



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner

June 06, 2024



HCA HEALTH SERVICES OF NEW HAMPSHIRE
PO BOX 80610
INDIANAPOLIS IN 46580

Re: Approved Standard Dredge and Fill Wetlands Permit Application – Impacts within Prime Wetlands and/or Duly-Established 100-foot Buffer (RSA 482-A)
NHDES File Number: 2024-00119
Subject Property: 333 Borthwick Ave, Portsmouth, Tax Map #240, Lot #2-1

Dear Applicant:

On June 06, 2024, the New Hampshire Department of Environmental Services (NHDES) Wetlands Bureau approved the above-referenced Standard Dredge and Fill Wetlands Permit Application to retain 200 square feet (SF) of dredge and fill to man-made palustrine emergent wetland to construct a building expansion for an existing hospital. Restore 2,918 SF of temporary impact to palustrine emergent wetland and 961 SF within the 100-foot duly designated prime wetland buffer of Portsmouth 015 for construction access.

Waive Env-Wt 306.05(a)(1) and Env-Wt 311.10 requiring applicant to provide a wetland delineation and functional assessment for all wetlands on the property.

Pursuant to RSA 482-A:11, IV(a) and Env-Wt 705.01, a 20-day waiting period is required to allow all interested parties the opportunity to submit a request for reconsideration to the NHDES Wetlands Bureau, prior to issuance of the permit. If no requests for reconsideration are received by the NHDES Wetlands Bureau within 20 days, the permit will be issued. The department shall not wait the full 20 days to issue the permit if it receives written notice sooner from each person required to be notified pursuant to Env-Wt 705.01 (a) and (b), that each person has no objection to the permit being issued. Please note, this letter is **not** a permit or authorization to begin work.

This approval is based on the following findings:

1. This project is classified as a major project per Rule Env-Wt 407.02(a), as the project impacts a priority resource area (PRA) and does not qualify for a project-type exception (PTE) under Env-Wt 407.04, regardless of the size of impact.
2. The proposed project includes 961 SF of temporary impact within a developed portion of the duly designated 100-foot prime wetland buffer of Portsmouth Prime Wetland 015, for construction access and to restore the impacted prime wetland buffer.
3. The impacts take place within a man-made stormwater treatment wetland and no direct impacts are proposed to the prime wetland as a result of this project.
4. The project involves negligible environmental impacts as the impacts occur within the previously developed portion of the duly designated 100-foot prime wetland buffer and all temporary impacts will be restored to pre-construction conditions. The prime wetland will not be adversely impacted as a result of this project.
5. Based on the findings above, NHDES finds that there is clear and convincing evidence this proposal will have no significant loss of values to the prime wetlands as set forth in RSA 482-A:1 or the functions and values identified by the City of Portsmouth at the time of designation, and the project therefore meets the criteria set forth in Rule Env-Wt 704.02, Criteria for Approval.

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
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6. On January 17, 2024, NHDES received a request to waive Rule Env-Wt 306.05(a)(1), and Rule Env-Wt 311.10, to relieve the applicant from the requirement to perform a wetland delineation and functions and values assessment for all wetlands on the property apart from the wetlands within the immediate vicinity of the proposed impacts for the project.
7. The department finds that the documentation provided by the applicant provides clear and convincing evidence that granting the waivers will not result in either an avoidable adverse impact on the environment or natural resources of the state, including but not limited to jurisdictional areas and protected species or habitat; an avoidable adverse impact on public health or public safety; any impact on abutting properties that is more significant than that which would result from complying with the rule; or a statutory requirement being waived; and any benefit to the public or the environment from complying with the rule is outweighed by the operational or economic costs to the applicant and thus, that the requirements of Env-Wt 204.05 have been met.
8. Per Rule Env-Wt 204.05(a), the department has granted the requested waiver of Rule Env-Wt 306.05(a)(1), and Rule Env-Wt 311.10.
9. Per Rule Env-Wt 202.01(b) in accordance with 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 104.21, or adversely affect the values of the resources protected by RSA 482-A, or, is not of substantial public interest, as defined in Env-Wt 104.34.
10. The Department finds that the project as proposed and conditioned meets the requirements of RSA 482-A and the Wetlands Program Code of Administrative Rules Chapters Env-Wt 100-1000.

In accordance with RSA 482-A:10, RSA 21-O:14, and Rules Ec-Wet 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, June 06, 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) 271-3650.

If you have any questions, please contact me at Kristin.Duclos@des.nh.gov or (603) 559-1516.

Sincerely,



Kristin L. Duclos
Wetlands Specialist, Wetlands Bureau
Land Resources Management, Water Division

Copied: Portsmouth Municipal Clerk/Conservation Commission
Gove Environmental Services, Inc, c/o Brenden Walden



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

June 13, 2024

KIMBERLEY S/THOMAS P LYNG
333 NEW CASTLE AVE
PORTSMOUTH NH 03801



Re: Approved Standard Dredge and Fill Wetlands Permit Application (RSA 482-A)
NHDES File Number: 2024-00792
Subject Property: 333 New Castle Ave, Portsmouth, Tax Map/Block/Lot(s): 207/no block/2

Dear Owner:

On June 13, 2024, the New Hampshire Department of Environmental Services (NHDES) Wetlands Bureau approved the above-referenced application to impact a total of 418 square feet of tidal resources to include 370 square feet of tidal waters and 48 square feet of previously-developed 100 foot tidal buffer zone to construct a new 4 foot x 12 foot accessway, a 4 foot x 20 foot piling supported pier, a 3 foot x 10 foot gangway, and a 10 foot x 20 foot float with an overall structure length seaward of the highest observable tide line of 82 feet along 195 linear feet of frontage on the Piscataqua River in Portsmouth.

In accordance with RSA 482-A:10, RSA 21-O:14, and Rules Ec-Wet 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, June 13, 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) 271-3650.

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

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

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

FILE #2024-00792
KIMBERLEY S/THOMAS P LYNG
PORTSMOUTH

DECISION DATE:

June 13, 2024

DECISION:

Impact a total of 418 square feet of tidal resources to include 370 square feet of tidal waters and 48 square feet of previously-developed 100 foot tidal buffer zone to construct a new 4 foot x 12 foot accessway, a 4 foot x 20 foot piling supported pier, a 3 foot x 10 foot gangway, and a 10 foot x 20 foot float with an overall structure length seaward of the highest observable tide line of 82 feet along 195 linear feet of frontage on the Piscataqua River in Portsmouth

CONDITIONS:

1. All work shall be done in accordance with the approved plans by Ambit Engineering, Inc. dated January 18, 2024, and received by the NH Department of Environmental Services (NHDES) on March 26, 2024, in accordance with Env-Wt 307.16.
2. This permit shall not be effective until the permittee records this permit at the Rockingham County Registry of Deeds. Any limitations or conditions in the permit so recorded shall run with the land beyond the expiration of the permit. The permittee shall provide the NHDES with a copy of the permit stamped by the registry with the book and page and date of receipt, in accordance with RSA 482-A:3, II and Env-Wt 314.02(b) and (c).
3. Pile installation shall occur between November 15 and March 15, in order to protect anadromous fish, in accordance with Env-Wt 307.10(i) and Env-Wt 311.06(g).
4. The ramp and float portions of residential tidal docks shall be seasonal and removed from the water during the non-boating season, in accordance with Env-Wt 606.06(b).
5. Tidal docking installation shall be done by equipment located on a barge or in uplands to prevent the driving of construction equipment in or through tidal waters/wetlands or on the bottom of the inter-tidal zone, in accordance with Env-Wt 606.05(b).
6. Heavy equipment shall not be operated in any jurisdictional area unless specifically authorized by this permit, in accordance with Env-Wt 307.15(a).
7. In accordance with Env-Wt 307.03(h), equipment shall be staged and refueled outside of jurisdictional areas and in accordance with Env-Wt 307.15.
8. 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.
9. 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.
10. 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.

FINDINGS:

1. This project is classified as a major project per Rule Env-Wt 606.17(a)(1), for all new overwater structure construction in tidal waters/wetlands.
2. The approval has been conditioned that the work be performed during the federal dredge window between November 15 - March 15 in accordance with NHF&G recommendations relayed in correspondence dated April 22, 2024 and the requirements of RSA 212-A.
3. The Department finds that this permit for work to dredge or fill will not 'infringe on the property rights or unreasonably affect the value or enjoyment of property of abutting owners' and would not be prohibited by RSA 482-A:11, II.

4. Comments received by NHDES from the Portsmouth Conservation Commission about this application were determined to be related to issues outside of the jurisdiction of RSA 482-A.
5. The Department finds the location, design, and method of construction for this proposed residential tidal dock has been based on the results of the coastal functional assessment, is the least environmentally-impacting practicable alternative, has been certified by a professional engineer as having sufficient structural integrity based on the results of the vulnerability assessment, and will not impede the passage of non-motorized watercraft to a degree that a reasonable person would find objectionable, therefore, the requirements of Rule Env-Wt 606.06(e) have been met.
6. The applicant obtained a statement from the Pease Development Authority, Division of Ports and Harbors regarding the projects impact on navigation and passage stating, "[w]e examined the proposed site and found that the structure will have no negative effect on safe navigation in the channel."
7. NHDES finds that the requirements for a public hearing, as established in RSA 482-A, do not apply as the project will not have a significant environmental impact, as defined in New Hampshire Administrative Rule Env-Wt 104.19, on the resources protected by RSA 482-A, and, is not of substantial public interest, as defined in New Hampshire Administrative Rule Env-Wt 104.32.

