



STATE OF NEW HAMPSHIRE
DEPARTMENT of NATURAL and CULTURAL RESOURCES
DIVISION of PARKS and RECREATION

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Mary Ann Tilton
Assistant Bureau Administrator
Wetlands Bureau
Land Resources Management Program
NH Department of Environmental Services
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095

Dear Ms. Tilton:

Thank you for the opportunity to respond to the proposed Wetland Rules Env Wt 100-900. Our comments are in two major areas: 1) the impacts of the rules on our non-motorized (hiking, equestrian) and motorized (snowmobiles, ATV's) trail system, and 2) the impacts of the propose rules on our management of the tidal beaches.

In general we:

- Urge full consideration of any additional time or requirements in the permit process and whether the additional requirements are justified by the additional protection of the resource;
- Would assume that any additional requirements are the results of documented problems and that the new requirements would address those;
- Would be very concerned with any changes in the rules that require additional certifications to be able to file a permit; and
- Would be concerned that the additional requirements are supported by adequate enforcement so that those who are not complying are not given a competitive advantage over those that do comply.

Trails/Lands:

We appreciate that the Division of Parks and Recreation and the Trails Bureau were invited to participate in the Wetland Stakeholder Rules Workgroup. However, our understanding of the role of participation was different from what actually happened. In general, we are concerned with the overall scope of the changes and the difficulty in being able to find relevant sections grouped together or easy to understand.

The following are references to the specific Rules and comments on each of them. Please consider that the impact is not only on the Division of Parks Trails Bureau but also the 136 clubs,

51,000 volunteers and 5,000+ landowners we depend on to provide motorized access on over 8,000 miles of motorized trails.

Env-wt 103.52 Priority Resource area

This is a very significant concern to the trails community, specifically (a) and (c). Under Env-wt 103.52 (a) any project that may have a documented occurrence of a protected species or habitat for such species is automatically upgraded to a Major Impact permit under Env-wt 408.01 as a Priority Resource area. We do not oppose the concept of this permit being required for these areas. However, we do not agree that the presence of a documented occurrence should be a trigger a Major Impact permit for trails projects.

We have a similar concern with subsection (c) of this section that upgrades a project to a Major Impact if it is impacting a floodplain wetland contiguous to a tier 3 or higher watercourse. The purpose of the PBN or SPN process is to be able to make minor impacts for projects. The tier 3 watercourse is definition is watercourse that drains < 640 acres, which we believe could be too small an area for our Trails Bureau projects to trigger a Major impact. For example bridge repairs on one of these streams may now be elevated to a major impact project, potentially including many first order streams, even with less than 3000 sf of impacts. Generally our projects over 1st order streams are 1200 sf and require a SPN.

Env-wt 308.05 Activation of an SPN

(c) adds in a new requirement to notify towns of SPNs, and copy DES with the notification. This was not required before and is not required in RSA 482-A:3, XII. This is an additional administrative burden on applicants for small projects and would seem to increase the paperwork DES needs to collect for these projects. This makes us wonder what the role of the town is in state permits now and going forward. We would request that this section be removed.

Env-wt 308.07 Post-Notification Requirements...

(a) we would note that trail SPNs covering most trail projects are in remote locations where there would be no one to look for the notice, and the work locations under a single permit may be in multiple locations for the same project (in a geographic area).

(c) the requirement to follow up with DES within 10 days of the completion of a project is a new administrative burden for these smaller projects and would increase the work load for permit holders and DES. The permit already has an expiration date.

Env-wt 309.06 PBN

We would suggest that the difference between a SPN and PBN and when someone would use one versus the other is made entirely clear.

Env-wt 311.11 Required Signatures and Certifications

(e) now allows members of a conservation commission to inspect work done under permits. This appears to be a new authorization being given to these boards. Again, it seems here that DES is turning the oversight of these permits to the Town. Our biggest concern is that we work with more than 5000 private landowners that may not sign permits for small projects if it allows untrained individuals who are not accountable for their actions and whose intentions are beyond the intentions of DES to walk on their property. This could have a significant impact on the availability of a trail system that has been decades in the making as these landowners would not allow us to maintain the trail any longer. We would request that the last sentence add in minimum impact trails SPN projects along to Forestry SPNs in this section. This would clarify that DES staff may inspect these projects.

Env-wt 406.03 Wetland Delineation

Forestry, Agriculture and Utility are clearly exempted in certain cases from needing wetland delineation in sections (b) (2), however it is unclear if Trails activities are also exempted. Forestry, Agriculture and Utility project sections typically also include Trails. We would ask that a minimum impact trail project also be exempted from needed delineation and added to this section.

Env-wt 407.04 Project Type Exemptions (PTE)

(c) add in clarification that projects that meet the requirements for an SPN under Env-wt 308 here also to make it clear.

Env-wt 517

517.01 (a)(2) notes that projects be located away from lakes, rivers, river banks, etc. Many trails follow along the edges of rivers and banks, and also along lake shores. Keep in mind these locations are most appealing to trail users. The locations of these trails are also where the landowner allows them. We agree that the trails should not impact the wetlands or water quality would, but would like further consideration of needs for public access.

517.02 (c) unclear if this is for boardwalks only or trails also. The rest of this section seems to target only boardwalks.

517.06 (5) we oppose this language being part of this section. The length of time of standing water is not a constant and changes based upon weather and other factors. We feel this section should be removed or recognize these factors.

517.06 (c) see comments earlier. There needs to be the ability to have NHB or others make recommendations and not an automatic permit level increase for projects. Any project that is for routine maintenance or limited disturbance should be exempted from this section and also section 103.52

The overall 517 section does not flow well and is difficult to understand.

Tidal Beaches

We would like to make the case to retain the existing exemption for the state's tidal beach management under the current rules Env-Wt 303.05. The Department of Natural and Cultural Resources, Division of Parks and Recreation has been the agency assigned to the maintenance

and management of the State's seacoast recreational beaches starting in the mid-1930's. The agency has extensive knowledge of maintenance practices of these developed recreation areas. While we understand these rules must apply broadly to all ocean-front property.

The proposed rules DES are substantially different from the existing rules and would have a significant impact on the ability of the Division of Parks and Recreation to maintain State Park ocean beaches. The proposed rules do not reflect the historic use of the beaches as an extension of the built environment intensively used and managed as public recreation sites. We do not understand why the changes are being made.

What are the specific problems that precipitated the changes from the current rules? What practices have been using to manage the beach are problematic and why? What are the specific ecological benefits of the proposed rules? Do the benefits of the proposed rules offset the additional costs for an operationally self-funded park system managing these resources on behalf of the public?

The proposed rules seem to indicate that the historic management and use of the beaches is unacceptable and there is now an effort to restrict or limit public use of the beach in order to meet other objectives.

We request that you please consider the following:

Hampton Beach State Park consists of three management units described from south to north as South Beach (Hampton River to Epping Ave), the Seashell Area or main beach (Haverhill Street to Great Boar's Head, and North Beach (Dumas Ave to High Street). All these areas have been heavily impacted by decades of human intervention and hardening of the natural environment.

The South Beach area is a combination of natural beach, maintained beach and created land. The current condition of this beach is due to several actions over the years. First, a portion of the current park was created by filling in the area when the course of the river changed due to extreme storm events in the mid-1930's. Secondly, the existing dunes were started when snow fence that was installed seasonally to protect the buildings from storm driven sand was not removed due to maintenance lapse in the 1950's. Thirdly, the beach has been the deposition site of decades of river and harbor dredging activities which have continued to add to the dunes which threaten to overwhelm the public use infrastructure. Some level of active management is needed to prevent the loss of the buildings and continue public access to this valuable resource.

At the Seashell area, boardwalks installed in the 1890's have been replaced by seawalls constructed in the 1950's. Once this dividing line was created it interrupted natural beach movement causing the use of mechanical equipment to pull sand away from the wall and level the beach. The lowering of the sand from the top of the seawall is necessary to prevent storm over wash from topping the wall, protecting private property on the west side of Route 1A.

North Beach is the most hardened section of the New Hampshire coastline. The first man made barriers were piled cobbles to protect Route 1A (and are still in use in Rye and North Hampton). A sheet pile seawall was installed in the 1930's to protect the road and private property. A

concrete seawall was installed between 6th Street and High Street in the 1950's and from Great Boar's Head to 6th Street in the mid-1980's. Millions of state funds have been invested in these seawalls.

The other Division-maintained beaches at North Hampton State Beach, Jenness Beach, and Wallis Sands have similar man-made walls and infrastructure that provides the same public access and economic benefits to their host communities and the State of New Hampshire.

The beaches are intensively used sites with virtually every square inch impacted by visitors (50,000-80,000 per day at Hampton Beach – picture following) sitting, sunbathing, standing, running, playing volleyball etc. It is as if a trail system in a forest was every square inch of that forest.

Beaches are not as naturally static as inland areas (recognizing there are flood events on inland water courses). Winter storms and wave action undo any of our management actions that we take during the summer season. It is not our impact on this environment that has been the major public policy concern. The major concern is the impact of rising sea levels and intense winter storms that are devastating the adjacent land and built environment.

The maintenance of the beach is an ongoing activity. It is not a single event like the installation of stream crossing or the filling of a wetland. The surface of the beach is disturbed on a regular basis. Beaches are raked every night to remove the trash, sand is piled in front of the seawall in the fall to protect the adjacent built infrastructure, and the beaches are graded every spring at least once.

The removal of trash on the beach is performed by a beach rake. Using a beach rake is a standard for removal of trash on beaches across the country. Over 100 tons of trash are removed by the rake every year with 80-90% of the volume being trash and the remainder the sand picked up in the raking process. Any restriction on disturbance of the surface or the ability to remove any sand from the beaches would prevent beach raking.

The beaches are graded to:

- Recover and remove sand from the area of the seawalls to protect the integrity of the seawall and prevent sand and waves from topping the wall and spilling over onto the sidewalks, parking lots, park sites, and the road (the sand is carried by wind or wave action);
- Provide a level beach area for the beach rake to operate;
- Fill in areas at or near the low tide line that have washed out. These areas are a cause of dangerous riptides. Filling them in minimizes the danger to swimmers;
- Allow vehicles safer and direct access to the water to conduct rescues. If the grade is too steep the vehicles can't drive down (there were 197 rescues in 2018); and
- Allow the accessible ramp to be out to the water for visitors with mobility restrictions.

Please keep in mind that anything that affects the ability of State Parks to maintain the beach for the public will affect the local communities and businesses that rely on the beach. We have not reached out to those communities yet to let them know that there is a proposal that would impact

their expectations for how the beach is maintained for public use. However, they should be fully engaged in the discussion if they have not.

We would also note that if there is adequate justification to change the historic use and management of the beach and a permit was required, we roughly estimate the permit, in addition to staff time, at 15 cents per square foot would cost NH State Parks hundreds of thousands of dollars. These funds would come directly out of the revenue used to support our visitors, the management of the beach and other parks in the park system (as an operationally self-funded park system, 25% of the parks support the rest of the park system).

We put extraordinary effort into being good stewards of the public resources whose management had been entrusted to us and to the safety and experience of our citizens and visitors. We are also very grateful for the excellent working relationship with the Department of Environmental Services and have the greatest respect for your mission to protect the public's interest in these resources. However, we do not agree that these rule changes regarding beach maintenance are necessary and respectfully request that we continue to be allowed to operate, maintain and provide for the use of NH State Park ocean beaches as we have for decades.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Philip Bryce', with a long horizontal flourish extending to the right.

Philip Bryce
Director

Cc: Sarah Stewart, Commissioner
Brad Simpkins, Director, NH Division of Forests and Lands



