

**BUREAU OF ENVIRONMENT
CONFERENCE REPORT**

SUBJECT: NHDOT Monthly Natural Resource Agency Coordination Meeting

DATE OF CONFERENCE: June 15, 2022

LOCATION OF CONFERENCE: Virtual meeting held via Zoom

ATTENDED BY:

NHDOT

Andrew O’Sullivan

Matt Urban

Jon Evans

Joshua Brown

Arin Mills

ACOE

Mike Hicks

EPA

Jean Brochi

NHDES

Karl Benedict

Lori Sommer

Christian Williams

Eben Lewis

Kevin Lucey

Kelly Thrippleton-Hunter

NHB

Absent

NH Fish & Game

John Magee

Federal Highway

Jamie Sikora

The Nature Conservancy

Pete Steckler

Consultants/ Public

Participants

Christine Perron

Drew Hoffman

PRESENTATIONS/ PROJECTS REVIEWED THIS MONTH: *(minutes on subsequent pages)*

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Finalize Meeting Minutes

Finalized and approved the May 18, 2022 meeting minutes.

Hampton-Portsmouth, 26485 (X-A003(355)):

Christine Perron reviewed the project, which involves improvements to a rail trail and is funded under the Federal CMAQ (Congestion Mitigation & Air Quality Improvement) Program. The project was first introduced at the September 2021 Natural Resource Agency Meeting. The purpose of today's meeting was to wrap up loose ends to finalize permit application materials. Specifically, the following issues require discussion:

- Breaking the 9.6 miles of corridor into two projects was discussed at the last two meetings but there still seem to be some questions or concerns.
- Concurrence on mitigation
- Prime wetland buffer waiver

As noted in email correspondence, it became apparent that getting a field review scheduled in early June with all of the agencies, as requested at the last meeting, was going to be a challenge. Also, since the last meeting, the Army Corps provided feedback via email that wetlands discussed at the last meeting are considered jurisdictional and impacts would require mitigation. Because of the project's very aggressive schedule, it was decided that it would be best to wait until after the application is submitted to determine if a field review should be scheduled.

More information was provided on the project limits. DOT purchased 9.6 miles of the rail corridor as a single purchase. The limits of the project originally put into the Ten Year Plan (TYP) were based on nothing more than the limits of the purchase agreement. The draft TYP now has two separate projects for the Hampton-Portsmouth 9.6 mile segment – the northern 7.9 miles is project 26485, which is what we're discussing today. The southern 1.7 miles is 26485A, which will be discussed at a later date. As mentioned at previous meetings, the 9.6 miles was split into two projects simply because of the additional time needed to address drainage and right of way issues along the southern 1.7 miles. Breaking that into a separate project allows the 7.9 miles to move forward sooner, maintaining momentum in the public eye and taking full advantage of currently available funding.

There are now currently four rail trail projects on this rail corridor in the TYP and the four projects comprise the off-street portion of the NH Seacoast Greenway. Two other previously purchased segments of corridor consist of 2.3 miles between Hampton and Hampton Falls (Project 43537), and 2 miles in Seabrook (Project 42609). These other two projects both have independent utility and are undergoing separate NEPA reviews and permitting efforts.

Impacts along the southern segment (Hampton-Portsmouth 26485A) have not been quantified yet but are anticipated to be in the ballpark of 6,000 square feet of wetland impact and 100 linear feet of stream impact. There are no prime wetlands, tidal wetlands, or other priority resource areas in the 1.7 mile segment. Breaking the Hampton-Portsmouth 9.6-mile corridor into two projects does not result in different permitting requirements. Individually and cumulatively, the projects would be classified as Categorical Exclusions under NEPA and would be below the Individual Permit threshold. FHWA has confirmed that these two projects can be reviewed as separate NEPA

documents and that permitting and mitigation should be addressed as two projects. The proposed improvements along the entire corridor will be discussed in the NEPA document but each project will have a separate document.

Total wetland impacts and mitigation were reviewed for the 7.9-mile project. Wetland impacts will be approximately 39,400 sq ft, which equates to an in-lieu fee of \$236,000. Letters were sent in January 2022 to town officials in North Hampton, Greenland, Rye, and Portsmouth. Included in the letter was a request for input on potential local mitigation projects that NHDOT could consider. Responses regarding resources in the project area were received from the City of Portsmouth and Town of North Hampton; however, neither town addressed the request for input on mitigation projects.

The prime wetland buffer was discussed. Approximately 8,000 linear feet of trail travels through prime wetland buffer in Portsmouth, which would equate to around 150,000 sq ft of impact from regrading the existing rail bed. The project team would like concurrence from DES that a waiver can be requested for prime wetland buffer impacts.

The following is a summary of questions and comments from attendees:

Karl Benedict (DES)

- Noted that the 7.9 and 1.7 mile projects could be permitted separately but cumulative impacts would need to be considered based on DES statute regarding projects done within a 5-year time period. (*Language was reviewed subsequent to the meeting: NH RSA 482-A V. Notwithstanding any rules adopted by the commissioner defining minor projects, a series of minor projects undertaken by a single developer or several developers over a period of 5 years or less may, when considered in the aggregate, amount to a major project in the opinion of the department; all such related projects shall be subject to a public hearing as provided in RSA 482-A:8. A series of minor projects shall be considered in the aggregate if they abut or if they are a part of an overall scheme of development or are otherwise consistent parts of an eventual whole.*)
- A prime wetland buffer waiver seems appropriate. A waiver request would come under Chapter 700 rules and will require coordination with the City of Portsmouth.

Jon Evans (DOT)

- The lead federal agency, FHWA, made a decision regarding independent utility and views these two segments as individual projects. FHWA may not approve mitigation for cumulative impacts.

Lori Sommer (DES)

- This seems to be one linear project. If the next segment is permitted within 5 years, mitigation for the next segment would be required per DES statute, even if that project is below the mitigation threshold.
- There was some discussion about the other projects along the rail corridor. If these are permitted within 5 years of the first project, would they all be considered cumulatively by DES? Lori commented that would need to be discussed if applications come in within

5 years of each other. It was noted that the other two projects would likely have tidal impacts and would require mitigation on their own.

- Lori agreed that in-lieu fee would be appropriate for 26485.

Jean Brochi (EPA)

- Why did the two segments start as one project if they have independent utility?
- Jon responded that more appropriate project limits became apparent as design got underway.

Kevin Lucey (NHDES Coastal Program)

- Noted that the segment through the Hampton-Seabrook estuary has significant regulatory and resource considerations, including Tier 4 stream crossings.

Jon Evans (DOT)

- Following the discussion regarding separate permits and mitigation, there is concurrence that the application for 26485 can move forward. Mitigation for the next segment can be discussed as part of the next permitting effort.

Eben Lewis (DES)

- Would buffer impacts be located entirely in upland? Christine confirmed that impacts in the prime wetland buffer would be upland only.

Lori Sommer (DES)

- DES will need to discuss the buffer waiver to make sure they handle this consistently. The AG's office recently advised DES that the prime wetland buffer is the only upland buffer that can require mitigation. If a waiver isn't possible, then mitigation for buffer impacts would be required.
- Christine noted that Chapter 700 allows for on-site mitigation. If mitigation is required, there should be a discussion about creative mitigation measures to avoid an in-lieu fee for 150,000 sq ft of upland impact. Andy agreed that it would be challenging for DOT to mitigation for upland impacts for areas designated by the municipality.
- There was discussion about the City's viewpoint on the project. Christine noted that the project has a lot of support.
- Subsequent to the meeting, Lori sent the following via email: *I want to get back to you about the waiver issue. As noted in today's meeting, please review and prepare for submission information noted in Env-Wt 706.04 and specifically item (b). This information needs to be submitted to the department with the application as well as to the Portsmouth Conservation Commission (PCC). The NHDES' review shall follow Env-Wt 706.05. The information provided to the PCC will then result in a response. If NHDES and PCC conclude that there will be no significant net loss of wetland values as identified, NHDES can issue the waiver and no mitigation is required. If this conclusion cannot be reached, mitigation may be needed. I'm willing to meet in the field and discuss on-site items to include as mitigation if that is the case.*

Kevin Lucey (NHDES Coastal Program)

- Since the project is adjacent to the Coakley Landfill, an EPA superfund site, he shared last month's presentation with Drew Hoffmann at DES, who indicated that appropriate construction specifications would be needed regarding contamination.
- Christine said that DOT is working with a consultant on contamination issues and the consultant will be identifying the necessary specifications and contract language.

Submitted by:

Christine Perron
McFarland Johnson, Inc.

Note: Finalized minutes and the complete list of attendees will be available in the Conference Report for the June 15, 2022 Natural Resource Agency Coordination Meeting.