



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



February 28, 2020

CITY OF PORTSMOUTH DPW
C/O RYAN FLYNN
1 JUNKINS AVE
PORTSMOUTH NH 03801

Re: Wetlands Permit Application (RSA 482-A); NHDES File Number: 2019-02206
Subject Property: Banfield Rd, Portsmouth, Tax Map, Lot # ROW

Dear Mr. Flynn:

On February 28, 2020, NHDES Wetlands Bureau approved your request to dredge and fill 11,172 square feet of palustrine forested, scrub-shrub and unconsolidated bottom wetlands, including 8,014 square feet of municipally-designated prime wetlands, plus 10,211 square feet of duly-established prime wetland buffer. In addition, temporarily impact 6,819 square feet of palustrine forested, scrub-shrub and unconsolidated bottom wetlands, including 4,478 square feet of municipally-designated prime wetlands, plus 51,320 square feet of duly-established prime wetland buffer. Compensatory mitigation includes a Declaration of Restrictive Covenants for Conservation Purposes to legally protect a 34.54-acre parcel adjacent to Great Bog (a municipally designated Prime Wetland) and will function to protect water quality for Pickering Brook, which flows into Great Bay.

The purpose of this letter is to notify you and all interested parties of New Hampshire Department of Environmental Services (NHDES's) approval and initiate a 20-day waiting period prior to the permit issuance pursuant to Env-Wt 704.01. Please note that this letter is not a permit to conduct work. The permit will be mailed to you upon completion of this waiting period provided that no request for reconsideration is received by NHDES.

The decision to approve this application was based on the following findings:

1. This is a Major Project per New Hampshire Administrative Rule Env-Wt 303.02(f), projects located in or adjacent to municipally-designated prime wetlands.
2. The project is located within and adjacent to the City of Portsmouth's municipally-designated Prime Wetland number 003A ("Great Bog"). Great Bog is characterized as a 573-acre southern New England seepage Marsh, functioning to protect water quality for Pickering Brook, which flows into Great Bay.
3. The applicant has provided evidence which demonstrates that this proposal is the alternative with the least adverse impact to areas and environments under the department's jurisdiction per New Hampshire Administrative Rule Env-Wt 302.03.
4. The existing conditions of the road and multiple cross-culverts provide poor drainage conditions. This project includes replacement of three existing crossings, which will improve drainage, hydraulic connectivity and minimize flooding in this area.

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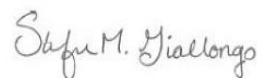
NHDES Main Line: (603) 271-3503 • Subsurface Fax: (603) 271-6683 • Wetlands Fax: (603) 271-6588

TDD Access: Relay NH 1 (800) 735-2964

5. The applicant has demonstrated by plan and example that each factor listed in New Hampshire Administrative Rule Env-Wt 302.04(a) Requirements for Application Evaluation, has been considered in the design of the project.
6. Pre-application meetings and discussions were held between the applicant and regulatory agencies on June 21, 2016 and February 15, 2017. Meeting notes are available in the NHDES file 2019-02206.
7. In correspondence dated April 16, 2019, the Portsmouth Conservation Commission expressed support of the project.
8. The Natural Heritage Bureau (NHB) report submitted with the application package (NHB18-1635) indicates the presence of threatened and endangered plant species, plus the presence of exemplary natural communities, located within the vicinity of the project.
9. In correspondence dated November 01, 2019, NHB generally concurred with the project's avoidance, minimization and mitigation measures. Further though, since the rare plant survey results were inconclusive, NHB recommends confirming the identity of the subject plant species prior to the start of construction. Additional mitigation measures may be necessary depending on the result of the confirmation.
10. This permit is conditioned upon obtaining appropriate authorization from the owner(s) of abutting properties for work will encroach outside of the established right of way.
11. No comments of concern were received by NHDES from abutters or local governing organizations.
12. In correspondence from the NH Division of Historical Resources (NHDHR), dated April 17, 2017, it was determined that no historic properties would be affected by the project, as proposed.
13. In accordance with RSA 428-A:8, NHDES finds that the requirements for a public hearing do not apply as the permitted project is not of substantial public interest, and will not have a significant impact on or adversely affect the values of the riverine resource, as identified under RSA 482-A:1.
14. Compensatory mitigation includes a Declaration of Restrictive Covenants for Conservation Purposes to legally protect a 34.54-acre parcel adjacent to Great Bog (a municipally designated Prime Wetland) and will function to protect water quality for Pickering Brook, which flows into Great Bay.

Any person aggrieved by this decision may appeal to the New Hampshire Wetlands Council (the Council) by filing an appeal that meets the requirements specified in RSA 482-A:10, RSA 21-O:14, and the rules adopted by the Council, Env-WtC 100-200. The appeal must be filed **directly with the Council within 30 days** of the date of this decision and must 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 notice of appeal can be considered by the Council. Information about the Council, including a link to the Council's rules, is available at <http://nhec.nh.gov/> (or more directly at <http://nhec.nh.gov/wetlands/index.htm>.) Copies of the rules also are available from the NHDES Public Information Center at (603) 271-2975.

Sincerely,



Stefanie M. Giallongo
Wetlands Inspector
NHDES Wetlands Bureau

cc: Portsmouth Conservation Commission & City Council
Lee Carbonneau, Normandeau Associates, Inc.

ec: Peter Britz, City of Portsmouth
Peter Rice, Portsmouth DPW
Amy Lamb, NH Natural Heritage Bureau
Lori Sommer, NHDES Wetlands Mitigation Program

BANFIELD ROAD; PORTSMOUTH

DECISION DATE: February 28, 2020

DECISION:

Dredge and fill 11,172 square feet of palustrine forested, scrub-shrub and unconsolidated bottom wetlands, including 8,014 square feet of municipally-designated prime wetlands, plus 10,211 square feet of duly-established prime wetland buffer. In addition, temporarily impact 6,819 square feet of palustrine forested, scrub-shrub and unconsolidated bottom wetlands, including 4,478 square feet of municipally-designated prime wetlands, plus 51,320 square feet of duly-established prime wetland buffer. Compensatory mitigation includes a Declaration of Restrictive Covenants for Conservation Purposes to legally protect a 34.54-acre parcel adjacent to Great Bog (a municipally designated Prime Wetland) and will function to protect water quality for Pickering Brook, which flows into Great Bay.

CONDITIONS:

1. All work shall be in accordance with plans by TEC, Inc. dated February 06, 2017, revised through October 31, 2019, last received by the New Hampshire Department of Environmental Services (NHDES) on February 03, 2020.
2. This permit does not authorize encroachment onto an abutter's property unless, prior to starting work, the permittee has (1) obtained temporary construction easements or other written agreements from the owner of the abutting property, and (2) submitted a copy of each agreement to the NHDES Wetlands Bureau.
3. Prior to the start of construction, in coordination with the New Hampshire Natural Heritage Bureau, the permittee shall confirm the identity of the population of rare plant species in the vicinity of the project. Pending the results of field-confirmation, additional coordination may be necessary to mitigate potential impacts to this population.
4. Work shall be conducted during annual low flow conditions and in the dry only. No excavation shall be done in flowing water. No construction equipment shall be operated in flowing water.
5. This permit is not valid until the permittee or permittee's contractors submit a detailed dewatering and diversion plan to NHDES for review and written approval. The plan shall include all proposed cofferdams, diversion and dewatering strategies, estimated maximum flow to be diverted, site stabilization provisions if capacity of diversion is exceeded, and measures to reduce turbidity. This plan shall be stamped by a licensed Professional Engineer (PE), in accordance with New Hampshire Administrative Rule Env-Wt 303.04(I).
6. Not less than 5 state business days prior to starting work authorized by this permit, the permittee shall notify the NHDES Wetlands Bureau (Stefanie.Giallongo@des.nh.gov) and the local conservation commission in writing of the date on which work under this permit is expected to start.
7. Prior to construction, all wetland and surface water boundaries adjacent to construction areas shall be clearly marked to prevent unintentional encroachment on adjacent wetlands and surface waters.
8. The channel at the culvert inlet(s) and outlet(s) must maintain or improve the natural hydrology and not impede or accelerate flow.
9. All development activities associated with this project shall be conducted in compliance with applicable requirements of RSA 483-B and New Hampshire Administrative Rules Env-Wq 1400 during and after construction.
10. All work shall be conducted in dry conditions and in a manner that will not cause or contribute to any violations of surface water quality standards in RSA 485-A or New Hampshire Administrative Rules Env-Wq 1700.

11. Discharge from dewatering of work areas shall be to sediment basins that are: a) located in uplands; b) lined with hay bales or other acceptable sediment trapping liners; c) set back as far as possible from wetlands and surface waters, with a preferred undisturbed vegetated buffer of at least 50 feet and a minimum undisturbed vegetative buffer of 20 feet.
12. Dredged materials, whether to be stockpiled or disposed of, shall be dewatered in sedimentation basins lined with siltation and erosion controls, and located outside of wetland areas.
13. Any fill used shall be clean sand, gravel, rock, or other suitable material.
14. To prevent the introduction or export of invasive plant species to or from the site, the permittee's contractor(s) shall clean all soils and vegetation from equipment and timber matting before it is moved to and from the site.
15. Within three days of final grading or temporary suspension of work in an area that is in or adjacent to wetlands or surface waters, all exposed soil areas shall be stabilized by seeding and mulching during the growing season, or if not within the growing season, by mulching with tackifiers on slopes less than 3:1 or netting and pinning on slopes steeper than 3:1.
16. Where construction activities occur between November 30 and May 1, all exposed soil areas shall be stabilized within 1 day of establishing the grade that is final or that otherwise will exist for more than 5 days. Stabilization shall include placing 3-inches of base course gravels, or loaming and mulching with tack or netting and pinning on slopes steeper than 3:1.
17. Appropriate siltation and erosion controls shall be in place prior to construction, shall be maintained during construction, and remain until the area is stabilized. Silt fence(s) must be removed once the area is stabilized.
18. Appropriate turbidity controls shall be installed prior to construction, shall be maintained during construction such that no turbidity escapes the immediate work area, and shall remain until suspended particles have settled and the water at the work site has returned to normal clarity.
19. The Contractor responsible for completion of the work shall utilize techniques described in the NH Stormwater Manual, Volume 3, Erosion and Sediment Controls During Construction (December 2008).
20. Construction equipment shall be inspected daily for leaking fuel, oil and hydraulic fluid. Faulty equipment shall be repaired prior to construction. The contractor shall have appropriate oil spill kits on site and readily accessible at all times during construction and each operator shall be trained in its use.
21. All refueling of equipment shall occur outside of surface waters or wetlands during construction.

MONITORING:

22. A certified wetland scientist or qualified professional shall monitor the project during construction to ensure that the work is conducted in accordance with the approved plans.
23. The permittee shall notify the NHDES Wetlands Bureau (Stefanie.Giallongo@des.nh.gov), in writing, of the certified wetland scientist or qualified professional retained. The permittee shall re-notify the NHDES Wetlands Bureau if the identity of the qualified professional changes during the project.
24. The qualified professional shall inspect the construction areas and submit a monitoring report to NHDES Wetlands Bureau after any rain event of 1/2 inch or greater, within a 24-hour period, during construction.
25. Wet weather monitoring report(s) shall be submitted within 1 week of the rain event and shall include, but not be limited to, documentation of erosion control deployment, status of construction activities, sequence at time of monitoring, remedies enacted to correct deficiencies in water quality protection measures.
26. A follow-up report including photographs of all stages of construction shall be submitted to the NHDES Wetlands Bureau (Stefanie.Giallongo@des.nh.gov) within 60 days of final site stabilization.

27. The certified wetlands scientist or qualified professional monitoring the project shall submit annual reports by January 30th following each of two full growing seasons, post-construction, to the NHDES Wetlands Bureau (Stefanie.Giallongo@des.nh.gov).
28. The permittee or permittee's contractor shall properly construct, and monitor the restoration of impact areas, and shall take such remedial actions as may be necessary to restore areas to pre-existing function and condition.

MITIGATION:

29. This approval is not valid until the applicant/owner executes and records the conservation deed for the 34.54-acres, as depicted on plans prepared by Civilworks, dated November 19, 2014 and received by NHDES on February 03, 2020.
30. Following permit issuance and prior to recording of the conservation deed, the natural resources existing on the conservation parcel shall not be removed, disturbed, or altered without prior written approval of NHDES.
31. The conservation restrictions to be placed on the preservation areas shall be written to run with the land, and both existing and all future property owners shall be subject to the restrictions.
32. The plan noting the conservation area with a copy of the final deed language shall be recorded with the Rockingham Registry of Deeds for each lot that is subject to the restrictions. The permittee shall submit a copy of the recording from the Rockingham County Registry of Deeds to the NHDES Wetlands Bureau prior to the start of construction.
33. The conservation area shall be surveyed by a licensed surveyor, and marked by monuments [stakes] prior to construction. If this survey determines the parcel is less than the size represented in the application, the permittee shall submit the completed survey to NHDES for review. As a result of this review, NHDES may require additional mitigation adjustments after coordination with the appropriate conservation commission, and state and federal agencies.
34. The permittee/permittee's contractor shall notify the NHDES Wetlands Bureau when the monuments are placed, and coordinate an on-site review of their location prior to construction.
35. There shall be no placement of fill, construction of structures, or storage of vehicles or hazardous materials on the conservation parcel.
36. Activities in contravention of the conservation deed shall be deemed to be a violation of RSA 482-A, and shall be subject to enforcement under RSA 482-A.