

LATE ITEM – XIV. B. 4. MOTION

Director Parker:

The Pease Development Authority (“PDA”) Board of Directors hereby authorizes the Executive Director to satisfy project mitigation permit requirements of the New Hampshire Department of Environmental Services (“NHDES”) and the U.S. Army Corps of Engineers (“ACOE”), for both the BUILLD Main Pier Rehabilitation project and the Functional Replacement of the Barge Dock project (“Projects”), with the Division of Ports and Harbors (“DPH”) making a \$238,570.34 contribution into the Aquatic Resource Mitigation (ARM) fund at NHDES regarding the Projects, while also seeking reimbursement from the State for said contribution; all in accordance with the Memorandum of Geno Marconi, Division Director, dated May 18, 2022, attached hereto.




PEASE

INTERNATIONAL

PORTS AND HARBORS

555 Market Street, Suite 1 Portsmouth, NH 03801

Date: May 18, 2022
To: Pease Development Authority ("PDA"), Board of Directors
From: Geno Marconi, Division Director 
Subject: Change to Wetlands Mitigation Requirements

As previously reported to and approved by the PDA Board, and following a recommendation by the New Hampshire Department of Environmental Services (NHDES) Wetlands Division, the Division of Ports and Harbors (Division) received funding approval from the Governor and Executive Council for five hundred thousand dollars (\$500,000) to construct four hundred (400) lineal feet of shoreline restoration in Cutt's Cove to satisfy mitigation requirements for both the BUIILD Main Pier Rehabilitation project, and the Functional Replacement of the Barge Dock project.

On Monday, May 16, 2022, NHDES notified the Division that the U.S. Army Corps of Engineers (ACOE) would not accept the shoreline restoration as mitigation for the construction permits at the Market Street Marine Terminal. Therefore to satisfy the mitigation requirements of NHDES and the ACOE, the Division must make a \$238,570.34 contribution into the Aquatic Resource Mitigation (ARM) fund at NHDES.

The funding previously approved by the Governor and Executive Council was for construction of a mitigation project and not the ARM contribution. As such, to cover this payment the Division would need to:

- (1) Apply for an amendment to the original approval; or,
- (2) Submit a new request for the funding into the ARM fund.

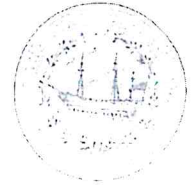
This sudden issue is extremely time sensitive and any delay in satisfying this mitigation requirement would seriously impact the start date (July 1) of the in water work at the terminal, which has already been delayed by three (3) months.

Therefore, the Division is requesting approval of the PDA Board of Directors to expend \$238,570.34 from the Ports and Harbors fund in order to make the contribution to the ARM Fund while simultaneously seeking reimbursement from the State.



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



November 22, 2021

NH DIVISION OF PORTS AND HARBOR
C/O GENO MARCONI
555 MARKET ST
PORTSMOUTH NH 03801

Re: Approved Standard Dredge and Fill Wetlands Permit Application (RSA 482-A); NHDES File Number: 2021-02950
Subject Property: Market St Marine Terminal, Portsmouth, Tax Map #119, Lot #5

Dear Owner:

On November 22, 2021, the New Hampshire Department of Environmental Services (NHDES) Wetlands Bureau approved the above-referenced application to impact a total of 33,000 square feet, 14,000 square of tidal waters and 19,000 square feet of previously developed upland tidal buffer zone, to expand the existing Market Street Marine Terminal facility by replacing the failed approach bridge, construction of deck infill over open water area between the wharf and shore, repair deteriorated caissons, repair deteriorated concrete superstructure, installation of rip rap (241 linear feet), grading and drainage, to allow safe docking and freight discharge of cargo vessels at Division of Ports and Harbors Port facility. Compensatory mitigation to be provided for permanent impacts within tidal surface waters involves restoring tidal wetlands and tidal buffer zone as authorized by permit #2016-01460 or a one-time payment into the Aquatic Resource Mitigation Fund ("ARM") of \$238,570.34 dollars.

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, November 22, 2021.** 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 <http://nhec.nh.gov/wetlands/index.htm>. 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

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

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DECISION DATE:
November 22, 2021

DECISION:

Impact a total of 33,000 square feet, 14,000 square of tidal waters and 19,000 square feet of previously developed upland tidal buffer zone, to expand the existing Market Street Marine Terminal facility by replacing the failed approach bridge, construction of deck infill over open water area between the wharf and shore, repair deteriorated caissons, repair deteriorated concrete superstructure, installation of rip rap (241 linear feet), grading and drainage, to allow safe docking and freight discharge of cargo vessels at Division of Ports and Harbors Port facility. Compensatory mitigation to be provided for permanent impacts within tidal surface waters involves restoring tidal wetlands and tidal buffer zone as authorized by permit #2016-01460 or a one-time payment into the Aquatic Resource Mitigation Fund ("ARM") of \$238,570.34 dollars.

CONDITIONS:

1. In accordance with Env-Wt 307.16, all work shall be done in accordance with the approved plans dated August 2021 by Appledore Marine Engineering, LLC, as received by the NH Department of Environmental Services (NHDES) on September 14, 2021.
2. In accordance with Env-Wt 605.01(a)(3), all in-water pile driving shall not occur between April 1 and June 30 to avoid impacts that could adversely affect fish habitat, wildlife habitat, or both.
3. In accordance with Env-Wt 605.01(a)(3), a startle noise shall be used each day before drilling the steel pipe piles to avoid any impacts that could adversely affect fish habitat, wildlife habitat, or both. The applicant shall coordinate with NH Fish and Game on appropriate startle noise prior to conducting work.
4. In accordance with Env-Wt 307.11(a)(1)-(2), rip rap shall be clean that meets the project's specifications for its use; and does not contain any material that could contaminate surface or groundwater or otherwise adversely affect the ecosystem in which it is used.
5. 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.
6. All work shall be conducted and maintained in such a way as to protect water quality as required by Rule Env-Wt 307.03(a) through (h).
7. 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.
8. 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.
9. 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.
10. In accordance with Env-Wt 307.04(a), activities that produce suspended sediment in jurisdictional areas that provide value as bird migratory areas or fish and shellfish spawning or nursery areas, shall be done so as to avoid and minimize discharges of dredged material or placement of fill material during spawning or breeding seasons by using water quality protection techniques as specified in Env-Wt 307 and timing of project as specified in Env-Wt 307.10(g) or (h), as applicable.
11. In accordance with Env-Wt 307.03(b), all work, including management of soil stockpiles, shall be conducted so as to minimize erosion, minimize sediment transfer to surface waters or wetlands, and minimize turbidity in surface waters and wetlands using the techniques described in Env-Wq 1505.02, Env-Wq 1505.04, Env-Wq 1506, and Env-Wq 1508; the applicable BMP manual; or a combination thereof, if the BMP manual provides less protection to jurisdictional areas than the provisions of Env-Wq 1500.

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12. 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.
13. 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.
14. 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.
15. 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.

MITIGATION

16. The permit is contingent on completing the restoration of shoreline as authorized in permit #2016-01460 or by providing a check in the amount of \$238,570.34 to the NHDES Aquatic Resource Mitigation Fund by the applicant as calculated per Env-Wt 803.07 and RSA 482-A:30.
17. The restoration work to be conducted shall be the responsibility of the applicant and coordinated with the City of Portsmouth. Funds for the restoration work shall be provided to the City prior to start of construction.
18. The applicant shall submit a Federal Mitigation Plan for review by NHDES and the US Army Corps of Engineers prior to start of construction to include a schedule for executing the restoration work under permit #2016-01460.
19. The ARM Fund payment of \$238,570.34 authorizes work included in this permit if the restoration work is not carried out. 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.

FINDINGS:

1. This is classified as a major project per Rule Env-Wt 609.11(b)(1), as the project is located in sand dunes, tidal wetlands, or bogs, and is not for repair of an existing structure pursuant to Env-Wt 609.10.
2. Per Rule Env-Wt 311.06(h), on October 25, 2021, the Portsmouth Conservation Commission provided comments on the proposed project, stating, "This Commission recommends approval of the cited project."
3. Per Rule Env-Wt 311.01(b), the applicant coordinated with the NH Fish and Game Department (NHF&G) and the Natural Heritage Bureau to determine how to avoid and minimize project-related impacts on rare or protected animal species and habitat.
4. Per Rule 606.05(d), the applicant coordinated with NHF&G and National Marine Fisheries for design recommendations or time of year restrictions in or near essential fish habitat.
5. Per Rule Env-Wt 603.09, on September 9, 2021, 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 navigation in the channel."
6. Per Rule Env-Wt 306.05, the applicant has addressed all of the required planning items that are used to determine the appropriate impact classification of a project and the type of approval required.
7. Per Rule Env-Wt 313.01(a)(2), all applicable conditions specified in Env-Wt 307 have been met.
8. Per Rule Env-Wt 313.01(a)(3), all resource and project-specific criteria established in Env-Wt 600 have been met.
9. Per Rule Env-Wt 313.01(a)(5), and as required by RSA 482-A:11, II, 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'.
10. Per Rule Env-Wt 313.03(a) and (b), the applicant has demonstrated that potential impacts to jurisdictional areas have been avoided to the maximum extent practicable and that any unavoidable impacts have been minimized.
11. The industrial tidal dock project meets the criteria listed in Rule Env-Wt 606.13.
12. Per Rule Env-Wt 606.13(c), the applicant has submitted an expansion statement that addresses whether the facility is at capacity or has the physical space to expand operations in the future.

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13. Per Rule Env-Wt 606.13(d), the applicant has identified all federal design standards from the U.S. Coast Guard, the U.S. Maritime Administration, and the Maritime Transportation System; and certified that the identified requirements have been met.
14. The tidal shoreline stabilization project meets the criteria established in Rule Env-Wt 609.01(a) through (e).
15. Per Rule Env-Wt 609.04(a), the applicant has demonstrated that a living shoreline is not practicable, and is not subject to Env-Wt 609.04(c).
16. Per Rule Env-Wt 609.07(a)(1), the applicant has demonstrated that anticipated turbulence, flows, restricted space, fetch, or similar factors render soft stabilization methods physically impractical, and natural areas or naturalized soft shoreline stabilization on neighboring properties will not be damaged by the placement of the proposed rip-rap.
17. The applicant has reviewed permittee-responsible options for mitigation. A nearby City parcel has been proposed for mitigation in the form of habitat improvement through restoration of a living shoreline. The parcel will restore tidal wetlands and upland tidal buffer zone previously filled and armored with rip-rap.
18. The applicant will provide funding to the living shoreline project prior to start of construction to the City of Portsmouth to continue and complete work authorized under NHDES permit #2016-1460. The completion of this effort will finish work that was started and will result in improved habitat for juvenile fish and invertebrates and facilitate saltmarsh migration landward over time.
19. The mitigation at the City parcel will be carried out according to NHDES permit #2016-01460.
20. If the applicant is unable to coordinate and complete the restoration of 600 linear feet of living shoreline, then a one-time payment to the Aquatic Resource Mitigation (ARM) fund of \$238,570.34 is required for the work authorized under this permit. The payment into the ARM fund shall be deposited in the NHDES fund for the Salmon Falls-Piscataqua Rivers watershed per RSA 482-A:29.
21. The funds provided by the applicant for the completion of the living shoreline restoration satisfies the NHDES mitigation requirement for the future deep water dredge work that has been estimated not to exceed 55,000 sq.ft. of tidal water impacts. That work would be required to be submitted in a new application for review and approval by the Department and federal agencies.
22. Per Rule Env-Wt 801.03, the applicant has considered permittee-responsible mitigation and proposes restoration to be carried out by NHDES permit #2016-01460 as described in the project narrative titled "Phase II Multi-Habitat Restoration at Cutts Cove, Portsmouth, NH".
23. Per Rule Env-Wt 803.10(e), the Department shall accept the mitigation proposal as the proposal meets the requirements of Env-Wt 803.10(b), and of Env-Wt 803.10(d)], and the mitigation type or combination of mitigation types listed in Rule Env-Wt 803.08(a) Table 800-1.
24. The Department decision is issued in letter form and upon transfer of funds or receipt of the ARM fund payment, the Department shall issue a posting permit in accordance with Env-Wt 803.11(c).
25. Per Rule Env-Wt 202.01(b) and as required by RSA 482-A:8, the 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 New Hampshire Administrative Rule Env-Wt 104.19, on the resources protected by RSA 482-A, or, is not of substantial public interest, as defined in New Hampshire Administrative Rule Env-Wt 104.32.

