PROPOSED NH DES ADMINISTRATIVE RULES

Relating to the CSPA
Chapter Env-Wq 1400

The following are the amended final proposed rules as developed by NH DES staff in response to the JLCAR Preliminary Objection. As Annotated 3/17/08

This copy is current as of 3/17/08.

Tentative JLCAR rules hearing March 21, 2008

We encourage your participation.

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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) The natural mean high water level, for natural fresh water bodies without artificial impoundments listed in the official list of public waters published by the department;

(b) The water line at full pond as determined by the elevation of the top of the 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) The highest observable tide line, for coastal waters; and

(e) The ordinary high water mark, for rivers designated as protected under RSA 483:15 and all flowing waters of fourth order or higher as specified in RSA 483-B:4, XVI(c).

PART Env-Wq 1402 DEFINITIONS

Env-Wq 1402.01 "Abutter" means "abutter" as defined in RSA 483-B:4, I.

Env-Wq 1402.02 "Accessory structure" means "accessory structure" as defined in RSA 483-B:4, II.

Env-Wq 1402.03 "Basal area" means "basal area" as defined in RSA 483-B:4, III.

Env-Wq 1402.04 "Commissioner" means "commissioner" as defined in RSA 483-B:4, IV.

Env-Wq 1402.05 "Construction" for the purpose of RSA 483-B:5-a, I(a), means:

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

(b) Any activity that increases the impervious area on a property.

Env-Wq 1402.06 "Department" means "the department of environmental services" as defined in RSA 483-B:4, V.

Env-Wq 1402.07 "Disturbed area" means "disturbed area" as defined in RSA 483-B:4, VI.

Env-Wq 1402.08 "Fertilizer" as used in RSA 483-B:9, means any substance, other than limestone,

that contains any recognized plant nutrient which is designed or intended for use in promoting plant growth or health or claimed to have value in promoting plant growth or health, or which is used with the intent of prompting plant growth or health.

Env-Wq 1402.09 "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.

Env-Wq 1402.10 "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.

Env-Wq 1402.11 "Ground cover" means "ground cover" as defined in RSA 483-B:4, VII.

Env-Wq 1402.12 "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.

Env-Wq 1402.13 "Impervious surface" means "impervious surface" as defined in RSA 483-B:4, VII-a.

Env-Wq 1402.14 "Lot of record" means "lot of record" as defined in RSA 483-B:4, VIII.

Env-Wq 1402.15 "Low phosphate, slow release nitrogen fertilizer" means fertilizer that is guaranteed, as indicated on the package label, to contain:

(a) Not more than 2% phosphorus; and

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

Env-Wq 1402.16 "Municipality" means "municipality" as defined in RSA 483-B:4, X.

Env-Wq 1402.17 "Natural ground cover" means "natural ground cover" as defined in RSA 483-B:4, X-a.

Env-Wq 1402.18 "Natural woodland buffer" means "natural woodland buffer" as defined in RSA 483-B:4, XI.

Env-Wq 1402.19 "Non-conforming lot of record" means "nonconforming lot of record" as defined in RSA 483-B:4, XI-a.

Env-Wq 1402.20 "Nonconforming structure" means "nonconforming structure" as defined in RSA 483-B:4, XI-b.

Env-Wq 1402.21 "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. The term includes a porch that is screened but does not include a porch that is enclosed in whole or in part with glass or any other material designed or intended to provide a weather-proof barrier.

Env-Wq 1402.22 "Ordinary high water mark" means "ordinary high water mark" as defined in RSA 483-B:4, XI-c.

Env-Wq 1402.23 "Person" means "person" as defined in RSA 483-B:4, XII.

Env-Wq 1402.24 "Pre-existing nonconforming primary structure" means a primary structure that does not meet current setback requirements and that was built prior to:

(a) July 2, 2002, for properties on the Connecticut River;

(b) 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;

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

(d) April 1, 2008, for properties that are included as a result of Laws of 2007, Ch. 267, namely all properties on 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.

Env-Wq 1402.25 "Primary building line" means "primary building line" as defined in RSA 483-B:4, XIII.

Env-Wq 1402.26 "Primary structure" means "primary structure" as defined in RSA 483-B:4, XIV.

Env-Wq 1402.27 "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 1402.28 "Protected shoreland" means "protected shoreland" as defined in RSA 483-B:4, XV.

Env-Wq 1402.29 "Public waters" means "public waters" as defined in RSA 483-B:4, XVI.

Env-Wq 1402.30 "Reference line" means "reference line" as defined in RSA 483-B:4, XVII.

Env-Wq 1402.31 "Removal or removed" means "removal or removed" as defined in RSA 483-B:4, XVIII.

Env-Wq 1402.32 "Repeat violation" means "repeat violation" as defined in RSA 483-B:4, XVIII-a.

Env-Wq 1402.33 "Repair" means "repair" as defined in RSA 483-B:4, XVIII-b.

Env-Wq 1402.34 "Replace in kind" means "replace in kind" as defined in RSA 483-B:4, XVIII-c.

Env-Wq 1402.35 "Replacement system" means "replacement system" as defined in RSA 483-B:4, XVIII-d.

Env-Wq 1402.36 "Residential unit" means "residential unit" as defined in RSA 483-B:4, XIX.

Env-Wq 1402.37 "Same degree of protection provided to the public waters" as used in RSA 483-B:11, II, means that:

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

(b) 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

(c) 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.

Env-Wq 1402.38 "Sapling" means "sapling" as defined in RSA 483-B:4, XX.

Env-Wq 1402.39 "Segment" means a section of waterfront buffer delineated in accordance with RSA 483-B:9, V(a)(2)(D). The term includes full segments, meaning a 50 foot by 50 foot area, and partial segments, meaning any area that does not comprise a full segment.

Env-Wq 1402.40 "Shoreland frontage" means "shoreland frontage" as defined in RSA 483-B:4, XX-a.

Env-Wq 1402.41 "Shoreland permit" means a permit issued under RSA 483-B:5-a, I(a) other than a permit by notification under Env-Wq 1406.~~0~~4***05***.

Env-Wq 1402.42 "Shrub" means "shrub" as defined in RSA 483-B:4, XXI.

Env-Wq 1402.43 "Stabilized" means conditions under which soils will not erode.

Env-Wq 1402.44 "Structure" means "structure" as defined in RSA 483-B:4, XXII.

Env-Wq 1402.45 "Subdivision" means "subdivision" as defined in RSA 483-B:4, XXIII.

Env-Wq 1402.46 "Tree" means "tree" as defined in RSA 483-B:4, XXIV.

Env-Wq 1402.47 "Undisturbed state" means "undisturbed state" as defined in RSA 483-B:4, XXIV-a.

Env-Wq 1402.48 "Unsafe tree" means a tree that has a structural defect and poses an imminent hazard to structures ***or to personal property or safety.***~~, as certified by a licensed forester, certified arborist, or licensed landscape architect.~~

Env-Wq 1402.49 "Urbanization" means "urbanization" as defined in RSA 483-B:4, XXV.

Env-Wq 1402.50 "Water dependent structure" means "water dependent structure" as defined in RSA 483-B:4, XXVI.

Env-Wq 1402.51 "Waterfront buffer" means the protected shoreland within 50 feet of the reference line, as specified in RSA 483-B:9, V(a)(1).

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

Env-Wq 1403.01 Maintenance of the Waterfront Buffer.

(a) Within the waterfront buffer, 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 1403.02 Maintenance of the Natural Woodland Buffer.

(a) Within the natural woodland buffer, no person shall undertake any activity in violation of RSA 483-B:9, V(b).

(b) The 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 1403.03 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 area.

(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.

(c) A retaining wall shall not be included in the calculation of impervious area if:

(1) The wall has a footprint of less than 12 inches in width; and

(2) The total footprint of all such walls is less than 150 square feet.

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

(1) Prevent damage to surrounding trees and saplings;

(2) Minimize damage to ground cover;

(3) Prevent soil erosion and sedimentation to the water body; and

(4) Leave all stumps intact in accordance with RSA 483-B:9, V(a)(2)(B).

(c) In any enforcement action against a property owner or contractor 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 or contractor, as applicable.

(d) Proof that removed trees were dead, diseased, or unsafe shall include, but not be limited to, the following:

(1) Photographs of the property which clearly show the dead, diseased, or unsafe trees and saplings; and

(2) Written certification signed by ***an individual with knowledge and experience in assessing tree health, such as*** a licensed forester, certified arborist, or licensed landscape architect**,** that the trees and saplings that were removed were dead, diseased, or unsafe, as applicable.

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

(1) Prevent damage to surrounding trees and saplings;

(2) Minimize damage to ground cover;

(3) Prevent soil erosion and sedimentation to the water body

(4) Leave all stumps intact in accordance with RSA 483-B:9, V(a)(2)(B).

(c) In any enforcement action against a property owner or contractor 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 or contractor, as applicable.

(d) Proof that the removal complied with RSA 483-B:9, V(a)(2)(D) shall include, but not be limited to, the following:

(1) Photographs of the property which clearly show the trees or saplings; and

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

PART Env-Wq 1404 STORMWATER AND EROSION AND SEDIMENTATION CONTROL

Env-Wq 1404.01 Protection of Water Quality.

(a) No person shall undertake construction or any other activity in such a way as to degrade water quality in violation of the water quality standards specified in Env-Ws 1700 or successor rules in 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 soils.

Env-Wq 1404.02 Stormwater Management and Erosion Control.

(a) Pursuant to RSA 483-B:9, V(d)(1), all new structures, modifications to existing structures, and excavation or earth moving within the protected shoreland shall be designed and constructed in accordance with RSA 485-A:17 and Env-Ws 415 or successor rules in Env-Wq 1500, to manage stormwater and control erosion and sediment, before, during, and after construction.

(b) For projects for which 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

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 structure shall be constructed unless allowed by local zoning.

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

Env-Wq 1405.03 Limitations on Accessory Structures.

(a) Accessory structures shall:

(1) Not exceed 12 feet in height; or

(2) Not exceed 20 feet in height if authorized by a permit under RSA 482-A, but located on the land rather than over public water, such as a dug-in boathouse.

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

(1) No larger than 150 square feet in each full segment of the waterfront buffer, or as pro-rated for partial segments as specified in RSA 483-B:9, V(a)(2)(D); 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.

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.

PART Env-Wq 1406 PERMITTING OF PROJECTS

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 or established in Env-Wq 1406.03 ***or Env-Wq 1406.04*** 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 Exemption for Vested Rights.

(a) Subject to (e), below, activities in the protected shoreland shall not require a permit under RSA 483-B:5-a if the property owner or developer can demonstrate to the department's satisfaction that the property owner or developer has incurred substantial liabilities in a reasonable, good faith reliance on the absence of a controlling law or regulation, sometimes called vested rights.

(b) The department shall deem any of the following to be proof that the property owner or developer has vested rights:

(1) The activities are specifically identified in an application that has been the subject of notice by a planning board pursuant to RSA 676:4, I(d) or the zoning board of adjustment prior to July 1, 2007, regardless of whether an approval has yet been issued, provided that such application is ultimately approved by the municipal board(s) having authority over the activities covered by the application;

(2) The activities are specifically identified in a detailed plan or narrative description submitted with a building permit application submitted to a municipality prior to October 1, 2007, provided that such application is ultimately approved by the municipal board(s) or official having authority over building permits;

(3) A concrete foundation for the primary structure was installed between April 1, 2007 and April 1, 2008;

(4) The activities are specifically identified in a variance or redevelopment waiver issued by the department prior to April 1, 2008 pursuant to RSA 483-B, unless the approval specifically requires the permittee to obtain a permit pursuant to this section if work was not commenced prior to April 1, 2008; or

(5) The activities were specifically approved in a permit issued pursuant to RSA 485-A:17 prior to April 1, 2008, unless the approval specifically requires the permittee to obtain a permit pursuant to this section if work was not commenced prior to April 1, 2008.

(c) A property owner or developer who is not able to show any of the conditions listed in (b)(1)-(5) may submit other evidence to demonstrate that the property owner or developer has otherwise incurred substantial liabilities and that such liabilities:

(1) Resulted from a reasonable, good faith reliance on the absence of a controlling law or regulation; and

(2) Are related to the provision of RSA 483-B from which the property owner or developer is seeking relief.

(d) A property owner claiming vested rights shall provide the following to the department in writing:

(1) The name and mailing address of the property owner;

(2) The name, mailing address, and daytime telephone number and, if available, an e-mail address, of an individual authorized to act on behalf of the property owner with whom the department can discuss the proposed project;

(3) The physical address of the proposed project site, if different from the property owner's mailing address;

(4) The name of the surface water that causes the property to be subject to RSA 483-B;

(5) If the exemption is claimed under (b)(1), above, proof that the notice was issued;

(6) If the exemption is claimed under (b)(2), above, a copy of the detailed plan or narrative description submitted with the building permit application;

(7) If the exemption is claimed under (b)(3), above, proof that the foundation has been installed, such as dated photographs or a bill for the foundation showing the date of installation; and

(8) If the exemption is claimed under (c), above, the following information:

a. A budget showing the total estimated cost of the project;

b. A narrative describing the full scope of the project, including all work expected to be done on the property within a 5-year period;

c. How much of the total estimated cost had been incurred prior to July 1, 2007 and how much of the total estimated cost had been incurred prior to April 1, 2008;

d. How much of the total scope of the project had been completed prior to July 1, 2007 and how much of the total scope of the project had been completed prior to April 1, 2008;

e. What revisions would be required to redesign the project to reflect the standards enacted to be effective April 1, 2008;

f. The cost of the revisions that would be needed; and

g. The relationship of the revisions to the full scope of the project as originally

envisioned.

(e) An exemption shall not be available under (a), above, if:

(1) The applicant proposes changes to the activities from those that would otherwise be exempt under (a), above, and such changes would increase impacts in the natural woodland buffer established by RSA 483-B:9, V(b)(1); or

(2) The applicable permit, approval, variance, or redevelopment waiver expires or otherwise lapses prior to work commencing, or is revoked for cause by the issuing authority.

Env-Wq 1406.~~03~~***04*** Additional Activities in Protected Shoreland That Do Not Require a Shoreland Permit.

(a) A person shall not be required to obtain a permit under RSA 483-B:5-a, I(a) prior to undertaking any activity listed in (c), below, in the protected shoreland, provided that the activity is conducted in accordance with the conditions noted.

(b) In any enforcement action against a property owner or contractor for actions arguably covered in (a), above, the burden of proving that the exemption applies shall be on the property owner or contractor, as applicable.

(c) Activities exempt pursuant to (a), above, shall be as follows:

(1) 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);

(2) Removal of trees or saplings, or both, in accordance with Env-Wq 1403.04 or Env-Wq 1403.05;

(3) Maintenance, repair, or modification of an existing, legal, primary structure that does not:

a. Alter the footprint or impervious area of the structure;

b. Require, or result in, the removal of vegetation;

c. Result in an increase in sewage loading;

d. Increase the number of residential units on the property; or

e. Require, or result in, any excavation or filling within the protected shoreland;

(4) Maintenance, repair, or modification of an existing, legal, accessory structure that does not:

a. Alter the footprint or impervious area of the structure;

b. Require, or result in, the removal of vegetation;

c. Result in an increase in sewage loading;

d. Increase the number of residential units on the property;

e. Require, or result in any excavation or filling within the protected shoreland; or

f. Exceed the criteria of Part Env-Wq 1405, if it is located within the waterfront buffer;

(5) Placement of picnic tables or other forms of lawn furniture;

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

a. 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;

b. Educational or research purposes; or

c. Monitoring hydrology;

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

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

(9) Construction or installation of a fence using hand-***held*** tools;

(10) Digging test pits for the purposes of determining suitability for wastewater disposal under RSA 485-A:29 relating to subdivisions or septic systems, provided***:***

a. ***T***~~t~~here is no disruption of groundcover within 50 feet of the reference line***;*** and

b. ***N***~~n~~o test pits ***are dug*** within 75 feet of the reference line ***unless needed to evaluate eligibility for replacement under Env-Wq 1003.10***;

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

(12) Forestry conducted in compliance with RSA 227-J:9 by or under the direction of a water supplier for the purpose of managing a water supply watershed;

(13) Replacement of a failed septic system, either in-kind as specified in Env-Wq 1003.10 or under a new approval, provided there is no increase in sewage loading from the structure(s) served by the system; ~~and~~

(14) Placement of a single structure more than 50 feet from the reference line, provided that:

a. The footprint of the structure is less than 150 sq. ft.;

b. No excavation or filling will occur in conjunction with the construction or placement of the structure;

c. The structure will not be heated;

d. The structure will not have electricity or plumbing; and

e. The structure will not be used as living space~~.~~***; and***

(15) Activities required to abate an imminent threat to public safety or public health or to stabilize property during or immediately following an emergency, provided the procedures specified in Env-Wq 1407 are followed.

Env-Wq 1406.~~04~~***05*** 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~~***06***, 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) ***Any v***~~V~~ehicles used shall be ~~designed to have low ground contact pressure~~ ***operated in a manner that minimizes disturbance to the natural woodland buffer***;

(3) ~~The type and manner of d~~***D***rilling ***operations*** shall be ~~selected~~ ***managed so as*** 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) Drill cuttings not used to back fill drill holes shall be removed or stabilized; and

(~~5~~***6***) Equipment shall be operated and maintained to avoid spillage of fluids including, but not limited to, oil, gas, antifreeze, or hydraulic fluids; ~~and~~

(b) Drilling of test wells ***or installation of monitoring wells for purposes of exploring for public water supplies or soil or groundwater contamination,*** 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~~***1***) The entity undertaking the drilling 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) Any vehicles used shall be operated in a manner that minimizes disturbance to the natural woodland buffer;

(3) Drilling operations shall be managed so as to have no impact on water quality;

(~~3~~***4***) Drill holes shall be back filled with drill spoil or clean fill or permanently cased;

(~~4~~***5***) Drill cuttings not used to back fill drill holes shall be removed or stabilized; and

(~~5~~***6***) Equipment shall be operated and maintained to prevent spillage of fluids including, but not limited to, oil, gas, antifreeze, or hydraulic fluids~~.~~***; and***

(c) Drilling of drinking water wells outside of the natural woodland buffer, subject to the following conditions:

(1) The entity undertaking the drilling shall provide the landowner, the department, and the local governing body, with written notification of the intended location and type of well to be installed at least 14 days prior to commencing work;

(2) Any vehicles used shall be operated in a manner that minimizes disturbance to the terrain;

(3) Drilling operations shall be managed so as to have no impact on water quality;

(4) Any abandoned drill holes shall be back filled with drill spoil or clean fill;

(5) Drill cuttings not used to back fill drill holes shall be removed or stabilized; and

(6) Equipment shall be operated and maintained to prevent spillage of fluids including, but not limited to, oil, gas, antifreeze, or hydraulic fluids.

Env-Wq 1406.~~05~~***06*** 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~~***07***, which has been signed as specified in Env-Wq 1406.~~07~~***08***;

(b) Plans as specified in Env-Wq 1406.~~08~~***09***, formatted as specified in Env-Wq 1406.~~10~~***11***;

(c) Plans formatted as specified in Env-Wq 1406.~~10~~***11*** or other information, or both, as specified in Env-Wq 1406.~~09~~***10***, if applicable to the proposed project;

(d) The attachments identified in Env-Wq 1406.~~11~~***12***;

(e) The certification(s) required by Env-Wq 1406.~~12(c)~~***13(d)***; 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~~***07*** 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-***and***-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~~***08*** Signatures Required.

(a) The property owner(s) and applicant, if other than the property owner, shall sign and date the 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~~***09*** Plans to be Submitted with All Shoreland Permit Applications. The plans required by Env-Wq 1406.~~05~~***06***(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 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) The limits of existing cleared areas, such as gardens, lawns, and paths;

(l) A plan of any planting(s) proposed in the waterfront buffer, showing the proposed location(s) and Latin names or common names of proposed species;

(m) If applicable, 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

(n) The date of plan and the preparer's name.

Env-Wq 1406.~~09~~***10*** 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%~~ ***15% or more*** within the protected shoreland under RSA 483-B:9, V(g)(2) or RSA 483-B:9, V(g)(3), a ~~survey~~ ***plan*** of the property prepared and stamped by a licensed land surveyor to verify the square footage of the lot;

(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 RSA 483-B:9, V(g)(2);

(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~~.~~***; and***

(h) For any project involving work within the waterfront buffer, the following:

(1) A plan showing each segment of waterfront buffer that will be impacted by the project;

(2) The location and diameter of all existing trees and saplings, at least up to that which is sufficient to meet the point requirement specified in RSA 483-B:9, V(a)(2)(D); and

(3) A designation of the trees to be cut during the project, if any, including:

a. The diameter of all trees and saplings at 4-½ feet from the ground; and

b. The names of the existing species, using either the Latin names or common names;

Env-Wq 1406.~~10~~***11*** 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 which are 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~~ ***individual authorized to submit the plans electronically***.

Env-Wq 1406.~~11~~***12*** Attachments to Shoreland Permit Application. The attachments required by Env-Wq 1406.~~05~~***06***(d) shall be as follows:

(a) A copy of the recorded deed of the current property owner;

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

(c) Photographs ~~of~~ ***which clearly show*** 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)~~***13(d)***;

(g) A copy of the NH department of resources and economic development, division of forests and lands, natural heritage bureau report for the subject property indicating that the portion of the natural woodland buffer impacted by 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 on which the worksheet is based.

Env-Wq 1406.~~12~~***13*** Required Notifications.

(a) Each applicant for a shoreland permit shall submit a copy of the completed and signed 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 ¼-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) 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 by certified mail 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.

(d) 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; and

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

Env-Wq 1406.~~13~~***14*** 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 project:

(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~~***15*** 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~~***06***; and

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

(c) If the department determines that the project as proposed will not comply with all applicable criteria of these rules and 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) If a permit is issued, all work shall be done in accordance with the plans approved by the department, which shall be considered part of the issued permit.

(g) All permits issued shall be subject to the conditions specified in Env-Wq 1406.~~16~~***17***.

Env-Wq 1406.~~15~~***16*** Recordation of Certain Permits.

(a) 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 permit shall not be effective until the property owner has recorded 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.

(b) Within 15 days of the date of recordation, the property owner shall provide a copy of the recorded document to the department.

(c) If a permit is issued in the name of an applicant who is not the property owner pursuant to Env-Wq 1406.~~17~~***18***(b), the recordation required by (a), above, shall include an explanatory affidavit or other suitable, recordable explanation to ensure that the variance(s) or redevelopment wavier, as applicable, appear(s) in the chain of title for the property.

Env-Wq 1406.~~16~~***17*** Conditions Applicable to All Projects in the Protected Shoreland. The following conditions shall apply to all projects in the protected shoreland, in addition to any project-specific conditions included pursuant to Env-Wq 1406.~~14~~***15*** and regardless of whether a permit is obtained:

(a) 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;

(b) 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;

(c) No person undertaking any activity in the protected shoreland 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

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

Env-Wq 1406.~~17~~***18*** 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 department shall issue the permit in the applicant's name directly if so requested in writing signed by the property owner and the applicant.

(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 original or a legible copy of the shoreland permit, including all plans and conditions included pursuant to Env-Wq 1406.~~14~~***15***; 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 possess and have read the shoreland permit, including all plans and conditions included pursuant to Env-Wq 1406.~~14~~***15***(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~~***19*** <u>Duration of Shoreland Permit; Amendments</u>.

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

(b) The holder of a shoreland permit who wishes to make changes to a project after the department has issued the permit shall:

(1) Apply for an amended permit in accordance with (c), below, if the changes meet the criteria specified in (e), below; or

(2) Apply for a new permit in accordance with Env-Wq 1406, if the changes do not meet the criteria specified in (e), below.

(c) A permit holder shall request an amendment to an issued permit by submitting the following to the department in writing:

(1) A copy of the permit that is sought to be amended;

(2) Those components of a complete original application that differ from the application originally submitted;

(3) A list that identifies each specific change to the project, with a cross-reference to where on the submitted documents that change is reflected and how it is reflected; and

(4) A statement signed by the permit holder certifying that the proposed changes meet all of the criteria specified in (e), below.

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

(e) A permit shall be amended only if the proposed changes meet all of the following criteria:

(1) There is no increase in impervious area;

(2) There is no reduction in any set-back to the reference line;

(3) There is no increase in disturbed area;

(4) The work can be completed prior to the expiration date of the original permit; and

(5) The project as revised would have been approved under Env-Wq 1406.~~14~~***15*** if the revised project had been submitted originally.

(f) If the project as revised meets the criteria specified in (e), above, the department shall issue an amended permit. The issuance of an amended permit shall not extend the expiration date.

PART Env-Wq 1407 EMERGENCY PROCEDURES

Env-Wq 1407.01 Emergency ~~Permits~~ ***Authorizations***.

(a) A property owner may request a***n*** ~~permit~~ ***authorization to act*** on an emergency basis pursuant to this section in lieu of filing an application under Env-Wq 1406.~~05~~***06*** if:

(1) A threat to public safety or public health exists or significant damage to private property is imminent as a result of an occurrence beyond the control of the property owner, such as a natural disaster;

(2) The ~~event causing~~ ***request for*** the emergency ***authorization*** ~~occurred~~ ***is made*** within one week of ~~the request~~ ***discovering the need*** for the emergency ~~permit~~ ***authorization***; and

(3) The work covered by the emergency ~~permit~~ ***authorization*** is limited to temporary stabilization of the property or ***other*** mitigation of the immediate threat***, such as removal of hazardous or potentially hazardous materials***.

(b) The property owner or property owner's agent shall request an emergency ~~permit~~ ***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 permit, and, if available, an e-mail address and fax number;

(2) A description of the ***need for the*** emergency ***authorization***; and

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

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

(d) The department shall:

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

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

Env-Wq 1407.02 Work During Emergencies Without Prior ~~Permit~~ ***Authorization***.

(a) Subject to (b), below, ~~the department shall not take an enforcement action against a person who performs work in the protected shoreland without first obtaining a permit~~ ***work without a permit issued under Env-Wq 1406 or an emergency authorization issued under Env-Wq 1407.01 shall be allowed during a natural disaster*** if the work:

(1) Was initiated and completed during a natural disaster; and

(2) Is limited to that work necessary 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 commencing 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 ***need for the work to be done on an*** emergency ***basis***; and

(3) A description of what work was done and when the work began and was completed.

Env-Wq 1407.03 Action After Emergency. An application as specified in Env-Wq 1406.~~05~~***06*** shall be submitted for any permanent repairs, restoration, or other activities proposed to be undertaken after the immediate threat has been abated and the property has been stabilized.

PART Env-Wq 1408 REPLACEMENT OR REDEVELOPMENT

Env-Wq 1408.01 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 or such shorter period of time as is specified in local ordinances or regulations.

(b) For purposes of these rules, the time 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 the time period established in (a), above, any primary structure thereafter constructed shall conform to all applicable set-back requirements.

Env-Wq 1408.02 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 1408.03 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 1408.04 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~~***06***:

(a) The footprint(s), impervious area(s), and location(s) of all existing structure(s) within the protected shoreland;

(b) The footprint(s), impervious area(s), and location(s) of all proposed structures within the protected shoreland;

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

(d) An explanation of how the project:

(1) Is more nearly conforming 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 1408.05 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 1409 VARIANCE FROM THE MINIMUM STANDARDS

Env-Wq 1409.01 Variance Requests. Each applicant for a variance under RSA 483-B:9, V(i) shall provide the following information with the application required by Env-Wq 1406.~~05~~***06***:

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

(b) Pursuant to RSA 483-B:9, V(i), a statement describing 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~~***13***(c).

Env-Wq 1409.02 Decision on Variance Request.

(a) The department shall approve a request for variance under RSA 483-B:9, V(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 1409.01(b), 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 1410 URBANIZED SHORELAND EXEMPTION

Env-Wq 1410.01 Definitions.

(a) "Historic", for purposes of Env-Wq 1410.03(a) and Env-Wq 1410.05(b), means ***the time period*** from 1971 to the date of the application or such longer period as the applicant designates.

(b) "Applicant" means the entity that is eligible under RSA 483-B:12, I or IV to apply for, and that does apply for, an urbanized shoreland exemption.

Env-Wq 1410.02 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 1410.03 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, based on lot lines as shown on a municipal tax map; and

(5) If available, a recent aerial photograph of the area.

Env-Wq 1410.04 Delivery. The applicant shall send the evidence directly to the office of energy and planning with a copy to the commissioner.

Env Ws 1410.05 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 complete request.

(b) The commissioner shall approve the request if the evidence required by Env-Wq 1410 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 1411 CONSISTENCY OF STATE AND LOCAL ACTION ON SHORELAND ZONE PROJECTS

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) The reference line;

(b) The primary building line, 50 feet from the reference line; and

(c) 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.

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 1412.03 Restoration Plan Contents. A restoration plan shall include the following:

(a) The information specified in Env-Wq 1406.~~08~~***09***;

(b) The list of species of plants proposed for replanting, using Latin names or common names;

(c) The number and distribution of plants proposed for replanting, based on the matrix specified in Env-Wq 1412.04;

(d) A plan of the waterfront buffer, shown with vegetation sufficient to meet the points required by RSA 483-B:9, V(a)(2)(D);

(e) A plan of the natural woodland buffer, 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;

(f) All existing and proposed structures, including but not limited to the primary structure and accessory 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 the waterfront buffer, the following shall apply to each segment, to reach at least the total points required by RSA 483-B:9, V(a)(2)(D) in that 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(a)(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) Subject to (c), below, ground cover in the form of shrubs planted as individual plants or clusters shall be assessed points as follows:

(1) A one-gallon to 2-gallon shrub shall equal one-third of a point;

(2) A 3-gallon to 4-gallon shrub shall equal one-half of a point;

(3) Ground cover planted in the form of sod or mat shall equal one point for every 50 square feet;

(4) Sod or mat ground cover shall constitute no more than 15 points in each full segment; and

(5) Shrub groundcover shall constitute no more than 20 points in each full segment~~.~~***; and***

(c) ~~Areas disturbed~~ ***No points shall be credited for replacement of natural ground cover removed*** in violation of RSA 483-B***:9, V(a)(2)(C)*** ~~shall be restored to the points required by RSA 483-B:9, V(a)(2)(D) without credit for ground cover~~.

Env-Wq 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) The replacement plants shall be chosen from 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, replacement vegetation and ground cover shall be based on the trees, saplings, and natural ground cover that existed before removal. 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(a)(2)(D) or to provide at least an equivalent level of protection as would be afforded by native trees,

saplings, and natural ground cover that met the minimum score;

(e) Replacement trees shall be placed at least 5 feet apart on center;

(f) 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 with the restoration plan; and

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

PART Env-Wq 1413 WAIVERS FROM RULES

Env-Wq 1413.01 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 1413.02 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 1413.03.

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

Env-Wq 1413.03 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;

(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-Wq 1413.04.

(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 1413.04 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 1413.05 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 1414 SUSPENSION OR REVOCATION OF PERMITS, WAIVERS, AND VARIANCES

Env-Wq 1414.01 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 1408, a variance issued under Env-Wq 1409, or a rule waiver issued under Env-Wq 1413.

Env-Wq 1414.02 Definitions. For purposes of this part, the following definitions shall apply:

(a) “Approval” means a shoreland permit issued under Env-Wq 1406, a redevelopment waiver issued under Env-Wq 1408, a variance issued under Env-Wq 1409, or a rule waiver issued under Env-Wq

1413, as applicable to a particular proceeding; and

(b) "Recipient" means the person to whom the approval was issued or the person's successor in interest.

Env-Wq 1414.03 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 would conform 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, VIII and IX
Env-Wq 1403	RSA 483-B:5; RSA 483-B:9, V(a) and (b); RSA 483-B:17, III
Env-Wq 1404	RSA 483-B:9, V(c)
Env-Wq 1405	RSA 483-B:17, IV
Env-Wq 1406	RSA 483-B:5-a; RSA 483-B:17, I and X
Env-Wq 1407	RSA 483-B:5-a; RSA 483-B:17, I and X
Env-Wq 1408	RSA 483-B:11
Env-Wq 1409	RSA 483-B:9, V(i)
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)