ENVIRONMENTAL Fact Sheet

NEW HAMPSHIRE DEPARTMENT OF Environmental Services

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Wetlands Permitting: Avoidance, Minimization and Mitigation

Wetland permitting relies on applicants successfully demonstrating that proposed projects *avoid* potential impacts to the maximum extent practicable, *minimize* unavoidable impacts, and *mitigate* for all impacts to jurisdictional areas.

For any project design, demonstration of avoidance and minimization is required before consideration of mitigation. Mitigation is not a substitute for the requirement to select the location, design and techniques that will result in the least impact to wetlands and other related resources protected under state statute RSA 482-A because of the functions and values they provide to wildlife, people and the overall environment

What does it mean?

The following terms are defined in state administrative rules:

- **Avoidance** means not impacting areas if there is a practicable alternative that would have less impact (Env-Wt 102.12).
- **Minimization** means reducing adverse impacts to jurisdictional areas through project timing, design and implementation (Env-Wt 103.38 and 103.39).
- **Practicable** means available and capable of being done after taking into consideration cost, existing technology and logistics in light of overall project purposes (Env-Wt 103.62).

Guidance is available on how to avoid potential impacts and minimize any unavoidable impacts. State administrative rules also reference the Wetlands Best Management Practice Techniques for Avoidance and Minimization (2019). This guide illustrates avoidance and minimization for a variety of projects, such as bank stabilization, stream crossings, residential and industrial development. It is a tool to help applicants and consultants prepare more complete applications in order to adequately avoid and minimize impacts to wetlands, reduce costs to applicants, and facilitate applicants receiving streamlined decisions. It includes project-specific examples and details applicable to many project types that have been successfully permitted in New Hampshire.

Avoidance and minimization rely on **advance** planning and data collection before preparing wetlands permit applications. Prior to site design, and in some cases prior to site selection, wetlands and related resources must be professionally mapped and characterized. This provides critical information for documenting resources to avoid when designing and planning a project. For projects that will permanently impact one acre or more, or for projects that impact a Priority Resource Area, avoidance and minimization requirements include conducting an off-site alternatives analysis.

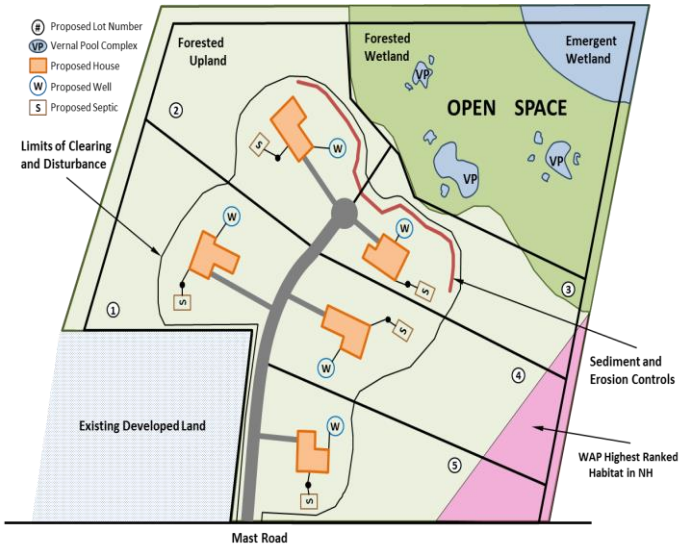

***Figure 1**. Example plan showing existing developed land, forested uplands, forested wetlands, open space, and emergent wetlands.*

Applicants must also demonstrate the measures they propose to use to minimize impacts. Examples may include design and construction techniques, setbacks, and timing adjustments to reduce unavoidable adverse impacts. These techniques consider the purpose of the proposed project, the functions and values of the resources, and the practicability of the avoidance and minimization measures.

Applicants may use the Avoidance and Minimization Written Narrative, the Avoidance and Minimization Checklist, or their own narrative. An application that does not include information on avoidance and minimization may be deemed administratively incomplete and returned to the applicant.

For other project-specific questions on wetlands permitting, avoidance and minimization, functions and values, Priority Resource Areas, or how to design an approvable project, please contact your state regional reviewer.

When does NHDES require compensatory mitigation?

After avoidance and minimization have been exhausted, the next step in the application planning process is determining whether compensatory mitigation is required. State administrative rules define "compensatory mitigation" as "actions designed to offset unavoidable permanent impacts" (Env-Wt 102.38).

State administrative rules (Env-Wt 313.04) describe when compensatory mitigation is required. Below is a summary of the "impact thresholds" they include:

- 10,000 square feet or more of permanent impacts to freshwater wetlands.
- 200 linear feet or more of permanent impacts to freshwater watercourses unless impacts are related to a self-mitigating crossing
- 20,000 square feet or more of permanent impacts to freshwater wetlands for wildlife pond projects.
- 2,000 square feet or more of permanent impacts to freshwater or tidal waterbodies for docks and new shoreline structures.
- Any amount of permanent impact to a Priority Resource Area. These may include freshwater, tidal and upland resources.

State administrative rules (Env-Wt 313.04 b) also describe activities exempt from compensatory mitigation, including:

- Bank stabilization to protect existing infrastructure or use bio-engineering methods.
- Temporary impacts not intended to remain after the project is completed.
- Wetland or stream restoration or enhancement.
- Minimum impact maintenance of structures.
- Maintenance dredge of a federal navigation project or maintenance dredge of existing legal boat slips.
- Bank stabilization using living shoreline techniques.
- Sand dune replacement or restoration.
- Impacts to developed uplands (Env-Wt 602.12).

How can applicants propose compensatory mitigation?

After avoidance and minimization, applicants have several options for proposed state-level mitigation, including:

1. An in-lieu fee payment to the Aquatic Resource Mitigation (ARM) Fund.
2. A permittee-responsible mitigation project that uses restoration, enhancement, preservation and/or creation to offset the losses to aquatic resource function and values.
3. A combination of both.