



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



**Robert R. Scott, Commissioner**

August 09, 2021

NH DEPT OF TRANSPORTATION  
ATTN ANDREW O'SULLIVAN  
PO BOX 483  
CONCORD NH 033020483

**Re: Approved Standard Dredge and Fill Wetlands Permit Application – Required Payment to Aquatic Resource Mitigation Fund (RSA 482-A)**  
**NHDES File Number: 2019-03832**  
**Subject Property: Us Route 4, Danbury, Tax Map #ROJW, Lot #ROW**

Dear Applicant:

On August 09, 2021, 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 22,686 square feet within palustrine forested, palustrine scrub-shrub and palustrine emergent wetlands for the realignment and widening of US Route 4 which includes replacing in a new location the existing NHRR Bridge No. 156/104 over the Northern Rail Trail. Temporarily impact 4,056 square feet within palustrine forested, palustrine scrub-shrub and palustrine emergent wetlands for construction access and siltation controls. Mitigate wetland impacts by making a one-time payment of \$88,809.33 to the NHDES Aquatic Resource Mitigation (ARM) fund within the Pemigewasset-Winnepesaukee River Watershed.

**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 plans for NHDOT for Federal Aid Project No. X-A001(230), N.H. Project No. 16303, US Route 4 in Danbury dated November 15, 2019 as received by the NH Department of Environmental Services (NHDES) on July 7, 2021.
2. The permit is contingent on submittal of a one-time payment in the amount of \$88,809.33 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 311.11(d), this permit is not valid until the applicant/owner obtains construction easements on abutting parcels or written permission from abutting property owners if the proposed transportation project is beyond the existing right-of-way. The permittee shall submit a copy of each recorded easement to the NHDES Wetlands Bureau prior to construction.
5. 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.
6. 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.
7. In accordance with Env-Wt 527.05(b), the contractor responsible for completion of the work shall use

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techniques described in Env-Wq 1504.06, Env-Wq 1504.16, Env-Wq 1505.02, Env-Wq 1506, and Env-Wq 1508.

8. 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.
9. In accordance with Env-Wt 307.03(e), all exposed soils and other fills shall be permanently stabilized within 3 days following final grading.
10. 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.
11. 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.
12. 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.
13. 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).
14. In accordance with Env-Wt 307.11(a), fill shall be clean sand, gravel, rock, or other material 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.
15. In accordance with Env-Wt 307.11(b), limits of fill shall be clearly identified prior to commencement of work and controlled in accordance with Env-Wt 307.03 to ensure that fill does not spill over or erode into any area where filling is not authorized.
16. In accordance with Env-Wt 307.12(d), mulch used within an area being restored shall be natural straw or equivalent non-toxic, non-seed-bearing organic material.
17. 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.
18. In accordance with Env-Wt 307.12(h), any trees cut in an area of authorized temporary impacts shall be cut at ground level with the shrub and tree roots left intact, to prevent disruption to the wetland soil structure and to allow stump sprouts to revegetate the work area.
19. In accordance with Env-Wt 307.12(b), upon completion of construction, all disturbed wetland areas shall be stabilized with wetland seed mix containing non-invasive plant species only.
20. In accordance with Env-Wt 307.12(g), a temporary impact area restored by seeding or plantings shall not be deemed successful if the area is invaded by nuisance species such as common reed or purple loosestrife during the first full growing season following the completion of construction; and a remediation plan shall be submitted to the department that proposes measures to be taken to eradicate nuisance species during this same period.
21. 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.
22. 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.

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

1. This is classified as a major project per Rule Env-Wt 407.03(a), as impacts to jurisdictional areas other than a watercourse are equal to or greater than 10,000 square feet and per Rule Env-Wt 527.07 which provides that public highway projects are classified based on the dimensions established in Env-Wt 407, subject to the adjustments and project exceptions.
2. The public highway project meets all of the approval criteria established in Env-Wt 527.02. Reconstruction and realignment of a section of US Route 4 is required to improve sight distance and public safety. The roadway is proposed to be shifted to the northwest, lowered in elevation and widened. The project requires a new I-beam concrete-deck bridge over the Northern Rail Trail to replace existing NHRR Bridge No. 156/104.
3. The application was received December 11, 2019. A Request for More Information (RMI) was issued February 20, 2020. Due to cost concerns, NHDOT changed the proposed bridge structure from a pre-cast concrete arched-frame on knee-wall abutments to a traditional I-beam concrete deck bridge. This and other adjustments resulted in a minor decrease in total wetland impacts. An amendment request was provided with the RMI response package to NHDES on July 7, 2021.
4. The applicant has demonstrated specifically that each factor listed in Env-Wt 313.03(b) has been considered in the design of the proposed major project. Three alternatives were evaluated by NHDOT. Shifting the road easterly would require land acquisition, wetland impacts, and reconstruction of Spear Hill Road. The no-build option would not address sight distance and public safety issues with the existing alignment. Constructing an at-grade crossing would create challenges for maintaining roadway drainage and public safety due to the intersection with the rail trail. Although the project increases impervious area, water quality is anticipated to be improved over existing conditions through a new closed drainage system with sumped catch basins that deliver stormwater to two grassed treatment swales.
5. Per Rule Env-Wt 801.03(b), the applicant is offering an in-lieu mitigation payment as specified in RSA 482-A:30 for permanent wetland impacts, as permittee-responsible compensatory mitigation is not practicable. In 2018, the project was presented at NHDOT, at which time mitigation was discussed. At the time of the application, the Town of Danbury did not have a conservation commission and no priority conservation projects from town officials were received.
6. The Department decision is issued in letter form and upon receipt of the ARM fund payment of \$88,809.33, the Department shall issue a posting permit in accordance with Env-Wt 803.11(c).
7. The payment into the ARM fund shall be deposited in the NHDES fund for the Pemigewasset-Winnepesaukee River watershed per RSA 482-A:29.
8. The project area consists of several large wetland systems and multiple smaller isolated wetlands. No vernal pools were identified by the wetland scientist. Of the larger wetlands proposed to be impacted, permanent impacts are primarily in wetlands one and three and will be impacted for embankment fill. Wetland one is located between US Route 4 and the rail trail, is semi-permanently flooded and contains forested, scrub-shrub and emergent classes. Wetland three is located on the west side of US Route 4, is seasonally flooded and saturated and contains forested and scrub-shrub classes. A fresh water marsh was delineated in the north of the project area but is not proposed to be impacted.
9. Per Rule Env-Wt 311.01(b), the NH Natural Heritage Bureau (Datacheck #NHB19-3576) determined that there were no recorded occurrences for sensitive species or habitat near the project area.
10. US Endangered Species Act, Section 7 consultation for northern long-eared bat (NLEB) was initiated with the US Fish and Wildlife Service (USFWS) and it was determined that the project may rely on the Programmatic Biological Opinion for effects to NLEB (USFWS correspondence in file).
11. Consultation with the NH Division of Historic Resources (NHDHR) and the Federal Highway Administration (FHWA) determined that the project will have an adverse effect on the Northern Railroad Historic District due to the removal of the bridge, a contributing structure (Adverse Effects Memo in file). Appropriate mitigation and minimization measures were being coordinated through NHDHR and FHWA at the time of application.


12. Per Rule Env-Wt 202.01(b) and as required by 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 104.19, on the resources protected by RSA 482-A, or, is not of substantial public interest, as defined in Env-Wt 104.32.

Pursuant to RSA 482-A:28, **this approval is contingent on receipt of a one-time in-lieu mitigation payment of \$88,809.33 to the NHDES Aquatic Resource Mitigation (ARM) Fund.** NHDES recommends delaying payment until after the 30-day reconsideration period ending September 8, 2021. 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 December 7, 2021, 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, August 09, 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 <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 [lori.sommer@des.nh.gov](mailto:lori.sommer@des.nh.gov) or (603) 271-4059.

Sincerely,



Lori L. Sommer  
Wetland Mitigation Coordinator, Wetlands Bureau  
Land Resources Management, Water Division

**Cc:** Danbury Municipal Clerk  
David Scott, NHDOT, Bureau of Bridge Design  
**Ec:** Karl Benedict, NHDES Wetlands Bureau, Public Works Program  
Lori Sommer, NHDES Wetland Bureau, Mitigation Program