

TITLE L

WATER MANAGEMENT AND PROTECTION

CHAPTER 489

INTEGRATED LAND DEVELOPMENT PERMIT

Section 489:1

[RSA 489:1 suspended by 2017, 156:143 for the biennium ending June 30, 2019.]

[RSA Chapter 489 suspended by 2017, 156:143 for the biennium ending June 30, 2019.]

489:1 Purpose. –

This chapter is intended to:

- I. Establish an integrated land development permit option that may be sought, at the discretion of the applicant, as an alternative to seeking one or more individual land development permits or approvals issued by the department of environmental services.
- II. Provide a coordinated approach and holistic perspective in regulating land development activities to protect the quality and functions of New Hampshire's natural environment.
- III. Establish an alternative project review and permitting process to improve communication and coordination between multiple organizations and entities involved in the permitting of proposed projects.
- IV. Establish a structured pre-application process to provide enhanced guidance earlier in the project design process to facilitate compliance and improved environmental performance.
- V. Encourage and facilitate implementation of environmentally superior projects.
- VI. Recognize that the degree of relatedness of the affected programs presents a unique opportunity to achieve efficiencies and savings that are not possible to achieve by similar means within the other programs administered by the department.

Source. 2013, 270:1, eff. July 1, 2017.

Section 489:2

[RSA 489:2 suspended by 2017, 156:143 for the biennium ending June 30, 2019.]

489:2 Definitions. –

In this chapter:

- I. "Abutter" means any person who owns land immediately contiguous to the subject property or who owns flowage rights on such land. The term does not include the owner of any land that is separated by a public road or public waterway from the subject property or, in the absence of a public road or waterway, is more than 1/4-mile from the limits of the proposed work. If any land that is immediately contiguous to the subject property is owned in whole or in part by the person who is proposing the work or is necessary to meet any frontage requirement, the term includes the person owning the next contiguous property.
- II. "Affected programs" means the following programs implemented by the department:
 - (a) The terrain alteration program established under RSA 485-A:17 and rules adopted pursuant thereto;
 - (b) The subdivision and individual sewage disposal systems program established under RSA 485-A:29 through RSA 485-A:44 and rules adopted pursuant thereto;
 - (c) The wetlands program established under RSA 482-A and rules adopted pursuant thereto; and
 - (d) The shoreland water quality protection program established under RSA 483-B and rules adopted pursuant thereto.
- III. "Applicant" means the person who initiates the application process for an integrated land development

permit. If the applicant is not the owner of the property on which the project is proposed to occur, the applicant shall be authorized in writing by the property owner to undertake all actions and representations required under this chapter.

IV. "Department" means the department of environmental services.

V. "Integrated land development permit" means a single permit issued by the department in lieu of issuing separate permits or approvals under one or more of the affected programs.

VI. "Permittee" means a person who obtains an integrated land development permit under this chapter.

VII. "Subject property" means the property on which a project is proposed or, after issuance of a permit, is undertaken.

Source. 2013, 270:1, eff. July 1, 2017.

Section 489:3

[RSA 489:3 suspended by 2017, 156:143 for the biennium ending June 30, 2019.]

489:3 Authorization. –

I. There is hereby established an integrated land development permit, for which application may be made as an alternative to applying for separate, individual permits or approvals under the affected programs.

II. Municipalities may review materials, engage in discussions with the department, conduct independent site visits with the consent of the property owner and the applicant, if other than the property owner, and provide written comment to the department during any or all phases of the integrated land development permit process. Municipalities may attend site visits, attend meetings or participate in discussions between the applicant and the department in accordance with the following:

(a) Municipalities may participate in meetings or other discussions between the department and the applicant during the conceptual and pre-application phases of the integrated land development permit process under RSA 489:5 and RSA 489:6 with the consent of the applicant.

(b) Municipalities may participate in site visits conducted by state or federal regulatory agencies during the conceptual and pre-application phases of the integrated land development permit process under RSA 489:5 and RSA 489:6 with the consent of the property owner and the applicant, if other than the property owner.

(c) If the department concludes that it would promote the efficient and timely consideration of a final application under RSA 489:7, the department may invite the municipality in which the subject property is located to participate in meetings or other discussions between the department and the applicant or attend site visits conducted by state or federal regulatory agencies.

(d) To the extent practicable, site visits by municipalities for the purposes of commenting on a permit application or permit issued under this chapter shall be coordinated with entry upon the property by state or federal regulatory agencies under RSA 489:3, VI.

III. If administrative requirements or procedures contained in this chapter, or adopted by rule to execute this chapter, conflict with administrative requirements or procedures of any other statute or rule implemented by the department, the provisions under this chapter shall apply.

IV. The time limits prescribed in this chapter, or adopted by rule to execute this chapter, shall supersede any time limits provided in any other applicable provision of law.

V. Electronic communications and electronic document management may be employed to facilitate correspondence, application, notification, and coordination under this chapter.

VI. Submission of materials for the pre-application technical review under RSA 489:6, II or for final application under RSA 489:7 shall constitute express authorization by the property owner and the applicant, if other than the property owner, for the department and other participating regulatory agencies, through their respective agents or employees, to enter upon the subject property for purposes of evaluating site conditions and the application made under this chapter at reasonable times and with reasonable notice except under exigent circumstances.

Source. 2013, 270:1, eff. July 1, 2017.

Section 489:4

[RSA 489:4 suspended by 2017, 156:143 for the biennium ending June 30, 2019.]

489:4 Applicability. –

I. Any person who wishes to conduct an activity requiring a permit or other approval from the department under 2 or more of the affected programs may choose to apply for an integrated land development permit from the department in lieu of all individual program permits or approvals otherwise required under the affected programs, subject to the following conditions and limitations:

- (a) All permits or approvals otherwise required under the applicable affected programs shall be included in the application for an integrated land development permit and in any permit issued based on the application.
- (b) No person shall be eligible under this chapter if the person is the subject of a state administrative, civil, or criminal enforcement action for violating this chapter or any of the affected programs at the time of initiating the application process.
- (c) No person shall be eligible under this chapter if the person was the subject of a state administrative, civil, or criminal enforcement action for violating this chapter or any of the affected programs within the 5 years prior to initiating the application process, unless the action was withdrawn or overturned on appeal.
- (d) No property shall be eligible under this chapter if the property is or has been the subject of an administrative enforcement action for violations of this chapter or any of the affected programs, unless the violations have been remediated or will be remediated as part of the proposed project and any outstanding fees, fines, and penalties assessed against the same person who owns the property at the time of the application have been paid in full.
- (e) No property shall be eligible under this chapter without the prior consent of the attorney general if the property is, at the time of initiating the application process, or has been, within the 5 years prior to initiating the application process, the subject of a civil or criminal enforcement action for violations of this chapter or any of the affected programs. This subparagraph shall not apply to any action that was withdrawn or overturned on appeal.
- (f) This chapter shall not apply if any of the work that is part of the project, other than preliminary site evaluation activities such as surveys or test pits not requiring a permit from the department, has been initiated or completed prior to the application process being initiated.
- (g) This chapter shall not apply to permits for shoreline structures unless they are part of a larger project.
- (h) This chapter shall not apply to emergency authorizations.

II. For projects that would otherwise require only a single permit from the department under the affected programs, the applicant may request a waiver of the requirement for 2 or more permits provided the project incorporates low-impact or minimum-impact design practices and the applicant demonstrates that the proposed project will achieve a superior overall environmental outcome in accordance with the requirements and procedures specified in RSA 489:9.

Source. 2013, 270:1, eff. July 1, 2017.

Section 489:5

[RSA 489:5 suspended by 2017, 156:143 for the biennium ending June 30, 2019.]

489:5 Conceptual Preliminary Discussions. – Any person interested in pursuing an integrated land development permit may consult with the department regarding the applicable procedures and requirements. Applicants may request and participate in conceptual pre-application discussions with the department prior to initiating the formal pre-application technical review process under RSA 489:6. Such conceptual pre-application discussions shall not replace the formal pre-application technical review process.

Source. 2013, 270:1, eff. July 1, 2017.

Section 489:6

[RSA 489:6 suspended by 2017, 156:143 for the biennium ending June 30, 2019.]

489:6 Pre-Application Technical Review. –

I. An applicant shall initiate the integrated land development permit process by conducting certain activities, as specified by the department in rules adopted under this chapter, in preparation for pre-application technical review by the department. These activities shall include the following:

- (a) Inquiry or consultation with the department of natural and cultural resources' natural heritage bureau and the fish and game department;
- (b) Notification of and provision of materials on the proposed project to the governing body, the planning department, the planning board, and conservation commission of the municipality or municipalities in which the proposed project is located;
- (c) Notification of and provision of materials on the proposed project to the local river management advisory committee, when the project is in the corridor of a designated river or river segment under RSA 483;
- (d) Notification of and consultation with federal regulatory entities, when applicable;
- (e) Notification of, and, when requested, provision of materials on the proposed project to the New Hampshire division of historic resources;
- (f) Assessment of site characteristics and location, as defined by the department in rules adopted under this chapter; and
- (g) Other assessments, inquiries, notifications, and consultations as defined by the department in rules adopted under this chapter.

II. After conducting the activities required under paragraph I, the applicant shall submit to the department such materials as the department requires under rules adopted pursuant to RSA 541-A. The department may require the applicant to pay up to 30 percent of the expected final application fee under RSA 489:7, I to cover departmental costs associated with the pre-application technical review. Any payment made shall be applied towards the final application fee. Such payment shall not be refundable or transferable to another project should a final permit application not be submitted.

III. The applicant shall participate in a pre-application technical review with the department.

IV. As part of the pre-application technical review, the department shall review preliminary design plans, supporting information, and advisory input from state or federal entities notified or consulted pursuant to paragraph I and comments received from other persons notified pursuant to paragraph I to identify critical issues regarding site development and design, any requested waivers, and any mitigation that may be needed, and review the final permit application requirements with the applicant.

V. The department may invite any state or federal entities notified under paragraph I to participate in pre-application technical review discussions. Other persons or entities may be included at the request of the applicant.

VI. The pre-application technical review process shall not establish any presumption as to whether the department will approve the final application.

Source. 2013, 270:1, eff. July 1, 2017. 2017, 156:14, I, eff. July 1, 2017.

Section 489:7

[RSA 489:7 suspended by 2017, 156:143 for the biennium ending June 30, 2019.]

489:7 Submission and Review of Final Application. –

I. Following the pre-application technical review, the applicant shall submit a complete application, as defined by the department in rules, together with the application fee, which shall be equal to the total of the permit fees specified in statute and in rules for each of the individual permits or approvals being replaced by the integrated land development permit, to the department. The proposed activities shall not be undertaken unless and until the applicant receives a permit from the department.

II. Within 14 days of receipt of the application, the department shall notify the applicant whether the application is complete or not. Incomplete applications shall not be accepted and shall be returned, along with the fee, to the applicant to be made complete and resubmitted to the department.

III. Concurrent with the submission of the final application to the department, the applicant shall:

- (a) Provide a complete copy of the final application and all supporting materials, by certified mail or other delivery method that provides proof of receipt, to the municipality, or if applicable, municipalities in which the

project is located and, when applicable, the local river management advisory committee or committees.

(b) Notify all abutters by certified mail or other delivery method that provides proof of receipt regarding the application. If any question arises as to whether all abutters were notified, the burden shall be on the applicant to show that notification was made.

IV. The department shall apply the technical criteria established in the affected programs.

V. The department may waive, in accordance with RSA 489:9, any technical criteria established by statute or rule under the affected programs, if such waiver is necessary to achieve a superior overall environmental outcome, or achieve an equivalent overall environmental outcome at reduced cost.

VI. Within 45 days of receiving a complete application, the department shall:

(a) Approve the application and issue a permit, which shall include such conditions as the department deems necessary to comply with this chapter or rules adopted under this chapter;

(b) Deny the application and issue written findings in support of the denial;

(c) Identify the need for and schedule a public hearing on the proposed project, and within 30 days of the public hearing approve or deny the application in accordance with subparagraph (a) or (b); or

(d) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant.

VII. If the department fails to act within the applicable time frame established in this section, the applicant may ask the department to issue the permit by submitting a written request. If the applicant has previously agreed to accept communications from the department by electronic means, a request submitted electronically by the applicant shall constitute a written request.

(a) Within 14 days of the date of receipt of a written request from the applicant to issue the permit, the department shall:

(1) Approve the application, in whole or in part, and issue a permit; or

(2) Deny the application and issue written findings in support of the denial.

(b) If the department does not issue either a permit or a written denial within the 14-day period, the applicant shall be deemed to have a permit by default and may proceed with the project as presented in the application.

The authorization provided by this subparagraph shall not relieve the applicant of complying with all requirements applicable to the project, including but not limited to requirements established in or under this chapter and any chapter relating to the applicable affected programs.

(c) Upon receipt of a written request from an applicant, the department shall issue written confirmation that the applicant has a permit by default pursuant to subparagraph (b), which authorizes the applicant to proceed with the project as presented in the application and requires the work to comply with all requirements applicable to the project, including but not limited to requirements established in or under this chapter and any chapter relating to the applicable affected programs.

VIII. Undertaking any activity authorized by a permit issued pursuant to VI(a), VII(a), or VII(c) shall constitute express authorization by the property owner and the permittee, if other than the property owner, for the department and other participating regulatory agencies, through their respective agents or employees, to enter upon the subject property for purposes of determining compliance with the permit and other applicable requirements at reasonable times and with reasonable notice except under exigent circumstances.

Source. 2013, 270:1, eff. July 1, 2017.

Section 489:8

[RSA 489:8 suspended by 2017, 156:143 for the biennium ending June 30, 2019.]

489:8 Rulemaking. –

The commissioner of the department shall adopt rules under RSA 541-A relative to:

I. Requirements and procedures for the pre-application process and technical review, including requirements for notification of and coordination with municipalities, other state and federal agencies, local river management advisory committees, and other entities.

II. Application requirements and procedures for processing a final application for an integrated land development permit, including requirements for notification of and coordination with municipalities, other state and federal agencies, local river management advisory committees, and other entities.

- III. Applicability of technical criteria of the affected program.
- IV. Time extensions and duration of a permit, and procedures and requirements for amending a permit issued pursuant to this chapter.
- V. Procedures and requirements for projects requiring a public hearing.
- VI. Terms and conditions for permits issued under this chapter to ensure compliance with this chapter and affected programs.

Source. 2013, 270:1, eff. July 1, 2017.

Section 489:9

[RSA 489:9 suspended by 2017, 156:143 for the biennium ending June 30, 2019.]

489:9 Waivers. –

- I. No waiver from any affected program's requirement in rule or statute shall be granted unless the applicant requesting the waiver demonstrates that:
 - (a) There will be no substantial loss of wetland functions and values;
 - (b) Water quality will be protected to the maximum extent practicable and in compliance with the anti-degradation requirements of the federal Clean Water Act and departmental rules; and
 - (c) A superior overall environmental outcome will be achieved or an equivalent overall environmental outcome at reduced cost.
- II. The demonstration required by paragraph I shall be made based on project design, mitigation, submission of modeling results, engineering calculations, relevant scientific studies, or such other documentation the applicant believes supports the requested waiver.
- III. No waiver shall be granted if doing so results in a violation of any state statute or regulation outside those governing the affected programs, unless the statute or regulation expressly provides that the provisions may be waived.
- IV. No waiver shall be granted if doing so results in a violation of any federal requirement, unless the federal requirement expressly provides that its provisions may be waived and the federal agency charged with enforcing the requirement agrees with the waiver.
- V. Municipalities may adopt an innovative land use control ordinance pursuant to RSA 674:21, authorizing the planning board to allow a project that does not fully conform to the local zoning ordinance to proceed as approved by the department under this chapter, provided the planning board makes a finding that such a project meets the criteria of paragraph I.

Source. 2013, 270:1, eff. July 1, 2017.

Section 489:10

[RSA 489:10 suspended by 2017, 156:143 for the biennium ending June 30, 2019.]

489:10 Appeals. –

- I. Any person aggrieved by a decision made under RSA 489:7, V, VI(a) or (b), or VII, and any person subject to an order of the department under RSA 489:11 who wishes to appeal shall, within 30 days of the decision, file a notice of appeal with the appeals clerk for a hearing before a joint water-wetland council described in paragraph II. At the time the notice of the appeal is filed, the person shall send a copy of the appeal to the commissioner. If the appeal is of a decision to issue a permit, the person shall also send a copy of the appeal to the permittee. The notice of appeal shall clearly state that it is being filed pursuant to this paragraph.
- II. Upon receipt of a notice of appeal filed pursuant to paragraph I, the appeals clerk shall notify the chairperson of the water council established under RSA 21-O:7 and the chairperson of the wetlands council established under RSA 21-O:5-a. The chairperson shall each designate 4 members of their respective councils to sit with a hearing officer appointed under RSA 21-M:3, VIII as a joint council for purposes of the appeal. The interests represented by members of the joint council shall be as diverse as possible based on the council members available to be designated after any recusals are considered.

- III. The appeal shall set forth fully every ground upon which it is claimed that the decision complained of is unlawful or unreasonable. Only those grounds set forth in the appeal shall be considered by the joint council.
- IV. The joint council shall conduct an adjudicative proceedings as provided in RSA 21-M:3, IX and X, RSA 21-O:14, RSA 541-A, and rules to be adopted by both of the councils for appeals to be heard by the joint council. Until both of the councils have adopted the same rules, the rules of the wetlands council shall apply to any appeal. The burden of proof shall be on the party seeking to set aside the department's decision to show that the decision is unlawful or unreasonable. All findings of the department upon all questions of fact properly before it shall be prima facie lawful and reasonable.
- V. If the appeal is of a decision to issue a permit, the permittee may appear and become a party to the appeal as a matter of right. Requests by any other person to intervene in any appeal shall be made and decided upon as provided in RSA 541-A:32.
- VI. On appeal, the joint council may affirm the decision of the department or may remand to the department with a determination that the decision complained of is unlawful or unreasonable. In either case, the council shall specify the factual and legal basis for its determination and shall identify evidence in the record created before the council that supports its decision.
- VII. Any party aggrieved by a decision of the joint council may appeal to the supreme court as specified in RSA 541.
- VIII. In the case of a remand to the department by the joint council, the department shall consider the council's determination and may either reissue the subject decision or order or appeal as provided in paragraph VII.

Source. 2013, 270:1, eff. July 1, 2017.

Section 489:11

[RSA 489:11 suspended by 2017, 156:143 for the biennium ending June 30, 2019.]

489:11 Compliance. –

- I. The following shall constitute noncompliance with this chapter:
- (a) Failure to comply with this chapter or any rule adopted or permit issued under this chapter.
 - (b) Failure to comply with an order of the commissioner issued relative to this chapter or any rule adopted or permit issued under this chapter.
 - (c) Misrepresentation by any person of a material fact made in connection with any application filed under this chapter or any permit issued under this chapter.
- II. The permittee shall be responsible for ensuring that all work done under the permit complies with the permit and all other applicable requirements. Any person who performs work under an integrated land development permit shall comply with the permit and all other applicable requirements.
- III. The department may issue a written order to any person in noncompliance with this chapter as specified in paragraph I to cease any continuing noncompliance and to remediate or restore any land or water areas affected by the noncompliance.
- IV. Any noncompliance with this chapter as specified in paragraph I may be enjoined by the superior court upon application of the attorney general.
- V. Any person who knowingly fails to comply with this chapter as specified in paragraph I shall be subject to all remedies available under law in the applicable affected programs. For purposes of this paragraph, a permit issued under this chapter shall constitute a permit issued under each of the applicable affected programs.

Source. 2013, 270:1, eff. July 1, 2017.