

**MEMORANDUM OF AGREEMENT
BETWEEN THE DEPARTMENT OF ENVIRONMENTAL SERVICES
AND THE DEPARTMENT OF TRANSPORTATION REGARDING
ALTERATION OF TERRAIN PERMITS (RSA 485-A)**

WHEREAS, RSA 485-A:17, Terrain Alteration, requires that any person proposing to undertake construction in or on the border of the surface waters of the state, or proposing to significantly alter the characteristics of the terrain in such a manner as to impede the natural runoff or create an unnatural runoff, shall apply for a permit and pay a fee to the Department of Environmental Services (DES) to authorize such activities; and

WHEREAS, DES Chapter Env-Wq 1500, Alteration of Terrain (AOT), was promulgated to protect drinking water supplies, surface waters and groundwater by specifying the procedures and criteria for obtaining permits required by RSA 485-A:17; and

WHEREAS, RSA 485-A:17, III authorizes DES to exempt other state agencies from the permit and fee provisions of RSA 485-A:17, provided that the agency has incorporated appropriate protective practices in its projects which are substantially equivalent to the requirements established by DES under RSA 485-A:17, and

WHEREAS, the Department of Transportation (DOT) designs, constructs and maintains all projects under its control so as to prevent or control erosion of the land, and provide appropriate long-term stormwater management and treatment practices in accordance with the contract provisions; engineering standards; guidelines or best management practices (BMPs) and regulatory standards, as periodically amended and incorporated in this Memorandum of Agreement (MOA) as Appendix A; and

WHEREAS, Part Env-Wt 307.03 requires demonstration that a project permitted pursuant to RSA 482-A, Fill and Dredge in Wetlands, has incorporated appropriate measures to protect water quality, and Env-Wt 527.04(e) prohibits direct discharge to wetlands and surface waters; and

WHEREAS, Env-Wq 1503.33 requires, under certain circumstances, consultation with the New Hampshire Fish and Game Department (NHFG) regarding threatened and endangered species and the process for such consultation will be governed by a separate Memorandum of Agreement between DOT and NHFG;

NOW, THEREFORE, DES has determined that by utilizing or complying with the standards and practices identified in Appendix A, DOT has incorporated protective practices into its projects that are substantially equivalent to the terrain alteration requirements of RSA 485-A:17 and Chapter Env-Wq 1500. Accordingly, DOT is exempt from the requirements of RSA 485-A:17 and Chapter Env-Wq 1500 that would otherwise require DOT to obtain an alteration of terrain permit and to pay a permit fee for the design, construction and maintenance of all projects conducted in accordance with this MOA, subject to the following stipulations.

STIPULATIONS

I. PURPOSE AND APPLICABILITY

- A. This Agreement sets forth the procedures for DES to determine substantial equivalency of DOT protective practices consistent with RSA 485-A:17, III.
- B. This Agreement shall apply to DOT and any agent, contractor, or consultant acting on its behalf, and under its direction, but does not include locally-managed projects, including Local Public Agency projects, State Aid Bridge projects, and State Aid Highway projects.
- C. At any time, DOT may choose to apply for an AOT permit pursuant to RSA 485-A:17, and Chapter Env-Wq 1500, rather than by following the requirements set-forth in this MOA.

II. CONTRACT PROVISIONS, ENGINEERING STANDARDS, GUIDELINES OR BMPS, AND REGULATORY STANDARDS

DOT shall design, construct and maintain all projects processed under this MOA in accordance with the contract provisions; engineering standards; guidelines or best management practices (BMPs); and regulatory standards, as periodically amended, identified in Appendix A. Each year in December DOT shall provide DES with an updated Appendix A. If DES has objections to the information in Appendix A, the dispute resolution procedure in Stipulation VI shall be followed.

III. DOCUMENTATION OF SUBSTANTIAL EQUIVALENCY

DOT shall prepare, or cause to be prepared, for projects processed pursuant to this MOA, stormwater and other water quality analyses, consistent with the standards identified in Appendix A, in order to demonstrate that project designs and plans are substantially equivalent to the alteration of terrain requirements of RSA 485-A:17 and Chapter Env-Wq 1500. The project-level analyses shall be made available to DES upon request.

IV. MONITORING AND REPORTING

DOT and DES shall meet annually in January to evaluate the substantial equivalency determinations made under this MOA, unless both parties agree that the meeting is unnecessary. Regardless of whether the meeting is held, DOT shall prepare, and make available to DES the following information:

- A. A table identifying each project advertised for construction in the previous year, and which was processed pursuant to this MOA, to include, for each project:
 - a. Project name and number;
 - b. Brief project description;
 - c. Amount of new pavement area (net increase);
 - d. The name of the engineering firm that completed the design analysis pursuant to Stipulation III, if other than DOT;

- e. The DES permit number(s) for any Shoreland Water Quality Protection Act, or Wetlands permit obtained for each project; and
 - f. Information on design and construction cost of each project.
- B. For the top 10% of the projects identified in the table, ranked based on the amount of new pavement area created, and prepared pursuant to Stipulation IV.A., DOT shall provide DES with the detailed project level water quality analyses prepared pursuant to Stipulation III.

V. STANDARD DREDGE AND FILL PERMIT APPLICATIONS, PURSUANT TO RSA 482-A, DREDGE AND FILL IN WETLANDS

- A. When submitting a permit application for a Standard Dredge and Fill permit pursuant to RSA 482-A, DOT may cite this Agreement, and shall provide a brief narrative of the water quality treatment measures incorporated into the project, including a summary of treated pavement area. This summary shall include:
- a. The amount of new pavement area in square feet that will be added as a result of the project;
 - b. The total amount of pavement area in square feet that will have new stormwater treatment as a result of the project; and
 - c. The ratio of (b) to (a) expressed as a percentage.
- B. When a project is reviewed at a Natural Resource Agency Coordination meeting, and the information is available, DOT shall provide:
- a. The percent of new impervious area that will have stormwater treatment,
 - b. Any proposed, new direct discharges to wetlands or surface waters, and
 - c. The Natural Heritage Bureau Datacheck results.
- C. DES reserves the right to request additional avoidance and minimization measures to meet requirements of Chapter Env-Wt 100 *et seq.*

VI. DISPUTE RESOLUTION

- A. Should either party object in writing to the other party regarding the manner in which the terms of this Agreement are carried out, DOT and DES shall consult to resolve the objection.
- B. At any time during implementation of the terms of this Agreement, should any member of the public raise an objection in writing to either DOT or DES pertaining to such implementation, DOT or DES as applicable, shall immediately notify the other party of the objection. DOT and DES shall then meet to consider and resolve the objection.

VII. AMENDMENT

Either DES or DOT may, at any time, propose amendments to this Agreement, whereupon DES and DOT shall consult to consider such amendment. This Agreement may be amended only upon written concurrence of both DES and DOT.

VIII. TERMINATION

- A. Either DES or DOT may terminate this Agreement. If this Agreement is not amended as provided for in Stipulation VII, or if either party proposes termination of this Agreement for any reason, the party proposing termination shall notify the other party in writing, explain the reasons for proposing termination, and consult to seek alternatives to termination.
- B. Should such consultation result in an agreement on an alternative to termination, DES and DOT shall amend this Agreement.
- C. Should such consultation fail, the party proposing termination may terminate this Agreement.
- D. Should this Agreement be terminated, DOT shall follow the permitting requirements of RSA 485-A and Chapter Env-Wq 1500.

IX. DURATION OF AGREEMENT

This Agreement shall have no end date, unless terminated pursuant to Stipulation VIII. This Agreement shall be reviewed by DES and DOT every 5 years, and if determined by mutual agreement, amended in accordance with Stipulation IX.

SIGNATURES

The parties hereby acknowledge and reaffirm their commitment to perform all duties set forth in this Agreement.

New Hampshire Department of Environmental Services

By: 
Robert R. Scott
Commissioner

3/1/22
(date)

New Hampshire Department of Transportation

By: 
Victoria F. Sheehan
Commissioner

2/18/2022
(date)

APPENDIX A

Contract provisions, engineering standards, guidelines, best management practices, and regulatory standards utilized by the Department of Transportation so as to prevent or control erosion of the land, and provide appropriate long-term stormwater management and treatment practices.

- NHDOT “Standard Specifications for Road and Bridge Construction,” March 2016
- AASHTO “Highway Drainage Guidelines,” 2007
- EPA “Developing your Stormwater Pollution Prevention Plan – Guide for Construction Sites,” May 2007
- USDOT “Best Management Practices for Erosion and Sediment Control,” June 1995
- FHWA “Urban Drainage Design Manual, “ September 2009
- NHDES “New Hampshire Stormwater Management Stormwater Manual, Volumes 1, 2, & 3,” December 2008
- NHDOT “Guidelines for Temporary Erosion Control and Stormwater Management,” 2002
- NHDOT “Best Management Practices for Routine Roadway Maintenance Activities in New Hampshire,” 2019
- NHDOT “Construction Manual,” 2016
- FHWA “Hydraulic Design of Highway Culverts,” April 2012
- ARWMA “Manual for American Railway Engineers and Maintenance of Way Association,” April 2015
- AASHTO “Drainage Manual,” 2014
- NHDOT “Salt Management Plan,” June 2019
- NHDOT “Stormwater BMP Inspection and Maintenance Plan,” May 2019
- NHDOT “Highway Design Manual,” March 2014
- NHDOT “Manual of Drainage Design for Highways,” April 1998

**Please note that this list is not comprehensive*