 1406.05, provided the notice described is provided as specified:

(a) Drilling geotechnical borings during the final design phase of a public project, subject to the following conditions:

(1) The entity undertaking the project shall provide the landowner, the department, and the local governing body with written notification of the general location and the type of work to be conducted at least 14 days prior to its commencement;

(2) Vehicles used shall be designed to have low ground contact pressure;

(3) The type and manner of drilling shall be selected to have no impact on water quality;

(4) Drill holes shall be back-filled with drill spoil or filled with clean material or grout; and

(5) Equipment shall be operated and maintained to avoid spillage of oil, gas, or hydraulic fluids; and

(b) Drilling of test wells subject to the following conditions:

- (1) The entity undertaking the drilling shall provide the department with a copy of the written access agreement signed by the landowner or the landowner's authorized agent or the court order granting access;***
- (2) The agency shall provide the landowner, the department, and the local governing body, with written notification of the general location and the type of work to be conducted at least 14 days prior to its commencement;***
- (3) Drill holes shall be back filled with drill spoil or clean fill or permanently cased;***
- (4) Drill cuttings not used to back fill drill holes shall be removed or stabilized; and***
- (5) Equipment shall be operated and maintained to prevent spillage of oil, gas, or hydraulic fluids.***

~~Env-Wq 1406.05 Information Required for Redevelopment Waiver. The applicant for a redevelopment waiver under RSA 483-B:11, II shall provide the following information:~~

- ~~(a) The name, mailing address, and daytime telephone number of property owner;~~
- ~~(b) The street address of the proposed project site, if different from the property owner's mailing address;~~
- ~~(c) A list of the names and mailing addresses, as well as tax map and lot numbers, of all abutters;~~
- ~~(d) The name of the water body;~~
- ~~(e) A description of all temporary and permanent impacts proposed within the protected shoreland;~~
- ~~(f) A description of the project;~~

{¶(g) has been moved and renumbered as Env-Wq 1408.04(d)}

Env-Wq 1406.05 Shoreland Permit Application Procedures. To apply for a shoreland permit under RSA 483-B:5-a, I(a), the applicant shall submit the following to the department:

- (a) A complete application as described in Env-Wq 1406.06, which has been signed as specified in Env-Wq 1406.07;***
- (b) Plans as specified in Env-Wq 1406.08, formatted as specified in Env-Wq 1406.10;***
- (c) Plans formatted as specified in Env-Wq 1406.10 or other information, or both, as specified in Env-Wq 1406.09, if applicable to the proposed project;***
- (d) The attachments identified in Env-Wq 1406.11;***
- (e) The certification(s) required by Env-Wq 1406.12(c); and***
- (f) The fee required by RSA 483-B:5-a, I(b), unless exempted by RSA 483-B:5-a, III.***

~~Env-Wq 1406.06 Attachments to Redevelopment Waiver Application. The applicant for a redevelopment waiver under RSA 483-B:11, II shall submit the following documents with the redevelopment waiver application form:~~

- ~~(a) A copy of the US geological survey map with the property and project located;~~
- ~~(b) A copy of the tax map showing the location and lot number of the proposed project;~~
- ~~(c) A plan showing the existing conditions and proposed conditions after completion of the project, including the following:
 - ~~(1) A plan of the property that shows all property boundaries, any easements over the property,~~~~

- and the footprints of all existing and proposed primary structures, accessory structures, and water dependent structures, clearly labeled;
- ~~(2) The scale, if any, used on the plan;~~
 - ~~(3) The dimensions and locations of all existing and proposed structures and all other relevant features necessary to clearly define the project;~~
 - ~~(4) A labeled north pointing arrow to indicate orientation;~~
 - ~~(5) A legend that clearly indicates all symbols, line types, and shading used on the plan;~~
 - ~~(6) For projects that include changing the footprint of structures on the property, a delineation of all wetlands;~~
 - ~~(7) The reference line as defined in RSA 483-A:4, XVII;~~
 - ~~(8) If the topography is to be altered, the existing and proposed topography, including a reference elevation;~~
 - ~~(9) Proposed methods of erosion and siltation controls indicated graphically and labeled, or otherwise annotated as needed for clarity;~~
 - ~~(10) The primary building setback, the natural woodland buffer, and the protected shoreland zone, as measured from the reference line;~~
 - ~~(11) All other local and state setbacks;~~
 - ~~(12) A tree plot plan showing all existing trees within the protected woodland buffer and an indication of trees to be cut for the project, including:
 - ~~a. The diameter of all trees at 4 ½ feet from the ground;~~
 - ~~b. The pre and post construction basal areas; and~~
 - ~~c. Species type;~~~~
 - ~~(13) Photographs of the existing conditions including the area within 50 feet of all proposed impacts;~~
 - ~~(14) The profiles of all existing and proposed structures, clearly showing the ridgeline heights;~~
 - ~~(15) Dimensions, locations, and all other details relevant to the “more nearly conforming” proposal; and~~
 - ~~(16) The date of plan and the preparer’s name.~~

Env-Wq 1406.06 Shoreland Permit Application Information. An application for a permit to work in the protected shoreland under RSA 483-B:5-a, I(a) shall include the following information:

- (a) The legal name of each property owner as it appears on the deed of record and the registry and book and page number where the deed is recorded;***
- (b) The regular mailing address and daytime telephone number of the property owner and, if available, an e-mail address;***
- (c) The name, mailing address, and daytime telephone number of the applicant, if other than the property owner, and, if available, an e-mail address;***
- (d) If the applicant is not the property owner and is not the authorized agent of the property owner for purposes of the application, documentation supporting the applicant’s right to engage in the proposed activity on the property, for example a long-term lease or purchase-sale agreement;***
- (e) The street address of the proposed project site, if different from the property owner’s mailing address;***
- (f) The name of the water body that causes the property to be subject to RSA 483-B; and***
- (g) A narrative description of the project.***

Env-Wq 1406.07 Signatures Required.

(a) The ***property*** owner(s) and the authorized agent ***applicant***, if applicable ***other than the property owner***, shall sign ***and date*** the ~~waiver~~ application.

(b) The signature(s) shall constitute certification that:

(1) The information provided is true, complete, and not misleading to the knowledge and belief of the signer; and

(2) ***The signer understands that any permit, waiver, or variance granted based on false, incomplete, or misleading information shall be subject to revocation.***

{Env-Wq 1406.08 has been moved and renumbered as Env-Wq 1406.12}

{Env-Wq 1406.09 has been moved and renumbered as Env-Wq 1408.05}

Env-Wq 1406.08 Plans to be Submitted with All Shoreland Permit Applications. The plans required by Env-Wq 1406.05(b) shall show the existing conditions on the property, all proposed work, and all temporary impacts within 250 feet of the reference line, including the following:

(a) ***An overview plan of the property within 250 feet of the reference line that shows the approximate location of all property lines, easements, and rights-of-way, clearly labeled;***

(b) ***The scale, if any, used on the plan or, if the plan is not to scale, the complete dimensions of all features;***

(c) ***A labeled north-pointing arrow to indicate orientation;***

(d) ***A legend that clearly explains all symbols, line types, and shading used on the plan;***

(e) ***The reference line, the primary building line, the natural woodland buffer, and the protected shoreland zone as those terms are defined in RSA 483-B:4;***

(f) ***All other applicable local and state setbacks;***

(g) ***The dimensions and locations of all existing and proposed structures, impervious areas, disturbed areas, and all other relevant features necessary to clearly define both existing conditions and the proposed project;***

(h) ***The dimensions, locations, and descriptions of all proposed temporary impacts associated with completion of the project;***

(i) ***Proposed methods of erosion and siltation controls indicated graphically and labeled, or otherwise annotated as needed for clarity;***

(j) ***A delineation of all existing and proposed disturbed areas within the natural woodland buffer;***

(k) ***A plan showing the waterfront buffer, broken down into 50 foot by 50 foot segments, and the location and diameter of all existing trees and saplings, and a designation of the trees to be cut during the project, if any, including:***

- (1) ***The diameter of all trees and saplings at 4-½ feet from the ground; and***
- (2) ***The names of the existing species, using either the Latin names or common names;***
- (l) ***The limits of existing cleared areas, such as gardens, lawns, and paths;***
- (m) ***A plan of any planting(s) proposed in the waterfront buffer, showing the proposed location(s) and Latin names of proposed species;***
- (n) ***The location of an existing or proposed 6-foot-wide foot path to the waterbody or temporary access path, as allowed by RSA 483-B:9, V(a)(2)(D)(viii); and***
- (o) ***The date of plan and the preparer's name.***

Env-Wq 1406.09 Plans or Other Information Required for Certain Projects. If applicable, the following plans or other information shall also be submitted with the application:

- (a) ***For any project proposing that the impervious area be greater than 20% within the protected shoreland under RSA 483-B:9, V(g)(2) or RSA 483-B:9, V(g)(3), stamped surveyed plans of the property and all existing and proposed impervious areas;***
- (b) ***For any project proposing that the impervious area be greater than 20% within the protected shoreland under RSA 483-B:9, V(g)(2) or RSA 483-B:9, V(g)(3), a copy of the draft deed restriction that will be recorded as required by the statute to create a no-cut waterfront buffer;***
- (c) ***For any project proposing that the impervious area be greater than 25% but not exceeding 30% within the protected shoreland under RSA 483-B:9, V(g)(3), plans for a stormwater management system in accordance with Env-Wq 1500 that will ensure that post-development total runoff volume does not exceed pre-development total runoff volume;***
- (d) ***For any project that includes a waiver request for redevelopment or proposes the modification of a pre-existing non-conforming structure under RSA 483-B:11, II, the information required by Env-Wq 1408.04;***
- (f) ***For any project that includes a variance request under RSA 483-B:9, V(i), the information required by Env-Wq 1409; and***
- (g) ***For any project involving pervious surfaces, a plan with specifications of how those surfaces will be maintained.***

Env-Wq 1406.10 Format of Plans.

- (a) ***The plans for any shoreland project submitted for approval on paper shall meet the format requirements specified in (b) through (e), below.***
- (b) ***Left margins shall be 2 inches and the remaining margins shall be at least one inch.***
- (c) ***Plans drawn to scale shall be shown using a scale of not more than 20 feet to one inch, except that if the lot cannot be shown on a 1:20 scale, it shall be shown on a larger scale on a separate sheet.***

(d) ***All plans shall be folded to 8-1/2 inches by 11 inches.***

(e) ***For plans submitted electronically, the format shall be as specified in the user agreement entered into by the permitted designer.***

Env-Wq 1406.11 Attachments to Shoreland Permit Application. The attachments required by Env-Wq 1406.05(d) shall be as follows:

(a) ***A copy of the local building permit, or a statement signed by the applicant that on the date specified in the statement, the applicant confirmed with the local official identified in the statement that a local building permit is not required for the project;***

(b) ***A copy of the US geological survey map with the property and project located;***

(c) ***Photographs of the existing site conditions in the shoreland zone, including the area within 50 feet of all proposed impacts;***

(d) ***A copy of the tax map showing the location and lot number of the proposed project;***

(e) ***A list of the names and mailing addresses, as well as tax map and lot numbers, of all abutters;***

(f) ***The certification required by Env-Wq 1406.12(e);***

(g) ***A copy of the NH Natural Heritage Bureau report for the subject property indicating that the project has been screened for species of concern;***

(h) ***A copy of a completed shoreland application worksheet that includes:***

(1) ***Square feet of the lot within 250 feet of the reference line;***

(2) ***Square feet and percentage of the lot area constituting existing impervious surface(s) within 250 feet of the reference line***

(3) ***Proposed amount of impervious surface(s) within 250 feet of the reference line;***

(4) ***Total percentage of lot area within the protected shoreland which will be impervious upon completion of the project;***

(5) ***The name of the person who completed the worksheet; and***

(6) ***The date of the plan that the worksheet is based on.***

Env-Wq 1406.0812 Local Required Notifications.

(a) Each applicant for a redevelopment waiver under RSA 483-B:11, II ***shoreland permit*** shall submit a copy of the ***completed and*** signed waiver application to the local governing body of the city or town in which the property is located at the time of submittal to the department.

(b) ***If any portion of a project is located within 1/4-mile of a river or river segment designated***

under RSA 483, the applicant shall send a copy of the completed and signed application to the appropriate local river advisory committee at the time of submittal to the department.

(c) Pursuant to RSA 227-C:9, I, the applicant shall notify the New Hampshire department of cultural resources, division of historical resources of the filing of an application for a shoreland permit with the department.

(d) The applicant who submits an application for a shoreland permit that includes a request for a variance under RSA 483-B:9, V(i) or a redevelopment waiver under RSA 483-B:11, II shall send written notice to each abutter at the time of submittal of the application to the department which includes:

(1) The street address and municipality of the property that is the subject of the application;

(2) A clear statement that an application has been filed under RSA 483-B and that the application includes a request for a variance under RSA 483-B:9, V(i) or a redevelopment waiver under RSA 483-B:11, II, as applicable; and

(3) The specific date that the application was or will be filed with the department.

(e) The applicant shall certify in writing submitted to the department with the application that:

(1) A copy of the application was provided to the city or town clerk and, if applicable, to the local river advisory committee;

(2) A notice was sent as required by (c), above, to the New Hampshire department of cultural resources, division of historical resources; and

(3) If applicable, the notice required by (d), above, was sent to all abutters.

Env-Wq 1406.13 Coordination of Permit Applications. The application for a shoreland permit shall identify whether applications for any of the following permits have been submitted or will need to be submitted to the department for the same property:

(a) Wetlands permit under RSA 482-A;

(b) Individual sewage disposal system under RSA 485-A:29;

(c) Subdivision permit under RSA 485-A:29; and

(d) Alteration of terrain permit under RSA 485-A:17.

Env-Wq 1406.14 Decisions on Shoreland Permit Applications.

(a) Upon receipt of an application for a shoreland permit, the department shall proceed in accordance with RSA 483-B:5-a, V.

(b) The department shall approve an application for a shoreland permit if all of the following are true:

(1) The application is complete as specified in Env-Wq 1406.05; and

(2) ***The project, during and after construction if constructed as proposed, will comply with all applicable criteria of RSA 483-B.***

(c) ***If the department determines that the project as proposed will not comply with all applicable criteria of RSA 483-B but that reasonable project-specific conditions could be imposed to bring the project into compliance, the department shall approve the application with such conditions are necessary to ensure compliance.***

(d) ***If the department determines that the project as proposed will not comply with all applicable criteria of RSA 483-B and that reasonable project-specific conditions cannot be imposed that would bring the project into compliance, the department shall deny the application.***

(e) ***The department shall notify the applicant in writing of its decision. If the application is denied, the notice shall specify the reason(s) for the denial.***

(f) ***All permits issued shall be subject to the conditions specified in Env-Wq 1406.16.***

Env-Wq 1406.15 Recordation of Certain Permits. If a permit is issued that contains one or more variances under RSA 483-B:9, V(i) or a redevelopment waiver under RSA 483-B:11, II, or any combination thereof, the property owner shall record the variance(s) or redevelopment waiver, as applicable, in the chain of title to the property at the registry of deeds for the appropriate county.

Env-Wq 1406.16 Conditions Applicable to All Projects in the Protected Shoreland. In addition to any project-specific conditions included pursuant to Env-Wq 1406.14(c), the following conditions shall apply to all projects in the protected shoreland:

(a) ***All work shall be done in accordance with the plans approved by the department, which shall be considered part of the issued permit;***

(b) ***Erosion and siltation control measures shall:***

(1) ***Be installed prior to the start of work;***

(2) ***Be maintained throughout the project; and***

(3) ***Remain in place until all disturbed surfaces are stabilized;***

(c) ***Erosion and siltation controls shall be appropriate to the size and nature of the project and to the physical characteristics of the site, including slope, soil type, vegetative cover, and proximity to wetlands or surface waters;***

(d) ***No person undertaking any activity in the protected shoreland for which a permit is required shall cause or contribute to, or allow the activity to cause or contribute to, any violations of the surface water quality standards established in Env-Ws 1700 or successor rules in Env-Wq 1700; and***

(e) ***Any fill used shall be clean sand, gravel, rock, or other suitable material.***

Env-Wq 1406.17 Issuance and Transferability.

(a) ***Subject to (b), below, the department shall issue a shoreland permit in the name of the owner(s) of the property on whose land the project is located.***

(b) If the applicant is not the property owner or the agent for the property owner, but has a financial or other legal interest in the property that will arise after issuance of the permit but prior to commencement of the activity covered by the permit, the applicant may request the department to issue the permit in the applicant's name directly.

(c) The department shall transfer a shoreland permit for a project that is not completed from one owner to a new owner upon request of the new owner in accordance with (d) through (f), below.

(d) Prior to requesting a transfer of the shoreland permit, the new owner(s) shall:

(1) Read, view, and possess the shoreland permit, including all plans and conditions included pursuant to Env-Wq 1406.14(c); and

(2) Agree to abide by the terms and conditions of the shoreland permit.

(e) To request the transfer of a shoreland permit, the new owner(s) shall submit the following to the department in writing:

(1) The shoreland permit number;

(2) Identification of the owner(s) listed on the issued shoreland permit;

(3) Identification of the person(s) to whom the shoreland permit is being transferred;

(4) Recording information of the deed that transferred ownership of property, including the names of the grantor, grantee, town, county, registry and book and page numbers;

(5) The location of the property, by tax map and lot number and street address and municipality; and

(6) The following statement, agreed to and signed by the new owner(s):

“I/we, the undersigned, certify that I am/we are the present owner(s) of the property formerly of (name of former owner) and that I/we have possess and have read the shoreland permit, including all plans and conditions included pursuant to Env-Wq 1406.14(c). I/we agree that I/we will abide by the previously-issued permit. I/we fully understand that the activities covered by the permit must be completed in strict accordance with the permit unless an amendment is applied for and granted. My/Our Title Reference is Book (number) Page (number), (County) Registry of Deeds, and briefly is for land at (street address) in (town), New Hampshire.”

Env-Wq 1406.18 Duration of Shoreland Permit; Amendments.

(a) Issued shoreland permits shall expire 5 years from the date of issuance as specified on the permit.

(b) A permit holder may request an amendment to an issued permit by submitting those components of a complete original application that differ from the application originally submitted, including an additional fee if the additional area to be disturbed would have resulted in an increased fee if the project had originally been submitted as revised.

(c) *The department shall review an amendment request in accordance with RSA 483-B:5-a, V.*

(d) *If the permit as amended meets the criteria specified in Env-Wq 1406.14 and the work can be completed prior to the expiration date of the original permit, the department shall issue an amended permit. The issuance of an amended permit shall not extend the expiration date.*

{Existing PART Env-Wq 1407 has been moved and renumbered as PART Env-Wq 1409}

PART Env-Wq 1407 EMERGENCY PROCEDURES

Env-Wq 1407.01 Emergency Authorizations.

(a) *Emergency work shall be authorized by the department when a threat to public safety or public health exists or significant damage to private property is imminent and the event causing the emergency occurred within 5 days of the request for emergency authorization.*

(b) *Work covered by an emergency authorization shall be limited to temporary stabilization of the site or mitigation of the immediate threat.*

(c) *The property owner or property owner's agent shall request an emergency authorization by providing the following information to the department by telephone, e-mail, or fax:*

(1) *The name and daytime telephone number of the individual requesting the authorization, and, if available, an e-mail address and fax number;*

(2) *A description of the emergency; and*

(3) *A description of the work to be performed and a schedule for the work.*

(d) *If a request is made by telephone, the property owner or property owner's agent shall provide the information required by (c), above, by e-mail or fax as soon as possible but no later than 24 hours after the initial request.*

(e) *The department shall:*

(1) *Issue an emergency authorization when necessary to mitigate an immediate threat to public health or safety or personal property; and*

(2) *Keep a record of each emergency authorization issued.*

Env-Wq 1407.02 Work During Emergencies Without Prior Authorization.

(a) *Subject to (b), below, work without a permit or emergency authorization shall be allowed during a natural disaster to the extent needed to mitigate an immediate threat or stabilize a property.*

(b) *If work is done pursuant to (a), above, the owner of the property where such work occurred, or the property owner's agent, shall report the following information to the department as soon as practicable but no later than 30 days after doing the work:*

(1) *The name and daytime telephone number of the individual reporting the information, and, if available, an e-mail address and fax number;*

(2) *A description of the emergency; and*

(3) *A description of the work that was done and when the work was completed.*

Env-Wq 1407.03 Action After Emergency. An application as specified in Env-Wq 1406.05 shall be submitted for any permanent repairs, restoration, or other activities proposed to be undertaken after the emergency has ended.

PART Env-Wq 1408 REPLACEMENT OR REDEVELOPMENT

Env-Wq 14068.01 Replacement of Pre-existing Nonconforming Primary Structures Damaged By Accidental Means.

(a) The owner of any pre-existing nonconforming primary structure damaged by accidental means who wishes to rebuild the structure in its existing location shall begin construction within 2 years of the date of the accident.

(b) The 2-year period specified in (a), above, shall not run during the pendency of any legal action that is intended to or has the effect of precluding the owner from rebuilding the structure.

(c) If the owner does not begin construction to replace the pre-existing nonconforming structure within 2 years of the date of the accident, any primary structure thereafter constructed shall conform to all applicable set-back requirements.

Env-Wq 14068.02 Replacement of Pre-existing Nonconforming Primary Structures Other Than Those Damaged By Accidental Means. Any pre-existing nonconforming primary structure shall be repaired, renovated, or replaced in kind only in accordance with RSA 483-B:11.

Env-Wq 14068.03 Conversion of Decks and Porches Prohibited. No deck or porch located between the primary building line and the reference line shall be converted to become part of the primary living space.

Env-Wq 14068.04 Redevelopment Waivers. Any property owner who wishes to redevelop, pursuant to RSA 483-B:11, II, a property on which a pre-existing nonconforming primary structure exists shall submit ***the following to the department ***with the application required by Env-Wq 1406.05:******

~~(a) The information specified in Env-Wq 1406.05, on a waiver application form obtained from the department; and~~

~~(b) The documents specified in Env-Wq 1406.06.~~

(a) The dimensions and location(s) of all existing structure(s) within the protected shoreland;

(b) The dimensions and location(s) of all proposed structures within the protected shoreland;

(c) Profiles of all existing and proposed structures, clearly showing the ridgeline heights to scale or with dimensions given; and

~~Env-Wq 1406.05-(gd)~~ An explanation of how the project:

(1) Is more nearly conforming, ~~as that phrase is defined in RSA 483-B:11, II,~~ than the existing structure(s), *as that phrase is defined in RSA 483-B:11, II, with reference to the information provided pursuant to (a) through (c), above, and any other supporting details that are relevant to making the proposal “more nearly conforming”;* and

(2) Will provide at least the same degree of protection to the public waters, as required by RSA 483-B:11, II.

Env-Wq 14068.0905 Decision on Redevelopment Waiver Request.

(a) The department shall approve a request for a redevelopment waiver under RSA 483-B:11, II upon finding that:

- (1) The proposal is adequate to ensure that the intent of RSA 483-B is met; and
- (2) The criteria for granting a waiver under RSA 483-B:11, II are met.

(b) The department shall notify the applicant in writing of its decision *in conjunction with its decision on the shoreland permit application*. If the request is denied, the department shall identify the specific reason(s) for the denial.

PART Env-Wq 14079 VARIANCE FROM THE MINIMUM STANDARDS

Env-Wq 14079.01 Variance Requests. Each applicant for a variance under RSA 483-B:9, V(gi) shall: ~~(a) Provide the following information specified in Env-Wq 1407.02 on a form obtained from the department with the application required by Env-Wq 1406.05; and~~

~~(b) Submit the documents specified in Env-Wq 1407.03 with the application.~~

~~Env-Wq 1407.02 Information Required for Variance Requests. The applicant for a variance under RSA 483-B:9, V(g) shall provide the following information:~~

~~(a) The name(s), mailing address(es), and daytime telephone number(s) of the property owner and the applicant, if other than the property owner;~~

~~(b) The street address of the proposed project site, if different from the property owner's mailing address;~~

~~(c) The name of the water body;~~

~~(da) A description *statement* of the variance requested, with specific reference to the paragraph or subparagraph of RSA 483-B:9, V;~~

~~(eb) Pursuant to RSA 483-B:9, V(g-i), how the proposed variance meets the criteria which govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b), as those criteria have been interpreted by the N.H. supreme court, as follows:~~

- (1) The literal enforcement of the standard would result in an unnecessary hardship;
- (2) Granting a variance will not result in the diminution in value of surrounding properties;
- (3) The variance would not be contrary to the spirit of RSA 483-B;

- (4) Granting a variance would not be contrary to the public interest; and
- (5) Granting a variance would do substantial justice; ***and***

(c) ***Verification that all of the abutters have been notified of the proposed project as required by Env-Wq 1406.12(d).***

~~Env-Wq 1407.03 Attachments to Variance Request. The applicant for a variance under RSA 483-B:9, V(g) shall submit the following documents with the variance request form:~~

- ~~(a) A copy of the tax map showing the location and lot number of the proposed project; and~~
- ~~(b) A plan showing the existing conditions and proposed conditions after completion of the project for which the variance is needed, including the following:
 - ~~(1) A plan of the property that shows all property boundaries, any easements over the property, and the footprints of all existing and proposed primary structures, accessory structures, and water dependent structures, clearly labeled;~~
 - ~~(2) The scale, if any, used on the plan;~~
 - ~~(3) The dimensions and locations of all existing and proposed structures and all other relevant features necessary to clearly define the project;~~
 - ~~(4) A labeled north pointing arrow to indicate orientation; and~~
 - ~~(5) A legend that clearly indicates all symbols, line types, and shading used on the plan.~~~~

~~Env-Wq 1407.04 Signature Required.~~

- ~~(a) The owner and the authorized agent, if applicable, shall sign the variance application.~~
- ~~(b) The signature(s) shall constitute certification that:
 - ~~(1) The information provided is true, complete, and not misleading to the knowledge and belief of the signer; and~~
 - ~~(2) The signer understands that any variance granted based on false, incomplete, or misleading information shall be subject to revocation.~~~~

~~Env-Wq 1407.05 Local Notification. Each applicant for a variance under RSA 483-B:9, V(g) shall submit a copy of the signed variance application to the local governing body of the city or town in which the property is located at the time of submittal to the department.~~

Env-Wq 1407.0602 Decision on Variance Request.

(a) The department shall approve a request for variance under RSA 483-B:9, V(~~g~~***i***) upon finding that:

- (1) The proposal is adequate to ensure that the intent of RSA 483-B is met; and
- (2) The criteria for granting a variance under RSA 674:33, as identified in Env-Wq 1407.0201(~~eb~~***eb***), have been met.

(b) The department shall notify the applicant in writing of its decision ***in conjunction with the decision on the application for shoreland permit.*** If the request is denied, the department shall identify the specific reason(s) for the denial.

PART Env-Wq 140810 URBANIZED SHORELAND EXEMPTION

Env-Wq 1408***10***.01 Definition of “Historic”. For purposes of Env-Wq 1408***10***.03(a) and Env-Wq 1408***10***.05(b), “historic” means no less than the 25-year period preceding the application, provided that the applicant may expand the time period at the applicant’s discretion.

Env-Wq 1408***10***.02 Eligibility for Urbanized Shoreland Exemption.

(a) Pursuant to RSA 483-B:12, I, the governing body of a municipality may, in its discretion, request the commissioner to exempt all or a portion of the protected shoreland within its boundaries from the provisions of this chapter if the governing body finds that special local urbanization conditions exist in the protected shoreland for which the exemption is sought.

(b) Pursuant to RSA 483-B:12, IV, the Pease development authority, division of ports and harbors, may, in its discretion, request the commissioner to exempt all or a portion of any land purchased, leased, or otherwise acquired by it pursuant to RSA 12-G:39.

Env-Wq 1408***10***.03 Evidence.

(a) Pursuant to RSA 483-B:12, II, the applicant for an urbanized shoreland exemption shall present evidence of existing and historic patterns of building and development in the protected shoreland, which shall address the following:

- (1) Current and historic building density;
- (2) Current commercial or industrial uses;
- (3) Municipal or other public utilities; and
- (4) Current municipal land use regulations which affect the protected shoreland.

(b) The applicant for an urbanized shoreland exemption shall also provide:

- (1) The number of structures in sight from the water body;
- (2) Density allowed under current local zoning ordinances;
- (3) Extent of non-residential land use currently existing;
- (4) One or more maps that clearly define the boundaries of the area to be exempted;*** and
- ~~(45)~~ If available, a recent aerial photograph of the area.

Env-Wq 1408***10***.04 Delivery. The applicant shall send the evidence directly to the office of energy and planning with a copy to the commissioner.

Env Ws 1408***10***.05 Time Frames for Decisions.

(a) The department shall request the office of energy and planning to submit a written recommendation to the commissioner within 30 working days of receipt of a completed request.

(b) The commissioner shall approve the request if the evidence required by Env-Wq 140810 shows that the municipality has existing and historic patterns of building and development in the protected shoreland.

(c) The commissioner shall issue written findings in support of the decision within 30 working days from receipt of the recommendation.

PART Env-Wq 140911 ~~REVIEW OF CONSISTENCY OF STATE AND LOCAL ACTION ON~~
SHORELAND ZONE PROJECTS

~~Env-Wq 1409.01 Definition.~~ For purposes of this part, the following definition shall apply:

~~(a) "Project" means the full scope of development activities that are proposed to take place on a parcel of property within 5 years of the application date.~~

Env-Wq 1411.01 Required Information. The following information shall be included on all plans submitted to any state or local agency for any project that includes work in the protected shoreland:

- (a) A tree inventory in accordance with Env-Wq 1406.08(k);*
- (b) The reference line;*
- (c) The primary building line, 50 feet from the reference line; and*
- (d) Any local setbacks.*

Env-Wq 1411.02 Consistency Required; Notice Required.

(a) As specified in RSA 483-B:3, state and local permits for work within the protected shoreland zone shall be issued only when consistent with RSA 483-B.

(b) State and local permits for work within the protected shoreland zone shall include a notice that a state shoreland permit under RSA 483-B may be required.

~~Env-Wq 1409.02 Coordination of Permit Applications.~~

~~(a) Any person applying for any of the permits specified in (c), below, shall identify on the application whether the property is located in a protected shoreland zone as specified in Env-Wq 1401.02.~~

~~(b) If the property is located in a protected shoreland zone, the applicant shall:~~

- ~~(1) Identify all other state and local permits or other approvals that are required for the proposed project;~~
- ~~(2) For permits or approvals required from the department, submit all applications concurrently;~~
- ~~(3) For each permit or approval required from other than the department, identify whether the permit or approval has been applied for and, if so, whether a decision has been made on the application; and~~
- ~~(4) Submit the information specified in Env-Wq 1409.03 with at least one of the applications submitted to the department. If the information is not submitted with each application, the applicant shall indicate which application contains the information.~~

~~(c) The permits to which this section applies shall be as follows:~~

- ~~(1) Wetlands permit pursuant to RSA 482-A;~~

- ~~(2) Individual sewage disposal system pursuant to RSA 485 A:29;~~
- ~~(3) Subdivision permit pursuant to RSA 485 A:29;~~
- ~~(4) Alteration of terrain permit pursuant to RSA 485 A:17; and~~
- ~~(5) Any permit required for any activity listed in RSA 483 B:9, II through IV d.~~

~~Env Wq 1409.03 Information Required with Applications. Subject to Env Wq 1409.05, for each project within the protected shoreland zone, the applicant shall submit the following information, which may be in the form of plans, in sufficient detail to allow the department to determine whether the requirements of RSA 483 B:9 will be met:~~

- ~~(a) The number, location, basal area, and distribution of trees existing within the natural woodland buffer on the property prior to the proposed project;~~
- ~~(b) Whether any of the trees identified pursuant to (a), above, is dead, diseased, or otherwise unsafe and, if otherwise unsafe, the basis for the determination;~~
- ~~(c) The size and placement of all primary, accessory, and water dependent structures planned as part of the project; and~~
- ~~(d) Whether the project will result in a residential or commercial use and, if commercial, whether the project will include any facility listed in RSA 483 B:9, II through IV d.~~

~~Env Wq 1409.04 Determination of Consistency.~~

- ~~(a) The department shall ensure that the departmental programs responsible for reviewing the application(s) for a project coordinate their reviews.~~
- ~~(b) The department shall approve the application(s) only if it determines, as required by RSA 483-B:3, I, that:
 - ~~(1) The applicant has met all requirements for issuing the permit for which the application was submitted or has received a waiver or variance for the requirement; and~~
 - ~~(2) Issuing the permit(s) will be consistent with the intent of RSA 483 B.~~~~
- ~~(c) The department shall issue its decision in writing. If the decision is to deny one or more of the permits needed for the project, the reason(s) for the denial(s) shall be stated in writing.~~

~~Env Wq 1409.05 Submittal of Information When Replacing Failed Septic System.~~

- ~~(a) Any person needing to replace a failed septic system may request a waiver to the requirement of Env Wq 1409.03(a) to identify the basal area of the trees in the protected woodland buffer.~~
- ~~(b) The request shall include a statement that the only work that will be done on the property is the replacement of the failed septic system.~~
- ~~(c) The request shall be submitted to the department in writing and shall be signed by the property owner and by the applicant, if other than the property owner.~~
- ~~(d) The signatures provided under (c), above, shall constitute certification that:
 - ~~(1) The information provided is true to the knowledge and belief of the signer; and~~
 - ~~(2) The signer understands that any waiver granted based on false or misleading information shall be subject to revocation.~~~~

PART Env-Wq 1412 SHORELAND RESTORATION

Env-Wq 1412.01 Applicability. This part shall apply to all plans for restoration of a waterfront buffer or natural woodland buffer that are submitted to the department for approval.

Env-Wq 1412.02 Definition. For purposes of this part, the following definition shall apply:

- (a) “Mat” means a density of no less than one individual plant per square foot.***

Env-Wq ~~1403.02~~**1412.03** Restoration Plan *Contents*. (a) ~~If ordered by the department to restore a natural woodland buffer, the property owner shall submit a restoration plan for approval.~~ (b) ~~The A restoration plan shall identify~~***include the following:***

- (a) ***The information specified in Env-Wq 1406.08;***
- (4b) ***The list of species of plants proposed for replanting, using Latin names;***
- (2c) ***The number and distribution of plants proposed for replanting, based on the matrix specified in Env-Wq 1412.04;***
- (3d) ***The basal area of the trees proposed for replanting***~~A plan of the waterfront buffer, shown with vegetation sufficient to meet the points required by RSA 483-B:9, V(a)(2)(D);~~
- (4e) ~~The existing trees remaining within~~***A plan of the natural woodland buffer, if any shown with the amount of impervious surface, amount of disturbed area to be restored, and the amount of area allowed to revert to an undisturbed state; and***
- (5f) ~~The~~***All*** existing and proposed structures, including but not limited to the primary structure, ~~and accessory structures, and water dependent structures.;~~***and***
- (g) ***A schedule for implementing the restoration and monitoring the success of the restoration over at least 2 growing seasons.***

Env-Wq 1412.04 Planting Matrix. When restoring a shoreline, the following shall apply to each 50 foot by 50 foot segment, to reach at least a total of 50 points in each segment:

- (a) ***Trees and saplings shall be assessed points based on their diameter measured at 4½ feet off the ground, in accordance with RSA 483-B:9, V(2)(D)(i), as follows:***
 - (1) ***A diameter of one to 6 inches shall equal 1 point;***
 - (2) ***A diameter of more than 6 inches to 12 inches shall equal 5 points;***
 - (3) ***A diameter of more than 12 inches shall equal 10 points;***
- (b) ***Ground cover in the form of shrubs shall be planted as individual plants or clusters and shall be assessed points as follows:***
 - (1) ***A one-gallon to 2-gallon shrub shall equal one-third of a point; and***
 - (2) ***A 3- gallon to 4-gallon shrub shall equal one-half of a point;***
- (c) ***Groundcover planted in the form of sod or mat shall equal one point for every 50 square feet;***
- (d) ***Sod or mat groundcover shall constitute no more than 15 points; and***
- (e) ***Shrub groundcover shall constitute no more than 20 points.***

Env-Wq ~~1403.03~~**1412.05** Plan Approval *Criteria*. The department shall approve a restoration plan

that meets the following criteria:

(a) Replacement plantings shall meet one of the following:

(1) Subject to (c), below, replacement plants shall consist of the ***native*** species that are as close as possible to the species present prior to vegetation removal; or

(2) ~~At least 75 percent of t~~ The replacement plants shall be chosen from ~~the natural woodland buffer plantings list~~ ***the DES Native Shoreland/Riparian Buffer Plantings for New Hampshire*** included as appendix A to these rules;

(b) Subject to (c), below, replacement plants shall have spatial and compositional diversity that replicates the previously ***existing waterfront buffer or*** natural woodland buffer;

(c) No species listed on the New Hampshire prohibited invasive species list developed pursuant to RSA 430:53, III or the New Hampshire restricted invasive species list developed pursuant to RSA 430:53, IV shall be planted, even if such species existed on the property prior to the property being cleared;

(d) ***Within the waterfront buffer, R***replacement ***vegetation*** and ~~remaining trees~~ ***ground cover*** shall comprise at least 50 percent of the basal area that existed prior to cutting. ***be based on the trees, saplings, and natural ground cover that existed before removal in accordance with RSA 483-B:9, V(g)(2). If the quantity and type of removed vegetation cannot be determined, the area shall be planted with native trees, saplings, or natural ground cover in sufficient quantity, type, and location either to meet the minimum score per RSA 483-B:9, V(g)(2) or to provide at least an equivalent level of protection;***

(e) ***The plan shall specify that all existing and replacement vegetation shall be allowed to grow without interference;***

(ef) Replacement trees shall be placed ~~no further apart than~~ ***at least 10 feet apart*** on center;

(~~f~~g) There shall be no changes to surface drainage unless a sediment and erosion control plan ***that meets the requirements specified in Env-Ws 415 or successor rules in Env-Wq 1500*** is submitted and approved. ~~The sediment and erosion control plan shall be submitted with the restoration plan and shall meet the requirements specified in Env-Ws 415 or successor rules in subtitle Env-Wq;~~ ***and***

(h) ***The requirements of Env-Wq 1412.04 shall be met.***

PART Env-Wq 144013 WAIVERS FROM RULES

Env-Wq 144013.01 Purpose. The shoreland protection rules will apply to a variety of situations and properties. It is recognized that strict compliance with all shoreland protection rules may not always be in the best interests of the public or the environment in every conceivable situation. The department therefore establishes these procedures and criteria, in accordance with RSA 541-A:22, IV, to accommodate those situations where strict adherence to the rules would not be in the best interest of the public or the environment.

Env-Wq 144013.02 Procedures.

(a) Any person who is or would be directly and adversely affected by the strict application of a rule

in Chapter Env-Wq 1400 may request a waiver thereof.

- (b) Each request for a rule waiver shall be filed in writing.
- (c) Each request for a rule waiver shall include the information specified in Env-Wq 14103.03.

(d) All requests for a rule waiver which are submitted as part of an application for a ~~redevelopment waiver~~ ***shoreland permit*** under Env-Wq 1406 or a ~~variance under Env-Wq 1407~~ ***the*** application, or as soon thereafter as the need for the rule waiver is identified by the applicant or the department.

Env-Wq 144013.03 Content and Format of Requests.

- (a) The person requesting the rule waiver shall provide the following information:
 - (1) The name, mailing address, and ***daytime*** telephone number of the property owner;
 - (2) The name, mailing address, and ***daytime*** telephone number of the applicant, if other than the property owner;
 - (3) The location of the property to which the rule waiver request relates, if other than the mailing address of the property owner or applicant;
 - (4) The number(s) of the specific section(s) of the shoreland protection rules for which a waiver is sought;
 - (5) A full explanation of why a rule waiver is being requested, ~~including an explanation of the hardship that would be caused by compliance with the rule;~~
 - (6) If applicable, a full explanation of the alternate that is proposed to be substituted for the requirement in the rule, including written documentation and/or data to support the alternative; and
 - (7) A full explanation of why the applicant believes that having the rule waiver granted will meet the criteria in Env-Wm 144013.04.
- (b) The property owner and the person requesting the rule waiver, if other than the property owner, shall sign the request.
- (c) The signature(s) shall constitute certification that:
 - (1) The information provided is true, complete, and not misleading to the knowledge and belief of the signer; and
 - (2) The signer understands that any variance granted based on false, incomplete, or misleading information shall be subject to revocation.

Env-Wq 144013.04 Criteria.

- (a) Subject to (b), below, a request for a rule waiver shall be granted if:

- (1) Granting the request will not result in:
 - a. An adverse effect to the environment or natural resources of the state, public health, or public safety; or
 - b. An impact on abutting properties that is more significant than that which would result from complying with the rule; and
- (2) One or more of the following conditions is satisfied:
 - a. Granting the request is consistent with the intent and purpose of the rule being waived; or
 - b. Strict compliance with the rule will provide no benefit to the public and will cause an operational or economic hardship to the applicant.

(b) No rule waiver shall be granted if the effect of the waiver would be to waive or modify a statutory requirement.

Env-Wq 144013.05 Decisions. The department shall notify the person requesting the waiver of the decision in writing. If the request is denied, the department shall identify the specific reason(s) for the denial.

PART Env-Wq 14414 SUSPENSION OR REVOCATION OF WAIVERS AND VARIANCES

Env-Wq 14414.01 Purpose. The purpose of this part is to establish the procedures to suspend or revoke a ***shoreland permit issued under Env-Wq 1406, a redevelopment waiver issued under Env-Wq 140608, a variance issued under Env-Wq 140709, or a rule waiver issued under Env-Wq 144013.***

Env-Wq 14414.02 Definitions. For purposes of this part, the following definitions shall apply:

- (a) “Approval” means a ~~redevelopment waiver~~ ***shoreland permit issued under Env-Wq 1406, a redevelopment waiver issued under Env-Wq 1408, a variance issued under Env-Wq 140709, or a rule waiver issued under Env-Wq 144013, as applicable to a particular proceeding; and***
- (b) “Recipient” means the person to whom the approval was issued.

Env-Wq 14414.03 Basis and Procedures for Suspension or Revocation.

(a) Any approval issued by the department shall be issued based on the presumption that the information submitted to obtain the approval is true, complete, and not misleading.

(b) If, after the issuance of an approval, the department receives information indicating that the information upon which the approval was based was false, incomplete, or misleading, the department shall notify the recipient in accordance with RSA 541-A:31, III of the date, time and place of a hearing at which the recipient shall be given an opportunity to show cause why the approval should not be revoked.

- (c) The hearing shall be conducted in accordance with RSA 541-A:31 and Env-C 200.
- (d) After the hearing, the department shall revoke the approval if the department determines that:
 - (1) The approval would not have been issued if the information submitted had been true, complete, and not misleading; and
 - (2) The project for which the approval was obtained cannot be made to conform to applicable requirements.
- (e) After the hearing, the department shall suspend the approval if the department determines that:
 - (1) The approval would not have been issued if the information submitted had been true, complete, and not misleading; and
 - (2) The project for which the approval was obtained ~~can be made to~~ ***would*** conform ~~to~~ ***with*** applicable requirements ***if the deficiencies were corrected.***
- (f) If an approval is suspended pursuant to (e), above, the department shall reinstate the approval upon receiving proof from the recipient that the project meets applicable requirements for approval.
- (g) The department shall notify the recipient in writing of its decision. If the decision is to suspend or revoke the approval, the department shall specify the reason(s) for the decision.

Appendix

Rule Section(s)	State Statute(s) Implemented
Env-Wq 1401	RSA 483-B:1; RSA 483-B:2
Env-Wq 1402	RSA 483-B:4; RSA 483-B: 17, II and VII
Env-Wq 1403	RSA 483-B:5; RSA 483-B:9, V(a) and (b); RSA 483-B: 17, III, RSA 483-B: 17, VIII
Env-Wq 1404	RSA 483-B:9, V(d)
Env-Wq 1405	RSA 483-B:17, IV
Env-Wq 1406	RSA 483-B: 17, I and XI
Env-Wq 1407	RSA 483-B: 17, I and XI
Env-Wq 1408	RSA 483-B:11
Env-Wq 1409	RSA 483-B:9, V(g)
Env-Wq 1410	RSA 483-B:12; RSA 483-B: 17, II
Env-Wq 1411	RSA 483-B:3; RSA 483-B:6
Env-Wq 1412	RSA 483-B:17, IX; RSA 483-B:9, V(a) and (b)
Env-Wq 1413	RSA 541-A:22, IV
Env-Wq 1414	RSA 541-A:16, I(b)