



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



**Robert R. Scott, Commissioner**

March 03, 2023

NH DEPT OF TRANSPORTATION  
7 HAZEN DR  
CONCORD NH 03302

**Re: Approved Standard Dredge and Fill Wetlands Permit Application – Required Payment to Aquatic Resource Mitigation Fund (RSA 482-A)**  
**NHDES File Number: 2022-03264**  
**Subject Property: F.E. Everett Turnpike Row, Merrimack, Tax Map #ROW, Lot #ROW**

Dear Applicant:

On March 03, 2023, the New Hampshire Department of Environmental Services (NHDES) Wetlands Bureau approved the above-referenced Standard Dredge and Fill Wetlands Permit Application to Dredge and fill a total of 17,611 square feet (SF) of palustrine and riverine wetlands for NHDOT Project 13761F to perform widening of the roadway from two to three lanes in each direction with the addition of a northbound and southbound travel lane. The project also includes stormwater and drainage improvements including replacement of a 36-inch culvert carrying Dumpling Brook under the Turnpike. The proposed project will require 12,251 SF of permanent impacts and 5,360 SF of temporary impacts to palustrine wetlands and 290 linear feet (including 170 LF of temporary impacts) of stream channel associated with the roadway widening and required grading. Compensatory mitigation includes a one-time payment of \$115,392.53 dollars into the Aquatic Resource Mitigation Fund ("ARM") for the Merrimack River Service Area.

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

1. In accordance with Env-Wt 307.16, all work shall be done in accordance with the Wetlands plans for NHDOT NH Project No. 13761E, F.E. Everett Turnpike Corridor Widening Project (Merrimack) Towns of Nashua-Merrimack-Bedford dated November 4, 2022, as received by the Department on November 23, 2022, and Dumpling Brook Alignment and Profile plans dated January 18-19, 2023 as received by the Department on January 25, 2023.
2. The issuance of this permit is contingent on submittal of a check in the amount of \$115,392.53 to the Aquatic Resource Mitigation Fund by the applicant as calculated per Env-Wt 803.07 and RSA 482-A:30.
3. In accordance with Env-Wt 807.01(b), the payment shall be received by NHDES within 120 days from the approval decision or NHDES will deny the application.
4. In accordance with Env-Wt 527.05(a) In addition to complying with all applicable conditions in Env-Wt 307, the permit shall be contingent on review and approval by the department of final stream diversion and erosion control plans that detail the timing and method of stream flow diversion during construction and show temporary siltation, erosion, and turbidity control measures to be implemented.
5. In accordance with Env-Wt 314.03, (a) The permittee shall notify the department in writing at least one week prior to commencing any work under the permit.
6. All work shall be performed in accordance with the approved Soil and Groundwater Management Plan for Merrimack-F.E. Everett Turnpike (FEET) 13761E Nashua-Merrimack-Bedford Project, DES Site #202004008, Project #39601.

[www.des.nh.gov](http://www.des.nh.gov)

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NHDES Main Line: (603) 271-3503 • Subsurface Fax: (603) 271-6683 • Wetlands Fax: (603) 271-6588  
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7. The Contractor shall be made aware of the potential to encounter rare species and shall follow contract documents requirements detailing the reporting of observations to New Hampshire Fish & Game. All observations of rare, threatened, or endangered species must be immediately reported to the NHEM Department (Melissa Doperalski 603-479-1129 cell or Brendan Clifford 603-944-0885).
8. Work operations shall be completed in accordance with the rare plant transplanting plan for NHDOT Nashua-Merrimack-Bedford 13761E (NHB21-1748) approved by the Natural Heritage Bureau (by email) on February 22, 2023.
9. In accordance with Env-Wt 307.10(g), subject to Env-Wt 307.10(h), in non-tidal waters, no dredging shall occur between October 1 and March 31 for any fish migration or larval settling area of cold-water fish.
10. In accordance with Env-Wt 307.03(c)(2), water quality control measures shall be comprised of wildlife-friendly erosion control materials.
11. In accordance with Env-Wt 527.05(b), The contractor responsible for completion of the work shall use techniques described in Env-Wq 1504.06, Env-Wq 1504.16, Env-Wq 1505.02, Env-Wq 1506, and Env-Wq 1508.
12. In accordance with Env-Wt 307.03(a), no activity shall be conducted in such a way as to cause or contribute to any violation of surface water quality standards specified in RSA 485-A:8 or Env-Wq 1700; ambient groundwater quality standards established under RSA 485-C; limitations on activities in a sanitary protective area established under Env-Dw 302.10 or Env-Dw 305.10; or any provision of RSA 485-A, Env-Wq 1000, RSA 483-B, or Env-Wq 1400 that protects water quality.
13. In accordance with Env-Wt 307.11(g), authorized temporary fill other than swamp mats, construction mats, and corduroy shall be placed on geotextile fabric laid on preconstruction wetland grade.
14. All work shall be conducted and maintained in compliance with the water quality protection conditions specified in Rule Env-Wt 307.03(a) through (h).
15. In accordance with Env-Wt 307.03(c)(4), water quality control measures shall be capable of minimizing erosion; collecting sediment and suspended and floating materials; and filtering fine sediment.
16. In accordance with Env-Wt 307.03(c)(3), water quality control measures shall be installed prior to start of work and in accordance with the manufacturer's recommended specifications or, if none, the applicable requirements of Env-Wq 1506 or Env-Wq 1508.
17. In accordance with Env-Wt 307.03(c)(5), water quality control measures shall be maintained so as to ensure continued effectiveness in minimizing erosion and retaining sediment on-site during and after construction.
18. In accordance with Env-Wt 307.03(c)(6), water quality control measures shall remain in place until all disturbed surfaces are stabilized to a condition in which soils on the site will not experience accelerated or unnatural erosion by achieving and maintaining a minimum of 85% vegetative cover using an erosion control seed mix, whether applied in a blanket or otherwise, that is certified by its manufacturer as not containing any invasive species; or placing and maintaining a minimum of 3 inches of non-erosive material such as stone.
19. In accordance with Env-Wt 307.03(d), any sediment collected by water quality control measures shall be removed with sufficient frequency to prevent the discharge of sediment; and placed in an upland location in a manner that prevents its erosion into a surface water or wetland.
20. In accordance with Env-Wt 307.03(c)(7), temporary water quality control methods shall be removed upon completion of work when compliance with Env-Wt 307.03(c)(6) is achieved.
21. In accordance with Env-Wt 307.03(h), equipment shall be staged and refueled outside of jurisdictional areas (unless allowed) and in accordance with Env-Wt 307.15.
22. In accordance with Env-Wt 307.05(e), to prevent the use of soil or seed stock containing nuisance or invasive species, the contractor responsible for work shall follow Best Management Practices for the Control of Invasive and Noxious Plant Species (Invasive Plant BMPs).
23. Restoration of all temporary impacts shall meet all of the conditions listed in Rule Env-Wt 307.12(a) through (i).
24. In accordance with Env-Wt 307.12(f), if any temporary impact area that is stabilized with seeding or plantings does not have at least 75% successful establishment of wetlands vegetation after 2 growing seasons, the area shall be replanted or reseeded, as applicable.

25. In accordance with Env-Wt 307.12(i), wetland areas where permanent impacts are not authorized shall be restored to their pre-impact conditions and elevation by replacing the removed soil and vegetation in their pre-construction location and elevation such that post-construction soil layering and vegetation schemes are as close as practicable to pre-construction conditions.
26. In accordance with Env-Wt 307.12(a), within 3 days of final grading or temporary suspension of work in an area that is in or adjacent to surface waters, all exposed soil areas shall be stabilized by seeding and mulching, if during the growing season; or mulching with tackifiers on slopes less than 3:1 or netting and pinning on slopes steeper than 3:1 if not within the growing season.
27. In accordance with Env-Wt 307.12(f), if any temporary impact area that is stabilized with seeding or plantings does not have at least 75% successful establishment of wetlands vegetation after 2 growing seasons, the area shall be replanted or reseeded, as applicable.
28. 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.
29. 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.
30. 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.
31. In accordance with Env-Wt 307.03(e), all exposed soils and other fills shall be permanently stabilized within 3 days following final grading.
32. In accordance with Env-Wt 307.18(c), within 60 days of completion of construction, the applicant shall submit to the department a report that describes the monitoring conducted and date(s) of inspections, and includes photos showing the extent of jurisdictional impacts, areas of restoration, and progress of any plantings shall be submitted to the department.

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

1. This is a Major Project per New Hampshire Administrative Rule Env-Wt 407.03, Table 407-1 having more than 10,000 square feet of impacts to jurisdictional area.
2. The proposed NHDOT 13761E project is part of the larger Nashua-Merrimack-Bedford 13761 project that involves widening three (3) segments of the existing two-lane portions of the F.E. Everett Turnpike (F.E.E.T.) in Nashua, Merrimack, and Bedford, New Hampshire. The 13761 project has been divided into five (5) separate construction contracts. The 13761E project begins approximately 0.2 miles north of Exit 12 (the Bedford Road overpass Station 1160+00.00) and continues north for 0.9 miles. Based on prior discussions with NHDES and the Corps, each construction contract will be permitted separately, and cumulative impacts will be tracked for the entire project.
3. The purpose of the project is to provide improved mobility, congestion relief, and improved safety along the project corridor.
4. The project includes replacement of a Tier 2 stream crossing, carrying Dumpling Brook under the Everette Turnpike. The culvert replacement meets the criteria of Env-Wt 904.08.
5. This project was reviewed at the Natural Resource Agency Coordination Meeting on August 17, 2022, and September 21, 2022. Mitigation was determined to be required as the proposed work permanently impacts 12,251 square feet of palustrine wetlands and includes 120-linear feet of permanent impacts to streams. The applicant has reviewed the Town of Merrimack request to acquire easement on State owned parcel as compensatory mitigation and determined the property may be necessary to complete future phases of the NHDOT 13761 project.
6. The NH Natural Heritage (NHB2022-2441) database has been checked which identified multiple species within the flagged project area. The New Hampshire Fish & Game (NHFG) project recommendations have been included as permit conditions. The applicant has completed surveys for rare plants and has provided documentation of coordination with NH Natural Heritage Bureau.

7. The proposed highway improvements will result in a total of 14.21 acres of impervious area where currently the existing roadway has 10.36 acres of impervious within the 13761E project limits. Therefore, the total new additional impervious is 3.85 acres. The total pavement area collected to the proposed stormwater quality treatment practices is 9.81 acres. The proposed treatment goal for this project is to treat more than double the amount of new additional pavement area that is created by the project. Looking solely at the additional impervious pavement created within the 13761E project limits of 3.85 acres, treating 9.81 acres of pavement exceeds the AOT treatment goal of 7.70 acres, which is double the amount of new impervious surfaces created along F.E.E.T. mainline.
8. This approval is contingent on receipt by DES of a one-time payment of \$115,392.53 dollars into the Aquatic Resource Mitigation Fund ("ARM").

Pursuant to RSA 482-A:28, **this approval is contingent on receipt of a one-time in-lieu mitigation payment of \$115,392.53 to the NHDES Aquatic Resource Mitigation (ARM) Fund.** NHDES recommends delaying payment until after the 30-day reconsideration period ending April 2, 2023. In accordance with Env-Wt 803.11(c)(2) and Env-Wt 807.01(b), if NHDES has not received the in-lieu mitigation payment within 120 days of this letter, or by **July 1, 2023**, NHDES will deny the application. Please include a copy of this letter with the payment.

In accordance with RSA 482-A:10, RSA 21-O:14, and Rules Env-WtC 100-200, **any person aggrieved by this decision may file a Notice of Appeal directly with the NH Wetlands Council (Council) within 30 days of the decision date, March 03, 2023.** Every ground claiming the decision is unlawful or unreasonable must be fully set forth in the Notice of Appeal. Only the grounds set forth in the Notice of Appeal are considered by the Council. Information about the Council, including Council Rules, is available at <https://nhec.nh.gov/wetlands/index.htm>. For appeal related issues, contact the Council Appeals Clerk at (603) 271-6072.

If you have any questions, please contact me directly at Karl.Benedict@des.nh.gov or (603) 271-4194.

Sincerely,



Karl D. Benedict  
Public Works Supervisor, Wetlands Bureau  
Land Resources Management, Water Division

cc: NHDOT  
Agent  
Municipal Clerk/Conservation Commission  
ec: NHDOT  
Agent