



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

May 10, 2024

SUNAPEE DIFFERENCE LLC
C/O VR NE HOLDINGS LLC
390 INTERLOCKEN CRESCENT STE 100
BROOMFIELD CO 80021

Re: Approved Standard Dredge and Fill Wetlands Permit Application with Mitigation (RSA 482-A)
NHDES File Number: 2023-00719
Subject Property: Mt Sunapee Access Rd, Newbury, Tax Map #13, Lot #0092

Dear Applicant:

This letter serves as notification of the New Hampshire Department of Environmental Services' (NHDES) intent to issue a conditional approval of the above-referenced application for a NHDES Wetlands Permit. The approval will **not be effective until** compensatory mitigation actions outlined in the conditions of the enclosed NHDES Wetlands Permit have been completed. Compensatory mitigation for your project requires payment into [New Hampshire's in-lieu fee \(ILF\) program](#), the Aquatic Resource Mitigation (ARM) Fund, operated by NHDES. No work in state jurisdiction under state statute RSA 482-A is authorized until the ILF payment is confirmed via a payment receipt letter on [OneStop](#).

This letter serves as confirmation of completion of the State of NH process only. You are hereby notified that, in addition to following the conditions of the NHDES Wetlands Permit, you are responsible for complying with Federal law and are advised to consult with the New England Regulatory Division of the U.S. Army Corps of Engineers (USACE) to complete the federal review pursuant to Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899 and the [Department of the Army, General Permits for the State of New Hampshire](#) (NHGP). Under Federal law, no work may occur without written authorization from USACE. It is the permittee's obligation to contact USACE prior to proceeding with any activities authorized by this NHDES Wetlands Permit to avoid unauthorized activities and a federal enforcement action.

This NHDES approval is contingent on receipt and clearance of a one-time ILF mitigation payment of \$317,530.01, which purchases .20 Wetland credits and 289 Stream credits, to the ARM Fund as compensatory mitigation for the NHDES Wetlands Permit pursuant to RSA 482-A:28 through A:31 and Env-Wt Chapter 800. USACE and its regulatory partners, including the U.S. Environmental Protection Agency, will review your project and verify the total number of Wetland and/or Stream credits that must be purchased from the ARM Fund, as federal mitigation pursuant to the NHPG and USACE [New England District Compensatory Mitigation Standard Operating Procedures](#) (12/29/2020). In many cases, the ILF payment for the NHDES Wetlands Permit will include all or a portion of the cost of purchasing credits as deemed necessary to satisfy federal obligations. For questions regarding federal mitigation requirements, please contact USACE at (978) 318-8832, (978) 318-8295, or by email at cenae-r-nh@usace.army.mil.

Payment Timeline: NHDES recommends delaying the ILF payment until after the NHDES appeal period and following written authorization from USACE describing federal mitigation requirements. Upon receipt of written authorization from the USACE, NHDES recommends you contact the [ARM Fund](#) at des.arm@des.nh.gov to confirm the total required ILF payment amount to satisfy federal mitigation requirements. Following payment and prior to work, it is the permittee's responsibility to verify that the payment has cleared, by downloading the payment receipt letter from

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

[OneStop](#). The letter will indicate the processed payment amount, the impacts authorized through the payment, and the number of federal credits purchased by the payment, as applicable.

Payment Instructions: Mitigation payments must be payable to “Treasurer - State of NH” and must reference “ARM Fund”, NHDES File Number and USACE File Number (beginning “NAE”). Payments can be mailed to NHDES Wetlands Bureau, 29 Hazen Drive, PO Box 95, Concord, NH 03302-0095.

Enclosed please find NHDES Wetlands Permit 2023-719.

This approval is based on the following findings:

Background Findings:

1. This is classified as a major impact project per Env-Wt 524.06(d)(3) and Env-Wt 407.03(a), as impacts to a watercourse are greater 200 LF.
2. On May 10, 2023, NHDES received comments from the Newbury Conservation Commission (NCC). Their concerns include an increased risk of nutrient and chemical runoff into the Beck Brook and Lake Sunapee, stormwater treatment; hydrological impacts to the wetland adjacent to the proposed parking lot entrance, missing plan details depicting the lagoons, spray irrigation sites, and wetland limits; impacts to the wild brook trout population in Beck Brook, and compensatory mitigation. On May 18, 2023, NHDES received correspondence from the NCC indicating that a new set of plans were provided. The NCC indicates concerns regarding the three septage lagoons and the wetlands to serve as the filtration, and requested the applicant provide compensatory mitigation for the wetlands proposed in the parking lot expansion.
3. On May 19, 2023 NHDES issued a Request for Information (RMI) to the applicant itemizing 11 items.
4. On June 16, 2023, NHDES met with the applicant to review the RMI and revised proposal for NHDES' consideration.
5. On July 7, 2023, NHDES received a call and spoke with a member of the NCC emphasizing their May 10, 2023 letter of concern.
6. On July 18, 2023, NHDES received a response and amended plans from the applicant.
7. On August 16, 2023 NHDES and the applicant executed a time extension to extend the review until September 1, 2023 to allow additional time for coordination with other bureaus, to conduct a field inspection to ensure all permit requirements are met.
8. On August 28, 2023, NHDES issued a second Request for More information regarding 6 items including a request to address the NCC Comments.
9. On December 27, 2023, the NCC expanded on concerns previously outlined in the May 18, 2023 letter including: a limited project scope from a larger long-term master development plan, location of the proposed project in relation to the spray field, degradation of water quality and water quality sampling, the wetland impact footprint, hydrological connectivity, monitoring requirements, and stormwater management plan.
10. On December 28, 2023, NHDES issued a Request for More information with 4 items. In particular, NHDES asked the applicant to respond to the NCC letter dated December 27, 2024.
11. On February 13, 2024 NHDES received a response to its 12/28/23 RMI item by item. They provided a response to the NCC letter in attachment Appendix D. Included in the applicant's response is an email from the Drinking Water and Groundwater Bureau confirming their acceptance of the proposed 100 foot buffer and proposed plan provided as part of the NHDES Wetlands application.
12. On March 18, 2024, the NCC provided a letter to NHDES. The NCC concerns included nutrients retention and impact on groundwater to surface waters, a reference to the Groundwater permit conditions, and a reference to the Groundwater approval requiring a timeline to replace the site's infrastructure.
13. On March 19, 2024, NHDES issued a fourth Request for More information regarding 4 items. NHDES asked the applicant to address the latest NCC comments.

Findings of Fact:

14. Per Env-Wt 313.01(c)(1), Env-Wt 524.02, and Env-Wt 524.04, the applicant conducted analysis of different alternative upland locations and found no practicable alternative site within perimeter under a lease contract.

15. Per Env-Wt 311.07(b)(3) and Env-Wt 524.02(b), NHDES finds that the on-site alternatives analysis demonstrates that the project avoids and minimizes impacts to the maximum extent practicable. The design has been reduced significantly from the initial design presented and has proposed wetland creation to mitigate impacts to the intermittent stream.

16. Per Rule Env-Wt 204.05(a), NHDES has granted a waiver to the requirement established in Rule Env-Wt 306.05(a)(1), to have all wetlands delineated. NHDES finds that the delineated area is sufficient to demonstrate that the least impacting practicable alternative has been selected.

17. Granting the above referenced waiver will not result in an avoidable adverse impact on the environment or natural resources of the state, public health or public safety 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.

18. The applicant provided revised project plans, including but not limited to clearly labeled lagoons and spray disposal area in the overall view of the Mount Sunapee base area, Beck Brook labeled in respect to the proposed construction activities, and the wetland delineation limits as requested by NCC. The project has gone through several design iterations to minimize wetland impacts, and the stormwater systems have been designed to capture and treat more impervious area than the project proposes to add. The applicant has proposed a created treatment wetland at the inlet of the proposed culvert/parking lot with plants to provide additional nutrient retention and attenuation through the addition of a constructed wetlands downstream of the buffer. The Horizons' modeling indicates the design "will have a residence time of 16.7 minutes, more than double the 8.3-minute residence time of the existing stream" and "anticipates that this provides additional time for potential nutrient uptake."

19. To maintain the surface hydrologic connection per Env-Wt 524.03(d), the applicant has revised the project plans to include an impermeable clay liner in the ditchline to prevent dewatering of the wetland adjacent to the parking lot entrance.

20. Per Rule Env-Wt 311.01(b) and (c)(1), the applicant coordinated with the NH Fish and Game Department (NHF&G) and the Natural Heritage Bureau (NHB) to determine how to avoid and minimize project-related impacts on rare or protected animal species and habitat, and on protected plants or exemplary natural communities. NHF&G "did not identify any particular project-related impacts pertaining to the cold-water fishery in Beck Brook", as the project does not propose the elimination of any shading of Beck Brook, and that all stormwater passes through underground filtration. Furthermore, Normandeau was contracted to address concerns regarding fish and fish habitat impacts to Beck Brook and Lake Sunapee. A letter dated November 20, 2023 by Normandeau supports that the project is unlikely to increase temperature of the waters in Beck Brook. Furthermore, the analysis concludes that "(t)he inclusion of stormwater BMPs, a design that minimizes hydraulic and flow alteration from the existing conditions, constructed wetlands for nutrient trapping of upper watershed flows, the retention of flows to the current watershed, and the lack of any construction or clearing to the vegetation shading Beck Brook should result in no changes to Beck Brook or Lake Sunapee in-stream/lake habitat as a result of this project work." NHB has no further concerns regarding NHB22-3045.

21. Per Env-Wt 313.04, compensatory mitigation is required for impacts on a watercourse greater than 200 linear feet.

22. The applicant has proposed compensatory mitigation via in-lieu mitigation payment in accordance with Env-Wt 803.05.

23. The NHDES has accepted a compensatory mitigation proposal that meets the requirements of Env-Wt 800 for all permanent impacts that will remain after avoidance and minimization per Env-Wt 313.01(a) has taken place.

24. NHDES finds that the applicant has addressed the NCC comments which pertain to the limits of jurisdiction under RSA 482-A.

Mitigation is required as part of this approval. The required mitigation must be completed as approved in the permit, in accordance with the conditions in the permit, and in conjunction with the project. Failure to comply with the mitigation requirements will be considered a violation of RSA 482-A.

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, May 09, 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,

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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 MaryAnn.Tilton@des.nh.gov or (603) 271-2147.

Sincerely,



Mary Ann Tilton
Assistant Bureau Administrator, Wetlands Bureau
Land Resources Management, Water Division

Enclosure

Copied: Seth Prescott, DNCR
Chris Hernick, PE Horizons Engineering, Inc.
Municipal Clerk/Conservation Commission
Local River Advisory Committee
NHDES Rivers Program
Emily Nichols, ARM Fund Manager