| Notice Number | **2021-87** | Rule Number | **Env-Wq 1503.08, 1503.19, 1503.22, 1503.33, 1504.09, 1504.13, 1504.18, 1506.15** |
|---|---|---|---|

| | |
|---|---|
| 1. Agency Name & Address:<br><br>**Department of Environmental Services**<br>**29 Hazen Drive**<br>**P.O. Box 95**<br>**Concord, NH 03302-0095** | 2. RSA Authority: **RSA 485-A:6, VIII and RSA 485-A:17, I**<br>3. Federal Authority: **N/A**<br>4. Type of Action:<br>Adoption **X**<br>Repeal ____<br>Readoption ____<br>Readoption w/amendment **X** |

5. Short Title: **Requirements for Alteration of Terrain Permits and Consultation with NH Fish and Game Department**

6. (a) Summary of what the rule says and of any proposed amendments:

The existing rules establish the information that must be included in a permit application for Alteration of Terrain (AOT) as well as the criteria that must be met before the Department will issue a permit under RSA 485-A:17, I. This proposal readopts with amendment Env-Wq 1503.08, *Additional Information Required for AOT Permit Applications*, Env-Wq 1503.19, *Criteria for Issuance of AOT Permits*, and Env-Wq 1503.22, *Amended Permits for Modifications to Approved Projects.* The Department last amended Env-Wq 1503.19(h), effective June 2, 2020, to address the requirements of RSA 212-A:9, III, *Conservation Measures*. This proposal also readopts with amendment and makes technical revisions to Env-Wq 1504.09, *Stormwater Drainage Report; Drainage Area Plans; Hydrologic Soil Group Plans* and Env-Wq 1504.13 *Infiltration Feasibility Report*.

The proposal eliminates the requirement in Env-Wq 1503.19(h) that requires every applicant to perform a study and provide a report performed by a wildlife biologist. The proposal adopts a new requirement in Env-Wq 1503.33 that requires an applicant to request consultation with the NH Fish and Game Department (NHF&G) whenever the Natural Heritage Bureau database records identify threatened or endangered species in the vicinity of the proposed project and also if NHDES receives evidence, verified by NHF&G, of any state or federally listed threatened or endangered wildlife species in the vicinity of the project. The proposal also adopts requirements in Env-Wq 1504.18, that all plans contain wildlife protection notes and for those projects that require consultation with NHF&G, the plans must also contain a list of all conservation measures recommended by NHF&G. Lastly, the proposal adopts new requirements in Env-Wq 1506.15 for manufactured erosion and sediment control products.

6. (b) Brief description of the groups affected:

The proposed rules will affect applicants for an Alteration of Terrain Permit under RSA 485-A:17, I, in cases where database records identify threatened or endangered species in the vicinity of the proposed project.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

| Rule Section(s) | State Statute(s) Implemented |
|---|---|
| Env-Wq 1503.08 intro, (a), & (c)-(m); Env-Wq 1503.19 intro, (a)-(g), & (j); Env-Wq 1503.22(a)-(c) & (e)-(h). | RSA 485-A:1; RSA 485-A:17 |
| Env-Wq 1503.08(b) and (n), 1503.19(h), 1503.22(d) and 1503.33 | RSA 485-A:1; RSA 485-A:17; RSA 212-A:9, III |
| Env-Wq 1504.09 and 1504.13 | RSA 485-A:1; RSA 485-A:17 |
| Env-Wq 1504.18 | RSA 485-A:1; RSA 485-A:17; RSA 212-A:9, III |
| Env-Wq 1506.15 | RSA 485-A:1; RSA 485-A:17 |

7. Contact person for copies and questions including requests to accommodate persons with disabilities:


Name: **Ridge Mauck, P.E.**

Title: **Administrator, Alteration of Terrain Bureau**

Address: **Department of Environmental Services**
**29 Hazen Drive**
**P.O. Box 95**
**Concord, NH 03302-0095**

Phone #: **(603) 271-2303**

Fax#: **(603) 271-2867**

E-mail: **Addison.r.mauck@des.nh.gov**


The rules also can be viewed in PDF in the Public Comment Opportunities section of the NHDES website at https://www.des.nh.gov/public-comment-opportunities and selecting "Rulemaking"

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 p.m. on October 6, 2021**

☒ Fax ☒ E-mail ☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **September 28, 2021 at 2:00 p.m.**

Place: **DES Offices, Room 208C, 29 Hazen Drive, Concord NH**

**NOTE: NHDES security procedures require all visitors to sign in and present photo identification (such as a driver's license). If you plan to attend the public hearing in person, please bring photo identification with you.**

**You also may attend the hearing via WebEx, which can be accessed through the following link:**

https://nhgov.webex.com/nhgov/j.php?MTID=m7b3fee18e75276b7b956ca0ac332c910

**Meeting number (access code): 180 126 0635**
**Meeting password: XGuJ8sDXM68**
**You also may join the meeting by phone:**
**Call in Number: +1-415-655-0001**
**Access Code: 1801260635##** US Toll

**Contact Tom Taggart at Thomas.taggart@des.nh.gov or (603) 271-8156**

**if you have any questions or technical issues connecting to the hearing.**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant):

FIS# **21:082**, dated **08/11/2021**

1. **Comparison of the costs of the proposed rule(s) to the existing rule(s)**
When compared to the existing rules, the proposed rules will result in both additional costs and savings to citizens, political subdivisions, and independently owned businesses filing applications for an alteration of terrain permit. The amount of any increase or decrease in costs is indeterminable. Not applicable to Env-Wq 1503.33, 1504.18 and 1506.15 which are new rules.

2. **Cite the Federal mandate. Identify the impact on state funds:**
No federal mandate, no impact on state funds.

3. **Cost and benefits of the proposed rule(s):**
The proposed rules eliminate the current requirement in Env-Wq 1503.19(h) for the applicant to perform a study and provide a report performed by a wildlife biologist. The cost of the study and report by a wildlife biologist ranges from $5,000 to $35,000 or more, depending on the size of the project. This will reduce costs to political subdivision, citizens, and independently owned businesses that file applications for an alteration of terrain permit.

The proposed rules specify that the conservation measures recommended by NH Fish and Game must be added to the project plans to assure that the project meets the requirements of RSA 212-A:9, III. For projects requiring consultation with NH Fish and Game, the proposed rules require applicants to keep records of relevant correspondence with NH Fish and Game and provide that information to the Department of Environmental Services with the permit application. This will result in additional costs to the permit applicants. Any additional costs are indeterminable and will depend on what species is present and the measures required to avoid, minimize, or mitigate impacts.

A. **To State general or State special funds:**
None.

B. **To State citizens and political subdivisions:**
See #3 above.

C. **To independently owned businesses:**
See #3 above.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution

**The rules do not mandate or assign any new, expanded, or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision, and so do not violate Part I, Article 28-a of the N.H. Constitution.**