



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

March 26, 2024

PORTSMOUTH MUNICIPAL CLERK/CONSERVATION COMMISSION
1 JUNKINS AVE
PORTSMOUTH NH 03801

Re: Received Standard Dredge and Fill Wetlands Permit Application (RSA 482-A)
NHDES File Number: 2024-00792
Subject Property: 333 New Castle Ave, Portsmouth, Tax Map #207, Lot #2

Dear Sir or Madam:

On March 26, 2024, the New Hampshire Department of Environmental Services (NHDES) Wetlands Bureau received the above-referenced Standard Dredge and Fill Wetlands Permit Application (Application). On March 26, 2024, NHDES determined the Application was administratively complete in accordance with RSA 482-A:3, XIV. *Please note this letter is not a permit or authorization to begin work.*

Pursuant to RSA 482-A:11, III, if notification by a local conservation commission, local river management advisory committee, or the New Hampshire Rivers Council pursuant to this paragraph is not received by the department within 14 days (**April 4, 2024**) following the date the notice is filed with the municipal clerk, the department shall not suspend its normal action, but shall proceed as if no notification has been made. Please include the NHDES file number on the written notification.

Please provide a copy of this letter to all local level departments, boards, and commissions. Pursuant to current state laws and regulations, NHDES is not authorized to consider local zoning and regulatory issues pertaining to a project. These issues must be addressed at the local level.

If you have any questions, please contact the Wetlands Bureau at (603) 271-2147.

Sincerely,

Brandy Holmes
Application Receipt Center, Wetlands Bureau
Land Resources Management, Water Division

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
NHDES Main Line: (603) 271-3503 • Subsurface Fax: (603) 271-6683 • Wetlands Fax: (603) 271-6588
TDD Access: Relay NH 1 (800) 735-2964



The State of New Hampshire
Department of Environmental Services



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The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



March 29, 2024

MR JOHN (JACK) GARDNER
50 ODIORNE POINT ROAD
PORTSMOUTH NH 03801

Re: Restoration Plan Approval
Land Resources Management File Number: 2024-00153
Subject Property: 50 Odiorne Point Road, Portsmouth, Tax Map #224, Lot #3

Dear Mr. Gardner:

On March 14, 2024, the New Hampshire Department of Environmental Services (NHDES) Land Resources Management Program received a proposed site restoration plan (Restoration Plan) for the above-referenced property (Property). NHDES hereby approves the Restoration Plan as submitted, subject to the following specific conditions. If there is a conflict between the Restoration Plan and this Restoration Plan Approval, this Restoration Plan Approval will control.

1. **By September 30, 2024**, approximately 4,572 square feet of the 100-foot previously developed upland tidal buffer zone, 100-foot prime wetland buffer, freshwater wetlands, and Protected Shoreland shall be restored, monitored, and managed in accordance with the Restoration Plan and all project descriptive details submitted to NHDES on March 14, 2024, by Normandeau Associates, Inc.
2. The restoration shall be conducted according to the Restoration Plan and as conditioned by this Restoration Plan Approval. Any changes or alterations to the Restoration Plan must be requested in writing and approved in writing by NHDES prior to implementing any such changes or alterations.
3. All persons involved in restoration activities on the Property shall have read and become familiar with the provisions of the Restoration Plan and this Restoration Plan Approval prior to beginning the activities. A copy of the Restoration Plan and this Restoration Plan Approval shall be kept posted at the Property during the restoration activities.
4. A certified wetland scientist (CWS), horticultural professional, or qualified professional shall supervise the restoration activities within RSA 482-A jurisdiction on the Property to ensure that the restoration is accomplished pursuant to this Restoration Plan Approval.
5. Siltation, erosion, and turbidity controls shall be installed prior to restoration, shall be maintained during restoration activities, and shall remain until the area is stabilized.
6. All steps shall be taken to ensure that no water quality violations occur on the Property during restoration activities.
7. Silt fence and hay bales shall not be used across streams, channels, swales, ditches, or other drainage ways.
8. Within three days following the last activity in the restoration area or where restoration activities are suspended for more than three days, all exposed soils shall be stabilized by seeding and mulching. In accordance with Env-Wt 307.12(d), mulch used within RSA 482-A jurisdiction shall be natural straw or equivalent non-toxic, non-seedbearing organic material.
9. No machinery shall be used within undisturbed NHDES jurisdictional areas on the Property during the restoration unless vegetation and soil is not disturbed.
10. All material removed during restoration activities shall be placed out of NHDES' jurisdiction.

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File # 2024-00153

March 29, 2024

Page 3 of 3

David Price
Land Resource Management Program
Department of Environmental Services
222 International Drive Suite 175
Portsmouth, NH 03801

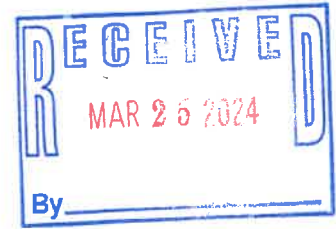
Should you have any questions, please contact me at David.Price@des.nh.gov or (603) 559-1514.

Sincerely,



David Price
East Region Supervisor
Land Resources Management Program
Water Division

cc: Portsmouth Conservation Commission
Portsmouth Planning Department
Normandeau Associates, Inc.



THE STATE OF NEW HAMPSHIRE
WETLANDS COUNCIL

APPEAL OF SAGAMORE LANDING CONDOMINIUM ASSOCIATION AND DAVID AND
MARGARET WITHAM

NOTICE OF APPEAL
(NHDES Wetlands Permit No 2018-03677)

NOW COMES Sagamore Landing Condominium Association for itself and as agent for all the unit owners of Sagamore Landing Condominium Association, and David and Margaret Witham, Individually and as Trustee of the David C. Witham Revocable Trust of 2009 (together “Appellants”), by and through their attorneys, Sheehan Phinney Bass & Green, PA, and files this Petition for Appeal (“Petition”) of the New Hampshire Department of Environmental Services (“Department”) dated February 21, 2024 (“Decision”) to approve a major impact project on Sagamore Creek proposed by Jon and Joan Dickinson (“Permitees”). This Petition is filed pursuant to RSA 21-O:14 and RSA 482-A:10.

A. Name and Address of Appellants

Sagamore Landing Condominium Association for itself and as agent for all the unit owners of Sagamore Landing Condominium Association
c/o Danielle Megliola, President
284 Walker Bungalow Road
Portsmouth, NH 03801
(917) 940-6604
danielle.megliola@gmail.com

David and Margaret Witham, Individually and as Trustees of the David C. Witham Revocable Trust of 2009
238 Walker Bungalow Road
Portsmouth, NH 03801
(603) 498-9084
withamarchitecture@gmail.com

B. Counsel for Appellants

John-Mark Turner
1000 Elm Street, 17th Floor
Manchester, NH 03101
(603) 627-8143
jturner@sheehan.com

C. Standing

Unit Owners of Sagamore Landing Condominium Association (“SLCA”) are abutting landowners to a major tidal docking structure project proposed on abutting frontage. The SLCA has seven (7) unit owners. SLCA and unit owners were entitled to be noticed in accordance with RSA 482-A:9. David and Margaret Witham are the nearest abutters and are persons aggrieved by the Department decision in accordance with RSA 21-O:14 I-a and were entitled to be noticed in accordance with RSA 482-A:9.

D. Land Description

The land involved in the Decision is located at 220 Walker Bungalow Road in Portsmouth, New Hampshire and is a shorefront parcel on Sagamore Creek. The land is designated as Tax Map 223, Lot 20 and is referred to in the warranty deed to Jon and Joan Dickinson dated September 24, 2017, recorded October 30, 2017 at Rockingham County Registry of Deeds Book 5866, Page 1780.

E. Decision Being Appealed

On February 25, 2019, the Wetlands Bureau granted a permit to the Dickinsons to permanently impact a total of 760 square feet to construct a new tidal docking structure. The proposed structure consisted of a 4 foot x 10 foot access way connecting to a 4 foot x 100 foot fixed pier connecting to a 3 foot x 40 foot ramp connecting to a 10 foot x 20 foot float. The

overall structure length would be 150 feet. Because of the type and classification of this project, it also must be approved by the Governor and Executive Council.

The Appellants appealed that permit to this Council. That appeal is docketed at 19-04 WtC. At the July 24, 2019 pre-hearing conference in that matter, DES representatives said the agency had made a mistake by permitting the dock even though no abutting property line extension had been shown on the plans provided with the application. Since that time, the case has been stayed by July 24, 2019 order and subsequent additional orders following status reports by the parties.

On August 26, 2022, the applicant, submitted a new dock proposal to the Department. The Department treated the proposal as a request for a permit amendment under Env-Wt 314.07. The proposed dock was shorter than the original proposal and consists of a 4 foot x 5 foot access way connecting to a 4 foot x 20 foot fixed pier, connect to a 3 foot x 30 foot ramp connecting to a 20 foot x 10 foot float.

On February 21, 2024, the Department issued the attached decision (Exhibit A), approving the modified dock proposal.

F. Facts and Grounds for Appeal

1. SLCA unit owners own the Association property as tenants in common.
2. David Witham is Trustee of the David C. Witham Revocable Trust of 2009, which owns 238 Walker Bungalow Road. Margaret Witham is the Beneficiary of the David C. Witham Revocable Trust of 2009. Both David and Margaret Witham live at 238 Walker Bungalow Road.
3. The abutting lot that is the subject of this appeal was previously owned by the Ciotti family, Permittees' predecessor in title, who purchased the lot in 1962. The Ciottis

purchased 220 Walker Bungalow Road from a lobsterman and the house included a boat, traps, and a dock. The dock was likely constructed in the early 60s and was +/- 32 feet long. This roughly 32 foot long dock served the needs of a lobsterman, and the Ciotti family after that. Over time, the Ciotti's dock broke. In 2010, the Ciottis applied for a wetlands permit to install rip-rap and construct a tidal docking structure with an overall length of 55 feet, providing one slip on 53 feet of frontage on Sagamore Creek. *See* File #: 2010-3326, which is hereby incorporated by reference in its entirety. Ultimately, the Ciotti family never built this approved proposed dock.

4. The Witham's home is a year-round home. In the summer, the Withams and their children participate in frequent recreational activities directly out their backyard on Sagamore Creek, such as boating, kayaking, and swimming. In addition, the Witham family highly values the remaining view they have of Sagamore Creek.
5. The six (6) other families in SLCA also live in their Sagamore Creek homes year-round. They also use the Association's dock for boating, kayaking, paddle boarding, canoeing, and swimming.
6. Prior to issuance of the 2019 Permit Permittees did not in any way depict Appellants' abutting property line on plans submitted to the Department, even though such lines and their extensions are required by Env-Wt 603.07(b), and even though RSA 482-A:3, XIII(b) and Env-Wt 513.10(d)(2), prohibits boats from extending over the extension of an abutter's property line.
7. The recently issued permit is based on February 12, 2023 plans authored by Ambit Engineering. They are attached as Exhibit B. Unlike the 2019 plans, the 2023 plans do show an extended line on the eastern side of the Dickisons' parcel. However, the depicted

line is not an extension of the abutting property line. Instead, the line is shot from an arbitrary point along the boundary between the abutters' property and the mean high water line. In other words, the line is drawn from the boundary (at an arbitrary point) between the Appellants' property and the State's property.

8. The Appellants provided an expert opinion to DES by Steve Nix, who located the correct placement of the property line extension. Mr. Nix's report is attached as Exhibit C.

G. Statement of Relief Sought

Appellants request that the Wetlands Council, pursuant to RSA 482-A:10, VI, remand to the Department the Decision along with a Council determination that the Decision was unlawful and unreasonable, on the following grounds:

1. The decision was unlawful and unreasonable because the approved dock violates RSA 482-A:3, XII and Env-Wt 513.10(d)(2). The property line extension is correctly shown by Mr. Nix. The extension runs across the permitted dock such that no boat could tie up without extending over the extension line. The Department's decision erroneously and unreasonably relied on a property line extension that was not an extension of the abutting property line. Because the abutters have not consented to the encroachment on the property line extension, the permit cannot issued under the statute and rule.
2. The Decision was unlawful and unreasonable because the Department failed to convene a public hearing under RSA 482-A:8 for this major tidal wetlands project by erroneously concluding that the project was not of substantial public interest and would not have a significant impact on or adversely affect Sagamore Creek's resources.

3. The Decision was unlawful and unreasonable because the Department failed to apply Env Wt 513.10(e), which requires an applicant to explain, with reference to the factors in 513.10(d)(1), why they are deviating from a standard parallel docking configuration.
4. The Decision was unlawful and unreasonable because it erroneously failed to consider or make sufficient findings with regard to practicable alternatives that would have less adverse impact on the area and environments under the Department's jurisdiction.
 - a. A mooring would have less adverse impact than a dock.
 - b. The owner prior to the Ciottis used and maintained a +/- 32 foot long dock that was sufficient for his use as a lobsterman.
 - c. The Department failed to consider or make appropriate findings on other practicable and available alternatives with less adverse impact on the area and abutters, and unlawfully and unreasonably issued a permit for a major docking structure. *See Env-Wt 313.03*
5. The Decision was unlawful and unreasonable because it failed to adequately consider or address potential impacts of the proposed project on public navigation and recreation and instead relied upon the earlier 2019 limited review of navigational impacts to the federally designated navigation channel without distinguishing between high, mid, and low tides, or addressing potential impacts on recreational activities outside the federal channel.
 - a. Numerous property owners along Sagamore Creek use the creek for kayaking, canoeing, paddle boarding, swimming, and similar recreational activities.
 - b. The Department only considered Pease Development Authority, Division of Ports and Harbors opinion, submitted by Permittees, that it would have "no

negative effect on navigation in the [federal] channel.” PDA’s only considered the earlier dock configuration not the modified proposal.

- c. The Department failed to include any findings on the impact the dock would have on the recreational opportunities on the creek, or the navigation by kayaks and other low draft and/or non-motorized vessels at mid to low tides.
6. The Decision was unlawful and unreasonable because the permitted dock unreasonably interferes with the ability of abutting owners to use and enjoy their properties:
- a. The Decision includes no Findings on the visual impact to Appellants’ current view, which would unreasonably affect Appellants’ property values and use and enjoyment of their properties. RSA 482-A:11 and Env-Wt Parts 300 and 400.
7. The Department unreasonably and unlawfully approved the project in contravention of Env-Wt 513.11, requiring that an applicant with less than 75’ of shoreline frontage cannot have a docking structure larger than 4 feet x 24 feet.
- a. The Department recognized the lot at 220 Walker Bungalow Road as having 53’ of shoreline frontage when granting approval to the Ciottis in 2010.
 - b. The tax map of 220 Walker Bungalow Road indicates the property has somewhere between 50’ and 60’ of shoreline frontage.

WHEREFORE, Appellants hereby request the Wetlands Council to:

- A. Remand the Decision to the Department with instructions to deny the permit application; and
- B. Order such other relief deemed just and proper.

Respectfully submitted,

**SAGAMORE LANDING CONDOMINIUM
ASSOCIATION AND
DAVID AND MARGARET WITHAM**

By Its Attorneys,

SHEEHAN PHINNEY BASS & GREEN, PA

Dated: March 22, 2024

By: /s/ John-Mark Turner
John Mark Turner (NH Bar #15610)
1000 Elm Street, PO Box 3701
Manchester, NH 03105
(603) 627-8143; jturner@sheehan.com

CERTIFICATION

I certify that a copy of the foregoing was on this date emailed and/or mailed this Notice pursuant to Ec-Wet 201.03 and 203.01(d), to the Director of the Water Division, the other parties to the department decision, Department c/o Collis Adams, New Hampshire Department of Environmental Services, the Portsmouth City Council, Planning Board and Conservation Commission, and the abutters as required by Env-WtC 203.02(a)(12).

Dated: March 22, 2024

By: /s/ John-Mark Turner
John-Mark Turner



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

February 21, 2024

JOAN/JON DICKINSON
137 ELWYN AVE
PORTSMOUTH NH 03801

Re: Approved Standard Dredge and Fill Wetlands Permit Application (RSA 482-A)
NHDES File Number: 2018-03677
Subject Property: 220 Walker Bungalow Rd, Portsmouth, Tax Map #223, Lot #20

Dear Owner:

On February 21, 2024, the New Hampshire Department of Environmental Services (NHDES) Wetlands Bureau approved the above-referenced application to impact a total of 390 square feet (SF), 20 SF of permanent impact to the previously developed upland tidal buffer zone and 370 SF of permanent impact to tidal wetlands, to construct a new tidal docking structure. The structure consists of a 4 foot by 5 foot access way connecting to a 4 foot by 20 foot fixed pier connecting to a 3 foot by 30 foot ramp connecting to a 10 foot by 20 foot float. The overall structure length seaward of the highest observable tide line is 52 feet, providing one slip on 128 feet of frontage on Sagamore Creek.

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, February 21, 2024.** 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://www.nhec.nh.gov/wetlands-council/about>. For appeal related issues, contact the Council Appeals Clerk at (603) 271-6072.

In accordance with RSA 482-A:3, II(a) and Env-Wt 313.02(b), as your project is a major project located in a great pond or in public waters of the state, your application must also be approved by the Governor and the Executive Council. Upon expiration of the appeal period, a redacted copy of the file is submitted to the Governor and the Executive Council for their consideration. Information about the Governor and the Executive Council is available at <https://www.nh.gov/council/>.

Sincerely,

Philip Trowbridge, P.E., Manager
Land Resources Management, Water Division

Enclosure: Copy of Decision

cc: Agent
Municipal Clerk/Conservation Commission
Abutters
ec: Assistant Administrator, Wetlands Bureau

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FILE #2018-03677
JOAN/JON DICKINSON
PORTSMOUTH

DECISION DATE:
February 21, 2024

DECISION:

Impact a total of 390 square feet (SF), 20 SF of permanent impact to the previously developed upland tidal buffer zone and 370 SF of permanent impact to tidal wetlands, to construct a new tidal docking structure. The structure consists of a 4 foot by 5 foot access way connecting to a 4 foot by 20 foot fixed pier connecting to a 3 foot by 30 foot ramp connecting to a 10 foot by 20 foot float. The overall structure length seaward of the highest observable tide line is 52 feet, providing one slip on 128 feet of frontage on Sagamore Creek.

CONDITIONS:

AMENDED CONDITIONS

1. All work shall be in accordance with plans by Ambit Engineering Inc. dated August 2022, and revised through February 13, 2023, last received by the NH Department of Environmental Services (NHDES) on February 16, 2023.
2. Not less than 5 state business days prior to starting work authorized by this permit, the permittee shall notify the NHDES Wetlands Bureau Pease office and the local conservation commission in writing of the date on which work under this permit is expected to start.
3. This permit shall not be effective until recorded at the Rockingham County Registry of Deeds Office by the permittee. A copy of the recorded permit shall be submitted to the NHDES Wetlands Bureau prior to construction.
4. Any future work in jurisdiction as specified in RSA 482-A on this property will require a new application and approval by the NHDES Wetlands Bureau.
5. No person undertaking any activity shall cause or contribute to, or allow the activity to cause or contribute to, any violations of the surface water quality standards in RSA 485-A and New Hampshire Administrative Rule Env-Wq 1700.
6. This tidal docking structure shall be the only docking structure on this water frontage.
7. All work shall be conducted in compliance with RSA 483-B.
8. Construction of the dock shall occur from a barge equipped with a crane, at low tide, to reduce potential impacts to the river bank and the estuarine intertidal and subtidal wetlands.
9. Pile driving or pile removal work shall be done during low tide to the maximum extent practicable.
10. Decking shall have at least 3/4-inch spacing between the decking planks to provide sufficient sunlight penetration and rainfall to underlying vegetation.
11. Appropriate siltation/erosion/turbidity controls shall be in place prior to construction, shall be maintained during construction, and shall remain in until the area is stabilized.
12. Work shall be conducted in a manner so as to minimize turbidity and sedimentation to surface waters and wetlands.
13. Work shall be conducted in a manner that avoids excessive discharges of sediments to fish spawning areas.
14. The seasonal structures, including but not limited to the ramp and float, shall be removed during the non-boating season and stored on the existing pier or in an upland location.
15. All construction-related debris shall be properly disposed of outside of the areas subject to RSA 482-A.
16. 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 tack or netting and pinning on slopes steeper than 3:1.

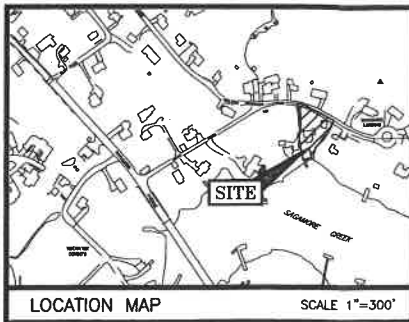
FINDINGS:

1. This is a Major Project per New Hampshire Administrative Rule Env-Wt 303.04(a), projects located tidal wetlands, except for repair of existing structures.

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2. 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.
3. The proposed dock is the minimum length necessary to provide access at this location for the duration of the tidal cycle and designed in such a way as to prevent the float from sitting on the mud at low tide.
4. The decking of the proposed dock will have a minimum of 3/4-inch spacing between the decking planks and the bottom of the pier will be a minimum of 4 feet above the substrate to provide adequate ambient light levels to support the underlying salt marsh community.
5. The permittee's contractor will be utilizing a barge and crane to complete construction of the dock from the water to minimize impacts to the tidal wetland resource.
6. The applicant has demonstrated by plan and example that each factor listed in New Hampshire Administrative Rule Env-Wt 302.04(a) and (c), Requirements for Application Evaluation, has been considered in the design of the project.
7. The Natural Heritage Bureau (NHB) report submitted with the application package (NHB18-3657) stated that although there was record of sensitive species in the vicinity, no impacts to rare or endangered species or exemplary natural communities are expected as a result of the project.
8. Other NHDES permits associated with this site include: 2018-01656 and 2018-02479 (issued August 21 and September 14, 2018, respectively) for impacts to the protected Shoreland and the previously-developed upland tidal buffer zone for redevelopment of the residential property; 2010-03326 (issued February 08, 2011) to replace a deteriorated timber bulk head with 187 linear feet of riprap stabilization, and; 1993-01664 (issued November 16, 1993) for impacts to the previously-developed upland tidal buffer zone for installation of a replacement septic system.
9. In accordance with RSA 482-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 estuarine resource, as identified under RSA 482-A:1.
10. NHDES staff field inspection on February 22, 2019 found that the site is accurately represented in the application.
11. In correspondence dated December 26, 2018, the Pease Development Authority, Division of Ports and Harbors, determined that the project would have no negative effect on navigation in the channel.
12. In correspondence dated July 31, 2018, signed authorization was provided by the applicant to allow their agent to act on their behalf throughout the permitting process.
13. In correspondence dated February 19, 2019, the applicant requested a waiver to NH Administrative Rule Env-Wt 606.03(b), Piers, Docks, Wharves and Floats Criteria, to allow for less than 12 feet of separation between the two seaward pairs of proposed piles. As proposed, 8 sets of piles are structurally sufficient and strict adherence to the rule would require 9 sets of piles to be driven.
14. In accordance with New Hampshire Administrative Rule Env-Wt 204.04, a waiver will be granted if the project will not have an adverse impact to the environment or natural resources of the state, public health, or public safety, and the strict compliance with the rule will provide no benefit to the public and will cause an operational or economic hardship to the applicant.
15. Consistent with New Hampshire Administrative Rule Env-Wt 204.04, the Department finds that strict adherence to the rule would result in more impact to the environment and not benefit the public. Therefore, the Department waives the requirements set forth by New Hampshire Administrative Rules Env-Wt 606.03(b).
16. Per Rule Env-Wt 314.07(a) and subject to Env-Wt 314.07(b), the permittee has requested an amendment to the approved permit on February 16, 2023. The amended plan includes reducing the size of the docking structure from 760 square feet to 390 square feet.
17. The NHDES original approval of this docking structure was appealed by an abutter on May 10, 2019. Since that time, the parties requested and were granted a motion to stay by the Wetlands Council in order for the parties to try to reach agreement. While agreement has not been reached, the permittee submitted an amendment to NHDES requesting approval for a much smaller docking structure in order to resolve the appellants concerns.
18. In accordance with RSA-482-A:3, XIV.(e), the request does not constitute a "significant amendment".



LOCATION MAP SCALE 1"=300'

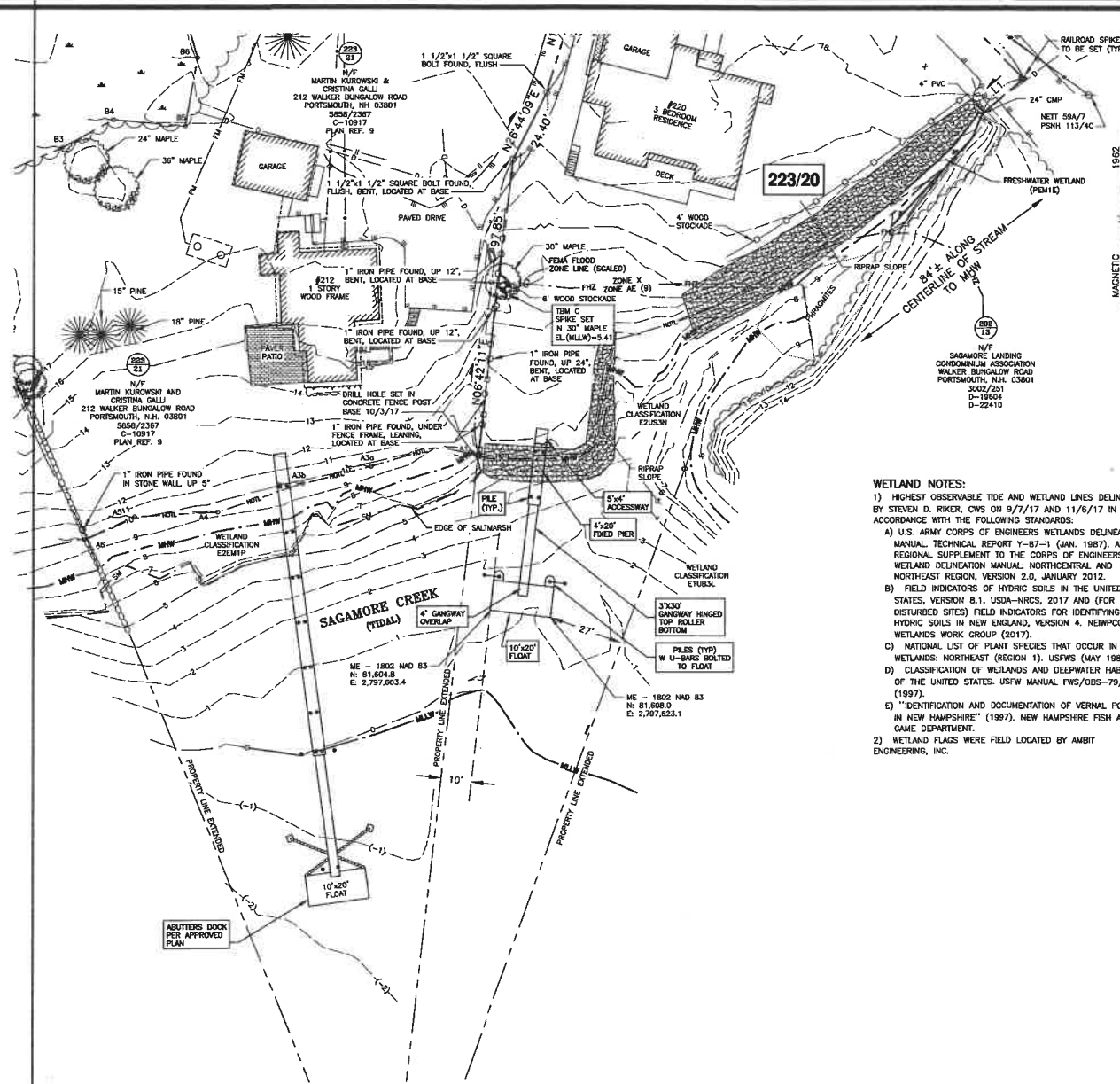
LEGEND:

EXISTING

- | | |
|-------------|---|
| N/F | NOW OR FORMERLY RECORD OF PROBATE |
| RP | ROCKINGHAM COUNTY REGISTRY OF DEEDS MAP 11 / LOT 21 |
| RCRD | |
| RR SPK FND | RAILROAD SPIKE FOUND/SET |
| IR FND | IRON ROD FOUND/SET |
| IP FND | IRON PIPE FOUND/SET |
| WH FND | WIRE FOUND |
| TS FND | TOWN BOUND FOUND |
| BND w/DH | BOUND w/ DRILL HOLE |
| ST BND w/DH | STONE BOUND w/DRILL HOLE |
| RR SPK SET | RAILROAD SPIKE FOUND/SET |
| IR SET | IRON ROD FOUND/SET |
| IP SET | IRON PIPE FOUND/SET |
| WH SET | WIRE FOUND/SET |
| DH SET | DRILL HOLE FOUND/SET |
| | NHDT BOUND FOUND |
| | TOWN BOUND FOUND |
| | BOUND w/ DRILL HOLE |
| | STONE BOUND w/DRILL HOLE |
| | UNDERGROUND ELECTRIC OVERHEAD ELECTRIC WIRES |
| | CONTOUR |
| | EDGE OF PAVEMENT (EP) |
| | WOODS / TREE LINE |

PREVIOUS DES PERMIT APPROVALS:

- NH DES WETLANDS: 93-01664
- NH DES WETLANDS: 2010-03326
- NH DES WETLANDS: 2018-02479
- NH DES SHORELAND: 2018-01656



- WETLAND NOTES:**
- HIGHEST OBSERVABLE TIDE AND WETLAND LINES DELINEATED BY STEVEN D. RIKER, CWS ON 9/7/17 AND 11/6/17 IN ACCORDANCE WITH THE FOLLOWING STANDARDS:
 - U.S. ARMY CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL, TECHNICAL REPORT Y-87-1 (JAN. 1987), AND REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL, NORTHCENTRAL AND NORTHEAST REGION, VERSION 2.0, JANUARY 2012.
 - FIELD INDICATORS OF HYDRIC SOILS IN THE UNITED STATES, VERSION 8.1, USDA-NRCS, 2017 AND (FOR DISTURBED SITES) FIELD INDICATORS FOR IDENTIFYING HYDRIC SOILS IN NEW ENGLAND, VERSION 4, NEWPPCC WETLANDS WORK GROUP (2017).
 - NATIONAL LIST OF PLANT SPECIES THAT OCCUR IN WETLANDS: NORTHEAST (REGION 1), USFWS (MAY 1988).
 - CLASSIFICATION OF WETLANDS AND DEEPWATER HABITATS OF THE UNITED STATES, USFWS MANUAL FWS/OBS-79/31 (1997).
 - "IDENTIFICATION AND DOCUMENTATION OF VERNAL POOLS IN NEW HAMPSHIRE" (1997), NEW HAMPSHIRE FISH AND GAME DEPARTMENT.
 - WETLAND FLAGS WERE FIELD LOCATED BY AMBIT ENGINEERING, INC.

AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
800 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 436-8282
Fax (603) 436-2616

- NOTES:**
- PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 223 AS LOT 20.
 - THE CONTRACTOR SHALL NOTIFY DIG SAFE AT 1-888-DIG-SAFE (1-888-344-7233) AT LEAST 72 HOURS PRIOR TO COMMENCING ANY EXCAVATION ON PUBLIC OR PRIVATE PROPERTY.
 - UNDERGROUND UTILITY LOCATIONS ARE BASED UPON BEST AVAILABLE EVIDENCE AND ARE NOT FIELD VERIFIED. LOCATING AND PROTECTING ANY ABOVEGROUND OR UNDERGROUND UTILITIES IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR AND/OR THE OWNER. UTILITY CONFLICTS SHOULD BE REPORTED AT ONCE TO THE DESIGN ENGINEER.
 - CONTRACTOR SHALL INSTALL AND MAINTAIN EROSION CONTROL MEASURES IN ACCORDANCE WITH THE "NEW HAMPSHIRE STORMWATER MANUAL, VOLUME 3, EROSION AND SEDIMENT CONTROLS DURING CONSTRUCTION. (NHDES DECEMBER 2008).
 - THE LIMIT OF WORK IS TO BE CLEARLY UNDERSTOOD WITHIN THE JURISDICTIONAL AREAS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION.
 - THE PURPOSE OF THIS PLAN IS TO SHOW A PROPOSED DOCK ON MAP 223 LOT 20 IN THE CITY OF PORTSMOUTH.
 - VERTICAL DATUM: MEAN LOWER LOW WATER (MLLW), BASIS OF VERTICAL DATUM IS NH DOT DEC 397-0990, REDUCTION FROM NAVD83 TO MLLW BASED ON NOAA STATION 8419870, SEAVEY ISLAND, MLLW BEING 4.62' LOWER THAN 0.00 NAVD83. MHW LINE AS SHOWN IS AT ELEV. 8.43 MLLW.
 - WESTERLY BOUNDARY LINE OF THE PARCEL IS REFERRED TO AS A PRIVATE ROAD IN PRECEDING DEEDS FOR THE PROPERTY TO THE WEST (SEE 1024/241). THE DEED FOR THE SUBJECT PARCEL REFERS TO THIS LINE AS A PRIVATE ROAD (SEE 5866/1780). EASTERLY BOUNDARY LINE IS REFERRED TO AS THE CENTERLINE OF A DITCH OR SMALL STREAM LEADING NORTHERLY FROM SAGAMORE CREEK. OWNERSHIP ONLY EXTENDS TO THE CENTERLINE OF THE CREEK IN THE AREA ABOVE MEAN HIGH WATER.
 - UPDATED SITE CONSTRUCTION ON TAX MAP 223 LOTS 20 & 21 IS NOT SHOWN HEREON.

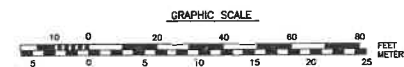
**DICKINSON DOCK
220 WALKER
BUNGALOW ROAD
PORTSMOUTH, N.H.**

NO.	DESCRIPTION	DATE
3	SHORTEN DOCK LENGTH	2/13/23
2	DOCK LAYOUT	8/12/22
1	ADD NOTE B	2/19/19
0	ISSUED FOR COMMENT	12/7/18

REVISIONS

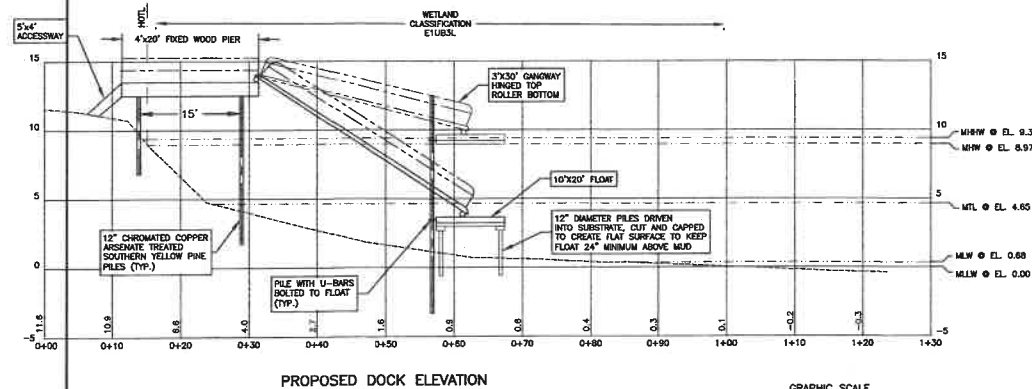
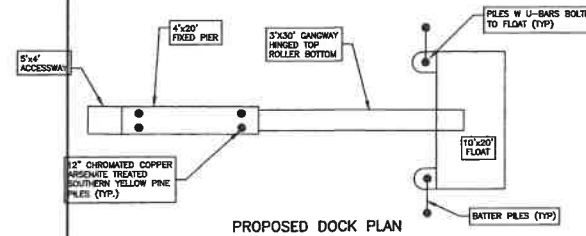
SCALE 1"=20' AUGUST 2022
NHDES DOCK PERMIT PLAN **C2**

I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000.
John R. Chagnon
JOHN R. CHAGNON, ILS #738
DATE 2-13-23



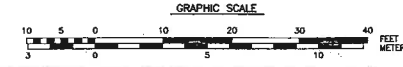
NOTES:

- 1) THE CONTRACTOR SHALL NOTIFY DIG SAFE AT 1-888-DIG-SAFE (1-888-344-7233) AT LEAST 72 HOURS PRIOR TO COMMENCING ANY EXCAVATION ON PUBLIC OR PRIVATE PROPERTY.
- 2) UNDERGROUND UTILITY LOCATIONS ARE BASED UPON BEST AVAILABLE EVIDENCE AND ARE NOT FIELD VERIFIED. LOCATING AND PROTECTING ANY ABOVEGROUND OR UNDERGROUND UTILITIES IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR AND/OR THE OWNER. UTILITY CONFLICTS SHOULD BE REPORTED AT ONCE TO THE DESIGN ENGINEER.
- 3) CONTRACTOR SHALL INSTALL AND MAINTAIN EROSION CONTROL MEASURES IN ACCORDANCE WITH THE "NEW HAMPSHIRE STORMWATER MANUAL, VOLUME 3, EROSION AND SEDIMENT CONTROLS DURING CONSTRUCTION. (NHDES DECEMBER 2008).
- 4) NUMBER OF PILES TO BE DRIVEN FOR DOCKING STRUCTURE NOT TO EXCEED 12 AS DEPICTED ON PROPOSED DOCK ELEVATION. ALSO NOTE TIME OF YEAR AND NOISE RESTRICTIONS FOR DRIVING OF PILES.
- 5) VERTICAL DATUM: MEAN LOWER LOW WATER (MLLW), BASIS OF VERTICAL DATUM IS NH DOT DISC 397-0990, REDUCTION FROM NAVD83 TO MLLW BASED ON NOAA STATION 8419870, SEAWAY ISLAND. MLLW BEING 4.62' LOWER THAN 0.00 NAVD83. MHW LINE AS SHOWN IS AT ELEV. 8.43 MLLW.



SCALE: 1" = 10' (HOR.)
1" = 5' (VERT.)

PROPOSED PIER, GANGWAY & FLOAT w/ PILES



SEQUENCE OF CONSTRUCTION

- 1) MOBILIZATION OF A CRANE BARGE, PUSH BOAT, WORK SKIFF, MATERIALS AND PREFABRICATED COMPONENTS SUCH AS THE GANGWAY AND FLOAT TO THE SITE VIA APPROVED ACCESS.
- 2) MOBILIZATION OF EQUIPMENT TRUCKS TO THE SITE.
- 3) THE BARGE WILL BE POSITIONED ALONGSIDE THE PROPOSED LOCATION OF THE NEW DOCK AND WATERWARD OF ANY EMERGENT VEGETATION TO MINIMIZE IMPACTS.
- 4) INSTALLATION OF THE SUB STRUCTURE WILL BE PERFORMED FROM A CRANE BARGE OR SKIFF TO REDUCE THE AMOUNT OF FOOT TRAFFIC IN THE INTERTIDAL AREA.
- 5) ALL WORK WILL BE PERFORMED AT LOW TIDE TO MINIMIZE SEDIMENTATION.
- 6) PILING WILL BE MECHANICALLY DRIVEN BY A CRANE ELIMINATING ANY EXCAVATION FOR INSTALLATION OF THE PILING. PILING ARE DRIVEN TO REFUSAL.
- 7) PILING ARE CUT AND BEAM CAPS ARE INSTALLED AND THE SUPER STRUCTURE OF THE PIER IS BUILT. MATERIALS ARE LIFTED FROM THE BARGE AND SET INTO POSITION BY THE CRANE.
- 8) ONCE THE PIER IS COMPLETE, THE GANGWAY AND FLOAT ARE BROUGHT INTO POSITION AND INSTALLED.

DISCHARGES, AVOIDANCE, MINIMIZATION AND MITIGATION

DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE U.S. AND ANY SECONDARY IMPACTS SHALL BE AVOIDED AND MINIMIZED TO THE MAXIMUM EXTENT PRACTICABLE. PERMITTEES MAY ONLY FILL THOSE JURISDICTIONAL WETLANDS AND WATERWAYS THAT THE CORP AND NHDES AUTHORIZES AS SECONDARY IMPACTS. IF NOT SPECIFICALLY AUTHORIZED BY USACE AND NHDES, ANY UNAUTHORIZED FILL OR SECONDARY IMPACT TO WETLANDS MAY BE CONSIDERED AS A VIOLATION OF THE CWA.
* UNLESS SPECIFICALLY AUTHORIZED USACE AND NHDES, NO WORK SHALL DRAIN A WATER OF THE U.S. BY PROVIDING A CONDUIT FOR WATER ON OR BELOW THE SURFACE.

HEAVY EQUIPMENT IN WETLANDS

HEAVY EQUIPMENT OTHER THAN FIXED EQUIPMENT (DRILL RIGS, FIXED CRANES, ETC.) WORKING IN WETLANDS SHALL NOT BE STORED, MAINTAINED OR REPAIRED IN WETLANDS, UNLESS IT IS LESS ENVIRONMENTALLY DAMAGING OTHERWISE, AND AS MUCH AS POSSIBLE SHALL NOT BE OPERATED WITHIN THE INTERTIDAL ZONE. WHERE CONSTRUCTION REQUIRES HEAVY EQUIPMENT OPERATION IN WETLANDS, THE EQUIPMENT SHALL EITHER HAVE LOW GROUND PRESSURE (LESS THAN 1.5 PSI), OR SHALL NOT BE LOCATED DIRECTLY ON WETLAND SOILS AND VEGETATION; IT SHALL BE PLACED ON SWAMP MATS THAT ARE ADEQUATE TO SUPPORT THE EQUIPMENT IN SUCH A WAY AS TO MINIMIZE DISTURBANCE OF WETLAND SOIL AND VEGETATION. SWAMP MATS ARE TO BE PLACED IN THE WETLAND FROM THE UPLAND OR FROM EQUIPMENT POSITIONED ON SWAMP MATS IF WORKING WITHIN A WETLAND. DRAGGING SWAMP MATS INTO POSITION IS PROHIBITED. OTHER SUPPORT STRUCTURES THAT ARE LESS IMPACTING AND ARE CAPABLE OF SAFELY SUPPORTING EQUIPMENT MAY BE USED WITH WRITTEN CORPS AND NHDES AUTHORIZATION. SIMILARLY, NOT USING MATS DURING FROZEN, DRY OR

OTHER CONDITIONS MAY BE ALLOWED WITH WRITTEN CORPS AND NHDES AUTHORIZATION. AN ADEQUATE SUPPLY OF SPILL CONTAINMENT EQUIPMENT SHALL BE MAINTAINED ON SITE. CONDUIT ROADS AND SWAMP/CONSTRUCTION MATS ARE CONSIDERED AS FILL WHETHER THEY'RE INSTALLED TEMPORARILY OR PERMANENTLY.

TIME OF YEAR WORK WINDOW AND NOISE RESTRICTIONS

- A. PILES INSTALLED IN THE DRY DURING LOW WATER OR IN-WATER BETWEEN NOV. 8TH - APR. 30TH, OR
 - B. MUST BE DRILLED AND PINNED TO LEDGE, OR
 - C. VIBRATORY HAMMERS USED TO INSTALL ANY SIZE AND QUANTITY OF WOOD, CONCRETE OR STEEL PILES, OR
 - D. IMPACT HAMMERS LIMITED TO ONE HAMMER AND <50 PILES INSTALLED/DAY WITH THE FOLLOWING: WOOD PILES OF ANY SIZE, CONCRETE PILES 48-INCHES DIAMETER, STEEL PILES 12-INCHES DIAMETER IF THE HAMMER IS <3000 LBS. AND A WOOD CUSHION IS USED BETWEEN THE HAMMER AND STEEL PILE.
- FOR IN-WATER ABOVE
- I. IN-WATER NOISE LEVELS SHALL NOT >107dB SEL RE 1/40 or 206dB PEAK RE 1/40 AT A DISTANCE >10M FROM THE PILE BEING INSTALLED, AND
 - II. IN-WATER NOISE LEVELS >105dB PEAK RE 1/40 SHALL NOT EXCEED 12 CONSECUTIVE HOURS ON ANY GIVEN DAY AND A 12 HOUR RECOVERY PERIOD (I.E. IN-WATER NOISE BELOW 105dB PEAK RE 1/40) MUST BE PROVIDED BETWEEN WORK DAYS.

WORK SITE RESTORATION

- I. UPON COMPLETION OF CONSTRUCTION, ALL DISTURBED WETLAND AREAS SHALL BE PROPERLY STABILIZED. ANY SEED MIX SHALL CONTAIN ONLY PLANT SPECIES NATIVE TO NEW ENGLAND.
- II. THE INTRODUCTION OR SPREAD OF INVASIVE PLANT SPECIES IN DISTURBED AREAS IS PROHIBITED.
- III. IN AREAS OF AUTHORIZED TEMPORARY DISTURBANCE, IF TREES ARE CUT THEY SHALL BE CUT AT BREAST LEVEL AND NOT UPROOTED IN ORDER TO PREVENT DISRUPTION TO THE WETLAND SOIL STRUCTURE AND TO ALLOW STUMP SPROUTS TO REVEGETATE THE WORK AREA, UNLESS OTHERWISE AUTHORIZED.
- IV. WETLAND AREAS WHERE PERMANENT DISTURBANCE IS NOT AUTHORIZED SHALL BE RESTORED TO THEIR ORIGINAL CONDITION AND ELEVATION, WHICH UNDER NO CIRCUMSTANCES SHALL BE HIGHER THAN THE PRE-CONSTRUCTION ELEVATION. ORIGINAL CONDITION MEANS CAREFUL PROTECTION AND/OR REMOVAL OF EXISTING SOIL AND VEGETATION, AND REPLACEMENT BACK TO THE ORIGINAL LOCATION SUCH THAT THE ORIGINAL SOIL, VEGETATION AND VEGETATION SCHEMES ARE APPROXIMATELY THE SAME, UNLESS OTHERWISE AUTHORIZED.

SEDIMENTATION AND EROSION CONTROL

ADEQUATE SEDIMENTATION AND EROSION CONTROL MANAGEMENT MEASURES, PRACTICES AND DEVICES, SUCH AS PHASED CONSTRUCTION, VEGETATED FILTER STRIPS, GEOTEXTILE SALT FENCES, STORMWATER DETENTION AND INFILTRATION SYSTEMS, SEDIMENT DETENTION BASINS, OR OTHER DEVICES SHALL BE INSTALLED AND PROPERLY MAINTAINED TO REDUCE EROSION AND RETAIN SEDIMENT ON-SITE DURING AND AFTER CONSTRUCTION. THEY SHALL BE CAPABLE OF PREVENTING EROSION, OF COLLECTING SEDIMENT, SUSPENDED AND FLOATING MATERIALS, AND OF FILTERING FINE SEDIMENT. THE DISTURBED AREAS SHALL BE STABILIZED AND THESE DEVICES SHALL BE REMOVED UPON COMPLETION OF WORK. THE SEDIMENT COLLECTED BY THESE DEVICES SHALL BE REMOVED AND PLACED AT AN UPLAND LOCATION, IN A MANNER THAT WILL PREVENT ITS LATER EROSION INTO A WATERWAY OR WETLAND. ALL EXPOSED SOIL AND OTHER FILLS SHALL BE PERMANENTLY STABILIZED AT THE EARLIEST PRACTICABLE DATE.

SPAWNING AREAS

DISCHARGES OF DREDGED OR FILL MATERIAL, AND/OR SUSPENDED SEDIMENT PRODUCING ACTIVITIES IN FISH AND SHELLFISH SPAWNING OR NURSERY AREAS, OR AMPHIBIAN AND MIGRATORY BIRD BREEDING AREAS, DURING SPAWNING OR BREEDING SEASONS SHALL BE AVOIDED. IMPACTS TO THESE AREAS SHALL BE MINIMIZED TO THE MAXIMUM EXTENT PRACTICABLE DURING ALL TIMES OF THE YEAR. INFORMATION ON SPAWNING HABITAT FOR SPECIES MANAGED UNDER THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT (I.E. EFH FOR SPAWNING ADULTS) CAN BE OBTAINED FROM THE NMFS WEBSITE AT: WWW.NMFS.NOAA.GOV/HVDC.

STORAGE OF SEASONAL STRUCTURES

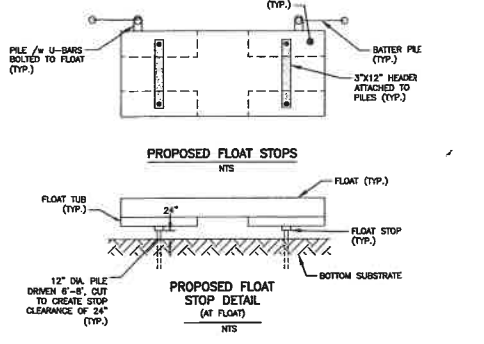
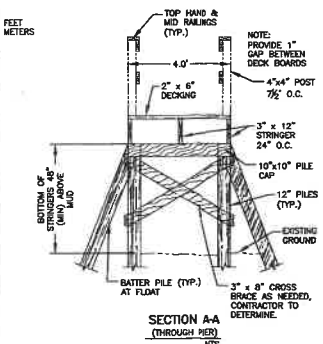
COASTAL STRUCTURES SUCH AS PIER SECTIONS, FLOATS, ETC. THAT ARE REMOVED FROM THE WATERWAY FOR A PORTION OF THE YEAR (OFTEN REFERRED TO AS SEASONAL STRUCTURES) SHALL BE STORED IN AN UPLAND LOCATION, LOCATED ABOVE HIGHEST OBSERVABLE TIDE LINE (HOTL) AND NOT IN TIDAL WETLANDS. THESE SEASONAL STRUCTURES MAY BE STORED ON THE FIXED, PILE-SUPPORTED PORTION OF THE STRUCTURE THAT IS SEAWARD OF HOTL. THIS IS INTENDED TO PREVENT STRUCTURES FROM BEING STORED ON THE MARSH SUBSTRATE AND THE SUBSTRATE SEAWARD OF MARSH.

ENVIRONMENTAL FUNCTIONS AND VALUES

THE PERMITTEE SHALL MAKE EVERY REASONABLE EFFORT TO 1) CARRY OUT THE CONSTRUCTION OR OPERATION OF THE WORK AUTHORIZED BY USACE AND NHDES HEREIN IN A MANNER THAT MINIMIZES ADVERSE IMPACTS ON FISH, WILDLIFE AND NATURAL ENVIRONMENTAL VALUES, AND 2) PROHIBIT THE ESTABLISHMENT OR SPREAD OF PLANT SPECIES IDENTIFIED AS NON-NATIVE INVASIVE SPECIES BY ANY FEDERAL OR STATE AGENCY. SEE THE SECTION ON INVASIVE SPECIES AT [HTTP://WWW.NAE.USACE.ARMY.MIL/REGULATORY/](http://www.nae.usace.army.mil/regulatory/) FOR CONTROL METHODS.

INSPECTIONS

THE PERMITTEE SHALL ALLOW THE CORPS AND NHDES TO MAKE PERIODIC INSPECTIONS AT ANY TIME DEEMED NECESSARY IN ORDER TO ENSURE THAT THE WORK IS BEING OR HAS BEEN PERFORMED IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS PERMIT. THE CORPS AND NHDES MAY ALSO REQUIRE POST-CONSTRUCTION ENGINEERING DRAWINGS FOR COMPLETED WORK, AND POST-DREDGING SURVEY DRAWINGS FOR ANY DREDGING WORK.



DICKINSON DOCK
220 WALKER
BUNGALOW ROAD
PORTSMOUTH, N.H.

NO.	DESCRIPTION	DATE
3	SHORTEN DOCK LENGTH	2/13/23
2	DOCK, GANGWAY	8/12/22
1	RECONFIGURE DOCK	2/18/20
0	ISSUED FOR COMMENT	12/07/18

REVISIONS

SCALE: AS SHOWN DECEMBER 2018

NHDES DOCK DETAILS **C3**

STEPHAN T. NIX
ATTORNEY AT LAW
LICENSED LAND SURVEYOR
25 COUNTRY CLUB ROAD, SUITE 502
GILFORD, NH 03249
603-524-4963, (fax 603-524-1978)
snix@metrocast.net



March 3, 2023

John-Mark Turner, Esq.
Sheehan Phinney Bass & Green PA
1000 Elm Street, 17th Floor
Manchester, NH 03101

Re: David and Margaret Witham
Sagamore Landing Condominium Association
Portsmouth, New Hampshire
NHDES Wetlands Council Appeal No. 19-04 WtC
Our file number: 6046

Dear Attorney Turner:

This letter is in response to your request to me regarding DES Wetlands file 2018-03677, for Jon and Joan Dickenson that includes the proposed construction into Sagamore Creek of a fixed pier with a gangway leading to a float secured by piles located off 220 Walker Bungalow Road, Portsmouth, N.H. The DES original application was originally filed in 2018 requesting approval of a longer docking structure. It is my understanding that the original application was appealed to the Wetlands Council, which was stayed.

The property abuts the Sagamore Landing Condominium ("Sagamore Condo") to the west. The most westerly standalone condominium Unit is owned by David and Margaret Witham. You represent David and Margaret Witham.

I provided a report dated July 22, 2019, discussing the location of the extension of the common property line between the Dickenson property and the Sagamore Landing Condominium. The July 22, 2019, report is made a part hereof ("*STN 2019 Report*").

In 2019, you requested that I review the plans in relation to *N.H. Code of Admin. R. Env-Wt 304.04 Setback From Property Lines*, that states:

- (a) The department shall limit the location of a project to at least 20 feet from an abutting property line or imaginary extension thereof over surface water unless it receives written agreement from the affected abutter concurring with any impact that may result relative to the abutter's interests.

Id.

In preparing this amended report I reviewed the documents listed in the STN 2019 Report and the following additional documents.¹

1. February 16, 2023, filing to DES by Ambit Engineering amending the 2018 submittal;
2. February 13, 2023, plans by Ambit Engineering depicting the amended (shortened) dock and a representation of the property line extension into Sagamore Creek. (“2023 Ambit Plan”).
3. Letter dated August 24, 2022, from Ambit Engineering, Inc. to the New Hampshire Wetland Council outlining the theory supporting the extension of the property line depicted on the 2023 Ambit Plan. (the “Ambit Letter”).

Question Presented: Does the 2023 Ambit Plan supported by the Ambit Letter accurately depict the extension of the boundary line between the Dickenson property and the Sagamore Landing Condominium?

Discussion

The history of the deed conveyancing and historic plans are discussed at length in the *STN 2019 Report* and the *Ambit Letter*, to which reference is made as background for this report. Reference is made to a plan entitled "Dickinson Dock 220 Walker Bungalow Road, Portsmouth, N.H." by Amit Engineering, Inc. last amended date August 12, 2022, attached to the *Ambit Letter* (page 18 of the *Ambit Letter* pdf file), (the “2022 Ambit Plan”).

Ambit Letter reviews the deed description history and cites the *STN 2019 Report* that states the rule of tidal boundaries in New Hampshire as “title to the waters of the State of New Hampshire and that the boundary line between private property and the public trust is set by common law at the mean high tide or mean high water line. *We agree that that is settled law.*” *Ambit Letter* at 3, (italics in original).

The *STN 2019 Report* opined that “the imaginary extension of the common property line into Sagamore Creek is the extension of the angle of the unnamed brook where it intersects with the Mean High Water mark.” *STN 2019 Report* at 3. See also *STN 2019 Report Ex. G* (depicting the extended line in red). *Ambit* disagrees. *Ambit Letter* at 3-4.

Relying on the principal that “[w]hen interpreting deeds, the general rule is to determine the intent of the parties at the time of the conveyance in light of the surrounding circumstances.” *Chao v. Richey Co.*, 122 N.H. 1115, 1117, (1982), *Ambit* opines:

This is a well established rule of land survey boundary determination and this clearly demonstrates that the dividing line between the properties is located along the brook or creek to the point where the brook or creek flows into Sagamore Creek.

¹ This letter is limited to a review of existing plans and documents available from the public record and did not include a site inspection.

Ambit Letter at 2.

Ambit later opines:

The intent of the parties was to create a division line between the properties *that went to Sagamore Creek and therefore we must follow the mean high water line along the Sagamore Landing Condo – Witham property as it travels along the mean high water line until it reaches Sagamore Creek and then extend the line from there.* This is clearly a case where the actual conveyance of the property to the center of the creek was not possible due to the nature of the state’s interest below mean high water. However the intent of the deed cannot be overruled by the party’s misunderstandings regarding the nature of this unnamed creek and title thereto.

Ambit Letter at 4 (italics in original), (underline added for emphasis).

The Ambit line is depicted on Dock Permit Plan Sheet C2 attached to the *Ambit Letter*.

Env-Wt 304.04 states in pertinent part that the project [dock] must be “at least 20 feet from an abutting property line or imaginary extension thereof over surface water ...” *Id.* (emphasis added).

“When we interpret a statute, we ascribe the plain and ordinary meaning to the words used. ... We do not look beyond the language of the statute to determine legislative intent if the language is clear and unambiguous. ... Nor will we consider what the legislature might have said or add words the legislature did not include.” *Appeal of Town of Seabrook*, 163 N.H. 635, 644, (2012), (citations and quotes omitted).

The plain meaning of “abut” is “to border on: to touch along an edge, ‘Their property abuts our land.’ *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/abut>.

The Ambit theory fails in that the extension of the property line depicted in the Ambit Letter exhibit is not the extension a common line between Dickenson and Sagamore Landing Condominium (abutting properties) over surface waters. It is an impossibility for an *abutting* property line to exist in a location where the properties do not physically abut.

There is no language in *Env-Wt* 304.04 authorizing the intent of the parties to the private deeds to control the language of the rule. Applying the intent of the parties to the private deeds adds language to the rule that DES did not include.

Env-Wt 104.33 defines “Surface water” means those portions of waters of the state that have standing or flowing water at or on the surface of the ground. The term includes but is not limited to watercourses, lakes, ponds, marshes, and tidal waters.” *Id.* (emphasis added). The *2023 Ambit Plan* depicts the mean high water line and the centerline of the brook. The mean high water line is the boundary between the private party and the State. The centerline of the brook is the private common boundary between Dickenson and Sagamore Landing

Condominium. These boundaries are not disputed. The waters on the State side of the mean high water line are “Surface Waters”.

Pursuant to the plain language of *Env-Wt* 304.04, the imaginary extension of the common property line into Sagamore Creek is the extension of the angle of the unnamed brook where it intersects with the mean high water mark.

Conclusion.

As depicted on Ex. A 3/3/2023 is the extension of the common property line between the properties (the centerline of the unnamed brook) and where it intersects the proposed Dickinson dock.²

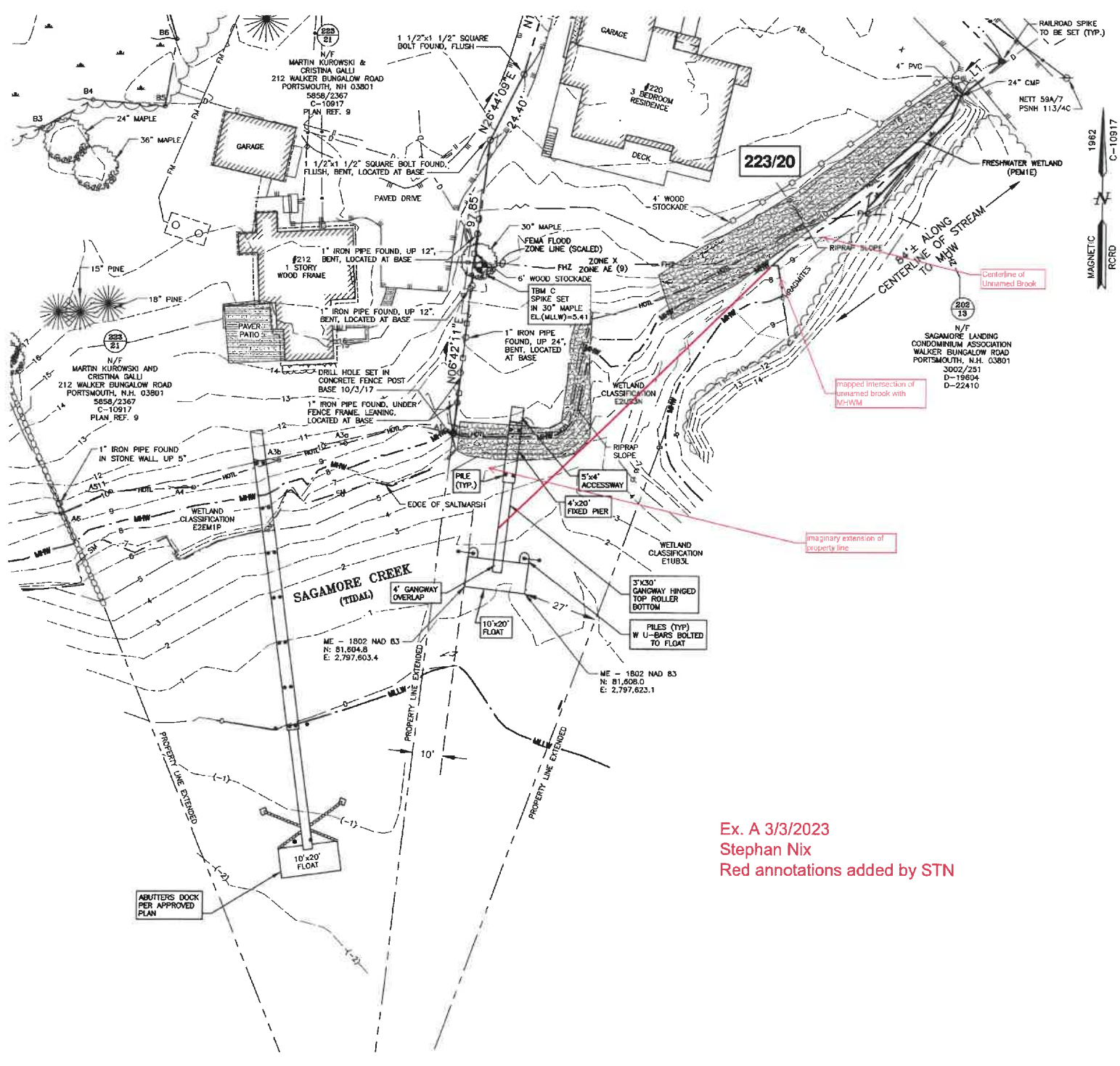


Sincerely,

A handwritten signature in black ink, appearing to read "Stephan Nix".

Stephan Nix

² The location of the mean high water line is slightly different on the *2023 Ambit Plan* compared to the 2018 *Ambit Plan*. The line on Ex. A 3/3/2023 is created using a visual best fit based on the 9' contour line at brook centerline with the MHW line at the centerline of the brook. A more detailed survey cross section of this area could provide better definition. The information provided indicates that more detail will have little impact on the outcome possibly shifting the line by only a few degrees with the proposed dock remaining within the extension.



Ex. A 3/3/2023
 Stephan Nix
 Red annotations added by STN

THE STATE OF NEW HAMPSHIRE
WETLANDS COUNCIL

APPEAL OF SAGAMORE LANDING CONDOMINIUM ASSOCIATION AND DAVID AND
MARGARET WITHAM

NOTICE OF APPEAL SERVICE LIST
(NHDES Wetlands Permit No 2018-03677)

Portsmouth Municipal Clerk
1 Junkins Avenue
Portsmouth, NH 03801

Portsmouth Conservation Commission
1 Junkins Avenue
Portsmouth, NH 03801

David and Margaret Witham
238 Walker Bungalow Road
Portsmouth, NH 03801

Jon and Joan Dickinson (*through counsel via email*)
1242 Ocean Boulevard
Rye, NH 03870

Mary Ann Tilton, Wetlands Assistant Bureau Administrator (*via email*)
NH Department of Environmental Services
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095

Rene Pelletier, Director of Water Division
Wetlands Bureau Administrator
NH Department of Environmental Services
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095

Michelle A. Doucette (*via email*)
Appeals Clerk
New Hampshire Wetlands Council
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095

Sagamore Landing Condominium Assoc.
c/o Danielle Megliola
284 Walker Bungalow Road
Portsmouth, NH 03801

Martin & Cristina Kurowski
212 Walker Bungalow Road
Portsmouth, NH 03801

THE STATE OF NEW HAMPSHIRE
WETLANDS COUNCIL

APPEAL OF SAGAMORE LANDING CONDOMINIUM ASSOCIATION AND DAVID AND
MARGARET WITHAM

NOTICE OF APPEARANCE
(NHDES Wetlands Permit No 2018-03677)

A. Name and Address of Appellants

Sagamore Landing Condominium Association for itself and as agent for all the unit owners of
Sagamore Landing Condominium Association
c/o Danielle Megliola, President
284 Walker Bungalow Road
Portsmouth, NH 03801
(917) 940-6604
danielle.megliola@gmail.com

David and Margaret Witham, Individually and as Trustees of the David C. Witham Revocable
Trust of 2009
238 Walker Bungalow Road
Portsmouth, NH 03801
(603) 498-9084
withamarchitecture@gmail.com

B. Counsel for Appellants

John-Mark Turner, N.H. Bar 15610
1000 Elm Street, 17th Floor
Manchester, NH 03101
(603) 627-8143
jturner@sheehan.com

Respectfully submitted,

**SAGAMORE LANDING CONDOMINIUM
ASSOCIATION AND
DAVID AND MARGARET WITHAM**

By Its Attorneys,

SHEEHAN PHINNEY BASS & GREEN, PA

Dated: March 22, 2024

By: /s/ John-Mark Turner
John Mark Turner (NH Bar #15610)
1000 Elm Street, PO Box 3701
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CERTIFICATION

I certify that a copy of the foregoing was on this date emailed and/or mailed this Notice pursuant to Ec-Wet 201.03 and 203.01(d), to the Director of the Water Division, the other parties to the department decision, Department c/o Collis Adams, New Hampshire Department of Environmental Services, the Portsmouth City Council, Planning Board and Conservation Commission, and the abutters as required by Env-WtC 203.02(a)(12).

Dated: March 22, 2024

By: /s/ John-Mark Turner
John-Mark Turner

THE STATE OF NEW HAMPSHIRE
WETLANDS COUNCIL

APPEAL OF SAGAMORE LANDING CONDOMINIUM ASSOCIATION
AND DAVID AND MARGARET WITHAM

Docket no. 24-06 WtC

NOTICE OF APPEARANCE

A. NAME AND ADDRESS OF PERMITTEES:

Jon and Joan Dickinson
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Respectfully submitted,
Jon and Joan Dickinson, Permittees
By their attorneys,
Bosen & Associates, PLLC

Date: March 26, 2024

By: /s/John K. Bosen, Esquire
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CERTIFICATION

I certify that a copy of the foregoing Appearance has, this date, been emailed and/or mailed to the parties on the attached Service List.

Date: March 26, 2024

By: /s/John K. Bosen, Esquire

SERVICE LIST

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NH Wetlands Council
PO Box 95
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Portsmouth Conservation Commission
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