



The State of New Hampshire  
**Department of Environmental Services**



**Robert R. Scott, Commissioner**

October 3, 2022

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NH DEPT OF TRANSPORTATION  
C/O MICHAEL DUGAS  
7 HAZEN DR  
CONCORD NH 03302

**Re: Approved Standard Dredge and Fill Wetlands Permit Application – Required Payment to Aquatic Resource Mitigation Fund (RSA 482-A)  
NHDES Wetlands Bureau File 2022-02027  
Hampton Branch Rail Corridor, North Hampton, Greenland, and Portsmouth**

Dear Applicant:

On October 03, 2022, the New Hampshire Department of Environmental Services (NHDES) Wetlands Bureau approved the above-referenced Standard Dredge and Fill Wetlands Permit Application to: Impact a total of 57,645 SF of jurisdictional area to include permanent impact of 6,250 SF of forested wetland (1,740 square feet of temporary impact), permanently impact 33,225 SF of emergent wetland (15,670 SF of temporary impact), permanently impact 245 SF of Portsmouth prime wetland (003A) (410 SF of temporary impact), permanently impact 35 SF within the bed and banks of a perennial stream along 3 LF (70 SF of temporary impact along 6 feet), and permanently impact 6 LF along the bank of a perennial stream for the improvement of the existing 7.9 Hampton Branch Rail Corridor to accommodate bicycle and pedestrians by removing existing rail ties, resurfacing the trail, clearing vegetation, upgrading drainage, roadway crossing modifications, trail reconstruction, and stream rehabilitation of one stream crossing at Pickering Brook, a Tier 2 stream. Compensatory mitigation includes a one-time payment of \$258,331.08 submitted to NHDES Aquatic Resource Mitigation (ARM) Fund for the Salmon Falls - Piscataqua Service Area.

**This approval is contingent on the following conditions being met:**

1. All work shall be in accordance by Greenman-Pedersen, Inc. for the State of New Hampshire Department of Transportation (NHDOT), N.H. Project No. 26485, Hampton-Portsmouth received by the NH Department of Environmental Services (NHDES) on July 15, 2022.
2. The permit is contingent on submittal of a check in the amount of \$258,331.08 to the Aquatic Resource Mitigation Fund by the applicant as calculated per Env-Wt 803.07 and RSA 482-A:30.
3. 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.
4. In accordance with Env-Wt 527.05(a) In addition to complying with all applicable conditions in Env-Wt 307, the permit shall be contingent on review and approval by the department 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.
5. 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.
6. 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.
7. 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

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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.

8. 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).
9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. All dredging activities shall meet all of the conditions listed in Rule Env-Wt 307.10(a) through (n).
17. In accordance with Env-Wt 307.05(e), to prevent the use of soil or seed stock containing nuisance or invasive species, the contractor responsible for work shall follow Best Management Practices for the Control of Invasive and Noxious Plant Species (Invasive Plant BMPs).
18. Restoration of all temporary impacts shall meet all of the conditions listed in Rule Env-Wt 307.12(a) through (i).
19. 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.
20. 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.
21. 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.
22. In accordance with Env-Wt 307.12 (h) any trees cut in an area of authorized temporary impacts shall be cut at ground level with the shrub and tree roots left intact, to prevent disruption to the wetland soil structure and to allow stump sprouts to revegetate the work area; and
23. 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.
24. 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.
25. 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.
26. In accordance with Env-Wt 307.03(e), all exposed soils and other fills shall be permanently stabilized within 3 days following final grading.

**This approval is based on the following findings:**

1. This is classified as a major project per Rule Env-Wt 407.03(a), as impacts to jurisdictional areas other than a watercourse are equal to or greater than 10,000 square feet (SF), and the project is not subject to an adjustment under Env-Wt 407.02; does not qualify for a project-type exception (PTE) under Env-Wt 407.04; and does not qualify for project-specific criteria as identified in Env-Wt 407.04, Table 407-2.
2. Per Rule Env-Wt 202.01(b) and as required by RSA 482-A:8, NHDES finds that the requirements for a public hearing do not apply as the project will not have a significant environmental impact, as defined in Env-Wt 104.19, on the resources protected by RSA 482-A, or, is not of substantial public interest, as defined in Env-Wt 104.32.
3. The public highway project meets all of the approval criteria established in Env-Wt 527.02.
4. The applicant has demonstrated specifically that each factor listed in Env-Wt 313.03(b) has been considered in the design of the proposed major project.
5. Per Rule Env-Wt 311.06(h), the North Hampton, Greenland, and Portsmouth Conservation Commissions did not provide comments on the proposed project.
6. Per Rule Env-Wt 311.01(b), the applicant coordinated with the NH Fish and Game Department and the Natural Heritage Bureau to determine how to avoid and minimize project-related impacts on rare or protected animal species and habitat, and on protected plants or exemplary natural communities.
7. Per Rule Env-Wt 313.01(a)(4), all project-specific criteria established in Env-Wt 500 and Env-Wt 900 have been met.
8. Per Rule Env-Wt 313.01(a)(3), all resource-specific criteria established in Env-Wt 500, Env-Wt 700, Env-Wt 900 have been met.
9. The payment into the ARM fund shall be deposited in the NHDES fund for the Salmon Falls - Piscataqua Rivers watershed per RSA 482-A:29.
10. Per Rule Env-Wt 706.05(b), the department has issued a waiver to perform work not addressed by Env-Wt 706.01(a) in a portion of a duly-established 100-foot buffer on the subject property, as the department has determined that there will be no significant net loss of wetland values as identified by the local conservation commission or local governing authority; and in RSA 482-A:1
11. The Department decision is issued in letter form and upon receipt of the ARM fund payment, the Department shall issue a posting permit in accordance with Env-Wt 803.11(c).
12. Per Rule Env-Wt 803.10(e), the department has accepted the proposal for an in-lieu mitigation payment as the proposal meets the requirements of Env-Wt 803.10(b), and of Env-Wt 803.10(d), and the mitigation type or combination of mitigation types listed in Rule Env-Wt 803.08(a) Table 800-1 that are available in the same watershed as the impacts for compensating jurisdictional area losses are not practicable.
13. The tier 2 stream crossing project meets the criteria established in Rule Env-Wt 904.04.
14. This stream crossing is a tier 2 per Env-Wt 904.04(a), as the contributing watershed is greater than 200 acres but less than 640 acres.

Pursuant to RSA 482-A:28, **this approval is contingent on receipt of a one-time in-lieu mitigation payment of \$258,331.08 to the NHDES Aquatic Resource Mitigation (ARM) Fund.** NHDES recommends delaying payment until after the 30-day reconsideration period ending November 3, 2022. 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 February 11, 2023, 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, October 03, 2022.** 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 Eben.Lewis@des.nh.gov or (603) 559-1515.

Sincerely,



Eben M. Lewis  
Southeast Region Supervisor, Wetlands Bureau  
Land Resources Management, Water Division

cc: Andrew O'Sullivan, NHDOT  
Lori Sommer, NHDES  
North Hampton, Greenland, and Portsmouth Conservation Commissions