

**MEMORANDUM OF AGREEMENT  
BETWEEN THE DEPARTMENT OF ENVIRONMENTAL SERVICES  
AND THE DEPARTMENT OF TRANSPORTATION REGARDING  
WETLANDS PERMITTING TIMEFRAMES (RSA 482-A)**

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**WHEREAS**, RSA 482-A:1 establishes that it is, “*found to be for the public good and welfare of this state to protect and preserve its submerged lands under tidal and fresh waters and its wetlands;*” and

**WHEREAS**, RSA 482-A:3 states that, “*no person shall excavate, remove, fill, dredge, or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from the [Department of Environmental Service];*” (NHDES) and

**WHEREAS**, RSA 482-A:3, XIV sets out the required permit processing timeframes for wetland projects; and

**WHEREAS**, NHDES adopted wetlands rules effective December 15, 2019 to establish specific approval and design criteria, information required, standard processes and permit conditions and to improve the quality and consistency of application and plan submissions, and technical review and processing, and

**WHEREAS**, RSA 482-A:3, XIV(b)(1) states that, “*The time limits prescribed by this paragraph shall not apply to applications submitted by the department of transportation, for which time limits shall be set by a memorandum of agreement between the commissioner of the department of environmental services and the commissioner of the department of transportation*” (NHDOT), and

**WHEREAS**, NH Code of Administrative Rules Env-Wt 527.05(a) states that a permit for the construction of a public highway project, “*shall be contingent on review and approval by the department of final stream diversion and erosion control plans that detail the timing and method of stream flow diversion during construction and show temporary siltation, erosion, and turbidity control measures to be implemented;*”

**NOW, THEREFORE**, NHDES and NHDOT agree that, subject to the following stipulations, both agencies shall implement the requirements established in RSA 482-A and NH Code of Administrative Rules PART Env-Wt 100-900, except as established below.

**STIPULATIONS**

**I. PURPOSE AND APPLICABILITY**

- A. This Agreement sets forth the processing timeframes for wetlands permit applications submitted by NHDOT to NHDES.

- B. This Agreement shall apply to NHDOT and any agent, contractor, or consultant acting on its behalf, and under its direction.
- C. This Agreement shall not apply to locally-managed projects, including but not limited to Local Public Agency projects, State Aid Bridge projects, and State Aid Highway projects.
- D. At any time, NHDOT may choose to process a permit application pursuant to RSA 482-A by following the timeline established in RSA 482-A:3, XIV rather than by following the timelines in this Agreement. For reasons such as known controversy or complexity, DES may also request that DOT process a permit application by following the timeline established in RSA 482-A:3, XIV.

## **II. DEFINITIONS**

Terms used in this Agreement are defined in RSA 482-A and NH Code of Administrative Rules PART Env-Wt 100-900 or successor rules.

## **III. PERMITTING SCHEDULE FOR PROJECTS WITH LESS THAN 1 ACRE OF JURISDICTIONAL IMPACT AND WHICH QUALIFY FOR COVERAGE UNDER THE ARMY CORPS OF ENGINEERS GENERAL PERMIT FOR NEW HAMPSHIRE**

In processing an application for permits under this section, except for permits by notification, the following schedule shall apply:

- A. Within 5 days of receiving a complete permit application by NHDOT, NHDES shall issue a notice of administrative completeness or send notice to NHDOT identifying any additional information required to make the application administratively complete. Each receipt of additional information by NHDOT in response to any notice shall re-commence the 5 day period until NHDES issues a notice of administrative completeness. The NHDOT shall submit the requested information as soon as practicable. There is no time limit by which the information must be submitted, but NHDOT will provide an update to NHDES every 60 days until the requested information is submitted. However, Env-Wt 305.02(d) continues to apply to projects for which an application has been filed prior to December 15, 2019, in that the design, approval, and construction criteria in effect at the time of filing apply, only if the application is complete within 6 months of December 15, 2019, regardless of when the completeness determination is made.
- B. Within 50 days of the issuance of a notice of administrative completeness, NHDES will request any additional information required to complete its review of the application. The NHDOT shall submit the requested information as soon as practicable. There is no time limit by which the information must be submitted, but NHDOT will provide an update to NHDES every 60 days until the requested information is submitted. However, Env-Wt 305.02(d) continues to apply to projects for which an application has been filed prior to December 15, 2019, in that

the design, approval, and construction criteria in effect at the time of filing apply, only if the application is complete within 6 months of December 15, 2019, regardless of when the completeness determination is made.

- C. Within 30 days of the receipt of a complete response from NHDOT pursuant to a request for additional information, NHDES shall:
  - a. Approve the application and issue a permit;
  - b. Deny the application and issue written findings in support of the denial;
  - c. Schedule a public hearing within 30 days in accordance with NHDES wetlands rules, and in accordance with RSA 482-A; or
  - d. Extend the time for rendering a decision with the agreement of NHDOT.
- D. Where no request for additional information is made pursuant to this section, NHDES shall, within 50 days from the issuance of the notice of administrative completeness:
  - a. Approve the application and issue a permit;
  - b. Deny the application and issue written findings in support of the denial;
  - c. Schedule a public hearing within 30 days in accordance with NHDES wetlands rules, and in accordance with RSA 482-A; or
  - d. Extend the time for rendering a decision with the agreement of NHDOT.
- E. Where a public hearing pursuant to RSA 482-A:22 is required, NHDES shall follow the timelines established in NH Code of Administrative Rules PART Env-Wt 202 PERMIT APPLICATION HEARINGS.

**IV. PERMITTING SCHEDULE FOR PROJECTS WITH 1 ACRE OR MORE OF JURISDICTIONAL IMPACT AND/OR WHICH DO NOT QUALIFY FOR COVERAGE UNDER THE ARMY CORPS OF ENGINEERS GENERAL PERMIT FOR NEW HAMPSHIRE**

In processing an application for permits under this section, NHDOT and NHDES shall follow the timelines established in RSA 482-A:3, XIV.

**V. APPROVAL OF FINAL STREAM DIVERSION AND EROSION CONTROL PLANS (Env-Wt 527.05(a))**

In processing permits under this section, NHDES may choose to approve final stream diversion and erosion control plans prior to permit issuance when NHDOT has submitted sufficient information in the permit application, thereby eliminating the need for such post-permitting approval. However, when a NHDOT permit is conditioned on NHDES review and approval of final stream diversion and erosion control plans, NHDES shall take no more than 14 days in rendering such approval, commencing on the date NHDES receives a complete set of plans. The 14 day review timeline shall not apply where work has been done without a permit.

## **VI. MONITORING AND REPORTING**

The NHDOT and NHDES shall meet annually upon execution of this Agreement to evaluate each agency's functioning under this Agreement. Prior to the annual meeting, NHDES shall draft an agenda for NHDOT approval, and NHDOT shall prepare an evaluation of the projects permitted under this Agreement, including the permitting timeline for each project. The results of this annual meeting will be presented to a NHDOT/NHDES department-level session.

## **VII. 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, NHDOT and NHDES 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 NHDOT or NHDES pertaining to such implementation, that party shall immediately notify the other party. The NHDOT and NHDES shall then meet to consider and resolve the objection.
- C. If NHDES and NHDOT are unable to resolve an objection at the NHDOT Bureau of Environment/NHDES Land Resources Management level, the objection shall be elevated to a NHDOT/NHDES department-level session, following which either party can choose to seek to amend this Agreement pursuant to Stipulation VIII, or terminate this Agreement pursuant to Stipulation IX.

## **VIII. AMENDMENT**

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

## **IX. TERMINATION**

- A. Either NHDES or NHDOT may terminate this Agreement. If this Agreement is not amended as provided for in Stipulation VIII, or if either party proposes termination of this Agreement for other reasons, 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, NHDES and NHDOT shall proceed in accordance with that agreement.
- C. Should such consultation fail, the party proposing termination may terminate this Agreement.
- D. Should this Agreement be terminated, NHDES and NHDOT shall follow the permitting requirements of RSA 482-A, and NH Code of Administrative Rules PART Env-Wt 100-900.

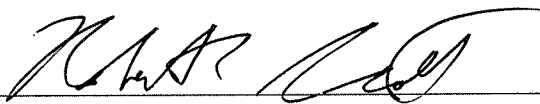
**X. DURATION OF AGREEMENT**

This Agreement shall remain in effect for a period of five (5) years after the date it takes effect, unless it is terminated prior to that time pursuant to Stipulation IX. This Agreement shall be reviewed by NHDES and NHDOT on an annual basis for modification or termination in accordance with Stipulation VI. If no changes are proposed and neither NHDES nor NHDOT objects within the first five (5) year term, the term of this Agreement shall be extended automatically for another five (5) years without re-execution.

**SIGNATURES**

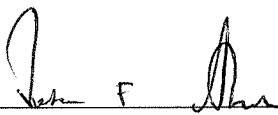
The parties hereby acknowledge and reaffirm their commitment to perform all duties set forth in this Agreement.

New Hampshire Department of Environmental Services

By:   
Robert R. Scott  
Commissioner

12/17/19  
(date)

New Hampshire Department of Transportation

By:   
Victoria F. Sheehan  
Commissioner

12/16/19  
(date)

