The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner

September 22, 2021

NH DEPT OF TRANSPORTATION
ATTN ANDREW O'SULLIVAN
PO BOX 483
CONCORD NH 03301

Re: Approved Standard Dredge and Fill Wetlands Permit Application – Required Payment to Aquatic Resource Mitigation Fund (RSA 482-A)
NHDES File Number: 2021-02209
Subject Property: Interstate 89 Mm 24.2 To Mm 28.8, Sutton, Tax Map #NA, Lot #NA

Dear Andrew:

On September 22, 2021, the New Hampshire Department of Environmental Services (NHDES) Wetlands Bureau approved the above-referenced Standard Dredge and Fill Wetlands Permit Application to Dredge and fill a total of 35,731 square feet/113 linear feet of palustrine wetlands and intermittent stream for NHDOT Sutton Project 42419, Interstate-89 rehabilitation of roadway pavement surface, reconfiguring the Sutton Rest Area, guardrail replacement, tree clearing for improving sight distance and access to drainage structures, signing upgrades and replacements, and rock scaling. Bridge work will be limited to paving. Work includes drainage structure improvements and culvert rehabilitations. Impact areas include 9,121 square feet/38 linear feet of temporary impacts to be restored. Compensatory mitigation consists of a one-time payment of $116,614.66 into the Aquatic Resource Mitigation (ARM) Fund, within the Contoocook River Watershed account, for 26,610 square feet of permanent impacts to palustrine and intermittent stream wetlands.

This approval is contingent on the following conditions being met:
1. In accordance with Env-Wt 307.16, all work shall be done in accordance with the Wetlands Plans for State of New Hampshire Department of Transportation, NH Project No. 43565, Federal Aid Project X-A004 (839), Interstate-89 dated March, 2021 and with the Construction Sequence (June 14, 2021) as received by NHDES on July 12, 2021, and with the Perch Repair Detail Plan as received by NHDES on September 16, 2021.
2. In accordance with Env-Wt 314.03, (a) The permittee shall notify the department in writing at least one week prior to commencing any work under the permit.
3. The permit is contingent on submittal of a check in the amount of $116,614.66 to the Aquatic Resource Mitigation Fund by the applicant as calculated per Env-Wt 803.07 and RSA 482-A:30.
4. In accordance with Env-Wt 807.01(b), the payment shall be received by NHDES within 120 days from the approval decision or NHDES will deny the application.
5. The permit shall be contingent on review and approval by NHDES of final stream diversion and erosion control plans that detail the timing and method of stream flow diversion during construction and show temporary siltation, erosion, and turbidity control measures to be implemented.
6. The contractor responsible for completion of the work shall use techniques described in Env-Wq 1504.06, Env-Wq 1504.16, Env-Wq 1505.02, Env-Wq 1506, and Env-Wq 1508.
7. In accordance with Env-Wt 307.03(c)(2), water quality control measures shall be comprised of wildlife-friendly erosion control materials if erosion control blankets are utilized.
8. In accordance with Env-Wt 307.07, all development activities associated with any project shall be conducted in

compliance with applicable requirements of RSA 483-B and Env-Wq 1400 during and after construction.
9. In accordance with Env-Wt 307.03(a), no activity shall be conducted in such a way as to cause or contribute to any violation of surface water quality standards specified in RSA 485-A:8 or Env-Wq 1700; ambient groundwater quality standards established under RSA 485-C; limitations on activities in a sanitary protective area established under Env-Dw 302.10 or Env-Dw 305.10; or any provision of RSA 485-A, Env-Wq 1000, RSA 483-B, or Env-Wq 1400 that protects water quality.
10. All work shall be conducted and maintained in such a way as to protect water quality as required by Rule Env-Wt 307.03(a) through (h).
11. In accordance with Env-Wt 307.03(c)(3), water quality control measures shall be installed prior to start of work and in accordance with the manufacturer's recommended specifications or, if none, the applicable requirements of Env-Wq 1506 or Env-Wq 1508.
12. In accordance with Env-Wt 527.05(b), The contractor responsible for completion of the work shall use techniques described in Env-Wq 1504.06, Env-Wq 1504.16, Env-Wq 1505.02, Env-Wq 1506, and Env-Wq 1508.
13. In accordance with Env-Wt 307.11(g), authorized temporary fill other than swamp mats, construction mats, and corduroy shall be placed on geotextile fabric laid on preconstruction wetland grade.
14. Invasive Plant Management Plan shall be performed to ensure the project conforms to Env-Wt 307.05 and the Department's "Best Management Practices for the Control of Invasive and Noxious Plant Species" will be utilized to control the spread of known invasive species populations in the project area.
15. In accordance with Env-Wt 307.03(c)(4), water quality control measures shall be capable of minimizing erosion; collecting sediment and suspended and floating materials; and filtering fine sediment.
16. In accordance with Env-Wt 307.03(c)(5), water quality control measures shall be maintained so as to ensure continued effectiveness in minimizing erosion and retaining sediment on-site during and after construction.
17. In accordance with Env-Wt 307.03(c)(6), water quality control measures shall remain in place until all disturbed surfaces are stabilized to a condition in which soils on the site will not experience accelerated or unnatural erosion by achieving and maintaining a minimum of 85% vegetative cover using an erosion control seed mix, whether applied in a blanket or otherwise, that is certified by its manufacturer as not containing any invasive species; or placing and maintaining a minimum of 3 inches of non-erosive material such as stone.
18. In accordance with Env-Wt 307.03(d), any sediment collected by water quality control measures shall be removed with sufficient frequency to prevent the discharge of sediment; and placed in an upland location in a manner that prevents its erosion into a surface water or wetland.
19. In accordance with Env-Wt 307.03(c)(7), temporary water quality control methods shall be removed upon completion of work when compliance with Env-Wt 307.03(c)(6) is achieved.
20. In accordance with Env-Wt 307.03(h), equipment shall be staged and refueled outside of jurisdictional areas (unless allowed) and in accordance with Env-Wt 307.15.
21. Restoration of all temporary impacts shall meet all of the conditions listed in Rule Env-Wt 307.12(a) through (i).
22. In accordance with Env-Wt 307.12(i), wetland areas where permanent impacts are not authorized shall be restored to their pre-impact conditions and elevation by replacing the removed soil and vegetation in their pre-construction location and elevation such that post-construction soil layering and vegetation schemes are as close as practicable to pre-construction conditions.
23. In accordance with Env-Wt 307.12(f), if any temporary impact area that is stabilized with seeding or plantings does not have at least 75% successful establishment of wetlands vegetation after 2 growing seasons, the area shall be replanted or reseeded, as applicable.
24. In accordance with Env-Wt 307.12(a), within 3 days of final grading or temporary suspension of work in an area that is in or adjacent to surface waters, all exposed soil areas shall be stabilized by seeding and mulching, if during the growing season; or mulching with tackifiers on slopes less than 3:1 or netting and pinning on slopes steeper than 3:1 if not within the growing season.
25. In accordance with Env-Wt 307.12(f), if any temporary impact area that is stabilized with seeding or plantings does not have at least 75% successful establishment of wetlands vegetation after 2 growing seasons, the area shall be replanted or reseeded, as applicable.
26. In accordance with Env-Wt 307.03(g)(1), the person in charge of construction equipment shall inspect such

equipment for leaking fuel, oil, and hydraulic fluid each day prior to entering surface waters or wetlands or operating in an area where such fluids could reach groundwater, surface waters, or wetlands.
27. In accordance with Env-Wt 307.03(g)(2), the person in charge of construction equipment shall repair any leaks prior to using the equipment in an area where such fluids could reach groundwater, surface waters, or wetlands.
28. In accordance with Env-Wt 307.03(g)(3) and (4), the person in charge of construction equipment shall maintain oil spill kits and diesel fuel spill kits, as applicable to the type(s) and amount(s) of oil and diesel fuel used, on site so as to be readily accessible at all times during construction; and train each equipment operator in the use of the spill kits.
29. In accordance with Env-Wt 307.03(e), all exposed soils and other fills shall be permanently stabilized within 3 days following final grading.
30. In accordance with Env-Wt 514.05(h), within 60 days of completion of construction, the applicant shall submit a post-construction report that has been prepared by a professional engineer, certified wetland scientist, or qualified professional which describes the monitoring conducted and date(s) of inspections, and includes photos showing the extent of jurisdictional impacts, areas of restoration, and progress of any plantings in accordance with Env-Wt 307.18(c).
31. In accordance with Env-Wt 803.04(b)(1), mitigation project monitoring shall span no fewer than 2 growing seasons.

This approval is based on the following findings:
1. This is a Major Project per NH Administrative Rule Env-Wt Rule Env-Wt 407.03(a), the impacts are greater than 10,000 square feet.
2. The Sutton 41429 project is located along I-89 northbound and southbound (SB) from approximately MM 24.2 to MM 28.8 and includes the Exit 10 ramps and SB rest area. There are several drainage structures that will require permanent and temporary impacts to jurisdictional wetlands including intermittent streams, and palustrine and forested wetlands. Three Tier 1 stream crossings will be rehabilitated though slip-lining. Grading and outlet protection work at the culverts will result in permanent impacts. Slope work for roadway and ramp widening results in permanent impacts to roadside ditches and other palustrine wetlands. All clearing will not include grubbing which will allow native vegetation to re-establish.
3. The applicant has considered project alternatives and selected resurfacing, relocation, reconstruction or rehabilitation (4R) as the selected alternative. This alternative rehabilitates the existing pavement through a reclaim treatment, widens mainline and ramps where the widths are deficient, and replaces/rehabilitates ancillaries such as drainage and guardrail. This alternative meets the project purpose by updating the roadway to meet current safety guidelines and extending the service life of the interstate facility.
4. There are impacts to jurisdictional wetlands classified as PEM1Ex (previously excavated man-made ditch lines) that are associated with underdrain and catch basin replacement-in-kind. The proposed work is in an effort to maintain, replace, and preserve the usefulness of the man-made non-tidal drainage ditches and to update the underdrain along this highway corridor and will be done within the same footprint of the existing delineated ditch; work associated with these ditches is not intended to extend into nor beyond any area of wetlands jurisdiction of the department of environmental services that is not delineated at man-made non-tidal drainage ditch; dredged spoils will be deposited in areas outside of wetlands jurisdiction. The applicant has identified the underdrain replacement activities to be exempt from permitting as the ditch lines will be returned to existing condition (elevation, width, and re-vegetated) after construction in accordance with RSA 482-A:3, IV(b), Env-Wt 308.01(b), NH ACOE General Permit section IX 22(d), and CFR 323.4(a)(1)(iii)(c)(1)(i) & (ii).
5. The Town of Sutton Conservation Commission was contacted by letter on June 26, 2019. A response was received including identification of wetlands and invasive species in the project area and a list of priority mitigation sites for the Town of Sutton.
6. The NH Department of Natural and Cultural Resources Natural Heritage Bureau reviewed the project area and determined that there are no know records of State or Federally protected species or their habitats located in the vicinity of the work. The project is located within the range of the federally threatened northern long-eared bat (NLEB). Consultation for impacts to NLEB has been completed with the US Fish and Wildlife Service, who have concurred that the project will result in a May Affect, Likely to Adversely Affect finding for this species in accordance with the FHWA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and NLEB. The

Contractor will be required to implement all appropriate Avoidance and Minimization Measures during construction and no further consultation is necessary.
7. The applicant has confirmed that the proposed stormwater treatment BMPs confirm that the proposed project will fully meet Env-Wt-1500 (or equivalency), and will not cause or contribute in significant degradation of waters of the state. The project includes 163,786 square feet of new treatment for 84,506 square feet of new pavement (new widened shoulders offset by reductions at the rest area). The project also includes a stormwater demonstration project at the rest area to be completed by the UNH Stormwater Center. It will be designed by UNH and incorporate interruptive signage explaining why and how it works to improve water quality.
8. Compensatory mitigation consists of a one-time payment of $116,614.66 into the Aquatic Resource Mitigation (ARM) Fund, within the Contoocook River Watershed account for 26,610 square feet of impacts to palustrine wetland and intermittent stream.

Pursuant to RSA 482-A:28, **this approval is contingent on receipt of a one-time in-lieu mitigation payment of $116,614.66 to the NHDES Aquatic Resource Mitigation (ARM) Fund.** NHDES recommends delaying payment until after the 30-day reconsideration period ending October 30, 2021. In accordance with Env-Wt 803.11(c)(2) and Env-Wt 807.01(b), if NHDES has not received the in-lieu mitigation payment within 120 days of this letter, or by January 28, 2022, NHDES will deny the application. Please include a copy of this letter with the payment.

In accordance with RSA 482-A:10, RSA 21-O:14, and Rules Env-WtC 100-200, **any person aggrieved by this decision may file a Notice of Appeal directly with the NH Wetlands Council (Council) within 30 days of the decision date, September 22, 2021**. Every ground claiming the decision is unlawful or unreasonable must be fully set forth in the Notice of Appeal. Only the grounds set forth in the Notice of Appeal are considered by the Council. Information about the Council, including Council Rules, is available at https://nhec.nh.gov/wetlands/index.htm. For appeal related issues, contact the Council Appeals Clerk at (603) 271-6072.

If you have any questions, please contact me directly at lori.sommer@des.nh.gov or (603) 271-4059.

Sincerely,

Lori L. Sommer

Lori L. Sommer
Wetland Mitigation Coordinator, Wetlands Bureau
Land Resources Management, Water Division

cc: Property Owner
Agent
Municipal Clerk/Conservation Commission
Local River Advisory Committee
ec: NHDES Rivers Program