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THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

William Cass, P.E.
Commissioner

David Rodrigue, P.E.
Assistant Commissioner

Andre Briere, Colonel, USAF (RET)
Deputy Commissioner

Bureau of Environment
May 1, 2023

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

In accordance with the requirements approved by Governor and Executive Council on November 18, 2016 (Item #28), and January 8, 2020 (Item #9), authorize DOT to continue to make payments to the Department of Environmental Services (DES) (Vendor #177894) for permit application fees, and in lieu mitigation fees pursuant to RSA 482-A, and RSA 483-B for DOT construction projects and maintenance activities requiring fill and dredge in wetlands and other areas under the jurisdiction of RSA 482-A, as well as impacts to the protected shoreland of surface waters. The DOT requests that these payments be approved and effective upon Governor and Executive Council approval through June 30, 2025.

Funding for this request is contingent upon the availability and continued appropriation of funds in FY 2024 and FY 2025.

EXPLANATION

Pursuant to RSA 482-A, "*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 services]*." The law includes prescribed fees for such impacts which DES uses to fund delivery of this fee funded permitting program. In addition, to compensate for the loss of jurisdictional areas, DES adopted rules that require mitigation for major impact projects, certain minor impact projects with jurisdictional impacts of 10,000 square feet or greater, and projects involving stream impact (CHAPTER Env-Wt 800). The ARM Fund authorizes DES to collect mitigation funds in lieu of wetland restoration, wetland creation, or upland buffer preservation, as part of a wetlands permit application. These funds are then pooled by DES with payments from other permit applications to fund projects that have greater conservation value within the same watershed. The ARM program was authorized in legislation that became effective in August 2006.

Pursuant to RSA 483-B:5-b, I, *"No person shall commence construction, excavation, or filling activities within the protected shoreland without obtaining a permit from the department [of environmental*

services] to ensure compliance with this chapter... " The law includes prescribed fees for permit applications based on the amount of impact to the protected shoreland.

Having the flexibility for these payments is crucial to the nature of the work performed and completed by DOT. Continued approval of this method will ensure the timeliness of project and maintenance work, as the DOT cannot begin work on a project within RSA 482-A or RSA 483-B jurisdiction without permits or without having made required ARM Fund payments. This reporting system further assists the Governor and Executive Council in understanding this permitting component of the DOT's work.

In addition, and as approved by the Governor and Executive Council on November 18, 2016 (Item #28), and January 8, 2020 (Item #9), at the conclusion of FY 2023 an informational item will be provided identifying the permit fees and ARM Fund payments made during FY 2023, and all future years approved under this memorandum.

Your approval of this resolution is respectfully requested.

Sincerely,

William J. Cass
Commissioner

WJC/ktn
Attachment

1-May-23

DES Payments Summary (RSA 482-A)

FY	Application Fee	ARM Fund	Total
2022	$70,803.20	$4,755,988.58	$4,826,791.78
2021	$62,396.80	$828,841.20	$891,238.00
2020	$137,038.80	$219,286.63	$356,325.43
2019	$101,907.60	$1,392,372.19	$1,494,279.79
2018	$54,823.00	$2,994,122.16	$3,048,945.16
2017	$53,032.60	$364,129.44	$417,162.04
2016	$94,130.20	$2,194,227.28	$2,288,357.48
2015	$45,879.40	$731,656.33	$777,535.73
2014	$55,442.80	$934,453.93	$989,896.73
2013	$66,621.60	$0.00	$66,621.60
2012	$47,081.60	$152,569.50	$199,651.10
2011	$57,053.60	$165,692.62	$222,746.22
Total	**$846,211.20**	**$14,733,339.86**	**$15,579,551.06**

DES Payments Summary (RSA 483-B)

FY	Application Fee
2022	$13,451.20
2021	$26,750.20
2020	$14,682.40
Total	**$54,883.80**

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New Hampshire DOT
Department of Transportation

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

G+C #28
Date 11/18/16

Victoria F. Sheehan
Commissioner

William Cass, P.E.
Assistant Commissioner

Bureau of Environment
October 12, 2016

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, NH 03301

REQUESTED ACTION

Authorize the Department of Transportation (DOT) to make payments to the Department of Environmental Services (DES) (Vendor #177894) for permit application fees, and in lieu mitigation fees pursuant to RSA 482-A, for Department construction projects and maintenance activities requiring fill and dredge in wetlands, as well as other areas under the jurisdiction of RSA 482-A. The DOT requests that these payments be approved and effective upon Governor and Executive Council approval through June 30, 2017.

Funding for this request is available for FY 2017 based upon the source of funds for each particular project or activity.

EXPLANATION

Pursuant to RSA 482-A, "*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 [DES].*" The law includes prescribed fees for such impacts which DES uses to fund delivery of this fee funded permitting program. In addition, to compensate for the loss of jurisdictional areas, DES adopted rules that require mitigation for major impact projects, certain minor impact projects with jurisdictional impacts of 10,000 square feet or greater, and projects involving stream impact (Env-Wt 303.02). The ARM Fund authorizes DES to collect mitigation funds in lieu of wetland restoration, wetland creation, or upland buffer preservation, as part of a wetlands permit application. These funds are then pooled by DES with payments from other permit applications to fund projects that have greater conservation value within the same watershed. The ARM program was authorized in legislation that became effective in August 2006.

Similar to the Governor and Executive Council approved processes for rented equipment (G&C Item #62, March 12, 2014) and force account agreements (G&C Item #179, June 18, 2014), at the conclusion of each fiscal year, an informational item will be presented to the Governor and Executive Council identifying the permit fees and ARM Fund payments made during the prior fiscal year, while requesting continued approval for payments in the next fiscal year. ARM Fund payments up to now have been individual authorized and this new process will streamline approval and reporting.

Having flexibility for these payments is critical to the nature of the work performed and completed by DOT.

Below is a summary of the payments made by the DOT for permit application fees and ARM Fund payments for the past four (4) fiscal years:

RSA 482-A Payments Made to the Department of Environmental Services

State FY	# of Fee Applications	Application Fees	# of ARM Fund Projects	ARM Fund Payments	Total
2017 (YTD)	12	$8,287.40	11	$196,015.31	$204,302.71
2016	58	$94,130.20	6	$2,194,227.28	$2,288,357.48
2015	47	$45,879.40	7	$731,656.33	$777,535.73
2014	42	$55,442.80	9	$934,453.93	$989,896.73
Total	159	$203,739.80	33	$4,056,352.85	$4,260,092.65

Approval of this method will ensure the timeliness of project and maintenance work, as the DOT cannot begin work on a project within RSA 482-A jurisdiction without permits or without having made required ARM Fund payments. We believe the reporting system being proposed will further assist the Governor and Executive Council in understanding this permitting component of the DOT's work.

Your approval of this resolution is respectfully requested.

Sincerely,

Victoria F. Sheehan

Victoria F. Sheehan
Commissioner

VFS/ktn

Attachments

New Hampshire DOT
Department of Transportation

Victoria F. Sheehan
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

G+C #9
Date 1/8/2020

William Cass, P.E.
Assistant Commissioner

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

Bureau of Environment
December 11, 2019

REQUESTED ACTION

Authorize the Department of Transportation (DOT) to make payments to the Department of Environmental Services (DES) (Vendor #177894) for permit-related fees pursuant to the Shoreland Water Quality Protection Act (RSA 483-B), for DOT construction projects and maintenance activities requiring impacts to the protected shorelands of the state. The DOT requests that these payments be approved and effective upon Governor and Executive Council approval through June 30, 2021.

Funding for this request is contingent upon the availability and continued appropriation of funds in FY 2020 and FY 2021.

EXPLANATION

Pursuant to RSA 483-B:5-b, I, *"No person shall commence construction, excavation, or filling activities within the protected shoreland without obtaining a permit from the department [of environmental services] to ensure compliance with this chapter..."* The law includes prescribed fees for permit applications based on the amount of impact to the protected shoreland.

Until July 1, 2019 RSA 483-B:5-b, III read, *"Construction of public roads, public utility lines and associated structures and facilities, and public water access facilities shall be exempt from the permitting fees of paragraph I."* This provision of law was introduced in 2008 (Chapter 5, Laws of 2008) and established a sunset clause repealing it effective on July 1, 2011. Chapter 224, Laws of 2011 extended the effective date of the repeal to July 1, 2016. Chapter 253, Laws of 2016 extended the effective date of the repeal to July 1, 2019. Chapter 346, Laws of 2019 (HB 4-FN-LOCAL) addressed certain permitting provisions of the Shoreland Water Quality Protection Act, however the repeal of the exemption from permitting fees provided by RSA 483-B:5-b, III was not included.

Having the flexibility for these payments is crucial to the nature of the work performed and completed by DOT. Approval of this method will ensure the timeliness of project and maintenance work, as the DOT cannot begin work on a project within RSA 483-B jurisdiction without permits. The reporting system further assists the Governor and Executive Council in understanding this permitting component of the DOT's work.

In addition, similar to the Governor and Executive Council-approved process for payments to DES for impacts in RSA 482-A jurisdictional areas (G&C Item #28, November 18, 2016), at the conclusion of FY 2020 an informational item will be provided identifying the permit fees made during FY 2019 and all future years approved under this memorandum. Prior to approval of this process, permit fees for work under the Shoreland Water Quality Protection Act were not required.

Your approval of this resolution is respectfully requested.

Sincerely,

Victoria F. Shechan

Victoria F. Shechan
Commissioner

VFS/ktn